

Respondent's Motion for Summary Disposition AND Statement of Facts re: Feathers 3-15755

On 7-17-20 this court ordered Enforcement to refile its motion for summary disposition by 7-31-20 due to procedural errors and material filing omissions which Respondent brought to the Court's attention. The court's order did not state that Respondent could not concurrently file his own motion for summary disposition. Enforcement should not be favored in this regard; attached hereto is Respondent's filing.

BACKGROUND AND ARGUMENTS

Around the period 2007-2008 it was brought to the public's attention that Bernie Madoff, formerly a president of a major stock exchange and a manager of tens of billions of dollars of other people's money, was operating a Ponzi scheme. SEC looked bad from all of this. For years SEC Enforcement personnel had been alerted of credible suspicions of same. So, SEC tripled enforcement actions in the years that followed, a matter of public record, and, in fact, a matter flouted by SEC in its own press releases in those years.

In 2012, Enforcement brought about a seizure of investment's companies and his personal assets by way of a sealed *ex parte prima facie* civil action. That seizure relied wholly and exclusively upon the testimony of Roger Boudreau, CPA, and Susan Hannan, Esq. A third member of the Enforcement team, though he was not an SEC employee, was Thomas A. Seaman, a federal equity receiver. Seaman and his company profited with tens of millions of dollars in gross revenues from SEC referrals from 2005-2015, including \$5,000,000 in documented billings to Respondent's companies. Seaman's company homesite internet pages show primarily revenues from SEC actions over that period. Enforcement requested Seaman's many receivership appointments despite knowledge of federal watchdog GAO's recommendations to Congress to avoid same.

Boudreau did not employ a single remotely valid or reliable financial illustration within his sealed testimony. To his own false financial illustrations Boudreau affixed, repeatedly, the prejudicial and pejorative label "Ponzi". He labeled these all "pro forma", though, to leave sufficient wiggle room on his false financial illustrations which civil court relied to approve a seizure of Respondent's companies, all submitted by Enforcement *ex parte*. Subsequent to Respondent's efforts demonstrating the falsity to civil court of Boudreau's work, Enforcement's senior trial prosecutor, John Bulgozdy, Esq., described Boudreau's false, material, and prejudicial testimony as having been produced "in good faith", despite both Bulgozdy's and Boudreau's of knowledge of its falsity. Boudreau's testimony appears to have been produced by way of judicial deception, given his experience with accounting and his CPA licensing. Enforcement's attorney Hannan, in her sealed testimony, repeatedly failed to outline specific material allowances outlined within Respondent's investment funds. These materially contributed to civil court's decision to approve their seizure.

Under seal Enforcement's senior trial prosecutor, representing SEC now, again, in this OIP, falsely described his federal equity receiver request, Seaman, as a licensed CPA. He applied his false licensing description with full knowledge that Seaman was not a CPA, and that Seaman has never held any accounting certification, whether by licensing or from a degree from an accredited institution. And, Enforcement asked for Seaman's appointment while failing to inform civil court of their knowledge that Seaman had, prior to his first SEC appointment, violated California, and federal, advertising, licensing, and conduct laws by advertising himself as a licensed CPA, only months before receiving his first civil appointment at Enforcement's bequest.

EVIDENTIARY MATERIALS AND WITNESS STATEMENTS

Prior submitted to this court is a forensic accounting report of Respondent's investment funds performed by Annette Stalker, CPA. The report relied upon the same underlying factual financial data and offering documents of Respondent's investment companies which Boudreau and Hannan relied upon. Wholly

different conclusions are shown in its finding then were offered by Boudreau and Hannan. It is an arms-length third party report commissioned by the criminal court of Hon. Lucy Koh, and concurrently submitted to civil and criminal court, which civil court could not benefit from, on a timely basis, due to the date of its engagement and completion. The only reasons that Respondent accepted a criminal plea are best stated by one of Respondent's past investors, Mr. Syd Raineri. At Respondent's criminal sentencing hearing Mr. Raineri stated, in open court, the following (Exhibit 1, "Sentencing Transcript"):

pg. 29:

"AND I JUST WANTED TO ADD POSSIBLY A LITTLE CLARITY FOR THE JUDGE. PART OF THE REASON WHY YOU ARE HAVING SUCH A DIFFICULT TIME UNRAVELLING THIS CASE, WHICH I SEE, IS FIRST OFF, I BELIEVE THAT THE MAN WAS WRONGLY ACCUSED TO BEGIN WITH."

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"I BELIEVE IF YOU WERE TO DEDUCT THE AMOUNT THAT IT COSTS FOR THE RECEIVERSHIP, DURING THAT PERIOD OF TIME, AND THE ATTORNEY FEES, THAT THE FUNDS WERE BASICALLY SOLVENT, THAT THEY WOULD HAVE PAID OFF ONE HUNDRED PERCENT IF THEY WOULD HAVE HAD TO LIQUIDATE THOSE FUNDS THEMSELVES WITHOUT PAYING A RECEIVER."

Pg. 32

"I THINK THAT THE GOVERNMENT OVERSTEPPED THEIR AUTHORITY IN 2012 MAINLY BECAUSE OF THE MADOFF SITUATION THAT THE SECURITIES AND EXCHANGE COMMISSION LOOKED SO BAD THAT THEY WENT OUT AFTER EVERY SMALL COMPANY THAT WAS INVOLVED IN INVESTMENT. AND THAT ADDED TO THE PROBLEM."

Pg. 33

"I'M SURE THAT HE WANTED TO GET IT OVER WITH, AND THAT'S PART OF THE REASON WHY HE PLED. THE FACT THAT HE HAD SO MANY LITIGATED MATTERS THROUGHOUT THE PROCEEDINGS WAS JUST, I BELIEVE, A FRUSTRATED MAN THAT COULDN'T AFFORD AN ATTORNEY BECAUSE THEY TIED UP ALL HIS MONEY RIGHT AT THE BEGINNING AND HE WAS NOT ABLE TO DEFEND HIMSELF. OVER TIME, IT WEARS YOU DOWN."

In conclusion, and based on the preceding, these matters should now proceed to trial.

Respectfully,



Mark Feathers, *pro se*, Respondent

Dated 7-31-20

STATEMENT OF FACTS and DECLARATIONS OF RESPONDENT

ALL of the matters stated herein I certify to be statements of fact, to the best of my knowledge and on this date, in the County of San Mateo, CA. All of the evidentiary materials attached hereto are materials which have been prior submitted to civil, and/or, criminal court.



Mark Feathers, *pro se*, Respondent

Dated 7-31-20

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA,) CR-14-00531-LHK
)
PLAINTIFF,) SAN JOSE, CALIFORNIA
)
VS.) MARCH 7, 2018
)
FEATHERS,) PAGES 1-62
)
DEFENDANT)
)
_____)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE LUCY H. KOH
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S

FOR THE PLAINTIFF: BY: MARISSA HARRIS
U.S. ATTORNEYS OFFICE
NORTHERN DISTRICT CALIFORNIA
150 ALMADEN BLVD., STE. 900
SAN JOSE, CA 95113

FOR THE DEFENDANT: BY: EUGENE G. ILLOVSKY
MATTHEW CARTER DIRKES
BOERSCH & ILLOVSKY LLP
1611 TELEGRAPH AVENUE, SUITE 806
OAKLAND, CA 94612

PROBATION:

OFFICIAL COURT REPORTER: SUMMER FISHER, CSR, CRR
CERTIFICATE NUMBER 13185

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY
TRANSCRIPT PRODUCED WITH COMPUTER

1 SAN JOSE, CALIFORNIA

MARCH 7, 2018

2 P R O C E E D I N G S

3 (COURT CONVENEED AT 9:46 A.M.)

4 THE CLERK: YOUR HONOR, THE NEXT MATTER WILL ALSO BE
5 THE IN CUSTODY MATTER.

6 CASE 14-CR-00531. UNITED STATES OF AMERICA VERSUS MARK
7 FEATHERS.

8 PLEASE STATE YOUR APPEARANCES.

9 MS. HARRIS: GOOD MORNING, YOUR HONOR.

10 MARISSA HARRIS FOR THE UNITED STATES.

11 MR. ILLOVSKY: GOOD MORNING, YOUR HONOR.

12 EUGENE ILLOVSKY WITH MATTHEW DIRKES. WE ARE BY
13 APPOINTMENT FOR MR. FEATHERS WHO IS PRESENT AND IN CUSTODY.

14 PROBATION OFFICER: GOOD MORNING, YOUR HONOR.

15 BRIAN CASAI FROM PROBATION.

16 THE COURT: ALL RIGHT. GOOD MORNING AND WELCOME TO
17 EVERYONE.

18 LET ME ASK MR. FEATHERS, HAVE YOU READ AND DISCUSSED THE
19 PRESENTENCE REPORT WITH YOUR ATTORNEY?

20 THE DEFENDANT: YES, YOUR HONOR.

21 THE COURT: I GUESS I SHOULD SAY, YOUR ATTORNEYS.

22 THE DEFENDANT: YES, YOUR HONOR.

23 THE COURT: ALL RIGHT. THANK YOU.

24 I HAVE SOME QUESTIONS TO ASK, BUT IF ANYONE WANTS TO SPEAK
25 FIRST, THAT'S FINE TOO.

1 LET ME FIRST ASK, DO YOU HAVE -- AND I KNOW MS. HARRIS,
2 THIS WAS MR. LUCEY'S CASE; IS THAT RIGHT?

3 MS. HARRIS: YES, YOUR HONOR.

4 THE COURT: SO I DON'T KNOW, HOW LONG HAVE YOU BEEN
5 ON THIS CASE?

6 MS. HARRIS: FOR PROBABLY ABOUT A MONTH, YOUR HONOR.

7 I JUST LITERALLY I GOT IT. HE WAS WALKING OUT THE DOOR,
8 AND I GOT IT AND WAS ASKED TO WRITE THE SENTENCING SUBMISSION
9 IN TWO WEEKS.

10 THE COURT: OH, OKAY.

11 MS. HARRIS: IT'S BEEN A BIT OF A TRIAL BY FIRE,
12 YOUR HONOR.

13 THE COURT: OH, I'M SURE. THIS IS A HEAVILY
14 DOCUMENT-INTENSIVE CASE, SO I DON'T EVEN KNOW IF YOU ARE
15 FAMILIAR ENOUGH WITH IT TO ANSWER SOME OF MY QUESTIONS.

16 DO YOU HAVE A RESPONSE TO THE DEFENSE SENTENCING MEMO?
17 BECAUSE I FELT LIKE THE SENTENCING MEMOS OF THE PARTIES WERE
18 KIND OF TWO SHIPS PASSING IN THE NIGHT.

19 DO YOU HAVE A RESPONSE OR NOT? AND I WILL UNDERSTAND IF
20 YOU ARE JUST NOT FAMILIAR ENOUGH WITH THE CASE NOW THAT
21 MR. LUCEY HAS LEFT.

22 MS. HARRIS: WELL, A RESPONSE IN WHAT WAY,
23 YOUR HONOR?

24 SO I NOTE THAT WITH REGARDS TO THE RESTITUTION, I HAVE
25 ASKED THE RECEIVER TO BE AVAILABLE TODAY IN CASE THE COURT HAS

1 ANY QUESTIONS FOR HIM. AND SO I GAVE THE COURT CLERK THAT
2 NUMBER. BUT IN TERMS OF A RESPONSE, I MEAN, YOUR HONOR, MY
3 UNDERSTANDING --

4 THE COURT: I MEAN, THEY BASICALLY ARE SAYING HE'S
5 NOT GUILTY, HE MADE ALL THE REQUIRED DISCLOSURES, THAT'S THE
6 WAY I READ THEIR MEMO.

7 MS. HARRIS: RIGHT.

8 THE COURT: IT'S LIKE HE REALLY DIDN'T DO ANYTHING
9 WRONG, HE DID EVERYTHING RIGHT.

10 MS. HARRIS: YOUR HONOR --

11 THE COURT: WHAT'S YOUR ANSWER ON ALL OF THESE?

12 MS. HARRIS: YOUR HONOR, TO THAT, I WOULD SAY THE
13 PLEA AGREEMENT SPEAKS FOR ITSELF.

14 THE DEFENDANT MADE ADMISSIONS IN THE PLEA AGREEMENT,
15 SPECIFICALLY HE ADMITTED TO A COUNT OF MAIL FRAUD, WHICH BY ITS
16 VERY NATURE REQUIRES HIM TO ADMIT TO MISSTATEMENTS THAT HE MADE
17 IN CONNECTION WITH THESE FUNDS, AND IN RELATION TO THE
18 TRANSFERS THAT WERE MADE BETWEEN THE FUNDS AND SBCC. THOSE
19 FACTS WERE LITERALLY IN THE PLEA AGREEMENT. WE AGREED TO THEM.
20 MR. LUCEY AND MR. ILLOVSKY HAMMERED OUT THIS AGREEMENT ON THE
21 EVE OF TRIAL. IT WAS A FINE TUNED AGREEMENT, FROM MY
22 UNDERSTANDING, AND THESE ARE THE FACTS THAT WERE AGREED TO, AND
23 THAT'S IT.

24 SO I MEAN, I DON'T REALLY UNDERSTAND TO WHAT EXTENT THERE
25 IS ANY ATTEMPT HERE TO WALK BACK FROM THE FACTS IN THE PLEA

1 AGREEMENT. BUT TO THE EXTENT THAT THERE IS ONE, IT'S -- I
2 THINK IT'S NONSENSE BECAUSE THAT'S LITERALLY WHAT HE AGREED TO,
3 IT'S IN WRITING, AND THAT'S THE END OF IT.

4 THE COURT: LET ME ASK, YOU KNOW, I HAVE SOME
5 FAMILIARITY JUST BECAUSE I HAD TO WRITE TWO SUBSTANTIVE ORDERS
6 IN THIS CASE BECAUSE HE WANTED THE RELEASE OF FUNDS, AND SO I
7 HAD TO FAMILIARIZE MYSELF WITH THE SEC CASE THAT'S BEFORE
8 JUDGE DAVILA.

9 I ISSUED MY FIRST ORDER ON DECEMBER 19TH OF 2016, AND THEN
10 THEY EFFECTIVELY MOVED FOR RECONSIDERATION AND I HAD TO ISSUE
11 ANOTHER ORDER ON MARCH 1ST OF 2017. AND THERE HAVE BEEN SO
12 MANY APPEALS, CERTAINLY IN THE CIVIL CASE.

13 I GUESS WHAT I DON'T UNDERSTAND IS THE CIVIL CASE HAS BEEN
14 LITIGATED FOR QUITE SOME TIME, AND YOU'VE HAD A RECEIVER WHO
15 WAS BASICALLY APPOINTED EARLY ON TO SEIZE THE FUNDS AND TRY TO
16 DISTRIBUTE THEM TO THE INVESTORS VERY EARLY ON.

17 AND YOU HAVE, YOU KNOW, ACCOUNTANTS THAT HAVE BEEN WORKING
18 ON FIGURING OUT THE MONEYS, WE HAVE THESE VERY SPECIFIC
19 NUMBERS, AND SO I DON'T UNDERSTAND WHY THE POSITION IS THAT
20 LOSS CANNOT REASONABLY BE DETERMINED, INVESTOR LOSS. THAT'S
21 WHAT I DON'T UNDERSTAND.

22 I MEAN, JUDGE DAVILA HAS DONE CROSS SUMMARY JUDGEMENT
23 MOTIONS IN THE CIVIL CASE. I'VE READ HIS SUMMARY JUDGEMENT
24 ORDER. I MEAN, THERE'S BEEN A LOT OF FIGURING OUT WHAT THAT
25 NUMBER IS. SO WHY IS IT THAT, OH, WE CAN'T REALLY DETERMINE IT

1 AND WE HAVE TO JUST GO WITH GAIN?

2 MS. HARRIS: WELL, YOUR HONOR, THE DIFFERENCE BETWEEN
3 THE CIVIL AND THE CRIMINAL CASE OBVIOUSLY IS THE BURDEN, THE
4 GOVERNMENT'S BURDEN OF PROOF.

5 AND HERE, IN THIS PARTICULAR CASE, THERE WERE SOME
6 CHALLENGES IN TERMS OF PROVING THE DEFENDANT'S CONTINUING
7 INTENT TO DEFRAUD AFTER HE SENT OUT LETTERS REGARDING THE
8 NATURE OF ASKING FOR BASICALLY RETROACTIVE APPROVAL OF THESE
9 TRANSFERS.

10 THE COURT: THE LOANS.

11 MS. HARRIS: YES, THE LOANS AND THE NATURE OF THEM
12 AND DISCLOSING THAT TO SOME EXTENT TO THE INVESTORS, AND
13 INDICATING THAT HE NEEDED THEIR APPROVAL TO RECLASSIFY THESE
14 LOANS AS RECEIVABLES.

15 THE COURT: OKAY.

16 MS. HARRIS: SO AGAIN, THE GAIN NUMBER THAT WE ARE
17 USING IS BECAUSE THIS IS THE GAIN THAT THE GOVERNMENT BELIEVES
18 THAT IT COULD HAVE PROVED AT TRIAL.

19 YOU KNOW, I NOTE THAT YOU ARE CORRECT TO BRING UP THE IDEA
20 THAT JUDGE DAVILA ORDERED DISGORGEMENT OF OVER \$7 MILLION IN
21 THE CIVIL CASE.

22 THE COURT: \$7,782,951.07, TO BE EXACT.

23 MS. HARRIS: YES, YOUR HONOR.

24 AND AGAIN, THE COUNT THAT MR. FEATHERS PLED TO WAS A VERY
25 SPECIFIC SET OF FACTS DEALING WITH ONE OF THE FUNDS, AND WITH

1 THE MISSTATEMENTS THAT HE MADE IN RELATION TO THAT FUND.

2 AND SO THE WAY THAT THE GOVERNMENT AND THE DEFENDANT
3 ARRIVED AT THIS PARTICULAR NUMBER WAS BY LOOKING AT THE GAIN TO
4 FEATHERS AS OF JANUARY 2009, THROUGH ROUGHLY AUGUST OF 2010.
5 AND THAT'S THE NUMBER, THE GAINS THAT WOULD HAVE BEEN RELEVANT
6 TO THAT PARTICULAR FUND, WHICH IS THE SUBSTANCE OF THE COUNT
7 THAT HE PLED TO. BASICALLY, THAT'S HOW WE CAME TO THE NUMBER
8 THAT WE AGREED TO IN THE PLEA AGREEMENT FOR THE ENHANCEMENT
9 UNDER 2(B)1.1.

10 THE COURT: NOW CAN I ASK YOU A QUESTION, THE
11 PERMANENT INJUNCTION IN THE SEC CASE BEFORE JUDGE DAVILA WAS
12 THE \$7.7 MILLION NUMBER?

13 MS. HARRIS: YES, YOUR HONOR.

14 THE COURT: SO WHY ARE YOU REQUESTING RESTITUTION OF
15 \$5.7? HAS OVER \$2 MILLION BEEN PAID OUT? WHAT'S -- JUST
16 EXPLAIN THE DIFFERENCE.

17 MS. HARRIS: SURE.

18 SO YOUR HONOR, THE SEC ACTION, THERE WERE A NUMBER OF
19 THINGS THAT HAPPENED. AS YOUR HONOR IS AWARE, THE COURT
20 GRANTED SUMMARY JUDGEMENT AGAINST FEATHERS IN AUGUST 2013. AND
21 SHORTLY THEREAFTER IT ISSUED THE PERMANENT INJUNCTION AGAINST
22 FEATHERS AND HIS CO-DEFENDANTS IN THAT CASE, SBCC, IPF, SPF,
23 AND ORDERED DISGORGEMENT IN THE AMOUNT THE COURT SPECIFIED, AND
24 THEN ASKED, IN ADDITION TO PREJUDGMENT INTEREST, AND IMPOSED A
25 CIVIL PENALTY.

1 NOW THE COURT -- IN FEBRUARY OF 2014, THE COURT GRANTED
2 THE RECEIVER'S PROPOSED DISTRIBUTION PLAN WHICH BASICALLY
3 ALLOWED THE RECEIVER TO LIQUIDATE THE ASSETS OF THESE COMPANIES
4 THAT WERE HELD IN RECEIVERSHIP AND DISTRIBUTE THEM AMONG ALL OF
5 THE DEFENDANT CLAIMANTS WHO WERE THE INVESTORS IN THE FUNDS,
6 THE VARIOUS FUNDS.

7 THIS WAS DONE PURSUANT TO WHAT'S CALLED THE "RISING TIDE
8 METHOD." AND BASICALLY SOME CLAIMANTS WERE PRIORITIZED WHO HAD
9 NOT HAD A CHANCE TO RECOVER PRIOR TO THE APPOINTMENT OF THE
10 RECEIVER. AND ONCE THEY WERE MADE WHOLE TO A CERTAIN AMOUNT,
11 THAT'S WHEN THEY THEN -- EVERYBODY STARTED TO RECEIVE
12 ADDITIONAL DISTRIBUTIONS OF THE RECEIVERSHIP'S ASSETS.

13 SO THERE WERE FOUR DISTRIBUTIONS TOTAL. AND OF THE
14 ROUGHLY 40 MILLION SOME ODD ALLOWED CLAIMS THAT ALL OF THESE
15 GROUPS OF INVESTORS HAD, 35 MILLION WAS PAID OUT BY THE
16 RECEIVER OVER FOUR DISTRIBUTIONS.

17 SO THIS IS WHY WE GET THE NUMBER, THE \$5 MILLION --
18 \$5.6 MILLION NUMBER THAT THE GOVERNMENT HAS ASKED FOR IN
19 RESTITUTION BECAUSE THAT IS --

20 THE COURT: \$5,724,667.54.

21 MS. HARRIS: CORRECT. THAT'S THE UNPAID REMAINDER OF
22 THE ALLOWED CLAIMS FROM THE CIVIL CASE. THAT'S WHY WE ARE
23 ASKING FOR THAT IN RESTITUTION.

24 AND I WILL NOTE, YOUR HONOR, THAT THIS NUMBER, THE ALLOWED
25 CLAIMS IN THE CIVIL CASE COVERS A MUCH BROADER SCOPE OF

1 VICTIMS, IT COVERS A MUCH BROADER TIME PERIOD THAN WAS PURSUED
2 IN THE CRIMINAL MATTER.

3 AGAIN, THIS IS FOR THE ENTIRE UNIVERSE OF PEOPLE POSSIBLY
4 AFFECTED. AND THAT'S WHY I WROTE IN MY SENTENCING MEMO THAT
5 THIS RESULT IS A VERY POSITIVE ONE. I MEAN, IT'S VERY RARE
6 THAT YOU HAVE A FRAUD CASE WHERE ALL OF THE VICTIMS END UP MADE
7 WHOLE, THAT THERE'S MONEY TO GIVE TO THEM, THAT THEY ARE
8 REIMBURSED FOR THE FRAUDS -- WELL --

9 THE COURT: THEY ARE NOT ONE HUNDRED PERCENT.

10 MS. HARRIS: NOT ONE HUNDRED PERCENT, BUT
11 EIGHTY-EIGHT PERCENT, TO BE EXACT.

12 SO, YOU KNOW, IN TERMS OF THE GOVERNMENT'S CIVIL AND
13 CRIMINAL ENFORCEMENT ARMS WORKING TOGETHER TO RECEIVE A
14 POSITIVE RESULT FOR ALL OF THE POTENTIAL PEOPLE IMPACTED BY
15 THIS CASE, I ACTUALLY THINK IT'S A VERY POSITIVE OUTCOME.

16 I MEAN, I'VE HAD SEVERAL FRAUD CASES WHERE THIS IS NOT THE
17 OUTCOME, WHERE THE VICTIMS DON'T GET ANYTHING, WHERE THE MONEY
18 HAS ALREADY BEEN SPENT. AND IN FACT, I HAVE A SEVEN-DEFENDANT
19 ONE COMING YOUR WAY, YOUR HONOR, WHERE THAT VERY WELL MAY BE
20 THE CASE.

21 SO, YOU KNOW, AGAIN, THAT'S WHY AT THE END OF THE DAY WHEN
22 WE CONSIDERED THE BEST WAY TO RESOLVE THIS MATTER, WE ALSO
23 CONSIDERED THE ACTIONS THAT HAVE BEEN TAKEN BY THE SEC IN THE
24 CIVIL CASE TO GET THE DISGORGEMENT, TO GET THE ASSETS
25 LIQUIDATED AND THE ENTIRE UNIVERSE OF INVESTORS REPAID THE

1 MONEYS THAT WERE OWED TO THEM, AND THEN CONSIDERED AFTER ALL OF
2 THAT WAS TAKEN INTO ACCOUNT, WHAT THE GOVERNMENT'S REMAINING
3 INTEREST IS IN THE CIVIL CASE -- EXCUSE ME, IN THE CRIMINAL
4 CASE, AND THAT'S HOW WE ARRIVED AT THIS AGREEMENT.

5 AND WE DO BELIEVE THAT THE SENTENCE THAT WE RECOMMENDED,
6 THE 33 MONTHS IN PRISON, ALONG WITH RESTITUTION AS CALCULATED
7 HERE, THE SUPERVISED RELEASE AND THE HUNDRED DOLLAR SPECIAL
8 ASSESSMENT FEE, IS A FAIR SENTENCE WHEN TAKEN IN TOTALITY WITH
9 THE GOVERNMENT'S CIVIL ENFORCEMENT EFFORTS.

10 AGAIN, THIS IS A VERY POSITIVE RESULT, IN MY VIEW.

11 THE COURT: SO LET ME ASK YOU ABOUT THE TIME PERIOD
12 IN THE PLEA AGREEMENT.

13 IT SAYS "BEGINNING APPROXIMATELY 2009 AND CONTINUING
14 THROUGH AT LEAST AUGUST 2010, AND FOR SOME PERIOD THEREAFTER,
15 NO LATER THAN APPROXIMATELY JUNE 2012." I JUST FOUND THAT VERY
16 CONFUSING. DOES THAT MEAN THAT THERE WAS NO CRIMINAL ACTIVITY
17 BETWEEN AUGUST 2010 AND JUNE 12TH, OR WHY IS IT WRITTEN THIS
18 WAY SUCH THAT THERE'S A BREAK AROUND AUGUST 2010? IS THAT WHEN
19 THE LETTER WENT OUT YOU JUST REFERENCED EARLIER AFTER THE
20 APPROVAL?

21 MS. HARRIS: YES, YOUR HONOR. IT WAS SENT OUT
22 ROUGHLY, I BELIEVE ON AUGUST 15TH OF 2010 IS WHEN THE LETTER
23 WAS SENT TO THE IPF INVESTORS ASKING FOR THEIR RETROACTIVE
24 APPROVAL.

25 THE COURT: OKAY. SO THEN WHY IS THERE ANY CRIMINAL

1 ACTIVITY AFTER THAT LETTER THEN? WHY ARE YOU SAYING NO LATER
2 THAN APPROXIMATELY JUNE 2012?

3 MS. HARRIS: SO JUNE 2012 WAS WHEN THE RECEIVER WAS
4 APPOINTED. SO TO THE EXTENT THAT THE POTENTIAL UNIVERSE OF
5 TIME FOR THE FRAUDS TO HAVE OCCURRED -- FOR THE FRAUDS TO HAVE
6 HAPPENED, THEY COULDN'T HAVE HAPPENED AFTER THE TIME OF THE
7 SEC'S TEMPORARY INJUNCTION AND THEIR APPOINTMENT OF THE
8 RECEIVERSHIP WHICH TOOK OVER ALL OF THE ASSETS AND BUSINESS
9 CONTROL OF THE DEFENDANT COMPANIES.

10 MR. ILLOVSKY: YOUR HONOR, COULD I --

11 THE COURT: LET ME --

12 MR. ILLOVSKY: I'M SORRY.

13 THE COURT: YES. I HAVE A TON OF QUESTIONS, BUT IF
14 YOU WOULD LIKE TO --

15 MR. ILLOVSKY: I'M JUST GOING TO PITCH IN ON THE TWO
16 ISSUES.

17 THE ONE, JUST TO ADD TO IT WHAT THE GOVERNMENT SAID, THE
18 LETTER THAT WAS SENT IN AUGUST OF 2010 WAS NOT USED TO SOLICIT
19 INVESTORS, IT WAS SENT TO CURRENT INVESTORS. SO THE NUMBER OF
20 VICTIMS THAT GOES INTO THE GUIDELINE CALCULATION IS BASED ON A
21 NUMBER OF INVESTORS CURRENTLY AT THE TIME.

22 THE COURT: AT THE TIME OF AUGUST 2010?

23 MR. ILLOVSKY: YES.

24 THE COURT: OKAY.

25 MR. ILLOVSKY: AND BECAUSE THAT LETTER WAS NOT USED

1 TO SOLICIT INVESTORS, A PROXY CALCULATION WAS NEEDED TO
2 CALCULATE THE LOSS. AND WHAT'S REFLECTED IN THE PLEA AGREEMENT
3 IS ROUGHLY WHAT THE ACCOUNTING ENTRY WAS AT THE TIME, WHICH WAS
4 A NUMBER BETWEEN 250 AND 550.

5 SECOND POINT IS ON THE TIME LIMIT. THE COURT WILL SEE IN
6 THE PLEA AGREEMENT THAT THE LANGUAGE ABOUT THE TIMING, THE
7 COURT HAD A QUESTION ABOUT IT. BASICALLY --

8 THE COURT: IT'S JUST ODD WORDING, THAT'S WHY I
9 WANTED TO ASK.

10 MR. ILLOVSKY: YES. PRETTY CAREFULLY CRAFTED
11 WORDING, YOUR HONOR.

12 IF THE COURT LOOKS TO PARAGRAPH 1-F, BOTTOM OF PAGE 3.
13 "AFTER AUGUST 2010, I FAILED TO ADEQUATELY DISCLOSE TO
14 INVESTORS THE MATERIAL OMISSION CONTAINED IN MY AUGUST 2010
15 LETTER."

16 SO IN OTHER WORDS, THE IDEA IS THAT -- THE INFORMATION WAS
17 LEFT OUT OF THAT LETTER FOR THE REAL REASON FOR THE ACCOUNTING
18 CHANGE. AND THEN THE PLEA AGREEMENT SAYS THAT MR. FEATHERS, UP
19 UNTIL THE TIME OF THE RECEIVER, DIDN'T TELL THE PEOPLE THAT HE
20 HAD SENT IT TO, HEY, I SENT THAT LETTER AND IT DIDN'T CONTAIN
21 THIS INFORMATION.

22 SO JUST TO HELP ON THOSE TWO ISSUES.

23 THE COURT: OKAY. ALL RIGHT. THANK YOU.

24 LET ME ALSO ASK ABOUT JUST SOME OF THE ASSETS, JUST SO I
25 UNDERSTAND WHAT MIGHT BE AVAILABLE FOR RESTITUTION.

1 SO I LOOKED BACK AT THE NOVEMBER 12, 2014 AFFIDAVIT AND A
2 COUPLE OF QUESTIONS. IT SAYS [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 I GUESS THAT'S THE CASE. BUT WHAT'S THE DIFFERENCE
10 BETWEEN -- THE FINANCIAL AFFIDAVIT FROM 2014 SAYS [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 MR. ILLOVSKY: IF I MAY, YOUR HONOR.

15 I BELIEVE THAT WHAT'S BEHIND THAT IS THAT THERE ACTUALLY
16 WAS [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 THE COURT: OH, I SEE. OKAY. ALL RIGHT.

20 MR. ILLOVSKY: SO IN OTHER WORDS, [REDACTED]

21 [REDACTED] I GUESS.

22 THE COURT: I SEE. OKAY. AND THAT MUST HAVE
23 HAPPENED IN THAT TIME FRAME.

24 MR. ILLOVSKY: YES.

25 THE COURT: OKAY. ALL RIGHT. THANK YOU FOR THE

1 CLARIFICATION.

2 LET ME ASK, THE 2014 AFFIDAVIT ALSO LISTS A BUNCH OF
3 ASSETS, AND I WAS JUST WONDERING, [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 DO THOSE ASSETS NOT EXIST ANYMORE?

9 MR. ILLOVSKY: YOUR HONOR, THOSE WERE, [REDACTED]

10 [REDACTED]

11 MR. FEATHERS WAS UNEMPLOYED DURING THAT PERIOD WHEN I THINK THE
12 CHARGES WERE FIRST PENDING.

13 THE COURT: ALL RIGHT. WELL, THIS WAS IN HIS
14 NOVEMBER AFFIDAVIT.

15 MS. HARRIS: SEE. [REDACTED]

16 [REDACTED]

17 MR. ILLOVSKY: YES.

18 THE COURT: OKAY. ALL RIGHT.

19 SO I WAS INTERESTED TO SEE THAT MR. FEATHERS HAS [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 I'M JUST WONDERING WITH ALL THESE ASSETS, HOW DOES HE
25 QUALIFY FOR APPOINTED COUNSEL ALL THESE YEARS?

1 MR. ILLOVSKY: I THINK I CAN HELP THE COURT ON THAT,
2 YOUR HONOR.

3 THE COURT: OKAY. SURE.

4 MR. ILLOVSKY: IT MIGHT BE FIVE MONTHS AGO OR SO, BUT

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 JUDGE COUSINS PUT US ON CALENDAR, ASKED ABOUT THE SALE
12 WHEN IT WAS PENDING, ASKED US TO MAKE A REPORT TO THE COURT
13 WHEN THE SALE WAS COMPLETED, WHICH WE DID. AND I BELIEVE
14 JUDGE COUSINS MADE A DETERMINATION THAT THERE WASN'T ANY
15 NECESSITY FOR MR. FEATHERS TO MAKE ANY CONTRIBUTIONS TO HIS
16 DEFENSE AT THAT TIME.

17 THE COURT: I SEE. OKAY.

18 [REDACTED]

19 [REDACTED]

20 [REDACTED] AND YOU ARE OBJECTING TO ANY OF THAT GOING TO
21 RESTITUTION; IS THAT RIGHT? THAT'S YOUR POSITION?

22 MR. ILLOVSKY: THE FOCUS IN THE SENTENCING MEMO WAS
23 ON THE \$22,000 THAT THE PROBATION OFFICE SUGGESTED, AND I THINK
24 WE LAID OUT OUR ARGUMENTS IN THE SENTENCING MEMO THAT TO THE
25 EXTENT THAT IT HINDERS MR. FEATHERS'S REENTRY AND PROBABLY

1 WORKS AGAINST THE INTEREST OF THE INVESTORS TO --

2 THE COURT: SO NO MONEY IS GOING TO GO TO
3 RESTITUTION, THEN YOU ARE SAYING HE SHOULD HAVE ALL THIS 114
4 FOR HIM FOR REENTRY.

5 MR. ILLOVSKY: I DIDN'T ADDRESS THE 114, I WAS FACING
6 THE NUMBER IN THE PROBATION REPORT, YES.

7 THE COURT: YEAH.

8 LET ME ASK MS. HARRIS, DO YOU THINK THE DEFENDANTS ARE
9 RENEGING ON THE BINDING PLEA AGREEMENT CONDITION THAT THE
10 DEFENDANT PAY THE SEC RESTITUTION BY ASKING IN THEIR DEFENSE
11 MEMO NOT TO BE ORDERED TO PAY THE \$5,724,667.54 THAT'S BEEN
12 DEEMED BY THE RECEIVER AS CURRENTLY OWED IN THAT SEC CASE?

13 MS. HARRIS: YOUR HONOR, THE COURT CAN ORDER THE
14 AMOUNT -- HE AGREED TO PAY RESTITUTION IN AN AMOUNT TO BE SET
15 BY THE COURT. HE ALSO AGREED TO --

16 THE COURT: NO, NO, NO, NO. THAT SPECIFICALLY
17 REFERENCES THE SEC CASE.

18 MS. HARRIS: RIGHT. AND I'M GOING TO SAY, INCLUDING
19 THE AMOUNT THAT WAS ORDERED BY JUDGE DAVILA IN THE SEC CASE.

20 THE COURT: IT SAYS IN PARAGRAPH 6, LINE 16
21 THROUGH 19, "I SPECIFICALLY AGREE THAT RESTITUTION SHALL
22 INCLUDE THE JUDGMENT NOW PENDING AGAINST ME IN THE CASE OF
23 SECURITIES AND EXCHANGE COMMISSION VERSUS SMALL BUSINESS
24 CAPITAL, ET AL., CV 12-3237-EJD, NORTHERN DISTRICT OF
25 CALIFORNIA."

1 SO TO ME, THAT DOESN'T SAY OH, I'M JUST AGREEING TO SOME
2 FUTURE AMOUNT AGREED BY THE COURT, IT'S GOING TO SPECIFICALLY
3 INCLUDE THAT SEC JUDGMENT.

4 AND SO I GUESS I'M CLEAR, I READ THAT, AND THEN I SEE,
5 YEAH, BUT DON'T ORDER WHAT THE RECEIVER IN THE SEC CASE IS
6 ACTUALLY OWED.

7 MS. HARRIS: YOUR HONOR, I AGREE.

8 I MEAN, AGAIN, HE SAID IN HIS PLEA AGREEMENT THAT HE WOULD
9 ADOPT THIS JUDGMENT, THAT IT HAD BEEN ORDERED AGAINST HIM. HE
10 PLED TO A VERY SPECIFIC SET OF FACTS THAT FORMED THE BASIS FOR
11 HIS GUILT.

12 I MEAN, I GUESS THE REASON WHY I'M NOT SO MUCH RESPONDING
13 IT IS BECAUSE, LOOK, I MEAN, HIS LAWYER IS ALLOWED TO ADVOCATE
14 FOR HIM IN WHATEVER WAY THE LAWYER SEES FIT. AND I DON'T
15 REALLY TAKE THESE ARGUMENTS THAT ARE SORT OF WALKING BACK ON
16 THE GUILT OR WALKING BACK ON THE PAYMENT FOR RESTITUTION VERY
17 SERIOUSLY. BECAUSE AGAIN, THERE IS A BINDING PLEA AGREEMENT,
18 THE COURT HAS ALREADY CONVICTED HIM AND THE COURT CAN ORDER
19 RESTITUTION.

20 SO HE CAN SAY WHATEVER HE WANTS TO, YOUR HONOR, BUT AT THE
21 END OF THE DAY, THE POWER RESIDES WITH THE COURT TO ORDER
22 RESTITUTION AND SENTENCE HIM. SO I VIEW THIS AS ADVOCACY, NOT
23 ANY SORT OF, LIKE, I WANT TO WITHDRAW MY PLEA, OR ANYTHING LIKE
24 THAT.

25 I JUST DON'T -- I'M SORRY, I JUST DIDN'T TAKE THESE CLAIMS

1 BEING MADE IN HIS SENTENCING MEMO VERY SERIOUSLY, CONSIDERING
2 THAT HE AGREED TO ENTER INTO A BINDING PLEA AGREEMENT WITH THE
3 GOVERNMENT AND THE COURT HAS FOUND -- HAS ORDERED HIM CONVICTED
4 AS A BASIS OF THAT PLEA AND NOW HAS THE POWER TO ORDER THE
5 RESTITUTION.

6 MR. ILLOVSKY: CAN I JUST --

7 THE COURT: LET ME ASK OUR PROBATION OFFICER -- YES.

8 MR. ILLOVSKY: I JUST WANTED TO JUMP IN AND DEFEND
9 MYSELF A LITTLE BIT.

10 THE COURT: OH, I'M GOING TO GIVE YOU AN OPPORTUNITY
11 TO SPEAK. THE DEFENSE COUNSEL ALWAYS GETS THE OPPORTUNITY AT
12 THE END, BUT GO AHEAD. IN ADDITION TO DURING, BUT GO AHEAD.

13 MR. ILLOVSKY: JUST TO BRING FORWARD THAT IN THE
14 SENTENCING MEMORANDUM, WE WERE NOT CONTENDING THAT THERE SHOULD
15 BE NO RESTITUTION OBLIGATION, IN FACT THAT WAS SOMETHING THAT
16 WAS AGREED TO IN THE PLEA AGREEMENT, AND IN FACT IT'S BROADER.
17 IT'S BROADER THAN WHAT'S MERITED BY THE ACTUAL CONDUCT.

18 WHAT WE WERE JUST PROPOSING TO THE COURT IS THAT IF THE
19 COURT ENTERS A NUMBER CERTAIN BUT THEN THE RECEIVER'S NUMBER
20 CHANGES, WE HAVE TO RUN BACK TO THE COURT TO GET THE ORDER
21 FIXED.

22 WE POINTED TO A COUPLE OF EXAMPLES WHERE THAT JUST SEEMED
23 TO BE SOME DISCREPANCY BETWEEN THE RECEIVER'S ACCOUNTING AND
24 WHAT VICTIMS IN THEIR -- A COUPLE OF VICTIMS IN THEIR
25 STATEMENTS HAD SAID THEY WERE OWED.

1 SO WE WERE JUST TRYING TO HELP THE COURT, BUT IF THE COURT
2 THINKS THAT AN AMOUNT CERTAIN SHOULD BE ENTERED AS A
3 RESTITUTION, THAT'S CERTAINLY THE COURT'S DECISION. WE WERE
4 JUST TRYING TO AVOID COMING BACK.

5 MS. HARRIS: AND AGAIN, IF THE COURT HAS ANY
6 QUESTIONS ABOUT HOW THE REMAINING AMOUNTS OWED -- OF UNPAID
7 CLAIMS OWED TO THE VICTIMS HAVE BEEN CALCULATED, THE RECEIVER
8 IS AVAILABLE TO ANSWER THEM.

9 AGAIN, THIS WAS -- I DESCRIBED VERY BRIEFLY THE METHOD
10 THAT HE USED. YOU KNOW, THIS METHOD DID NOT TAKE INTO ACCOUNT
11 ANY PRINCIPLE OR INTEREST THAT HAD BEEN REPAID TO THE VICTIMS
12 PRIOR TO THE APPOINTMENT OF THE RECEIVER. SO THAT COULD BE THE
13 REASON FOR THE DISCREPANCY IN SOME OF THE CLAIMS THAT SOME OF
14 THESE VICTIMS MADE AND WHAT THE RECEIVER HAS PROVIDED TO THEM
15 AND STATES THAT THEY ARE STILL OWED.

16 THE COURT: WELL, I DON'T LEAVE RESTITUTION OPEN
17 ENDED AND SAY, I ORDER RESTITUTION IN AN AMOUNT TO BE
18 DETERMINED AT SOME FUTURE DATE. I MEAN, I'M NOT GOING TO DO
19 THAT.

20 MS. HARRIS: YES.

21 AND AGAIN, THE GOVERNMENT HAS PROVIDED TO THE COURT, THE
22 RECEIVER'S SPREADSHEET AS TO HOW MUCH MONEY THE RECEIVER
23 BELIEVES THAT EACH INDIVIDUAL IS OWED. AND AGAIN, THAT IS AN
24 AMOUNT CERTAIN. EVEN TO THE EXTENT THAT THERE IS SOME SMALL
25 DISCREPANCY, AGAIN, I NOTE THAT OVER 88 PERCENT OF THE

1 PRINCIPLE OF THE CLAIM HAS BEEN PAID AT THIS POINT. SO THESE
2 ARE MINOR DISPUTES, YOUR HONOR, AND I DON'T THINK THE COURT
3 SHOULD BECOME OVERWHELMED BY THEM IN THE WAY THAT THE DEFENSE
4 SUGGESTS.

5 THE COURT: OH, I'M NOT GOING TO. I MEAN, I HAVE
6 LOOKED AT THE SEC CASE.

7 LET ME JUST -- OKAY. THIS WAS A FOOTNOTE THAT WAS IN MY
8 SECOND DRAFT OF THE ORDER THAT I FILED IN WHAT, NOVEMBER 2017.
9 I ACTUALLY TOOK THE FOOTNOTE OUT. BUT I MEAN, JUDGING BY HOW
10 THAT CASE WAS LITIGATED, I DO NOT WANT TO LEAVE THIS OPEN TO
11 EXTEND FURTHER THE -- LET ME JUST READ, THIS WAS IN MY SECOND
12 DRAFT THAT DIDN'T GET FILED.

13 "MR. FEATHERS SOUGHT LEAVE TO SUE THE RECEIVER ON SEVERAL
14 OCCASIONS, ALL OF WHICH WERE REJECTED BY THE COURT, FILED A
15 COMPLAINT AGAINST THE RECEIVER'S COUNSEL WITH THE STATE BAR OF
16 CALIFORNIA, WHICH WAS DETERMINED TO HAVE NO MERIT. LODGED A
17 COMPLAINT AGAINST THE RECEIVER WITH THE CHARTER FINANCIAL
18 ANALYST INSTITUTE WHICH WAS DETERMINED TO HAVE NO MERIT AND
19 SOUGHT TO INTERVENE IN AN UNRELATED COMMISSION CASE IN THE
20 CENTRAL DISTRICT OF CALIFORNIA IN WHICH THE RECEIVER WAS
21 APPOINTED RECEIVER.

22 MR. FEATHERS'S REQUEST WAS SUMMARILY REJECTED BY THE
23 APPOINTING DISTRICT COURT."

24 I MEAN, THERE HAS BEEN SO MUCH UNNECESSARY LITIGATION IN
25 THAT CASE, AND TO INVITE AND SAY, LET'S JUST KEEP THAT FIGHT

1 GOING, LET'S HAVE MR. FEATHERS CONTINUE TO FIGHT EXACTLY WHAT
2 THE RECEIVER THINKS THE RESTITUTION SHOULD BE, I'M NOT GOING TO
3 DO THAT. I'M NOT GOING TO DO THAT.

4 I CAN GO INTO MORE OF HOW MUCH UNNECESSARY LITIGATION
5 THERE WAS IN THAT CASE, HOW MANY UNNECESSARY APPEALS THERE WERE
6 IN THAT CASE.

7 AND SO THAT'S WHY I WAS INTERESTED BY PROBATION SAYING OH,
8 WELL MR. FEATHERS WAS JUST GROUND DOWN BY THAT CIVIL CASE,
9 THAT'S WHY HE SENT THE THREATENING E-MAILS TO THE RECEIVER, TO
10 THE FOUR SEC ATTORNEYS, TO THE ATTORNEY FOR THE RECEIVER, FOR
11 HIS CURRENT COUNSEL IN THE CRIMINAL CASE, FOR HIS PRIOR COUNSEL
12 IN THE CRIMINAL CASE.

13 DID YOU TAKE A LOOK AT HOW THAT SEC CASE WAS LITIGATED? A
14 LOT OF THAT BURDEN WAS SELF-INFLICTED BY MR. FEATHERS. I MEAN,
15 I WILL JUST GO THROUGH MY OWN ORDER. HE APPEALED EVERYTHING,
16 EVEN THINGS THAT WERE NOT APPEALABLE, AND THEN HE WOULD MOVE
17 FOR RECONSIDERATION.

18 I MEAN, A LOT OF THE GRINDING DOWN WAS MR. FEATHERS DOING
19 THE GRINDING. DID YOU THINK ABOUT THAT?

20 PROBATION OFFICER: I CAN UNDERSTAND THAT,
21 YOUR HONOR, BUT THAT'S NOT NECESSARILY SOMETHING I TOOK INTO
22 ACCOUNT WHEN MAKING THE STATEMENTS I DID.

23 THE COURT: WELL YOU TOOK INTO ACCOUNT TO SAY THE
24 E-MAILS WERE REALLY JUST BECAUSE HE WAS GROUND DOWN BY THE
25 LITIGATION.

1 PROBATION OFFICER: THOSE WERE HIS OWN WORDS THAT
2 WERE KIND OF CORROBORATED BY HIS FAMILY, AND THAT'S WHAT I WENT
3 BY. BUT I UNDERSTAND THE COURT'S POINT.

4 THE COURT: I MEAN, I WILL GO THROUGH MY ORDER.

5 HE APPEALED EVERYTHING OVER AND OVER AGAIN. A LOT OF THE
6 PROTRACTED NATURE OF THAT LAWSUIT WAS SELF-INFLICTED BY
7 MR. FEATHERS.

8 I MEAN, I HAD A TASTE OF IT MYSELF WITH THIS MOTION TO
9 RELEASE FUNDS AND THEN THE MOTION FOR RECONSIDERATION OF MY
10 ORDER DENYING THE MOTION FOR RELEASE OF FUNDS, MOTION FOR STAY
11 OF PROCEEDINGS. I MEAN, A LOT OF THE LITIGIOUSNESS WAS
12 MR. FEATHERS. SO IF HE'S GROUND DOWN, HE WAS DOING THE
13 GRINDING.

14 I MEAN, IT'S NOT TYPICAL THAT RECEIVERS HAVE TO DEAL WITH
15 THIS.

16 THIS IS THE RECEIVER'S DECLARATION, JUNE 23RD, 2016.
17 "MR. FEATHERS HAS SENT ME AND MY COUNSEL MORE THAN THREE
18 HUNDRED E-MAIL MESSAGES. THESE E-MAILS GENERALLY INCLUDED
19 FALSE ACCUSATIONS, PERSONAL ATTACKS, THREATS TO SUE OR THREATS
20 TO BRING LEGAL ACTION AGAINST ME IN SOME MANNER. MR. FEATHERS
21 HAS THREATENED TO SUE OR BRING LEGAL ACTION AGAINST ME IN
22 WRITING, APPROXIMATELY 35 TIMES, AND HAS STATED HIS INTENTION
23 TO CONTINUE TO LITIGATE FOR YEARS TO COME."

24 I MEAN, ANYWAY, SO YOU DIDN'T SPEAK TO THE RECEIVER ABOUT
25 WHY THE SEC LITIGATION WAS LONG AND GROUND DOWN MR. FEATHERS,

1 YOU JUST SPOKE TO MR. FEATHERS AND HIS WIFE?

2 PROBATION OFFICER: CORRECT, YOUR HONOR. I
3 UNDERSTAND THE COURT'S POINT.

4 MS. HARRIS: YOUR HONOR, I DID SPEAK -- I HAVE SPOKEN
5 TO HIM MANY TIMES, AND IN FACT YESTERDAY I ASKED HIM WHETHER OR
6 NOT HE WISHED TO MAKE ANY SORT OF VICTIM STATEMENT AS A RESULT
7 OF ALL OF THIS.

8 I DID CITE TO HIS DECLARATION IN MY SENTENCING MEMO. I
9 ALSO REVIEWED SOME PARTS OF IT AND FOUND IT TO BE VERY
10 UNFORTUNATE. BUT HE SAID THAT, YOU KNOW, HE'S REALLY BEEN
11 THROUGH THE RINGER ON THIS ONE. SO HE'S AVAILABLE TO ANSWER
12 THE COURT'S QUESTIONS ABOUT THE RESTITUTION, TO THE EXTENT THAT
13 THERE'S -- THE COURT CONTINUES TO HAVE ANY QUESTIONS ABOUT IT.

14 BUT, YOU KNOW, HE'S BASICALLY SAID ALL THAT HE HAS TO SAY,
15 AND JUST DIDN'T WANT TO CONTINUE ON THIS PATH OF, YOU KNOW,
16 ACCUSATORY RECRIMINATIONS, HE JUST DIDN'T WANT TO DO THAT.

17 SO I ADMIRE HIM AND RESPECT HIM FOR BEING PROFESSIONAL AND
18 FOR BEING AVAILABLE TO THE COURT, BUT IT'S JUST AT THE END OF
19 THE DAY, HE THOUGHT THAT IT WOULD NOT BE PRODUCTIVE.

20 THE COURT: OH, I DON'T THINK HE NEEDS TO BE HERE.

21 I WAS JUST SAYING I WAS INTERESTED IN THE FACT THAT THE
22 PSR DISMISSES THE THREATS THAT MR. FEATHERS MADE AGAINST THE
23 FOUR SEC ATTORNEYS, THE RECEIVER, THE ATTORNEY FOR THE
24 RECEIVER, THE CURRENT COUNSEL IN HIS CRIMINAL CASE, HIS THEN
25 CURRENT COUNSEL, THAT WAS RITA BOSWORTH, THE PUBLIC DEFENDER,

1 AND HIS PRIOR COUNSEL, AND JUST DISMISSES THAT AND SAYS, WELL
2 HE WAS JUST GROUND DOWN BY THE LITIGATION.

3 AND YOU KNOW, I DID LOOK INTO THAT CASE BECAUSE I HAD
4 ISSUED TWO SUBSTANTIVE ORDERS, AND THE GRINDING WAS DONE BY
5 MR. FEATHERS.

6 AND SO I JUST, I DON'T KNOW, I THINK IT'S UNFORTUNATE THE
7 PSR DOESN'T TALK TO ANYONE OTHER THAN JUST THE DEFENDANT AND
8 THE DEFENDANT'S WIFE. IF YOU ARE GOING TO MAKE REPRESENTATIONS
9 ABOUT THAT LAWSUIT, I THINK IT WOULD BE GOOD TO GET -- I MEAN,
10 YOU DIDN'T TALK TO ANY OF THE VICTIMS WHO WERE RECEIVING THE
11 THREATENING E-MAILS.

12 PROBATION OFFICER: I THINK MR. LUCEY AT THE TIME,
13 WHO I DID SPEAK WITH, DIDN'T SEEM TO TAKE THE THREATS AS
14 SERIOUS THREATS WHEN HE ACTUALLY INTENDED TO HURT PEOPLE. AND
15 THAT WAS KIND OF MY UNDERSTANDING AT THE TIME. I DIDN'T INTEND
16 TO BE DISMISSIVE, I JUST THOUGHT HE DIDN'T INTEND TO PHYSICALLY
17 HURT PEOPLE.

18 THE COURT: ALL RIGHT. BUT IF YOU THINK YOU ARE
19 APPOINTED BY THE COURT AS A RECEIVER, YOU SHOULD BE SUBJECT TO
20 THIS? LAWSUITS AND HAVING YOUR LICENSE REVOKED, HAVING YOUR
21 LAWYER SUED, HAVING TO GET THREE HUNDRED E-MAILS WITH PERSONAL
22 ATTACKS.

23 I MEAN, YOU KNOW, WHETHER YOU FEAR FOR YOUR LIFE OR NOT,
24 WORKING AS A RECEIVER FOR THE COURT SHOULD NOT INVOLVE THIS
25 LEVEL OF HARASSMENT OVER THIS LENGTH OF TIME. DO YOU AGREE

1 WITH THAT, OR NOT?

2 PROBATION OFFICER: CERTAINLY, YOUR HONOR.

3 THE COURT: HOW ARE WE, AS A COURT, GOING TO GET
4 PEOPLE TO SERVE AS RECEIVERS IF THIS IS THE TREATMENT THEY GET,
5 RIGHT? THAT HINDERS OUR ABILITY TO RECRUIT RECEIVERS AND
6 APPOINT RECEIVERS IN THE FUTURE.

7 ANYWAY, LET ME ASK, IN PARAGRAPH 62, YOU SAY THAT
8 MR. FEATHERS SUBMITTED INCOMPLETE FORMS WHICH REFLECT THAT FROM

9 [REDACTED]
10 [REDACTED]
11 [REDACTED] -- I'M JUST WONDERING, WHERE IS HE GETTING ALL THIS CASH?

12 [REDACTED]
13 [REDACTED] BETWEEN 2017
14 AND 2018 MUST BE LIKE, I MEAN, IT'S ONLY MARCH 7TH OF 2018, SO
15 THIS MUST HAVE BEEN VERY RECENTLY. HOW WERE THE FORMS
16 INCOMPLETE?

17 PROBATION OFFICER: I DON'T HAVE THE FORMS WITH ME,
18 YOUR HONOR, BUT I THINK THAT THE [REDACTED]
19 [REDACTED]
20 THAT'S MY RECOLLECTION.

21 THE COURT: YOU KNOW, I'M JUST CONCERNED THAT
22 THERE'S, LIKE, [REDACTED] AND WE ARE BEING TOLD NOT TO
23 ORDER THAT [REDACTED] BE USED TO
24 PAY RESTITUTION.

25 SO OF THE -- SINCE WE'RE NOT DOING IT BY INVESTOR LOSS AND

1 ONLY DOING THE SENTENCING GUIDELINE CALCULATION BY GAIN TO
2 MR. FEATHERS, NOW ONE OF THE VICTIMS, BARBARA BUSHY, SAYS THAT
3 THE INVESTOR MONEY WAS USED TO PAY FOR MR. FEATHERS'S NANNY AND
4 THAT HIS YOUNG CHILDREN, [REDACTED]
5 [REDACTED]; IS THAT CORRECT? WHAT WERE THE INVESTOR
6 FUNDS USED FOR? NOBODY KNOWS?

7 GO AHEAD, PLEASE.

8 MR. ILLOVSKY: YOUR HONOR, I THINK THAT THERE WERE --
9 I THINK THAT THERE WAS EVIDENCE THAT THERE WERE TRANSFERS FROM
10 THE MANAGEMENT COMPANY TO THE NANNY WHO WAS WORKING AT THE
11 MANAGEMENT COMPANY, AND [REDACTED] OF THE
12 MANAGEMENT COMPANY.

13 THE COURT: AND HOW OLD WERE THE BOYS AT THE TIME?

14 MR. ILLOVSKY: I WANT TO SAY [REDACTED]

15 THE REASON WHY THOSE TRANSFERS, WHICH YOU KNOW WERE
16 ALLEGED AS A DIVERSION IN THE INDICTMENT, ARE NOT IN THE PLEA
17 AGREEMENT IS BECAUSE THE MONEY THAT WENT TO THE MANAGEMENT
18 COMPANY WAS DISCLOSED AND JUSTIFIED. AND AGAIN, ONCE THE MONEY
19 GOES INTO THE MANAGEMENT COMPANY, HOW THE MANAGEMENT COMPANY
20 RUNS ITSELF WAS AN ISSUE FOR THE MANAGEMENT COMPANY AND FOR ITS
21 OWNERSHIP.

22 SO THE GOVERNMENT WASN'T TRYING TO -- BY THE TIME THE PLEA
23 AGREEMENT -- THE GOVERNMENT WASN'T RAISING ISSUES ABOUT MONEY.
24 IN OTHER WORDS, IF IT GOES TO THE MANAGEMENT COMPANY PROPERLY,
25 THEN HOW THE MANAGEMENT COMPANY SPENDS IT IS NOT RELEVANT TO

1 THE GOVERNMENT.

2 THE COURT: BUT THE [REDACTED]

3 [REDACTED] --

4 MR. ILLOVSKY: MAY HAVE BEEN. MAY HAVE BEEN. THERE
5 WEREN'T ANY DISCLOSURES ABOUT THAT THAT WERE VIOLATED.

6 THE COURT: SO I HAVE A QUESTION ABOUT HOW LONG
7 MR. FEATHERS IS NOT ALLOWED TO PERFORM FINANCIAL OFFERINGS. IS
8 IT JUST FOR THE THREE-YEAR PERIOD OF SUPERVISED RELEASE? IS HE
9 EVEN PROHIBITED?

10 THE ONLY REASON I RAISE THIS IS ONE OF THE VICTIMS,
11 WILLARD PHEE, SAYS THAT MR. FEATHERS SHOULD BE BARRED FOR AT
12 LEAST 25 YEARS. I DON'T KNOW IF THAT'S AN OUTLANDISH REQUEST
13 OR WHAT. IS HE AT ALL? IS THERE ANY RESTRICTION ON HIS
14 ABILITY TO --

15 MS. HARRIS: YOUR HONOR, I KNOW THAT IN THE CIVIL
16 CASE AN INJUNCTION WAS PLACED AGAINST HIM. YOU PRESUMED, AND I
17 DON'T KNOW WHETHER IT WAS RIGHT OR WRONG TO PRESUME THAT THAT
18 WOULD HAVE INCLUDED A DISBARMENT FROM ANY INVOLVEMENT WITH
19 OFFERINGS OF SECURITIES. IT WOULD HAVE BEEN INHERENT IN THAT
20 TYPE OF AN ACTION BY THE SEC.

21 I CAN FIND OUT THAT INFORMATION. I MEAN, I WOULD THINK
22 THAT HE SHOULD BE DISBARRED FROM EVER HANDLING THESE TYPES OF
23 FINANCIAL INSTRUMENTS EVER AGAIN.

24 THE COURT: I ASSUME THAT'S HANDLED BY THE CIVIL
25 CASE. THE CRIMINAL CASE JUST HAS HIM NOT EMPLOYED AS A

1 SECURITIES BROKER FOR HIS TERM OF THREE YEARS OF SUPERVISED
2 RELEASE. AND I DON'T THINK WE WOULD HAVE JURISDICTION BEYOND
3 THE SUPERVISED RELEASE TERM ANYWAY, SO THAT WOULD BE SOMETHING
4 THAT'S UP TO THE SEC.

5 MR. ILLOVSKY: I THINK THERE WOULD BE A LIFETIME BAR
6 BY THE SEC, YOUR HONOR.

7 THE COURT: OKAY. ALL RIGHT.

8 AND AS I SAID, I DON'T KNOW IF THAT WAS AN OUTLANDISH
9 REQUEST BY MR. PHEE, I WAS JUST CURIOUS BECAUSE HE PUT IT IN
10 HIS LETTER.

11 ALL RIGHT. WELL, THIS IS AN 11(C) (1) (C), THAT'S A BINDING
12 PLEA AGREEMENT. IF I DON'T SENTENCE ACCORDING TO THIS PLEA
13 AGREEMENT, MR. FEATHERS CAN WITHDRAW HIS GUILTY PLEA AND THE
14 GOVERNMENT CAN WITHDRAW ITS SENTENCING OFFER.

15 I AM GOING TO SENTENCE WITHIN THE PARTY'S AGREED UPON
16 SENTENCE. SO LET ME HEAR FROM ANYONE WHO WANTS TO SPEAK.

17 MS. HARRIS: FIRST, LET ME JUST CONFIRM, ARE THERE
18 ANY VICTIMS IN THE AUDIENCE THAT WISH TO BE HEARD? YES, SIR.

19 MR. RAINERI: I DON'T HAVE A LOT TO ADD BECAUSE I'M
20 NOT AN ATTORNEY.

21 THE COURT: OKAY. CAN YOU PLEASE STATE AND SPELL
22 YOUR NAME.

23 MR. RAINERI: YES. MY NAME IS SYD. THAT'S S-Y-D.
24 LAST NAME IS RAINERI, R-A-I-N-E-R-I.

25 THE COURT: OKAY. GO AHEAD, PLEASE.

1 MR. RAINERI: AND I JUST WANTED TO ADD POSSIBLY A
2 LITTLE CLARITY FOR THE JUDGE.

3 PART OF THE REASON WHY YOU ARE HAVING SUCH A DIFFICULT
4 TIME UNRAVELLING THIS CASE, WHICH I SEE, IS FIRST OFF, I
5 BELIEVE THAT THE MAN WAS WRONGLY ACCUSED TO BEGIN WITH.

6 THE COURT: OKAY. SO LET ME ASK YOU, WERE YOU ONE OF
7 THE EARLY INVESTORS WHO GOT FULLY PAID OFF BY THE FUNDS OF THE
8 LATER INVESTORS? BECAUSE I UNDERSTAND THE EARLY INVESTORS GOT
9 PAID BACK IN FULL AND GOT THE PERCENTAGE YOU WANTED AND YOU ARE
10 ALL VERY SUPPORTIVE OF MR. FEATHERS.

11 SO WHEN WAS YOUR TIME PERIOD THAT YOU INVESTED?

12 MR. RAINERI: I INVESTED, I BELIEVE IT STARTED WHEN
13 IT BEGAN, 2008.

14 THE COURT: OKAY. 2008. WHEN WAS THE LAST TIME YOU
15 INVESTED?

16 MR. RAINERI: JUST BEFORE THE RECEIVER TOOK OVER IN
17 2012.

18 THE COURT: OKAY. ALL RIGHT. AND THEN DID YOU
19 RECEIVE THE FULL --

20 MR. RAINERI: NO.

21 THE COURT: OKAY. SO HOW MUCH DID YOU GET BACK?

22 MR. RAINERI: WHAT THEY DID WAS THEY DEDUCTED ANY
23 GAIN ON THE INVESTMENT FROM THE TIME THAT I STARTED INVESTING.

24 THE COURT: OKAY.

25 MR. RAINERI: TO THE --

1 THE COURT: WHAT DID YOU GET BETWEEN 2008 AND 2012
2 WHILE IT WAS STILL IN OPERATION?

3 MR. RAINERI: I DON'T HAVE THAT FIGURE IN FRONT OF
4 ME, BUT JUST THE GUESS OFF THE TOP OF MY HEAD, PROBABLY
5 \$35,000.

6 THE COURT: AND HOW MUCH DID YOU INVEST?

7 MR. RAINERI: I, AT THAT TIME TO 2012, I HAD ABOUT
8 \$224,000 IN.

9 THE COURT: OKAY. AND THEN -- BUT IN TERMS OF THAT
10 FOUR-YEAR WINDOW, WHEN DID YOU -- DO YOU RECALL WHEN YOU -- DID
11 YOU INVEST IT ALL AT ONCE, OR IT SOUNDS LIKE YOU INVESTED IN
12 2008.

13 MR. RAINERI: NO, I STARTED WITH A \$50,000 INVESTMENT
14 INITIALLY AND ADDED TO IT EVERY -- ON A PERIOD OF A COUPLE OF
15 YEARS.

16 THE COURT: ALL RIGHT. SO YOU STARTED WITH \$50,000
17 IN 2008, AND THEN YOU CONTINUED TO INVEST THROUGH ABOUT 2010,
18 YOU THINK?

19 MR. RAINERI: 2012 WHEN THE RECEIVER TOOK OVER.

20 THE COURT: OH, YOU KEPT PUTTING MONEY IN?

21 MR. RAINERI: YES. I ALSO WAS RECEIVING DIVIDENDS ON
22 PART OF THAT. I HAD TWO ACCOUNTS. I HAD MY FAMILY ACCOUNT AND
23 THEN I HAD MY IRA ACCOUNT. PART OF MY IRA ACCOUNT --

24 THE COURT: AND THEN DID YOU GET ALL THE DIVIDENDS IN
25 2008, 2009, 2010, 2011 AS WELL?

1 MR. RAINERI: THEY STOPPED AS SOON AS THE RECEIVER
2 TOOK OVER, WHATEVER THAT DATE WAS.

3 THE COURT: I THINK IT WAS ABOUT JUNE 2012 ROUGHLY.

4 OKAY. ALL RIGHT. I DO UNDERSTAND THAT THE EARLY
5 INVESTORS RECEIVED THEIR DIVIDENDS, THAT WAS MOSTLY MONEY FROM
6 THE LATER INVESTORS, SO THE EARLY INVESTORS ARE HAPPY BECAUSE
7 THEY --

8 MR. RAINERI: SEE, THAT'S WHERE I DISAGREE.

9 THE COURT: OKAY. GO AHEAD, PLEASE.

10 MR. RAINERI: THE NUMBERS I THINK SPEAK FOR
11 THEMSELVES. IF YOU LOOK AT THE TIME PERIOD THAT THE BUSINESS
12 WAS IN RECEIVERSHIP, WHICH WAS FIVE YEARS, DURING THAT PERIOD
13 OF TIME, ESPECIALLY FOR THE FIRST FOUR YEARS, THE BUSINESS
14 CONTINUED TO GENERATE OVER \$250,000 A MONTH IN INCOME WHEN THEY
15 WERE NOT ABLE TO SOLICIT ONE DIME. MOST OF THIS MONEY WAS ATE
16 UP BY THE RECEIVERSHIP.

17 I BELIEVE IF YOU WERE TO DEDUCT THE AMOUNT THAT IT COSTS
18 FOR THE RECEIVERSHIP, DURING THAT PERIOD OF TIME, AND THE
19 ATTORNEY FEES, THAT THE FUNDS WERE BASICALLY SOLVENT, THAT THEY
20 WOULD HAVE PAID OFF ONE HUNDRED PERCENT IF THEY WOULD HAVE HAD
21 TO LIQUIDATE THOSE FUNDS THEMSELVES WITHOUT PAYING A RECEIVER.

22 I DON'T HAVE THE EXACT FIGURES BECAUSE I'M NOT AN
23 ACCOUNTANT, BUT JUST OFF THE TOP OF MY HEAD, WE RECEIVED ALMOST
24 87 PERCENT OF THE ASSETS OF THE COMPANY -- I SHOULD SAY OF OUR
25 INVESTMENTS, AND THAT LEAVES ABOUT 13 PERCENT. AND I THINK IF

1 YOU LOOK AT WHAT THE RECEIVER RECEIVED, IT PROBABLY AMOUNTED TO
2 PRETTY CLOSE TO THAT AMOUNT OVER FIVE YEARS. SO IF YOU ADD
3 THOSE TWO TOGETHER, THE COMPANY WAS BASICALLY SOLVENT.

4 I THINK THAT THE GOVERNMENT OVERSTEPPED THEIR AUTHORITY IN
5 2012 MAINLY BECAUSE OF THE MADOFF SITUATION THAT THE SECURITIES
6 AND EXCHANGE COMMISSION LOOKED SO BAD THAT THEY WENT OUT AFTER
7 EVERY SMALL COMPANY THAT WAS INVOLVED IN INVESTMENT. AND THAT
8 ADDED TO THE PROBLEM.

9 I FELT THAT THEY COULD HAVE COME IN, IF THERE WAS A
10 PROBLEM WHEN THEY --

11 THE COURT: DO YOU THINK THAT MR. FEATHERS SHOULD NOT
12 PLEAD GUILTY TO THIS FEDERAL FELONY? DO YOU THINK THAT'S
13 WRONG?

14 MR. RAINERI: I THINK THAT --

15 THE COURT: YOU THINK NO CRIME HAS BEEN COMMITTED?

16 MR. RAINERI: I DON'T BELIEVE THAT THERE WAS ANY
17 INTENTIONAL CRIME COMMITTED. INADVERTENT CRIME. I'M NOT --
18 HERE, AGAIN, I'M NOT ASTUTE IN ALL OF THE RAMIFICATIONS OF THE
19 SECURITIES LAW, INADVERTENTLY HE MAY HAVE.

20 THE COURT: ALL RIGHT. WELL, THE ELEMENTS OF THE
21 CRIME TO WHICH HE PLED GUILTY REQUIRE KNOWING PARTICIPATION IN
22 A SCHEME TO DEFRAUD, KNOWING THAT THE PROMISES OR STATEMENTS
23 WERE FALSE WHEN MADE, KNOWING THAT THE PROMISES OR STATEMENTS
24 WERE MATERIAL AND ACTING WITH THE INTENT TO DEFRAUD.

25 M R. RAINERI: ALL I CAN ADD TO THAT IS DURING THE

1 TIME THAT I DEALT WITH MR. FEATHERS'S FIRM, I WAS NEVER MISLEAD
2 ANY TIME, THAT I AM AWARE OF. AND I READ EVERY PERSPECTIVE
3 THAT HE EVER SENT OUT. HE WAS IN ACTIVE PURSUIT OF BUSINESS
4 AND BUSINESS RETURN, VERY MUCH SIMILAR TO WHAT ANYBODY WOULD
5 DO.

6 LIKE I SAID, IN THE BEGINNING, IF HE GOT CAUGHT UP IN THIS
7 AFTER ALL THIS TIME, I'M SURE THAT HE WANTED TO GET IT OVER
8 WITH, AND THAT'S PART OF THE REASON WHY HE PLED.

9 THE FACT THAT HE HAD SO MANY LITIGATED MATTERS THROUGHOUT
10 THE PROCEEDINGS WAS JUST, I BELIEVE, A FRUSTRATED MAN THAT
11 COULDN'T AFFORD AN ATTORNEY BECAUSE THEY TIED UP ALL HIS MONEY
12 RIGHT AT THE BEGINNING AND HE WAS NOT ABLE TO DEFEND HIMSELF.
13 OVER TIME, IT WEARS YOU DOWN.

14 NOW, I NOTICED YOUR HONOR CONSIDERED THIS IS HIS PROBLEM,
15 IT VERY POSSIBLY WAS A GOOD PORTION OF IT, BUT I THINK IT WAS
16 MORE OUT OF FRUSTRATION THAN ANYTHING ELSE.

17 I DON'T REALLY HAVE ANYTHING ELSE TO ADD TO THAT OTHER
18 THAN THE FACT THAT IN MY CASE, I LOST ABOUT \$80,000 THROUGHOUT
19 THIS PROCEEDING, AND THAT DOESN'T INCLUDE THE INTEREST THAT WAS
20 PAID TO ME IN THE PERIOD BEFORE THE RECEIVER TOOK OVER. THAT
21 WOULD HAVE TO BE ADDED TO IT, AND IT WOULD BE WELL OVER
22 PROBABLY \$150,000.

23 THE COURT: I'M NOT SURE I UNDERSTAND. IF IT DOESN'T
24 INCLUDE THE INTEREST THAT WAS OWED TO YOU IN THE PERIOD BEFORE
25 THE --

1 MR. RAINERI: NO, THE INTEREST THAT I HAD ALREADY
2 COLLECTED BECAUSE I WAS ONE OF THE ORIGINAL INVESTORS.

3 THE COURT: WAIT, SO YOU COLLECTED INTEREST?

4 MR. RAINERI: YES.

5 THE COURT: AND YOU ARE SAYING THAT YOU LOST IT AND
6 THAT SHOULD BE INCLUDED IN YOUR LOSS?

7 MR. RAINERI: THAT'S RIGHT. BECAUSE THE RECEIVER
8 DEDUCTED ANY PAYMENTS THAT WERE MADE TO THE INVESTORS PRIOR TO
9 THE RECEIVERSHIP.

10 THE COURT: RIGHT.

11 MR. RAINERI: SO IN OTHER WORDS, IF YOU INVESTED
12 \$100,000 AND YOU HAD RECEIVED \$10,000 IN RETURNS BEFORE THE
13 RECEIVER CAME IN, THEY DEDUCTED THAT \$10,000 FROM YOUR ORIGINAL
14 INVESTMENT WHICH WAS \$100,000, AND THEY MADE RESTITUTION ON THE
15 REMAINING \$90,000. AND OF THAT, THEY RETURNED APPROXIMATELY
16 87 PERCENT.

17 THE COURT: ALL RIGHT. THANK YOU.

18 MR. RAINERI: I HOPE THAT HELPS YOU.

19 THE COURT: ALL RIGHT. THANK YOU.

20 MR. RAINERI: YOU'RE WELCOME.

21 THE COURT: ANY OTHER INVESTORS, OR ANYONE ELSE WHO
22 IS HERE? NO? OKAY. ALL RIGHT. I DON'T SEE ANYBODY.

23 ALL RIGHT. LET ME THEN -- FIRST, DOES MR. FEATHERS WISH
24 TO SPEAK?

25 THE DEFENDANT: NO, YOUR HONOR. THANK YOU.

1 THE COURT: ALL RIGHT. GO AHEAD, IT'S ALL YOURS.

2 MR. ILLOVSKY: THANK YOU, YOUR HONOR.

3 WE TOOK A LOT OF THE COURT'S TIME IN OUR SENTENCING MEMO,
4 WHICH I KNOW THE COURT READ, SO I WON'T BEAT A LOT OF THAT INTO
5 THE GROUND.

6 THE COURT DID DISCUSS A LITTLE BIT THE LITIGATION CONDUCT
7 FROM THE SEC CASE WHICH WASN'T IN THE PSR, SO WE DIDN'T GET TO
8 ADDRESS IT, SO I WILL TALK ABOUT IT.

9 THE COURT: HE MENTIONED, HE SAYS THAT WAS THE REASON
10 THAT MR. FEATHERS SENT THE THREATENING E-MAILS, WHICH IS THE
11 REASON FOR THE OBSTRUCTION OF JUSTICE, SO IT IS INTERWOVEN.

12 HE SAID IT WAS THE LITIGATION THAT WORE HIM DOWN AND
13 THAT'S WHY HE SENT IT. SO I THINK THAT DOES RAISE THE ISSUE OF
14 WELL, WHAT WAS THE CAUSE OF ALL THAT EXTRA LITIGATION IN THE
15 SEC CASE?

16 BUT GO AHEAD, PLEASE.

17 MR. ILLOVSKY: IT WAS UNFORTUNATE. IT WAS NOT GREAT
18 CONDUCT. MR. FEATHERS HAS ACKNOWLEDGED THAT CERTAINLY BY, YOU
19 KNOW, DISMISSING THE TWO APPEALS THAT WERE AGAINST THE
20 INDIVIDUALS.

21 THE COURT: AGAINST THE RECEIVER.

22 MR. ILLOVSKY: YEAH.

23 THE COURT: AND WHO ELSE?

24 MR. ILLOVSKY: AND I THINK THE ACCOUNTANT.

25 THE COURT: OKAY.

1 MR. ILLOVSKY: SO THOSE APPEALS ARE DISMISSED.

2 I DO THINK THAT IT DID BECOME A FAIRLY CONTENTIOUS CIVIL
3 LITIGATION MATTER, I'M NOT THOROUGHLY FAMILIAR WITH IT, I HAVE
4 SEEN SOME OF THE FILES, SOME OF THE E-MAIL EXCHANGES, SOME OF
5 THE EXCHANGES WITH THE SEC LAWYERS. IF MR. FEATHERS HAD HAD
6 SEC COUNSEL, I THINK, YOU KNOW, NONE OF -- I DON'T THINK ANY OF
7 THAT WOULD HAVE HAPPENED.

8 THE COURT: SO HE SENT THE THREATENING E-MAILS WHEN
9 HE WAS REPRESENTED BY RITA BOSWORTH OF THE FEDERAL PUBLIC
10 DEFENDER'S OFFICE, SO HE HAD COUNSEL IN THIS CASE.

11 MR. ILLOVSKY: YEAH, BUT THE CIVIL CASE WENT ON FOR A
12 FEW YEARS WITH THE SEC LAWYERS, AND SO IT WAS A LOT OF
13 UNMEDIATED INTERACTIONS WITH THE GOVERNMENT. NOT THAT IT
14 EXCUSES THE CONDUCT, BUT MAYBE PUTS A LITTLE CONTEXT AROUND IT
15 THAT IF HE HAD HAD A LAWYER, OF COURSE A LAWYER WOULD HAVE
16 PREVENTED THAT.

17 SO JUST FOR THE COURT TO CONSIDER THAT, PLUS MR. FEATHERS,
18 AS THE PROBATION OFFICER POINTED OUT, DID SEND IN AN APOLOGY.
19 AND AS THE COURT KNOWS, BECAUSE THERE'S NOT GOING TO BE A
20 TRIAL, IT DOESN'T -- NOBODY REALLY SEEMS TO THINK THAT THE
21 THREAT THERE IS ANYTHING REAL, IT WAS JUST VENTING FRUSTRATION.
22 POORLY DONE. SHOULDN'T BE DONE IN AN E-MAIL TO GOVERNMENT
23 OFFICERS, BUT SO BE IT.

24 AS FAR AS THE INVESTORS, I THINK IF YOU LOOK AT THE
25 RECEIVER REPORT, THERE WERE ABOUT 365 INVESTORS WHO STILL HAVE

1 CLAIMS. AGAIN, MANY OF THEM ARE OUTSIDE OF -- THEY PUT IN
2 MONEY AFTER 2010. YOU GOT EIGHT INVESTORS WRITING INTO THE
3 COURT, AGAIN, SO THAT'S ABOUT TWO PERCENT. I THINK SIX OF
4 THOSE, IT LOOKS LIKE, PUT MONEY IN AFTER THE CRIME, THE FACT OF
5 THE CRIME. THE OTHER TWO, I CAN'T TELL.

6 YOU GOT THREE INVESTORS SUPPORTING MR. FEATHERS, TWO WROTE
7 TO THE COURT AND ONE ADDRESSED THE COURT, SO THAT'S ABOUT ONE
8 PERCENT.

9 SO JUST TO CONVEY TO THE COURT MAYBE THAT THE UNDERLYING
10 CASE, WHICH UNFORTUNATELY WAS TAINTED BY MR. FEATHERS'S
11 LITIGATION CONDUCT, THAT THE UNDERLYING CASE WAS MAYBE A LITTLE
12 BIT CLOSER -- WOULD HAVE BEEN A LITTLE BIT CLOSER HAD
13 MR. FEATHERS BEEN REPRESENTED. AND AGAIN, IN OUR MEMORANDUM
14 WHICH WAS WRITTEN FOR THE COURT TO PROVIDE CONTEXT, NOT TO --

15 THE COURT: NOW, HE WAS INITIALLY REPRESENTED. HOW
16 LONG DID HE HAVE COUNSEL? DO YOU KNOW?

17 MR. ILLOVSKY: THAT'S A GOOD QUESTION.

18 THE COURT: AND IT'S NOT EVEN THAT IMPORTANT. GO
19 AHEAD, PLEASE, I'M SORRY TO INTERRUPT YOU.

20 MR. ILLOVSKY: IT WAS ABOUT THREE MONTHS, 90 DAYS.

21 THE COURT: SO A VERY SHORT PERIOD.

22 MR. ILLOVSKY: YEAH. MY UNDERSTANDING.

23 AND I JUST THINK THAT THERE WERE A LOT OF COMPLEXITIES IN
24 THE DISCLOSURE DOCUMENTS THAT WOULD HAVE BEEN FLESHED OUT FOR
25 JUDGE DAVILA.

1 AND AGAIN, NOT TO GO INTO IT ENOUGH TO TRY TO RELITIGATE
2 THE CIVIL SEC CASE, BUT IF YOU READ THE SEC'S PRESS RELEASE, IT
3 HIGHLIGHTS THAT THERE WAS A GUARANTEE THAT THE FUNDS PROMISED
4 INVESTORS A GUARANTEED RETURN. IT TURNS OUT THAT'S NOT THE
5 CASE, THERE'S NO GUARANTEED RETURN. BUT THAT BECAME PART OF
6 THE SEC PRESS RELEASE, IT BECAME PART OF THE REASON IT WOULD GO
7 TO THE JUDGE. AND I THINK IT JUST SPIRALED OUT OF CONTROL FOR
8 THIS MAN.

9 AND AGAIN, NOT TO WALK BACK ON THE GUILT IN THIS CASE, BUT
10 JUST TO ASK THE COURT TO CONSIDER, YOU KNOW, THE FULL CONTEXT
11 OF THE CASE WITH THE SEC AND SOME OF THE COMPLEXITIES, AND I
12 THINK WE TRIED TO POINT OUT IN OUR BRIEF THAT THE EXTENT TO
13 WHICH THE INDICTMENT HAD PICKED UP ON THINGS IN THE CIVIL CASE,
14 THEY ARE NOT PART OF THE PLEA AGREEMENT BECAUSE AS WE SHOWED
15 THE COURT, THEY ARE ACTUALLY WRONG.

16 SO AS FAR AS THE PERSONAL INFORMATION, I WON'T REPEAT IT,
17 BUT WE DID BRING FORWARD TO THE COURT THE PEOPLE WHO WROTE IN
18 SUPPORT OF MR. FEATHERS, FORMER COLLEAGUES, FORMER EMPLOYEES,
19 BORROWERS, PEOPLE WHO GOT SMALL BUSINESS LOANS. MR. FEATHERS
20 HAD DEDICATED HIS LIFE TO LENDING MONEY TO SMALL BUSINESSES AND
21 CREATING WHATEVER SOCIAL GOOD THAT WOULD CREATE.

22 AND SO, YOU KNOW, WE ARE ASKING THE COURT TO GO TO THE
23 LOWER END OF THE AGREED UPON RANGE THAT THE PARTIES HAVE SET,
24 WE ARE ASKING THE COURT TO TAKE ALL OF THAT STUFF INTO ACCOUNT.

25 MS. HARRIS: I ACTUALLY DO HAVE JUST A COUPLE SMALL

1 POINTS, IF THE COURT WILL HEAR ME.

2 THE COURT: OKAY. GO AHEAD, PLEASE.

3 MS. HARRIS: THANK YOU.

4 AS I SAID BEFORE YOUR HONOR, THE GOVERNMENT IS
5 RECOMMENDING A SENTENCE OF 33 MONTHS PRISON, THREE YEARS OF
6 SUPERVISED RELEASE, THE RESTITUTION THAT WE SPOKE OF BEFORE AND
7 THE SPECIAL ASSESSMENT FEE.

8 THIS ULTIMATELY ISN'T THE LOW END OF THE DEFENDANT'S
9 GUIDELINE RANGE -- RESULTING GUIDELINE RANGE BASED ON THE RANGE
10 AGREED TO IN THE PLEA.

11 AS I SAID BEFORE, THIS IS A RARE FRAUD CASE WITH A
12 POSITIVE OUTCOME. YOU KNOW, I REALLY JUST DO WANT TO RESTATE
13 THAT IT IS JUST SO RARE TO HAVE A CASE WHERE THE VICTIMS
14 RECEIVE EVEN SOME PORTION OF THEIR MONEY BACK, THAT THAT WAS
15 TAINTED BY THE DEFENDANT'S CONDUCT.

16 I DO JUST NOTE THAT, YOU KNOW, THE GOVERNMENT HAS EVERY
17 INTEREST IN MAKING CERTAIN THAT THE TRADING THAT HAPPENS ON THE
18 STOCK MARKET, THAT SECURITIES, THAT FINANCIAL INSTRUMENTS ARE
19 DONE -- THAT INDIVIDUALS WHO INVEST IN THOSE THINGS DO THAT
20 FREELY AND UNDER NO MISREPRESENTATION ABOUT WHAT IT IS THAT
21 THEY ARE DOING AND WHAT THEY CAN EXPECT TO RECEIVE IN RETURN
22 FOR THEIR INVESTMENTS.

23 IT IS OFTEN A THANKLESS JOB THAT THE SEC DOES, AND EVEN
24 THAT THE U.S. ATTORNEY'S OFFICE DOES IN PURSUING THESE TYPES OF
25 CASES. OBVIOUSLY EVERYBODY CAN HAVE A DIFFERENT EXPERIENCE

1 WITH THEIR INVESTMENT, AND WE SEE THAT HERE WITH THE INDIVIDUAL
2 WHO TESTIFIED TODAY AND SOME OF THE STATEMENTS THAT WERE MADE
3 IN THE VICTIM IMPACT STATEMENTS SUBMITTED TO THE COURT.

4 OBVIOUSLY THERE WERE DEFINITELY SOME PEOPLE WHO DID FEEL
5 THAT MR. FEATHERS MISLEAD THEM, THEY MADE THAT CLEAR. THAT WAS
6 THE BASIS FOR THE GOVERNMENT'S INDICTMENT, THAT WAS THE BASIS
7 FOR HIS CONVICTION.

8 I JUST -- YOU KNOW, AT THE END OF THE DAY, WHAT I REALLY
9 CAN'T ABIDE BY IS THIS SORT OF LESSENING ACCOUNTABILITY FOR HIS
10 CONDUCT. I TEND TO TAKE THE COURT'S POSITION THAT THE CONDUCT
11 DURING THE CIVIL CASE WAS OUTRAGEOUS. UNDER ANY OTHER
12 CIRCUMSTANCE, THIS INDIVIDUAL MIGHT HAVE BEEN DECLARED A
13 VEXATIOUS LITIGANT AND THAT HIS CONDUCT IS WHAT WOULD CAUSE
14 THAT CASE TO LAST FOR AS LONG AS IT DID.

15 HIS CONDUCT IS WHAT CAUSED THE RECEIVER TO HAVE TO GET
16 COUNSEL AND FOR THE ATTORNEY'S FEES FOR THAT COUNSEL. AND THE
17 COURT SHOULD KEEP THAT IN MIND, THAT WAS A GOVERNMENT-INITIATED
18 ACTION. SO TO THE EXTENT THAT IT LASTED FOR LONGER THAN IT
19 SHOULD HAVE, THAT IS A DELAY, AN OBSTRUCTION OF THE
20 GOVERNMENT'S FUNCTIONING BECAUSE THIS INDIVIDUAL DECIDED TO
21 ENGAGE IN THAT CONDUCT.

22 NONETHELESS, I DO THINK THAT THE RESOLUTION REACHED HERE
23 IS A FAIR ONE, AND IT SHOULD BE TAKEN IN CONTEXT WITH ALL OF
24 THE GOVERNMENT'S CIVIL ENFORCEMENT EFFORTS DONE TO DATE. THIS
25 IS A VERY SUCCESSFUL OUTCOME AND THE GOVERNMENT STANDS BY IT

1 AND WE HOPE THAT THE COURT ACCEPTS IT.

2 THANK YOU.

3 THE COURT: ALL RIGHT. IS THERE ANYTHING PROBATION
4 WANTS TO STATE?

5 PROBATION OFFICER: NO, YOUR HONOR. THANK YOU.

6 THE COURT: ALL RIGHT. LET ME END WITH DEFENSE
7 COUNSEL. IS THERE ANYTHING ELSE THAT YOU WOULD LIKE TO ADD?

8 I MEAN, CERTAINLY HE'S ONLY PLEADING TO 1 OF 29 COUNTS.
9 THE SCOPE OF WHAT HE'S PLEADING TO IS MUCH MORE NARROW THAN
10 WHAT WAS CHARGED IN THE INDICTMENT. AND I THINK THAT IS A
11 CREDIT TO ALL THE WORK THAT YOU HAVE DONE SINCE YOU WERE
12 APPOINTED. IS THERE ANYTHING ELSE YOU WOULD LIKE TO ADD?

13 MR. ILLOVSKY: JUST TO SAY, YOUR HONOR, I UNDERSTAND
14 THE COURT'S FRUSTRATION WITH MR. FEATHERS AS A LITIGANT, IT WAS
15 NOT MODEL BEHAVIOR. I DO NOT --

16 THE COURT: OH, I'M NOT FRUSTRATED. I DID NOT HAVE
17 THE SEC CASE. SO I'M JUST SAYING I GOT A GLIMPSE OF IT AND I
18 DO THINK SOME OF THE LENGTH AND BURDEN WAS SELF-INFLICTED,
19 THAT'S ALL. THAT WAS MY ONLY POINT. I ONLY HAD TO DO TWO
20 WRITTEN ORDERS. HAD IT GOTTEN REALLY EXTENSIVE, THEN I MAY
21 HAVE JOINED IN FEELING MORE FRUSTRATED, BUT I'M JUST COMMENTING
22 ON WHAT I SEE FROM THE SEC CASE.

23 MR. ILLOVSKY: I THINK IT'S TOTALLY TRUE. I THINK A
24 LOT OF IT WAS SELF-INFLICTED, SADLY.

25 I WILL ALSO SAY THAT I REALLY DO BELIEVE THAT THE

1 PROBATION OFFICE DID A VERY GOOD EXAMINATION OF THE CASE AND
2 GRAPPLED WITH A DIFFICULT AND COMPLEX CASE IN A VERY SHORT
3 PERIOD OF TIME.

4 AND IT WAS -- THE DEFENSE'S REQUEST, THE COURT WAS NICE
5 ENOUGH TO TRUNCATE THE SCHEDULE A LITTLE BIT, BUT IT HAD THE
6 PROBATION OFFICE SCRAMBLING. AND I DO THINK THE PROBATION
7 OFFICE DID A GOOD JOB. I DO THINK THAT THE PROBATION OFFICE
8 FAIRLY CONSIDERED THE CIRCUMSTANCES OF MR. FEATHERS. IN FACT,
9 I DON'T THINK THEY ARE UNDULY MINIMIZING HIS BEHAVIOR IN
10 RECOMMENDING TO THE COURT THAT THERE SHOULD BE -- THAT THE
11 VARIANCE WOULD BE FAIR, AND WE JOIN WITH THAT.

12 AND WITH THAT, WE WILL LEAVE IT ALONE.

13 THE COURT: ALL RIGHT.

14 WELL, THE COURT HAS TO CONSIDER THE SENTENCING GUIDELINES
15 AS AN INITIAL MATTER, THEY ARE CERTAINLY NOT BINDING. AND LET
16 ME JUST START OFF BY CALCULATING THE BASE OFFENSE LEVEL
17 PURSUANT TO 2(B)1.1(A) (1) IS 7.

18 NOW THE PARTIES HAVE AGREED IN THEIR BINDING PLEA
19 AGREEMENT TO CALCULATE THE LOSS BY THE GAIN TO MR. FEATHERS
20 INSTEAD OF BY INVESTOR LOSS. AND DOING THE CALCULATION THAT
21 WAY, PURSUANT TO 2(B)1.1(B) (1) (G), BECAUSE THE LOSS EXCEEDED
22 \$250,000, THERE'S A 12 LEVEL INCREASE.

23 PURSUANT TO 2(B)1.1(B) (2) (A) (1), THERE'S A TWO LEVEL
24 INCREASE FOR MORE THAN ONE VICTIM, THERE'S A TWO LEVEL INCREASE
25 FOR OBSTRUCTION OF JUSTICE; THERE'S A THREE LEVEL REDUCTION FOR

1 ACCEPTANCE OF RESPONSIBILITY PURSUANT TO 3(E)1.1. SO THE FINAL
2 OFFENSE LEVEL IS 20, AND THAT IS IN THE 33 TO 41 MONTH
3 SENTENCING GUIDELINE RANGE; IS THAT CORRECT?

4 MR. ILLOVSKY: YES, YOUR HONOR.

5 PROBATION OFFICER: THAT'S CORRECT, YOUR HONOR.

6 THE COURT: ALL RIGHT.

7 NOW I WOULD JUST NOTE, AND THE PARTIES HAVE AGREED NOT TO
8 DO IT THIS WAY FOR REASONS OF DIFFICULTY OF CALCULATION, IF YOU
9 WERE TO LOOK AT WHAT THE INVESTOR LOSS WAS, JUDGE DAVILA, WHO
10 HAD THE CIVIL CASE, ISSUED A PERMANENT INJUNCTION, AS I SAID
11 BEFORE, IN THE AMOUNT OF \$7,782,961.07. BOTH THE RECEIVER IN
12 THAT SEC CASE AND THE GOVERNMENT ARE REQUESTING RESTITUTION OF
13 \$5,724,667.54.

14 AND IN THE BINDING PLEA AGREEMENT, IN PARAGRAPH 10 ON
15 PAGE 6, MR. FEATHERS HAS SPECIFICALLY AGREED THAT RESTITUTION
16 IN THE CRIMINAL CASE SHALL INCLUDE THE JUDGMENT NOW PENDING
17 AGAINST HIM IN THE SEC CASE BEFORE JUDGE DAVILA.

18 SO IF YOU WERE TO LOOK AT WHAT THE INVESTOR WAS LOSING,
19 AND USE THAT TO DO THE CALCULATION INSTEAD OF THE GAIN, IT
20 WOULD ACTUALLY BE A PLUS 18 INSTEAD OF A PLUS 12 BECAUSE IT
21 EXCEEDS 3.5 MILLION AND IT'S LESS THAN 9.5 MILLION.

22 AND IF YOU WERE TO DO THE CALCULATION BASED ON INVESTOR
23 LOSS, IT WOULD BE 63 TO 78 MONTHS BECAUSE THE FINAL OFFENSE
24 LEVEL WOULD BE 26.

25 BUT THE PARTIES HAVE A BINDING PLEA AGREEMENT TO DO THE

1 GUIDELINE CALCULATION BASED ON THE LOSS BECAUSE OF THE
2 DIFFICULTY, THEY SAY, IN CALCULATING WHAT THAT INVESTOR LOSS
3 WOULD BE.

4 I AM SOMEWHAT SKEPTICAL THAT IT WOULD BE AS DIFFICULT AS
5 THE PARTIES SAY, BUT I DO UNDERSTAND IT TO BE EXTREMELY
6 COMPLEX.

7 MR. ILLOVSKY: PLUS IT'S A DIFFERENT TIME PERIOD.

8 MS. HARRIS: DIFFERENT SET OF CIRCUMSTANCES.

9 THE COURT: I UNDERSTAND. I UNDERSTAND. IT WOULDN'T
10 NECESSARILY BE COMPLETE OVERLAP, BUT I AM NOT AS CONVINCED THAT
11 EVEN IF YOU LOOKED AT THE NARROWER SCOPE OF TIME, NARROWER
12 NUMBER OF VICTIMS, THAT YOU COULDN'T DETERMINE LOSS.

13 BUT IT'S FINE. I'M GOING TO ACCEPT THE BINDING PLEA
14 AGREEMENT OF THE PARTIES TO DO THE CALCULATION USING A LOSS
15 AMOUNT OF OVER 250,000 INSTEAD OF SOMETHING OVER 3.5 MILLION.
16 SO THAT'S FINE.

17 NOW THAT IS THE CALCULATION.

18 MR. ILLOVSKY: THOSE WOULD HAVE BEEN THE EARLY
19 INVESTORS, RIGHT, SO THERE WOULD HAVE BEEN LOWER LOSS,
20 PROBABLY.

21 THE COURT: WELL, I DON'T THINK YOU WOULD GET IT DOWN
22 TO 250,000.

23 MR. ILLOVSKY: 94 HAD NO LOSS.

24 THE COURT: I STILL DON'T THINK YOU WOULD GET IT DOWN
25 TO 250,000, BUT IT'S FINE, I'M GOING TO ACCEPT THE PARTY'S

1 SENTENCING GUIDELINE CALCULATION THAT'S IN YOUR BINDING PLEA
2 AGREEMENT.

3 I WILL JUST SAY THAT WHAT IS MITIGATING IS THAT
4 MR. FEATHERS HAS PLED GUILTY, IT WOULD HAVE BEEN AN EXTREMELY
5 COMPLICATED TRIAL, AND THAT HE HAS SUFFERED A GREAT LOSS AS A
6 RESULT OF BOTH CASES.

7 HE'S NOT ABLE TO SEE HIS TWO SONS AND HIS STEPSON, HIS
8 WIFE IS DIVORCING HIM, THEY [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED] AND THIS HAS TAKEN A HUGE TOLL ON HIM, AND I
12 DO RECOGNIZE THE DIFFICULTY OF HIM BEING PRO SE IN HIS SEC
13 CASE, AND IT EXTENDED FOR A LONG PERIOD OF TIME, AND I
14 CERTAINLY UNDERSTAND THE DRAIN.

15 AND I APPLAUD THE FACT THAT SO MUCH HAS BEEN REPAID TO THE
16 INVESTORS AT SUCH A HIGH RATE OF REIMBURSEMENT. AND I
17 RECOGNIZE THAT SOME OF THE INVESTORS ARE VERY HAPPY, ESPECIALLY
18 THE EARLY ONES WHO DID GET PAYMENT, ALTHOUGH I SUGGEST THAT
19 SOME OF THE PAYMENT THEY RECEIVED WERE JUST THE INVESTMENTS
20 FROM THE LATER INVESTORS.

21 BUT I DO UNDERSTAND MANY OF THEM ARE SATISFIED, AS WAS THE
22 GENTLEMAN MR. SYD RAINERI WHO TESTIFIED TODAY AND THE LETTERS
23 THAT I READ FROM VICTIMS.

24 BUT, I MEAN, MR. FEATHERS HAS PLED GUILTY TO COUNT 20 OF
25 THE INDICTMENT, AND HE HAS, BY PLEADING GUILTY, AGREED THAT HE

1 KNOWINGLY PARTICIPATED IN THE SCHEME TO DEFRAUD, IN A SCHEME OR
2 PLAN FOR OBTAINING MONEY OR PROPERTY BY MAKING FALSE PROMISES
3 OR STATEMENTS, THAT HE KNEW THAT THE PROMISES OR STATEMENTS
4 WERE FALSE WHEN MADE, THAT THE PROMISES OR STATEMENTS WERE
5 MATERIAL, THAT IS THEY WOULD REASONABLY INFLUENCE A PERSON TO
6 PART WITH MONEY OR PROPERTY, THAT HE ACTED WITH INTENT TO
7 DEFRAUD, AND THAT AN ESSENTIAL PART OF HIS SCHEME WAS IN
8 CONNECTION WITH AND INVOLVING USE OF THE MAIL.

9 THAT IS WHAT HE HAS PLED TO, THAT IS WHAT HE HAS
10 STIPULATED TO, SO I BEAR THAT IN MIND AS WELL.

11 WITH REGARD TO THE OBSTRUCTION OF JUSTICE, LET ME JUST GET
12 TO THAT POINT. UNFORTUNATELY MR. FEATHERS, WHILE HE WAS IN
13 THIS CRIMINAL CASE BEING REPRESENTED BY RITA BOSWORTH OF THE
14 FEDERAL PUBLIC DEFENDER'S OFFICE, SENT THREATENING E-MAIL TO
15 HER, TO HIS PRIOR LAWYER IN THE CRIMINAL CASE, TO THE RECEIVER,
16 TO THE ATTORNEY FOR THE RECEIVER, AND TO FOUR SEC ATTORNEYS.

17 YOU KNOW, SOME OF THESE PEOPLE HAD ALREADY BEEN SUED BY
18 MR. FEATHERS, ONE WAS VERBALLY ASSAULTED IN COURT BY
19 MR. FEATHERS PRIOR TO INDICTMENT IN THE CRIMINAL CASE. AND YOU
20 KNOW, THE PSR KIND OF MINIMIZES THE E-MAILS BY SAYING OH, BUT
21 THE LITIGATION, HE, YOU KNOW, IT GROUND HIM DOWN.

22 BUT I JUST WANT TO REPEAT, THIS WAS THE FOOTNOTE IN AN
23 EARLIER DRAFT OF THE ORDER I ISSUED, YOU KNOW, THAT HE SOUGHT
24 LEAVE TO SUE THE RECEIVER ON SEVERAL OCCASIONS, HE FILED A
25 COMPLAINT AGAINST THE RECEIVER'S COUNSEL WITH THE STATE BAR TO

1 TRY TO GET THAT PERSON, TO HAVE THEIR LICENSE REVOKED OR
2 SUSPENDED. THAT WAS DETERMINED TO HAVE NO MERIT.

3 HE LODGED A COMPLAINT AGAINST THE RECEIVER WITH THE
4 CHARTER FINANCIAL ANALYST INSTITUTE, WHICH WAS DETERMINED TO
5 HAVE NO MERIT. HE SOUGHT TO INTERVENE IN AN UNRELATED
6 COMMISSION CASE IN THE CENTRAL DISTRICT OF CALIFORNIA IN WHICH
7 THE RECEIVER WAS APPOINTED RECEIVER, THAT WAS SUMMARILY
8 REJECTED BY THE DISTRICT COURT.

9 SO I HEAR MR. RAINERI, I'M SURE THE LEGAL FEES WERE HIGH
10 FOR THE RECEIVER, BUT A LOT OF THAT WAS SPENT TRYING TO DEFEND
11 HIMSELF FROM THE LAWSUITS AND FROM THE ACTIONS OF MR. FEATHERS.
12 SO IF ANYONE INCREASED THE COST OF THE RECEIVER -- IT TAKES
13 TIME TO RESPOND TO ALL OF THIS.

14 LOOK AT THE RECEIVER'S DECLARATION FROM JUNE 23RD, 2016.
15 "MR. FEATHERS HAS SENT ME AND MY COUNSEL MORE THAN THREE
16 HUNDRED E-MAIL MESSAGES. THESE E-MAILS GENERALLY INCLUDE FALSE
17 ACCUSATIONS, PERSONAL ATTACKS, THREATS TO SUE OR BRING LEGAL
18 ACTION AGAINST ME IN SOME MANNER. MR. FEATHERS HAS THREATENED
19 TO SUE ME OR BRING LEGAL ACTION AGAINST ME IN WRITING
20 APPROXIMATELY 35 TIMES, AND HAS STATED HIS INTENTION TO
21 CONTINUE THE LITIGATION FOR YEARS TO COME."

22 LOOK AT WHAT THE -- YOU KNOW, I JUST WANT TO SHARE WHAT
23 THE VICTIMS WHO RECEIVED THESE THREATENING E-MAIL E-MAILS SAID.
24 THIS IS VICTIM ONE. "VICTIM ONE HAS RECEIVED THREATENING
25 E-MAILS FROM MR. FEATHERS PREVIOUSLY." THIS IS IN ADDITION TO

1 THE ONE THAT GOT MR. FEATHERS REMANDED IN THIS CASE AND IS THE
2 OBSTRUCTION OF JUSTICE INCIDENT.

3 IT SAYS "V1 WAS USUALLY INCLUDED ON THE CC LINE OF THE
4 E-MAILS AND NOT ON THE TO LINE." THIS WAS THE FIRST TIME HE
5 WAS ON THE TO LINE. "THERE WERE TIMES IN COURT WHERE
6 MR. FEATHERS HAS BECOME SO ANGRY THAT V1 HAS BECOME CONCERNED
7 FOR V1'S SAFETY. V1 WAS STUNNED THAT FEATHERS WOULD MAKE THE
8 STATEMENTS THAT HE MADE. THE MOST RECENT E-MAIL MADE V1
9 CONCERNED FOR V1'S SAFETY. V1 WAS CONCERNED FOR V2'S SAFETY
10 BECAUSE IT WAS POSSIBLE V2 WOULD HAVE TO TESTIFY IN
11 MR. FEATHERS'S CRIMINAL TRIAL."

12 LET'S GO TO V2. "V2 HAS RECEIVED HUNDREDS OF E-MAILS FROM
13 MR. FEATHERS IN THE PAST, SOME OF WHICH THREATENED V2'S CAREER.
14 EVEN THOUGH V2 FELT SORRY FOR MR. FEATHERS, THIS E-MAIL CAUSED
15 HIM ALARM AND V2 FELT UNSETTLED AND INTIMIDATED. V2 FOUND THE
16 E-MAIL DISTURBING AND IT CAUSED HIM STRESS." V2 WENT ON TO
17 NOTE THAT "V2 FELT BOTH HARASSED AND BADGERED BY FEATHERS."

18 I ASSUME YOU DIDN'T READ THIS; IS THAT CORRECT? BECAUSE
19 IT WASN'T IN YOUR PSR.

20 PROBATION OFFICER: I CAN'T RECALL AT THIS POINT. I
21 DON'T THINK SO.

22 THE COURT: OKAY. THIS IS V3. THIS IS BASICALLY THE
23 MOTION FOR REVOCATION OF RELEASE PENDING TRIAL.

24 OKAY. THIS WAS ECF NUMBER 108 ON THIS DOCKET, THE
25 CRIMINAL CASE WAS FILED MARCH 22, 2017.

1 LET'S GO TO VICTIM THREE. "V3 HAD PREVIOUSLY HEARD
2 FEATHERS MAKE INFLAMMATORY COMMENTS IN OPEN COURT. IN PREVIOUS
3 CIVIL COURT PROCEEDINGS, FEATHERS HAD VOWED REVENGE AGAINST THE
4 SECURITIES AND EXCHANGE COMMISSION TEAM AND HAD BEEN UPSET BY
5 THE USE OF THE WORD PONZI."

6 THIS IS VICTIM FOUR. "VICTIM 4 NOTED THAT FEATHERS HAS
7 SENT EARLY MORNING AND LATE NIGHT INFLAMMATORY E-MAILS IN THE
8 PAST, BUT THIS WAS THE FIRST ONE THAT INCLUDED A PHYSICAL
9 THREAT."

10 THIS IS VICTIM 5. "V5 NOTED THAT FEATHERS HAD SENT EARLY
11 MORNING AND LATE INFLAMMATORY E-MAILS IN THE PAST, BUT THIS WAS
12 THE ONE FIRST THAT INCLUDED PHYSICALLY THREATENING STATEMENTS.
13 V5 HAD THREATENING ENCOUNTERS WITH FEATHERS IN THE PAST. ON
14 ONE OCCASION, THAT OCCURRED PRIOR TO THE FILING OF THE CRIMINAL
15 INDICTMENT. FEATHERS HAD HAD AN OVER-THE-TOP REACTION TO
16 SOMETHING V5 SAID IN COURT. FEATHERS BEGAN SCREAMING AT V5,
17 CALLING V5 INDECENT.

18 ON ANOTHER OCCASION, FEATHERS HAD PLACED HIMSELF BETWEEN
19 V5 AND THE EXIT OF THE COURTROOM AND STATED THAT FEATHERS WOULD
20 SEE V5 IN HELL AND CALLED HER, TO THE BEST OF V5'S
21 RECOLLECTION, A LYING PIECE OF SHIT OR A LYING BITCH.

22 THE SCHEDULING CLERK APPARENTLY OVERHEARD THE COMMENT,
23 NOTIFIED THE COURT MARSHALS WHO PROCEEDED TO ESCORT V5 OUT
24 AFTER FEATHERS LEFT THE COURTROOM.

25 V5 WAS GENERALLY NOT A PERSON WHO WAS EASILY INTIMIDATED

1 OR AFRAID OF CONFRONTATION, HOWEVER FEATHERS WAS STRESSFUL TO
2 BE AROUND.

3 V5 WAS NOT AFRAID OF FEATHERS, BUT BEING AROUND HIM
4 REQUIRED HYPER-ALERTNESS AND V5 DID NOT WANT TO BE ALONE IN A
5 CONFINED SPACE WITH FEATHERS, BUT WAS WILLING TO BE IN A
6 COURTROOM WITH HIM."

7 THIS IS V6. "THE LANGUAGE IN THE E-MAIL MADE V6 CONCERNED
8 FOR V6'S OWN PERSONAL SAFETY, THE SAFETY OF V6'S FAMILY AND THE
9 SECURITY OF V6'S PROPERTY."

10 SO I MEAN, YOU JUST SAID THAT MR. LUCEY SAID THAT NONE OF
11 THESE VICTIMS FELT THAT ANY OF THESE THREATS WERE REAL? WHAT
12 EXACTLY DID MR. LUCEY SAY, BECAUSE THIS DOCUMENT WAS FILED BY
13 MR. LUCEY.

14 PROBATION OFFICER: I CAN'T RECALL THAT EXACT
15 CONVERSATION, YOUR HONOR. IT JUST SEEMED THAT HE WASN'T
16 CONCERNED, IN OUR TALK, THAT MR. FEATHERS HAD ACTUALLY INTENDED
17 TO PHYSICALLY HARM SOMEONE. I THINK THAT WAS THE GIST OUR
18 CONVERSATION, AS BEST I REMEMBER.

19 THE COURT: ALL RIGHT. BUT YOU DIDN'T BOTHER TO READ
20 THIS MOTION, THE SUBJECT OF THE E-MAIL.

21 PROBATION OFFICER: I CAN'T RECALL THAT I HAD. I
22 BELIEVE I WOULD HAVE, BUT IT'S BEEN A COUPLE OF MONTHS SINCE
23 THE CASE STARTED IN MY HANDS, SO I CAN'T RECALL.

24 I UNDERSTAND THE COURT'S POINT, YOUR HONOR.

25 THE COURT: YEAH. IF YOU ARE GOING TO MAKE

1 REPRESENTATION ABOUT THINGS, IT SHOULD INCLUDE ALL
2 PERSPECTIVES.

3 PROBATION OFFICER: UNDERSTOOD.

4 THE COURT: IT MAKES IT MORE PERSUASIVE THAT WAY.

5 ALL RIGHT. AND THEN I JUST HAVE MY OWN, FROM MY OWN
6 ORDERS IN THIS CRIMINAL CASE OF GOING THROUGH THE NUMBER OF
7 TIMES, OCTOBER 23RD 2013 NINTH CIRCUIT DISMISSED FOR LACK OF
8 JURISDICTION.

9 THEN HE APPEALED AGAIN NOVEMBER 7, 2013, THAT GETS ANOTHER
10 NINTH CIRCUIT NUMBER. THEN THERE'S ANOTHER APPEAL TO THE
11 NINTH CIRCUIT ON FEBRUARY 27, 2017, THAT GETS ANOTHER NUMBER.
12 THEN THERE'S ANOTHER APPEAL TO THE NINTH CIRCUIT NOVEMBER 10TH
13 OF 2014.

14 I MEAN, JUST -- YOU KNOW, I UNDERSTAND MR. FEATHERS WAS
15 SELF-REPRESENTED, AND I THINK THAT'S UNFORTUNATE IN OUR CIVIL
16 JUSTICE SYSTEM THAT WE DON'T HAVE APPOINTED COUNSEL IN ALL OF
17 THOSE CASES. BUT I DO WANT TO SAY THAT THE LENGTH OF THE CIVIL
18 CASE AND HOW BURDENSOME IT WAS, IN MANY RESPECTS, CAUSED BY
19 MR. FEATHERS.

20 AND I WOULD SAY THAT A LOT OF THE RECEIVER FEES THAT
21 MR. RAINERI COMPLAINS ABOUT AND COUNSEL FOR MR. SEIMEN, THE
22 RECEIVER, WAS BECAUSE OF ALL OF THIS LITIGATION AND E-MAILS AND
23 APPEALS. THIS MAKES IT MORE EXPENSIVE. THIS IS WHAT MAKES THE
24 FEES HIGHER. AND A LOT OF THAT WAS CAUSED BY MR. FEATHERS.

25 I MEAN, I JUST LOOK THROUGH HOW MANY TIMES -- YOU LOOK

1 THROUGH SO MANY -- MR. FEATHERS FILED SANCTIONS MOTIONS AGAINST
2 THE SEC LAWYERS. HE FILED AGAIN AND AGAIN, MULTIPLE REQUESTS
3 THAT THE RECEIVER BE DISCHARGED. ALL OF THAT IS WHAT INCREASES
4 THE FEES FOR LITIGATION.

5 YOU KNOW, EVERY TIME THESE LAWSUITS ARE FILED, THE
6 RECEIVER HAS TO FILE A DECLARATION. THIS IS EXTREMELY TIME
7 INTENSIVE. EXPENSIVE, BURDENSOME, AND A LOT OF THAT WAS
8 SELF-INFLICTED.

9 SO ANYWAY, I DO APPRECIATE THAT MR. FEATHERS SERVED IN THE
10 NAVY FROM 1986 TO 1989. [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 MR. ILLOVSKY: I DON'T KNOW THE ANSWER, YOUR HONOR.

15 THE COURT: I MEAN, HE SERVED '86 TO '89, SO THAT'S
16 WHAT, 31 YEARS AGO.

17 MR. ILLOVSKY: SORRY, I DON'T KNOW THE DISABILITY
18 RULES.

19 THE COURT: YEAH, 32 YEARS AGO. SO FOR THREE YEARS
20 OF SERVICE, [REDACTED]

21 [REDACTED]

22 ALL RIGHT. THE COURT, IN IMPOSING THE SENTENCE, HAS
23 CONSIDERED THE FACTORS SET FORTH IN 3553(A), THE NATURE AND
24 CIRCUMSTANCES OF THE OFFENSE, THE HISTORY AND CHARACTERISTICS
25 OF THE DEFENDANT, THE NEED FOR THE SENTENCE TO REFLECT THE

1 SERIOUSNESS OF THE OFFENSE, TO PROMOTE RESPECT FOR THE LAW, TO
2 PROVIDE JUST PUNISHMENT FOR THE OFFENSE, TO AFFORD ADEQUATE
3 DETERRENCE TO CRIMINAL PRODUCT, TO PROTECT THE PUBLIC FROM
4 FURTHER CRIMES OF THE DEFENDANT.

5 I DON'T BELIEVE THE DEFENDANT NEEDS ANY VOCATIONAL
6 TRAINING OR MEDICAL CARE, CORRECT?

7 MR. ILLOVSKY: CORRECT.

8 THE COURT: BUT TO AVOID UNWARRANTED SENTENCE
9 DISPARITIES AMONG DEFENDANTS WITH SIMILAR RECORDS WHO HAVE BEEN
10 FOUND GUILTY OF SIMILAR CONDUCT AND THE NEED TO PROVIDE
11 RESTITUTION TO ANY VICTIMS OF THE OFFENSE.

12 I WILL NOTE THAT PURSUANT TO THE PERMANENT INJUNCTION IN
13 THE SEC CASE, JUDGE DAVILA ORDERED THAT \$7,782,961.07 BE
14 DISGORGED, AND THAT WAS A DISGORGEMENT OF PROFITS AGAINST THE
15 DEFENDANT AS CO-DEFENDANTS. THE PLAN APPROVED 40 MILLION AND
16 ALLOWED CLAIMS FROM INVESTORS. THE RECEIVER DISTRIBUTED NEARLY
17 35 MILLION TO INVESTORS IN FOUR DISTRIBUTIONS WHICH ALLOWED
18 INVESTORS TO RECOVER AT LEAST 88 PERCENT OF THE PRINCIPLE.

19 THE GOVERNMENT REQUESTS RESTITUTION IN THE AMOUNT OF
20 \$5,724,667.54 WHICH IS THE UNPAID REMAINDER OF CLAIMS AGAINST
21 MR. FEATHERS AND SBCC.

22 THERE ARE NO OBJECTIONS TO THE PSR THAT I HAVE TO RESOLVE.

23 SO PURSUANT TO THE SENTENCING REFORM ACT OF 1984, IT IS
24 THE JUDGMENT OF THE COURT THAT MR. MARK FEATHERS IS HEREBY
25 COMMITTED TO THE CUSTODY OF THE BUREAU OF PRISONS TO BE

1 IMPRISONED FOR A TERM OF 33 MONTHS.

2 THE COURT RECOMMENDS THAT THE DEFENDANT PARTICIPATE IN
3 [REDACTED] TREATMENT IN THE BUREAU OF PRISONS.

4 UPON RELEASE FROM IMPRISONMENT, MR. FEATHERS SHALL BE
5 PLACED ON SUPERVISED RELEASE FOR A TERM OF THREE YEARS.

6 WITHIN 72 HOURS OF RELEASE FROM THE CUSTODY OF THE BUREAU
7 OF PRISONS, THE MR. FEATHERS SHALL REPORT IN PERSON TO THE
8 PROBATION OFFICE IN THE DISTRICT TO WHICH HE IS RELEASED.

9 WHILE ON SUPERVISED RELEASE, HE SHALL NOT COMMIT ANOTHER
10 FEDERAL, STATE OR LOCAL CRIME; SHALL COMPLY WITH THE STANDARD
11 CONDITIONS THAT HAVE BEEN ADOPTED BY THIS COURT, EXCEPT THAT
12 THE MANDATORY DRUG TESTING PROVISION IS SUSPENDED, AND SHALL
13 COMPLY WITH THE FOLLOWING ADDITIONAL CONDITIONS:

14 MR. FEATHERS, YOU SHALL PAY ANY RESTITUTION AND SPECIAL
15 ASSESSMENT THAT IS IMPOSED BY THIS JUDGMENT AND THAT REMAINS
16 UNPAID AT THE COMMENCEMENT OF THE TERM OF SUPERVISED RELEASE.

17 YOU SHALL NOT OPEN ANY NEW LINES OF CREDIT AND/OR INCUR
18 NEW DEBT WITHOUT THE PRIOR PERMISSION OF THE PROBATION OFFICER.

19 YOU SHALL PROVIDE THE PROBATION OFFICER WITH ACCESS TO ANY
20 FINANCIAL INFORMATION, INCLUDING TAX RETURNS, AND SHALL
21 AUTHORIZE THE PROBATION OFFICER TO CONDUCT CREDIT CHECKS AND
22 OBTAIN COPIES OF INCOME TAX RETURNS.

23 I WILL SAY I AM A LITTLE BIT CONCERNED THAT WITHOUT ANY
24 RESTITUTION BEING PAID, YOU KNOW, [REDACTED]
25 [REDACTED] BETWEEN 2017 AND 2018. HE HAS [REDACTED]

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[REDACTED]

[REDACTED]. I DO HOPE
THAT SOME OF THIS WILL GO TO RESTITUTION.

YOU SHALL COOPERATE IN THE COLLECTION OF DNA AS DIRECTED
BY THE PROBATION OFFICER.

YOU SHALL SUBMIT YOUR PERSON, RESIDENCE, OFFICE, VEHICLE,
ELECTRONIC DEVICES AND THEIR DATA, INCLUDING CELL PHONES,
COMPUTERS AND ELECTRONIC STORAGE MEDIA, OR ANY PROPERTY UNDER
YOUR CONTROL TO A SEARCH. SUCH A SEARCH SHALL BE CONDUCTED BY
A U.S. PROBATION OFFICER OR ANY FEDERAL, STATE OR LOCAL LAW
ENFORCEMENT OFFICER AT ANY TIME, WITH OR WITHOUT SUSPICION.

FAILURE TO SUBMIT TO SUCH A SEARCH MAY BE GROUNDS FOR
REVOCATION. THE DEFENDANT SHALL WARN ANY RESIDENCE THAT THE
PREMISES MAY BE SUBJECT TO SEARCHES.

YOU SHALL NOT BE EMPLOYED -- I THINK WE NEED THE WORD "AS"
AS A SECURITIES BROKER OR ANY OTHER EMPLOYMENT RELATED TO THE
INSTANT OFFENSE AS DIRECTED BY THE PROBATION OFFICER.

WILL YOU MAKE THAT CHANGE IN THE JUDGMENT, PLEASE. THANK
YOU.

PROBATION OFFICER: I WILL, YOUR HONOR.

THE COURT: IT IS FURTHER ORDERED THAT THE DEFENDANT
SHALL PAY TO THE U.S. A SPECIAL ASSESSMENT OF \$100. PAYMENT
SHALL BE MADE TO:

THE CLERK OF U.S. DISTRICT COURT.
450 GOLDEN GATE AVENUE, BOX 36060.

1 SAN FRANCISCO, CA 94102

2 DURING IMPRISONMENT, PAYMENTS OF CRIMINAL MONETARY
3 PENALTIES ARE DUE AT THE RATE OF NOT LESS THAN \$25 PER QUARTER
4 AND PAYMENT SHALL BE THROUGH THE BUREAU OF PRISONS INMATE
5 FINANCIAL RESPONSIBILITY PROGRAM.

6 NOW, I ACTUALLY THINK THAT THE DEFENDANT DOES HAVE THE
7 ABILITY TO PAY THE FINE. I HAVE JUST GONE THROUGH, HE'S GOT
8 [REDACTED] CASH. SO WHY ARE WE SAYING THAT HE DOESN'T
9 HAVE THE ABILITY TO PAY THE FINE? NOW GRANTED I WOULD WANT THE
10 MONEY TO GO TO RESTITUTION TOWARDS THE VICTIMS ANYWAY.

11 YOU ARE THE ONE THAT JUST SAID HE'S GOT [REDACTED]

12 [REDACTED]
13 [REDACTED]
14 [REDACTED] I MEAN, 2018, THE LAST WEEKS OR
15 MONTHS, SO WHY ARE WE FINDING THAT HE HAS NO ABILITY TO PAY A
16 FINE?

17 PROBATION OFFICER: MY THINKING, YOUR HONOR, WAS THE
18 ASSETS THAT HE HAS LEFT AGAINST THE RESTITUTION STILL OWING, IT
19 JUST DIDN'T MAKE SENSE TO ME.

20 THE COURT: YEAH.

21 WELL, I MEAN, I FIND THAT HE DOES HAVE THE ABILITY TO PAY
22 A FINE BUT I ORDER IT WAIVED BECAUSE I WANT THE MONEY TO GO TO
23 RESTITUTION, IF THERE IS ANY.

24 I JUST DON'T THINK I CAN MAKE A FACTUAL FINDING THAT HE
25 DOESN'T HAVE THE ABILITY TO PAY THE FINE WHEN HE'S GOT THAT

1 MUCH CASH.

2 IT IS FURTHER ORDERED THAT MR. FEATHERS SHALL PAY
3 RESTITUTION TO THE VICTIMS. NOW I GUESS YOUR ATTACHMENT A IS
4 THIS LIST, CORRECT?

5 PROBATION OFFICER: THAT'S CORRECT, YOUR HONOR.

6 THE COURT: TO THIS REPORT. AND THE TOTAL AMOUNT OF
7 \$5,724,667.54.

8 IT IS RECOMMENDED THAT \$22,000 [REDACTED]
9 [REDACTED] BE PAID TOWARD RESTITUTION
10 FORTHWITH.

11 DURING IMPRISONMENT, PAYMENT OF RESTITUTION IS DUE AT THE
12 RATE OF NOT LESS THAN \$25 PER QUARTER, AND PAYMENT SHALL BE
13 THROUGH THE BUREAU OF PRISONS INMATE RESPONSIBILITY PROGRAM.

14 ONCE THE DEFENDANT IS ON SUPERVISED RELEASE, RESTITUTION
15 MUST BE PAID IN MONTHLY PAYMENTS OF NOT LESS THAN \$500.00, OR
16 AT LEAST TEN PERCENT OF EARNINGS, WHICHEVER IS GREATER, TO
17 COMMENCE NO LATER THAN 60 DAYS FROM PLACEMENT ON SUPERVISION.

18 ANY ESTABLISHED PAYMENT PLAN DOES NOT PRECLUDE ENFORCEMENT
19 EFFORTS BY THE U.S. ATTORNEY'S OFFICE IF THE DEFENDANT HAS THE
20 ABILITY PAY MORE THAN THE MINIMUM DUE.

21 THE RESTITUTION PAYMENTS SHALL BE MADE TO:

22 THE CLERK OF U.S. DISTRICT COURT.

23 ATTENTION FINANCIAL UNIT.

24 450 GOLDEN GATE AVENUE, BOX 36060

25 SAN FRANCISCO, CA 94102

1 NOW, MR. ILLOVSKY, YOU WANT ME TO READ ATTACHMENT A, ALL
2 OF THE VICTIMS AND THEIR CLAIM BALANCES?

3 MR. ILLOVSKY: I DON'T THINK THAT'S NECESSARY. CAN
4 THAT JUST BE ATTACHED AS PART --

5 THE COURT: WE CAN JUST MAKE IT PART OF THE JUDGMENT,
6 BUT I DO WANT TO OFFER TO READ ALL OF THIS, WHAT ABOUT YOU?

7 MS. HARRIS: NO, YOUR HONOR. THE COURT CAN JUST
8 ATTACH THE LIST SUBMITTED BY PROBATION AND I THINK THAT WOULD
9 BE SUFFICIENT BY REFERENCE.

10 THE COURT: OKAY. ALL RIGHT.

11 AND MR. FEATHERS DOES HAVE A COPY OF THIS LIST, CORRECT?

12 MR. ILLOVSKY: YES, YOUR HONOR.

13 THE COURT: WITH ALL THE VICTIMS' NAMES AND NUMBERS;
14 IS THAT CORRECT, MR. FEATHERS?

15 THE DEFENDANT: YES, YOUR HONOR.

16 THE COURT: OKAY. DO YOU WANT ME TO READ ALL THESE
17 NAMES AND AMOUNTS IN COURT?

18 THE DEFENDANT: THAT'S NOT NECESSARY, YOUR HONOR.

19 THE COURT: OKAY. ALL RIGHT. AND SAME FOR YOU,
20 OFFICER?

21 PROBATION OFFICER: CORRECT, YOUR HONOR.

22 THE COURT: OKAY. THEN I WON'T READ THAT.

23 NOW I DO THINK THAT WE HAVE TO DISMISS THE COUNTS, AT
24 LEAST 2 THROUGH 29, CORRECT?

25 MS. HARRIS: YES, YOUR HONOR.

1 THE COURT: ALL RIGHT. THAT MOTION TO DISMISS
2 COUNTS 2 THROUGH 29 IS GRANTED.

3 THE CLERK: MY APOLOGIES, YOUR HONOR, I BELIEVE IT'S
4 1 THROUGH 19 AND 21 THROUGH 29.

5 MS. HARRIS: CORRECT, CORRECT.

6 THE COURT: OH, I'M SORRY. HE PLED TO COUNT 20. MY
7 MISTAKE. THAT'S CORRECT. MY MISTAKE. THANK YOU FOR
8 CORRECTING ME.

9 ALL RIGHT. SO THE GOVERNMENT'S MOTION TO DISMISS COUNTS 1
10 THROUGH 19, AND 21 THROUGH 29 IS GRANTED. THOSE COUNTS ARE
11 DISMISSED.

12 I AM WAIVING INTEREST ON THE RESTITUTION AMOUNT.

13 ALL RIGHT. NOW IN THE PLEA AGREEMENT, IN PARAGRAPH 4,
14 MR. FEATHERS, YOU'VE GIVEN UP YOUR RIGHT TO APPEAL THE
15 CONVICTION, THE JUDGMENT AND ORDERS OF THE COURT AS WELL AS ANY
16 ASPECT OF YOUR SENTENCE, INCLUDING ANY ORDERS RELATING TO
17 FORFEITURE OR RESTITUTION, BUT YOU HAVE KEPT THE RIGHT TO CLAIM
18 THAT YOUR COUNSEL WAS NOT EFFECTIVE.

19 NOW IF YOU WISH TO FILE A NOTICE OF APPEAL FOR INEFFECTIVE
20 ASSISTANCE OF COUNSEL, YOU MUST DO SO IN WRITING WITHIN 14 DAYS
21 OF TODAY'S DATE. YOU ALSO HAVE THE RIGHT TO APPLY TO PROCEED
22 IN FORMA PAUPERIS TO HAVE THE FEES WAIVED IF YOU DON'T HAVE THE
23 MONEY TO PAY YOUR FILING FEE.

24 I WOULD ALSO NOTE THAT IN PARAGRAPH 5 OF YOUR PLEA
25 AGREEMENT YOU HAVE AGREED NOT TO FILE ANY COLLATERAL ATTACK ON

1 YOUR CONVICTION OR SENTENCE, INCLUDING A PETITION UNDER 28 USC
2 SECTION 2255, OR 28 USC SECTION 2241, BUT YOU HAVE KEPT THE
3 RIGHT TO CLAIM THAT YOUR COUNSEL WAS NOT EFFECTIVE.

4 YOU HAVE ALSO AGREED IN PARAGRAPH 5 OF YOUR PLEA AGREEMENT
5 NOT TO SEEK RELIEF UNDER 18 USC SECTION 3582.

6 IS THERE ANYTHING FURTHER FOR MR. FEATHERS?

7 MS. HARRIS: NO, YOUR HONOR. I DON'T THINK SO.

8 MR. ILLOVSKY: TWO SMALL THINGS, YOUR HONOR.

9 THE COURT: YES.

10 MR. ILLOVSKY: ONE, COULD WE ASK THE COURT TO
11 RECOMMEND DESIGNATION TO A CALIFORNIA INSTITUTION? YOU KNOW,
12 CONSISTENT WITH BOP'S POLICY AND SECURITY REQUIREMENTS?

13 THE COURT: ABSOLUTELY. NOW DO YOU WANT ME TO MAKE
14 IT AS CLOSE AS POSSIBLE TO LOS ALTOS OR -- BECAUSE CALIFORNIA
15 IS BIG. DO YOU WANT A SPECIFIC --

16 MR. ILLOVSKY: I THINK WE WILL JUST GO WITH
17 CALIFORNIA, YOUR HONOR.

18 THE COURT: OKAY. THAT'S FINE.

19 SO I WILL RECOMMEND A BUREAU OF PRISONS FACILITY AS CLOSE
20 AS POSSIBLE -- WELL, I WILL JUST SAY WITHIN CALIFORNIA TO
21 FACILITATE FAMILY VISITS.

22 NOW I DID SEE YOUR REQUEST TO RELEASE MR. FEATHERS AND
23 THEN HAVE HIM SELF SURRENDER IN A WEEK, AND I'M GOING TO DENY
24 THAT REQUEST.

25 MR. ILLOVSKY: I GUESS YOU DON'T WANT ME TO GO TO MY

1 NUMBER TWO THEN.

2 THE COURT: WELL, WHAT WAS YOUR NUMBER TWO.

3 MR. ILLOVSKY: I'M SORRY, THE SELF SURRENDER THING.

4 THE COURT: NO, I DON'T THINK THAT WOULD BE
5 APPROPRIATE IN THIS CASE.

6 MR. ILLOVSKY: NOTHING FURTHER THEN, YOUR HONOR.

7 THE COURT: ALL RIGHT.

8 WELL, YOU KNOW, THANK YOU ALL. AND GOOD LUCK TO YOU,
9 MR. FEATHERS.

10 MS. HARRIS: THANK YOU, YOUR HONOR.

11 PROBATION OFFICER: THANK YOU, YOUR HONOR.

12 THE COURT: TAKE CARE OF YOURSELF, SIR.

13 (THE PROCEEDINGS WERE CONCLUDED AT 11:26 A.M.)

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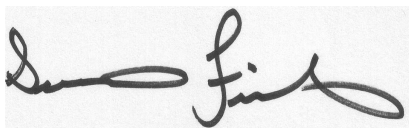
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CERTIFICATE OF REPORTER

I, THE UNDERSIGNED OFFICIAL COURT
REPORTER OF THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH
FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY
CERTIFY:

THAT THE FOREGOING TRANSCRIPT,
CERTIFICATE INCLUSIVE, CONSTITUTES A TRUE, FULL AND
CORRECT TRANSCRIPT OF MY SHORTHAND NOTES TAKEN AS
SUCH OFFICIAL COURT REPORTER OF THE PROCEEDINGS
HEREINBEFORE ENTITLED AND REDUCED BY COMPUTER-AIDED
TRANSCRIPTION TO THE BEST OF MY ABILITY.



SUMMER A. FISHER, CSR, CRR
CERTIFICATE NUMBER 13185

DATED: 1/15/20