UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-15887

In the Matter of

BLAYNE S. DAVIS,

Respondent.

DIVISION OF ENFORCEMENT'S REPLY IN SUPPORT OF MOTION FOR SUMMARY DISPOSITION AGAINST RESPONDENT

Pursuant to the Order entered July 11, 2014, the Division of Enforcement submits this Reply in Support of its Motion for Summary Disposition ("Motion"). With respect to all issues except the two discussed below, the Division, believing no reply is necessary, stands on the arguments in its Motion.

1. Order Entered in Section 2255 Proceeding

Davis attaches to his response an order the district court entered in his 28 U.S.C. § 2255 proceeding requiring the Government to respond to four issues Davis had raised. However, as demonstrated in the Motion, the pendency of an appeal or a habeas petition does not does not serve to delay the determination of this proceeding. The fact the district court wanted to hear the Government's position on a particular issue before ruling is of no moment: the Government would file a response in all appeals and most section 2255 proceedings.

In any event, three of the four issues mentioned in the order would affect only Davis's sentence. The one issue relating to the conviction itself—the Government's alleged failure to

produce certain impeachment material—has been conclusively refuted by the Government in its recent response. *See Davis v. United States*, 6:12-cv-1870 (D.E. 25, at 12-13) (representing that impeachment material Davis seeks—grand jury testimony of a particular witness—does not exist because witness did not testify before the grand jury).[1]

2. Davis's Recent Guilty Plea

On July 28, 2014, pursuant to an agreement with the Government, Davis pleaded guilty to Count One of the current indictment against him, which charges him with conspiracy to commit mail and wire fraud, in violation of 18 U.S.C. § 1349. *United States v. Davis*, Crim. No. 6:14-cr-00043 (D.E. 65) According to the Statement of Offense Davis signed under penalty of perjury (*id.*, D.E. 64-1),[2] beginning in January 2008, more than a year after the conclusion of the scheme to defraud at issue in this proceeding, Davis and two conspirators solicited investors in Capital Blu, making various misrepresentations and sending statements to customers overstating the value of their accounts. (*Id.* at 7 ¶ c, 8-9 ¶ f) The conspirators diverted funds from customer accounts to pay Capital Blu's operating expenses and personal expenses of its principals. (*Id.* at 10, ¶ j) In addition, in Ponzi-scheme fashion, the conspirators used new investments to pay redemptions by earlier investors. (*Id.* at 11, ¶ k)

The guilty plea's significance is two-fold. First, Davis places great emphasis on payments he made to settle a lawsuit filed against him by his victims. However, he testified the funds came from Capital Blu,[3] and the timing of the payment—July 2008[4]—falls in the midst of the conspiracy involving Capital Blu. Davis gets no credit for robbing Peter to pay Paul.

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[1]The Government's response is attached as Exhibit 1.

[2]The Statement of Offense is attached as Exhibit 2.

[3]*See* Ex. 6 to Commission's Motion for Summary Disposition (11th Cir. Opinion), at 2-3.

[4]*See* Letter Confirming Settlement, *Davis v. United States*, 6:12-cv-1870 (D.E. 13-1, at 4). A copy of the letter is attached as Exhibit 3.

Second, in light of the guilty plea, Davis now stands convicted of two investor frauds over a 3-year period. Under these circumstances, it is inconceivable that anything other than a lifetime ban is appropriate. Mr. Davis will likely be released from prison sometime in his 30's. At that point he'll want a way to earn a living—it needs to be in a field other than securities.

CONCLUSION

For the reasons discussed above and in the Motion, the Division asks the Law Judge to sanction Davis by issuing a penny stock bar and barring him from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent or NRSRO.

September 12, 2014

Respectfully submitted,

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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

BLAYNE DAVIS,

Petitioner,

v.

Case No. 6:12-cv-1870-Orl-22GJK
6:10-cr-190-Orl-22GJK

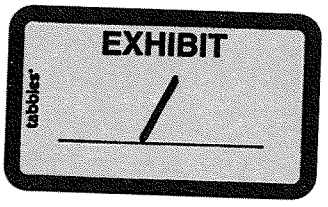
UNITED STATES OF AMERICA,

Respondent.

UNITED STATES' RESPONSE OPPOSING DEFENDANT'S MOTION TO AMEND HIS MOTION UNDER 28 U.S.C. § 2255

Pursuant to 28 U.S.C. § 2255, the Rules Governing Section 2255 Proceedings, and this Court's August 13, 2014, order, the United States files this response opposing Blayne Davis' (Davis) motion to amend his section 2255 by adding a new claim of ineffective assistance of counsel pursuant to Rule 15 of the Federal Rules of Civil Procedure and asserting that the United States did not respond to the merits of three of Davis' ineffective assistance of counsel claims which he alleged in his second section 2255 motion.[1] The following addresses Davis' new ineffective assistance of counsel claim (Ground Eight) and the merits of the three previously alleged claims of ineffective assistance of counsel (Grounds, Five, Six, and Seven).

[1] On May 28, 2013, the government filed its response to Davis' second section 2255 motion (Doc. Cv-13). The government argued that Davis' Grounds Five, Six, and Seven directly challenge the Court's order of his term of imprisonment which are not constitutional claims and, therefore, are not cognizable. Doc. Cv-15.



I. STATEMENT OF CASE

On March 8, 2011, a jury convicted Blayne Davis (Davis) of wire fraud, in violation of 18 U.S.C. § 1343 (Counts Three, Four, and Five). The jury acquitted Davis of Counts One and Two. Doc. Cr-79.[2]

On November 1, 2011, the court sentenced Davis to 36 months in prison as to Counts Three, Four, and Five, followed by 3 years of supervised release, all such terms to run concurrent. Doc. Cr-125. This Court entered its judgment on November 30, 2011 and an amended judgment that included the restitution amounts on January 13, 2012.[3] Docs. Cr-130, 147.

Davis directly appealed his sentence to the United States Court of Appeals for the Eleventh Circuit, Appeal No. 11-15834. On appeal, Davis challenged whether:

1. the district court abused its discretion by permitting the United States to question Davis regarding the source of funds he had used to settle the investors' claims or regarding his failure to file his 2008 tax return;

2. the prosecutor committed plain error during closing argument; and

3. cumulative error.

On September 27, 2012, the Eleventh Circuit affirmed Davis' conviction and sentence. Doc. cr-159. *United States v. Davis*, 491 F.App'x 48 (11th Cir. 2012). Davis did not seek a writ of certiorari in the Supreme Court.

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[2] Pleadings from the civil and criminal dockets are cited as "Doc. Cv-[doc. no.]" and "Doc. Cr-[doc. no]," respectively.

[3] The judgment was amended to include amounts of restitution owed.

On December 14, 2012, Davis filed his section 2255 motion and memorandum in support. Docs. Cv-1, 1-1. On January 28, 2013, the court filed an order finding that Davis's 2255 motion did not state any claims and ordered Davis to file an amended motion to include all the claims he intended to raise. Doc. Cv-6. The court further found that Davis's memorandum of law exceeded the page limitation set forth in Local Rule 3.01(a) and ordered Davis to limit the memorandum to twenty-five pages. Id. On February 11, 2013, Davis filed an amended section 2255 motion, a fifty-eight page memorandum of law, and a motion for leave to file a memorandum of law in excess of the page limitation. Docs. Cv-7, 8, 8-1. On February 21, 2013, the court granted Davis's motion to exceed the page limit. Doc. Cv-11. On March 14, 2013, Davis filed a second section 2255 motion. Docs. Cv-13, 13-1. In his motion, Davis asserted the following claims, all of which are purportedly claims of ineffective assistance of counsel. Specifically, Davis alleged that his attorney was ineffective for failing to:

- move to dismiss the indictment for lack of interstate nexus (Ground 1);
- challenge the venue (Ground 2);
- challenge specific jury instructions (Ground 3);
- challenge the alleged misleading statements made by the government at trial (Ground 4);
- challenge the loss calculations (Ground 5);
- challenge the determination that the offense involved ten or more victims (Ground 6); and

- challenge the court's restitution order (Ground 7).[4]

On May 28, 2013, the United States filed its response in opposition to Davis' section 2255 motion. Doc. Cv-15.

On June 3, 2013, Davis filed a reply, Doc. Cv-16, and on July 12, 2013, he filed an amended reply. Doc. Cv-20. Specifically, he seeks to add an additional ineffective assistance of counsel claim, asserting that defense counsel was ineffective for failing to object when the Government failed to turn over all prior statements of witness Giddens in violation of the Jenks Act (Ground 8). Additionally, Davis realleges the following claims that counsel was ineffective in failing to:

- challenge the loss calculations (Ground 5);
- challenge the determination that the offense involved ten or more victims (Ground 6); and
- challenge the court's restitution order (Ground 7).

II FACTS

The United States submitted a complete statement of facts regarding the offense which was based upon the facts contained in the superseding indictment, the PSR, the parties' joint factual stipulations, and Government Exhibit 9. The United States now incorporates that portion of its response herein as though fully set forth in this response.

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[4] Ground 8 in Davis' second section 2255 motion is merely a summation of Grounds 1 through 7.

III. MEMORANDUM OF LAW

A. TIMELINESS

Davis' conviction became final on December 26, 2012, when the time for seeking certiorari review had expired, therefore he had until December 26, 2013, to file his section 2255 motion. *see Kaufmann v. United States*, 282 F.3d 1336, 1338 (11th Cir. 2002) (when prisoner does not petition for certiorari, conviction does not become final for purposes of section 2255(1) until expiration of ninety-day period for seeking certiorari. Therefore, Davis had until December 26, 2013, to file his section 2255 motion. Davis' reply and amended reply to his section 2255 motion are timely. See 28 U.S.C. § 2255 ¶ (f)(1).

B. COGNIZABILITY

Davis argues in his motion, under the guise of ineffective assistance of counsel, that the court miscalculated his sentence under the sentencing guidelines because there was no proof to support the loss calculations (Ground 5 - Doc. Cv-13 at 24-32) and the offenses did not involve ten or more victims (Ground 6 - Doc. Cv-13 at 32-33). Additionally, Davis claims, again under the guise of ineffective assistance of counsel, that restitution was not proven nor determined by the jury at trial (Ground 7 - Doc. Cv-13 at 33-35). However, the defendant is simply dissatisfied with his sentence and is now attempting to re-litigate that sentence. To the extent that the defendant directly challenges this Court's order of his term of imprisonment in Grounds 5, 6, and 7, his arguments do not present constitutional claims and,

therefore, are not cognizable. Collateral review pursuant to 28 U.S.C. § 2255 is not a substitute for direct appeal. *Lynn v. United States*, 365 F.3d 1225, 1232 (11th Cir. 2004); *Burke v. United States*, 152 F.3d 1329, 1331-32 (11th Cir. 1998) (citing *Sunal v. Large*, 332 U.S. 174, 178 (1947)). Nonconstitutional claims can be raised on collateral review only when the alleged error constitutes a "' fundamental defect which inherently results in a complete miscarriage of justice [or] an omission inconsistent with the rudimentary demands of fair procedure.'" *Reed v. Farley*, 512 U.S. 339, 348 (1994) (quoting *Hill v. United States*, 368 U.S. 424, 428 (1962)).

The defendant's term of imprisonment was increased based on the fact that the offense involved a loss of more than $200,000, but not more than $400,000, and the fact that the offense involved ten or more victims. Doc. Cr-147. At sentencing, the Court stated, "I think it's clear Mr. Davis has not accepted responsibility as contemplated in 3E1.1." Doc. Cr-131 at 13-14. The judgment was subsequently amended to include the amounts of restitution owed by Davis. Doc. cr-147.

Despite the defendant's claims of ineffective assistance of counsel, the defendant has not claimed that any error in this case (assuming that there is one) constitutes a "'fundamental defect which inherently results in a complete miscarriage of justice [or] an omission inconsistent with the rudimentary demands of fair procedure.'" *Reed*, 512 U.S. at 348. The defendant was afforded the opportunity to raise the issue on direct appeal, and chose not to. In these circumstances, the defendant cannot establish that an imposition of the term of imprisonment was

fundamentally unfair or that it constituted a miscarriage of justice sufficient to form the basis for collateral relief. *Burke*, 152 F.3d at 1331-32.

C. MERITS

Ineffective Assistance of Counsel - Generally

The Sixth Amendment right to counsel is the right to effective assistance of counsel. *McMann v. Richardson*, 397 U.S. 759, 771 n.14 (1970). The benchmark for judging any claim of ineffective assistance of counsel, however, is whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result. *Strickland v. Washington*, 466 U.S. 668, 688 (1984); *see also Boykins v. Wainwright*, 737 F.2d 1539, 1542 (11th Cir. 1984). Because a lawyer is presumed to be competent to assist a defendant, the burden is on the accused to demonstrate the denial of the effective assistance of counsel. *United States v. Cronic*, 466 U.S. 648, 658 (1984). Ineffectiveness of counsel may be grounds for vacating conviction if (1) counsel's performance fell below an objective standard of reasonable professional assistance and (2) the defendant was prejudiced by the deficient performance. *Strickland*, 466 U.S. at 687, 694. "There is no reason for a court deciding an ineffective assistance claim . . . to address both components of the inquiry if the defendant makes an insufficient showing on one." *Strickland*, 466 U.S. at 697. Thus, if the defendant fails to show that he is prejudiced by the alleged errors of counsel, this Court may

reject the defendant's claim without determining whether the counsel's performance was deficient. *See Coulter v. Herring*, 60 F.3d 1499, 1504 n.8 (11th Cir. 1995).

For performance to be deficient, it must be established that, in light of all the circumstances, counsel's performance was outside the wide range of professional competence. *See Strickland*, 466 U.S. at 690. In other words, when reviewing counsel's decisions, "the issue is not what is possible or 'what is prudent or appropriate, but only what is constitutionally compelled.'" *Chandler v. United States*, 218 F.3d 1305, 1313 (11th Cir. 2000) (en banc) (quoting *Burger v. Kemp*, 483 U.S. 776 (1987)). Furthermore, "[t]he burden of persuasion is on a petitioner to prove, by a preponderance of competent evidence, that counsel's performance was unreasonable." *Chandler*, 218 F.3d at 1313. This burden of persuasion, though not insurmountable, is a heavy one. *See id.* at 1314. "'Judicial scrutiny of counsel's performance must be highly deferential,'" and courts "must avoid second-guessing counsel's performance." Id. at 1314 (quoting *Strickland*, 466 U.S. at 689). "Courts must 'indulge [the] strong presumption' that counsel's performance was unreasonable and that counsel 'made all significant decisions in the exercise of reasonable professional judgment.'" *Id.* (quoting *Strickland*, 466 U.S. at 689-90). Therefore, "counsel cannot be adjudged incompetent for performing in a particular way in a case, as long as the approach taken 'might be considered sound trial strategy.'" *Id.* (quoting *Darden v. Wainwright*, 477 U.S. 168 (1986)).

If the record is incomplete or unclear about counsel's actions, then it is presumed that counsel exercised reasonable professional judgment. *See id.* at 1314-15 n.15. Thus, the presumption afforded counsel's performance "is not . . . that the particular defense lawyer in reality focused on and, then, deliberately decided to do or not to do a specific act." *Id.* Rather, the presumption is "that what the particular defense lawyer did at trial. . . were acts that some reasonable lawyer might do." *Id.*

Moreover, "[t]he reasonableness of a counsel's performance is an objective inquiry." *Id.* at 1315. For a petitioner to show deficient performance, he "must establish that no competent counsel would have taken the action that his counsel did take." *Id.* To uphold a lawyer's strategy, a court "need not attempt to divine the lawyer's mental processes underlying the strategy." *Id.* at 1315 n.16. Finally, "[n]o absolute rules dictate what is reasonable performance for lawyers." *Id.* at 1317.

Ground 5 - Counsel was ineffective in failing to challenge the loss calculations at sentencing.

Davis claims that his attorney should have objected to the twelve-level enhancement at sentencing because the victims' loss was more than $200,000 but not more than $400,000, pursuant to USSG §2B1.1(b)(1)(G). PSR ¶ 37. Docs. Cv-16 at 11-13, Cv-20 at 8-9. Davis bases his claim on his self-serving statement that, "The loss to the victims is minimal and cleanly laid out in their trial testimony." Doc. Cv-16 at 11. Davis is simply wrong. During the sentencing hearing, defense counsel objected, although unsuccessfully, to the loss figure in order to, "preserve our

rights in the event the Supreme Court would alter acquitted conduct rules ... based on the fact that it embraces some measure of acquitted conduct that would most likely bring that number below 200." *Id.* at 14. Additionally, Stuart Glenn, a victim of Davis' scheme, testified at sentencing that, "I was never made whole . . . " and "I believe I'm still out about $30,000." *Id.* at 18. Contrary to Davis' assertion, defense counsel did, in fact, object to the loss figures. Therefore, this claim is without merit.

Ground 6 - Counsel was ineffective in failing to object to the determination that the offense involved ten or more victims.

Davis claims that defense counsel should have objected to the two-level enhancement because the offense involved 10 or more victims, pursuant to USSG §2B1.1(b)(2)(A). PSR ¶ 38. Specifically, Davis asserts that, "there are only a few defined victims, with definite investment amounts, and definite return payments." Docs. Cv-16 at 11.

During the sentencing hearing, defense counsel made the tactical decision not to argue that the offense involved ten or more victims and, alternatively, to argue that Davis' sentence should not be enhanced by two levels on the basis of obstruction of justice because (1) he testified at trial; and (2) the jury did not find that Davis' testimony untruthful. Doc. Cr-131 at 3-4, 7. Indeed, Davis benefitted as a result of defense counsel's objection when the Court sustained the objection, resulting in a sentencing guidelines range of 37 to 46 months in prison. *Id.* at 8, 17. Additionally, defense made the tactical decision to argue that the Court should credit Davis with two levels for acceptance of responsibility because he voluntarily made significant

restitution admitting that, "There may be a couple thousand dollars here or there that was not paid back to a couple of investors." *Id.* at 9-10, 12-13. The government responded that Davis denied the charges at trial and pointed out that Davis made restitution to the victims because the victims brought a lawsuit against Davis. *Id.* at 11-12. The Court overruled the objection stating, "I think it's clear that Mr. Davis has not accepted responsibility as contemplated in 3E1.1." *Id.* at 13-14.

A tactical decision amounts to ineffective assistance of counsel "only if it was so patently unreasonable that no competent attorney would have chosen it." *Adams v. Wainwright*, 709 F.2d 1443, 1445 (11th Cir. 1983); *accord Strickland*, 466 U.S. at 690. The overwhelming evidence in this case proved that there were more than 10 victims of Davis' scheme. Davis' attorney's tactical decision to argue that Davis did not obstruct justice and accepted responsibility was reasonable.

Because this claim is meritless, Davis' attorney cannot be faulted for failing to raise them. *Chandler*, 218 F.3d at 131 (11th Cir. 2000) (en banc) (setting out the standard for reviewing an ineffective assistance of counsel claim); *United States v. Nyhuis*, 211 F.3d 1340, 1344 (11th Cir. 2000) (counsel is not ineffective for failing to raise claims reasonably considered to be without merit).

Ground 7 - Counsel was ineffective in failing to challenge the Court's restitution order.

Davis argues that his counsel was ineffective in failing to challenge the restitution order. Doc. Cv-16 at 2. During the sentencing hearing, the Court reserved ruling on the determination of restitution and a restitution hearing was

scheduled for January 12, 2012. Doc. Cr-131 at 26-27. However, on January 9, 2012, Davis stipulated to the restitution in the amount of $41,865. Doc. Cr-140. The stipulation specifically stated, "The undersigned has conferred with counsel for the defendant and he agrees with the restitution amounts stated herein." *Id.* at 1. Subsequently, the Court ordered Davis to pay restitution in the amount of $41,865. Doc. Cr-147 at 5. For the reasons previously stated in Ground Six, defense counsel made the tactical decision not to challenge the restitution order at sentencing. The evidence in this case proved that restitution in the amount ordered was appropriate. Davis' attorney's tactical decision to argue that Davis did not obstruct justice and accepted responsibility was reasonable.

Because this claim is meritless, Davis' attorney cannot be faulted for failing to raise it. *Chandler*, 218 F.3d at 131 (11th Cir. 2000) (en banc) (setting out the standard for reviewing an ineffective assistance of counsel claim); *United States v. Nyhuis*, 211 F.3d 1340, 1344 (11th Cir. 2000) (counsel is not ineffective for failing to raise claims reasonably considered to be without merit).

Ground 8 - Counsel was ineffective for failing to object to the government's failure to turn over all prior statements of witness Giddens in violation of the Jencks Act.

Davis states, without support, that the government failed to turn over any Jencks materials relating to witness Giddens. Davis suggests, without support that witness Giddens testified before the grand jury. Witness Giddens did not testify before the grand jury. In support of the lack of Jencks materials relating to witness

Giddens, the government offers that the indictment was returned in the Middle District of Florida on July 21, 2010, the same date that witness Giddens was testifying at Davis' detention hearing in Texas. Docs. Cr-5 (indictment) and Cr-11 (Rule 5(c) documents from SDTX).

The record is filled with defense counsel's vigorous and concerned representation of Davis during the pretrial, trial, and appellate process. It is clear that Davis was afforded extremely effective counsel and that each and every one of Davis' post-conviction challenges are devoid of merit. Accordingly, based on his amended petition and the record now before this Court, Davis has not established any entitlement to relief based on effective assistance of counsel.

D. STATEMENT ON NEED FOR AN EVIDENTIARY HEARING

Davis is not entitled to an evidentiary hearing. Davis has the burden of establishing the need for an evidentiary hearing, see Birt v. Montgomery, 725 F.2d 587, 591 (11th Cir. 1984) (en banc), and he would be entitled to a hearing only if his allegations, if proved, would establish his right to collateral relief, see Townsend v. Sain, 372 U.S. 293, 307 (1963). "Under Rules Governing Section 2255 Cases, Rule 4(b), a district court faced with a § 2255 motion may make an order for its summary dismissal "[i]f it plainly appears from the face of the motion and any annexed exhibits and the prior proceedings in the case that the movant is not entitled to relief[.]" Broadwater v. United States, 292 F.3d 1302, 1303 (11th Cir. 2003) (quoting 28 U.S.C. foll. § 2255). According, no hearing is required when the record establishes that a

section 2255 claim lacks merit, see United States v. Lagrone, 727 F.2d 1037, 1038 (11th Cir. 1984), or that it is defaulted see McCleskey v. Zant, 499 U.S. 467, 494 (1991).

Davis has not established any basis for an evidentiary hearing because the issues he raises are not cognizable and his arguments are facially insufficient to merit relief. No evidentiary development is needed for this Court to resolve the issues.

THEREFORE, Davis's amended section 2255 motion should be denied.

Respectfully submitted,

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DATE: September 10, 2014

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

UNITED STATES OF AMERICA	**: CASE NO. 6:13-cr-43-JA-DAB-1**
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	:
	:
	: VIOLATION:
v.	:
	: 18 U.S.C. § 1349
	: (Conspiracy)
	:
	: FORFEITURE:
BLAYNE S. DAVIS,	:
	: 18 U.S.C. § 981(a)(1)(C), 28 U.S.C. §
Defendant.	**: 2461(c), 21 U.S.C. § 853(p)**

STATEMENT OF THE OFFENSE

Pursuant to Rule 11 of the Federal Rules of Criminal Procedure, defendant BLAYNE S. DAVIS and the United States agree and stipulate that at all relevant times:

Relevant Parties and Entities

1. Defendant BLAYNE S. DAVIS was a resident of the State of Florida and the director of trading for Capital Blu Management, LLC ("CAPITAL BLU"), a for-profit corporation registered in the State of Florida, which acted as a commodity pool operator and purported to offer investment and managed account services for investors in the off-exchange foreign currency, or "forex," marketplace.

EXHIBIT
2

2. DONOVAN G. DAVIS, JR., a resident of the State of Florida, was the managing member of CAPITAL BLU.

3. DAMIEN L. BROMFIELD ("BROMFIELD"), a resident of the State of Florida, was the director of operations for CAPITAL BLU.

Background

4. In or about January 2007, defendant BLAYNE S. DAVIS and BROMFIELD formed CAPITAL BLU as a limited liability company incorporated in the State of Florida.

5. Defendant BLAYNE S. DAVIS and BROMFIELD solicited potential investors, including DONOVAN G. DAVIS, JR. and his relatives, to invest and to enter into managed-account agreements with CAPITAL BLU. Such investments and managed-account agreements allowed CAPITAL BLU to trade forex for investors. CAPITAL BLU earned commissions and fees based on, among other things, the volume of trades that the company made.

6. In or about the spring and summer of 2007, DONOVAN G. DAVIS, JR. solicited relatives, friends, and associates to invest in CAPITAL BLU, resulting in significant amounts being placed under CAPITAL BLU's management.

7. In or about August 2007, defendant BLAYNE S. DAVIS, DONOVAN G. DAVIS, JR., and BROMFIELD entered into an agreement

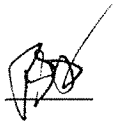
Defendant's Initials 

whereby DONOVAN G. DAVIS, JR. joined CAPITAL BLU as its managing member.

8. In or about September 2007, as the number of investors and money placed under management grew, defendant BLAYNE S. DAVIS, DONOVAN G. DAVIS, JR., and BROMFIELD agreed to, and did, form a forex investment fund limited partnership called the CBM FX Fund, LP (the "Fund"), with CAPITAL BLU acting as the general partner of the Fund. The Fund pooled multiple investors' money into a common fund to be traded by CAPITAL BLU. Fund investors became limited partners based on, and in proportion to, their investments in the Fund. Many of CAPITAL BLU's managed-account investors transferred their investments into the Fund.

9. From in or about November 2007, through in or about September 2008, DONOVAN G. DAVIS, JR. worked as CAPITAL BLU's managing member in CAPITAL BLU's office in Melbourne, Brevard County, in the Middle District of Florida. DONOVAN G. DAVIS, JR. met with and solicited investors in and near CAPITAL BLU's Melbourne office.

10. As director of trading operations, defendant BLAYNE S. DAVIS oversaw the company's forex trading and reported trading results to DONOVAN G. DAVIS, JR. and DAMIEN BROMFIELD. Defendant BLAYNE S. DAVIS knew that CAPITAL BLU reported false statements to the Fund's investors concerning the Fund's trading performance in 2006 and 2007.

Defendant's Initials 

COUNT ONE OF THE INDICTMENT
(Conspiracy)

11. By no later than on or about January 22, 2008, defendant BLAYNE S. DAVIS, DONOVAN G. DAVIS, JR., and BROMFIELD knew that the Fund had sustained significant trading losses, including losses that day, resulting in large losses of money for the Fund's investors.

The Conspiracy

12. From in or about January 2008, through in or about August 2008, in Orange, Brevard, and Collier Counties, in the Middle District of Florida, and elsewhere, defendant BLAYNE S. DAVIS and DONOVAN G. DAVIS, JR., and BROMFIELD unlawfully, willfully, and knowingly, conspired, combined, confederated, and agreed together and with each other to commit mail fraud and wire fraud, in violation of Title 18, United States Code, Sections 1349, 1341, and 1343, that is, to defraud the Fund's investors and to obtain money and property from those investors by means of materially false and fraudulent pretenses, representations, and promises, including misrepresentations about CAPITAL BLU's and the Fund's trading performance, the value of the Fund, the value of each investor's investment in the Fund, and the risks associated with the Fund.

The Scheme and Artifice

13. Beginning no later than on or about January 22, 2008, defendant BLAYNE S. DAVIS, DONOVAN G. DAVIS, JR., and BROMFIELD knowingly and willfully devised and intended to devise an unlawful scheme and artifice to

defraud the Fund's investors, and to obtain money and property from those investors by means of materially false and fraudulent pretenses, representations, and promises, including statements that misrepresented CAPITAL BLU's and the Fund's trading performance, the value of the Fund, the value of each investor's investment in the Fund, and the risks associated with the Fund.

14. As part of the scheme, defendant BLAYNE S. DAVIS, DONOVAN G. DAVIS, JR., and BROMFIELD, among other things, induced investors to invest their money with CAPITAL BLU and the Fund – and to maintain their investments – through such materially false and fraudulent pretenses, representations, and promises.

15. For the purpose of executing such scheme and artifice and attempting to do so, among other things, defendant BLAYNE S. DAVIS, DONOVAN G. DAVIS, JR., and BROMFIELD knowingly did cause to be delivered by U.S. mail and a private and commercial interstate carrier, false monthly account statements for individual investors in the Fund, and false statements concerning the Fund's value and trading performance, in violation of Title 18, United States Code, Sections 1349 and 1341.

16. For the purpose of executing such scheme and artifice and attempting to do so, among other things, defendant BLAYNE S. DAVIS, DONOVAN G. DAVIS, JR., and BROMFIELD knowingly did transmit, and cause to be transmitted, by means of wire communication in interstate commerce,

writings, signs, and signals, false statements concerning the Fund's value and trading performance, false monthly account statements for individual investors in the Fund, and wire transfers of investor funds to CAPITAL BLU and the Fund, in violation of Title 18, United States Code, Sections 1349 and 1343.

Goal of the Conspiracy

17. It was a goal of the conspiracy that defendant BLAYNE S. DAVIS, DONOVAN G. DAVIS, JR., and BROMFIELD would and did enrich themselves by, among other things: (a) making false and fraudulent pretenses, representations, and promises to induce investors to invest and maintain their investments with CAPITAL BLU and the Fund; (b) diverting such investments to CAPITAL BLU's operating accounts for their personal use and benefit; and (c) diverting such investments to pay redemptions to other investors to conceal the losses sustained by the Fund and the investors, and to conceal the fraudulent misrepresentations and misuse of investors' funds.

Manner and Means of the Conspiracy

18. The manner and means by which defendant BLAYNE S. DAVIS, DONOVAN G. DAVIS, JR., and BROMFIELD would and did carry out the goal of the conspiracy included, among other things, the following:

False and Fraudulent Representations to Investors

a. From no later than on or about January 22, 2008, through in or about August 2008, defendant BLAYNE S. DAVIS, DONOVAN G. DAVIS, JR.,

and BROMFIELD solicited investors by falsely and fraudulently representing and causing to be represented, among other things, that: (i) the total amount invested in the Fund was more than actually had been invested; (ii) the total amount invested in the Fund by DONOVAN G. DAVIS, JR. and his relatives was more than they actually had invested; (iii) the earnings of investors, including the earnings of DONOVAN G. DAVIS, JR. and his relatives, from their investments in the Fund was more than they actually had earned; and (iv) CAPITAL BLU employed a risk management strategy, which purportedly limited an investor's exposure to loss to no more than ten to twenty percent of an investor's investment in the Fund at any point in time, when in fact there was no such strategy. Defendant BLAYNE S. DAVIS, DONOVAN G. DAVIS, JR., and BROMFIELD knew that these representations were false.

b. By no later than on or about January 22, 2008, defendant BLAYNE S. DAVIS, DONOVAN G. DAVIS, JR., and BROMFIELD knew and discussed that the Fund had suffered significant trading losses and that the Fund had lost a significant amount of money.

c. In or about early February 2008, defendant BLAYNE S. DAVIS, DONOVAN G. DAVIS, JR., and BROMFIELD discussed and agreed to report false positive monthly gains to the Fund's investors in their monthly account statements for January 2008.

d. From in or about January 2008, through in or about August 2008, defendant BLAYNE S. DAVIS, DONOVAN G. DAVIS, JR., and BROMFIELD referred to the difference between the value of the Fund that CAPITAL BLU reported to investors and the actual value of the Fund as the "gap." For example, on or about February 8, 2008, defendant BLAYNE S. DAVIS, DONOVAN G. DAVIS, JR., and BROMFIELD knew that the "[g]ap" represented a "difference [of] $3,228,547," or "29%" of the Fund that they had "to make up."

e. In or about January and February 2008, defendant BLAYNE S. DAVIS, DONOVAN G. DAVIS, JR., and BROMFIELD agreed to "make up" the gap by, for example, raising more money from investors to the Fund, controlling CAPITAL BLU's costs, improving CAPITAL BLU's forex trading performance, and falsely reporting performance figures to "keep th[os]e upcoming performance numbers as low as possible, but still enough to achieve confidence in [CAPITAL BLU's] client base and future client base."

f. Thereafter, at or near the beginning of each month, from in or about February 2008 through in or about August 2008, defendant BLAYNE S. DAVIS, DONOVAN G. DAVIS, JR., and BROMFIELD caused CAPITAL BLU to send monthly account statements to each of the Fund's investors that included false information about the Fund's monthly trading results and misrepresented the value of each investor's account in the Fund. CAPITAL BLU delivered the

false monthly account statements to investors via email, on CAPITAL BLU's website, and by U.S. mail and a private and commercial interstate carrier. Defendant BLAYNE S. DAVIS, DONOVAN G. DAVIS, JR., and BROMFIELD knew that these account statements and misrepresentations to investors were false and fraudulent. The false monthly account statements that they caused to be sent included the following:

i. On or about February 1, 2008, CAPITAL BLU reported a 1.60 percent monthly gain to investors for January 2008 when, in fact, the Fund and its investors sustained a net loss for January 2008;

ii. On or about March 1, 2008, CAPITAL BLU reported a 3.32 percent monthly gain to investors for February 2008 when, in fact, the Fund and its investors sustained a net loss for February 2008; and

iii. On or about April 1, 2008, CAPITAL BLU reported a 1.22 percent monthly gain to investors for March 2008 when, in fact, the Fund and its investors sustained a net loss for March 2008.

g. By no later than on or about April 22, 2008, defendant BLAYNE S. DAVIS, DONOVAN G. DAVIS, JR., and BROMFIELD knew that the "gap" had grown to approximately $3.5 million, or 32% of the Fund.

h. From on or about January 22, 2008, through in or about August 2008, defendant BLAYNE S. DAVIS, DONOVAN G. DAVIS, JR., and BROMFIELD never disclosed to any investor the existence of the "gap," nor the

true value of the Fund and any investor's account in the Fund. Instead, they made false representations about the Fund's performance to investors and potential investors.

Inducement of Investors to Invest in the Fund

i. After January 22, 2008, using the foregoing false and fraudulent pretenses, representations, and promises, defendant BLAYNE S. DAVIS, DONOVAN G. DAVIS, JR., and BROMFIELD induced multiple investors to transfer and caused to be transferred funds to CAPITAL BLU and the Fund by means of interstate wire transfer.

Diversion of Investor Money for Operating and Personal Expenses

j. From no later than February 2008 through in or about August 2008, defendant BLAYNE S. DAVIS, DONOVAN G. DAVIS, JR., and BROMFIELD knew that CAPITAL BLU's operating expenses exceeded CAPITAL BLU's legitimate revenue. During at least that period, defendant BLAYNE S. DAVIS, DONOVAN G. DAVIS, JR., and BROMFIELD agreed to, and did, divert investors' money from the Fund accounts to pay CAPITAL BLU's operating expenses and personal expenses, including salaries of approximately $15,000 per month for each of them, approximately $50,000 per month for their use of a private airplane, and for payments of their use of the company credit card.

Defendant's Initials 

k. Defendant BLAYNE S. DAVIS, DONOVAN G. DAVIS, JR., and BROMFIELD also agreed to, and did, divert new investments into the Fund to pay redemptions to other investors in order to conceal their fraudulent scheme.

l. From on or about January 22, 2008, through in or about August 2008, defendant BLAYNE S. DAVIS, DONOVAN G. DAVIS, JR., and BROMFIELD never disclosed to the Fund's investors that investor money would be used to pay other investors' redemptions and to cover CAPITAL BLU's operating expenses and their personal expenses.

m. On or about August 8, 2008, the Fund sustained significant trading losses of over $4 million. On or about that date, defendant BLAYNE S. DAVIS, DONOVAN G. DAVIS, JR., and BROMFIELD knew of the losses. However, they did not disclose the losses to the Fund's investors; instead, they continued to induce and to cause investors to invest and maintain their investments in the Fund using false representations, pretenses, and promises.

19. On or about August 29, 2008, defendant BLAYNE S. DAVIS was terminated from CAPITAL BLU. However, he continued to speak with the Fund's investors on and after August 28, 2008, and denied knowing about the losses to the Fund. He also attempted to induce Fund investors and others to invest money with him in a different investment companies he purportedly was founding.

20. On or about September 15, 2008, investigators from the National Futures Association ("NFA"), an independent self-regulatory organization that oversaw commodities and futures trading in the United States, conducted a surprise audit of CAPITAL BLU's office in Melbourne. At that time, of more than $16 million invested in the Fund (approximately $4 million of which had been previously withdrawn and redeemed by investors), less than $635,000 remained in Fund-related bank and trading accounts. The NFA shut down CAPITAL BLU's trading operations the next day.

Losses Sustained by the Investors

21. During the approximate one-year life of the Fund, CAPITAL BLU received approximately $16,616,872.20 from over 100 investors. Approximately $4,088,795.99 was returned as redemptions to investors during the life of the Fund, and approximately $633,299.69 remained in Fund-related bank accounts when CAPITAL BLU's operations were stopped by the NFA. Accordingly, investors sustained losses of a total of approximately $11,894,776.52.

TOTAL LOSS AMOUNT

22. The total loss amount for the transactions set forth herein for the purposes of the United States Sentencing Guidelines is $11,894,776.52.

Respectfully submitted,

ERIC H. HOLDER, JR.
Attorney General of the United States

RONALD C. MACHEN JR.
United States Attorney, D.C. Bar No. 498-610
Acting under authority conferred by 28 U.S.C. § 515(a)

By: _____

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Jonathan P. Hooks, D.C. Bar No. 468-570
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Defendant's Initials _____

DEFENDANT'S ACCEPTANCE

I have read every word of this Statement of Offense. Pursuant to Federal Rule of Criminal Procedure 11, after consulting with my attorney, I agree and stipulate to this Statement of Offense, and declare under penalty of perjury that it is true and correct.

Date: 7/23/14

Blayne S. Davis
Defendant

I have discussed this Statement of Offense with my client, Blayne S. Davis. I concur with her decision to stipulate to this Statement of Offense.

Date: 7/23/14

Tim Bower Rodriguez
Attorney for the Defendant Blayne S. Davis

Defendant's Initials

WRIGHT, FULFORD, MOORHEAD & BROWN
ATTORNEYS

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June 18, 2008

Via Hand Delivery

Mark L. Horwitz, Esquire
17 East Pine Street
Orlando, Florida 32801

Re: Jaret Glenn, et al vs. Blayne S. Davis
Case No. 08-CA-9035 #35

Dear Mr. Horwitz:

I received your correspondence of even date offering $131,500 to fully settle the above-reference lawsuit. My clients accept this offer. Please deliver payment to my trust account at your earliest opportunity, but no later than July 2, 2008.

I will prepare a settlement agreement and mutual release for each party's signature and send it to you for review and comment under separate cover. I will not disburse the settlement funds to my clients until I have sent to you an agreeable settlement agreement and mutual release fully executed by my clients.

I am pleased that we were able to resolve this matter without protracted litigation. Thank you for your continued professional courtesy in resolving this matter.

Sincerely,

Chesley G. Moody, Jr.
cmoody@wfmblaw.com

RECEIVED
JUN 18 2008
LAW OFFICES OF
MARK L. HORWITZ

CGM/mjb
cc: Jaret Glenn via U.S. Mail
Ricardo Brignole via U.S. Mail
Robin Minall via U.S. Mail
Mark Jack via U.S. Mail
Stephen Van Dyke via U.S. Mail
Chris Anderson via U.S. Mail

EXHIBIT 1-C

EXHIBIT
3
tabbies