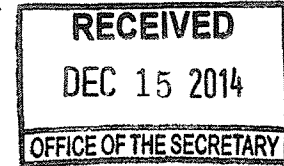


UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION



ADMINISTRATIVE PROCEEDING  
File No. 3-16104

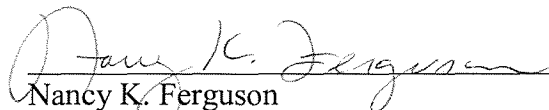
In the Matter of  
  
MICHAEL LEE MENDENHALL,  
  
Respondent.

**DIVISION'S REQUEST FOR OFFICIAL NOTICE IN SUPPORT OF MOTION FOR  
SUMMARY DISPOSITION AGAINST MICHAEL LEE MENDENHALL**

Pursuant to Commission's Rules of Practice 323, the Division requests that the Court take official notice of the following exhibits:

- Exhibit 1      Verdict and Sentencing Docket
- Exhibit 2.      Investment Advisers Registration Depository ("IARD").
- Exhibit 3.      Indictment in *People v. Michael Lee Mendenhall*, Case No. 11CR10094, District Court, City and County of Denver, State of Colorado, (the "criminal proceeding").
- Exhibit 4.      April 20, 2012, Transcript of Sentencing in criminal proceeding.
- Exhibit 5.      March 2, 2012, Transcript of Jury Verdict in criminal proceeding.
- Exhibit 6.      Respondent Opening Brief in *People v. Michael Mendenhall*, Case No. 12CA1171, Court of Appeals, State of Colorado.

Dated this 12th day of December, 2014.

  
Nancy K. Ferguson  
Securities and Exchange Commission  
Byron G. Rogers Federal Building  
1961 Stout Street, Suite 1700  
Denver, CO 80294-1961  
Email: [ferguson@sec.gov](mailto:ferguson@sec.gov)  
Phone: 303.844.1050

CERTIFICATE OF SERVICE

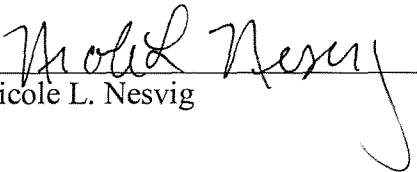
I hereby certify that a true copy of the Division of Enforcement's Request for Official Notice in Support of Motion for Summary Disposition Against Michael Lee Mendenhall was served on the following on this 12th day of December, 2014, in the manner indicated below:

Securities and Exchange Commission  
Brent Fields, Secretary  
100 F Street, N.E.  
Mail Stop 1090  
Washington, D.C. 20549  
(By Facsimile and original and three copies by UPS)

Honorable Carol Fox Foelak  
100 F Street, N.E.  
Mail Stop 2557  
Washington, D.C. 20549  
(Courtesy copy by Email and UPS)

Mr. Michael Lee Mendenhall

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

  
\_\_\_\_\_  
Nicole L. Nesvig

# Exhibit 1

Print Minute Orders 8/19/14 1:43 PM  
Status: RSTD MROG CLSD District Court, Denver County  
Case #: 2011 CR 010094 Div/Room: 5C Type: Theft  
The People of the State of Colorado vs MENDENHALL, MICHAEL LEE

FILE DATE	EVENT/FILING/PROCEEDING
3/02/2012	Minute Order (print)
JUDGE: BRW	CLERK: REPORTER:
JUDGE BRIAN WHITNEY	CRT RPRT: BETH ELLIS *JTRL
PD BLAKE RENNER; DDA KANDACE GERDES	
PARTIES APPROACH BENCH FOR QUESTION FROM DELIBERATING JURY COUNSEL AND COURT DISCUSS AND RESPOND TO THE 8 QUESTIONS JURY PANEL POSED; JURY PANEL WILL BE INSTRUCTED TO REFER TO THE INSTRUCTIONS THAT WERE GIVEN TO THEM BEFORE ENTERING DELIBERATIONS	
**PARTIES PRESENT FOR NEW JURY QUESTION REGARDING POSSIBLE TYPO ON JURY VERDICT FORM -- TYPO IS CORRECTED AND RETURNED TO JURY PANEL	
**JURY INFORMS LAW CLERK THEY HAVE REACHED A VERDICT	
DEF AND PD BLAKE RENNER PRESENT; DDA KANDACE GERDES PRESENT	
JURY PANEL RETURNS TO COURTROOM WITH INSTRUCTIONS AND SIGNED JURY VERDICT FORMS	
COURT READS VERDICTS: GUILTY CNTS 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27	
DEFENSE REQUEST JURY POLL -- UNANIMOUS AFFIRMATIVE RESPONSE	
PARTIES REQUEST PSI AND SENTENCING DATE	
ORD: PSIO	
SENH: 04/20/12 130PM -- COURT REPORTER TO BE PRESENT	
DEF REMANDED	
*CLK MEMO CC: SHERIFF	
COURT RELEASES JURY WITH THANKS AND APPRECIATION FOR SERVICE /TLN	
**RECEIPT FOR JURY MEALS IN THE AMOUNT OF \$125.46 DELIVERED TO ADMIN ON 03/06/12 /TLN	

Print Minute Orders 8/19/14 1:43 PM  
Status: RSTD MROG CLSD District Court, Denver County  
Case #: 2011 CR 010094 Div/Room: 5C Type: Theft  
The People of the State of Colorado vs MENDENHALL, MICHAEL LEE

FILE DATE            EVENT/FILING/PROCEEDING  
4/20/2012            Minute Order (print)

JUDGE: BRW            CLERK:            REPORTER:  
JUDGE BRIAN WHITNEY            CRT RPRT CINDY HUDAK            SENH

DEF APPEARS IN CUSTODY WITH PD BLAKE RENNER DDA KANDACE GERDES  
PARTIES ARE PREPARED TO PROCEED TO SENTENCING  
PARTIES AND COURT HAVE RECEIVED PSI AND VICTIM STATEMENTS AND SENTENCING  
MEMORANDUMS  
PEOPLE ARE REQUESTING RESTITUTION DEF REQUESTS 30 DAYS TO RESPOND  
PEOPLE REQUEST VICTIMS SPEAK TO COURT REGARDING THIS MATTER  
PEOPLE MAKE ARGUMENT REGARDING SENTENCING  
DEFENSE MAKES ARGUMENT REGARDING SENTENCING  
COURT HEARS FROM DEFENDANT REGARDING HIS SENTENCE  
PEOPLE REQUEST RESTRAINING ORDER IN THIS MATTER REMAIN ACTIVE DURING PENDENCY  
OF SENTENCE  
COURT PROCEEDS TO SENTENCING

DEF SNT CNT 1 5 YRS DOC 5 YRS MAND PAROLE CONC TO CNT 2  
DEF SNT CNT 2 5 YRS DOC 5 YRS MAND PAROLE CONC TO CNT 1  
DEF SNT CNT 3 5 YRS DOC 5 YRS MAND PAROLE CONS CNTS 1 AND 2 CONC CNTS 4 5 8 9  
10 11  
DEF SNT CNT 4 5 YRS DOC 5 YRS MAND PAROLE CONS CNTS 1 AND 2 CONC CNTS 3 5 8 9  
10 11  
DEF SNT CNT 5 5 YRS DOC 5 YRS MAND PAROLE CONS CNT 1 AND 2 CONC CNTS 3 4 8 9  
10 11  
DEF SNT CNT 8 5 YRS DOC 5 YRS MAND PAROLE CONS CNTS 1 AND 2 CONC CNTS 3 4 5 9  
10 11  
DEF SNT CNT 9 5 YRS DOC 5 YRS MAND PAROLE CONS CNTS 1 AND 2 CONC CNTS 3 4 5 8  
10 11  
DEF SNT CNT 10 5 YRS DOC 5 YRS MAND PAROLE CONS CNTS 1 AND 2 CONC CNTS 3 4 5  
8 9 11  
DEF SNT CNT 11 5 YRS DOC 5 YRS MAND PAROLE CONS CNTS 1 AND 2 CONC CNTS 3 4 5  
8 9 10  
DEF SNT CNT 12 5 YRS DOC 5 YRS MAND PAROLE CONS CNTS 1 THRU 11 CONC CNT 13  
DEF SNT CNT 13 5 YRS DOC 5 YRS MAND PAROLE CONS CNTS 1 THRU 11 CONC CNT 12  
DEF SNT CNT 14 5 YRS DOC 5 YRS MAND PAROLE CONS CNTS 1 THRU 13 CONC CNTS 15  
16 17 18  
DEF SNT CNT 15 5 YRS DOC 5 YRS MAND PAROLE CONS CNTS 1 THRU 13 CONC CNTS 14  
16 17 18  
DEF SNT CNT 16 5 YRS DOC 5 YRS MAND PAROLE CONS CNTS 1 THRU 13 CONC CNTS 14  
15 17 18  
DEF SNT CNT 17 5 YRS DOC 5 YRS MAND PAROLE CONS CNTS 1 THRU 13 CONC CNTS 14  
15 16 18  
DEF SNT CNT 18 5 YRS DOC 5 YRS MAND PAROLE CONS CNTS 1 THRU 13 CONC CNTS 14  
15 16 17  
DEF SNT CNT 19 5 YRS DOC 5 YRS MAND PAROLE CONS 1 THRU 18 CONC CNTS 20 21 22  
23 24  
DEF SNT CNT 20 5 YRS DOC 5 YRS MAND PAROLE CONS 1 THRU 18 CONC CNTS 19 21 22  
23 24  
DEF SNT CNT 21 5 YRS DOC 5 YRS MAND PAROLE CONS 1 THRU 18 CONC CNTS 19 20 22  
23 24  
DEF SNT CNT 22 5 YRS DOC 5 YRS MAND PAROLE CONS 1 THRU 18 CONC CNTS 19 20 21  
23 24

Status: RSTD MROG CLSD Print Minute Orders 8/19/14 1:43 PM  
Case #: 2011 CR 010094 Div/Room: 5C District Court, Denver County Type: Theft  
The People of the State of Colorado vs MENDENHALL, MICHAEL LEE

FILE DATE	EVENT/FILING/PROCEEDING
4/20/2012	Minute Order (print)
JUDGE: BRW	CLERK: REPORTER:
DEF SNT CNT 23 5 YRS DOC 5 YRS MAND PAROLE CONS 1 THRU 18 CONC CNTS 19 20 21	
22 24	
DEF SNT CNT 24 5 YRS DOC 5 YRS MAND PAROLE CONS 1 THRU 18 CONC CNTS 19 20 21	
22 23	
DEF SNT CNT 25 5 YRS DOC 5 YRS MAND PAROLE CONS 1 THRU 24 CONC CNT 26	
DEF SNT CNT 26 5 YRS DOC 5 YRS MAND PAROLE CONS 1 THRU 24 CONC CNT 25	
DEF SNT CNT 27 5 YRS DOC 5 YRS MAND PAROLE CONC 1 THRU 26	
RESTITUTION ENTERS IN THE AMOUNT OF \$1,408,667.77	
PAY FINES AND COSTS CNT 1 WAIVED ON ALL OTHER COUNTS	
ORDER PUBLIC DEFENDER APPOINTED FOR PURPOSES OF APPEAL	
PRESENTENCE CONFINEMENT CREDIT TOTAL 317 DAYS	
DEF REMANDED	
CLK MEMO CC SHERIFF	

/TLN

## Exhibit 2

## Notice

**CRD® or IARD(TM) Information:** This report contains information from the CRD (Central Registration Depository) system, or the IARD system (Investment Advisers Registration Depository), which are operated by FINRA, a national securities association registered under the Securities Exchange Act of 1934. The CRD system primarily contains information submitted on uniform broker-dealer and agent registration forms and certain other information related to registration and licensing. The IARD system primarily contains information submitted on uniform investment adviser and agent registration forms and certain other information related to registration and licensing. The information on Uniform Forms filed with the CRD or IARD is deemed to have been filed with each regulator with which the applicant seeks to be registered or licensed and shall be the joint property of the applicant and such regulators. The compilation constituting the CRD database as a whole is the property of FINRA. Neither FINRA nor a participating regulator warrants or guarantees the accuracy or the completeness of the CRD or IARD information. CRD information consists of reportable and non-reportable information.

FINRA operates the CRD system in its capacity as a registered national securities association and pursuant to an agreement with the North American Securities Administrators Association, Inc. (NASAA).

FINRA operates the IARD system as a vendor pursuant to a contract with the Securities and Exchange Commission and undertakings with NASAA and participating state regulators.

**Reportable Information:** Information that is required to be reported on the current version of the uniform registration forms.

**Non-Reportable Information:** Information that is not currently reportable on a uniform registration form. Information typically is not reportable because it is out-of-date; it was reported in error; or some change occurred either in the disposition of the underlying event after it was reported or in the question on the form that elicited the information. Although not currently reportable, this information was once reported on a uniform form and, consequently, may have become a state record. Users of this information should recognize that filers have no obligation to update non-reportable data; accordingly, it may not reflect changes that have occurred since it was reported.



CRD® or IARD(TM) System      Current As Of: 08/03/2014  
Snapshot - Individual  
CRD® or IARD(TM) System Report provided to: SEC  
Request Submitted: 8/4/2014 10:33:29 AM

Page 2 of 16

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Details for Request#: 13792179  
Report: Snapshot - Individual  
Requested By: DRV

<u>Parameter Name</u>	<u>Value</u>
Request by CRD# or SSN:	CRD#
Individual CRD# or SSN	4963691
Include Personal Information?	Yes
Include All Registrations with Employments:	Both Current and Previous Employments
Include All Registrations for Current and/or Previous Employments with:	All Regulators
Include Professional Designations?	Yes
Include Employment History?	Yes
Include Other Business?	Yes
Include Exam Information?	Yes
Include Continuing Education Information? (CRD Only)	Yes
Include Filing History? (CRD Only)	Yes
Include Current Reportable Disclosure Information?	Yes
Include Regulator Archive and Z Record Information? (CRD Only)	Yes

Individual 4963691 - MENDENHALL, MICHAEL LEE

Administrative Information

Composite Information

Full Legal Name MENDENHALL, MICHAEL LEE  
 State of Residence CO  
 Active Employments <<No Current Active Employments found for this Individual.>>  
 Reportable Disclosures? Yes  
 Statutory Disqualification? SDRQRSRVW  
 Registered With Multiple Firms? No  
 Material Difference in Disclosure? No

Personal Information

Individual CRD# 4963691  
 Other Names Known By MENDENHALL, MICHAEL  
 Year of Birth 1963

Registrations with Current Employer(s)

<<No Registrations with Current Employer(s) found for this Individual.>>

Registrations with Previous Employer(s)

From 01/19/2009 To 10/18/2010 COLORADO FINANCIAL SERVICE CORPORATION(104343)

Reason for Termination Discharged

Termination Comment FAILURE TO RESPOND TO FINRA REQUEST FOR INFORMATION IN A TIMELY MANNER. INFORMATION REQUESTED WAS TO BE RECEIVED IN THE FINRA OFFICE NO LATED THAN SEPTEMBER 30, 2010. AS OF OCTOBER 18, 2010 REP HAD NOT DELIVERED INFORMATION AND U-5 WAS INITIATED.

Regulator	Registration Category	Status Date	Registration Status	Approval Date
CO	AG	10/28/2010	TERMED	01/19/2010
FINRA	GS	10/28/2010	TERMED	01/19/2010
TX	AG	10/28/2010	TERMED	03/15/2010

From 06/10/2005 To 11/20/2009 UVEST FINANCIAL SERVICES GROUP, INC.(13787)

Reason for Termination Voluntary

Termination Comment

Regulator	Registration Category	Status Date	Registration Status	Approval Date
CO	AG	11/24/2009	TERMED	10/20/2005
FINRA	GS	11/24/2009	TERMED	10/20/2005

Individual 4963691 - MENDENHALL, MICHAEL LEE

**Administrative Information**

**Professional Designations**

<<No Professional Designations found for this Individual.>>

**Employment History**

From	01/2010	To	Present	<b>Name</b>	COLORADO FINANCIAL SERVICE CORPORATION
				<b>Location</b>	CENTENNIAL, CO, USA
				<b>Position</b>	REGISTERED REP
				<b>Investment Related</b>	Yes
From	01/1983	To	Present	<b>Name</b>	BANKERS LIFE AND CASUALTY CO.
				<b>Location</b>	CHICAGO, IL, USA
				<b>Position</b>	AGENT/MANAGER
				<b>Investment Related</b>	No
From	10/2005	To	11/2009	<b>Name</b>	UVEST FINANCIAL SERCVIVES GROUP, INC.
				<b>Location</b>	GREENWOOD VILLAGE, CO, USA
				<b>Position</b>	REGISTERED REP
				<b>Investment Related</b>	Yes

**Office of Employment History**

From 01/2009 To 10/2010  
**Name** COLORADO FINANCIAL SERVICE CORPORATION(104343)

**Independent Contractor** Yes

**Office of Employment Address**

CRD Branch#	Branch Code#	Firm Billing Code	Registered Location?	Private Residence?	Address Start Date	Address End Date	Type of Office
357746			Yes	No	01/19/2009	10/18/2010	Located At
<b>Address</b> 304 INVERNESS WAY SOUTH, SUITE 355 CENTENNIAL, CO 80112 UNITED STATES							

From 06/2005 To 11/2009  
**Name** UVEST FINANCIAL SERVICES GROUP, INC.(13787)

**Independent Contractor**

**Office of Employment Address**

CRD Branch#	Branch Code#	Firm Billing Code	Registered Location?	Private Residence?	Address Start Date	Address End Date	Type of Office
392435			Yes	No	01/15/2009	11/20/2009	Located At
<b>Address</b> 8400 E PRENTICE AVE, STE 460 GREENWOOD VILLAGE, CO 80111 UNITED STATES							
			No	No	06/10/2005	11/20/2009	Located At
<b>Address</b> 8400 E PRENTICE AVE, STE. 460							

Individual 4963691 - MENDENHALL, MICHAEL LEE

Administrative Information

Office of Employment History

Office of Employment Address

166460 GREENWOOD VILLAGE, CO 80111 USA Yes No 05/17/2006 04/30/2009 Located At Address 600 WEST CHICAGO AVE. CHICAGO, IL 60610 UNITED STATES

Other Business

OWN 2 RENTAL PROPERTIES. HANDLED BY RENTAL AGENT.;BANKERS LIFE AND CASUALTY CO, INSURANCE AGENT, STARTED 01/1983, 20 HRS A WEEK.

Exam Appointments

<<No Exam Appointments found for this Individual.>>

Exam History

Table with columns: Exam, Enrollment ID, Exam Status, Status Date, Exam Date, Grade, Score, Window Dates. Rows include exam results for S7 and S63.

CE Regulatory Element Status

Current CE Status 2YEARTERMED

CE Base Date

CE Appointments

<<No CE Appointments found for this Individual.>>

Current CE

<<No Current CE found for this Individual.>>

Next CE

<<No Next CE found for this Individual.>>

CE Directed Sequence History

<<No CE Directed Sequence History found for this Individual.>>

Inactive CE History Dates

From 02/17/2011 To 10/19/2012

Previous CE Requirement Status

Table with columns: Requirement Type, Session, Status, Status Date, Window Dates, Result. Rows show various CE requirement statuses.

Filing History

Table with columns: Filing Date, Form Type, Filing type, Source. Row shows filing on 12/26/2013.

CRD® or IARD(TM) System Report -- See notice regarding CRD Data on cover page.

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Individual    4963691 - MENDENHALL, MICHAEL LEE

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**Administrative Information**

**Filing History**

Filing Date	Form Type	Filing type	Source
04/22/2013	U5	Amendment	(13787) UVEST FINANCIAL SERVICES GROUP, INC. (13787)
08/28/2012	U6	CRD Individual	CO
08/27/2012	U6	CRD Individual	FINRA
07/26/2012	U6	CRD Individual	FINRA
11/09/2011	U5	Amendment	UVEST FINANCIAL SERVICES GROUP, INC. (13787)
04/29/2011	U5	Amendment	UVEST FINANCIAL SERVICES GROUP, INC. (13787)
04/28/2011	U6	CRD Individual	CO
03/11/2011	U5	Amendment	UVEST FINANCIAL SERVICES GROUP, INC. (13787)
02/18/2011	U6	CRD Individual	FINRA
10/28/2010	U5	Amendment	COLORADO FINANCIAL SERVICE CORPORATION (104343)
10/28/2010	U5	Full	COLORADO FINANCIAL SERVICE CORPORATION (104343)
10/27/2010	BR	Amendment	COLORADO FINANCIAL SERVICE CORPORATION (104343)
02/09/2010	U4	Amendment	COLORADO FINANCIAL SERVICE CORPORATION (104343)
01/19/2010	U4	Initial	COLORADO FINANCIAL SERVICE CORPORATION (104343)
11/24/2009	U5	Full	UVEST FINANCIAL SERVICES GROUP, INC. (13787)
11/09/2009	U4	Upload - New U4 Questions	UVEST FINANCIAL SERVICES GROUP, INC. (13787)
04/30/2009	BR	Closure	UVEST FINANCIAL SERVICES GROUP, INC. (13787)
01/15/2009	BR	Initial	UVEST FINANCIAL SERVICES GROUP, INC. (13787)
03/25/2008	BR	Amendment	UVEST FINANCIAL SERVICES GROUP, INC. (13787)
05/17/2006	BR	Amendment	UVEST FINANCIAL SERVICES GROUP, INC. (13787)
09/20/2005	U4	Amendment	UVEST FINANCIAL SERVICES GROUP, INC. (13787)
06/16/2005	U4	Initial	UVEST FINANCIAL SERVICES GROUP, INC. (13787)

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Individual 4963691 - MENDENHALL, MICHAEL LEE

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**Reportable Events**

**Number of Reportable Events**

Bankruptcy	0
Bond	0
Civil Judicial	0
Criminal	1
Customer Complaint	2
Internal Review	1
Investigation	1
Judgement/Lien	0
Regulatory Action	1
Termination	0

<b>Occurrence#</b>	1533898	<b>Disclosure Type</b>	Internal Review
<b>FINRA Public Disclosable</b>	No	<b>Reportable</b>	Yes
<b>Material Difference in Disclosure</b>	No		

<b>Filing ID</b>	29002901	<b>Form (Form Version)</b>	U5 (05/2009)
<b>Filing Date</b>	10/28/2010		
<b>Source</b>	104343 - COLORADO FINANCIAL SERVICE CORPORATION		
<b>Disclosure Questions Answered</b>	7B		

**Internal Review DRP** **DRP Version** 05/2009

**Part I**

1. Notice received from: COLORADO FINANCIAL SERVICE CORPORATION
2. Date initiated/Explanation: 10/18/2010
3. Details: FAILURE TO RESPOND TO FINRA REQUEST FOR INFORMATION IN A TIMELY MANNER.
4. Internal review pending: Yes
5. Resolution details:
  - A. Date concluded/ Explanation:
  - B. Internal review resolution:
6. Comment:

**Part II**

Summary:

<b>Occurrence#</b>	1533899	<b>Disclosure Type</b>	Investigation
<b>FINRA Public Disclosable</b>	No	<b>Reportable</b>	Yes
<b>Material Difference in Disclosure</b>	No		
<b>Filing ID</b>	29002718	<b>Form (Form Version)</b>	U5 (05/2009)

Individual 4963691 - MENDENHALL, MICHAEL LEE

Reportable Events

Filing Date 10/28/2010
Source 104343 - COLORADO FINANCIAL SERVICE CORPORATION
Disclosure Questions Answered 7A

Investigation DRP DRP Version 05/2009

- 1. Investigation initiated by:
A. Notice received from: SRO
B. Full name of regulator: FINRA
2. Notice date/Explanation: 09/17/2010
WE RECEIVED A COPY OF A LETTER SENT FROM FINRA TO MR. MENDENHALL DATED SEPTEMBER 17, 2010.
3. Nature of investigation: FINRA EXAMINATION # 20090204899
UVEST FINANCIAL SERVICES GROUP, INC./ MICHAEL MENDENHALL
4. Pending investigation: Yes
5. Resolution details:
A. Date resolved/Explanation:
B. Investigation resolution:
6. Comment:

Occurrence# 1549630 Disclosure Type Regulatory Action
FINRA Public Disclosable Yes Reportable Yes
Material Difference in Disclosure No

Filing ID 33048788 Form (Form Version) U6 (05/2009)
Filing Date 08/27/2012
Source FINRA
Disclosure Questions Answered

Regulatory Action DRP DRP Version 05/2009

- 1. Regulatory Action initiated by:
A. Initiated by: Self Regulatory Organization
B. Full name of regulator: FINRA
2. Sanction(s) sought: Other: N/A
3. Date initiated/Explanation: 02/16/2011
4. Docket/Case#: 2009020489901
5. Employing firm: UVEST FINANCIAL SERVICES GROUP, INC. AND COLORADO FINANCIAL SERVICE CORPORATION
6. Product type(s): Mutual Fund
Promissory Note
Other: ANNUITY

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Individual 4963691 - MENDENHALL, MICHAEL LEE

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Reportable Events

Regulatory Action DRP

DRP Version 05/2009

7. Allegation(s): FINRA RULES 2010, 3240, 8210, NASD RULES 2110, 2370: MENDENHALL BORROWED APPROXIMATELY \$309,710 FROM HIS MEMBER FIRMS' CUSTOMERS WITHOUT NOTIFYING HIS FIRMS OF THE LOANS; WHEN HIS FIRST EMPLOYING FIRM'S WRITTEN PROCEDURES PROHIBITED ITS REGISTERED REPRESENTATIVES FROM BORROWING OR LENDING MONEY FROM OR TO A CLIENT UNDER ANY CIRCUMSTANCES; AND HIS SECOND EMPLOYING FIRM'S PROCEDURES DO NOT PERMIT ITS REGISTERED REPRESENTATIVES TO ENGAGE IN ANY BORROWING AND LENDING ARRANGEMENTS WITHOUT PRIOR WRITTEN APPROVAL FROM THE FIRM. MENDENHALL DID NOT REQUEST OR OBTAIN PERMISSION FROM THE FIRST FIRM TO BORROW MONEY FROM ANY CUSTOMERS AND HE DID NOT DISCLOSE OR OBTAIN APPROVAL FROM THE SECOND FIRM FOR LOAN HE GOT FROM A CUSTOMER. TO OBTAIN THE FUNDS TO LOAN TO MENDENHALL, ONE OF THE CUSTOMERS LIQUIDATED AN ANNUITY AND AN INDEX FUND HELD IN HER ACCOUNT AT THE FIRST FIRM AND TO DATE MENDENHALL HAS NOT REPAID THE CUSTOMER ANY PRINCIPAL OR INTEREST FROM THE LOAN. MENDENHALL FULLY PAID THE LOAN HE RECEIVED FROM THE CUSTOMER OF HIS SECOND FIRM, ALBEIT NOT IN THE TIME FRAME PRESCRIBED AT THE TIME OF THE REQUEST TO BORROW THE FUNDS. MENDENHALL, IN RESPONSE TO FINRA REQUEST FOR INFORMATION, PROVIDED INFORMATION AND DOCUMENTS THAT WERE MISLEADING. MENDENHALL FAILED TO PROVIDE COMPLETE AND ACCURATE INFORMATION, CAUSING FINRA TO BELIEVE HE HAD ONLY BORROWED FUNDS FROM ONE CUSTOMER, THE CUSTOMER WHO WAS INDICATED IN THE FINRA COMPLAINT AGAINST HIM, WHEN IN FACT HE BORROWED MONEY FROM SEVERAL OTHER CUSTOMERS.
8. Current status: Final
9. Limitations or restrictions while pending: No
10. If on appeal:
- A. Appealed to:
- B. Date appealed/Explanation:
- C. Limitations or restrictions while on appeal:
11. Resolution details:
- A. Resolution detail: Decision
- B. Resolution date/Explanation: 08/22/2012
12. Final order: No
13. Sanction detail:
- A. Sanctions ordered: Bar (Permanent)



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Individual 4963691 - MENDENHALL, MICHAEL LEE

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**Reportable Events**

**Regulatory Action** **DRP**      **DRP Version** 05/2009

B. Other sanctions:

C. Willful violation or failure to supervise: No

i. Willfully violated:

ii. Willfully aided, abetted, counseled, commanded, induced, or procured:

iii. Failed reasonably to supervise another person:

D. Sanction type details:

Sanction type: Bar (Permanent)

Registration capacities affected: ANY CAPACITY

Duration (length of time)/Explanation: N/A

Start date/Explanation: 08/22/2012

End date/Explanation:

E. Requalification type details:

F. Monetary related sanction type details:

14. Comment:      DEFAULT DECISION RENDERED JULY 25, 2012 WHEREIN MENDENHALL IS BARRED FROM ASSOCIATION WITH ANY FINRA MEMBER IN ANY CAPACITY. DECISION IS FINAL AUGUST 22, 2012.

<b>Occurrence#</b>	1552818	<b>Disclosure Type</b>	Customer Complaint
<b>FINRA Public Disclosable</b>	Yes	<b>Reportable</b>	Yes
<b>Material Difference in Disclosure</b>	No		

<b>Filing ID</b>	31327520	<b>Form (Form Version)</b>	U5 (05/2009)
<b>Filing Date</b>	11/09/2011		
<b>Source</b>	13787 - UVEST FINANCIAL SERVICES GROUP, INC.		
<b>Disclosure Questions Answered</b>	7E(4)(a)		

**Customer Complaint** **DRP**      **DRP Version** 05/2009

1. Customer name(s): OPAL VALENTE

2. Residence information:

A. Customer(s) state of residence: Colorado

B. Other state(s) of residence/ detail:

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Individual 4963691 - MENDENHALL, MICHAEL LEE

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Reportable Events

Customer Complaint DRP

DRP Version 05/2009

3. Employing firm: UVEST FINANCIAL SERVICES GROUP, INC.
4. Allegation(s): ATTORNEY ALLEGES THAT HIS CLIENT PURCHASED A PROMISSORY NOTE THROUGH MR. MENDENHALL IN SEPTEMBER 2007 THAT WAS NOT REPAID.
5. Product type(s): Promissory Note
6. Alleged compensatory damage amount: \$132,637.73  
Explanation:
7. Customer complaints:
- A. Oral complaint: No
- B. Written complaint: Yes
- C. Arbitration/CFTC reparation or civil litigation: Yes
- i. Arbitration/Reparation forum court name/location: DENVER, COLORADO
- ii. Docket/Case#: 11-01157
- iii. Arbitration or civil litigation filing date: 03/21/2011
- D. Date received by/Served on firm/Explanation: 03/30/2011  
FIRM RECEIVED NOTICE OF ARBITRATION ON 03/30/2011
8. Complaint, arbitration/CFTC reparation, civil litigation pending: No
9. Complaint, arbitration/CFTC reparation or civil status: Settled
10. Status date/Explanation: 10/11/2011
11. Settlement/Award/Monetary judgment:
- A. Award amount: \$50,000.00
- B. Contribution amount: \$0.00
12. Arbitration/CFTC reparation information:
- A. Arbitration/CFTC reparation claim filed with:
- B. Docket/Case#:
- C. Date notice/Process was served/Explanation:
13. Pending arbitration/ CFTC reparation:
14. Disposition:
15. Disposition date/Explanation:

Individual 4963691 - MENDENHALL, MICHAEL LEE

**Reportable Events**

**Customer Complaint DRP** **DRP Version** 05/2009

16. Monetary compensation details:

- A. Total compensation amount:
- B. Contribution amount:

17. Court in which case was filed:

- A. Name of court:
- B. Location of court:
- C. Docket/Case#:

18. Date notice/process was served/Explanation:

19. Pending civil litigation:

20. Civil litigation status:

21. Disposition date/Explanation:

22. Monetary compensation details:

- A. Total compensation amount:
- B. Contribution amount:

23. If action is currently on appeal:

- A. Appeal date/Explanation:
- B. Court appeal filed with:
  - i. Name of court:
  - ii. Location of court:
  - iii. Docket/Case#:

24. Comment:

<b>Occurrence#</b>	1560307	<b>Disclosure Type</b>	Criminal
<b>FINRA Public Disclosable</b>	Yes	<b>Reportable</b>	Yes
<b>Material Difference in Disclosure</b>	No		
<b>Filing ID</b>	33058628	<b>Form (Form Version)</b>	U6 (05/2009)
<b>Filing Date</b>	08/28/2012		
<b>Source</b>	Colorado		
<b>Disclosure Questions Answered</b>			

**Criminal DRP** **DRP Version** 05/2009

1. Organization:

- A. Organization name:
- B. Investment-related business: Yes

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Individual 4963691 - MENDENHALL, MICHAEL LEE

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**Reportable Events**

**Criminal DRP**

**DRP Version** 05/2009

C. Position:

2. Formal action was brought in: State Court

A. Name of court: DENVER COUNTY DISTRICT COURT

B. Location of court: DENVER, CO

C. Docket/Case#: 10CR04981 AND 11CR10094

3. Event status:

A. Current status: Final

B. Event status date/Explanation: 04/12/2011

4. Event and disposition disclosure detail:

A. Date first charged/Explanation: 11/12/2010

B. Event and disposition detail:

Formal charge description:	SECURITIES FRAUD
No. of Counts:	18
Felony or misdemeanor:	Felony
Plea for each charge:	N/A
Disposition of charge:	
Explanation:	
Date of amended charge:	
Amended charge:	
No. of Counts:	
Amended felony or misdemeanor:	
Pleas for amended charge:	
Disposition of amended charge:	
Explanation:	

Formal charge description:	THEFT
No. of Counts:	9
Felony or misdemeanor:	Felony
Plea for each charge:	N/A
Disposition of charge:	
Explanation:	
Date of amended charge:	
Amended charge:	
No. of Counts:	
Amended felony or misdemeanor:	
Pleas for amended charge:	
Disposition of amended charge:	
Explanation:	

C. Date of 04/20/2012

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CRD® or IARD(TM) System Report -- See notice regarding CRD Data on cover page.

**Individual 4963691 - MENDENHALL, MICHAEL LEE**

**Reportable Events**

**Criminal DRP**

**DRP Version** 05/2009

disposition/Explanation:

D. Sentence/Penalty details: CONVICTED ON 25 COUNTS OF SECURITIES FRAUD AND THEFT: 30 YEARS PRISON, RESTITUTION OF \$1,408,667.77, AND 5 YEARS MANDATORY PAROLE.

5. Comment: FROM APRIL 2006 THROUGH NOVEMBER 2010 MENDENHALL SOLICITED INVESTMENT FROM A NUMBER OF HIS ELDERLY BANKERS LIFE CLIENTS, ISSUING PROMISSORY NOTES WITH FIXED RETURNS AND INTEREST RATES. OSTENSIBLY THE MONEY WAS TO BE USED FOR REAL ESTATE INVESTMENTS. INVESTIGATION REVEALED MENDENHALL USED THE MONEY FOR PERSONAL EXPENSES. THE TOTAL AMOUNT INVESTED WAS APPROXIMATELY \$1.2 MILLION FROM 15 SEPARATE INVESTORS. MENDENHALL IS SCHEDULED TO BE ARRAIGNED ON MAY 13, 2011. ORIGINALLY, MENDENHALL WAS CHARGED WITH 3 COUNTS OF FELONY THEFT WHICH WERE ROLLED INTO THE 27 COUNTS OF SECURITIES FRAUD AND THEFT, AN ADDITIONAL COUNT OF SECURITIES FRAUD WAS SUBSEQUENTLY FILED AND DISMISSED AND 2 OF THE 27 COUNTS WERE DISMISSED.

<b>Occurrence#</b>	1655293	<b>Disclosure Type</b>	Customer Complaint
<b>FINRA Public Disclosable</b>	Yes	<b>Reportable</b>	Yes
<b>Material Difference in Disclosure</b>	No		

<b>Filing ID</b>	35892484	<b>Form (Form Version)</b>	U5 (05/2009)
<b>Filing Date</b>	12/26/2013		
<b>Source</b>	13787 - UVEST FINANCIAL SERVICES GROUP, INC.		
<b>Disclosure Questions Answered</b>	7E(5)(a),7E(5)(b)		

**Customer Complaint DRP**

**DRP Version** 05/2009

- 1. Customer name(s): RITA E HAMMES ET AL
- 2. Residence information:
  - A. Customer(s) state of residence: Colorado
  - B. Other state(s) of residence/ detail:
- 3. Employing firm: UVEST FINANCIAL
- 4. Allegation(s): CUSTOMERS ALLEGE THAT ADVISOR SOLD THEM UNAUTHORIZED PROMISSORY NOTE INVESTMENTS WHICH WERE NOT REPAYED. ACTIVITY PERIOD 10/05 TO 11/09.
- 5. Product type(s): Promissory Note
- 6. Alleged compensatory damage amount: \$1,005,219.00
  - Explanation:
- 7. Customer complaints:
  - A. Oral complaint: No

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Individual 4963691 - MENDENHALL, MICHAEL LEE

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**Reportable Events**

Customer Complaint	DRP	DRP Version
B. Written complaint:	Yes	05/2009
C. Arbitration/CFTC reparation or civil litigation:	Yes	
i. Arbitration/Reparation forum court name/location:	FINRA	
ii. Docket/Case#:	12-03474	
iii. Arbitration or civil litigation filing date:	09/28/2012	
D. Date received by/Served on firm/Explanation:	10/15/2012	
8. Complaint, arbitration/CFTC reparation, civil litigation pending:	No	
9. Complaint, arbitration/CFTC reparation or civil status:	Settled	
10. Status date/Explanation:	10/02/2013	
11. Settlement/Award/Monetary judgment:		
A. Award amount:	\$1,100,100.00	
B. Contribution amount:	\$0.00	
12. Arbitration/CFTC reparation information:		
A. Arbitration/CFTC reparation claim filed with:		
B. Docket/Case#:		
C. Date notice/Process was served/Explanation:		
13. Pending arbitration/ CFTC reparation:		
14. Disposition:		
15. Disposition date/Explanation:		
16. Monetary compensation details:		
A. Total compensation amount:		
B. Contribution amount:		
17. Court in which case was filed:		
A. Name of court:		
B. Location of court:		
C. Docket/Case#:		

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Individual 4963691 - MENDENHALL, MICHAEL LEE

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**Reportable Events**

**Customer Complaint DRP**

DRP Version 05/2009

- 18. Date notice/process was served/Explanation:
- 19. Pending civil litigation:
- 20. Civil litigation status:
- 21. Disposition date/Explanation:
- 22. Monetary compensation details:
  - A. Total compensation amount:
  - B. Contribution amount:
- 23. If action is currently on appeal:
  - A. Appeal date/Explanation:
  - B. Court appeal filed with:
    - i. Name of court:
    - ii. Location of court:
    - iii. Docket/Case#:

24. Comment: SETTLEMENT SIGNED 10/2/13, PAYMENT SENT 10/9/13.

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**Regulator Archive and Z Records**

<<No Regulator Archive and Z Records found for this Individual.>>

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## Exhibit 3



FILED IN DENVER  
DISTRICT COURT  
COPY-CRIM

2011 APR 14 AM 8:53

District Court, City and County of Denver, Colorado City and County Building, Room 424 1437 Bannock Street Denver, CO 80202	? COURT USE ONLY ?
<b>Plaintiff:</b> THE PEOPLE OF THE STATE OF COLORADO	
<b>Defendant:</b> MICHAEL LEE MENDENHALL	Case Number: <b>77CR10094</b>
	Grand Jury No. 11CR2A
	Div.: Criminal Crim: 424 / <b>5C</b>
<b>INDICTMENT</b>	

SECURITIES FRAUD - FRAUD OR DECEIT, C.R.S. 11-51-501(1)(c), (F3) <50053> 1 (1 count)

SECURITIES FRAUD - UNTRUE STATEMENT OR OMISSION, C.R.S. 11-51-501(1)(b), (F3) <50052> 2, 4, 6, 8, 9, 10, 12, 14, 15, 16, 17, 19, 20, 21, 22, 23, 25 (17 counts)

THEFT, C.R.S. 18-4-401(1),(2)(d), (F3) <0801E> 3 (1 count)

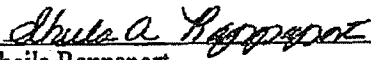
THEFT- SERIES, C.R.S. 18-4-401(1),(4), (F3) <0801I> 5, 7 (2 counts)

THEFT - SERIES, C.R.S. 18-4-401(1),(4), (F3) <0801X> 11, 13, 18, 24, 26 (5 counts)

THEFT, C.R.S. 18-4-401 (1),(2)(d), (F3) <0801V> 27 (1 count)

The Grand Jury presents the within Indictment and the same is ordered filed.

Dated this 13 day of April, 2011.

  
\_\_\_\_\_  
Sheila Rappaport  
Presiding Judge  
Denver District Court

SEC-CDS-E-0000001

**COUNT ONE**

**SECURITIES FRAUD - FRAUD OR DECEIT, C.R.S. 11-51-501(1)(c) (F3) <50053>**

Between and including April 13, 2006 and November 18, 2010, at and triable in the City and County of Denver, State of Colorado, **MICHAEL LEE MENDENHALL**, in connection with the offer, sale, or purchase of a security, directly or indirectly, unlawfully, feloniously, and willfully engaged in any act, practice, or course of business which operated or would have operated as fraud or deceit upon any person; in violation of sections 11-51-501(1)(c) and 11-51-603(1), C.R.S.

The facts supporting Count 1 are as follows:

1. All facts in support of all other counts are incorporated herein by reference.
2. Beginning in approximately April 2006, and continuing through and including November 18, 2010, in the City and County of Denver, State of Colorado, Michael Lee Mendenhall (Mendenhall), offered false and misleading representations, material omissions, and promises that were known by Mendenhall to be false, or engaged in any act, practice or course of business that were known by Mendenhall to be false, or engaged in any act, practice or course of business that operated as a fraud or deceit upon any person.
3. At all times relevant to this Indictment, Mendenhall owned and/or controlled the properties at [REDACTED] Units [REDACTED], 145, and 247, all of which are located in the City and County of Denver, State of Colorado (hereafter referred to, in total or in part, as "the properties").
4. Mendenhall purchased [REDACTED] Unit [REDACTED] on or about October 9, 1999, for \$318,950.00, secured by one or more mortgages on Unit [REDACTED]
5. Mendenhall purchased [REDACTED] Unit [REDACTED] on or about December 15, 2005, for \$353,608.00, secured by one or more mortgages on Unit [REDACTED]
6. Mendenhall purchased [REDACTED] Unit 145 on or about July 29, 2005, for \$438,800.00, secured by one or more mortgages on Unit 145.
7. Mendenhall purchased [REDACTED] Unit 247 on or about June 29, 2005, for \$494,000.00, secured by one or more mortgages on Unit 247.
8. At all times relevant to this Indictment, Mendenhall rented, or had available for rent, [REDACTED] Units 145 and 247 to third parties.
9. At all times relevant to this Indictment, Mendenhall personally lived in [REDACTED] Unit [REDACTED].

10. For purposes of this Indictment, Mendenhall began the scheme in November 2006 by directly and indirectly offering, soliciting, and /or selling securities; to wit: notes, promissory notes, or investment contracts, to approximately 16 private investors. The majority, if not all of these investors, were pre-existing clients of Mendenhall through Bankers Life Insurance.
11. At all times relevant to this Indictment, Mendenhall was employed as a Unit Sales Manager with Bankers Life and Casualty (hereinafter "Bankers Life").
12. At all times relevant to this Indictment, Mendenhall was licensed as a securities sales representative, which was active with the Colorado Division of Securities through and including, October 28, 2010. Mendenhall was licensed as a securities sales representative, employed by U-VEST Financial Services Group, Inc., and then by Colorado Financial Services Corporation.
13. At all times relevant to this Indictment, Mendenhall, in order to promote the scheme to defraud potential investors, generally described the investment as an opportunity for an individual to invest with him for the purpose of providing funds to be used for, or in connection with, Mendenhall's recent residential real estate acquisitions located near the Belleview Lightrail Station/Continuum Partners development.
14. In connection with the offer and sales of securities, to wit: investment contracts, evidence of indebtedness, or promissory notes, Mendenhall directly and indirectly, made oral and written representations to investors which were materially false or misleading, including but not limited to, the fact that their investment would be without any risk and was safe, solid, and a sure thing.
15. In furtherance of the scheme, Mendenhall also memorized how he would use the funds he obtained from the investors in a promissory note that he signed with each investor, that stated in relevant part, "It is agreed and understood that [investor] shall put forth the sum of [\$ \_\_\_\_] to Michael L. Mendenhall for the purposes of Mr. Mendenhall's recent residential real estate acquisitions located near the Belleview Light rail Station/Continuum Partners development...This note shall be secured by the equity held in the above said properties...," referring to the properties located at [REDACTED] as previously referenced in above paragraph 3.
16. At all times relevant to this Indictment, Mendenhall solicited investments from numerous Bankers Life clients, which he evidenced by executing a promissory note that had a stated length, a stated interest rate, and was secured by one or more of the units at [REDACTED] which is located in the City and County of Denver, State of Colorado.

17. At all times relevant to the indictment, Mendenhall used investor funds to make payments to other investors, for Bankers Life business expenses, to cover outstanding checks, for payment of personal expenses, and transfers to other Mendenhall-controlled bank accounts.
18. At no time relevant to this Indictment, while Mendenhall was promoting these securities, to wit: notes, promissory notes, or investment contracts, did Mendenhall disclose to investors the following material facts, which, if the investor(s) had known one or more of the facts, would have led them to not invest:
- a. That Mendenhall was using new investor money to pay off prior investors.
  - b. That investor funds were being co-mingled with other investor funds.
  - c. That there were multiple investors providing funds for the project.
  - d. That each and every investor's funds were secured by the equity in the 4 units, for which he did not file a lien(s) against the property to secure the investors' promissory note.
  - e. That contrary to the statement in the promissory notes dated between 2006 and 2010 referring to Mendenhall's "recent real estate acquisitions," the 4 units were in fact purchased between 1999 and 2005.
  - f. That Mendenhall had first and/or second mortgages and/or lines of credit on one or more of the four units at [REDACTED] Denver, Colorado, at all times relevant to the indictment.
  - g. That at no time did Mendenhall own any of the four units free and clear of liens or encumbrances on the units.
  - h. That Units [REDACTED] were being used by Mendenhall as his personal residence.
  - i. That Mendenhall had requested "hardship" consideration from one or more of his mortgage companies.
  - j. That Mendenhall allowed one or more of the 4 units to go into foreclosure by failing to make the mortgage payments.
  - k. That investor funds were being co-mingled with Mendenhall's personal bank accounts.
  - l. That Mendenhall was using investor funds to pay personal expenses including:
    - 1. To make monthly car payments on three personal vehicles owned by Mendenhall.
    - 2. For personal expenses for Mendenhall and his life partner, Rory Brown.
    - 3. To pay for Mendenhall's son's college education.
    - 4. Cash withdrawals for the personal use by Mendenhall and Rory Brown.
    - 5. Payments to Rory Brown.
  - m. That Mendenhall was reporting a negative taxable income.
  - n. That only a small percentage of the investors' money was being used as Mendenhall represented, or for development expenses.
  - o. That none of the investors' money was being used by Mendenhall for real estate acquisitions.
19. At various times, all of which are relevant to this Indictment, Mendenhall also obtained and repaid the following "short term" loans from the prospective investors, as illustrated on the following chart:

Investors	Date of Short Term Loan	Amount of Short Term Loan
<b>Opal Marie Valente</b>		
	12/14/2007	\$15,000.00
	05/23/2008	\$12,000.00
	07/01/2008	\$10,000.00
	07/30/2008	\$12,000.00
	09/09/2008	\$12,000.00
	10/14/2008	\$12,000.00
	01/05/2009	\$15,000.00
	03/30/2009	\$15,000.00
	06/30/2009	\$15,000.00
<b>Elmer F. Kembel</b>		
	09/24/2007	\$25,000.00
	11/02/2007	\$25,000.00
	01/28/2008	\$30,000.00
	06/16/2008	\$30,000.00
<b>Grant Midcap</b>		
	10/29/2008	\$20,000.00
<b>Rita E. Hemmes</b>		
	11/28/2007	\$17,000.00

**COUNT TWO**

SECURITIES FRAUD - UNTRUE STATEMENT OR OMISSION, C.R.S. 11-51-501(1)(b), (F3) <50052>

Between and including April 13, 2006 and November 18, 2010, at and triable in the City and County of Denver, State of Colorado, MICHAEL LEE MENDENHALL, in connection with the offer, sale, or purchase of a security, to wit: promissory note or investment contract, directly or indirectly, to BETTY JEAN MICHAUD unlawfully, feloniously, and willfully made an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; in violation of sections 11-51-501(1)(b) and 11-51-603(1), C.R.S.

**COUNT THREE**

THEFT, C.R.S. 18-4-401(1),(2)(d), (F3) <0801E>

On or about September 28, 2005, at and triable in the City and County of Denver, State of Colorado, MICHAEL LEE MENDENHALL, unlawfully, feloniously, and knowingly obtained or exercised control over things of value, namely: MONEY of BETTY JEAN MICHAUD with a value of \$15,000.00 dollars or more, without authorization, or by threat or deception, and knowingly used, concealed, or abandoned the thing of value in such manner as to permanently deprive BETTY JEAN MICHAUD of its use or benefit; in violation of section 18-4-401(1)(b), (2)(d), C.R.S.

**COUNT FOUR**

SECURITIES FRAUD - UNTRUE STATEMENT OR OMISSION, C.R.S. 11-51-501(1)(b), (F3) <50052>

Between and including November 29, 2006 and November 18, 2010, at and triable in the City and County of Denver, State of Colorado, MICHAEL LEE MENDENHALL, in connection with the offer, sale, or purchase of a security, to wit: promissory note or investment contract, directly or indirectly, to KALJO C. SCHIFF unlawfully, feloniously, and willfully made an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; in violation of sections 11-51-501(1)(b) and 11-51-603(1), C.R.S.

**COUNT FIVE**

THEFT- SERIES, C.R.S. 18-4-401(1),(4), (F3) <0801I>

Between and including May 30, 2006 and November 29, 2006, at and triable in the City and County of Denver, State of Colorado, MICHAEL LEE MENDENHALL, unlawfully, feloniously, and knowingly obtained or exercised control over things of value, namely: MONEY of BETTY JEAN MICHAUD AND KALJO C. SCHIFF twice or more within a period of six months, with an aggregate value of \$15,000.00 dollars or more, without authorization, or by threat or deception, and knowingly used, concealed, or abandoned the thing of value in such manner as to permanently deprive BETTY JEAN MICHAUD AND KALJO C. SCHIFF of its use or benefit; in violation of section 18-4-401(1)(b), (4), C.R.S.

**COUNT SIX**

SECURITIES FRAUD - UNTRUE STATEMENT OR OMISSION, C.R.S. 11-51-501(1)(b), (F3) <50052>

Between and including **December 24, 2006 and November 18, 2010**, at and triable in the City and County of Denver, State of Colorado, **MICHAEL LEE MENDENHALL**, in connection with the offer, sale, or purchase of a security, to wit: promissory note or investment contract, directly or indirectly, to **ELMER F. KEMBEL** unlawfully, feloniously, and willfully made an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; in violation of sections 11-51-501(1)(b) and 11-51-603(1), C.R.S.

**COUNT SEVEN**

THEFT- SERIES, C.R.S. 18-4-401(1),(4), (F3) <0801I>

Between and including **December 24, 2006 and March 2, 2007**, at and triable in the City and County of Denver, State of Colorado, **MICHAEL LEE MENDENHALL**, unlawfully, feloniously, and knowingly obtained or exercised control over things of value, namely: **MONEY** of **ELMER F. KEMBEL AND BETTY JEAN MICHAUD** twice or more within a period of six months, with an aggregate value of \$15,000.00 dollars or more, without authorization, or by threat or deception, and knowingly used, concealed, or abandoned the thing of value in such manner as to permanently deprive **ELMER F. KEMBEL AND BETTY JEAN MICHAUD** of its use or benefit; in violation of section 18-4-401(1)(b), (4), C.R.S.

The facts supporting Counts 2 through 7 are as follows:

1. All facts in support of all other counts are incorporated herein by reference.
2. Betty Jean Michaud (Michaud) first met Mendenhall in 2005, while purchasing an annuity from Bankers Life. Mendenhall was her Bankers Life agent. Ms. Michaud and her husband, who is since deceased, purchased an annuity from Mendenhall in the amount of \$100,000.00.
3. Ms. Michaud was born on [REDACTED].
4. In 2005, Mendenhall contacted Michaud and told her she could get a better return by investing in his real estate investment, as noted in the facts supporting Count 1.
5. Mendenhall presented himself to be a very successful agent at Bankers Life and that his real estate company was successful. Mendenhall misrepresented to Michaud that at least one of his properties located at [REDACTED] Denver, Colorado, was totally paid off. In addition, Mendenhall told Michaud that there was no risk and the investment was solid. Mendenhall showed Michaud pictures of the real estate development he was investing in and always came to her house and spoke to her about the investment. Mendenhall also told Michaud that her investment would be used for future real estate acquisitions at the same

location. Based upon the information related by Mendenhall, beginning in 2005 Michaud began investing with Mendenhall.

6. On or about September 28, 2005, based upon the affirmative representations and misstatements of fact made by Mendenhall and his failure to disclose material facts, Michaud invested \$15,000.00 with Mendenhall. Based upon the same representations and misstatements and Mendenhall's failure to disclose material facts, Michaud made additional investments on or about May 30, 2006, in the amount of \$45,000.00, and on or about March 2, 2007, in the amount of \$10,500.00. These three investments were documented by Michaud and Mendenhall by signing a promissory note dated July 10, 2007, in the amount of \$70,500.00.
7. On or about August 20, 2007, Michaud made an additional investment with Mendenhall in the amount of \$101,570.00. This investment was also documented with a promissory note dated August 20, 2007, for \$101,570.00.
8. On or about August 27, 2008, Mendenhall gave Michaud a check in the amount of \$9,141.30, for interest on the two promissory notes.
9. Michaud's funds were not used for real estate acquisition or costs associated with real estate acquisition, as represented by Mendenhall.
10. As of April 13, 2011, Michaud has not received payment on her investments; the first one due August 20, 2008, for her \$70,000.00 investment and the second one for \$101,570.00, due September 1, 2008.
11. As a result of investing with Mendenhall, Michaud's loss is \$15,000.00 or more.
12. In approximately 2004, Mr. Kaljo Schiff (Schiff) met Mendenhall when Mendenhall was assigned to be Schiff's Bankers Life agent. After retiring in 2004, Schiff invested his 401K in a Bankers Life annuity.
13. Mr. Schiff was born on September 19, 1935.
14. Starting in November 2006, Schiff was approached by Mendenhall about investing with Mendenhall in a real estate investment that was to be backed by the four properties located at [REDACTED] Denver, Colorado, as noted in the facts supporting Count 1. Mendenhall did not disclose specifically how he would use the money in the real estate investment, but told Schiff, there was "no risk" because the four properties were all leased, which was an untrue statement.
15. Starting in 2006, based upon the affirmative representations and misstatements of fact made by Mendenhall and his failure to disclose material facts, Schiff invested \$20,000.00 with Mendenhall which was documented by a promissory note dated November 29, 2006, which



stated in relevant part that the \$20,000.00 investment was for Mendenhall's recent residential real estate acquisitions located near the Belleview Lightrail Station/Continuum Partners development and was secured by four properties owned by Mendenhall located at [REDACTED] [REDACTED] [REDACTED] 145, and 247, Denver, Colorado. The rate on the promissory note was 8% for the period of one year. Mendenhall did not file any notice of lien or encumbrance to secure Schiff's investment.

16. On or about November 10, 2008, Mr. Schiff agreed to an "Addendum" to the Note, showing that the original note dated November 29, 2006, would be due on May 31, 2009. Mr. Schiff agreed to this "Addendum" because Mendenhall said he didn't have the funds to pay off Schiff's original note. A second "Addendum" to the original promissory note was signed on or about November 30, 2009. Schiff agreed to this second "Addendum" when Mendenhall agreed to pay \$5,000.00 in interest at the time Schiff signed the second "Addendum." The Addendums did not modify Mendenhall's use of Schiff's funds.
17. In April 2010, Mendenhall came to Schiff seeking additional investment funds from Schiff. Mr. Schiff agreed to invest an additional \$42,000.00 in what Mendenhall described as a "really good deal". Mr. Schiff wrote Mendenhall a check for a 90 day loan, that according to Schiff, was tied into a company Mendenhall called "Black Star Energy." The note dated May 20, 2010 was for \$43,050.00, and due July 10, 2010. Mr. Schiff stated that he received a post-dated check dated July 15, 2010, from the Wells Fargo account of Rory A. Brown & Michael Mendenhall, account #xxxx8041.
18. On or about July 15, 2010, Schiff deposited the check and learned there was insufficient funds in the account to cover the check. Mr. Schiff has not tried to redeposit the check nor received his funds for the 90 day loan.
19. Schiff's funds were not used by Mendenhall for real estate costs related to real estate acquisitions.
20. As of April 13, 2011, Mendenhall has not paid Schiff the principal amount of \$20,000.00, evidenced by the first promissory note dated November 29, 2006, with the first and second Addendums dated November 10, 2008 and November 30, 2009.
21. As of April 13, 2011, Mendenhall has not paid Schiff the principal amount of \$42,000.00, plus accrued interest on the investment in April 2010.
22. As of April 13, 2011, as a result of investing with Mendenhall, Schiff's loss is \$15,000.00 or more.
23. Starting in 2000, Elmer Kembel, (Kembel) began purchasing annuities from Bankers Life.

24. Mr. Kembel was born on [REDACTED].
25. In December 2006, Kembel first met Mendenhall when Mendenhall came to Kembel's farm house. The reason for Mendenhall's visit to Kembel was to propose that Kembel invest in Mendenhall's recent real estate acquisitions, as noted in the facts supporting Count 1.
26. Mendenhall advised Kembel during that meeting that Mendenhall's properties, located at [REDACTED] Denver, Colorado were worth approximately \$3 million. Mendenhall also promised Kembel a better return if Kembel invested with Mendenhall. At the time, Kembel was receiving a 6% return from his Bankers Life investment. However, Mendenhall offered Kembel a 9% annual return, compounded quarterly.
27. Based upon the information Mendenhall provided in the form of affirmative representations and misstatements of fact as well as his failure to disclose material facts, Kembel invested \$30,000.00 with Mendenhall on or about December 24, 2006.
28. Between and including September 24, 2007 and June 16, 2008, Kembel also provided Mendenhall at least \$100,000.00 in the form of short term/ 90 day notes, which Mendenhall paid back to Kembel with other investor funds.
29. On or about September 29, 2008, Kembel invested another \$40,000.00 with Mendenhall, with a guaranteed return of 9% compounded annually.
30. On March 20, 2009, Kembel and Mendenhall executed a promissory note for the \$70,000.00 which was due on May 20, 2010, which reflected both the December 2006 and September 2008 investments, for which the stated use of the funds was to be for Mendenhall's recent residential real estate acquisitions located near the Belleview Lightrail Station/Continuum Partners development and was secured by the four properties owned by Mendenhall located at [REDACTED] [REDACTED] 145, and 247, Denver, Colorado, which were part of Phase 1 of the project and that Phase 2 and 3 would be completed by mid-2010. The term of the note was 14 months with a 9% annual return, compounded quarterly.
31. Kembel's funds were used, in part, to pay other investors, Rory Brown, and credit payments.
32. As of April 13, 2011, Mendenhall has not paid Kembel the principal amount of \$70,000.00 plus interest.
33. As of April 13, 2011, as a result of investing with Mendenhall, Kembel's loss is \$15,000.00 or more.

**COUNT EIGHT**

SECURITIES FRAUD - UNTRUE STATEMENT OR OMISSION, C.R.S. 11-51-501(1)(b), (F3) <50052>

Between and including **September 21, 2007 and November 18, 2010**, at and triable in the City and County of Denver, State of Colorado, **MICHAEL LEE MENDENHALL**, in connection with the offer, sale, or purchase of a security, to wit: promissory note or investment contract, directly or indirectly, to **OPAL MARIE VALENTE** unlawfully, feloniously, and willfully made an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; in violation of sections 11-51-501(1)(b) and 11-51-603(1), C.R.S.

**COUNT NINE**

SECURITIES FRAUD - UNTRUE STATEMENT OR OMISSION, C.R.S. 11-51-501(1)(b), (F3) <50052>

Between and including **January 14, 2008 and November 18, 2010**, at and triable in the City and County of Denver, State of Colorado, **MICHAEL LEE MENDENHALL**, in connection with the offer, sale, or purchase of a security, to wit: promissory note or investment contract, directly or indirectly, to **CAROLE I. COTTRELL** unlawfully, feloniously, and willfully made an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; in violation of sections 11-51-501(1)(b) and 11-51-603(1), C.R.S.

**COUNT TEN**

SECURITIES FRAUD - UNTRUE STATEMENT OR OMISSION, C.R.S. 11-51-501(1)(b), (F3) <50052>

Between and including **February 14, 2008 and November 18, 2010**, at and triable in the City and County of Denver, State of Colorado, **MICHAEL LEE MENDENHALL**, in connection with the offer, sale, or purchase of a security, to wit: promissory note or investment contract, directly or indirectly, to **JOYCE E. HACKLER** unlawfully, feloniously, and willfully made an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; in violation of sections 11-51-501(1)(b) and 11-51-603(1), C.R.S.

**COUNT ELEVEN**

**THEFT - SERIES, C.R.S. 18-4-401(1),(4), (F3) <0801X>**

Between and including **August 20, 2007 and February 18, 2008**, at and triable in the City and County of Denver, State of Colorado, **MICHAEL LEE MENDENHALL**, unlawfully, feloniously, and knowingly obtained or exercised control over things of value, namely: **MONEY** of **BETTY JEAN MICHAUD, OPAL MARIE VALENTE, CAROLE I. COTTRELL AND JOYCE E. HACKLER** twice or more within a period of six months, with an aggregate value of \$20,000.00 dollars or more, without authorization, or by threat or deception, and knowingly used, concealed, or abandoned the thing of value in such manner as to permanently deprive **BETTY JEAN MICHAUD, OPAL MARIE VALENTE, CAROLE I. COTTRELL AND JOYCE E. HACKLER** of its use or benefit; in violation of section 18-4-401(1)(b), (4), C.R.S.

The facts supporting Counts 8 through 11 are as follows:

1. All facts in support of all other counts are incorporated herein by reference.
2. Opal Marie Valente (Valente) met Mendenhall in approximately 2000, when Mendenhall was Valente's Bankers Life agent.
3. Ms. Valente was born on [REDACTED].
4. Starting in 2007, Mendenhall approached Valente and advised her that she could make a higher return than she was receiving on her Bankers Life annuity if she were to invest with him in his real estate investment at [REDACTED] [REDACTED] as noted in the facts supporting Count 1. Mendenhall told Valente that her investment would be used to build and fund the real estate project located at [REDACTED] [REDACTED] Street. Mendenhall also represented to Valente that there was only one other investor involved in his real estate project, but, that the person fell ill and ended up not being able to invest.
5. In order to make the investment with Mendenhall, on or about September 21, 2007, Valente liquidated her Bankers Life annuity at a \$9,400.00 penalty. Mendenhall agreed to reimburse Valente for the penalty and rolled the penalty amount into the note, along with the investment of \$125, 210.02.
6. On or about September 28, 2007, based upon the affirmative representations and misstatements of fact made by Mendenhall and his failure to disclose material facts, Valente invested \$125,210.02 with Mendenhall. On or about that same date, Valente and Mendenhall executed a 12 month promissory note with Mendenhall for \$132,637.73, carrying a 9 % interest rate. The stated purpose of use of the funds in the promissory note was for Mendenhall's recent residential real estate acquisitions located near the Belleview Lightrail Station/Continuum Partners development and was secured by the four properties owned by Mendenhall located at [REDACTED] Units 141, [REDACTED] 145, and 247, Denver, Colorado, which were part of Phase 1 of the project and that

Phase 2 and 3 will be completed by Standard and Pacific Homes.

7. On or about December 3, 2008, Valente received a check from Mendenhall in the amount of \$10,000.00 for interest on the loan.
8. Between December 2007, and June 2009, Valente also provided Mendenhall over \$100,000 in short term loans, which were repaid by Mendenhall with other investor funds.
9. Valente's funds were exhausted within 27 days, and were used, in part, to pay other investors, Rory Brown, transfers to other Mendenhall controlled bank accounts, and credit payments.
10. As of April 13, 2011, Valente has not received any other payment on her investment of 125,210.02.
11. As a result of investing with Mendenhall, Valente's loss is \$20,000.00 or more.
12. In December 2007, Carole I. Cottrell, (Cottrell), spoke to Mendenhall, her Bankers Life agent, about investing in bonds and CD's. Although not looking at any specific investments at that time, Cottrell stated that Mendenhall told her about an opportunity to invest in four properties he owned, located at [REDACTED] [REDACTED] Denver, Colorado. Mendenhall also supplied Cottrell with numerous newspaper clippings and papers on the real estate development that Mendenhall claimed was going to be built at that location, as noted in the facts supporting Count 1.
13. Ms. Cottrell was born on February 25, 1937.
14. Based upon the affirmative representations and misstatements of fact made by Mendenhall and his failure to disclose material facts, including, but not limited to, Mendenhall's representation that there was no risk associated with the investment, Cottrell invested \$52,000.00 with Mendenhall on or about January 14, 2008.
15. On or about January 14, 2008, Cottrell and Mendenhall signed a promissory note in the amount of \$52,469.85, for the period of 24 months with an annual interest rate of 8.25%. The stated purpose of-use of the funds in the promissory note was for Mendenhall's recent residential real estate acquisitions located near the Belleview Lightrail Station/Continuum Partners development and was secured by Units 145 and 247, Denver, Colorado, which were part of Phase 1 of the project and that Phase 2 and 3 will be completed by Mackenzie House and Standard Pacific Homes.
16. Cottrell's funds were exhausted within 10 days, and were used, in part, to cover outstanding checks, transfers to other Mendenhall controlled bank accounts, and credit payments.

17. Cottrell received a check from Mendenhall in January 2009 for \$4,328.75, but has not received any other funds from Mendenhall.
18. As of April 13, 2011, Cottrell has not received any other payment on her investment.
19. As a result of investing with Mendenhall, Cottrell's loss is \$20,000.00 or more.
20. In approximately 2006, Joyce E. Hackler, (Hackler) met Mendenhall through her friends, Mr. and Mrs. Fay Marsh. Hackler purchased an annuity in the amount of \$100,000.00 from Bankers Life through Mendenhall as a Bankers Life agent.
21. Ms. Hackler was born on [REDACTED].
22. In 2008, Hackler noted that her annuity appeared to be losing about \$1,000.00 per month. During that same time, Mendenhall called Hackler and told her he could get her into something that would pay her a better interest rate than she was getting from her annuity, as noted in the facts supporting Count 1. Hackler explained to Mendenhall that she was looking to invest in some type of investment that would pay her a better rate of return, but was not risky.
23. Mendenhall explained to Hackler that he owned 4 properties at [REDACTED] Denver, Colorado, a community called "Montrechez," and that he wanted her to invest so that he could purchase other properties at the same location. Mendenhall also told Hackler that he was the president of the Montrechez HOA. Hackler said Mendenhall appeared to be a very successful and wanted the money to invest in the real estate development at [REDACTED] Denver, Colorado. Mendenhall provided Hackler with a brochure titled, "Bellevue Station," which included information on a development at Bellevue Station, artist drawings and real estate information for properties at [REDACTED] Denver, Colorado. Mendenhall also told Hackler that there was no risk to the investment with him.
24. As a result of the affirmative representations and misstatements of fact by Mendenhall and his failure to disclose material facts, Hackler decided to invest \$116,045.90, with Mendenhall on or about February 14, 2008.
25. Hackler and Mendenhall signed a promissory note dated February 18, 2008, for the sum of \$116,045.90 for the term of 24 months and an annual return of 8.25%. The stated purpose of use of the funds in the promissory note was for Mendenhall's recent residential real estate acquisitions located near the Bellevue Lightrail Station/Continuum Partners development and was secured by the four properties owned by Mendenhall located [REDACTED] Units 145, and 247, Denver, Colorado.

26. Hackler's funds were exhausted within 24 days, and were used, in part, to cover outstanding checks, for payments to other investors, transfers to other Mendenhall controlled bank accounts, and credit payments.
27. As of April 13, 2011, Hackler has not received payment on the note dated February 18, 2008.
28. As a result of investing with Mendenhall, Hackler's loss is \$20,000.00 or more.

**COUNT TWELVE**

SECURITIES FRAUD - UNTRUE STATEMENT OR OMISSION, C.R.S. 11-51-501(1)(b), (F3) <50052>

Between and including **March 21, 2008 and November 18, 2010**, at and triable in the City and County of Denver, State of Colorado, **MICHAEL LEE MENDENHALL**, in connection with the offer, sale, or purchase of a security, to wit: promissory note or investment contract, directly or indirectly, to **RITA E. HAMMES** unlawfully, feloniously, and willfully made an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; in violation of sections 11-51-501(1)(b) and 11-51-603(1), C.R.S.

**COUNT THIRTEEN**

THEFT - SERIES, C.R.S. 18-4-401(1),(4), (F3) <0801X>

Between and including **March 21, 2008 and August 29, 2008**, at and triable in the City and County of Denver, State of Colorado, **MICHAEL LEE MENDENHALL**, unlawfully, feloniously, and knowingly obtained or exercised control over things of value, namely: **MONEY** of **RITA E. HAMMES** twice or more within a period of six months, with an aggregate value of \$20,000.00 dollars or more, without authorization, or by threat or deception, and knowingly used, concealed, or abandoned the thing of value in such manner as to permanently deprive **RITA E. HAMMES** of its use or benefit; in violation of section 18-4-401(1)(b), (4), C.R.S.

The facts supporting Counts 12 and 13 are as follows:

1. All facts in support of all other counts are incorporated herein by reference.
2. Rita E. Hammes (Hammes) knew Mendenhall from his affiliation as her Bankers Life agent. Hammes had purchased annuities through Mendenhall. Additionally, Hammes provided Mendenhall money in 2004 and 2007, which Mendenhall paid back, leading Hammes to believe Mendenhall was trustworthy and honest.
3. Ms. Hammes was born on [REDACTED].
4. In late 2007, Mendenhall contacted Hammes about investing in a real estate project by the Lightrail station in Denver, as noted in the facts supporting Count 1. Mendenhall told Hammes that she would receive an 8.25% return on her investment.
5. Mendenhall told Hammes that he owned two condominium units in Denver at [REDACTED] and he was going to purchase other units. Hammes told Mendenhall that she did not want to invest in the real estate project, but based upon her past dealings with Mendenhall, his stated purpose of use of the money, and his failure to disclose material facts, Hammes agreed to give Mendenhall a personal loan for an 8.25% interest return. Hammes provided Mendenhall \$103,542.21 on or about March 21, 2008.



6. Hammes and Mendenhall executed a promissory note on March 21, 2008, for the period of 24 months, in the amount of \$103,542.21. The stated purpose of use of the funds in the promissory note was for Mendenhall's recent residential real estate acquisitions located near the Belleview Lightrail Station/Continuum Partners development and was secured by Units 145 and 247, Denver, Colorado, which were part of Phase 1 of the project and that Phase 2 and 3 will be completed by Mackenzie House and Standard Pacific Homes.
7. In August 2008, based upon her past dealings with Mendenhall, his stated purpose of use of the money, and his failure to disclose material facts, Hammes provided Mendenhall another \$130,000.00 as a personal loan.
8. In total, Hammes provided Mendenhall over \$200,000.00 for Mendenhall's real estate investment located at [REDACTED] Denver, Colorado, which was for the purpose of providing funds for Mendenhall's project at the Lightrail station in Denver.
9. Hammes funds were exhausted within 21 days, and were used, in part, to pay other investors, transfers to other Mendenhall controlled bank accounts, and credit payments.
10. As of April 13, 2011, Hammes has not received payment on the March 21, 2008 note.
11. As a result of investing with Mendenhall, Hammes' loss is \$20,000.00 or more.

**COUNT FOURTEEN**

SECURITIES FRAUD - UNTRUE STATEMENT OR OMISSION, C.R.S. 11-51-501(1)(b), (F3) <50052>

Between and including **December 1, 2008 and November 18, 2010**, at and triable in the City and County of Denver, State of Colorado, **MICHAEL LEE MENDENHALL**, in connection with the offer, sale, or purchase of a security, to wit: promissory note or investment contract, directly or indirectly, to **SION A. ALFORD III** unlawfully, feloniously, and willfully made an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; in violation of sections 11-51-501(1)(b) and 11-51-603(1), C.R.S.

**COUNT FIFTEEN**

SECURITIES FRAUD - UNTRUE STATEMENT OR OMISSION, C.R.S. 11-51-501(1)(b), (F3) <50052>

Between and including **December 3, 2008 and November 18, 2010**, at and triable in the City and County of Denver, State of Colorado, **MICHAEL LEE MENDENHALL**, in connection with the offer, sale, or purchase of a security, to wit: promissory note or investment contract, directly or indirectly, to **FAY A. MARSH** unlawfully, feloniously, and willfully made an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; in violation of sections 11-51-501(1)(b) and 11-51-603(1), C.R.S.

**COUNT SIXTEEN**

SECURITIES FRAUD - UNTRUE STATEMENT OR OMISSION, C.R.S. 11-51-501(1)(b), (F3) <50052>

Between and including **January 9, 2009 and November 18, 2010**, at and triable in the City and County of Denver, State of Colorado, **MICHAEL LEE MENDENHALL**, in connection with the offer, sale, or purchase of a security, to wit: promissory note or investment contract, directly or indirectly, to **GRANT MIDCAP** unlawfully, feloniously, and willfully made an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; in violation of sections 11-51-501(1)(b) and 11-51-603(1), C.R.S.

**COUNT SEVENTEEN**

**SECURITIES FRAUD - UNTRUE STATEMENT OR OMISSION, C.R.S. 11-51-501(1)(b), (F3) <50052>**

Between and including **March 2, 2009 and November 18, 2010**, at and triable in the City and County of Denver, State of Colorado, **MICHAEL LEE MENDENHALL**, in connection with the offer, sale, or purchase of a security, to wit: promissory note or investment contract, directly or indirectly, to **CRAIG A. WESSBECKER** unlawfully, feloniously, and willfully made an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; in violation of sections 11-51-501(1)(b) and 11-51-603(1), C.R.S.

**COUNT EIGHTEEN**

**THEFT - SERIES, C.R.S. 18-4-401(1),(4), (F3) <0801X>**

Between and including **September 29, 2008 and March 2, 2009**, at and triable in the City and County of Denver, State of Colorado, **MICHAEL LEE MENDENHALL**, unlawfully, feloniously, and knowingly obtained or exercised control over things of value, namely: **MONEY** of **ELMER F. KEMBEL, SION A. ALFORD III, FAY A. MARSH, GRANT MIDCAP, AND CRAIG A. WESSBECKER** twice or more within a period of six months, with an aggregate value of \$20,000.00 dollars or more, without authorization, or by threat or deception, and knowingly used, concealed, or abandoned the thing of value in such manner as to permanently deprive **ELMER F. KEMBEL, SION A. ALFORD III, FAY A. MARSH, GRANT MIDCAP, AND CRAIG A. WESSBECKER** of its use or benefit; in violation of section 18-4-401(1)(b), (4), C.R.S.

The facts supporting Counts 14 through 18 are as follows:

1. All facts in support of all other counts are incorporated herein by reference.
2. In July 2007, Sion Alford, (Alford) met Mendenhall, through another agent at Bankers Life. Alford had worked in the insurance business for over thirty years and after his wife became ill, Alford decided to purchase long term health insurance through Mendenhall.
3. Mr. Alford was born on September 8, 1935.
4. In December 2008 Mendenhall told Alford about an opportunity to invest in four properties Mendenhall owned, located at [REDACTED] Street, Denver, Colorado, that needed funds to maintain and improve the condominium units, as noted in the facts supporting Count 1. Mendenhall also supplied Alford with numerous newspaper clippings and papers on the real estate development that Mendenhall claimed was going to be built at that location.
5. Based upon the affirmative representations and misstatements of fact made by Mendenhall and Mendenhall's failure to disclose material facts, Alford invested \$30,000.00 in December 2008. Alford made it clear to Mendenhall prior to investing that

Alford needed the \$30,000.00 returned in the 90 day period as Alford had to use the funds for upcoming expenses.

6. When Mendenhall was unable to pay Alford his \$30,000.00 when the term was due, Alford and Mendenhall signed a promissory note dated June 29, 2009, carrying a 15% interest rate. Alford explained that the note was for \$32,000.00, which was principal of \$30,000.00, plus the accrued interest since December 2008. The stated purpose of use of the funds in the promissory note was for Mendenhall's recent residential real estate acquisitions located near the Belleview Lightrail Station/Continuum Partners development and was secured by Unit [REDACTED] which was part of Phase 1 of the project and that Phase 2 and 3 will be completed by Village Homes by mid-2010.
7. Alford funds were exhausted within 2 days, and were used, in part, to cover outstanding checks, for checks payable to Rory Brown, and credit payments. .
8. As of April 13, 2011, Alford has not received payment on his investment from the note dated June 29, 2009.
9. As a result of investing with Mendenhall, Alford's loss is \$20,000.00 or more.
10. On or about December 2, 2008, Fay A. Marsh (Marsh) went to Mendenhall's office for the purpose of receiving one-third disbursement from an annuity that he and his wife had purchased in 2006. Marsh explained that his wife wanted the funds in the annuity split between her two children and Marsh after her death.
11. Mr. Marsh was born on [REDACTED].
12. Marsh intended to place \$25,000.00 of the proceeds into another annuity. During the December 2, 2008 meeting, Mendenhall told Marsh he had a good real estate investment deal for Marsh, as noted in the facts supporting Count 1. Mendenhall asked Marsh for a 90 day loan for \$60,000.00 which Marsh agreed to provide funds, based upon Mendenhall's affirmative representations and misstatements of fact, as well as Mendenhall's failure to disclose material facts. In exchange, Mendenhall gave Marsh a postdated check dated March 3, 2009, in the amount of \$61,500.00, reflecting Marsh's \$60,000.00 investment plus an additional \$1,500.00 in interest.
13. In March 2009, Marsh called Mendenhall about repayment on the note. At that time, Mendenhall told Marsh that he did not have the funds available to make the check good but agreed to wire Marsh \$10,000.00 as a payment towards interest and partial repayment of principal. Mendenhall also agreed to give Marsh a promissory note for the remainder of the \$51,500.00. At the time the promissory note was executed, Mendenhall represented to Marsh that there was no risk in the investment and that Marsh would receive payment when the note was due.
14. On or about July 22, 2009, Mendenhall and Marsh executed a promissory note for \$51,500.00 with an 8.25% interest rate payable in 12 months. The stated purpose of use

of the funds in the promissory note was for Mendenhall's recent residential real estate acquisitions located near the Belleview Lightrail Station/Continuum Partners development and was secured by Units [REDACTED] [REDACTED] 145, and 247, which was part of Phase 1 of the project and that Phase 2 and 3 will be completed by Village Homes by mid-2010.

15. Mr. Marsh's funds were exhausted within 29 days, and were used, in part, to cover outstanding checks, to pay other investors, for checks payable to Rory Brown, and credit payments.
16. As of April 13, 2011, Marsh has not received payment on his investment from the note dated July 22, 2009.
17. As a result of investing with Mendenhall, Marsh's loss is \$20,000.00 or more.
18. In approximately October 2008, Mendenhall approached Grant Midcap (Midcap) and asked Midcap to lend money to Mendenhall, at a 9% return on investment. Mendenhall first asked for \$100,000 for a real estate investment but Mr. Midcap told Mendenhall he didn't have that much money to invest.
19. Mr. Midcap was born on June 12, 1924.
20. In October 2008, Midcap invested \$20,000.00 with Mendenhall, which was paid back with an additional \$1,000.00 in interest.
21. In late 2008 and continuing into early 2009, Mendenhall told Midcap about an opportunity to invest in four properties Mendenhall owned, located at [REDACTED] [REDACTED] Denver, Colorado, the investment of which would be to maintain and improve the condominium units, as well as acquire more properties, as noted in the facts supporting Count 1. Mendenhall also told Midcap that he, Mendenhall, was completing the improvement work personally.
22. Between and including January 9, 2009 and January 29, 2009, based upon the affirmative representations and misstatements of fact made by Mendenhall and his failure to disclose material facts, Midcap invested an additional \$70,000.00 with Mendenhall, which was documented by Mendenhall and Midcap signing a promissory note dated January 29, 2009 for \$72,071.48 due in 12 months with a 9% interest rate, extendible for another 12 months. The stated purpose of use of the funds in the promissory note was for Mendenhall's recent residential real estate acquisitions located near the Belleview Lightrail Station/Continuum Partners development and was secured by Units [REDACTED] [REDACTED] 145, and 247, which was part of Phase 1 of the project and that Phase 2 and 3 will be completed by Village Homes by mid-2010.

23. In January 2010, Mendenhall asked Midcap for the additional 12 months to pay the \$72,000.00 note, which Midcap agreed to do. At the same time, Mendenhall asked for an additional \$20,000.00 investment from Midcap. On or about January 23, 2010, Midcap invested an additional \$20,000.00 with Mendenhall.
24. Midcap's funds were exhausted within approximately one month, and were used, in part, to pay other investors, for personal expenses and credit payments.
25. As of April 13, 2011, Midcap has not received payment on his investment from the note dated January 29, 2009.
26. As a result of investing with Mendenhall, Midcap's loss is \$20,000.00 or more.
27. Craig A. Wessbecker (Wessbecker) has known Michael Mendenhall since late 2007, or 2008. Wessbecker originally purchased short term health insurance through Bankers Life, with Mendenhall being the Bankers Life representative/agent that sold the policy to Wessbecker.
28. Mr. Wessbecker was born on [REDACTED].
29. In March 2009, Mendenhall approached Wessbecker about a project where Mendenhall represented that he was raising money for the developer who was building in the area of the Belleview light rail station. Mendenhall told Wessbecker that the developer could not raise funds to complete the project, so Mendenhall was raising money for him. Mendenhall represented that he owned properties at Belleview and showed Wessbecker a prospectus of the mixed use plans for Belleview. Mendenhall told Wessbecker that that the investment was guaranteed money.
30. Based upon the affirmative representations and misstatements of fact made by Mendenhall and his failure to disclose material facts, Wessbecker invested \$20,000.00 on or about March 2, 2009. This investment was memorialized by a note of dated March 3, 2009 for \$20,000.000, which carried an interest rate of 8.25%, payable in 12 months with an option to extend the note for an additional year. The stated purpose of use of the funds in the promissory note was for Mendenhall's recent residential real estate acquisitions located near the Belleview Lightrail Station/Continuum Partners development and was secured by Units [REDACTED] 145, and 247, which was part of Phase 1 of the project and that Phase 2 and 3 will be completed by Village Homes by mid-2010.
31. On or about May 20, 2009, Wessbecker then invested an additional \$15,000.00 in the form of a 90 day short term note. This investment was not memorialized by a note.

32. Wessbecker's funds were exhausted within 15 days, and were used, in part, to pay outstanding checks, for personal expenses and credit payments.
33. As of April 13, 2011, Wessbecker has not received payment from Mendenhall either on his \$20,000 investment from the note dated March 3, 2009; or Wessbecker's later investment of \$15,000.00 on May 20, 2009.
34. As a result of investing with Mendenhall, Wessbecker's loss is \$20,000.00 or more.
35. On or about September 29, 2008, based upon the prior representations and omissions by Mendenhall, Kembel invested an additional \$40,000.00 with Mendenhall, as noted in the facts supporting Counts 2 through 7.

**COUNT NINETEEN**

SECURITIES FRAUD - UNTRUE STATEMENT OR OMISSION, C.R.S. 11-51-501(1)(b), (F3) <50052>

Between and including **May 27, 2009 and November 18, 2010**, at and triable in the City and County of Denver, State of Colorado, **MICHAEL LEE MENDENHALL**, in connection with the offer, sale, or purchase of a security, to wit: promissory note or investment contract, directly or indirectly, to **DONALD E. LEDFORD** unlawfully, feloniously, and willfully made an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; in violation of sections 11-51-501(1)(b) and 11-51-603(1), C.R.S.

**COUNT TWENTY**

SECURITIES FRAUD - UNTRUE STATEMENT OR OMISSION, C.R.S. 11-51-501(1)(b), (F3) <50052>

Between and including **May 27, 2009 and November 18, 2010**, at and triable in the City and County of Denver, State of Colorado, **MICHAEL LEE MENDENHALL**, in connection with the offer, sale, or purchase of a security, to wit: promissory note or investment contract, directly or indirectly, to **CLARA V. LEDFORD** unlawfully, feloniously, and willfully made an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; in violation of sections 11-51-501(1)(b) and 11-51-603(1), C.R.S.

**COUNT TWENTY-ONE**

SECURITIES FRAUD - UNTRUE STATEMENT OR OMISSION, C.R.S. 11-51-501(1)(b), (F3) <50052>

Between and including **August 21, 2009 and November 18, 2010**, at and triable in the City and County of Denver, State of Colorado, **MICHAEL LEE MENDENHALL**, in connection with the offer, sale, or purchase of a security, to wit: promissory note or investment contract, directly or indirectly, to **EDITH BERNDT** unlawfully, feloniously, and willfully made an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; in violation of sections 11-51-501(1)(b) and 11-51-603(1), C.R.S.



**COUNT TWENTY-TWO**

SECURITIES FRAUD - UNTRUE STATEMENT OR OMISSION, C.R.S. 11-51-501(1)(b), (F3) <50052>

Between and including **September 10, 2009 and November 18, 2010**, at and triable in the City and County of Denver, State of Colorado, **MICHAEL LEE MENDENHALL**, in connection with the offer, sale, or purchase of a security, to wit: promissory note or investment contract, directly or indirectly, to **DELBERT HANING** unlawfully, feloniously, and willfully made an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; in violation of sections 11-51-501(1)(b) and 11-51-603(1), C.R.S.

**COUNT TWENTY-THREE**

SECURITIES FRAUD - UNTRUE STATEMENT OR OMISSION, C.R.S. 11-51-501(1)(b), (F3) <50052>

Between and including **September 10, 2009 and November 18, 2010**, at and triable in the City and County of Denver, State of Colorado, **MICHAEL LEE MENDENHALL**, in connection with the offer, sale, or purchase of a security, to wit: promissory note or investment contract, directly or indirectly, to **VIRGINIA HANING** unlawfully, feloniously, and willfully made an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; in violation of sections 11-51-501(1)(b) and 11-51-603(1), C.R.S.

**COUNT TWENTY-FOUR**

THEFT - SERIES, C.R.S. 18-4-401(1),(4), (F3) <0801X>

Between and including **May 20, 2009 and September 10, 2009**, at and triable in the City and County of Denver, State of Colorado, **MICHAEL LEE MENDENHALL**, unlawfully, feloniously, and knowingly obtained or exercised control over things of value, namely: **MONEY** of **CRAIG A. WESSBECKER, DONALD E. LEDFORD, CLARA V. LEDFORD, EDITH BERNDT, DELBERT HANING, AND VIRGINIA HANING** twice or more within a period of six months, with an aggregate value of \$20,000.00 dollars or more, without authorization, or by threat or deception, and knowingly used, concealed, or abandoned the thing of value in such manner as to permanently deprive of its use **CRAIG A. WESSBECKER, DONALD E. LEDFORD, CLARA V. LEDFORD, EDITH BERNDT, DELBERT HANING, AND VIRGINIA HANING** or benefit; in violation of section 18-4-401(1)(b), (4), C.R.S.

The facts supporting Counts 19 through 24 are as follows:

1. All facts in support of all other counts are incorporated herein by reference.
2. In 2008, Donald E. & Clara V. Ledford (the Ledfords) met Mendenhall after relocating to Colorado. The Ledfords' had been purchasing annuities from Bankers Life starting in 2003 and after relocating to Denver, Mendenhall became their Bankers Life representative/agent.

3. Mr. Ledford was born on [REDACTED].
4. Mrs. Ledford was born on [REDACTED].
5. The Ledfords said their investments were for real estate acquisitions and investments. Mendenhall did not mention anything about risk to the Ledfords.
6. The Ledfords made the following three investments to Mendenhall, based upon the affirmative representations and misstatements of fact Mendenhall made to them, as well as his failure to disclose material facts to the Ledfords:
  - \$25,000.00 on or about May 27, 2009
  - \$25,000.00 on or about July 23, 2009
  - \$22,000.00 on or about August 27, 2010
7. The Ledfords and Mendenhall signed three promissory notes reflecting their total investment of \$72,000.00 in Mendenhall's real estate investment. The notes carried an interest rate of 8.25% with a term of 12 months. The stated purpose of use of the funds in the promissory note was for Mendenhall's recent residential real estate acquisitions located near the Belleview Lightrail Station/Continuum Partners development and was secured by Units [REDACTED] [REDACTED] 145, and 247, which was part of Phase 1 of the project and that Phase 2 and 3 will be completed by Richmond Homes by mid-2011.
8. Ledfords funds from all three investments were each exhausted within 10 days, and were used, in part, to pay other investors, for checks payable to Rory Brown and credit payments.
9. As of April 13, 2011, the Ledfords have not received payment from Mendenhall on any of their promissory notes.
10. As a result of investing with Mendenhall, the Ledfords loss is \$20,000.00 or more.
11. Starting in August 2009, Edith Berndt (Berndt) was contacted by Mendenhall about an investment opportunity he was involved in. Berndt knew Mendenhall because he was her Bankers Life representative/agent.
12. Ms. Berndt was born on [REDACTED] [REDACTED] [REDACTED].
13. Berndt stated that Mendenhall told her he had worked for Bankers Life for some time and presented as very successful. Mendenhall met with Berndt at her home several times to discuss the project, as noted in the facts supporting Count 1. Mendenhall discussed his ownership of three condominiums located at [REDACTED] Denver, Colorado. Mendenhall explained that he was going to invest in the project, including the

purchase of other properties in the development, specifically purchasing town houses at the Belleview Station. Mendenhall also represented that Berndt would receive 8.25% on her investment and that there was no risk.

14. Based upon Mendenhall's affirmative representations and misstatements of fact, and his failure to disclose material facts, Berndt invested \$25,000.00 with Mendenhall, on August 21, 2009. She and Mendenhall both signed a promissory note due August 21, 2011, with 8.25% interest. The stated purpose of use of the funds in the promissory note was for Mendenhall's recent residential real estate acquisitions located near the Belleview Lightrail Station/Continuum Partners development and was secured by Units 145 and 247, which was part of Phase 1 of the project and that Phase 2 and 3 will be completed by Village Homes by mid-2010.
15. Berndts' funds were exhausted within 8 days, and were used, in part, to pay personal expenses, for checks payable to Rory Brown and credit payments.
16. As a result of investing with Mendenhall, Berndt's loss is \$20,000.00 or more.
17. Delbert & Virginia Haning (the Hanings) met Mendenhall in approximately 2008. They were introduced to Mendenhall through another Bankers Life agent.
18. Mr. Haning was born on [REDACTED].
19. Mrs. Haning was born on [REDACTED].
20. Starting in 2009, the Hanings were contacted by Mendenhall about a real estate investment opportunity at [REDACTED] [REDACTED] [REDACTED] Street. Mendenhall met with the Hanings to discuss the project, as noted in the facts supporting Count 1. Mendenhall's statements to the Hanings included: Mendenhall owned two condominiums located at [REDACTED] [REDACTED] [REDACTED] Street, Denver, Colorado. Mendenhall explained that he was going to invest in the project, including the purchase of two other condominiums in the development, specifically purchasing town houses at the Belleview Station. Mendenhall told them he had worked for Bankers Life for some time and presented as very successful. Mendenhall also represented that Berndt would receive 8.25% on their investment and that there was no risk.
21. Based upon Mendenhall's affirmative representations and misstatements of fact, in addition to his failure to disclose material facts, the Hanings invested \$15,588.00 with Mendenhall on September 10, 2009. On or about September 10, 2009, the Hanings and Mendenhall signed a 24 month promissory note for \$15,588.00 due on September 11, 2011, with 8.25% interest. The stated purpose of use of the funds in the promissory note was for Mendenhall's recent residential real estate acquisitions located near the Belleview Lightrail Station/Continuum Partners development and was secured by Units 145 and 247, which was part of Phase 1 of the project and that Phase 2 and 3 will be completed by Village Homes by mid-2010.

22. The Hanings funds were exhausted within 14 days, and were used, in part, to pay other investors and credit payments. None of the funds were used for the real estate project.

23. As a result of investing with Mendenhall, the Hanings loss is \$15,000.00 or more.

**COUNT TWENTY-FIVE**

SECURITIES FRAUD - UNTRUE STATEMENT OR OMISSION, C.R.S. 11-51-501(1)(b), (F3) <50052>

Between and including February 17, 2010 and November 18, 2010, at and triable in the City and County of Denver, State of Colorado, **MICHAEL LEE MENDENHALL**, in connection with the offer, sale, or purchase of a security, to wit: promissory note or investment contract, directly or indirectly, to **JUDITH A. GINETTI** unlawfully, feloniously, and willfully made an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; in violation of sections 11-51-501(1)(b) and 11-51-603(1), C.R.S.

**COUNT TWENTY-SIX**

THEFT - SERIES, C.R.S. 18-4-401(1),(4), (F3) <0801X>

Between and including January 23, 2010 and April 14, 2010 at and triable in the City and County of Denver, State of Colorado, **MICHAEL LEE MENDENHALL**, unlawfully, feloniously, and knowingly obtained or exercised control over things of value, namely: **MONEY** of **GRANT MIDCAP, JUDITH A. GINETTI, AND KALJO C. SCHIFF** twice or more within a period of six months, with an aggregate value of \$20,000.00 dollars or more, without authorization, or by threat or deception, and knowingly used, concealed, or abandoned the thing of value in such manner as to permanently deprive **GRANT MIDCAP, JUDITH A. GINETTI, AND KALJO C. SCHIFF** of its use or benefit; in violation of section 18-4-401(1)(b), (4), C.R.S.

The facts supporting Counts 25 and 26 are as follows:

1. All facts in support of all other counts are incorporated herein by reference.
2. Starting in 2007, Judith A. Ginnetti, (Ginnetti) became acquainted with Mendenhall through her partner, Celeste Sultze. Sultze' cousin, Michel Keefer, worked for Bankers Life. Keefer knew Mendenhall when they both worked at Bankers Life.
3. Ms. Ginnetti was born on [REDACTED].
4. In early 2010, Mendenhall contacted Ginnetti and told her he could get her a nice return on her money if she didn't need access to her money in the immediate future. Mendenhall went on to state that he was no longer working for U-Vest and she needed to move her money out of that account. Mendenhall told Ginnetti that the money would be used for construction of real estate. Ginnetti trusted Mendenhall and that was her security that he would return her investment funds plus profit.
5. Based upon the affirmative representations and misstatements of fact statements made by Mendenhall and his failure to disclose material facts, on or about February 17, 2010, Ginnetti invested her entire life savings (held in her U-Vest account) of \$22,251.43 with

Mendenhall for his real estate project. Ginnetti signed a 24 month promissory note for \$22,251.43 with Mendenhall on February 17, 2010, which carried a 6.25% interest rate. The stated purpose of use of the funds in the promissory note was for Mendenhall's recent residential real estate acquisitions located near the Belleview Lightrail Station/Continuum Partners development which was part of Phase 1 of the project which was completed and that Phase 2 and 3 will be completed by Village Homes by Richmond Homes.

6. Ginnetti's funds were exhausted within 5 days, and were used, in part, for cash withdrawals and credit payments.
7. As a result of investing with Mendenhall, Ginnetti's loss is \$20,000.00 or more.
8. On or about January 23, 2010, based upon the prior representations and omissions by Mendenhall, Grant Midcap invested an additional \$20,000.00 with Mendenhall, as noted in the facts supporting Counts 14 through 18.
9. On or about April 14, 2010, based upon the prior representations and omissions by Mendenhall, Kaljo C. Schiff invested an additional \$42,000.00 with Mendenhall, as noted in the facts supporting Counts 2 through 7.

**COUNT TWENTY-SEVEN**

**THEFT, C.R.S. 18-4-401 (1),(2)(d), (F3) <0801V>**

On or about **August 27, 2010**, at and triable in the City and County of Denver, State of Colorado, **MICHAEL LEE MENDENHALL**, unlawfully, feloniously, and knowingly obtained or exercised control over a thing of value, namely: **MONEY** of **DONALD E. LEDFORD AND CLARA V. LEDFORD** with the value of \$20,000.00 dollars or more, without authorization, or by threat or deception, and knowingly used, concealed, or abandoned the thing of value in such manner as to permanently deprive **DONALD E. LEDFORD AND CLARA V. LEDFORD** of its use or benefit; in violation of section 18-4-401(1)(b), (2)(d), C.R.S.

The facts supporting Count 27 are as follows:

1. All facts in support of all other counts are incorporated herein by reference.
2. On or about August 27, 2010, based upon prior representations and omissions of fact by Mendenhall, Donald E. and Clara V. Ledford invested an additional \$22,000.00 with Mendenhall, as noted in the facts supporting Counts 19 through 24.

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Grant Midcap

Craig Wessbecker

Donald & Clara Ledford

Sion Alford

Edith Berndt



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Mackenzie Homes  
Custodian of Records or Agent  
Address Unknown

Standard and Pacific Homes  
Custodian of Records or Agent  
Address Unknown

Continuum Partners  
Custodian of Records or Agent  
Address Unknown

Richmond Homes  
Custodian of Records or Agent  
Address Unknown

## Exhibit 4

1 DENVER DISTRICT COURT  
LINDSEY-FLANIGAN COURTHOUSE  
2 520 West Colfax Avenue  
3 Denver, Colorado 80204-2609

4 -----

5 THE PEOPLE OF THE  
STATE OF COLORADO,

6 Plaintiff,

7 v.

8 MICHAEL LEE MENDENHALL,

9 Defendant.

|  
|  
|  
|  
|  
|  
\*FOR COURT USE ONLY\*
Case No. 11CR10094
Courtroom 5C
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10 -----

11 REPORTER'S TRANSCRIPT OF PROCEEDINGS  
12 -----

13 This matter came on for Sentencing Hearing on  
14 Friday, April 20, 2012, before the HONORABLE BRIAN R.  
15 WHITNEY, Judge of the District Court, and the  
16 following proceedings were had:  
17 -----

18 FOR THE PEOPLE: Kandace C. Gerdes, 21350

19 FOR THE DEFENDANT: Blake J. Renner, 24757

20  
21  
22

23 CYNTHIA A. HUDAK, RPR  
24 Denver District Court  
Lindsey-Flanigan Courthouse  
25 720-337-0692

1 FRIDAY, APRIL 20, 2012

2 (Whereupon, the court convened with all  
3 parties present and the following proceedings were  
4 had:)

5 THE COURT: All right. The Court will call  
6 11CR10094, People vs. Michael Mendenhall.

7 MS. GERDES: Good afternoon, Your Honor.  
8 Kandace Gerdes appearing on behalf of the People.

9 MR. RENNER: Blake Renner on behalf of  
10 Mr. Mendenhall who appears in custody.

11 THE COURT: All right. The Court has  
12 received the presentence investigation report, the  
13 sentencing memorandum of the prosecution, the  
14 sentencing memorandum of the defense, the victim  
15 impact statements submitted by the prosecution.

16 Were there any other submissions that the  
17 Court did not receive?

18 MS. GERDES: Nothing from the People, thank  
19 you.

20 THE COURT: All right. Are you ready to  
21 proceed to sentencing?

22 MS. GERDES: People are prepared, Your  
23 Honor.

24 THE COURT: All right. Just before we  
25 begin, let me ask Mr. Renner, have you read through

1 the presentence investigative report?

2 MR. RENNER: Yes, Your Honor.

3 THE COURT: Are there additions,  
4 corrections, or changes aside from what you would like  
5 to say concerning the sentencing?

6 MR. RENNER: The only thing I will say is --  
7 and I don't think it's all that important -- is in the  
8 summary of the offense, I think that was pretty much  
9 taken verbatim from the grand jury indictment. Some  
10 of those things were proven at trial, some of them I  
11 don't think were. Some of them are not factually  
12 accurate, but I have no objection to that.

13 THE COURT: All right. Ms. Gerdes, the  
14 People's position on sentencing in this matter.

15 MS. GERDES: Your Honor, with the Court's  
16 permission, I'd like the victims to speak first.

17 THE COURT: Absolutely.

18 MS. GERDES: All right. Mr. Sion Alford,  
19 A-L-F-O-R-D, would first like to address the Court.

20 THE COURT: All right. Mr. Alford, if you  
21 would like to come up to this podium right here and  
22 speak whenever you're ready.

23 MR. ALFORD: My name is Sion Alford. I'm  
24 from Monument. I don't know what else I could say  
25 that I hadn't already put in the report that you got.

1 My feelings are pretty strong. I think that  
2 Mr. Mendenhall should be -- should be put away for  
3 quite a while, because I feel like he's not much  
4 different than a predator of young children. In this  
5 case, he's a predator of elderly people, and I'm  
6 against any kind of leniency on your part.

7 I think that he should be put away. And I,  
8 myself, I suffered monetary loss and anxiety. When I  
9 loaned him the money, it was on the condition that it  
10 was for three months only because I needed the money.  
11 My wife is in a nursing home, and I have no help  
12 paying for that.

13 But my situation is -- I feel like it's not  
14 near as dire as some of the other victims. But as far  
15 as I'm concerned, I think he should be dealt with  
16 pretty severely.

17 THE COURT: All right. Thank you, sir.

18 MR. ALFORD: Okay.

19 MS. GERDES: Next to address the Court is  
20 Mrs. Haning.

21 THE COURT: Good afternoon.

22 MS. HANING: Good afternoon, Your Honor.

23 I wrote mine out, because I didn't trust  
24 that I'd remember anything once I got up here.

25 Just back about 33 years ago, my husband and

1 I met. I was setting up a store and he was putting in  
2 gas pumps at that store. I was a single mother of  
3 four; he was a single father of four. And, yeah, we  
4 got married and combined our families.

5 And as our kids started leaving home, we  
6 decided to become foster parents; and over the 25  
7 years we were foster parents to 30 kids -- well,  
8 actually, 29 because we had one of them twice; once  
9 when she was two and again when she was six. The rest  
10 were all teenagers. The ones that nobody else wanted.

11 Most of them came out of the Department of  
12 Corrections or Social Services, but somewhere what  
13 they called my illegal kids, because they were kids  
14 that were homeless, and we took them in and made a  
15 home for them, because I knew that they were better  
16 off in my home than on the street. And yes, we could  
17 have saved more money, but funny how the State doesn't  
18 pay for things like senior pictures or prom dresses or  
19 weddings after the kids leave home; and we were the  
20 parents for these kids, so we paid for those things.

21 So the first thing we tried to teach our  
22 kids was about God's love, about respect and love for  
23 each other and for us.

24 And now about that washing machine that I  
25 know Kandace has brought up before. I needed that



1 washing machine. I wanted that \$588 out of that money  
2 because there were times when my washing machine  
3 washed as many as 27 loads of clothes a week, and my  
4 washer was dying, and I needed a washer, but he got  
5 that too.

6 I know that life isn't fair, and during this  
7 time we lost three of our kids. My son was killed in  
8 a car accident three months before his son was born,  
9 and one son drowned, and our adopted daughter was so  
10 badly beaten by a boyfriend that she was in hospital  
11 in Denver for five months in a coma. And there went  
12 some more money, because for five months I paid a  
13 hotel bill so that I could stay with her and take care  
14 of her.

15 So \$16,000 may not sound like a lot to some  
16 people, but that was a lot of money for us because it  
17 was hard earned and it was -- it was hard for us to  
18 save that much.

19 And, finally, I think what upsets me more  
20 than anything is that all of this money that he took  
21 he took from elderly people, and I don't know why that  
22 is; maybe we're more trusting than the younger people,  
23 I don't know. And it wasn't so bad for us because he  
24 didn't get so much; but some of these people, it was  
25 their life savings, and I feel bad for them.

1           And, finally, what upsets more than that  
2 even is what he's done to his own family, his own  
3 children. They didn't deserve this. I mean, they  
4 wanted to have a father as they got married and had  
5 kids, and now they don't have that. They never will.

6           And all these years that Dale and I have  
7 worked side by side in our small business to make a  
8 living in the daytime and go home at night to take  
9 care of all these kids that we tried to help, and then  
10 in 2004, I went in the hospital for a minor operation  
11 and the doctor messed up the operation and almost  
12 killed me, and I was forced to retire.

13           So now at the age of 73, my husband is still  
14 working. And he may have to work for a few more years  
15 to make up this money. And I think, you know, we  
16 might even ask for leniency in this had -- if we  
17 thought that he had learned a lesson from this, but  
18 when he was out on bond, what happened? Just went out  
19 and did it again. So, oh, well, you know, do  
20 whatever.

21           And now, I just -- I just hope that sometime  
22 during these next few years that he can find God, that  
23 he can find some peace with himself and can confess  
24 these things and ask for forgiveness, because maybe we  
25 don't forgive so easy, but God does.

1 THE COURT: Thank you, ma'am.

2 MS. GERDES: Rita Hewitt (phonetic).

3 THE COURT: Okay.

4 MS. HEWITT: Good afternoon, Judge.

5 THE COURT: Afternoon.

6 MS. HEWITT: Well, I thought Michael and I  
7 had a very good relationship. I trusted him  
8 explicitly. I had loaned him, I think the first loan  
9 was around 14,000, and he paid it back as promised,  
10 and it seemed like then -- it just seemed like after  
11 he once got my trust, then it was so easy to ask for  
12 more. And having paid back a loan and through a lot  
13 of conversations and a reputable company, I thought it  
14 was secure.

15 And first it was 120,000 and then it was  
16 130,000. And it was supposed to be back paid -- paid  
17 back within two years' time. The time came. I lived  
18 in Santa Fe, New Mexico; no relatives, no nothing down  
19 there.

20 I'm 84 years old. I thought I would be  
21 coming back to the Denver area or Pueblo area to my  
22 family. I didn't have the funds then to move, and  
23 it's very costly to move. And, of course, cost of  
24 living has gone up so much. The income doesn't, but  
25 the cost of living does. The income doesn't increase.

1           And in 2005 -- I paid no income tax in 2005,  
2           2006, 2007. But 2008 when I lend this money to  
3           Michael, he told me he would pay all expenses, and he  
4           talked me into it when he wanted the 130,000. He  
5           talked me into cashing in one of my annuities, an  
6           investment.

7           And the penalty was \$6,287 I had to pay to  
8           Federal and \$1,717 to New Mexico for a total of  
9           \$8,004. The first time I had to pay income tax from  
10          2005 up to 2011. Because of that, I had to pay that  
11          \$8,004 income tax.

12          I had retirement funds for a lifetime of  
13          hard work and frugal living and saving. But due to  
14          his smooth talking, my trust in him, I lost it. And I  
15          feel very bad. My family knows of some of this, but  
16          not all of it. And I feel so bad that I was so  
17          trusting, it makes you feel like you never want to  
18          trust a person again.

19          And like I said, he told me he'd pay all  
20          expenses, but and -- you know, at 9 percent interest,  
21          what good is interest return if you don't get nothing?  
22          So even at that high interest, it's better interest  
23          than you could have got at a bank, but it would have  
24          been safer at the bank.

25          And if he had to live like I had to live

1       instead of the high living that he has done -- I have  
2       worked for the last three years. As I said, I'm 84  
3       years old. Thank goodness I have good health. But  
4       I've worked for the census, I've worked as a  
5       companion, and I've worked driving cars for Beaver  
6       Toyota all in Santa Fe, New Mexico.

7                     I've worked hard for my money and I really  
8       trusted this man; and I'm like some the other victims,  
9       I think he is a predator on seniors, and I think it's  
10      a disgrace to have anybody in an investment position  
11      to take advantage of seniors.

12                    And I hope, Judge, as you are the deciding  
13      person, I hope you are not lenient with him, because  
14      it will be sure a disappointment to all of us who came  
15      here today to talk to you. Thank you.

16                    THE COURT: Thank you.

17                    MS. GERDES: Ms. Valente.

18                    THE COURT: Okay.

19                    MS. VALENTE: My name is Opal Marie Valente,  
20      and I had known Michael for about ten years as a  
21      banker's rep. And then he says to me, Why leave your  
22      money in the bank and get 3 percent when I can give  
23      you 9 percent?

24                    And I felt so dumb when I showed this to an  
25      attorney, because I was going to have surgery, and I

1 didn't know if I'd come through it or not. And he  
2 said, Honey, this thing isn't worth the paper that  
3 it's written on.

4 And I know now I should have said I need a  
5 deed or I need something, but he had a way of  
6 smoothing everything over. And the day before I had  
7 surgery, he went to the bank, signed another note that  
8 if I didn't come out of it, that he would see that my  
9 daughter got it.

10 And it's just been one lie after another  
11 lie; and my son turned him in to FINRA, and he says,  
12 Mother, if he's doing that to you, he's doing it to  
13 other people. And Michael sat in my kitchen and said,  
14 He's just trying to ruin my integrity. I've never  
15 even had a parking ticket.

16 And through all of this, I've been so  
17 embarrassed, so ashamed to even tell my best friend  
18 that I was such a sucker to get sucked into something  
19 like this. And it's affected my heart, my health.  
20 I've been taken to the hospital three times just from  
21 passing out. They cannot find one thing wrong with  
22 me, except that I'm under undue stress from something  
23 that's happened in the past.

24 And I can't get over that I'd let somebody  
25 that I trusted so much do the damage that he's done to

1 me and to my health, because now my children call me  
2 once or twice a day to be sure I'm okay. And there's  
3 nothing wrong with me except the stress that I let  
4 this fool take advantage of me.

5 So I hope that you see it in your heart to  
6 do to him what he's done to the rest of us. Thank  
7 you.

8 THE COURT: Thank you.

9 Any other victims want to speak?

10 MS. GERDES: No. Thank you, Your Honor.

11 Your Honor, as an initial matter, the People  
12 are seeking restitution in this matter in the total  
13 amount of \$1,408,667.77, that is a modification from  
14 the sentencing memo. I have provided that to  
15 Mr. Renner.

16 THE COURT: All right.

17 MS. GERDES: If I may approach?

18 THE COURT: You may. And if I understand  
19 that, that includes the loss, incidentals, prejudgment  
20 interest; is that correct?

21 MS. GERDES: That is correct, Your Honor.

22 MR. RENNER: Your Honor, I'm not sure we  
23 have any objection to that, but just since the numbers  
24 were changing, I'd like a little bit more time to look  
25 at the number to make sure the number is correct. So

1 we'd ask for 30 days to respond.

2 THE COURT: Absolutely.

3 MS. GERDES: Your Honor, thank you.

4 As the Court is aware, the defendant stands  
5 before you today on his first felony conviction.

6 We've heard the term "predator," and not  
7 predator as each of the victims have said to you in a  
8 violent offense. This is not about sentencing on a  
9 violent offense. It is because, as you've heard and  
10 you heard during the two-week trial of the defendant's  
11 charm and polish, that he possess a significant danger  
12 the community.

13 He's frankly more dangerous than a street  
14 criminal. The street criminal expresses his or her  
15 intentions right up front. They point a gun as they  
16 walk into the 7-Eleven, everyone knows exactly the  
17 circumstances are.

18 In this case, it was a betrayal of trust, a  
19 betrayal and the ability that the defendant had to  
20 charm and to cajole his way into each of the victim's  
21 lives, not just once over a period of years; lulling  
22 them by the short-term notes; lulling them by calling  
23 them, wishing them happy holidays, by wishing them  
24 happy birthday, by taking them to Perkin's, by doing  
25 the very favorite things they wanted to do.



1           It was that sense of care that the defendant  
2 pretended to have with the victims that allowed each  
3 of the victims to invest, to take their life savings,  
4 their secure investments and give it to the defendant,  
5 because they trusted his promises, they trusted his  
6 words.

7           When the defendant was confronted about  
8 this, and has been over the years, he reacts, again,  
9 in a very unique way. First he denies, and then he  
10 makes excuses.

11           Contrary to the recall of Mr. Schwartz'  
12 statement of the events of the defendant's November  
13 2010 arrest, Mr. Stevenson, who was actually present  
14 with the uniformed officers, actually witnessed the  
15 defendant's son and son's friend sit on a curb outside  
16 the home, a 6,000-square-foot-plus home, in cuffs; and  
17 it's true, there were automatic weapons pointed at the  
18 defendant's door.

19           It took about ten minutes for the defendant  
20 to come down, casually open the door in a towel. He  
21 had just finished his massage. His masseuse was at  
22 the house.

23           And it doesn't stop there. As this Court is  
24 aware, and Judge Laff presided over this piece of the  
25 case, Judge Laff admonished the defendant, Do not go

1 out and attempt to sell or solicit securities, don't.  
2 And that was in my response to my request that he not  
3 be allowed to have contact with Banker's Life clients.

4 The defendant's response was to go out  
5 within three days of that admonition and complete  
6 paperwork for Leland Gammel, to liquidate over  
7 \$100,000 and for her to give him a \$150,000 check for  
8 a new investment venture he had with Chadbourn and  
9 Partners, a company out of Florida.

10 Even when Leland Gammel's son confronted him  
11 and said, What about this indictment I read on the  
12 media, he wouldn't admit. He said, No, it's all taken  
13 care of. Truly, it was not.

14 And it is appalling that the defendant took  
15 time and time again the life savings from almost every  
16 victim. And you've seen all of them. None of them  
17 come from means, none of them are silver spooned.  
18 They are, as I put in my memo, from the greatest  
19 generation. They are people who have survived the  
20 depression, who have nothing, who either have or  
21 continues to still work because that's what they did.  
22 They didn't ask for handouts. They didn't ask for  
23 other people to give them money like the defendant it.  
24 They earned it or they didn't have what they wanted.

25 And the Court knows how Mr. Mendenhall spent

1 the money. It was on nothing but frivolity and waste.  
2 He didn't even put a portion, a significant portion of  
3 the money into the mortgages. If he had, we wouldn't  
4 be here. If he had done as he said to each of the  
5 victims, we would not be here today.

6 But yet, as you heard time and time again,  
7 the defendant says, You can trust me. See? I'm doing  
8 what I told you I'd do.

9 The problem is the only thing the defendant  
10 was doing time and time again from 2005 through 2010  
11 was committing one crime after another.

12 Now, the defendant suggests that the problem  
13 arose because of real estate and the market crashing.  
14 The problem is we have the defendant's own conduct;  
15 and the conduct is that -- and it's from the bank  
16 statements, doesn't matter what each of the victims  
17 here say. And there are more here, as the Court  
18 knows, but wish not to address the Court -- it's not  
19 what the victims said, it's what the defendant did  
20 with the money.

21 And we know that within days, perhaps a  
22 month at longest, he had spent hundreds of thousand of  
23 dollars that he had received to invest in the four  
24 properties. That's what he did with the money with  
25 the stroke of his pen, with a call to transfer between

1 accounts.

2           It's conduct that brings us here today. I  
3 do not question the goodness of Mr. Mendenhall. I  
4 question -- and I ask the Court to sentence him on his  
5 conduct. It is not bad business. It is not a  
6 downturn on the economy. This is nothing short of  
7 straight theft and deception.

8           And throughout this case, Your Honor, the  
9 People believe that the defendant's conscious is, at  
10 best, external. The disassociation results in a  
11 complete lack of remorse; and despite his hallow words  
12 and excuses, he still continues over and over again to  
13 continue with his conduct, because he simply does not  
14 think he committed these crimes.

15           And his life partner tells you that in his  
16 letter. He specifically says, Mr. Mendenhall  
17 continues to maintain his innocence. Yet, Mr. Renner  
18 points out that the defendant is remorseful and  
19 accepts responsibility.

20           Of course, the People have not heard, nor  
21 has the Court, from the defendant. But should the  
22 defendant say to you, I'm sorry, I want to work again,  
23 I'll make it all right, I ask the Court to be very  
24 cautious of that. That is the very reason that there  
25 are 16 victims in this case who gave their life

1 savings, because they trusted. They trusted on empty  
2 promises and hallow words.

3 If the defendant -- as we look back in the  
4 history of the case, first he denies that he's done  
5 wrong, then he argues that he simply is right. You  
6 recall from the interview that he had with  
7 Mr. Stevenson there was a debate back and forth in  
8 2008 already about him being told he was selling a  
9 security.

10 The defendant's response was, I am not. But  
11 curiously then he changed the caption on all of his  
12 notes. From "promissory note" to "note."

13 And then finally, if those two don't work,  
14 the defendant turns to pity. You'll recall as he  
15 introduced himself to the members of the jury, and as  
16 he stated in his -- in the social portion of the  
17 presentence investigation report, he had a rough  
18 childhood.

19 And as a result of that and as a result of  
20 his decision to come out later in life that he was  
21 homosexual, people should feel sorry for him. He's  
22 had a hard life. He's had hard things.

23 Well, Your Honor, you've heard throughout  
24 the course of the trial and just today from  
25 Ms. Haning -- I think it would be fair to say that Ms.

1 Haning and Ms. Valente, and every other victim in this  
2 case have not had an easy life either by a mere  
3 function of their health continuing to decline, but  
4 they're not willing to give up. And they are standing  
5 before you, accepting what they should have or may  
6 have done differently. They're accepting  
7 responsibility, contrary to the defendant who is  
8 continually minimized any accountability.

9 And finally, if pity doesn't work, the  
10 defendant lashes out. As you'll recall from the brief  
11 testimony in the -- from the Conseco representative,  
12 the defendant's response, when all else failed, was to  
13 go to them as a whistleblower. But the whistleblower  
14 was with conditions, and the conditions were that  
15 Banker's Life pay for his clients having done business  
16 with him.

17 He admits on a six-hour interview that  
18 Banker's Life had nothing to do with this; yet he  
19 says, Boy, it would be really bad if the media got  
20 ahold of all this dirty laundry that I just talked to  
21 you about, so we need to fix this, Banker's Life.

22 Defense brings up the lawsuit. In speaking  
23 with the representatives and the civil attorneys, they  
24 don't have an exact dollar amount, but what we do know  
25 is that the deferred compensation amount in

1 Mr. Mendenhall's account is roughly \$200,000, which is  
2 a fraction of what he owes.

3 That brings me to what the People are asking  
4 for by way of an actual sentence. The People do not  
5 believe that probation is appropriate. Given the  
6 nature of the crime, the risk of the defendant  
7 re-offending, which the People have sincere concerns  
8 about, and the defendant's undermining of and  
9 disrespect for the law, probation is not a good  
10 solution.

11 The same holds true for Community  
12 Corrections. The People believe that although a  
13 fantastic program, it's not designed to adequately  
14 supervise an economic offender. And just because he's  
15 nonviolent doesn't make him less of a risk. In fact,  
16 as I have said, I think it makes him more of a risk.

17 As a result the defendant's manipulative  
18 personality and ability to adapt his behavior to  
19 minimize the situation, to seek pity, and to lash out,  
20 he imposes a credible danger to the community, which  
21 would allow him to commit additional crimes without  
22 fear of punishment.

23 Therefore, Your Honor, the People are asking  
24 in this case -- the People and the victims, both those  
25 you've heard from today, those present today, as well

1 as those who could not be present, that you send a  
2 very strong and unequivocal message so Mr. Mendenhall.  
3 His conduct will not be tolerated.

4 We ask that you sentence him for at least 16  
5 separate acts of conscious deception and theft of  
6 elderly victims and their life savings being taken  
7 from them.

8 Counsel points out that this request by the  
9 People is disparate from that in other cases handed  
10 down by the Denver bench.

11 I would note that eight of the cases cited  
12 by the defendant involve nothing about securities  
13 fraud, pure and simple. They did not. They have  
14 involved, theft, computer crime, forgery.

15 Notably absent was Mr. Frederick Dryer, who  
16 actually was convicted in 2007 of COCCA racketeering  
17 as well as numerous counts of securities fraud and  
18 theft, for which he received a 132-year sentence.

19 I do ask the Court to sentence in accord  
20 with Hoover. Because in the Hoover case, each piece,  
21 each conduct as it relates to the victim was  
22 acknowledged by the Court and was acknowledged as  
23 receiving acknowledgment in the sentence handed down.

24 Your Honor, anything but a lengthy prison  
25 sentence that acknowledges the effect that



1 Mr. Mendenhall's conduct has had on each and every  
2 victim in this case would unduly depreciate the  
3 severity and the situation and the defendant's  
4 continued lack of respect for the law. Thank you.

5 THE COURT: All right. Mr. Renner.

6 MR. RENNER: Your Honor, I was going to be  
7 brief because I think I stated most of what I need to  
8 say in the memorandum. However, I think I do need to  
9 respond to some of the allegations made by Ms. Gerdes.

10 She describes Mr. Mendenhall as being a  
11 predator. And in the memorandum provided to the  
12 Court, there's the letter from Mr. Best. Mr. Best is  
13 someone who worked as a supervisor at Banker's Life  
14 for many years, worked with Mr. Mendenhall.

15 And he points out that during the time, the  
16 lengthy period of time that he worked with  
17 Mr. Mendenhall, Mr. Mendenhall was the person that  
18 they pointed out as an example of ethical behavior.  
19 He's the person who sold the clients what they needed,  
20 not what he wanted to sell them to make a bigger  
21 commission. And they put him with the younger agents  
22 to teach them that.

23 And I think the Court heard during the  
24 course of the testimony of this trial from many of the  
25 victims talking about how they established their

1 relationship with Mr. Mendenhall at Banker's and how  
2 they were very satisfied with his taking care of their  
3 insurance and financial needs. It wasn't a situation  
4 where he was out trying to sell them as much as  
5 possible. It was a situation where he was selling  
6 them what they needed. And the ones who testified in  
7 regard to that relationship all said, We were very  
8 happy with him.

9           And I think to say that he's some kind of  
10 predator would presuppose that for the past 25 years  
11 working at Banker's Life this ethical behavior and  
12 this concern for his clients was something done in  
13 anticipation of being able at some point to steal  
14 people's money. And I don't think that's logical.

15           He cared about his clients and he cared  
16 about their needs, because that's who he is. So to  
17 say he's a predator, I think discounts his entire work  
18 and personal history.

19           In regard to -- Ms. Gerdes talked about the  
20 excuses that Mr. Mendenhall made. And, again, the  
21 Court heard the testimony. There were victims who  
22 said when it came time to pay back the money, I talked  
23 to Michael and he said, Because of the problem with  
24 the economy, I cannot sell these houses, I cannot pay  
25 you back. That was the truth, that was the reality;

1 and he was up front and open with them and told them  
2 that.

3 In regard to the situation with the other  
4 case that was charged by the Denver DA's office, I  
5 wasn't present. Ms. Maski (phonetic) was representing  
6 Mr. Mendenhall at this time. It's my understanding  
7 that Ms. Gerdes came in and requested a restraining  
8 order, that he could not have contact with any of his  
9 Banker's Life clients. And that Judge Laff did not  
10 extend it that far. He said, You cannot have contact  
11 with any of the victims in this case or any Banker's  
12 Life employees. But he refused to extend it as far as  
13 Ms. Gerdes wanted.

14 The transaction in that case was selling a  
15 debenture for Chadbourn, which was a separate company  
16 that he was working on a commission basis for. There  
17 was nothing about that, and there's nothing alleged  
18 that that was anything but a legitimate transaction.  
19 Within a few days, they began to have concerns about  
20 Mr. Mendenhall, they asked for their money back and  
21 they got it back.

22 Ms. Gerdes talked about how Mr. Mendenhall  
23 spent the victims' money on frivolity and waste.  
24 Again, the Court heard the testimony from Ms. Carraro.  
25 The substantial portion of the money that was loaned

1 to Mr. Mendenhall went to these mortgages. As was  
2 testified to, it was upwards of 15, \$16,000 a month  
3 was the burden of these mortgages. And that's where a  
4 significant amount came out.

5 And I asked Ms. Carraro on the stand when we  
6 were looking at her pie charts -- and as the  
7 prosecution points out, Mr. Mendenhall was making a  
8 substantial salary from Banker's Life. And if you  
9 look at that, you see that the amount for his personal  
10 expenses was less by, I think, over a hundred thousand  
11 than what his income was.

12 So he was putting not only his own money  
13 into those properties, but he wasn't spending more  
14 than he was making. So this wasn't a situation where  
15 he was out just living wastefully or frivolously.

16 She talks about the deception of  
17 Mr. Mendenhall. Mr. Mendenhall came in in 2007 and  
18 sat down with the Denver DA's office, and explained to  
19 them exactly what their real estate situation was. He  
20 didn't hide anything. He didn't mischaracterize  
21 anything. He told them exactly why he was borrowing  
22 the money. He told them where he was getting the  
23 money. He told them how he was hoping to pay back the  
24 people. He sat down with the authorities, voluntarily  
25 and explained the whole situation to them, and the

1 reaction to that was nothing.

2 He was not charged. He was not admonished.  
3 They didn't come forward and say, This was going to be  
4 a problem. It was nothing.

5 And the last thing Ms. Gerdes talks about is  
6 his relationship with Banker's Life. And I think in  
7 regard to acceptance of responsibility in this case,  
8 what the Court knows about that, I think goes a long  
9 way.

10 When it got to the point that it was clear  
11 that the market was not going to turn around and  
12 Mr. Mendenhall was not going to be able to sell these  
13 properties in a short period of time and be able to  
14 make enough money to pay back the investors, he looked  
15 for an alternative in how to pay them back.

16 And that was he went to Banker's Life and he  
17 said, You owe me these renewals, this deferred  
18 compensation, retirement income, I want you to take  
19 that and pay back my clients. And that was basically  
20 all of the money he had saved up over the last 25  
21 years for his retirement, he was asking to give to the  
22 Banker's Life -- excuse me, his clients at Banker's  
23 Life.

24 And in pleadings in that case, pleadings  
25 from the Banker's Life side of the equation, that's

1 listed over at 500,000. So they're not disputing the  
2 amount; they're disputing whether they owe it, because  
3 they're saying it was wrongful -- or it was justified  
4 termination. But as far as the amount, they're  
5 admitting that over \$500,000.

6 So I think he had an expectation that he  
7 would be able to get a large sum of money and pay back  
8 these victims.

9 And that's really what I was trying to get  
10 across in the sentencing memorandum. That if you look  
11 at this from the beginning, it was a reasonable real  
12 estate investment that Mr. Mendenhall made. This was  
13 not some predatory scheme where he thought, I'm going  
14 to start into this process and take a whole bunch of  
15 people's money for my own benefit and never pay them  
16 back.

17 This was a reasonable real estate  
18 investment. And when the market crashed, all of a  
19 sudden things changed dramatically.

20 And I think what the Court should be  
21 punishing Mr. Mendenhall for is the fact that in his  
22 desperation to kind of keep the properties viable, to  
23 keep them viable so he could pay back the early  
24 investors, he continued to take on new investors.  
25 That clearly was something that was not good judgment,

1 and I think that is really what the crime is here.

2 But I think, going into it, there was no  
3 predatory desire to steal people's money. It was a  
4 reasonable real estate investment. It's not a  
5 situation where he set up some kind of Ponzi scheme or  
6 investment scheme that he knew from the beginning was  
7 going to be taking everyone's money. It was a  
8 reasonable real estate investment.

9 And I don't think there's anything that was  
10 presented at trial that says that he ever gave up that  
11 goal of paying back the investors. And that's why all  
12 the way up to the very end he was at Banker's Life,  
13 saying, Can you make this right, can you take the  
14 money you owe me and give it to them?

15 So I think that was always a goal of his was  
16 to pay back the people. Again, that's not the actions  
17 of a predator. That's a person who got themselves  
18 into a bad situation and is trying to make it right.  
19 And I think that's what Mr. Mendenhall was basically  
20 doing throughout this situation.

21 I think, in looking at the charts submitted  
22 to the Court, I think a sentence of the kind that  
23 Ms. Gerdes is asking for would be desperate.

24 She's saying they aren't securities fraud.  
25 What I requested from state judicial was cases

1 involving securities fraud, and that's what I got. I  
2 got a chart for the whole state. I cut out all the  
3 other jurisdictions because I felt Denver was the most  
4 relevant.

5 There is a correction that Mr. Hoover was  
6 reduced from 100 years to 50 years by Judge Rappaport.  
7 But if you look at those numbers, the People on that  
8 list who got over ten years prison, there are  
9 differences between them and Mr. Mendenhall.

10 Specifically, number one, many of them were  
11 charged with COCCA, which is Class 2 felony. And I  
12 think COCCA, the reason it's a Class 2 felony is it  
13 does involve the type of behavior that I think  
14 Ms. Gerdes was trying to describe where you're  
15 basically going into the whole venture with the goal  
16 of committing crimes and stealing people's money, and  
17 that's not what we have here. And that's why  
18 Mr. Mendenhall wasn't charged with the COCCA.

19 You have Mr. Destro with a COCCA. There  
20 were 58 victims in that case; he got 20 years DOC.  
21 Mr. Hoover had 45 victims, was charged with COCCA, had  
22 \$15 million in restitution. He got what is now 50  
23 years DOC.

24 Mr. Linville had 26 victims, was charged  
25 with COCCA, got 32 years DOC. Mr. Jackson \$21 million



1 in restitution, 59 counts, 15 years DOC. And then  
2 Mr. Mueller, \$74 million in restitution.

3 If you look at the amount of restitution  
4 here, it's at the bottom of that list. It's just over  
5 a million dollars. I think it's actually under a  
6 million dollars, and then you throw on the prejudgment  
7 interest and it goes over a million or just slightly  
8 over a million to begin with.

9 So he's at the bottom of that list in regard  
10 to the amount of restitution. He doesn't have as many  
11 victims as some of the people who got more time.

12 And I think an important thing to point out  
13 is Mr. Mendenhall, obviously, has no criminal history  
14 other than a 2009 DWAI. And again, I think that says  
15 a lot about Mr. Mendenhall's behavior going into this.  
16 He has no history of committing any crimes, even any  
17 arrests.

18 So for him all of a sudden to just one day  
19 wake up at the age of 40 something and say, I'm going  
20 to start stealing people's money, again, doesn't make  
21 sense.

22 I think he is a good candidate for  
23 probation, and I think he is a good candidate as  
24 someone who can pay back the restitution to the  
25 victims here.

1                   And the Court has read the victim impact  
2                   statements. I think they vary pretty widely on how  
3                   much time or punishment they want from Mr. Mendenhall,  
4                   but they all want their money back. And I think  
5                   Mr. Mendenhall does have a history of picking himself  
6                   up from adversity and becoming financially successful,  
7                   so I think he can do that again, and he could pay back  
8                   the money that's owed.

9                   He still has the pending lawsuit with  
10                  Banker's Life. If he's successful on that, he could  
11                  pay back a significant portion of the restitution.  
12                  But I think in giving him probation, it gives him the  
13                  opportunity to begin paying back. It may be a little  
14                  bit at a time, but it gives him that opportunity to  
15                  make some restitution to the victims.

16                  If the Court is not willing to do that, I  
17                  would ask the Court to sentence him in accord to  
18                  similarly situated defendants as set forth in the  
19                  chart and give him no more than six years DOC.

20                  THE COURT: All right.

21                  MR. RENNER: Before Mr. Mendenhall speaks,  
22                  Mr. Schwartz is here. He'd like to speak on behalf of  
23                  Mr. Mendenhall.

24                  THE COURT: Okay.

25                  MR. SCHWARTZ: Good afternoon, Your Honor.

1 THE COURT: Good afternoon.

2 MR. SCHWARTZ: My name is James Schwartz,  
3 and I thank you for the opportunity to speak on  
4 Michael's behalf.

5 I believe that this case is grossly  
6 misrepresented who I know Michael to be and his  
7 intentions. He's a good mans. He's a man of honor  
8 and unwavering loyalty and commitment. He's  
9 compassionate and loving and someone I would trust  
10 with my life.

11 When he first told me he was going to the  
12 company to blow the whistle at Banker's Life, his  
13 primary concern was the well-being of his clients.  
14 And through this difficult investigation, his clients  
15 continue to be one of his primary concerns. He wants  
16 to be able to continue paying them back.

17 I've talked to Michael every week and have  
18 experienced a change in him, and I believe this change  
19 is positive. He's reconnected with his faith, which  
20 has always been important to him. He isn't blaming  
21 anyone else. He's taking the lessons and figuring how  
22 to apply them for personal growth. He realizes that  
23 material possessions don't define who a person is, and  
24 he wants to simplify his life and be able to help  
25 others and get back.

1           I pray that the Court's unmerciful in their  
2           sentencing, because we all stumble and fall, and  
3           sometimes we just need a little help getting back on  
4           track. Please let Michael come home so he can get a  
5           job and work hard, like he's already done, and make  
6           things right; and afford him the opportunity pay back  
7           his clients and have a second chance at life. Thank  
8           you.

9           MR. RENNER: And Mr. Best who wrote the  
10          letter also wanted to be here. His wife had to go to  
11          the hospital, but he did want to be here.

12          THE COURT: Okay.

13          MR. RENNER: Mr. Mendenhall?

14          THE DEFENDANT: Your Honor, this situation  
15          has been the most regrettable and wrenching situation  
16          of my life. I have been devastated, my family has  
17          been devastated, my friends; but most importantly, my  
18          clients.

19                 I'm absolutely heart broken for my clients,  
20          and to them I say that I'm deeply sorry for this  
21          entire situation. I want each of them to know that  
22          not for a moment was there ever any other intention to  
23          honor my commitments and to pay them back entirely for  
24          the money that they had loaned me.

25                 The prosecution seems to believe that if you

1 say something enough times, it then becomes true.  
2 Only I and my Father in heaven know my heart and know  
3 my intentions were genuine.

4 I'm also sorry to my clients that they were  
5 not able to hear from me during this period of time,  
6 as I was prohibited from speaking to them by the way  
7 of a protection order. They were left to believe  
8 about me whatever the prosecution said and whatever my  
9 former company, Banker's Life, and Conseco said.

10 I went to work for this company right out of  
11 high school. That's the only job I ever had, and I  
12 went on to spend and enjoy a 28-year career with this  
13 company. I don't believe that would have been the  
14 case, if the things about me that have been said were  
15 true.

16 I've always worked hard during my career to  
17 put my clients' needs first and to make sure I was  
18 making suitable recommendations. I believe that the  
19 loans that were given to me on behalf of my clients  
20 were suitable as well. Certainly, based on the real  
21 estate market and the conditions at that time, I had  
22 absolutely no way of predicting the crisis that would  
23 ensue in the markets, and especially in the real  
24 estate market in 2008.

25 I believed I was doing the right thing by

1 taking the situation to my company and seeking their  
2 cooperation in regard to our mutual clients in getting  
3 my clients paid back the monies that were owed me. In  
4 addition to my retirement, there was also about a half  
5 a million dollars in hard costs that I had asked for.

6 In sworn testimony in this courtroom, Rick  
7 Riser from Banker's Life and Consec, stated that in  
8 fact the company was withholding monies from me. He  
9 else stated reluctantly that the senior members of our  
10 corporate management team were aware of these loans  
11 almost a full year in advance before these events  
12 unfolded, and I was not terminated from the company as  
13 he said when they first learned about the loans, but  
14 only after I brought to light corporate misconduct.

15 They have done their best to avoid  
16 responsibility to what they say are their clients and  
17 to make them whole by paying the monies that are owed  
18 me. I am still actively trying to make them  
19 accountable for the monies that they owe me in the  
20 form of a civil lawsuit.

21 I would also note that the company recently  
22 paid out a million dollar-plus settlement in their  
23 Seattle, Washington office based on what they consider  
24 to be circumstances of similar nature. Full and final  
25 payment was made to each and every client that

1 exceeded that \$1 million.

2 I want my clients to know that prior to  
3 these difficult events, during, and even now, I'm  
4 working to make you whole.

5 I pray for you often, asking the most high  
6 God to comfort you, to keep you, and most importantly  
7 to make you whole financially. I am truly sorry to  
8 each of you, and I seek and ask your forgiveness for  
9 involving you in what has turned out to be such a  
10 horrible ordeal.

11 You trusted me, and I will never stop  
12 working for your full restoration. I am the person  
13 that you believed me to be. I'm ashamed and  
14 embarrassed for how this has turned out, and I will  
15 continue to work diligently to make it right. Thank  
16 you.

17 THE COURT: Anything else from either party?

18 MS. GERDES: Your Honor, there's just one  
19 housekeeping matter. I note that according to the  
20 PSI, the restraining order is set to expire May 12th  
21 of 2012. We ask that the restraining order stay in  
22 place during the pendency of the sentence of this case  
23 whatever the Court imposes.

24 MR. RENNER: No objection.

25 THE COURT: Okay. All right. The Court sat

1 through the trial of this matter as well as a portion  
2 of the pretrial matters. I've heard the testimony  
3 both today as well as throughout the trial. I've  
4 heard testimony from the defendant both today and  
5 throughout the trial, and the parties and the  
6 presentence investigative report have painted a  
7 picture of what was going on in this case. And  
8 there's been desperate things said about what kind of  
9 person Mr. Mendenhall was, what kind of person that he  
10 preyed upon and whether he was a predator.

11 What was clear to the Court throughout  
12 hearing this testimony was that for the vast majority  
13 of Mr. Mendenhall's life he was hard working, he was a  
14 good person, he worked for a company, he was loyal.

15 And, as Mr. Renner said, what started out as  
16 a reasonable personal real estate transaction went  
17 south either based on the economy or based on anything  
18 else. The difference is that -- this Court sees that  
19 as being a prelude to what happened is that a lot of  
20 people suffered throughout this crisis or this  
21 downturn, and the difference was that they didn't turn  
22 to others. They suffered the crisis alone. They went  
23 through it. They lost what they had purchased,  
24 whether it was right or wrong, but they didn't drag  
25 other people down with them.



1           I listened to all the people that testified  
2           as to who the victims were in this case. As  
3           Ms. Gerdes pointed out, they were hard-working. They  
4           spent their lives not gaining wealth, but saving  
5           enough to secure their future. And each and every  
6           victim that testified at the court said that, if not a  
7           major chunk, the entirety of that future became  
8           unsecure.

9           These were people that didn't have the money  
10          to put into a real estate transaction and were talked  
11          into it. They were not, based upon the promissory  
12          notes that I read, driven by greed. They were driven  
13          by trust. Nine percent on an investment is not being  
14          greedy for anybody who has lived in the past 30 years.  
15          Nine percent, when you're earning two percent and  
16          someone that you trust says you can get nine percent,  
17          is simply a good deal. And they were not people that  
18          could afford to lose it.

19          When I look at Ponzi schemes and other  
20          things, as Mr. Renner's pointed out specific cases,  
21          but I've taken a long time to look at these different  
22          things, whether they're in the newspaper or otherwise.  
23          Many of the investors are brought in and they are  
24          brought in on their own volition for the purpose of  
25          maximizing an outcome and greed. That is not the case

1 here.

2           These were people that he had met through  
3 Banker's Life. I don't believe he had the intent to  
4 become a predator; but because of his client list, he  
5 preyed on people that couldn't afford to fund his real  
6 estate venture and to lose money in his real estate  
7 venture.

8           It takes on added significance that these  
9 people were not out to make a quick buck. They were  
10 out to trust a man to make them a little bit more  
11 money on what they had accrued over their entire  
12 lifetime.

13           I don't believe Mr. Mendenhall went into  
14 this with the intent to commit a lot of crimes. I  
15 believe he started that behavior when everything was  
16 falling down around him, and he turned to realize that  
17 everyone else was going to have to bail him out of  
18 this; because if he didn't, he would lose what he had  
19 saved for. And at that point it became criminal  
20 behavior and continued for a long period of time when  
21 he should have stopped and when he could have paid  
22 back the money and when he could have let these houses  
23 go or sold them or short sold them or foreclosed them  
24 and make good on his notes. Or not make good on his  
25 notes.

1           If it had been one or two, you just realize  
2 you made an error as a businessman, you try to make up  
3 for it, and you move on. He's been found guilty of 27  
4 counts. Many of those are serious theft, many of them  
5 are securities fraud; but those 27 counts represent a  
6 lot of people, not 27, but a lot of them.

7           And it's that activity that I cannot fathom  
8 for a man who has zero criminal history to run up  
9 Class 3 felony, after Class 3 felony, after Class 3  
10 felony in a sort period of time and never turn back,  
11 never look back.

12           I heard the testimony of the defendant at  
13 trial, and I heard his testimony today. And I will  
14 say, Mr. Mendenhall, you were contrite, you were  
15 apologetic. I truly believe you mean that you didn't  
16 cause any of these people harm, but that's not the  
17 person that testified here on the stand.

18           The person that testified here on the stand  
19 was arrogant, was convinced that he had done nothing  
20 wrong, even after he heard what his actions had caused  
21 to the people that testified one after another, after  
22 another.

23           Based upon all that, Mr. Mendenhall is  
24 somewhat of an enigma, and I don't know what to trust.  
25 But I have read through every victim's statement given

1 to me, and I've listened to the victims that came up  
2 here today, and I listened to what they feel, and I  
3 don't have any reason to doubt their testimony.

4 I get comments about people that can't  
5 sleep, almost universally. I get comments of people  
6 that are elderly to me that I respect that are now  
7 nervous to tell anybody what happened to them, because  
8 they are ashamed. And that sort of emotion coming  
9 from somebody who spent their life working hard is  
10 undue.

11 The Court does not believe that this can be  
12 simply compared to other sentences, whether they're  
13 COCCA cases or not. It's a unique situation with a  
14 unique defendant and unique victims; and what I see  
15 here is a crime wave that occurred over a short period  
16 of time, short in my view, not short to anybody it  
17 affected. And it was a continual one, and it doesn't  
18 deserve probation in any stretch of the imagination.

19 The other side of the coin is this Court has  
20 to balance the ability to fix what's wrong against the  
21 punishment of the defendant; and in this case, what I  
22 see is a man with a high school education and a long  
23 career that gave him standing in Banker's Life, and  
24 that standing will be stripped of him by this mere  
25 matter of conviction in this. He will never deal with

1 securities again. He will never deal in the insurance  
2 companies again. He will never be hired by a company  
3 where he is involved in sales again. And, therefore,  
4 all of the 28 years of skills that he developed are  
5 useless at this point.

6 If I'm to give him probation so that he can  
7 pay it back, I have to assess his viability of being  
8 able to pay them back, and I don't see it happening.  
9 With 27 felony convictions, it's going to be nearly  
10 impossible for him to become employed, let alone  
11 become employed in a situation that would allow him to  
12 pay back a million-plus dollars in restitution.

13 The Court takes all of this into account to  
14 determine what sentence is appropriate in this matter.  
15 And one of the things that I rely very heavily on is  
16 what the victims in this case said throughout their  
17 statements. They all want their money back. This  
18 Court is doubtful it can get that for them. I don't  
19 blame them for wanting their money back.

20 Many of them want him incarcerated for the  
21 rest of his life. I don't believe it's the function  
22 of this Court simply to lock up people for the rest of  
23 their life for retribution at all. The fact of the  
24 matter is is that by the time Mr. Mendenhall were even  
25 able to secure any position or he could pay these

1 people back, there's a reality of the fact that these  
2 people are elderly and will not have much time left  
3 for him to make good on his promises.

4 Based upon all that, the Court has  
5 determined an appropriate sentence in this. I will  
6 say this now, it is complex, because I'm sentencing on  
7 27 felonies.

8 On Count 1, which is securities fraud case,  
9 a generalized securities fraud case, the Court  
10 sentences the defendant to five years in the  
11 Department of Corrections, the mandatory period of  
12 parole of five years.

13 On Count 2, that's the generalized  
14 securities fraud as well, sentence the defendant to  
15 five years in the Department of Corrections with a  
16 mandatory five years of parole. Those counts will run  
17 consecutive to -- concurrent to each other.

18 On Count 3, on Count 4, on Count 5, on Count  
19 8, on Count 9, on Count 10, and Count 11, which varies  
20 between theft and securities fraud, Class 3 felony,  
21 the Court will sentence him on each of those counts to  
22 five years Department of Corrections with a mandatory  
23 period of five years parole. Those joint counts will  
24 run concurrent to each other, but to consecutive to  
25 the original first two.

1           On Count 12 and Count 13, the securities  
2 fraud and theft case, theft count, considering one  
3 particular victim, the Court will sentence him to  
4 another five years in the Department of Corrections  
5 with a five-year mandatory parole. Those sentences  
6 will run consecutive to the prior sentences.

7           On Count 14, on Count 15, on Count 16, on  
8 Count 17, and on Count 18, Court will sentence him  
9 similarly to five years in the Department of  
10 Corrections, five years of mandatory parole. Each of  
11 these counts will run concurrent to each other, but  
12 consecutive to the other counts.

13           On Count 19, on Count 20, on Count 21, on  
14 Count 22, on Count 23, and on Count 24, the Court will  
15 sentence him to five years in the Department of  
16 Corrections with five years of mandatory parole.  
17 Those counts will run concurrent to each other, but  
18 consecutive to the counts that I've listed in the  
19 other sentences.

20           On Counts 25 and 26, the Court will sentence  
21 him to five years in the Department of Corrections,  
22 five years mandatory parole. Those two counts will  
23 run concurrent to each other, but consecutive to the  
24 other counts.

25           Count 27, he'll be sentenced to five years

1 Department of Corrections, five years of mandatory  
2 parole. And that will run concurrent with all of the  
3 counts listed in that.

4 Mr. Mendenhall, that may be confusing and  
5 your attorney may go over it; and it may be confusing  
6 to the people that are listening here. But what that  
7 sentence results in, because I've done the math, is a  
8 25-year sentence to the Department of Corrections  
9 staggered over several different periods with a  
10 mandatory five-year period of parole.

11 When Ms. Valente got up and talked to me  
12 just this afternoon, she said something to me that I  
13 realized when I was imposing this sentence is actually  
14 what happened, but it's not why it happened. She  
15 said, Do to him what he has done to us.

16 You have a long prison sentence ahead of  
17 you; and when you are released from prison, you will  
18 not have any assets, and you'll be of the age of the  
19 victims that you have victimized in this case. And  
20 it's this Court's hope at that point you feel what  
21 they feel.

22 How much presentence confinement time is he  
23 entitled to? I saw the --

24 MR. RENNER: 317 days.

25 THE COURT: Okay.



1 THE COURT: He will be given 317 days of  
2 presentence confinement. A condition of his release  
3 is that he pay restitution in the amount of  
4 \$1,408,667.77. Mr. Renner has perfected his right to  
5 object to that amount in said hearing in the future.

6 All right. With that, he's remanded.

7 MR. RENNER: Ask to be appointed for  
8 purposes of appeal, Your Honor.

9 THE COURT: Granted. Public defender will  
10 be appointed for purposes of the appeal.

11 MR. RENNER: I'll submit a written order.  
12 Thank you.

13 MS. GERDES: Thank you, Your Honor.

14 (Whereupon, the hearing was concluded.)

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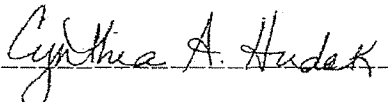
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## 1 REPORTER'S CERTIFICATE

2 This document is a true and complete  
3 transcription of my stenographic notes taken in my  
4 capacity as Officer Reporter, District Court, Denver  
5 County, Colorado, at the time and place noted.

6  
7 Dated this 27th day of November, 2012.

8  
9  
10  
11 

12  
13 Cynthia A. Hudak, RPR

14 Official Reporter

15  
16 Note: Copy transcripts of the foregoing not obtained  
17 directly from the reporter are not certified, as the  
18 integrity of the record cannot be guaranteed.

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## Exhibit 5

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DISTRICT COURT, CITY AND COUNTY  
OF DENVER, STATE OF COLORADO

Lindsey-Flanigan Courthouse  
520 West Colfax  
Denver, Colorado 80204

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THE PEOPLE OF THE STATE OF COLORADO

v.

MICHAEL LEE MENDENHALL,

Defendant.

^COURT USE ONLY^

Case No. 10CR10094  
Courtroom 5C

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FOR THE PEOPLE:  
KANDACE GERDES  
Deputy District Attorney  
Registration No. 21350

FOR THE DEFENDANT:  
BLAKE RENNER  
Deputy State Public Defender  
Registration No. 24757

This matter commenced on Friday, March 2, 2012, before  
the HONORABLE BRIAN WHITNEY, Judge of the Denver District Court, with  
a jury of twelve.

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INDEX OF PROCEEDINGS

Court Reporter's Certificate

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1 MORNING SESSION, FRIDAY, MARCH 2, 2012, 9:20 A.M.

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

3 (The following proceedings were held in open  
4 court in the presence of the jury with the defendant and  
5 counsel present.)

6 THE COURT: All right. The Court has received  
7 questions from the jury. There are approximately eight of  
8 them. They all deal with asking questions of law  
9 concerning the theft counts. And the Court and the  
10 attorneys have talked, and I believe -- anybody can jump  
11 in here and correct me if I'm wrong -- that we're in  
12 agreement that they have been instructed as thoroughly as  
13 they need to be, and we will refer them to the  
14 instructions and their collective judgment based upon  
15 those instructions.

16 MS. GERDES: People agree.

17 MR. RENNER: I agree.

18 THE COURT: All right. Are you both available  
19 throughout the day?

20 MS. GERDES: I'm staying here.

21 (A recess was then taken from 9:21 a.m. until  
22 10:07 a.m.)

23 THE COURT: All right. The Court will call  
24 10CR10094, People versus Mendenhall. The Court has  
25 received a question concerning -- well, the parties have

1 read it, but it concerns one of the boxes on the  
2 verdict -- on one of the verdict forms concerning Rita  
3 Hammes, and they're asking whether the amount is  
4 \$103,542.21 or \$103,452. In other words, did the two  
5 numbers get transposed. I didn't have the original jury  
6 instructions, and so I needed to find out if that was  
7 either a typographical error or what it was.

8 MS. GERDES: Your Honor, I reviewed the verdict  
9 form, and I've also reviewed -- I don't have my copy of  
10 the actual exhibits, but based upon my exhibit list, which  
11 I would trust would be typed correctly, I do show the wire  
12 transfer amount at Exhibit 503 to be \$103,542.21.

13 THE COURT: Whereas, the verdict form says the  
14 other?

15 MS. GERDES: Correct. So I believe there was a  
16 transposition in the verdict form.

17 THE COURT: Okay.

18 MS. GERDES: But exhibit -- literally, the  
19 Exhibit 503 would clarify that issue, because it was  
20 prepared by a third-party bank as to the amount.

21 THE COURT: Okay. And you know, the -- when we  
22 went through the verdict forms and there was no objection,  
23 I didn't review them under a magnifying glass, so I would  
24 not have noticed whether it was a transposition or what.

25 So Mr. Renner, what's your position on how to

1 answer this question? I know you would like to say let's  
2 leave it alone. I guess -- there is obviously an error in  
3 the jury -- in the verdict form. I don't have an answer  
4 off the top of my head. Is a postclosing change of the  
5 verdict forms possible without creating more confusion?  
6 It seems to me that this is -- and so I'd like to hear  
7 from Mr. Renner. It seems to me that this is just two  
8 numbers got switched, not something that was intentionally  
9 put in.

10 MR. RENNER: I think I would agree with that  
11 analysis. I will object -- I will object to any  
12 modifications of the jury instructions. They've been  
13 tendered, they've been deliberating, and I'm objecting to  
14 any modification,

15 THE COURT: Okay.

16 MS. GERDES: And Your Honor, the People's  
17 position is that, as the finders of fact, I believe the  
18 jury is ultimately the party -- or the appropriate  
19 party -- to decide the amount, if any, of theft. We did  
20 designate a amount, a date, and the person. They -- if  
21 they disagree with the number, they disagree with the  
22 number, but given the *Roberts* decision and the crime, that  
23 you define with specificity a theft by marking the boxes,  
24 I don't think that necessarily limits them as to if they  
25 find the amount should be different, especially --



1    whereas, here it appears to be a transpositional error.  
2    So given that they are charged with a specific duty of  
3    finding theft, not in a range, but as to an amount --

4           THE COURT:   Okay.   All right.   Well, I believe,  
5    since it seems to be a transposition and it's in the  
6    verdict forms, and not in the instructions themselves,  
7    that I can let them know that it is a typographical error.  
8    So I'm going to send that back in to them, and they can  
9    make their decision.   I'm not going to point to any piece  
10   of evidence.   I think that would be wrong, so I can tell  
11   them that it's a typographical error.

12           Let me just be clear before I send this back in  
13   and create havoc, the actual number I'm supposed to put  
14   down is the 542 number -- it's the 542 and not the 452?

15           MS. GERDES:   It should be series 542.

16           THE COURT:   Five-four-two.   Okay.

17           All right.

18           (A recess was then taken from 10:12 a.m. until  
19   10:23 a.m.)

20           THE COURT:   Okay.   We're back on the record in  
21   10CR10094.   The jury has informed my bailiff that they  
22   have reached a verdict.   Are we ready to receive a  
23   verdict?

24           MS. GERDES:   People are prepared.

25           MR. RENNER:   Yes, Your Honor.

1 THE COURT: All right. We'll bring the jury in,  
2 then.

3 (The jury returned to the courtroom.)

4 THE COURT: All right. We are back on the  
5 record in -- oops. We're missing one. Sorry.

6 THE JUROR: She's the alternate.

7 THE COURT: That's what I thought. We're back  
8 on the record. The jury is present, the defendant and  
9 attorneys are present.

10 Ms. Hudson, did you end up being the foreperson?

11 THE JUROR: I am.

12 THE COURT: Has the jury reached a verdict in  
13 this matter?

14 THE JUROR: We have.

15 THE COURT: If you can hand that to Bob, and  
16 bring it up here.

17 Thanks.

18 All right. If Mr. Mendenhall could stand up,  
19 please.

20 The jury verdict, charges of securities fraud,  
21 fraud or deceit. We, the jury, find the defendant Michael  
22 Lee Mendenhall, guilty of securities fraud, fraud or  
23 deceit.

24 The jury verdict, charge of securities fraud,  
25 untrue statement or omission, concerning Betty Jean

1 Machaud. We, the jury, find the defendant, Michael Lee  
2 Mendenhall, guilty of securities fraud, untrue statement  
3 or omission, against Betty Jean Machaud.

4 Jury verdict, charge of theft, September 28th,  
5 Betty Jean Machaud. We, the jury, find the defendant,  
6 Michael Lee Mendenhall, guilty of theft against Betty Jean  
7 Machaud.

8 Jury verdict, untrue statement or omission,  
9 concerning Kaljo Schiff. We, the jury, find the  
10 defendant, Michael Lee Mendenhall, guilty of securities  
11 fraud, untrue statement or omission, against Kaljo Schiff.

12 Jury verdict on the charge of theft, series  
13 \$15,000 or more, concerning Betty Jean Michaud and Kaljo  
14 Schiff. We, the jury, find the defendant, Michael Lee  
15 Mendenhall, guilty of theft, series of \$15,000 or more,  
16 against Betty Jean Michaud and Kaljo Schiff.

17 Further, we find that the defendant has  
18 committed the following acts of theft unanimously and  
19 beyond a reasonable doubt. Betty Jean Michaud, May 30th,  
20 2006, \$45,000; Kaljo Schiff, November 29th, 2006, \$20,000.

21 Jury verdict, charges of securities fraud,  
22 untrue statement or omissions concerning Ms. Opal Valente.  
23 We, the jury, find the defendant, Michael Lee Mendenhall,  
24 guilty of securities fraud, untrue statement or omission,  
25 against Opal Valente.

1           Jury verdict, charges of security fraud, untrue  
2 statement or omission. We, the jury, find the defendant,  
3 Michael Lee Mendenhall, guilty of securities fraud, untrue  
4 statement or omission, against Carole Cottrell.

5           Jury verdict, charges of securities fraud,  
6 untrue statement or omission, concerning Joyce Hackler.  
7 We, the jury, find the defendant, Michael Lee Mendenhall,  
8 guilty of securities fraud, untrue statement or omission,  
9 against Joyce Hacker.

10           Jury verdict, charge of theft, series \$20,000 or  
11 more, between and concerning Betty Jean Michaud, Opal  
12 Marie Valente, Carole Cottrell, and Joyce Hackler. We,  
13 the jury, find the defendant, Michael Lee Mendenhall,  
14 guilty of theft of \$20,000 or more against Betty Michaud,  
15 Opal Marie Valente, Carole Cottrell, and Joyce Hackler.

16           Further, we find the defendant committed the  
17 following acts of theft unanimously and beyond a  
18 reasonable doubt: Betty Jean Michaud, August 20th, 2007,  
19 \$101,570; Opal Marie Valente, September 28th, 2007,  
20 \$125,210.02; Carole Cottrell, January 14th, 2008, \$52,000;  
21 Joyce Hackler, February 14th, 2008, \$116,045 --  
22 \$116,045.90.

23           Jury verdict, charge of securities fraud, untrue  
24 statement or omission, Rita Hammes. We, the jury, find  
25 the defendant, Michael Lee Mendenhall, guilty of

1 securities fraud, untrue statement or omission, against  
2 Rita Hammes.

3 Jury verdict, charge of theft, series,  
4 concerning Rita Hammes. We, the jury, find the defendant,  
5 Michael Lee Mendenhall, guilty of theft against Rita  
6 Hammes. Further, we find the defendant committed the  
7 follow acts of theft unanimously and beyond a reasonable  
8 doubt: Rita Hammes on March 21st, 2008, \$103,452.21; Rita  
9 Hammes, August 19th, 2008, \$120,000.

10 Jury verdict, charges of security fraud, untrue  
11 statement or omission concerning Sion Alford. We, the  
12 jury, find the defendant, Michael Lee Mendenhall, guilty  
13 of securities fraud, untrue statement or omission, against  
14 Sion Alford, III.

15 Jury verdict, charge of securities fraud, untrue  
16 statement or omission concerning Fay Marsh. We, the jury,  
17 find the defendant, Michael Lee Mendenhall, guilty of  
18 securities fraud, untrue statement or omission, against  
19 Fay Marsh.

20 Jury verdict, charge of securities fraud, untrue  
21 statement or omission, concerning Grant Midcap. We, the  
22 jury, find the defendant, Michael Lee Mendenhall, guilty  
23 of securities fraud, untrue statement or omission, against  
24 Grant Midcap.

25 Jury verdict, charge of securities fraud, untrue

1 statement or omission, Craig Wessbecker. We, the jury,  
2 find the defendant, Michael Lee Mendenhall, guilty of  
3 securities fraud, untrue statement or omissions, against  
4 Craig A. Wessbecker.

5 Jury verdict, charge of theft, series \$20,000 or  
6 more, concerning Sion Alford, III; Fay Marsh; Grant  
7 Midcap; and Craig Wessbecker. We, the jury, find the  
8 defendant, Michael Lee Mendenhall, guilty of theft, series  
9 \$20,000 or more, against Sion Alford, III, Fay Marsh,  
10 Grant Midcap, and Craig Wessbecker.

11 Further, we find that the defendant committed  
12 the following acts of theft unanimously and beyond a  
13 reasonable doubt: Grant Midcap, October 29th, 2008,  
14 \$20,000; Sion Alford, III, December 1st, 2008, \$30,000;  
15 Fay Marsh, December 3rd, 2008, \$59,555.11; and Grant  
16 Midcap, January 29th, 2009, \$50,000; Craig Wessbecker,  
17 March 2nd, 2009, \$20,000.

18 Jury verdict, charge of securities fraud, untrue  
19 statement or omission, concerning Donald Ledford. We, the  
20 jury, find the defendant, Michael Lee Mendenhall, guilty  
21 of securities fraud, untrue statement or omission, against  
22 Donald Ledford.

23 Jury verdict, charge of securities fraud, untrue  
24 statement or omission, concerning Clara Ledford. We, the  
25 jury, find the defendant, Michael Lee Mendenhall, guilty

1 of securities fraud, untrue statement or omission, against  
2 Clara Ledford.

3 Jury verdict, charge of security fraud, untrue  
4 statement or omission, concerning Edith Berndt. We, the  
5 jury, find the defendant, Michael Lee Mendenhall, guilty  
6 of securities fraud, untrue statement or omission, against  
7 Edith Berndt.

8 Jury verdict, charge of securities fraud, untrue  
9 statement or omission, concerning Delbert Haning. We, the  
10 jury, find the defendant, Michael Lee Mendenhall, guilty  
11 of securities fraud, untrue statement or omission, against  
12 Delbert Haning.

13 Jury verdict, charge of securities fraud, untrue  
14 statement or omission, concerning Virginia Haning. We,  
15 the jury, find the defendant, Michael Lee Mendenhall,  
16 guilty of securities fraud, untrue statement or omission,  
17 against Virginia Haning.

18 Jury verdict, charge of theft, series \$20,000 or  
19 more, concerning Craig Wessbecker, Donald Ledford, Clara  
20 Ledford, Edith Berndt, and Delbert Haning, and Virginia  
21 Haning. We, the jury, find the defendant, Michael Lee  
22 Mendenhall, guilty of theft, series \$20,000 or more,  
23 against Craig A. Wessbecker, Donald E. Ledford, Clara  
24 Ledford, Edith Berndt, and Delbert Haning and Virginia  
25 Haning.

1           Further, we find that the defendant committed  
2 the following acts of theft unanimously and beyond a  
3 reasonable doubt: Craig Wessbecker, May 20th, 2009,  
4 \$15,000; Donald and Clara Ledford, May 27th, 2009,  
5 \$25,000; Donald and Clara Ledford, July 23rd, 2009,  
6 \$25,000; Edith Berndt, August 21st, 2009, \$25,000; Delbert  
7 and Virginia Haning, September 10th, 2009, \$15,588.

8           Jury verdict, charge of securities fraud, untrue  
9 statement or omission concerning Judith Ginnetti. We, the  
10 jury, find the defendant, Michael Lee Mendenhall, guilty  
11 of securities fraud, untrue statement or omission, against  
12 Judith Ginnetti.

13           Jury verdict, charge of theft, series, of  
14 \$20,000 or more, concerning Grant Midcap, Judith Ginnetti,  
15 and Kaljo Schiff. We, the jury, find the defendant,  
16 Michael Lee Mendenhall, guilty of theft, series \$20,000 or  
17 more, against Grant Midcap, Judith Ginnetti, and Kaljo  
18 Schiff.

19           Further, we find that the defendant committed  
20 the following acts of theft unanimously and beyond a  
21 reasonable doubt: Grant Midcap, January 23rd, 2010,  
22 \$20,000; Judith Ginnetti, February 17th, 2010, \$22,251.43,  
23 Kaljo Schiff, April 14th, 2010, \$42,000.

24           Jury verdict, charge of theft, Donald Ledford  
25 and Carole -- Clara -- Ledford. We, the jury, find the



1 defendant, Michael Lee Mendenhall, guilty of theft against  
2 Donald E. Ledford and Clara Ledford.

3 All right. Ms. Hudson, was that and is that the  
4 verdicts of the jury in this matter?

5 THE JUROR: It is.

6 THE COURT: All right. Would anybody like the  
7 jury polled?

8 MS. GERDES: People do not request that.

9 MR. RENNER: Yes, Your Honor.

10 THE COURT: All right. Ms. George, was that and  
11 is that your verdict?

12 THE JUROR: Yes.

13 THE COURT: Okay. Ms. Teglovic, is that -- was  
14 that and is that your verdict?

15 THE JUROR: Yes.

16 THE COURT: And Ms. Jimenez, was that and is  
17 that your verdict?

18 THE JUROR: Yes.

19 THE COURT: Ms. Gorman, was that and is that  
20 your verdict?

21 THE JUROR: Yes.

22 THE COURT: Mr. Haskell, was that and is that  
23 your verdict?

24 THE JUROR: Yes.

25 THE COURT: Okay. Ms. Papsin, was that and is

1 that your verdict?

2 THE JUROR: Yes.

3 THE COURT: Mr. Papsin -- sorry. So now we're  
4 all out of order here. Ms. Variot, was that and is that  
5 your verdict?

6 THE JUROR: Yes.

7 THE COURT: Okay. Ms. Gillian -- Gillilan --  
8 sorry -- was that and is that your verdict?

9 THE JUROR: Yes.

10 THE COURT: Okay. Ms. Barrett-Osborne, was that  
11 and is that your verdict?

12 THE JUROR: Yes.

13 THE COURT: Okay. Ms. Nelson, was that and is  
14 that your verdict?

15 THE JUROR: Yes.

16 THE COURT: And Ms. Pen, was that and is that  
17 your verdict?

18 THE JUROR: Yes.

19 THE COURT: Okay. And finally, Ms. Husband --  
20 Ms. Hudson -- was that and is that your verdict?

21 THE JUROR: Yes.

22 THE COURT: Okay. All right. Ladies and  
23 gentlemen, I want to thank you for your jury service  
24 today, and I'm going to read you a mandatory discharge  
25 instruction. You've heard it once with the alternate, but

1 it now applies to you.

2           You've completed your duties as jurors in this  
3 case, and you are discharged with the thanks of the Court.  
4 The question may arise whether you may now discuss this  
5 case with the lawyers, defendant, or other person, and for  
6 your guidance the Court instructs you that whether you  
7 talk to anyone is entirely your own decision. It is  
8 proper for others to discuss this case with you, and you  
9 may talk to them, but you need not. If you do talk to  
10 them, you can tell them as much or as little as you want  
11 about your deliberations or any facts that influenced your  
12 decision. If any person persists in discussing this case  
13 over your objection or becomes critical of you or your  
14 service, either before or after discussion begins, please  
15 report it to me immediately.

16           And ladies and gentlemen, I want to give you a  
17 special thanks. It's not every day you're called to jury  
18 service in the City and County of Denver and then you're  
19 faced with a trial that lasts as long as this one was. I  
20 know it was a hardship on many of you. You would have  
21 loved to have squeaked out during the voir dire, but you  
22 didn't and you stuck it out and you did a good job, and we  
23 appreciate what you've done for this.

24           I will tell you that the only consolation for  
25 you is for the rest of the calendar year you will not be

1 serving again, but that's not as long as you'd like it,  
2 I'm sure. I do hope the experience was somewhat  
3 informative to you. I do hope that it was an experience  
4 that you look back on favorably. If there's anything that  
5 my staff or I can do that would make jury service better  
6 for the other people that follow you, please feel free to  
7 let us know and we'll try to incorporate that.

8           Again, thank you for the time you've put in. It  
9 was a big commitment and I appreciate you taking it.  
10 You're excused with the thanks of the Court as well as of  
11 the parties.

12           (The jury left the courtroom.)

13           THE COURT: And if counsel could approach for  
14 just a moment.

15           (Bench Conference.)

16           THE COURT: I don't know if you've had a chance  
17 to think about this, but do think about it. The next  
18 trial is scheduled -- I don't know if this affects whether  
19 or not we're going to trial, it may, it not may, but it's  
20 still set during a time that I won't be here. So the more  
21 you can think about whether you want to push that one back  
22 or do something because of this verdict or not, I just  
23 need to let you know.

24           MR. RENNER: Okay.

25           MS. GERDES: Very well, Your Honor. We're set,

1 I believe, March 20th.

2 THE COURT: March 20th, yeah.

3 (The proceedings resumed in open court.)

4 THE COURT: All right. We need to at least on  
5 this matter order a PSI, but because there is another  
6 pending matter, I think we can put that off, unless  
7 there's some reason to order it today.

8 MR. RENNER: I'd ask we go ahead and order it  
9 today.

10 MS. GERDES: I -- I think so as well, Your  
11 Honor. I think we'd like to set a sentencing date.  
12 Obviously, we'll need to notify all of our victims and  
13 they may choose to be here; and given their age and health  
14 considerations, I'd prefer to set that date.

15 THE COURT: Okay. That's fine. All right. The  
16 Court will order a presentence investigative report to be  
17 accomplished -- those usually take -- are taking six to  
18 seven weeks, so we're looking at -- I think to be on the  
19 safe side we're looking at April 20th for sentencing.

20 MR. RENNER: That's fine.

21 MS. GERDES: That's fine with the People. Might  
22 I suggest, given the fact that we may have victims here,  
23 so that we're not tying up the morning docket, we ask for  
24 a 1:30 setting?

25 THE COURT: Yeah. We have to do them at 1:30

1 because that's when the court reporters are available.

2 MS. GERDES: Even better.

3 THE COURT: Yeah. So we'll be doing it at 1:30  
4 in the afternoon.

5 All right. And when is the pretrial conference  
6 for the second trial in this matter?

7 THE CLERK: I set it for dispo next Thursday.

8 THE COURT: Okay. So it's set next Thursday.  
9 So as far as that case goes, we're still on the docket,  
10 although the attorneys -- I just mentioned it up here.  
11 I'm not trying to keep anything secret. I was hoping the  
12 jury wouldn't hear, but the Court has difficulty with that  
13 date but will do what it needs to do to take care of that  
14 matter.

15 All right. So Mr. Mendenhall is remanded to the  
16 custody of the sheriff.

17 (The proceedings were concluded at 10:43 a.m.)

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REPORTER'S CERTIFICATE

I, Elizabeth K. Ellis, do hereby certify that I am a Registered Professional Reporter within and for the State of Colorado, Official Reporter for the Second Judicial District Court, Courtroom 5C, at Denver, Colorado; that as such reporter, I was present upon the occasion of the Trial in the above-entitled matter at the aforesaid time and place and that I stenographically recorded all proceedings had.

I do hereby certify that I reduced my said shorthand notes to typewritten form and the foregoing pages, numbered 1 through 19 inclusive, constitute a full and correct transcript of shorthand notes so taken as aforesaid.

IN WITNESS WHEREOF, I have hereunto set my hand this 21st day of August, 2012.

S\ Elizabeth K. Ellis  
Elizabeth K. Ellis, RPR

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11 recorded all proceedings had.

12 I do hereby certify that I reduced my said  
13 shorthand notes to typewritten form and the foregoing  
14 pages, numbered 1 through 19 inclusive, constitute a full  
15 and correct transcript of shorthand notes so taken as  
16 aforesaid.

17 IN WITNESS WHEREOF, I have hereunto set my hand  
18 this 21st day of August, 2012.

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S\ Elizabeth K. Ellis  
Elizabeth K. Ellis, RPR

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DISTRICT COURT, CITY AND COUNTY  
OF DENVER, STATE OF COLORADO

Lindsey-Flanigan Courthouse  
520 West Colfax  
Denver, Colorado 80204

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THE PEOPLE OF THE STATE OF COLORADO

v.

MICHAEL LEE MENDENHALL,

Defendant.

^COURT USE ONLY^

Case No. 10CR10094  
Courtroom 5C

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FOR THE PEOPLE:  
KANDACE GERDES  
Deputy District Attorney  
Registration No. 21350

FOR THE DEFENDANT:  
BLAKE RENNER  
Deputy State Public Defender  
Registration No. 24757

This matter commenced on Friday, March 2, 2012, before  
the HONORABLE BRIAN WHITNEY, Judge of the Denver District Court, with  
a jury of twelve.

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1 MORNING SESSION, FRIDAY, MARCH 2, 2012, 9:20 A.M.

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

3 (The following proceedings were held in open  
4 court in the presence of the jury with the defendant and  
5 counsel present.)

6 THE COURT: All right. The Court has received  
7 questions from the jury. There are approximately eight of  
8 them. They all deal with asking questions of law  
9 concerning the theft counts. And the Court and the  
10 attorneys have talked, and I believe -- anybody can jump  
11 in here and correct me if I'm wrong -- that we're in  
12 agreement that they have been instructed as thoroughly as  
13 they need to be, and we will refer them to the  
14 instructions and their collective judgment based upon  
15 those instructions.

16 MS. GERDES: People agree.

17 MR. RENNER: I agree.

18 THE COURT: All right. Are you both available  
19 throughout the day?

20 MS. GERDES: I'm staying here.

21 (A recess was then taken from 9:21 a.m. until  
22 10:07 a.m.)

23 THE COURT: All right. The Court will call  
24 10CR10094, People versus Mendenhall. The Court has  
25 received a question concerning -- well, the parties have

1 read it, but it concerns one of the boxes on the  
2 verdict -- on one of the verdict forms concerning Rita  
3 Hammes, and they're asking whether the amount is  
4 \$103,542.21 or \$103,452. In other words, did the two  
5 numbers get transposed. I didn't have the original jury  
6 instructions, and so I needed to find out if that was  
7 either a typographical error or what it was.

8 MS. GERDES: Your Honor, I reviewed the verdict  
9 form, and I've also reviewed -- I don't have my copy of  
10 the actual exhibits, but based upon my exhibit list, which  
11 I would trust would be typed correctly, I do show the wire  
12 transfer amount at Exhibit 503 to be \$103,542.21.

13 THE COURT: Whereas, the verdict form says the  
14 other?

15 MS. GERDES: Correct. So I believe there was a  
16 transposition in the verdict form.

17 THE COURT: Okay.

18 MS. GERDES: But exhibit -- literally, the  
19 Exhibit 503 would clarify that issue, because it was  
20 prepared by a third-party bank as to the amount.

21 THE COURT: Okay. And you know, the -- when we  
22 went through the verdict forms and there was no objection,  
23 I didn't review them under a magnifying glass, so I would  
24 not have noticed whether it was a transposition or what.

25 So Mr. Renner, what's your position on how to

1 answer this question? I know you would like to say let's  
2 leave it alone. I guess -- there is obviously an error in  
3 the jury -- in the verdict form. I don't have an answer  
4 off the top of my head. Is a postclosing change of the  
5 verdict forms possible without creating more confusion?  
6 It seems to me that this is -- and so I'd like to hear  
7 from Mr. Renner. It seems to me that this is just two  
8 numbers got switched, not something that was intentionally  
9 put in.

10 MR. RENNER: I think I would agree with that  
11 analysis. I will object -- I will object to any  
12 modifications of the jury instructions. They've been  
13 tendered, they've been deliberating, and I'm objecting to  
14 any modification,

15 THE COURT: Okay.

16 MS. GERDES: And Your Honor, the People's  
17 position is that, as the finders of fact, I believe the  
18 jury is ultimately the party -- or the appropriate  
19 party -- to decide the amount, if any, of theft. We did  
20 designate a amount, a date, and the person. They -- if  
21 they disagree with the number, they disagree with the  
22 number, but given the Roberts decision and the crime, that  
23 you define with specificity a theft by marking the boxes,  
24 I don't think that necessarily limits them as to if they  
25 find the amount should be different, especially --

1    whereas, here it appears to be a transpositional error.  
2    So given that they are charged with a specific duty of  
3    finding theft, not in a range, but as to an amount --

4           THE COURT:   Okay.   All right.   Well, I believe,  
5    since it seems to be a transposition and it's in the  
6    verdict forms, and not in the instructions themselves,  
7    that I can let them know that it is a typographical error.  
8    So I'm going to send that back in to them, and they can  
9    make their decision.   I'm not going to point to any piece  
10   of evidence.   I think that would be wrong, so I can tell  
11   them that it's a typographical error.

12           Let me just be clear before I send this back in  
13   and create havoc, the actual number I'm supposed to put  
14   down is the 542 number -- it's the 542 and not the 452?

15           MS. GERDES:   It should be series 542.

16           THE COURT:   Five-four-two.   Okay.

17           All right.

18           (A recess was then taken from 10:12 a.m. until  
19   10:23 a.m.)

20           THE COURT:   Okay.   We're back on the record in  
21   10CR10094.   The jury has informed my bailiff that they  
22   have reached a verdict.   Are we ready to receive a  
23   verdict?

24           MS. GERDES:   People are prepared.

25           MR. RENNER:   Yes, Your Honor.

1 THE COURT: All right. We'll bring the jury in,  
2 then.

3 (The jury returned to the courtroom.)

4 THE COURT: All right. We are back on the  
5 record in -- oops. We're missing one. Sorry.

6 THE JUROR: She's the alternate.

7 THE COURT: That's what I thought. We're back  
8 on the record. The jury is present, the defendant and  
9 attorneys are present.

10 Ms. Hudson, did you end up being the foreperson?

11 THE JUROR: I am.

12 THE COURT: Has the jury reached a verdict in  
13 this matter?

14 THE JUROR: We have.

15 THE COURT: If you can hand that to Bob, and  
16 bring it up here.

17 Thanks.

18 All right. If Mr. Mendenhall could stand up,  
19 please.

20 The jury verdict, charges of securities fraud,  
21 fraud or deceit. We, the jury, find the defendant Michael  
22 Lee Mendenhall, guilty of securities fraud, fraud or  
23 deceit.

24 The jury verdict, charge of securities fraud,  
25 untrue statement or omission, concerning Betty Jean

1 Machaud. We, the jury, find the defendant, Michael Lee  
2 Mendenhall, guilty of securities fraud, untrue statement  
3 or omission, against Betty Jean Machaud.

4 Jury verdict, charge of theft, September 28th,  
5 Betty Jean Machaud. We, the jury, find the defendant,  
6 Michael Lee Mendenhall, guilty of theft against Betty Jean  
7 Machaud.

8 Jury verdict, untrue statement or omission,  
9 concerning Kaljo Schiff. We, the jury, find the  
10 defendant, Michael Lee Mendenhall, guilty of securities  
11 fraud, untrue statement or omission, against Kaljo Schiff.

12 Jury verdict on the charge of theft, series  
13 \$15,000 or more, concerning Betty Jean Michaud and Kaljo  
14 Schiff. We, the jury, find the defendant, Michael Lee  
15 Mendenhall, guilty of theft, series of \$15,000 or more,  
16 against Betty Jean Michaud and Kaljo Schiff.

17 Further, we find that the defendant has  
18 committed the following acts of theft unanimously and  
19 beyond a reasonable doubt. Betty Jean Michaud, May 30th,  
20 2006, \$45,000; Kaljo Schiff, November 29th, 2006, \$20,000.

21 Jury verdict, charges of securities fraud,  
22 untrue statement or omissions concerning Ms. Opal Valente.  
23 We, the jury, find the defendant, Michael Lee Mendenhall,  
24 guilty of securities fraud, untrue statement or omission,  
25 against Opal Valente.



1           Jury verdict, charges of security fraud, untrue  
2 statement or omission. We, the jury, find the defendant,  
3 Michael Lee Mendenhall, guilty of securities fraud, untrue  
4 statement or omission, against Carole Cottrell.

5           Jury verdict, charges of securities fraud,  
6 untrue statement or omission, concerning Joyce Hackler.  
7 We, the jury, find the defendant, Michael Lee Mendenhall,  
8 guilty of securities fraud, untrue statement or omission,  
9 against Joyce Hacker.

10           Jury verdict, charge of theft, series \$20,000 or  
11 more, between and concerning Betty Jean Michaud, Opal  
12 Marie Valente, Carole Cottrell, and Joyce Hackler. We,  
13 the jury, find the defendant, Michael Lee Mendenhall,  
14 guilty of theft of \$20,000 or more against Betty Michaud,  
15 Opal Marie Valente, Carole Cottrell, and Joyce Hackler.

16           Further, we find the defendant committed the  
17 following acts of theft unanimously and beyond a  
18 reasonable doubt: Betty Jean Michaud, August 20th, 2007,  
19 \$101,570; Opal Marie Valente, September 28th, 2007,  
20 \$125,210.02; Carole Cottrell, January 14th, 2008, \$52,000;  
21 Joyce Hackler, February 14th, 2008, \$116,045 --  
22 \$116,045.90.

23           Jury verdict, charge of securities fraud, untrue  
24 statement or omission, Rita Hammes. We, the jury, find  
25 the defendant, Michael Lee Mendenhall, guilty of

1 securities fraud, untrue statement or omission, against  
2 Rita Hammes.

3 Jury verdict, charge of theft, series,  
4 concerning Rita Hammes. We, the jury, find the defendant,  
5 Michael Lee Mendenhall, guilty of theft against Rita  
6 Hammes. Further, we find the defendant committed the  
7 follow acts of theft unanimously and beyond a reasonable  
8 doubt: Rita Hammes on March 21st, 2008, \$103,452.21; Rita  
9 Hammes, August 19th, 2008, \$120,000.

10 Jury verdict, charges of security fraud, untrue  
11 statement or omission concerning Sion Alford. We, the  
12 jury, find the defendant, Michael Lee Mendenhall, guilty  
13 of securities fraud, untrue statement or omission, against  
14 Sion Alford, III.

15 Jury verdict, charge of securities fraud, untrue  
16 statement or omission concerning Fay Marsh. We, the jury,  
17 find the defendant, Michael Lee Mendenhall, guilty of  
18 securities fraud, untrue statement or omission, against  
19 Fay Marsh.

20 Jury verdict, charge of securities fraud, untrue  
21 statement or omission, concerning Grant Midcap. We, the  
22 jury, find the defendant, Michael Lee Mendenhall, guilty  
23 of securities fraud, untrue statement or omission, against  
24 Grant Midcap.

25 Jury verdict, charge of securities fraud, untrue

1 statement or omission, Craig Wessbecker. We, the jury,  
2 find the defendant, Michael Lee Mendenhall, guilty of  
3 securities fraud, untrue statement or omissions, against  
4 Craig A. Wessbecker.

5 Jury verdict, charge of theft, series \$20,000 or  
6 more, concerning Sion Alford, III; Fay Marsh; Grant  
7 Midcap; and Craig Wessbecker. We, the jury, find the  
8 defendant, Michael Lee Mendenhall, guilty of theft, series  
9 \$20,000 or more, against Sion Alford, III, Fay Marsh,  
10 Grant Midcap, and Craig Wessbecker.

11 Further, we find that the defendant committed  
12 the following acts of theft unanimously and beyond a  
13 reasonable doubt: Grant Midcap, October 29th, 2008,  
14 \$20,000; Sion Alford, III, December 1st, 2008, \$30,000;  
15 Fay Marsh, December 3rd, 2008, \$59,555.11; and Grant  
16 Midcap, January 29th, 2009, \$50,000; Craig Wessbecker,  
17 March 2nd, 2009, \$20,000.

18 Jury verdict, charge of securities fraud, untrue  
19 statement or omission, concerning Donald Ledford. We, the  
20 jury, find the defendant, Michael Lee Mendenhall, guilty  
21 of securities fraud, untrue statement or omission, against  
22 Donald Ledford.

23 Jury verdict, charge of securities fraud, untrue  
24 statement or omission, concerning Clara Ledford. We, the  
25 jury, find the defendant, Michael Lee Mendenhall, guilty

1 of securities fraud, untrue statement or omission, against  
2 Clara Ledford.

3 Jury verdict, charge of security fraud, untrue  
4 statement or omission, concerning Edith Berndt. We, the  
5 jury, find the defendant, Michael Lee Mendenhall, guilty  
6 of securities fraud, untrue statement or omission, against  
7 Edith Berndt.

8 Jury verdict, charge of securities fraud, untrue  
9 statement or omission, concerning Delbert Haning. We, the  
10 jury, find the defendant, Michael Lee Mendenhall, guilty  
11 of securities fraud, untrue statement or omission, against  
12 Delbert Haning.

13 Jury verdict, charge of securities fraud, untrue  
14 statement or omission, concerning Virginia Haning. We,  
15 the jury, find the defendant, Michael Lee Mendenhall,  
16 guilty of securities fraud, untrue statement or omission,  
17 against Virginia Haning.

18 Jury verdict, charge of theft, series \$20,000 or  
19 more, concerning Craig Wessbecker, Donald Ledford, Clara  
20 Ledford, Edith Berndt, and Delbert Haning, and Virginia  
21 Haning. We, the jury, find the defendant, Michael Lee  
22 Mendenhall, guilty of theft, series \$20,000 or more,  
23 against Craig A. Wessbecker, Donald E. Ledford, Clara  
24 Ledford, Edith Berndt, and Delbert Haning and Virginia  
25 Haning.

1           Further, we find that the defendant committed  
2 the following acts of theft unanimously and beyond a  
3 reasonable doubt: Craig Wessbecker, May 20th, 2009,  
4 \$15,000; Donald and Clara Ledford, May 27th, 2009,  
5 \$25,000; Donald and Clara Ledford, July 23rd, 2009,  
6 \$25,000; Edith Berndt, August 21st, 2009, \$25,000; Delbert  
7 and Virginia Haning, September 10th, 2009, \$15,588.

8           Jury verdict, charge of securities fraud, untrue  
9 statement or omission concerning Judith Ginnetti. We, the  
10 jury, find the defendant, Michael Lee Mendenhall, guilty  
11 of securities fraud, untrue statement or omission, against  
12 Judith Ginnetti.

13           Jury verdict, charge of theft, series, of  
14 \$20,000 or more, concerning Grant Midcap, Judith Ginnetti,  
15 and Kaljo Schiff. We, the jury, find the defendant,  
16 Michael Lee Mendenhall, guilty of theft, series \$20,000 or  
17 more, against Grant Midcap, Judith Ginnetti, and Kaljo  
18 Schiff.

19           Further, we find that the defendant committed  
20 the following acts of theft unanimously and beyond a  
21 reasonable doubt: Grant Midcap, January 23rd, 2010,  
22 \$20,000; Judith Ginnetti, February 17th, 2010, \$22,251.43,  
23 Kaljo Schiff, April 14th, 2010, \$42,000.

24           Jury verdict, charge of theft, Donald Ledford  
25 and Carole -- Clara -- Ledford. We, the jury, find the



1 that your verdict?

2 THE JUROR: Yes.

3 THE COURT: Mr. Papsin -- sorry. So now we're  
4 all out of order here. Ms. Variot, was that and is that  
5 your verdict?

6 THE JUROR: Yes.

7 THE COURT: Okay. Ms. Gillian -- Gillilan --  
8 sorry -- was that and is that your verdict?

9 THE JUROR: Yes.

10 THE COURT: Okay. Ms. Barrett-Osborne, was that  
11 and is that your verdict?

12 THE JUROR: Yes.

13 THE COURT: Okay. Ms. Nelson, was that and is  
14 that your verdict?

15 THE JUROR: Yes.

16 THE COURT: And Ms. Pen, was that and is that  
17 your verdict?

18 THE JUROR: Yes.

19 THE COURT: Okay. And finally, Ms. Husband --  
20 Ms. Hudson -- was that and is that your verdict?

21 THE JUROR: Yes.

22 THE COURT: Okay. All right. Ladies and  
23 gentlemen, I want to thank you for your jury service  
24 today, and I'm going to read you a mandatory discharge  
25 instruction. You've heard it once with the alternate, but

1 it now applies to you.

2           You've completed your duties as jurors in this  
3 case, and you are discharged with the thanks of the Court.  
4 The question may arise whether you may now discuss this  
5 case with the lawyers, defendant, or other person, and for  
6 your guidance the Court instructs you that whether you  
7 talk to anyone is entirely your own decision. It is  
8 proper for others to discuss this case with you, and you  
9 may talk to them, but you need not. If you do talk to  
10 them, you can tell them as much or as little as you want  
11 about your deliberations or any facts that influenced your  
12 decision. If any person persists in discussing this case  
13 over your objection or becomes critical of you or your  
14 service, either before or after discussion begins, please  
15 report it to me immediately.

16           And ladies and gentlemen, I want to give you a  
17 special thanks. It's not every day you're called to jury  
18 service in the City and County of Denver and then you're  
19 faced with a trial that lasts as long as this one was. I  
20 know it was a hardship on many of you. You would have  
21 loved to have squeaked out during the voir dire, but you  
22 didn't and you stuck it out and you did a good job, and we  
23 appreciate what you've done for this.

24           I will tell you that the only consolation for  
25 you is for the rest of the calendar year you will not be



1 serving again, but that's not as long as you'd like it,  
2 I'm sure. I do hope the experience was somewhat  
3 informative to you. I do hope that it was an experience  
4 that you look back on favorably. If there's anything that  
5 my staff or I can do that would make jury service better  
6 for the other people that follow you, please feel free to  
7 let us know and we'll try to incorporate that.

8           Again, thank you for the time you've put in. It  
9 was a big commitment and I appreciate you taking it.  
10 You're excused with the thanks of the Court as well as of  
11 the parties.

12           (The jury left the courtroom.)

13           THE COURT: And if counsel could approach for  
14 just a moment.

15           (Bench Conference.)

16           THE COURT: I don't know if you've had a chance  
17 to think about this, but do think about it. The next  
18 trial is scheduled -- I don't know if this affects whether  
19 or not we're going to trial, it may, it not may, but it's  
20 still set during a time that I won't be here. So the more  
21 you can think about whether you want to push that one back  
22 or do something because of this verdict or not, I just  
23 need to let you know.

24           MR. RENNER: Okay.

25           MS. GERDES: Very well, Your Honor. We're set,

1 I believe, March 20th.

2 THE COURT: March 20th, yeah.

3 (The proceedings resumed in open court.)

4 THE COURT: All right. We need to at least on  
5 this matter order a PSI, but because there is another  
6 pending matter, I think we can put that off, unless  
7 there's some reason to order it today.

8 MR. RENNER: I'd ask we go ahead and order it  
9 today.

10 MS. GERDES: I -- I think so as well, Your  
11 Honor. I think we'd like to set a sentencing date.  
12 Obviously, we'll need to notify all of our victims and  
13 they may choose to be here; and given their age and health  
14 considerations, I'd prefer to set that date.

15 THE COURT: Okay. That's fine. All right. The  
16 Court will order a presentence investigative report to be  
17 accomplished -- those usually take -- are taking six to  
18 seven weeks, so we're looking at -- I think to be on the  
19 safe side we're looking at April 20th for sentencing.

20 MR. RENNER: That's fine.

21 MS. GERDES: That's fine with the People. Might  
22 I suggest, given the fact that we may have victims here,  
23 so that we're not tying up the morning docket, we ask for  
24 a 1:30 setting?

25 THE COURT: Yeah. We have to do them at 1:30

1 because that's when the court reporters are available.

2 MS. GERDES: Even better.

3 THE COURT: Yeah. So we'll be doing it at 1:30  
4 in the afternoon.

5 All right. And when is the pretrial conference  
6 for the second trial in this matter?

7 THE CLERK: I set it for dispo next Thursday.

8 THE COURT: Okay. So it's set next Thursday.  
9 So as far as that case goes, we're still on the docket,  
10 although the attorneys -- I just mentioned it up here.  
11 I'm not trying to keep anything secret. I was hoping the  
12 jury wouldn't hear, but the Court has difficulty with that  
13 date but will do what it needs to do to take care of that  
14 matter.

15 All right. So Mr. Mendenhall is remanded to the  
16 custody of the sheriff.

17 (The proceedings were concluded at 10:43 a.m.)

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REPORTER'S CERTIFICATE

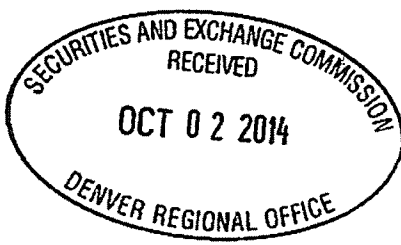
I, Elizabeth K. Ellis, do hereby certify that I am a Registered Professional Reporter within and for the State of Colorado, Official Reporter for the Second Judicial District Court, Courtroom 5C, at Denver, Colorado; that as such reporter, I was present upon the occasion of the Trial in the above-entitled matter at the aforesaid time and place and that I stenographically recorded all proceedings had.

I do hereby certify that I reduced my said shorthand notes to typewritten form and the foregoing pages, numbered 1 through 19 inclusive, constitute a full and correct transcript of shorthand notes so taken as aforesaid.

IN WITNESS WHEREOF, I have hereunto set my hand this 21st day of August, 2012.

S\ Elizabeth K. Ellis  
Elizabeth K. Ellis, RPR

# Exhibit 6

<p>COURT OF APPEALS, STATE OF COLORADO</p> <p>Ralph L. Carr Judicial Center 2 East 14<sup>th</sup> Ave. Denver, CO 80203</p>	 <p>♦ COURT USE ONLY ♦</p>
<p>Denver District Court Honorable Kenneth M. Laff, Brian R. Whitney, Catherine Lemon Case Number 11CR10094</p>	
<p>THE PEOPLE OF THE STATE OF COLORADO</p> <p>Plaintiff-Appellee</p> <p>v.</p> <p>MICHAEL MENDENHALL</p> <p>Defendant-Appellant</p>	
<p>Douglas K. Wilson, Colorado State Public Defender RYANN S. HARDMAN, #37922 1300 Broadway, Suite 300 Denver, CO 80203</p> <p><a href="mailto:PDApp.Service@coloradodefenders.us">PDApp.Service@coloradodefenders.us</a> (303) 764-1400 (Telephone)</p>	<p>Case Number: 12CA1171</p>
<p>OPENING BRIEF</p>	

A

<p>COURT OF APPEALS, STATE OF COLORADO</p> <p>Ralph L. Carr Judicial Center 2 East 14<sup>th</sup> Ave. Denver, CO 80203</p>	<p>▲ COURT USE ONLY ▲</p>
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<p>Douglas K. Wilson, Colorado State Public Defender RYANN S. HARDMAN, #37922 1300 Broadway, Suite 300 Denver, Colorado 80203</p> <p><a href="mailto:PDApp.Service@coloradodefenders.us">PDApp.Service@coloradodefenders.us</a> (303) 764-1400 (Telephone)</p>	<p>Case Number: 12CA1171</p>
<p>CERTIFICATE OF COMPLIANCE</p>	

I hereby certify that this brief complies with all requirements of C.A.R. 28 and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

The brief complies with C.A.R. 28(g).

It contains 7,541 words.

The brief complies with C.A.R. 28(k).

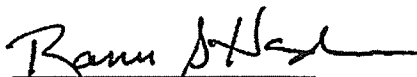
For the party raising the issue:

It contains under a separate heading (1) a concise statement of the applicable standard of appellate review with citation to authority; and (2) a citation to the precise location in the record (R.\_\_\_\_, p.\_\_\_\_), not to an entire document, where the issue was raised and ruled on, if the issue involves (i) admission or exclusion of evidence, (ii) giving or refusing to give a jury instruction, or (iii) any other act or ruling for which the party seeking relief must record an objection or perform some other act to preserve appellate review.

For the party responding to the issue:

It contains, under a separate heading, a statement of whether such party agrees with the opponent's statements concerning the standard of review and preservation for appeal, and if not, why not.

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28 and C.A.R. 32.

  
\_\_\_\_\_  
Signature of attorney or party

A

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## ISSUES PRESENTED

- I. Whether the trial court reversibly erred by instructing the jury that “security means any note,” and whether the court should have instructed the jury to consider the context of the transactions in determining whether the notes were securities.
- II. Whether the trial court reversibly erred by allowing the district attorney’s investigator to testify about his decision whether to pursue criminal charges against Mr. Mendenhall, including statements that he does not bring charges where “criminal filing is not appropriate” and where the circumstances do not “fall under the statute.”
- III. Whether a witness’s testimony and the prosecutor’s statements in closing argument likening Mr. Mendenhall to Bernie Madoff and calling the alleged victims “members of the Greatest Generation” violated Mr. Mendenhall’s rights to due process and to a fair trial by an impartial jury.
- IV. Whether this Court should remand the case for the trial court to clarify Mr. Mendenhall’s sentence and to amend the mittimus, if necessary.

## STATEMENT OF THE CASE

On April 14, 2011, Mr. Mendenhall was charged by indictment with one count of securities fraud – fraud or deceit,<sup>1</sup> seventeen counts of securities fraud – untrue statement or omission,<sup>2</sup> one count of theft of \$15,000 or more,<sup>3</sup> two counts of theft – series of \$15,000 or more,<sup>4</sup> five counts of theft – series of \$20,000 or more,<sup>5</sup> and one

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<sup>1</sup> §11-51-501(1)(c); §11-51-603(1), C.R.S. (F3)

<sup>2</sup> §11-51-501(1)(b); §11-51-603(1), C.R.S. (F3)

<sup>3</sup> §18-4-401(1)(b), (2)(d), C.R.S. (F3)

<sup>4</sup> §18-4-401(1)(b), (4), C.R.S. (F3)

<sup>5</sup> §18-4-401(1)(b), (4), C.R.S. (F3)

count of theft of \$20,000 or more.<sup>6</sup> The dates of the alleged offenses spanned September 2005 through November 2010. (PR, CF, Vol.1, p.1-36) The prosecution later dismissed one count of securities fraud and one count of theft-series (counts six and seven). (Tr. 2/21/12, p.4-5)

Following a trial held February 21 through March 2, 2012, a jury found Mr. Mendenhall guilty. (PR, CF, Vol.2, p.343-73) On April 20, 2012, the court sentenced Mr. Mendenhall to thirty years in prison, plus five years mandatory parole. (PR, CF, Vol.2, p.473-76) Mr. Mendenhall filed a notice of appeal on June 4, 2012. (PR, CF, Vol.2, p.485-87)

### STATEMENT OF THE FACTS

Mr. Mendenhall worked at Banker's Life and Casualty for twenty-eight years as an agent and a manager. (Tr. 2/29/12, p.39, 41, 47, 53) During his career, he established personal relationships with many of his clients. (Tr. 2/29/12, p.80, 229) In 1999, he bought a townhome near the Denver Tech Center, where he lived for many years. (Tr. 2/29/12, p.57-58)

Because the area was experiencing dramatic growth, in 2005, Mr. Mendenhall bought three other townhomes in the development where he lived. (Tr. 2/29/12, p.63-66) Mr. Mendenhall hoped that the houses would increase in value and that he

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<sup>6</sup> §18-4-401(1)(b), (2)(d), C.R.S. (F3)

could sell them for a profit. (Tr. 2/29/12, p.62-65, 67-68) He intended to lease them for three years and then sell them. (Tr. 2/29/12, p.67-68) However, Mr. Mendenhall found that it was difficult to lease the homes. (Tr. 2/29/12, p.72-73)

In 2008, the real estate market crashed. The value of the homes plummeted. (Tr. 2/29/12, p.75) Mr. Mendenhall had difficulty maintaining the real estate. (Tr. 2/29/12, p.73) He began to ask his clients for loans. (Tr. 2/29/12, p.77, 81-82) He hoped that the market would rebound and that his properties would regain value. (Tr. 2/29/12, p.76-77)

All of the loans had similar terms. The clients loaned Mr. Mendenhall an amount of money for one or two years, and Mr. Mendenhall promised to repay them with interest. Mr. Mendenhall documented the loans, entitling them "promissory notes" or "notes." The notes stated that the money was "for the purposes of Mr. Mendenhall's recent residential real estate acquisitions." (*E.g.*, Binder, Ex.202, 304, 402, 504) Mr. Mendenhall testified that he needed the money to pay his four mortgages and many lines of credit that he used to finance the mortgages. (Tr. 2/29/12, p.90, 104) Mr. Mendenhall was not purchasing or developing additional property. (Tr. 2/29/12, p.86)

The prosecution argued that the notes were securities and that Mr. Mendenhall knowingly obtained his clients' money by deception and used it so as to permanently



deprive them of its benefit. (E.g., Tr. 3/1/12, p.11-13, 19, 52-53) The defense argued that the notes were personal loans, not securities, and that Mr. Mendenhall did not obtain his clients' money by deception or use it so as to permanently deprive them of its benefit. (E.g., Tr. 3/1/12, p.37-38, 43-45, 47-48)

### SUMMARY OF THE ARGUMENT

It is the duty of the trial court to correctly instruct the jury on the legal principles raised in a case. The definition of "security" includes "any note." However, the United States Supreme Court has explained that not all "notes" are "securities." In *United States v. McKye*, 734 F.3d 1104, 1109-10 (10th Cir. 2013), the court reasoned that whether the alleged fraud involved a security is an element of the crime of securities fraud and the question of whether a note is a security has both factual and legal components. Thus, it was error for the district court to instruct the jury that "the term 'security' includes a note." Here, the trial court instructed the jury that "security means any note." This error was harmful because it was disputed whether these documents were "securities," because the documents were entitled "notes," and because the State's securities expert testified that the documents at issue were "securities as notes." Moreover, the court should have instructed the jury to consider the context of the transactions in determining whether the notes were

securities, and the court erred by leaving it to defense counsel to attempt to cure the erroneous instruction through argument.

A prosecutor's personal opinion as to a defendant's guilt shall not be outwardly indicated nor presented to the jury. This rule is especially important if the opinion of guilt is delivered in combination with the suggestion that the prosecutor's office would not bring charges against anyone who could not be guilty. In one case, our supreme court has explained that a prosecutor's reference to a "screening process" was improper because it hinted that additional inculpatory evidence unknown to the jury supported the defendant's guilt and revealed the prosecutor's personal opinion. And in another case, a division of this Court has disapproved of comments that "unmistakably implied that because of pre-trial screening, there could be no doubt of defendant's guilt," including statements that, because of investigation by the district attorney's office, no charges are filed "if there is any reasonable doubt." Here, the district attorney's investigator's testimony about his process and decision to pursue charges against Mr. Mendenhall, including statements that he does not bring charges where "criminal filing is not appropriate" and where the circumstances do not "fall under the statute," constituted improper opinion as to Mr. Mendenhall's guilt and implied State access to additional, inculpatory evidence.

Prosecutorial misconduct in argument is a matter of special concern because of the possibility that the jury will give special weight to the prosecutor's arguments. A prosecutor may not use arguments calculated to inflame the passions of the jury and may not encourage jurors to determine a defendant's guilt or innocence on the basis of bias or prejudice. No purpose is served by comparing the defendant to another defendant charged with a notorious crime other than to attempt to impassion the jury. Such a comparison constitutes misconduct. Here, a witness's testimony likening Mr. Mendenhall to Bernie Madoff and the prosecutor's inflammatory statements in closing argument referring to that testimony and calling the alleged victims members of the "Greatest Generation" encouraged the jury to use their passions and prejudices in evaluating the evidence.

These errors, alone or cumulatively, violated Mr. Mendenhall's rights to due process, to a fair trial by an impartial jury, to proof beyond a reasonable doubt of every element necessary to constitute the crime charged, to the presumption of innocence, and to present a defense. This Court should vacate Mr. Mendenhall's convictions and remand the case for a new trial.

Finally, Crim. P. 36 allows a court to correct errors in the record arising from oversight at any time. The trial court's oral pronouncement of Mr. Mendenhall's sentence is conflicting, indicating two different sentences. This Court should remand

the case for the trial court to clarify Mr. Mendenhall's sentence and to amend the mittimus if necessary.

## ARGUMENT

### I. The Trial Court Reversibly Erred by Instructing the Jury that "Security Means Any Note" and by Refusing Mr. Mendenhall's Alternative Instructions.

#### A. Standard of Review

Defense counsel objected to the court's definition of "security," and the court rejected Mr. Mendenhall's alternative instructions. (Tr. 2/29/12, p.120-31)

An appellate court reviews jury instructions de novo to determine whether the instructions as a whole accurately informed the jury of the governing law. *People v. Lucas*, 232 P.3d 155, 162 (Colo. App. 2009). In addition, the court's errors in instructing the jury violated Mr. Mendenhall's rights to due process, to a fair trial, to proof beyond a reasonable doubt of every element necessary to constitute the crime charged, to the presumption of innocence, and to present a defense. *See* U.S. Const. amends. V, VI, XIV; Colo. Const. art. II, §§16, 23, 25. The determination of whether a defendant's constitutional rights have been violated is reviewed de novo. *See, e.g., Quintano v. People*, 105 P.3d 585, 592 (Colo. 2005); *People v. Nave*, 689 P.2d 645, 647 (Colo. App. 1984).

Preserved errors of constitutional magnitude must be reversed unless the State proves they are harmless beyond a reasonable doubt. *Chapman v. California*, 386 U.S. 18, 24 (1967). The question is not whether the error would have changed the outcome but rather whether the error contributed to the verdict. *People v. Cobb*, 962 P.2d 944, 950 (Colo. 1998).

### B. General Law

Due process requires an accused to be presumed innocent at the outset of trial and requires the prosecution to prove the existence of every element of a charged offense beyond a reasonable doubt. U.S. Const. amends. V, XIV; Colo. Const. art. II, §25; *In re Winship*, 397 U.S. 358, 363-64 (1970); *People ex rel. Juhan*, 439 P.2d 741, 743-44 (Colo. 1968); *see also* §18-1-402, C.R.S. 2013. “Instructions which fail to define all the elements of an offense charged, so that a jury may decide whether they have been established beyond a reasonable doubt, are constitutionally deficient.” *People v. Martinez*, 634 P.2d 26, 28 (Colo. 1981).

Due process guarantees an accused the right to a fair trial by an impartial jury. U.S. Const. amends. V, VI, XIV; Colo. Const. art. II, §§16, 23, 25; *Dunlap v. People*, 173 P.3d 1054, 1081 (Colo. 2007). An essential feature of a fair trial is that the trial court correctly instructs the jury on all matters of law. *Carter v. Kentucky*, 450 U.S. 288, 303 (1981); *People v. Jurado*, 30 P.3d 769, 771 (Colo. App. 2001); *see also* *People v. Nunex*,

841 P.2d 261, 264 (Colo. 1992). Moreover, an accused is guaranteed a meaningful opportunity to present a complete defense. *See* U.S. Const. amends. V, VI, XIV; Colo. Const. art. II, §§16, 23, 25; *Crane v. Kentucky*, 476 U.S. 683, 690 (1986); *People v. Young*, 825 P.2d 1004, 1008 (Colo. App. 1991).

It is the duty of the trial court to correctly instruct the jury on the legal principles raised in a case. *E.g.*, *People v. Stewart*, 55 P.3d 107, 120 (Colo. 2002); *People v. Cowden*, 735 P.2d 199, 202 (Colo. 1987). A jury instruction is erroneous if it is misleading. *People v. Cuevas*, 740 P.2d 25, 26 (Colo. App. 1987); *see People v. Zukowski*, 260 P.3d 339, 344 (Colo. App. 2010).

“[A]rguments of counsel cannot substitute for instructions by the court.” *Taylor v. Kentucky*, 436 U.S. 478, 488-89 (1978). Defense counsel’s arguments do not have the same effect or force as a court’s instructions. *Carter*, 450 U.S. at 304 (other trial instructions and arguments of counsel “were no substitute for the explicit instruction that the petitioner’s lawyer requested”). And a defendant’s constitutional rights cannot “be permitted to hinge upon a hope that defense counsel will be a more effective advocate than the prosecutor” on matters of law in closing argument. *See Taylor*, 436 U.S. at 489.

“In Colorado, an instruction embodying a defendant’s theory of the case *must be given* by the trial court if the record contains any evidence to support the theory.”

*Nunez*, 841 P.2d at 264 (emphasis in original). If the trial court rejects the defendant's tendered theory of defense instruction, "a trial court has an affirmative obligation to cooperate with counsel to either correct the tendered theory of the case instruction or to incorporate the substance of such in an instruction drafted by the court." *Id.* at 265.

As pertinent here, section 11-51-501 defines the offense of securities fraud:

(1) It is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly:

...

(b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or

(c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

§11-51-501(1)(b), (c), C.R.S. 2013.

Pursuant to section 11-51-201(17), C.R.S. 2013, the definition of "security" includes "any note." Colorado's definition of the term "security" "is virtually identical to the definition of 'security' in the federal securities act." *People v. Milne*, 690 P.2d 829, 833 (Colo. 1984)(applying the test established in *SEC v. W.J. Howey Company*, 328 U.S. 293 (1946)).

Section 11-51-201(17) does not define “note.” However, the United States Supreme Court has explained that not all “notes” are “securities.” In *Reves v. Ernst & Young*, 494 U.S. 56, 62 (1990), the Court stated “‘note’ may now be viewed as a relatively broad term that encompasses instruments with widely varying characteristics ...” Notes are used in a variety of settings, not all of which involve investments. *Id.* “Thus, the phrase ‘any note’ should not be interpreted to mean literally ‘any note.’” *Id.* at 63.

In *United States v. McKye*, 734 F.3d 1104, 1109-10 (10th Cir. 2013), the court held that the district court erred when it instructed the jury that the term “security” includes “a note.” At trial, the State presented evidence that the defendant marketed certain investment notes. Each note had a subheading identifying them as “notes” bearing a guaranteed annual return. *Id.* at 1106. The court instructed the jury that the term security “includes a note or an investment contract.” *Id.* at 1107, 1110 fn. 6. The court of appeals reasoned that whether the alleged fraud involved a security is an element of the crime of securities fraud and the question of whether a note is a security has both factual and legal components. Thus, it was error for the district court to instruct the jury that “the term ‘security’ includes a note.” *Id.* at 1109-10.



C. The trial court erred by instructing the jury that “security means any note,” particularly because it was disputed whether these documents were “securities,” the documents were entitled “notes,” and the State’s securities expert testified that the documents at issue were “securities as notes.” Moreover, the court should have instructed the jury to consider the context of the transactions in determining whether the notes were securities.

Here, citing *Reves v. Ernst & Young*, defense counsel requested an instruction stating “a note is not always a security.” (Tr. 2/29/12, p.119, 121, 126-28) He further requested that the court instruct the jury to consider context in determining whether the documents constituted securities. (Tr. 2/29/12, p.125, 126-28) The court rejected the proposed instructions and instead instructed the jury that “‘Security’ means any note ....” (PR, CF, Vol.2, p.331) The court stated that defense counsel could argue that “there’s a contextual endeavor” in determining whether the notes were securities. (Tr. 2/29/12, p.129-30)

The elements of securities fraud required the jury to find that Mr. Mendenhall acted “in connection with the offer or sale of any security.” *See* §11-51-501(1)(b), (c); (PR, CF, Vol.2, p.232) All of the documents at issue in this case were entitled “Promissory Note” or “Note.” (Binder, Ex.202, 203, 205, 304, 308, 402, 419, 504, 604, 704, 803, 901, 1004, 1202, 1205, 1206, 1302, 1402, 1502) The prosecution’s securities law expert testified that the documents were “notes” and, thus, “securities.”

(Tr. 2/28/12, p.259; 2/29/12, p.17) And the court instructed the jury that “security means any note.” (PR, CF, Vol.2, p.331)

The court erred by instructing the jury that the term security included “any note” and by failing to instruct the jury that a note is not always a security. As the United States Supreme Court has explained, not all “notes” are “securities.” *Reves*, 494 U.S. at 62. Moreover, although section 11-51-201 defines “security” as “any note,” that statute states that the terms have the following definitions “unless the context otherwise requires.” The statutory phrase, “unless the context otherwise requires,” refers to the context within which the term security is used in the statute’s substantive provisions. The phrase requires this Court to examine the statute to determine whether the context of its substantive provisions requires some meaning to be given to the term other than the ones adopted by the definitional portion of the statute. *Pima Fin. Serv. Corp. v. Selby*, 820 P.2d 1124, 1128 (Colo. App. 1991). As *Reves v. Ernst & Young* and *United States v. McKye* make clear, “security” does not mean “any note,” and it was error for the court to so instruct the jury.

As in *United States v. McKye*, whether the alleged fraud involved a security was an element of the crime and whether the notes at issue here were securities was a factual question for the jury. Because the jury was instructed that “any note” is a security, the

court deprived the jury of the opportunity to make a finding essential to conviction. *Cf.* 734 F.3d at 1109-10.

The court further erred by failing to instruct the jury that the jurors must consider context in determining whether the transactions constituted securities. In *Reves v. Ernst & Young*, the Court stated that, in determining whether a transaction is a security, courts are not bound by “legal formalities” but instead must take account of the context and “economics of the transaction.” 494 U.S. at 61-63. A division of this Court has similarly stated, “whether a transaction is a security does not depend on the label it is given, but upon the substance and economic realities of the situation.” *People v. Pahl*, 169 P.3d 169, 181 (Colo. App. 2006)(citing *Jenkins v. Jacobs*, 748 P.2d 1318 (Colo. App. 1987)). The division in *People v. Pahl* held that the district court acted properly by instructing the jury to consider the totality of the circumstances in determining whether the venture was a security. *Id.* at 183-84. Further, this instruction was supported by the evidence in this case. The State’s securities expert agreed that, “you just can’t look at what the thing is titled, you have to actually look at the substance and the realities of transactions between the parties.” (Tr. 2/28/12, p.222, 246) At a minimum, the court should have worked with defense counsel to craft an acceptable instruction. *Cf. Nunez*, 841 P.2d at 265.

Finally, the court erred by leaving it to defense counsel to attempt to cure the erroneous instruction and to explain the law. It is the duty of the trial court to correctly instruct the jury on the law. *E.g., Cowden*, 735 P.2d at 202; *Stewart*, 55 P.3d at 120. And “arguments of counsel cannot substitute for instructions by the court” *Taylor*, 436 U.S. at 488-89. Here, although the expert testified about the importance of considering the context of the transactions and although defense counsel attempted to argue that not all notes are securities and that the jury should consider the context, the court did not instruct the jury to consider context and provided an instruction of law stating “security means any note.” The court also instructed the jury, “You have heard witnesses who have testified as experts. You are not bound by the testimony of experts; their testimony is to be weighed as that of any other witness.” (PR, CF, Vol.2, p.319) And the court instructed, “While the lawyers may have commented during the trial on some of these rules, you are to be guided by what I say about them. You must follow all the law as I explain it to you.” (PR, CF, Vol.2, p.311) The court should have instructed the jury as requested by defense counsel and not left it to defense counsel to explain the law, especially after the court told the jurors they could disregard the lawyers’ arguments.

The error is not harmless under any standard. The issue of whether the transactions in this case were securities was disputed. Mr. Mendenhall’s defense was

that these transactions were not securities. Instruction No. 20 permitted the jury to convict Mr. Mendenhall without the necessity of the State proving the notes at issue were securities. *Cf. McKye*, 734 F.3d at 1111. Although the securities expert testified that these transactions constituted both “notes” and “investment contracts,” the definition of “investment contract” was complex and whether these transactions met the various elements of an “investment contract” was also disputed. (Tr. 2/28/12, p.220-22, 250-58, 259; 2/29/12, p.17, 147; PR, CF, Vol.2, p.331-32) The decision was all but made for the jury after the expert testified that these transactions were “securities as notes” and the court instructed the jury that “security means any note.”

#### D. Conclusion

The trial court’s definition of “security” and rejection of Mr. Mendenhall’s instructions violated Mr. Mendenhall’s rights to due process, to a fair trial, to proof beyond a reasonable doubt of every element necessary to constitute the crime charged, to the presumption of innocence, and to present a defense. *See* U.S. Const. amends. V, VI, XIV; Colo. Const. art. II, §§16, 23, 25; *Reves*, 494 U.S. at 62; *McKye*, 734 F.3d at 1109-10; *Nunez*, 841 P.2d at 264-65; *Pabl*, 169 P.3d at 183-84. This Court should reverse Mr. Mendenhall’s securities fraud convictions and remand the case for a new trial.

**II. The Trial Court Reversibly Erred by Allowing the District Attorney's Investigator to Testify About His Decision Whether to Pursue Criminal Charges Against Mr. Mendenhall.**

**A. Standard of Review**

Defense counsel objected to this evidence on relevancy grounds. (Tr. 2/23/12, p.86-87)

Evidentiary rulings are generally reviewed for an abuse of discretion. *People v. Jimenez*, 217 P.3d 841, 864 (Colo. App. 2008). A court abuses its discretion when its decision is based on an erroneous understanding or application of the law. *People v. Muniz*, 190 P.3d 774, 781 (Colo. App. 2008). However, the admission of this evidence violated Mr. Mendenhall's rights to due process and to a fair trial. *See* U.S. Const. amends. V, VI, XIV; Colo. Const. art. II, §§16, 23, 25. The determination of whether a defendant's constitutional rights have been violated is reviewed de novo. *See, e.g., Quintano*, 105 P.3d at 592; *Nave*, 689 P.2d at 647.

Preserved errors of constitutional magnitude must be reversed unless the State proves they are harmless beyond a reasonable doubt. *Chapman*, 386 U.S. at 24. The question is not whether the error would have changed the outcome but rather whether the error contributed to the verdict. *Cobb*, 962 P.2d at 950.

## B. General Law

Due process guarantees an accused the right to a fair trial, which includes the right to a fair and impartial jury. U.S. Const. amends. V, VI, XIV; Colo. Const. art. II, §§16, 23, 25; *Dunlap*, 173 P.3d at 1081. This requires that a jury reach its verdict based solely on properly admitted evidence. See, e.g., *Domingo-Gomez v. People*, 125 P.3d 1043, 1048 (Colo. 2005). A due process violation occurs when “evidence is introduced that is so unduly prejudicial that it renders the trial fundamentally unfair.” *Bloom v. People*, 185 P.3d 797, 806 (Colo. 2008)(quoting *Payne v. Tennessee*, 501 U.S. 808, 809 (1991)).

Evidence is relevant if it has any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence. CRE 401. Only relevant evidence is admissible. CRE 402. Even relevant evidence should be excluded where its probative value is substantially outweighed by the danger of unfair prejudice. CRE 403; *Old Chief v. United States*, 519 U.S. 172, 180-81 (1997); *Welsh v. People*, 80 P.3d 296, 307-08 (Colo. 2003).

A prosecutor’s personal opinion as to a defendant’s guilt shall not be outwardly indicated nor presented to the jury. *People v. Jones*, 832 P.2d 1036, 1040 (Colo. App. 1991). Such opinions are improper. *Domingo-Gomez*, 125 P.3d at 1049 (“C.R.P.C. Rule 3.4(e) requires that counsel not ‘state a personal opinion as to the justness of a cause,

the credibility of a witness ... or the guilt or innocence of an accused.”). Similarly, a prosecutor should not intimate that she has personal knowledge of evidence unknown to the jury. *Id.* This rule is especially important if the opinion of guilt is delivered in combination with the suggestion that the prosecutor’s office would not bring charges against anyone who could not be guilty. *Jones*, 832 P.2d at 1040.

Prosecutors have a duty to avoid using improper methods designed to obtain an unjust result. *Domingo-Gomez*, 125 P.3d at 1048. Because the prosecutor represents the State, their comments have significant persuasive force with the jury. *See id.* at 1049. For that reason, the possibility that the jury will give great weight to the prosecutor’s comments because of the prestige associated with the office and the presumed fact-finding capabilities available to the office is a matter of special concern. *See id.*

In *Domingo-Gomez v. People*, a prosecutor stated in rebuttal argument, “There is a screening process for charging cases, and it takes a lot more than somebody saying that person did it. It takes the type of evidence that we have here.” Our supreme court explained that the prosecutor’s reference to a “screening process” was improper because it hinted that additional inculpatory evidence unknown to the jury supported the defendant’s guilt and revealed the prosecutor’s personal opinion. *Id.* at 1052. “Prosecutorial remarks of personal knowledge, combined with the power and prestige



inexorably linked with the office may encourage a juror to rely on the prosecution's allegation that unadmitted evidence supports a conviction." *Id.*

Similarly, in *People v. Jones*, in closing argument, the prosecutor (a) expressed his personal belief in the credibility of a prosecution witness, (b) implied that the charges had received the pre-trial approval of a judge, and (c) stated to the jurors that, after investigation by the district attorney's office, no charges are filed "if there is any reasonable doubt." A division of this Court disapproved of these comments and concluded that the comments "unmistakably implied that because of pre-trial screening, there could be no doubt of defendant's guilt." 832 P.2d at 1039-40.

**C. The district attorney's investigator's testimony about his pre-trial process and decision to pursue charges against Mr. Mendenhall, including statements that he does not bring charges where "criminal filing is not appropriate" and where the circumstances do not "fall under the statute," constituted improper opinion as to Mr. Mendenhall's guilt and implied State access to additional, inculpatory evidence.**

The district attorney's investigator testified regarding the process through which he received and investigated cases and his decision to "ultimately [bring] the case forward to pursuing criminal charges." (Tr. 2/23/12 PM, p.85-89; 2/24/12, p.6-8)<sup>7</sup> He testified that he received referrals from many sources. He received between 250 and 500 referrals a year and determined whether there was ongoing criminal

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<sup>7</sup> An excerpt of Investigator Stevenson's testimony is attached as Appendix A.

activity that required immediate intervention. (Tr. 2/23/12 PM, p.85-86) Some referrals were not appropriate for criminal filing because they did not “fall under the statute,” and he did not file charges in those cases. If a case was appropriate for criminal charges, he started an investigation, conducted interviews, obtained bank records, determined whether to file an investigative report, and handed it to the prosecutor. (Tr. 2/23/12 PM, p.87) He testified that of the 250 to 500 referrals, only approximately thirty-five to fifty cases resulted in criminal charges. The court overruled defense counsel’s objection to this testimony as irrelevant. (Tr. 2/23/12 PM, p.86-87)

The investigator then detailed the referral and pre-trial process in this case. (Tr. 2/23/12 PM, p.88-89, 2/24/12, p.6-8) In 2008, he interviewed Mr. Mendenhall and a few of the clients. He testified that he did not have enough evidence to proceed with criminal charges at that time. (Tr. 2/24/12, p.6) However, in 2010, an investigator from Mr. Mendenhall’s company and prosecution witness, contacted him, and he reopened the investigation. He contacted more of Mr. Mendenhall’s clients. He authored an order to produce bank records and examined the records. (Tr. 2/24/12, p.6-8) He testified that he “ultimately brought the case forward to pursuing criminal charges.” (Tr. 2/24/12, p.8)

The investigator's testimony about his decision to pursue criminal charges was irrelevant. *See* CRE 401; *cf. People v. Mullins*, 104 P.3d 299, 301 (Colo. App. 2004) ("The facts that the police believed they had enough evidence and that a judge found there was probable cause to arrest defendant had no rational tendency to prove that defendant committed [the offense]"). Moreover, the investigator's testimony about the number of cases that he investigates each year and decides to charge was irrelevant. His decisions in other cases do not make the existence of any fact of consequence in this case more or less probable. *See* CRE 401.

Even if relevant, which Mr. Mendenhall does not concede, the investigator's testimony about his process and decision to pursue criminal charges was substantially outweighed by the danger of undue prejudice. *See* CRE 403. His comments had the same effect as the prosecutors' comments in *Domingo-Gomez* and in *Jones*. He improperly suggested the State's opinion as to Mr. Mendenhall's guilt and on the strength of the evidence. Also, it implied State access to additional, inculpatory evidence against Mr. Mendenhall. The investigator's opinion as to Mr. Mendenhall's guilt, coupled with his statements that he does not bring charges where "criminal filing is not appropriate" and where the circumstances do not "fall under the statute," were particularly improper. (Tr. 2/23/12PM, p.86-87); *See Jones*, 832 P.2d at 1040.

The investigator's comments implied that, because of pre-trial screening, there could be no doubt of Mr. Mendenhall's guilt. As in *Domingo-Gomez*, the investigator's remark indicated a biased opinion on the part of the State. The statement suggested that the State engaged in a "screening process" to weed out weaker cases and, implicitly, that the State did not consider this a weak case. The testimony improperly presented the jury with the State's opinion of Mr. Mendenhall's guilt and encouraged them to rely on the district attorney's judgment. *Cf. Domingo-Gomez*, 125 P.3d at 1052. Moreover, similar to the comments in *Jones*, the investigator's testimony referred to a court order to produce bank records, implying that a court participated in the screening process and also found merit in the allegations. *Cf. Jones*, 832 P.2d at 1040.

**D. The error, alone or in combination with the error in Argument III, warrants reversal of Mr. Mendenhall's convictions.**

The error warrants reversal of Mr. Mendenhall's convictions. The evidence against Mr. Mendenhall was not overwhelming. Although it was undisputed that Mr. Mendenhall received money from his clients, it was contested whether the promissory notes constituted securities and whether he obtained the money by deception or used it in such a manner as to deprive the clients permanently thereof.

Mr. Mendenhall's defense was that these were personal loans, not securities. (*E.g.*, Tr. 2/29/12, p.81; 3/1/12, p.42-43) Although the prosecution's securities expert opined that there was a "common enterprise," an element of "investment

contracts,” and therefore these were securities, the expert conceded that, if property were acquired and merely held with the hope that it would increase in value after time due to its location, which was Mr. Mendenhall’s plan, there would be no “common enterprise.” (Tr. 2/28/12, p.250, 257-58; 2/29/12, p.147) Moreover, Mr. Mendenhall’s clients testified that the return on their investments was not dependent upon the success of the business, which the expert testified was necessary for a “common enterprise.” (E.g, Tr. 2/22/12, p.233; 2/23/12 AM, p.13-14; 2/28/12, p.252)

Regarding the thefts, the defense argued that Mr. Mendenhall did not deceive his clients. He showed them promotional materials (e.g., Binder, Ex.301) and told them he owned the four properties. It would be unreasonable for the clients to assume that their loans alone were funding four luxury homes or that Mr. Mendenhall did not have mortgages on the four properties. (Tr. 3/1/12, p.43-44) In addition, the defense argued that Mr. Mendenhall did not use the money in such a manner as to permanently deprive the clients. (Tr. 3/1/12, p.44-47) Mr. Mendenhall testified that he, and occasionally his partner through their joint account, used the money to pay the mortgages and property costs. (E.g, Tr. 2/29/12, p.100, 102, 104-05) Mr. Mendenhall testified that he was fighting to keep the properties afloat, that he

acknowledged his debts, and that he had every intention to pay back the loans. (E.g., Tr. 2/29/12, p.106-16, 149-50)

The district attorney's investigator's improper testimony about his process and decision to charge Mr. Mendenhall was irrelevant, unfairly prejudicial, suggested the State's opinion as to Mr. Mendenhall's guilt, and implied official access to additional inculpatory evidence. This was a large part of the investigator's testimony, and it carried into two days of trial. (Tr. 2/23/12 PM, p.84-89; 2/24/12, p.6-8) And, in closing argument, the prosecutor referred to the investigator's process in deciding whether to charge Mr. Mendenhall. (Tr. 3/1/12, p.27) The evidence weakened Mr. Mendenhall's credibility and his defense. For the foregoing reasons, the court violated Mr. Mendenhall's constitutional rights to due process, to a fair trial, and to an impartial jury and abused its discretion by allowing the improper testimony. See U.S. Const. amends. V, VI, XIV; Colo. Const. art. II, §§ 16, 23, 25. This error, alone or in combination with the error addressed in Argument III, warrants reversal of Mr. Mendenhall's convictions. See *People v. Reynolds*, 575 P.2d 1286, 1289 (Colo. 1978) ("the combined effect of the errors at trial prevented the defendant from receiving a fair trial"). This Court should reverse Mr. Mendenhall's convictions and remand the case for a new trial.

### III. A Witness's Testimony and the Prosecutor's Inflammatory Statements in Closing Argument Violated Mr. Mendenhall's Rights to Due Process and to a Fair Trial by an Impartial Jury.

#### A. Standard of Review

Defense counsel did not object to this testimony or to the prosecutor's statements. A violation of an accused's due process rights is reviewed de novo. *See, Quintano*, 105 P.3d at 592; *Nave*, 689 P.2d at 647. Where the defense does not object to a prosecutor's statements at trial, a reviewing court must review for plain error and determine whether a reasonable possibility exists that the error contributed to the defendant's conviction such that serious doubt is cast upon the reliability of the jury's verdict. *Domingo-Gomez*, 125 P.3d at 1053. "It has long been recognized that misconduct by a prosecuting attorney in closing argument may be grounds for reversing a conviction." *People v. Rodriguez*, 794 P.2d 965, 972 (Colo. 1990)(citing *Berger v. United States*, 295 U.S. 78 (1934)).

#### B. General Law

Due process guarantees a defendant the right to a fair trial by an impartial jury. *See* U.S. Const. amends. V, VI, XIV; Colo. Const. art. II, §§ 16, 23, 25; *see also Domingo-Gomez*, 125 P.3d at 1048; *Harris v. People*, 888 P.2d 259, 263 (Colo. 1995). An impartial jury must determine the issues solely on the basis of the evidence introduced at trial and not on the basis of bias or prejudice. *Harris*, 888 P.2d at 264; *see also Oaks v.*

*People*, 371 P.2d 443, 447 (Colo. 1962)(the right to trial by jury guarantees “a fair verdict, free from the influence or poison of evidence which should never have been admitted, and the admission of which arouses passions and prejudices which tend to destroy the fairness and impartiality of the jury”). “A jury that has been misled by improper argument cannot be considered impartial.” *Domingo-Gomez*, 125 P.3d at 1048.

“Prosecutors have a higher ethical responsibility than other lawyers because of their dual role as both the sovereign’s representative in the courtroom and as advocates for justice.” *Id.* at 1049. “Prosecutorial conduct in argument is a matter of special concern because of the possibility that the jury will give special weight to the prosecutor’s arguments, not only because of the prestige associated with the prosecutor’s office but also because the fact-finding facilities presumably available to the office.” *Wilson v. People*, 743 P.2d 415, 419 n.7 (Colo. 1987)(quoting ABA, *Standards for Criminal Justice*, Standard 3-5.8, Commentary (3d ed. 1993)).

Prosecutors have a duty to not use improper methods designed to obtain an unjust result and must not use closing arguments to mislead or unduly influence the jury. *Domingo-Gomez*, 125 P.3d at 1048-49; *Harris*, 888 P.2d at 263. A prosecutor may not use arguments calculated to inflame the passions of the jury and may not encourage jurors to determine a defendant’s guilt or innocence on the basis of bias or



prejudice. *Domingo-Gomez*, 125 P.3d at 1049; *Harris*, 888 P.2d at 266; *People v. McBride*, 228 P.3d 216, 221-23 (Colo. App. 2009)(“prosecutors may not resort to ‘inflammatory comments’ that serve no purpose but ‘inflam[ing] the passions of the jury.’”).

A prosecutor should not compare the defendant to infamous criminals. No purpose is served by comparing the defendant to another defendant charged with a notorious crime other than to attempt to impassion the jury. *State v. Thompson*, 578 N.W.2d 734, 743 (Minn. 1998)(prosecutor compared the defendant to O.J. Simpson). Such a comparison clearly constitutes misconduct. *Id.* In *Harris v. People*, our supreme court found reversible, plain error where the prosecutor repeatedly referred to military operations by and against Saddam Hussein. 888 P.2d at 265. The references were irrelevant and improperly encouraged the jurors to use their prejudices and passions in evaluating the evidence. *Id.*

**C. A witness’s testimony likening Mr. Mendenhall to Bernie Madoff and the prosecutor’s inflammatory statements in closing argument referring to that testimony and calling the alleged victims members of the “Greatest Generation” encouraged the jury to use their passions and prejudices in evaluating the evidence, violating Mr. Mendenhall’s rights to due process and to a fair trial by an impartial jury.**

Here, Donald Ledford testified that he had accused Mr. Mendenhall of running a “Madoff scheme.” (Tr. 2/24/12, p.35) In closing argument, the prosecutor repeated that testimony likening Mr. Mendenhall to Bernie Madoff: “And then you

remember Mr. Ledford actually kind of jokingly said to the defendant, It seems like a Madoff scheme to me, to which what did the defendant say? Well, Madoff didn't need the money." (Tr. 3/1/12, p.25)

Moreover, the prosecutor, in contrast, repeatedly referred to the alleged victims as "members of the Greatest Generation." She stated, "And remember our group of investors, the members of the greatest generation, those who lived through the depression and worked hard their entire lives, when they heard the term 'owned,' we all know what they thought." (Tr. 3/1/12, p.16) She further argued,

Let's talk briefly about his investors. They were quite a group of individuals, needless to say, that you saw in the last week, but they were his clients. They weren't his close friends. They were his clients from Bankers Life. Members of the greatest generation who trusted the defendant because he had been with Bankers for 28 years.

(Tr. 3/1/12, p.22)

Here, the court erroneously permitted Mr. Ledford's testimony and the prosecutor engaged in misconduct by employing arguments designed to inflame the passions and prejudices of the jury. The references to Bernie Madoff compared Mr. Mendenhall to a notorious criminal who operated an "infamous Ponzi scheme." See *Abady v. Certain Underwriters at Lloyd's London Subscribing to Mortg. Bankers Bond-No. MBB-06-0009*, 317 P.3d 1248, 1254 (Colo. App. 2012). And the prosecutor's references to the alleged victims as "members of the Greatest Generation" only

served to garner sympathy. Bernie Madoff and the Greatest Generation were irrelevant to Mr. Mendenhall. *See* CRE 401. The inflammatory comments improperly encouraged the jurors to decide the case on the basis of bias and prejudice and were improper. *Cf. Domingo-Gomez*, 125 P.3d at 1048-49; *Harris*, 888 P.2d at 263-66; *McBride*, 228 P.3d at 221-23.

**D. The error, alone or in combination with the error in Argument II, warrants reversal of Mr. Mendenhall's convictions.**

Mr. Ledford's testimony and the prosecutor's improper statements constitute plain error, and a reasonable possibility exists that the error contributed to Mr. Mendenhall's conviction such that serious doubt is cast upon the reliability of the jury's verdict. As explained in Argument II, there was not overwhelming evidence. Mr. Mendenhall's defense was that these were personal loans, not securities. (*E.g.*, Tr. 2/29/12, p.81; 3/1/12, p.42-43) It was disputed whether the promissory notes constituted securities and whether Mr. Mendenhall obtained the money by deception or used it in such a manner as to deprive his clients permanently thereof. (*E.g.*, Tr. 3/1/12, p.36-47) As detailed in Argument II, although the expert had a different opinion, his testimony supported Mr. Mendenhall's defense that the notes did not constitute securities. (Tr. 2/28/12, p.250) In addition, Mr. Mendenhall testified as to his representations to his clients, supporting his defense that he did not obtain the money by deception, and how he used the money and fought to hold on to his

properties after the crash of the real estate market, supporting his defense that he did not use the money in such a manner as to permanently deprive his clients. (Tr. 2/29/12, p.100, 102, 104-05, 106-16, 149-50)

Mr. Mendenhall's testimony and credibility were very important to the defense. The prosecutor's comments likening Mr. Mendenhall to Bernie Madoff impugned Mr. Mendenhall's credibility. The prosecutor's references to Bernie Madoff and to the alleged victims as "members of the Greatest Generation" encouraged the jury to decide the case on the basis of bias or prejudice and violated Mr. Mendenhall's rights to a fair trial by an impartial jury. *See* U.S. Const. amends. V, VI, XIV; Colo. Const. art. II, §§ 16, 23, 25; *Domingo-Gomez*, 125 P.3d at 1048; *Harris*, 888 P.2d at 263. This error, alone or in combination with the error addressed in Argument II, warrants reversal of Mr. Mendenhall's convictions. *See Reynolds*, 575 P.2d at 1289.

**IV. This Court Should Remand the Case for the Trial Court to Clarify Mr. Mendenhall's Sentence and to Amend the Mittimus.**

**A. Standard of Review**

Defense counsel did not notice the discrepancies in the court's pronouncement of sentence. The interpretation of a written transcript is a question of law subject to de novo review. *People v. Rockne*, 315 P.3d 172, 178 (Colo. App. 2012).

## B. General Law

“A judge may correct or amend a record so that it speaks the truth.” *People v. Emerson*, 500 P.2d 368, 369 (Colo. 1972). Crim. P. 36 allows a court to correct errors in the record arising from oversight or omission at any time. *See People v. Mason*, 535 P.2d 506, 508 (Colo. 1975).

Where a mittimus incorrectly reflects a court’s actual sentence, the court may correct the mittimus to conform to the original sentence. *Id.* In determining the effect of a written mittimus, this Court should consider the entire record, harmonizing, if possible, the mittimus with any oral pronouncement of the court, but resolving any conflict in favor of the court’s oral pronouncement. *See Rockne*, 315 P.3d at 177 (internal citations omitted); *see also People v. Turner*, 730 P.2d 333, 337 (Colo. App. 1986).

## C. This Court should remand the case for resentencing to clarify Mr. Mendenhall’s sentence and to amend the mittimus.

Here, when the court listed each conviction and its corresponding sentence, the sentences totaled thirty years in prison. (Tr. 4/20/12, p.43-45) The mittimus reflects those sentences. (Vol. 2, p.473-75) However, when the court was finished listing the convictions and sentences, the court stated that the sentences totaled twenty-five years:

Mr. Mendenhall, that may be confusing and your attorney may go over it; and it may be confusing to the people that are listening here. But what that sentence results in, because I've done the math, is a 25-year sentence to the Department of Corrections staggered over several different periods with a mandatory five-year period of parole.

(Tr. 4/20/12, p.45)

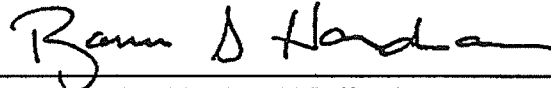
It appears that the court intended and believed it was imposing a twenty-five year sentence. However, the individual sentences totaled thirty years, and the mittimus reflects a thirty-year sentence. This Court should remand the case for the trial court to clarify this discrepancy in its oral pronouncement of Mr. Mendenhall's sentence and to amend the mittimus, if necessary. *See* Crim. P. 36; *People v. Young*, 894 P.2d 19, 20 (Colo. App. 1994)(remanding for court to correct the mittimus consistent with its oral ruling).

### CONCLUSION

For the reasons presented in Parts I-III, Mr. Mendenhall respectfully requests that this Court reverse his convictions and remand his case for a new trial.

For the reasons presented in Part IV, Mr. Mendenhall respectfully requests that this Court remand the case for the trial court to clarify Mr. Mendenhall's sentence and to amend the mittimus.

DOUGLAS K. WILSON  
Colorado State Public Defender

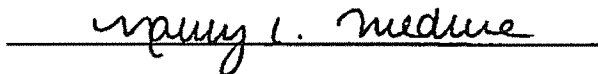


---

RYANN S. HARDMAN, #37922  
Deputy State Public Defender  
Attorneys for Michael Mendenhall  
1300 Broadway, Suite 300  
Denver, Colorado 80203  
(303) 764-1400

CERTIFICATE OF SERVICE

I certify that, on August 14, 2014, a copy of this Opening Brief of Defendant-Appellant was electronically served through ICCES on Catherine P. Adkisson of the Attorney General's office through their AG Criminal Appeals account.



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# Appendix A



2/23/12 PM

85

1 (The following proceedings were conducted at the  
2 bench out of the hearing of the jury:)

3 THE COURT: I'm not sure you had to approach. It  
4 sounds like a legal definition to me.

5 MR. RENNER: And there's no at-risk charge in this  
6 case.

7 MS. GERDES: I was really trying to give context  
8 to the type of investigator he is.

9 THE COURT: Let's stay away from the legal  
10 definitions.

11 MS. GERDES: We'll do so.

12 (The following proceedings were conducted in the  
13 presence and hearing of the jury:)

14 Q. (BY MS. GERDES) Mr. Stevenson, there's particular groups  
15 of individuals that you have a particular specialty in dealing  
16 with, people of a certain age of classification known as at-risk?

17 A. That's correct.

18 Q. Okay. Now, how do you normally receive cases as an  
19 investigator within the Economic Crime Unit involving at-risk or  
20 exploitation?

21 A. Through many, many different agencies. I receive what I  
22 call referrals from Adult Protection Services in the City and  
23 County of Denver as well as sometimes outside the City and County  
24 of Denver from other law enforcement agencies, from banking  
25 institutions, from private citizens, from medical professionals,

1 from probate court, and off the top --

2 Q. From family members?

3 A. And from family members, yes, ma'am.

4 Q. Okay. In a given 12-month period, how many referrals, as  
5 you've called them, do you receive on average?

6 MR. RENNER: Your Honor, I would object as to  
7 relevance.

8 THE COURT: Overruled.

9 A. Approximately, it's a range from, I'd say, 250 to 500  
10 referrals a year.

11 Q. (BY MS. GERDES) And what is the process that you  
12 undertake once you've received a referral? Is it a fast track?  
13 Is there a particular process that you undertake?

14 A. When I receive a referral, I try to determine if there's  
15 an ongoing exploitation of the victim. If that's the case, the  
16 Denver District Attorney's Office has protocol where I'm expected  
17 to investigate immediately within 24 hours, if that's the case,  
18 and to stop the financial exploitation, if I'm able to do that,  
19 through the laws and criminal justice system.

20 Q. Okay. Now, of the referrals that you receive on a yearly  
21 basis, do they all result in the filing of criminal charges?

22 A. No, they do not.

23 Q. Why not?

24 A. Well, because of the nature of the beast, I'll say.  
25 There are times when a criminal filing is not appropriate. It

1 doesn't fall under the statute that I primarily work under or  
2 statutes that I work under. Many times, like I say, I'll get  
3 referrals from family members. Sometimes it will be a family  
4 tug-of-war, trying to get assets of the individual. Again, it  
5 won't be appropriate to file criminal charges. Basically, it  
6 just will not be criminal charges that I can file on an  
7 individual, so I call it a referral and I don't file the charges.

8 Q. So you actually look at each case. And if appropriate to  
9 look at there possibly being criminal charges, what do you do  
10 then?

11 A. Then I continue: Start an investigation, conduct  
12 interviews, get bank records, make a determination to file an  
13 investigative report, and hand that to a prosecutor.

14 Q. Of the large number of referrals that you receive in a  
15 given year, how many of those of your cases result in the filing  
16 of criminal charges?

17 MR. RENNER: Objection, relevance.

18 THE COURT: Overruled.

19 A. Approximately 35 to 50 cases a year that I actually file  
20 criminal charges on.

21 Q. (BY MS. GERDES) Okay. And that's after completing an  
22 investigation?

23 A. That's correct.

24 Q. Okay. I'd like to date back to 2008, and specifically a  
25 referral that you received as a member of the Economic Crime Unit

1 investigation unit as it related to Michael Mendenhall.

2 A. Yes, ma'am.

3 Q. You did receive a referral?

4 A. Yes, ma'am.

5 Q. Can you briefly tell us the nature of that referral.

6 A. The referral came in, actually, through our intake  
7 division. We have two individuals who work intake who receive  
8 phone calls, again, from some of the same institutions that I  
9 receive phone calls. This referral came in from Wells Fargo  
10 Bank, Janelle Cavanaugh (phonetically spelled). There was a  
11 brief discussion between our intake individual who collected  
12 certain documents from Janelle Cavanaugh, and it was forwarded to  
13 me.

14 Q. What did you do with that referral?

15 A. I spoke to Janelle Cavanaugh specifically to verify the  
16 information that she'd reported to our intake personnel. I  
17 contacted two of the victims by phone who were designated in the  
18 referral, and I also eventually spoke to Mr. Mendenhall.

19 Q. Do you recall the names of the parties that there was a  
20 concern for may be affected or the parties who people were  
21 concerned about?

22 A. Yeah. I believe there were four or five that were  
23 reported by Wells Fargo: a Joyce Hackler, Carole Cottrell, Ms.  
24 Ginnetti, Opal Valente.

25 Q. Did you speak to those individuals?

1 A. I spoke to two of those individuals.

2 Q. All right. Do you remember who you spoke to?

3 A. I'm sorry, and Betty Michaud. I didn't mention to her.

4 I spoke to Betty Michaud and Joyce Hackler.

5 Q. You said you also spoke to Mr. Mendenhall?

6 A. Yes. At the conclusion of interviewing those two  
7 individuals, I contacted Mr. Mendenhall and I asked him to come  
8 in for an interview.

9 Q. And the nature of the referral that came in related to  
10 what, specifically?

11 A. Well, in general terms, it related to the financial  
12 exploitation, so that is possible theft charge, and also there  
13 was a securities piece to it, as well.

14 Q. Okay. When you contacted Mr. Mendenhall, was it by  
15 phone?

16 A. Originally, it was by phone, and then Mr. Mendenhall  
17 agreed to come into the office and do an interview with myself  
18 and another investigator.

19 Q. And where did Mr. Mendenhall come for this interview?

20 A. Well, I'm fairly sure it's at the office I'm at now, 2001  
21 West Colfax, but it could have been at 303 West Colfax.

22 Q. But it was at the Denver District Attorney's Office?

23 A. Yes.

24 Q. Depending on where they were located at the time?

25 A. Yes.

2/24/12

1 Q As a result of learning that information, what did  
2 you do as part of the referral process that you talked to us  
3 about?

4 A Well, the interview of Mr. Mendenhall was on  
5 March 8, I believe. Previous to that, on March 3 and  
6 March 4, I had interviewed Joyce Hackler and Betty Michaud  
7 in reference to the referral.

8 Q And based upon your interviews with them and the  
9 information that you learned by speaking with the  
10 defendant's mortgage companies, did you proceed forward with  
11 your investigation?

12 A I did not.

13 Q Why not?

14 A Well, my primary focus was, again, the financial  
15 exploitation or theft from these victims. The two victims  
16 that I interviewed, neither of them believed nor did they  
17 want to file any kind of complaint against Mr. Mendenhall.  
18 At the time of the interviews their notes that they received  
19 from Mr. Mendenhall were not due, so I didn't have  
20 evidentiary material to go forward with a criminal  
21 complaint.

22 Q Now, I would like to fast forward to 2010.

23 A Yes.

24 Q You were contacted by Rick Riser?

25 A Actually, the contact originally came through

1 Melissa Adams of the Department of -- Colorado Department of  
2 Insurance.

3 Q And based upon that contact, what did you next do?

4 A My next contact was with Rick Riser from Conseco  
5 Insurance. So Mr. Riser identified approximately 12 to 15  
6 individuals who had funded Mr. Mendenhall's investment  
7 through promissory notes. I then began contacting those  
8 individuals. Just -- I also worked with Jerry Lowe from the  
9 Division of Securities. With the number of alleged victims  
10 at that time, we split up the list. I contacted  
11 approximately eight originally, and he contacted  
12 approximately eight as well.

13 Q Did you also examine bank documents at that time?

14 A Yes. The timing wasn't -- after I had done  
15 preliminary interviews with these individuals and  
16 interviewed Mr. Riser, I authored an order to produce bank  
17 records for a Wells Fargo bank account and a KeyBank bank  
18 account.

19 Q Which we have now seen as admitted Exhibits 102  
20 and 129?

21 A That's correct.

22 Q You also mentioned that you interviewed the 12 to  
23 15 names that you were given who had funded the defendant's  
24 investment?

25 A That's correct.

1 Q Did that include -- who did that include  
2 interviewing or reinterviewing?

3 A You want all of the names?

4 Q As -- let me ask you a better question. The  
5 people who so far have testified today, did you speak with  
6 some or all of those individuals who invested money with Mr.  
7 Mendenhall?

8 A All of them.

9 Q All right. You also reinterviewed Ms. Michaud?

10 A I did.

11 Q And Ms. Valente?

12 A I did. Those are two individuals that I had  
13 originally interviewed in 2008, so I kept them on my list to  
14 start the investigation again because I had previous contact  
15 with them. So I interviewed both of them.

16 Q Based upon the bank records and the remainder of  
17 your investigation, you ultimately brought the case forward  
18 to pursuing criminal charges?

19 A I did.

20 Q No further questions.

21 THE COURT: Cross-examination?

22 MR. RENNER: Yeah. I just have a few questions  
23 for you, Investigator.

24 //

25 //



*Carmella Storto*  
Director – Field Regulatory  
Contract Compliance

November 24, 2010

Michael Mendenhall  
4545 S. [REDACTED]  
Townhouse [REDACTED]  
Denver, CO 80237-3460

Dear Mr. Mendenhall:

Please be advised that Bankers Life and Casualty Company is recording your contract termination as a contract termination for cause since you transgressed the policies and procedures of Bankers Life and Casualty Company in violation of your contract with Bankers Life and Casualty Company. Specifically, you borrowed money from policyholders.

The insurance department has been advised of this contract termination for cause.

In accordance with the terms of your contract with Bankers Life and Casualty Company, no commissions or deferred compensation, either vested or otherwise, will be paid to you.

Sincerely,

  
Carmella Storto  
Director – Field Regulatory

B

You replied on 4/27/2010 9:26 AM.

**Mendenhall, Michael**

**From:** Urs, Dwight **Sent:** Tue 4/27/2010 8:56 AM  
**To:** Mendenhall, Michael  
**Cc:**  
**Subject:** FW: Michael Mendenhall  
**Attachments:**

*Loan?*

**"DON'T CONFUSE ACTIVITY WITH ACCOMPLISHMENT!"**  
**"IT'S WHAT YOU LEARN..AFTER YOU KNOW IT ALL..THAT COUNTS!"**  
Dwight Urs  
Branch Sales Manager 5053  
303-694-3643, ext. 11

---

**From:** Goldberg, Scott [mailto:s.goldberg@banklife.com]  
**Sent:** Tue 4/27/2010 5:01 AM  
**To:** Urs, Dwight  
**Cc:** Calabrese, Erin  
**Subject:** Re: Michael Mendenhall

Dwight,

Erin will follow up on this. Our recollection is that there was some concern that Michael may have received a loan from a client, which is not appropriate practice. We need to ascertain whether this became a FINRA issue and, if so, the resolution. If all is ok, we will put Michael on the list.

Best,  
Scott

Scott L. Goldberg  
Bankers Life and Casualty Company  
W: 312-396-7653  
M: 773-230-1569  
F: 312-396-5986

On Apr 26, 2010, at 2:09 PM, "Urs, Dwight" <Dwight.Urs@bankers.com> wrote:

> Good afternoon..Is Michael Mendenhall B9900 on the list to get  
> appointed with the new entity. As you remember..U-Vest had a problem  
> with his debt in the rental properties..which are positive cash flow.  
>  
> **"DON'T CONFUSE ACTIVITY WITH ACCOMPLISHMENT!"**  
> **"IT'S WHAT YOU LEARN..AFTER YOU KNOW IT ALL..THAT COUNTS!"**  
> Dwight Urs  
> Branch Sales Manager 5053  
> 303-694-3643, ext. 11

C

**Mendenhall, Michael**

---

**From:** Calabrese, Erin [e.calabrese@banklife.com]  
**To:** Mendenhall, Michael  
**Cc:**  
**Subject:** FW: FINRA Inquiry  
**Attachments:**

**Sent:** Mon 12/28/2009 9:43 AM

Michael,

Per Steve, the updated address for UVEST is below.

Erin Calabrese  
Bankers Life and Casualty Company  
600 West Chicago Ave  
Chicago IL 60654  
312-396-7354  
312-396-7310 fax

-----Original Message-----

**From:** Steve R. Sanok [mailto:steve\_sanok@uvest.com]  
**Sent:** Monday, December 28, 2009 9:38 AM  
**To:** Calabrese, Erin  
**Subject:** RE: FINRA Inquiry

Erin,

Thank you for your help. My address is:

4828 Parkway Plaza Drive  
Plaza 2 Floor 3  
Charlotte, NC 28217

Steve Sanok

LPL Financial Institution Services  
Senior Branch Examiner | Compliance

Direct: 704-405-4707  
Toll-free: 800-277-8802 | ext. 3633  
Fax: 704-227-4526  
Email: steve\_sanok@uvest.com

-----Original Message-----

**From:** Calabrese, Erin [mailto:e.calabrese@banklife.com]  
**Sent:** Monday, December 28, 2009 10:36 AM  
**To:** Steve R. Sanok  
**Subject:** FW: FINRA Inquiry

FYI

Erin Calabrese  
Bankers Life and Casualty Company  
600 West Chicago Ave

Chicago IL 60654  
312-396-7354  
312-396-7310 fax

-----Original Message-----

From: Mendenhall, Michael [<mailto:michael.mendenhall@bankerslife.com>]  
Sent: Wednesday, December 23, 2009 3:07 PM  
To: Calabrese, Erin  
Cc: Kernahan, Steve  
Subject: RE: FINRA Inquiry

Erin,  
I will be back in the office on the 30th. I will mail them back on that day. Have a wonderful holiday.  
~Michael

Michael L. Mendenhall  
LUTCF, AMTC, MDRT  
Unit Sales Manager  
Bankers Life and Casualty Company

---

From: Calabrese, Erin [<mailto:e.calabrese@banklife.com>]  
Sent: Tue 12/22/2009 2:59 PM  
To: Mendenhall, Michael  
Cc: Kernahan, Steve  
Subject: FINRA Inquiry

Michael,

UVEST contacted me today and advised me that your name was included in a FINRA inquiry. As a result, UVEST is requesting that you send all of your client files to them so that they may conduct an investigation into the inquiry and work with FINRA to resolve the matter. Unfortunately, at this time, I do not have any more information. Please ship the files directly to Steve Sanok at UVEST. His information is below:

UVEST Financial Services

Attn: Steve Sanok

4828 Parkway Plaza

Plaza 243

Charlotte, NC 28217

Though we have very little information at this point, I feel it is important to stress that your immediate response to this request is important.

Erin Calabrese

Bankers Life and Casualty Company

600 West Chicago Ave

Chicago IL 60654

312-396-7354

312-396-7310 fax

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December 31, 2009

Steve Sanok  
LPC Financial Institution Services  
4828 Parkway Plaza Blvd  
Plaza 2 Floor 3  
Charlotte, NC 28217

Dear Mr. Sanok:

Please find the enclosed client files, which have been requested as a result of a FINRA inquiry.

I consider Opal Marie Valente to be a longtime friend of mine as well as a client. She and I have known one another for more than 15 years and I would consider her a personal friend before a client. Based solely on our personal relationship, Marie and I entered into a high-end real estate development project. Our arrangement is based purely on our personal relationship and is no way linked to her UVEST account. Her account was transferred from another broker/dealer a few years ago and was done so based on our relationship. Marie's account activity has only had a previously small security mature at which time she purchased a mutual fund with a portion of those proceeds for \$13,000.00. This is the only trade that has occurred.

Marie's son has gone against her wishes as well as her daughters by writing this letter to FINRA. Marie and her daughter have spoken with a local FINRA representative and stated they are both completely satisfied and are not making any complaints. They have both placed their statements in written form to FINRA.

If you require additional feedback from me I may be contacted by email:  
[Michael.Mendenhall@bankerslife.com](mailto:Michael.Mendenhall@bankerslife.com) or by phone: 303-694-3643 Ext. 12.

Sincerely



Michael Mendenhall