UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-16379

In the Matter of

LAWRENCE FOSTER,

Respondent.

DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY DISPOSITION AGAINST RESPONDENT LAWRENCE FOSTER AND SUPPORTING MEMORANDUM OF LAW

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I. Introduction

Pursuant to Rule 250 of the Commission's Rules of Practice, the Division of Enforcement (the "Division") respectfully moves for summary disposition and the imposition of an industry bar from association and a penny stock bar against Respondent Lawrence Foster ("Respondent") pursuant to Section 15(b)(6) of the Securities Exchange Act of 1934 ("Exchange Act"). The Division sets forth its grounds below.

II. History of the Case

The Commission issued the Order Instituting Proceedings ("OIP") on February 6, 2015, pursuant to Section 15(b) of the Exchange Act. In summary, the OIP alleges that Respondent solicited investors on the false representation that he would invest their funds in purported land developments in the Bahamas when, in fact, he did not invest the funds but instead used them for personal spending. These facts led to Respondent's conviction in the criminal case against him. The OIP required Respondent to file an Answer to the allegations in the Order within twenty days after service, as provided by Rule 220 of the Commission's Rules of Practice. OIP, IV, p.3. Respondent was served with the OIP on February 17, 2015, and as of the filing of this motion, May 26, 2015, Respondent has not filed an answer.

On March 25, 2015, a telephonic pre-hearing conference was held. At the prehearing conference, Respondent indicated that he was agreeable to settling this proceeding. However, in a subsequent discussion between counsel for the Division and Respondent's criminal counsel it became clear that settlement was not likely. Thereafter, on May 5, 2015, the Law Judge set a briefing schedule, including a filing deadline of May 26, 2015 for the Division's motion for summary disposition.

III. Memorandum of Law

A. Respondent's Criminal Case

On October 3, 2013, a federal grand jury returned an amended superseding indictment against Respondent, charging him with one count of conspiracy to commit wire fraud in violation of 18 U.S.C. § 1349 and six counts of wire fraud in violation of 18 U.S.C. § 1343 (D.E. 195, Amended Superseding Indictment, *United States v. Foster, et al.*, No. 1:13-cr-20063 (S.D. Fla. Oct. 3, 2013) (attached as Exhibit 1)).

On October 22, 2014, the jury returned a guilty verdict against Respondent for one count of conspiracy to commit wire fraud in violation of 18 U.S.C. § 1349. and six counts of wire fraud in violation of 18 U.S.C. § 1343 (D.E. 196, Jury Verdict (attached as Exhibit 2)). Respondent's sentencing hearing has been scheduled for July 7, 2015 (D.E. 496, Order, *U.S. v. Foster, et al.*, 1:13-cr-20063 (S.D. Fla. May 18, 2015)).

B. Statement of Facts

1. Facts Deemed Admitted By Respondent's Failure to Answer

In the OIP, the Division alleged, among other things, that from December 2009 to January 2013, Respondent was the President of Paradise is Mine, LLC, a company that offered investors the opportunity to invest in purported land developments in the Bahamas, and that Respondent acted as an unregistered broker. *See* OIP, II.A.1; II.B.4. These facts are deemed admitted by Respondent's failure to file an answer. *See* Rules of Practice 155(a) (party who fails to answer may be deemed to be in default and the allegations of the OIP "may be deemed to be true"); 220(c) ("Any allegation not denied [in the answer] shall be deemed admitted."), 17 C.F.R. §§ 155(a), 220(c); *David E. Lynch*, AP File No. 3-9440, 2002 WL 1997953, *4 n.12 (Aug. 30, 2002) (Opinion of the Commission) ("Under Rule 155(a), the allegations of the OIP may be

deemed to be true."); *Trautman Wasserman & Co., Inc.*, AP File No. 3-12559, 2008 WL 149120, *12 (Jan. 14, 2008) (Initial Decision) ("[Respondent] is in default and the allegations in the OIP as to [Respondent] are deemed true because it did not file an Answer and has not otherwise defended the proceeding."). Therefore, Respondent has admitted that he acted as an unregistered broker, as alleged in the OIP.

2. Facts Determined Against Respondent Based on His Criminal Conviction

Respondent's conviction estops him from disputing the facts relevant to this matter. *Eric S. Butler*, Exchange Act Release No. 65204, at 7 n.23, 2011 WL 3792730 (Aug. 26, 2011); *see also Elliott v. SEC*, 36 F.3d 86, 86 (11th Cir. 1994) (refusing in a follow-on proceeding to "entertain the collateral attack on the criminal conviction"). The facts underlying the conviction were described in detail by the District Court in denying Foster's motion for judgment of acquittal. D.E. 471, Order Denying Defendants' Rule 29 Motion for Judgment of Acquittal ("Order") (Apr. 24, 2015).[1] The Order establishes that from at least December 2009 to January 2013 Respondent was the President of Paradise is Mine, a company located in Miami Beach purportedly offering investment opportunities in a residential real estate development project in

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[1] A copy of the Order is attached as Exhibit 3. The District Court's opinion describing the evidence can be used to determine the facts that were established in the criminal case. *See Gregory Bartko*, AP File No. 3-14700, 2014 WL 896758, *12 (Mar. 7, 2014) (Opinion of the Commission) (approving consideration of "district court order describing the trial and evidence"; "[F]ollow-on proceedings have long considered district court findings, including in [criminal] cases following a general verdict, as evidence of the public interest that is not open to collateral challenge."); *Ross Mandell*, AP File No. 3-14981, 2014 WL 907416, *3 n.14, *5 n.24 (Mar. 7, 2014) (Order of the Commission) (relying on district court's order denying motions for acquittal and new trial); *cf. Gary L. McDuff*, AP File No. 3-15764, 2015 WL 1873119, *3 (Apr. 23, 2015) (Order of the Commission) (in context of general criminal verdict, Law Judge could not rely on allegations of indictment without engaging in "particularized collateral-estoppel analysis"; distinguishing *Mandell* because its "analysis also referenced a district court order, which made express findings about what the jury would have concluded from the evidence presented at Mandell's criminal trial.").

the Bahamas. D.E. 471, pp. 3-4. Respondent solicited investors for Paradise is Mine, and directed investors to purported articles about Paradise is Mine from reputable news sources such as USA Today, the Wall Street Journal, and Forbes, when in fact the press releases were created by Paradise is Mine. D.E. 471, p. 5. Respondent offered investors the opportunity to invest in Paradise is Mine by either making a loan to Paradise is Mine that would be collateralized by land in the Bahamas or purchasing options for a portion of an interest in the real estate purportedly owned by Paradise is Mine. D.E. 471, pp. 5-8. Respondent and sales representatives for Paradise is Mine targeted individuals who had previously invested in, and lost money with, companies through transactions brokered by sales representatives now working for Paradise is Mine. As an inducement to invest additional money with Paradise is Mine, the potential investors were offered a credit for their previous investment losses, and Paradise is Mine presented the option as an opportunity for investors to recoup money previously lost in unsuccessful ventures. D.E. 471, pp. 4-5. Through this scheme, Respondent raised $8.3 million for Paradise is Mine. Approximately $280,000, or less than 3% of the funds raised, was distributed as purported interest payments to investors. D.E. 471, p. 9. The remaining expenditures included cash withdrawals, payments to unknown individuals and entities, office expenses, and payments for rare coins and jewelry. D.E. 471, p. 9.

The Order found that based on the evidence presented at trial, the jury could have reasonably found that (i) Respondent, in fabricating news articles about Paradise is Mine, acted with intent to defraud (D.E. 471, p. 26); (ii) Respondent made false and fraudulent representations to investors about the celebrity-filled residential development in the Bahamas (D.E. 471, p. 28); (iii) Respondent misrepresented the true ownership of the land in the Bahamas

(D.E. 471, pp. 29-30); and (iv) the use of investor funds was in furtherance of a fraudulent scheme (D.E. 471, p. 30).

3. Sworn Statement of Respondent's Co-conspirator

In addition to the facts determined against Respondent in his criminal proceeding and the facts deemed admitted by Respondent's failure to file an answer to the OIP, the Law Judge should also consider the plea agreement entered into by Respondent's co-conspirator, Jordon McCarty ("McCarty"), which establishes certain facts relevant to the allegations against Respondent. *See* Plea Agr., D.E. 147 (attached as Exhibit 4). Administrative Law Judges are empowered to "receive relevant evidence" and are directed to "exclude all evidence that is irrelevant, immaterial or unduly repetitious." 17 C.F.R. § 201.320. Rule 401 of the Federal Rules of Evidence provides that evidence is "relevant" if (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action."[2] The term "relevant" as used in Rule 320 is construed more "broad[ly] than" is the case "under the Federal Rules of Evidence." *City of Anaheim*, Exchange Act Release No. 42140, 1999 SEC LEXIS 2421, at *4 (Nov. 16, 1999). Therefore, the Commission's law judges are directed to be "inclusive in making evidentiary determinations." *Id.* Furthermore, in an administrative proceeding, no rule prohibits the admission of hearsay evidence. *See* 17 C.F.R. § 201.320; *In the Matter of Thomas C. Gonnella,* Administrative Proceeding File No. 3-15737, Administrative Proceedings Rulings Release No. 1579 (July 2, 2014), at 2 (denying motion in limine because "hearsay evidence that is relevant is admissible in administrative proceedings"); *see also Gonnella,* Administrative Proceeding File No. 3-15737, Administrative Proceedings

[2] Although the Federal Rules of Evidence do not govern Commission proceedings, they are "often used as a reference point." *Miguel A. Ferrer and Carlos J. Ortiz*, Administrative Proceeding Release No. 730, 2012 WL 8751437, at *5 at n.1 (Nov. 2, 2012).

Rulings Release No. 1319 (Mar. 20, 2014), General Prehearing Order ¶ 6 ("There is no general prohibition on hearsay evidence in Commission administrative proceedings.").

Here, Respondent's co-conspirator, McCarty, pled guilty to conspiracy to commit wire fraud in violation of 18 U.S.C. § 1349, and entered into a written plea agreement in which he swore to certain facts about Respondent. *See* Plea Agr., D.E. 147; Transcript of Change of Plea (attached as Exhibit 5).[3] Indeed, the Plea Agreement establishes the following:

- Respondent induced investors to invest in purported land developments in the Bahamas through investments in Paradise is Mine. Ex. 3, p.14;
- Respondent conspired with McCarty to defraud investors by making material misrepresentations to induce investors to send money to Paradise is Mine. Ex. 3, p. 14;
- Respondent promised investors a fixed interest rate of 10% to 20% of their investment, and in some instances guaranteed that investors would receive a return of their full principal. Ex. 3, p.14;
- Respondent and his co-conspirators held investor calls and meetings and distributed promotional materials, including fabricated newspaper articles about Paradise is Mine. Ex. 3, p.14;
- Respondent did not invest money in a residential development in the Bahamas, and instead used the money to fund his personal expenses. Ex. 3, p.14;
- In one or more conversations with his co-conspirators, Respondent urged McCarty to raise more money from one investor so that they could split the money 50/50 between them. Ex. 3, p.15.

[3] During the change of plea, McCarty stated under oath that the factual proffer of the plea agreement was accurate. (Transcript at pp. 12-13)

Because the facts established by McCarty's plea agreement make the facts alleged against Respondent more probable than they would be without the plea agreement and because the facts established by the plea agreement are of consequence in determining the action against Respondent, these facts should be considered by the Law Judge in connection with this Motion.

D. Summary Disposition is Appropriate

1. Because of Respondent's Conviction, There are No Disputed Facts

The Law Judge should grant a motion for summary disposition if there is "no genuine issue with regard to any material fact and the party making the motion is entitled to summary disposition as a matter of law." 17 C.F.R. § 201.250(b). Here, since "[a]ll material facts that concern the activities for which [Respondent] was convicted were decided against him in the criminal case," summary disposition is appropriate. *Adam Harrington*, Initial Decision Release No. 484, at 1, 2013 WL 1655690 (Apr. 17, 2013), *review dismissed*, Exchange Act Release No. 70149, 2013 WL 4027264 (Aug. 8, 2013); *Alan Brian Baiocchi*, Initial Decision Release No. 382, at 1, 2009 WL 2030524 (July 14, 2009). These "estoppel" facts are further confirmed by the facts deemed admitted by Respondent's default and the testimony of his co-conspirator.

2. The Undisputed Facts Entitle the Division to Summary Disposition as a Matter of Law

The facts proffered in support of this motion entitle the Division to summary disposition as a matter of law. The Division seeks relief under Section 15(b)(6)(A) of the Exchange Act, which provides in relevant part:

> With respect to any person . . . at the time of the alleged misconduct, who was associated with a broker . . . the Commission, by order, shall censure, place limitations on the activities or functions of such person, or suspend for a period not exceeding 12 months, or bar any such person from being associated with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, or from participating in an offering of penny stock, if the Commission finds, on the record

> after notice and opportunity for a hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person—
>
> * * * *
>
> (ii) has been convicted of any offense specified in [Exchange Act Section 15(b)(4)(B)] within 10 years of the commencement of the proceedings under this paragraph . . . .

15 U.S.C. § 78o(b)(6)(A). Each of the requirements of Section 15(b)(6)(A)—timely issuance of the OIP, conviction under a qualifying statute, and misconduct committed while Respondent was associated with a broker or dealer—is satisfied here.

a. The Division Timely Filed this Action

The Division must commence a proceeding under Section 15(b)(6)(A)(ii) within "10 years" of the criminal conviction. *See Joseph Contorinis*, Exchange Act Release No. 72031, at 4-6, 2014 WL 1665995 (Apr. 25, 2014) (10-year limitations period governs Section 15(b)(6)(A)(ii) proceeding; limitations period runs from date of conviction, not underlying conduct). Here, Respondent was convicted in 2014, and the OIP was issued in 2015. Therefore, this matter was timely filed.

b. Respondent Was Convicted of a Qualifying Offense

Respondent's conviction for wire fraud and conspiracy to commit wire fraud triggers the Commission's ability to sanction him under Section 15(b)(6)(A)(ii), which permits the Commission to seek the relief requested here if a person has been convicted of an offense set forth in Exchange Act Section 15(b)(4)(B). *See* 15 U.S.C. §§ 78o(b)(4)(B), 78o(b)(6)(A)(ii). Here, Respondent's conviction and the underlying conduct involved the sale of securities, arose out of the conduct of the business of a broker, involved fraudulent concealment and misappropriation of funds, and involved a violation of section 1343 of title 18, United States

Code, and therefore falls squarely within the requirements of Exchange Act Section 15(b)(4)(B)(i)-(iv).

c. Respondent Was Associated with a Broker at the Time of the Misconduct

Section 15(b)(6)(A) requires that Respondent have been a "person . . . associated with a broker" at the time of the misconduct.[4] The broker in question need not have been a registered broker. *See Jenny E. Coplan*, Initial Decision Release No. 595, at 2 n.3, 2014 WL 1713067 (May 1, 2014). Moreover, if Respondent was a broker at the time of the misconduct, he will also be a "person controlling . . . such broker," thus satisfying the requirement that he have been a person associated with a broker. 15 U.S.C. § 78c(a)(18); *see In the Matter of Stuart E. Rawitt*, Admin. Proc. File No. 3-16357, 2015 WL 1907623, at *2 (Apr. 28, 2015) (Initial Decision) ("Because he was acting as a broker he was also associated with a broker-dealer, within the meaning of the statute."); *cf. Anthony J. Benincasa*, Admin. Proc. File No. 3-8825, 2001 WL 99813, *2 (Feb. 7, 2001) (individual acting as investment adviser would also control investment adviser and therefore meet definition of "person associated with an investment adviser").

With respect to Respondent's broker status, Exchange Act Section 3(a)(4)(A) defines a "broker" as "any person engaged in the business of effecting transactions in securities for the account of others." 15 U.S.C. § 78c(a)(4)(A). The definition connotes "a certain regularity of participation in securities transactions at key points in the chain of distribution." *Mass. Fin. Serv., Inc. v. Sec. Investor Prot. Corp.*, 411 F. Supp. 411, 415 (D. Mass.), *aff'd*, 545 F.2d 754 (1st Cir. 1976); *see also SEC v. Martino*, 255 F. Supp. 2d 268, 283 (S.D.N.Y. 2003) (citing, among

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[4] Although the misconduct here did not involve penny stocks, a penny stock bar is nevertheless authorized because Davis was associated with a broker at the time of the misconduct. *See George Louis Theodule*, Initial Decision Release No. 607, at 6 n.6, 2014 WL 2447731 (June 2, 2014).

other cases, *SEC v. Margolin*, No. 92-Civ-6307 (PKL), 1992 WL 279735, at *5 (S.D.N.Y. Sept. 30, 1992) ("'brokerage' conduct may include receiving transaction-based income, advertising for clients, and possessing client funds and securities")).

Because neither of the phrases "engaged in the business" or "effecting transactions" is defined in the Exchange Act, courts and the Commission have examined a variety of factors considered in determining whether a person acted as a broker. For example, the Southern District of Florida listed the following factors:

> [W]hether the person: 1) actively solicited investors; 2) advised investors as to the merits of an investment; 3) acted with a 'certain regularity of participation in securities transactions'; 4) received commissions or transaction-based remuneration; 5) is an employee of the issuer; 6) is selling, or previously sold, the securities of other issuers; 7) is involved in negotiations between the issuer and the investor; 8) analyzes the financial needs of an issue; 9) recommends or designs financing methods; 10) discusses the details of securities transactions; and 11) makes investment recommendations.

SEC v. U.S. Pension Trust Corp., 2010 WL 3894082, at *21 (S.D. Fla. Sept. 30, 2010).

The factors listed above are not exclusive, and not all of them, or any particular number of them, must be satisfied for a person to be a broker. *See SEC v. Benger*, 697 F. Supp. 2d 932, 945 (N.D. Ill. 2010) (explaining that six factors listed in *SEC v. Hansen*, 1984 WL 2413, at *10 (S.D.N.Y. Apr. 6, 1984) as relevant to determinations of whether a person acted as a broker "were not designed to be exclusive").

The Commission has looked at solicitation as "one of the most relevant factors in determining whether a person is effecting transactions." *Definition of Terms in and Specific Exemptions for Banks, Savings Associations, and Savings Banks Under Sections 3(a)(4) and 3(a)(5) of the Securities Exchange Act of 1934*, Interim Final Rule Release No. 34-44291, 2001 WL 1590253, at *20 n.124. The Sixth Circuit similarly held that a defendant's involvement in

communications with and recruitment of investors for the purchase of securities was strongly indicative of broker conduct. *SEC v. George*, 426 F.3d 786, 793 (6th Cir. 2005). Courts and the Commission have also looked at the receipt of transaction-based compensation as a strong indicator of broker-dealer activity. *See, e.g., Cornhusker Energy Lexington, LLC v. Prospect St. Ventures*, 2006 WL 2620985, *6 (D. Neb. Sept. 12, 2006); *see also SEC v. Margolin*, 1992 WL 279735. Although a person need not receive transaction-related compensation to be a broker, transaction-based compensation can include investor funds misappropriated by a person regularly involved in the active solicitation of investors. *See George*, 426 F.3d at 793; *see also SEC v. Vestron Fin. Corp.* Case No. 01-4269-CIV-SEITZ (S.D. Fla. Oct. 16, 2001) (defendant acted as an unregistered broker and received transaction-related compensation in the form of misappropriated offering proceeds); *United States v. Elliott*, 62 F.3d 1304, 1310-11 (11th Cir. 1995) (two managers of a Ponzi scheme "received 'transaction-based compensation' whenever a customer implemented their advice by purchasing" one of the investment products they offered: one received a commission, and the other "received the investment principal, which he commingled with his personal funds").

Here, Respondent was convicted of conspiring to commit wire fraud and wire fraud for his misconduct while engaged in the offer and sale of unregistered securities. Respondent held himself out as a broker, solicited investors, and received transaction-based compensation. As detailed in the Order, from 2009 to at least 2013, Respondent solicited investors by telling them that their money would be invested in Paradise is Mine for the development of real estate in the Bahamas, promising investors they could recoup investment losses from prior unsuccessful investments. Further, Respondent received transaction-based compensation in the form of

misappropriated funds. Therefore, Respondent was a broker and a person associated with a broker during the time of the misconduct.

d. Industry and Penny Stock Bars Are Appropriate Sanctions

In determining whether an administrative sanction is in the public interest, the Commission considers: (1) the egregiousness of a respondent's actions; (2) the isolated or recurrent nature of the violations; (3) the degree of scienter involved; (4) the respondent's assurances against future violations; (5) the respondent's recognition of the wrongful nature of his conduct; and (6) the likelihood the respondent's occupation will present opportunities for future violations. *See Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979); *Patrick G. Rooney*, Initial Decision Release No. 638, at 5, 2014 WL 3588060 (July 22, 2014). "Absent 'extraordinary mitigating circumstances,' an individual who has been convicted cannot be permitted to remain in the securities industry." *Frederick W. Wall*, Exchange Act Release No. 52467, at 8 (Sept. 19, 2005) (citing *John S. Brownson*, 77 SEC Docket 3636, 3640 (July 3, 2002)).

Here, these factors weigh in favor of industry and penny stock bars. First, Respondent's actions were egregious. His conviction establishes that he knowingly and willfully executed a fraudulent investment scheme, soliciting investors for investments that he never made. Rather, Respondent used the investors' money to pay himself.

Second, this was not a one-time lapse in judgment. Respondent's actions extended over a matter of years. Third, Respondent's level of scienter was extremely high. He knew he was not investing the money in a celebrity-filled land development in the Bahamas and was simply misappropriating investor money. His scienter was so substantial it gave rise to a criminal conviction.

With respect to the fourth and fifth factors, Respondent has provided no assurances that he will avoid *future* violations of the law. Although "[c]ourts have held that the existence of a past violation, without more, is not a sufficient basis for imposing a bar[,] . . . 'the existence of a violation raises an inference that it will be repeated.'" *Tzemach David Netzer Korem*, Exchange Act Release No. 70044, 2013 SEC LEXIS 2155, at *23 n.50 (July 26, 2013) (quoting *Geiger v. SEC,* 363 F.3d 481, 489 (D.C. Cir. 2004)). Respondent has offered no evidence to rebut that inference.

Sixth, although Respondent will likely be sentenced to a term in prison, he will eventually be released, and unless he is barred from the securities industry he will have the chance to again harm investors.

Finally, it serves the public interest to collaterally bar Respondent from all association with the securities industry. The Dodd-Frank Wall Street Reform and Consumer Protection Act, enacted on July 21, 2010, added collateral bars as sanctions under Exchange Act Section 15(b)(6). The Commission has held that Dodd-Frank's collateral bars "are prospective remedies whose purpose is to protect the investing public from future harm," and therefore applying the bars to address pre-Dodd-Frank conduct is "not impermissibly retroactive." *John W. Lawton*, Advisers Act Release No. 3513, at 16, 2012 WL 6208750 (Dec. 13, 2012). Accordingly, the Law Judge should bar Respondent from the securities industry, even though certain of his conduct occurred prior to Dodd-Frank's enactment.

IV. Conclusion

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

May 26, 2015

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that an original and three copies of the foregoing were filed with the Securities and Exchange Commission, Office of the Secretary, 100 F Street, N.E., Washington, D.C. 20549-9303, and that a true and correct copy of the foregoing has been served by overnight, on this 26th day of May, 2015, on the following persons entitled to notice:

The Honorable Brenda P. Murray
Chief Administrative Law Judge
Securities and Exchange Commission
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Washington, D.C. 20549

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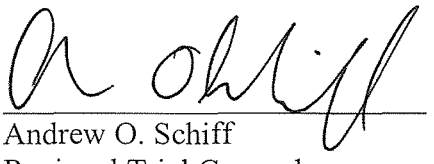


Andrew O. Schiff
Regional Trial Counsel

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 13-CR-20063-Graham(s)(s)
18 U.S.C. § 1349
18 U.S.C. § 1343
18 U.S.C. § 1957
18 U.S.C. § 1956(a)(1)(B)(i)
31 U.S.C. § 5324(a)(1)
31 U.S.C. § 5324(d)(2)
21 U.S.C. § 981(a)(1)(C)
18 U.S.C. § 982(a)(1)
31 U.S.C. § 5317(c)(1)
18 U.S.C. § 2

UNITED STATES OF AMERICA

vs.

LAWRENCE FOSTER
a/k/a "Lorenzo Foster,"
JORDON McCARTY, and
JOHANA LEON,

Defendants.
_____/

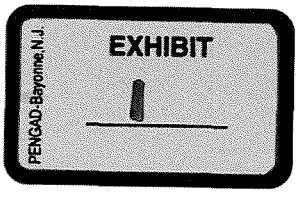
AMENDED SUPERSEDING INDICTMENT

The Grand Jury charges that:

GENERAL ALLEGATIONS

At various times relevant to this Amended Superseding Indictment:

1. Paradise Is Mine was a limited liability corporation incorporated in the State of Florida. Its principal place of business was located in Miami Beach, Florida. It purported to offer the general public investment opportunities in a residential real estate development project in Rum Cay in the Bahamas.



2. Defendant **JOHANA LEON** was the registered agent and a corporate officer of Paradise Is Mine. **LEON** had sole signatory authority over Paradise Is Mine's bank accounts.

3. Defendant **LAWRENCE FOSTER** represented himself to be the President of Paradise Is Mine. **FOSTER** resided in Miami Beach, Florida.

4. Defendant **JORDON McCARTY** was a resident of Miami-Dade County, Florida.

COUNT 1
Conspiracy to Commit Wire Fraud
(18 U.S.C. § 1349)

1. Paragraphs 1 through 4 of the General Allegations section of this Amended Superseding Indictment are re-alleged and incorporated by reference as though fully set forth herein.

2. From at least as early as December 2009, the exact date being unknown to the Grand Jury, continuing to on or about January 31, 2013, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendants,

LAWRENCE FOSTER
a/k/a "Lorenzo Foster,"
JORDON McCARTY, and
JOHANA LEON,

did willfully, that is, with the intent to further the object of the conspiracy, and knowingly combine, conspire, confederate and agree with each other, and others known and unknown to the Grand Jury, to violate Title 18, United States Code, Section 1343, that is, knowingly and with the intent to defraud devise and intend to devise a scheme and artifice to defraud and to obtain money and property by means of materially false and fraudulent pretenses, representations, and

promises, knowing that they were false and fraudulent when made, and, for the purpose of executing such scheme and artifice, transmitting and causing to be transmitted by means of wire communication in interstate and foreign commerce, certain writings, signs, signals, pictures, and sounds.

PURPOSE OF THE CONSPIRACY

3. It was the purpose of the conspiracy for the defendants and their conspirators to unlawfully enrich themselves and others by misappropriating monies from investors by making materially false representations, and concealing and omitting to state material facts concerning, among other things, expected rates of return, the true ownership of the property in the Bahamas that the defendants used to induce investments, the collateralization of the investments, the availability of an asset exchange program, and the use of investor money for personal benefit.

MANNER AND MEANS

The manner and means by which the defendants and their conspirators sought to accomplish the purpose and object of the conspiracy included, among others, the following:

4. **LAWRENCE FOSTER** and **JORDON McCARTY**, directly and indirectly, solicited individuals to invest in Paradise Is Mine. Investors were provided with the option of either buying real estate in Rum Cay in the Bahamas or making loans to Paradise Is Mine collateralized by land located in Rum Cay. Investors were led to believe that Paradise Is Mine was a successful real estate company that was in the process of developing a celebrity filled residential community in Rum Cay. Investors were not told that the land in Rum Cay that Paradise Is Mine was selling to investors or using as collateral for loans was in fact not owned by Paradise Is Mine.

5. To generate interest in Paradise Is Mine's sales efforts, **LAWRENCE FOSTER** caused Paradise Is Mine to issue press releases on the internet that falsely portrayed Paradise Is Mine as having a successful real estate project in Rum Cay. The press releases frequently contained materially false information relating to Paradise Is Mine's purported project including a press release issued in February 2011 that falsely and fraudulently represented that a Super Bowl MVP Quarterback purchased an oceanfront lot in Paradise Is Mine's development in Rum Cay. In truth, Paradise Is Mine had signed a contract with the quarterback pursuant to which Paradise Is Mine agreed to provide an oceanfront lot to the quarterback as compensation for his agreeing to provide promotional services on behalf of Paradise Is Mine. The quarterback never provided promotional services and never approved or authorized the press release.

6. **LAWRENCE FOSTER** further caused Paradise Is Mine to maintain a website on the internet that gave the false and fraudulent appearance that Paradise Is Mine was a successful real estate company. The website falsely represented that since its inception Paradise Is Mine had amassed over $4 billion in real estate throughout the world and that it currently owned over 16,000 acres in the Caribbean, the United States, and South America. The website also contained copies of some of the press releases issued by Paradise Is Mine. **FOSTER** caused Paradise Is Mine to portray these press releases in a false and misleading light by making it appear that they were legitimate news articles published by well known and reputable media companies when they were nothing more than press releases that Paradise Is Mine itself created and caused to be broadcast on the internet.

7. During telephone calls and investor meetings, **LAWRENCE FOSTER** and **JORDON McCARTY** further made, and caused others to make, false and fraudulent

representations about rates of returns that the investors could expect on their investments in Paradise Is Mine. Specifically, FOSTER and McCARTY falsely and fraudulently promised and caused others to promise investors above-market fixed rates of return, and further guaranteed and caused others to guarantee that investors would receive their full principal back after the expiration of a certain term.

8. LAWRENCE FOSTER and JORDON McCARTY additionally offered potential investors the ability to fund their investments using personal assets, such as stocks.

9. To induce investors to invest in Paradise Is Mine, LAWRENCE FOSTER and JORDON McCARTY sent and caused others to send, via U.S. mail, false and fraudulent promotional materials, including the purported news articles containing the false and misleading stories about Paradise Is Mine's development in Rum Cay.

10. During telephone calls and investor meetings, LAWRENCE FOSTER and JORDON McCARTY induced, and caused others to induce, investors to wire money into bank accounts controlled by Paradise Is Mine.

11. JOHANA LEON withdrew investor money as cash from the bank accounts of Paradise Is Mine for the benefit of herself and her conspirators.

12. To induce customers to provide money to Paradise Is Mine, LAWRENCE FOSTER and JORDON McCARTY made, and caused others to make, numerous materially false and fraudulent statements to customers, and concealed and omitted to state, and caused others to conceal and omit to state, material facts to customers, including, among others, the following:

Materially False Statements

(a) That investors would be purchasing land in the Bahamas held by Paradise Is Mine;

(b) That investor money would be used to develop land in the Bahamas owned by Paradise Is Mine;

(c) That certain well known and reputable media companies had published positive news stories about the land development of Paradise Is Mine in the Bahamas;

(d) That Paradise Is Mine had no business dealings with B.W.D. or the company associated with B.W.D.

(e) That a Super Bowl MVP Quarterback and other celebrities purchased real estate in the residential development project in Rum Cay from Paradise Is Mine.

Concealment and Omission of Material Facts

(f) That the real estate in Rum Cay that Paradise Is Mine was selling or using as collateral for loans was not owned by Paradise Is Mine;

(g) That **LAWRENCE FOSTER** used investor funds to pay for personal expenses including the lease of his Bentley Continental automobile, landscaping for his residence in Miami Beach, and attorney fees;

(h) That investor money would not be invested in the manner explained to investors, and that, instead, a significant portion of investor money would be withdrawn as cash by **JOHANA LEON** and would be used for the personal use of the conspirators, including to make payments relating to **LAWRENCE FOSTER**'s house in Miami Beach; and

(i) That **LAWRENCE FOSTER** fabricated and had fabricated false articles

purporting to be from legitimate news sources regarding the development successes of Paradise Is Mine.

All in violation of Title 18, United States Code, Section 1349.

COUNTS 2-7
Wire Fraud
(18 U.S.C. § 1343)

1. Paragraphs 1 through 4 of the General Allegations section of this Amended Superseding Indictment are re-alleged and incorporated by reference as though fully set forth herein.

2. From at least as early as December 2009, the exact date being unknown to the Grand Jury, continuing to on or about January 31, 2013, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendants,

LAWRENCE FOSTER a/k/a
"Lorenzo Foster," and
JORDON McCARTY,

did knowingly and with intent to defraud devise and intend to devise a scheme and artifice to defraud and to obtain money and property by means of materially false and fraudulent pretenses, representations and promises, knowing that the pretenses, representations and promises were false and fraudulent when made, and did knowingly transmit and cause to be transmitted by means of wire communication in interstate and foreign commerce, certain writings, signs, signals, pictures, and sounds for the purpose of executing the scheme and artifice.

PURPOSE OF THE SCHEME AND ARTIFICE

3. It was the purpose of the scheme and artifice for the defendants and their

accomplices to unlawfully enrich themselves and others by misappropriating monies from investors by making materially false representations, and concealing and omitting to state material facts concerning, among other things, expected rates of return, the true ownership of the property in the Bahamas that the defendants used to induce investments, the collateralization of the investments, the availability of an asset exchange program, and the use of investor money for personal benefit.

MANNER AND MEANS

4. The allegations contained in paragraphs 4 through 12 of the Manner and Means section of Count 1 of this Amended Superseding Indictment are realleged and incorporated by reference as though fully set forth herein as a description of the manner and means.

USE OF THE WIRES

5. On or about the dates specified below as to each count, **LAWRENCE FOSTER** and **JORDON McCARTY**, for the purpose of executing the aforesaid scheme and artifice to defraud, and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, did knowingly transmit and cause to be transmitted, by means of wire communication in interstate and foreign commerce, certain writings, signs, signals, pictures, and sounds as more specifically described below:

COUNT	APPROXIMATE DATE OF TRANSMISSION	DESCRIPTION OF WIRE COMMUNICATION
2	February 1, 2010	Wire in the approximate amount of $25,000 by "R.B." from an account at Bank of America located in California, to the Paradise Is Mine account ending in 6335 at Bank of America located in the Southern District of Florida
3	September 2, 2011	Wire in the approximate amount of $15,000 by "R.B." from an account at Bank of America located in California, to the Paradise Is Mine account ending in 6335 at Bank of America located in the Southern District of Florida
4	September 8, 2011	Wire in the approximate amount of $31,000 by "R.B." from an account at Bank of America located in California, to the Paradise Is Mine account ending in 6335 at Bank of America located in the Southern District of Florida
5	September 8, 2011	Wire in the approximate amount of $19,000 by "R.B." from an account at Bank of America located in California, to the Paradise Is Mine account ending in 6335 at Bank of America located in the Southern District of Florida
6	January 27, 2012	Wire in the approximate amount of $77,000 by "L.N." from an account at NorthStar Bank in Minnesota, to the Paradise Is Mine account ending in 6335 at Bank of America located in the Southern District of Florida
7	February 10, 2012	Wire in the approximate amount of $77,750 by "L.N." from an account at CitiBank, N.A. located in New York, to the Paradise Is Mine account ending in 6335 at Bank of America located in the Southern District of Florida

In violation of Title 18, United States Code, Sections 1343 and 2.

COUNTS 8-11
Money Laundering
(18 U.S.C. § 1956(a)(1)(B)(i))

On or about the dates specified below as to each count, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendant,

JOHANA LEON,

did knowingly conduct and attempt to conduct a financial transaction affecting interstate and foreign commerce, which financial transaction involved the proceeds of specified unlawful activity, knowing that the property involved in the financial transaction represented the proceeds of some form of unlawful activity, and knowing that the transaction was designed in whole and in part to conceal and disguise the nature, location, source, ownership and control of the proceeds of specified unlawful activity, as more specifically described below:

COUNT	APPROXIMATE DATE	FINANCIAL TRANSACTION
8	August 4, 2010	Deposit of check number 6321 from the Paradise Is Mine account at Bank of America ending in 6635 payable to "B.D." or "Cash" in the approximate amount of $9,500
9	August 27, 2010	Deposit of check number 6359 from the Paradise Is Mine account at Bank of America ending in 6635 payable to "B.D." or "Cash" in the approximate amount of $9,000
10	September 6, 2011	Deposit of check number 6653 from the Paradise Is Mine account at Bank of America ending in 6635 payable to "Jordon McCarty" or "Cash" in the approximate amount of
11	July 23, 2012	Deposit of check number 7036 from the Paradise Is Mine account at Bank of America ending in 6635 payable to "S.F." or "Cash" in the approximate amount of $8,125

It is further alleged that the specified unlawful activity is wire fraud, in violation of Title 18, United States Code, Section 1343.

COUNT	APPROXIMATE DATE OF TRANSACTIONS	TRANSACTIONS
12	January 30, 2012	$9,500 cash withdrawal $5,500 cash withdrawal $1,430 cash withdrawal $1,000 cash withdrawal $400 cash withdrawal
13	July 9, 2012	$6,000 cash withdrawal $3,995 cash withdrawal $500 cash withdrawal
14	September 20, 2012	$9,846 cash withdrawal $300 cash withdrawal

In violation of Title 31, United States Code, Sections 5324(a)(1) and (d)(2), and Title 31, Code of Federal Regulations, Part 103 and Title 18, United States Code, Section 2.

In violation of Title 18, United States Code, Sections 1956(a)(1)(B)(i) and 2.

COUNTS 12-14
Structuring to Avoid Reporting Requirements
(31 U.S.C. § 5324(a)(1) and (d)(2))

1. A "currency transaction report" ("CTR") is a report that is submitted on United States Department of Treasury ("Treasury"), Financial Crimes Enforcement Network Form 104. A domestic financial institution is required by federal law to file a CTR with Treasury for each financial transaction that involves United States currency in excess of $10,000. Such financial transactions include deposits, withdrawals, or exchanges of currency, or other transactions involving the physical transfer of currency from one person to another.

2. On or about the dates specified below as to each count, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendant,

JOHANA LEON,

did knowingly and for the purpose of evading the reporting requirements of Title 31, United States Code, Section 5313(a), and any regulation prescribed thereunder, attempt to cause Bank of America, a domestic financial institution, to fail to file a report required under Title 31, United States Code, Section 5313(a), and any regulation prescribed thereunder, while violating another law of the United States and as part of a pattern of illegal activity involving more than $100,000 in a 12-month period:

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 12-20063-CR-GRAHAM(s)(s)

UNITED STATES OF AMERICA

vs.

LAWRENCE FOSTER
a/k/a "Lorenzo Foster"

Defendant.
_____/

VERDICT

(1) We, the Jury, unanimously find the Defendant, Lawrence Foster, as to Count 1 of the Indictment:

NOT GUILTY _____ GUILTY ✓

(2) We, the Jury, unanimously find the Defendant, Lawrence Foster, as to Count 2 of the Indictment:

NOT GUILTY _____ GUILTY ✓

(3) We, the Jury, unanimously find the Defendant, Lawrence Foster, as to Count 3 of the Indictment:

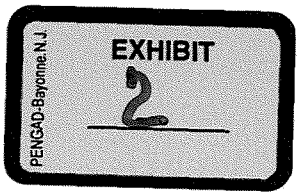
NOT GUILTY _____ GUILTY ✓

(4) We, the Jury, unanimously find the Defendant, Lawrence Foster, as to Count 4 of the Indictment:

NOT GUILTY _____ GUILTY ✓

(5) We, the Jury, unanimously find the Defendant, Lawrence Foster, as to Count 5 of the Indictment:

NOT GUILTY _____ GUILTY ✓



(6) We, the Jury, unanimously find the Defendant, Lawrence Foster, as to Count 6 of the Indictment:

NOT GUILTY _____ GUILTY ✓

(7) We, the Jury, unanimously find the Defendant, Lawrence Foster, as to Count 7 of the Indictment:

NOT GUILTY _____ GUILTY ✓

SO SAY WE ALL.

[illegible]
Foreperson's Signature

10/22/14 3:00p.m.
Date and Time

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 13-20063-CR-GRAHAM

UNITED STATES OF AMERICA,

vs.

LAWRENCE FOSTER and
JOHANA LEON,

Defendants.
_____/

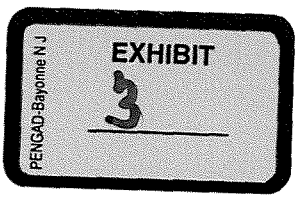
ORDER DENYING DEFENDANTS' RULE 29 MOTION FOR JUDGMENT OF ACQUITTAL and DEFENDANT LEON'S MOTION FOR A NEW TRIAL

THIS CAUSE came before the Court upon Defendants Lawrence Foster ("Foster) and Johana Leon's ("Leon") motions for judgments of acquittal, pursuant to Rule 29 of the Federal Rules of Criminal Procedure, or in the alternative, Defendant Leon's motion for a new trial [D.E. 402 and 403].

THE COURT has considered the motions, the pertinent portions of the record, and is otherwise fully advised in the premises. For the reasons set forth below, Defendants' motions are denied.

I. Background

On October 22, 2014, the jury in this cause returned a unanimous verdict finding Defendant Foster guilty of conspiracy to commit wire fraud, in violation of 18 U.S.C. §1349 and six counts of wire fraud in violation of 18 U.S.C. §1343. Although, Defendant



Leon was acquitted of the conspiracy and money laundering counts, she was found guilty of three counts of structuring to avoid reporting requirements in violation of 18 U.S.C. §5324(a)(1) and (d)(2). Defendants now move for a judgment of acquittal notwithstanding the verdict pursuant to Rule 29 of the Federal Rules of Criminal Procedure. Alternatively, Defendant Leon moves for a new trial pursuant to Rule 33. The government filed its response and the parties subsequently replied. [D.E. 404, 408, and 411]. During a hearing held in this matter on February 2, 2015, the Court directed the parties to file supplemental briefing on the pending motions for judgment of acquittal. [D.E. 428]. Defendant Foster filed his supplemental brief in support of his motion for judgment of acquittal [D.E. 431], the government filed its response [D.E. 432], and Defendant Foster filed a reply to the government's response [D.E.436], and his corrected supplemental brief [D.E. 437].

Subsequent to his filings, Defendant Foster requested a hearing on his motion for judgment of acquittal. [D.E. 438]. The Court granted Defendant Foster's request for a hearing and on March 16, 2015, oral arguments were presented by Defendant Foster and the government.[D.E. 403]. This matter is now ripe for disposition.

The following summary of the trial evidence is presented in the light most favorable to the government. "United States v.

Garcia, 405 F.3d 1260, 1269 (11th Cir.2005) (citation omitted). The Court also makes all reasonable inferences and credibility choices in favor of the government and the jury's verdict. United States v. Topete, 361 F. App'x 78, 79 (11th Cir. 2010).

A. Paradise Is Mine Scheme

Paradise is Mine ("PIM") was a company located in Miami Beach, Florida, purportedly offering investment opportunities in a residential real estate development project located in Rum Cay, Bahamas. Defendant Lawrence Foster ("Foster") was the President of PIM. Defendant Johana Leon ("Leon") was the registered agent and a corporate officer. Additionally, Defendant Leon had sole signatory authority over PIM's bank accounts.

To generate interest and sales, PIM issued press releases on the internet that purported the purchase of Rum Cay land by numerous celebrities, including former NFL players Joe Montana and Ray Lewis. The press releases appeared on PIM's web page as "articles." PIM represented that the press releases were legitimate news articles published by or featured in reputable and popular media companies such as USA Today, The Wall Street Journal, and Forbes. [See Govt. Ex. 515d]. The aforementioned media companies however never wrote or published articles regarding PIM or the Rum Cay development.

Moreover, to induce investors to invest in PIM, Defendant Foster distributed and caused others to distribute promotional materials, including sales brochures containing the purported news articles featuring stories about PIM's development in Rum Cay. Investors receiving this information believed that PIM's Rum Cay development was a successful venture and that numerous celebrities "purchased" land. Investors believed the PIM "articles" were "featured" in the reputable news sources identified under their respective logos. Investors were not told that the purported articles, which appeared on the PIM web page and in sales brochures, were press releases created by PIM.

During the existence of PIM, at least from December 2009 through January 31, 2013, Defendant Foster directly, or indirectly, solicited investors. Representatives of PIM, including sales staff, contacted potential investors by phone. Specifically, individuals who previously lost money in the stock market or precious metal markets were solicited by PIM representatives. These targeted individuals had previously invested in, and loss money with, companies through transactions brokered by sales representatives now working for PIM. PIM sales representatives were familiar with these individuals and aware of the losses they incurred as a result of their previous investments. As inducement to invest additional money with PIM, the individuals were offered a credit for their previous investment losses. PIM presented this option as an

opportunity for investors, to recoup money previously lost in unsuccessful ventures. [D.E. 453, p. 189].

Defendant Foster provided PIM sales staff with training and the script used to pitch the PIM investment opportunity. Representatives, including the sales staff, provided potential investors with PIM brochures that included articles featuring PIM from reputable news organizations such as USA Today, Forbes, and The Wall Street Journal. PIM sales staff repeated the contents of the articles when making calls to potential investors. PIM representatives, including the sales staff, also attached and highlighted the articles from USA Today, Forbes, and The Wall Street Journal when emailing potential investors.

In the calls, emails, and brochures, investors were led to believe that PIM was a successful real estate company which was in the process of developing a residential community in Rum Cay, Bahamas. Investors were offered two opportunities to invest in PIM. The first opportunity allowed investors to invest in marketing, promotional, and business initiatives related to the development of Rum Cay by making loans to PIM, which were collateralized by options to the lots. Secondly, investors could buy options in real estate lots located in Rum Cay.

1. Secured Loans

After receiving calls and emails pitching the PIM investment opportunity, and after reviewing PIM's brochure and web page, investors who loaned money, provided PIM with a commitment of funds. [D.E. 453, p. 12]. After receiving the commitment of funds, Defendant Foster emailed investors a secured loan agreement between the investor and PIM. The email also stated in part that PIM and Rum Cay "have been featured in over 377 international publications" including USA Today, The Wall Street Journal, and Forbes. [See D.E. 453, p. 13, Govt. Ex. 150].

The loan agreement between PIM and investors conveyed a "mortgage and security interest" in real property owned by the "company" on Rum Cay. [See Govt. Ex. 252]. The loan agreement defined the "company" as PIM, and investors understood the "company" to be PIM. PIM was the only company named throughout the loan agreement. However, the "Deed to Secure Debt/Collateral Memo" attached as an addendum to the agreement stated that "[t]his document shall serve as a 'Deed to Secure Debt' from PIM whose specific interest has been provided by Sunward Holdings, LTD…." [See Foster Ex. 110, 130]. During solicitation, PIM representatives never told investors that Sunward Holdings owned the Rum Cay land. Investors also were not told of Sunward Holdings' ownership interest prior to providing a commitment of funds. The first time investors learned of Sunward Holdings' interest in the Rum Cay land was upon reading the addendum attached to the loan agreement.

2. Land Options

The second investment opportunity was an option agreement which conveyed an interest in Rum Cay lots. The option agreement likewise defined the "company" as PIM. [See Govt. Ex. 205]. Because PIM was the only company named in the option agreement, and the only company investors communicated with, they reasonably understood PIM to be the owner of the property. In some cases, investors were not aware of Sunward Holdings, or its interest in the land, until after making their last payment on the lot. After this payment was made, investors received a subsequent option agreement which listed Sunward Holdings as the owner of the lot. [D.E. 453, p. 171-172; Govt. Ex. 201].

Ken Toppin, the Executive Director for Sunward Holdings, explained that all Bahamian real estate transactions are registered with the Registry of Records in the Register General's Department. [D.E. 458, p. 142]. Unlike in the United States, in the Bahamas, land can be conveyed, transferred, and registered in ownership interest other than fee simple absolute. Individuals can sell, transfer, and register options to land. An option to land is an ownership interest in land which precludes others from purchasing the land. However, the owner of the land option does not have absolute title to the land. In order for absolute title to convey, the seller or purchaser of the option must pay a Bahamian stamp tax

equivalent to 10% of the purchase price to the government. Upon payment of the stamp tax, an additional "document of conveyance" transfers absolute title to the land. [D.E. 458, p. 143]. This is similar to receiving title in "fee simple absolute" in accord with United States law.

Before entering into the option contract with PIM, investors were aware of the stamp tax requirement. PIM advised investors that they could pay the stamp tax and receive absolute title to the land. Alternatively, the investors could sell the option and allow the buyer of the option to pay the stamp tax. Upon payment of the stamp tax, absolute title to the land would transfer to that person. [D.E. 458, p.143]. None of the investors who engaged in the land option investment vehicle received the final document of conveyance because they were hopeful they could sell their option and make a profit. Payment of the 10% stamp tax would have required paying additional funds to the Bahamian government, which in some instance would have been equivalent to approximately $35,000.00. Because the goal of the investment was to make money, investors wanted to avoid diminishing their total return by paying the stamp tax. There is no evidence that any investor exercised the option to land, sold the option to land, paid the government stamp tax, or received absolute title.

3. Funds from Investors

Lavderim Hysa, a forensic accountant with the Federal Bureau of Investigation, conducted a forensic analysis of PIM's bank accounts. Mr. Hysa, identified approximately $8.3 million deposited into PIM's three Bank of America accounts and JP Morgan account. PIM received these funds from individual investors and equity trust entities. [D.E. 456, p. 125]. According to Mr. Hysa, PIM distributed approximately $280,000.00 in partial payments to investors. Less than 3% of the funds collected were distributed as interest payments to investors. [Govt. Ex. 806-A]. The remaining expenditures included cash withdrawals, payments to unknown individuals and entities, sales staff, office related expense, and payments for rare coins and jewelry. [Govt. Ex. 807]. At the time of Defendant Foster's arrest, $1.1 million remained in PIM's bank accounts.

B. Defendant Leon Structuring Counts

Defendant Leon, was a corporate officer of PIM, and the sole signatory on PIM's bank accounts. Leon withdrew investor money as cash from the bank accounts of PIM on numerous occasions. In doing so, Defendant Leon structured transactions in amounts less than $10,000 to avoid the reporting requirements of 31 U.S.C. §5313(a).

According to the teller at JP Chase Bank, [redacted], he is required to complete a currency transaction report for cash transactions involving more than $10,000.00. [Trial Tr. 10-15-15, p. 41]. Mr. [redacted] also fills out branch referral notes describing specific transactions of interest. In a March 2011 branch referral note, Mr. [redacted] describes an encounter with Defendant Leon. According to Mr. [redacted] Defendant Leon openly told him that she was trying to avoid the reporting requirement. [D.E. 456, p. 46]. Defendant Leon approached his counter with "three checks to cash... totaling $9,990.00 and the other for a OC." [D.E. 456, p. 51]. Mr. [redacted] said he does not remember using or the meaning of the term "OC". Id. Nonetheless, it appears Defendant Leon was charged an $8.00 fee for the "OC" transaction. Defendant paid the $8.00 fee with a $20.00 bill, entitling her to change of $12.00. With her original cash transaction of $9,990.00 and change in the amount of $12.00, [redacted] attempted to distribute $10,002.00 to Defendant Leon. Upon learning that he would be required to fill out a currency transaction report, Defendant Leon asked [redacted] to reverse the transaction and asked if the fee could be taken from the $9,990.00. If the fee came out of the $9,990.00, then the total transaction would be less than $10,00.00, and [redacted] would not be required to fill out the currency transaction report. [redacted] also noted that Defendant Leon "has done this several times before and has had similar transactions." [D.E. 456, p. 52].

II. Standard of Review

A. Rule 29 of Federal Rules of Criminal Procedure

Defendants seek the entry of a judgment of acquittal under Federal Rule of Criminal Procedure 29(c). "A motion for judgment of acquittal is a direct challenge to the sufficiency of the evidence presented against the defendant." United States v. Aibejeris, 28 F.3d 97, 98 (11th Cir.1994) (per curiam). When faced with a Rule 29 motion, the Court should "determine whether, viewing all the evidence in the light most favorable to the Government and drawing all reasonable inferences and credibility choices in favor of the jury's verdict, a reasonable trier of fact could find that the evidence established guilt beyond a reasonable doubt." United States v. Grigsby, 111 F.3d 806, 833 (11th Cir.1997) (quoting United States v. O'Keefe, 825 F.2d 314, 319 (11th Cir.1987)).

A "verdict of guilty must stand if there is substantial evidence to support it." United States v. Toler, 144 F.3d 1423, 1428 (11th Cir.1998). Any conflicts in the evidence are resolved in favor of the Government, and all inferences that tend to support the Government's case must be accepted. United States v. Ward, 197 F.3d 1076, 1079 (11th Cir.1999). "A jury is free to choose among reasonable constructions of the evidence." United States v. Williams, 390 F.3d 1319, 1323 (11th Cir. 2004). Thus, the evidence need not exclude every reasonable hypothesis of innocence or be

wholly inconsistent with every conclusion but guilt. Id. In short, the Court must determine whether, based on the evidence, a reasonable jury could find the defendant guilty beyond a reasonable doubt. United States v. Ward, 197 F.3d 1076, 1079 (11th Cir.1999). A jury's verdict cannot be overturned if any reasonable construction of the evidence would have allowed the jury to find the defendant guilty beyond a reasonable doubt. United States v. Herrera, 931 F.2d 761, 762 (11th Cir.1991).

B. Rule 33 of Federal Rules of Criminal Procedure

Alternatively, Defendant Leon moves for a new trial under Federal Rule of Criminal Procedure 33. (D.E. 402]. The power of a court to grant a new trial is much broader than the power to grant a motion for acquittal. See United States v. Ward, 274 F.3d 1320, 1323 (11th Cir.2001). In reviewing a motion for a new trial, "a district court may weigh the evidence and consider the credibility of the witnesses." Butcher v. United States, 368 F .3d 1290, 1297 (11th Cir.2004) (citation omitted). "However, ... the court 'may not ... set aside the verdict simply because it feels some other result would be more reasonable. The evidence must preponderate heavily against the verdict, such that it would be a miscarriage of justice to let the verdict stand.'" Id. (quoting United States v. Martinez, 763 F.2d 1297, 1312-13 (11th Cir.1985)).

III. Analysis

A. Defendant Foster

Defendant Foster was convicted of conspiracy to commit wire fraud, in violation of 18 U.S.C. §1349 and six counts of wire fraud in violation of 18 U.S.C. §1343. Under Federal Rule of Criminal Procedure 29(a), the district court, "on the defendant's motion[,] must enter a judgment of acquittal of any offense for which the evidence is insufficient to sustain a conviction." Fed.R.Crim.P. 29(a); United States v. Higginbotham, 558 F. App'x 912, 913 (11th Cir. 2014). Defendant Foster attacks the jury verdict asserting that he did not commit fraud in his operation of PIM because: 1) he made no materially false misrepresentations to induce business; 2) he was transacting business with land that had clear and marketable title; 3) he acted in good faith and in accordance with the agreements to which he entered; and 4) his promotional and marketing efforts were ethical and in keeping with the standards of the industry. [D.E. 403]. The Government opposes Defendant Foster' motion asserting that the evidence establishes that he: 1) misled investors by doctoring PIM press releases to look like "articles" from reputable news organizations; 2) misled investors about celebrities "purchasing" land in the Bahamas when no celebrity had title to any land; and 3) misled investors as to the true owner of the land. [D.E. 404].

1. Conspiracy to Commit Wire Fraud and Substantive Wire Fraud

To establish a scheme to defraud, the government must prove a material misrepresentation or the omission or concealment of a material fact calculated to deceive another of money or property. United States v. Maxwell, 579 F.3d 1282, 1299 (11th Cir.2009) (citing Hasson, 333 F.3d at 1270-71). "A misrepresentation is material if it has 'a natural tendency to influence, or [is] capable of influencing, the decision maker to whom it is addressed.'" Maxwell, 579 F.3d at 1299 (alteration in original) (quoting Hasson, 333 F.3d at 1271). The government need not prove that Defendant contemplated harm to a specific, identifiable victim, but rather defendant's criminal intent and criminal culpability can be inferred from the defendant's conduct. Maxwell, 579 F.3d at 1301; *See* United States v. Munoz, 430 F.3d 1357, 1369 (11th Cir.2005) ("Direct proof of willful intent to defraud is not necessary. It may be inferred from the activities of the parties involved.") (quoting Blachly v. United States, 380 F.2d 665, 676 (5th Cir.1967)); United States v. Artuso, 482 F. App'x 398, 401 (11th Cir. 2012) cert. denied, 133 S. Ct. 1456, 185 L. Ed. 2d 367 (U.S. 2013). It is unnecessary that the victim actually relies on the misrepresentation or omission; proof of intent to defraud is sufficient. United States v. Bradley, 644 F.3d 1213, 1239 (11th Cir. 2011).

The Judicial definition of a scheme to defraud "signifies 'the deprivation of something of value by trick, deceit, chicane, or

overreaching.'" United States v. Pendergraft, 297 F.3d 1198, 1208 (11th Cir.2002) ("[T]he meaning of 'scheme to defraud' has been judicially defined.") (citing United States v. Lemire, 720 F.2d 1327, 1335 (D.C.Cir.1983)). All that is necessary is that the scheme be reasonably calculated to deceive; the intent element of the crime is shown by the existence of the scheme. Id.

a. Material Misrepresentation

i. PIM's press releases

The trial evidence revealed that Defendant Foster directed investors to purported "articles" from reputable news sources, such as USA Today, The Wall Street Journal and Forbes, when in fact they were press releases created by PIM. [redacted], was hired to contact potential investors on behalf of PIM. Ms. [redacted] met with Defendant Foster at PIM's offices in Miami where she received a PIM brochure, as well as a script to read to potential investors. [D.E. 452, p. 141, Govt. Ex. 401]. According to Ms. [redacted] the PIM brochure contained a list of 377 publications in which PIM was featured. Along with the icons, headers, or logos for the publications, the caption read "Paradise is Mine projects have been featured in Forbes.com, USA Today, The Wall Street Journal." Ms. [redacted] was further directed to relay this information to potential investors. As instructed, Ms. [redacted] referenced these publications when making calls to potential investors.

The same representations appeared on PIM's web page. Specifically, PIM's Web page stated "Within the last two years PIM and its projects have been featured in 377 international publications and global media outlets including Forbes, USA Today, Wall Street Journal, ESPN, Scottrade, Yahoo Finance, and The Jay Leno Show." [See Govt. Ex. 515 (a)-(c)]. The headers or logos of these publications appear on PIM's web page along with what appears to be news articles.

Mr. [redacted], an investor, loaned PIM a sum of money. Before agreeing to lend PIM funds, Mr. [redacted] received an email from a PIM representative highlighting PIM's recent feature in more than 377 international publications. Mr. [redacted] visited PIM's web page where he viewed articles appearing to be from reputable publications. The articles, according to Mr. [redacted], "gave a favorable impression that Paradise Is Mine is a viable institution." [D.E. 453, p. 9]. After visiting PIM's web page, viewing the sales brochures and speaking with a PIM representative, Mr. [redacted] committed to investing $200,000.00 in cash and assigning $70,000.00 in lost assets from a previous bad investment. After sending a commitment of funds, Mr [redacted] received an email directly from Defendant Foster that stated in part that PIM had been "featured" in publications including USA Today, Southern Boating, Scottrade, Yahoo News, and The Wall Street Journal. [D.E. 453, p. 15, Govt. Ex. 152]. Mr. [redacted] reasonably believed that

the articles "featured" in the publications were written by reporters after doing research and analysis of PIM. Id.

[redacted] an investor who purchased a land option from PIM, received an email from Defendant Foster that included articles from Forbes magazine and USA Today that stated celebrities were purchasing property in Rum Cay. [D.E. 453, p. 161]. Mr. [redacted] visited PIM's web page approximately 15 to 20 times, and viewed articles, before he decided to invest with PIM. Id. After his purchase, Mr. [redacted] began asking Defendant Foster about selling his land option and expressing reservations about his investment. [D.E. 453, p. 171-173]. In response to his concern, PIM reduced Mr. [redacted] remaining option cost from $157,000.00 to $75,000.00. [D.E. 453, p. 171-172]. After making his final payment of $75,000.00, Mr. [redacted] was sent another option agreement. [See Govt. Ex. 201]. In this final option agreement, Sunward Holdings was named as the vendor and owner of the land. It was at this time, after making final payment for the lot, that Mr. [redacted] discovered that the option contract was between himself and Sunward Holdings, not PIM. [D.E. 453, p. 172]. Prior to receipt of the final option contract, Mr. [redacted] had never heard of Sunward Holdings. Mr. [redacted] testified that he felt anger and disappointment because he was expecting to contract with PIM, not Sunward Holdings. [D.E. 453, p. 173]. Mr. [redacted] expressed concern about the new documents and also inquired about receiving title to his land. Id.

In response, he received an email from Defendant Foster with "links and sites of different advertisements." [D.E. 453, p. 174]. Included were links to what Defendant Foster described as "articles" from Forbes, USA Today, and the Wall Street Journal referencing the purchase of land by celebrities [D.E. 453, p. 174, Govt. Ex. 203]. Mr. [redacted] believed that by "articles", Defendant Foster was communicating that they were published by the various journals. [D.E. 453, p. 175]. According to Mr. [redacted] reviewing the articles that said Joe Montana had purchased property in PIM felt promising and made him "feel good" about his investment. [D.E. 453, p. 179].

Mr. [redacted], an investor who also purchased a land option from PIM, visited PIM's web page and was "most impressed" with the endorsements that appeared in articles from The Wall Street Journal, USA Today, and Forbes magazine [D.E. 454, p. 69]. Mr. [redacted] recalled the web page stating that many famous people, such as Joe Montana and Ray Lewis, had invested in the property. [D.E. 454, p. 70]. Further, when he saw an article, he believed to be published on Forbes.com, on PIM's web page with the caption *Joe Montana Joins a Long List of Notables to Descend to the Island*, it gave the project "credibility." Id. Mr. [redacted] also recalled seeing an article published in USA Today on PIM's web page. Again, seeing the article published in USA Today, a publication he subscribes to and reads daily, gave him a "good sense of comfort

that this was going to be a very good investment." [D.E. 454, p. 71, Govt. Ex. 402b]. According to Mr. [redacted] after reviewing PIM's web page, he decided to move forward and purchase a lot. Id.

Following his purchase of property from PIM, Mr. [redacted] received an email from Defendant Foster, on March 7, 2011, that referenced links to several "articles", including a Forbes article, which featured Joe Montana's affiliation with Rum Cay. [D.E. 454, pp. 83-85]. In an email of March 9, 2011, Defendant Foster tells Mr. [redacted] that PIM had recently been featured in more than 79 international publications and media outlets including USA Today and The Wall Street Journal. [D.E. 454, p. 86]. On April 29, 2011, Mr. [redacted] received another email from Defendant Foster with the subject "PIM has appeared in 377 global publications as of 4-29-11." [D.E. 454, p. 87, Govt. Ex. 307]. This email included logos from USA Today and The Wall Street Journal as well as local newspapers from San Francisco familiar to Mr. [redacted] Id. Upon seeing PIM featured in these publications, Mr. [redacted] felt very comfortable with his investment. [D.E. 454, p. 89].

Contrary to the representation of PIM, links listed on PIM's web page, and viewed by investors, were not to articles appearing on the publications web pages. Gaston Nieves ("Nieves"), a senior computer forensic examiner with the Federal Bureau of Investigation ("FBI"), testified that if you clicked on the word "Forbes" on

PIM's web page it directed you to an article. [D.E. 455, p. 175]. Nieves then demonstrated this for the jury. The viewers were redirected to what appeared to be a news article along with a photo of Joe Montana. Id. Similarly, the link to The Wall Street Journal, directed viewers to an article, saved as a PDF file, with The Wall Street Journal logo at the top, and at the bottom the note "[a]s published online version of the Wall Street Journal." [D.E. 455, p. 176]. A PDF file is a "portable document format" that captures all of the elements, including the original graphic appearance, of a printed document as an electronic image. In other words, the PDF version of The Wall Street Journal article was not a link to the article as it appeared on wsj.com at the time of viewing, but rather a copy of an image. Nieves reviewed the file properties of the articles. The file properties contained the details associated with the creation of the article and its data structure. In viewing the file properties of the PDF version of The Wall Street Journal article, Nieves determined that Defendant Foster was the author of the article created February 14, 2010. [D.E. 455, p. 177]. The file properties for the link titled *USA Today Article-Jewels Discovered.doc*, created May 21, 2009, also listed Defendant Foster as the author. Id. It can be inferred from the evidence that Defendant Foster created the image of the articles as they appeared on PIM's web page.

According to Nieves, the URL, or internet address, for the links on PIM's Web page did not belong to the actual publications. [D.E. 455, p. 179]. For example, as explained by Nieves, the link to forbes.bahamasmediabank.com, is not a link to forbes.com, the actual web page for Forbes magazine. [D.E. 455, p. 180, Govt. Ex. 203]. Likewise, the link for usatoday-jewels.bahamasmediabank.com is not the same as usatoday.com; and the link to wallstreejournal.bahamaswebnews.com is not the same as wsj.com. Id.

Collen Schwartz ("Schwartz"), director of publicity for The Wall Street Journal, testified that while press releases appear on the online version of The Wall Street Journal at wsj.com, they are clearly distinguished from news articles with a notation disclaiming a role in the content creation. [D.E. 455, p. 107]. While "articles" that appear in both the print and online versions of The Wall Street Journal are written by reporters, "press releases" that appear on wsj.com are written by non-reporters, provided by companies other than The Wall Street Journal, and are distributed by public relation companies to media outlets, like wsj.com. Id. Ms. Schwartz identified government's exhibit 515d as a press release titled *Ray Lewis Acquires Land In Rum Cay,* with the Wall Street Journal logo at the top left, and additional information below. [D.E. 455, pp. 108-109]. Ms. Schwartz noted that the purported "article" lacked a byline with the name of the author or reporter who wrote the piece, and the date line was inconsistent

with an article written by wsj.com. [D.E. 455, p. 109]. The last line of the document stated: "[a]s published online version The Wall Street Journal." However, upon a search of the wsj.com archives, Ms. Schwartz was unable to find the article. [D.E. 455, p. 110].

Likewise, Benjamin Abramson, deputy managing editor for travel for USA Today, testified that after looking through the USA Today database, he was unable to locate a purported USA Today article dated March 23, 2009. [D.E. 455, p. 126, Govt. Ex. 402b]. Notably, the "article" included an outdated USA Today logo in the left hand corner. [D.E. 455, p. 127]. This infers that the article could not have been accurate because in March 2009, USA Today used no such logo. The article also contained other stylistic and visual cues that lead Mr. Abramson to conclude that it was not an article published by USA Today. Id. According to Mr. Abramson, in his experience, USA Today does not publish press releases as articles without any alteration. [D.E. 455, p. 129]. Nor does USA Today publish press releases online or in its print newspaper. Id. Also, to Mr. Abramson's knowledge, USA Today does not authorize press releases to be used with the USA Today logo. Id.

Defendant Foster maintains that he did not doctor PIM press releases to look like "articles" from reputable news organizations. Rather, Defendant Foster availed himself of a commonly used

distribution service, Vocus, who produced and distributed the press releases. Defendant Foster contends that PIM never represented the press releases as "articles" written by the publications, but rather noted that PIM was "featured" in them. This means, the press releases were picked up by the media outlets and appeared on their respective web pages. PIM then took screen shots of the press releases as they appeared on the media outlet web page and reproduced them in their marketing and promotional materials. Defendant Foster further asserts that there is no evidence that the PIM press releases were illegitimate or not in accord with industry practice.

In support of this argument, Defendant Foster called Rhonda Harper, an expert in marketing and public relations. In her expert opinion, Ms. Harper testified that PIM's marketing efforts were within the standards, ethics and boundaries of current marketing and public relation practices. Harper testified that in building and increasing the value of a brand it is common for companies to enter into an agreement for professional services with celebrities like Joe Montana or Ray Lewis. [D.E. 457, p. 186]. After entering into such agreements, Ms. Harper testified that PIM contracted with a PR distribution company, Vocus, which has an online service called PRWeb. PIM paid Vocus to issue press releases announcing that they had entered into deals with different celebrities. [D.E. 457, p. 176]. Ms. Harper, having no personal knowledge of the

postings at issue, testified that it is typical for a company to enter into a contract with an online distribution company, create distribution lists, write the press release with a headline and sometimes a sub-headline, and upload the press release to the online distribution service. The distribution service approves the formatting of the press release and decides whether the content is newsworthy. The online distribution company sends the press release to the publications listed on the distribution list. In this case, PIM's press release was sent to business publications, travel publications, and sports publications. [D.E. 457, p. 177].

Ms. Harper explained that posting of the press releases to the internet sites of these media outlets is done by computer algorithms. [D.E. 457, p. 180]. Ms. Harper testified that the press releases are posted to the media outlets' web page without the knowledge or review of the media company. The press release is posted to the press release section of the media outlet's internet site, but it appears under their logo. Id. The press release may remain on the publication's web page for a millisecond or a couple of days. [D.E. 457, p. 181]. The distribution company provides a list to the company of where its press release appeared. To leverage the value of the press release as a marketing initiative, and to extend the life of the information, the company creates a screenshot of the press release as it appears on the media outlet's web page. The company thereafter uses the screenshot in its

marketing materials. Ms. Harper testified that PIM could take a screenshot of the press releases, as they appeared on the publications web pages, and email this material, create brochures, or put them on its web page, to leverage and extend the life of the marketing collateral. [D.E. 457, pp. 183-184]. According to Ms. Harper, it is common to cut-and-paste press releases as they appear on the media outlets and "clean" them up by removing unwanted verbiage before pasting them to a website. [D.E. 458, p. 49-52]. It is also common to use old headers or artwork of news outlets in this "clean up" process. [D.E. 458, p. 57]. This practice, as Harper explained, was something typical and standard in the industry.

Ms. Harper further testified that although "feature" is an industry word, as is article, publish, post, and press release, those not in the public relations or media industry, use all of those terms interchangeably. [D.E. 457, p. 189]. Ms. Harper explained that an editor or writer would use the word "feature" in a different, more specific, context than a lay person. [D.E. 457, p. 190].

As instructed by Rule 29 of the Federal Rules of Criminal Procedure, viewing all of the evidence in the light most favorable to the government and drawing all reasonable inferences and credibility choices in favor of the jury's verdict, a reasonable

jury could find that PIM's marketing materials and web page included press releases designed to appear as legitimate news articles, when in fact the purported articles were press releases manipulated by Defendant Foster to include logos from reputable news sources. Testimony from Mr. Abramson, the USA Today representative, was that the PIM "article" included an outdated USA Today logo, and other visual cues, that inferred that the article was not published by USA Today. A reasonable jury could find that USA Today, The Wall Street Journal, and Forbes magazine never published or featured articles about PIM. A reasonable jury could also find that Defendant Foster posted the articles to PIM's web page, included the articles in PIM's sales brochures, and directed investors to view the articles knowing that the articles had a natural tendency to influence investors. Additionally, the jury could find that in creating the articles with the logos of news publications such as The Wall Street Journal and USA Today Defendant Foster acted with the intent to defraud. United States v. Maxwell, 579 F.3d 1282, 1299 (11th Cir.2009). Moreover, the jury could reasonably infer that investors viewed the articles either on PIM's web page, or in sales brochures and emails provided by Defendant Foster, before investing money in or purchasing property from PIM. Further, it can be inferred by the jury that PIM's representation that the articles were featured in reputable

publications influenced investors decision to loan money to or purchase land from PIM.

Finally, a reasonable jury could reject Ms. Harper's testimony that PIM's use of press releases in this manner is common place and within the ethical standards of the industry. Based on this evidence, a reasonable trier of fact could find beyond a reasonable doubt that the "articles" were material misrepresentations calculated and used by PIM to deceive investors of money or property.

ii. Celebrity purchases of land

A jury could reasonably find that PIM made false and fraudulent representations that celebrities "purchased" land in the Bahamas from PIM. Mr. [redacted] testified that he was assured that there were numerous celebrities including Ray Lewis and Joe Montana, who "purchased" lots in the Bahamas. Additionally, after reading articles about celebrities owning land in Rum Cay, he believed celebrities paid PIM money for property in the same development where his lot was located.

Although PIM represented that football MVP Joe Montana and other celebrities purchased land, they actually signed a professional services agreement with PIM, in essence bartering the use of their name in exchange for a land option to a lot in Rum

Cay. Mr. Montana was not required to pay any money for his land option, but instead would be paid by PIM for his endorsement of the project. Such agreements are not uncommon between companies and celebrities, however, notwithstanding PIM's representations, no celebrities, including Joe Montana, in fact received absolute title to any land in Rum Cay.

A scheme to defraud requires proof of material misrepresentations, or the omission or concealment of material facts, reasonably calculated to deceive persons of ordinary prudence. United States v. Hasson, 333 F.3d 1264, 1270-71 (11th Cir. 2003). A Misrepresentation or omission having a natural tendency to influence, or is one on which a person of ordinary prudence would rely, is sufficient to constitute a scheme to defraud. Viewing the evidence in the light most favorable to the Government, a reasonable trier of fact could find, that Defendant Foster's claim that numerous celebrities, including Joe Montana, bought or owned land, rather than an option to land, in Rum Cay was a material misrepresentation that an ordinary person would rely upon in making a decision to invest in PIM. This misrepresentation in conjunction with omitting the fact that celebrities in fact bartered services for land options rather than purchased lots, lead a reasonable jury to find it was calculated to deceive investors.

iii. Land ownership

A reasonable jury could find that Defendant Foster misrepresented the true ownership of the Rum Cay land in the Bahamas. Despite representations to potential investors that PIM owned and was developing land in the Bahamas, PIM in fact did not have title to any land in the Bahamas. Instead, Sunward Holdings, owned the land. Sunward Holdings land ownership was not disclosed to potential investors in PIM's marketing materials or during its initial sales pitch.

PIM was defined as the "company" in the agreements with investors and was the only company known to investors. Investors were not told, prior to committing funds, or signing the option contracts, that Sunward Holdings, and not PIM, owned the land. Investors testified that they were surprised to see Sunward Holdings named in the final option contract or attached addendum as owner of the land.

[redacted] learned of Sunward Holding after making his final payment for his lot and receipt of a third option contract. Mr. [redacted] was angry and disappointed to see Sunward Holdings instead of PIM named in his final option contract. Mr. [redacted] expressed his reservations to Defendant Foster about his investment upon learning that he was entering into an agreement with an unknown company.

Given this record, it is reasonable for a jury to find that PIM's failure to disclose Sunward Holdings as the land owner in the loan agreements and land option contracts was calculated to deceive investors. A reasonable jury could find that investors believed that PIM owned the Rum Cay land and that Sunward Holding's land ownership was a material omission. The failure to provide this information to investors is a material misrepresentation or omission sufficient to support a reasonable jury's guilty verdict.

iv. Investor Funds

Through PIM's misrepresentations, the company collected approximately $8.3 million from investors. PIM paid out approximately $280,000.00 in partial payments to investors. Less than 3% of the funds collected were distributed as interest payments to investors. [Govt. Ex. 806-A]. The bank records show that PIM withdrew the remaining funds for items including cash withdrawals, payments to unknown individuals and entities, payments to sales staff, office related expenses and payments for rare coins and jewelry. [Govt. Ex. 807]. At the time of Defendant Foster's arrest, $1.1 million remained in PIM's bank accounts. A reasonable jury could infer that PIM's use of the funds were in furtherance of the fraudulent scheme.

B. **Defendant Leon**

1. Structuring Transactions to Avoid Reporting

Defendant Leon was found guilty of three counts of structuring to avoid reporting requirements in violation of 18 U.S.C. §5324(a)(1) and (d)(2). She contends the government failed to demonstrate that she knowingly structured transactions to cause banks to fail to file transaction reports, that the purpose of the transactions was to evade the reporting requirements, or that the transactions furthered another Federal crime as part of a pattern of illegal activity involving more than $100,000.00 in a 12-month period. [D.E. 402]. The Government responds that the evidence clearly shows that Defendant Leon was aware of the reporting requirements and took affirmative steps to avoid them. [D.E. 404].

Defendant Leon asserts that she did not knowingly structure cash transactions to avoid the currency transaction reporting requirement. However, there is direct and circumstantial evidence of Leon's knowledge of the reporting requirement. Specifically, Mr. [redacted], a JP Morgan Chase Bank teller, testified that, according to his recollection, based upon his internal notes, on March 25, 2011, Defendant Leon came to his counter with three checks totaling more than $10,000.00. [redacted] testified that if there is a transaction involving more than $10,000.00, he is required to fill out a currency transaction report. [D.E. 456, p. 44]. According to

[redacted] Defendant Leon openly tried to "avoid the reporting" requirement. [D.E. 456, p. 45, Govt. Ex. 701]. The bank records reflect that Defendant Leon stated that she did not want to complete a currency form, and wanted to restructure her transaction to avoid having to complete the form. According to the bank records Defendant Leon previously completed similar transactions to avoid the reporting requirement. [D.E. 456, p. 46]. Moreover, the bank records reflect a clear pattern of dividing transactions into numerous smaller transactions to avoid reporting requirements. For example, from November 30, 2012, to January 30, 2013, Defendant Leon made cash withdrawals on 13 days over $9,750 but below $10,000, in different combinations of cash withdrawals, and check withdrawals from different branches.

The *mens rea* elements of knowledge and intent can often be proved through circumstantial evidence and the reasonable inferences drawn therefrom. See, e.g., Ratzlaf v. United States, 510 U.S.135, 149 n. 19, 114 S.Ct. 655, 126 L.Ed.2d 615 (1994) (noting that "jury may, of course, find the requisite knowledge on defendant's part by drawing reasonable inferences from the evidence of defendant's conduct"). A verdict of guilty may be based entirely on circumstantial evidence as long as the inferences of culpability drawn from the circumstances are reasonable. United States v. MacPherson, 424 F.3d 183, 190 (2d Cir. 2005). While there was direct evidence that Leon knowingly structured financial

transactions with [redacted] to avoid the reporting requirements, the totality of circumstantial evidence also permitted a jury to reasonably find that Defendant Leon engaged in a pattern of structuring transactions with the requisite guilty knowledge and intent.

Defendant Leon contends that she acted at the direction of Defendant Foster. Defendant Foster, without her input, determined how PIM's money was to be spent, and how transactions were to be structured. However, the jury could have reasonably inferred from her pattern of structuring, and her statements to Mr. [redacted] that she knew of and intended to evade currency reporting requirements. Id.

Notwithstanding Defendant Leon's assertions that she acted at the direction of Defendant Foster or that he signed her name to checks, her knowledge and intent to structure transactions to avoid reporting is supported by the evidence. The testimony revealed that upon learning that her transaction exceeded $10,000.00, and required a report, Defendant Leon asked the teller to cancel her transaction. Moreover, she had completed similar transactions in an effort to avoid the reporting requirement. Whether or not she acted at the direction of Defendant Foster is not relevant to her conduct as charged. Viewing the evidence in the light most favorable to the government it is reasonable for a jury to conclude that Defendant

Leon, personally or while aiding and abetting others, structured transactions that divided a sum over $10,000.00 into smaller cash transactions in violation of 18 U.S.C. §5324(a)(1) and (d)(2).

With regards to Defendant Leon's motion for a new trial pursuant to Rule 33 of the Federal Rules of Criminal Procedure, the Court does not find that the evidence preponderates heavily against the jury's verdict, such that it would be a miscarriage of justice to let the verdict stand. Butcher v. United States, 368 F.3d 1290, 1296-97 (11th Cir. 2004). Accordingly, Defendant Leon's motion for new trial is denied.

IV. Conclusion

After considering all of the Defendants' arguments, the Court finds them without merit. The evidence, taken in the light most favorable to the government, is sufficient to support the jury's verdict. Accordingly, it is hereby

ORDERED AND ADJUDGED that Defendant Foster's Motion for Judgment of Acquittal notwithstanding the Verdict [D.E. 403] is **DENIED**. It is further

ORDERED AND ADJUDGED that Defendant Johana Leon's Motion for Acquittal or in the Alternative for a New Trial [D.E. 402] is **DENIED**.

DONE AND ORDERED in Chambers at Miami, Florida, this 22nd day of APRIL, 2015.

DONALD L. GRAHAM
UNITED STATES DISTRICT JUDGE

cc: All Counsel of Record

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Case No. 13-20063-Cr-Graham

UNITED STATES OF AMERICA

vs.

JORDON McCARTY,

Defendant.
_____/

PLEA AGREEMENT

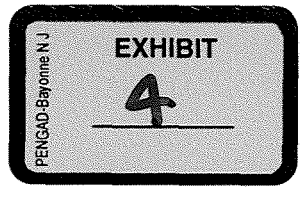
The United States of America and Jordon McCarty (hereinafter referred to as the "defendant") enter into the following agreement:

1. The defendant agrees to plead guilty to Count One of the Indictment, which charges the defendant with conspiring to commit wire fraud, in violation of Title 18, United States Code, Section 1349.

2. The United States agrees to seek dismissal of Counts Two and Three as to this defendant after sentencing.

PENALTIES

3. The defendant understands and acknowledges that, as to Count One, the court may impose a statutory maximum term of imprisonment of up to 20 years, followed by a term of supervised release of up to 3 years. In addition to a term of



imprisonment and supervised release, the court may impose a fine of up to $250,000 or not more than the greater of twice the gross gains or gross loss resulting from the offense. *See* 18 U.S.C. § 3571(d).

4. The defendant further understands and acknowledges that, in addition to any sentence imposed under the previous paragraph of this agreement, a special assessment in the amount of $100 will be imposed on the defendant. The defendant agrees that any special assessment imposed shall be paid at the time of sentencing.

5. The defendant understands that restitution under Title 18, United States Code, Section 3663A is mandatory and the defendant agrees that the restitution required as a result of the criminal conduct set forth in paragraph one above shall be equal to the amount of any actual victim loss attributable to the defendant's knowing participation in the criminal conduct, as determined at sentencing. The defendant agrees that the defendant committed offenses against property listed in Section 366A as part of the fraud scheme set forth in paragraph one above. The defendant further agrees to make restitution in the amount of loss arising from the relevant conduct related to this matter, not just from the offense of conviction. The parties jointly agree to recommend that the Court order the Defendant to pay restitution in the amount of $1,103,183.48.

APPLICABLE SENTENCING PROCEDURES

6. The defendant is aware that the sentence will be imposed by the court after considering the Federal Sentencing Guidelines and Policy Statements (hereinafter "Sentencing Guidelines"). The defendant acknowledges and understands that the

court will compute an advisory sentence under the Sentencing Guidelines and that the applicable guidelines will be determined by the court relying in part on the results of a Pre-Sentence Investigation by the court's probation office, which investigation will commence after the guilty plea has been entered. The defendant is also aware that, under certain circumstances, the court may depart from the advisory sentencing guideline range that it has computed, and may raise or lower that advisory sentence under the Sentencing Guidelines. The defendant is further aware and understands that the court is required to consider the advisory guideline range determined under the Sentencing Guidelines, but is not bound to impose that sentence; the court is permitted to tailor the ultimate sentence in light of other statutory concerns, and such sentence may be either more severe or less severe than the Sentencing Guidelines' advisory sentence. Knowing these facts, the defendant understands and acknowledges that the court has the authority to impose any sentence within and up to the statutory maximum authorized by law for the illegal conduct to which the defendant has agreed to plead guilty (as described in paragraph 1) and that the defendant may not withdraw the plea solely as a result of the sentence imposed.

7. The Office of the United States Attorney for the Southern District of Florida (hereinafter "Office") reserves the right to inform the court and the probation office of all facts pertinent to the sentencing process, including all relevant information concerning the offenses committed, whether charged or not, as well as concerning the defendant and the defendant's background. Subject only to the express terms of any agreed-upon

sentencing recommendations contained in this agreement, this Office further reserves the right to make any recommendation as to the quality and quantity of punishment.

8. The United States further to recommend that the defendant be sentenced at the low end of the guideline range, as that range is determined by the court.

9. The United States agrees that it will recommend at sentencing that the court reduce by two levels the sentencing guideline level applicable to the defendant's offense, pursuant to Section 3E1.1(a) of the Sentencing Guidelines, based upon the defendant's recognition and affirmative and timely acceptance of personal responsibility. If at the time of sentencing the defendant's offense level is determined to be 16 or greater, the government will make a motion requesting an additional one level decrease pursuant to Section 3E1.1(b) of the Sentencing Guidelines, stating that the defendant has assisted authorities in the investigation or prosecution of the defendant's own misconduct by timely notifying authorities of the defendant's intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the government and the court to allocate their resources efficiently.

10. The United States and the defendant agree that, although not binding on the probation office or the court, they will jointly recommend that the court make the following findings and conclusions as to the sentence to be imposed:

Guideline: The offense involves fraud, and Guideline 2B1.1 applies.
Base offense: The base offense level is 7 because of the maximum penalty.
Loss amount: The level increases by 18 to reflect between $2.5 million and $7 million in intended loss.
Victims: The level increases by 4 to reflect over 50 but under 250 victims.
Sophisticated: The Defendant's actions were not sufficiently sophisticated to

warrant an increase.

Role: The Defendant deserves a 2-level increase to reflect his role in the criminal activity.

Variance: The Defendant reserves the right to argue for a downward variance and departure.

11. The defendant agrees to cooperate fully with this Office by (a) providing truthful and complete information and testimony, and producing documents, records and other evidence, when called upon by this Office, whether in interviews, before a grand jury, or at any trial or other court proceeding; (b) appearing at such grand jury proceedings, hearings, trials, and other judicial proceedings, and at meetings, as may be required by this Office; and (c) if requested by this Office, working in an undercover role to contact and negotiate with others suspected and believed to be involved in criminal misconduct under the supervision of, and in compliance with, law enforcement officers and agents. This Office reserves the right to evaluate the nature and extent of the defendant's cooperation and to make the defendant's cooperation, or lack thereof, known to the court at the time of sentencing. If in the sole and unreviewable judgment of this Office the defendant's cooperation is of such quality and significance to the investigation or prosecution of other criminal matters as to warrant the court's downward departure from *the advisory sentence* calculated under the Sentencing Guidelines, this Office may at or before sentencing make a motion consistent with the intent of Section 5K1.1 of the Sentencing Guidelines prior to sentencing, or Rule 35 of the Federal Rules of Criminal Procedure subsequent to sentencing, reflecting that the defendant has provided substantial assistance and recommending that the defendant's

sentence be reduced from the advisory sentence suggested by the Sentencing Guidelines. The defendant acknowledges and agrees, however, that nothing in this Agreement may be construed to require this Office to file any such motion(s) and that this Office's assessment of the nature, value, truthfulness, completeness, and accuracy of the defendant's cooperation shall be binding insofar as the appropriateness of this Office's filing of any such motion is concerned. The defendant understands and acknowledges that the Court is under no obligation to grant any motion referred to in this agreement should the government exercise its discretion to file any such motion. The defendant also understands and acknowledges that the court is under no obligation to reduce the defendant's sentence because of the defendant's cooperation.

12. The United States, however, will not be required to make any motions or recommendations if the defendant: (1) fails or refuses to make a full, accurate and complete disclosure to the probation office of the circumstances surrounding the relevant offense conduct; (2) is found to have misrepresented facts to the government prior to entering into this plea agreement; or (3) commits any misconduct after entering into this plea agreement, including but not limited to committing a state or federal offense, violating any term of release, or making false statements or misrepresentations to any governmental entity or official. The parties agree that the defendant does not deserve any reduction pursuant to Section 3E1.1 if the defendant is found to have refused to assist authorities in recovery of the fruits and instrumentalities of the offense.

FORFEITURE & FINANCIAL DISCLOSURE OBLIGATIONS

12. The defendant agrees to forfeit to the United States, voluntarily and immediately, all of the defendant's right, title and interest in all assets and/or their substitutes which are subject to forfeiture, pursuant to 18 U.S.C. § 981(a)(1)(C) and the procedures of 21 U.S.C. § 853, including but not limited to the following: (a) The contents of Bank of America Account number 898032366335 in the name of Paradise is Mine; (b) the contents of Bank of America Account number 898053927957 in the name of Paradise is Mine; (c) the contents of JP Morgan Account number 872715800 in the name of Paradise is Mine; and (d) one 2010 Bentley Continental GT Speed VIN: SCBDP3ZA3AC063252, FL Tag BNBX88. The defendant agrees that the above-named property is directly or indirectly traceable to the proceeds of the wire fraud offense to which the defendant has agreed to plead guilty, and that it is therefore subject to forfeiture pursuant to 18 U.S.C. § 981(a)(1)(C). In addition, defendant agrees to the entry of a forfeiture money judgment in the amount of $2,500,000, which represents the proceeds of the wire fraud offense to which he has agreed to plead guilty. The defendant knowingly and voluntarily agrees to waive any claims or defenses the defendant may have under the Eighth Amendment to the United States Constitution, including any claim of excessive fine or penalty with respect to the forfeited asset. The defendant agrees to waive any appeal for the forfeiture. The defendant further agrees to waive any applicable time limits for the initiation of administrative forfeiture and/or any further notification of any judicial or administrative forfeiture proceedings brought

against said asset. The defendant also agrees that the defendant shall assist this Office in all proceedings, whether administrative or judicial, involving the forfeiture to the United States of all rights, title, and interest, regardless of their nature or form, in all assets, including real and personal property, cash and other monetary instruments, wherever located, which the defendant or others to the defendant's knowledge have accumulated as a result of illegal activities. Such assistance will involve an agreement on defendant's part to the entry of an order enjoining the transfer or encumbrance of assets which may be identified as being subject to forfeiture. Additionally, defendant agrees to identify as being subject to forfeiture all such assets, and to assist in the transfer of such property to the United States by delivery to this Office upon this Office's request, all necessary and appropriate documentation with respect to said assets, including consents to forfeiture, quit claim deeds and any and all other documents necessary to deliver good and marketable title to said property.

13. The defendant agrees to make a full and accurate disclosure of the defendant's financial affairs to the United States Attorney's Office and to the United States Probation Office. Specifically, the defendant agrees that, within 10 calendar days of the signing of this Plea Agreement, the defendant shall submit a completed Financial Disclosure Statement (provided by the United States Attorney's Office or the Probation Office), and shall fully and truthfully disclose and identity all assets in which the defendant has any interest and/or over which the defendant exercise control, whether directly or indirectly, including those held a spouse or significant other; a nominee or

shell owner; or a third party. The defendant further agrees to provide, in a timely manner, all financial information requested by the United States Attorney's Office and the United States Probation Office, and upon request, to meet in person to identify assets and monies that can be used to satisfy any order of restitution, forfeiture, or a fine judgment. In addition, the defendant expressly authorizes the United States Attorney's Office to obtain a credit report from all credit agencies.

14. The defendant agrees to not - without prior approval from the Government - sell, hide, waste, encumber, destroy, or otherwise devalue any asset until the defendant's restitution, fine, and forfeiture is paid in full. The defendant also shall identify any transfer of assets valued in excess of $5,000 (US) after the date of the first charging document against the defendant or after the date that the defendant became aware of the nature of the criminal investigation (whichever is earlier). The defendant agrees to disclose the identity of the asset, the approximate value of the asset, the identity of the person to whom the asset was transferred and the current location of the asset.

15. The defendant agrees to cooperate fully in the investigation and the identification of assets to be applied towards forfeiture, restitution, and any fine. The defendant agrees that providing false or incomplete information about the defendant's financial assets; that hiding, selling, transferring or otherwise devaluing assets; or failing to cooperate fully in the investigation and identification of assets can be used as a basis for (1) separate prosecution, including under Title 18, United States Code, Section 1001;

(2) a recommendation of a denial of a reduction for acceptance of responsibility pursuant to Sentencing Guideline Section 3E1.1; and (3) a denial of any reduction for any cooperation.

16. The defendant agrees to liquidate assets, or complete any other tasks which will result in immediate payment of the forfeiture, restitution or fine in fill, or full payment in the shortest amount of time, as requested by the government.

17. The defendant represents and agrees that all monies and properties deposited with the Clerk of Court to secure the defendant's release on bond in this case belong to the defendant and should be used as payment towards restitution, consistent with Title 28, United States Code, Section 2044.

WAIVER OF CERTAIN RIGHTS

18. The defendant is aware that Title 18, United States Code, Section 3742 affords the defendant the right to appeal the sentence imposed in this case. Acknowledging this, in exchange for the undertakings made by the United States in this plea agreement, the defendant hereby waives all rights conferred by Section 3742 to appeal any sentence imposed, including any restitution order, or to appeal the manner in which the sentence was imposed, unless the sentence exceeds the maximum permitted by statute or is the result of an upward departure and/or a variance from the guideline range that the court establishes at sentencing. The defendant further understands that nothing in this agreement shall affect the government's right and/or duty to appeal as set forth in Title 18, United States Code, Section 3742(b). However, if the United States appeals the

defendant's sentence pursuant to Section 3742(b), the defendant shall be released from the above waiver of appellate rights. By signing this agreement, the defendant acknowledges that the defendant has discussed the appeal waiver set forth in this agreement with defense counsel. The defendant further agrees, together with the United States, to request that the district court enter a specific finding that the defendant's waiver of the defendant's right to appeal the sentence to be imposed in this case was knowing and voluntary.

19. The defendant recognizes that pleading guilty may have consequences with respect to the defendant's immigration status, if the defendant is not a citizen of the United States. Under federal law, a broad range of crimes are removable offenses, and, in some cases, removal is presumptively mandatory. Removal and other immigration consequences are the subject of a separate proceeding, however, and the defendant understands that no one, including the defendant's attorney or the district court, can predict to a certainty the effect of the defendant's conviction on the defendant's immigration status. In addition, the defendant's plea might have consequences with respect to whether the defendant is committed civilly. Defendant nevertheless affirms the desire to plead guilty regardless of any immigration or civil commitment consequences that the plea may entail, even if the consequence is automatic removal from the United States or civil commitment.

20. The defendant agrees to having consulted with the defendant's attorney and fully understands all rights with respect to the pending charges. Further, the

defendant was advised and fully understands all rights with respect to the provisions of the Sentencing Guidelines which may apply in this case. The defendant understands the constitutional rights associated with going to trial, including the right to be represented by counsel, the right to plead not guilty, the right to trial by jury, the right to confront and cross-examine adverse witnesses, the right to be protected from compelled self-incrimination, the right to testify and present evidence, and the right to compel the attendance of witnesses. By signing below, the defendant attests to having read this agreement, carefully reviewed every part of it with the defendant's attorney, and to being satisfied with the advice and representation of the defendant's attorney regarding the decision to enter into the agreement. The defendant voluntarily agrees to be bound by every term and condition set forth herein. The defendant affirms that the defendant has discussed this matter thoroughly with the defendant's attorney. The defendant further affirms that the defendant's discussions with defense counsel have included discussion of possible defenses that the defendant might raise if the case were to go to trial, as well as possible issues and arguments that the defendant may raise at sentencing. The defendant additionally affirms that the defendant is satisfied with the representation provided defense counsel.

ADMISSIBILITY OF FACTUAL PROFFER

21. In the event the defendant withdraws from this agreement prior to or after pleading guilty to the charges identified in paragraph one (1) above or otherwise fails to fully comply with any of the terms of this plea agreement, this Office will be released

from its obligations under this agreement, and the defendant agrees and understands that: (a) the defendant thereby waives any protection afforded by any proffer letter agreements between the parties, Section 1B1.8 of the Sentencing Guidelines, Rule 11(f) of the Federal Rules of Criminal Procedure, and Rule 410 of the Federal Rules of Evidence, and that any statements made by the defendant as part of plea discussions, any debriefings or interviews, or in this agreement, whether made prior to or after the execution of this agreement, will be admissible against the defendant without any limitation in any civil or criminal proceeding brought by the government; (b) the defendant's waiver of any defense based on the statute of limitations or any other defense based on the passage of time in filing an indictment or information, referred to herein, shall remain in full force and effect; and (c) the defendant stipulates to the admissibility and authenticity, in any case brought by the United States in any way related to the facts referred to in this agreement, of any documents provided by the defendant or the defendant's representatives to any state or federal agency and/or this Office. The defendant stipulates to the admissibility, in any case brought by the United States in any way related to the facts in this agreement, of the entire factual basis set forth below as being the defendant's own statement. The defendant voluntarily and knowingly adopts the factual basis as a post-plea discussion statement that is not protected by Federal Rule of Criminal Procedure 11(6) or Federal Rule of Evidence 410.

22. This Office and the defendant stipulate to and agree not to contest the following facts, and stipulate that such facts, in accordance with Rule 11(b)(3) of the

Federal Rules of Criminal Procedure, provide a sufficient factual basis for the plea of guilty in this case:

> Between 2009 and 2012, in Miami-Dade County, in the Southern District of Florida and elsewhere, Jordon McCarty conspired with others, including Lawrence Foster and Johana Leon, to defraud investors by making material misrepresentations to induce those investors to send money, via interstate wires, to a company known as *Paradise is Mine*.
>
> The scheme operated as follows: Lawrence Foster and McCarty solicited individuals to invest in *Paradise is Mine*, offering investment opportunities in a supposed land development deal in the Bahamas. Potential investors were also presented with the opportunity to supposedly purchase land in the Bahamas to fund their investments using personal assets, such as stocks.
>
> During telephone calls and investor meetings, Foster and McCarty made false and fraudulent representations about rates of returns that the investors could expect on their investments in *Paradise is Mine*. Specifically, both men falsely and fraudulently promised and caused others to promise investors a fixed interest rate of between 10% and 20% of their investment, and further guaranteed and caused others to guarantee that investors would receive their full principal back after the expiration of a certain term. Foster and McCarty also sent and instructed others to send, via U.S. mail, false and fraudulent promotional materials, including purported newspaper articles containing positive stories about *Paradise is Mine*.
>
> McCarty and Foster failed to disclose to potential investors that investor money would not be used to purchase or develop land in the Bahamas held by *Paradise is Mine*, that a significant portion of investor money would be withdrawn as cash by conspirator Johana Leon for the personal use of the conspirators and would not be invested in the manner explained to investors; or that Foster fabricated false and fraudulent articles purporting to be from legitimate news sources regarding the development successes of *Paradise is Mine*.
>
> McCarty also participated in another scheme to defraud investors. Combined, McCarty induced investors to invest approximately $6.5 million from approximately 100 victims.
>
> After being confronted by law enforcement, McCarty agreed to cooperate

> and recorded conversations with conspirator Lawrence Foster. In one particular conversation, conspirator Foster urged McCarty to raise more money from one investor so that they could split that money 50/50 between them. The investors who invested through McCarty's firm were never told that McCarty was keeping 50 percent of the proceeds of their investments.

The defendant agrees that above-styled factual basis is true and correct to the best of the defendant's knowledge. Because the factual basis set forth above has the limited purpose of supporting the defendant's guilty plea to the charges discussed in paragraph one, the factual basis set forth above does not purport to represent all facts and circumstances relating to the defendant's participation. Similarly, the factual basis contained above is not intended to identify all knowledge the defendant might have of the unlawful activity of other individuals.

BOND

23. If the Court does not remand the defendant after the change of plea, the defendant agrees that the government may search the defendant's residence, vehicle, or person at any time. In addition, the defendant agrees that the government may detain the defendant without prior judicial approval at the sole discretion of the government based on reasonable suspicion that the defendant violated or attempted to violate any of the terms or conditions of his bond or the plea agreement, and can direct any member of law enforcement, whether state, federal, or immigration, to detain the defendant if such reasonable suspicion exists. Should the government's detention of the defendant occur, the defendant will be returned to the custody of the United States Marshals, and the

government agrees to file a Motion for Revocation of Bond with the Court within 14 days of the government's detention of the defendant. The defendant reserves the right to oppose the government's Motion for Revocation and may argue to the Court that no reasonable suspicion existed that the defendant violated or attempted to violate any of the terms or conditions of his bond or the plea agreement.

24. By signing this agreement, the defendant waives his right to extradition from any country or state should the defendant flee the Southern District of Florida. The defendant agrees that he was fully informed by his attorney of his rights to extradition, and voluntarily waives his right to extradition should the defendant fail to appear before the court as required in this matter. Further, through the waiver contained herein, the defendant agrees to petition the Court to expedite the defendant's return, in custody, to the United States of America to answer to the charges contained in this case. The defendant concedes that he is the individual against whom charges are pending in this case, and for whom process is outstanding there. The defendant agrees to waive all rights under the extradition treaty or agreement, including the right to a hearing and agree to return to the United States without any promise or threats being made or any other form of inducement or intimidation being exercised on the part of any representatives, officials, or officers of the United States, or of any person whatsoever. The defendant agrees that this waiver of rights is entirely of his own free will and accord.

ADMISSION OF GUILT

25. The defendant confirms that the defendant is guilty of the offense to which the defendant is pleading guilty; that the defendant's decision to plead guilty is the decision that the defendant has made; and that nobody has forced, threatened, or coerced the defendant into pleading guilty. The defendant accordingly affirms that the defendant is entering into this agreement knowingly, voluntarily, and intelligently, and with the benefit of full, complete, and effective assistance by the defendant's attorney.

26. Defense counsel, by signing below, attests to explaining fully to the defendant all rights with respect to the pending charges, to reviewing with the defendant the provisions of the Sentencing Guidelines and to explaining to the defendant the provisions which may apply in this case. Counsel for the defendant carefully reviewed every part of this plea agreement with the defendant in the defendant's native language.

27. The defendant confirms that the defendant has read this plea agreement, or that this plea agreement has been read to the defendant. If the defendant does not understand English, the defendant confirms that this plea agreement has been translated into the defendant's native language and that the defendant has read this plea agreement, or that this plea agreement has been read to the defendant in the defendant's native language.

28. The defendant is aware that the sentence has not yet been determined by the court. The defendant also is aware that any estimate of the probable sentencing range or sentence that the defendant may receive, whether that estimate comes from the

defendant's attorney, the government, or the probation office, is a prediction, not a promise, and is not binding on the government, the probation office or the court. The defendant understands further that any recommendation that the government makes to the court as to sentencing, whether pursuant to this agreement or otherwise, is not binding on the court and the court may disregard the recommendation in its entirety. The defendant understands and acknowledges, as previously acknowledged above, that the defendant may not withdraw a plea based upon the court's decision not to accept a sentencing recommendation made by the defendant, the government, or a recommendation made jointly by both the defendant and the government.

29. This is the entire agreement and understanding between the United States and the defendant. There are no other agreements, promises, representations, or understandings.

WIFREDO A. FERRER
UNITED STATES ATTORNEY

Date: 9/13/13 By: _____
H. RON DAVIDSON
ASSISTANT UNITED STATES ATTORNEY

Date: 8/27/13 By: _____
JASON KREISS
ATTORNEY FOR DEFENDANT

Date: 8/27/13 By: _____
JORDON McCARTY
DEFENDANT

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION
CASE NO. 13-20063-CR-GRAHAM

UNITED STATES OF AMERICA,

Plaintiff,

SEPTEMBER 13, 2013
11:31 A.M.

vs.

JORDON McCARTY,

Defendant.

PAGES 1 THROUGH 21

TRANSCRIPT OF CHANGE OF PLEA
BEFORE THE HONORABLE DONALD L. GRAHAM
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFF:
Mr. H. Ron Davidson, AUSA
Mr. Robert T. Watson, AUSA
OFFICE OF U.S. ATTORNEY
99 N.E. 4th Street
Miami, Florida 33132

FOR THE DEFENDANT:
Mr. Jason W. Kreiss, Esq.
LAW OFFICES OF JASON W. KREISS, ESQ.
1824 SE 4th Avenue
Fort Lauderdale, Florida 33316

COURT REPORTER:
Carly L. Horenkamp, RMR, CRR
U.S. DISTRICT COURT
400 N. Miami Avenue, Room 12-3
Miami, Florida 33128
(305) 523-5147

(Open Court, 11:31 a.m.)

THE COURT: All right. Are we ready to proceed?

MR. DAVIDSON: Yes, Your Honor. Thank you.

MR. KREISS: Yes, Your Honor.

COURTROOM DEPUTY: United States versus Jordon McCarty, 13-20063-Criminal-Graham.

THE COURT: Appearances, please.

MR. DAVIDSON: Thank you, Your Honor. Good morning. Ron Davidson on behalf of the United States. With me is Assistant U.S. Attorney Robert Watson.

THE COURT: Good morning.

MR. KREISS: Good morning, Your Honor, Jason Kreiss on behalf of Jordon McCarty, who is standing to my left.

THE COURT: Good morning.

Good morning, Mr. McCarty.

THE DEFENDANT: Good morning.

THE COURT: The Court has been advised that you would like to change a previously entered plea of not guilty to guilty. Is that correct, sir?

MR. KREISS: Correct, Your Honor.

THE COURT: Please come to the lectern, raise your right hand so that you may be sworn.

JORDON McCARTY, DEFENDANT, SWORN

THE COURT: Mr. McCarty, you are now under oath. You must tell the truth in this morning's proceeding. If it is

determined that you have not told the truth, you could be subject to another prosecution for perjury. The term "perjury" means lying under oath. Do you understand?

THE DEFENDANT: Yes, I do.

THE COURT: If you would like to speak with your lawyer at any time, please let me know. Also, if I say anything that you do not clearly understand, bring the matter to my attention immediately. Understood?

THE DEFENDANT: Yes, sir.

THE COURT: State your full name.

THE DEFENDANT: My first name is Jordon, my last name is McCarty.

THE COURT: Your age?

THE DEFENDANT: [redacted]

THE COURT: Now far in school did you go?

THE DEFENDANT: Community college.

THE COURT: Did you attend high school?

THE DEFENDANT: Yes, I did.

THE COURT: Where did you attend high school?

THE DEFENDANT: [redacted]

[redacted].

THE COURT: And where did you attend community college?

THE DEFENDANT: In Grand Rapids, Michigan.

THE COURT: What was the name of the institution?

THE DEFENDANT: [redacted]

THE COURT: At this time I want to ensure you understand the proceedings. Have you ever been treated for a mental illness?

THE DEFENDANT: No, Your Honor.

THE COURT: Have you ever been treated for addiction to a narcotic or non-narcotic drug?

THE DEFENDANT: [redacted]

THE COURT: Tell me about your treatment.

THE DEFENDANT: [redacted]

THE COURT: Were you in any treatment facilities prior to this case being filed?

THE DEFENDANT: No.

THE COURT: When did you start treatment?

THE DEFENDANT: I believe it was in February of this year.

THE COURT: And what type of treatment have you received?

THE DEFENDANT: [redacted]

THE COURT: All right. Have you understood everything your lawyer has said to you throughout this case?

THE DEFENDANT: Yes, I have.

THE COURT: Have you understood everything I have said to you this morning?

THE DEFENDANT: Yes, I do.

THE COURT: Do you believe that your [redacted] have caused you not to understand what your lawyer has explained to you about this case?

THE DEFENDANT: No.

THE COURT: Counsel, do you have any reason to doubt the competence of the defendant?

MR. KREISS: Absolutely not, Your Honor. I've had multiple conversations over a significant period of time with Mr. McCarty. We've reviewed discovery together. There's never been an issue as to his competency.

THE COURT: Very well. Government, same question.

MR. DAVIDSON: I have no basis to doubt his ability to plead guilty here today, Your Honor.

THE COURT: Are you presently under the influence of any drug, medication, or alcoholic beverage of any kind?

THE DEFENDANT: No, Your Honor.

THE COURT: Have you received a copy of the indictment?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Have you had an opportunity to fully discuss the case with your lawyer?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Has he answered all of your questions about the case?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Are you satisfied with his representation and advice in the case?

THE DEFENDANT: Absolutely, Your Honor.

THE COURT: At this time I would like to ask you a series of questions which in effect explain the rights you have in this proceeding. I understand that you desire to plead guilty, but I want to ensure you understand all of your constitutional rights.

Do you understand you have the right to plead not guilty and the right to require the government to prove your guilt beyond a reasonable doubt?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Do you understand you have the right to a trial by jury, during which you would have the right to the assistance of a lawyer?

THE DEFENDANT: Also yes, Your Honor.

THE COURT: Do you understand you have the right to see and hear all of the witnesses testify at trial and have the government's witnesses cross-examined in your defense?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Do you understand you have the right on

your own behalf to decline to testify at trial unless you voluntarily elect to do so?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Do you understand you have the right to have subpoenas issued for the production of witnesses or exhibits in your defense at trial?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Do you further understand that by entering a plea of guilty, if your plea is accepted, you will waive your right to a trial and all other rights associated with a trial as I previously explained?

THE DEFENDANT: Yes, Your Honor.

THE COURT: The offense to which you propose to plead guilty is a felony offense. If you are adjudged guilty you could lose certain valuable civil rights in the United States, including the right to vote, to serve on a jury, to hold public office, and the right to possess a firearm of any kind. Do you understand?

THE DEFENDANT: Yes, I do, Your Honor.

THE COURT: Are you a United States citizen?

THE DEFENDANT: Yes, I am, Your Honor.

THE COURT: You will recall, sir, that you executed a plea agreement. Did you in fact sign the plea agreement on page 18 of the document captioned Plea Agreement?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Did you read the agreement before signing it?

THE DEFENDANT: Yes, I did, Your Honor.

THE COURT: Did you discuss the terms in the agreement with your lawyer?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Do you have any questions concerning the plea agreement?

THE DEFENDANT: No, Your Honor.

THE COURT: You will recall that in paragraph 3 you acknowledge understanding that as to Count 1 of the indictment, the Court may impose a maximum term of 20 years' imprisonment followed by supervised release of up to three years.

In addition, the Court may impose a fine of up to $250,000 or not more than the greater of twice the gross gain or the gross loss resulting from the fraud count that you are pleading guilty to.

Moreover, the Court must impose a special assessment in the amount of $100 and the Court must impose restitution as determined.

Do you understand?

THE DEFENDANT: Yes, Your Honor.

THE COURT: You have already agreed with the government that the restitution amount that you would be subject to pay is $1,103,183.48. Do you understand?

THE DEFENDANT: Yes, I do, Your Honor.

THE COURT: Your agreement also makes reference to the federal sentencing guidelines and policy statements. We cannot tell you this morning exactly what your guidelines will be. After today's hearing, the probation office will prepare a presentence investigation report. They will consult with you and others in obtaining information about your background, including your financial information, medical information, family, prior convictions or incidents of being involved in criminal activities, and other matters. They will also determine the facts in this case. All of this information will be included in the report I referenced a moment ago. This report will also contain advisory guidelines.

You may object to any of the facts in the report or to any of the advisory guidelines. This will occur at the time of sentencing. I will entertain all objections. Thereafter, determine the facts, the guidelines. I will then consult the advisory guidelines and determine an appropriate sentence, of course affording you and the government an opportunity to present matters regarding an appropriate sentence. Do you understand?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Parole has been abolished. If you are sentenced to a term of imprisonment you cannot be released on parole. Do you understand?

THE DEFENDANT: Yes, Your Honor.

THE COURT: You will be released on supervised release as we discussed earlier. Understood?

THE DEFENDANT: Yes, Your Honor.

THE COURT: In some circumstances the Court may impose a sentence which is more or less severe than required by the guidelines. This has to do with a departure from the guidelines. Departure issues will be determined at the time of sentencing. Do you understand?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Any questions about anything we have discussed thus far?

THE DEFENDANT: No, Your Honor.

THE COURT: You propose to plead guilty to Count 1 of the indictment. Count 1 of the indictment alleges a conspiracy to commit wire fraud. The government would have to prove that from at least as early as December of 2009 continuing to on or about January 31st of 2013, in Miami-Dade County, in the Southern District of Florida, that you and others engaged in a conspiracy. A "conspiracy" is an illegal agreement. So in this offense you are being charged with agreeing to do something wrong, not that you actually did it.

The government alleges that this conspiracy or agreement was committed willfully, that is, voluntarily and purposely with the specific intent to do something the law

forbids. They also allege the conspiracy was reached knowingly, that is, intentionally and not because of mistake or accident.

The government alleges that the conspiracy, that is, the illegal agreement, was done, as I stated, willfully and knowingly and with the intent to defraud. Defraud normally means to cheat someone so that there is some financial gain to yourself or loss to someone else. Do you understand?

THE DEFENDANT: Yes, I do, Your Honor.

THE COURT: The government alleges that you reached an agreement to enter into a scheme to defraud individuals by making materially false and fraudulent pretenses, representations, and promises, knowing that this information was in fact false and fraudulent and it was for the purpose of executing the scheme to defraud.

And the government alleges that in committing, that is, agreeing to commit the fraud, you engaged in wire communications which traveled in interstate or foreign commerce.

Do you understand the allegations with respect to the conspiracy to commit wire fraud?

THE DEFENDANT: Yes, I do, Your Honor.

THE COURT: The government alleges the manner and means in which the fraud was committed. The government would have to prove that at least one overt act was committed in

furtherance of the fraudulent scheme. For example, during telephone calls and investor meetings, you and others made false and fraudulent representations about the rates of returns that investors could expect on their investments in Paradise Is Mine. Do you understand?

THE DEFENDANT: Yes, Your Honor.

THE COURT: The government alleges that there were several material false statements. For example, that investor money would be used to develop land in the Bahamas owned by Paradise Is Mine.

Essentially, as we stated, this is a conspiracy to commit a wire fraud, that is, an agreement to cause individuals to give up money under false and fraudulent pretenses for your gain and/or their loss, that is, the individual investors. Do you understand?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Do you have any questions about the allegations set forth in the conspiracy to commit wire fraud that is Count 1 of the indictment?

THE DEFENDANT: No, Your Honor.

THE COURT: Within your plea agreement, on page 12, there is a reference to a factual proffer and its admissibility. However, more importantly, on --

MR. DAVIDSON: Judge, I believe the factual proffer is on page 14.

THE COURT: You are correct. More importantly, there is a factual basis set forth on pages 14 and 15 which allege how you were involved in the fraudulent conspiracy.

Did you read the factual basis set forth on pages 14 and 15?

THE DEFENDANT: Yes, I did, Your Honor.

THE COURT: Do you agree that the factual basis accurately describes what you did in this case?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Do you agree that you committed the acts alleged in Count 1 of the indictment?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Is there anything you would like to change with regard to the factual proffer?

THE DEFENDANT: No, Your Honor.

THE COURT: The Court finds that the factual proffer presents an adequate factual basis for the allegations set forth in Count 1 of the indictment.

Is there a desire to have the factual proffer read into the record?

MR. DAVIDSON: Not by the government, Your Honor.

MR. KREISS: Not by the defense, Your Honor. Not necessary.

THE COURT: Very well. At this time, sir, I would like to review some of the many provisions in the plea

agreement that we have not discussed. Keep in mind you may not withdraw your plea solely because you are unhappy with the sentence imposed. Understood?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Many of the items we have already discussed. I'm not going to go over those items unless you have some specific questions. If you do, bring them to my attention.

The government has agreed to recommend a sentence at the low end of the guideline range. They have also agreed to recommend a two- or three-level reduction for your acceptance of responsibility. Do you understand?

THE DEFENDANT: Yes, Your Honor.

THE COURT: In paragraph 10, you have reached an agreement with the government as to how the guidelines should be calculated. Keep in mind the Court will make the final decision as to the guideline computation, considering the recommendations of the probation office and of the government and defense. Do you understand?

THE DEFENDANT: Yes, Your Honor, I do.

THE COURT: So the key point is, even though you have reached this agreement, I may determine that the guidelines are either higher or lower and a different calculation than that set forth in paragraph 10. I am not bound by paragraph 10. Do you understand?

THE DEFENDANT: Yes, Your Honor.

THE COURT: You have agreed to provide truthful information to the government. If the government determines that you have provided truthful and substantial assistance, then they could file a motion which would allow the Court to impose a sentence less than the guideline range or less than the sentence imposed. If the government does not file such a motion, then the Court would have no authority to reduce your sentence after that sentence has been imposed. Do you understand?

THE DEFENDANT: Yes, Your Honor.

THE COURT: In order to receive the benefit of the agreement you have reached with the government, you are bound to provide full, accurate, and complete information to the probation office, you cannot be found to have misrepresented facts to the government before you entered into the plea agreement, and you may not commit any misconduct after entering into the agreement. Do you understand?

THE DEFENDANT: Yes, Your Honor.

THE COURT: You have reached an agreement with the government as to forfeiture and financial disclosure obligations. You have agreed to forfeit your right in certain assets. You have agreed to enter into a money judgment in the amount of $2,500,000. And you have agreed that you will not challenge these forfeitures on any constitutional bases. Do

you understand?

THE DEFENDANT: That's correct, Your Honor.

THE COURT: In paragraph 13, you have agreed that within ten calendar days of signing this agreement, you will submit a financial disclosure statement to the United States Attorney's Office or the probation office which will truthfully identify all of the assets that you have control over. Do you understand?

THE DEFENDANT: Yes, Your Honor.

THE COURT: You have agreed not to sell, encumber, destroy, or devalue any asset and you will identify any assets transferred in excess of $5,000. Do you understand?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Of course, these provisions are in effect until you pay in full the restitution, fine, and forfeiture in this case. Understood?

THE DEFENDANT: Yes, Your Honor.

THE COURT: You have agreed, as we stated earlier, to cooperate with the government. If you provide information that is incorrect, you could be charged with making false statements to the government, you could not receive the benefit of the acceptance of responsibility we discussed a moment ago, and you may not be able to receive a reduction of sentence as we discussed previously. Do you understand?

THE DEFENDANT: I understand, Your Honor.

THE COURT: You have agreed to liquidate assets and perform other tasks which will result in immediate payment of the forfeiture, restitution, or fine in full in this case. Do you understand?

THE DEFENDANT: Correct, Your Honor.

THE COURT: Any monies deposited with the Clerk of Court are to be used as payment towards your restitution. Do you understand?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Ordinarily an individual has the right to appeal a sentence. In your plea agreement, on page 10, you have waived your right to appeal unless the sentence exceeds the maximum permitted by statute or is the result of an upward departure or variance from the guidelines. Also, if the government elects to appeal, you will then be released from your appellate waiver. These are the only three instances in which you would be able to appeal the sentence imposed by the Court. Do you understand?

THE DEFENDANT: Yes, Your Honor.

THE COURT: You have agreed that if you are not remanded today, then the government may search your residence, vehicle, or person and they may detain you at their discretion based on reasonable suspicion that you may have violated the law. Do you understand?

THE DEFENDANT: Yes, Your Honor.

THE COURT: You have waived your right to extradition in this cause should you not abide by your bond conditions and appear as directed in the Southern District of Florida.

THE DEFENDANT: Yes, Your Honor.

THE COURT: The last paragraph suggests that the written plea agreement is the entire agreement between you and the government and there are no other agreements, promises, representations, or understandings.

Are counsel aware of any other agreements or understandings?

MR. DAVIDSON: No, Your Honor.

MR. KREISS: None from the defense, Your Honor.

THE COURT: Mr. McCarty, are you aware of any agreements other than those set forth in the plea agreement between yourself and the United States?

THE DEFENDANT: No, Your Honor.

THE COURT: Do you have any questions about anything we have discussed this morning?

THE DEFENDANT: No, Your Honor.

THE COURT: Has anyone attempted to force you to plead guilty in any way or manner?

THE DEFENDANT: No, Your Honor.

THE COURT: You may consult with your counsel at this time, Mr. McCarty. When you tell me you are ready to proceed, I intend to accept your plea of guilty.

(Off-the-record discussion.)

THE DEFENDANT: I'm ready to proceed, Your Honor.

THE COURT: How do you plead to Count 1 of the indictment, guilty or not guilty?

THE DEFENDANT: Guilty, Your Honor.

THE COURT: It is the finding of the Court in the case of the United States of America versus Jordon McCarty that the defendant is fully competent and capable of entering an informed plea, and his plea of guilty is a knowing and voluntary plea supported by an independent basis in fact containing each of the essential elements of the offense alleged. Your plea is accepted. You are adjudged guilty.

Sentencing in this cause is scheduled for Thursday, November 21st, 2013, at 4:00 p.m. The parties are being given an order on sentencing. Please comply with the terms in the order.

What is the government's position regarding bond?

MR. DAVIDSON: Your Honor, he can remain out on the current bond.

THE COURT: Very well. Mr. McCarty, at the government's recommendation, I am going to authorize you to remain out on the present bond conditions. Make sure that you follow those conditions strictly so that you don't incur any additional difficulties. Do you understand, sir?

THE DEFENDANT: Yes. And thank you, Your Honor.

THE COURT: Additional matters by the defense?

MR. KREISS: None from the defense, Your Honor.

THE COURT: Additional matters by the government?

MR. DAVIDSON: No, Your Honor. Thank you.

THE COURT: Thank you all very much. Have a good weekend. We are in recess.

(Proceedings concluded at 11:58 a.m.)

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UNITED STATES OF AMERICA)
) ss:
SOUTHERN DISTRICT OF FLORIDA)

C E R T I F I C A T E

I, Carly L. Horenkamp, Certified Shorthand Reporter in and for the United States District Court for the Southern District of Florida, do hereby certify that I was present at and reported in machine shorthand the proceedings had the 13th day of September, 2013, in the above-mentioned court; and that the foregoing transcript is a true, correct, and complete transcript of my stenographic notes.

I further certify that this transcript contains pages 1 - 21.

IN WITNESS WHEREOF, I have hereunto set my hand at Miami, Florida, this 9th day of March, 2015.

/s/ Carly Horenkamp

Carly L. Horenkamp, RMR, CRR
Certified Shorthand Reporter