

UNITED STATES OF AMERICA  
Before the  
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING  
File No. 3-17686

In the Matter of

JAMES Y. LEE,

Respondent.

DECLARATION OF JENNIFER PELTZ

I, Jennifer Peltz, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am an attorney and a member in good standing of the bar of the State of Illinois.

I am employed as a Senior Counsel in the Division of Enforcement by the United States Securities and Exchange Commission.

2. On February 13, 2014, the Securities and Exchange Commission instituted a civil injunctive action against James Y. Lee ("Lee") in the District Court for the Southern District of California, *SEC v. Lee*, 14-cv-00347-LAB-BGS. A true and correct copy of the complaint is attached as Exhibit A.

3. On May 7, 2016, Lee consented to the entry of a final judgment against him. A true and correct copy of Lee's consent is attached as Exhibit B.

4. On July 15, 2016, the District Court entered final judgment against Lee. Among other things, the final judgment permanently enjoined Lee from violations of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder, Sections 17(a)(1) and (a)(2) of the Securities Act of 1933, and Sections 206(1) and 206(2) of the Investment Advisers Act of 1940. A true and correct copy of the final judgment is attached as Exhibit C.

5. On October 9, 2014, the United States Attorney filed a criminal information against Lee in the Southern District of California, *US v. Lee*, 14-cr-02937-BEN. Lee pleaded guilty to the information. A true and correct copy of Lee's plea agreement is attached as Exhibit D. A true and correct copy of the transcript of Lee's Change of Plea Hearing is attached as Exhibit E. A true and correct copy of the criminal judgment is attached as Exhibit F.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on January 30, 2017, in Chicago, Illinois.

  
Jennifer Peltz

# **Exhibit A**

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13  
14 **UNITED STATES DISTRICT COURT**  
15 **SOUTHERN DISTRICT OF CALIFORNIA**

16 SECURITIES AND EXCHANGE  
17 COMMISSION,

18 Plaintiff,

19 vs.

20 JAMES Y. LEE

21 Defendant,

22 and LARISSA O. ETTORE, ELX  
INTERNATIONAL, INC., CLAYTON K.  
LEE, ADVANCED CENTURY CORP.,  
23 LOLITA GATCHALIAN, ULTRA  
INTERNATIONAL, INC., and SOT  
24 GROUP, INC.,

25 Relief Defendants.

Case No. '14CV0347 LAB BGS

**COMPLAINT FOR VIOLATIONS OF  
THE FEDERAL SECURITIES LAWS**

**DEMAND FOR JURY TRIAL**

1 Plaintiff Securities and Exchange Commission (the "Commission") alleges the  
2 following against Defendant James Y. Lee ("Lee") and Relief Defendants Larissa O.  
3 Ettore, ELX International, Inc., Clayton K. Lee, Advanced Century Corp., Lolita  
4 Gatchalian, Ultra International Inc., and SOT Group, Inc., and hereby demands a jury  
5 trial:

6 **SUMMARY OF THE ACTION**

7 1. This enforcement action concerns an unregistered investment adviser  
8 who gained his clients' trust through deceit and then abused this misplaced trust to  
9 further defraud his clients in other ways, after they provided him investment funds  
10 to manage on their behalf.

11 2. Defendant Lee misled investors about his background, portraying  
12 himself as a highly successful financial industry expert, while failing to disclose a  
13 prior criminal conviction for embezzlement and a more recent Commission cease-  
14 and-desist order for his role in unlawful penny stock offerings.

15 3. To further entice investors to place retirement or other needed savings  
16 in his unclean hands, Lee misrepresented investors' risk of loss. Lee covered up  
17 the truth of the undisclosed risks of his speculative options trading strategy with  
18 false assurances to protect clients from downside risk through "stop-loss" controls  
19 and by partially reimbursing any losses out of his own supposedly "deep pockets."

20 4. Lee also deceived certain clients by providing them with inflated  
21 investment returns in order to collect undeserved management fees.

22 5. Finally, Lee traded in penny stocks in some client accounts, which  
23 was outside of his discretionary authority, and fraudulently induced one client to  
24 enter into a convertible promissory note with another penny stock company.

25 6. Lee was no more interested in sharing in his clients' eventual and  
26 substantial losses (as promised) than he was in paying millions of dollars owed to  
27 the federal government for his past illegal conduct, so he purposefully avoided  
28 holding assets in his own name by funneling monies through the Relief

1 Defendants. Lee instructed clients to pay his management fees to various shell  
2 companies owned by his girlfriend, son, and two long-time associates,  
3 respectively. These companies, in turn, disbursed a portion of the funds to Lee and  
4 to the friends and family that served as his de facto intermediaries.

5 7. Through the conduct alleged in this Complaint, Lee engaged in: (1)  
6 fraudulent or deceptive conduct in connection with the purchase or sale of  
7 securities, in violation of Section 10(b) of the Securities Exchange Act of 1934  
8 (“Exchange Act”) and Rule 10b-5 thereunder; (2) fraud in the offer or sale of  
9 securities in violation of Section 17(a)(1) and (2) of the Securities Act of 1933  
10 (“Securities Act”); and (3) fraudulent or deceptive conduct with respect to  
11 investment advisory clients, in violation of Section 206(1) and (2) of the  
12 Investment Advisers Act of 1940 (“Advisers Act”).

13 8. Accordingly, the Commission seeks the following relief: (a) entry of  
14 a permanent injunction prohibiting Lee from further violations of the relevant  
15 provisions of the federal securities laws; (b) disgorgement of Lee’s ill-gotten gains,  
16 plus pre-judgment interest; (c) disgorgement by the Relief Defendants of all unjust  
17 enrichment and/or ill-gotten gain received from Lee, plus pre-judgment interest,  
18 with Lee jointly and severally liable with the corporate Relief Defendants; and (d)  
19 the imposition of a civil monetary penalty against Lee due to the egregious nature  
20 of his violations.

21 **JURISDICTION AND VENUE**

22 9. The Commission seeks a permanent injunction and disgorgement  
23 pursuant to Section 20(b) of the Securities Act [15 U.S.C. §§ 77t(b)], Section  
24 21(d)(1) of the Exchange Act [15 U.S.C. § 78u(d)(1)], and Section 209(d) of the  
25 Advisers Act [15 U.S.C. §§ 80b-9(d)].

26 10. The Commission seeks the imposition of a civil monetary penalty  
27 pursuant to Section 20(d) of the Securities Act [15 U.S.C. §§ 77t(d)], Section  
28 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)], and Section 209(e) of the

1 Advisers Act [15 U.S.C. §§ 80b-9(e)].

2 11. This Court has jurisdiction over this action pursuant to Sections 20(d)  
3 and 22(a) of the Securities Act [15 U.S.C. §§ 77t(d), 77v(a)], Sections 21(d), 21(e),  
4 and 27(a) of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e), 77aa(a)],<sup>9</sup> and  
5 Sections 209(d), 209(e) and 214(a) of the Advisers Act [15 U.S.C. §§ 80b-9(d),  
6 80b-9(e), 80b-14(a)].

7 12. Venue is proper pursuant to Section 22(a) of the Securities Act [15  
8 U.S.C. § 77v(a)], Section 27(a) of the Exchange Act [15 U.S.C. § 78aa(a)], and  
9 Section 214(a) of the Advisers Act [15 U.S.C. § 80b-14(a)].

10 13. A substantial part of the acts and transactions giving rise to the claims  
11 alleged herein occurred in this district and, as set forth below, Defendant and one  
12 or more Relief Defendants reside and/or transact business in this district.

13 14. In connection with the conduct alleged in this Complaint, Defendant  
14 Lee directly or indirectly made use of the means or instrumentalities of  
15 transportation or communication in interstate commerce, the facilities of a national  
16 securities exchange, or the mails.

17 15. Lee's conduct involved fraud, deceit, or deliberate or reckless  
18 disregard of regulatory requirements, and resulted in substantial loss, or significant  
19 risk of substantial loss, to other persons.

20 16. Unless enjoined, Lee is likely to continue to engage in the securities  
21 law violations alleged herein, or in similar conduct that would violate the federal  
22 securities laws.

23 **DEFENDANT**

24 17. **James Y. Lee**, age 58, resides in La Jolla, California. Lee is not  
25 registered with the Commission and has never held any securities licenses.

26 **RELIEF DEFENDANTS**

27 18. **Larissa O. Ettore** ("Ettore"), age 37, is Lee's girlfriend. She is a  
28 resident of La Jolla, California, and the sole officer and director of ELX

1 International Corp., one of the companies that Lee used to collect client  
2 management fees and disburse the proceeds. Ettore is not registered with the  
3 Commission and has never held any securities licenses.

4 19. **ELX International, Corp.** ("ELX"), is a Texas corporation that  
5 maintains an office in San Diego, California. ELX received funds from Lee's  
6 clients and made payments to (or for the benefit of) Lee as well his family, friends  
7 and/or associates.

8 20. **Clayton K. Lee**, age 34, is Lee's son. He is a resident of Alameda,  
9 California, and the sole officer and director of Advanced Century Corp., one of the  
10 companies that Lee used to collect client management fees and disburse the  
11 proceeds. Clayton Lee is not registered with the Commission and has never held  
12 any securities licenses.

13 21. **Advanced Century Corp.** ("Advanced Century"), is a California  
14 corporation that maintains an office in Alameda, California. Advanced Century  
15 received funds from Lee's clients and made payments to (or for the benefit of) Lee  
16 as well as his family (including Clayton Lee), friends and/or associates.

17 22. **Lolita Gatchalian** ("Gatchalian"), age 55, is a long-time associate of  
18 Lee. She is a resident of Albany, California, and the sole officer and director of  
19 Ultra International Corp., one of the companies Lee used to collect client  
20 management fees and disburse the proceeds. Gatchalian is not registered with the  
21 Commission and has never held any securities licenses.

22 23. **Ultra International, Inc.** ("Ultra"), is a Nevada Corporation with its  
23 place of business in Albany, California. Ultra received funds from Lee's clients  
24 and made payments to (or for the benefit of) Lee and Gatchalian.

25 24. **SOT Group, Inc.** ("SOT"), is a Nevada Corporation with its principal  
26 place of business in San Diego, California. SOT's sole officer and director is a  
27 long-time associate of Lee. SOT received funds from Lee's clients and made  
28 payments to (or for the benefit of) Lee as well as his family, friends and/or



1 associates.

2 **FACTUAL ALLEGATIONS**

3 25. Starting in December 2008, if not earlier, Lee solicited investors in  
4 multiple states (including California, Colorado, and Texas) to open online  
5 brokerage accounts, including margin accounts, for purposes of allowing him to  
6 trade stock options on their behalf and share in any profits.

7 26. A stock “option” is a security that gives the purchaser the right, but  
8 not the obligation, to buy (in the case of a “call” option) or sell (in the case of a  
9 “put” option) shares of a company’s stock for a specified price (the “strike price”)  
10 until the expiration date of the option contract.

11 27. Conversely, the party that writes (or “sells to open”) the option  
12 contract, receiving a payment for doing so, is obligated to sell the shares to, or buy  
13 the shares from, the option holder at the specified price if the option is timely  
14 exercised.

15 28. Generally, the value of an option will change as the price of the  
16 underlying stock changes. When an option expires, it no longer has any value.

17 29. Many of the investors who became Lee’s clients had limited  
18 investment experience and no prior options trading experience.

19 30. From March 2009 through May 2011, at least 24 clients opened  
20 brokerage accounts for purposes of investing in options through Lee.

21 31. Lee’s clients funded individual accounts opened in their names at  
22 Scottrade OptionsFirst or Charles Schwab, by mailing checks and making wire or  
23 other transfers to these online brokers.

24 32. Lee exercised near complete control over client accounts, determining  
25 what options should be traded and when. Lee had access to client accounts  
26 through use of client user name and password information. Lee executed the  
27 trades in the accounts or directed others to do so per his instructions. Lee  
28 conducted this activity out of SOT’s office in San Diego, among other places.

1           **Lee misled clients about his background**

2           33. Lee's clients often were first introduced to him at pre-arranged  
3 meetings held in hotel suites or conference rooms, among other places. Most  
4 prospective clients were family, friends or acquaintances of one of two early Lee  
5 investors, who helped facilitate these meetings.

6           34. To induce prospective clients into believing he was an investment  
7 adviser worthy of fiduciary trust, Lee portrayed himself as a wealthy and  
8 successful financial industry expert who now enjoyed helping others to make  
9 money.

10          35. In terms of his educational background, Lee told investors that he had  
11 a law degree, an MBA, PhD and was a CPA.

12          36. In terms of his work history, Lee told investors (among other things)  
13 that he had over 20 years of trading experience, including on the floor of the New  
14 York Stock Exchange and at large broker-dealers, and advised companies on tax,  
15 acquisition and/or financing matters.

16          37. In terms of his trading operation, Lee told investors that he had a large  
17 research team in China that helped him to identify profitable options trades. Using  
18 this support and his own "proprietary" strategies, Lee said he oversaw options  
19 trading in the accounts of select "family and friends." Lee likened himself to a  
20 coach that was calling the plays for various "quarterbacks" who executed trades at  
21 his direction in client accounts.

22          38. Among other occasions, Lee made these representations (described in  
23 paragraphs 34 to 37) to an investor in a meeting held on or about October 8, 2009  
24 in Las Vegas, Nevada; to a different investor in a meeting held on or about October  
25 9, 2009 in Las Vegas, Nevada; and over several meetings held with another  
26 investor on or about February 22, 2011, April 20, 2011 and May 2011 in Houston,  
27 Texas.

28          39. The same or substantially similar representations were made by Lee to

1 numerous other investors between December 2008 and May 2011.

2 40. When touting his purported professional and financial success, Lee  
3 failed to disclose past and more recent serious legal troubles.

4 41. Lee had been the chief financial officer of a mortgage company that  
5 ceased operating in 1993. Lee failed to disclose to his clients that he had been  
6 convicted in 1997 of wire fraud and embezzlement related to the mortgage  
7 company's business activities and pension plan. Lee was sentenced to 30 months  
8 in prison and ordered to pay \$2,880,000 in restitution. He has made only minimal  
9 payments towards this obligation.

10 42. Despite this, Lee described his mortgage-industry background to at  
11 least one investor in glowing terms, stating in a December 2008 meeting in Las  
12 Vegas that he had built a mortgage company and sold it for a lot of money.

13 43. Likewise, Lee failed to disclose to his clients that in a 2008  
14 administrative proceeding, the Commission entered an order making findings and  
15 imposing sanctions by default against Lee related to his involvement in  
16 unregistered offerings of billions of shares in penny stock companies. Specifically,  
17 after he affirmatively declined to defend the proceeding, Lee was ordered to cease  
18 and desist from committing or causing violations of Sections 5(a) and 5(c) of the  
19 Securities Act and further ordered to disgorge ill-gotten gains of \$2,866,375 plus  
20 prejudgment interest. See In re Alexander & Wade, Inc., and James Y. Lee,  
21 Securities Act Release No. 8954 (A.L.J. Aug. 28, 2008). Lee has not made any  
22 payments to satisfy this obligation.

23 44. When confronted in a meeting in early 2009 by an investor who  
24 learned about the Commission cease and desist order, Lee placated the investor by  
25 falsely claiming that his name was later removed from the Commission's lawsuit  
26 because he was merely a consultant whose advice had been misused by corporate  
27 management. Believing this to be true, the investor later repeated this information  
28 to another prospective Lee client in an email sent on June 10, 2010. The next day,

1 the existing client forwarded this exchange to Lee, but Lee did nothing to correct  
2 the false explanation.

3 45. The information Lee failed to disclose to his clients was material. A  
4 reasonable investor would want to know about Lee's prior criminal conviction and  
5 securities law violations before entrusting savings to his discretion.

6 **Lee misled clients about their investment risk**

7 46. In addition to what Lee's clients, problematically, did not know about  
8 his background, the full picture of their investment risk was further obscured by  
9 Lee's incomplete and false assurances about the safety of their trading accounts  
10 with him.

11 47. In the investor meetings in Las Vegas and Houston described above,  
12 as well as in similar pitches to other investors, Lee indicated that he, or one of his  
13 "quarterbacks" that submitted trades for execution in client accounts at his  
14 direction, would closely monitor account performance to adhere to conservative  
15 trading guidelines he established, which ensured consistently positive results.

16 48. Lee, however, did not discuss with clients the risks of options trading,  
17 in particular the risks of his preferred strategy—writing (or "selling to open")  
18 uncovered (or "naked") option positions. An uncovered position is one in which  
19 the option writer does not own shares of the underlying stock. Whereas an option  
20 holder's potential loss is limited to the amount paid for the option (should the  
21 option expire worthless or "out of the money"), the option writer's potential loss is  
22 not so limited (and may be unlimited, if writing uncovered calls) because the writer  
23 may have to buy or sell shares of the underlying stock at an unfavorable price  
24 compared to the current market price.

25 49. Lee also did not disclose to clients the related risks involved with his  
26 trading on "margin." In a margin account, the brokerage firm lends the investor  
27 cash, using the account as collateral, to purchase securities. With respect to  
28 options trading, margin also refers to the cash or securities required to be deposited

1 as collateral for the option writer's obligation to buy or sell shares of the  
2 underlying stock. Margin requirements for option writing are complex and vary  
3 based on option type. An uncovered option writer may be required to provide the  
4 broker with additional cash or securities in the event of adverse market  
5 movements.

6 50. Lee did not explain to his clients that they could: (a) lose more money  
7 than invested in the margin account; (b) have to deposit additional cash or  
8 securities in the margin account on short notice to cover market losses; and (c) be  
9 forced to sell some or all of the securities held in the account if the account value  
10 falls below a certain threshold.

11 51. Instead of making these risk disclosures, Lee made empty guarantees.  
12 To attract the business of at least twelve clients, Lee promised that if their accounts  
13 actually suffered any realized losses, he would split the losses with them "50/50"  
14 and repay them out of his own supposedly "deep pockets." In return, as described  
15 further below, Lee asked to share "50/50" in the clients' realized gains.

16 52. This equal sharing of profits and losses was among the representations  
17 made in the investor meetings described above in paragraph 38.

18 53. While Lee put few things in writing, he confirmed his agreement to  
19 share losses equally with one investor, in a June 24, 2011 email.

20 54. Lee also told certain clients his trading platform included the  
21 application of "stop-losses," or risk controls, that prevented clients from losing  
22 more than 10%. Lee also told one of these clients that the principal in her account  
23 would be safe and not at risk, in their initial meeting held on or about October 8,  
24 2009 in Las Vegas.

25 55. Despite Lee's claims about the safety of client investments, all of  
26 Lee's clients faced margin calls and suffered substantial losses in their accounts.

27 56. By early 2012, Lee's clients collectively had lost over \$11 million  
28 (out of approximately \$25 million invested) and additionally paid over \$3.3 million

1 in fees.

2 57. Nonetheless, Lee failed to share in client losses as promised and as  
3 demanded by clients. He repaid less than \$200,000 and most clients received  
4 nothing.

5 58. Lee's misleading statements about the management of client assets  
6 were material. A reasonable investor would want to know the truth about the risks  
7 associated with Lee's trading strategy, including the absence of promised  
8 safeguards and loss-sharing, when deciding to invest with Lee.

9 **Lee charged fees based on false performance**

10 59. Part of Lee's usual pitch to prospective clients was that he would keep  
11 their best interests in mind, more so than large, traditional firms that he said spent  
12 most of their money on overhead expenses. Lee, however, charged high fees and  
13 even defrauded certain clients by knowingly charging fees based on overstated  
14 investment results.

15 60. Lee told prospective clients that they would pay 50% of monthly  
16 realized profits as management fees. He later reduced his fee to 25% for some  
17 clients. Lee told prospective clients that no written contract with him was needed,  
18 but if a client did not pay his invoices, he would stop trading in that client's  
19 account.

20 61. Lee, or others at his direction, calculated the realized gains or losses in  
21 client accounts on a monthly basis. Lee determined the percentage of monthly  
22 realized profits that clients would be charged as a management fee and when  
23 clients would be invoiced.

24 62. In his zeal to profit at his clients' expense, Lee charged fees to three  
25 of his investment advisory clients based on false account performance for February  
26 2011 and concealed from the clients that they had actually incurred net realized  
27 losses that month, such that no fees were due.

28 63. Lee had an arrangement to pay a portion of the fees generated by the

1 accounts of these three clients to another individual (also a Lee investor) who  
2 introduced the clients to Lee and helped manage their accounts at Lee's direction.  
3 This individual went along with Lee's plan to spread the realized losses in these  
4 client accounts over five months and to charge only one-fifth of the realized losses  
5 against the realized gains for February 2011, so it would appear that the clients had  
6 net realized profits for which management fees were due. Accordingly, the three  
7 clients received invoices for management fees from Lee, and/or the individual that  
8 managed their accounts at Lee's direction, based on the false net realized profits  
9 for February 2011, which invoices the clients paid.

10 64. As for the supposed deferral of the remainder of the losses to future  
11 months, this never came to pass. Lee billed one of the clients for management fees  
12 in subsequent months without reducing the client's gains by any offsetting  
13 adjustments for the prior February 2011 losses. The other two clients incurred  
14 additional losses after February 2011 and did not receive further invoices for the  
15 affected accounts.

16 65. By exaggerating gains and minimizing losses, Lee deceived his clients  
17 about the true performance of their investments and his associated fees.

18 **Lee traded outside his discretionary authority in penny stocks**

19 66. Lee or others acting at his direction, purchased and sold penny stocks  
20 in two client accounts even though Lee only had an agreement with these clients to  
21 trade options.

22 **Lee misled a client about another penny stock investment**

23 67. In July 2009, Lee advised one of his clients to invest in Axia Group  
24 Inc. ("Axia"), which at the time was a Nevada Corporation based in Cave Creek,  
25 Arizona.

26 68. Based on Lee's recommendation, the client invested \$15,000 in Axia  
27 through a convertible promissory note.

28 69. Lee said that he served as a consultant to small companies like Axia,

1 and helped take them public via the over-the-counter market. Lee further claimed  
2 that he was compensated only in stock.

3 70. At the time of the client's \$15,000 investment, Axia had less than  
4 \$700 in its bank account. There was only one additional deposit in the account (for  
5 \$2,490) before it was liquidated in March 2010. Unbeknown to Lee's client, after  
6 receiving his \$15,000 investment, Axia began transferring funds to companies and  
7 individuals associated with Lee: two payments to ELX totaling \$8,000; two  
8 payments to MAKJ Capital Solutions, Inc. totaling \$4,500; and one payment to  
9 Ettore's brother for \$1,500. Lee never disclosed these cash payments to his client.

10 71. Lee's deceit about his relationship with Axia and the use of his  
11 client's investment proceeds was material. A reasonable investor would want to  
12 know that in recommending Axia, Lee stood to be the primary beneficiary from an  
13 investment in the company.

14 **Lee diverted fraudulent proceeds to the Relief Defendants**

15 72. To avoid having assets in his own name, and to reinforce his contrived  
16 image as a successful money manager, Lee's clients were invoiced by and paid  
17 management fees to various shell companies controlled by Lee, namely ELX,  
18 Advanced Century, Ultra and/or SOT (the "Corporate Relief Defendants").

19 73. Lee, or others at his direction, sent invoices to clients through email  
20 and mail. Many client invoices were prepared and sent by an administrative  
21 assistant who worked with Lee out of SOT's San Diego office.

22 74. Lee's clients paid the invoices by mailing checks or making wire  
23 transfers to the Corporate Relief Defendants.

24 75. During the relevant period, the Corporate Relief Defendants were  
25 almost exclusively funded by Lee's clients.

26 76. SOT received over \$990,000 from various Lee clients, plus additional  
27 funds from ELX.

28 77. ELX received over \$900,000 from various Lee clients, plus additional



1 funds from Advanced Century and SOT.

2 78. Advanced Century received over \$660,000 from various Lee clients,  
3 plus additional funds from ELX.

4 79. Ultra received over \$130,000 of Lee client funds.

5 80. The Corporate Relief Defendants, in turn, funneled a portion of the  
6 client fees to Lee, his family, friends and/or close associates, as well as businesses  
7 they controlled.

8 81. Among other individuals and entities, the Corporate Relief  
9 Defendants disbursed the monies received from Lee's clients to Ettore, Clayton  
10 Lee and/or Gatchalian (the "Individual Relief Defendants").

11 82. Ettore received over \$390,000 from ELX and SOT, in payments made  
12 directly to Ettore or for her benefit.

13 83. Clayton Lee received over \$40,000 in payments from SOT and  
14 Advanced Century.

15 84. Gatchalian received over \$69,000 in payments from Ultra.

16 85. The Individual Relief Defendants, and the Corporate Relief  
17 Defendants they formed, collaborated with Lee by serving as intermediaries for  
18 payments related to his investment advisory business.

19 86. The Corporate Relief Defendants were formed at the request and  
20 direction of Lee, and Lee conducted the corporations' businesses.

21 87. The management fees paid by Lee's clients to the Corporate Relief  
22 Defendants, and the above-described amounts received by the Individual Relief  
23 Defendants, constitute proceeds of Lee's fraud.

24 88. When Lee appeared before Commission staff for investigative  
25 testimony, he invoked his Fifth Amendment right against self-incrimination and  
26 refused to answer any questions about his background, his representations to  
27 investors, his trading strategy and the other conduct described above.

28

1 **FIRST CLAIM FOR RELIEF**

2 **Violations of Section 10(b) of the Exchange Act and Rule 10b-5**

3 89. The Commission repeats and incorporates by reference the allegations  
4 in paragraphs 1 through 88 above.

5 90. By engaging in the conduct described above, Defendant Lee, directly  
6 or indirectly, acting knowingly or recklessly, in connection with the purchase or  
7 sale of securities, by the use of means and instrumentalities of interstate commerce,  
8 or of the mails, or a facility of a national securities exchange: (a) employed  
9 devices, schemes or artifices to defraud; (b) made untrue statements of material  
10 fact or omitted to state a material fact necessary to make the statements made, in  
11 the light of the circumstances under which they were made, not misleading; and (c)  
12 engaged in acts, practices or courses of business which operated as a fraud or  
13 deceit upon certain persons.

14 91. As a result, Defendant violated, and unless enjoined will likely  
15 continue to violate, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and  
16 Rule 10b-5 [17 C.F.R. § 240.10b-5] thereunder.

17 **SECOND CLAIM FOR RELIEF**

18 **Violations of Section 17(a)(1) and (2) of the Securities Act**

19 92. The Commission repeats and incorporates by reference the allegations  
20 in paragraphs 1 through 88 above.

21 93. Defendant, by engaging in the conduct described above, directly or  
22 indirectly, in the offer or sale of securities by use of the means or instruments of  
23 transportation or communication in interstate commerce or by use of the mails: (a)  
24 with scienter, employed devices, schemes, or artifices to defraud; and (b) obtained  
25 money or property by means of untrue statements of material fact or omissions to  
26 state a material fact necessary to make the statements made, in light of the  
27 circumstances under which they were made, not misleading.

28 94. By engaging in the conduct described above, Defendant violated, and

1 unless enjoined will likely continue to violate, Section 17(a)(1) and (2) of the  
2 Securities Act [15 U.S.C. § 77q(a)(1), (2)].

3 **THIRD CLAIM FOR RELIEF**

4 **(Violations of Section 206(1) and 206(2) of the Advisers Act)**

5 95. The Commission repeats and incorporates by reference the allegations  
6 in paragraphs 1 through 88 above.

7 96. Defendant Lee was an “investment adviser” within the meaning of  
8 Section 202(a)(11) of the Advisers Act [15 U.S.C. § 80b-2(a)(11)].

9 97. By engaging in the conduct described above, Defendant, directly or  
10 indirectly, while acting as an investment adviser, by use of the mails or any means  
11 or instrumentality of interstate commerce: (a) with scienter, employed devices,  
12 schemes, or artifices to defraud clients or prospective clients; and (b) engaged in  
13 transactions, practices, or courses of business which operated or would operate as a  
14 fraud or deceit upon clients or prospective clients.

15 98. By engaging in the conduct described above, Defendant has violated,  
16 and unless enjoined will likely continue to violate, Section 206(1) and (2) of the  
17 Advisers Act [15 U.S.C. § 80b-6(1), (2)].

18 **FOURTH CLAIM FOR RELIEF**

19 **(Unjust Enrichment of Relief Defendants)**

20 99. The Commission repeats and incorporates by reference the allegations  
21 in paragraphs 1 through 88 above.

22 100. Section 21(d)(5) of the Exchange Act [15 U.S.C. § 78u(d)(5)] states:  
23 “In any action or proceeding brought or instituted by the Commission under any  
24 provision of the securities laws, the Commission may seek, and any Federal court  
25 may grant, any equitable relief that may be appropriate or necessary for the benefit  
26 of investors.”

27 101. As described above, Relief Defendants ELX, Advanced Century,  
28 Ultra, SOT, Ettore, Clayton Lee and Gatchalian received investor funds under

1 circumstances dictating that, in equity and good conscience, they should not be  
2 allowed to retain such funds.

3 102. As a result, each Relief Defendant is liable for unjust enrichment and  
4 should be required to return his, her or its ill-gotten gains, in an amount to be  
5 determined by the Court.

6 103. Defendant Lee should be held jointly and severally liable for the total  
7 amounts received by each of the respective Corporate Relief Defendants as a result  
8 of the conduct described above.

9 **PRAYER FOR RELIEF**

10 **WHEREFORE**, the Commission respectfully requests that the Court:

11 A. Enter a permanent injunction restraining Defendant and each of his  
12 agents, servants, employees and attorneys and those persons in active concert or  
13 participation with him who receive actual notice of the injunction by personal  
14 service or otherwise, including facsimile transmission or overnight delivery  
15 service, from directly or indirectly engaging in the conduct described above, or in  
16 conduct of similar purport and effect, in violation of:

- 17 1. Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and  
18 Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5];
- 19 2. Section 17(a)(1) and (2) of the Securities Act [15 U.S.C.  
20 § 77q(a)(1), (2)]; and
- 21 3. Section 206(1) and 206(2) of the Advisers Act [15 U.S.C.  
22 § 80(b)-6(1), (2)].

23 B. Require Defendant to disgorge his ill-gotten gains and losses avoided,  
24 plus prejudgment interest;

25 C. Order Defendant to pay an appropriate civil monetary penalty  
26 pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)], Section  
27 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)], and Section 209(e) of the  
28 Advisers Act [15 U.S.C. § 80b-9(e)];

1 D. Require the Relief Defendants to disgorge all unjust enrichment  
2 and/or ill-gotten gain received directly or indirectly from Defendant, plus  
3 prejudgment interest, holding Defendant jointly and severally liable with the  
4 respective Corporate Relief Defendants;

5 E. Retain jurisdiction over this action to implement and carry out the  
6 terms of all orders and decrees that may be entered or to entertain any suitable  
7 application or motion for additional relief, within the jurisdiction of this Court; and

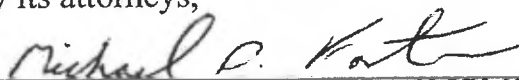
8 F. Award such other and further relief as the Court deems just and  
9 proper.

10  
11 Dated: February 13, 2014

Respectfully submitted,

12 **Securities and Exchange Commission,**

13 By its attorneys,

14 

15 Michael D. Foster (IL Bar No. 6257063)  
16 Email: fostermi@sec.gov  
17 John Birkenheier (IL Bar No. 6270993)  
18 Email: birkenheierj@sec.gov  
19 Jennifer Peltz (IL Bar No. 6280848)  
20 Email: peltzj@sec.gov  
21 Securities and Exchange Commission  
22 175 West Jackson Boulevard, Suite 900  
23 Chicago, Illinois 60604  
24 Telephone: (312) 353-7390  
25 Facsimile: (312) 353-7398

26 /s/ Karen Matteson

27 Karen Matteson (Cal. Bar No. 102103)  
28 mattesonk@sec.gov  
Securities and Exchange Commission  
5670 Wilshire Boulevard, 11<sup>th</sup> Floor  
Los Angeles, CA 90036  
Telephone: (323) 965-3840  
Facsimile: (323) 965-3908  
*Local Counsel*

# **Exhibit B**

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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

vs.

JAMES Y. LEE

Defendant,

and LARISSA O. ETTORE, ELX  
INTERNATIONAL, INC., CLAYTON K.  
LEE, ADVANCED CENTURY CORP.,  
LOLITA GATCHALIAN, ULTRA  
INTERNATIONAL, INC., and SOT  
GROUP, INC.,

Relief Defendants.

Case No. 14-CV-0347-LAB-BGS

**CONSENT OF DEFENDANT  
JAMES Y. LEE**

15 1. Defendant James Y. Lee (“Defendant” or “Lee”) waives service of a  
16 summons and the complaint in this action, enters a general appearance, and admits  
17 the Court’s jurisdiction over Defendant and over the subject matter of this action.

18 2. Defendant has pleaded guilty to criminal conduct relating to certain  
19 matters alleged in the complaint in this action. Specifically, in *United States v.*  
20 *James Yiu Lee*, Case No. 14-cr-2937-BEN (S.D. Cal.), Defendant pleaded guilty to  
21 obstruction of justice in violation of 18 U.S.C. § 1503. In connection with that  
22 plea, Defendant admitted that: (a) he “solicited clients to conduct on-line trading  
23 on their behalf in exchange for a share of profits”; (b) he “induced potential clients  
24 to hire [Defendant] by fraudulently making false representations and promises, and  
25 omitting material information”; (c) he “sent falsified invoices to clients”; (d) he  
26 “solicited clients through fraudulent means”; and (e) his “fraudulent conduct  
27 caused losses of over \$10 million” for 14 investor victims, all of whom are among  
28 Lee’s alleged victims in this matter. This Consent shall remain in full force and

1 effect regardless of the existence or outcome of any further proceedings in *United*  
2 *States v. James Yiu Lee*.

3 3. For the purposes of this action, Defendant stipulates that he is liable  
4 for the First, Second, and Third Claims for Relief in the complaint in this action.  
5 Defendant further stipulates that, as alleged in the complaint in this action, he  
6 violated Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”)  
7 [15 U.S.C. §78j(b)], and Rule 10b-5 thereunder [17 C.F.R. §240.10b-5]; Sections  
8 17(a)(1) and (a)(2) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C.  
9 §§77q(a)(1) and (a)(2)]; and Sections 206(1) and 206(2) of the Investment  
10 Advisers Act of 1940 (“Advisers Act”) [15 U.S.C. § 80b-6(1) and (2)].

11 4. Defendant hereby consents to the entry of the final Judgment in the  
12 form attached hereto (the “Final Judgment”) and incorporated by reference herein,  
13 which, among other things, finds Defendant liable for violating, and permanently  
14 restrains and enjoins Defendant from violations of Section 10(b) of the Exchange  
15 Act [15 U.S.C. §78j(b)], and Rule 10b-5 thereunder [17 C.F.R. §240.10b-5];  
16 Sections 17(a)(1) and (a)(2) of the Securities Act [15 U.S.C. §§77q(a)(1) and  
17 (a)(2)]; and Sections 206(1) and 206(2) of the Advisers Act [15 U.S.C. §§ 80b-6(1)  
18 and (2)].

19 5. The Final Judgment further orders Defendant to pay disgorgement in  
20 the amount of \$1,880,263.00, plus prejudgment interest thereon in the amount of  
21 \$322,762.95, but further orders that Defendant’s obligation to pay disgorgement in  
22 this matter will be satisfied by payments made to satisfy the restitution order in  
23 *United States v. James Yiu Lee*. Based on the 78 month prison sentence and  
24 restitution order imposed upon him, the Commission has determined to withdraw  
25 its claims for civil monetary penalties against Defendant.

26 6. Defendant waives the entry of findings of fact and conclusions of law  
27 pursuant to Rule 52 of the Federal Rules of Civil Procedure.

28 7. Defendant waives the right, if any, to a jury trial and to appeal from



1 the entry of the Final Judgment.

2 8. Defendant enters into this Consent voluntarily and represents that no  
3 threats, offers, promises, or inducements of any kind have been made by the  
4 Commission or any member, officer, employee, agent, or representative of the  
5 Commission to induce Defendant to enter into this Consent.

6 9. Defendant agrees that this Consent shall be incorporated into the Final  
7 Judgment with the same force and effect as if fully set forth therein.

8 10. Defendant will not oppose the enforcement of the Final Judgment on  
9 the ground, if any exists, that it fails to comply with Rule 65(d) of the Federal  
10 Rules of Civil Procedure, and hereby waives any objection based thereon.

11 11. Defendant waives service of the Final Judgment and agrees that entry  
12 of the Final Judgment by the Court and filing with the Clerk of the Court will  
13 constitute notice to Defendant of its terms and conditions. Defendant further  
14 agrees to provide counsel for the Commission, within thirty days after the Final  
15 Judgment is filed with the Clerk of the Court, with an affidavit or declaration  
16 stating that Defendant has received and read a copy of the Final Judgment.

17 12. Consistent with 17 C.F.R. 202.5(f), this Consent resolves only the  
18 claims asserted against Defendant in this civil proceeding. Defendant  
19 acknowledges that no promise or representation has been made by the Commission  
20 or any member, officer, employee, agent, or representative of the Commission with  
21 regard to any criminal liability that may have arisen or may arise from the facts  
22 underlying this action or immunity from any such criminal liability. Defendant  
23 waives any claim of Double Jeopardy based upon the settlement of this proceeding,  
24 including the imposition of any remedy or civil penalty herein. Defendant further  
25 acknowledges that the Court's entry of a permanent injunction may have collateral  
26 consequences under federal or state law and the rules and regulations of self-  
27 regulatory organizations, licensing boards, and other regulatory organizations.  
28 Such collateral consequences include, but are not limited to, a statutory

1 disqualification with respect to membership or participation in, or association with  
2 a member of, a self-regulatory organization. This statutory disqualification has  
3 consequences that are separate from any sanction imposed in an administrative  
4 proceeding. In addition, in any disciplinary proceeding before the Commission  
5 based on the entry of the injunction in this action, Defendant understands that he  
6 shall not be permitted to contest the factual allegations of the complaint in this  
7 action.

8 13. Defendant understands and agrees to comply with the terms of 17  
9 C.F.R. § 202.5(e), which provides in part that it is the Commission's policy "not to  
10 permit a defendant or respondent to consent to a judgment or order that imposes a  
11 sanction while denying the allegations in the complaint or order for proceedings."  
12 As part of Defendant's agreement to comply with the terms of Section 202.5(e),  
13 Defendant acknowledges the guilty plea for related conduct described in paragraph  
14 2 above, and: (i) will not take any action or make or permit to be made any public  
15 statement denying, directly or indirectly, any allegation in the complaint or  
16 creating the impression that the complaint is without factual basis; (ii) will not  
17 make or permit to be made any public statement to the effect that Defendant does  
18 not admit the allegations of the complaint, or that this Consent contains no  
19 admission of the allegations; (iii) upon the filing of this Consent, Defendant hereby  
20 withdraws any papers filed in this action to the extent that they deny any allegation  
21 in the complaint; and (iv) stipulates for purposes of exceptions to discharge set  
22 forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, that the allegations  
23 in the complaint are true, and further, that any debt for disgorgement, prejudgment  
24 interest, civil penalty or other amounts due by Defendant under the Final Judgment  
25 or any other judgment, order, consent order, decree or settlement agreement  
26 entered in connection with this proceeding, is a debt for the violation by Defendant  
27 of the federal securities laws or any regulation or order issued under such laws, as  
28 set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19). If


1 Defendant breaches this agreement, the Commission may petition the Court to  
2 vacate the Final Judgment and restore this action to its active docket. Nothing in  
3 this paragraph affects Defendant's: (i) testimonial obligations; or (ii) right to take  
4 legal or factual positions in litigation or other legal proceedings in which the  
5 Commission is not a party.

6 14. Defendant hereby waives any rights under the Equal Access to Justice  
7 Act, the Small Business Regulatory Enforcement Fairness Act of 1996, or any  
8 other provision of law to seek from the United States, or any agency, or any  
9 official of the United States acting in his or her official capacity, directly or  
10 indirectly, reimbursement of attorney's fees or other fees, expenses, or costs  
11 expended by Defendant to defend against this action. For these purposes,  
12 Defendant agrees that Defendant is not the prevailing party in this action since the  
13 parties have reached a good faith settlement.

14 15. Defendant agrees that the Commission may present the Final  
15 Judgment to the Court for signature and entry without further notice.

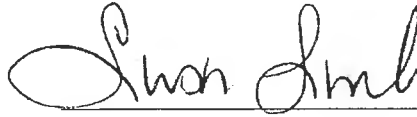
16 16. Defendant agrees that this Court and the Magistrate Judge in this  
17 matter shall retain jurisdiction over this matter for the purpose of enforcing the  
18 terms of the Final Judgment. Defendant agrees that the Magistrate Judge shall  
19 retain jurisdiction over all disputes between and among the parties arising out of  
20 the settlement agreement, including but not limited to interpretation and  
21 enforcement of the terms of the settlement agreement.

22  
23 Dated: MAY 7, 2016

  
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James Y. Lee

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On 5/7/2016, 2016, James Y. Lee, a person known to me,  
personally appeared before me and acknowledged executing the foregoing  
Consent.

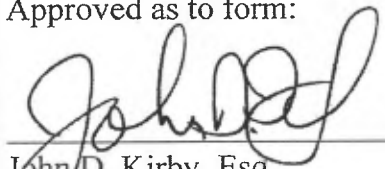


Notary Public

Commission expires:

9/13/2016

Approved as to form:



John D. Kirby, Esq.  
Law Offices of John D. Kirby  
1010 2nd Ave., Suite 2400  
San Diego, CA 92101  
619-880-4377  
Attorney for Defendant

### ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

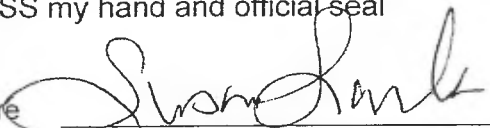
County of Kern

On 5/7/2016 before me, Susana Landa, Notary Public  
(insert name and title of the officer)

personally appeared James Y. Lee  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal

Signature  (Seal)



ACMAJANADIG  
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AMORILAO OIBIN YATON  
Y TUOO HEBE  
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# **Exhibit C**

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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

vs.

JAMES Y. LEE

Defendant,

and LARISSA O. ETTORE, ELX  
INTERNATIONAL, INC., CLAYTON K.  
LEE, ADVANCED CENTURY CORP.,  
LOLITA GATCHALIAN, ULTRA  
INTERNATIONAL, INC., and SOT  
GROUP, INC.,

Relief Defendants.

Case No. 14-CV-0347-LAB-BGS

**FINAL JUDGMENT AS TO  
DEFENDANT JAMES Y. LEE**

The Securities and Exchange Commission (“Commission”) having filed a  
Complaint and Defendant James Y. Lee (“Defendant”) having entered a general  
appearance; consented to the Court’s jurisdiction over Defendant and the subject  
matter of this action; consented to entry of this Final Judgment; waived findings of  
fact and conclusions of law; and waived any right to appeal from this Final  
Judgment:



I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant is liable for violating, as alleged in the complaint in this matter, and is permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, in connection with the purchase or sale of any security:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or
- (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) Defendant's officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendant or with anyone described in (a).

II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is liable for violating, as alleged in the complaint in this matter, and is permanently restrained and enjoined from violating, Section 17(a) of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. § 77q(a)] in the offer or sale of any security by the use of any means or instruments of transportation or

1 communication in interstate commerce or by use of the mails, directly or  
2 indirectly:

3 (a) to employ any device, scheme, or artifice to defraud; or

4 (b) to obtain money or property by means of any untrue statement of a  
5 material fact or any omission of a material fact necessary in order to make  
6 the statements made, in light of the circumstances under which they were  
7 made, not misleading.

8  
9 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as  
10 provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also  
11 binds the following who receive actual notice of this Final Judgment by personal  
12 service or otherwise: (a) Defendant's officers, agents, servants, employees, and  
13 attorneys; and (b) other persons in active concert or participation with Defendant  
14 or with anyone described in (a).

15 III.

16 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED  
17 that Defendant is liable for violating, as alleged in the complaint in this matter, and  
18 is permanently restrained and enjoined from violating, Section 206(1) and 206(2)  
19 of the Investment Advisers Act of 1940 (the "Advisers Act") [15 U.S.C. §§ 80b-  
20 6(1) and 80b-6(2)], by making use of the mails or any means of instrumentality of  
21 interstate commerce, in connection with the conduct of business as an investment  
22 adviser:

23 (a) to employ devices, schemes and artifice to defraud investment  
24 advisory clients and prospective clients; or

25 (b) to engage in any transaction, practice or course of business which  
26 operates or would operate as a fraud or deceit upon such clients and prospective  
27 clients.

28

1 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as  
2 provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also  
3 binds the following who receive actual notice of this Final Judgment by personal  
4 service or otherwise: (a) Defendant's officers, agents, servants, employees, and  
5 attorneys; and (b) other persons in active concert or participation with Defendant  
6 or with anyone described in (a).

7 IV.

8 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that  
9 Defendant is liable for disgorgement of \$1,880,263, representing profits gained as  
10 a result of the conduct alleged in the complaint in this matter, plus prejudgment  
11 interest thereon in the amount of \$322,762.95. However, Defendant shall be  
12 credited dollar-for-dollar for any payments made to satisfy the restitution order  
13 imposed on Defendant in the companion criminal matter, *United States v. James*  
14 *Yiu Lee*, Case No. 14-cr-2937-BEN (S.D. Cal.). Based on the prison sentence  
15 imposed in *United States v. Lee*, the Commission has determined to withdraw its  
16 claims for civil monetary penalties against Defendant. This Final Judgment, and  
17 any payments made hereto, do not affect the disgorgement obligations, if any, of  
18 any other parties to this matter.

19 V.

20 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the  
21 *Consent of Defendant James Y. Lee* is incorporated herein with the same force and  
22 effect as if fully set forth herein, and that Defendant shall comply with all of the  
23 undertakings and agreements set forth therein.

24 IV.

25 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, for  
26 purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy  
27 Code, 11 U.S.C. §523, the allegations in the complaint are true and admitted by  
28

1 Defendant, and further, any debt for disgorgement, prejudgment interest, civil  
2 penalty or other amounts due by Defendant under this Final Judgment or any other  
3 judgment, order, consent order, decree or settlement agreement entered in  
4 connection with this proceeding, is a debt for the violation by Defendant the  
5 federal securities laws or any regulation or order issued under such laws, as set  
6 forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19).

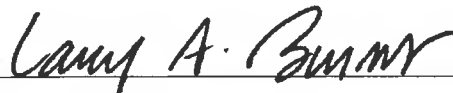
7 VII.

8 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this  
9 Court and the Magistrate Judge in this matter shall retain jurisdiction of this matter  
10 for the purposes of enforcing the terms of this Final Judgment. The Magistrate  
11 Judge shall retain jurisdiction over all disputes between and among the parties  
12 arising out of the settlement agreement, including but not limited to interpretation  
13 and enforcement of the terms of the settlement agreement.

14 VIII.

15 There being no just reason for delay, pursuant to Rule 54(b) of the Federal  
16 Rules of Civil Procedure, the Clerk is ordered to enter this Final Judgment  
17 forthwith and without further notice.

18  
19 Dated: July 15, 2016

20 

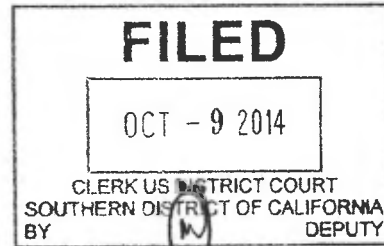
21 Hon. Larry A. Burns

22 United States District Judge

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# **Exhibit D**

1 LAURA E DUFFY  
United States Attorney  
2 CHRISTOPHER P. TENORIO  
Assistant U.S. Attorney  
3 California Bar No. 166022  
880 Front Street, Room 6293  
4 San Diego, CA 92101  
Tel: (619) 546-8413  
5 Fax: (619) 546-0450  
6 Email: Christopher.Tenorio@usdoj.gov



7 Attorneys for the United States

8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA, )  
11 Plaintiff, )  
12 v. )  
13 JAMES YIU LEE, )  
14 Defendant. )  
15 )

CASE NO. 14 CR 2937 - BEN

PLEA AGREEMENT

16 IT IS HEREBY AGREED between the plaintiff, UNITED STATES OF  
17 AMERICA, through its counsel, Laura E. Duffy, United States Attorney, and  
18 Christopher P. Tenorio, Assistant United States Attorney, and Defendant, James Yiu  
19 Lee, with the advice and consent of John Kirby, counsel for Defendant, as follows:

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I

**THE PLEA**

Defendant agrees to plead guilty to an Information charging one count of obstruction of justice in violation of 18 U.S.C. § 1503. In addition, the defendant agrees that the provisions of any attached forfeiture addendum shall govern forfeiture in this case.

The Government agrees to not prosecute the defendant thereafter for conduct outlined in the "Factual Basis" Section of this plea agreement, unless the defendant breaches the plea agreement, or the guilty plea entered pursuant to this plea agreement is set aside for any reason. Defendant expressly waives all constitutional and statutory defenses to the reinstatement of any charges dismissed pursuant to this agreement.

II

**NATURE OF THE OFFENSE**

**A. ELEMENTS EXPLAINED**

Defendant understands that the Information charges obstruction of justice, in violation of 18 U.S.C. § 1503, which has the following elements:

1. The defendant influenced, obstructed, or impeded, or endeavored to influence, obstruct, or impede the due administration of justice; and,
2. the defendant acted corruptly with the intent to obstruct justice.

**B. ELEMENTS UNDERSTOOD AND ADMITTED - FACTUAL BASIS**

Defendant has fully discussed the facts of this case with defense counsel. Defendant has committed each of the elements of each of the charged offense, and admits that there is a factual basis for his guilty plea to the charged count. The following facts occurred within the Southern District of California and elsewhere, and are true and undisputed:

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- 1           1.    On December 29, 1997, the defendant was convicted of wire fraud  
2           (18 U.S.C. § 1343) and pension embezzlement (18 U.S.C. § 664) in  
3           United States v. James Yiu Lee, et al., Crim. Case No. 95CR0041-  
4           MMC-1 (N.D. CA 1995) (“1997 Conviction”).
- 5           2.    On November 10, 1998, the defendant was sentenced to 30 months of  
6           custody (both counts running concurrently), 3 years of supervised  
7           release, and ordered to pay \$2,880,000 in restitution for the 1997  
8           Conviction. To date, the defendant continues to owe approximately  
9           \$2,853,235.
- 10          3.    From approximately April 2007 to July 2013, the defendant acted  
11          corruptly and with the intent to obstruct justice by engaging in  
12          fraudulent and deceptive conduct designed to hinder and minimize  
13          the efforts of the United States to collect on the criminal judgment  
14          and restitution order imposed in the 1997 Conviction, by obtaining  
15          money from clients in such a way as to conceal such income from the  
16          United States. Among other means, the defendant:
  - 17          a)    solicited clients to conduct on-line trading on their behalf in  
18          exchange for a share of profits;
  - 19          b)    induced potential clients to hire the defendant by fraudulently  
20          making false representations and promises, and omitting  
21          material information;
  - 22          c)    instructed clients to send his management fees to bank  
23          accounts he opened in the name of shell corporations;
  - 24          d)    used credit cards in the names of relatives to pay for expenses,  
25          and paid the corresponding bills from his shell-corporation  
26          accounts; and,

1 e) sent falsified invoices to clients to ensure that he would  
2 continue to fraudulently receive income without the knowledge  
3 of the United States.

4 4. The defendant's specific conduct designed to hinder and minimize  
5 the efforts of the United States to collect on the criminal judgment  
6 and restitution order imposed in the 1997 Conviction included the  
7 following:

8 a) On approximately April 12, 2007, the defendant caused the  
9 incorporation of ELX Int., Inc. ("ELX") – a shell corporation  
10 he controlled and ostensibly based in San Diego – but omitted  
11 any mention of his name as a corporate officer, signatory on  
12 the corporation's bank account, or in any other fashion in  
13 control of the corporation.

14 b) Between August 2009 and August 2011, the defendant sent  
15 invoices to clients on ELX letterhead, directing clients to send  
16 payments to the ELX bank account for the defendant's  
17 management of the clients' on-line trading accounts.

18 c) The defendant solicited clients through fraudulent means. For  
19 example, in approximately September 2009, the defendant  
20 misrepresented to Dr. David Calvo that the defendant was a  
21 CPA; misrepresented that he had Ph.D., J.D., and M.B.A.  
22 degrees; and failed to disclose the 1997 Conviction.

23 d) In approximately September 2009, the defendant told Dr.  
24 Calvo that the defendant would share 50% of both realized  
25 gains and losses incurred from on-line trading activity on  
26 accounts opened in Dr. Calvo's name. In approximately  
27 January 2011, the defendant's trading activity created realized  
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losses to Dr. Calvo's accounts, but the defendant restructured billing invoices to spread losses over five months in order to avoid having to immediately pay 50% of realized losses and to permit continued billing and the receipt of income.

- e) Between August 2009 and March 2012, the defendant caused over \$350,000 to be wire transferred from the ELX bank account to other shell accounts under his control, which he would use for personal expenses.
- f) Between August 2009 and July 2013, the defendant caused the production of checks totaling over \$150,000 from the ELX bank account to pay bills for credit cards issued in the name of others, but used by the defendant for personal expenses.
- g) Using these and other fraudulent and deceptive practices, the defendant concealed his control and ownership of income in order to avoid its collection by the United States pursuant to the outstanding judgment and restitution order for the 1997 Conviction. Additionally, the defendant's fraudulent conduct caused losses of over \$10 million for the following additional victims:

Victim-Investor(s)	Approximate Loss
Geraldine & Donald Lacto	\$515,403.34
Dr. David & Dianne Calvo	\$1.8 million
Valerie Lee & Pamela Bridgen	\$1 million
Dr. Hal & Nancy Blatman	\$60,000
Dr. Lacy & Helen Koonce	\$285,000
Richard L. Brackett, Trustee	\$280,000

1	Roberto Contreras	\$2 million
2	Sunita Jain	\$429,000
3	Michael Heylum	\$180,000
4	Lynn Sahin	\$1 million
5	Kathryn Ayers	\$50,000
6	Joon Lee	\$1.7 million
7	Dr. Labor Jarolimek	\$860,000
8	Mark Viola	\$476,000

10 **III**  
 11 **PENALTIES**

12 Defendant understands that the crime to which defendant is pleading guilty carries  
 13 the following penalties:

- 14 A. a maximum ten years in prison;
- 15 B. a maximum \$250,000 fine; or twice the gross gain or loss caused by the  
 16 offense;
- 17 C. a mandatory special assessment of \$100 per count;
- 18 D. a term of supervised release of not more than three years. Defendant  
 19 understands that failure to comply with any of the conditions of supervised  
 20 release may result in revocation of supervised release, requiring defendant  
 21 to serve in prison all or part of the term of supervised release;
- 22 E. an order from the Court pursuant to 18 U.S.C. § 3663A that defendant make  
 23 mandatory restitution to the victims of the offense of conviction, or the  
 24 estates of the victims. Defendant also understands that, pursuant to 18  
 25 U.S.C. § 3663(a)(1)(A), the Court shall also order, if agreed to by the  
 26 parties in this plea agreement, restitution to persons other than the victims  
 27 of the offense of conviction; and,  
 28

1 F. forfeiture of any property, real or personal, which constitutes or is derived  
2 from proceeds traceable to the offense (18 U.S.C. § 981(a)(1)(C) and 28  
3 U.S.C. § 2461(c)).

4 Defendant further understands that by pleading guilty Defendant may be become  
5 ineligible for federal benefits.

6 **IV**

7 **DEFENDANT'S WAIVER OF TRIAL RIGHTS**

8 Defendant understands that this guilty plea waives the right to:

- 9 A. Continue to plead not guilty and require the Government to prove the  
10 elements of the crime beyond a reasonable doubt;
- 11 B. A speedy and public trial by jury;
- 12 C. The assistance of counsel at all stages of trial;
- 13 D. Confront and cross-examine adverse witnesses;
- 14 E. Present evidence and to have witnesses testify on behalf of Defendant;
- 15 F. Not testify or have any adverse inferences drawn from the failure to testify;  
16 and,
- 17 G. Defendant knowingly and voluntarily waives any rights and defenses  
18 defendant may have under the Excessive Fines Clause of the Eighth  
19 Amendment to the United States Constitution to the forfeiture of property in  
20 this proceeding or any related civil proceeding.

21 **V**

22 **DEFENDANT ACKNOWLEDGES NO PRETRIAL RIGHT**  
23 **TO BE PROVIDED WITH IMPEACHMENT**  
24 **AND AFFIRMATIVE DEFENSE INFORMATION**

25 The Government represents that any information establishing the factual  
26 innocence of Defendant known to the undersigned prosecutor in this case has been  
27 turned over to defendant. The Government will continue to provide such information  
28 establishing the factual innocence of Defendant.

1 Defendant understands that if this case proceeded to trial, the Government would  
2 be required to provide impeachment information relating to any informants or other  
3 witnesses. In addition, if Defendant raised an affirmative defense, the Government  
4 would be required to provide information in its possession that supports such a defense.  
5 Defendant acknowledges, however, that by pleading guilty Defendant will not be  
6 provided this information, if any, and Defendant also waives the right to this  
7 information. Finally, Defendant agrees not to attempt to withdraw the guilty plea or to  
8 file a collateral attack based on the existence of this information.

9 VI

10 **DEFENDANT'S REPRESENTATION THAT GUILTY**  
11 **PLEA IS KNOWING AND VOLUNTARY**

12 Defendant represents that:

- 13 A. Defendant has had a full opportunity to discuss all the facts and  
14 circumstances of this case with defense counsel and has a clear  
15 understanding of the charges and the consequences of this plea. Defendant  
16 understands that, by pleading guilty, Defendant may be giving up and  
17 rendered ineligible to receive valuable government benefits and civic rights,  
18 such as the right to vote, the right to possess a firearm, the right to hold  
19 office, and the right to serve on a jury. Defendant further understands that  
20 the conviction in this case may subject Defendant to various collateral  
21 consequences, including but not limited to deportation, removal or other  
22 adverse immigration consequences; revocation of probation, parole, or  
23 supervised release in another case; and suspension or revocation of a  
24 professional license, none of which will serve as grounds to withdraw  
25 Defendant's guilty plea;
- 26 B. No one has made any promises or offered any rewards in return for this  
27 guilty plea, other than those contained in this agreement or otherwise  
28 disclosed to the Court;

- 1 C. No one has threatened Defendant or Defendant's family to induce this
- 2 guilty plea; and,
- 3 D. Defendant is pleading guilty because in truth and in fact Defendant is guilty
- 4 and for no other reason.

VII

6 **AGREEMENT LIMITED TO U.S. ATTORNEY'S OFFICE**  
 7 **SOUTHERN DISTRICT OF CALIFORNIA**

8 This plea agreement is limited to the United States Attorney's Office for the  
 9 Southern District of California, and cannot bind any other federal, state or local  
 10 prosecuting, administrative, or regulatory authorities, although the Government will  
 11 bring this plea agreement to the attention of other authorities if requested by Defendant.

VIII

12 **APPLICABILITY OF SENTENCING GUIDELINES**

13 Defendant understands the sentence imposed will be based on the factors set forth  
 14 in 18 U.S.C. § 3553(a). Defendant understands further that in imposing the sentence, the  
 15 sentencing judge must consult the United States Sentencing Guidelines ("Guidelines")  
 16 and take them into account. Defendant has discussed the Guidelines with defense  
 17 counsel and understands that the Guidelines are only advisory, not mandatory, and the  
 18 Court may impose a sentence more severe or less severe than otherwise applicable under  
 19 the Guidelines, up to the maximum in the statute of conviction. Defendant understands  
 20 further that the sentence cannot be determined until a presentence report has been  
 21 prepared by the U.S. Probation Office and defense counsel and the Government have  
 22 had an opportunity to review and challenge the presentence report. Nothing in this plea  
 23 agreement shall be construed as limiting the Government's duty to provide complete and  
 24 accurate facts to the district court and the U.S. Probation Office.

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 27 //  
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IX

**SENTENCE IS WITHIN SOLE DISCRETION OF JUDGE**

This plea agreement is made pursuant to Federal Rule of Criminal Procedure 11(c)(1)(B). Defendant understands that the sentence is within the sole discretion of the sentencing judge. The Government has not made and will not make any representation as to what sentence Defendant will receive. Defendant understands that the sentencing judge may impose the maximum sentence provided by statute, and is also aware that any estimate of the probable sentence by defense counsel is a prediction, not a promise, and is not binding on the Court. Likewise, the recommendation made by the Government is not binding on the Court, and it is uncertain at this time what Defendant's sentence will be. Defendant also has been advised and understands that if the sentencing judge does not follow any of the parties' sentencing recommendations, Defendant nevertheless has no right to withdraw the plea.

X

**PARTIES' SENTENCING RECOMMENDATIONS**

**A. SENTENCING GUIDELINE CALCULATIONS**

Although the parties understand that the Guidelines are only advisory and just one of the factors the Court will consider under 18 U.S.C. § 3553(a) in imposing a sentence, the Government will recommend the following Base Offense Level, Specific Offense Characteristics, Adjustments, and Departures:

**Fraud:\***

(1)	Base Offense Level [§ 2B1.1(a)(2)]:	6
(2)	Loss (\$7 - \$20 million) [§ 2B1.1(b)(1)(K)]	+20
(3)	More than 10 victims [§ 2B1.1(b)(2)(A)]	+2
(4)	Sophisticated Means [§ 2B1.1(b)(10)(C)]	+2
(5)	Acceptance of Responsibility [§ 3E1.1]	<u>-3</u>
	Adjusted Offense Level	27



1 *\*Pursuant to §1B1.2(c), the parties agree that the "Factual Basis section of this plea*  
2 *agreement establishes the commission of an additional offense, that is, conspiracy to*  
3 *commit wire fraud (and obstruction of justice). Accordingly, the parties agree that the*  
4 *Guidelines should be calculated as if the defendant had been convicted of this*  
5 *additional count.*

6 **B. ACCEPTANCE OF RESPONSIBILITY**

7 Notwithstanding paragraph A.5 above, the Government will not be obligated to  
8 recommend any adjustment for Acceptance of Responsibility if Defendant engages in  
9 conduct inconsistent with acceptance of responsibility including, but not limited to a  
10 knowing and willful doing of the following:

- 11 1. Fails to truthfully admit a complete factual basis as stated in the plea  
12 at the time the plea is entered, or falsely denies, or makes a statement  
13 inconsistent with, the factual basis set forth in this agreement;
- 14 2. Falsely denies prior criminal conduct or convictions;
- 15 3. Is untruthful with the Government, the Court or probation officer;
- 16 4. Materially breaches this plea agreement in any way; or,
- 17 5. Contests or assists any third party in contesting the forfeiture of  
18 property to which the defendant has agreed to forfeit as set forth in  
19 any attached forfeiture addendum.

20 **C. ADDITIONAL ADJUSTMENTS AND SENTENCE REDUCTIONS**  
21 **INCLUDING THOSE UNDER 18 U.S.C. § 3553**

22 The parties agree that Defendant may request or recommend additional downward  
23 adjustments, departures, including Criminal History departures under USSG § 4A1.3, or  
24 sentence reductions under 18 U.S.C. § 3553. The Government may oppose any such  
25 downward adjustments, departures and sentence reductions not set forth in Section X,  
26 Paragraph A above.

27 //

28 //

1 **D. NO AGREEMENT AS TO CRIMINAL HISTORY CATEGORY**

2 The parties have no agreement as to Defendant's Criminal History Category.

3 **E. "FACTUAL BASIS" AND "RELEVANT CONDUCT"**  
4 **INFORMATION**

5 The parties agree that the facts in the "factual basis" paragraph of this agreement  
6 are true, and may be considered as "relevant conduct" under USSG § 1B1.3 and as the  
7 nature and circumstances of the offense under 18 U.S.C. § 3553(a)(1).

8 **F. PARTIES' RECOMMENDATIONS REGARDING CUSTODY**

9 The parties agree that the Government will recommend that Defendant be  
10 sentenced to the low end of the advisory guideline range as calculated by the  
11 Government pursuant to this agreement.

12 **G. SPECIAL ASSESSMENT**

13 The parties will jointly recommend that Defendant pay a special assessment in the  
14 amount of \$100 forthwith at time of sentencing. Defendant shall pay the special  
15 assessment through the office of the Clerk of the District Court by bank or cashier's  
16 check or money order made payable to the "Clerk, United States District Court."

17 **H. RESTITUTION**

18 Defendant agrees to pay restitution to the victims of the conduct described in the  
19 Factual Basis of the Plea Agreement, including the victims specifically identified.  
20 Defendant agrees that the amount of restitution ordered by the Court shall include the  
21 defendant's total offense conduct, and is not limited to the count of conviction.  
22 Defendant understands that the Government estimates restitution to be between \$7  
23 million and \$20 million, and the Court shall order restitution payable forthwith.  
24 Defendant agrees and understands that any payment schedule imposed by the Court is  
25 without prejudice to the United States to take all actions and take all remedies available  
26 to it to collect the full amount of the restitution.

27 Defendant agrees that the restitution, restitution judgment, payment provisions,  
28 and collection actions of this plea agreement are intended to, and will, survive defendant,

1 notwithstanding the abatement of any underlying criminal conviction after the execution  
2 of this agreement. Defendant further agrees that any restitution collected and/or  
3 distributed will survive him, notwithstanding the abatement of any underlying criminal  
4 conviction after execution of this agreement.

5 The restitution described above shall be paid through the Office of the Clerk of the  
6 District Court by bank or cashier's check or money order made payable to the "Clerk,  
7 United States District Court."

8 Further, the restitution described above shall be paid to or on behalf of the victims  
9 who will be identified prior to sentencing.

10 Defendant agrees that, before sentencing, Defendant shall provide to the United  
11 States, under penalty of perjury, a financial disclosure form listing all Defendant's assets  
12 and financial interests valued at more than \$1,000. Defendant understands that these  
13 assets and financial interests include all assets and financial interests in which defendant  
14 has an interest (or had an interest prior to September 4, 2012), direct or indirect, whether  
15 held in Defendant's own name or in the name of another, in any property, real or  
16 personal. Defendant shall also identify all assets valued at more than \$5,000 which have  
17 been transferred to third parties since April 10, 2008, including the location of the assets  
18 and the identity of the third parties.

19 The parties will jointly recommend that as a condition of probation or supervised  
20 release, Defendant will notify the Collections Unit, United States Attorney's Office, of  
21 any interest in property obtained, directly or indirectly, including any interest obtained  
22 under any other name, or entity, including a trust, partnership or corporation after the  
23 execution of this plea agreement until the fine or restitution is paid in full.

24 The parties will also jointly recommend that as a condition of probation or  
25 supervised release, defendant will notify the Collections Unit, United States Attorney's  
26 Office, before defendant transfers any interest in property owned directly or indirectly  
27 by defendant, including any interest held or owned under any other name or entity,  
28 including trusts, partnerships and/or corporations.



1 If at any time Defendant files a notice of appeal, appeals, or collaterally attacks  
2 the conviction or sentence in violation of this plea agreement, said violation shall be a  
3 material breach of this agreement as further defined below.

4 **XII**

5 **BREACH OF THE PLEA AGREEMENT**

6 Defendant acknowledges, understands and agrees that if Defendant violates or  
7 fails to perform any of Defendant's obligations under this agreement, such violation or  
8 failure to perform may constitute a material breach of this agreement.

9 Defendant acknowledges, understands and agrees further that the following non-  
10 exhaustive list of conduct by Defendant unquestionably constitutes a material breach of  
11 this plea agreement:

- 12 1. Failing to plead guilty pursuant to this agreement,
- 13 2. Failing to fully accept responsibility as established in Section X, paragraph  
14 B, above,
- 15 3. Failing to appear in court,
- 16 4. Attempting to withdraw the plea,
- 17 5. Failing to abide by any lawful court order related to this case,
- 18 6. Appealing or collaterally attacking the sentence or conviction in violation  
19 of Section XI of this plea agreement, or
- 20 7. Engaging in additional criminal conduct from the time of arrest until the  
21 time of sentencing.

22 In the event of Defendant's material breach of this plea agreement, Defendant  
23 will not be able to enforce any of its provisions, and the Government will be relieved of  
24 all its obligations under this plea agreement. For example, the Government may pursue  
25 any charges including those that were dismissed, promised to be dismissed, or not filed  
26 as a result of this agreement (Defendant agrees that any statute of limitations relating to  
27 such charges is tolled as of the date of this agreement; Defendant also waives any double  
28 jeopardy defense to such charges). In addition, the Government may move to set aside

1 Defendant's guilty plea. Defendant may not withdraw the guilty plea based on the  
2 Government's pursuit of remedies for Defendant's breach.

3 Additionally, Defendant agrees that in the event of Defendant's material breach of  
4 this plea agreement: (i) any statements made by Defendant, under oath, at the guilty plea  
5 hearing (before either a Magistrate Judge or a District Judge); (ii) the stipulated factual  
6 basis statement in this agreement; and (iii) any evidence derived from such statements,  
7 are admissible against Defendant in any prosecution of, or action against, Defendant.  
8 This includes the prosecution of the charge that is the subject of this plea agreement or  
9 any charges that the prosecution agreed to not file as part of this agreement, but later  
10 pursues because of a material breach by the Defendant. Additionally, Defendant  
11 knowingly, voluntarily, and intelligently waives any argument under the United States  
12 Constitution, any statute, Rule 410 of the Federal Rules of Evidence, Rule 11(f) of the  
13 Federal Rules of Criminal Procedure, and/or any other federal rule, that the statements or  
14 any evidence derived from any statements should be suppressed or are inadmissible.

15 **XIII**

16 **ENTIRE AGREEMENT**

17 This plea agreement embodies the entire agreement between the parties and  
18 supersedes any other agreement, written or oral.

19 **XIV**

20 **MODIFICATION OF AGREEMENT MUST BE IN WRITING**

21 No modification of this plea agreement shall be effective unless in writing signed  
22 by all parties.

23 **XV**

24 **DEFENDANT AND COUNSEL FULLY UNDERSTAND AGREEMENT**

25 By signing this agreement, Defendant certifies that Defendant has read it (or that it  
26 has been read to Defendant in Defendant's native language). Defendant has discussed  
27 the terms of this agreement with defense counsel and fully understands its meaning and  
28 effect.

XVI

DEFENDANT IS SATISFIED WITH COUNSEL

Defendant has consulted with counsel and is satisfied with counsel's representation, although Defendant's attorney could not, and did not, advise him in that regard.

LAURA E. DUFFY  
United States Attorney

  
CHRISTOPHER P. TENORIO  
Assistant U.S. Attorney

DATED


10/9/14

  
JOHN KIRBY  
Defense Counsel

DATED

10/9/14

IN ADDITION TO THE FOREGOING PROVISIONS TO WHICH I AGREE, I SWEAR UNDER PENALTY OF PERJURY THAT THE FACTS IN THE "FACTUAL BASIS" SECTION ABOVE ARE TRUE.

  
JAMES YIU LEE  
Defendant

DATED

10/6/14

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# **Exhibit E**



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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,	)	
	)	
PLAINTIFF,	)	CASE NO. 14CR2937-BEN(BLM)
	)	
VS.	)	SAN DIEGO, CALIFORNIA
	)	
JAMES YIU LEE,	)	THURSDAY,
	)	OCTOBER 9, 2014
DEFENDANT.	)	10:24 A.M.
_____	)	

TRANSCRIPT OF ARRAIGNMENT AND CHANGE OF PLEA HEARING  
BEFORE THE HONORABLE BARBARA LYNN MAJOR  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

FOR THE GOVERNMENT:           CHRISTOPHER TENORIO  
  ASSISTANT U.S. ATTORNEY  
  880 FRONT STREET  
  SAN DIEGO, CALIFORNIA 92101

FOR THE DEFENDANT:           JOHN D. KIRBY  
  ATTORNEY AT LAW  
  1010 SECOND AVENUE  
  SUITE 2400  
  SAN DIEGO, CALIFORNIA 92101

TRANSCRIPT ORDERED BY:       CLAIRE TAYLOR

TRANSCRIBER:                   CAMERON P. KIRCHER

PROCEEDINGS RECORDED BY ELECTRONIC SOUND RECORDING;  
TRANSCRIPT PRODUCED BY TRANSCRIPTION.

1 SAN DIEGO, CALIFORNIA - THURSDAY, OCTOBER 9, 2014

2 10:24 A.M.

3 THE CLERK: ITEMS NO. 1, 2 AND 3 ON -- I'M SORRY, 1,  
4 2 AND 3 AND THE ADD ON ON CALENDAR.

5 (PAUSE WHILE THE COURT HEARD OTHER MATTERS.)

6 THE CLERK: AND THE ADD ON, ITEM A1, 14CR2937-BEN,  
7 JAMES YIU LEE.

8 MR. TENORIO: GOOD MORNING, YOUR HONOR. CHRIS  
9 TENORIO FOR THE UNITED STATES FOR THAT MATTER.

10 THE COURT: GREAT. THANK YOU.

11 MR. KIRBY: GOOD MORNING, YOUR HONOR. JOHN KIRBY ON  
12 BEHALF OF MR. LEE. HE'S PRESENT.

13 THE COURT: GREAT. THANK YOU.

14 COME UP TO THE PODIUM.

15 ALL RIGHT. WHILE WE WAIT FOR THE OTHER TWO, I CAN  
16 HANDLE THE INFORMATION ON MR. LEE. SO INITIALLY, MR. LEE, I  
17 WANT TO REMIND YOU THAT YOU HAVE THE RIGHT TO REQUIRE THE  
18 UNITED STATES TO PRESENT THIS CASE TO THE GRAND JURY AND TO  
19 SEE WHETHER OR NOT THE GRAND JURY WOULD RETURN AN INDICTMENT  
20 CHARGING YOU WITH A CRIME.

21 IF YOU GIVE UP THAT RIGHT AND AUTHORIZE THE UNITED  
22 STATES TO FILE THIS INFORMATION CHARGING YOU WITH OBSTRUCTION  
23 OF JUSTICE, AIDING AND ABETTING AND CRIMINAL FORFEITURE, THE  
24 UNITED STATES MAY PROCEED ALL THE WAY TO TRIAL ON THAT  
25 CRIME -- THOSE CRIMES WITHOUT EVER PRESENTING THIS CASE TO

1 THE GRAND JURY.

2 I UNDERSTAND FROM YOUR LAWYER THAT THAT'S WHAT YOU  
3 WANT TO DO, AND I HAVE A ONE-PAGE WAIVER OF INDICTMENT SIGNED  
4 BY YOU AND YOUR LAWYER IN WHICH YOU GIVE UP THAT RIGHT.

5 SO I'M NOW GOING TO VERIFY WITH YOU, DO YOU WANT TO  
6 GIVE UP YOUR RIGHT TO REQUIRE THE UNITED STATES TO PRESENT  
7 THIS CASE TO THE GRAND JURY AND AUTHORIZE THEM TO CHARGE YOU  
8 WITH THE CRIME OF AIDING AND ABETTING, THE OBSTRUCTION OF  
9 JUSTICE AND CRIMINAL FORFEITURE.

10 THE DEFENDANT: YES, YOUR HONOR.

11 THE COURT: I ACCEPT THAT, ORDER THAT THE  
12 INFORMATION BE FILED.

13 IT'S MY UNDERSTANDING YOU ALSO INTEND TO PLEAD  
14 GUILTY TO THIS CRIME TODAY; IS THAT CORRECT?

15 THE DEFENDANT: YES, YOUR HONOR.

16 THE COURT: THEN I WANT YOU TO LISTEN CAREFULLY TO  
17 MY COURTROOM DEPUTY. WE'RE STARTING YOUR -- I'M SORRY.  
18 YOU'RE GOING TO BE ARRAIGNED ON THE INFORMATION, AND WE'RE  
19 STARTING YOUR GUILTY PLEA NOW.

20 THE CLERK: JAMES YIU LEE, IS THAT YOUR TRUE NAME,  
21 SIR?

22 THE DEFENDANT: YES.

23 THE CLERK: YOU ARE HEREBY INFORMED THAT AN  
24 INFORMATION HAS BEEN FILED, CHARGING YOU WITH OBSTRUCTION OF  
25 JUSTICE, AIDING AND ABETTING AND CRIMINAL FORFEITURE.

1 COUNSEL, HAVE YOU RECEIVED A COPY AND DO YOU WAIVE  
2 FURTHER READING?

3 MR. KIRBY: I HAVE AND SO WAIVED.

4 THE CLERK: YOU ARE FURTHER INFORMED THAT YOU ARE  
5 ENTITLED TO A TRIAL BY JURY, TO BE REPRESENTED BY COUNSEL AT  
6 ALL STAGES OF THE PROCEEDINGS BEFORE THIS COURT AND TO HAVE  
7 WITNESSES SUMMONED TO TESTIFY ON YOUR OWN BEHALF.

8 HOW DO YOU PLEAD TO THE CHARGES AGAINST YOU, GUILTY  
9 OR NOT GUILTY?

10 THE DEFENDANT: GUILTY.

11 (PAUSE WHILE THE COURT HEARD OTHER MATTERS.)

12 THE CLERK: SPEAKING TO ALL THREE OF YOU, INCLUDING  
13 MR. LEE, DO YOU SOLEMNLY SWEAR THAT THE EVIDENCE YOU SHALL  
14 GIVE IN THE CAUSE NOW BEFORE THIS COURT SHALL BE THE TRUTH,  
15 THE WHOLE TRUTH AND NOTHING BUT THE TRUTH?

16 MR. LEE?

17 THE DEFENDANT: YES.

18 (PAUSE WHILE THE COURT HEARD OTHER MATTERS.)

19 THE CLERK: THANK YOU.

20 THE COURT: ALL RIGHT. I'M SPEAKING TO ALL THREE OF  
21 YOU.

22 EACH OF YOU ARE PLEADING GUILTY TO A DIFFERENT CRIME  
23 CHARGED IN A DIFFERENT CHARGING DOCUMENT. HOWEVER, MUCH OF  
24 WHAT I HAVE TO SAY APPLIES TO ALL OF YOU, AND I THEREFORE AM  
25 TAKING YOUR GUILTY PLEAS AT THE SAME TIME.

1 I AM GOING TO DO MY VERY BEST TO MAKE IT CLEAR TO  
2 YOU WHAT IS HAPPENING HERE TODAY. IF, HOWEVER, AT ANY POINT  
3 DURING THIS PROCEEDING YOU DO NOT UNDERSTAND WHAT'S GOING ON,  
4 IT'S UP TO YOU TO LET ME KNOW. AND IT'S OKAY TO INTERRUPT ME  
5 TO TELL ME THAT YOU DON'T UNDERSTAND WHAT IS GOING ON. IF I  
6 DON'T HEAR FROM YOU TODAY, I AM GOING TO ASSUME THAT YOU  
7 UNDERSTOOD EVERYTHING THAT HAPPENED HERE TODAY.

8 MR. LEE, STARTING WITH YOU. HOW OLD ARE YOU, SIR?

9 THE DEFENDANT: 59.

10 THE COURT: HOW FAR DID YOU GO IN SCHOOL?

11 THE DEFENDANT: BACHELOR DEGREES, UNDERGRAD.

12 THE COURT: OKAY. WAS ALL OF YOUR EDUCATION HERE IN  
13 THE UNITED STATES?

14 THE DEFENDANT: YES.

15 THE COURT: DO YOU READ ENGLISH FLUENTLY?

16 THE DEFENDANT: YES.

17 THE COURT: HAVE YOU TAKEN ANY MEDICATION, DRUGS OR  
18 OTHER SUBSTANCE IN THE PAST 72 HOURS?

19 THE DEFENDANT: NO.

20 (PAUSE WHILE THE COURT HEARD OTHER MATTERS.)

21 THE COURT: SPEAKING TO ALL THREE OF YOU THEN.

22 I WANT TO REMIND EACH OF YOU THAT YOU JUST AGREED TO  
23 TELL THE TRUTH AND YOU WERE PLACED UNDER OATH --

24 THE DEFENDANT: YOUR HONOR, I TOOK SOME TYLENOL  
25 YESTERDAY FOR MY HEADACHE. DOES THAT COUNT?

1           THE COURT: IT DOES. THAT WAS THE MEDICATION  
2 PART.

3           THE DEFENDANT: OKAY. SORRY.

4           THE COURT: IT'S OKAY. HOW DO YOU FEEL THIS  
5 MORNING?

6           THE DEFENDANT: GOOD. BETTER.

7           THE COURT: YOU FEEL OKAY?

8           THE DEFENDANT: I'VE BEEN UNDER THE WEATHER, BUT I  
9 FEEL BETTER TODAY, YES.

10          THE COURT: DO YOU WANT TO GO FORWARD WITH YOUR  
11 GUILTY PLEA TODAY?

12          THE DEFENDANT: YES, MA'AM.

13          THE COURT: OKAY. SPEAKING TO ALL THREE OF YOU.

14 I WANT TO REMIND EACH OF YOU THAT YOU JUST AGREED TO  
15 TELL THE TRUTH AND YOU WERE PLACED UNDER OATH. WHAT THAT  
16 MEANS IS THAT YOU MUST TELL ME THE TRUTH, AND IF YOU DO NOT  
17 TELL ME THE TRUTH, THE FALSE ANSWERS THAT YOU GIVE ME COULD  
18 BE USED AGAINST YOU, AND YOU COULD BE CHARGED WITH A TOTALLY  
19 SEPARATE CRIME CALLED PERJURY OR MAKING A FALSE STATEMENT.

20 SO IT'S EXTREMELY IMPORTANT THAT YOU LISTEN VERY  
21 CAREFULLY TO EVERYTHING I HAVE TO SAY, THAT YOU THINK BEFORE  
22 YOU ANSWER MY QUESTIONS AND THAT YOU ANSWER MY QUESTIONS  
23 TRUTHFULLY.

24 DO YOU UNDERSTAND ALL OF THAT?

25 MR. LEE?

1           THE DEFENDANT: YES.

2           (PAUSE WHILE THE COURT HEARD OTHER MATTERS.)

3           THE COURT: SPEAKING TO ALL THREE OF YOU STILL.

4           EACH OF YOU HAVE THE RIGHT TO HAVE A DISTRICT JUDGE  
5 TAKE YOUR GUILTY PLEA. I AM A MAGISTRATE JUDGE. IN ORDER  
6 FOR ME TO TAKE YOUR GUILTY PLEA, YOU MUST GIVE UP YOUR RIGHT  
7 TO APPEAR IN FRONT OF THE DISTRICT JUDGE AND AUTHORIZE ME TO  
8 GO FORWARD.

9           I HAVE A TWO-PAGE CONSENT DOCUMENT, A SEPARATE ONE  
10 FOR EACH OF YOU, SIGNED BY YOU, YOUR LAWYER AND THE ATTORNEY  
11 FOR THE UNITED STATES IN WHICH YOU GIVE UP THAT RIGHT. IF  
12 THAT'S WHAT YOU DECIDE TO DO, IT MEANS THAT I WILL TAKE YOUR  
13 GUILTY PLEA TODAY AND ANOTHER JUDGE WILL SENTENCE YOU AT A  
14 LATER DATE.

15           IS THAT WHAT YOU WANT TO DO?

16           MR. LEE?

17           THE DEFENDANT: YES.

18           (PAUSE WHILE THE COURT HEARD OTHER MATTERS.)

19           THE COURT: I ACCEPT THE CONSENT FROM EACH OF YOU.

20           I WANT EACH OF YOU NOW TO LISTEN VERY CAREFULLY,  
21 BECAUSE YOU DO HAVE SOME IMPORTANT CONSTITUTIONAL RIGHTS THAT  
22 YOU ARE GIVING UP BY PLEADING GUILTY. EACH OF YOU HAS THE  
23 FOLLOWING CONSTITUTIONAL RIGHTS:

24           IN A PROSECUTION FOR PERJURY OR FALSE STATEMENT,  
25 WITH REGARD TO MR. LEE, THE GOVERNMENT HAS THE RIGHT TO USE

1 AGAINST YOU ANY STATEMENT THAT YOU MADE UNDER OATH.

2 FOR ALL OF YOU, EACH OF YOU HAVE THE RIGHT TO  
3 PERSIST IN YOUR PLEA OF NOT GUILTY. YOU HAVE THE RIGHT TO A  
4 SPEEDY AND PUBLIC TRIAL BEFORE A JURY, OR YOU MAY GIVE UP  
5 THAT RIGHT AND PERMIT A JUDGE TO TRY YOUR CASE WITHOUT A  
6 JURY.

7 YOU HAVE A RIGHT TO THE ASSISTANCE OF COUNSEL  
8 THROUGHOUT ALL PROCEEDINGS, INCLUDING A TRIAL. IF YOU CANNOT  
9 AFFORD TO PAY AN ATTORNEY, APPOINTED COUNSEL WILL REPRESENT  
10 YOU THROUGH TRIAL AT NO COST TO YOU. YOU HAVE THE RIGHT TO  
11 CONFRONT AND CROSS-EXAMINE THE WITNESSES AGAINST YOU, TO  
12 TESTIFY, TO PRESENT EVIDENCE AND TO COMPEL WITNESSES TO  
13 ATTEND TRIAL ON YOUR BEHALF. AND YOU HAVE THE RIGHT AGAINST  
14 COMPELLED SELF-INCRIMINATION, WHICH MEANS THAT YOU ARE NOT  
15 REQUIRED TO TESTIFY AT ANY HEARING OR TRIAL AND THE  
16 GOVERNMENT MAY NOT COMMENT ON YOUR SILENCE.

17 EACH OF YOU HAS ALL OF THESE RIGHTS. IF YOU PLEAD  
18 GUILTY TODAY, THERE WILL BE NO TRIAL, AND YOU WILL GIVE UP  
19 ALL OF THE RIGHTS THAT I HAVE JUST TOLD YOU ABOUT WITH THE  
20 EXCEPTION THAT YOUR LAWYER WILL CONTINUE TO REPRESENT YOU  
21 THROUGH SENTENCING. IS THAT WHAT YOU WANT TO DO?

22 MR. LEE?

23 THE DEFENDANT: YES.

24 (PAUSE WHILE THE COURT HEARD OTHER MATTERS.)

25 THE COURT: STILL SPEAKING TO ALL THREE OF YOU.



1           EACH OF YOU ARE PLEADING GUILTY TO A FELONY CRIME.  
2           THE UNITED STATES IS REQUIRED TO PROVE EVERY ELEMENT OF THAT  
3           CRIME TO A JURY TO A STANDARD CALLED BEYOND A REASONABLE  
4           DOUBT.

5           BY PLEADING GUILTY, YOU WILL BE ADMITTING EVERY  
6           ELEMENT, SO IT'S IMPORTANT THAT YOU KNOW WHAT THOSE ELEMENTS  
7           ARE. YOU'RE PLEADING TO DIFFERENT CRIMES, SO I'M GOING TO  
8           SPEAK WITH YOU SEPARATELY.

9           MR. LEE, YOU ARE PLEADING GUILTY TO THE CRIME OF  
10          OBSTRUCTION OF JUSTICE. THAT CRIME HAS THE FOLLOWING TWO  
11          ELEMENTS: FIRST, YOU INFLUENCED, OBSTRUCTED, IMPEDED OR  
12          ENDEAVORED TO INFLUENCE, OBSTRUCT OR IMPEDE THE DUE  
13          ADMINISTRATION OF JUSTICE; AND, SECOND, YOU ACTED CORRUPTLY  
14          WITH THE INTENT TO OBSTRUCT JUSTICE.

15          DO YOU UNDERSTAND THAT THOSE ARE THE ELEMENTS THAT  
16          THE UNITED STATES WOULD HAVE TO PROVE AND THE ELEMENTS THAT  
17          YOU WILL BE ADMITTING BY PLEADING GUILTY?

18          THE DEFENDANT: YES.

19          THE COURT: IN ADDITION, YOU ARE AGREEING TO  
20          FORFEIT -- ARE THERE SPECIFIC ITEMS THAT HE'S AGREEING TO  
21          FORFEIT?

22          MR. TENORIO: NO, YOUR HONOR. JUST UP TO A CERTAIN  
23          AMOUNT, IF THERE IS PROPERTY THAT IS TRACED.

24          THE COURT: OKAY. SO YOU ARE AGREEING TO FORFEIT UP  
25          TO TEN MILLION SIX HUNDRED THIRTY FIVE DOLLARS -- NO.

1 \$10,635,403.34.

2 DO YOU UNDERSTAND THAT?

3 THE DEFENDANT: YES.

4 THE COURT: OKAY. AGAIN, YOU WOULD HAVE THE RIGHT  
5 TO HAVE THE GOVERNMENT PROVE THAT AMOUNT, BUT AS PART OF THIS  
6 PLEA, YOU ARE GIVING UP ANY RIGHT THAT YOU HAVE TO ANY  
7 PROPERTY UP TO THAT AMOUNT.

8 DO YOU UNDERSTAND THAT?

9 THE DEFENDANT: YES.

10 (PAUSE WHILE THE COURT HEARD OTHER MATTERS.)

11 THE COURT: SPEAKING TO ALL THREE OF YOU AGAIN.

12 BY PLEADING GUILTY TO THIS CRIME, EACH OF YOU ARE  
13 FACING CERTAIN MAXIMUM PENALTIES, AND, AGAIN, IT'S IMPORTANT  
14 THAT YOU KNOW WHAT THEY ARE.

15 MR. LEE, BY PLEADING GUILTY TO THIS CRIME, YOU ARE  
16 FACING A MAXIMUM OF TEN YEARS IN PRISON, A MAXIMUM FINE OF  
17 \$250,000, OR TWICE THE GROSS GAIN OR LOSS CAUSED BY THIS  
18 CRIME. YOU'RE ALSO FACING A MANDATORY SPECIAL ASSESSMENT OF  
19 \$100, A MAXIMUM TERM OF SUPERVISED RELEASE OF THREE YEARS, AN  
20 ORDER FROM THE COURT FOR MANDATORY RESTITUTION TO THE VICTIMS  
21 OF THE CRIMES OR THEIR ESTATES, AND FORFEITURE OF ANY  
22 PROPERTY, REAL OR PERSONAL, WHICH CONSTITUTES OR IS DERIVED  
23 FROM PROCEEDS TRACEABLE TO THE OFFENSE.

24 DO YOU UNDERSTAND -- OH, IN ADDITION, YOU MAY BECOME  
25 INELIGIBLE FOR CERTAIN FEDERAL BENEFITS, INCLUDING BENEFITS

1 UNDER THE FOOD STAMP PROGRAM.

2 DO YOU UNDERSTAND THAT THOSE ARE THE MAXIMUM  
3 PENALTIES THAT YOU ARE FACING BY PLEADING GUILTY?

4 THE DEFENDANT: YES.

5 (PAUSE WHILE THE COURT HEARD OTHER MATTERS.)

6 THE COURT: SPEAKING TO ALL THREE OF YOU AGAIN.

7 IF YOU RECEIVE A CUSTODIAL SENTENCE, YOU MAY RECEIVE  
8 A TERM OF SUPERVISED RELEASE THAT WILL FOLLOW THAT SENTENCE.

9 (PAUSE WHILE THE COURT HEARD OTHER MATTERS.)

10 THE COURT: FOR ALL THREE OF YOU, IF YOU DO RECEIVE  
11 A TERM OF SUPERVISED RELEASE, THAT MEANS THAT WHEN YOU ARE  
12 RELEASED FROM CUSTODY, YOU MUST COMPLY WITH THE TERMS AND  
13 CONDITIONS IMPOSED BY THE SENTENCING JUDGE.

14 IF AT ANY TIME DURING THE PERIOD OF SUPERVISED  
15 RELEASE YOU ARE FOUND TO HAVE VIOLATED YOUR CONDITIONS OF  
16 SUPERVISED RELEASE, AND DEPENDING UPON THE SEVERITY OF THE  
17 VIOLATION, YOU COULD BE RETURNED TO PRISON FOR THE FULL  
18 AMOUNT OF THE SUPERVISED RELEASE TERM. YOU WOULD NOT RECEIVE  
19 CREDIT FOR THE TIME YOU ALREADY SERVED IN CUSTODY AND A NEW  
20 TERM OF SUPERVISED RELEASE COULD BE IMPOSED. IF YOU AGAIN  
21 VIOLATE THE TERMS OF YOUR SUPERVISED RELEASE, THIS PROCESS  
22 COULD HAPPEN REPEATEDLY.

23 DO YOU UNDERSTAND ALL OF THAT?

24 MR. LEE?

25 THE DEFENDANT: YES.

1 (PAUSE WHILE THE COURT HEARD OTHER MATTERS.)

2 THE COURT: FOR MR. LEE, DOES THIS PLEA AGREEMENT  
3 CONTEMPLATE THE POSSIBILITY OF PROBATION?

4 MR. KIRBY: WELL, YOUR HONOR, UNDER THE AGREED  
5 UPON -- NOT STARTING, BUT I BELIEVE, YES, IT'S POSSIBLE THAT  
6 HE COULD RECEIVE PROBATION.

7 THE COURT: ALL RIGHT. OH, NO, HIS OFFENSE LEVEL IS  
8 WAY ABOVE THAT.

9 MR. KIRBY: RIGHT.

10 THE COURT: ALL RIGHT. LET'S SEE. MR. LEE, ARE YOU  
11 A UNITED STATES CITIZEN?

12 THE DEFENDANT: YES.

13 (PAUSE WHILE THE COURT HEARD OTHER MATTERS.)

14 THE COURT: SPEAKING TO ALL THREE OF YOU AGAIN.

15 THE SENTENCING JUDGE IN EACH OF YOUR CASES WILL  
16 CONSIDER THE SENTENCING GUIDELINES AS ADVISORY IN DETERMINING  
17 YOUR SENTENCE. HAVE YOU DISCUSSED WITH YOUR ATTORNEY THE  
18 SENTENCING GUIDELINES AND HOW THEY MAY APPLY TO YOU?

19 MR. LEE?

20 THE DEFENDANT: YES.

21 (PAUSE WHILE THE COURT HEARD OTHER MATTERS.)

22 THE COURT: THE SENTENCING GUIDELINES ARE NOT  
23 MANDATORY, SO SENTENCING JUDGE MAY DEPART FROM THEM AND  
24 SENTENCE YOU ALL THE WAY UP TO THE STATUTORY MAXIMUM.

25 DO YOU UNDERSTAND THAT?

1 MR. LEE?

2 THE DEFENDANT: YES.

3 (PAUSE WHILE THE COURT HEARD OTHER MATTERS.)

4 THE COURT: NEITHER YOUR ATTORNEY NOR ANYONE ELSE  
5 CAN GUARANTY THE SENTENCE THAT YOU WILL RECEIVE. IF THE  
6 SENTENCE YOU RECEIVE IS MORE SEVERE THAN YOU EXPECT, YOU WILL  
7 STILL BE BOUND BY YOUR GUILTY PLEA AND YOU WILL NOT HAVE A  
8 RIGHT TO WITHDRAW YOUR GUILTY PLEA.

9 DO YOU UNDERSTAND THAT?

10 MR. LEE?

11 THE DEFENDANT: YES.

12 (PAUSE WHILE THE COURT HEARD OTHER MATTERS.)

13 THE COURT: I HAVE IN FRONT OF ME A WRITTEN PLEA  
14 AGREEMENT, A SEPARATE ONE FOR EACH OF YOU, AND WE'RE GOING TO  
15 GO THROUGH THOSE NOW.

16 MR. LEE, I'M STARTING WITH YOU, SIR. I HAVE A  
17 17-PAGE PLEA AGREEMENT. ON THE LAST PAGE, THERE ARE THREE  
18 SIGNATURES, INCLUDING YOURS.

19 BEFORE YOU SIGNED THIS AGREEMENT, DID YOU READ THE  
20 ENTIRE AGREEMENT?

21 THE DEFENDANT: YES.

22 THE COURT: DID YOU HAVE ENOUGH TIME TO DISCUSS THIS  
23 AGREEMENT WITH YOUR LAWYER?

24 THE DEFENDANT: YES.

25 THE COURT: DID HE EXPLAIN THIS AGREEMENT TO YOU AND

1 ANSWER ALL OF YOUR QUESTIONS?

2 THE DEFENDANT: YES.

3 THE COURT: ARE YOU SATISFIED WITH THE  
4 REPRESENTATION THAT YOU HAVE RECEIVED FROM YOUR LAWYER?

5 THE DEFENDANT: YES.

6 THE COURT: BY PLACING YOUR SIGNATURE ON THE LAST  
7 PAGE, DID THAT SIGNIFY THAT YOU HAD READ THE ENTIRE DOCUMENT,  
8 THAT YOU UNDERSTOOD THE ENTIRE DOCUMENT AND THAT YOU AGREED  
9 TO BE BOUND BY ALL OF THE TERMS AND CONDITIONS SET FORTH IN  
10 THE DOCUMENT?

11 THE DEFENDANT: YES.

12 (PAUSE WHILE THE COURT HEARD OTHER MATTERS.)

13 THE COURT: SPEAKING TO ALL THREE OF YOU AGAIN.

14 EACH OF YOUR PLEA AGREEMENTS CONTAINS A PROVISION  
15 ENTITLED "DEFENDANT WAIVES APPEAL AND COLLATERAL ATTACK." IN  
16 THAT PROVISION, YOU WAIVE OR GIVE UP YOUR RIGHT TO APPEAL AND  
17 COLLATERALLY ATTACK YOUR CONVICTION AND SENTENCE IN SPECIFIC  
18 CIRCUMSTANCES.

19 DO YOU UNDERSTAND THAT PROVISION, MR. LEE?

20 THE DEFENDANT: YES.

21 THE COURT: AND DO YOU AGREE TO BE BOUND BY IT?

22 THE DEFENDANT: YES.

23 (PAUSE WHILE THE COURT HEARD OTHER MATTERS.)

24 THE COURT: SPEAKING TO THE LAWYERS FOR ALL THREE  
25 DEFENDANTS.

1 HAVE YOU DISCUSSED THIS PLEA AGREEMENT THOROUGHLY  
2 WITH YOUR CLIENT, INCLUDING THE PROVISION REGARDING WAIVER OF  
3 APPEAL AND COLLATERAL ATTACK?

4 MR. KIRBY: YES AS TO MR. LEE.

5 (PAUSE WHILE THE COURT HEARD OTHER MATTERS.)

6 THE COURT: AND IN EACH OF YOUR OPINIONS, DOES YOUR  
7 CLIENT UNDERSTAND THE PLEA AGREEMENT IN ITS ENTIRETY?

8 MR. KIRBY: YES AS TO MR. LEE.

9 (PAUSE WHILE THE COURT HEARD OTHER MATTERS.)

10 THE COURT: ALL RIGHT. RETURNING THEN TO THE THREE  
11 DEFENDANTS.

12 EACH OF YOUR WRITTEN PLEA AGREEMENTS CONTAINS  
13 WRITTEN PROMISES OR AGREEMENTS. HAVE ANY PROMISES BEEN MADE  
14 TO YOU IN ORDER TO GET YOU TO PLEAD GUILTY THAT ARE NOT  
15 INCLUDED IN THE WRITTEN PLEA AGREEMENT?

16 MR. LEE?

17 THE DEFENDANT: NO.

18 (PAUSE WHILE THE COURT HEARD OTHER MATTERS.)

19 THE COURT: HAS ANYONE THREATENED YOU OR FORCED YOU  
20 IN ANY WAY TO PLEAD GUILTY?

21 MR. LEE?

22 THE DEFENDANT: NO.

23 (PAUSE WHILE THE COURT HEARD OTHER MATTERS.)

24 THE COURT: ARE YOU PLEADING GUILTY TO HELP SOME  
25 OTHER PERSON?

1 MR. LEE?

2 THE DEFENDANT: NO.

3 (PAUSE WHILE THE COURT HEARD OTHER MATTERS.)

4 THE COURT: IS IT TRUE THEN THAT YOU ARE PLEADING  
5 GUILTY BECAUSE YOU ARE GUILTY AND FOR NO OTHER REASON?

6 MR. LEE?

7 THE DEFENDANT: YES.

8 (PAUSE WHILE THE COURT HEARD OTHER MATTERS.)

9 THE COURT: I'M NOW GOING TO SPEAK WITH EACH OF YOU  
10 INDIVIDUALLY ABOUT WHAT IT IS THAT YOU DID THAT MAKES YOU  
11 GUILTY OF THIS CRIME. I WANT TO REMIND YOU THAT YOU ARE  
12 UNDER OATH, SO YOU MUST TELL ME THE TRUTH.

13 MR. LEE, I'M GOING TO START WITH YOU. IN DECEMBER  
14 OF 1997, WERE YOU CONVICTED OF WIRE FRAUD AND PENSION  
15 EMBEZZLEMENT IN THE NORTHERN DISTRICT OF CALIFORNIA?

16 THE DEFENDANT: YES.

17 THE COURT: AND WERE YOU THEN SENTENCED IN 1998 ON  
18 THOSE CONVICTIONS TO 30 MONTHS IN CUSTODY, TO BE FOLLOWED BY  
19 THREE YEARS OF SUPERVISED RELEASE AND ORDERED TO PAY  
20 RESTITUTION IN THE AMOUNT OF \$2,880,000.00?

21 THE DEFENDANT: YES.

22 THE COURT: AND TO DATE, DO YOU STILL OWE THE VAST  
23 MAJORITY OF THAT?

24 THE DEFENDANT: YES.

25 THE COURT: ALL RIGHT. ACTUALLY, WHAT I'M GOING TO



1 DO TO MAKE SURE THAT WE GET THE FACTS RIGHT, I'M GOING TO  
2 HAVE THE GOVERNMENT STATE THOSE FACTS. AND THEN, MR. LEE, I  
3 WANT YOU TO LISTEN VERY CAREFULLY, BECAUSE I'M GOING TO ASK  
4 YOU WHETHER WHAT HE SAYS IS TRUE.

5 INITIALLY, HAVE YOU READ EVERYTHING IN THE PLEA  
6 AGREEMENT ON PAGES 3, 4, 5 AND 6 REGARDING WHAT IT'S ALLEGED  
7 YOU'VE DONE?

8 THE DEFENDANT: YES.

9 THE COURT: AND IS EVERYTHING IN THIS DOCUMENT TRUE?

10 THE DEFENDANT: YES.

11 THE COURT: ALL RIGHT. IF YOU'LL HIGHLIGHT THE  
12 FACTS THAT SET THE FACTUAL BASIS.

13 MR. TENORIO: I WILL, YOUR HONOR. THANK YOU.

14 BETWEEN APPROXIMATELY APRIL 2007 TO JULY 2013, THE  
15 DEFENDANT ACTED CORRUPTLY WITH THE INTENT TO OBSTRUCT JUSTICE  
16 BY ENGAGING IN FRAUDULENT AND DECEPTIVE CONDUCT DESIGNED TO  
17 HINDER AND MINIMIZE THE EFFORTS OF THE UNITED STATES TO  
18 COLLECT ON THE CRIMINAL JUDGMENT AND RESTITUTION ORDER  
19 IMPOSED IN HIS 1997 CONVICTION.

20 HE DID SO BY OBTAINING MONEY FROM CLIENTS IN A WAY  
21 THAT CONCEALED THE INCOME FROM THE UNITED STATES.

22 THE COURT: IS WHAT THE LAWYER JUST SAID TRUE IN ALL  
23 RESPECTS?

24 THE DEFENDANT: YES.

25 THE COURT: GO AHEAD, SIR.

1           MR. TENORIO: HE DID SO, AMONG OTHER MEANS, BY  
2 SOLICITING CLIENTS TO CONDUCT ONLINE TRADING ON THEIR BEHALF  
3 IN EXCHANGE FOR A SHARE OF PROFITS; INDUCING POTENTIAL  
4 CLIENTS TO HIRE HIM BY FRAUDULENTLY MAKING FALSE  
5 REPRESENTATIONS AND PROMISES AND OMITTING MATERIAL  
6 INFORMATION; INSTRUCTING CLIENTS TO SEND MANAGEMENT FEES TO  
7 BANK ACCOUNTS THAT HE OPENED IN THE NAME OF SHELL  
8 CORPORATIONS AND USING CREDIT CARDS IN THE NAMES OF OTHERS TO  
9 PAY FOR EXPENSES AND BILLS FROM HIS SHELL CORPORATION  
10 ACCOUNTS.

11           HE ALSO SENT FALSIFIED INVOICES TO CLIENTS TO ENSURE  
12 THAT HE WOULD CONTINUE TO FRAUDULENTLY RECEIVE INCOME WITHOUT  
13 THE KNOWLEDGE OF THE UNITED STATES.

14           THE COURT: IS WHAT THE LAWYER JUST SAID TRUE IN ALL  
15 RESPECTS?

16           THE DEFENDANT: YES.

17           THE COURT: ALL RIGHT.

18           MR. TENORIO: HIS SPECIFIC CONDUCT TO OBSTRUCT  
19 JUSTICE INCLUDED THE INCORPORATION OF THE CORPORATION ELX IN  
20 APRIL OF 2007, A SAN DIEGO-BASED SHELL CORPORATION, WHICH  
21 OMITTED ANY MENTION OF HIS NAME AS A CORPORATE OFFICER OR  
22 SIGNATORY ON THE BANK ACCOUNT OR IN ANY OTHER FASHION TO SHOW  
23 CONTROL OF THE CORPORATION.

24           THE COURT: IS THAT TRUE, SIR?

25           THE DEFENDANT: YES.

1           THE COURT: ALL RIGHT.

2           MR. TENORIO: BETWEEN AUGUST 2009 AND AUGUST 2011,  
3 HE SENT INVOICES TO CLIENTS ON THE ELX LETTERHEAD DIRECTING  
4 THEM TO SEND PAYMENTS TO THE ELX BANK ACCOUNT FOR HIS  
5 MANAGEMENT OF THE CLIENTS' ONLINE TRADING ACCOUNTS.

6           THE COURT: DID YOU DO THAT, SIR?

7           THE DEFENDANT: YES.

8           MR. TENORIO: HE SOLICITED CLIENTS THROUGH  
9 FRAUDULENT MEANS, SPECIFICALLY REPRESENTING THAT --  
10 MISREPRESENTING THAT HE WAS A CPA, THAT HE HELD PH.D., J.D.  
11 AND MBA DEGREES, AND HE FAILED TO DISCLOSE HIS 1997  
12 CONVICTION.

13           THE COURT: IS IT TRUE THAT YOU DID ALL OF THOSE  
14 THINGS, SIR?

15           THE DEFENDANT: YES.

16           MR. TENORIO: IN APPROXIMATELY SEPTEMBER 2009, HE  
17 INFORMED SPECIFIC CLIENTS AND OTHER CLIENTS THAT HE WOULD  
18 SHARE 50 PERCENT OF BOTH REALIZED GAINS AND LOSSES INCURRED  
19 FROM ONLINE TRADING ACTIVITY.

20           IN APPROXIMATELY JANUARY OF 2011, HIS TRADING  
21 ACTIVITY CREATED REALIZED LOSSES, BUT HE RESTRUCTURED BILLING  
22 INVOICES TO SPREAD LOSSES OVER FIVE MONTHS IN ORDER TO  
23 CONTINUE TO RECEIVE PAYMENTS AND PERCEIVED GAINS RATHER THAN  
24 LOSSES.

25           THE COURT: DID YOU DO THAT, SIR?

1           THE DEFENDANT:   YES.

2           THE COURT:    ALL RIGHT.

3           MR. TENORIO:    BETWEEN AUGUST 2009 AND MARCH 2012, HE  
4           CAUSED OVER \$350,000 TO BE WIRE TRANSFERRED FROM THE ELX BANK  
5           ACCOUNT TO OTHER SHELL ACCOUNTS UNDER HIS CONTROL, WHICH HE  
6           WOULD USE FOR PERSONAL EXPENSES.

7           THE COURT:    DID YOU DO THAT, SIR?

8           THE DEFENDANT:   YES.

9           MR. TENORIO:    BETWEEN AUGUST 2009 AND JULY 2013, HE  
10          CAUSED THE PRODUCTION OF CHECKS TOTALING OVER \$150,000 FROM  
11          THE ELX BANK ACCOUNT TO PAY FOR BILLS -- PAY BILLS FOR CREDIT  
12          CARDS ISSUED IN THE NAME OF OTHERS BUT WHICH HE USED FOR  
13          PERSONAL EXPENSES.

14          THE COURT:    IS IT TRUE THAT YOU DID ALL OF THAT,  
15          SIR?

16          THE DEFENDANT:   YES.

17          MR. TENORIO:    AND, FINALLY, YOUR HONOR, THESE AND  
18          OTHER FRAUDULENT, DECEPTIVE PRACTICES WERE UTILIZED TO  
19          CONCEAL HIS CONTROL AND OWNERSHIP OF INCOME IN ORDER TO AVOID  
20          PAYING THE COLLECTION FROM HIS 1997 CONVICTION AND  
21          SPECIFICALLY THE LOSSES ENUMERATED HEREIN.

22          THE COURT:    IS THAT CORRECT, SIR, THAT YOU ENGAGED  
23          IN ALL OF THIS FRAUDULENT AND DECEPTIVE ACTIVITIES IN ORDER  
24          TO PREVENT THE UNITED STATES FROM COLLECTING ON THE  
25          OUTSTANDING RESTITUTION ORDER?

1           THE DEFENDANT: YES.

2           MR. TENORIO: THANK YOU, YOUR HONOR.

3           THE COURT: AND DO YOU SPECIFICALLY ADMIT THE LOSSES  
4 SET FORTH ON PAGES 5 AND 6?

5           THE DEFENDANT: YES.

6           THE COURT: IS THE UNITED STATES SATISFIED WITH THE  
7 FACTUAL BASIS?

8           MR. TENORIO: WE ARE, YOUR HONOR. THANK YOU.

9           THE COURT: AND IS THIS PLEA MADE VOLUNTARILY AND  
10 WITH YOUR CONCURRENCE, COUNSEL?

11           MR. KIRBY: YES, YOUR HONOR.

12           (PAUSE WHILE THE COURT HEARD OTHER MATTERS.)

13           THE COURT: WHILE THEY ADDRESS THAT, THE NEXT ISSUE  
14 THAT I HAVE TO ADDRESS WITH MR. LEE OBVIOUSLY IS COUNSEL.

15           AND MR. KIRBY, YOU'VE BEEN PRESENT THROUGHOUT THIS  
16 PROCEEDING REPRESENTING HIM. ARE YOU RETAINED ON THIS  
17 MATTER?

18           MR. KIRBY: I AM, YOUR HONOR.

19           THE COURT: OKAY. MR. LEE, I WANT YOU TO UNDERSTAND  
20 THAT IF YOU DID NOT HAVE THE ABILITY TO HIRE A LAWYER, I  
21 WOULD APPOINT A LAWYER TO REPRESENT YOU.

22           IT'S MY UNDERSTANDING THAT YOU HAVE HIRED MR. KIRBY  
23 TO REPRESENT YOU AND HE IS REPRESENTING YOU BOTH PRIOR TO  
24 YOUR APPEARANCE IN COURT TODAY, AND HE WILL CONTINUE TO  
25 REPRESENT YOU; IS THAT ACCURATE?

1           THE DEFENDANT: THAT IS ACCURATE.

2           THE COURT: OKAY. AND YOU ARE MAKING A GENERAL  
3 APPEARANCE, SIR?

4           MR. KIRBY: YES, YOUR HONOR.

5           THE COURT: GREAT. THANK YOU.

6           (PAUSE WHILE THE COURT HEARD OTHER MATTERS.)

7           THE COURT: SPEAKING TO ALL THREE OF YOU THEN.  
8 UNDERSTANDING THE MAXIMUM PENALTIES THAT YOU ARE  
9 FACING, THE RIGHTS THAT YOU HAVE AND ARE GIVING UP AND ALL OF  
10 THE OTHER CONSEQUENCES OF YOUR GUILTY PLEA, DO YOU STILL WANT  
11 TO PLEAD GUILTY?

12           MR. LEE?

13           THE DEFENDANT: YES.

14           (PAUSE WHILE THE COURT HEARD OTHER MATTERS.)

15           THE COURT: MR. LEE, HOW DO YOU PLEAD TO THE  
16 ONE-COUNT INFORMATION CHARGING YOU WITH OBSTRUCTION OF  
17 JUSTICE, GUILTY OR NOT GUILTY?

18           THE DEFENDANT: GUILTY.

19           THE COURT: AND DO YOU AGREE TO FORFEIT ANY AND ALL  
20 RIGHT THAT YOU MAY HAVE IN ANY AND ALL PROPERTY UP TO THE  
21 AMOUNT OF \$10,635,403.34?

22           THE DEFENDANT: YES.

23           (PAUSE WHILE THE COURT HEARD OTHER MATTERS.)

24           THE COURT: SPEAKING TO ALL THREE OF YOU.

25           I FIND -- BASED UPON EVERYTHING THAT HAS HAPPENED

1       HERE IN COURT TODAY, AS WELL AS ALL OF THE WRITTEN DOCUMENTS  
2       IN FRONT OF ME, I FIND THAT EACH OF YOUR GUILTY PLEAS IS MADE  
3       KNOWINGLY AND VOLUNTARILY, WITH A FULL UNDERSTANDING OF THE  
4       NATURE OF THE CHARGE, THE RIGHTS THAT YOU HAVE AND ARE GIVING  
5       UP AND ALL OF THE OTHER CONSEQUENCES OF YOUR GUILTY PLEA.

6               I ALSO FIND THAT THERE IS A FACTUAL BASIS FOR YOUR  
7       GUILTY PLEA, AND I THEREFORE RECOMMEND TO THE DISTRICT JUDGE  
8       IN EACH OF YOUR CASES THAT HE OR SHE ACCEPT YOUR GUILTY PLEA.  
9       AND I'M GOING TO SET THIS FOR SENTENCING IN FRONT OF THAT  
10      JUDGE.

11             SO, MR. LEE, YOUR CASE IS ASSIGNED TO JUDGE BENITEZ.  
12      AND YOU ARE ORDERED TO APPEAR IN HIS COURT FOR SENTENCING ON  
13      JANUARY 19TH OF NEXT YEAR AT 9:00 A.M.

14             DO YOU UNDERSTAND THAT YOU MUST APPEAR IN HIS  
15      COURTROOM ON THAT DATE AND TIME?

16             THE DEFENDANT:   YES.

17             (PAUSE WHILE THE COURT HEARD OTHER MATTERS.)

18             THE COURT:    SPEAKING TO ALL THREE OF YOU.

19             I FIND THE TIME BETWEEN TODAY AND THE SENTENCING  
20      HEARING DATE, WHICH I JUST SET, EXCLUDABLE UNDER THE SPEEDY  
21      TRIAL ACT ON THE GROUNDS THAT THE DISTRICT JUDGE WILL BE  
22      CONSIDERING THE PROPOSED PLEA AGREEMENT.  I HEREBY VACATE ALL  
23      HEARING DATES OTHER THAN THE SENTENCING HEARING WHICH I JUST  
24      SET.

25             I ORDER PROBATION TO PREPARE A PRE-SENTENCE REPORT

1 FOR EACH DEFENDANT. AND THERE DO NOT APPEAR TO BE ANY  
2 MOTIONS.

3 (PAUSE WHILE THE COURT HEARD OTHER MATTERS.)

4 THE COURT: MR. LEE, THIS IS YOUR INITIAL  
5 APPEARANCE, SO NOW THE FINAL THING THAT WE NEED TO ADDRESS  
6 WITH YOU IS BAIL.

7 WHAT'S THE POSITION OF THE UNITED STATES?

8 MR. TENORIO: YOUR HONOR, AFTER SPEAKING WITH  
9 DEFENSE COUNSEL, WE AGREE THAT THE BOND WOULD BE APPROPRIATE  
10 AT \$40,000, SECURED BY HIS SIGNATURE AND THAT OF TWO  
11 FINANCIALLY-RESPONSIBLE ADULTS.

12 AND IN ADDITION TO THAT, THERE ARE TWO PROPOSED  
13 SURETIES THAT COUNSEL HAS PROPOSED TO ME THAT SEEM TO BE  
14 ACCEPTABLE, BARRING ANY BACKGROUND REVIEW OF PRIORS.

15 THE COURT: OKAY. AND WOULD YOU SUGGEST GIVING THE  
16 DEFENDANT A WEEK TO GET THESE DOCUMENTS IN? YOU HAVEN'T SEEN  
17 THE DOCUMENTS YET.

18 MR. TENORIO: YES. THAT WOULD BE FINE WITH THE  
19 GOVERNMENT.

20 THE COURT: OKAY. ALL RIGHT. TELL ME SOMETHING  
21 ABOUT YOUR CLIENT, MR. KIRBY.

22 MR. KIRBY: YES, YOUR HONOR. HE IS A LONG-TIME  
23 RESIDENT OF CALIFORNIA. HE HAS STRONG TIES TO CALIFORNIA,  
24 PRIMARILY SACRAMENTO, WHERE HIS FATHER AND SEVERAL SIBLINGS  
25 RESIDE. HE HAS OTHER SIBLINGS THAT RESIDE ELSEWHERE IN THE



1 UNITED STATES.

2 HIS LONG-TIME -- AND REALLY THE TERM "GIRLFRIEND"  
3 DOESN'T REALLY FIT WHEN YOU'VE BEEN WITH SOMEBODY FOR EIGHT  
4 YEARS. HIS GIRLFRIEND OF EIGHT YEARS LIVES HERE IN SAN  
5 DIEGO.

6 THE COURT: WHERE IS THE DEFENDANT GOING TO LIVE?

7 MR. KIRBY: HE ACTUALLY GOES BETWEEN TWO DIFFERENT  
8 RESIDENCES CURRENTLY.

9 THE COURT: THE ONE IN LA JOLLA AND THE ONE IN  
10 ALAMEDA?

11 MR. KIRBY: YEAH.

12 THE COURT: ALL RIGHT.

13 MR. KIRBY: HE DOES HAVE BUSINESS TIES TO THE  
14 COMMUNITY AS WELL. AND THIS IS SOMETHING I WANTED TO STRESS.  
15 WE'VE BEEN IN NEGOTIATIONS WITH THE GOVERNMENT FOR SEVERAL  
16 MONTHS.

17 THE COURT: I ASSUMED THAT TO BE THE CASE.

18 MR. KIRBY: AND MR. LEE, WITH PLEA AGREEMENT IN  
19 HAND, TRAVELED TO HONG KONG FOR BUSINESS AND CAME BACK JUST  
20 VERY RECENTLY; SO HE'S NOT GOING TO FLEE IN THIS MATTER. HE  
21 KNOWS ABOUT HOW MUCH TIME HE'S LOOKING AT AND HE CAME BACK  
22 FROM HONG KONG IN ANY EVENT.

23 THE PROPOSED SURETIES ARE HIS SON AND HIS  
24 DAUGHTER-IN-LAW. AND AS I SAID, WE AGREED TO 40,000 AS A  
25 BOND AMOUNT. IT'S ABOVE WHAT PRETRIAL IS ASKING FOR, BUT

1 WE'VE ALREADY NEGOTIATED THAT. AND THE SON AND  
2 DAUGHTER-IN-LAW SHOULDN'T HAVE ANY PROBLEM WITH THAT.

3 THE ONE THING I WOULD LIKE TO ADDRESS, YOUR HONOR,  
4 AND PRETRIAL SUGGESTS IT, AND I WOULD ASK AS WELL THAT HE  
5 BE -- HE HAS TAX CLIENTS THROUGHOUT THE UNITED STATES. HE  
6 ALSO HAS A DAUGHTER IN NEW YORK, SO I WOULD LIKE HIS TRAVEL  
7 OPTIONS TO BE THROUGHOUT THE UNITED STATES. AND --

8 THE COURT: GO AHEAD.

9 MR. KIRBY: AND LIKE -- AS I SAID, THAT'S WHAT  
10 PRETRIAL IS RECOMMENDING. AND HE DOES HAVE -- I MEAN, HIS  
11 PRIMARY BUSINESS TRAVEL IS TO EITHER NEVADA OR NEW YORK.  
12 HE'S ALSO GOT A DAUGHTER IN NEW YORK.

13 THE COURT: I ACTUALLY AM VERY CONCERNED ABOUT THIS  
14 INDIVIDUAL. I APPRECIATE THE FACT THAT HE CAME BACK KNOWING  
15 THIS. HOWEVER, THE CONDUCT THAT HE JUST ADMITTED TO IS  
16 OBVIOUSLY FRAUDULENT. I MEAN, HE KNEW HE OWED MONEY AND HE  
17 DID EVERYTHING TO AVOID IT. HE WASN'T HONEST WITH CLIENTS  
18 THAT HE WAS REPRESENTING. AND SO I AM QUITE CONCERNED ABOUT  
19 HIS HONESTY AND I AM NOT GOING TO ALLOW HIM TO TRAVEL  
20 INTERNATIONALLY WHILE WE'RE AWAITING THE END OF THIS CASE.

21 I WANT YOU TO LISTEN CAREFULLY, SIR. I'M IMPOSING  
22 THE FOLLOWING ADDITIONAL CONDITIONS -- THE FOLLOWING  
23 CONDITIONS ON YOU:

24 YOU MUST NOT COMMIT A FEDERAL, STATE OR LOCAL CRIME  
25 DURING THE PERIOD OF RELEASE;

1           YOU MUST MAKE ALL OF YOUR COURT APPEARANCES;  
2           YOUR TRAVEL IS RESTRICTED TO THE STATE OF CALIFORNIA  
3           AND YOU MAY NOT ENTER MEXICO;

4           YOU MUST REPORT FOR SUPERVISION TO THE PRETRIAL  
5           SERVICES AGENCY AS DIRECTED BY THE ASSIGNED PRETRIAL SERVICES  
6           OFFICER AND PAY FOR THE REASONABLE COST OF SUPERVISION IN AN  
7           AMOUNT TO BE DETERMINED BY THE PRETRIAL SERVICES AGENCY AND  
8           APPROVED BY THE COURT;

9           YOU MAY NOT POSSESS OR USE ANY NARCOTIC, DRUG OR  
10          CONTROLLED SUBSTANCE WITHOUT A LAWFUL MEDICAL PRESCRIPTION;

11          YOU MAY NOT POSSESS ANY FIREARM, DANGEROUS WEAPON OR  
12          DESTRUCTIVE DEVICE DURING THE PENDENCY OF THE CASE;

13          YOU MUST READ OR HAVE EXPLAINED TO YOU AND THEN  
14          ACKNOWLEDGE UNDERSTANDING OF THE ADVICE OF PENALTIES AND  
15          SANCTIONS FORM;

16          YOU MUST PROVIDE A CURRENT RESIDENCE, ADDRESS AND  
17          TELEPHONE NUMBER PRIOR TO YOUR RELEASE FROM CUSTODY AND KEEP  
18          IT CURRENT WHILE THE CASE IS PENDING;

19          YOU MUST ACTIVELY SEEK AND MAINTAIN FULL-TIME  
20          EMPLOYMENT, SCHOOLING OR A COMBINATION THEREOF;

21          YOU MUST EXECUTE A PERSONAL APPEARANCE BOND IN THE  
22          AMOUNT OF \$40,000 THAT'S SECURED BY YOUR SIGNATURE AND THE  
23          SIGNATURES OF TWO FINANCIALLY-RESPONSIBLE ADULTS WHO MUST BE  
24          RELATED TO YOU;

25          YOU MUST SURRENDER YOUR PASSPORT TO PRETRIAL

1 SERVICES, AND YOU MAY NOT APPLY FOR ANY NEW TRAVEL DOCUMENTS  
2 WHILE THIS CASE IS PROCEEDING.

3 YOU MUST NOTIFY -- I'LL STATE THIS AS A CONDITION I  
4 INTEND TO ADD, AND THEN I'LL HEAR FROM COUNSEL ON IT.

5 AS I INDICATED, I AM QUITE CONCERNED BY THE CONDUCT  
6 THAT HE HAS JUST ADMITTED TO, AS WELL AS THE CONDUCT THAT WAS  
7 FOUND IN THE PRIOR CASE, AND SO I AM INCLINED TO REQUIRE HIM  
8 TO NOTIFY HIS CLIENTS THAT HE HAS PLED GUILTY TO THIS CRIME.

9 DO YOU WANT TO BE HEARD ON THAT?

10 THE DEFENDANT: YES.

11 MR. KIRBY: IF I COULD HAVE ONE MOMENT.

12 THE COURT: YOUR LAWYER IS WHO SHOULD TALK ABOUT IT.  
13 (ATTORNEY/CLIENT DISCUSSION.)

14 MR. KIRBY: YOUR HONOR, ASIDE FROM THE CONDUCT, THE  
15 BUYING AND SELLING OF SECURITIES, MR. LEE HAS A LEGITIMATE  
16 TAX CONSULTING BUSINESS, AND IT MAY, IN FACT, DESTROY THAT  
17 BUSINESS IF HE HAS TO TELL EACH OF HIS PEOPLE WHO ARE TOTALLY  
18 UNRELATED TO BUYING AND SELLING OF STOCKS THAT HE JUST PLED  
19 GUILTY.

20 HE'S OBVIOUSLY GOING TO HAVE TO DO THAT AT SOME  
21 POINT, BECAUSE HE'S GOING TO GO INTO CUSTODY AT SOME POINT,  
22 BUT HE WOULD LIKE TO WRAP THINGS UP BEFORE HE HAS TO DO THAT.

23 THE COURT: WHAT'S THE THOUGHTS OF THE GOVERNMENT ON  
24 THAT ISSUE?

25 MR. TENORIO: YOUR HONOR, I SHARE THE COURT'S

1 CONCERNS. MY SUSPICION IS THAT THESE CLIENTS PROBABLY WERE  
2 NOT EVEN AWARE OF THE 1998 CASE, AND IT WAS SIMILAR IN THAT  
3 IT WAS EMBEZZLEMENT CASES OR AN EMBEZZLEMENT CASE AND OTHER  
4 FRAUDS; SO, YEAH, WE WOULD STRONGLY REQUEST THAT THAT  
5 CONDITION BE IMPOSED.

6 THE COURT: I HAVE TO SAY, MR. KIRBY AND MR. LEE, I  
7 REALLY DO FEEL QUITE STRONGLY ABOUT THIS. I AM CONCERNED  
8 ABOUT MR. LEE'S CONDUCT OVER THE PAST WHENEVER IT WAS, THE  
9 END OF THE '90S, UP UNTIL NOW.

10 I HEAR WHAT MR. KIRBY IS SAYING ON BEHALF OF  
11 MR. LEE, AND THAT IS THAT HE HAD THIS FRAUDULENT ACTIVITY  
12 THAT HE AGREED -- THAT HE JUST ADMITTED IN THIS CASE, BUT HE  
13 ALSO HAS THIS LEGITIMATE TAX CONSULTING BUSINESS. I DON'T  
14 SEE THE TWO OF THEM AS CLEARLY DIFFERENT AS I BELIEVE MR. LEE  
15 WOULD LIKE THE -- LIKE TO BELIEVE THEY ARE.

16 AND SO HE HAS NOW ADMITTED THIS ACTIVITY IN FRONT OF  
17 ME, AND I BELIEVE THAT HIS CLIENTS HAVE A RIGHT TO KNOW THAT.  
18 I AM CONCERNED THAT IF I DON'T REQUIRE IT, THAT THE COURT  
19 WOULD THEN BE ENABLING HIM TO ENGAGE IN ONGOING POTENTIALLY  
20 FRAUDULENT CONDUCT. AND SO CERTAINLY HE CAN ADVISE HIS  
21 CLIENTS, HIS TAX CLIENTS THAT HE THINKS THE TWO OF THE  
22 ACTIVITIES ARE COMPLETELY DIFFERENT, BUT I DO BELIEVE THAT HE  
23 MUST NOTIFY THEM OF THE FACT THAT HE HAS PLED GUILTY.

24 SO I'M ADDING THAT AS A CONDITION. DEFENDANT MUST  
25 NOTIFY ALL CLIENTS THAT HE HAS PLED GUILTY TO THIS CRIME.

1                   AND AS I INDICATED, THE TRAVEL IS RESTRICTED TO --  
2                   HIS TRAVEL IS RESTRICTED TO THE STATE OF CALIFORNIA. I AM  
3                   SPECIFICALLY NOT ALLOWING HIM TO GO -- TO TRAVEL  
4                   INTERNATIONALLY FOR ANY REASON. IF THERE IS SOME REASON THAT  
5                   HE HAS TO TRAVEL WITHIN THE UNITED STATES FOR WORK, HE CAN  
6                   SUBMIT THAT THROUGH YOU, COUNSEL, TO ME AS A REQUEST. I  
7                   DON'T WANT IT TO BE SOMETHING WHERE IT WOULD JUST BE  
8                   CONVENIENT, AND HE'D LIKE TO GO TO A CONFERENCE OR HE WOULD  
9                   LIKE TO MEET WITH SOMEONE.

10                   IF HE CAN CONDUCT HIS BUSINESS OVER THE PHONE,  
11                   THAT'S THE WAY YOU SHOULD DO IT. IF THERE IS SOME REASON  
12                   THAT HE ACTUALLY NEEDS TO TRAVEL, THAT CAN BE PRESENTED TO ME  
13                   IN A WRITTEN REQUEST. THE SURETIES HAVE TO AGREE TO IT.

14                   MR. KIRBY: YOUR HONOR, MAY I ASK THAT -- CAN IT  
15                   ALSO BE TO VISIT FAMILY?

16                   THE COURT: NO. WHY DOES HE NEED TO TRAVEL TO VISIT  
17                   FAMILY?

18                   MR. KIRBY: HIS DAUGHTER IS IN NEW YORK.

19                   THE COURT: RIGHT. SHE CAN TRAVEL HERE.

20                   MR. KIRBY: AND HIS LONG-TIME GIRLFRIEND'S PARENTS  
21                   ARE IN NEVADA AND VERY ILL. CAN HE, ON PRIOR APPROVAL, GO  
22                   SEE THEM AS WELL?

23                   THE COURT: IF THERE IS A MEDICAL EMERGENCY, I WOULD  
24                   CONSIDER THAT; BUT, AGAIN, IT HAS TO BE IN WRITING, REQUESTED  
25                   AHEAD OF TIME.

1           AND THE REASON, ONE OF THE REASONS I'M IMPOSING THIS  
2           IS I DON'T BELIEVE THAT THIS DEFENDANT HAS TAKEN HIS  
3           CONVICTION SERIOUSLY. I AM CONCERNED THAT HE BELIEVES HE CAN  
4           CONTINUE TO CONDUCT LIFE IN ANY WAY HE WANTS. HE HAS PLED  
5           GUILTY TO A SECOND VERY SERIOUS CRIME. DESPITE APPARENTLY  
6           MAKING A SIGNIFICANT AMOUNT OF MONEY, HE HAS NOT MADE ANY  
7           SIGNIFICANT EFFORT TO PAY BACK THE FINE OR RESTITUTION THAT  
8           WAS ORDERED IN THE ORIGINAL CASE.

9           AND THIS CRIMINAL CONDUCT HAS CONSEQUENCES. AND SO  
10          HE DOESN'T GET TO JUST GO VISIT FAMILY AS HE WANTS. I'M  
11          CONCERNED ABOUT WHAT HE'S DOING WHILE HE'S THERE AND WHO HE  
12          IS SEEING AND WHAT HE'S SAYING, FRANKLY.

13          AND SO IF THERE IS AN EMERGENCY AND HE NEEDS TO GO,  
14          I'D BE WILLING TO CONSIDER THAT. BUT THE FACT THAT HE WOULD  
15          JUST LIKE TO TRAVEL TO VISIT THEM, NO, I'M NOT APPROVING IT.

16          DO YOU UNDERSTAND?

17          MR. KIRBY: YES, YOUR HONOR.

18          THE COURT: OKAY. MR. LEE, DO YOU UNDERSTAND THAT  
19          YOU MUST COMPLY WITH ALL OF THE CONDITIONS THAT I HAVE JUST  
20          SET?

21          THE DEFENDANT: YES.

22          THE COURT: OKAY. AND I AM GIVING YOU ONE WEEK TO  
23          SUBMIT THE BOND PAPERWORK. SO THE BOND PAPERWORK MUST BE  
24          SUBMITTED TO THIS COURT BY OCTOBER 16TH.

25          YOU MUST GO DOWN RIGHT NOW AND BE FINGERPRINTED AND

1 BOOKED. YOU WILL BE RELEASED, BUT YOU MUST BE FINGERPRINTED  
2 AND BOOKED BEFORE YOU LEAVE TODAY.

3 AND THEN YOU MUST MEET WITH PRETRIAL SERVICES WHEN,  
4 TOMORROW OR TODAY?

5 PRETRIAL SERVICES OFFICER: TODAY, YOUR HONOR.  
6 DOWNSTAIRS.

7 THE COURT: SO AFTER THE MARSHALS, THEN YOU MUST GO  
8 TO PRETRIAL SERVICES.

9 DO YOU UNDERSTAND, SIR?

10 THE DEFENDANT: YES, MA'AM.

11 THE COURT: ALL RIGHT. THAT'S IT FOR TODAY.

12 MR. TENORIO: THANK YOU, YOUR HONOR.

13 (PROCEEDINGS CONCLUDED AT 11:17 A.M.)

14 -- 0000 --

15 I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT  
16 FROM THE ELECTRONIC SOUND RECORDING OF THE PROCEEDINGS IN THE  
17 ABOVE-ENTITLED MATTER.

18

19 /S/CAMERON P. KIRCHER                      10-16-14  
20 TRANSCRIBER                                      DATE

21

22

23

24

25

26



# **Exhibit F**

DEFENDANT: JAMES YIU LEE (1)  
CASE NUMBER: 14CR2937-BEN

**IMPRISONMENT**

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of SEVENTY-EIGHT (78) MONTHS.

- Sentence imposed pursuant to Title 8 USC Section 1326(b).
- The court makes the following recommendations to the Bureau of Prisons:  
DEFENDANT BE INCARCERATED WITHIN THE WESTERN REGION OF THE UNITED STATES.

The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district:

at \_\_\_\_\_  a.m.  p.m. on \_\_\_\_\_  
as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

- before \_\_\_\_\_
- as notified by the United States Marshal.
- as notified by the Probation or Pretrial Services Office.

**RETURN**

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_

at \_\_\_\_\_, with a certified copy of this judgment.

UNITED STATES MARSHAL

By \_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL

DEFENDANT: JAMES YIU LEE (1)  
CASE NUMBER: 14CR2937-BEN

**SUPERVISED RELEASE**

Upon release from imprisonment, the defendant shall be on supervised release for a term of :  
**THREE (3) YEARS.**

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

*For offenses committed on or after September 13, 1994:*

The defendant shall not illegally possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter as determined by the court. Testing requirements will not exceed submission of more than 4 drug tests per month during the term of supervision, unless otherwise ordered by court.

The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)

The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon.

The defendant shall cooperate in the collection of a DNA sample from the defendant, pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000, pursuant to 18 USC sections 3563(a)(7) and 3583(d).

The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense. (Check if applicable.)

The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution obligation, it is a condition of supervised release that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervised release in accordance with the Schedule of Payments set forth in this judgment.

The defendant must comply with the standard conditions that have been adopted by this court. The defendant shall also comply with any special conditions imposed.

**STANDARD CONDITIONS OF SUPERVISION**

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: JAMES YIU LEE (1)  
CASE NUMBER: 14CR2937-BEN

### SPECIAL CONDITIONS OF SUPERVISION

- Submit person, residence, office or vehicle to a search, conducted by a United States Probation Officer at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may be grounds for revocation; the defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition. +
- If deported, excluded, or allowed to voluntarily return to country of origin, not reenter the United States illegally and report to the probation officer within 24 hours of any reentry to the United States; supervision waived upon deportation, exclusion or voluntary departure.
- Not transport, harbor, or assist undocumented aliens.
- Not associate with undocumented aliens or alien smugglers.
- Not reenter the United States illegally.
- Not enter the Republic of Mexico without written permission of the Court or probation officer.
- Report all vehicles owned or operated, or in which you have an interest, to the probation officer.
- Not possess any narcotic drug or controlled substance without a lawful medical prescription.
- Not associate with known users of, smugglers of, or dealers in narcotics, controlled substances, or dangerous drugs in any form.
- Participate in a program of mental health treatment as directed by the probation officer, take all medications as prescribed by a psychiatrist/physician, and not discontinue any medication without permission. The Court authorizes the release of the presentence report and available psychological evaluations to the mental health provider, as approved by the probation officer. Allow for reciprocal release of information between the probation officer and the treatment provider. May be required to contribute to the costs of services rendered in an amount to be determined by the probation officer, based on the defendant's ability to pay. +
- Comply with the Court ordered requirements for restitution obligations in Case No. 95CR0041-45-01-MMC.
- Provide complete disclosure of personal and business financial records to the probation officer as requested.
- Be prohibited from opening checking accounts or incurring new credit charges or opening additional lines of credit without approval of the probation officer.
- Employment must be approved by the probation officer.
- Resolve all outstanding warrants within \_\_\_\_\_ days.
- Complete \_\_\_\_\_ hours of community service in a program approved by the probation officer within \_\_\_\_\_ days.
- Reside in a Residential Reentry Center (RRC) as directed by the probation officer for a period of \_\_\_\_\_ days.
- Notify the Collections Unit, United States Attorney's Office, before transferring any interest in property owned, directly or indirectly, including but not limited to any interest held or owned under any other name, or entity, including a trust, partnership or corporation.
- Notify the Collections Unit, United States Attorney's Office, of any interest in property obtained, directly or indirectly, including but not limited to any interest obtained under any other name, or entity, including a trust, partnership or corporation until the fine or restitution is paid in full.