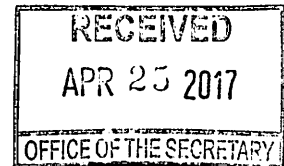


UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION



ADMINISTRATIVE PROCEEDING
File No. 3-17856

In the Matter of

JOHN AUSTIN GIBSON, JR.,

Respondent.

**DIVISION OF ENFORCEMENT'S MOTION AND MEMORANDUM OF LAW
SUPPORTING ENTRY OF DEFAULT**

I. Introduction

The Division of Enforcement (the "Division"), pursuant to Rule 155(a) and 220(f) of the Commission's Rules of Practice, 17 C.F.R. §§ 201.155(a) and 201.220(f), moves for entry of an Order finding Respondent John Austin Gibson, Jr. in default and determining this proceeding against him upon consideration of the record. The Division sets forth the grounds below.

II. History of the Case

On February 23, 2017, the Commission issued the Order Instituting Proceedings ("OIP") pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") and Section 203(f) of the Investment Advisers Act of 1940 ("Advisers Act"). The OIP alleges that Gibson obtained funds by representing to investors that he was a representative of the investment firms MetLife and Allianz and could establish accounts at these firms on investors' behalf. Instead of investing the money, Gibson converted the funds to his own use and sent victims fake account

statements to cover his tracks. These facts led to Gibson's guilty plea in the criminal case against him.

On April 6, 2017, the Law Judge entered an Order requiring Gibson to show cause by April 17, 2017 why the proceeding should not be determined against him by default. That day passed without a response from Gibson.

III. Memorandum of Law

A. Gibson's Criminal Case

On June 8, 2016, the United States Attorney for the Eastern District of Louisiana filed an information against Gibson charging him with one count of mail fraud, in violation of 18 U.S.C. § 1341 (D.E. 1, *United States v. Gibson*, No. 2:16-cr-00103 (E.D. La.) ("*Gibson*") (attached as Exhibit 1)). On July 18, 2016, Gibson pled guilty to the information. (*Id.*, D.E. 16 (attached as Exhibit 2)). On March 22, 2017, the district court sentenced Gibson to 18 months imprisonment followed by a three-year term of supervised release, and ordered that he pay \$213,597 in restitution to MetLife and Allianz (who apparently reimbursed the victims). (*Id.*, D.E. 37 (attached as Exhibit 3)).

B. Facts Determined Against Gibson

According to the factual basis for Gibson's plea (*Id.*, D.E. 18 (attached as Exhibit 4)),¹ from 2008 through 2014, Gibson held himself out as a MetLife representative and Allianz agent capable of establishing and monitoring investment accounts with those entities. During this period, Gibson solicited and accepted money from individuals for investment, but instead of

¹Gibson's plea estops him from disputing the facts relevant to this matter. See *Don Warner Reinhard*, Exchange Act Rel. No. 63720, at 11-12, 2011 WL 121451 (Jan. 14, 2011) (respondent who pleaded guilty "cannot now dispute the accuracy of the findings set out in the Factual basis for Plea Agreement"); *Gary M. Kornman*, Exchange Act Rel. No. 59403, at 12 & n.34, 2009 WL 367635 (Feb. 13, 2009) (criminal conviction based on guilty plea precludes litigation of issues in Commission proceedings).

setting up accounts, Gibson fraudulently diverted the monies for his own personal use. Gibson sent three victims fraudulent account statements relating to a non-existent accounts with MetLife and Allianz.

C. Entry of Judgment by Default is Appropriate

The facts determined in his criminal case and by Gibson's default² show that the Division is entitled to the relief that it seeks. Section 15(b)(6)(A) of the Exchange Act provides in relevant part:

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

* * * *

(ii) has been convicted of any offense specified in [Exchange Act Section 15(b)(4)(B)] within 10 years of the commencement of the proceedings under this paragraph

Advisers Act Section 203(f) provides for an identical associational bar (but not a penny stock bar) for a person with a qualifying conviction who at the time of the misconduct was associated with an investment adviser. Each of the requirements of these provisions—timely issuance of the OIP, conviction under a qualifying statute, and misconduct committed while Gibson was associated with a broker or dealer—are satisfied here.

²Under Rule 155(a), a party who fails to file a timely answer “may be deemed to be in default” and the Law Judge “may determine the proceeding against that party upon consideration of the record, including the order instituting proceedings, the allegations of which may be deemed to be true” 17 C.F.R. § 201.155(a).

1. The Division Timely Filed this Action

The Division must commence proceedings under Exchange Act Section 15(b)(6)(A)(ii) and Advisers Act Section 203(f) within 10 years of the criminal conviction. *See Joseph Contorinis*, Exchange Act Rel. No. 72031, at 4-6, 2014 WL 1665995 (Apr. 25, 2014) (10-year limitations period runs from date of conviction, not underlying conduct). Here, Gibson was convicted in 2016, and the OIP was issued in 2017. Therefore, this matter was timely filed.

2. Gibson Was Convicted of a Qualifying Offense

Gibson's mail fraud conviction constitutes a "felony . . . which . . . involves the violation of section . . . 1341 . . . of Title 18," thus triggering the Commission's ability to sanction him under both the Exchange Act and the Advisers Act. *See* Exchange Act Sections 15(b)(4)(B)(iv), 15(b)(6)(A)(ii); Advisers Act Sections 203(e)(2)(D), 203(f).

3. Gibson Was Associated with a Broker and an Investment Adviser at the Time of the Misconduct

Exchange Act Section 15(b)(6)(A) and Advisers Act Section 203(f) each require that Gibson have been a person associated with, respectively, a broker or investment adviser at the time of the misconduct. Here, deemed admitted is the OIP's allegation that Gibson was a Louisiana-registered investment adviser between February 2008 and March 2009 and between October 2007 and March 2009 was associated with MetLife, a dually-registered broker-dealer and investment adviser. The OIP further alleges that after his resignation from MetLife, he continued to act as an unregistered investment adviser. (OIP § II.A.1) Therefore, Gibson is subject to sanction under the Exchange Act and the Advisers Act.

4. Industry and Penny Stock Bars Are Appropriate Sanctions

In determining whether an administrative sanction is in the public interest, the Commission

considers, among other things, the egregiousness of the respondent's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the respondent's assurances against future violations, the respondent's recognition of the wrongful nature of his conduct, and the likelihood that the respondent's occupation will present opportunities for future violations.

David R. Wulf, Exchange Act Rel. No. 77411, at 5-6, 2016 WL 1085661 (Mar. 21, 2016) (quotation and alterations omitted). "Absent extraordinary mitigating circumstances, an individual who has been convicted cannot be permitted to remain in the securities industry." *Frederick W. Wall*, Exchange Act Rel. No. 52467, at 8, 2005 WL 2291407 (Sept. 19, 2005) (quotation omitted); *accord Shreyans Desai*, Exchange Act Rel. No. 80129, at 6, 2017 WL 782152 (Mar. 1, 2017).

Here, these factors weigh in favor of industry and penny stock bars. First, Gibson's actions were egregious. His conviction establishes that he knowingly and willfully engaged in a scheme to defraud several victims and appropriate their funds for his own use. The statements by victims at his sentencing demonstrates the severe impact of his conduct. (*Gibson*, Trans., 3/22/2017, at 12:10-17:22, 17:24-19:15 (attached as Exhibit 5))

Second, this was not a one-time lapse in judgment: Gibson admitted to a scheme that continued for more than five years. Third, Gibson's level of scienter was extremely high, giving to a criminal conviction.

With respect to the fourth and fifth factors, notwithstanding his guilty plea, Gibson has not participated in this matter, thus providing no assurances that he will avoid *future* violations of the law. Although "[c]ourts have held that the existence of a past violation, without more, is not a sufficient basis for imposing a bar, . . . the existence of a violation raises an inference that it will be repeated." *Tzemach David Netzer Korem*, Exchange Act Release No. 70044, at 10 n.50, 2013 WL 3864511 (July 26, 2013) (quotation and alternations omitted). Gibson has offered no

evidence to rebut that inference.

Sixth, although Gibson is serving a 18 month sentence, he will eventually be released, and unless he is barred from the securities industry he will have the chance to again harm investors.

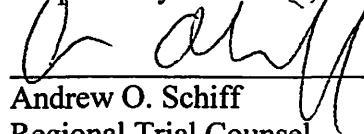
Finally, it serves the public interest to collaterally bar Gibson from all association with the securities industry. Although Gibson's scheme began prior to the July 2010 enactment of the Dodd-Frank Act, the collateral bars authorized therein may be imposed because his scheme extended into 2014. *See Wayne L. Palmer*, Initial Decision Rel. No. 1025, at 7, n.6, 2016 WL 3227658 (June 13, 2016) ("Because a portion of Palmer's misconduct occurred after July 22, 2010 . . . imposing a full collateral bar is not impermissibly retroactive."). Accordingly, the Law Judge should bar Gibson from the securities industry, even though certain of his conduct occurred prior to Dodd-Frank's enactment.

IV. Conclusion

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

April 24, 2017

Respectfully submitted,



Andrew O. Schiff
Regional Trial Counsel
Direct Line: (305) 982-6390
schiffa@sec.gov

DIVISION OF ENFORCEMENT
SECURITIES AND EXCHANGE COMMISSION
801 Brickell Avenue, Suite 1800
Miami, FL 33131
Phone: (305) 982-6300
Fax: (305) 536-4154

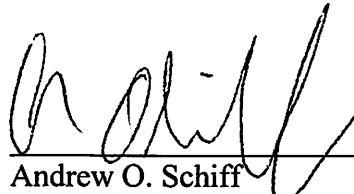
CERTIFICATE OF SERVICE

I hereby certify that an original and three copies of the foregoing were filed with the Securities and Exchange Commission, Office of the Secretary, 100 F Street, N.E., Washington, D.C. 20549-9303, and that a true and correct copy of the foregoing has been served by overnight, on this 24th day of April 2017, on the following persons entitled to notice:

The Honorable James E. Grimes
Administrative Law Judge
Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

John Austin Gibson, Jr.

████████████████████ Apt. ██████
Studio City, CA ██████
Pro Se



Andrew O. Schiff
Regional Trial Counsel

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
2016 JUN -8 P 3:30
WILLIAM W. BLEVINS
6

FELONY

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

BILL OF INFORMATION FOR MAIL FRAUD

UNITED STATES OF AMERICA

v.

JOHN GIBSON

*
*
*
*
*
*
*
*
*

CRIMINAL NO. **16-103**
SECTION: **SECT. R MAG 3**
VIOLATIONS: 18 U.S.C. § 1341

The United States Attorney charges that:

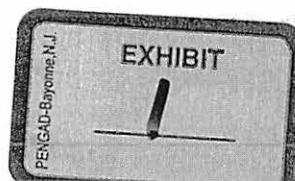
COUNT 1

A. THE SCHEME TO DEFRAUD

1. Beginning in 2008 and continuing through 2014, defendant, JOHN GIBSON, knowingly and willfully devised and intended to devise a scheme and artifice to defraud Y.B., P.B., G.B, S.J. and D.J. As part of the scheme, GIBSON used false and fraudulent pretenses, material misrepresentations, and promises to defraud investors Y.B., P.B., G.B, S.J. and D.J. of monies.

2. It was further part of the scheme and artifice to defraud that, from 2008 through 2014, GIBSON solicited funds from Y.B., P.B., G.B, S.J. and D.J by falsely representing that he would use their funds to establish investment accounts at Metlife and Allianz. As a result of his

Fee _____
Process _____
x Dktd _____
CtRmDep _____
Doc. No. _____



false representations, **GIBSON** received approximately \$169,348 in funds from Y.B., P.B., G.B, S.J. and D.J.

3. It was further part of the scheme and artifice to defraud that, from 2008 through 2014, **GIBSON** fraudulently diverted investor funds from Y.B., P.B., G.B, S.J. and D.J. for his own personal use.

4. It was further part of the scheme and artifice to defraud that, from 2008 through 2014, **GIBSON** made materially false representations to Y.B., P.B., G.B, S.J. and D.J. and reassured them that their funds were invested for their benefit in accounts at Metlife and Allianz by creating fictitious and fraudulent account statements and sending those statements to Y.B., P.B., G.B, S.J. and D.J.

5. It was further part of the scheme and artifice to defraud that, from 2008 through 2014, **GIBSON** perpetuated the fraud by sending partial payments back to G.B, S.J. and D.J. to reassure them that their funds were invested for their benefit in accounts at Metlife and Allianz.

B. THE USE OF THE UNITED STATES MAIL

6. On or about August 13, 2014, in the Eastern District of Louisiana and elsewhere, the defendant, **JOHN GIBSON**, for the purpose of executing and attempting to execute the scheme and artifice to defraud set forth above and for the purpose of obtaining money and property by means of false and fraudulent pretenses, representations, and promises, did knowingly place in an authorized depository for mail, to be sent and delivered by the Postal Service, a money order in the amount of \$250 as a fictitious withdrawal from a non-existent Allianz account, in order to hide, conceal, and perpetuate his scheme and artifice to defraud, which resulted in a total loss of approximately \$169,348 to his clients.

All in violation of Title 18, United States Code, Section 1341.

NOTICE OF FORFEITURE

1. The allegations of Count 1 of this Bill of Information are realleged and incorporated by reference as though set forth fully herein for the purpose of alleging forfeiture to the United States of America pursuant to the provisions of Title 18, United States Code, Sections 1341 and 981(a)(1)(C), made applicable through Title 28, United States Code, Section 2461(c).

2. As a result of the offense alleged in Count 1, defendant, **JOHN GIBSON**, shall forfeit to the United States pursuant to Title 18, United States Code, Section 981(a)(1)(C), made applicable through Title 28, United States Code, Section 2461(c), any and all property, real or personal, which constitutes or is derived from proceeds traceable to a violation of Title 18, United States Code, Section 1341.

3. If any of the property subject to forfeiture, as a result of any act or omission of the defendant:

- a. cannot be located upon the exercise of due diligence;
- b. has been transferred or sold to, or deposited with, a third person;
- c. has been placed beyond the jurisdiction of the Court;
- d. has been substantially diminished in value; or
- e. has been commingled with other property which cannot be subdivided without difficulty;

it is the intent of the United States, pursuant to Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of said defendant up to the value of the above forfeitable property.

All in violation of Title 18, United States Code, Sections 1341 and 981(a)(1)(C), made applicable through Title 28, United States Code, Section 2461(c).

KENNETH ALLEN POLITE, JR.
UNITED STATES ATTORNEY



SEAN TOOMEY
Assistant United States Attorney
La. Bar Roll No. 36055

New Orleans, Louisiana
June 8, 2016

No. _____

United States District Court

FOR THE

EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA

vs.

JOHN GIBSON

BILL OF INFORMATION FOR
MAIL FRAUD

VIOLATION: 18 U.S.C. § 1341

Filed _____, 20 16

_____, Clerk.

By _____, Deputy



SEAN TOOMEY

Assistant United States Attorney

DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACTION - IN U.S. DISTRICT COURT

BY: INFORMATION INDICTMENT

Matter Sealed: Juvenile Other than Juvenile
 Pre-Indictment Plea Superseding Defendant Added
 Indictment Charges/Counts Added
 Information

Name of District Court, and/or Judge/Magistrate Location (City)
 UNITED STATES DISTRICT COURT EASTERN
 DISTRICT OF LOUISIANA Divisional Office

Name and Office of Person
 Furnishing Information on **Bonnie Barousse**
 THIS FORM U.S. Atty Other U.S. Agency
 Phone No. (504) 680-3181
 Name of Asst. U.S. Attorney Sean Toomey
 (if assigned)

PROCEEDING

Name of Complainant Agency, or Person (& Title, if any)
 Dyisha Morgan-Neal, USPIS

person is awaiting trial in another Federal or State Court
 (give name of court)

this person/proceeding transferred from another district
 per (circle one) FRCrP 20, 21 or 40. Show District

this is a reprosecution of charges
 previously dismissed which were
 dismissed on motion of:
 U.S. Atty Defense

this prosecution relates to a
 pending case involving this same
 defendant. (Notice of Related
 Case must still be filed with the
 Clerk.)

prior proceedings or appearance(s)
 before U.S. Magistrate Judge
 regarding this defendant were
 recorded under

SHOW
 DOCKET NO.

MAG. JUDGE
 CASE NO.

Place of offense Orleans Parish County

CASE NO. **16-103**

USA vs.

Defendant: John Gibson

Address: **SECT. R MAG 3**

Interpreter Required Dialect: _____

Birth Date 1985 Male Alien
 Female (if applicable)

Social Security Number **XXX-XX-8397**

DEFENDANT

Issue: Warrant Summons

Location Status:

Arrest Date _____ or Date Transferred to Federal Custody _____

Currently in Federal Custody

Currently in State Custody

Writ Required

Currently on bond

Fugitive

Defense Counsel (if any): _____

FPD CJA RET'D

Appointed on Target Letter

This report amends AO 257 previously submitted

OFFENSE CHARGED - U.S.C. CITATION - STATUTORY MAXIMUM PENALTIES - ADDITIONAL INFORMATION OR COMMENTS

Total # of Counts 1 (for this defendant only)

Offense Level (1, 3, 4)	Title & Section/ (Petty = 1 / Misdemeanor = 3 / Felony = 4)	Description of Offense Charged	Count(s)
4	18 U.S.C. § 1341	Mail Fraud	1

NO MAGISTRATE PAPERS WERE FOUND

for

NAME: JOHN GIBSON

Initials: DAS

MINUTE ENTRY
VANCE, J.
JULY 18, 2016

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA

CRIMINAL CASE

VERSUS

NO. 16-103

JOHN GIBSON (BOND)

SECTION: R

CASE MANAGER: JAY SUSSLIN
COURT REPORTER: MARY THOMPSON

REARRAIGNMENT

APPEARANCES: JOHN GIBSON, DEFENDANT
TOWNSEND MYERS, COUNSEL FOR DEFENDANT
SEAN TOOMEY, ASSISTANT U.S. ATTORNEY
U.S. PROBATION OFFICER
U.S. MARSHALS

Court begins.

All present and ready.

Defendant is sworn and questioned by the Court.

Defendant is present to withdraw former plea of Not Guilty as to Count 1 of the Bill of Information and enters a plea of guilty as to same.

Waiver of Indictment previously signed and filed into the record.

Defendant is cautioned regarding possible prosecution for perjury or false statement if answers to the Court's questions are not truthful.

Defendant is informed of rights to trial by jury or the Court and waives same.

Reading of the Information by the Court to the defendant is waived.

Defendant is informed of the maximum penalties.

JS-10: 00:18



Defendant is informed of the Sentencing Guidelines.

Defendant enters a plea of Guilty.

Plea agreement is disclosed to the Court in letter form, summarized by counsel for the Government, signed by all parties and filed into the record.

Factual basis is signed by all parties and filed into the record.

The Court finds there is a factual basis for the guilty plea in this matter and that the defendant is fully competent to enter a plea of guilty and is pleading guilty knowingly and voluntarily.

The defendant is ADJUDGED GUILTY on plea of Guilty.

PRETRIAL CONFERENCE AND TRIAL ARE HEREBY CANCELLED.

ALL PENDING MOTIONS ARE HEREBY SATISFIED AS MOOT.

Pre-Sentence Investigation is ORDERED.

SENTENCING set for WEDNESDAY, NOVEMBER 9, 2016, at 9:30 a.m.

Defendant is released on bond to return on the date set for sentencing.

Court adjourned.

UNITED STATES DISTRICT COURT

Eastern District of Louisiana

UNITED STATES OF AMERICA

v.

JOHN GIBSON

JUDGMENT IN A CRIMINAL CASE

Case Number: 16-103 "R"

USM Number: 36855-034

Townsend Myers

Defendant's Attorney

THE DEFENDANT:

pleaded guilty to count(s) 1 of the Bill of Information on July 18, 2016

pleaded nolo contendere to count(s) _____
which was accepted by the court.

was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18:1341	Mail Fraud		1

The defendant is sentenced as provided in pages 2 through 8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

The defendant has been found not guilty on count(s) _____

Count(s) _____ is are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

3/22/2017

Date of Imposition of Judgment

Sarah Vance

Signature of Judge

Sarah S. Vance, U.S. District Judge

Name and Title of Judge

3/28/17

Date



DEFENDANT: JOHN GIBSON
CASE NUMBER: 16-103 "R"

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:

18 months as to Count 1 of the Bill of Information.

The court makes the following recommendations to the Bureau of Prisons:

That the defendant serve his term of imprisonment in a facility near his family in Los Angeles, California.

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 12:00 p.m. on 5/24/2017.

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 _____

a _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____

DEPUTY UNITED STATES MARSHAL

DEFENDANT: JOHN GIBSON
CASE NUMBER: 16-103 "R"

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of :
three years as to Count 1 of the Bill of Information.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must 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.
 - The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
5. You must 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 the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
6. You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: JOHN GIBSON
CASE NUMBER: 16-103 "R"

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature

Date

DEFENDANT: JOHN GIBSON
CASE NUMBER: 16-103 "R"

SPECIAL CONDITIONS OF SUPERVISION

In addition, the following special conditions are imposed:

The defendant shall provide complete access to financial information, including disclosure of all business and personal finances, to the United States Probation Officer.

The defendant shall not apply for, solicit or incur any further debt, included but not limited to loans, lines of credit or credit card charges, either as a principal or cosigner, as an individual or through any corporate entity, without first obtaining written permission from the United States Probation Officer.

The defendant shall pay any restitution that is imposed by this judgment.

The defendant shall maintain full-time, legitimate employment and not be unemployed for a term of more than 30 days unless excused for schooling, training, or other acceptable reasons. Further, the defendant shall provide documentation including, but not limited to pay stubs, contractual agreements, W-2 Wage and Earning Statements, and other documentation requested by the United States Probation Officer. If unemployed, the defendant shall participate in employment readiness programs, as approved by the probation officer.

As directed by the probation officer the defendant shall participate in an approved cognitive behavioral therapeutic treatment program and abide by all supplemental conditions of treatment. The defendant shall contribute to the cost of this program to the extent that the defendant is deemed capable by the United States Probation Officer.

DEFENDANT: JOHN GIBSON
 CASE NUMBER: 16-103 "R"

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>JVTA Assessment*</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 100.00	\$ 0.00	\$ 0.00	\$ 213,597.35

- The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.
- The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss**</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
Metlife c/o Robert Hill 501 U.S. Highway 22 West Bridgewater, New Jersey 08807	\$88,876.51	\$88,876.51	
Allianz Life c/o Lorie Wells #20140627 5701 Golden Hills Drive Minneapolis, Minnesota 55416	\$124,720.84	\$124,720.84	
TOTALS	\$ <u>213,597.35</u>	\$ <u>213,597.35</u>	

- Restitution amount ordered pursuant to plea agreement \$ _____
- The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- The court determined that the defendant does not have the ability to pay interest and it is ordered that:
- the interest requirement is waived for the fine restitution.
- the interest requirement for the fine restitution is modified as follows:

* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.
 ** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: JOHN GIBSON
CASE NUMBER: 16-103 "R"

ADDITIONAL TERMS FOR CRIMINAL MONETARY PENALTIES

It is the finding of this Court that the defendant is not able to pay a fine. Accordingly, no fine shall be imposed; however, in accordance with 18 U.S.C. § 3663A, restitution in the amount of \$213,597.35 shall be paid to the following victims in the following amounts:

Metlife, c/o Robert Hill, 501 U.S. Highway 22 West, Bridgewater, New Jersey 08807
(\$88,876.51)

Allianz Life, c/o Lorie Wells, #20140627, 5701 Golden Hills Drive, Minneapolis,
Minnesota 55416 (\$124,720.84)

The payment of restitution shall begin while the defendant is incarcerated. Upon release, any unpaid balance shall be paid at a rate of \$100 per month. The payment is subject to increase or decrease, depending on the defendant's ability to pay. Any payment made that is not payment in full shall be divided proportionately among the victims. The Court finds that the defendant does not have the ability to pay interest on the restitution. The Court will waive the interest requirement in this case.

Payments shall be made payable to the Clerk, United States District Court, and are to be forwarded to the following address:

U.S. CLERK'S OFFICE
ATTN.: FINANCIAL SECTION
500 POYDRAS STREET
ROOM C151
NEW ORLEANS, LOUISIANA 70130

The U.S. Bureau of Prisons, the U.S. Probation Office, and the U.S. Attorney's Office are responsible for enforcement of this order.

DEFENDANT: JOHN GIBSON
CASE NUMBER: 16-103 "R"

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A Lump sum payment of \$ _____ due immediately, balance due
- not later than _____, or
 in accordance with C, D, E, or F below; or
- B Payment to begin immediately (may be combined with C, D, or F below); or
- C Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F Special instructions regarding the payment of criminal monetary penalties:
\$100.00 Special Assessment is due immediately

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

The defendant shall pay the cost of prosecution.

The defendant shall pay the following court cost(s):

The defendant shall forfeit the defendant's interest in the following property to the United States:
Forfeiture of the defendant's rights, title and interest in certain property may be ordered consistent with the plea agreement and Bill of Information.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) JVTA assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

UNITED STATES OF AMERICA * CRIMINAL NO. 16-103

v. *

SECTION: "R"

JOHN GIBSON *

* * *

FACTUAL BASIS

If this case were to proceed to trial, the United States would prove, beyond a reasonable doubt, through credible testimony and reliable evidence, the following facts:

In or around 2008 and continuing through 2014, the defendant, **JOHN GIBSON**, represented himself as a MetLife representative and Allianz agent capable of establishing and monitoring investment accounts with those entities.

In or around 2008 and continuing through 2014, the defendant, **GIBSON**, solicited and accepted money from individuals to be invested with Metlife and Allianz, but instead of setting up accounts with Metlife and Allianz in those individuals' names, **GIBSON** fraudulently diverted the monies for his own personal use.

In or around 2008, **GIBSON** approached S.J. and D.J. and suggested that they would benefit from investing in a Metlife account that **GIBSON** could establish and



monitor. Relying on **GIBSON**'s representations, S.J. and D.J. delivered a check in the amount of \$15,000 to **GIBSON**. **GIBSON** did not create an account with Metlife on behalf of S.J. and D.J. and instead fraudulently kept the funds for his own personal use.

Between 2008 and 2011, **GIBSON** sent G.B. false and fraudulent account statements corresponding to the non-existent Metlife account via the United States Mail.

In or around 2010, S.J. and D.J. began to ask **GIBSON** to release their funds because they needed those monies to supplement their living expenses. In order to perpetuate the fraud, **GIBSON** agreed to release the funds and sent G.B. several checks as partial payments to S.J. and D.J. via the United States Mail.

In or around March 2009, **GIBSON** approached Y.B. and P.B. and suggested that Y.B. and P.B. would benefit from moving investment monies then held with Prudential into a Metlife account that **GIBSON** would set up and monitor. Relying on **GIBSON**'s representations, G.B. delivered a check in the amount of \$75,000 to **GIBSON**. **GIBSON** did not create an account with Metlife on behalf of Y.B. and P.B. and instead fraudulently kept the funds for his own personal use.

Between 2009 and 2014, **GIBSON** sent Y.B. and P.B. false and fraudulent account statements via the United States Mail corresponding to the non-existent Metlife account.

In or around March 2014, Y.B. and P.B. began to ask **GIBSON** to release their funds because they needed those monies to supplement their living expenses. **GIBSON** agreed to release the funds, but never in fact returned any money to Y.B. and P.B.

In or around October 2009, **GIBSON** approached G.B. and suggested that G.B. would benefit from moving investment monies then held with Prudential into an Allianz account that **GIBSON** would set up and monitor. Relying on **GIBSON**'s representations,

G.B. delivered a check in the amount of \$79,348 to **GIBSON**. **GIBSON** did not create an account with Allianz on behalf of G.B. and instead fraudulently kept the funds for his own personal use.

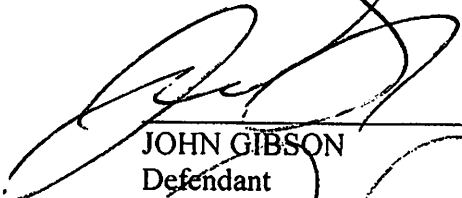
Between 2009 and 2014, **GIBSON** sent G.B. false and fraudulent account statements corresponding to the non-existent Allianz account via the United States Mail.

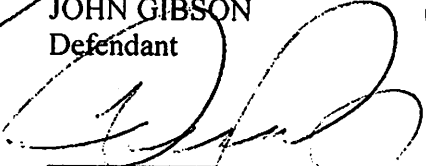
In or around March 2014, G.B. began to ask **GIBSON** to release his funds because he needed those monies to supplement his living expenses. In order to perpetuate the fraud, **GIBSON** agreed to release the funds and sent G.B. several money orders as partial payments via the United States Mail.


From 2008 through 2014, in the Eastern District of Louisiana and elsewhere, the defendant, **JOHN GIBSON**, for the purpose of executing and attempting to execute the scheme and artifice to defraud set forth above and for the purpose of obtaining money and property by means of false and fraudulent pretenses, representations, and promises, as set forth above, did unlawfully, willfully, and knowingly utilized the United States Mail; to wit, and solely as examples: on or about March 31, 2012, and in furtherance of the scheme to defraud, **GIBSON** mailed Y.B. and P.B. a false and fraudulent account statement corresponding to the non-existent Metlife account via the United States Mail; on or about August 13, 2014, in furtherance of the scheme to defraud, **GIBSON** mailed G.B. a money order in the amount of \$250.00 as a fictitious withdrawal from the non-existent Allianz account; in or about 2011, in furtherance of the scheme to defraud, **GIBSON** mailed S.J. and D.J. a check in the amount of \$1,000.00 as a fictitious withdrawal from the non-existent Metlife account.

In summary, all of the evidence introduced at trial would establish the elements of the offense and prove the defendant's guilt beyond a reasonable doubt. Moreover, the above described statement is not intended to constitute a complete statement of all facts and evidence of the defendant's guilt in this case, but rather is a minimum statement of facts necessary to establish a factual predicate for the guilty plea.

READ AND APPROVED:


JOHN GIBSON (date) 7/18/16
Defendant


TOWNSEND MYERS (date) 7/18/16
Counsel for Defendant


SEAN TOOMEY (date) 7/18/16
Assistant U.S. Attorney

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

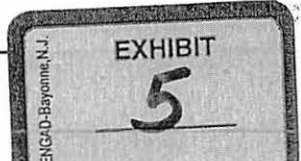
UNITED STATES OF AMERICA Criminal Case No. 16-103
VS. March 22, 2017
JOHN GIBSON Section R

REPORTER'S OFFICIAL TRANSCRIPT OF THE SENTENCING HEARING
BEFORE THE HONORABLE SARAH S. VANCE
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Government:	MR. SEAN M. TOOMEY U.S. Attorney's Office 650 Poydras Street Suite 1600 New Orleans, LA 70130
For the Defendant:	MR. TOWNSEND M. MYERS Townsend M. Myers, APLC 700 Camp Street Suite 213 New Orleans, LA 70130
Official Court Reporter:	Lanie M. Smith, RPR, CRR 500 Poydras Street, B-275 New Orleans, Louisiana 70130 (504) 589-7782

Proceedings reported using computerized stenotype;
transcript produced via computer-aided transcription.



P R O C E E D I N G S

(Call to order of the court.)

THE COURTROOM MANAGER: First up on the Court's criminal document, criminal case 16-103, *USA versus John Gibson*.

09:51AM

Mr. Gibson, please step up to the podium. Counsel, please make your appearances for the record.

MR. TOOMEY: Good morning, Your Honor. Sean Toomey on behalf of the United States.

09:51AM

MR. MYERS: Good morning, Your Honor. Townsend Myers appearing on behalf of and with John Gibson.

THE COURT: This matter is before the Court for sentencing. Is there any reason that sentence cannot be imposed at this time?

09:52AM

MR. MYERS: Not by the defense, Your Honor.

MR. TOOMEY: No, Your Honor.

THE COURT: All right. I'll begin by there was a Rule 11(c)(1)(C) plea agreement in this case in which the defendant agreed to plead guilty to Count 1 of the bill of information and in return the government agreed not to charge him with any other violations of Federal law that he may have committed in the Eastern District of Louisiana provided that he truthfully informed the government of those crimes before pleading guilty.

09:52AM

09:52AM

1 The government also agreed to seek a three-point
2 offense level reduction for timely acceptance of responsibility
3 and agreed that the correct loss amount for the purposes of
4 calculating the defendant's guideline sentencing range is
09:52AM 5 between \$95,000 and \$150,000.

6 The Court accepts the plea agreement because it
7 adequately reflects the seriousness of the offense, avoids the
8 uncertainty of trial and does not undermine the statutory
9 purposes of sentencing.

09:53AM 10 You forgot you had that in there?

11 MR. TOOMEY: I'm sorry, Your Honor. I'm looking at the
12 plea agreement now.

13 THE COURT: It's on the first page, I think.

14 (Brief pause in the proceedings.)

09:53AM 15 THE COURT: Do y'all have a different one?

16 MR. MYERS: Your Honor, Record Document No. 19. I do
17 not see that language in terms of the dollar amounts.

18 THE COURT: Yeah. And we went over this at the
19 rearraignment as a (c)(1)(C) plea agreement because you agreed
09:53AM 20 to the loss amount which is the sentencing factor.

21 MR. TOOMEY: I apologize, Your Honor (Reviewing).

22 (Brief pause in the proceedings.)

23 THE COURT: You want to go look at it? What?

24 MR. TOOMEY: The Court just provided me with
09:54AM 25 Record Document 19. I don't see that language, Your Honor.

1 THE COURT: It's not in the one that's in the record?

2 No.

3 Where did we get this?

4 MR. TOOMEY: Maybe if we could pass this, Your Honor;

09:55AM 5 and let me just review this briefly.

6 THE COURT: Well, which one --

7 MR. TOOMEY: I don't recall another plea agreement,

8 Your Honor.

9 THE COURT: Because we have one. I have one that I'm

09:55AM 10 looking at right now dated June 24th. You must have come in

11 with another one.

12 MR. MYERS: If I could clarify, Your Honor. I believe

13 that is the case that there had been an earlier discussion

14 about a plea along those lines, but that that had been

09:55AM 15 submitted as a draft plea agreement and it was supplemented by

16 the plea agreement that Counsel is referencing as

17 Record Document Number 19. So I would agree that that language

18 was not in the plea agreement that we signed.

19 THE COURT: Okay. Then we're going to have to take a

09:55AM 20 break for me to read this because --

21 MR. TOOMEY: I'll note, Your Honor, that I have

22 reviewed the presentence report and I do not believe the

23 presentence report reflects the --

24 THE COURT: It doesn't and that's why I was wondering

09:56AM 25 what planet you guys were on because I had a different plea

1 agreement in my materials and I didn't realize that there was a
2 different one than the one we had in the file on the --

3 MR. TOOMEY: I apologize for the confusion.

4 THE COURT: No, it's probably on my end. You just need
09:56AM 5 to give me some time. We're going to take a break and do
6 another sentencing, and we'll come back and do this one.

7 MR. TOOMEY: Thank you, Judge.

8 (Court is in recess.)

9 THE COURTROOM MANAGER: Criminal case 16-103, *USA*
10:34AM 10 *versus John Gibson.*

11 THE COURT: All right. We had started this proceeding
12 a few minutes ago and I had the wrong plea agreement and I just
13 want to put on the record and make sure that we're all on the
14 same page that the proper plea agreement was the plea agreement
10:34AM 15 submitted dated July 18, 2016; is that correct?

16 MR. TOOMEY: Yes, Your Honor.

17 MR. MYERS: Yes, Your Honor.

18 THE COURT: And that plea agreement did not have an
19 agreement as to the proper loss amount for the purposes of
10:34AM 20 guideline calculations?

21 MR. MYERS: That's correct, Your Honor.

22 MR. TOOMEY: Yes, ma'am.

23 THE COURT: Then why don't we just start from the
24 beginning on this hearing and whatever happened before is noted
10:34AM 25 as an error and we'll proceed.

1 MR. MYERS: If I could also, Your Honor, I failed to
2 also mention in addition to obviously Mr. Gibson who is present
3 in court beside me; his wife, Angelle, is here; his mother,
4 Winda Christopher; and his two children are also here in the
10:35AM 5 audience. I just wanted to make that a part of the record as
6 well.

7 THE COURT: Thank you. This matter is before the Court
8 for sentencing. Is there any reason that sentence cannot be
9 imposed at this time?

10:35AM 10 MR. TOOMEY: No, Your Honor.

11 MR. MYERS: No, Your Honor.

12 THE COURT: Mr. Gibson, have you received a copy of the
13 presentence investigation report?

14 THE DEFENDANT: Yes, Your Honor.

10:35AM 15 THE COURT: I understand that neither the government
16 nor the defendant has any objections to the report; is that
17 right?

18 MR. TOOMEY: Yes, Your Honor.

19 MR. MYERS: That's right, Your Honor.

10:35AM 20 THE COURT: Since there are no objections to the
21 report, is it correct for me to state that there are no errors,
22 corrections, alterations, additions or objections that either
23 the government or the defendant wishes to make to the report?

24 MR. TOOMEY: That's correct, Your Honor.

10:35AM 25 MR. MYERS: That's correct.

1 THE COURT: Since there are no objections to the
2 presentence investigation report, the Court adopts its
3 statements of fact and orders the report, except for the
4 sentencing recommendation, filed under seal.

10:36AM

5 Mr. Gibson, you've been found guilty of one count
6 of mail fraud in violation of Title 18, United States Code,
7 Section 1341. There was a Rule 11(c)(1)(A) plea agreement in
8 this case in which the defendant agreed to plead guilty to
9 Count 1 of the bill of information. In return the government

10:36AM

10 agreed not to charge the defendant with any violations of
11 Federal law that he may have committed in the Eastern District
12 of Louisiana, provided that he truthfully inform the government
13 of those crimes prior to pleading guilty. The government also
14 agreed to seek a three-point offense level reduction for timely
15 acceptance of responsibility.

10:36AM

16 Has there been such a motion?

17 MR. TOOMEY: Your Honor, at this time I would make that
18 motion orally.

19 THE COURT: All right. The motion is granted.

10:36AM

20 The Court accepts the plea agreement because it
21 adequately reflects the seriousness of the offense, avoids the
22 uncertainty of trial and does not undermine the statutory
23 purposes of sentencing.

10:36AM

24 I have consulted the United States Sentencing
25 Guidelines and determined that the advisory sentencing range is

1 as follows: You have a total offense level of 14, a criminal
2 history category of I, which indicates a guideline range of 15
3 to 21 months imprisonment; a fine range of 4,000 to
4 \$427,194.70; restitution in the amount of \$213,597.35 and a
5 \$100 special assessment.

6 The defendant has moved for a downward departure
7 from the guideline range or in the alternative for a downward
8 variance. The Court is prepared to rule on that.

9 First, the Court addresses the defendant's
10 argument that his offense was aberrant behavior and that he is
11 entitled to a departure under Section 5K.2.20 of the sentencing
12 guidelines. Under that section, the Court may depart downward
13 only if the defendant committed a single criminal occurrence or
14 single criminal transaction that was committed without
15 significant planning, was of limited duration and represents a
16 marked deviation by the defendant from an otherwise law-abiding
17 life.

18 Although the defendant does not have a criminal
19 record, that is not enough to qualify for a departure under
20 this section. As detailed in the factual basis, the defendant
21 defrauded several individuals over a period of more than five
22 years. This is far from the sort of spontaneous and seemingly
23 thoughtless act that constitutes aberrant behavior under
24 Fifth Circuit precedent and the Court therefore finds that a
25 departure for aberrant behavior is not warranted.

1 Next the Court addresses the defendant's argument
2 that a departure under Section 5H1.5 is warranted for his
3 employment record.

4 Under the sentencing guidelines and Fifth Circuit
10:38AM 5 precedent, the defendant's employment record is not ordinarily
6 relevant in determining whether a departure is warranted. A
7 departure is warranted only when this characteristic is present
8 to an exceptional degree.

9 The PSR states that the defendant works from home
10:39AM 10 as a clinical research associate, but the mere fact that the
11 defendant is employed is not enough to warrant a departure.

12 Accordingly the Court finds that the defendant's
13 employment record is not sufficiently exceptional to warrant a
14 departure.

10:39AM 15 The defendant also argues that he's entitled to a
16 departure under 5H1.6 for family ties and responsibilities.
17 The defendant is married with two daughters. Under the
18 sentencing guidelines, family ties and responsibilities are not
19 ordinarily relevant in determining whether a sentence should be
10:39AM 20 imposed outside the applicable guideline range. The issue is
21 whether the defendant's family ties and responsibilities are
22 sufficiently exceptional to justify a downward departure.

23 The guidelines instruct that in determining
24 whether a departure for family responsibilities is warranted,
10:39AM 25 the Court shall ascertain whether the defendant serving a

1 sentence within the applicable guideline range will cause
2 substantial, direct and specific loss of essential caretaking
3 or essential financial support to the defendant's family. The
4 loss of caretaking or financial support substantially exceeds
10:40AM 5 the harm ordinarily incident to incarceration for a
6 similarly-situated defendant. The loss of caretaking or
7 financial support is one for which no effective remedial or
8 ameliorative programs are reasonably available making the
9 defendant's caretaking or financial support irreplaceable and
10:40AM 10 the departure effectively will address the loss of caretaking
11 or financial support.

12 Here the defendant has made no showing that the
13 loss of caretaking and financial support for his family
14 resulting from a guideline sentence substantially exceeds the
10:40AM 15 harm ordinarily incident to incarceration for a
16 similarly-situated defendant. Many defendants are married and
17 have children. The defendant provides no reason why his wife
18 cannot provide financial and caretaking support or why this
19 care or support cannot be supplemented by private or public
10:40AM 20 assistance.

21 Accordingly the Court finds that the defendant's
22 family responsibilities are not sufficient to warrant a
23 departure.

24 The Court also addresses his argument that his
10:41AM 25 charitable and civic contributions warrant a departure. In

1 support the defendant points to his degree in theology and his
2 100 hours of community service with Uplifting Kids charity.

3 Guideline Section 5H1.11 instructs that civic,
4 charitable or public service activities and similar prior good
10:41AM 5 works are not ordinarily relevant in determining whether a
6 departure is warranted. Although defendant's charitable work
7 is admirable, the Court finds consistent with Section 5H1.11
8 that this work does not warrant a departure. That's 5H1.11.

9 For these reasons, the defendant's motion for a
10:41AM 10 departure is denied. As for the variance motion, the Court may
11 grant a downward variance; but the Court finds that a downward
12 variance is not warranted in this case. Selecting a
13 non-guideline sentence is within the discretion of the
14 sentencing court. In imposing a sentence sufficient but not
10:42AM 15 greater than necessary, the Court considers not only the
16 defendant's history and characteristics; but also numerous
17 other factors, including the nature and circumstances of the
18 offense; the need for the sentence to reflect the seriousness
19 of the offense; the need to promote respect for the law; the
10:42AM 20 need to deter criminal conduct and the need to protect the
21 public from further crimes by the defendant. The defendant's
22 crimes, although nonviolent, are serious. The Court finds that
23 the sentencing guidelines accurately reflect the seriousness of
24 the defendant's crime. Although the defendant has no criminal
10:42AM 25 history, that fact is incorporated into the sentencing

1 calculation. The defendant is employed, has family obligations
2 and has performed charitable work; but none of these factors
3 are present to an unusual degree.

4 Accordingly the motion for a downward variance is
10:42AM 5 denied.

6 Are there any victims who would like to be heard?

7 MR. TOOMEY: Yes, Your Honor, I believe there are.

8 THE COURTROOM MANAGER: Good morning, ma'am. If you
9 would just state your name for the record, please.

10:43AM 10 MS. GOSIN: Good morning, Judge. My name is Lillian
11 Baham Gosin. I am the daughter of Poleate Baham who is
12 90 years old and the late Yvonne Baham. They're victims of
13 Mr. Gibson.

14 If you don't mind, I'm going to read my statement
10:43AM 15 just for the sake of nerves and getting through it.

16 THE COURT: That's fine.

17 MS. GOSIN: Judge, I'm the one who discovered that
18 Mr. Gibson stole money from my parents. Mr. Gibson is the
19 husband of my niece Angelle. I love my niece; and as I have
10:43AM 20 explained to her mother, my oldest sister, when the theft was
21 first discovered, my position has always been that who Angelle
22 chose to live her life with was totally her business and not
23 mine. It was only after Mr. Gibson went into my parent's home
24 and stole money from them that I involved myself, not in
10:44AM 25 Angelle's life, but in what he had done to my parents.

1 I was living and working in Denver at the time;
2 however, I was coming home on an average of once a month. My
3 husband was still living and working here so we went back and
4 forth. Each time that I was home, I visited my parents. It
10:44AM 5 was on one of those occasions that my mom, dad and I were in my
6 mom's bedroom. She was too weak to get out of bed that day.
7 She looked up at me and said to me, "Lillian, I don't
8 understand why we can't get our money. We want our money."

9 I responded, "What money? What are you talking
10:44AM 10 about, Mom?"

11 She said that she had been trying to contact
12 Angelle's husband because they had invested money with him, but
13 that he was not calling them back. She told me that they
14 always have problems getting their statements and each time
10:44AM 15 they would talk to my sister and eventually a statement would
16 show up.

17 At that time she told my daddy to go get them.
18 She said, "Go get the letters."

19 He came back, and he laid about 20 letters on the
10:45AM 20 bed. I opened the letters and could not believe what I was
21 looking at. At first glance, the statements looked like
22 MetLife forms; but it became very clear very fast that these
23 were made-up forms. I spent hours with my parents that day
24 showing them that the letters were fake and trying to console
10:45AM 25 them at the same time. I explained to them that the postmarks

1 on the envelope indicated they came from a different address
2 than the MetLife address on the so-called statements. I
3 explained to them that I would look into this for them.

4 I contacted my daughter, Lindsey, who is an
10:45AM 5 attorney. I contacted my youngest sister, Lawanna, because I
6 knew that she had some financial experience and knowledge. The
7 three of us examined the documents. We found where Mr. Gibson
8 used an account number. We contacted MetLife and learned that
9 Mr. Gibson never invested any money in my parent's name; that
10:46AM 10 the account was not real and that, in fact, we learned that on
11 the day that Mr. Gibson went to my parent's house; convinced
12 them to take their money out of a legitimate account with
13 Prudential and taking a loss in doing so; turning over the
14 money to him; that that day, he did not even possess the
10:46AM 15 necessary license to invest their money.

16 It became obvious that Mr. Gibson walked into my
17 parent's house with the intent to steal from them. It became
18 obvious that Mr. Gibson took my parent's money and moved away
19 to California, never intending to invest my parent's money.

10:46AM 20 Needless to say, this resulted in chaos within
21 the family. I remember standing in Office Depot faxing
22 documents to MetLife in an attempt to recoup their losses. At
23 the same time I was on the phone with one of my sisters who was
24 crying and telling me that pursuing this could kill Daddy
10:47AM 25 because after all the years of protecting his stuff, for him to

1 realize that someone walked in and stole his money was going to
2 kill him. This was very stressful.

3 But I; along with my daughter Lindsey and
4 Lawanna, my sister, continued to work through the agonizing
10:47AM 5 situation and were able to recoup some of my parent's losses.
6 I want to make it clear that the recoup funds came from MetLife
7 insurance and not from Mr. Gibson. He has never returned a
8 penny.

9 My parents worked hard for everything they had.
10:47AM 10 My daddy entered the service in World War II at the age of 15.
11 My daddy and mama married in the early Fifties and worked to
12 make a living during some very difficult and challenging times.
13 It was not easy for people of color.

14 My mama told me that when they were living in
10:47AM 15 New Orleans, she went to work at a candy store and the owner
16 told her that since she was a pretty colored girl, she needed
17 to stand in the window showing pralines to the people passing
18 by to draw customers.

19 My daddy who loves coffee told me that when he
10:48AM 20 was in the Navy, the Red Cross volunteers would give coffee to
21 the German prisoners of war and not the colored soldiers.

22 Now, I'm saying that to demonstrate to the Court
23 how hard it was for my parents to acquire their honest money.
24 Regardless of the injustices that they had to endure, they were
10:48AM 25 always proud and eager to talk about how blessed they were to

1 be able to take care of themselves and that they would never
2 have to rely on their children financially in their old age as
3 they would say.

10:48AM 4 It took a lot of prayers. They are both devout
5 Catholics. It took the love that they have for each other and
6 their children to outweigh the injustices.

7 Now, it is my opinion that anyone who can walk
8 into the home of their wife's grandparents -- a grandmother
9 stricken with Parkinson's and a grandfather in his Eighties who
10:48AM 10 is trying to be the primary caretaker of his wife -- and steal
11 their hard-earned money, that person, Mr. Gibson, does not have
12 a conscience. It is not going to change.

13 Mr. Gibson is someone that doesn't understand the
14 term "honest living," and he doesn't understand the true value
10:49AM 15 of money. My parents did. They prayed hard; worked hard; were
16 responsible, honest people. They raised a family of seven
17 children and provided a good home through a lot of sacrificing.

18 Mr. Gibson sees money for who has it and what
19 will it take for him to get some of someone else's hard-earned
10:49AM 20 money for nothing. It is my opinion that he will not change.
21 There will be other victims of Mr. Gibson.

22 This brings me to my last point. Soon after my
23 Mama passed in February 2016, my daddy and I were taking care
24 of some of his business at the bank. After leaving the bank,
10:49AM 25 while driving, I noticed that my daddy was quiet and sad. I

1 asked him what was on his mind. I thought he was going to say
2 that he missed Mama and that he didn't understand why she had
3 to die because that was a conversation we were having on a
4 daily basis and I would talk to him about her being in heaven
10:50AM 5 and being safe and not having to suffer anymore and those type
6 of things.

7 But that wasn't on his mind after leaving the
8 bank that day. He turned to me and he said this and this is
9 his words, "I'm just thinking about all the old people that
10:50AM 10 don't have somebody like you. They probably have money
11 somewhere that they have forgotten about or someone has stolen
12 from them that they could never get back."

13 He told me that he wanted me to know that he
14 appreciated everything that I had done for him and Mama and
10:50AM 15 what I was doing to help him. This is why I'm standing here in
16 front of you because if I could have influence to prevent just
17 one more elderly person from being a victim of Mr. Gibson, I
18 have honored my parents.

19 Thank you, Judge.

10:50AM 20 THE COURT: Thank you very much. I'm really sorry
21 this has happened to your family.

22 MS. GOSIN: Yes, it was devastating. Thank you.

23 THE COURT: I'm sure it was.

24 MR. TOOMEY: This is Mr. Gary Baham. He's one of the
10:51AM 25 victims in this case, and he has already provided a letter to

1 the Court.

2 Is there anything in addition you would like to
3 tell the Court?

4 MR. BAHAM: No, not really.

10:51AM 5 MS. SMITH: I'm Yvonne Smith. I'm Gary's sister, and I
6 was going to read his letter on his behalf because it's too
7 difficult for him.

8 THE COURT: Fine.

9 MS. SMITH: "My name is Gary Baham, and I have been
10 financially ruined. I worked for the same employer for more
11 than 30 years; and after losing my job due to being laid off, I
12 thought I properly invested my retirement savings, but instead
13 it was stolen from me. For years I was told that my investment
14 was gaining me enormous returns when all the while I had no
10:51AM 15 investment at all. I received false financial statements and
16 constant reassurances from John Gibson that my money was secure
17 and that the longer that I left it in this account, the gains
18 would be extraordinary. I have paid back taxes and penalties
19 because the money that I thought that I was investing was
10:52AM 20 instead spent, not by me, but all the IRS knew is that it
21 wasn't invested properly in order for me to receive tax
22 exemptions. The IRS knew more than I did.

23 "When I contacted my investment agent,
24 John Gibson, I was told that he would notify the IRS and
10:52AM 25 provide them with any documentation that they would need. The

1 result was obviously that I still had a big tax bill.

2 "I have been cited by the city to make repairs to
3 my house and do not have the money to do that. I am 65 years
4 old, and do not know how I am going to make it to the next day.

10:52AM 5 "I pray that this Court will order full
6 restitution to me and all the victims of this horrendous
7 fraud."

8 And if I may for the record state that I am
9 Gary's sister and my parents also were affected and my niece
10:53AM 10 and my oldest sister whom I love dearly and I love my niece and
11 her children. And it is a further indication of the enormous
12 pain that this has caused our family.

13 I must also add that I've seen the painful, real
14 consequences that my brother continues to suffer every day
10:53AM 15 because of the defendant's actions. Thank you.

16 THE COURT: Thank you. Again, I'm really sorry that
17 this happened to you. I think it's outrageous.

18 Is there anybody else?

19 MR. TOOMEY: No, Your Honor.

10:53AM 20 THE COURT: There's somebody in the back.

21 MR. MYERS: That's Mr. Gibson's wife who wanted to
22 speak on his behalf, Your Honor.

23 THE COURT: Briefly.

24 MS. GIBSON: Hi, Your Honor. As you see, this affected
10:53AM 25 my family; and I hate that it did. I pray that they can

1 forgive him. I pray that you'll show mercy on him because it
2 does impact me and my children for him if he gets prison time.
3 We do count on his income and it would be devastating,
4 especially to our three-year-old and I just pray that you can
10:54AM 5 show him some mercy and that my family can forgive him. That's
6 all I have to say.

7 THE COURT: Thank you.

8 Mr. Gibson, is there anything you want to say?

9 THE DEFENDANT: I would just like to say that,
10:54AM 10 Your Honor, this happened in 2009 and I know my wife's family
11 mentioned that I cannot change but, Your Honor I have changed.
12 And I have not touched any money since 2009. I'm a hard worker
13 and I turned my life around and I work every day to provide for
14 my wife, our newborn baby and our son.

10:55AM 15 I know what I did was wrong, Your Honor. Before
16 this even came to court, I made restitution to the victims
17 myself. I tried to do the best that I could, and then MetLife
18 went ahead and reimbursed the victims for the amount that they
19 had invested with me.

10:55AM 20 This has caused so much pain to my family and my
21 wife and my kids that, Your Honor, we're just trying to put the
22 pieces back together. And I just ask for your mercy that I can
23 continue to provide for my family; continue to be a good
24 citizen, Your Honor and continue to be a better man.

10:55AM 25 THE COURT: Counsel, is there anything you want to say?

1 MR. MYERS: No, Your Honor. I would rest on what I
2 submitted to the Court.

3 THE COURT: All right. Does the government have
4 anything?

10:56AM 5 MR. TOOMEY: Your Honor, I think we've already
6 submitted our position. I do want to, again, just note for the
7 Court that this is a horrible case. It's a tragedy all around.

8 But I do recognize that this defendant did come
9 forward immediately via a bill of information and accepted
10:56AM 10 responsibility. It doesn't mitigate and take away from the
11 obvious horrific conduct and the damages he's caused to
12 obviously his own family, but I do think it's appropriate to
13 acknowledge that from the government.

14 THE COURT: All right. I get the impression that the
10:56AM 15 defendant wants to act like, you know, nothing happened. I
16 mean, that to go forward and say, "I'm sorry" and act like
17 nothing happened and that's not the way it works. And a lot of
18 this pain was caused by him, the pain on his wife was caused by
19 him.

10:56AM 20 So I just don't understand how somebody could do
21 something to these hard-working people who struggled their
22 whole lives to be independent and save money and to steal from
23 them like that is just beyond my imagination to conceive.

24 But in any event, I've considered the advisory
10:57AM 25 guidelines and all the factors set forth in Section 3553(a) and

1 find it appropriate to give the defendant a sentence within the
2 guideline range.

3 It is the judgment of the Court that the
4 defendant John Gibson is hereby committed to the custody of the
10:57AM 5 Bureau of Prisons to be imprisoned for a term of 18 months.

6 The Court imposes this sentence because it's
7 sufficient, but not greater than necessary, to comply with the
8 statutory purposes of sentencing. Specifically the sentence
9 adequately reflects the seriousness of the offense, the need
10:57AM 10 for deterrence and to promote respect for the law and the
11 defendant's acceptance of responsibility.

12 The Court finds that the defendant does not have
13 the ability to pay a fine and no fine shall be imposed.

14 Restitution is mandatory. The defendant owes a total of
10:58AM 15 \$213,597.35 in restitution. Restitution in the amount of
16 \$124,720.84 is owed to Allianz Life and restitution in the
17 amount of \$88,876.51 is owed to MetLife. The payment of
18 restitution shall began while the defendant is incarcerated.

19 Upon his release, any unpaid balance will be paid at the rate
10:58AM 20 of \$100 a month. This payment is subject to increase or
21 decrease depending on the defendant's ability to pay. The
22 Court finds that the defendant does not have the ability to pay
23 interest on the restitution. The Court, therefore, will waive
24 the interest requirement.

10:58AM 25 Upon your release from imprisonment, you shall be

1 placed on supervised release for a term of three years. Within
2 72 hours of your release from the custody of the Bureau of
3 Prisons, you shall report in person to the probation office in
4 the district where you're released.

10:59AM 5 While you're on supervised release, you shall not
6 commit any federal, state or local crime and you shall not
7 possess a firearm or other dangerous weapon. You shall not
8 possess a controlled substance, you shall cooperate in the
9 collection of a DNA sample, and you shall comply with the
10:59AM 10 mandatory and standard conditions of supervised release adopted
11 by this Court.

12 In addition, I impose the following special
13 conditions: You shall participate in an approved cognitive
14 behavioral therapeutic treatment program and abide by all
10:59AM 15 supplemental conditions of treatment. You shall contribute to
16 the cost of the program to the extent you're deemed capable by
17 the probation officer; the financial disclosure condition and
18 the financial restriction condition which are imposed as a
19 result of the nature of the offense; the defendant shall pay
10:59AM 20 the restitution imposed by this judgement; the defendant shall
21 maintain full-time employment.

22 It's further ordered that the defendant shall
23 immediately pay to the United States a special assessment of
24 \$100.

11:00AM 25 Mr. Gibson, in your plea agreement you waived

1 your right to challenge your conviction or your sentence except
2 on direct appeal of any sentence that's imposed in excess of
3 the statutory maximum. Because the sentence I imposed is below
4 the statutory maximum, you have no right to directly appeal
11:00AM 5 your sentence or conviction; but you may have a right to bring
6 a claim of ineffective assistance of counsel in an appropriate
7 proceeding.

8 I'm going to order you to self-surrender. How
9 much time do you need?

11:00AM 10 MR. MYERS: Could we have 60 days, Your Honor?

11 THE COURT: In 60 days.

12 MR. MYERS: And may I also request to the extent that
13 the Court is able to make the request, Mr. Gibson's family and
14 children are in Los Angeles, California. If the Bureau of
11:00AM 15 Prisons would consider placement -- I guess that would be the
16 Southern District of California.

17 THE COURT: California is the Central District of
18 California, I think.

19 MR. MYERS: Los Angeles. You are right.

11:01AM 20 THE COURT: All right. The Court will recommend that
21 the defendant be designated in a facility close to his family
22 in the Central District of California.

23 THE COURTROOM MANAGER: Self-surrender date is
24 May 24th, Judge.

11:01AM 25 THE COURT: All right.

1 All right. Mr. Gibson, if you don't surrender
2 yourself at the place and on the date designated in this order,
3 you can be prosecuted for contempt of court which would result
4 in another conviction and sentence. Do you understand that?

11:01AM

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: Is there anything further?

7 MR. TOOMEY: No, Your Honor.

8 THE COURT: All right.

9 MR. MYERS: Thank you very much, Your Honor.

11:01AM

10 THE COURTROOM MANAGER: All rise.

11 (WHEREUPON, the proceedings were adjourned.)

12 * * * *

13 REPORTER'S CERTIFICATE

14 I, Lanie M. Smith, CRR, RPR, Official Court
15 Reporter, United States District Court, Eastern District of
16 Louisiana, do hereby certify that the foregoing is a true and
17 correct transcript, to the best of my ability and
18 understanding, from the record of the proceedings in the
19 above-entitled and numbered matter.

18 /s/ Lanie M. Smith
19 Official Court Reporter

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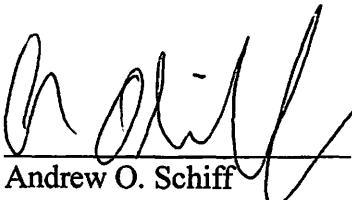
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CERTIFICATE OF SERVICE

I hereby certify that an original and three copies of the foregoing were filed with the Securities and Exchange Commission, Office of the Secretary, 100 F Street, N.E., Washington, D.C. 20549-9303, and that a true and correct copy of the foregoing has been served by overnight, on this 24th day of April 2017, on the following persons entitled to notice:

The Honorable James E. Grimes
Administrative Law Judge
Securities and Exchange Commission
100 F Street, N.E.
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