UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-19608

In the Matter of **MICHAEL K. MARTIN,** **Respondent.**	**DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY DISPOSITION AGAINST RESPONDENT MICHAEL K. MARTIN AND MEMORANDUM OF LAW IN SUPPORT**

Pursuant to Rule 250(b) of the Securities and Exchange Commission's ("SEC" or "Commission") Rules of Practice, the Division of Enforcement ("Division") respectfully moves for summary disposition against Respondent Michel K. Martin ("Martin").

This is a follow-on proceeding arising from a civil securities broker-dealer registration injunction and anti-fraud injunctions imposed by the United States District Court for the District of Maryland against Martin after granting summary judgment against him. Because Martin has been enjoined and the sole issue in this proceeding concerns the appropriate sanction against him under Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act"), this motion for summary disposition should be granted, and an associational bar should be imposed against him.

I. Procedural History and Factual Background

A. Martin's Criminal Conviction

In March 2018, Martin pleaded guilty and was subsequently convicted of conspiracy to commit wire fraud. In that plea, he acknowledged under oath that in March 2013, operating as Capital Source Lending ("CSL"), he participated in a fraudulent investment scheme. Martin admitted that, as part of this scheme, the victim investors made payments into escrow to establish "blocked bank

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accounts," which they were falsely told would contain ten times the amount of the funds in escrow in approximately 30 days. Exh. 1, Transcript of Plea Hearing, *U.S. v. Martin*, No. 3:15-cr-00163-EAW-1 (W.D.N.Y December 5, 2017), at pp. 37-38.[1] Martin also admitted that when one of the victims discovered that the blocked bank account was fraudulent, Martin offered the victim another fraudulent scheme involving a bank guarantee. *Id.* at pp. 41-43.

As part of his plea agreement, also Martin specifically acknowledged that he engaged in two other fraudulent schemes, each of which included Martin making false promises to obtain and "monetize bank instruments" – (1) a scheme in June of 2013 involving a charter school in Orange County, California, and (2) the scheme involving the NAHB builders. Exh. 2, Plea Agreement, *U.S. v. Martin* (W.D.N.Y. October 30, 2017), at pp. 4-5.

With respect to the scheme involving the charter school in Orange County, California, Martin's plea agreement states:

> In or about June 2013, [Martin] became involved in a fraudulent scheme which purported to utilize a bank instrument to obtain a payout of millions of dollars in exchange for an advance fee. Specifically, the defendant became involved with J.L, a member of the board of California Virtual Education Partners, a charter school located in Orange County, California. As part of the scheme, J.L.

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[1] Under Rule 323, notice may be taken in this proceeding of "any material fact which might be judicially noticed by a district court of the United States…." 17 C.F.R. § 201.323. Thus, official notice may be taken of the Commission's public official records and of the docket reports, court orders, official trial transcripts, admitted trial exhibits, and other court filings by the parties in the civil action. The Division respectfully requests that judicial notice be taken of the following exhibits to this motion:

- Exhibit 1 – Transcript of Plea Hearing, *U.S. v. Martin*, No. 3:15-cr-00163-EAW-1 (W.D.N.Y December 5, 2017);
- Exhibit 2 – Plea Agreement, *U.S. v. Martin* (W.D.N.Y. October 30, 2017);
- Exhibit 3 – SEC Complaint, *SEC v. North Star Finance, LLC, et al.*, No. GJH-15-1339 (May 11, 2015);
- Exhibit 4 – District Court's Memorandum Opinion, *SEC v. North Star Finance, LLC, et al.*, No. GJH-15-1339 (August 15, 2019); and
- Exhibit 5 –Amended Final Judgment, *SEC v. North Star Finance, LLC, et al.*, No. GJH-15-1339 (October 17, 2019).

> represented to and promised the other board members that the charter school could get a donation of $3 million in exchange for payment to J.L.'s company, Vintage Capital Management, Ltd of a $750,000 "document fee." Upon receipt of the $750,000, J.L. wire transferred $400,000 to the defendant, Michael Martin, who falsely represented that he would obtain and monetize a bank instrument which would result in a payout to J.L. of "no less than" 105,000,000 Euros. On or about July 1, 2013, $400,000 was wire transferred to a bank account the defendant controlled at Wells Fargo Bank in the name of Michael Martin dba Capital Source Lending. The defendant never obtained or monetized a bank instrument and never obtained any funding for J.L. The $400,000 was transferred to the defendant was used by the defendant and others to, among other things, pay personal living expenses, and was not returned to J.L. or the California Virtual Education Partners.

Id.

At his plea hearing, Martin affirmed under oath that he agreed with the above statement of facts. Exh. 1, Transcript of Plea Hearing, pp.44-46.

With respect to the NAHB scheme, Martin's pleas agreement states:

> In or about August 2014, [Martin] became involved in a fraudulent scheme which purported to utilize a bank instrument to obtain a payout of millions of dollars in exchange for an advance fee. Specifically, the defendant became involved with North Star Finance, LLC, and its principals, T.E. and Y.O., who had entered into an arrangement with the NAHB and its members to obtain financing for members' construction projects. After North Star Finance, LLC and its principals failed to obtain the promised financing for NAHB members, the defendant promised to 'obtained a [bank guarantee] for purchase or monetization purposes to generate funds' for the members' construction projects. As part of the agreement, the members were required to send the defendant a "participation fee" which represented a percentage of the funding sought. As part of the scheme, the defendant obtained or attempted to obtain, via wire communications in interstate and foreign commerce, the following amounts from the following victims….[Boomer Development, $75000; Eagle Development $225,000; Thomas Dostal Development $160,000].

Exh. 2, Plea Agreement, pp. 4-5.

At his plea hearing, Martin further confirmed under oath that he agreed with this description of the scheme. Exh. 1, Transcript of Plea Hearing, pp.47-48.

B. <u>The District Court Case</u>

On May 11, 2015, the Commission charged Martin with, among other things, violating

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Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, Section 17(a) of the Securities Act of 133 ("Securities Act"), Section 5(a) and (c) of the Securities Act, and Section 15 of the Exchange Act. Exh. 3, SEC Complaint ("Compl."), *SEC v. North Star Finance, LLC, et al.*, No. GJH-15-1339. As summarized in the Order Instituting Proceedings, the Commission alleged that from at least January 2013 until May 2015, North Star Finance, LLC, and its principals, CSL, Capital Source Funding, LLC ("CSF"), and Martin, engaged in a prime bank scheme defrauding investors of over $5 million. Order Instituting Administrative Proceedings ("OIP"), IA Release No. 87616, November 25, 2019, Section II, ¶ 2; Exh. 3, Compl., ¶¶ 2-3. The complaint alleged that Martin offered prime bank instruments to investors, made material misrepresentations about the existence and legitimacy of the instruments and other related transactions, and lulled investors. OIP, Section II, ¶ 2; Exh. 3, Compl. at ¶¶ 2-4. The Complaint also alleged that Martin acted as an unregistered broker or dealer. OIP, Section II, ¶ 2; Exh. 3, Compl. at ¶ 96.

On August 15, 2019, the district court granted the Commission's motion for summary judgment. Exh. 4, Memorandum Opinion ("Mem. Op."). The district court found that Martin's admitted participation in the three fraudulent schemes described above violated Exchange Act Section 10(b) and Rule 10b-5 and Securities Action Section 17(a) as a matter of law:

> In each of the three above-mentioned schemes, [Martin] made false statements as to his ability to obtain and monetize bank instruments that would generate substantial profits. Because each scheme relied on Martin's ability to obtain and monetize these bank instruments, these false statements were material to the transactions. He also admitted that he knowingly and willfully participated in these schemes, satisfying the scienter requirement. And he both successfully offered and sold these securities to his victims.

Id. at 11.

The district court also granted summary judgment against Martin on the SEC's Securities Act Section 5 and Exchange Act Section 15 claims. With respect to Section 15, the district court found that Martin "regularly participated in securities transactions, gave advice

to investors, and actively recruited investors." *Id.* at 18.

In addition to imposing monetary relief, the district court found that Martin should be enjoined from violating the relevant securities laws. *Id.* at 19. On October 17, 2019, the district court entered an amended final judgment against Martin that, among other things, permanently enjoined him from future violations of each of the statutes specified above and from directly or indirectly participating in the issuance, offer or sale of any security. Exh. 5, Amended Final Judgment.

C. The Follow-on Proceeding

On November 25, 2019, the Commission initiated this follow-on proceeding against Martin pursuant to Section 15(b) of the Exchange Act. The Office of the Secretary served Martin on December 3, 2019. Exh. 5, Proof of Service. Martin never filed an answer to the OIP. On January 8, 2021, counsel for the Division provided a letter pursuant to Rule 230 to Martin offering him access to the investigative file. Exh. 6, Rule 230 Ltr. to Counsel.

II. The Standard for Summary Disposition

SEC Rule of Practice 250(b) provides that, after a respondent's answer has been filed and documents have been made available to the respondent for inspection and copying, a party may move for summary disposition of any or all allegations of the OIP. *See* 17 C.F.R. § 201.250(b). A motion for summary disposition may be granted if there is no genuine issue with regard to any material fact and the party making the motion is entitled to summary disposition as a matter of law. *Id*.

The Commission has repeatedly upheld the use of summary disposition in cases such as this, where the respondent has been enjoined and the sole determination concerns the appropriate sanction. *See, e.g., Gary M. Kornman*, Exchange Act Release No. 59403, 2009 WL 367635, at *10 & n. 58 (Feb. 13, 2009), *pet. denied,* 592 F.3d 173 (D.C. Cir. 2010) (collecting cases). Under

Commission precedent, the circumstances in which summary disposition in a follow-on proceeding involving fraud is not appropriate "will be rare." *Efim Aksanov*, Initial Dec. Rel. No. 1000, 2016 WL 1444454, at *2 (Apr. 12, 2016) (citing *John S. Brownson*, Exchange Act Release No. 46161 (July 3, 2002), 55 S.E.C. 1023, 1028 n.12, *pet. denied,* 66 F. App'x 687 (9th Cir. 2003)).

Further, "[f]ollow-on proceedings are not an appropriate forum to revisit the factual basis for, or legal challenges to, an order issued by a federal court, and challenges to such orders do not present genuine issues of material fact in our follow-on proceedings." *John W. Lawton*, Investment Adviser Act Release No. 3513, 2012 WL 6208750, at *5 (Dec. 13, 2012). Thus, the Commission does not permit a respondent to relitigate issues that were addressed in a previous civil proceeding against the respondent. *See James E. Franklin*, Exchange Act Release No. 56649, 2007 WL 2974200, at *4 (Oct. 12, 2007). Finally, any pending appeal of an underlying judgment does not prevent the Commission from exercising its jurisdiction in a follow-on administrative proceeding. *James E. Franklin*, 2007 WL 2974200, at *9 n.15.

III. Summary Disposition is Appropriate in This Proceeding

The Commission should permanently bar Martin from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, and also should permanently bar him from participating in an offering of penny stock.

Section 15(b) of the Exchange Act authorizes the imposition of an associational bar on any person who has been enjoined by a court of competent jurisdiction from acting as a broker or dealer and also authorizes the Commission to bar such person from participating in an offering of penny stock, if such bars would be in the public interest. 15 U.S.C. §§ 78o(b)(4)(C), (6)(A)(iii); *Tzemach David Netzer Korem*, Exchange Act Release No. 70044, 2013 SEC LEXIS 2155, at *32 (July 26, 2013) (holding that it is "well established that [the Commission is] authorized to sanction an

associated person of an unregistered broker-dealer or investment adviser in a follow-on administrative proceeding").

A. Martin Has Been Enjoined

The District Court permanently enjoined Martin from violating Section 15(a) of the Exchange Act, as well as the anti-fraud provisions of the securities laws. Section 15(a) of the Exchange Act makes it unlawful for any person, while acting as a broker or dealer, to effect transactions in, or to induce or attempt to induce the purchase or sale of, any security without being registered with the Commission as a broker or dealer or an associated person of a registered broker-dealer. *See* 15 U.S.C. § 78o(a)(1). The District Court specifically found that Martin acted as a broker or dealer in connection with the activities at issue in the litigation. Exh. 4, Mem. Op., at 18.

B. An Associational Bar and Penny Stock Bar Are in the Public Interest

In assessing whether associational and penny stock bars are in the public interest, the Commission considers several factors including:

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

Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979) (*quoting SEC v. Blatt*, 583 F.2d 1325, 1334 n.29 (5th Cir. 1978)). Additionally, the Commission considers the age of the violation and the degree of harm to investors and the marketplace resulting from the violation. *Marshall E. Melton*, Exchange Act Release No. 48228, 2003 SEC LEXIS 1767, at *5-6 (July 25, 2003).

The Commission has often emphasized, however, that the public interest determination extends beyond consideration of the particular investors affected by a respondent's conduct to the public at large, the welfare of investors as a class, and standards of conduct in the securities business generally. *See Christopher A. Lowry*, 55 S.E.C. 1133, 1145 (2002), *aff'd,* 340 F.3d 501

(8th Cir. 2003); *Arthur Lipper Corp.*, 46 S.E.C. 78, 100 (1975). Moreover, the public interest requires a severe sanction when a respondent's past misconduct involves fraud because opportunities for dishonesty recur constantly in the securities business. *See Richard C. Spangler, Inc.*, 46 S.E.C. 238, 252 (1976). Here, the *Steadman* factors weigh in favor of an associational industry bar.[2]

First, Martin's actions were egregious. As he admitted at his plea colloquy, and as the district court explained in its summary judgment opinion, Martin participated in three fraudulent investment schemes, all of which involved blatant lies about Martin's ability to acquire and deliver to investors bank instruments that would generate substantial profits. Exhs. 1; 2; 4, Mem. Op., p. 11. He defrauded his investors, including a charter school in California, out of millions of dollars, which he used for his own benefit, giving his investors nothing in return for their money.

Second, Martin's violations were recurrent. His misconduct was not an isolated incident. His three separate fraudulent schemes spanned approximately 18 months, from March 2013 to August 2014.

Third, Martin acted with a high degree of scienter. Martin promised investors that he could obtain fictional bank instruments and fleeced them for millions of dollars. As the district court noted in its summary judgment opinion, in his criminal plea, Martin "admitted that he knowingly and willfully participated in these schemes, satisfying the scienter requirement" for purposes of Section 10(b). Exh. 4, Mem. Op., p. 11.

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[2] Even though Martin's misconduct did not involve a penny stock *per se*, this kind of collateral relief is appropriate and in the public interest in this proceeding because where, as here, a party engages in misconduct that warrants a suspension or bar to protect investors in one part of the industry regulated by the Commission, it is in the public interest to protect investors in all parts of the industry the Commission regulates. Investors should not bear the risk the Commission is not able to accurately predict what business Martin may choose to undertake during the associational bar. Therefore, because a penny stock bar is not disproportionate in these circumstances, the Commission should include it as part of its order.

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Finally, Martin has given no assurances against future violations and has failed to recognize the wrongful nature of his conduct. Despite his guilty plea, for years he contested his civil liability in the district court litigation. That, coupled with the recency of the offense and the impact on the public at large, demonstrates that an associational bar is necessary. Such a bar "will prevent [Martin] from putting investors at further risk." *Montford & Co*., Advisers Act Release No. 3829, 2014 SEC LEXIS 1529, at *86-87 (May 2, 2014), *pet. denied,* 793 F.3d 76 (D.C. Cir. 2015).

Ultimately, the securities industry "relies on the fairness and integrity of all persons associated with each of the professions covered by the collateral bar to forgo opportunities to defraud and abuse other market participants." *John W. Lawton*, 2012 WL 6208750, at *11. Martin's pattern of blatant misconduct demonstrates he is incapable of such fairness and integrity. He presents a significant risk to the securities market and should be sanctioned accordingly. *See Bartko v. SEC,* 845 F.3d 1217, 1220-21 (D.C. Cir. 2017) ("Under Dodd-Frank, then, the Commission is now able to bar a securities market participant from the six listed classes—broker-dealers, investment advisers, municipal securities dealers, transfers agents, municipal advisors and NRSROs—based on misconduct in only one class.").

V. Conclusion

For the foregoing reasons, the Division of Enforcement respectfully requests the Commission grant this Motion for Summary Disposition, and impose a permanent associational bar and penny stock bar against Martin under Section 15(b) of the Exchange Act.

DATED: April 22, 2021

By: /s/ Melissa Armstrong
Melissa Armstrong

DIVISION OF ENFORCEMENT
Securities and Exchange Commission
100 F Street NE

Washington, DC 20549-5949
Telephone: (202) 551-4724
Fax: (202) 772-9282
Email: armstrongme@sec.gov

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CERTIFICATE OF SERVICE

I certify that on April 22, 2021, I caused to be served the foregoing DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY DISPOSITION on the following persons in the manner indicated:

By U.S. mail:
Michael K. Martin
Baltimore Residential Reentry Office
400 First Street, NW
5th Floor
Washington, DC 20534

/s/ Melissa Armstrong
Melissa Armstrong

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Exhibit 1

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA) 15CR163
)
vs.
Rochester, New York
MICHAEL K. MARTIN) October 30, 2017
Defendant. 10:15 a.m.
- - - - - - - - - - - - - - - - X

PLEA

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE ELIZABETH A. WOLFORD
UNITED STATES DISTRICT JUDGE

JOSEPH P. KENNEDY, JR., ESQ.
United States Attorney
BY: MARYELLEN KRESSE, ESQ.
ELIZABETH RUSSO MOELLERING, ESQ.
Assistant United States Attorneys
138 Delaware Avenue
Buffalo, New York 14202

JOSEPH J. TERRANOVA, ESQ.
2901 Bowen Road, Suite C
Elma, New York 14059
Appearing on behalf of the Defendant

COURT REPORTER: Karen J. Bush, Official Court Reporter
(585) 613-4312
100 State Street
Rochester, New York 14614

USA VS. M. MARTIN

P R O C E E D I N G S

* * *

THE CLERK: United States of America versus Michael K. Martin, 15CR163EAW.

THE COURT: Good morning.

MR. TERRANOVA: Good morning, your Honor.

MS. KRESSE: Good morning.

THE COURT: Welcome to Rochester. So we have Ms. Kresse, Ms. Baumgarten here.

MS. MOELLERING: Ms. Moellering.

THE COURT: I'm sorry. I know who Ms. Baumgarten is, too. Ms. Moellering is here from the U.S. Attorney's office. Mr. Terranova. I'm off this morning. I do know Michael Martin.

THE DEFENDANT: Yes, ma'am.

THE COURT: You're represented here today by Mr. Terranova?

THE DEFENDANT: Yes, ma'am.

THE COURT: My understanding is that we, obviously, were in court in Buffalo last week, at that time there was some discussions as to whether or not you wanted to

accept the plea offer that had been extended by the government. I understand that you have now elected to do that; is that correct?

THE DEFENDANT: Yes, ma'am.

THE COURT: What's going to happen is I'm going to ask you a number of questions. The purpose of my questions is that I need to make sure that you understand what you're agreeing to and that you're entering into this plea in what's called a knowing, voluntary and intelligent manner. So if at any point in time during the course of my questions, you either have a question for me or a question for your attorney, I want you to stop me and ask your question. Do you understand?

THE DEFENDANT: Yes, ma'am.

THE COURT: The purpose is not to rush through this. The purpose is to make sure that you understand your rights and what rights you're going to be giving up, okay?

THE DEFENDANT: Yes, ma'am.

THE COURT: So the first step is for you to be sworn in. I'll ask you to stand and raise your right hand and my courtroom deputy will swear you in.

(Whereupon, the defendant was administered the oath by the courtroom deputy.)

THE COURT: You can take a seat. Mr. Martin, what you just did there is took an oath, therefore, I'm going to

expect you to answer my questions, truthfully. If you do not answer my questions truthfully, you could be prosecuted for another crime called perjury. Do you understand that?

THE DEFENDANT: Yes, ma'am.

THE COURT: Could you state your full name for the record?

THE DEFENDANT: Michael Kevin John Martin.

THE COURT: Say that again.

THE DEFENDANT: Michael Kevin John Martin. John is a baptism; legal name Michael Kevin Martin.

THE COURT: And where were you born, Mr. Martin?

THE DEFENDANT: Chelsea, Massachusetts.

THE COURT: How old are you?

THE DEFENDANT: Fifty-eight.

THE COURT: How far did you go in school?

THE DEFENDANT: Two years of college.

THE COURT: I take it you can read, write and understand English?

THE DEFENDANT: Yes, ma'am.

THE COURT: One thing is wait until I finish the question. Again, with a mouse running around my courtroom, I'd rather have the lights going out than a mouse. Okay. We need you to be able to hear me and my court reporter. If at any time you don't hear me or have a question about what I ask,

wait until I finish the question before giving me your answer. Okay?

THE DEFENDANT: Yes, ma'am.

THE COURT: So I take it you can read, write and

[redacted]

at

[redacted]

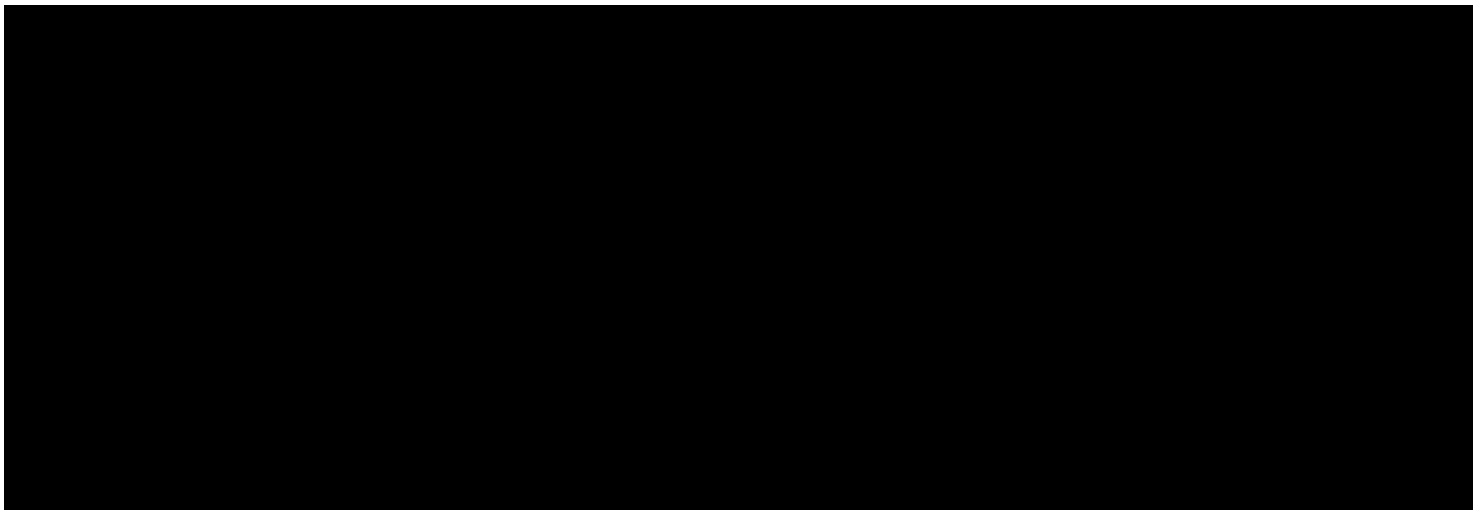
[redacted]

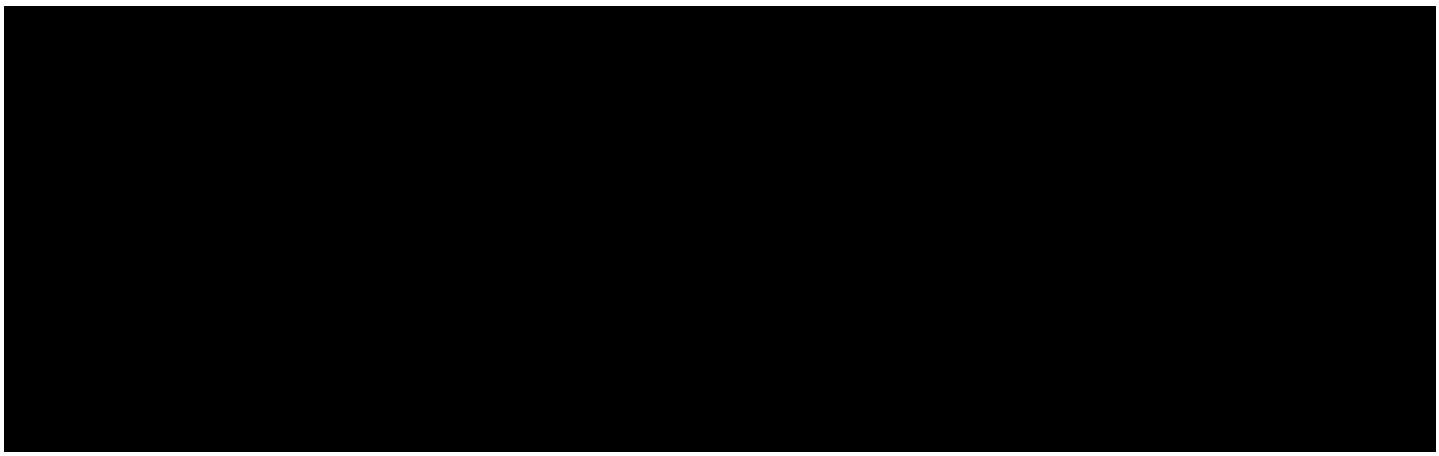
[redacted]

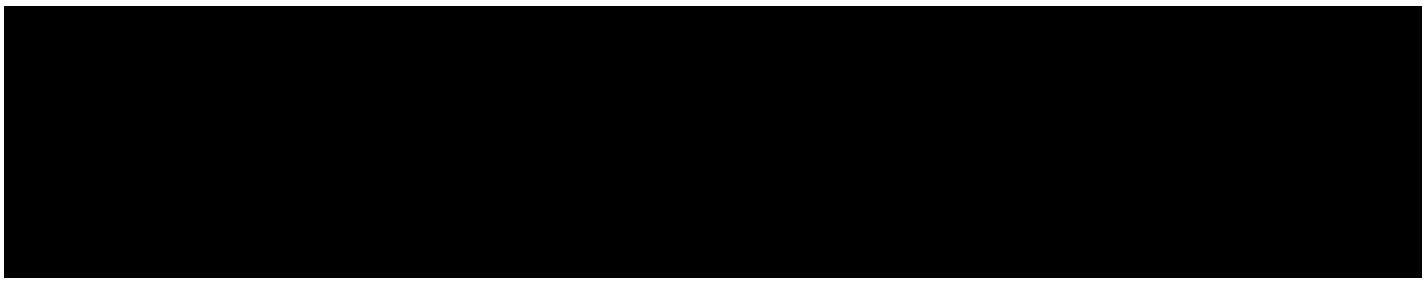
THE COURT: I'll remind you, I know you probably are a little nervous, but again, there is no reason to rush through this, so just wait. A good tip, pause for a minute after I finish my question before you give me your answer. So

[redacted]

[redacted]







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drugs or alcohol?

THE DEFENDANT: No, ma'am.

THE COURT: Is there any reason that you're not able to understand what's happening here in court today?

THE DEFENDANT: Other than the legality words, but no medication anything affecting me, no, ma'am.

THE COURT: Let me rephrase the question then. Is there any medical or mental health condition that is impacting your ability to understand what's happening here in court today?

THE DEFENDANT: No, ma'am.

THE COURT: And Mr. Terranova, I take it you've had an opportunity to discuss the plea agreement with your client?

MR. TERRANOVA: Extensively, Judge.

THE COURT: And are you satisfied that Mr. Martin understands the terms and conditions of the plea agreement and that he is able to enter into it in a knowing, voluntary and intelligent manner?

MR. TERRANOVA: Yes, your Honor. We've, since last Tuesday when we were before you in Buffalo, we have spent a great deal of time on the phone, by e-mail discussing the matter, and I believe my client is prepared to go forward.

THE COURT: Okay. And you believe that he understands the terms and conditions? You're satisfied with that?

MR. TERRANOVA: I do.

THE COURT: Now, regarding your decision, Mr. Martin, to enter into this plea agreement, have you discussed with your attorney the government's case against you, and by

that I mean the proof the government would have if this case went to trial?

THE DEFENDANT: Yes, ma'am.

THE COURT: Have you also talked with your attorney about what the likely result might be if the case went to trial?

THE DEFENDANT: Yes, ma'am.

THE COURT: Would it be fair to state that based on your discussions with your attorney, you believe entering into this plea agreement and pleading guilty to this charge is in your best interest?

THE DEFENDANT: Yes, ma'am.

THE COURT: With respect to the written plea agreement itself, have you gone over that in detail?

THE DEFENDANT: Not in detail, I was just doing that now.

THE COURT: Have you read the agreement?

MR. TERRANOVA: Well, I received it on Friday morning, your Honor, and I e-mailed it to my client. We discussed it on Friday extensively. I went through each section with him on the phone and assumed that he had read through it. And then when he arrived this morning at about 10 o'clock, we discussed it.

THE COURT: Is that correct, Mr. Martin?

THE DEFENDANT: Yes, ma'am.

THE COURT: Have you read the entire agreement yourself?

THE DEFENDANT: I haven't. And we went through it, like he said, like, you know, accepting responsibility, told me a little bit about that and then told me a little bit about that.

THE COURT: I'm not going to take a plea until you're able to tell me that you read it all yourself. We'll take a break so you can do that. You've not read the entire agreement?

THE DEFENDANT: No, ma'am.

THE COURT: How much time do you think you need?

MR. TERRANOVA: Probably 15 minutes, Judge. I had assumed that my client read it.

THE COURT: It doesn't matter, we're here. I got nothing else on the calendar today. We'll come back when you've gone through the whole agreement.

THE DEFENDANT: Okay. I won't be long.

THE COURT: Apparently there are no lights in the building except for this courtroom.

MS. KRESSE: That's a good sign.

(Whereupon, there was a break in the proceeding.)

THE COURT: We're back on the record. We have Ms.

Kresse, Ms. Moellering here from the U.S. Attorney's Office; Mr. Terranova and Mr. Martin is in the courtroom. Let me ask you, Mr. Martin, we took a break. Have you been able to review the entire plea agreement?

THE DEFENDANT: Yes.

THE COURT: And have you had an opportunity to talk to your attorney about any questions that you had during the recent review?

THE DEFENDANT: Yes.

THE COURT: Have you had sufficient time to talk to your attorney about this before coming in here today?

THE DEFENDANT: Yes.

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

THE DEFENDANT: Yes.

THE COURT: To the extent during any of your discussions with Mr. Terranova that you had any questions about the plea agreement, was he able to answer them to your satisfaction?

THE DEFENDANT: Yes.

THE COURT: Okay. What I'm going to do is I'm going to go through some of the provisions in the plea agreement with you on the record. I want to make sure that the record is clear, that you understand them. If at any point you

have a question about anything I ask you, I want you to stop me and ask your question. Do you understand?

THE DEFENDANT: Yes.

THE COURT: I'm not going to go through everything because you've told me you've read the agreement and gone over it with your attorney, but if you have a question about anything, whether I bring it up or not, again, I want you to ask me the question. All right?

THE DEFENDANT: Yes.

THE COURT: I want to direct your attention to the first paragraph of the plea agreement. In that paragraph it talks about certain maximum penalties that can be imposed for the charge, Count 1 of the superseding indictment, which charges a violation of Title 18 U.S.C. Section 1349, conspiracy to commit wire fraud. It talks about certain maximum penalties that can be imposed for a conviction on that crime, specifically 20 years in prison, a fine of $250,000, a mandatory $100 special assessment, and a supervised release term of three years. You understand those are the maximum penalties that can be imposed for this crime?

THE DEFENDANT: Yes.

THE COURT: Now, that special assessment of $100, that is mandatory, I have to impose it. Do you understand that?

THE DEFENDANT: Is that due today?

THE COURT: No, it's not due today. It will be assessed at the time of sentencing.

THE DEFENDANT: Yes.

THE COURT: And it's due immediately, but if you don't have the funds to pay it immediately, you can -- it's not as though collection efforts are going to be started against you immediately. But it's not due until the time of sentencing. Do you understand that?

THE DEFENDANT: I understand.

THE COURT: I don't have any discretion. In other words, I have to order that as part of sentencing. Do you understand that?

THE DEFENDANT: I understand.

THE COURT: Have you talked to Mr. Terranova about supervised release?

THE DEFENDANT: Yes, we went over that.

THE COURT: It's a type of probation or parole. And while on supervised release, you need to comply with certain terms and conditions that I set and the probation office sets with my approval. Do you understand that?

THE DEFENDANT: Yes, ma'am.

THE COURT: Now, in paragraph two it talks about the fact that if, while on supervised release, it's proven by a

preponderance of evidence that you violated any of those terms and conditions, then you could go to prison for up to two years without getting any credit for the time you've served on supervised release. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: What I'd like you to do is direct your attention to paragraph five of the plea agreement. Do you have that there in front of you?

THE DEFENDANT: Yes.

THE COURT: Do you see the reference at the end of paragraph five to the Sentencing Reform Act of 1984?

THE DEFENDANT: Yes.

THE COURT: That is the federal law, Mr. Martin, that I have to follow when I sentence you. And that federal law requires that I consider a number of factors before I impose a sentence. I have to consider your background, the nature and circumstances of your crime, a number of different factors. But the first step that I have to go through, I have to calculate what would the Sentencing Guidelines recommend for a sentence. Have you talked to Mr. Terranova about the Sentencing Guidelines?

THE DEFENDANT: Yes, ma'am.

THE COURT: Do you understand that the Sentencing Guidelines require me to determine two numbers: One is called

your offense level; and one is called your criminal history category. And then those two numbers recommend to me a range for a sentence under the Sentencing Guidelines. Do you understand that?

THE DEFENDANT: Yes, ma'am.

THE COURT: Now, before you're sentenced in this case, you're going to be interviewed by the Probation Department and they're going to prepare a document, it's called a presentence investigation report. And that document is going to tell me more about you, more about your background and more about the nature and circumstances of the crime that you pled guilty to. And it also will contain the Probation Department's calculations as to what the correct offense level and criminal history category are under the Sentencing Guidelines. Do you understand that?

THE DEFENDANT: Yes, ma'am.

THE COURT: It's then my job, as the sentencing judge, to carefully review that document and then sentence you to what I believe is just, fair, appropriate and reasonable under the law. Do you understand that?

THE DEFENDANT: Yes, ma'am, but not above the recommendation or you could?

THE COURT: I could, but you would -- I can -- just so you're clear, I could sentence you up to the maximum

allowed under the law and you would not be able to withdraw your guilty plea. Do you understand that?

THE DEFENDANT: Yes, ma'am.

THE COURT: However, if I sentence you within the range that you've agreed upon with the government, then you're waiving any right to appeal any sentence either within that range or less than that range. If I sentence you above that range, then you can appeal that sentence to the Second Circuit Court of Appeals and I'll go over that in just a minute. Do you understand that?

THE DEFENDANT: Understood.

THE COURT: So, you and the government, for purposes of this plea agreement, have entered into an understanding as to what you believe the correct calculations are under the Sentencing Guidelines. Now, this doesn't bind me. In other words, I have to make my own determination at the time of sentencing as to what I believe the correct calculations are under the Sentencing Guidelines. And the fact of the matter is, even if I agree with your calculations, the Sentencing Guidelines are advisory, not mandatory. So ultimately the decision as to what to sentence you to is within my discretion and in accordance with the Sentencing Reform Act of 1984. Do you understand that?

THE DEFENDANT: Can I back up? You said who

calculated the Guidelines?

THE COURT: You and the government in this plea agreement have entered -- are entering into an understanding as to what you believe the correct calculations are under the Sentencing Guidelines.

THE DEFENDANT: Me personally?

THE COURT: You and the government. Do you understand that?

MR. TERRANOVA: Well, I've advised my client, your Honor, that, if I'm not speaking out of turn here, that the Sentencing Guidelines are based upon certain relevant conduct and that the relevant conduct represents what I understand to be the total loss calculated for the conspiracy purposes. And so that's where the Guideline calculation comes from. So when the Judge says that you agree to it, what she is saying, if I'm not paraphrasing the Court inaccurately --

THE COURT: I'll let you know if you are.

MR. TERRANOVA: -- that this agreement hopes to put in place the Sentencing Guidelines that we believe the government and you and I believe are accurate.

THE COURT: That is correct, Mr. Terranova. Do you understand that, Mr. Martin?

THE DEFENDANT: Yes, ma'am.

THE COURT: What?

THE DEFENDANT: Yes, ma'am.

THE COURT: In other words, this plea agreement, among other things, represents an agreement that you reached with the government. It's what you believe the correct calculations are under the Sentencing Guidelines.

MR. TERRANOVA: And that doesn't mean, of course, that that is not subject to some challenge for sentencing purposes.

THE COURT: Well, it would be on your part and the government's part. I mean, I may not agree with it.

MR. TERRANOVA: Correct.

THE COURT: Probation may not agree with it.

As the sentencing judge, one of my roles is, at the time of sentencing, to make a determination as to what I believe the correct calculations are under the Sentencing Guidelines. So what you and the government agree to doesn't necessarily bind me. I could agree with this, I may not agree with this. Probation may agree with this, they may not. We're not going to know until the presentence investigation report is prepared and I take a look at it. And once a presentence investigation report is prepared, you'll have an opportunity to review it with your attorney. The government will review it. If there are objections to it, you'll try to work those out with the probation officer before the time of sentencing. But

at this point, what is being agreed upon in terms of the Sentencing Guidelines is you and the government are entering into an agreement as to what you think the Sentencing Guidelines call for in terms of the sentence.

THE DEFENDANT: Okay.

THE COURT: You understand that?

THE DEFENDANT: And during probation, I will talk to probation and bring my side and what I believe is the real money that is owed or taken and then you'll look at that and you'll determine between this and what --

THE COURT: No, you're bound by this. So, in other words, you're entering into an agreement. This plea agreement represents your agreement as to what you think the total loss is for Sentencing Guideline purposes.

MR. TERRANOVA: Judge, if I could just interrupt for a moment. Part of the problem is conceptually explaining to a client what conspiracy is, and the amounts my client is pleading to Count 1 of the indictment, the conspiracy, and there is an amount the government has indicated was the loss attributed to the acts of the co-conspirators. So I've explained to my client that he is legally responsible for what damages the conspiracy did in terms of financial loss, but what he is saying is it accurately reflects what I've told him that there is this lengthy sentencing process in which I'm able to

submit presentence memorandum with his input and that we can explain certain factors that we believe is the loss.

THE COURT: But you're agreeing to the loss as part of the plea agreement?

MR. TERRANOVA: Correct.

THE COURT: And you're agreeing to the restitution as part of the plea agreement?

MR. TERRANOVA: Correct. The factor that is very difficult to explain to a client, and frequently I found for law students to understand, is the law of conspiracy. And I've explained to my client that these are the damages that are attributable to the conspiracy and he is a co-conspirator, one of several.

THE COURT: Okay.

MR. TERRANOVA: So there are factors as a co-conspirator he may not be aware of. I've shown him what the Government's proof is and the various losses that is attributable to co-conspirators. My client will agree that this, in fact, is the loss of which he is a member.

THE COURT: And which he is responsible.

MR. TERRANOVA: As a co-conspirator.

THE COURT: Do you understand that?

THE DEFENDANT: Yes.

THE COURT: Ms. Kresse, anything that you want to

add?

MS. KRESSE: I think the Court made clear, and it's set forth on paragraph 12 on page 8 that the defendant and the government agree to the Guideline calculations that are in the plea agreement, and it specifically provides that neither party will advocate or recommend the application of any other Guideline or move for any Guideline departure or move for or recommend a Guideline outside of the -- as otherwise set forth in the agreement.

THE DEFENDANT: What the Court has indicated, the number is the number.

THE COURT: It doesn't mean it's my number, but it means it's your number.

MR. TERRANOVA: Yes. We understand that, your Honor. I've indicated to my client that presentence advocacy is important and the Court has full control.

THE COURT: But let's be clear, you're not going to be able to argue me, at interviews with the Probation Department or at the time of sentencing, that I should sentence you to anything other than 41 to 51 months in prison.

MR. TERRANOVA: Correct.

THE COURT: That doesn't mean it binds me.

MR. TERRANOVA: Yes.

THE COURT: That you can't argue to me that I

should sentence you anywhere outside of that.

MR. TERRANOVA: I've explained to my client that I can, through presentence advocacy, bring to the Court's attention certain factors that the Court may accept and sentence my client accordingly.

THE COURT: Let me make sure the record is clear, Mr. Martin. Do you have any questions about anything we covered up to this point?

THE DEFENDANT: Not yet.

THE COURT: And you understand that I can sentence you up to the maximum allowed under the law, including up to 20 years in prison, and you cannot withdraw your guilty plea? Do you understand that?

THE DEFENDANT: Yes, ma'am.

THE COURT: And you understand that for purposes of this plea agreement, you're entering into an agreement with the government that the Sentencing Guidelines would recommend a sentence of 41 to 51 months in prison. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: And you understand that part of your agreement with the government is that you're not going to argue to me at the time of sentencing that I should sentence you outside of the 41 to 51 prison sentence? Do you understand that?

THE DEFENDANT: But you could.

THE COURT: I could sentence you within it, above it, up to 20 years or sentence you below this.

THE DEFENDANT: Yes, ma'am.

THE COURT: But this agreement binds you, doesn't bind me, but binds you. Do you understand?

MR. TERRANOVA: What I advised my client, in presentence advocacy, I can bring to the Court certain factors about my client and the Court makes a decision as to sentencing, but you made it clear you could sentence him above the Guidelines, within the Guidelines or below and that is your decision and we can't advocate for a certain Guideline number.

THE COURT: There is nothing restricting you from bringing whatever information you want to bring before sentencing, and I would expect your attorney to do that as part of sentencing. What can't happen, you can't disagree with the Guideline range that is in the plea agreement and you can't argue to me for a sentence outside of that sentencing range at the time of sentencing.

THE DEFENDANT: Understood, understood.

THE COURT: Ms. Kresse, anything you think we need to clarify?

MS. KRESSE: I think we're good.

THE COURT: Let's make sure you understand how the

Guideline calculation is calculated that you're agreeing on with the government. You, in paragraph six, you and the government are agreeing that there is a base offense level of 7. You and the government are agreeing that the total loss that is in paragraph 7, the total loss was in excess of 1.5 million, and that the offense involved 10 or more victims and so the offense level would go up by 18. And in paragraph nine, you and the government are agreeing that that number should go down by three for what's called acceptance of responsibility. So the total offense level would end up being a 22. Do you understand that, Mr. Martin?

THE DEFENDANT: Yes, ma'am.

THE COURT: Now, I want to point out to you something about acceptance of responsibility. You don't get that automatically by coming in here and pleading guilty. You're going to be interviewed, as we said, by the Probation Department. They're going to prepare the presentence investigation report. Your attorney, I'm assuming, is going to submit materials to me at the time of sentencing. I have to make my own determination at the time of sentencing that you truly are remorseful for your conduct and you -- that you have accepted responsibility. Do you understand that?

THE DEFENDANT: Yes, ma'am.

THE COURT: If you were to commit another crime

between now and the time of sentencing, that could lead me to conclude that you have not accepted responsibility. Do you understand.

THE DEFENDANT: Understood.

THE COURT: And in paragraph 10, you and the government are agreeing that you have the lowest criminal history category that you can have, which is a 1. So as we said, if these numbers are correct and you have a total offense level of 22, and criminal history category of 1, the Sentencing Guidelines, at least, would recommend a prison sentence of 41 to 51 months in prison, a fine of $7500 up to $75,000, and a supervised release term of one to three years. Do you understand that?

THE DEFENDANT: Yes, ma'am.

THE COURT: If I sentence you within that range or much less than that range, then you waive your right to appeal or collaterally attack that sentence. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: If you were to go to trial and you were convicted after a trial and then I sentenced you, you would have the right to appeal that conviction and any sentence I imposed to the court above me, it's called Second Circuit Court of Appeals. Do you understand that?

THE DEFENDANT: Yes, ma'am.

THE COURT: You'd also have some limited rights to what they call collaterally attack the conviction and sentence by bringing, for instance, a habeas corpus proceeding before the Court where you were convicted. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: But you're specifically agreeing, pursuant to the terms and conditions of this plea agreement that if I sentence you within or less than 41 to 51 months in prison, a fine of $7500 up to $75000, and a supervised release term of one to three years, then you're waiving any right to a appeal or collaterally attack that sentence. Do you understand that?

THE DEFENDANT: Understood.

THE COURT: Now, in addition, you're agreeing about restitution, this is in paragraph 17. You're agreeing that the restitution that I must order in this case is in the amount of $1,113,000 to be paid to the victims as set forth in paragraph 17. Do you understand that?

THE DEFENDANT: Yes, ma'am.

THE COURT: And you are also agreeing that if I impose a restitution order in that amount, then you're waiving any other a right to waive any.

THE DEFENDANT: Can I ask a question? Virtual Education parties, 750. That was the accumulative debt that

Mr. Landow took, that is not me, but I have to pay what he took.

THE COURT: It's going to be joint and several with any other defendant that was found guilty in this offense or similar offense in the case.

THE DEFENDANT: So like if the person that took it, I could be splitting this with him?

THE COURT: You are right. In other words, you're going to be legally liable for the full amount. There is going to be restitution ordered as part of sentencing in this case that is going to require you to pay restitution in that full amount. But a victim can't recover twice from the same losses. So, in other words, for example, if the California Virtual Education Partners recovers some or all of that restitution from another culpable party, then that is going to reduce the amount that you would owe.

THE DEFENDANT: Understood.

THE COURT: Okay. But just so you're clear, you're agreeing to -- I must order restitution in this amount of $1,113,000, and you're agreeing not to appeal any restitution order that does not exceed that amount. Do you understand that?

THE DEFENDANT: Yes, ma'am.

THE COURT: Any other questions that you have up

to this point?

THE DEFENDANT: No, ma'am.

THE COURT: Let me talk to you about the rights that you're going to be giving up by pleading guilty as opposed to going to trial. First of all, do you understand that if you wanted, you would be entitled to continue with the plea of not guilty that has been entered on your behalf in this case and go to a trial in this case?

THE DEFENDANT: Yes.

THE COURT: And at that trial, you would be entitled to continued representation by Mr. Terranova. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: You would not have the burden of proof at this trial, you would not have the burden to prove anything. It would be up to the government to present its case against you and call witnesses against you. Do you understand that?

THE DEFENDANT: Yes, ma'am.

THE COURT: Your attorney, on your behalf, could challenge any of the evidence that the government sought to introduce and he could cross examine and confront any of the witnesses who testified against you. Do you understand that?

THE DEFENDANT: Yes, ma'am.

THE COURT: You'd have the right, if you wanted,

to testify on your own behalf or you could choose not to do that. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: You'd also have the right to call witnesses, put in proof in the form of a defense case, compel witnesses to attend the trial or you could choose not to do that. Do you understand that?

THE DEFENDANT: But I think that discovery is already closed. I don't think I would be able to do that particular --

MR. TERRANOVA: Well, the discovery we have, and most of it has been disclosed to my client and some of it, I'm still digging out.

THE DEFENDANT: I understand.

THE COURT: What I'm saying, you could present a defense case and testify on your own behalf or choose not to do, you could put in evidence if you wanted to and you could call witnesses to testify or you could choose not to. Do you understand.

THE DEFENDANT: Understood.

THE COURT: And if you chose not to testify or you chose not to put in any type of a defense case, I would specifically instruct the jury they could not in any way consider that as evidence of your guilt or evidence of anything

else for that matter. Do you understand that?

THE DEFENDANT: Yes, ma'am.

THE COURT: In addition, the government would have to prove each element of each charge beyond a reasonable doubt. Do you understand that?

THE DEFENDANT: Yes, ma'am.

THE COURT: And so for the elements at issue with Count 1 of the superseding indictment, if you look at paragraph three of the plea agreement.

THE DEFENDANT: Paragraph three?

THE COURT: On page two.

THE DEFENDANT: Yes, ma'am.

THE COURT: That sets forth the elements that the government would have to prove beyond a reasonable doubt before you could be convicted of conspiracy to commit wire fraud. Number one, that two or more persons, in some way or manner, agreed to try to accomplish a common and unlawful plan to commit wire fraud, that is, to knowingly and willfully devise a scheme or artifice to defraud or for obtaining money or property by means of materially false or fraudulent pretenses, representations or promises, and, for the purpose of executing such scheme or artifice, transmitted or caused to be transmitted by means of wire communication in interstate or foreign commerce, any writing, signs, signals, pictures or

sounds, in violation of Title 18 U.S.C. Section 1343. In other words, that is the first element, that there was an agreement between two or more persons to accomplish this objective. Do you understand that?

THE DEFENDANT: Yes, ma'am.

THE COURT: And then the second element that the government would have to prove before you could be convicted of conspiracy to commit wire fraud is that you knew the unlawful purpose of the plan and that you willfully joined in it. Do you understand that?

THE DEFENDANT: Yes, ma'am.

THE COURT: In addition, the jury would have to be unanimous in its verdict. In other words, all 12 people would have to be in agreement that the government had met its burden of proof. Do you understand that?

THE DEFENDANT: Yes, ma'am.

THE COURT: Do you understand that you're going to be giving up these rights?

THE DEFENDANT: I do.

THE COURT: Do you understand that a plea of guilty is the same as if a jury found you guilty after trial?

THE DEFENDANT: Yes, ma'am.

THE COURT: Let me ask you this. First, with a felony conviction, you lose certain civil rights, such as the

right to vote, the right to hold certain licenses or offices. Do you understand that?

THE DEFENDANT: Yes, ma'am.

THE COURT: Have any other promises been made to you to get you to plead guilty --

THE DEFENDANT: Yes, ma'am.

THE COURT: -- other than those contained in the plea agreement?

THE DEFENDANT: No, ma'am.

THE COURT: Has anyone coerced you or threatened you in any way to get you to plead guilty?

THE DEFENDANT: No, ma'am.

THE COURT: Have you answered my questions truthfully?

THE DEFENDANT: Yes, ma'am.

THE COURT: Do you have any question for me or your attorney?

THE DEFENDANT: No, ma'am.

THE COURT: All right. What I would like you to do is turn to the last numbered paragraph of the plea agreement.

THE DEFENDANT: 13?

THE COURT: Paragraph 25.

THE DEFENDANT: Yes, ma'am.

THE COURT: All right. What I'm going to do, Mr. Martin, I'm going to read this paragraph into the record. You can follow along on your copy, but I want you to listen to me, too, because after I read it, I'll ask you whether or not it's true, and it states as follows. This plea agreement represents the total agreement between the defendant, Michael K. Martin, and the government. There are no promises made by anyone other than those contained in this agreement. This agreement supersedes any other prior agreements, written or oral, entered into between the government and the defendant. Is that true?

THE DEFENDANT: Yes, ma'am.

THE COURT: Okay. I'm going to do the same thing with the paragraph on the next page. It states as follows. I have read this agreement, which consists of 14 pages. I have had a full opportunity to discuss this agreement with my attorney, Joseph Terranova, Esq. I agree that it represents the total agreement reached between myself and the government. No promises or representations have been made to me other than what is contained in this agreement. I understand all of the consequences of my plea of guilty. I fully agree with the contents of this agreement. I am signing this agreement voluntarily and of my own free will. Is that true, sir?

THE DEFENDANT: Yes, ma'am.

THE COURT: Okay. The next step is for you to

sign the plea agreement. Understand, though, Mr. Martin, when you sign this, you're telling me in writing that you fully understand all of the terms and conditions and you're entering into it in a knowing, voluntary and intelligent manner. Is that true?

THE DEFENDANT: It is, your Honor.

THE COURT: I ask you to sign the plea agreement now or do you have the original?

MS. KRESSE: We're signing it now.

THE COURT: So wait until the government signs it and you can sign the original.

THE COURT: Thank you. Do you have another copy?

MR. TERRANOVA: I have an unsigned copy that will be filed.

THE COURT: Yes, but I'll talk about the factual basis in a minute, so I wanted to make sure you have another copy.

MR. TERRANOVA: We have one.

THE COURT: The record should reflect that I have in front of me the original plea agreement. It's been signed by Ms. Moellering and Ms. Kresse on behalf of the Acting U.S. Attorney and signed by Mr. Martin and witnessed by his attorney, Mr. Terranova. I'm satisfied, Mr. Martin, based on your answers to my questions and based on your demeanor here in

court and based on your signing of the plea agreement that you are entering into this plea in a knowing, voluntary and intelligent manner. Now, before I accept your plea, you have to tell me what you did. So why don't we turn, if you would, to paragraph four of the plea agreement. Let me ask you this, Mr. Martin, have you read paragraphs 4 (a) through (g) (2), I guess it spans from pages two through six.

THE DEFENDANT: I'm sorry, the last, 4 (a).

THE COURT: (G)(2).

THE DEFENDANT: Yes, your Honor, I did, your Honor.

THE COURT: Is the information contained in the paragraphs accurate?

THE DEFENDANT: After pointing out, yes, yes.

THE COURT: Okay. What I'm going to do is go through, I'm not going to go through everything. I'll go through some of it with you. Let's start with paragraph 4 (a) states as follows: Between in or about March of 2013 and in or about May 2013 in the Western District of New York and elsewhere, you did knowingly, willfully and unlawfully combine, conspire and agree with Christopher Venti and others to device a scheme and artifice to defraud and obtain money and property by means of materially false and fraudulent pretenses, representations and promises, and for the purpose of executing

such scheme and artifice to transmit and cause to be transmitted by means of wire communication in interstate and foreign commerce writings, signs, signals and sounds; is that correct?

THE DEFENDANT: Yes, ma'am.

THE COURT: And it was part of the conspiracy that beginning in or about March of 2013, you, operating as Capital Source Lending, LC, agreed to work with Mr. Venti, who was operating as Viewpoint Solutions Group and Secured Strategies, LC, on a fraudulent investment scheme involving multiple victims, including victims one through six; is that true?

THE DEFENDANT: Yes, ma'am.

THE COURT: And so part of the conspiracy was that victims who were interested in obtaining funding, Mr. Venti would solicit them and others would solicit them with false promises of access to blocked bank accounts; is that accurate?

THE DEFENDANT: Yes, ma'am.

THE COURT: And those victims then would make payments into escrow to establish those blocked bank accounts; is that true?

THE DEFENDANT: Yes.

THE COURT: And then these victims were falsely and fraudulently told that the blocked bank accounts would contain ten times the amount of the funds in escrow in

approximately 30 days; is that true?

THE DEFENDANT: Yes, ma'am.

THE COURT: And I'm looking at paragraph 4(d). As part of the conspiracy, the victims were given letters on bank letterhead that purported to confirm the existence of the blocked bank accounts, but those letters were bogus or fraudulent; is that true?

THE DEFENDANT: Yes, ma'am.

THE COURT: And in reality, you, Christopher Venti and others involved in the conspiracy knew that the bank letters were fraudulent and that the confirmation process established in the escrow process signed by the victims was fraudulent and pre-arranged numbers, that victims were instructed to call directed them to others involved in the scheme who repeated the fraudulent representations; is that true?

THE DEFENDANT: Yes, ma'am.

THE COURT: And I'm looking at paragraph 4 (e) and you and Christopher Venti and others, fraudulently obtained funds via wire communication in interstate and foreign commerce and attempted to obtain such funds from victims one through six as listed in paragraph 4(e); is that correct?

THE DEFENDANT: Yes, ma'am.

THE COURT: And I'm looking at paragraph 4 (f).

You and Mr. Venti and others used the funds obtained from the victims for your own purposes; is that correct?

MR. TERRANOVA: He can just speak for himself.

THE COURT: I'm sorry, what?

MR. TERRANOVA: Well, you're asking him about Venti also using his funds for his personal use. I prefer if my client just answered for himself.

THE COURT: Well, the factual basis of the plea is a conspiracy and the factual basis of the plea has him acknowledging the accuracy of what others who were part of the conspiracy did, so if it's not accurate.

THE DEFENDANT: Yes, ma'am.

THE COURT: Let's be clear. If this is not accurate, you tell me what's not accurate. I'll be asking you the questions as consistent with the factual basis of the plea and if there is something in there you disagree, you tell me. Did you and Mr. Venti and others use the funds obtained from the victims for your own personal use?

THE DEFENDANT: Some of them.

THE COURT: Did you use any of them to establish the blocked bank accounts?

THE DEFENDANT: Yes, I did.

THE COURT: How much of them did you use to establish blocked bank accounts?

THE DEFENDANT: I believe the bank charged me probably somewhere around $758,000.

THE COURT: So you paid --

THE DEFENDANT: I paid Barclays, I paid third-party Barclays and went to a Barclays, and I paid HSBC for what I believe were proof of funds, but I guess they are not real, so yes, ma'am.

THE COURT: Were blocked bank accounts actually established?

THE DEFENDANT: They told me they were, your Honor.

THE COURT: Who told you?

THE DEFENDANT: The third parties that I paid for these accounts.

THE COURT: Who are the third parties?

THE DEFENDANT: There was a bank out of the VP, out of the Bank of England, and then I went through a third party named Christopher Powell who had access to HSBC bankers and he was the go-to guy because he had connections, but yes. Some of these funds I used for my personal use as well.

THE COURT: Well, how much did you use for your personal expenses?

THE DEFENDANT: Let me see, $100,000 and 200,000, probably a third of them.

THE COURT: So about $100,000.

THE DEFENDANT: Yes, ma'am.

THE COURT: And would you agree that neither victim, victim one or victim three who actually apparently sent money or you obtained their money ever received a return of the funds.

THE DEFENDANT: No, ma'am.

THE COURT: You agree with that, don't you?

THE DEFENDANT: I agree with that.

THE COURT: And after victim three discovered that the blocked bank account was fraudulent, you and Mr. Venti offered -- Mr. Venti offered victim three a different one with a higher rate of return authorizing the bank guarantee, but that was also fraudulent. Is that true?

THE DEFENDANT: The number three?

MR. TERRANOVA: Yes.

THE DEFENDANT: He confirmed the POF because --

THE COURT: I don't know what that means.

THE DEFENDANT: Proof of funds.

THE COURT: You tell me, did you offer victim three, in response to --

THE DEFENDANT: Yes, I did.

THE COURT: Let me finish the question. And let's be clear.

THE DEFENDANT: Yes, ma'am.

THE COURT: Okay. Once victim three finds out that you have obtained $200,000 as part of this fraudulent scheme and victim three confronts you about this or confronts you or your co-conspirators about it is it true that you and Mr. Venti offered him a different investment opportunity that was also fraudulent?

THE DEFENDANT: Mr. Venti didn't offer him the second, I did. I had 100,000, and I myself offered a different avenue for him because --

THE COURT: Was it a different avenue or was it a fraudulent scheme?

THE DEFENDANT: It was a fraudulent scheme.

THE COURT: It was a fraudulent scheme, is that what you're saying, Mr. Martin?

THE DEFENDANT: It's turning out that way, your Honor.

THE COURT: No. Mr. Martin, you're either guilty of conspiracy to commit wire fraud or you're not.

THE DEFENDANT: Yes, ma'am.

THE COURT: You either get acceptance of responsibility reduction in your Sentencing Guidelines calculations or you don't. So you tell me.

THE DEFENDANT: Yes, ma'am, it was, yes, ma'am.

THE COURT: Let me finish the question. Did you enter into this fraudulent scheme and this conspiracy to commit wire fraud and then when victim three discovers it, you offer him another fraudulent scheme?

THE DEFENDANT: Yes, ma'am.

THE COURT: And in fact, victim three never received the promised pay out of 5 million dollars or the return of $200,000 released from escrow; is that true?

THE DEFENDANT: Yes, ma'am.

THE COURT: And instead you used at least some of that money for your own personal expenses, about $100,000, is that what you're telling me?

THE DEFENDANT: Of that one, I'm going to say probably of that $200,000 of him, probably $75,000, your Honor.

THE COURT: And what happened to the other $125,000?

THE DEFENDANT: They went to pay for the insurance and everything that was required for the bank guarantee that victim three was notified of.

THE COURT: And so the bank received the other $125,000?

THE DEFENDANT: Yes, ma'am.

THE COURT: Now, paragraph 4 (g) indicates that you further agree that between in or about June of 2013 and in

or about May of 2015, you knowingly, willfully and unlawfully combined, conspired and agreed with others as set forth below to device a scheme and artifice to obtain money and property from such victims by means of materially false and fraudulent pretenses, representations and promises, and for the purpose of executing such scheme and artifice to transmit and cause to be transmitted by means of wire communication in interstate and foreign commerce writings, signs, signals and sounds. Is that true, sir?

THE DEFENDANT: Yes.

THE COURT: So the California Virtual Educational Partner scheme indicates that you became involved in that in June of 2013, which was a fraudulent scheme; is that correct?

THE DEFENDANT: Yes, ma'am.

THE COURT: And the paragraph 4 (g)(1) describes that scheme in further detail. Is the information in there correct?

THE DEFENDANT: Yes.

THE COURT: 4 (G)(1), first paragraph at the top of page five?

THE DEFENDANT: Yes, ma'am.

THE COURT: And as part of that scheme, this J.L. fraudulently obtained $750,000 and transferred $400,000 of it to you; is that true?

THE DEFENDANT: Yes, ma'am.

THE COURT: And you falsely represented that you would obtain and monetize a bank instrument which would result in a payout to J.L. of no less than 105 million Euros. Is that correct?

THE DEFENDANT: The numbers are wrong, but.

THE COURT: Well, tell me how the numbers are wrong.

THE DEFENDANT: Well, I didn't promise, I was just getting the bank. That is all I was getting and for that 400,000, yes, ma'am.

THE COURT: Well, did you falsely represent that you would obtain and monetize a bank instrument which would result in a pay out to J.L. of no less than 105 million Euros?

THE DEFENDANT: 105 million is wrong.

THE COURT: What was it that you said?

THE DEFENDANT: I wasn't monetizing it. He brought -- I'm going to say yes, I'm just going to say yes.

THE COURT: Mr. Martin, you're telling me two different things.

THE DEFENDANT: Yes, ma'am.

THE COURT: I'm going to remind you, you're under oath, and the statement in here indicates that you falsely represented that J.L. would obtain and monetize -- Martin

falsely represented that you would be obtaining and monetizing a bank instrument, which would result in a pay out to J.L. of no less than 105 million Euros. Is that true or not true?

THE DEFENDANT: Yes, ma'am.

THE COURT: That is true?

THE DEFENDANT: Yes, ma'am.

THE COURT: And this $400,000 was wire transferred to a bank account that you controlled at Wells Fargo Bank, true?

THE DEFENDANT: Yes.

THE COURT: And it was in your name, Capital Source Lending; is that true?

THE DEFENDANT: Yes.

THE COURT: And you never monetized a bank instrument and never obtained any funding for J.L. is that true?

THE DEFENDANT: Well, the instrument was obtained but there was no monetization and no funding for J.L., correct.

THE COURT: Well, what happened to the $400,000?

THE DEFENDANT: 218 went to the bank to cut the standby letter of credit.

THE COURT: And what happened to the remaining $172,000?

THE DEFENDANT: Once the bank had cut the

instrument and told me it was ready to be delivered, we used it -- I used it as co-conspirator used it as earned funds for personal.

THE COURT: So it's a remaining $182,000, so you used the remaining $182,000 for your own personal use and not to invest for J.L.'s purposes; is that correct?

THE DEFENDANT: 218 went to where it needed to go.

THE COURT: And what happened to the remaining 182,000?

THE DEFENDANT: Yes, that was -- it went, yes, I used that, yes.

THE COURT: For your own personal use.

THE DEFENDANT: Yes, ma'am.

THE COURT: And then the National Association of Home Builders details a fraudulent scheme that you became involved in this August of 2014; is that true?

THE DEFENDANT: Yes, ma'am.

THE COURT: You became involved with North Star Finance, LLC, and its principles TE and YO.

THE DEFENDANT: Yes, ma'am.

THE COURT: Is that true.

THE DEFENDANT: Yes, ma'am?

THE COURT: And is the description of what you did in connection with that scheme that is under paragraph 4(g)(2)

accurate?

THE DEFENDANT: Yes, ma'am.

MR. TERRANOVA: Judge, I should add that this is the National Association of Home Builders matter is before the SEC in an active civil action against my client, which there has been testimony and it's included here as relevant conduct. And it's not yet been resolved, although that is probably going to be resolved soon.

THE COURT: Well, just so we're clear, though, you agree with the accuracy of the description that is in paragraph 4(b)(2) about the National Association of Home Builders, Mr. Martin?

THE DEFENDANT: Yes.

THE COURT: Is it -- okay. Ms. Kresse, let me ask you, obviously Mr. Martin indicated that of the monies that were obtained were paid to the banks as part of, I guess, I'm not totally clear why they were, but what is the government's information on that?

MS. KRESSE: The government's position with respect to the bank instruments, whether you call them a bank guarantee or letter of credit, is they were all fraudulent, your Honor, and that the defendant knew they were fraudulent. The government's proof does not show any monies going to banks.

What Mr. Martin has said here this morning is that, for example, 218,000 went to a bank from the California Virtual Educational Partner scheme. And with respect to the victims one and three from the superseding indictment that I believe he said $100,000 had been used for personal expenses and the rest went to bank to get the instruments, we do see money going from the defendant to other people who were involved in the scheme, but I just wanted to be clear that those were co-conspirators with him and that we do not see, for example, money going to HSBC or money going to Barclays, that is just not what is evidenced in the bank records.

THE COURT: I think for purposes of the factual basis for a plea to a conspiracy to commit wire fraud what Mr. Martin has admitted to certainly satisfies that.

MS. KRESSE: Yes.

THE COURT: The question becomes the loss amount. And, I guess, Mr. Martin, I want to confirm with you that you agree that the total loss here, including relevant conduct, was in excess of 1.5 million? Do you agree with that?

THE DEFENDANT: Yes, ma'am.

THE COURT: That seems to be a satisfactory sufficient basis.

MS. KRESSE: I agree. In terms of the payment, I want to be clear that the government's information is not that

banks were getting paid by Mr. Martin, other co-conspirators were and that is accurate.

MR. TERRANOVA: There are facilitators who are co-conspirators who my client may have believed that these facilitators were acting on behalf of the bank.

MS. KRESSE: There may have been representations that those people were acting on behalf of the bank or had connection with the bank, I would agree with that.

THE COURT: I am satisfied, based on Mr. Martin's answers to my questions and based on the additional information Ms. Kresse just discuss and based on the information contained in the plea agreement at paragraph four, there is a sufficient factual basis for the plea, and, therefore, I'll accept it. I'll now ask you, Mr. Martin, in the presence of your attorney, how do you plead to Count 1 of the superseding indictment that charges conspiracy to commit wire fraud in violation of 18 U.S.C. Section 1349?

THE DEFENDANT: Guilty.

THE COURT: All right, thank you. Shall we set a sentencing date?

MS. KRESSE: Yes, ma'am.

THE COURT: Okay. Does the government have any objection to Mr. Martin remaining released under the same terms

and conditions pending sentencing?

MS. KRESSE: No objection.

THE COURT: Were you going to ask about your pretrial release?

THE DEFENDANT: I was going to ask about the overall 1.5, if that is held in escrow and gets paid back to the victims, what does that do for me?

THE COURT: Well, it would impact restitution, doesn't impact loss calculation. So, in other words, the Sentencing Guidelines calculate an offense level based on total loss and intended loss. So it doesn't matter if the victims have recovered some of the money, the loss figure for the Sentencing Guidelines purposes is what was the intended loss as part of the scheme, so the offense level is not going to be impacted by that. But it will impact restitution because, again, a victim can't recover their loss more than once.

THE DEFENDANT: Okay, thank you.

THE COURT: I want to point out something to you about your pretrial release. I don't believe there has been any issue in this case with respect to your compliance with the terms.

THE DEFENDANT: I've been very compliant.

THE COURT: It's always important that you comply with the order setting your conditions of release, it's

critically important, though, that you do so now. Because now that you've pled guilty, there is no longer a presumption in favor of bail. I'll allow you to remain released pending sentencing under the same terms and conditions that have been set. But any consideration for acceptance of responsibility, reduction, anything of that nature, you're jeopardizing that if you violate any of the terms and conditions of your bail, basically. Do you understand that?

THE DEFENDANT: Yes. I still report to whoever I've been dealing with?

THE COURT: Yes. You continue to comply with the same terms and conditions already in place.

THE DEFENDANT: Yes, ma'am.

THE COURT: Let's pick a sentencing date. Maybe. I'm not signed into my computer. Lisa, maybe you can give us a date about 90 days out.

THE CLERK: Judge, 90 days is --

MR. TERRANOVA: Could we advance that, Judge? My client has some medical issues and he needs to resolve and I'm wondering if the Court would consider 180 days?

THE COURT: Any objection?

MS. KRESSE: Could we split that?

MR. TERRANOVA: We usually go six months out.

THE COURT: Three, usually 90 days. I'll push it

to 120 days.

MR. TERRANOVA: That would be fine, thank you.

THE COURT: So 120 days, what would that take us to, Lisa?

THE CLERK: Tuesday, February 27th.

THE COURT: How does that work for everybody? I'll be on trial in Buffalo. Let's set it for 4 o'clock that day. Yes, Mr. Martin?

THE DEFENDANT: Do you have happen to know, I'll be receiving -- I'll be receiving -- for cancer, will I be able to get that in where I'm going?

THE COURT: Bureau of Prisons. Sorry. We'll make that a part of our presentence, I'll look into that.

What kind of cancer do you have?

THE DEFENDANT: I believe prostate cancer and now the onset of diabetes.

THE COURT: There are certain medical facilities at the Bureau of Prisons has available. Butner, I think, is one of them. And you can certainly make a request to me at the time of sentencing that I sentence you, if you're sentenced to incarceration, that you be sentenced to a facility that would be able to care for any medical concerns.

MR. TERRANOVA: I've advised my client that we'll look into any specialized treatment that he needs so that the

Bureau of Prisons can make a determination in that regard.

THE COURT: Okay. And obviously submit anything of that nature in connection with sentencing.

MR. TERRANOVA: Okay, thank you.

THE COURT: We'll set sentencing for Tuesday, February 27th at 4 p.m. in Buffalo. I'll issue a presentence scheduling order setting forth the deadlines for any submission prior to sentencing. Anything else from the government?

MS. KRESSE: No, your Honor.

THE COURT: Anything else from the defense?

MR. TERRANOVA: No, your Honor.

THE COURT: We'll see everybody back in Buffalo on the 27th of February. Thank you.

* * *

CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript of the record of proceedings in the above-entitled matter.

S/ Karen J. Bush, RPR

Official Court Reporter

Exhibit 2

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v. 15-CR-163-EAW

MICHAEL K. MARTIN,

Defendant.

PLEA AGREEMENT

The defendant, MICHAEL K. MARTIN, and the United States Attorney for the Western District of New York (hereinafter "the government") hereby enter into a Plea Agreement with the terms and conditions as set out below.

I. THE PLEA AND POSSIBLE SENTENCE

1. The defendant agrees to plead guilty to Count 1 of the Superseding Indictment which charges a violation of Title 18, United States Code, Section 1349 (Conspiracy to Commit Wire Fraud), for which the maximum possible sentence is a term of imprisonment of twenty years, a fine of $250,000, a mandatory $100 special assessment, and a term of supervised release of three years. The defendant understands that the penalties set forth in this paragraph are the maximum penalties that can be imposed by the Court at sentencing.

2. The defendant understands that, if it is determined that the defendant has violated any of the terms and conditions of supervised release, the defendant may be required to serve in prison all or part of the term of supervised release, up to two years, without credit

for time previously served on supervised release. As a consequence, in the event the defendant is sentenced to the maximum term of incarceration, a prison term imposed for a violation of supervised release may result in the defendant serving a sentence of imprisonment longer than the statutory maximum set forth in Paragraph 1 of this Agreement.

II. ELEMENTS OF THE OFFENSE

3. The defendant understands the nature of the offense set forth in Paragraph 1 of this Agreement and understands that if this case proceeded to trial, the government would be required to prove beyond a reasonable doubt the following elements of the crime:

(a) That two or more persons, in some way or manner, agreed to try to accomplish a common and unlawful plan to commit wire fraud, that is, to knowingly and willfully devise a scheme or artifice to defraud or for obtaining money or property by means of materially false or fraudulent pretenses, representations or promises, and, for the purpose of executing such scheme or artifice, transmitted or caused to be transmitted by means of wire communication in interstate or foreign commerce, any writings, signs, signals, pictures or sounds, in violation of Title 18, United States Code, Section 1343; and

(b) That the defendant knew the unlawful purpose of the plan and willfully joined in it.

FACTUAL BASIS

4. The defendant and the government agree to the following facts, which form the basis for the entry of the guilty plea, including relevant conduct:

(a) Between in or about March 2013, and in or about May 2013, in the Western District of New York, and elsewhere, the defendant, MICHAEL K. MARTIN, did knowingly, willfully and unlawfully combine, conspire and agree with Christopher Venti and others, to devise a scheme and artifice to defraud, and to obtain money and property by means of materially false and fraudulent pretenses,

representations and promises, and for the purpose of executing such scheme and artifice, to transmit, and cause to be transmitted, by means of wire communication in interstate and foreign commerce, writings, signs, signals and sounds.

(b) It was part of the conspiracy that, beginning in or about March 2013, the defendant, Michael K. Martin, operating as Capital Source Lending, LLC, agreed to work with Christopher Venti, operating as Viewpoint Solutions Group and Secured Strategies LLC, on a fraudulent investment scheme involving multiple victims, including Victims 1 through 6.

(c) It was further part of the conspiracy that victims who were interested in obtaining funding were solicited by Christopher Venti, and others. The solicitations involved false promises of, among other things, access to "blocked" bank accounts that purportedly contained the funds victims sought. Victims were required to make advance payments into escrow in order to establish the "blocked" bank accounts in their names. Victims were falsely and fraudulently told that the "blocked" bank accounts would contain ten times the amount of funds placed in escrow, and would be accessible to the victims in approximately thirty days. The advance payments were to be released from escrow by the victim upon the victim's confirmation that the "blocked" bank account had been established in the victim's name.

(d) It was further part of the conspiracy that victims were given letters on bank letterhead that purported to confirm the existence of "blocked" bank accounts containing ten times the victims' investment for the victims' exclusive use after thirty days. In reality, the defendant, Michael K. Martin, Christopher Venti, and others involved in the conspiracy knew that the bank letters were fraudulent, and that the confirmation process established in the escrow agreements signed by the victims, was fraudulent, in that the pre-arranged numbers victims were instructed to call directed them to others involved in the scheme who falsely represented to victims that they worked at the respective bank and that they could confirm the existence of the claimed "blocked" bank account.

(e) The defendant, Michael K. Martin, Christopher Venti, and others, fraudulently obtained funds via wire communications in interstate and foreign commerce, and attempted to obtain such funds from the following victims:

Victim	Intended Loss	Actual Loss
Victim 1	$100,000	$100,000
Victim 2	$100,000	---
Victim 3	$200,000	$200,000
Victim 4	$100,000	----
Victim 5	$100,000	----
Victim 6	$640,000*	----

* The approximate U.S. equivalent of 500,000 Euros as of 3/30/13.

(f) It was part of the conspiracy that victims were told, and otherwise led to believe, that the funds they put in escrow would be used in connection with establishing the "blocked" bank accounts. In reality, the defendant, Michael K. Martin, Christopher Venti, and others, used funds obtained from victims for their own purposes. For example, Victim 1 and Victim 3 released funds from escrow to Christopher Venti and the defendant, Michael K. Martin, and neither victim received the payout promised by the defendant and Venti, or obtained the return of the funds they released from escrow. After Victim 3 discovered that the "blocked" bank account was fraudulent, the defendant and Venti offered Victim 3 a different investment opportunity with a higher rate of return. That investment opportunity, which purportedly involved the acquisition of and "monetizing" of a "Bank Guarantee", was also fraudulent, and did not result in Victim 3 obtaining the promised payout of $5 million, or the return of the $200,000 released from escrow.

Relevant Conduct:

(g) The defendant further agrees that between in or about June 2013, and in or about May 2015, he knowingly, willfully and unlawfully combined, conspired and agreed with others, as set forth below, to devise a scheme and artifice to defraud additional victims, and to obtain money and property from such victims by means of materially false and fraudulent pretenses, representations and promises, and for the purpose of executing such scheme and artifice, to transmit, and cause to be transmitted, by means of wire communication in interstate and foreign commerce, writings, signs, signals, and sounds.

i. The California Virtual Education Partners Scheme: In or about June 2013, the defendant became involved in a fraudulent scheme which purported to utilize a bank instrument to obtain a payout of millions of dollars in exchange for an advance fee. Specifically, the defendant became involved with J.L., a member of the board of California Virtual Education Partners, a charter school located in Orange County, California. As part of the scheme, J.L. represented to and promised the other board members that the charter school could get a donation of $3 million in exchange for payment to J.L.'s company, Vintage Capital Management, Ltd. of a $750,000 "document fee." Upon receipt of the $750,000, J.L. wire transferred $400,000 to the defendant, Michael K. Martin, who falsely represented that he would obtain and monetize a bank instrument which would result in a payout to J.L. of "no less than" 105,000,000 Euros. On or about July 1, 2013, $400,000 was wire transferred to a bank account the defendant controlled at Wells Fargo Bank in the name Michael Martin dba Capital Source Lending. The defendant never obtained or monetized a bank instrument and never obtained any funding for J.L. The $400,000 wire transferred to the defendant was used by the defendant and others to, among other things, pay personal living expenses, and was not returned to J.L. or the California Virtual Education Partners.

ii. The National Association of Home Builders ("NAHB") Scheme: In or about August 2014, the defendant became involved in a fraudulent scheme which purported to utilize a bank instrument to obtain a payout of millions of dollars in exchange for an advance fee. Specifically, the defendant became involved with North Star Finance, LLC, and its principals, T.E. and Y.O., who had entered into an arrangement with the NAHB and its members to obtain financing for members' construction projects. After North Star Finance, LLC and its principals failed to obtain the promised financing for NAHB members, the defendant entered into new agreements with such members whereby the defendant promised to "obtain a [bank guarantee] for purchase or monetization purposes to generate funds" for the members' construction projects. As part of the agreement, the members were required to send the defendant a "participation fee" which represented a percentage of the funding sought. As part of the scheme, the defendant obtained or attempted to obtain, via wire communications in interstate and foreign commerce, the following amounts from the following victims. The victims ultimately received part or all of their funds back from the

defendant after the defendant learned that he was under investigation.

Victim	Intended Loss	Actual Loss
Boomer Development	$75,000	$15,000
Eagle Development	$225,000	----
Thomas Dostal Development	$160,000	$48,000

III. SENTENCING GUIDELINES

5. The defendant understands that the Court must consider but is not bound by the Sentencing Guidelines (Sentencing Reform Act of 1984).

BASE OFFENSE LEVEL

6. The government and the defendant agree that Guidelines Section 2B1.1(a)(1) applies to the offense of conviction and provides for a base offense level of 7.

SPECIFIC OFFENSE CHARACTERISTICS
U.S.S.G. CHAPTER 2 ADJUSTMENTS

7. The government and the defendant agree that the following specific offense characteristics do apply:

(a) Section 2B1.1(b)(1)(I): The total loss (including relevant conduct) was in excess of $1,500,000 and thus there is a 16 offense level increase; and

(b) Section 2B1.1(b)(2)(A)(i): The offense involved 10 or more victims, and thus there is a 2 offense level increase.

ADJUSTED OFFENSE LEVEL

8. Based on the foregoing, it is the understanding of the government and the defendant that the adjusted offense level for the offense of conviction is 25.

ACCEPTANCE OF RESPONSIBILITY

9. At sentencing, the government agrees not to oppose the recommendation that the Court apply the two level downward adjustment of Guidelines §3E1.1(a) (acceptance of responsibility), and further agrees to move the Court to apply the additional one-level downward adjustment of Guidelines §3E1.1(b), which would result in a total offense level of 22.

CRIMINAL HISTORY CATEGORY

10. It is the understanding of the government and the defendant that the defendant's criminal history category is I. The defendant understands that if he is sentenced for, or convicted of, any other charges prior to sentencing in this action the defendant's criminal history category may increase. The defendant understands that the defendant has no right to withdraw the plea of guilty based on the Court's determination of the defendant's criminal history category.

GUIDELINES' APPLICATION, CALCULATIONS AND IMPACT

11. It is the understanding of the government and the defendant that, with a total offense level of 22 and criminal history category of I, the defendant's sentencing range would be a term of imprisonment of 41 to 51 months, a fine of $7,500 to $75,000, and a period of

supervised release of 1 to 3 years. Notwithstanding this, the defendant understands that at sentencing the defendant is subject to the maximum penalties set forth in Paragraph 1 of this Agreement.

12. The government and the defendant agree to the Sentencing Guidelines calculations set forth in this Agreement and neither party will advocate or recommend the application of any other Guideline, or move for any Guidelines departure, or move for or recommend a sentence outside the Guidelines, except as specifically set forth in this Agreement. A breach of this paragraph by one party will relieve the other party of any agreements made in this Plea Agreement with respect to sentencing motions and recommendations. A breach of this paragraph by the defendant shall also relieve the government from any agreements to dismiss or not pursue additional charges.

13. The defendant understands that the Court is not bound to accept any Sentencing Guidelines calculations set forth in this agreement and the defendant will not be entitled to withdraw the plea of guilty based on the sentence imposed by the Court.

IV. STATUTE OF LIMITATIONS

14. In the event the defendant's plea of guilty is withdrawn, or conviction vacated, either pre- or post-sentence, by way of appeal, motion, post-conviction proceeding, collateral attack or otherwise, the defendant agrees that any charges dismissed pursuant to this agreement shall be automatically reinstated upon motion of the government and further agrees not to assert the statute of limitations as a defense to any federal criminal offense which

is not time barred as of the date of this Agreement. This waiver shall be effective for a period of six months following the date upon which the withdrawal of the guilty plea or vacating of the conviction becomes final.

V. GOVERNMENT RIGHTS AND RESERVATIONS

15. The defendant understands that the government has reserved the right to:

(a) provide to the Probation Office and the Court all the information and evidence in its possession that the government deems relevant concerning the defendant's background, character and involvement in the offense charged, the circumstances surrounding the charge and the defendant's criminal history;

(b) respond at sentencing to any statements made by the defendant or on the defendant's behalf that are inconsistent with the information and evidence available to the government;

(c) advocate for a specific sentence consistent with the terms of this agreement including the amount of restitution and/or fine and the method of payment; and

(d) modify its position with respect to any sentencing recommendation or sentencing factor under the Guidelines including criminal history category, in the event that subsequent to this agreement the government receives previously unknown information, including conduct and statements by the defendant subsequent to this agreement, regarding the recommendation or factor.

16. At sentencing, the government will move to dismiss the open counts of the Superseding Indictment in this action.

VI. RESTITUTION AND FINANCIAL PENALTY PROVISIONS

17. The defendant understands, and the parties agree, that the Court must require restitution in the amount of approximately $1,113,000 to be paid to the victims of the offense as set forth in the below chart as part of the sentence pursuant to Sentencing Guidelines Section 5E1.1 and Title 18, United States Code, Sections 3663A. The defendant understand that the defendant will not be entitled to withdraw the plea of guilty based upon any restitution amount ordered by the Court.

Victim	Amount of Restitution Owed
Victim 1	$100,000
Victim 3	$200,000
California Virtual Education Partners	$750,000
Boomer Development	$ 15,000
Thomas Dostal Development	$ 48,000

18. The defendant agrees to disclose fully and completely all assets in which the defendant either has any property interest or over which the defendant exercises control, directly or indirectly, including those held by a spouse, nominee or other third party. The defendant agrees to make complete financial disclosure to the United States by truthfully executing a sworn financial statement by the deadline set by the United States, or if no deadline is set, no later than two weeks prior to the date of sentencing. The defendant agrees to authorize the release of all financial information requested by the United States, including, but not limited to, executing authorization forms for the United States to obtain tax information, bank account records, credit history, and Social Security information. The defendant agrees to discuss or answer any questions by the United Sates relating to the

defendant's complete financial disclosure. The defendant will submit to an examination under oath and/or a polygraph examination conducted by an examiner selected by the U.S. Attorney's Office on the issue of the defendant's financial disclosures and assets, if deemed necessary by the U.S. Attorney's Office. The defendant certifies that the defendant has made no transfer of assets in contemplation of this prosecution for the purpose of evading or defeating financial obligations that are created by the Agreement and/or that may be imposed upon the defendant by the Court. In addition, the defendant promises that the defendant will make no such transfers in the future.

19. The defendant agrees that any financial records and information provided by the defendant to the Probation Office, before or after sentencing, may be disclosed to the United States Attorney's Office for use in the collection of any unpaid financial obligation.

20. The defendant understands and agrees that the Court, at the time of sentencing, will order that all monetary penalties imposed at that time (including any fine, restitution, or special assessment imposed in accordance with the terms and condition of this Plea Agreement) are to be due and payable in full immediately and subject to immediate enforcement by the United States. The defendant understands and acknowledges that any schedule of payments imposed by the Court at the time of sentencing is merely a minimum schedule of payments and does not, in any way, limit those methods available to the United States to enforce the judgment.

21. The defendant agrees that any funds and assets in which the defendant has an interest, which have been seized or restrained by the government or law enforcement as part

of the investigation underlying this Plea Agreement, and not subject to forfeiture, will be used to offset any judgment of restitution and fine imposed pursuant to this Plea Agreement, or to satisfy any debts owed by the defendant to the United States and/or agencies thereof.

VII. APPEAL RIGHTS

22. The defendant understands that Title 18, United States Code, Section 3742 affords a defendant a limited right to appeal the sentence imposed. The defendant, however, knowingly waives the right to appeal and collaterally attack any component of a sentence imposed by the Court which falls within or is less than the sentencing range for imprisonment, a fine and supervised release set forth in Section III, Paragraph 11 above, notwithstanding the manner in which the Court determines the sentence. In the event of an appeal of the defendant's sentence by the government, the defendant reserves the right to argue the correctness of the defendant's sentence. The defendant further agrees not to appeal a restitution order which does not exceed the amounts set forth in Section VI of this Agreement.

23. The defendant understands that by agreeing not to collaterally attack the sentence, the defendant is waiving the right to challenge the sentence in the event that in the future the defendant becomes aware of previously unknown facts or a change in the law which the defendant believes would justify a decrease in the defendant's sentence.

24. The government waives its right to appeal any component of a sentence imposed by the Court which falls within or is greater than the sentencing range for imprisonment, a fine and supervised release set forth in Section III, Paragraph 11 above,

notwithstanding the manner in which the Court determines the sentence. However, in the event of an appeal from the defendant's sentence by the defendant, the government reserves its right to argue the correctness of the defendant's sentence.

VIII. TOTAL AGREEMENT AND AFFIRMATIONS

25. This Plea Agreement represents the total agreement between the defendant, MICHAEL K. MARTIN, and the government. There are no promises made by anyone other than those contained in this Agreement. This Agreement supersedes any other prior agreements, written or oral, entered into between the government and the defendant.

JAMES P. KENNEDY, JR.
Acting United States Attorney
Western District of New York

BY: _____
MARYELLEN KRESSE
Assistant U. S. Attorney

Dated: October 30, 2017

BY: _____
ELIZABETH R. MOELLERING
Assistant U. S. Attorney

Dated: October 30, 2017

I have read this Agreement, which consists of 14 pages. I have had a full opportunity to discuss this Agreement with my attorney, Joseph Terranova, Esq. I agree that it represents the total agreement reached between myself and the government. No promises or representations have been made to me other than what is contained in this Agreement. I understand all of the consequences of my plea of guilty. I fully agree with the contents of this Agreement. I am signing this Agreement voluntarily and of my own free will.

MICHAEL K. MARTIN
Defendant

Dated: October 30, 2017

JOSEPH TERRANOVA, ESQ.
Attorney for the Defendant

Dated: October 30, 2017

Exhibit 3

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
GREENBELT DIVISION

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

NORTH STAR FINANCE LLC,
1604 Hopefield Rd.
Silver Spring, MD 20905
Montgomery County,

THOMAS G. ELLIS,
1604 Hopefield Rd.
Silver Spring, MD 20905
Montgomery County,

YASUO ODA,
10350 Swift Stream Pl., Apt. 207
Columbia, MD 21044
Howard County,

THOMAS H. VETTER,
6 Woodside Court
Danville, CA 94506,

MICHAEL K. MARTIN,
657 Lynn Shores Rd.
Virginia Beach, VA 23452,

SHARON L. SALINAS,
657 Lynn Shores Rd.
Virginia Beach, VA 23452,

CAPITAL SOURCE FUNDING LLC,
657 Lynn Shores Rd.
Virginia Beach, VA 23452, and

CAPITAL SOURCE LENDING LLC,
657 Lynn Shores Rd.
Virginia Beach, VA 23452,

Defendants,

Civil Action No. GJH 15 CV 1339

and

GOODWILL FUNDING INC.,
4767 Lonesome Dove Drive
Shingle Springs, CA 95682, and

CHAREL WINSTON,
4767 Lonesome Dove Drive
Shingle Springs, CA 95682,

Relief Defendants.

COMPLAINT

Plaintiff Securities and Exchange Commission ("Commission") alleges as follows:

SUMMARY

1. This case involves a type of investment scam known as a "prime bank" fraud. These fraudulent schemes involve the purported issuance, trading, or use of financial instruments affiliated with international banking institutions or other obscure sources. Defendants who conduct such schemes use technical-sounding terms and phrases to cloak what in fact are fictitious investment programs with an air of legitimacy. They prey on unsuspecting investors, promise extraordinary returns for little risk, and expend considerable effort in distracting investors who seek definitive answers regarding how their investments are actually being used and why the promised returns have not materialized.

2. From at least January 2013 until the present, Thomas G. Ellis and Yasuo Oda, through their company, North Star Finance LLC ("North Star"), Thomas H. Vetter, and Michael K. Martin and Sharon L. Salinas, through their companies, Capital Source Lending LLC and Capital Source Funding LLC (collectively, the "Capital Source entities" or "Capital Source"), engaged in a fraudulent "prime bank" scheme. In furtherance of this scheme, Defendants lured

and assisted in luring investors into complicated-sounding transactions involving bank guarantees and other financial instruments that supposedly could be "monetized" to generate millions of dollars. Defendants claimed and assisted one another in claiming that these extraordinary returns would then be available to investors in the form of project funding on highly favorable terms. Since at least January 2013, North Star and Capital Source have collected approximately $5 million – on information and belief, all from defrauded investors – and several of the defendants have used investors' money to pay themselves hundreds of thousands of dollars.

3. Defendants' investment programs were completely fictitious. Defendants neither obtained nor "monetized" international bank instruments to secure funding as promised. Although at least one investor who threatened to report the scheme received a partial refund of his invested funds, the returns promised by North Star and Capital Source were never realized.

4. Defendants made numerous material misrepresentations to investors in furtherance of the "prime bank" scheme. For example, Ellis, Vetter, and Martin repeatedly lied to investors about the existence of the supposed bank instrument investments and the use of investor funds. Ellis and Oda sent several emails in which they pressured investors to sign phony documents, on the false pretenses that the investment program was both legitimate and available for only a limited time. Martin falsely told one of these investors that he had personally been involved in seven other transactions in 2014 in which he had "secured" and "monetized" bank guarantees. Salinas participated in and aided and abetted the scheme by establishing bank accounts for Capital Source Funding, by falsely representing herself to be an escrow officer, and by signing at least one document that fraudulently purported to be an escrow agreement for the safekeeping of investor funds.

5. No transactions in securities offered or sold by or for the Defendants have been registered with the Commission, or are eligible for an exemption from registration with the Commission. Nor were any of the Defendants registered as broker-dealers, as is required for offering securities to investors in these circumstances, which several of the Defendants did.

6. By the conduct described herein, Defendants violated the anti-fraud and registration provisions of the federal securities laws, and will continue to violate those provisions unless restrained or enjoined by this Court.

JURISDICTION AND VENUE

7. The Commission brings this action, and this Court has jurisdiction over this action, pursuant to authority conferred by Section 20(b) and 22(a) of the Securities Act [15 U.S.C. §§ 77t(b) and 77v(a)] and Sections 21(d), 21(e) and 27 of the Exchange Act [15 U.S.C. §§ 78u(d), 78u(e) and 78aa].

8. The Defendants, directly and indirectly, made use of the means and instrumentalities of interstate commerce, and the means and instruments of transportation and communication in interstate commerce, in connection with the transactions, acts, practices, and courses of business alleged in this Complaint, certain of which occurred within the District of Maryland.

9. Venue in this district is proper under Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)] and Section 27 of the Exchange Act [15 U.S.C. § 78aa] because each Defendant engaged in transactions, acts, practices, and courses of business constituting the violations alleged in this Complaint, certain of which occurred within the District of Maryland, including specific communications, within the District of Maryland, with investors in furtherance of the fraudulent conduct alleged herein.

DEFENDANTS

10. **North Star Finance LLC** ("North Star") is a Maryland-based limited liability company with its principal office at Ellis's home address in Silver Spring, Maryland. North Star offers "project funding" in the building industry through bank guarantee transactions and other programs. North Star is not registered with the Commission in any capacity.

11. **Thomas Ellis** is a resident of Silver Spring, Maryland and a Senior Partner of North Star. Ellis is not registered with the Commission in any capacity.

12. **Yasuo Oda** is a resident of Ellicott City, Maryland and a Senior Partner of North Star. He is also North Star's registered agent. Oda is not registered with the Commission in any capacity.

13. **Thomas H. Vetter** is a resident of Danville, California. Vetter is not registered with the Commission in any capacity.

14. **Michael K. Martin** is a resident of Virginia Beach, Virginia. He controls the Capital Source entities, and he is the registered agent of Capital Source Lending LLC. Martin is not registered with the Commission in any capacity.

15. **Sharon L. Salinas** is a resident of Virginia Beach, Virginia. Through at least March 2015, she served a number of roles with the Capital Source entities, including as "VP of Operations" in Capital Source Lending LLC's "Compliance Division," and she is the registered agent of Capital Source Funding LLC. She is not registered with the Commission in any capacity.

16. **Capital Source Lending LLC** is a limited liability company based in Virginia Beach, Virginia, with its principal office at Martin and Salinas's home address. Capital Source Lending LLC promotes transactions involving bank instruments and "monetizing" services.

17. **Capital Source Funding LLC** is a limited liability company based in Virginia Beach, Virginia, with its principal office at Martin and Salinas's home address. In the scheme described herein, Capital Source Funding LLC purported to act as an escrow company and "paymaster" for Capital Source Lending LLC.

RELIEF DEFENDANTS

18. **Goodwill Funding Inc.** is an entity incorporated in Florida with its principal place of business in Shingle Springs, California. Between September and December 2014, Goodwill Funding, Inc. received at least $98,000 from Capital Source.

19. **Charel Winston** is a resident of Shingle Springs, California and is described on Goodwill Funding Inc.'s website as its founder and president. In November 2014, Winston received at least $25,000 from Capital Source.

20. There is no evidence that the Relief Defendants provided any lawful services or other value in return for these funds.

FACTS

I. Background

21. From at least January 2013 to the present, Defendants used the mail and wires to defraud investors by offering or selling fictitious investments involving prime bank instruments, including bank guarantees. Bank account records for North Star and Capital Source reflect that the fraud was both widespread and substantial: Defendants appear to have received more than $4.6 million in investor funds from over thirty investors. On information and belief, these investors are all located in the United States, and several have limited investment experience.

22. Ellis and Oda, through North Star, and Martin and Salinas, through Capital Source, promoted their fraudulent scheme through their respective websites on the internet.

Though the exact language varied from website to website and over time, the North Star and Capital Source websites generally described vague and non-sensical processes, with complex terms, through which North Star and Capital Source would "escrow" investor money, and then generate substantial funds that would be available to investors from the "monetization" of bank guarantees through well-known banks.

23. In or about 2014, Ellis and Oda began promoting an investment program that involved a North Star-Capital Source partnership. According to North Star's website, under this program, the "North Star Flex BG Loan Program," Capital Source would obtain and "monetize" a bank guarantee (the "BG" in the product's title) upon North Star's receipt of an investor's refundable application fee. The profits from this monetization process then would be made available by Capital Source to North Star, which would loan investors extraordinary amounts of money, in some instances up to $100 million, on highly favorable terms.

24. The investments offered by North Star and Capital Source are securities. As described more fully below, Ellis, Oda, Vetter, Martin, and Salinas encouraged, or aided and abetted each other in encouraging, investors to complete bogus legal documents and purported escrow agreements, and then to wire investment funds to accounts that one or more of the Defendants controlled. Investors were told that North Star and/or Capital Source would use investor funds for costs incurred in "monetizing" bank instruments, and that this process would pay fixed amounts on a specific future date.

25. Among other things, investors also were led to believe that their investments were being pooled into groups, that they would realize profits from the "monetization" process in the form of project funding on highly favorable terms, and that these profits were to come from the efforts of North Star and/or Capital Source.

26. Prime bank investment programs such as those offered by Defendants are fictitious. Several government agencies, including the Commission, the U.S. Department of the Treasury, and the Federal Bureau of Investigation (FBI), have posted investor alerts and warnings about fictitious "prime bank" investments on their publicly available websites. These agencies warn that the bank instruments similar to those described in this Complaint, including bank guarantees, are frequently used in fraudulent investment schemes. For example, the FBI publicly warns investors that "[w]hile foreign banks use instruments called 'bank guarantees' in the same manner that U.S. banks use letters of credit to insure payment for goods in international trade, *such bank guarantees are never traded or sold on any kind of market*." http://www.fbi.gov/scams-safety/fraud/fraud#pbnf (emphasis added).

27. Ellis, Oda, Vetter, Martin, and Salinas, and North Star and Capital Source knew or were reckless in not knowing that their investment offerings were fictitious, that the "monetization" process was bogus, that the investor funds collected by North Star and/or Capital Source were not being used in the manner represented to investors, and that each of their statements described herein were materially false or misleading or omitted to state material facts which would make the statements he made not materially misleading.

II. The Scheme to Defraud

The Initial Lure: Ellis and Vetter Promise Millions of Dollars in Financing to Members of the National Association of Homebuilders

28. The National Association of Homebuilders (NAHB) is a trade association that promotes the interests of homebuilders and the residential building industry. According its website, the NAHB represents more than 140,000 members. In February 2014, the NAHB held its annual meeting in Las Vegas, Nevada.

29. Ellis, on behalf of North Star, attended the NAHB's annual meeting as a guest speaker and gave a presentation on a purported financing opportunity for homebuilders. Vetter, who was a member of the NAHB Board of Directors and a participant on several NAHB committees, accompanied and introduced Ellis to NAHB members at the meeting.

30. In his presentation, Ellis described a risk-free way for NAHB members to secure millions of dollars' worth of financing for real estate projects through North Star at highly favorable rates. To take advantage of this program, homebuilders were instructed to wire a refundable "application fee" to North Star, which would be held safely in escrow.

31. A number of NAHB members believed the North Star program to be legitimate because Ellis's presentation was made at the NAHB meeting, with an introduction by Vetter. In the two months following Ellis's presentation, several NAHB members applied for the program by wiring hundreds of thousands of dollars' worth of application fees to North Star.

32. For example, Investor A.H. attended Ellis's presentation at the NAHB meeting. On February 20, 2014, Investor A.H. applied for $4.8 million in project funding by wiring a $30,000 application fee to North Star.

33. Ellis told Investor A.H. that his application fee would be held safely in an escrow account. Ellis also supplied Investor A.H. with a "Lender Cover Sheet" that ostensibly detailed the terms of the application. According to this document, Investor A.H.'s $30,000 payment would be used to cover miscellaneous processing costs but was refundable "[s]hould there be non-performance by North Star Finance."

34. Contrary to Ellis's representations, North Star did not place Investor A.H.'s $30,000 in an escrow account. In fact, in the week following North Star's receipt of Investor

A.H.'s $30,000 application fee, North Star transferred $2,000 directly to Ellis, $10,000 directly to Vetter, and $16,000 directly to Oda.

35. Vetter made additional false representations to Investor A.H. regarding the legitimacy of the North Star program. For example:

- Vetter told Investor A.H. that the program was being funded by a group of seven (7) U.S. billionaire investors. This was not true. In reality, the program that Ellis described and Vetter promoted was fictitious.

- Vetter told Investor A.H. that he (Vetter) was not gaining financially from his role in promoting the North Star program. This was not true. As alleged above, North Star paid Vetter $10,000 within a week of its receipt of Investor A.H.'s application fee. In total, North Star has paid Vetter at least approximately $140,000 in transaction-based compensation.

36. In the months that followed, Ellis and Vetter repeatedly assured Investor A.H. that funding for his loan was expected imminently. When the funding did not materialize, Ellis and Vetter provided vague excuses for the repeated delays.

The Bait & Switch: Defendants Convince NAHB Members to Invest in the "North Star Flex BG Loan Program," a Prime Bank Fraud

37. Having primed a number of investors for the imminent receipt of funding – funding that never actually materialized – Ellis, Vetter, Oda, and Martin, assisted by Salinas, then promoted the fraudulent prime bank investment program with Capital Source.

38. On or about July 24, 2014, Ellis sent Investor A.H. an email describing a new funding program. In the email, Ellis told Investor A.H. that, to obtain project funding, Investor A.H. should send an additional $75,000 to an escrow account. Ellis's email explained that $15,000 of this additional $75,000 payment would be used for various "processing" costs, and the remainder would be held in escrow until "validation of the instrument." Once Investor A.H. sent the required funds, Ellis's email stated that a "[b]ank instrument" would be "cut from a "Top 25 Bank." The "bank instrument" would then be "monetized" and $4.8 million in funds

sent to "Capital Source Lending's account." These funds would then be available to Investor A.H. on highly favorable terms. To further bait Investor A.H., Ellis falsely claimed that this new arrangement ultimately would save Investor A.H. substantial costs and thus be more economically advantageous.

39. Ellis attached a purported escrow agreement with Capital Source Funding for Investor A.H. to complete in connection with the "bank instrument" program. The escrow agreement contained instructions for Investor A.H. to wire $75,000 to a "Capital Source Funding Escrow Account" at Wells Fargo Bank, as well as signature lines for both Investor A.H. and for "Sharon Salinas (Federal Agent Ret)" on behalf of Capital Source Funding.

40. In the weeks that followed, through oral and email communications, Ellis, Vetter, Oda and Martin encouraged investors, including Investor A.H., to participate in the bank instrument program. Individually and in combination with one another, Ellis, Vetter, Oda and Martin answered questions about the program, supplied bogus documents, including purported "escrow" and "participation" agreements, and pressured investors to part with their money.

41. For example, in telephone calls, Ellis and Vetter told Investor A.H. that his additional $75,000 would only be required for a very short time because Capital Source would close the bank guarantee transaction within 2-3 weeks' time.

42. These statements were false. Ellis and Vetter knew or were reckless in not knowing that their representations materially misrepresented how Investor A.H.'s money would be used and omitted the material fact that none of the money would actually be used to close a bank guarantee transaction, which itself was fictitious.

43. Ellis and Vetter also encouraged Investor A.H. to come up with the money in any way possible, and suggested that Investor A.H. should borrow money from his family and repay the amount as soon as the loan funds became available.

44. Similarly, Martin hosted a conference call with Investor A.H. and other investors to explain the "bank instrument" program. In this call, Martin explained to a number of investors, including Investor A.H., how he would secure and monetize the bank guarantee. Martin also told the investors that he had successfully completed seven other transactions in 2014.

45. These statements were false. Martin knew or was reckless in not knowing that his representations materially misrepresented how investor money would be used and omitted the material fact that none of the investors' monies would actually be used to secure and monetize a bank guarantee. Martin also knew or was reckless in not knowing that he had not successfully completed seven other such transactions.

46. In an August 4, 2014 email, Ellis employed vague and complex terms to answer Investor A.H.'s questions about a bogus "participation agreement." Ellis falsely told Investor A.H., "we have 8 deals funding. So we have been working our butt off to get everyone funded."

47. In an August 6, 2014 email, Oda sent Investor A.H. what purported to be a "revised" participation agreement. Oda pressured Investor A.H. to apply for the investment program, stating that "expiration" was on August 11, 2014.

48. In an August 11, 2014 email, Oda told Investor A.H., "I still need to receive signed escrow agreement. Attached again. Without it I can not send participation agreement for process [sic]."

49. Oda knew or was reckless in not knowing that his emails to Investor A.H. materially misrepresented the legitimacy of the investment program promoted by North Star, and omitted the material facts that the referenced documents were bogus and that Investor A.H.'s money actually would not be securely held in an escrow account.

50. On August 12, 2014, Ellis emailed Investor A.H. a new "escrow agreement" on Capital Source Funding's letterhead. When Investor A.H. asked how this escrow agreement differed from an earlier version, Ellis replied that "[f]or compliance reasons, the escrow has to be on Capital Source Funding Letter Head. Homeland Security requires this to be able to trace the money."

51. Ellis knew or was reckless in not knowing that his answer to Investor A.H. materially misrepresented the legitimacy of the investment program and omitted the material facts that the document was bogus and that Investor A.H.'s money actually would not be held securely in an escrow account.

52. Investor A.H. also specifically inquired about the role of Sharon Salinas, who was listed as an "escrow officer" on the Capital Source escrow agreement.

53. On or about August 13, 2014, Vetter assured Investor A.H. that Salinas was Martin's wife and an employee working for Martin. Vetter further assured Investor A.H. that Wells Fargo, not Salinas, would be acting as the escrow agent holding Investor A.H.'s money.

54. On August 14, 2014, Investor A.H. signed the purported escrow agreement.

55. On August 15, 2014, Salinas countersigned the purported escrow agreement as the "CEO" of "Capital Source Funding Escrow." According to this document, twenty percent of Investor A.H.'s $75,000 "will be used right away for the cost of processing, underwriting, legal fees, issuance of loan documents, commissions, wires setting up account of the instrument," with

the balance of Investor A.H.'s $75,000 held safely in escrow. The purported escrow agreement further provided that, once the "instrument has been validated as real and obtained, balance of escrow will be earned and will be called to wire to Capital Source Lending."

56. On August 18, 2014, Investor A.H. caused $75,000 to be wired to what he believed to be Capital Source Funding's escrow account.

57. Bank records for Capital Source show that, in reality, Capital Source did not use and maintain Investor A.H.'s money in the manner that Salinas represented in the escrow agreement. On the same day it received Investor A.H.'s money, Capital Source caused $65,000 to be wired to an individual believed to be in Canada. There is no evidence that this individual or anyone else actually used Investor A.H.'s money "for the cost of processing, underwriting, legal fees, issuance of loan documents, commissions, [or] wires setting up account of the instrument."

58. A number of other homebuilders and NAHB members also invested in Defendants' fraudulent bank guarantee program. Based on a review of bank records, it appears that North Star and Capital Source together collected at least approximately $2.4 million from such investors between February 2014 and April 2015.

59. There is no evidence that any investor money was used to acquire, "monetize," or otherwise use any purported bank instruments in any legitimate transaction.

60. Bank records, however, reflect that North Star and Capital Source paid substantial monies directly to several of the Defendants. For example, since February 2014, North Star has paid Ellis, Oda, and Vetter approximately $528,000, $420,000, and $140,000, respectively.

Having Fraudulently Collected Substantial Investor Funds, Defendants Fabricated Excuses and Delays to Explain the Failure of Promised Funding to Materialize

61. Upon receiving investors' money, Ellis and Martin deceived investors about the status of their purported investments.

62. Ellis sent numerous emails to Investor A.H. and other investors in the "bank instrument" investment program in which he provided phony updates, blamed delays on fictitious bank processes, and admonished investors for asking detailed questions about the status of their investments.

63. For example, on September 17, 2014, Ellis sent an email to a group of investors that he referred to as "Group One," which, on information and belief, included Investor A.H. and four other investors. With the re: line "Update," Ellis stated [punctuation and syntax as per original]:

> The banks are what we call "Bank to Bank" which means that one banker makes a call to the other banker. Once that happens then monies are released. This is their verification process that the buyer of the instrument has his money in the assigned account to purchase the BG [bank guarantee] from us.
>
> The bank to bank call to happen can take one day up to 3 days. They are not only dealing with us but other clients.
>
> There is nothing else we can do to push the process but wait. I asked each and everyone of you to wait until we receive word with can be any hour from now. We will notify Bill our attorney and send an email out to each of you once we receive word.

64. In another "Update" email to investors, on October 7, 2014, Ellis stated [punctuation and syntax as per original]:

> Guys,
>
> The Bank Instrument has been sold which is great news. The buyer who purchased the instrument from us has asked for a minor / small change to the procedure. Mike [Martin] is working on that tomorrow morning with the clearing house and then the money flows.

> Please: No phone calls as I have to keep all of my lines open for Mike in case he needs something not to mention working on Group 2 with Bill our attorney. I will send out another update tomorrow in the afternoon once we hear from the clearing house.

65. On October 24, 2014, Ellis and Martin jointly provided a telephonic update to Investor A.H. In this call, Martin stated that both he and Ellis had invested their own money in the transaction. Martin and Ellis also offered further explanations for the delay, and they confirmed that they were working together:

> MARTIN: … I've spent money, Tom [Ellis] has spent money. We have spent more money than you have put into this thing. So you know, there's no option to fail here. I've got over $1 million of my own money into this.
>
> ****
>
> MARTIN: There are delays. We have those delays and a few things like that but I've got four good buyers that have already been vetted and ready to go. I've got one right now, they just sent me a return sheet for $5 billion. They're ready to take this thing down. So you know, when Tom [Ellis] says it's time, that's the way I get it. When my buyer says, listen, we're ready to go and send my email -- sends an email to my attorney going we are RWA, ready, willing and able to take this thing down and they send me RWA. If they don't complete this thing I can turn them over to Interpol.
>
> INVESTOR A.H.: Right.
>
> ELLIS: And [Investor A.H.], every email I send out, prior to me sending out that email I read it back to Mike [Martin]. Am I correct, Mike?
>
> MARTIN: Yes, you do.

66. Martin and Ellis knew or were reckless in not knowing that there was no bank instrument or guarantee, and that their status updates and representations were materially false or misleading or omitted to state material facts which would make the statements they made not materially misleading.

Defendants Continue to Deceive Investors

67. Since early 2015, Ellis and Oda, on behalf of North Star, have told several investors that were awaiting results that North Star was going to secure and monetize its own bank instruments, without the involvement of Capital Source Lending, and planned to continue to do so in the future.

68. For example, in an email to an investor on April 27, 2015, Ellis stated that he had just spoken to his "Rep / Monetizer" and that the "final forms were signed." Ellis falsely represented that the "next step is the 'template' to do this BG but also future BG's," and that this "will also mean the process in the future will be in place, run smooth, and cut down the funding times. ... North Star plans to be funding alot of projects this year and years to come."

69. Although at least one investor, Investor A.H., has received a partial refund of his investment following repeated demands, other investors continue to await the proceeds of their investments or of refunds of the amounts that they invested with Defendants.

Defendants Have Been Engaging in Fraudulent "Prime Bank" Schemes Since at Least 2013

70. Martin, through Capital Source, and aided and abetted by Salinas, has promoted fraudulent bank instrument transactions since at least 2013.

71. For example, in June 2013, Martin, through Capital Source Lending, entered into a "Fee Agreement" with an investor whereby, for a $400,000 advance fee, Martin fraudulently promised to secure a "leased SBLC" [Standy-By Letter of Credit] valued at €300 million. The investor wired $400,000 to Martin.

72. The investor has not received any return on his investment and the $400,000 advance fee was never returned. Bank records show that approximately $218,000 of the

investor's funds were transferred to a third party, and that Martin and Salinas spent the remaining funds on luxury car payments and miscellaneous living expenses.

73. In February 2014, law enforcement authorities in California arrested Martin's investor, alleging that he had stolen the money that he had wired to Martin for investment purposes. In connection with that investigation, law enforcement authorities obtained freezes on certain Wells Fargo bank accounts belonging to Capital Source Lending and Martin.

74. Approximately three weeks later, in February 2014, Salinas incorporated Capital Source Funding LLC. Salinas then opened several bank accounts under its name, with her as the only signer. By doing so, Salinas enabled Martin and Capital Source to operate outside the scope of the asset freeze and otherwise enabled the fraudulent scheme to continue.

III. Allegations Relating To Relief Defendants

75. Between September and December 2014, Goodwill Funding Inc. and Charel Winston received at least $123,000 from Capital Source, in the manner set forth below:

- Between September and December 2014, Salinas, on behalf of Capital Source, signed checks payable to Goodwill Funding Inc. totaling approximately $98,000, and
- In November 2014, Salinas, on behalf of Capital Source, signed a check payable to Winston in the amount of $25,000.

76. On information and belief, the funds received by the Relief Defendants came out of a Capital Source account that collected funds from investors who sought to participate in investment programs such as those described above.

77. There is no evidence that the Relief Defendants provided any lawful services or other value in return for these funds.

COUNT ONE

Violation of Exchange Act Section 10(b) and Rule 10b-5
(North Star, Ellis, Oda, Martin, and the Capital Source entities)

78. The Commission realleges and incorporates herein by reference paragraphs 1 through 777 above.

79. Defendants North Star, Ellis, Oda, Martin, and the Capital Source entities, directly and indirectly, with scienter, by use of the means or instrumentalities of interstate commerce, or of the mails, employed devices, schemes or artifices to defraud; made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and engaged in acts, practices or courses of business which have been and are operating as a fraud or deceit upon the purchasers or sellers of securities.

80. By reason of the foregoing, Defendants North Star, Ellis, Oda, Martin, and the Capital Source entities have violated and, unless restrained and enjoined, will continue to violate Exchange Act Section 10(b) [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5].

COUNT TWO

Aiding and Abetting Violations of Exchange Act Section 10(b) and Rule 10b-5
(North Star, Ellis, Oda, Vetter, Martin, and Salinas)

81. The Commission realleges and incorporates herein by reference paragraphs 1 through 800 above.

82. Pursuant to Exchange Act Section 20(e) [15 U.S.C. § 78t(e)], Ellis, Oda, Vetter, Martin, and Salinas knowingly or recklessly aided and abetted North Star and, unless restrained and enjoined, will continue to aid and abet North Star by providing substantial assistance in

furtherance of North Star's violations of Exchange Act Section 10(b) [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5].

83. Furthermore, North Star, Ellis, Oda, Vetter, Martin, and Salinas knowingly or recklessly aided and abetted the Capital Source entities and, unless restrained and enjoined, will continue to aid and abet the Capital Source entities by providing substantial assistance in furtherance of Capital Source's violations of Exchange Act Section 10(b) [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5].

COUNT THREE

Violation of Securities Act Section 17(a)
(North Star, Ellis, Oda, Martin, and the Capital Source entities)

84. The Commission realleges and incorporates herein by reference paragraphs 1 through 83 above.

85. North Star, Ellis, Oda, Martin, and the Capital Source entities, directly or indirectly, in the offer or sale of securities, by the use of the means or instruments of transportation or communication in interstate commerce or by the use of the mails: (a) has employed, is employing, or is about to employ devices, schemes or artifices to defraud; (b) has obtained, is obtaining or is about to obtain money or property by means of untrue statements of material fact and omissions to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (c) has engaged, is engaged, or is about to engage in transactions, acts, practices and courses of business that operated or would operate as a fraud upon purchasers of securities.

86. By reason of the foregoing, North Star, Ellis, Oda, Martin, and the Capital Source entities have violated and, unless restrained and enjoined, will continue to violate Securities Act Section 17(a) [15 U.S.C. § 77q(a)].

COUNT FOUR

Aiding and Abetting Violations of Securities Act Section 17(a)
(North Star, Ellis, Oda, Vetter, Martin, and Salinas)

87. The Commission realleges and incorporates herein by reference paragraphs 1 through 86 above.

88. Pursuant to Securities Act Section 15(b) [15 U.S.C. § 77o(b)], Ellis, Oda, Vetter, Martin, and Salinas knowingly or recklessly aided and abetted, and, unless restrained and enjoined, will continue to aid and abet North Star by providing substantial assistance in furtherance of North Star's violations of Securities Act Section 17(a) [15 U.S.C. § 77q(a)].

89. Furthermore, North Star, Ellis, Oda, Vetter, Martin, and Salinas knowingly or recklessly aided and abetted, and unless restrained and enjoined, will continue to aid and abet, the Capital Source entities by providing substantial assistance in furtherance of Capital Source's violations of Securities Act Section 17(a) [15 U.S.C. § 77q(a)].

COUNT FIVE

Violation of Securities Act Section 5
(North Star, Ellis, Oda, Martin, Salinas, and the Capital Source entities)

90. The Commission realleges and incorporates herein by reference paragraphs 1 through 89 above.

91. Defendants North Star, Ellis, Oda, Martin, Salinas and the Capital Source entities, directly or indirectly, made use of the means or instruments of transportation or communication in interstate commerce or of the mails to offer and sell securities through the use or medium of a prospectus or otherwise, and carried or caused to be carried through the mails or in interstate commerce, such securities for the purpose of sale or for delivery after sale, when no registration

statement had been filed or was in effect as to such securities and no legally recognized exemption from registration applied.

92. By reason of the foregoing, Defendants North Star, Ellis, Oda, Martin, Salinas and the Capital Source entities violated and, unless restrained and enjoined, will continue to violate Securities Act Sections 5(a) and (c) [15 U.S.C. § 77e(a) and (c)].

COUNT SIX

Aiding and Abetting Violations of Securities Act Section 5(a) and 5(c)
(Ellis, Oda, Martin, and Salinas)

93. The Commission realleges and incorporates herein by reference paragraphs 1 through 922 above.

94. Pursuant to Securities Act Section 15(b) [15 U.S.C. § 77o(b)], Ellis, Oda, Martin, and Salinas knowingly or recklessly aided and abetted the Capital Source entities' and/or North Star's offer and sale of unregistered securities and, unless restrained and enjoined, will continue to aid and abet the Capital Source entities and/or North Star by providing them with substantial assistance in furtherance of their violations of Securities Act Sections 5(a) and (c) [15 U.S.C. § 77e(a) and 77e(c)].

COUNT SEVEN

Violation of Exchange Act Section 15(a)
(Ellis, Oda, Vetter, and Martin)

95. The Commission realleges and incorporates herein by reference paragraphs 1 through 94 above.

96. Ellis, Oda, Vetter, and Martin, while acting as brokers or dealers, made use of the mails or any means or instrumentality of interstate commerce to effect transactions in, or to

induce or attempt to induce the purchase or sale of, securities without being registered with the Commission as a broker or dealer or an associated person of a registered broker-dealer.

97. By reason of the foregoing, Ellis, Oda, Vetter, and Martin violated and, unless restrained and enjoined, will continue to violate Exchange Act Section 15(a) [15 U.S.C. § 78o(a)].

CLAIM AGAINST RELIEF DEFENDANTS

98. The Commission realleges and incorporates herein by reference paragraphs 1 through 97 above.

99. Goodwill Funding Inc. and Winston received, directly or indirectly, funds and/or other benefits from one or more of the Defendants which are the proceeds of unlawful activities alleged in this Complaint and to which these Relief Defendants have no legitimate claim.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that the Court:

I.

Enter judgment in favor of the Commission finding that the Defendants violated the federal securities laws and Commission rules alleged against them in this Complaint;

II.

Permanently enjoin the Defendants from further violations of the federal securities laws and Commission rules alleged in this Complaint;

III.

Permanently enjoin the Defendants from directly or indirectly participating in the issuance, offer, or sale of any security, including but not limited to bank guarantees, irrevocable bank undertaking letters, joint venture agreements, proofs of funds, medium term notes, standby

letters of credit, and similar instruments, with the exception of the purchase or sale of securities listed on a national securities exchange;

IV.

Order all Defendants and Relief Defendants to disgorge, as the Court may direct, all ill-gotten gains received or benefits in any form derived from the illegal conduct alleged in this Complaint, together with pre-judgment interest thereon;

V.

Order all Defendants to pay civil monetary penalties pursuant to Securities Act Section 20(d) [15 U.S.C. § 77t(d)] and Exchange Act Section 21(d)(3) [15 U.S.C. § 78u(d)(3)]; and

VI.

Grant such other equitable and legal relief as may be appropriate or necessary for the benefit of investors pursuant to Exchange Act Section 21(d)(5) [15 U.S.C. § 78u(d)(5)].

JURY DEMAND

The Commission demands a trial by jury on all issues so triable.

Date: May 8, 2015

By: #803336

STEPHEN W. SIMPSON

Matthew P. Cohen
Stephen W. Simpson
Timothy N. England

Counsel for Plaintiff
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549
Fax: 202.772.9228
cohenma@sec.gov / Tel. 202.551.7276
simpsons@sec.gov / Tel. 202.551.4513
englandt@sec.gov / Tel. 202.551.4959

Exhibit 4

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
Southern Division

SECURITIES AND EXCHANGE COMMISSION	*	
Plaintiff,	*	
v.		**Case No.: GJH-15-1339**
	*	
NORTH STAR FINANCE, LLC, et al.,	*	
Defendants,	*	
and		
GOODWILL FUNDING, INC. and CHAREL WINSTON,	*	
Relief Defendants	*	
	*	

* * * * * * * * * * * * *

MEMORANDUM OPINION

The Securities and Exchange Commission ("SEC") moves for summary judgment against the remaining Defendants in this civil enforcement action: Michael K. Martin, his company Capital Source Lending, LLC ("CSL"), Thomas Vetter, and Relief Defendants Charel Winston and Goodwill Funding, Inc. ("Goodwill").[1] Martin, who is currently incarcerated, was not served the Motion for Summary Judgment at the location of his incarceration until January 15, 2019. ECF No. 385. On February 13, the Court granted Martin's first Motion for Extension of Time to file a response. ECF No. 388. On March 12, he filed a second Motion for Extension of Time and also sought to Compel Production of Documents. ECF No. 389. On March 29, the

[1] Defendants Sharon Salinas and her company Capital Source Funding, LLC were named in the motion, but accepted an offer of judgment on February 6, 2019. *See* ECF Nos. 386, 387.

Motion was granted in part and denied in part, and Martin was given thirty days to file a response. ECF No. 391. To date, neither Martin nor CSL has filed a response.

Defendant Vetter, proceeding *pro se*, filed an Opposition and Cross-motion for Summary Judgment. ECF No. 374. Defendant Winston, also proceeding *pro se*, filed an Opposition to the SEC's Motion for Summary Judgment, purportedly on behalf of herself and Goodwill Funding, Inc. ECF No. 376. However, that Opposition will only be considered as to Winston, as corporations may only file motions when represented by counsel. *See* Loc. R. 101.1(a) (D. Md. 2016) ("Individuals who are parties in civil cases may only represent themselves."). The SEC has also filed an unopposed Motion for Judgment as to Defendants North Star Finance, LLC ("North Star"), Thomas Ellis, and Yasuo Oda. ECF No. 365. No hearing is necessary. Loc. R. 105.6. For the following reasons, Plaintiff's Motion for Summary Judgment, ECF No. 361, is granted in part and denied in part. Defendant Vetter's Motion for Summary Judgment, ECF No. 374, is granted in part and denied in part. Plaintiff's Motion for Judgment, ECF No. 365, is granted.

I. BACKGROUND[2]

Defendant Martin is the registered agent of CSL, a limited liability company based in Virginia Beach, VA, with its principal office at Martin's home address. ECF No. 363 ¶¶ 18, 19. Martin has controlled CSL, which promoted transactions involving bank instruments and "monetizing" services since at least 2013. *Id*. ¶¶ 19, 36. From January 2013 to May 2015, Martin, CSL, and two other companies controlled by Martin obtained approximately $4,163,910.28 in deposits from at least 34 investors in connection with bank instrument transactions. *Id*. ¶ 45. In these transactions, Martin and CSL told investors that they could obtain and monetize bank guarantees, standby letters of credit, and other bank instruments. *Id*. ¶ 49.

[2] Unless stated otherwise, the background facts are undisputed or viewed in the light most favorable to the non-movant.

Martin pled guilty and was convicted of conspiracy to commit wire fraud in March 2018. *Id*. ¶ 38. As part of this guilty plea, Martin admitted to at least three fraudulent investment schemes from mid-2013 through 2015. *Id*. ¶¶ 38-44. In the first scheme, he admitted to knowingly and willfully conspiring with a third party on a scheme to falsely and fraudulently solicit payments from individuals in exchange for access to blocked bank accounts that would return 1000% on their investments within approximately thirty days. ECF No. 364-10 at 38-39.[3] Martin admitted to knowingly falsifying letters on bank letterhead that purported to confirm the existence of these accounts, and to having obtained funds from the victims of this scheme. *Id*. at 38.

In the second scheme, Martin admitted that he falsely represented to a member of the board of a charter school that, upon the transfer of $400,000, he would obtain and monetize a bank instrument which would result in a payout of no less than €105,000,000. *Id*. at 45-46. Martin admitted that he did not use the $400,000 to monetize a bank instrument and did not pay out any funds to the board member; instead, he used $182,000 of the transferred funds to pay personal living expenses. *Id*. at 46-47.

Martin also admitted to the accuracy of the plea agreement as to the third fraudulent scheme, in which he worked with North Star, Ellis, and Oda after they failed to obtain financing for construction projects for members of the National Association of Home Builders ("NAHB"). ECF No. 364-9 at 6. Martin admitted that he promised the members that in exchange for a "participation fee," he would obtain and monetize a bank guarantee to generate funds that North Star would loan to members for their construction projects. *Id*. For example, one member of NAHB declared that he was told to send $75,000 to an escrow account that Martin would use to

[3] Pin cites to documents filed on the Court's electronic filing system (CM/ECF) refer to the page numbers generated by that system.

acquire a bank instrument that would generate $4.8 million in funds. ECF No. 5-43 ¶¶ 15-16. These funds would then be loaned to the NAHB member on favorable terms to be used for a real estate project. *Id*. ¶ 16. Six months later, after myriad inquiries by the NAHB member and just as many false reassurances by Martin and Ellis that the money was forthcoming, Martin agreed to refund $60,000 of the $75,000. *Id*. ¶ 29. Martin explained that he was keeping the other $15,000 because he was ready to fund the transaction and accused the NAHB member of backing out of the agreement. *Id*.

The SEC, through expert testimony, has asserted that investments of this kind do not exist, and no defendant has offered any evidence to the contrary. *See* ECF No. 363 ¶¶ 26-29. Indeed, despite his continued promises to the victims of his scheme that he could acquire and monetize bank guarantees, Martin repeatedly admitted at his deposition that he does not fully understand what a bank guarantee is or how it would or could be monetized. *See* ECF No. 364-2 at 15, 16, 25, 26, 27.

Defendant Vetter was a member of NAHB's Board of Directors. ECF No. 363 ¶ 15. He began acting as a consultant for North Star in November 2013. ECF Nos. 374 ¶¶ 6-8, 363 ¶ 83. The consulting agreement stated that Vetter was to be paid "$5,000 per project upon signing of Term sheet with Company and Builder Client." ECF No. 364-15 at 10. On at least a few occasions, he was paid one-third of the fees each builder paid to North Star. *See* ECF No. 364-1 at 82-83. Vetter introduced Ellis and North Star to the NAHB builders at its annual meeting in Las Vegas, Nevada in February 2014. ECF No. 87 ¶¶ 28-30. At this meeting, Ellis pitched NAHB members on a "100% debt financing" opportunity requiring a "$30,000 refundable Earnest Money and processing fee deposit." ECF No. 374-9 at 3, 7. Though a disclaimer was read following the presentation stating that the presentation was "for the builders (sic)

information only," in the two months following the presentation, at least 12 NAHB members applied for the program. ECF No. 87 ¶ 30-31. Vetter helped facilitate these applications, having followed up with attendees who expressed interest with additional details and acting as the "front person" for Ellis with NAHB members. ECF No. 363 ¶¶ 91-92.

Vetter admitted that he was initially "extremely skeptical of this 100 percent financing," and attempted to research Ellis but found little except for a red flag on a website called "Ripoff Report" that he claims he later discovered was an "extortion website." ECF No. 364-1 at 18-19. Vetter claims he was reassured by the fact that North Star was working with Citywide Lending Group, an entity that claimed to be a broker registered with the SEC. *See* ECF No. 374-10 at 6-9. Ellis had also provided him with a newspaper article describing a project that Ellis claimed to have funded. ECF No. 364-1 at 37. Vetter unsuccessfully attempted to follow up with anyone associated with the project to verify Ellis' involvement. *Id*. In February 2014, a builder expressed concern about Ellis' refusal to provide references, and Vetter wrote to Ellis telling him to "[s]ay you are hamstrung because of the attorney's recommendation, and that it is out of your hands." ECF No. 364-1 at 151. At his deposition, Vetter did not recall sending this email and was unable to explain to what attorney recommendation he was referring. *Id*. at 43-44.

Vetter contends that, after funding failed to materialize for any of his builders, he resigned from his consulting agreement with North Star on June 1, 2014. ECF No. 374-10 at 3. But in his deposition he explained, in reference to a June 19, 2014 email that he received naming him as responsible for "educat[ing] the borrower," that he had been "front person" as part of his consulting role. ECF No. 364-1 at 53. Vetter consistently emphasized that his role was not to explain the loan structure, but rather to pass along information on the loan structure created by Ellis. *Id*. Despite his supposed resignation, Vetter continued to send and receive program-related

emails. On July 9, 2014, he proposed to Ellis that "[o]nce we get the first funding . . . lets go over all builders in the closing pipeline and pick the ones we want to continue to do business with and offer them the first slots for new project funding to them." *Id*. at 169. On September 24, 2014, Ellis sent an email to Vetter, Oda, and another North Star employee announcing a new loan program in which the applicants "do not pay back the loan." *Id*. at 176. In this email, Ellis asked Vetter to put the descriptions onto the North Star website, and Vetter did so. *Id*; *id*. at 67-68. Vetter testified that no one attempted to apply for this new program. *Id*. at 176.

Vetter also continued to communicate with NAHB members, passing along updates on the status of their applications. On October 24, 2014, he informed one member that the bank guarantee purchases had been completed, and only a final signature was required to conclude the transactions. ECF No. 364-1 at 194. By November 25, 2014, when the project still had not closed, Vetter emailed the member to say that "It is not as if they are deliberately delaying the process. Mike [Martin] has $3.5 million of his own money in this and I am sure he wants it Reimbursed (sic)." *Id*. at 197. Vetter further explained that he did not get paid until the projects close—a claim he was later unable to explain. *Id*. He sent similar emails to other NAHB members inquiring about the status of their projects. *Id*. at 200-05.

For his part, Vetter also challenges the SEC investigation as based on the suborned testimony of Andy Hutchison, one of the builders who applied for a loan from North Star. *See* ECF No. 374 ¶¶ 9-21. Vetter's allegation of suborned testimony is based on edits made to Hutchison's declaration by an SEC attorney. *See* ECF No. 374-6.

II. STANDARD OF REVIEW

Under Fed. R. Civ. P. 56, summary judgment is appropriate only when the Court, viewing the record as a whole and in the light most favorable to the nonmoving party, determines

that there exists no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 322-24 (1986). The burden is on the moving party to demonstrate that there exists no genuine dispute of material fact. *See Pulliam Inv. Co. v. Cameo Props.*, 810 F.2d 1282, 1286 (4th Cir. 1987). To defeat the motion, the nonmoving party must submit evidence showing facts sufficient for a fair-minded jury to reasonably return a verdict for that party. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986). Additionally, a party must be set forth admissible facts in order for them to be considered in support of or opposition to a motion for summary judgment. *See Williams v. Silver Spring Volunteer Fire Dep't*, 86 F. Supp. 398, 407 (D. Md. 2015).

Cross-motions for summary judgment require that the Court consider "each motion separately on its own merits to determine whether either of the parties deserves judgment as a matter of law." *Rossignol v. Voorhaar*, 316 F.3d 516, 523 (4th Cir. 2003). "The Court must deny both motions if it finds a genuine issue of material fact, 'but if there is no genuine issue and one or the other party is entitled to prevail as a matter of law, the court will render judgment.'" *Wallace v. Paulos*, No. DKC 2008-0251, 2009 WL 3216622, at *4 (D. Md. 2009) (citation omitted).

A district court is obligated to thoroughly analyze an unopposed motion for summary judgment to determine whether the moving party is entitled to summary judgment as a matter of law. *See Maryland v. Universal Elections, Inc.*, 729 F.3d 370, 380 (4th Cir. 2013). "Although the failure of a party to respond to a summary judgment motion may leave uncontroverted those facts established by the motion, the district court must still proceed with the facts it has before it." *Robinson v. Wix Filtration Corp.*, 599 F.3d 403, 409 n.8 (4th Cir. 2010) (internal quotations omitted).

III. DISCUSSION

Plaintiff contends that Defendants Martin and CSL violated Section 17(a) of the Securities Act, 15 U.S.C.A. § 77q(a); Section 10(b) of the Exchange Act, 15 U.S.C.A. § 78j(b), and Rule 10b-5 promulgated thereunder, 17 C.F.R. § 240.10b-5; Sections 5(a) and 5(c) of the Securities Act, 15 U.S.C. §§ 77e(a), (c); and Section 15(a) of the Exchange Act, 15 U.S.C. § 78o(a)(1).

Plaintiff alleges that Defendant Vetter violated Section 20(e) of the Exchange Act, 15 U.S.C. § 78t(e). Plaintiff also argues that Defendant Vetter violated Section 15(a) of the Exchange Act, 15 U.S.C. § 78o(a)(1).

Due to these violations, Plaintiff asks the Court both to enjoin Defendants from future violations of the Securities Laws and to disgorge all benefits Defendants have derived from their misconduct. Finally, Plaintiff seeks civil monetary penalties from all Defendants. Plaintiff also asserts that Relief Defendants Winston and Goodwill received unearned payments from Defendant Martin, and that these payments should also be disgorged.

A. The Definition of a "Security" Under the Securities Acts

As an initial matter, each of the alleged violations of the Securities Acts requires that the parties have engaged in conduct relating to "securities." The Supreme Court has adopted the "family resemblance" test to determine whether an instrument is a security. *Reves v. Ernst & Young*, 494 U.S. 56, 65 (1990). Under this test, a court must presume that "every note is a security." *Id*. However, because "Congress was concerned with regulating the investment market, not with creating a general federal cause of action for fraud," that presumption may be rebutted upon a showing that the note "bears a strong resemblance" to a judicially crafted list of

exceptions.[4] *Id*. at 64-65. To determine whether a note resembles one of the instruments on this list, courts must consider: 1.) the motivations that would prompt a reasonable seller and buyer to enter into the transaction, 2.) whether the plan of distribution of the instrument is one in which there is "common trading for speculation or investment," 3.) the reasonable expectations of the investing public, and 4.) whether the existence of another regulatory scheme reduces the risk of the instrument, rendering application of the Securities Acts unnecessary. *Id*. at 66-67. Furthermore, that a security offered up for sale did not actually exist does not render the Securities Acts inapplicable. *See, e.g., Local 875 I.B.T. Pension Fund v. Pollack*, 992 F. Supp. 545, 563-64 (E.D.N.Y. 1998).

In Martin's blocked bank account scheme, he presented and sold purported blocked bank accounts as notes that would pay out 1000% on the investments made by his victims. A reasonable buyer would seek access accounts such as these only for "profit the [account] is expected to generate." *Reves*, 494 U.S. at 66. Martin also sold these notes as though they were being traded for speculation or investment. Therefore, this scheme is properly governed by the Securities Acts. In Martin's charter school scheme, the same analysis applies, except Martin was selling fictitious bank instruments rather than blocked bank accounts.

In Martin's NAHB scheme, the analysis is more complicated, as the bank instruments could resemble a note evidencing a loan by a commercial bank for current operations. *See Arthur Anderson & Co.*, 726 F.2d at 939. Martin induced NAHB members into payments that would supposedly yield funds for the members' construction projects—not personal profit for them.

[4] This list of exceptions includes: the note delivered in consumer financing, the note secured by a mortgage on a home, the short-term note secured by a lien on a small business or some of its assets, the note evidencing a 'character' loan to a bank customer, short-term notes secured by an assignment of accounts receivable, a note which simply formalizes an open-account debt incurred in the ordinary course of business, and a note evidencing loans by commercial banks for current operations. *Reves*, 494 U.S. at 65 (citing *Exch. Nat'l Bank of Chicago v. Touche Ross & Co.*, 544 F.2d 1126, 1138 (2d Cir. 1976) and *Chem. Bank v. Arthur Andersen & Co.*, 726 F.2d 930, 939 (2d Cir. 1984)).

The NAHB members thus entered into the program for the purpose of "advanc[ing] some other commercial or consumer purpose"—in this case, to finance construction contracts. And it seems clear from the record that the NAHB members did not think of themselves as investors expecting a profit; rather, they considered their payments to be deposits or loan processing fees.

However, the method of generating those funds was still a "bank guarantee," a note that courts have consistently found to be a security. *See SEC. v. Wilde*, No. SACV 11-0315, 2012 WL 6621747, at *4 (C.D. Cal. 2012). The NAHB members also understood that their loans were being funded by the purchase and sale of bank instruments. *See* ECF No. 364-1 at 194 (referring to the buyer of an instrument in Hong Kong). These purported instruments would be traded in ways that reflected investments—indeed, the purchasers of the instruments were consistently referred to as "investors." *See, e.g.*, ECF No. 364-1 at 195. Though these securities did not actually exist, and there can thus be no "reasonable expectations of the investing public," it is also clear that no other regulatory scheme governs the sale of such instruments. Therefore, the NAHB scheme is properly governed by the Securities Act.

B. Defendants Martin and CSL

Plaintiff alleges that Martin, both individually and as the registered agent of CSL, violated Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act. Section 10(b), through its promulgated Rule 10b-5, provides that:

> [i]t shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange,
>
> (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, in connection with the purchase or sale of any security.

17 C.F.R. § 240.10b-5. "In a civil enforcement action under § 10(b), the SEC must establish that the defendant '(1) made a false statement or omission (2) of material fact (3) with scienter (4) in connection with the purchase or sale of securities.'" *SEC v. Pirate Investor, LLC*, 580 F.3d 233, 239 (4th Cir. 2009) (quoting *McConville v. SEC*, 465 F.3d 780, 786 (7th Cir. 2006)).

Section 17(a)(1) bars essentially the same behavior as Section 10(b), but in relation to the *offer* to sell securities, as well as to the sale of securities. *See SEC v. SBM Inv. Certificates, Inc.*, No. DKC 2006-0866, 2007 WL 609888, at *11 (D. Md. 2007). Sections 17(a)(2) and 17(a)(3), on the other hand, prohibit an individual from:

> (2) [obtaining] money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or
>
> (3) [engaging] in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

While §§ 10(b) and 17(a)(1) require proof of scienter, §§17(a)(2) and 17(a)(3) require only proof of negligence. *Aaron v. SEC*, 446 U.S. 680, 701-02 (1980).

Martin has admitted, under oath, to facts sufficient to establish violations of §§10(b) and 17(a)(1), as well as §§17(a)(2) and 17(a)(3). In each of the three above-mentioned schemes, he made false statements as to his ability to obtain and monetize bank instruments that would generate substantial profits. Because each scheme relied on Martin's ability to obtain and monetize these bank instruments, these false statements were material to the transactions. He also admitted that he knowingly and willfully participated in these schemes, satisfying the scienter requirement. And he both successfully offered and sold these securities to his victims.

Because Martin has introduced no evidence sufficient to create a genuine dispute of material fact as to these admissions, summary judgment is granted to the SEC as to the §§ 10(b) and 17(a) claims against Martin.

Furthermore, Martin exercised sole control over CSL, and acted within the scope of his authority in using CSL to enact these various schemes. ECF No. 363 ¶ 19. Martin's violations of the Securities Acts may thus be imputed to CSL, and summary judgment is granted to the SEC as to these claims against CSL as well. *See, e.g., Adams v. Kinder-Morgan, Inc.*, 340 F.3d 1083, 1106-07 (10th Cir. 2003) ("The scienter of the senior controlling officers of a corporation may be attributed to the corporation itself to establish liability as a primary violator of § 10(b) and Rule 10b–5 when those senior officials were acting within the scope of their apparent authority.").

Sections 5(a) and 5(c) of the Securities Act bar the offer or sale of a security in interstate commerce if a registration statement has not been filed as to that security. 15 U.S.C. §§ 77e(a), (c). It is undisputed that no registration statements were filed as to any of the above-mentioned securities. ECF No. 363 ¶ 7. Therefore, summary judgment is granted to the SEC on the §§ 5(a) and 5(c) claims.

C. Defendant Vetter

Section 20(e) of the Exchange Act, 15 U.S.C. § 78t(e), holds liable "any person that knowingly or recklessly provides substantial assistance to another person in violation of [the Act]." *See also* 15 U.S.C. § 77o(b) (establishing the same liability for assisting in the violation of the Securities Act). Though the Fourth Circuit has never discussed the subject, the Second, Ninth, and D.C. Circuits agree that to establish a violation of § 20(e), the SEC must show "(1) that a principal committed a primary violation; (2) that the aider and abettor provided substantial assistance to the primary violator; and (3) that the aider and abettor had the necessary 'scienter'-

i.e., that she rendered such assistance knowingly or recklessly." *Graham v. SEC*, 222 F.3d 994, 1000 (D.C. Cir. 2000) (collecting cases). To evaluate the aiding and abetting claims against Vetter, the NAHB scheme is better understood as two schemes: the initial loans offered by North Star beginning at the NAHB national meeting in February 2014, and the follow-up loans offered by North Star and Martin beginning in July 2014 after the first round of funding failed to materialize. *See* ECF No. 363 ¶ 104.

First, North Star, Ellis, and Oda accepted offers of judgment that established their primary violations of the Exchange Act. *See* ECF Nos. 212, 213, 214. As discussed above, Martin and CSL have also committed primary violations of the Exchange Act.

Second, the SEC has established, and Vetter has not disputed, sufficient facts to hold that Vetter provided substantial assistance to North Star, Ellis, and Oda. It is irrelevant that Vetter claims he was a consultant rather than an employee of North Star. Vetter introduced the North Star Defendants to the NAHB builders. He followed up with attendees of North Star's NAHB presentation and acted as the "front person" for Ellis with these attendees. He was paid for each application he facilitated. Regardless of whether Vetter had "resigned" his consulting position with North Star in June 2014, he continued to update the NAHB members on behalf of North Star and Ellis at least through October 2014, reassuring them that their funding was still on the way. These reassurances were a substantial part of the securities fraud, as they prevented as many members as possible from insisting upon refunds, making the fraud more profitable. *See* ECF No. 364-8 ¶ 26.

Vetter disputes that he offered substantial assistance in the schemes involving Martin, CSL, and the follow-up loans, contending that he was "not involved with Mike Martin from [CSL], nor did [he] have any financial arrangement or consulting agreement with CSL." ECF

No. 374 ¶ 31. But at his deposition, Vetter testified that he agreed, at some point, to pass on updates from Martin to NAHB members. *Id*. ¶ 108. The SEC has also produced at least two emails in which Vetter reassures an NAHB member that "tom and mike (sic) shared some confidential documents with [him] clarifying that . . . only a final signature is required to conclude the transactions," and that "Mike has $3.5 million of his own money in this." *Id*. ¶ 109. Because these emails establish that Vetter's "front man" work extended to at least one member who was involved in Martin's scheme, there can be no genuine dispute that Vetter provided substantial assistance to Martin and CSL as well.

Third, the Court must determine whether Vetter's substantial assistance was provided with the requisite scienter. "In a securities fraud action, 'the term 'scienter' refers to a mental state embracing intent to deceive, manipulate, or defraud.'" *Ottmann v. Hanger Orthopedic Group, Inc.*, 353 F.3d 338, 343 (4th Cir. 2003) (quoting *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 194 n. 12 (1976)). The scienter requirement under §§ 10(b) and 17(a)(1) can also be met by a showing of recklessness. *Id*. at 344. Behavior is reckless when it is "so highly unreasonable and such an extreme departure from the standard of ordinary care as to present a danger of misleading the plaintiff to the extent that the danger was either known to the defendant or so obvious that the defendant must have been aware of it." *Id*. at 343. The SEC contends that Vetter's behavior establishes recklessness as a matter of law. In his opposition, Vetter counters that he is entitled to summary judgment on the question of recklessness. *See* ECF No. 374 ¶ 29.

It is undisputed that Vetter assisted the North Star Defendants in their first scheme: offering NAHB members loans on favorable terms that required the payment of a deposit. And though these loans were to be funded by the "monetization" of bank guarantees, it is clear that the NAHB builders understood themselves to be applying for a loan requiring a down payment.

Unlike in a prime bank scheme, the NAHB members expected that they would repay the loan. *See* ECF No. 374-9 at 6-12. But the record is devoid of any evidence establishing that Vetter was sold on, or actually understood, the program as the sort of "prime bank" scheme that offered "a combination of huge returns and no risk" that was "inconceivable on its face." Though Defendants cite to numerous cases in which courts have awarded summary judgment to the SEC in prime bank fraud cases on the question of recklessness, in none of these cases was the fraud characterized to the defendant as a more believable program, such as a loan on favorable terms. *See SEC v. Wilde*, No. SACV 11-0315 DOC(AJWx), 2012 WL 6621747, at *6 (C.D. Cal. 2012) (describing a program in which the defendant obtained a $5 million bond and promised a return of $12 million in one week); *SEC v. Asset Recovery & Mgmt. Trust*, No. 2:02-CV-1372-WKW, 2008 WL 4831738, at *2 (M.D. Ala. 2008) (describing program in which clients could invest a "fully secured" principal amount that was "never at risk" and earn between eight and sixteen times their investment in a matter of months).

And though the perpetrators' characterization of the scheme as a builder loan agreement does not immunize it from qualifying as a security under the Securities Acts, this characterization is helpful to understand whether Vetter's behavior was reckless or not. In other words, the promise of a transaction in which huge profits are promised in exchange for a small investment should receive higher scrutiny from a participant than the promise of a large loan in exchange for a relatively small participant fee or down payment.

Certainly, this program should have, and did, raise red flags for Vetter, as the terms of the loan were extremely favorable at the time—although, Vetter asserts, not so extreme that comparable loans do not exist in the current economic climate. *See* ECF No. 364 ¶ 50. Vetter's investigation into North Star could have been far more comprehensive, but it was not

nonexistent. Though Vetter's internet search about Ellis revealed complaints on a site called the "Rip-off Report," he was informed from another media report that that website was, itself, a scam; though he never attempted to contact anyone at Citywide or conduct any research into the firm, Citywide had held itself out as a broker registered with the SEC; though he failed to contact any of Ellis' previous clients or otherwise confirm project funding, Ellis did provide Vetter with a news clip describing an ostensibly completed project. This evidence is insufficient to conclude that Vetter understood, or it was obvious, that the first scheme offered terms that were so facially inconceivable as to support an inference of recklessness. Furthermore, Vetter did make limited efforts—deficient as they may be in retrospect—to verify the legitimacy of the project. Therefore, the uncontroverted facts establish only that Vetter negligently allowed himself to be conned by the North Star Defendants into assisting them in the perpetration of the first scheme.

The evidence of Vetter's recklessness is far more apparent in regards to his aid of the second scheme. In July 2014, funding had failed to materialize for any of the NAHB members' projects for months; Martin and CSL emerged to offer funding in exchange for an additional "participation fee" of as much as $75,000. Vetter admits that "[n]o one, including anyone from North Star, had heard of Mike Martin until July of [2014]." ECF No. 374 ¶ 38. He also admitted to not knowing how Ellis had located Martin as a source of funding. *See* ECF No. 363 ¶ 104. At the single moment when Vetter had every reason to be more vigilant and cautious, there is no evidence Vetter conducted any research whatsoever into Martin. By September 2014, North Star and Martin were offering a new loan program in which the members did not have to pay back the loan—a program even Vetter called "crazy" and bizarre. *Id*. ¶ 106. Still, Vetter agreed to post the program descriptions on North Star's website. Furthermore, for months he continued to represent to NAHB members that Martin's funding would materialize, that Martin was losing money as

well, and that neither he nor Martin got paid until the projects closed. *Id*. ¶ 109. None of these statements were true, and Vetter either knew they were untrue, or conducted no research to confirm whether they were true. Under the circumstances—by the time of Vetter's final email that appears in the record, not a single project had been funded in nearly ten months of his work with North Star—Vetter's substantial assistance to Martin and North Star in relation to the second scheme was reckless as a matter of law.

Finally, Vetter devotes much of his opposition to accusations of suborned testimony by SEC attorneys centered around edits made to an affidavit by one of the NAHB members who fell victim to Defendants' fraudulent conduct. Vetter contends, without any citation to authority, that absent this suborned testimony, the SEC would have had no jurisdiction to bring this action. But, as explained above, the SEC has established violations of the Securities Acts that do not rely on the testimony of a single individual. Rather, the SEC relies on Vetter's own deposition and emails, presentations, and other documents to establish liability. Furthermore, none of the allegedly suborned edits to the affidavit establish any material changes that would amount to improper conduct on behalf of the SEC. Therefore, summary judgment is granted Defendant Vetter as to the first scheme, and to the SEC under Section 20(e) of the Exchange Act as to the second scheme.

D. Defendants Martin and Vetter's Failure to Register as Broker-Dealers

Section 15(a)(1) of the Exchange Act prohibits any person "engaged in the business of effecting transactions in securities for the account of others" from "induc[ing] or attempt[ing] to induce the purchase or sale of any security . . . unless [the person] is registered" with the SEC. 15 U.S.C. §§ 78c(a)(4), 78o(a)(1). Both the Sixth and Eighth Circuits have looked to the following factors to determine whether an individual's conduct requires registration by the SEC: "[1]

regular participation in securities transactions, [2] employment with the issuer of the securities, [3] payment by commission as opposed to salary, [4] history of selling the securities of other issuers, [5] involvement in advice to investors and [6] active recruitment of investors." *SEC v. Collyard*, 861 F.3d 760, 766 (8th Cir. 2017); *SEC v. George*, 426 F.3d 786, 797 (6th Cir. 2005). Each factor need not be established to assign liability. *Collyard*, 154 F. Supp. 3d at 788-90.

Defendant Martin regularly participated in securities transactions, gave advice to investors, and actively recruited investors. Defendant Vetter was paid by commission rather than salary, and was involved in both advice to the NAHB members and the active recruitment of those members. Therefore, both were required to register with the SEC and, having not, violated § 15(a)(1) of the Exchange Act.

E. Relief Defendants

A court may order disgorgement in a securities enforcement action against a relief defendant where that person: "(1) has received ill-gotten funds; and (2) does not have a legitimate claim to those funds." *CFTC v. Kimberlynn Creek Ranch, Inc.*, 276 F.3d 187, 192 (4th Cir. 2002) (citations omitted). The SEC contends that Martin transferred approximately $140,000 to Relief Defendants Charel Winston and Goodwill, who provided no services or other consideration in exchange for these funds. As discussed above, these funds were "ill-gotten" gains as a matter of law. Relief Defendants claim, however, that they provided valid, legitimate services in exchange for these funds. In support of this claim, they have submitted documents showing that they contracted to provide "Tear Sheets," bank guarantees, and a "MT799" to "trigger the providing banks to send an 'RWA.'" ECF Nos. 376-2. The SEC's expert witness explains that bank guarantees do not function as investment vehicles, cannot be monetized, and are non-transferrable. *Id*. ¶¶ 38, 39, 40. He similarly establishes that Relief Defendants' use of

these other terms is nonsensical, and thus cannot describe a legitimate transaction between them and Martin. *Id*. ¶¶ 33, 39, 43, 48, 52. Courts have consistently found that these banking processes do not exist as a matter of law. *See SEC v. Milan Group, Inc.*, 962 F. Supp. 2d 182, 195 (D.D.C. 2013) (discussing "misused or nonsensical" terms such as MT 760, MT 799, and RWAs), *vacated in part on other grounds by*, *SEC v. Milan Group, Inc.*, 595 F. App'x 2 (D.C. Cir. 2015); *SEC v. Reynolds*, No. 1:06-CV-1801-RWS, 2010 WL 3943729, *3-4 (N.D. Ga. 2010) (holding that investor transactions involving bank guarantees did not exist). Because Defendants do not offer any evidence to counter this expert testimony that none of these supposed financial products actually exist, they establish no genuine dispute of material fact. Therefore, the SEC is entitled to summary judgment that the funds transferred to the Relief Defendants from Martin must be disgorged.

F. Relief

The SEC seeks injunctive relief, disgorgement, and civil monetary penalties against Defendants Martin, CSL, and Vetter, as well as disgorgement and civil monetary penalties against Defendants North Star, Ellis, and Oda pursuant to the October 3, 2016 entry of judgment against the latter defendants in this case.

Defendants Martin, CSL, and Vetter have committed multiple violations of the Securities Laws, and there is thus a "reasonable likelihood that the wrong will be repeated." *SEC v. Lawbaugh*, 359 F. Supp. 418, 424 (D. Md. 2005). Therefore, permanent injunctive relief is proper. *See Am. Realty Trust*, 586 F.2d 1001, 1007 (granting injunction where three violations were established and proof of negligent conduct was strong).

Because disgorgement is "an equitable remedy designed to prevent unjust enrichment," courts have "broad discretion in determining whether to award disgorgement and in what

amount." *SEC v. Resnick*, 604 F. Supp. 2d 773, 782 (D. Md. 2009). A precise calculation of a defendant's profits due to fraud is often impossible, so a court's disgorgement calculation need only be a reasonable approximation of the gains connected to the fraud. *Id*. Prejudgment interest may be included in the disgorgement amount, "so as to prevent the defendant from profiting" from the illegal conduct. *Id*.

Defendants Martin and CSL jointly collected a total of $4,163,910.28 from investors, $1,474,250.00 of which was returned. Therefore, it is proper to disgorge Martin and CSL, jointly and severally, for the $2,689,660.28 not returned to investors, as well as prejudgment interest of $341,130.54 calculated from the time the last refund was made to an investor on April 21, 2015. *See* ECF No. 363 ¶¶ 110, 114; *see also SEC v. AbsoluteFuture.com*, 393 F.3d 94, 96-7 (2d Cir. 2004) (holding that defendant's liability for disgorgement would be joint and several with the corporation that shared profits from a fraudulent scheme). Vetter received $143,326.03 in connection with the fraudulent scheme.[5] Therefore, Vetter shall be disgorged that amount, as well as prejudgment interest of $19,771.95 calculated from the final payment he received in connection with the scheme on December 10, 2014. *See* ECF No. 363 ¶ 114. Relief Defendants received $140,000.00 of funds for which they provided no lawful goods or services. Therefore, they shall be disgorged that amount, as well as prejudgment interest of $19,313.13 calculated from the final payment made to them by Martin or CSL on December 12, 2014.

North Star received $2,072,255.00 from the scheme, and refunded $10,000 to one investor. Therefore, North Star is liable for $2,062,255.00, as well as $256,904.85 in prejudgment interest calculated from the final payment made by a builder to North Star on May

[5] Though Vetter was not found to have acted with the requisite scienter to establish a violation of Section 20(e) of the Exchange Act as to the first scheme, his violation of Section 15(a) of the Exchange Act covers both schemes. Therefore, his profits connected with both schemes were ill-gotten, and he had no legitimate claim to those profits.

5, 2015. The SEC also seeks disgorgement of $924,222.98 from Ellis and $768,233.68 from Oda based on payments made to them from North Star and the requisite prejudgment interest based on these payments. But the total amount of disgorgement should not exceed the amount of profit from the scheme. *See AbsoluteFuture.com,* 393 F.3d at 96. Because the SEC's proposed disgorgement of Ellis and Oda are based on profits North Star made in the scheme—not profits from any other source connected to the scheme—their share of the disgorgement must be joint and several with North Star. Therefore, Ellis and North Star are jointly and severally liable for $924,222.98 of North Star's total liability $2,329,159.85. Oda and North Star are jointly and severally liable for $256,904.85 of North Star's total liability of $2,329,159.85.

Finally, civil monetary penalties "are intended to punish, and label defendants wrongdoers." *Gabelli v. SEC,* 568 U.S. 442, 452 (2013). The Securities Acts impose three possible tiers of penalties, the third and highest tier of which may be imposed only where (1) the violation involves fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement; and (2) the violation directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons. 15 U.S.C. § 78u(d)(3)(B); 15 U.S.C. § 77t(d)(2). The SEC seeks third-tier penalties against Martin, CSL, and Vetter. As discussed comprehensively above, the violations in this case involved fraud, deceit, and manipulation, and they resulted in substantial losses for the victims. Therefore, third-tier civil penalties are appropriate.

The Securities Acts provide for calculation of a third-tier penalty in either of two ways. First, a court may impose a fixed amount—at the time of these violations $160,000 for an individual and $775,000 for an entity—multiplied by the number of violations or the number of persons defrauded. *See SEC v. Opulentica, LLC,* 479 F. Supp. 2d 319, 331 (S.D.N.Y., 2007);

SEC v. Kenton Cap., Ltd., 69 F. Supp. 2d 1, 17 n. 15 (D.D.C. 1998). Second, a court may impose a penalty equal to a defendant's gross pecuniary gain. *SEC v. CMKM Diamonds, Inc.*, 635 F. Supp. 2d 1185, 1192-93 (D. Nev. 2009).

The SEC requests a per-violation penalty that would result in a $4.8 million penalty each for Martin, Ellis, and Oda; a $23.25 million penalty for each for CSL and North Star, and a $4.16 million penalty for Vetter. But the gross pecuniary gain calculation—$3,030,790.82 for Martin and CSL, $2,329,159.85 for North Star, $924,222.98 for Ellis, $768.233.68 for Oda, $163,097.98 for Vetter—results in a more just outcome in this case. While Ellis, Oda and Martin all knowingly and intentionally both conceived of and executed several schemes that violated the act, only Ellis and Oda have admitted liability and agreed to injunctive relief before this Court, and thus taken a measure of responsibility for their actions. The SEC has only proven that Vetter's actions, while harmful, were reckless or knowing as to the assistance provided to Martin and North Star by reassuring NAHB members that their funds were still incoming. Because the gross pecuniary gains of each defendant better represents the degree of culpability for their violations of the Acts, the Court will impose these amounts as the appropriate civil penalties.

IV. CONCLUSION

Plaintiff's Motion for Summary Judgment, ECF No. 361, is granted in part and denied in part. Defendant's Motion for Summary Judgment, ECF No. 374, is granted in part and denied in part. Plaintiff's Motion for Judgment, ECF No. 365, is granted. A separate Order shall issue.

Dated: August 15, 2019

/s/
GEORGE J. HAZEL
United States District Judge

Exhibit 5

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
Southern Division

SECURITIES AND EXCHANGE COMMISSION, ***Plaintiff,*** *v.* **NORTH STAR FINANCE, LLC, et al.,** ***Defendants,*** **and** **GOODWILL FUNDING INC. and CHAREL WINSTON,** ***Relief Defendants.***	**Case No. GJH-15-1339**

~~[proposed]~~ **AMENDED ORDER AND FINAL JUDGMENT**

This matter has come before the Court on the Motion of Plaintiff Securities and Exchange Commission (ECF No. 398) to amend the Court's prior Order and Final Judgment entered on August 15, 2019 (ECF No. 397).

For good cause shown, the Motion is GRANTED. The Court hereby substitutes the instant Amended Order and Final Judgment in place of the prior Order and Final Judgment, as follows:

In accordance with the Memorandum Opinion entered by the Court on August 15, 2019 (ECF No. 396), it is hereby **ORDERED**, by the United States District Court for the District of Maryland, that:

1. Defendant Thomas H. Vetter's Motion for Summary Judgment, ECF No. 374, is granted as to the first scheme.

2. Plaintiff's Motion for Summary Judgment, ECF No. 361, is granted in all other respects.

3. Plaintiff's Motion for Judgment, ECF No. 365, is granted.

4. Plaintiff's Motion to Withdraw, ECF No. 383, is granted.

5. As to Defendants Michael K. Martin and Capital Source Lending LLC:

a. Defendants are permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) and Rule 10b-5 of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5(a), 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: (i) to employ any device, scheme, or artifice to defraud; (ii) 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 (iii) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

b. Defendants are permanently restrained and enjoined from violating Section 17(a) of the Securities Act of 1933 ("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 communication in interstate commerce or by use of the mails, directly or indirectly: (i) to employ any device, scheme, or artifice to defraud; (ii) to obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary in order to make the statements

made, in light of the circumstances under which they were made, not misleading; or (iii) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.

c. Defendants are permanently restrained and enjoined from violating Section 5 of the Securities Act, 15 U.S.C. § 77e, by, directly or indirectly, in the absence of any applicable exemption: (i) unless a registration statement is in effect as to a security, making use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell such security through the use or medium of any prospectus or otherwise; (ii) unless a registration statement is in effect as to a security, carrying or causing to be carried through the mails or in interstate commerce, by any means or instruments of transportation, any such security for the purpose of sale or for delivery after sale; or (iii) making use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise any security, unless a registration statement has been filed with the Commission as to such security, or while the registration statement is the subject of a refusal order or stop order or (prior to the effective date of the registration statement) any public proceeding or examination under Section 8 of the Securities Act, 15 U.S.C. § 77h.

d. Defendants are permanently restrained and enjoined from directly or indirectly participating in the issuance, offer, or sale of any security, including but not limited to bank guarantees, irrevocable bank undertaking letters, joint venture

agreements, proofs of funds, medium term notes, standby letters of credit, and similar instruments, with the exception of the purchase or sale of securities listed on a national securities exchange.

e. Defendant Martin is permanently restrained and enjoined from violating Section 15(a) of the Exchange Act, 15 U.S.C. § 78o(a), while acting as a broker or dealer, by the use of the mails or any means or instrumentality of interstate commerce to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security without being registered with the Commission as a broker or dealer or an associated person of a registered broker-dealer.

f. As provided in Fed. R. Civ. P. 65(d)(2), the foregoing Paragraphs 5(a)-(e) also bind the following who receive actual notice of this Amended Final Judgment by personal service or otherwise: (i) Defendants' officers, agents, servants, employees, and attorneys; and (ii) other persons in active concert or participation with Defendants or with anyone described in (i).

g. Defendants are liable, jointly and severally, for disgorgement of $2,689,660.28, representing profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of $341,130.54, and each are liable for a civil penalty in the amount of $3,030,790.82 pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), and Section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3). Defendants shall satisfy this obligation by paying $6,061,581.64 to the Commission within 30 days after entry of this Amended Final Judgment, in accordance with Paragraph 9 below.

6. As to Defendant Vetter:

a. Defendant is permanently restrained and enjoined from aiding and abetting any violation of Section 10(b) and Rule 10b-5 of the Exchange Act, 15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5(a), by knowingly or recklessly providing substantial assistance to any person that, directly or indirectly, 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: (i) employs any device, scheme, or artifice to defraud; (ii) makes 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 (iii) engages in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

b. Defendant is permanently restrained and enjoined from aiding and abetting any violation of Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a), by knowingly or recklessly providing substantial assistance to any person that, in the offer or sale of any security by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly: (i) employs any device, scheme, or artifice to defraud; (ii) obtains money or property by means of any untrue statement of a material fact or any omission of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or (iii) engages in any transaction, practice, or course of business

which operates or would operate as a fraud or deceit upon the purchaser.

c. Defendant is permanently restrained and enjoined from violating Section 15(a) of the Exchange Act, 15 U.S.C. § 78o(a), while acting as a broker or dealer, by the use of the mails or any means or instrumentality of interstate commerce to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security without being registered with the Commission as a broker or dealer or an associated person of a registered broker-dealer.

d. Defendant is permanently restrained and enjoined from directly or indirectly participating in the issuance, offer, or sale of any security, including but not limited to bank guarantees, irrevocable bank undertaking letters, joint venture agreements, proofs of funds, medium term notes, standby letters of credit, and similar instruments, with the exception of the purchase or sale of securities listed on a national securities exchange.

e. As provided in Fed. R. Civ. P. 65(d)(2), the foregoing Paragraphs 6(a)-(d) also bind the following who receive actual notice of this Amended Final Judgment by personal service or otherwise: (i) Defendant's officers, agents, servants, employees, and attorneys; and (ii) other persons in active concert or participation with Defendant or with anyone described in (i).

f. Defendant is liable for disgorgement of $143,326.03, representing profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of $19,771.95, and a civil penalty in the amount of $163,097.98 pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), and Section 21(d)(3) of the Exchange Act, 15 U.S.C. §

78u(d)(3). Defendant shall satisfy this obligation by paying $326,195.96 to the Commission within 30 days after entry of this Amended Final Judgment, in accordance with Paragraph 9 below.

7. As to Defendants North Star Finance LLC, Thomas G. Ellis and Yasuo Oda:

   a. Defendant North Star is liable for disgorgement of $2,062,255.00, representing profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of $256,904.85, for a combined amount of $2,319,159.85. As noted in the following Paragraphs 7(b) and 7(c), of that amount, $924,222.98 is joint and several with Defendant Ellis, and $768,233.68 is joint and several with Defendant Oda. Defendant North Star also is liable for a civil penalty in the amount of $2,319,159.85 pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), and Section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3). Defendant North Star shall satisfy these obligations by paying the total amount of $4,638,319.70 to the Commission within 30 days after entry of this Amended Final Judgment, in accordance with Paragraph 9 below.

   b. Defendant Ellis is liable for disgorgement of $822,281.77, representing profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of $101,941.21, for a combined amount of $924,222.98, which amount, as noted in the preceding Paragraph 7(a), is joint and several with Defendant North Star. Defendant Ellis also is liable for a civil penalty in the amount of $924,222.98 pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), and Section 21(d)(3) of the Exchange

Act, 15 U.S.C. § 78u(d)(3). Defendant Ellis shall satisfy these obligations by paying the total amount of $1,848,445.96 to the Commission within 30 days after entry of this Amended Final Judgment, in accordance with Paragraph 9 below.

c. Defendant Oda is liable for disgorgement of $683,498.00, representing profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of $84,735.68, for a combined amount of $768,233.68, which amount, as noted in Paragraph 7(a) above, is joint and several with Defendant North Star. Defendant Oda also is liable for a civil penalty in the amount of $768,233.68 pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), and Section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3). Defendant Oda shall satisfy these obligations by paying the total amount of $1,536,467.36 to the Commission within 30 days after entry of this Amended Final Judgment, in accordance with Paragraph 9 below.

8. As to Defendants Goodwill Funding Inc. and Charel Winston:

a. Defendants are liable, jointly and severally, for disgorgement of $140,000.00, representing profits gained as a result of the conduct alleged in the Complaint, together with prejudgment interest thereon in the amount of $19,313.13. Defendants shall satisfy this obligation by paying $159,313.13 to the Commission within 30 days after entry of this Amended Final Judgment, in accordance with Paragraph 9 below.

9. As for the disgorgement, prejudgment interest and penalty amounts ordered above:

a. Defendants may transmit payment electronically to the Commission, which will

provide detailed ACH transfer/Fedwire instructions upon request. Payment also may be made directly from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm. Defendants also may pay by certified check, bank cashier's check, or United States postal money order payable to the Securities and Exchange Commission, which shall be delivered or mailed to

Enterprise Services Center
Accounts Receivable Branch
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

and shall be accompanied by a letter identifying the case title, civil action number, and name of this Court; Defendants' names as defendants in this action; and specifying that payment is made pursuant to this Amended Final Judgment. Defendants shall simultaneously transmit photocopies of evidence of payment and case identifying information to the Commission's counsel in this action. By making this payment, Defendants relinquish all legal and equitable right, title, and interest in such funds and no part of the funds shall be returned to Defendants.

b. The Commission may enforce the Court's judgment for disgorgement and prejudgment interest by moving for civil contempt (and/or through other collection procedures authorized by law) at any time after 30 days following entry of this Amended Final Judgment. Defendants shall pay post judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961. The Commission shall hold the funds, together with any interest and income earned thereon (collectively, the "Fund"), pending further order of the Court. The

Commission may propose a plan to distribute the Fund subject to the Court's approval. Such a plan may provide that the Fund shall be distributed pursuant to the Fair Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002. The Court shall retain jurisdiction over the administration of any distribution of the Fund. If the Commission staff determines that the Fund will not be distributed, the Commission shall send the funds paid pursuant to this Amended Final Judgment to the United States Treasury. Regardless of whether any such Fair Fund distribution is made, amounts ordered to be paid as civil penalties pursuant to this Amended Final Judgment shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Defendants shall not, after offset or reduction of any award of compensatory damages in any Related Investor Action based on Defendants' payment of disgorgement in this action, argue that they are entitled to, nor shall they further benefit by, offset or reduction of such compensatory damages award by the amount of any part of their payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Defendants shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this Amended Final Judgment. For purposes of this paragraph, a "Related Investor Action" means

a private damages action brought against Defendants by or on behalf of one or more investors based on substantially the same facts as alleged in the Complaint in this action.

10. Any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Defendants Martin, Vetter, Ellis, Oda and Winston under this Amended Final Judgment or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Defendants of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19).

11. This Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Amended Final Judgment.

12. The Clerk shall close the case.

Dated: 10/17/2019

GEORGE J. HAZEL
United States District Judge

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-19608

In the Matter of **MICHAEL K. MARTIN,** **Respondent.**	**DECLARATION OF MELISSA ARMSTRONG**

I, Melissa Armstrong, declare as follows:

1. I am counsel for the Division of Enforcement in this matter.

2. The Commission issued its Order Instituting Proceedings ("OIP") in this matter on November 25, 2019. On or about November 26, 2019, the Office of the Secretary mailed by USPS a copy of the OIP to Respondent Michael K. Martin, using an address, obtained from the Bureau of Prisons, at a federal prison in Jesup, GA. The OIP arrived at the prison and was signed for on December 3, 2019. Exhibit 6 is a true and correct copy of the green card received by the Office of the Secretary relating to this mailing.

3. Martin was subsequently transferred to a residential reentry office in Baltimore, MD. On January 7, 2021, after confirming his mailing address with the Bureau of Prisons, I sent a letter to Martin informing him that the investigative file related to this matter was available for copying or viewing. Exhibit 7 is a true and correct copy of the letter.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April12, 2021.

/s/Melissa Armstrong
Melissa Armstrong

OS Received 04/22/2021

Exhibit 6

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☑ Agent
☐ Addressee

B. Received by (Printed Name) D. Adams

C. Date of Delivery 12-3-19

3- 19608

nt from item 1? ☐ Yes
dress below: ☐ No

Michael K. Martin
SPECIAL MAIL: OPEN IN THE PRESENCE
OF INMATE
Inmate #85627-083
FCI Jesup
Federal Correctional Institution
2680 301 South
Jesup, GA 31599

8042922

☐ Priority Mail Express®
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☐ Return Receipt for Merchandise
☐ Signature Confirmation™
☐ Signature Confirmation Restricted Delivery

☐ Collect on Delivery
Delivery Restricted Delivery
Restricted Delivery
(over $500)

2. Article Number (Transfer from service label)
7017 1450 0002 3895 5056

PS Form 3811, July 2015 PSN 7530-02-000-9053 Domestic Return Receipt

OS Received 04/22/2021

Exhibit 7

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
100 F Street NE
Washington DC 20549

Melissa Armstrong
Trial Counsel
(202) 551-4724
armstrongme@sec.gov

January 7, 2021

BY UPS

Michael K. Martin
Baltimore Residential Reentry Office
400 First Street, NW
5th Floor
Washington, DC 20534

Re: ***In the Matter of Michael K. Martin,*** **AP File No. 3-19608**

Dear Mr. Martin,

The Division of Enforcement ("Division"), pursuant to Rule 230 of the Commission's Rules of Practice, 17 C.F.R. §201.230, gives notice that its investigative file, with the exception of documents protected by privilege(s) or the work product doctrine, is available for inspection and copying at its Home Office in Washington D.C., where they are normally maintained. As you may recall, documents that would be covered by Rule 230 were previously produced to you as part of the discovery process in the district court litigation in Maryland that preceded the filing of this administrative proceeding. For reference, that litigation was entitled *SEC v. North Star Finance, LLC et al.*, Case No. GJH-15-1339.

Should you wish for the Division to make those same documents available to you again in this proceeding, we are happy to do so. Given the current COVID-19 pandemic, we can also arrange to produce copies of the documents to you at your expense. The Division requests that you provide reasonable notice in advance of inspection and bear the expense of copying any of the available documents in the investigative file.

Please feel free to contact me with any questions or concerns.

Sincerely,
Melissa Armstrong

OS Received 04/22/2021