

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-19734**

**In the Matter of**

**ANTHONY B. BRANDEL and**  
**M.Y. CONSULTANTS, INC.**

**Respondents.**

**DIVISION OF ENFORCEMENT'S**  
**SUPPLEMENTAL BRIEF**

Pursuant to the Commission's Order Requesting Additional Briefing and Materials dated February 10, 2023, the Division of Enforcement ("Division") submits this supplemental brief in support of its motion summary disposition against Respondents Anthony B. Brandel and M.Y. Consultants, Inc. ("Motion"), which the Commission has indicated it will construe as a motion for entry of default and for remedial sanctions.

**I. Additional Evidence Submitted**

The Division is attaching to this brief the entirety of the summary judgment briefing in the underlying civil court action, including the Commission's motion, Brandel's opposition, and the Commission's reply, and all exhibits thereto. The exhibits to the Commission's summary judgment motion include excerpts from the testimony of thirteen witnesses at Brandel's criminal trial, including each of the nine victims of Brandel's fraudulent scheme with Malom Group, M.Y. Consultants, and others.<sup>1</sup> The exhibits also include the criminal court's jury instructions. (Ex. 25).

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<sup>1</sup> The victims were: Anfinen (Ex.8), Barrie (Ex.9), Bellino (Ex.10), Billingsley (Ex.11), Dobyns (Ex.13), Gianopoulos (Ex. 15), Glazebok (Ex. 16), Kooyman (Ex. 17), Mittman (Ex. 19). *See* Exhibit 26 (verdict form in Brandel's criminal trial).

The exhibits to the summary judgment briefing establish the following facts supported by the following evidence:

<p>Brandel held himself out to potential investors as the Director of Operation for MY Consultants, Inc. and the United States representative for Malom.</p>	<p>Exhibit 12, Tr. 579:3 – 582:4 (Braunstein); Exhibit 13, Tr. 271:4 – 273:17 (Dobyns); Exhibit 19, Tr. 28:24 – 29:6 (Mitman).</p>
<p>Brandel solicited investors into agreements with Malom, negotiated the terms of the agreements with investors, prepared transaction documents, and notified investors when Malom agreed to the terms of the investments.</p>	<p>Exhibit 8, Tr. 390:6 – 392:14 and 402:24 – 404:1 (Anfinsen); Exhibit 9, Tr. 412:5 – 414:21, 420:3 – 21 and 422:7 – 423:24 (Barrie); Exhibit 10, Tr. 99:21 – 103:22 (Bellino); Exhibit 11, Tr. 72:18 – 78:4 (Billingsley); Exhibit 12, Tr. 603:22 – 604:16 and 613:10 – 614:1 (Braunstein); Exhibit 14, Tr. 338:24 – 339:20 (Fox); Exhibit 15, 443:8 – 446:4, 451:19 – 452:14 and 453:24 – 456:4 (Gianopoulos); Exhibit 16, Tr. 640:21 – 647:2 (Glazebook); Exhibit 17, Tr. 214 16 – 216:15 and 218:3 – 218:21 (Kooyman); Exhibit 19, Tr. 26:5 – 39:1 (Mitman); Exhibit 20, Tr. 843:2 -24, 844: 15 – 845:1 and 899:18 – 24 (Brandel);</p>
<p>Brandel had investors enter into escrow agreements with M.Y. Consultants’ escrow agent, told the investors to send their money to the escrow agent and instructed the escrow agent when to distribute the funds after the escrow conditions were met, and where to send the released funds after closing.</p>	<p>Exhibit 10, Tr. 108:14 – 110:13 (Bellino); Exhibit 16, Tr. 646:12 – 647:2 (Glazebook); Exhibit 17, Tr. 218:22 – 221:2 (Kooyman); Exhibit 30, Joint Escrow Agreement; Exhibit 31, Brandel’s Instructions to Investors.</p>
<p>Brandel received a percentage of the investors’ investments as compensation once the investors’ transactions were complete and cleared from escrow.</p>	<p>Exhibit 4, Tr. 511:7 – 513:1 (Brandel Inv. Test.); Exhibit 18, Tr. 557:2 – 558:5 (Marsh); Exhibit 23, Admitted Exhibit 1405 (Schedule of Payments to Brandel).</p>
<p>The securities offerings in which Brandel participated were not registered with the Commission or eligible for an exemption from registration.</p>	<p>Exhibit 27, SEC Attestation of Non Registration.</p>
<p>Brandel was not registered with the SEC as a broker-dealer to offer the securities to investors.</p>	<p>Exhibit 28, SEC Attestation of Non Registration.</p>
<p>Warras and Brandel, together with their coconspirators, raised \$9.9 million from the victims of the illegal Malom scheme, \$4.92 million of which was paid by investors who testified at the criminal trial.</p>	<p>Exhibit 18, Tr. 546:15 - 549:19; 571:12-18 (Marsh); Exhibit 21 (Admitted Exhibit 1401).</p>

Brandel personally received \$630,000 of the \$9.9 million, \$217,000 of which was received from the nine testifying investors for whom the Jury found Brandel violated Section 10(b) and Rule 10b-5.	Exhibit 18, Tr. 561:17 – 22; 571:12-18 (Marsh); Exhibit 23 (Admitted Exhibit 1405).
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## **II. An Associational and Penny Stock Bar Are in the Public Interest**

The evidence underlying the Commission’s summary judgment motion demonstrates that an associational and penny stock bar are in the public interest. Brandel’s conduct was egregious, as he personally solicited investors’ participation in the fraudulent scheme and directly profited from their loss. (Exs. 8-20). It was recurrent, as he was convicted of defrauding nine separate investors (Ex. 26). It involved a high degree of scienter, as the jury was instructed that it had to find that Brandel acted “knowingly” to convict him of securities fraud. (Ex. 25, p. 27). And Brandel has made no assurances against future violations and has wholly failed to take responsibility for this actions. In his opposition to the Commission’s motion for summary judgment, Brandel continued to assert that the allegations against him in both the civil and criminal proceedings were meritless. (Exh. E).

The evidence also shows that bars against M.Y. Consultants are appropriate. Witness testimony and documentary evidence establish that Brandel held himself out to investors as the Director of Operations of M.Y. Consultants and used that entity to commit his fraud. (Exs. 10, 12, 13, 16, 17, 19, 30, 31). M.Y. Consultants is as culpable as its agent Brandel.

“Absent extraordinary mitigating circumstances, an individual that has been convicted of fraud cannot be permitted to remain in the securities industry.” *Shreyans Desai*, Exchange Act Release No. 80129, at 6, 2017 WL 782152 (Mar. 1, 2017) (internal quotes omitted). This case presents no mitigating circumstance, and the evidence supports the imposition of associational and penny stock bars. The Division respectfully requests that the Commission grant its Motion.

DATED: March 13, 2023

Respectfully submitted,

/s/ Melissa Armstrong \_\_\_\_\_

Melissa Armstrong

DIVISION OF ENFORCEMENT

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**CERTIFICATE REGARDING SERVICE**

Since the Division of Enforcement filed its Motion, Anthony Brandel has been released from prison, and the Division has no current address for him. Records indicate that he is on supervised release, and counsel for the Division has contacted his parole officer to obtain his address. If and when the Division is successful in its efforts, it will serve the forgoing Supplemental Brief and file a proof of service.

/s/ Melissa Armstrong  
Melissa Armstrong

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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEVADA**

	)	
<b>SECURITIES AND EXCHANGE</b>	)	
<b>COMMISSION,</b>	)	
<i>Plaintiff,</i>	)	<b>2:13-CV-2280 (GMN)(PAL)</b>
v.	)	<b>MOTION FOR SUMMARY</b>
	)	<b>JUDGMENT AGAINST DEFENDANTS</b>
<b>MALOM GROUP AG, et al.</b>	)	<b>JAMES C. WARRAS AND ANTHONY</b>
<i>Defendants.</i>	)	<b>B. BRANDEL</b>
	)	

Following their criminal convictions for wire fraud and securities fraud concerning the same underlying conduct as alleged in the SEC’s complaint, the SEC respectfully moves for summary judgment against Defendants James C. Warras and Anthony B. Brandel.

This motion is supported by the attached memorandum in support of this motion, the statement of undisputed facts, and exhibits submitted in support thereof.

Dated: June 20, 2017

Respectfully Submitted,

/s/ Kenneth J. Guido

Kenneth J. Guido

Timothy N. England

Counsel for Plaintiff

U.S. Securities and Exchange Commission

**PROOF OF SERVICE**

I, Kenneth Guido, hereby declare that the foregoing motion, supporting memorandum, statement of undisputed facts and exhibits, and proposed order were filed on the Court's ECF system, and were:

Sent to the following via mail:

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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEVADA**

	)	
<b>SECURITIES AND EXCHANGE</b>	)	
<b>COMMISSION,</b>	)	<b>2:13-CV-2280 (GMN)(PAL)</b>
<i>Plaintiff,</i>	)	<b>MEMORANDUM IN SUPPORT OF</b>
v.	)	<b>MOTION FOR SUMMARY</b>
<b>MALOM GROUP AG, et al.</b>	)	<b>JUDGMENT AGAINST DEFENDANTS</b>
<i>Defendants.</i>	)	<b>JAMES C. WARRAS AND ANTHONY</b>
	)	<b>B. BRANDEL</b>

**INTRODUCTION**

Plaintiff Securities and Exchange Commission (“SEC”) moves for summary judgment against Defendants James Warras and Anthony Brandel. The SEC charged Warras and Brandel with violating the federal securities laws when, from approximately October 2009 until October 2013, they perpetrated an advance-fee high-yield investment scam with Switzerland-based Malom Group AG (“Malom”), Las Vegas-based M.Y. Consultants, Inc., and others. (SOF 1, Compl., Dkt. 1). In a parallel criminal proceeding, Warras and Brandel were convicted in this

District for engaging in the same underlying conduct as alleged in the SEC’s complaint. (**SOF 2**, Indictment ¶¶1, 3 and 5). Their convictions rested on the same scheme to defraud, the same unregistered securities, the same victims, the same illegal proceeds, and the same jurisdictional means. *United States v. Brandel*, 2:13 cr 439 (D. Nev.) (KJD-VCF) (“Brandel”).

Supported by the doctrine of collateral estoppel, and the additional undisputed facts set forth below, the SEC seeks summary judgment against Warras and Brandel as to all counts alleged in the Complaint. The SEC also seeks orders of permanent injunction enjoining Warras and Brandel from further violations of the federal securities laws and engaging in securities transactions, and orders that they disgorge the proceeds from the illegal scheme and pay civil monetary penalties.

## **PROCEDURAL HISTORY AND RELEVANT FACTS**

### **A. The SEC’s Complaint**

On December 16, 2013, the Commission filed a complaint alleging that between August 2009 and November 2011, James C. Warras and Anthony B. Brandel, among other defendants, participated in and aided and abetted an advance-fee investment scheme involving fictitious “prime bank” instruments and fraudulent high-yield investments. **SOF 1**, Compl. at ¶ 1. As alleged in the complaint, through the use of forged bank and other documents, fake histories of success, and the promise of risk-free investments and astronomical returns, the defendants lured investors into at least 31 investment agreements, for which investors collectively paid the defendants at least \$10.8 million. **SOF 1**, *Id.* At the center of the scheme was Malom Group AG—an acronym for “Make A Lot Of Money.” **SOF 1**, Compl. ¶1. None of the Malom securities offered or sold were registered with the Commission, as was required, and none qualified for any exemption from registration. By their conduct, the SEC alleged that Warras

and Brandel violated the antifraud provisions of the federal securities laws, aided and abetted fraud, and offered and sold unregistered securities. In addition, the SEC alleged that Brandel acted as an unregistered securities broker.

The complaint alleged that Warras was the Executive Vice President of Malom, **SOF 1**, Compl. at ¶¶ 1, 21, and that between approximately August 2009 until November 2011, he provided Brandel and other defendants with forged bank and other documents purporting to show that Malom had hundreds of millions of dollars, made several misrepresentations to investors about Malom and about the nature of various high-yield trading programs into which he sought to recruit investors, and was an active participant in negotiations with investors regarding certain fraudulent transactions. **SOF 1, Id.** at ¶¶ 101-120. After November 2011, continuing until at least October 2013, Warras lulled investors with excuses for non-performance and promises of refunds. **SOF 1, Id.** at ¶ 117.

With respect to Brandel, the complaint alleged that he, through his Las Vegas-based company, M.Y. Consultants, served as Malom's agent and main point of contact for investors. **SOF 1**, Compl. ¶¶ 3, 23-24, 30. From approximately August 2009 to November 2011, Brandel arranged transactions with Malom, requested from Warras and then circulated to investors fraudulent bank statements, handled investor funds, negotiated transaction documents, and communicated with investors. **SOF 1, Id.** at ¶¶ 23, 143. Continuing until at least spring 2013, Brandel lulled investors with excuses for non-performance and promises of refunds. **SOF 1, Id.** at ¶ 171. The complaint further alleged that Brandel was not registered with the Commission as a broker or dealer, as was required given his involvement in the scheme. **SOF 1, Id.** at ¶ 211.

After a motion by the U.S. Department of Justice, in which the DOJ asserted in this case that “[i]n sum and substance, the criminal indictment and civil complaint allege the same

securities fraud and investment scheme,” (*Brandel*, Dkt. No. 19 at 3), this Court stayed the SEC’s action pending the completion of the parallel criminal trial, (*Brandel*, Dkt. No. 27), and lifted the stay on December 28, 2016, after Warras’ and Brandel’s criminal convictions.

*Brandel*, Dkt. No. 66.

### **B. The Criminal Proceeding**

On December 11, 2013, a grand jury sitting in this District returned a sealed indictment against Warras, Brandel, and several other defendants. **SO 2**, Indictment. The indictment alleged multiple counts of securities fraud (18 U.S.C. §§ 78j(b), 78ff), wire fraud (18 U.S.C. § 1343), and conspiracy to commit wire and securities fraud (18 U.S.C. § 371). **SO 6**, Indictment ¶ 11. As alleged in the indictment, Warras, Brandel and the other defendants engaged in a conspiracy to fraudulently obtain money from investors by promoting purported high yield investment programs in which Malom would participate as partner or co-investor and to fraudulently divert those funds for their own personal benefit. **SO 7**, Indictment ¶ 12. The indictment alleged that the defendants lured investors into a type of security known as an investment contract with misrepresentations about the existence of the high-yield investment programs, Malom’s financial strength, and forged bank documents; diverted the funds paid by investors to their own personal use; and then attempted to dissuade victims from contacting authorities or taking legal action with promises of refunds.

At trial, several of Warras’s and Brandel’s victims testified about the investment opportunities presented to them and their expectation for their investment, the misrepresentations that were made to them about Malom’s financial resources and history of success, and the fact that they lost all of their invested funds. The government called an FBI agent as a summary witness, who testified that investors lost approximately \$9.9 million in connection with the

scheme, of which Warras received \$725,000, and Brandel \$630,000. **SOF 20-22.** The remaining funds were distributed amongst the other participants in the scheme. On December 7, 2015, after a five day trial by jury in which Warras and Brandel actively participated, they were convicted on all counts, including securities fraud. **SOF 8-11.** The amount of forfeiture has not yet been determined.

### **C. The Parallels Between the Civil and Criminal Proceedings**

The criminal case what brought to impose criminal sanctions for the same scheme to defraud by the same defendants as in the SEC's action. The SEC's case and the criminal case are almost identical. Both cases where brought to challenge the defendants', including Warras's and Brandel's, fraudulent sales of fictitious investments. The facts underlying both are identical. Defendants were found criminally liable for their actions: (1) Promoting fictitious, high-yield investment programs through investment contracts in the form of joint venture agreements and financial services agreements with Malom; (2) Fabricating and providing to investors false bank statements purporting to show that Malom Group AG had large account balances and otherwise making false statement to investors about Malom's financial resources and history of success; and (3) Responding to wary investors with false statements that refunds would be paid or the promised returns were imminent.

More specifically, the SEC Complaint and United States Indictment both detail how Warras and Brandel worked together to create and provide to investors fraudulent bank statements purporting to reflect Malom's financial strength, (**SOF 7**, Indictment ¶¶ 14(d-e, i); **SOF 1**, Compl. ¶¶ 103, 105, 113, 115, 152, 169-170). This specifically included bank statements from Suditrol Bank, (**SOF 7**, Indictment ¶14(b); **SOF 1**, Compl. ¶¶ 106-111), and Centrum Bank. **SOF 7**, Indictment ¶ 14(g); **SOF 7**, Compl. ¶ 170. In addition, both cases allege that

Warras submitted a declaration to the U.S. Bankruptcy Court that contained misrepresentations about a transaction Malom pitched to an investor whose bankruptcy was pending. (SOF 7, Indictment ¶ 13(h); (SOF 1, Compl. ¶ 118).

In short, the criminal case and the SEC's action sought sanctions for the Defendants' identical activity that violated the identical antifraud sections of the securities laws.

### **ARGUMENT**

As demonstrated below, the verdict and evidence established in the criminal proceeding shows that Warras and Brandel violated the antifraud provisions of the federal securities laws. Together with the additional undisputed facts in the attached statement of uncontested material facts, summary judgment as to liability on all counts, as well as injunctive and monetary relief, should be entered against them.

#### **A. Summary Judgment Should Be Granted When The Facts Have Already Been Litigated In A Criminal Matter**

Summary Judgment is appropriate when the pleadings, affidavits, and other supporting papers permitted by Federal Rule of Civil Procedure 56(c) demonstrate that there is no genuine issue of material fact and the moving party is entitled to prevail as a matter of law. Fed. R. Civ. P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). When a defendant has already been convicted of criminal securities fraud, courts in this Circuit have not hesitated to apply in Summary Judgment the doctrine of collateral estoppel to civil securities fraud violations to bar relitigation of factual issues necessarily decided in the criminal case. *See, e.g., Hinkle Northwest, Inc. v. SEC*, 641 F.2d 1304, 1308-09 (9th Cir. 1981); *SEC v. Alexander*, 115 F.Supp.3d 1071, 1079 (N.D. Cal. July 17, 2015); *SEC v. Reyes*, 2008 U.S. Dist. LEXIS 65895 at \*7 (N.D. Cal. Aug. 25, 2008). A criminal conviction is conclusive proof and operates as collateral estoppel in a subsequent civil action for the facts supporting the conviction. *Emich Motors Corp. v. General*

*Motors Corp.*, 340 U.S. 558, 568-71 (1951); *United States v. McLaurin*, 57 F.3d 823,826 (9th Cir. 1995); *SEC v. Earthly Mineral Sols., Inc.*, 2010 WL 3829348, at \*2 (D. Nev. Sept. 24, 2010). In seeking to invoke the doctrine of collateral estoppel in a case involving a parallel criminal matter, the moving party must establish that:

(1) the prior conviction must have been for a serious offense so that the defendant was motivated to fully litigate the charges; (2) there must have been a full and fair trial to prevent convictions of doubtful validity from being used; (3) the issue on which the prior conviction is offered must of necessity have been decided at the criminal trial; and (4) the party against whom the collateral estoppel is asserted was a party ... to the prior trial.

*Ayers v. City of Richmond*, 895 F.2d 1267, 1271 (9th Cir. 1990). Applying these criteria to this case, there is no dispute that the prior conviction was for serious offenses such that Warras and Brandel were adequately motivated to—and did—fully litigate the criminal charge, that there was a full and fair trial, and that both Warras and Brandel were parties to that trial. **SOF 8-9.** This leaves the third prong of the analysis, requiring that the issues in this matter have been actually litigated and necessarily decided in the prior case. This prong is clearly met here.

#### **B. Warras and Brandel Violated the Antifraud Provisions of the Securities Laws**

Section 10(b) of the Exchange Act makes it unlawful “[t]o use or employ, in connection with the purchase or sale of any security, any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the [C]ommission may prescribe as necessary or appropriate in the public interest or for the protection of investors.” 15 U.S.C. § 78j(b). Rule 10b-5, in turn, makes it unlawful, “in connection with the purchase or sale of any security,” “(a) [t]o employ any device, scheme, or artifice to defraud, (b) [t]o 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) [t]o engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.” 17 C.F.R. § 240.10b-5. Together, Section 10(b) and Rule 10b-5 prohibit “(1) using any deceptive device (2) in

connection with the purchase or sale of securities.” *United States v. O’Hagan*, 521 U.S. 642, 651 (1997). Similarly, Section 17(a) of the Securities Act prohibits the same fraudulent conduct in the offer or sale of any security. 15 U.S.C. § 77q(a). *SEC v. McCaskey*, 2001 U.S. Dist. LEXIS 13571, \*11-12 (S.D.N.Y. Sept. 6, 2001) (finding that although defendant was not charged criminally with Section 17(a) violation, his guilty plea to Section 10(b) prevented him from contesting liability as to Section 17(a), as the elements of Section 17(a) and 10(b) are essentially the same).

In finding the Defendants guilty of fraud, the jury in the criminal trials necessarily found that the Government proved beyond a reasonable doubt the elements of securities fraud under § 10(b) and Rule 10b-5, which is also alleged by the SEC here. According to the jury instructions, the jury found that: Warras and Brandel “willfully used a device or scheme to defraud someone, made an untrue statement of a material fact, failed to disclose a material fact that resulted in making the defendant’s statements misleading, or engaged in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any person as detailed in the indictment.” **SOF 9**, Brandel Jury Instr. No. 25. Their “acts were undertaken, statement was made, or failure to disclose was done in connection to the execution of an investment contract.” *Id.* They “directly or indirectly used an interstate wire or other instruments of interstate commerce in connection with these acts, making this statement, or this failure to disclose.” *Id.* They “acted knowingly.” *Id.*

As demonstrated by the facts set out in the indictment and adduced at trial, Warras’s and Brandel’s convictions “rest[] upon the same fraudulent acts” alleged in in this civil action. *See SEC v. Everest Mgmt. Corp.*, 466 F. Supp. 167, 173-74 (S.D.N.Y. Jan. 30, 1979). Taken from the facts alleged in the indictment, Warras and Brandel both:

- Promoted high yield investment programs and fraudulently diverted the monies received for their personal benefit. **SOF 2**, Indictment ¶ 13(a).
- Promoted high yield investment programs they told investors would pay large returns when they knew the programs were fictitious. *Id.*



- Fabricated and provided to investors false and fraudulent bank statements that purported to show that Malom had large balances at several banks, and orally represented to investors that Malom had vast cash reserves when they knew Malom's cash reserves were far less than what they represented to investors. **SOF 2**, Indictment ¶ 13(b).
- Provided investors with investment contracts titled "joint venture agreements" or "financial services agreements" and induced investors to part with money by promising that Malom would contribute its own money, when in fact they did not intend to contribute any money to a joint venture. **SOF 2**, Indictment ¶ 13(f).
- After securing money from investors for joint ventures, did not contribute money toward the joint venture as promised, cited excuses they knew were false for their failure to do so, and refused to provide refunds. **SOF 2**, Indictment ¶ 13(g).
- As to Warras, submitted a declaration to a United States Bankruptcy Court he knew contained materially false statements about a transaction he and Malom pitched to an investor who was in bankruptcy proceedings. **SOF 2**, Indictment ¶ 13(h).

Accordingly, Warras and Brandel, convicted of violating Section 10(b) and Rule 10b-5 of the Exchange Act, are liable here for the same fraudulent scheme. For the same reasons, they are also liable for violating Section 17(a) of the Securities Act, which prohibits the same fraudulent conduct in the offer or sale of any security. 15 U.S.C. § 77q(a); *SEC v. McCaskey*, *supra* at \*11-12.

Finally, the same facts found in the criminal matter support a finding that Warras and Brandel aided and abetted Malom's, and for Brandel, M.Y. Consultant's fraudulent conduct in violation of Exchange Act 20(e) and Securities Act 15(b). To establish aiding and abetting liability under Section 20(e) of the Exchange Act prior to the July 22, 2010 effective date of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub. Law 111-203 ("Dodd-Frank Act"), the Commission must show: (1) the existence of a primary violation; (2) actual knowledge by the alleged aider and abettor of the violation and of his/her role in furthering it; and (3) that the aider and abettor substantially assisted in accomplishing the primary violation. *SEC v. Fehn*, 97 F.3d 1276, 1288 (9th Cir. 1996). Section 9290 of the Dodd-

Frank Act amended Section 20(e) to state that recklessness can satisfy the intent standard for aiding and abetting liability. 15 U.S.C. § 78t(e). In convicting Warras and Brandel of conspiracy, the jury found that the Government proved each of the overt acts performed in furtherance of the conspiracy beyond a reasonable doubt. Among other evidence that they provided substantial assistance to Malom, Warras and Brandel “promoted high yield investment programs,” **SOF 7**, Indictment at ¶13(a), “fabricated and provided to investors false and fraudulent bank statements purporting to show that Malom had large account balances” and “orally represented to investors that Malom had vast cash reserves.” **SOF 7**, *Id.* at ¶ 13(b).

Further, Warras and Brandel induced investors to make payments to Malom and M.Y. Consultants by making materially false and misleading statements. **SOF 7**, Indictment at ¶ 13(i).

### **C. Warras and Brandel Violated Securities Act Section 5**

Sections 5(a) and (c) of the Securities Act prohibit any person from offering or selling a security in interstate commerce unless a registration statement is in effect or there is an applicable exemption. *See* 15 U.S.C. §§ 77e(a) and (c). The purpose of the registration requirements of Section 5 is to “protect investors by promoting full disclosure of information thought necessary to informed investment decisions.” *SEC v. Ralston Purina Co.*, 346 U.S. 119, 124 (1953). To establish a *prima facie* violation of Section 5 of the Securities Act, the Commission must show that: (1) A person, directly or indirectly, sold or offered to sell securities; and (2) No registration statement was filed or in effect; and (3) interstate means were used in connection with the offer or sale. *See SEC v. Calvo*, 378 F.3d 1211, 1214 (11th Cir. 2004); *accord SEC v. Murphy*, 626 F.2d 633, 640 (9th Cir. 1980).

As to the first element against an individual, such as Warras or Brandel, the *prima facie* case is met where it is shown that a person “engaged in steps necessary to” and was a

“substantial factor in” an unregistered distribution. *Murphy*, 626 F.2d at 649-50 & 652; *see also SEC v. Phan*, 500 F.3d 895, 906 (9th Cir. 2007) (affirming liability of defendant who directed company attorneys to draft contract for stock sale). Section 5 does not require proof that the defendant acted intentionally or with any other mental state. *Calvo*, 378 F.3d at 1215; *SEC v. Current Fin. Servs., Inc.*, 100 F. Supp. 2d. 1, 6 (D.D.C. 2000) (“Scienter is not required under Section 5 of the Securities Act”). Once the Commission establishes the *prima facie* elements of a Section 5 violation, the burden shifts to the party claiming the exemption or safe harbor from registration to show the applicability of the exemption or safe-harbor. *See Ralston Purina*, 346 U.S. at 126 (1953).

Warras and Brandel violated Sections 5(a) and (c) of the Securities Act by offering and selling Malom securities (in the form of investment contracts) in unregistered transactions. First, there is no dispute that the investment contracts Warras and Brandel offered investors were not registered with the SEC. **SOF 18**, Attestation. There also can be no reasonable dispute that Warras and Brandel were each a “substantial factor” in the offering. In fact, the Jury in the criminal case convicted them for making false statements to investors when offering them opportunities to make the investments, as here. **SOF 10**. It is also readily apparent from the Commission’s public files that there has been no registration for the transactions they sought to sell the investors. **SOF 18**, Attestation. Finally, as Warras and Brandel stipulated in *Brandel*, the investments were transmitted via wire transfers that were in interstate commerce. **SOF 13**, Stipulation of Parties, *Brandel*.

#### **D. Brandel Violated Exchange Act 15(a)**

Section 15(a) of the Exchange Act makes it unlawful for any broker or dealer to use jurisdictional means such as the telephone or mails to effect any transaction in, or to induce or

attempt to induce, the purchase or sale of any security unless such broker-dealer: (1) is registered with the Commission; (2) in the case of a natural person, is an associated person of a registered broker-dealer; or (3) satisfies the conditions of an exemption or safe harbor. Scierer is not an element of a violation of Section 15(a)(1). *SEC v. Randy*, 38 F. Supp. 2d 657, 667 (N.D. Ill. 1999). Section 3(a)(4) of the Exchange Act generally defines “broker” as any person, other than a bank, “engaged in the business of effecting transactions in securities for the account of others.” Among the activities that indicate a person may be a broker are: (1) solicitation of investors to purchase securities, (2) involvement in negotiations between the issuer and the investor, and (3) receipt of transaction-related compensation. *SEC v. Earthly Mineral Sols., Inc.*, 2011 WL 1103349, at \*3 (D. Nev. Mar. 23, 2011).

The factual record underpinning Brandel’s conviction supports a finding that Brandel violated Exchange Act Section 15(a). As evidenced by the testimony of several witnesses in the criminal trial, Brandel held himself out to be the United States representative for Malom. **SOF 14.** He solicited investors into agreements with Malom, negotiated the terms of the agreements with investors, prepared transaction documents, and notified investors when Malom agreed to the terms of the investments. **SOF 15.** Brandel had investors enter into escrow agreements with M.Y. Consultants escrow agent, told the investors to send their money to the escrow agent and instructed the escrow agent when to distribute the funds after the escrow conditions were met, and where to send the released funds after closing. **SOF 16.** He earned transaction-based compensation for his efforts. **SOF 17.** Significantly, Brandel was not registered as a broker-dealer with the SEC. **SOF 19,** Attestation.

**E. The Court Should Enter Permanent Injunctions against Both Defendants**

The Commission seeks permanent injunctions against Warras and Brandel enjoining them from engaging in future violations of Exchange Act Section 10(b), and Rule 10b-5 thereunder, and Securities Act Sections 5(a), 5(c), and 17(a). **SOF 1**, Complaint, Prayer for Relief, § II. The Commission also seeks a permanent injunction against Brandel enjoining him from engaging in future violations of Exchange Act Section 15(a). *Id.* Additionally, the Commission seeks a permanent injunction against Warras and Brandel enjoining them from directly or indirectly participating in the issuance, offer, or sale of any security, including but not limited to joint venture agreements, proofs of funds, bank guarantees, medium term notes, standby letters of credit, structured notes, and similar instruments, with the exception of the purchase or sale of securities listed on a national securities exchange. **SOF 1**, Complaint, Prayer for Relief, § III.

Section 20(b) of the Securities Act and Section 21(d) of the Exchange Act provide that upon a proper showing, a permanent injunction shall be granted in an enforcement action brought by the Commission. To obtain an injunction, the Commission must establish that there is a reasonable likelihood of future violations. *See SEC v. Murphy*, 626 F.2d at 655. The existence of past violations may give rise to an inference that there will be future violations. *See id.*; *United States v. Odessa Union Warehouse Co-op.*, 833 F.2d 172, 176 (9th Cir. 1987). Courts also consider factors such as the degree of scienter involved, the isolated or recurrent nature of the violative conduct, the defendant's recognition of the wrongful nature of the conduct, the likelihood that, because of the defendant's occupation, future violations may occur, and the sincerity of defendant's assurances (if any) against future violations. *Murphy*, 626 F.2d at 655.

Permanent injunctive relief is warranted against Warras and Brandel. There is a reasonable likelihood that these defendants may commit future securities violations given their egregious conduct that lasted over two years. There also is no question that they exhibited a high degree of scienter when they carried out this scheme. **SOF 1**, Complaint ¶¶ 1-13; 101-94. Based upon the serious nature of the defendants' illegal conduct, it is more than reasonable to infer a likelihood of future violations. *SEC v. Global Express Capital Real Estate Inv. Fund, I, LLC*, 289 F. App'x 183, 189 (9th Cir. 2008) (finding permanent injunction appropriate where defendant acted with the highest degree of scienter, failed to acknowledge her wrongdoing or provide future assurances against future violations, and engaged in egregious, recurring conduct).

#### **F. Disgorgement and Prejudgment Interest**

Disgorgement is an equitable remedy that deprives a defendant of the benefits of his wrongful conduct. *SEC v. Rind*, 991 F.2d 1486, 1493 (9th Cir. 1993). The Ninth Circuit has observed that disgorgement plays a central role in securities law enforcement. *Id.* at 1491. To obtain an order of disgorgement, the Commission need not provide a detailed accounting; rather disgorgement need be only a reasonable approximation of a defendant's unjust enrichment. *SEC v. First Jersey Secs., Inc.*, 101 F.3d 1450, 1474-75 (2d Cir. 1996).

Because Warras and Brandel violated Section 5 of the Securities Act by making unregistered offers and sales of securities, their ill-gotten gains for disgorgement purposes is the entire amount raised. *See SEC v. Platforms Wireless Int'l Corp.*, 617 F.3d 1072 (9th Cir. 2010). In *Platforms Wireless*, the Ninth Circuit affirmed an order requiring the defendants to jointly and severally disgorge the entire \$1.75 million raised from investors through an unregistered securities offering that violated Section 5 of the Securities Act. *Id.* at 1096-98. In ordering the defendants to disgorge the entire amount raised, the *Platforms Wireless* Court determined that the defendants benefitted from the entire amount raised, which was used to pay business and other expenses, not just the

amounts they personally received. *Id.* at 1097-98. As the Government witness testified, the Malom fraudulent scheme grossed \$9.9 million, of which \$4,920,000 was raised from the victims who testified in the criminal trial. **SO F 20.** At a minimum, Warras and Brandel should be ordered to pay disgorgement in amounts equal to the amount (\$4,920,00) raised from investors who testified at the criminal trial.<sup>1</sup>

Disgorgement orders also include prejudgment interest. *Id.* The purpose of ordering payment of prejudgment interest is to deny defendants any possible profit resulting from illegal activity. This removes any economic incentive to delay and ensures that “judicially-awarded interest rates are not less than the contemporary cost of money.” *SEC v. CMKM Diamonds*, 635 F. Supp. 2d 1185, 1190 (D. Nev. June 23, 2009) (internal citations and quotations omitted). Prejudgment interest should be calculated by applying the Internal Revenue Service tax underpayment rate. *See* 26 U.S.C. § 6621(a)(2); *Boock*, 2012 WL 3133638, at \*5 (citing *SEC v. First Jersey Secs., Inc.*, 101 F.3d 1450, 1476 (2d Cir. 1996)). There is little guidance on the selection of a date from which prejudgment interest should be calculated, but the Ninth Circuit has observed that the court’s selection of a prejudgment interest accrual date is flexible. *See Platforms Wireless*, 617 F.3d at 1099-1100.

The Commission’s staff calculated prejudgment interest on the disgorgement amount sought from Warras and Brandel from the date of the last investor agreement, September 22, 2011, until June 30, 2017. Applying the rate for the underpayment of federal income tax as set forth in 26 U.S.C. § 6621(a)(2), prejudgment interest on \$4,920,000, the amount of disgorgement sought from Warras and Brandel, for the relevant time period is \$1,015,020.15 for a total disgorgement figure of \$5,935,020.15. **SO F 23**, SEC’s Prejudgment Calculation.

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<sup>1</sup> The Commission’s proposed Final Judgment includes a provision offsetting any amount that Warras and Brandel pays in restitution against the disgorgement ordered by the Court in this action. *See* Proposed Final Judgment § X (filed concurrently).

### G. Civil Penalties

The Commission also requests civil penalties against Warras and Brandel. “Unlike disgorgement, civil penalties are not only designed to deter future violations of securities laws but are imposed to punish the individual violator,” and are not assessed based upon a theory of joint and several liability. *CMKM Diamonds*, 635 F. Supp. 2d at 1190-91. Although civil penalties are “determined by the court in light of the facts and circumstances,” Exchange Act § 21(d)(3)(B)(i); Securities Act § 20(d)(2)(A), courts generally calculate civil penalties in cases involving violations of federal securities laws in one of two ways. *See CMKM Diamonds, Inc.*, 635 F. Supp. 2d at 1192.

First, using a “per-violation” approach, a court may multiply a defendant’s violations by a dollar amount that conforms to one of three penalty ceilings outlined in Section 20(d)(2) of the Securities Act and Section 21(d)(3)(B) of the Exchange Act, which are graduated based upon the severity of the conduct. *See id.* Third tier penalties set the highest ceiling and are available when the securities law violation “involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement [and] such violation directly or indirectly resulted in substantial losses or created a significant risk of substantial loss to other persons,” Exchange Act § 21(d)(3)(B) [15 U.S.C. § 78u(d)(3)(B)]; Securities Act § 20(d)(2), 15 U.S.C. § 77t(d)(2), which the Commission asserts is applicable in this case. For individual defendants, the maximum statutory third tier penalty amount is \$150,000 per violation.<sup>2</sup>

Under the per-violation approach where defendants have violated multiple provisions of

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<sup>2</sup> The text of the Securities Act and Exchange Act sets the maximum penalties for natural person at \$100,000 for third-tier penalties. *Id.* These maximums are adjusted for inflation on a periodic basis. *See* 17 C.F.R. § 201.1004 (2009). In the 2009 adjustment, which applies to violations between March 2009 and March 2013, the third-tier penalty for natural persons was adjusted to \$150,000. 17 C.F.R. § 201.1004 (2009) (Table IV).



the securities laws and/or the same provisions multiple times, courts have calculated penalties in a variety of ways. Some courts have imposed penalties for each violation of a statutory provision. *See, e.g., SEC v. Jasper*, 883 F. Supp. 2d 915, 931 (N.D. Cal. 2010) (assessing third tier penalties for each securities law provision/count charged). Other courts, including in prime bank cases similar to the case at bar, have multiplied a single penalty by the number of investors affected. *SEC v. Kenton Capital, Ltd.*, 69 F.Supp.2d 1, 17 (D.D.C. 1998) (imposing 12 penalties, one for each of the 12 investors defrauded).

Under the second approach, a court may impose a penalty equal to a defendant's gross pecuniary gain. *See CMKM Diamonds*, 635 F. Supp. 2d at 1192-93. Some courts rely on this approach where "the number of transactions at issue makes imposition of a per-violation penalty both practically difficult and grossly disproportionate." *SEC v. Brandonisio*, 2013 WL 5375283 at \*9 (D. Nev. Sept. 24, 2013) (finding a penalty equal to pecuniary gain appropriate where complex pump and dump scheme involved potentially millions of transactions and misrepresentations); *CMKM Diamonds, Inc.*, 635 F. Supp. 2d at 1192-93 (declining to impose \$10,000 penalties for each of 569 transactions, or in the alternative, \$100,000 penalties for each of 40,000 investors defrauded, and instead imposing a penalty equal to the defendant's pecuniary gain).

Warras and Brandel violated several provisions of the federal securities laws and the jury heard testimony from seven victims against Warras and nine against Brandel. **SOF 20-23.** Using a penalty-per-investor approach, such as that employed in *Kenton*, the penalty against Warras would equal \$1,050,000 and the penalty against Brandel would equal \$1,350,000. Using a per-violation approach that imposes a penalty for each securities law provision charged in the

complaint, such as that employed in *Jasper*, the penalty against Warras would equal \$750,000 and the penalty against Brandel would equal \$900,000.<sup>3</sup>

The Court may wish to note, however, that it adopted the pecuniary gain approach in entering judgments against two defendants in this action, *see* Final Judgments in *SEC v. Malom Group AG*, 2:13cv2280 (D. Nev.) at [Dkts. 45-46], and against two defendants in a related action, *see SEC v. Erwin* 2:14cv623 (D. Nev.) [Dkt. 24]. In the criminal trial, the United States established that Brandel's gross amount of personal pecuniary gain was \$630,000, of which \$217,000 was received from investors who testified at trial against him. **SOF 22.** Warras's gross amount of personal pecuniary gain was \$720,000, of which \$166,785 was received from investors who testified at trial against him. **SOF 21.**

### **CONCLUSION**

For the reasons stated above, the Commission hereby requests that the Court grant the SEC's Motion for Summary Judgment as to Defendants Warras and Brandel based on collateral estoppel and the undisputed facts submitted with this motion.

Dated: June 20, 2017

Respectfully Submitted,

/s/ Kenneth J. Guido

Kenneth J. Guido

Timothy N. England

Counsel for Plaintiff

U.S. Securities and Exchange Commission

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<sup>3</sup> Based on five violations/counts in the Complaint against each of Warras and Brandel plus a sixth count against Brandel: (1) violating and (2) aiding and abetting violations of Exchange Act Section 10(b) and Rule 10b-5 thereunder; (3) violating Securities Act Section 5; (4) violating and (5) aiding and abetting violations of Securities Act Section 17(a); and, against Brandel only, violating Exchange Act Section 15(a).



<b>UNDISPUTED FACTS</b>	<b>EVIDENCE</b>
<p>1. On December 16, 2013, the SEC filed a civil enforcement action (“Complaint”) against Brandel and Warras for, <i>inter alia</i>, violations of Securities Exchange Act of 1934 (“Exchange Act”) Section 10(b) and Rule 10b-5. The Complaint alleges that:</p> <ul style="list-style-type: none"> <li>• In two advance-fee investment schemes perpetrated from at least August 2009 until November 2011, Switzerland-based Malom Group AG through its principals, agents, and promoters, defrauded more than 30 investors out of \$11 million using forged documents, fake histories of success, and the promise of risk-free investments and astronomical returns. (Para. 1)</li> <li>• Warras, Malom’s Executive Vice President, was one of the individuals charged with directing the schemes, providing Brandel with forged bank and other documents, made several misrepresentations to investors about Malom’s financial condition and the nature of the investments into which he recruited investors. (Para. 3, 101)</li> <li>• Brandel was Malom’s agent and main point of contact for investors in connection with the schemes, explaining the investments, collecting investor funds, providing investors with forged bank and other documents, misrepresenting to investors Malom’s financial condition and the nature of the investments into which he recruited investors, and lulling investors about the status of their transactions despite knowing or being reckless in not knowing that the programs promising astronomical guaranteed returns were false and misleading. (Para.3, 24, 30 and 42)</li> </ul>	<p>Exhibit 1, Complaint, <i>SEC v. Malom Group AG</i>, 2:13-cv-2280, at ¶¶ 1, 3, , 24, 30 and 42</p>
<p>2. Days earlier on December 11, 2013, the United States Department of Justice filed a Criminal Indictment against James Warras, Anthony B. Brandel, and several other defendants.</p>	<p>Exhibit 2, Criminal Indictment in <i>United States v. Brandel</i>, No. 2:13-cr-00439 (D. Nev. Dec. 11, 2013) (“Indictment”).<sup>1</sup></p>
<p>3. Malom Group AG (“Malom”) was a Switzerland corporation with an office at Seestrasse 185, CH8800, Thalwil-</p>	<p>Exhibit 2, Indictment at ¶1</p>

<sup>1</sup> The exhibits referenced herein are attached to the concurrently filed Declaration of Corinthian L. Davis.

Zurich, Switzerland.	
4. Anthony Brandel (“Brandel”).was a Nevada resident who acted as a director of M.Y. Consultants, Inc.	Exhibit 2, Indictment at ¶3
5. James Warras (“Warras”) was a Wisconsin Resident who acted as an Executive Vice President of Malom	Exhibit 2, Indictment at ¶5
6. The Criminal Indictment charged that, from October 2009 through October 2013, Warras and Brandel, together with other defendants,, willfully and knowingly, directly and indirectly, by use of the means and instrumentalities of interstate commerce, in connection with the purchase and sale of securities, use and employ of manipulative and deceptive devices and contrivance violated Title 15 United States Code Sections 78j(b) (“Section 10(b)”) and titled 17, Code of Federal regulations, Sections 240.10b-5 (“Rule 10b-5”) by: (a) employing devices, schemes, and artifices to defraud; Making untrue statements of material facts and omitting 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) engaging in acts, practices, and courses of business which operated and would operate as a fraud and deceit upon any person.	Exhibit 2, Indictment at ¶11
7. The Criminal Indictment charged Brandel and Warras Section 10(b) and Rule 10b-5 because they each engaged in the following activities that were subsequently adduced at trial: <ul style="list-style-type: none"> <li>• Promoted high yield investment programs they told investors would pay large returns when they knew the programs were fictitious.</li> <li>• Fabricated and provided to investors false and fraudulent bank statements that purported to show that Malom had large balances at several banks, and orally represented to investors that Malom had vast cash reserves when they knew Malom’s cash reserves were far less than what they represented to investors.</li> <li>• Provided investors with investment contracts titled “joint venture agreements” or “financial services agreements” and induced investors to part with money by promising that Malom would contribute its own money, when in fact they did not intend to contribute any money to a joint venture.</li> <li>• After securing money from investors for joint ventures, did not contribute money toward the joint venture as promised, cited excuses they knew were false for their</li> </ul>	Exhibit 2, Indictment at ¶¶ 12-14

<p>failure to do so, and refused to provide refunds.</p> <ul style="list-style-type: none"> <li>• As to Warras, submitted a declaration to a United States Bankruptcy Court he knew contained materially false statements about a transaction he and Malom Group pitched to an investor who was in bankruptcy proceedings.</li> <li>• Instead of investing the funds as represented to investors fraudulently diverted the monies received for their personal benefit.</li> </ul>	
<p><b>8.</b> A five day jury trial was held on December 1 through 4, and December 6 through 7, 2015. Brandel and Warras were represented by counsel, including during the presentation of evidence for and against them.</p>	<p>Exhibit 3, Tr. 1-2, 211-212, 476-477, 718-719 and 977-978.</p>
<p><b>9.</b> Brandel and Warras actively participated in their defense in the Criminal Trial. Brandel testified on his own behalf and Warras chose not to do so. Opening and Closing Arguments were made on their behalf.</p>	<p>Exhibit 6, Tr. 810:20 – 813:14</p>
<p><b>10.</b> On December 7, 2015, the Jury returned a unanimous verdict finding beyond a reasonable doubt that Brandel committed Securities Fraud in violation of Section 10(b) and Rule 10b-5, Wire Fraud in violation of 18 U.S.C. § 371, and conspired with others to commit the violations.</p>	<p>Exhibit 26, Verdict Form.</p>
<p><b>11.</b> On December 7, 2015, the Jury returned a unanimous verdict, finding that beyond a reasonable doubt Warras committed Securities Fraud in violation of Section 10(b) and Rule 10b-5, Wire Fraud in violation of 18 U.S.C. § 371, and conspired with others to commit the violations.</p>	<p>Exhibit 26, Verdict Form</p>
<p><b>12.</b> Warras and Brandel provided investors with fraudulent forged statement to induce them to invest in Malom’s securities offerings.</p>	<p>Exhibit 2, Indictment at ¶¶ 12-14.</p>
<p><b>13.</b> The victims’ investments were made by wire transfers that traveled in interstate commerce.</p>	<p>Exhibit 7, Tr. 576:20-25 (Stipulation).</p>
<p><b>14.</b> Brandel held himself out to potential investors as the Director of Operation for MY Consultants, Inc. and that he was the United States representative for Malom.</p>	<p>Exhibit 12, Tr. 579:3 – 582:4 (Braunstein); Exhibit 13, Tr. 271:4 – 273:17 (Dobyns); Exhibit 19, Tr. 28:24 – 29:6 (Mitman).</p>
<p><b>15.</b> Brandel solicited investors into agreements with Malom, negotiated the terms of the agreements with investors, prepared transaction documents, and notified investors when</p>	<p>Exhibit 8, Tr. 390:6 – 392:14 and 402:24 – 404:1 (Anfinsen); Exhibit 9, Tr. 412:5 – 414:21,</p>

<p>Malom agreed to the terms of the investments.</p>	<p>420:3 – 21 and 422:7 – 423:24 (Barrie); Exhibit 10, Tr. 99:21 – 103:22 (Bellino); Exhibit 11, Tr. 72:18 – 78:4 (Billingsley); Exhibit 12, Tr. 603:22 – 604:16 and 613:10 – 614:1 (Braunstein); Exhibit 14, Tr. 338:24 – 339:20 (Fox); Exhibit 15, 443:8 – 446:4, 451:19 – 452:14 and 453:24 – 456:4 (Gianopoulos); Exhibit 16, Tr. 640:21 – 647:2 (Glazebok); Exhibit 17, Tr. 214 16 – 216:15 and 218:3 – 218:21 (Kooyman); Exhibit 19, Tr. 26:5 – 39:1 (Mitman); Exhibit 20, Tr. 843:2 -24, 844: 15 – 845:1 and 899:18 – 24 (Brandel);</p>
<p><b>16.</b> Brandel had investors enter into escrow agreements with M.Y. Consultants escrow agent, told the investors to send their money to the escrow agent and instructed the escrow agent when to distribute the funds after the escrow conditions were met, and where to send the released funds after closing.</p>	<p>Exhibit 10, Tr. 108:14 – 110:13 (Bellino); Exhibit 16, Tr. 646:12 – 647:2 (Glazebok); Exhibit 17, Tr. 218:22 – 221:2 (Kooyman); Exhibit 32 Joint Escrow Agreement; Exhibit 33, Brandel’s Instructions to Investors.</p>
<p><b>17.</b> Brandel received a percentage of the investor’s investments as compensation once the investors’ transactions were complete and cleared from escrow.</p>	<p>Exhibit 4, Tr.511:7 – 513:1 (Brandel Inv. Test.); Exhibit 18, Tr. 557:2 – 558:5 (Marsh); Exhibit 23, Admitted Exhibit 1405 (Schedule of Payments to Brandel).</p>
<p><b>18.</b> The securities offerings in which Brandel and Warras participated were not registered with the Commission or eligible for an exemption from registration ( Para. 11)</p>	<p>Exhibit 27, SEC Attestation of Non Registration.</p>
<p><b>19.</b> Brandel was not registered with the SEC as a broker-dealer to offer the securities to investors (Para. 12)</p>	<p>Exhibit 28, SEC Attestation of Non Registration</p>
<p><b>20.</b> Warras and Brandel, together with their co-conspirators, raised \$9.9 million from the victims of the illegal Malom scheme, \$4.92 million of which was paid by investors</p>	<p>Exhibit 18, Tr. 546:15 - 549:19; 571:12-18 (Marsh); Exhibit 21 (Admitted Exhibit</p>

who testified at the criminal trial.	1401).
<b>21.</b> Warras personally received \$720,000 of the \$9.9 million, \$166,785 of which was received from the seven (7) testifying investors for whom the Jury found Warras violated Section 10(b) and 10b-5.	Exhibit 18, Tr. 560:2 – 561:16; 571:12-18 (Marsh); Exhibit 24 (Admitted Exhibit 1406).
<b>22.</b> Brandel personally received \$630,000 of the \$9.9 million, \$217,000 of which was received from the nine (9) testifying investors for whom the Jury found Brandel violated Section 10(b) and Rule 10b-5.	Exhibit 18, Tr. 561:17 – 22; 571:12-18 (Marsh); Exhibit 23, (Admitted Exhibit 1405).
<b>23.</b> Prejudgment interest on the \$4,920,000 obtained from investors who testified at trial is \$1,015,020.15 for a total of \$5,935,020.15.	Exhibit 29, SEC's Prejudgment Calculation.

July 20, 2017

Respectfully submitted,

/s/ Kenneth J. Guido

Kenneth Guido

Timothy N. England

U.S. Securities and Exchange Commission



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Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

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<b>UNITED STATES SECURITIES AND</b>		:
<b>EXCHANGE COMMISSION,</b>		:
		:
<b>Plaintiff,</b>		:
		:
<b>v.</b>		:
		:
<b>MALOM GROUP AG, ET AL.</b>		:
		:
<b>Defendant.</b>		:
<hr/>		:

**Case No. 2:13cc-2280(GMN)(PAL)**

**DECLARATION OF AUTHENTICITY**

I, Kenneth J. Guido, pursuant to 28 U.S.C. §1746, declare and state as follows:

1. I am an attorney in the Division of Enforcement of the United States Securities and Exchange Commission (the “SEC” or the “Commission”), and an attorney of record in the above-captioned proceeding.

2. I submit this declaration in support of the Commission’s Partial Motion for Summary Judgment against James Warras (“Warras”) and Anthony Brandel (“Brandel”).

3. Attached hereto as Exhibit 1 is a true and correct copy of the SEC’s Complaint in the above captioned action filed against Anthony Brandel, James Warras, and others.

4. Attached hereto as Exhibit 2 is a true and correct copy of the Criminal Indictment filed against Anthony Brandel, Joseph Micelli, James Warras, Sean Finn, Martin Schlaepfer, and Hans-Jurg Lips, dated December 11, 2013 (*U.S. v. Brandel*, 13-cr-439 (D. Nevada)).

5. Attached hereto as Exhibit 3 is a true and correct copy of the first two pages of each dates testimony transcript listing the attendees at each day of the trial in *U.S. v. Brandel*.

6. Attached hereto as Exhibit 4 is a true and correct copy of excerpts of the testimony of Anthony Brandel in the SEC's investigation that lead to the filing of the Complaint in this action.

7. Attached hereto as Exhibit 5 is a true and correct copy of the United States Final Exhibit List, admitted into evidence in *U.S. v. Brandel*.

8. Attached hereto as Exhibit 6 is a true and correct copy of excerpts of the transcript pages containing Warras's and Brandel's statements to the Court regarding their intentions to testify in *U.S. v. Brandel*.

9. Attached hereto as Exhibit 7 is a true and correct copy of excerpts of the transcript containing Warras's and Brandel's stipulation in *U.S. v. Brandel* that the transactions they participated in used instrumentalities of interstate commerce.

10. Attached hereto as Exhibit 8 is a true and correct copy of excerpts of the testimony of Jon Anfinsen one of the nine (9) investor-witnesses presented by the United States in *U.S. v. Brandel*.

11. Attached hereto as Exhibit 9 is a true and correct copy of excerpts of the testimony of Len Barrie one of the nine (9) investor-witnesses presented by the United States in *U.S. v. Brandel*.

12. Attached hereto as Exhibit 10 is a true and correct copy of excerpts of the testimony of Michael Bellino one of the nine (9) investor-witnesses presented by the United States in *U.S. v. Brandel*.

13. Attached hereto as Exhibit 11 is a true and correct copy of excerpts of the testimony of William Billingsley one of the nine (9) investor-witnesses presented by the United States in *U.S. v. Brandel*.

14. Attached hereto as Exhibit 12 is a true and correct copy of excerpts of the testimony of Allen Braunstein an attorney for one of the investors presented by the United States in *U.S. v. Brandel*.

15. Attached hereto as Exhibit 13 is a true and correct copy of excerpts of the testimony of Gary Dobyms one of the nine (9) investor-witnesses presented by the United States in *U.S. v. Brandel*.

16. Attached hereto as Exhibit 14 is a true and correct copy of excerpts of the testimony of Travis Fox one of the nine (9) investor-witnesses presented by the United States in *U.S. v. Brandel*.

17. Attached hereto as Exhibit 15 is a true and correct copy of excerpts of the testimony of William Gianopoulos one of the nine (9) investor-witnesses presented by the United States in *U.S. v. Brandel*.

18. Attached hereto as Exhibit 16 is a true and correct copy of excerpts of the testimony of Ed Glazebrook one of the nine (9) investor-witnesses presented by the United States in *U.S. v. Brandel*.

19. Attached hereto as Exhibit 17 is a true and correct copy of excerpts of the testimony of Michael Kooyman one of the nine (9) investor-witnesses presented by the United States in *U.S. v. Brandel*.

20. Attached hereto as Exhibit 18 is a true and correct copy of excerpts of the testimony of Gary Marsh, FBI Forensic Accountant presented by the United States in *U.S. v. Brandel*.

21. Attached hereto as Exhibit 19 is a true and correct copy of excerpts of the testimony of Debra Mitman one of the nine (9) investor-witnesses presented by the United States in *U.S. v. Brandel*.

22. Attached hereto as Exhibit 20 is a true and correct copy of excerpts of the testimony of Anthony Brandel in *U.S. v. Brandel*.

23. Attached hereto as Exhibit 21 is a true and correct copy of Exhibit 1401 admitted through the testimony of Gary Marsh, FBI Forensic Accountant presented in *U.S. v. Brandel*.

24. Attached hereto as Exhibit 22 is a true and correct copy of Exhibit 1402 admitted through the testimony of Gary Marsh, FBI Forensic Accountant in *U.S. v. Brandel*.

25. Attached hereto as Exhibit 23 is a true and correct copy of Exhibit 1405 admitted through the testimony of Gary Marsh, FBI Forensic Accountant presented in *U.S. v. Brandel*.

26. Attached hereto as Exhibit 24 is a true and correct copy of Exhibit 1406 admitted through the testimony of Gary Marsh, FBI Forensic Accountant in *U.S. v. Brandel*.

27. Attached hereto as Exhibit 25 is a true and correct copy of the Jury Instructions given to the Jury in *U.S. v. Brandel*.

28. Attached hereto as Exhibit 26 is a true and correct copy of the Verdict Form reflecting the Jury's unanimous decision in *U.S. v. Brandel*.

29. Attached hereto as Exhibit 27 is a true and correct copy of Attestation of Secretary of SEC that no registration statement is on file with the SEC for the securities transactions at issue in this litigation.

30. Attached hereto as Exhibit 28 is a true and correct copy of Attestation of Secretary of SEC that Anthony Brandel is not registered pursuant to Section 15(a) with the SEC.

31. Attached hereto as Exhibit 29 is a true and correct copy of the Prejudgment Calculation on the amount attributable to Warras and Brandel's illegal activity.

32. Attached hereto as Exhibit 30 is a true and correct copy of a Joint Escrow Instructions signed by Brandel.

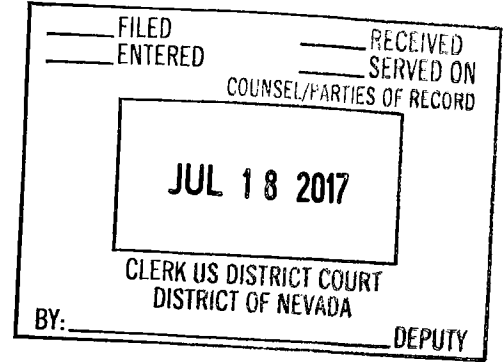
33. Attached hereto as Exhibit 31 is a true and correct copy of Brandel's instructions to investors regarding their investment.

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

Dated: June 20, 2017

/s/ Kenneth J. Guido  
Kenneth J. Guido

Anthony B. Brandel  
 currently residing  
 Nevada Southern Detention Center  
 Agency #48789048  
 2190 Mesquite Avenue  
 Pahrump, Nevada 89060



**UNITED STATES DISTRICT COURT  
 DISTRICT OF NEVADA**

**SECURITIES AND EXCHANGE  
 COMMISSION,**

*Plaintiff,*

*v,*

**MALOM GROUP AG, et al.**

*Defendants.*

) **CASE NO.: 2:13-CV-2280 (GMN)(PAL)**  
 )  
 ) **ANTHONY B. BRANDEL'S RESPONSE TO**  
 ) **THE SEC'S MOTION FOR SUMMARY**  
 ) **JUDGMENT AND REQUEST FOR A**  
 ) **CONTINUANCE**  
 )  
 )  
 )  
 )  
 )

I Anthony Brandel appearing Pro-Se submits the following response and request. Pursuant to document 71 filed on February 15, 2017, the Securities and Exchange Commission agreed to the extended time requested by the defendant's in documents 69 and 70, to conclude the criminal case US vs Malom Group AG et al # 2:13-cr-439-KJD-VCF. At this time Brandel is still waiting for the Restitution Evidentiary Hearing which is now scheduled for August 29, 2017. Also a "Notice of Appeal" for a direct appeal, has been filed and the appeal schedule has been issued by the "9<sup>th</sup> Circuit Court of Appeals" to Brandel's counsel whereby Brandel's Initial Brief is due September 12, 2017.

The conviction that took place on December 7, 2015, is a miscarriage of justice at best, and Brandel intends to prove his innocence by exposing the truth and the prosecutorial misconduct that took place during the trial. During the trial US vs Brandel, the Government did not prove that Mr. Brandel, (nor Malom for that matter) ever pitched an investment opportunity to any of the witnesses, whereas all of the witnesses did admit at trial that they themselves pitched the investment opportunities

to Malom Group. The Government did not prove that Brandel had any involvement, knew or could have known that the bank letters/statements or financial statements which all came directly from Malom were fraudulent. However the Government during its closing arguments convinced the jury that they did prove all of the accusations during trial, when in fact the Trial Transcripts (SEC's Exhibit 3 Doc 78-7), which your Honor would have to read the entire Trial Transcripts and not just the SEC's redacted versions shown in (SEC Exhibits 6 Doc 78-10) thru (SEC Exhibit 20 Doc 78-24), which then your Honor would see that the Government did not provide anyone to testify as to what documents used by the defendant's would be considered a securities, nor was there any mention as to the unregistered securities that the defendant's tried to sell as accused by the SEC and the Government. Also on day 5 of the Trial after the jury deliberated for only three hours, sent a question to Judge Dawson which requested the definition of "Securities Fraud" then not but 45 seconds later, without waiting for the definition said never mind they have their verdict, which clearly shows that the jury convicted Brandel of Securities Fraud without even knowing the meaning. This along with the evidence that was admitted by the Government, SEC' Exhibit 5 Doc 78-9, clearly shows that Government did not prove that Brandel had any involvement or knowledge of any fraudulent activities, and that Brandel was just an employee of M.Y. Consultants, Inc. as a processor, (which (SEC Exhibit 23 Doc. 78-27) shows that Brandel only made \$217,500 of the total \$4,950,000, which was a salary for the two year period) whereas M.Y. Consultants, Inc. entered into a processing agreement with Malom Group AG and its affiliates (for the purpose to only process "Loan Applications" and "Joint Venture Agreements") in October 2009 and ended their involvement in September 2011.

The fact that the Securities and Exchange commission is classifying the Joint Venture Agreement, Funding Commitment, or the Escrow Instructions as an unregistered security is incorrect. None of these documents fit in the definition of a securities, if these documents were to be classified as a securities, then every mortgage loan officer would have to be licensed as a "Securities Dealer/Broker" to conduct business, which is not the case and loan officers are issuing "Funding Commitments"


everyday. The “Joint Venture Agreement” or the “Escrow Instructions” can in no way be classified as a securities, its just an agreement between parties to perform certain duties for a fee and does not offer any returns (Brandel reserves the right to hire an Expert Witness to prove this point).

**CONSLUSION**

For the reasons stated above and the fact that Brandel will in fact undo this unjust act that took place on December 7, 2015, whereby then the Honorable Court can then make a Just decision, or at least schedule a hearing to determine this matter properly, Brandel hereby request that this case with the Securities and Exchange Commission be postponed until Brandel has completed his task with the Department of Justice in the case US vs Brandel.

Dated July 17, 2017

Respectfully Submitted

  
Anthony Brandel – Attorney Pro-Se



**PROOF OF SERVICE**

I Anthony Brandel, hereby declare that the forgoing document was sent via priority mail on July 17, 2017, from Nevada Southern Detention Center, to the Clerk of Courts at the United States District Court for the District of Nevada.

  
Anthony Brandel /

# PRIORITY MAIL

*Steve D...*

FROM: Nevada Southern Detention Center  
Anthony Brandel - 48789048  
2190 E. Mesquite Ave  
Pahrump NV 89060

TO: Clerk of Courts  
US District Court of NV.  
HLOYD GEORGE COURT HOUSE  
333 Las Vegas Blvd S.  
Las Vegas NV 89101

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Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEVADA**

	)	
<b>SECURITIES AND EXCHANGE</b>	)	
<b>COMMISSION,</b>	)	
<i>Plaintiff,</i>	)	<b>2:13-CV-2280 (GMN)(PAL)</b>
<i>v.</i>	)	<b>REPLY MEMORANDUM IN SUPPORT</b>
<b>MALOM GROUP AG, et al.</b>	)	<b>OF MOTION FOR SUMMARY</b>
<i>Defendants.</i>	)	<b>JUDGMENT AGAINST DEFENDANT</b>
	)	<b>ANTHONY B. BRANDEL</b>
	)	

**INTRODUCTION**

On June 20, 2017 Plaintiff Securities and Exchange Commission (“SEC”) moved for summary judgment against Defendants James Warras and Anthony Brandel (Dkt. 78). The SEC charged Warras and Brandel with violating the federal securities laws when, from approximately October 2009 until October 2013, they perpetrated an advance-fee high-yield investment scam with Switzerland-based Malom Group AG (“Malom”), Las Vegas-based M.Y. Consultants, Inc., and others. (Dkt. 78-2, Statement of Fact 1 ) (hereinafter “SOF \_\_\_”). In a parallel criminal

proceeding, Warras and Brandel were convicted in this District for engaging in the same underlying conduct as alleged in the SEC's complaint. (SOF 2, Indictment ¶¶1, 3 and 5). Their convictions rested on the same scheme to defraud, the same unregistered securities, the same victims, the same illegal proceeds, and the same jurisdictional means. *United States v. Brandel*, 2:13 cr 439 (D. Nev.) (KJD-VCF) ("Brandel").

Supported by the doctrine of collateral estoppel, the SEC seeks summary judgment against Warras and Brandel as to all counts alleged in the Complaint. The SEC also seeks orders of permanent injunction enjoining Warras and Brandel from further violations of the federal securities laws and engaging in securities transactions, and orders that they disgorge the proceeds from the illegal scheme and pay civil monetary penalties.

Brandel has filed an opposition to the SEC's motion. (Dkts. 82 and 83) In it, however, Brandel has not offered any evidence to create a genuine issue of material fact required by the applicable rules. Instead he simply argues, without legal authority, that the Court should not apply collateral estoppel because (1) he has appealed the criminal conviction, and (2) the transactions he participated in were not securities, but merely loans excluded from the definition of securities. Both contentions are without merit.

BRANDEL'S NOTICE OF APPEAL DOES NOT VITIATE COLLATERAL ESTOPPEL

Brandel's notice of appeal in his criminal case does not vitiate the application of collateral estoppel in this civil case. Courts have discretion to determine whether collateral estoppel should apply. It is well-established that a district court's judgment is a final judgment for purposes of issue preclusion, even if an appeal is pending on the underlying judgment. *Coleman v. Tollefson*, \_\_\_ U.S. \_\_\_, 135 S.Ct. 1759, 1764 (2015), quoting *Clay v. United States*, 537 U.S. 522, 527 (2003) ("Typically, a federal judgment becomes final for ... claim

preclusion purposes when the district court disassociates itself from the case, leaving nothing to be done at the court of first instance save execution of the judgment.”); *Eichman v. Fotomat Corp.*, 759 F.2d 1434, 1439 (9th Cir. 1985) (“[F]ederal rule . . . is that pendency of an appeal does not suspend the operation of an otherwise final judgment. . . .”); *Robi v. Five Platters, Inc.*, 838 F.2d 318, 327 (9th Cir. 1988) (“[I]n federal courts. . . the preclusive effects of a lower court judgment cannot be suspended simply by taking an appeal that remains undecided,” quoting Wright et al., 18A *Federal Practice and Procedure*, § 4433 (2d Ed.)).

In SEC cases, courts do not hesitate to apply collateral estoppel when a defendant has been convicted in a criminal case on the same operative facts as exist in the civil case. *SEC v. Alexander*, 115 F.Supp.3d 1071, 1079 (N.D. Cal. July 17, 2015); *SEC v. Reyes*, 2008 WL 3916247 at\*1 (N.D. Cal. Aug. 25, 2008). The case of *SEC v. Reyes* is illustrative. In that case, a defendant argued that the court should not apply collateral estoppel in the SEC’s case because he was appealing his criminal conviction. The district court rejected this argument and held “[t]he Ninth Circuit has anticipated that possibility, and held that ‘the benefits of giving a judgment preclusive effect pending appeal outweigh any risks of a later reversal of that judgment.’ *Collins v. D.R. Horton, Inc.*, 505 F.3d 874, 883 (9th Cir.2007). Reyes had an opportunity to fully and fairly litigate his guilt, and the jury’s verdict will not be stripped of its preclusive effect merely because of the possibility of reversal.” *Id.* at \*7.<sup>1</sup>

---

<sup>1</sup> Only in exceptional cases will a court decline to apply collateral estoppel when an appeal is pending. For example, in *Takiguchi v. MRI International*, 2:13 cv 01183, 2017 WL 752283 at \*2 (D. Nev. Feb. 27, 2017), the court exercised its discretion and refused to apply collateral estoppel in a private case based on a judgment entered in favor of the SEC in another case. The court declined to exercise its discretion because in the private case the defendant was willing to waive his Fifth Amendment rights against self-incrimination and testify under oath – something he had refused to do in the SEC case. These circumstances do not exist in this case, as Brandel testified in the criminal case without asserting his Fifth Amendment right against self-incrimination. More importantly, in this case the defendants have already been convicted under a heavier burden of proof (e.g., beyond a reasonable doubt) than is at issue here (e.g., preponderance of evidence).

BRANDEL'S TRANSACTIONS ARE NOT ANALOGOUS TO MORTGAGE LOANS

Contrary to the clear evidence admitted at the criminal trial, Brandel claims that he was merely acting to process loan applications and joint venture agreements and cannot be held liable for violating Section 15(a). Dkt. 82 at 2. In doing so, he incorrectly analogizes his activities to a mortgage loan officer. Mortgage loans are subject to an exemption from the securities, while Brandel's transactions are not. *First Citizens Fed. Sav. and Loan v. Worthen Bank*, 919 F.2d 510, 515 (9th Cir. 1990), citing *Chemical Bank v. Arthur Andersen*, 726 F.2d 930, 937 (2d Cir. 1984) (holding that, among others, a note secured by a mortgage falls within an exclusion from the definition of securities in SEC enforcement actions, while recognizing that transactions similar to Brandel's are securities). As the SEC explained in its opening memorandum, the Brandel transactions fall squarely in the category of transactions the Supreme Court has held are securities under the Securities Act and Securities Exchange Act. *First Citizens Fed. Sav.*, *supra* at 515, citing *Reves v. Ernst & Young*, 494 U.S. 56, 60-61, (1990), interpreting Section 3(a) (1) of the Exchange Act, 15 U.S.C. § 78c(a)(10). Brandel's claim that a decision against him would require all mortgage brokers to register with the SEC is simply wrong.

CONCLUSION

For the foregoing reasons and the reasons stated in the SEC's opening memorandum, Brandel's arguments should be rejected and the SEC's Motion for Summary Judgment should be granted.

August 1, 2017

Respectfully submitted,

/s/ Kenneth J. Guido  
Kenneth J. Guido  
Timothy N. England  
U.S. Securities and Exchange Commission

**PROOF OF SERVICE**

I, Kenneth Guido, hereby declare that the foregoing motion, supporting memorandum, statement of undisputed facts and exhibits, and proposed order were filed on the Court's ECF system, and were:

Sent to the following via mail:

James Warras  
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Hans-Jurg Lips

[REDACTED]

Martin U. Schlöpfer

[REDACTED]

Brian R. Young  
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[Brian.young4@usdoj.gov](mailto:Brian.young4@usdoj.gov)

August 1, 2017

/s/ Kenneth J. Guido  
Kenneth J. Guido

# EXHIBIT 1



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Timothy N. England  
Stephen L. Cohen  
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Attorneys for the Plaintiff

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEVADA**

<b>SECURITIES AND EXCHANGE</b>	)	
<b>COMMISSION,</b>	)	
	)	
<i>Plaintiff,</i>	)	
	)	
<b>v.</b>	)	
	)	
<b>MALOM GROUP AG, MARTIN U.</b>	)	<b>2:13-CV-2280</b>
<b>SCHLÄPFER, HANS-JÜRGEN LIPS,</b>	)	
<b>JAMES C. WARRAS, JOSEPH N.</b>	)	
<b>MICELLI, M.Y. CONSULTANTS, INC.,</b>	)	
<b>ANTHONY B. BRANDEL, M. DWYER,</b>	)	
<b>LLC, AND SEAN P. FINN,</b>	)	
	)	
<i>Defendants.</i>	)	

**COMPLAINT**

Plaintiff Securities and Exchange Commission (“Commission”) alleges as follows:

**SUMMARY**

1. In two advance-fee investment schemes perpetrated from at least August 2009 until November 2011, Switzerland-based Malom Group AG (“Malom”) – an acronym for “Make A Lot Of Money” – through its principals, agents, and promoters, defrauded more than 30

investors out of \$11 million using forged documents, fake histories of success, and the promise of risk-free investments and astronomical returns. Orchestrating the fraud from Switzerland and Las Vegas, Nevada, the defendants lured investors into agreements and transactions with Malom that involved fictitious “prime bank” instruments and exotic high-yield trading programs. In fact, Malom was nothing more than a sham company and the investments the defendants peddled were nothing more than vehicles used to steal investors’ money. Several of the defendants, through at least October 2013, continued to lie to investors that transactions would occur or that refunds or returns were forthcoming.

2. In furtherance of the schemes, the defendants made numerous false and misleading statements to investors and engaged deceptive acts, including lying about Malom’s history and financial resources; creating false and misleading documents provided to investors, such as forged Malom account statements and “proof of funds” letters from top overseas banks; lying about their own history of successful transactions with Malom; lying about the use of investor funds; and lying about the status of transactions and refunding investor funds.

3. Malom’s principals, Martin U. Schläpfer, (“Schläpfer”) and Hans-Jürg Lips (“Lips”), both residents of Switzerland, directed the scheme together with Malom’s U.S.-based officers, executive vice president James C. Warras (“Warras”) and compliance officer Joseph N. Micelli (“Micelli”). Anthony B. Brandel (“Brandel”), through his Las Vegas, Nevada company M.Y. Consultants, Inc., served as Malom’s agent and main point of contact for investors. Sean P. Finn (“Finn”), through his company M. Dwyer LLC (“M. Dwyer”), solicited investors for the schemes. Each of these defendants participated in both schemes, with the exception of Lips, who participated only in the second scheme.

4. In the first scheme, which took place from August 2009 to the summer of 2011, the defendants lured investors into “joint venture” agreements with Malom that purported to allow the investors, in exchange for an upfront fee, to “use” Malom’s financial resources to entice third parties to enter into investment transactions with Malom that would generate returns for Malom and the investor. The purported transactions typically involved high-yield overseas trading programs. The joint venture agreements and the trading programs bore the usual hallmarks of “prime bank” frauds, including guaranteed and astronomically-high investment returns, use of well-known overseas banks to demonstrate evidence of funds, inordinate complexity, and use of technical-sounding but nonsensical financial terminology.

5. Under the joint venture agreements, Malom was to evaluate the trading program proposed by the investor and, if it posed no “perceptible risk of loss” to Malom, Malom would enter into the transaction with the third party and share most of the profits with the investor.

6. However, even though the defendants almost always knew at least basic details about the trading programs investors intended to propose before accepting their upfront fees, Malom took the fees and proceeded to reject every proposed trading program on the grounds that the transactions were fraudulent, carried some risk of loss to Malom funds, or for other deficiencies. In a few instances, defendants Micelli, Brandel, and Finn actually provided investors with particular trading programs to propose to Malom, which the defendants later rejected after taking the investors’ funds.

7. The defendants never used investors’ upfront fees for any proposed transaction with Malom. Instead, they diverted the funds for their personal use.

8. In the second scheme, which took place between early 2011 and fall 2011, Malom promised to generate funding through the creation of structured notes that would be listed on “Western European” exchanges, in some cases supported by Brazilian sovereign bonds from the 1970s that the Brazilian government has publicly disclaimed as worthless. To induce investors to pay an “underwriting fee,” Malom and Lips issued corporate and personal guarantees to repay investors’ fees if Malom did not successfully generate funding within 90 to 120 days.

9. Contrary to defendants’ representations, Malom quickly distributed the investors’ funds among the defendants and others for their personal use, and had no other means to refund the underwriting fees. Malom also failed to issue any structured notes.

10. When investors became wary that the investments were real, defendants Lips, Warras, Micelli, and Brandel repeatedly lied to them about the progress of transactions and the prospect of receiving investment returns or refunds from Malom or M.Y. Consultants. These lies lulled investors into not disrupting the scheme through public complaints, lawsuits, or by reporting the defendants to governmental authorities. This lulling activity continued until at least October 2013.

11. None of the transactions in securities offered or sold by or for the defendants was registered with the Commission, or are eligible for an exemption from registration.

12. None of the defendants was registered with the Commission as broker-dealers, as is required for offering securities to investors in the circumstances described in this Complaint.

13. By virtue of their conduct, the defendants have engaged, and unless enjoined will continue to engage, in violations of, and/or aid and abet violations of, the anti-fraud and registration provisions of the federal securities laws. Additionally, M.Y. Consultants, Brandel,

M. Dwyer, and Finn have further violated the federal securities laws by failing to register as a broker or dealer of securities.

### **JURISDICTION AND VENUE**

14. 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].

15. This Court has personal jurisdiction over the defendants and venue is proper in the District of Nevada pursuant to 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 within this district. Further, three of the defendants reside and can be found within this district.

16. The defendants, directly and indirectly, have 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.

17. A majority of the investors are located in the United States and signed their investment contracts in the United States, which became binding upon execution by the investors. All investors received investment-related documents and contracts from Las Vegas-based M.Y. Consultants, all but one investor entered into escrow agreements with M.Y.

Consultants and U.S.-based escrow companies, and all investors ultimately paid funds into U.S.-based escrow accounts to purchase the securities.

### **DEFENDANTS**

18. **Malom Group AG** is a company formed under the laws of Switzerland in 1973. Its principal place of business is Baar, Switzerland. “Malom” is an acronym for “Make A Lot Of Money.”

19. **Martin U. Schläpfer**, sometimes spelled Martin U. Schlaepfer, age 55, is a resident of Switzerland. At the time of this filing he is believed to be incarcerated in Zurich, Switzerland, where he has been since September 2011 pending an investigation by Swiss authorities into investment fraud involving Malom Group’s offer of joint venture and structured note agreements, as well as a separate fraudulent scheme that took place between 2003 and 2011 involving the sale of surety bonds by another company Schläpfer controlled. Schläpfer is a member of Malom’s board of directors and is variously described as its Chief Executive Officer, managing director and legal counsel, although he is not a lawyer.

20. **Hans-Jürg Lips**, sometimes spelled Hans-Juerg Lips, age 50, is believed to be a resident of SAYS, Switzerland. He is a principal of Malom and is described as the Chairman of Malom’s board of directors; Malom’s Swiss incorporation papers refer to this position as “President” of the board. Lips was incarcerated in Zurich, Switzerland between September and December 2011 pending an investigation by the Swiss authorities into investment fraud involving Malom Group’s offer of joint venture and structured note agreements.

21. **James C. Warras**, age 67, is a resident of Waterford, Wisconsin and is the Executive Vice President of Malom. Warras pled guilty in 2002 to felony charges that he made

false statements in a sale of securities in Wisconsin. He was sentenced to probation and largely prohibited from offering or selling securities for five years.

22. **Joseph N. Micelli**, age 70, is a resident of Las Vegas, Nevada. He describes himself as Malom's Compliance Officer. He was an attorney, but was disbarred in California in 1997 for failing to provide clients notice that he was previously suspended by the bar for lying to clients. He is not licensed to practice law in any state.

23. **M.Y. Consultants, Inc.** is a consulting firm formed under the laws of Nevada in April 2007. Its principal place of business was Las Vegas, Nevada. Anthony Brandel served as its sole director. It had few, if any, regular employees. Through Brandel, M.Y. Consultants arranged transactions with Malom, handled investor funds, negotiated transaction documents, and communicated with investors.

24. **Anthony B. Brandel**, age 46, is a resident of Las Vegas, Nevada. He is the sole director of M.Y. Consultants and was its Operations Director. Anthony Brandel, through M.Y. Consultants, served as Malom's main point of contact with investors, explaining the investments, collecting investor funds through escrow agreements, and lulling investors about the status of their transactions.

25. **M. Dwyer LLC** is a limited liability company formed under the laws of Wyoming in July 2010. It was founded by Sean P. Finn, who was its sole manager and owner. It has no employees.

26. **Sean P. Finn**, age 44, is a resident of Whitefish, Montana. He is the founder and sole manager of M. Dwyer LLC. Through in-person contacts, email, internet advertisements,

and other avenues, Finn, directly and through M. Dwyer, recruited investors to enter into transactions with Malom.

## FACTS

### **I. THE SCHEME TO DEFRAUD**

27. From approximately August 2009 to fall 2011, with lulling activities by some of the defendants continuing at least until October 2013, the defendants used the mail and wires to defraud at least 30 investors out of approximately \$11 million through two schemes involving the offer and sale of securities.

28. The investors are largely located in the United States, including several in Nevada. They generally have limited investment experience.

29. The defendants participated in the scheme as principals, agents, and promoters. Martin U. Schläpfer and Hans-Jurg Lips, based in Switzerland, were the two principals of Malom, James C. Warras was its Executive Vice President, and Joseph N. Micelli was its purported Compliance Officer.

30. Anthony Brandel, through M.Y. Consultants, served as Malom's main point of contact with investors, explaining the investments, collecting investor funds through escrow agreements, and informing investors about the status of their transactions.

31. Sean P. Finn, through his company M. Dwyer LLC served as a promoter to recruit investors.

32. In designing and orchestrating the scheme, the defendants required investors to use the services of at least two escrow companies, American United Title and Escrow in Las Vegas, Nevada and Commercial Escrow Services, Inc. in California. These companies entered



into escrow agreements with M.Y. Consultants and investors, set up accounts into which investors deposited funds, and distributed investor funds at the defendants' direction. State authorities shut down the Nevada escrow company in fall 2009 and the California escrow company in 2011.

#### **A. The “Joint Venture” Investment Program**

33. The joint venture scheme targeted at investors to enter into trading programs and other transactions that could purportedly yield extraordinary returns (*e.g.*, 100% in a single day) through risk-free transactions. Investors were led to believe that, after paying an upfront fee and entering into a joint venture agreement with Malom, Malom would enter into the transactions with third parties using its substantial assets and give a lion's share of the profit back to the investor. This offering lasted from August 2009 to approximately August 2011.

34. All of the defendants except for Lips were involved in this offering (the “Joint Venture Defendants”), which resulted in at least 25 joint venture agreements and raised approximately \$7.5 million.

35. Under the joint venture agreements, investors were required to pay an upfront fee of between \$150,000 and \$1 million and identify transactions to be funded by Malom and to be entered into between Malom and third parties. In turn, Malom was to provide the investors with evidence of its funds, such as a bank statement or “proof of funds” bank letter, showing that Malom, or an entity whose funds Malom purportedly had access to, had tens to hundreds of millions of dollars available in overseas banks. Malom was then responsible for exploring the investors' proposed transactions with third parties, called “contract counter-parties.”

36. If, in its sole discretion, Malom deemed a transaction acceptable, it was to enter into the transaction directly with the contract counter-party and share profits with investors. Malom deemed acceptable only those transactions that posed “no perceptible risk of loss” to its funds.

37. Although termed “Joint Venture Agreements,” the agreements did not purport to create separate legal entities, contained no management provisions, and expressly did not create general partnerships between the investors and Malom.

38. The Joint Venture Defendants led investors to believe that Malom’s funds could somehow be used as collateral, leveraged, or “monetized” by contract counter-parties by supplying only a “proof of funds,” having banks “block” or “reserve” funds in an account, or by issuing bank-to-bank “SWIFT” communications.<sup>1</sup> The Joint Venture Defendants needed to invoke these seemingly sophisticated, but ultimately illegitimate or misused processes because Malom did not have the funds reflected in the proof of funds documents, which were all fraudulent and/or forged. In fact, the joint venture agreements and its attachments the defendants created and/or provided to investors used these and other catchphrases that government agencies have warned are indicative of fraudulent high-yield or “prime bank” schemes, in addition to describing terms or transactions in confusing and highly complex (but meaningless) ways, another indication of their fraudulent nature.

---

<sup>1</sup> “SWIFT” is an acronym for the Society for World Interbank Financial Telecommunication, an organization owned by more than 2,500 member banks that provides a system of standardized interbank telecommunications. References to SWIFT messages are commonly used in prime bank schemes as they provide an illusion of sophistication.

39. In some instances, Malom provided proof of funds documents purporting to show that other parties with which Malom had relationships had funds. Those proof of funds documents were also forged and/or fraudulently used by Malom.

40. Although the joint venture agreements charged investors with identifying and proposing trading programs or transactions for Malom to enter into, in certain instances the Joint Venture Defendants actually provided investors specific programs to propose to Malom, including one called the “Chase One-Day Program.” In March 2010, defendant Brandel promoted a trading program whereby investors could supposedly secure a 100%, guaranteed return in a single day by trading U.S. Treasury STRIPS<sup>2</sup> through the “Fed window” at JP Morgan Chase Bank in Manhattan. To enter the program, investors needed \$5.5 million.

41. According to program documents provided to Brandel by defendant Finn and other promoters, these securities could be bought from the bank and almost immediately sold back to it for a 100% profit. The process could be done in two hours and could be repeated for as long as the bank had instruments available.

42. Brandel and Finn mislead investors into believing such programs existed, despite knowing or being reckless in not knowing that programs promising such astronomical, guaranteed returns were fraudulent.

43. Micelli drafted a template joint venture agreement specific to this transaction to help Finn and other promoters recruit additional investors. The template agreement specifically described the purchase and sale of STRIPS and a guaranteed 100% profit. At the time he drafted this template, Micelli knew that such guarantees were not legitimate.

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<sup>2</sup> “STRIPS” is an acronym for Separate Trading of Registered Interest and Principal of Securities.

44. As a result of this effort, five investors entered into joint venture agreements to secure “proof of funds” for \$5.5 million each in return for transaction fees ranging from \$150,000 to \$200,000. None of the investors received a return on their investment or a refund of their upfront fees.

45. After accepting the upfront fees for the joint venture agreements, Malom, through Micelli, Brandel, or at times Schläpfer, proceeded to reject every transaction proposed by investors, and in some cases multiple transactions proposed by the same investor, because the transactions posed a “perceptible risk of loss” to Malom’s funds, were fraudulent, or otherwise did not comply with procedures that were “usual and customary in the banking and securities industry.” These rejections occurred repeatedly, even though Brandel and Micelli knew at least basic details about the proposed transactions before investors entered into joint venture agreements and paid fees to Malom.

46. Where transactions were rejected outright, the defendants told investors that they would not receive any refund and that their fees were used to compensate Malom for reserving its funds, to compensate it for the time spent exploring the trading program, and to reimburse costs incurred in pursuing the fraudulent transaction.

47. These statements were false and misleading. As the defendants knew or were reckless in not knowing, Malom had no funds to reserve. Moreover, the defendants spent little or no time exploring proposed transactions and incurred little or no costs pursuing any transactions.

48. If a transaction was not rejected outright, Malom, through Schläpfer, Micelli, and/or Brandel, gave investors various excuses why the transaction had not occurred. They

would purport to encounter delay after delay resulting from feigned illnesses and hospitalizations, banking holidays, weather crises, and vacations until the window for the proposed transaction closed or the investors or contract counter-parties abandoned the transaction.

**B. The “Structured Note” Investment Program**

49. Under the structured note scheme, which began in early 2011 and lasted through fall 2011, Malom pledged to underwrite, securitize, “credit enhance”, register, list, and market structured notes for companies who sought funding. Malom promised to sell the structured notes on unspecified “Western European” exchanges and to privately place the notes with unspecified subscribers. All of the defendants were involved in this offering, which resulted in at least six agreements and raised nearly \$3.5 million.

50. Malom failed to develop any funding through structured notes or otherwise, did not refund any investors’ funds, and spent investors’ funds on activities unrelated to the development of structured notes or other funding sources.

51. In the structured note agreements, Malom required investors to pay an upfront “underwriting fee” or “deposit” that would be used for the structured note offering. This was the investors’ sole responsibility in the structured note transactions.

52. If a transaction was successful, Malom agreed to refund the investor’s underwriting fee with a 25-50% premium. If a transaction was not successful, Malom agreed to refund the underwriting fee and pay a small penalty to the investor. Generally, refunds were payable between 90-120 days after entering into an agreement.

53. Malom failed to secure any funding and did not refund fees to any investor.

54. Malom did not undertake any steps to create or market any structured notes. Instead, the underwriting fees were immediately distributed among the defendants and others who had no role in effecting the contemplated transactions.

55. As an example, in connection with the bankruptcy proceeding of USA Springs Inc. (*In re USA Springs, Inc.*, Case No. 08-11816 (Bankr. D. N.H. June 27, 2008)), Malom, USA Springs, and two investors signed an “Investor Agreement” on or about June 23, 2011, whereby, for an underwriting fee paid by the investors, Malom would create and sell structured notes to raise \$60 million for USA Springs to help it emerge from bankruptcy.

56. The Investor Agreement stated that it was “necessary for a third party to invest and deposit with Malom [\$1.2 million]” so that Malom could “underwrite, credit enhance and securitize the Note; cause the Note to be listed on a Western-European exchange; and privately place the Note to subscribers with whom [Malom] enjoys pre-existing relationships,” and that Malom would use the \$1.2 million investment in furtherance of these duties.

57. As part of the Investor Agreement, the investors would receive a 50% return after a successful debt offering and Malom would receive a success fee, in this case, 1.5% of the face value at maturity of the Structured Notes placed, and an origination fee of 3% of the principal funding amount of \$60 million.

58. If the effort was unsuccessful after 120 days, Malom promised to refund the \$1.2 million without deduction, plus pay an additional \$50,000 to the investors.

59. In other words, Malom guaranteed either a 50% return in 120 days or a complete refund in addition to an approximately 4% penalty.

60. However, the investors' funds were immediately distributed among the defendants or to others, were not spent on any investment-related purpose, and were never refunded. Moreover, Malom did not have any funds with which to refund the structured note investors.

61. When investors in the structured note offering began to demand results or refunds, Malom, typically through Lips, Warras, and Micelli, made excuses for why it could not complete the transactions, usually blaming the European debt crisis. Alternatively, Lips and Warras told investors that Malom would secure funding through transactions involving H-series Brazilian Letras do Tesouro Nacional ("LTNs") – bonds issued by the Brazilian government in 1972 that were purportedly worth in excess of US\$200 million.

62. These LTNs, however, are worthless.

63. Well before Malom began telling investors it would repay them with these bonds and continuing until the present, the Brazilian National Treasury has hosted an English-language website unequivocally warning investors that "[a]ll LTN's issued in the seventies, in printed versions, had lost their value and are no longer valid," that "[a]ny documents about rescheduling these papers are an imitation intended to be passed off fraudulently or deceptively as genuine," and that "[a] number of law firms have generated negative outcomes for its clients, offering deals, presenting false evidences, with calculations attaching high values to those bonds."

64. To assuage investors' concerns about this and other warnings, Malom, using investor funds, paid Campos e Campos Advogados, a Brazilian law firm, and one of its partners to acquire LTNs and to obtain a legal opinion and official documents explaining why and how the LTNs were valid and had value.

65. Some of the documents provided to Malom by the Brazilian law firm were forgeries, including, for example, a November 19, 2010, “Repac Certificate,” which purports to be a government re-validation of the worthless bonds. Warras, Micelli, and Brandel provided these documents to investors, including to the USA Springs investors, when it became clear that Malom was not going to be able to create a structured note and needed to convince the investors, creditors, and the bankruptcy court that it could still generate promised funding.

66. Lips, Warras, Micelli, and Brandel all represented that the structured note transactions were risk-free to investors because of refunds guaranteed by Malom and personally by Lips. However, Malom and Lips did not have the funds to repay investors. Neither Malom nor Lips have returned any money to the structured note investors.

### **C. The Defendants’ Conduct in Furtherance of the Scheme**

#### **1. Martin U. Schlöpfer**

67. As a principal of Malom, Schlöpfer signed at least 23 joint venture agreements and documents attached thereto between August 2009 and January 2011. Schlöpfer signed most of these agreements on behalf of Malom, and the remaining agreements on behalf of NAS Operations AG and Maxmore Corporation Ltd., two companies affiliated with or controlled by Schlöpfer.

68. Schlöpfer received contractual documents from and returned signed documents to Nevada-based M.Y. Consultants, who in turn provided them to investors. Four of these joint venture agreements were with investors who were based in Nevada.

69. In the joint venture agreements with investors and in the attachments thereto, Schlöpfer claimed that Malom, NAS Operations, or Maxmore had hundreds of millions of



dollars on deposit at overseas banks where they either did not have the amounts claimed on deposit or never had accounts at all. Schläpfer also supplied Warras, Micelli, Brandel, and others with several bank statements purporting to reflect funds belonging to or accessible by these entities. However, as Schläpfer knew, most of the accounts referenced in these documents did not exist, or, if an account did exist, the balance never approached the amounts reflected on the statements Schläpfer provided.

70. For example, on June 20, 2011, Schläpfer forwarded an email to Lips, Warras, Micelli, and Brandel, purporting to be from a banker at EFG Bank in Switzerland in which the banker wrote that Malom was “a well-known client to us for many years” even though Malom had only opened an account in April 2011. The email further stated that Malom had “accounts . . . currently well in excess of \$3 mio.”

71. Malom had no funds in its EFG account on the date of the email and thereafter never had more than \$500,000 in this account.

72. Further, between at least July 2010 and April 2011, Schläpfer sent numerous emails to Warras, Micelli, and Brandel describing how Malom needed to pay bank officers or others to acquire bank documents. In one email to Warras, Micelli, and Brandel, dated August 31, 2010, Schläpfer lamented that various parties had contacted Centrum Bank in Switzerland about Malom’s accounts there, which “cost us a fortune to the responsible people (greed over risk!).”

73. Schläpfer also told investors that their advance fees were used to compensate Malom for reserving its funds for the investors’ transactions, even though Malom had not “reserved” any funds because it did not have the funds to reserve.

74. For example, in February 2011, Schlöpfer wrote in an email to one investor that Malom “received our engagement fee to offset our having held funds in abeyance” for the investor. According to its agreement with the investor, Malom was supposed to have reserved \$30 million for the investor at Centrum Bank. Although Malom did have an account at Centrum Bank for approximately four months, it was closed on January 19, 2011, and Malom never deposited any funds into it.

75. In fact, as Schlöpfer knew, he and the other defendants did not use the investors’ “fees” for any purported joint venture or structured note transaction. Instead, the defendants diverted the investors’ funds for their own personal use, to other parties involved in the schemes, or to persons unrelated to the purported transactions.

76. On several occasions, Schlöpfer misrepresented Malom’s previous successes to investors. For example, in fall 2010 he told one investor that Malom had successfully completed 10 deals in 2010 and netted \$12 million. In fact, Malom had not completed any successful deals in 2010, as Schlöpfer knew.

77. Further, in December 2010 and February 2011, Schlöpfer also passed off lists of “projects” from a company he was previously affiliated with, Northamerican Sureties Ltd. (“NAS”), and replaced the NAS logo on the cover with a Malom logo, even though NAS was a separate entity and operated in a different industry (surety bonds) from Malom.

78. Several of the companies on the list never had any relationship with NAS or Malom and never engaged in the projects listed beside their names on the reference list.

79. When investors inquired as to the status of transactions or demanded refunds, Schlöpfer made a series of excuses as to why Malom had not performed, including a series of

feigned illnesses and hospitalizations, including one where, in March 2011 he told one investor that he was “unavailable” because of a [REDACTED] when, in reality, he was incarcerated in Switzerland.

80. He also told investors that delays arose from problems with bank compliance officers (from banks at which Malom did not have any relationship); delays in transferring funds from one bank to another (sometimes involving banks at which Malom did not have accounts); and unspecified changes in the law.

81. Schläpfer knew or was reckless in not knowing that the statements described above were materially false or misleading or omitted to state material facts which would make the statements he made not materially misleading.

82. Schläpfer received at least \$2,306,000 of investor funds for his role in furthering the fraudulent schemes. Further, Malom received approximately \$831,200 as part of the scheme.

## **2. Hans-Jurg Lips**

83. Between February and September 2011, Lips, as Chairman and Head of Structured Finance of Malom, signed several documents stating that Malom held hundreds of millions of dollars at overseas banks where, as Lips knew, it either did not have the amounts claimed on deposit or never had accounts at all.

84. Lips signed two structured note agreements with investors located in Nevada. Further, all of the structured note investors negotiated their agreements through Nevada-based M.Y. Consultants, who also arranged to have the agreements signed by Lips and the investors.

85. For example, on February 24, 2011, Lips signed documents claiming that Malom had \$25 million at Südtirol Bank in Italy or Centrum Bank.

86. Malom never had an account at Südtirol.

87. Although it once had an account at Centrum Bank, it never had money on deposit there and the account had been closed for over a month when Lips signed the documents.

88. Further, Lips supplied investors with a letter addressed to him from a banker at Südtirol Bank. The letter was forged. The banker did not know Lips or Malom and the signature on the letter was not his.

89. In another example, on September 16, 2011, Lips sent an investor a letter, drafted by Micelli, claiming that Malom had funds on deposit at Estrategia Investimentos S.A., a financial services firm located in Brazil, with offices in Miami, Florida. However, Malom never had an account with this firm.

90. Lips also made several written promises to investors that their underwriting fees would be returned if no successful transactions took place, and made several false and misleading statements intended to convince investors that their investments were safe and Malom had the capacity to pay refunds.

91. On April 21, 2011, Lips supplied an investor with an email, purporting to be from an EFG banker, stating that Malom had \$2.4 million on deposit and was a well-known client for many years. EFG Bank records show that Malom had opened an account there approximately two weeks earlier, on April 5, 2011.

92. Shortly thereafter, on June 22, 2011, Lips provided the same investor with a signed statement in which he agreed to hold not less than \$2.5 million on deposit at EFG Bank in Switzerland to cover the cost of a refund. Malom never held more than \$500,000 at EFG Bank.

93. In both oral statements to investors and in written agreements, Lips also misrepresented that the fees investors paid in the structured note transactions were to pay costs associated with the underwriting of a bond offering. In several structured note transactions, including ones dated May 3, 2011, June 22, 2011, August 3, 2011, August 23, 2011, and September 7, 2011, those costs are described as including due diligence, securitization, credit enhancement, registration, listing fees, and all costs to be incurred in furtherance of these tasks. Each investor's funds were not, however, used in furtherance of their transactions. Instead, the defendants distributed investors' funds among themselves for their personal use, to other parties involved in the schemes, or to several individuals with no clear connection or role in the structured note transactions at issue.

94. As did Schlöpfer, in March 2011, Lips supplied Brandel and Micelli with the deceptive reference list reflecting references for NAS, but with a Malom logo, so that they could (and ultimately did) provide it to prospective investors. As Lips knew, several of the companies on the list never had any relationship with NAS or Malom and never engaged in the projects listed beside their names on the reference list.

95. Lips made several oral and written misrepresentations and material omissions regarding Malom's purported Brazilian LTNs to investors. First, he falsely claimed that the LTNs had substantial value even though the Brazilian National Treasury unequivocally stated—in English on its website—that they had no value.

96. Second, he failed to disclose to investors that Campos e Campos Advogados, the Brazilian law firm that purported to verify the LTNs, once listed Schlöpfer and Warras as employees, and that the firm had an agreement with Malom to share any proceeds arising out of

transactions utilizing the LTNs. Both facts call into question the law firm's objectivity in evaluating the LTNs.

97. Finally, he made misrepresentations to several investors and to the federal bankruptcy court in the USA Springs transaction regarding the status of Malom's attempts to "monetize" the LTNs, first claiming that transactions were imminent only to later blame failure on various problems such as issues with receiving SWIFT messages that purportedly could verify the LTNs. These last misrepresentations were made in three affidavits filed with the bankruptcy court dated February 29, 2012, April 30, 2012, and May 13, 2012.

98. In addition, since December 2011, when Lips was released from approximately two months of detention in Switzerland, Lips has contacted certain investors by telephone and through instant messaging to assure them that transactions were underway that would enable Malom to pay refunds. These contacts continued until at least October 2013.

99. Lips knew or was reckless in not knowing that the statements described above were materially false or misleading or omitted to state material facts which would make the statements he made not materially misleading.

100. Lips received at least \$431,295 of investor funds for his role in furthering the fraudulent schemes.

### **3. James C. Warras**

101. At various times from 2009 through 2011, Warras engaged in deceptive acts and made direct misrepresentations to investors. As the Executive Vice President of Malom, Warras provided Nevada-based Brandel and Micelli with forged bank and other documents, made several misrepresentations to investors about Malom and about the nature of various high-yield

trading programs into which he sought to recruit investors, and was an active participant in the negotiations with investors regarding certain fraudulent transactions, including the structured note transaction with USA Springs. Warras orchestrated or directed many of Brandel's and Micelli's false and misleading statements to investors from and in Nevada.

102. After Schläpfer and Lips were incarcerated, Warras regularly communicated with investors to lull them by making false excuses as to why transactions had not occurred, false promises that transactions were underway, and false promises that refunds were imminent.

103. Warras sent Brandel and Micelli by email several bank statements showing that Malom had hundreds of millions of dollars on deposit at various overseas banks. At the time he sent these statements, he knew or was reckless in not knowing they were forgeries.

104. Furthermore, in these email communications, which often also involved Schläpfer, Warras frequently told Micelli and Brandel that Malom needed to pay various bankers and others to secure such documents. For example, on July 14, 2010, Warras sent an email to Micelli and Brandel warning them that it was possible they would not get an account statement from Deutsche Bank in Germany, but adding that “[o]nce we get some more money to the [purported account holder] then Martin can work on the Duestsche [sic] Statement and most likely get it.”

105. In another example, on September 17, 2010, Warras forwarded a Deutsche Bank statement he received from Schläpfer to Micelli and Brandel, warning them that “we will have to pay for this [proof of funds] with the escrow that is created”; meaning that fees deposited into escrow by investors who were deceived by the bank statement would be used to pay for the

statement itself. In fact, the bank statement was a forgery. As Warras knew, or was reckless in not knowing, Malom never had an account at Deutsche Bank.

106. In another example, on March 19, 2011, Warras provided Micelli and Brandel with a letter that had been written by a banker at Südtirol Bank for two individuals (“Individuals A and B”) who were previously connected to the joint venture scheme as purported counterparties to a joint venture transaction proposed by an investor who was defrauded. Warras asked Micelli and Brandel to draft a letter from Südtirol Bank that could be used for all escrow deals, to which Micelli responded with suggested language.

107. On or about March 23, 2011, Warras received an email from Lips, purporting to attach a letter from Südtirol Bank that used Micelli’s proposed text, with minor alterations.

108. The letter was never issued by Südtirol Bank; it was a forgery.

109. On or about the same day, March 23, 2011, Individual A sent Warras an invoice for \$100,000 for a “payment to Sudtirol Bank.” Warras directed Micelli and Brandel to change the invoice to reflect “Legal and Consulting Services for the [credit-linked notes] and BRIC fund of Malom Group AG.”

110. In the ensuing week, between March 28 and April 4, 2011, Warras exchanged several emails with Individuals A and B whereby Individual A demanded the \$100,000 payment or else he would have the Südtirol Bank letter “revoked.”

111. Individual A warned Warras that “the banker who trusted me and did what I asked and delivered – he expects me to pay him.” In several emails, Warras assured Individual A that he would receive \$100,000. Warras then forwarded the emails to Brandel and Micelli, stating that “Südtirol is getting dangerous.”



112. Warras later paid Individual A \$75,000 out of investor funds given to Malom for purported structured note transactions, including the USA Springs transaction.

113. Warras also directed others to forge documents to deceive investors into believing Malom's LTNs were legitimate and had value. In July 2011, Warras directed the creation of a fraudulent acquisition document for the LTNs. In a series of emails to Campos e Campos law partner Luis Fernando de la Roca and Micelli, Warras directed Micelli to draft and backdate a joint venture contract showing how Malom acquired the LTNs, writing that Micelli should make sure it was full of "BOILER PLATE BULL SHIT" with "as many pages of B.S. as possible" so that it could be used as a "file stuffer" in negotiations with a bank who it tried to enlist in an effort to monetize the LTNs.

114. Warras specifically directed Micelli to state in the contract that Malom had acquired the LTNs in 1992, even though he testified during a deposition in the USA Springs bankruptcy proceeding that Malom acquired the LTNs in 2009 or 2010. He later instructed de la Roca to take Micelli's draft and "fill in the blanks and continue or change the story."

115. In December 2011, Warras sent an investor a receipt and an attachment from Merrill Lynch reflecting its acceptance into safe-keeping two LTNs. In the attachment, a Merrill Lynch employee purports to make several representations about the authenticity and value of the LTN, including that the instruments had "full paperwork that confirms [the instruments'] issuance, authenticity, and ownership chain and tax regularity." Merrill Lynch never issued the attachment; Warras forged it and the signature of the Merrill Lynch employee.

116. Warras also made several oral misrepresentations to investors about Malom's history of success. In August 2010, for example, he told one investor that Malom and Schläpfer had successfully concluded millions of dollars in transactions when they had not.

117. When Swiss authorities detained Schläpfer in September 2011, Warras served as Malom's primary point of contact for investors. Continuing until at least October 2013, Warras frequently contacted investors by telephone to discuss the status of their investments. Largely, these communications served to provide excuses for delays; to assure investors that various transactions, mostly involving the Brazilian LTNs, were underway or had closed that would permit the issuance of refunds; and, in the case of one investor, to warn him that going to authorities would jeopardize Malom's ability to refund money.

118. With respect to Malom's purported Brazilian LTNs, Warras falsely promised investors that transactions involving the LTNs would generate money for refunds for the joint venture investors and funding/refunds for the structured note investors. Like Lips, Warras omitted to tell investors the nature of Malom's investment-sharing relationship with (and Schläpfer's and Warras' alleged employment or affiliation with) Campos e Campos Advogados, the Brazilian law firm that purported to verify the LTNs. Warras also made several false claims regarding the value of the LTNs, which are worthless, and the status of closed and pending transactions involving the LTNs. In a November 18, 2011 affidavit Malom filed with a U.S. Bankruptcy Court, for example, Warras stated that Malom had accepted offers to sell the LTNs for \$200 million when, in fact, Malom had purportedly "purchased" the LTNs through Campos e Campos for no more than \$833,000, reflecting an astonishing 24,000 percent return on an instrument the Brazilian government publicly disclaimed as worthless.

119. Warras knew or was reckless in not knowing that the statements described above were materially false or misleading or omitted to state material facts which would make the statements he made not materially misleading.

120. Warras received at least \$1,066,915 of investor funds for his role in furthering the fraudulent schemes. He received these funds directly and through Carpe Diem Family Trust, a trust he controlled.

#### **4. Joseph N. Micelli**

121. Between August 2009 and the present, Micelli, a disbarred attorney, a self-professed and self-taught “expert” in the banking and securities industry, and Malom’s “Compliance Officer,” drafted joint venture agreements and structured note contracts, and reviewed the trading programs and other transactions the joint venture investors proposed both before and after investors placed funds into escrow. Micelli resides and worked primarily out of Las Vegas, Nevada throughout the schemes.

122. Starting in March 2010, he also knew that Finn and other promoters were actively pitching at least one risk-free, high-yield trading program to joint venture investors, the “Chase One-Day Program” described above, and provided the promoters with template contractual documents specific to that program to help their recruitment efforts.

123. In the joint venture transactions, after investors paid their advance fee, Micelli, acting on Malom’s behalf, invariably rejected proposed transactions or trading programs using various excuses. For example, on June 18, 2010, Micelli informed several investors that trades such as the “Chase One-Day Program” could be risk-free if they are conducted pursuant to certain procedures that are “usual and customary in the banking and securities industry.”

124. Despite having no formal training and having never worked in either industry, Micelli subsequently told investors that transactions could not be done because some procedure did not meet this generic standard or due to other deficiencies. For example, on October 14, 2010, he told one investor that “the compliance department of Centrum Bank [was] demanding to know” certain information about a transaction because it would have imposed “an independent obligation of Centrum Bank” even though no such demand had been made by the bank.

125. He also frequently rejected proposed trading programs as fraudulent because they contained red flags of illegitimacy such as guaranteed returns, enormous short-term returns and other indicators of fraud. In fact, Micelli knew that the joint venture agreements were designed and intended to solicit fraudulent trading programs and investment scams.

126. Micelli provided fraudulent bank statements and bank letters to investors on several occasions, including, among other occasions, by email on October 12, 2010, October 25, 2010, and December 23, 2010. Micelli knew or was reckless in not knowing these bank documents were fraudulent.

127. Among other clear indicators that they were illegitimate, between approximately July 2010 and April 2011, Micelli received numerous emails from Warras and Schläpfer discussing how Malom needed to pay bank officers or others for bank documents. In addition, these bank letters used several catchphrases that government agencies have warned are indicative of fraud, including that Malom’s funds were “clean, clear, and of non-criminal origin,” could be “blocked” or placed on “administrative hold,” and were “clean and clear” and “free of any liens or encumbrances.”

128. As far back as 2008, well before Micelli received these documents and provided them to investors, he was aware that these phrases indicated fraud, having received and read a detailed “handbook” titled “Lawyers’ Guide: Advising Clients on High Yield Investment Programs and Ponzi Schemes,” which described how these catchphrases (among other tactics) were used to deceive investors in fraudulent investment schemes.

129. Further, on or about August 24, 2009, he received electronic copies of several government warnings regarding “prime bank” schemes and the types of red flags to be aware of, including documents from the FBI, Department of the Treasury, and the Federal Reserve. These warnings identified high-yield schemes that use these phrases as fraudulent and illegal, and identified other common characteristics of such schemes such as guaranteed and risk-free investments, and astronomical returns on investments.

130. Micelli forwarded these warnings to Brandel by email at the outset of the joint venture scheme, in August 2009.

131. Micelli knew or was reckless in not knowing that the bank statements and bank letters also carried several other indicators of fraud. For example, several documents from Deutsche Bank carried different dates but had signatures, stamps, and document control numbers (e.g., barcodes) that were identical; one PDF file of a document from a Brazilian depository institution, IBRAC, contained mark-ups that showed that the original date was obscured electronically and a new date was typed above it in a different font from the original.

132. Despite knowing these strong indicators of fraud, he drafted template joint venture agreements and other contractual documents that referenced and attached these bank

documents for delivery to investors, and even included several of the same fraudulent catchphrases (*e.g.*, “clean, clear, and of non-criminal origin”) in the documents he drafted.

133. Micelli forged documents as well. One proposed transaction required notarized documents. On July 21, 2010, Micelli sent Brandel an email containing several electronic images of what appear to be Swiss notary stamps and signatures. Micelli copied these electronic images from a document Schlöpfer had previously signed and had notarized. Micelli then pasted these electronic images onto transactional documents and provided them to the counter-party in the transaction to give the impression that Schlöpfer had signed the documents and had them notarized in Switzerland when he had not.

134. He also forged a document purporting to be a “Proof of Funds” letter from Deutsche Bank evidencing Malom funds, which was provided by email to at least two investors in October 2011 to entice them to deposit fees for purported transactions with Malom. Electronic metadata on the .PDF format document shows that Micelli forged the letter by layering text and signature stamps over a blank image of Deutsche Bank letterhead.

135. Micelli forged other bank documents using rudimentary electronic cut-and-paste techniques. Micelli and other defendants used these documents to deceive investors into parting with their funds or in connection with proposed transactions after investors paid their fees. For example, in an email dated November 25, 2009, an assistant working with M.Y. Consultants forwarded to Brandel a word document containing text for a bank letter from Falcon Private Bank in Hong Kong. Brandel immediately forwarded it to Micelli and Warras. Micelli inserted this text onto an electronic copy of Falcon Private Bank’s letterhead, which already had two signatures of bank officers on it.

136. He repeated this on at least three occasions, creating forged letters from Falcon Private Bank dated December 9, 2009, February 1, 2010, and April 19, 2010.

137. On February 3, 2010, Micelli emailed the February 1, 2010 Falcon Private Bank letter, along with executed copies of a joint venture agreement, to Brandel and Warras so that it could be forwarded to an investor.

138. On April 19, 2010, Micelli emailed the April 19, 2010 Falcon Private Bank letter, along with executed copies of a joint venture agreement to Brandel, Warras, and Schläpfer so that it could be forwarded to an investor. Ultimately, each of these letters were provided to investors.

139. Micelli also made misrepresentations to investors by claiming that Malom had a history of success and significant financial resources. For example, on September 1, 2011, Micelli filed an affidavit with the U.S. Bankruptcy Court in the USA Springs bankruptcy proceeding in which he made several misrepresentations about Malom. He stated that “Malom has among its assets unencumbered cash in its bank account(s) totaling far in excess of \$16.6 million” when he knew it did not.

140. Further, Micelli claimed that Malom had “experience in underwriting similar transactions” when he knew it had none.

141. Micelli knew or was reckless in not knowing that the statements described above were materially false or misleading or omitted to state material facts which would make the statements he made not materially misleading.

142. Micelli received at least \$828,903 of investor funds for his role in furthering the fraudulent schemes.

## 5. Anthony Brandel & M.Y. Consultants

143. Since at least August 2009 until fall 2011, Brandel, a Nevada resident and the “Director of Operations” and the sole director of Nevada-based M.Y. Consultants, actively recruited investors and facilitated their entry into joint venture agreements and structured note agreements by soliciting details of the transactions investors sought to access, explaining the programs to investors, opening up escrow accounts into which investor funds would be deposited, coordinating the exchange of contractual documents between investors and Malom, and ultimately distributing investor funds amongst the defendants and others.

144. In recruiting investors, Brandel assured them that Malom had substantial assets under its control and a long history of successful transactions. Several of the investors Brandel solicited resided in Nevada.

145. Brandel made misrepresentations to investors about the extraordinary historical returns offered by trading programs, and explained how such trades were without risk when he knew that such transactions did not exist.

146. Brandel also sought fictitious documents to be used as proof of Malom’s funds (*e.g.*, bank statements or bank letters), helped create them, was aware that Malom was paying for their issuance, and then provided them to investors.

147. He induced investors into agreements knowing that Malom had no intent to engage in the various transactions investors sought to enter, even remarking that one agreement was a “straight JV that had a bullshit transaction attached to it.”

148. In communications with investors about Malom’s background, including its financial resources and history of success, Brandel repeated the falsehoods he was told by others



including by Schlöpfer, Warras, and Micelli. He made no effort to verify whether Malom had ever entered into successful transactions or whether it had any funds available.

149. Malom had not engaged in any successful transactions and did not have any significant funds available.

150. For example, on November 18, 2009 Brandel stated in an email to one promoter that Malom was a “multi billion dollar company and licensed every imaginable [sic],” and that Schlöpfer was a banking attorney. Malom never had such funds available, there is no evidence that it held any “licenses,” and Schlöpfer was not an attorney.

151. In another example, on or about July 2010 Brandel told one investor that other investors had been enormously successful even though he knew that none of the investors he had worked with had received any investment return.

152. In yet another example, Brandel and Micelli received an email from Warras on September 2, 2011, asking Brandel to let him know if a proof of funds from Estrategia Investimentos S.A. would work. Warras attached a marketing brochure from the company to the email.

153. Approximately an hour later, Brandel sent an email to one prospective investor stating that Malom has “been finalizing their Brazilian Treasury deal with ‘Estrategia Investimentos S.A.’ . . . which is where the majority of [Malom’s] funds are,” and attached the same marketing brochure.

154. Estrategia Investimentos did not hold any funds on behalf of Malom at that or at any other time.

155. Brandel also made several false and misleading statements about the risk of entering into transactions with Malom. For example, on or about late December 2009 or early January 2010, Brandel orally informed one investor that an investment was risk-free and that if a trade did not happen, the investor would get his funds back. The investor did not receive any funds back.

156. In April/May 2010, Brandel orally informed another investor that there was a “less than one percent risk” involved in a high-yield scheme because it was not an investment but rather a “transaction.” That investor also lost all of his funds.

157. Further, Brandel represented to several investors that Malom’s funds could be “administratively held,” “blocked,” or “reserved” by its banks to be used for the investors’ transactions. For example, in emails dated November 17, 2009 and December 15, 2009, he represented to potential investors that Malom’s banks could put administrative “holds” on its funds, adding in the latter email that the hold would be in effect for “one year and a day.”

158. These banking concepts do not exist in legitimate commerce.

159. In explaining how he was paid and how Malom used investors’ funds, Brandel informed one investor in August 2010 that he would be paid out of trading profits; told another investor on or about December 2009 that his transaction fees would be refunded if a trading program did not occur; and told another potential investor on July 12, 2010 that the fees were used to compensate Malom for “blocking” or “reserving” funds (which it did not have).

160. In actuality, Brandel distributed nearly 50 percent of the investors’ funds amongst a series of individuals and entities, including to M.Y. Consultants and to his own personal

account, almost immediately after investors sent funds into escrow accounts. The remaining funds were distributed amongst Schläpfer, Lips, and Warras.

161. Brandel performed several fraudulent and deceptive acts in connection with the scheme. For example, in March 2010, he encouraged Finn and other promoters to pitch trading programs such as the “Chase One-Day Program” to investors, helped Micelli create template documents specific to that transaction, and provided those documents to promoters to help recruit additional investors for the program.

162. He also knew or was reckless in not knowing that he was providing fraudulent bank statements and bank letters to investors. Between July 2010 and April 2011 Brandel received numerous emails from Schläpfer and Warras discussing how Malom needed to pay bank officers or others for bank documents.

163. Further, the bank documents Brandel received from Schläpfer, Warras, and/or Micelli contained clear signs that they were fraudulent or forged. First, each contained several catchphrases Brandel knew were used in high-yield scams and were indicative of fraud. He learned this, in part, from reviewing several government warnings Micelli sent to him by email on August 24, 2009.

164. Moreover, the documents had several physical characteristics that were highly indicative of fraud. For example, several documents purporting to be from Deutsche Bank carried different dates but had signatures and stamps and document control numbers that were identical, indicating that they were not authentic.

165. The “Deutsche Bank” letters appeared on letterhead for Deutsche Bank Privat- und Geschäftskunden AG, but made representations on behalf of Deutsche Bank AG, a separate legal entity and Deutsche Bank Privat- und Geschäftskunden AG’s parent company.

166. Further, the letters contained a footer that purported to list the members of the Management Board of Deutsche Bank Privat- und Geschäftskunden AG. The list is not accurate for 2010, the year the letter was dated.

167. In another example, one PDF file of a bank document contained mark-ups that showed that the original date was obscured and a new date was typed on the letter.

168. Another letter, from Südtirol Bank, directed the reader to contact the author at the “below indicated address” when the address was in a header at the top of the page.

169. After receiving fraudulent bank documents from Warras, Micelli, and/or Schläpfer, Brandel provided them to investors. The bank documents were required attachments to the joint venture and structured note agreements.

170. In trying to obtain more bank letters evidencing Malom’s supposed funds to supply to potential investors, Brandel sent an email to Warras on February 17, 2011 with a punch-list of statement requests, including for “500MM any major bank . . . 150MM any major bank . . . 100MM must be Deutsche Bank . . . 200MM any major bank . . . 25MM Centrum Bank.”

171. Until at least spring 2013, Brandel communicated with investors to promise refunds and provide updates on the status of various transactions that would enable refunds to be made. During this period, he regularly communicated with investors to advise them of the status

of their purported investments and assuring them that successful transactions were imminent and returns were forthcoming.

172. Brandel gave investors numerous reasons as to why transactions have not been completed as promised. For example, in communications with one investor over the course of nearly two years, Brandel variously blamed delays on illness, European banking holidays, trading licensing issues, fraudulent acts by others, and misrepresentations about the transactions by the promoters.

173. Brandel also used offers of refunds to investors as a lulling tactic. In February 2011, for example, he promised in writing to refund several investors' funds without deduction in exchange for a "hold harmless" agreement and later promised refunds in writing if an investor retracted allegations made on an internet site that Malom and M.Y. Consultants were engaged in fraud. No refunds have been made.

174. Brandel knew or was reckless in not knowing that the statements described above were materially false or misleading or omitted to state material facts which would make the statements he made not materially misleading.

175. Brandel and M.Y. Consultants are alter-egos of each other, with Brandel using M.Y. Consultants in furtherance of the scheme to defraud. He used corporate funds for his own purposes and to create and support several small businesses run by family members. Further, the company was inadequately capitalized and, when funds came in they were quickly transferred to others or depleted, including on paying personal expenses and through large cash withdrawals. Further, on information and belief, M.Y. Consultants failed to observe corporate formalities.

176. Brandel received at least \$532,500 in transaction-based compensation for his role in furthering the fraudulent scheme. M.Y. Consultants received approximately \$546,607 in connection with the scheme.

**6. Sean P. Finn and M. Dwyer LLC**

177. Sean P. Finn was a promoter working with M.Y. Consultants and Malom to solicit investors. At times, he acted through M. Dwyer, LLC, a company which he founded and serves as its sole manager. He participated in the fraud from approximately April 2010 to fall 2011.

178. Finn, through M. Dwyer, recruited investors for the joint venture and structured note programs; handled investment contracts with investors; and held himself out as a representative of Malom or intermediary between investors and Malom by explaining the joint venture and structured note programs, and regularly communicating with investors regarding updates on the status of their agreements.

179. Finn worked in association with Nevada-based M.Y. Consultants. After he solicited investors, he referred them to M.Y. Consultants, who entered into escrow agreements with the investors and provided them with the joint venture and structured note agreements with Malom. Finn successfully solicited at least one Nevada-based investor.

180. Finn made misrepresentations to several investors regarding Malom, its history, and the nature of transactions with Malom. Finn made no effort to independently verify whether Malom had ever entered into successful transactions or whether it had any funds available.

181. With respect to Malom's purported background, Finn wrote in one internet posting, dated July 9, 2011, that he worked with Malom because it had "references from top executives at Merrill Lynch and Goldman Sachs" and he had "spoken to several billion dollar

companies that owe their existence to Malom.” On March 2, 2011, he sent an email to another investor falsely claiming that Malom had “closed deals with Wal Mart, Bank of America and the State of New York,” and that Malom was “a billion dollar company.”

182. Finn misrepresented to investors the safety and the nature of investments with Malom. In a January 26, 2010 email advertisement to current and prospective investors, for example, Finn claimed that, with Malom, an investor’s “fee is always under [the investor’s] control,” and that the “engagement fee is not released to us until [the investor’s] attorney/banker advises [the investor] to do so.”

183. Finn made the same claims on M. Dwyer’s website, which generally solicited clients for joint venture transactions with his unnamed “partners” who, for a fee, could provide a minimum of \$10 million cash to investors to enter into transactions.

184. Similarly, on November 19, 2011, Finn posted a response to several allegations made against him on a website frequented by potential investors, falsely stating that his clients opened escrow accounts and “received 100% of their money back” when transactions were not successful.

185. Further, in a December 17, 2010 email Finn informed another investor that money deposited into escrow belonged to the investor “until [the investor] is satisfied with the documents and the account we provide,” and that only after the investor’s “team is satisfied” does the investor release funds. The escrow agreement, however, provided that escrowed funds would be released automatically only days after documents were received.

186. At the time he made each of these statements, Finn was attempting to recruit additional investors into transactions with Malom.

187. On M. Dwyer's website, Finn also stated that Malom could place funds on an "administrative hold via [SWIFT Message type] MT799 through UBS, Credit Suisse, HSBC, HSH Nord and Clariden Leu." This cannot be done in legitimate banking.

188. In urging one investor to deposit money into escrow in a January 24, 2011 email, Finn falsely stated that Malom had reserved \$30 million for the investor and passed on other offers for the same money.

189. Moreover, Finn omitted to tell investors that he would almost immediately be paid a fee of approximately 25% of the amount deposited into escrow regardless of whether Malom entered into any transactions or whether those transactions produced any profit.

190. Finn also made several misrepresentations to investors and potential investors about his own history of partnering with Malom in successful transactions. He falsely informed investors that Malom had billions of dollars available and that he had "closed" more than 50 transactions with Malom when he had not.

191. He also acted as a reference for Malom when contacted by another investor, falsely stating that he had personally engaged in successful transactions with Malom. On July 9, 2011, Finn posted a response to an internet posting accusing him and his company of fraud, falsely stating that "[t]he investors I have have made more money than they can spend in a lifetime." Finn went on to recruit additional investors for transactions with Malom after making this statement.

192. Finn knew or was reckless in not knowing that the statements described above were materially false or misleading or omitted to state material facts which would make the statements he made not materially misleading.



193. Finn and M. Dwyer are alter-egos of each other, with Finn using M. Dwyer in furtherance of the fraud. Finn commingled his assets with those of the company, the company was inadequately capitalized, and, on information and belief, failed to observe any corporate formalities.

194. Finn received at least \$840,000 of investor funds in transaction-based compensation for his role in recruiting investors and furthering the fraudulent schemes.

**COUNT ONE**

**Violation of Exchange Act Section 10(b) and Rule 10b-5**

(Malom, Schläpfer, Lips, Warras, Micelli, M.Y. Consultants, Brandel, M. Dwyer, Finn)

195. The Commission realleges and incorporates herein by reference paragraphs 1 through 194 above.

196. Malom, Schläpfer, Lips, Warras, Micelli, M.Y. Consultants, Brandel, M. Dwyer, and Finn, 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.

197. As a part of and in furtherance of their scheme, Malom, Schläpfer, Lips, Warras, Micelli, M.Y. Consultants, Brandel, M. Dwyer, and Finn, directly and indirectly, prepared, disseminated, or used contracts, written offering documents, promotional materials, bank documents, investor and other correspondence, and oral presentations, which contained untrue statements of material facts and misrepresentations of material facts, and which 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, including, but not limited to, those set forth in Paragraphs 1 through 196 above.

198. By reason of the foregoing, Malom, Schläpfer, Lips, Warras, Micelli, M.Y. Consultants, Brandel, M. Dwyer, and Finn 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**  
(Schläpfer, Lips, Warras, Micelli, M.Y. Consultants, Brandel, M. Dwyer, Finn)

199. The Commission realleges and incorporates herein by reference paragraphs 1 through 198 above.

200. Pursuant to Exchange Act Section 20(e) [15 U.S.C. § 78t(e)], Schläpfer, Warras, and Micelli knowingly or recklessly aided and abetted Malom by providing it with substantial assistance in furtherance of its primary violations; and Lips, Smith, M.Y. Consultants, Brandel, M. Dwyer, and Finn at least recklessly aided and abetted Malom by providing it with substantial assistance in furtherance of its violations of Exchange Act Section 10(b) [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5].

201. Furthermore, Brandel, M. Dwyer, and Finn at least recklessly aided and abetted M.Y. Consultants by providing it with substantial assistance in furtherance of its 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)**

(Malom, Schläpfer, Lips, Warras, Micelli, M.Y. Consultants, Brandel, M. Dwyer, Finn)

202. The Commission realleges and incorporates herein by reference paragraphs 1 through 201 above.

203. Malom, Schläpfer, Lips, Warras, Micelli, M.Y. Consultants, Brandel, M. Dwyer, and Finn, 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.

**COUNT FOUR**

**Aiding and Abetting Violations of Securities Act Section 17(a)**

(Schläpfer, Lips, Warras, Micelli, M.Y. Consultants, Brandel, M. Dwyer, Finn)

204. The Commission realleges and incorporates herein by reference paragraphs 1 through 203 above.

205. Pursuant to Securities Act Section 15(b) [15 U.S.C. § 77o(b)], Schläpfer, Warras, and Micelli knowingly or recklessly aided and abetted Malom by providing it with substantial assistance in furtherance of its primary violations; and Lips, Smith, M.Y. Consultants, Brandel, M. Dwyer, and Finn knowingly or at least recklessly aided and abetted Malom by providing it with substantial assistance in furtherance of its violations of Securities Act Section 17(a) [15 U.S.C. § 77q(a)].

206. Brandel, M. Dwyer, and Finn knowingly or recklessly aided and abetted M.Y. Consultants by providing it with substantial assistance in furtherance of its violations of Securities Act Section 17(a) [15 U.S.C. § 77q(a)].

**COUNT FIVE**

**Violation of Securities Act Section 5**

(Malom, Schläpfer, Lips, Warras, Micelli, M.Y. Consultants, Brandel, M. Dwyer, Finn)

207. The Commission realleges and incorporates herein by reference paragraphs 1 through 206 above.

208. Malom, Schläpfer, Lips, Warras, Micelli, M.Y. Consultants, Brandel, M. Dwyer, and Finn, 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.

209. By reason of the foregoing, Malom, Schläpfer, Lips, Warras, Micelli, M.Y. Consultants, Brandel, M. Dwyer, and Finn 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**

**Violation of Exchange Act Section 15(a)**

(M.Y. Consultants, Brandel, M. Dwyer, Finn)

210. The Commission realleges and incorporates herein by reference paragraphs 1 through 209 above.

211. M.Y. Consultants, Brandel, M. Dwyer, and Finn, 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.

212. By reason of the foregoing, M.Y. Consultants, Brandel, M. Dwyer, and Finn violated and, unless restrained and enjoined, will continue to violate Exchange Act Section 15(a) [15 U.S.C. § 78o(a)].

**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 joint venture agreements, proofs of funds, bank guarantees, medium term notes, standby letters of credit, structured notes, and similar instruments, with the exception of the purchase or sale of securities listed on a national securities exchange;

**IV.**

Order all 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)].

Date: December 16, 2013

By:

/s/ Stephen W. Simpson

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# EXHIBIT 2



**SEALED**

**Office of the United States Attorney**  
District of Nevada  
333 Las Vegas Boulevard, Suite 5000  
Las Vegas, Nevada 89101  
(702) 388-6336



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BY: _____	DEPUTY _____

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United States Attorney  
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5 (202) 616-3114

6 UNITED STATES DISTRICT COURT  
7 DISTRICT OF NEVADA

-oOo-

8 United States of America,  
9 Plaintiff,

10 vs.

11 ANTHONY BRANDEL,  
12 JOSEPH MICELLI,  
13 JAMES WARRAS,  
14 [REDACTED]  
15 [REDACTED]

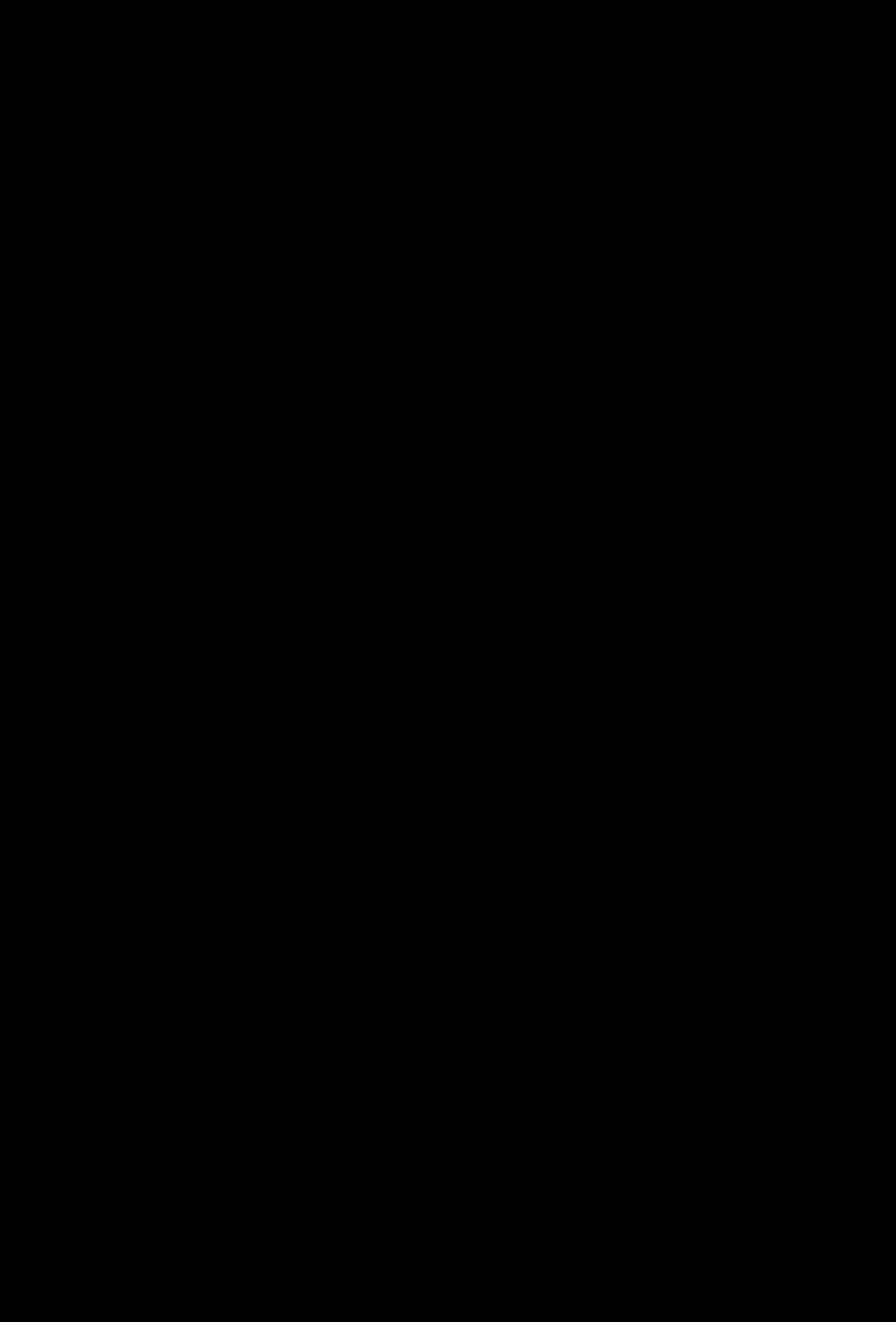
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) CRIMINAL INDICTMENT

) Case No.: 2:13-cr- 439

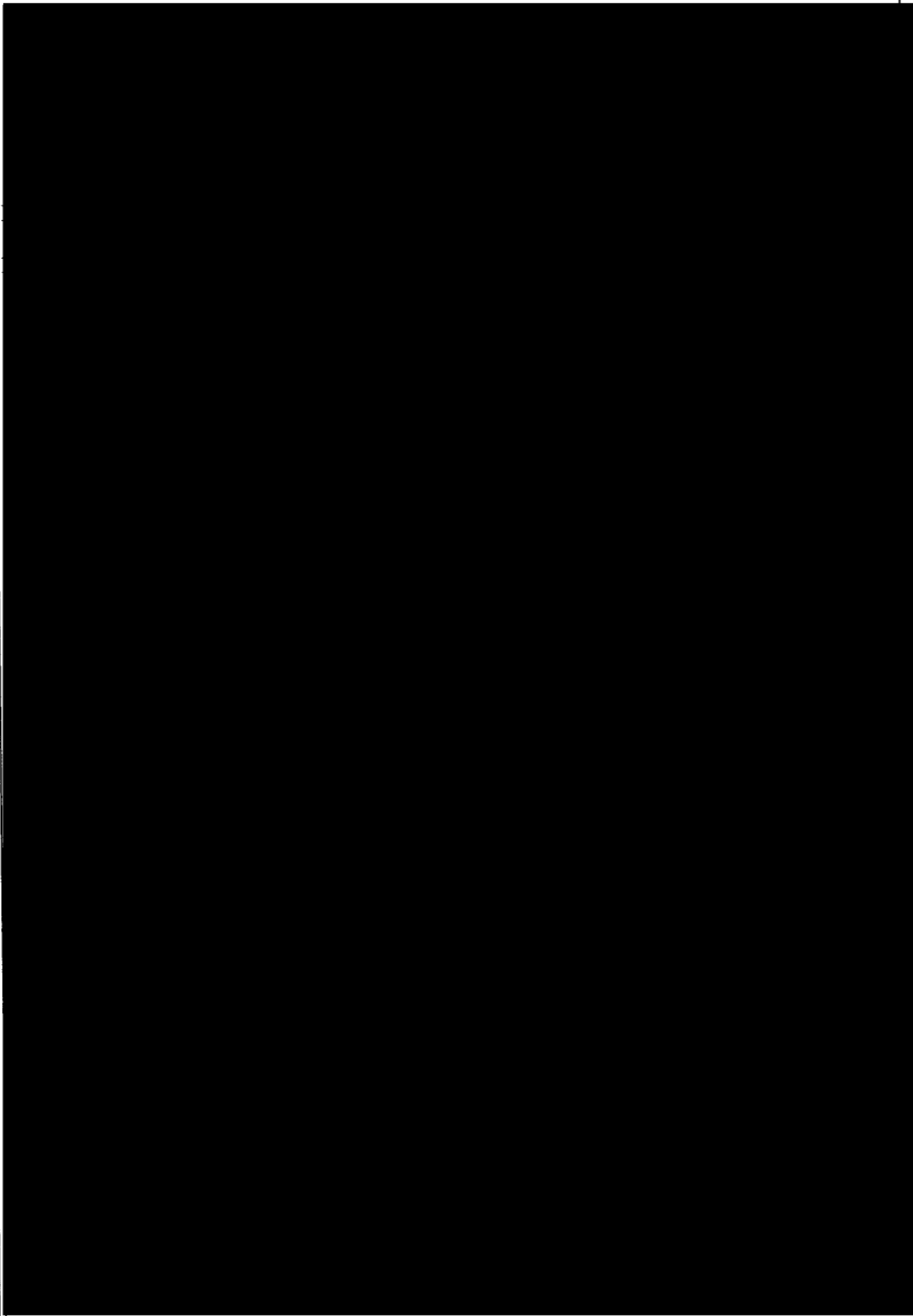
) VIOLATIONS:

) 18 U.S.C. § 371 – Conspiracy  
) 18 U.S.C. § 1343 – Wire Fraud  
) 15 U.S.C. §§ 78j(b); 78ff; 17 C.F.R. §  
16 [REDACTED]  
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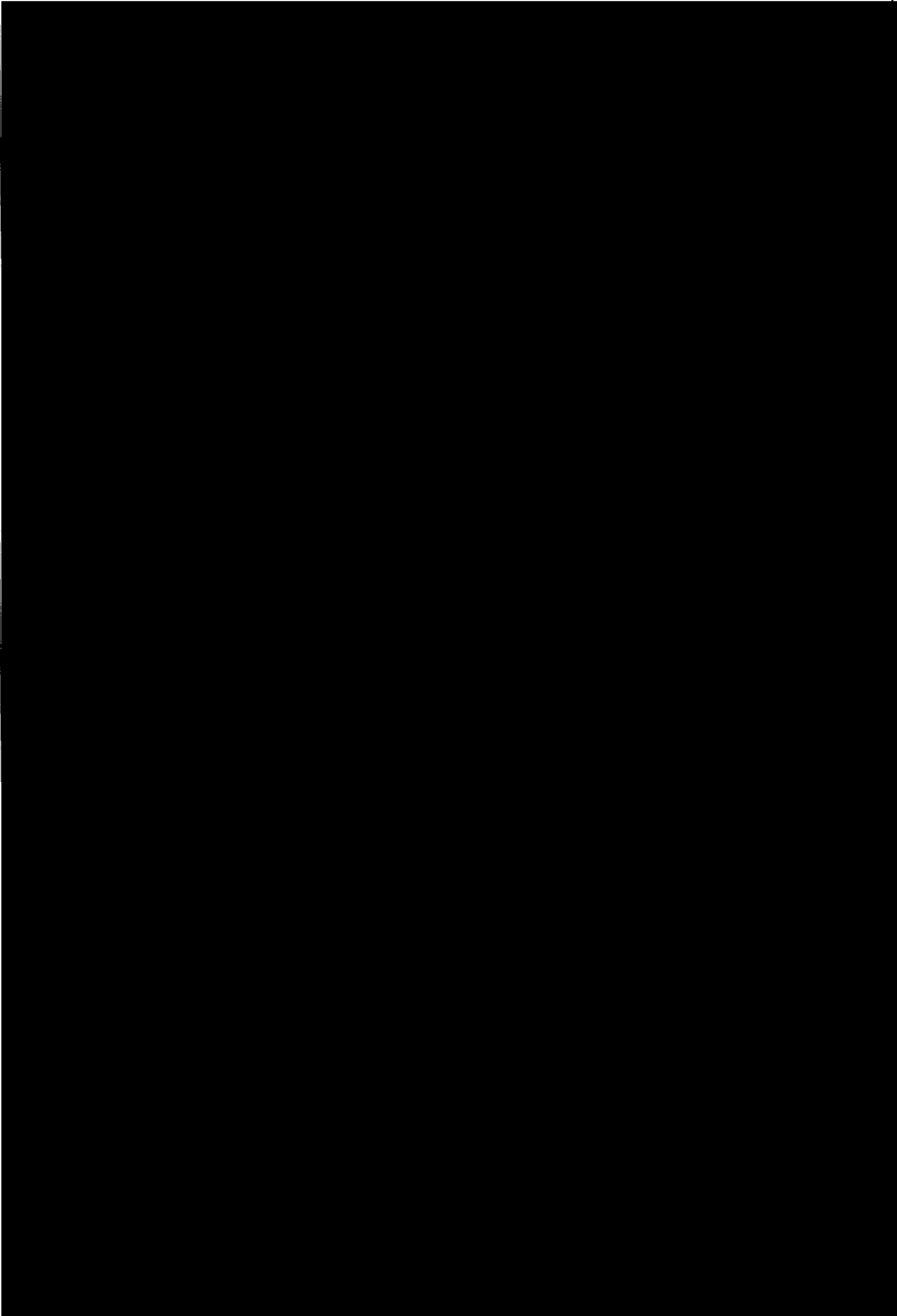
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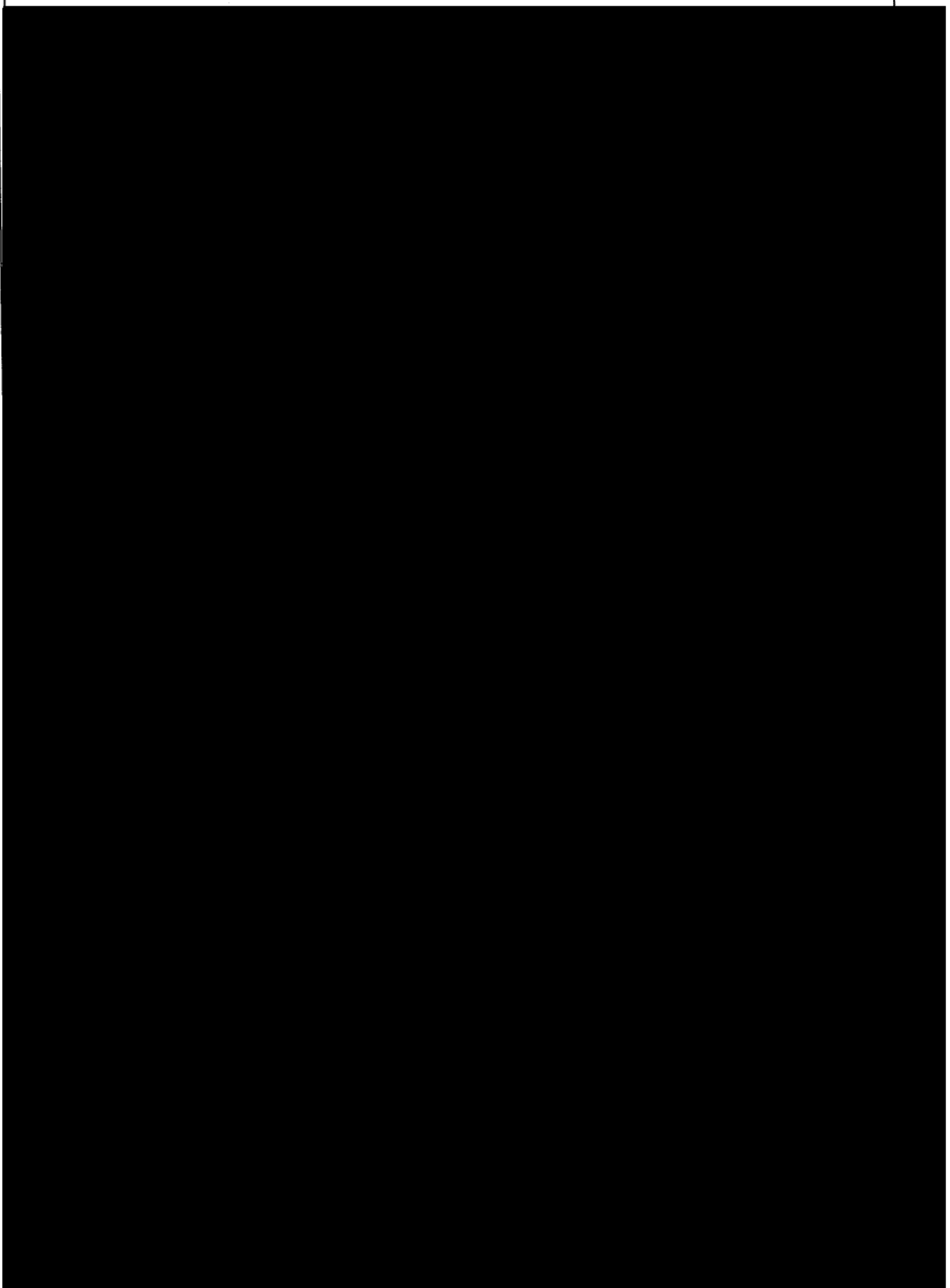
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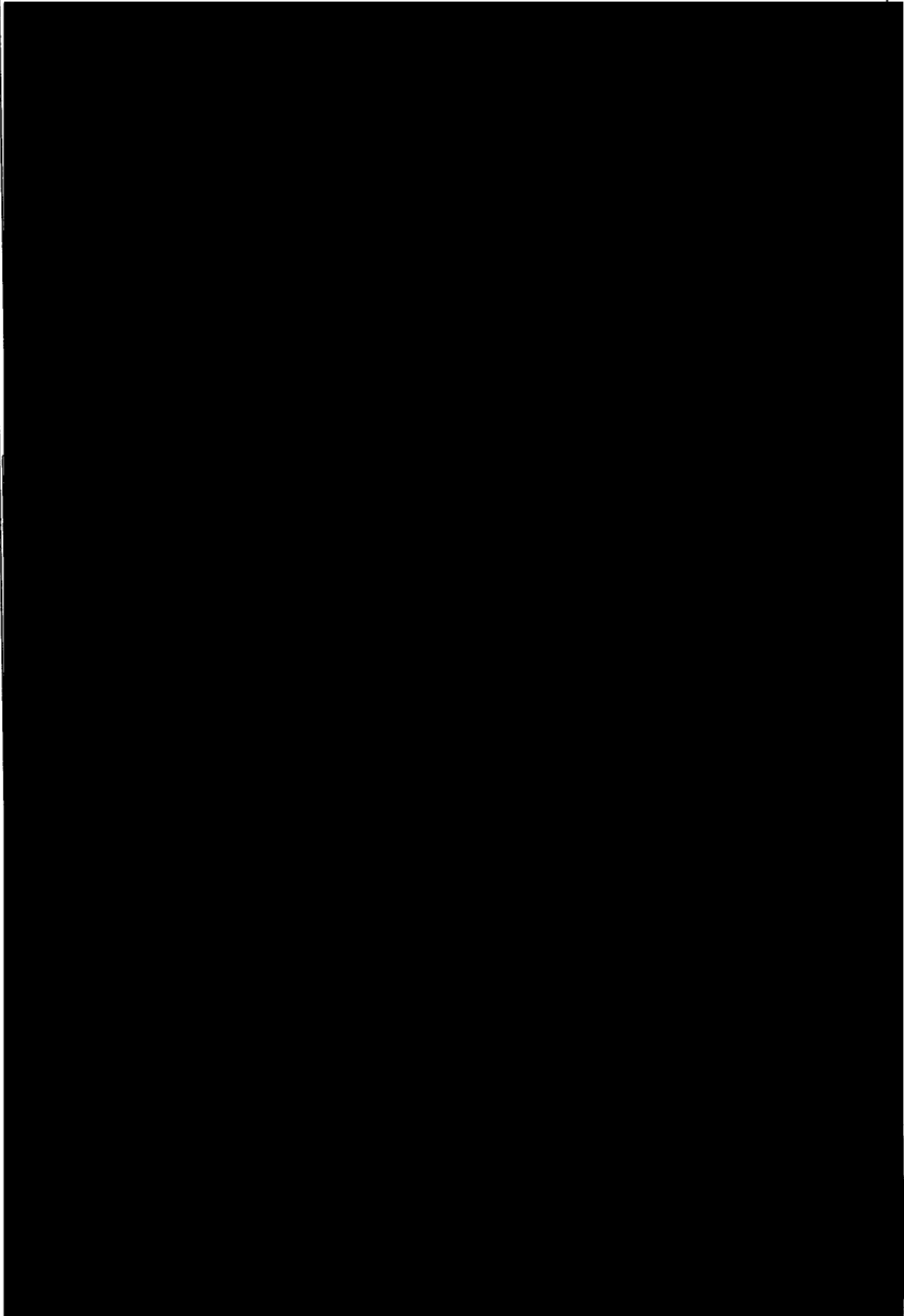
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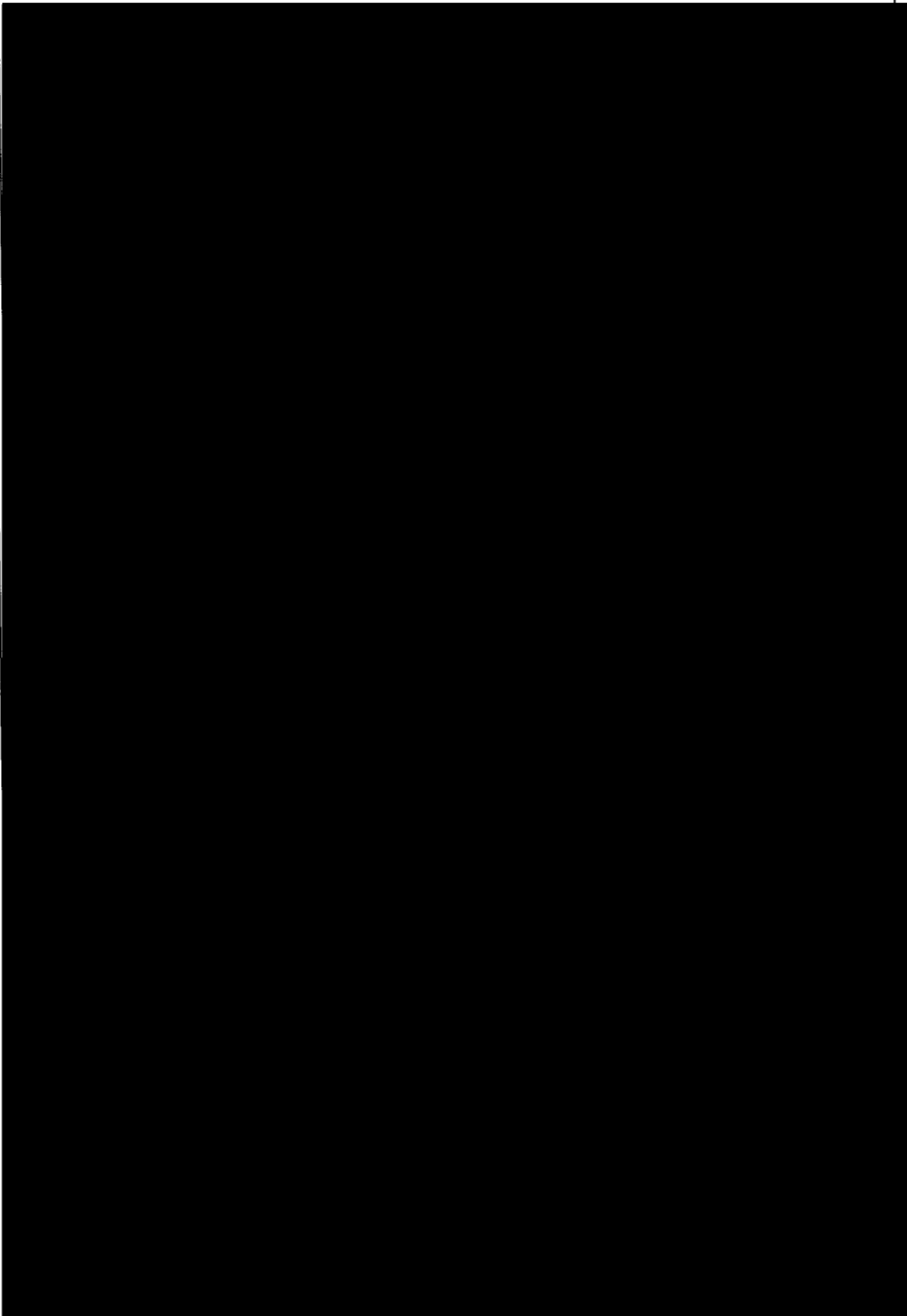
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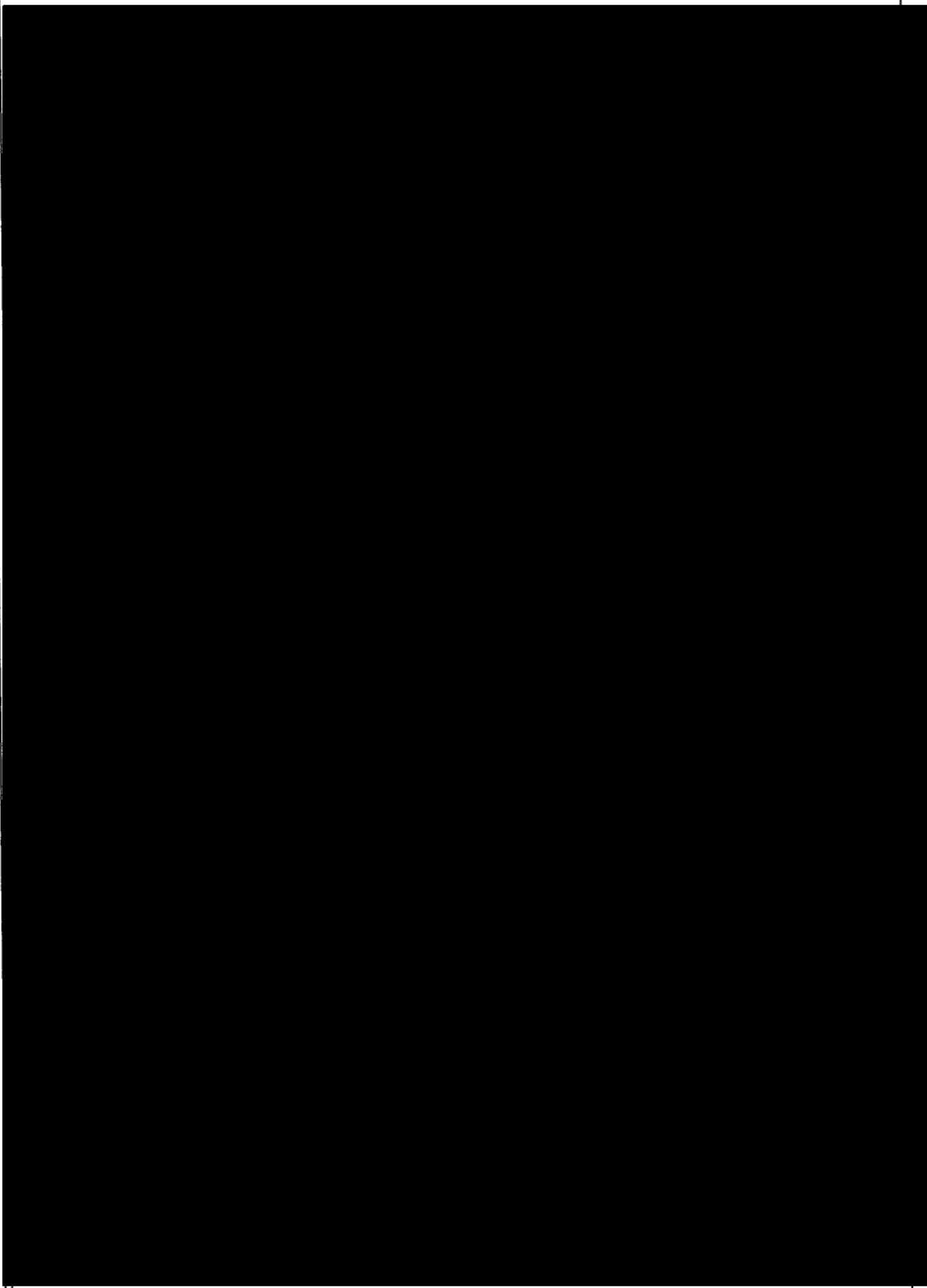
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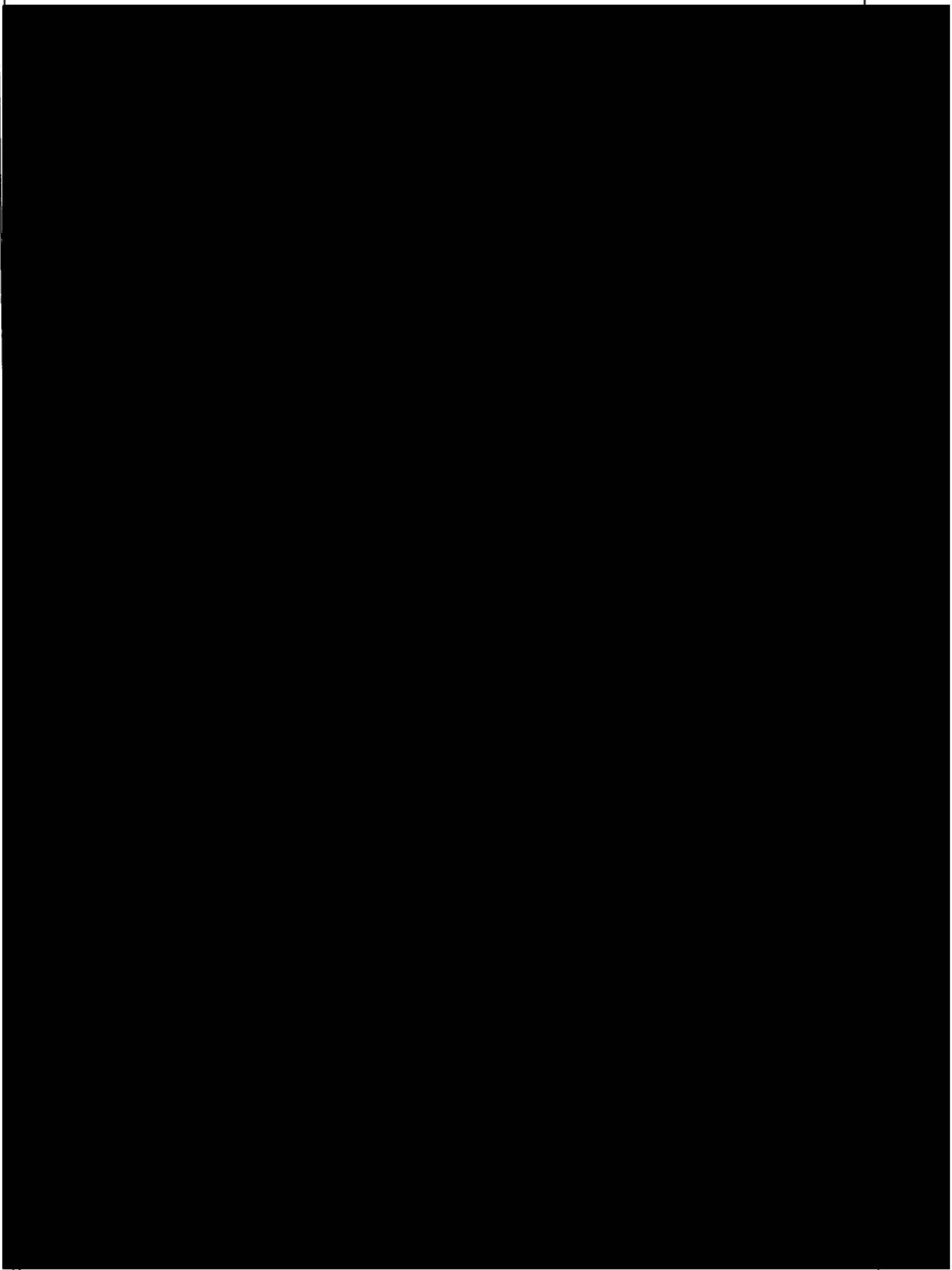


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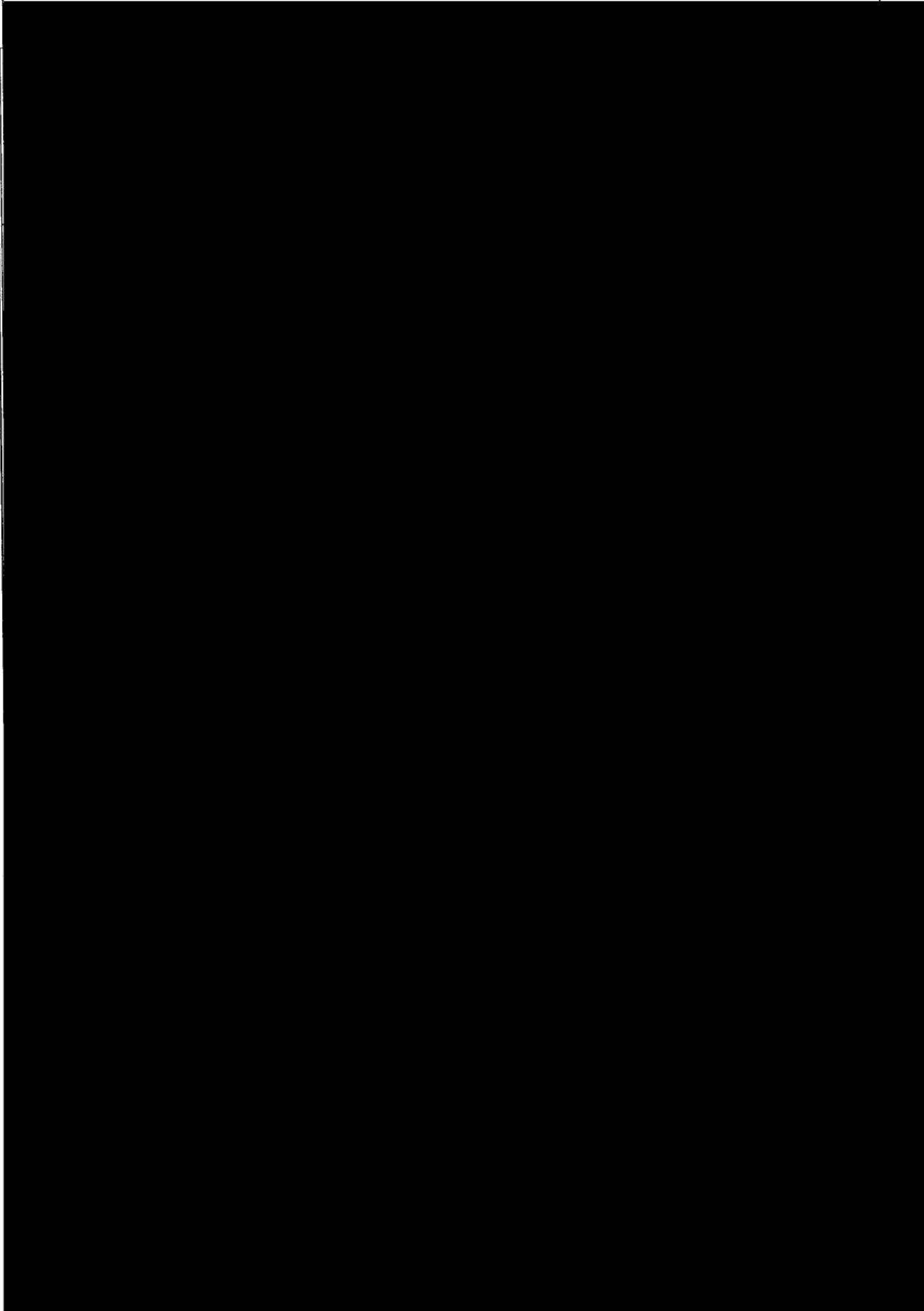




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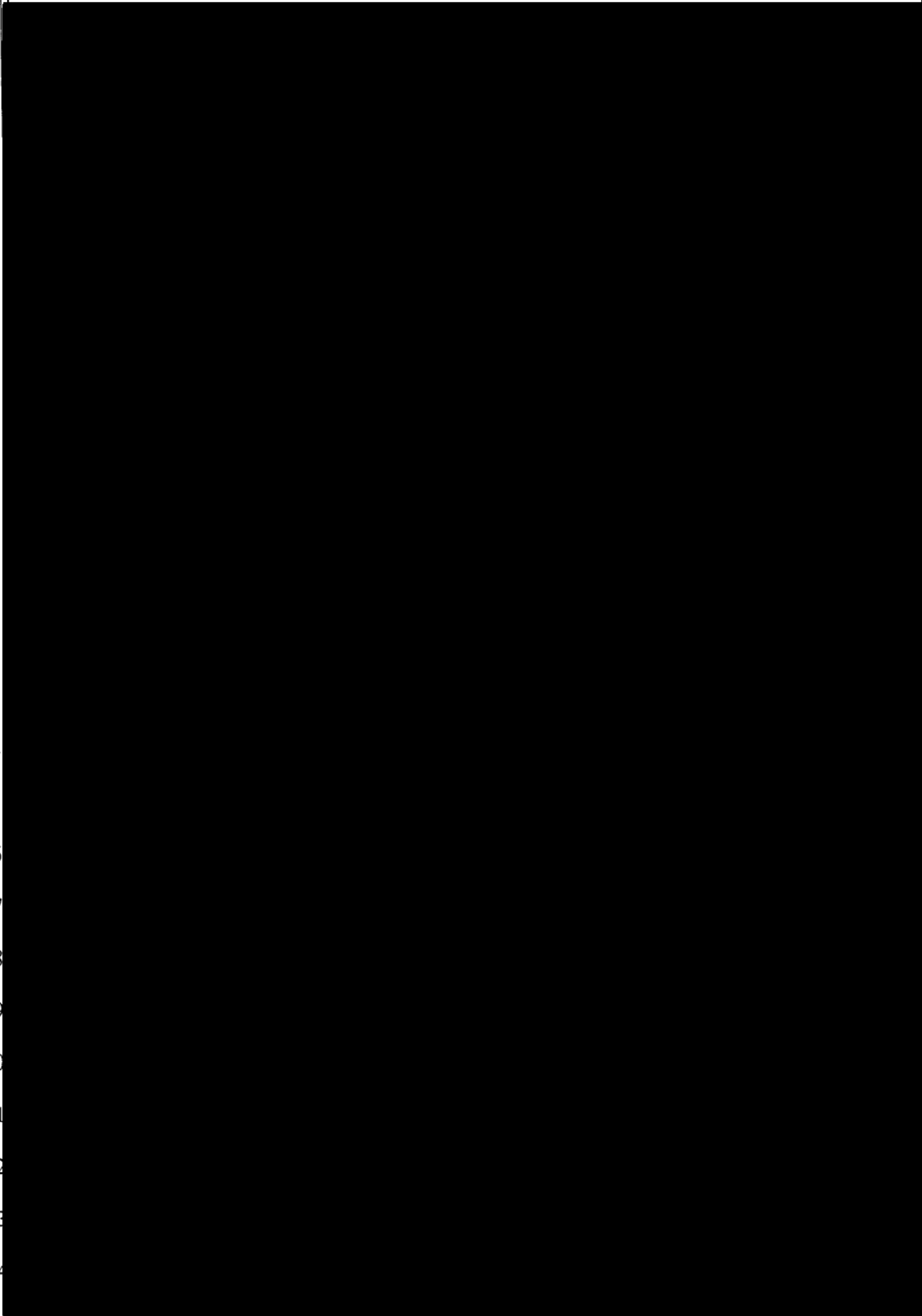


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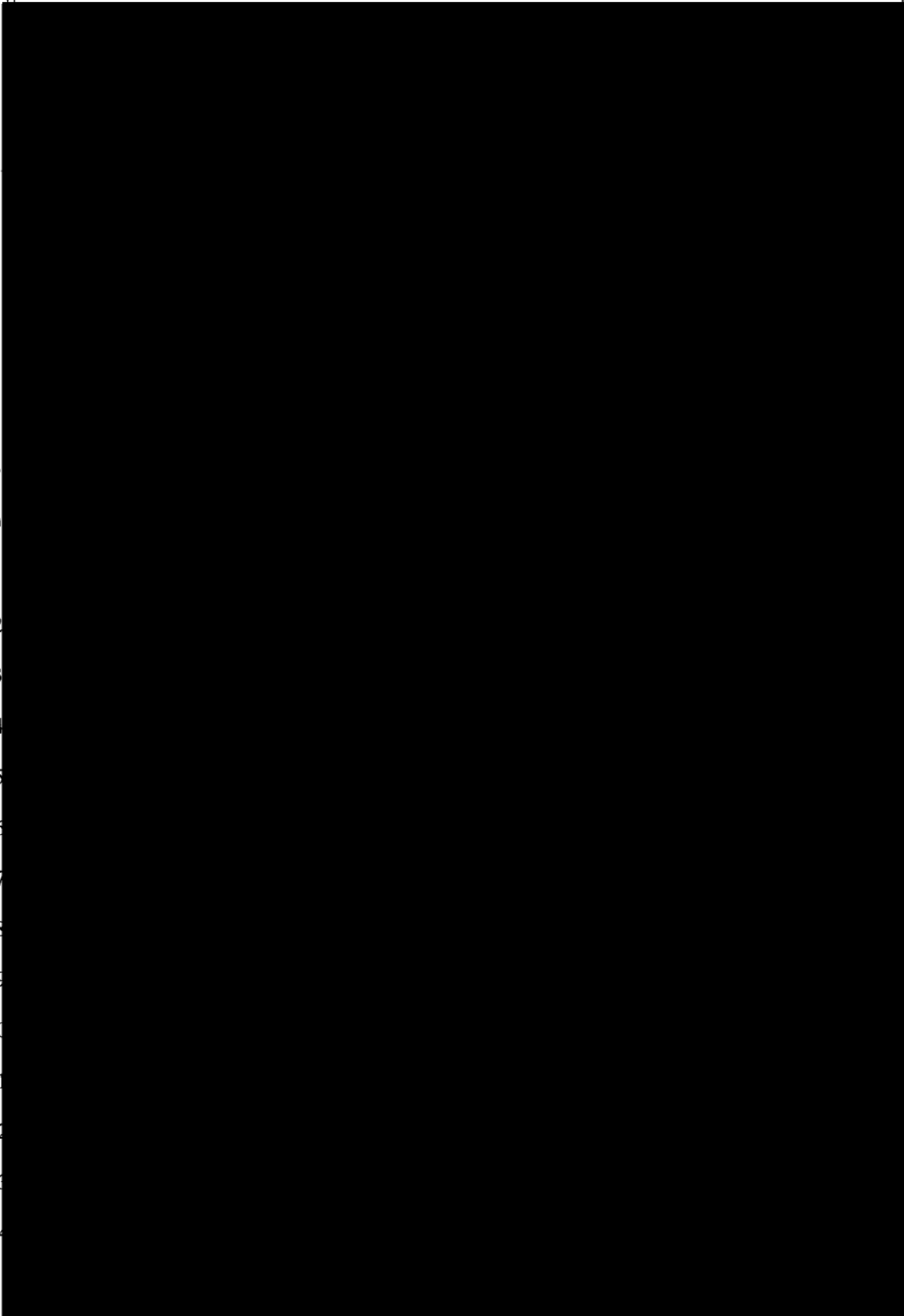


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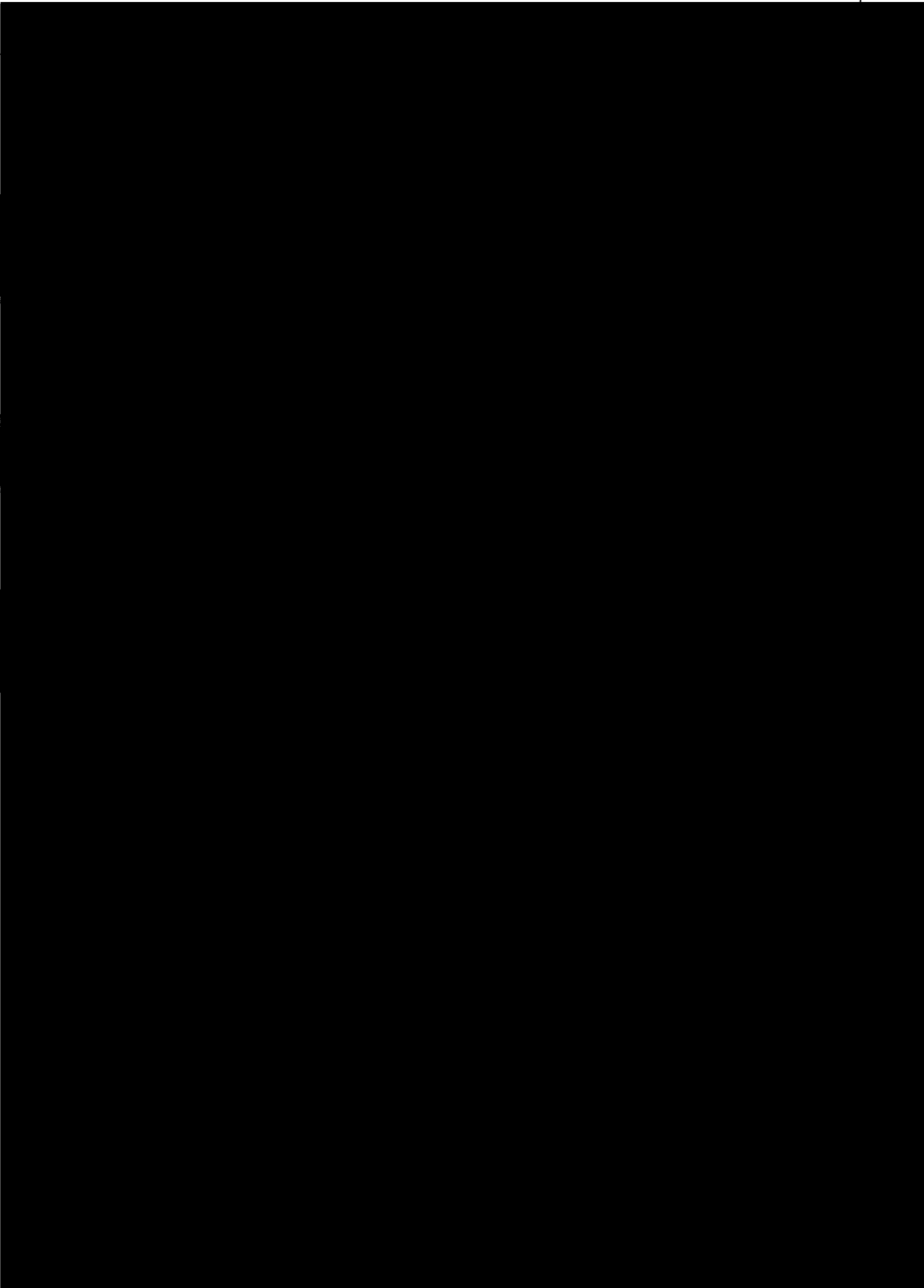
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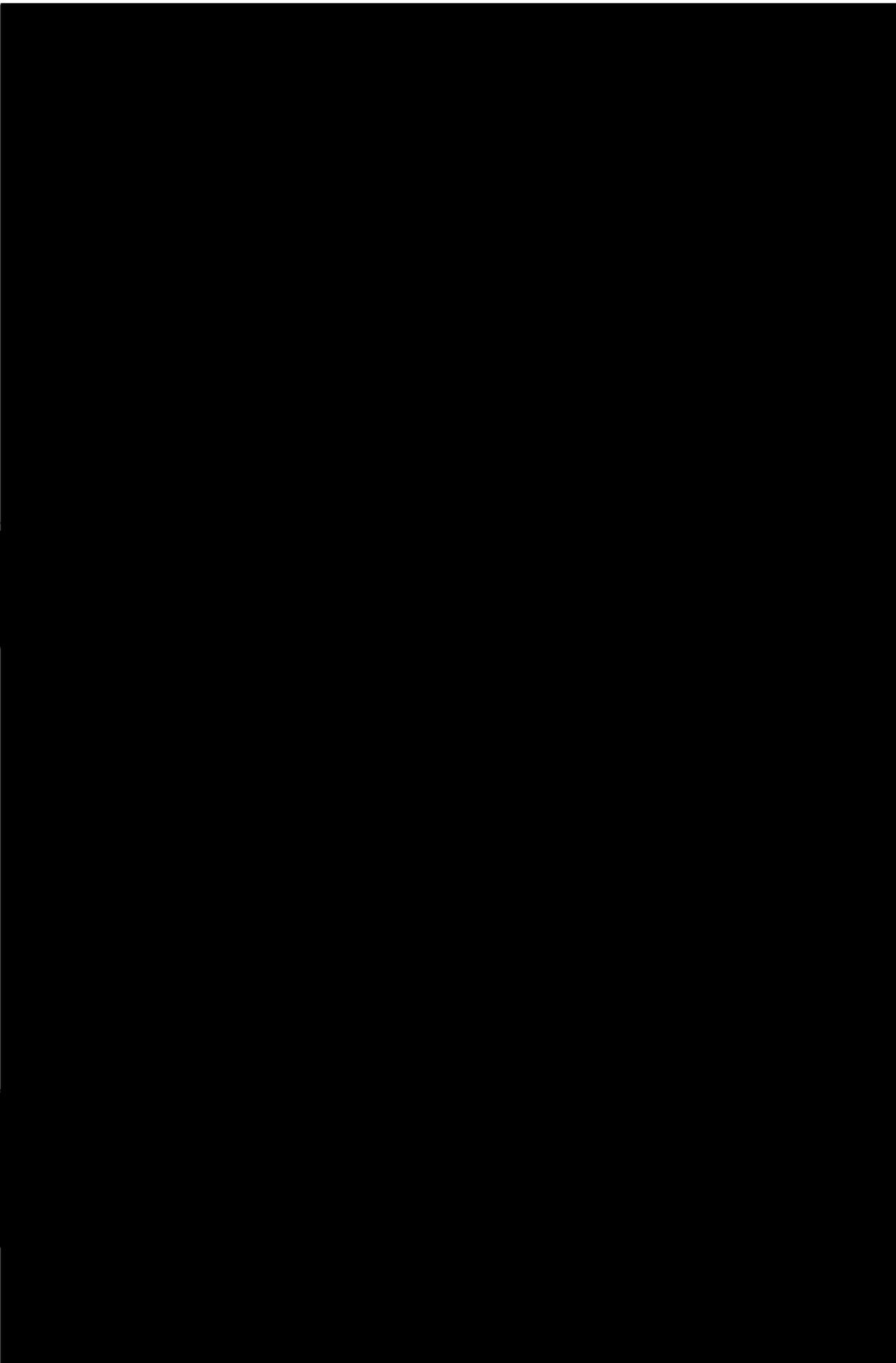
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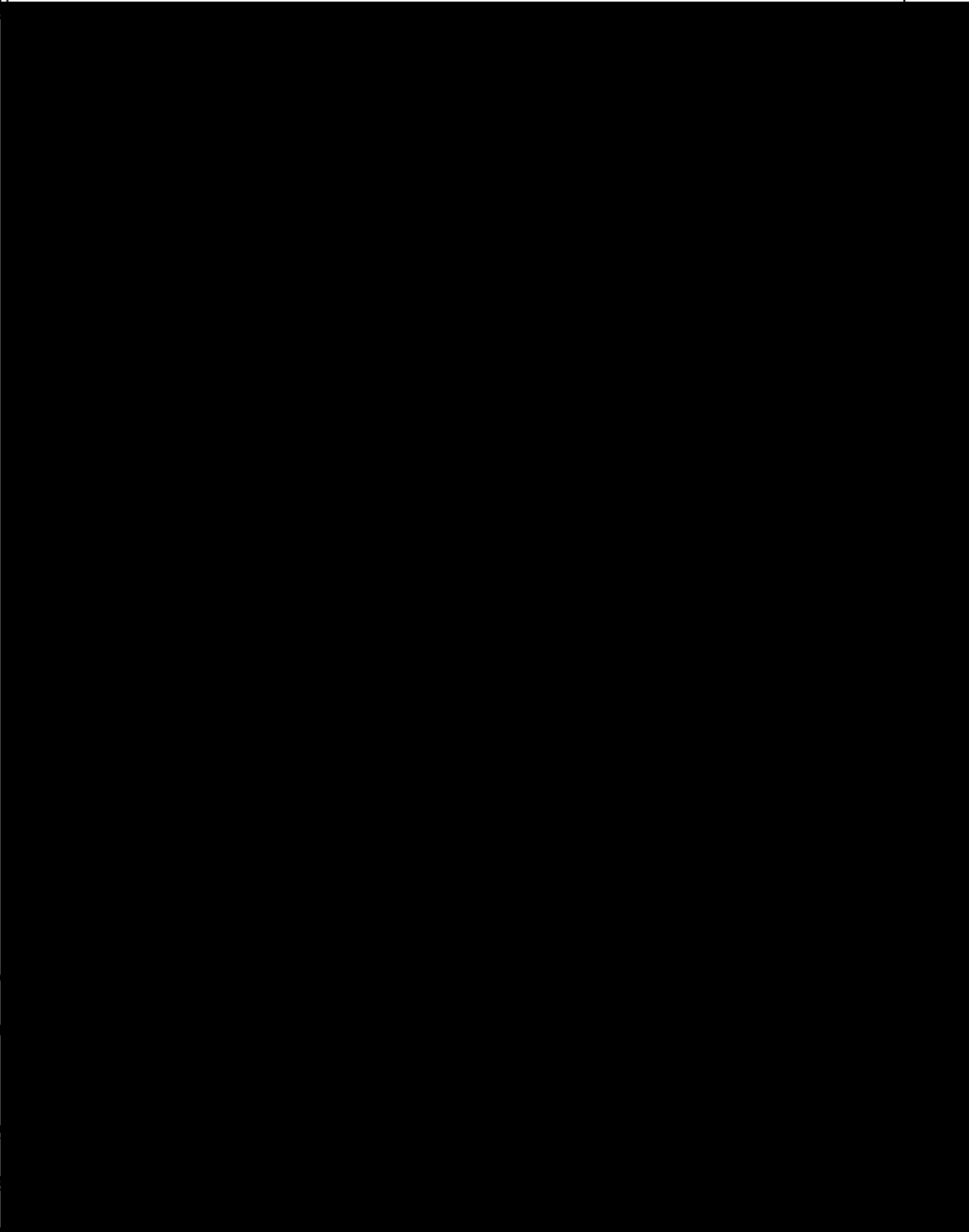


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# EXHIBIT 3

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEVADA

UNITED STATES OF AMERICA,	)	
	)	Case No. 2:13-cr-439-KJD-VCF
Plaintiff,	)	
	)	Las Vegas, Nevada
vs.	)	December 1, 2015
	)	2:01 p.m.
ANTHONY B. BRANDEL (1) and	)	
JAMES WARRAS (3),	)	
	)	Jury Trial, Day 1
Defendants.	)	
_____	)	Volume 1

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE KENT J. DAWSON  
UNITED STATES DISTRICT COURT JUDGE, AND A JURY

APPEARANCES:

For the Government:

BRIAN R. YOUNG  
MELISSA AOYAGI  
Criminal Division, Fraud Section  
1400 New York Avenue, NW  
Washington, DC 20530

Appearances continued on Page 2.

Court Reporter: Katherine Eismann, CSR, CRR, RDR  
(702)431-1919 eismann.csr@gmail.com

Proceedings reported by machine shorthand, transcript produced  
by computer-aided transcription.

1 APPEARANCES CONTINUED:

2 For the Defendant Anthony B. Brandel (1):

3 BRIAN JAMES SMITH, ESQ.  
4 GABRIEL L. GRASSO, ESQ.  
5 CHRISTOPHER GRASSO, ESQ.  
6 Smith & Grasso, Ltd.  
7 9525 Hillwood Drive, Suite 190  
8 Las Vegas, Nevada 89134

9 For the Defendant James Warras (3):

10 RENE VALLADARES  
11 Federal Public Defender  
12 RAQUEL LAZO  
13 Assistant Federal Defender  
14 411 East Bonneville Avenue, Rm. S 245  
15 Las Vegas, Nevada 89101

16 Also Present:

17 Gene Tierney, FBI  
18 Robert Lindston, Paralegal  
19 Nikki Seubert, Paralegal  
20 David Ruiz, IT

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEVADA

UNITED STATES OF AMERICA,	)	
	)	Case No. 2:13-cr-439-KJD-VCF
Plaintiff,	)	
	)	Las Vegas, Nevada
vs.	)	December 2, 2015
	)	9:06 a.m.
ANTHONY B. BRANDEL (1) and	)	
JAMES WARRAS (3),	)	
	)	Jury Trial, Day 2
Defendants.	)	
_____		)

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE KENT J. DAWSON  
UNITED STATES DISTRICT COURT JUDGE, AND A JURY

APPEARANCES:

For the Government:

BRIAN R. YOUNG  
MELISSA AOYAGI  
Criminal Division, Fraud Section  
1400 New York Avenue, NW  
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Appearances continued on Page 2.

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5 CHRISTOPHER GRASSO, ESQ.  
6 Smith & Grasso, Ltd.  
7 9525 Hillwood Drive, Suite 190  
8 Las Vegas, Nevada 89134

9 For the Defendant James Warras (3):

10 RENE VALLADARES  
11 Federal Public Defender  
12 RAQUEL LAZO  
13 Assistant Federal Defender  
14 411 East Bonneville Avenue, Suite 250  
15 Las Vegas, Nevada 89101

16 Also Present: )

17 Gene Tierney, FBI  
18 Robert Lindston, Paralegal  
19 Nikki Seubert, Paralegal  
20 David Ruiz, IT  
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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEVADA

UNITED STATES OF AMERICA,	)	
	)	Case No. 2:13-cr-439-KJD-VCF
Plaintiff,	)	
	)	Las Vegas, Nevada
vs.	)	December 3, 2015
	)	9:15 a.m.
ANTHONY B. BRANDEL (1) and	)	
JAMES WARRAS (3),	)	
	)	Jury Trial, Day 3
Defendants.	)	
_____	)	

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE KENT J. DAWSON  
UNITED STATES DISTRICT COURT JUDGE, AND A JURY

APPEARANCES:

For the Government:

BRIAN R. YOUNG  
MELISSA AOYAGI  
Criminal Division, Fraud Section  
1400 New York Avenue, NW  
Washington, DC 20530

Appearances continued on Page 2.

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(702)431-1919 eismann.csr@gmail.com

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1 APPEARANCES CONTINUED:

2 For the Defendant Anthony B. Brandel (1):

3 BRIAN JAMES SMITH, ESQ.  
4 GABRIEL L. GRASSO, ESQ.  
5 CHRISTOPHER GRASSO, ESQ.  
6 Smith & Grasso, Ltd.  
7 9525 Hillwood Drive, Suite 190  
8 Las Vegas, Nevada 89134

9 For the Defendant James Warras (3):

10 RENE VALLADARES  
11 Federal Public Defender  
12 RAQUEL LAZO  
13 Assistant Federal Defender  
14 411 East Bonneville Avenue, Suite 245  
15 Las Vegas, Nevada 89101

16 Also Present:

17 Gene Tierney, FBI  
18 Robert Lindston, Paralegal  
19 Nikki Seubert, Paralegal  
20 David Ruiz, IT  
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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEVADA

UNITED STATES OF AMERICA,	)	
	)	Case No. 2:13-cr-439-KJD-VCF
Plaintiff,	)	
	)	Las Vegas, Nevada
vs.	)	December 4, 2015
	)	9:07 a.m.
ANTHONY B. BRANDEL (1) and	)	
JAMES WARRAS (3),	)	
	)	Jury Trial, Day 4
Defendants.	)	Volume 4
	)	

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE KENT J. DAWSON  
UNITED STATES DISTRICT COURT JUDGE, AND A JURY

APPEARANCES:

For the Government:

BRIAN R. YOUNG  
MELISSA AOYAGI  
Criminal Division, Fraud Section  
1400 New York Avenue, NW  
Washington, DC 20530

Appearances continued on Page 2.

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1 APPEARANCES CONTINUED:

2 For the Defendant Anthony B. Brandel (1):

3 BRIAN JAMES SMITH, ESQ.  
4 GABRIEL L. GRASSO, ESQ.  
5 CHRISTOPHER GRASSO, ESQ.  
6 Smith & Grasso, Ltd.  
7 9525 Hillwood Drive, Suite 190  
8 Las Vegas, Nevada 89134

9 For the Defendant James Warras (3):

10 RENE VALLADARES  
11 Federal Public Defender  
12 RAQUEL LAZO  
13 Assistant Federal Defender  
14 411 East Bonneville Avenue, Suite 245  
15 Las Vegas, Nevada 89101

16 Also Present:

17 Gene Tierney, FBI  
18 Robert Lindston, Paralegal  
19 Nikki Seubert, Paralegal  
20 David Ruiz, IT  
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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEVADA

UNITED STATES OF AMERICA,	)	
	)	Case No. 2:13-cr-439-KJD-VCF
Plaintiff,	)	
	)	Las Vegas, Nevada
vs.	)	December 7, 2015
	)	9:08 a.m.
ANTHONY B. BRANDEL (1) and	)	
JAMES WARRAS (3),	)	
	)	Jury Trial, Day 5
Defendants.	)	
	)	

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE KENT J. DAWSON  
UNITED STATES DISTRICT COURT JUDGE, AND A JURY

APPEARANCES:

For the Government:

BRIAN R. YOUNG  
MELISSA AOYAGI  
Criminal Division, Fraud Section  
1400 New York Avenue, NW  
Washington, DC 20530

Appearances continued on Page 2.

Court Reporter: Katherine Eismann, CSR, CRR, RDR  
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2 For the Defendant Anthony B. Brandel (1):

3 BRIAN JAMES SMITH, ESQ.  
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5 CHRISTOPHER GRASSO, ESQ.  
6 Smith & Grasso, Ltd.  
7 9525 Hillwood Drive, Suite 190  
8 Las Vegas, Nevada 89134

9 For the Defendant James Warras (3):

10 RENE VALLADARES  
11 Federal Public Defender  
12 RAQUEL LAZO  
13 AMY CLEARY  
14 Assistant Federal Defenders  
15 411 East Bonneville Avenue, Suite 245  
16 Las Vegas, Nevada 89101

17 Also Present:

18 Gene Tierney, FBI  
19 Robert Lindston, Paralegal  
20 Nikki Seubert, Paralegal  
21 David Ruiz, IT  
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# EXHIBIT 4

**HO-12001**

***BRANDEL\_ANTHONY\_20130816***

***8/16/2013***

**Condensed Transcript**

**Prepared by:**

Stephen Simpson  
SEC

Thursday, December 03, 2015

1 PROCEEDINGS

2 MR. SIMPSON: We're reconvening testimony in  
3 the matter of M.Y. Consultants. The time is 9:32 a.m.  
4 on August 16, 2013.

5 Mr. Brandel, I'd just like to remind you that  
6 you're still under oath.

7 Whereupon,

8 ANTHONY BRANDEL

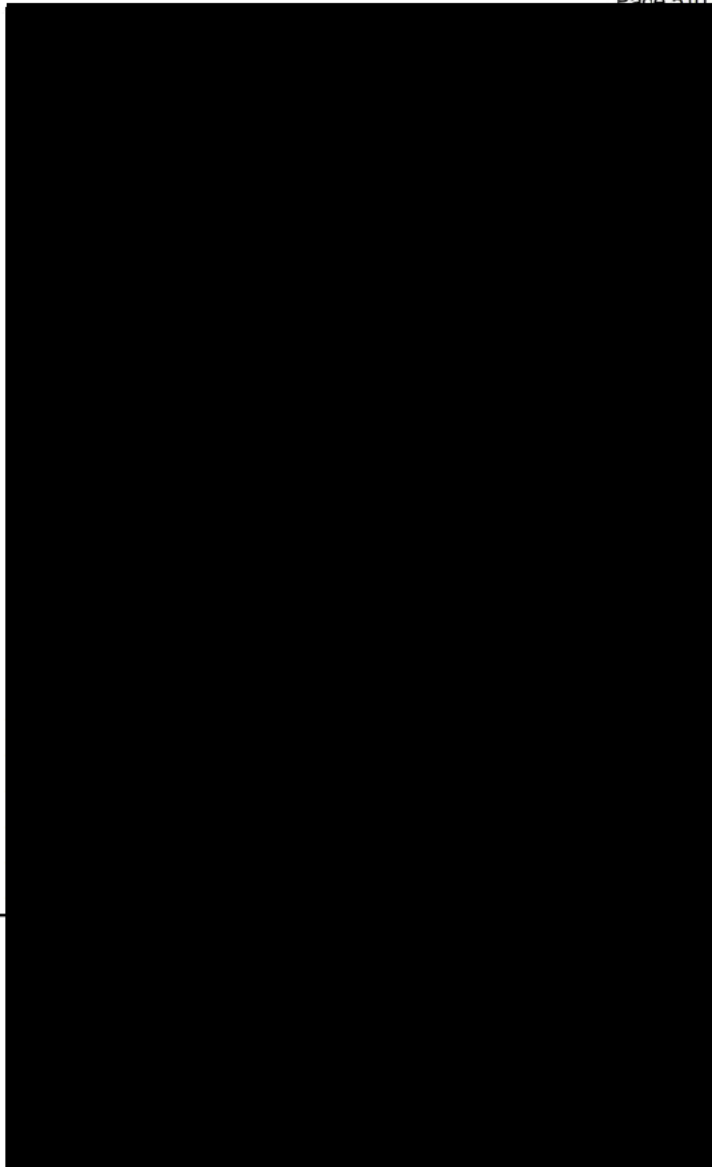
9 was recalled as a witness and, having been previously  
10 duly sworn, was further examined and further testified  
11 as follows:

12 EXAMINATION (RESUMED)

13 Q Do you understand that?

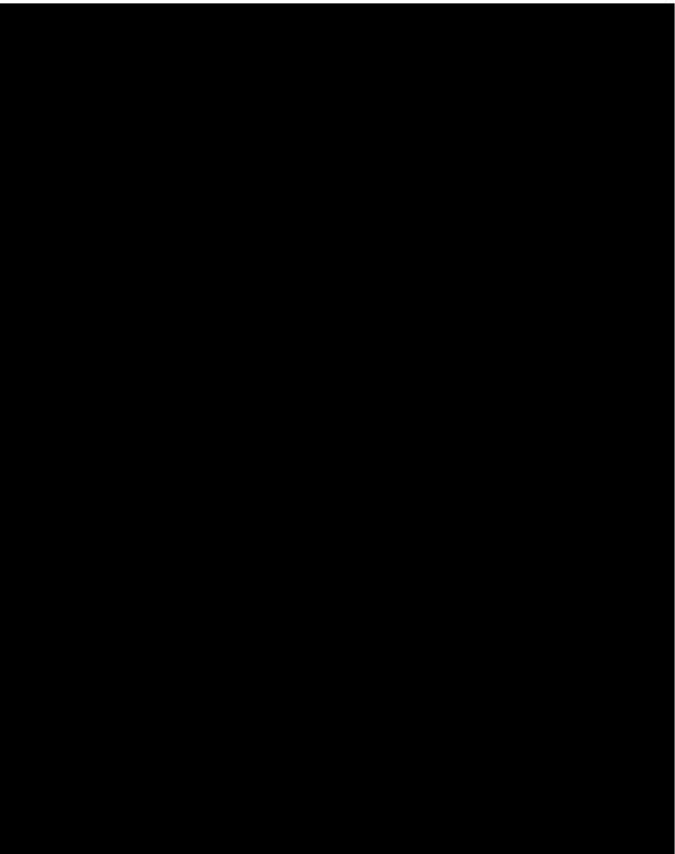
14 A Yes.





1 money available at the time these people brought in the  
 2 transaction.  
 3 Q So your understanding was that, you know, if  
 4 Martin is going to set aside, say, five and a half  
 5 million dollars for Mike Kooyman, that a certain amount  
 6 of Kooyman's -- the fee that he paid, which I believe is  
 7 \$200,000, a certain amount of that \$200,000 would  
 8 compensate Martin for not being able to use that five and  
 9 a half million dollars for a certain period of time?  
 10 A Well, it's to have Martin committing to having  
 11 the money available for Kooyman or any other joint  
 12 venture transaction; make sure that they have it  
 13 available.  
 14 Q Anything else?  
 15 A Well, I mean, obviously the brokers got paid  
 16 and so did M.Y. Consultants.  
 17 Q What was the split?  
 18 A It was -- as I talked yesterday -- at a minimum  
 19 50 percent went to Martin. The other 40 to 50 percent  
 20 stayed in Vegas, I should say, but the other 50 percent  
 21 was split up. Fifty percent went to M.Y. Consultants.  
 22 The other 50 percent went to the broker that brought in  
 23 the customer. And then that 50 percent that was kept --  
 24 or 50 percent of the 50 percent, which we're talking 25  
 25 percent now of the total amount, was then divided between

1 myself and Joseph Micelli with a 60, 40 split.



7 Q Mr. Brandel, what was the transaction fee that  
 8 the joint venture partners paid? What was that for?  
 9 A The what?  
 10 Q The transactions fees; the \$200,000. The  
 11 financial services fees, what was that for?  
 12 A It was a payment so -- to Martin for him to  
 13 give them a joint venture to where they're able to go out  
 14 and do the transactions that they claimed that they had  
 15 or bring -- if they had found any other kind of  
 16 transaction that they wanted to do, they had a partner  
 17 that was going to do that with them, because Martin  
 18 didn't know what their transaction was going to be about.  
 19 He just wasn't going to sign a JV and have, you know, a  
 20 commitment of having to use these funds, you know --  
 21 Q So what was it meant --  
 22 A -- for nothing.  
 23 Q -- to compensate Martin for?  
 24 A It was used to compensate Martin for him to tie  
 25 up his money to where he's promising to have that much

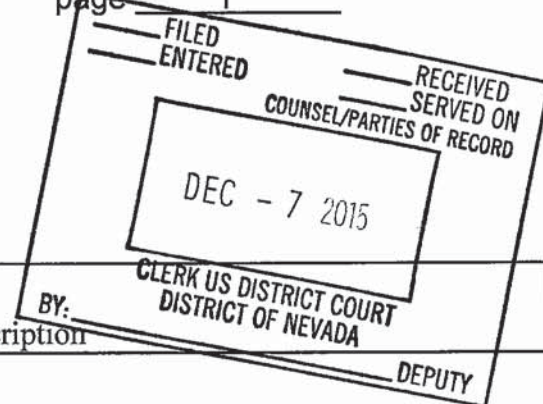
# EXHIBIT 5

EXHIBIT LIST

page 1

Case # 2:13-CR-439  
 Caption: United States v. Anthony Brandel, et al.

Exhibits for: Prosecution



Date Marked	Date Admitted	Number	Witness	Description
12/3/15	12/3/15	101	G. Tierney	Email: "RE: New Proof of Funds" DOJ-GMAILBRANDEL-00107122
12/3/15	12/3/15	102	G. Tierney	Email: "Martin received a call from Las Vegas about escrow" DOJ-GMAILBRANDEL-00132597
12/3/15	12/3/15	103	G. Tierney	Email: "Welcome to Fraudwatchers!" DOJ-AOLMICELLI-00054804
12/4/15	12/4/15	104	G. Tierney	Email: EFG BANK STATEMENT DOJ-GMAILBRANDEL-00031292
12/3/15	12/3/15	105	G. Tierney	Email: "AW: Deposit Investor for USA Springs" DOJ-AOLMICELLI-00006009
12/3/15	12/3/15	106	G. Tierney	Email: "Martin needs 2" DOJ-AOLMICELLI-00032550
12/4/15	12/4/15	107	G. Tierney	Email: "Preferred JC" DOJ-AOLMICELLI-00004646 - 4664
		108		Email: "Interesting info on you Joe..." DOJ-AOLMICELLI-00013266 - 13276
12/3/15	12/3/15	109	G. Tierney	Email: "Re: Art" DOJ-GMAILBRANDEL-00046378-386
		110		Email: "Re: Interesting Reading: DOJ-AOLMICELLI-00067857 - 67878

Date Marked	Date Admitted	Number	Witness	Description
		111		Email: Fraud alert DOJ-GMAILBRANDEL-00002086 – 2090
		112A		Email: "Re: Robert Townsend's Business Maker" DOJ-AOLMICELLI-00089706 – 89829
12/4/15	12/4/15	112B	by Oral Motion	Email: "Robert Townsend on Trading programs" DOJ-GMAILBRANDEL-00098586 – 98710
12/4/15	12/4/15	113	G. Tierney	Email: "RE: Warnings" DOJ-AOLMICELLI-00075543 – 75550
12/3/15	12/3/15	114	Geraldine Karonis	Warras Bankruptcy Deposition DOJ_USASPRINGSBANKRUPTCY_00000160 – 256
12/3/15	12/3/15	115A	Geraldine Karonis	Brazilian Bonds DOJ_USASPRINGSBANKRUPTCY_00000003
12/3/15	12/3/15	115B	Geraldine Karonis	Brazilian Bonds - Portuguese to English Translation DOJ_USASPRINGSBANKRUPTCY_00000007
12/3/15	12/3/15	116	Geraldine Karonis	Brazilian Bonds Website Warning DOJ_USASPRINGSBANKRUPTCY_00000038
12/3/15	12/3/15	117	Geraldine Karonis	Warras Bankruptcy Court Declaration DOJ_USASPRINGSBANKRUPTCY_00000059 – 68
12/3/15	12/3/15	118	John Cardente	Seized Merrill Lynch Documents DOJ-FOXLANE00001018 – 1019
12/3/15	12/3/15	119	John Cardente	Email: "Fwd: RE: Pick up Instruments in the vault at Merrill Lynch San Francisco" DOJ-GMAILBRANDEL-00013844 – 845
12/3/15	12/3/15	120	G. Tierney	Email: "Fwd: From John Cardente at Merrill Lynch" DOJ-GMAILBRANDEL-00033341 – 342

Date Marked	Date Admitted	Number	Witness	Description
		121		Email: "Fw: Profit Sharing" DOJ-AOLMICELLI-000012806 – 12820
12/3/15	12/3/15	122	G. Tierney	Email: "Fwd: Document needed as stocking stuffer for BONY" DOJ-AOLMICELLI-00031906 – 31907
12/3/15	12/3/15	123A	G. Tierney	Brandel SEC Deposition DOJ_SECTESTIMONY_00002382
12/4/15	12/4/15	123B	G. Tierney	Questionnaire Exhibit to Brandel SEC Deposition DOJ_SECTESTIMONY_00000703 – 707
		124A		Micelli SEC Deposition DOJ_SECTESTIMONY_00002934
		124B		Questionnaire Exhibit to Micelli SEC Deposition DOJ_SECTESTIMONY_00000370
12/3/15	12/3/15	124C	Geraldine Karonis	Micelli Bankruptcy Affidavit DOJ_USASPRINGSBANKRUPTCY_00000118 – 123
		125		Email: re Release and Refund SEC-DOJ-000006697 – 6700
12/3/15	12/3/15	126	Alan Braunstein	Email: "Fw: Securities receipt et al" SEC-RBLLP-P-0000577 – 580
12/3/15	12/3/15	127	Alan Braunstein	Email: "Fwd: From John Cardente at Merrill Lynch" SEC-RBLLP-P-0000581-585
12/3/15	12/3/15	128 Page 1	G. Tierney	Warras Order of Prohibition DOJ-WARRASWISCONSIN-0000001
		129A		Lack of Tax Record MY Inc., 2010, 2011 DOJ-IRS-00000013
		129B		Lack of Tax Record MY LLC 2010-2011 DOJ-IRS-00000016

Date Marked	Date Admitted	Number	Witness	Description
		130		Lack of Tax Record Micelli 2009-2011 DOJ-IRS-00000237
		131		Lack of Tax Record Warras 2009-2011 DOJ-IRS-00000624
		132		Lack of Tax Records Brandel 2009-2011 DOJ-IRS-00000019
		133		Ritz Carlton Receipt DOJ-FOXLANE-00000102
12/4/15	12/4/15	134	G. Tierney	Email: "Fw: UBS Statement" DOJ-GMAILBRANDEL-00048853 - 855
12/3/15	12/3/15	135	G. Tierney	Warras Handwritten Letter DOJ-FOXLANE-00000748 - 810
12/4/15	12/4/15	136	G. Tierney	Business Card DOJ-FOXLANE-00000700
12/4/15	12/4/15	137A	G. Tierney	Carpe Diem SPE Agreement DOJ-FOXLANE-00000881
12/4/15	12/4/15	137B	G. Tierney	Carpe Diem Declaration of Trust DOJ-FOXLANE-00000977
12/3/15	12/3/15	138	G. Tierney	NAS Operations Email Password DOJ-FOXLANE-00000913
12/4/15	12/4/15	139A	G. Tierney	Bank Records: Bank of America
12/4/15	12/4/15	139B	G. Tierney	Bank Records: Union Bank
12/4/15	12/4/15	139C	G. Tierney	Bank Records: US Bank
12/4/15	12/4/15	139D	G. Tierney	Bank Records: Federal Reserve, Fedwires

Date Marked	Date Admitted	Number	Witness	Description
		201		Joint Venture Agreement SEC-DOJ-000018731 – 18738
		202		Escrow Instructions SEC-DOJ-000000084 – 95
		203		Client Information Sheet SEC-DOJ-000000096 – 98
		204		IBRAC Letter SEC-DOJ-000000099
		205		Affidavit of Non-Compliance SEC-DOJ-000000100 – 101
		206		Email: "Fw: Ibrac: DOJ-AOLMICELLI-00000480 – 481
		206A		Native Email Re IBRAC Letter. DOJ-GMAILBRANDEL-00126733 – 126735
		207		Email re "IBRAC" doc DOJ-AOLMICELLI-00016219 – 16220
12/1/15	12/1/15	301	Michael Bellino	Joint Venture Agreement and AttachmentsDOJ-AOLMICELLI-00070360 – 70383
12/1/15	12/1/15	302	Michael Bellino	Email: "NCND Agreement" Re Confidentiality Agreement DOJ-AOLMICELLI-00073011 – 73016
12/1/15	12/1/15	303	Michael Bellino	Email: "Refund" DOJ-AOLMICELLI-00043592
12/1/15	12/1/15	304	Michael Bellino	Escrow Instructions SEC-SWISS-000000171 –179

Date Marked	Date Admitted	Number	Witness	Description
12/2/15	12/2/15	401	Michael Kooyman	Joint Venture Agreement and Attachments SEC-DOJ-000013668 – 13681
12/2/15	12/2/15	402	Michael Kooyman	Escrow Instructions SEC-Swiss-000001457 – 1466
12/2/15	12/2/15	403	Michael Kooyman	Brandel Email Attaching Docs DOJ-AOLMICELLI-00001963
12/2/15	12/2/15	404	Michael Kooyman	Email: "FW: Malom Group AG Joint Venture Agreements - Demand for Payment" DOJ-AOLMICELLI-00005283 – 5286
12/2/15	12/2/15	405	Michael Kooyman	Email: RE: Follow-up to Kooyman DOJ-AOLMICELLI-00007874
12/2/15	12/2/15	406	Michael Kooyman	Email from Kopec Re Disbarment DOJ-AOLMICELLI-00013266 – 13276
12/2/15	12/2/15	407	Michael Kooyman	Email: Micelli Re Preferred Procedures SEC-DOJ-000013611 – 13616
12/2/15	12/2/15	408	Michael Kooyman	Brandel Letter Re Refund SEC-DOJ-000013660
12/2/15	12/2/15	409	Michael Kooyman	Email: "Re: Eriq Mayer" SEC-DOJ-000029714 – 29716
		410		Email: "RE: Relation to Enicosa" DOJ-GMAILBRANDEL-00041267 – 41269
12/2/15	12/2/15	411	Michael Kooyman	Email: "Re: Just in case it doesn't show up again" DOJ-AOLMICELLI-00003689 – 3693
12/3/15	12/3/15	412	G. Tierney	Email re "will Martin do" the Chase deal DOJ-GMAILBRANDEL-00132093



Date Marked	Date Admitted	Number	Witness	Description
12/3/15	12/3/15	413	G. Tierney	Email re Chase Deal DOJ-GMAILBRANDEL-00133999 – 134000
12/3/15	12/3/15	414	G. Tierney	Email re Chase Deal DOJ-GMAILBRANDEL-00134052 – 134053
12/3/15	12/3/15	415	G. Tierney	Email re "we need to talk!" DOJ-GMAILBRANDEL-00110233 – 110234
12/3/15	12/3/15	416	G. Tierney	Email re Falcon Bank DOJ-AOLMICELLI-00008252
12/3/15	12/3/15	417	G. Tierney	Email attaching Falcon Bank Native DOJ_SECTESTIMONY_00000894 – 895
12/2/15	12/2/15	501	Travis Fox	Joint Venture Agreement and Attachments SEC-DOJ-000001620-1639
12/2/15	12/2/15	502	Travis Fox	Email from Schlaepfer Re Heart Attack SEC-DOJ-000000402-404 with redaction
12/2/15	12/2/15	503	Travis Fox	Email from Schlaepfer Re Swiss Trip SEC-DOJ-000000749 – 750
		504		Email from Schlaepfer Re Sudtirool SEC-DOJ-000000816 – 817
		505		Attorney Letter to Hardstone SEC-DOJ-000000872 – 874
12/2/15	12/2/15	506	Travis Fox	Letter from Schlaepfer Re Attorney Letter. SEC-DOJ-000020600
12/2/15	12/2/15	507	Travis Fox	Email from Micelli re Centrum SEC-DOJ-000020622 – 20623
		508		Email from Micelli Attaching Compliance DOJ-GMAILBRANDEL-00047390 – 410

Date Marked	Date Admitted	Number	Witness	Description
12/3/15	12/3/15	509	G. Tierney	Email re Sanitize the Piss Out of It DOJ-AOLMICELLI-00006186 – 6188
12/3/15	12/3/15	510	G. Tierney	Email re Sanitize DB DOJ-AOLMICELLI-00020209 – 20211
		511		Email re Compliance Documents DOJ-AOLMICELLI-000012649 – 12666
		512		Email Obtaining Compliance Package DOJ-GMAILBRANDEL-00131045 –1066
12/1/15	12/1/15	601	William Billingsley	Joint Venture Agreement and Attachments SEC-DOJ-000012617 – 12634
12/1/15	12/1/15	602	William Billingsley	Email From Myra RE Big Trade SEC-DOJ-000009115
		603		Email From Myra Re Verification SEC-DOJ-000009121
12/1/15	12/1/15	604	William Billingsley	Brandel Letter RE Joint Venture SEC-DOJ-000012512
12/3/15	12/3/15	605	G. Tierney	Email forwarding Agreement DOJ-GMAILBRANDEL-00037952 –7970
12/1/15	12/1/15	606	William Billingsley	Release of Escrow SEC-Swiss-000001824
12/1/15	12/1/15	607	William Billingsley	Email from Billingsley RE: NO Fee DOJ-GMAILBRANDEL-00016949
12/1/15	12/1/15	608	William Billingsley	Email from Billingsley RE: Financial Situation DOJ-GMAILBRANDEL-00002069

Date Marked	Date Admitted	Number	Witness	Description
12/2/15	12/2/15	701	Jon Anfinen	Joint Venture Agreement and Attachments SEC-SWISS-000001765 – 1783
		702		Escrow Instructions SEC-Swiss-000001812
		703		Complaint Letter and Email SEC-DOJ-000012900 – 12907
12/2/15	12/2/15	704	Jon Anfinen	Email with Fake DB Letter SEC-DOJ-000013125
		705		Fake Centrum Bank Letter SEC-DOJ-000013128
		706		Email re HSBC SEC-DOJ-000029488 – 29491
		707		Email from Finn re Secrecy SEC-DOJ-000029589
12/3/15	12/3/15	708	G. Tierney	Email re "do anything." DOJ-AOLMICELLI-00011138 – 11139
		801		Joint Venture Agreement SEC-DOJ-000025708 – 25713
		802		Email from Krupa Demanding Refund SEC-DOJ-000007222
		803		Email from Krupa re Unresponsiveness SEC-DOJ-000007230
		804		Email from Micelli attaching UBS Letter. SEC-DOJ-000025098
		805		Letter. From Brandel Describing Deal DOJ-GMAILBRANDEL-00063081

Date Marked	Date Admitted	Number	Witness	Description
12/2/15	12/2/15	901	Leonard Barrie	Financial Services Agreement and Exhibits SEC-DOJ-000006079 – 6096
12/2/15	12/2/15	902	Leonard Barrie	Escrow Instructions SEC-Swiss-000000616-624
			Admitted by Defense Counsel Brian Smith	
		903		Attorney Letter to Hardstone SEC-Swiss-000000634
12/2/15	12/2/15	904A	Leonard Barrie	Email from Schlaepfer re Refund Demand DOJ-AOLMICELLI-00006208 – 6211
12/3/15	12/3/15	904B	G. Tierney	Draft Barrie Email DOJ-AOLMICELLI-00001228 – 1230
12/4/15	12/4/15	905	G. Tierney	Email re Verbiage DOJ-GMAILBRANDEL-00107019 – 107020
12/4/15	12/4/15	906	G. Tierney	Email re Forwarded Documents DOJ-AOLMICELLI-00016244
		907		Barrie Objection to Escrow DOJ-GMAILBRANDEL-00072353
12/1/15	12/1/15	1001	Debra Mitman	Funding Commitment SEC-DOJ-000004131 – 4135
12/1/15	12/1/15	1002	Debra Mitman	Escrow Instructions SEC-DOJ-000033023 – 33031
12/1/15	12/1/15	1003	Debra Mitman	Email re Refund of Deposit DOJ-AOLMICELLI-00075815 – 75817
		1004		Email re Letter of Interest DOJ-AOLMICELLI-00016709 – 16718

Date Marked	Date Admitted	Number	Witness	Description
12/1/15	12/1/15	1005A	Debra Mitman	Email re Bank Letters DOJ-GMAILBRANDEL-00103325
12/1/15	12/1/15	1005B	Debra Mitman	Sudtirol Letter SEC-DOJ-000017661
12/1/15	12/1/15	1005C	Debra Mitman	Centrum Bank Letter SEC-DOJ-000033003
		1006		Refund Letter SEC-DOJ-000017729
12/2/15	12/2/15	1101	William Gianopoulous	Investor Agreement SEC-DOJ-000002013 – 2018
12/2/15	12/2/15	1102	William Gianopoulous	Funding Commitment SEC-DOJ-000002099 – 2107
12/2/15	12/2/15	1103 Page 6, 10	William Gianopoulous	Erwin Email Re Documents SEC-DOJ-000002494
				Page 6 and 10 only
12/2/15	12/2/15	1104	William Gianopoulous	Sudtirol Statement SEC-DOJ-00002077
12/4/15	12/4/15	1105	By Motion	Warras Sanitize DB DOJ-GMAILBRANDEL-00048956 – 48957
12/2/15	12/2/15	1106	William Gianopoulous	Email re Conference Calls SEC-DOJ-000002508
12/3/15	12/3/15	1107	William Gianopoulous	Email re Moving Forward SEC-DOJ-000002933 – 2934
				By Defense Counsel Brian Smith
		1108		Email re Cost Reimbursement SEC-DOJ-000003037 – 3074
		1109		Joint Escrow Instructions SEC-DOJ-000021309 – 21316

Date Marked	Date Admitted	Number	Witness	Description
12/3/15	12/3/15	1110		Email re Repac Agreements SEC-DOJ-000021662 – 21666
		1111		Email Chain Forwarding Sudtirol DOJ-GMAILBRANDEL-00107524 – 107526
		1112		Email Chain re Sanitize Sudtirol DOJ-AOLMICELLI-00032637 – 32639
		1113		Email re Sudtirol Dangerous DOJ-GMAILBRANDEL-00100595 – 100598
		1114		Email re Sudtirol Language DOJ-AOLMICELLI-00014598 – 14599
12/3/15	12/3/15	1115	G. Tierney	Email re Draft Sudtirol Letter DOJ-AOLMICELLI-00033326 – 33327
12/3/15	12/3/15	1116	Alan Braunstein	Campos Website DOJ-GMAILBRANDEL-00048560 – 48562
12/3/15	12/3/15	1201	Ed Glazebrook	Joint Venture Agreement DOJ-GMAILBRANDEL-00034464 – 34472
12/3/15	12/3/15	1202	Ed Glazebrook	Email re IBI transaction SEC-DOJ-000000001 – 50
		1203		Escrow Instructions SEC-Swiss-000000006 – 13
12/3/15	12/3/15	1204	Ed Glazebrook	Email re moving funds SEC-DOJ-000000065
		1205		Notice of Readiness to Proceed SEC-DOJ-000018730

Date Marked	Date Admitted	Number	Witness	Description
12/2/15	12/2/15	1206	Gary Dobyns & Ed Glazebrook	Signed Funding Commitment SEC-Swiss-000000041 – 48
12/2/15	12/2/15	1301	Gary Dobyns	Joint Venture Agreement SEC-DOJ-000013841 – 13843
		1302		Email re Retraction DOJ-AOLMICELLI-00005724 – 5725
		1303		Email re Update SEC-DOJ-000006737 – 6738
12/2/15	12/2/15	1304	Gary Dobyns	Second Joint Venture Agreement SEC-DOJ-000014026 – 14039
		1305		Email re SEC Names SEC-DOJ-000014959 – 14960
12/2/15	12/2/15	1306A	Gary Dobyns	Email re Rip-off Retraction SEC-DOJ-000024095 – 24101
12/3/15	12/3/15	1306B	G. Tierney	Email re Drafted Retraction DOJ-AOLMICELLI-00000743
12/2/15	12/2/15	1307	Gary Dobyns	Email re Update SEC-DOJ-000024114 – 24116
12/2/15	12/2/15	1308	Gary Dobyns	Email re Refund DOJ-GMAILBRANDEL-00107622
		1309		Email re Accounting SEC-DOJ-000013727 – 13734
12/2/15	12/2/15	1310	Gary Dobyns	Email re JV Partners SEC-DOJ-000013981 – 13983

Date Marked	Date Admitted	Number	Witness	Description
12/2/15	12/2/15	1311	Gary Dobyns	Email re Schlaepfer Arrested SEC-DOJ-000015750
12/2/15	12/2/15	1312	Gary Dobyns	Letter re Refund SEC-DOJ-000015753
12/2/15	12/2/15	1313	Gary Dobyns	Email re refund after arrest SEC-DOJ-000031709 – 31711
		1314		NAS Operations Email Password DOJ-AOLMICELLI-00032793
12/3/15	12/3/15	1401	Gary Marsh	Summary Chart: Selected Investor Funds Sent To Escrow
12/3/15	12/3/15	1402	Gary Marsh	Summary Chart: Release of Selected Investor Money From Escrow
12/3/15	12/3/15	1403	Gary Marsh	Summary Chart: Account Summary for M.Y. Consultants Bank of America Account ending in 5912 for Period: 1/15/2010 – 10/12/2011
12/3/15	12/3/15	1404	Gary Marsh	Summary Chart: Account Summary for Allen R. Smith Escrow Account. Account number ending in 1737.
12/3/15	12/3/15	1405	Gary Marsh	Summary Chart: Disbursements of Selected Investor Funds to Anthony Brandel.
12/3/15	12/3/15	1406	Gary Marsh	Summary Chart: Disbursements of Selected Investor Funds to James Warras.
12/3/15	12/3/15	1407	Gary Marsh	Summary Chart: Disbursements of Selected Investor Funds to Joseph Micelli.
12/3/15	12/3/15	1408	Gary Marsh	Summary Chart: Disbursements of Selected Investor Funds to Sean Finn.
12/3/15	12/3/15	1409	Gary Marsh	Summary Chart: Anthony Brandel Sample Expenditures From Personal Account.
12/3/15	12/3/15	1410	Gary Marsh	Summary Chart: James Warras Sample Expenditures From Personal/Trust Account.



# EXHIBIT 6

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEVADA

UNITED STATES OF AMERICA,	)	
	)	Case No. 2:13-cr-439-KJD-VCF
Plaintiff,	)	
	)	Las Vegas, Nevada
vs.	)	December 4, 2015
	)	9:07 a.m.
ANTHONY B. BRANDEL (1) and	)	
JAMES WARRAS (3),	)	
	)	Jury Trial, Day 4
Defendants.	)	Volume 4
_____	)	

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE KENT J. DAWSON  
UNITED STATES DISTRICT COURT JUDGE, AND A JURY

APPEARANCES:

For the Government:

BRIAN R. YOUNG  
MELISSA AOYAGI  
Criminal Division, Fraud Section  
1400 New York Avenue, NW  
Washington, DC 20530

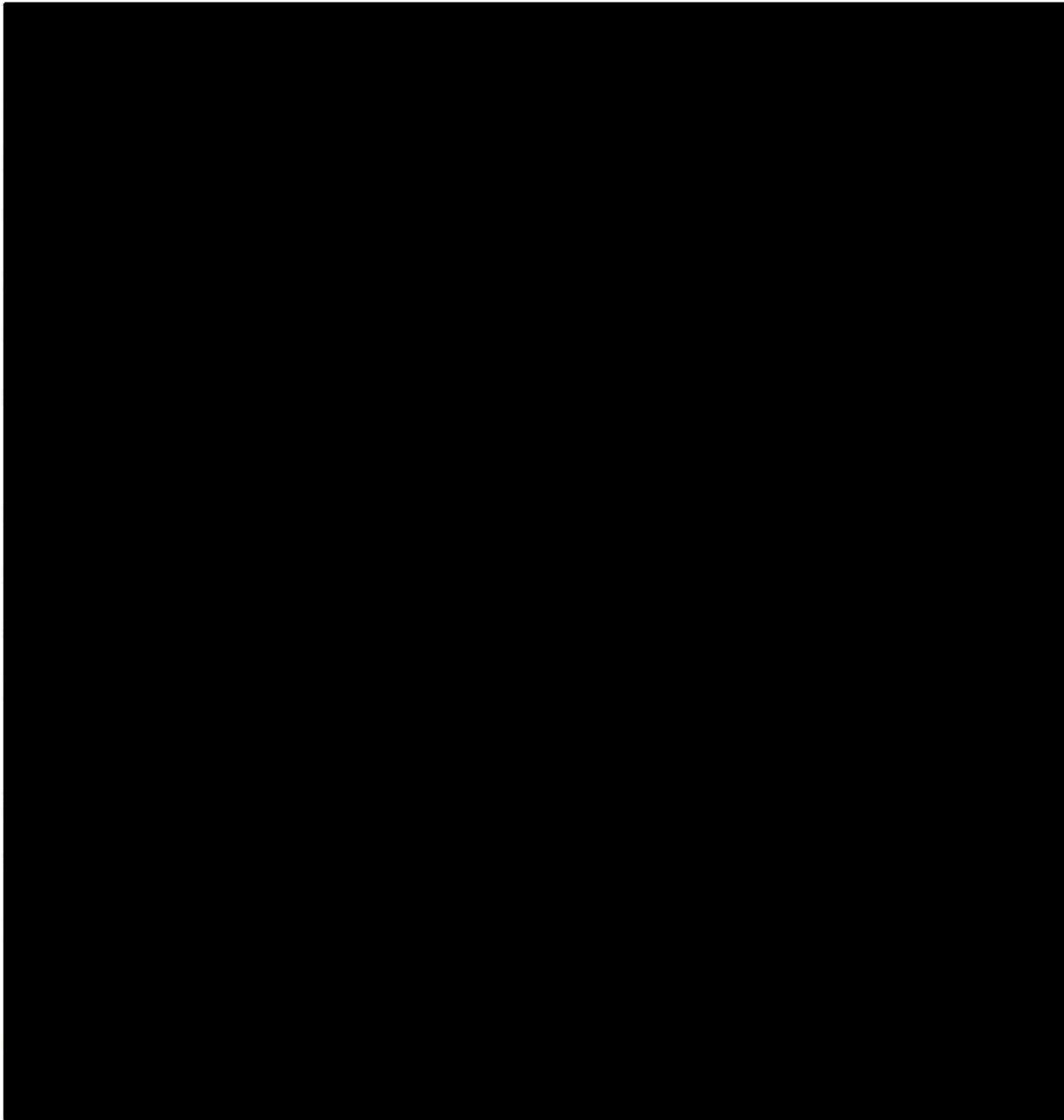
Appearances continued on Page 2.

Court Reporter: Katherine Eismann, CSR, CRR, RDR  
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Proceedings reported by machine shorthand, transcript produced  
by computer-aided transcription.

Defendant Brandel's Opening Statement

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THE COURT: Please be seated. A defendant in a criminal case has the right to testify or not testify in their own case. The decision whether to testify or not has to take into consideration many factors, including the fact that the defendant is subject to cross-examination, that the defendant may, in the course of testimony, if that is what is decided, be

Defendant Brandel's Opening Statement

1 subject to impeachment. These are the risks of testifying or  
2 not testifying.

3 The Court, as a matter of course, issues an  
4 instruction to the effect that if the defendant's decision is  
5 not to testify, that cannot be considered by the jury as an  
6 adverse inference on the question of guilt.

7 It is expected that defendants, in making this  
8 decision, will consult with their counsel, and that an informed  
9 decision will be made in that regard.

10 So, what I would like to do now is to inquire of both  
11 defendants, first Mr. Brandel.

12 Are you aware of the matters that I have just stated?

13 DEFENDANT BRANDEL: Yes, Your Honor.

14 THE COURT: You can be seated. You may remain  
15 seated.

16 Have you discussed the matter of testifying or not  
17 testifying with your attorneys?

18 DEFENDANT BRANDEL: Yes, I have.

19 THE COURT: Have they answered all your questions?

20 DEFENDANT BRANDEL: Yes, they have.

21 THE COURT: Do you feel that you have been fully  
22 informed?

23 DEFENDANT BRANDEL: Yes.

24 THE COURT: Are you deciding to testify because they  
25 have informed you, you must testify?

Defendant Brandel's Opening Statement

1 DEFENDANT BRANDEL: No.

2 THE COURT: Are you testifying because of any  
3 coercion or threats from third parties?

4 DEFENDANT BRANDEL: No.

5 THE COURT: And is it your decision to -- knowing  
6 your rights, to testify or not testify, and what the Court has  
7 stated to you, to testify in this case on your own behalf?

8 THE DEFENDANT: Yes.

9 THE COURT: Mr. Brandel, the same questions. Have  
10 you -- have you been informed of all the matters that I have  
11 just stated with respect to your rights to testify or not  
12 testimony?

13 DEFENDANT WARRAS: Mr. Warras, Your Honor?

14 THE COURT: Mr. Warras. I'm sorry.

15 DEFENDANT WARRAS: Yes, Your Honor. I have.

16 THE COURT: Have you discussed with your attorneys  
17 the question of whether you would testify or not testimony?

18 DEFENDANT WARRAS: I have, Your Honor.

19 THE COURT: Are you satisfied with the information  
20 that you have received from your attorneys?

21 DEFENDANT WARRAS: Yes, Your Honor.

22 THE COURT: Are you deciding not to testify because  
23 of anything your attorneys have said that makes you feel that  
24 you must testify -- not testify?

25 DEFENDANT WARRAS: No.

Defendant Brandel's Opening Statement

1 THE COURT: Are you deciding not to testify because  
2 of anything your attorneys have said regarding your decision  
3 not to testify? Have you been compelled by your attorneys not  
4 to testify?

5 DEFENDANT WARRAS: No.

6 THE COURT: You are making it voluntary --  
7 voluntarily of your own decision?

8 DEFENDANT WARRAS: Yes, Your Honor.

9 THE COURT: And is it true that you have decided not  
10 to testify?

11 DEFENDANT WARRAS: Yes, Your Honor.

12 THE COURT: Does the government request further  
13 canvas of either of the defendants?

14 MR. YOUNG: No, sir.

15 THE COURT: All right. Okay. We will resume these  
16 proceedings at 1:00 p.m.

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# EXHIBIT 7

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEVADA

UNITED STATES OF AMERICA,	)	
	)	Case No. 2:13-cr-439-KJD-VCF
Plaintiff,	)	
	)	Las Vegas, Nevada
vs.	)	December 3, 2015
	)	9:15 a.m.
ANTHONY B. BRANDEL (1) and	)	
JAMES WARRAS (3),	)	
	)	Jury Trial, Day 3
Defendants.	)	
_____	)	

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE KENT J. DAWSON  
UNITED STATES DISTRICT COURT JUDGE, AND A JURY

APPEARANCES:

For the Government:

BRIAN R. YOUNG  
MELISSA AOYAGI  
Criminal Division, Fraud Section  
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Washington, DC 20530

Appearances continued on Page 2.

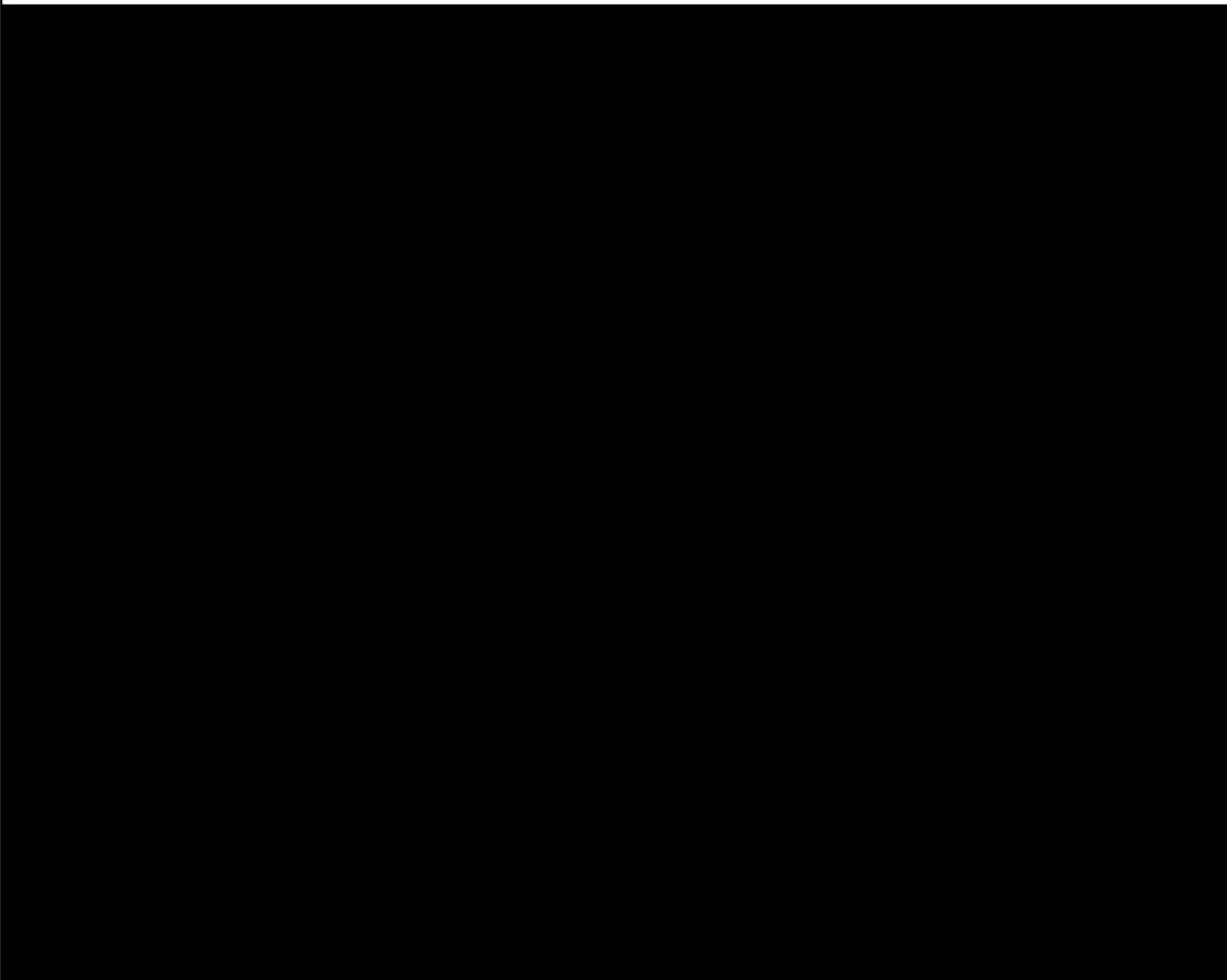
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Gary Marsh - Cross

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Thank you, Your Honor.

THE COURT: Thank you. Further examination?

MS. AOYAGI: No, Your Honor. Thank you.

THE COURT: Thank you. The witness is excused.

Is now a good time to take our break for the lunch?

MR. YOUNG: It is, Judge. But I wonder if I could read a few stipulations at this point.

THE COURT: You may.

MR. YOUNG: Ladies and gentlemen, the parties stipulate the wire transfers described in Counts 2 through 13 of the indictment traveled in interstate commerce.

Gary Marsh - Cross

1           Second stipulation, the parties agree and stipulate  
2 to the following: Taxpayers are required to declare taxable  
3 income to the Internal Revenue Service by filing tax returns.

4           When a taxpayer files a return, the Internal Revenue  
5 Service maintains those records in the ordinary course of  
6 business. A custodian of records for the Internal Revenue  
7 Service did a search for tax returns filed by people and  
8 entities associated with this case and found no indication of  
9 tax returns -- sorry -- and found no indication that tax  
10 returns were filed by the following entities and people for the  
11 following time periods.

12           M.Y. Consultants, Inc., from 2010 and 2011.

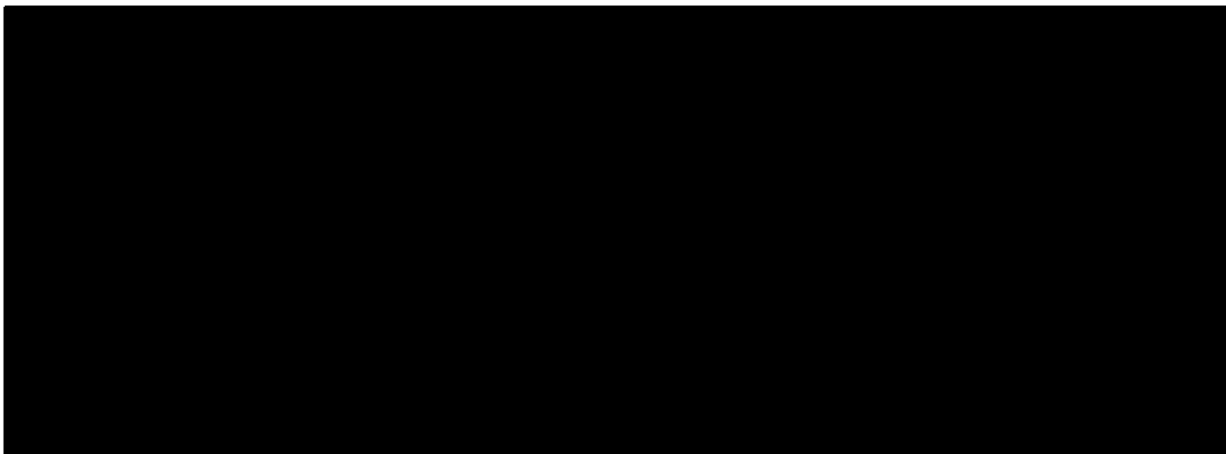
13           M.Y. Consultants Group, LLC, March 31st, 2010,  
14 through December 31st, 2011.

15           Joseph Micelli, 2009 through 2011.

16           James Warras, 2009 through 2011.

17           Anthony Brandel, 2010 through 2011.

18           Thank you, Judge.



# EXHIBIT 8

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEVADA

UNITED STATES OF AMERICA,	)	
	)	Case No. 2:13-cr-439-KJD-VCF
Plaintiff,	)	
	)	Las Vegas, Nevada
vs.	)	December 2, 2015
	)	9:06 a.m.
ANTHONY B. BRANDEL (1) and	)	
JAMES WARRAS (3),	)	
	)	Jury Trial, Day 2
Defendants.	)	
_____	)	

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE KENT J. DAWSON  
UNITED STATES DISTRICT COURT JUDGE, AND A JURY

APPEARANCES:

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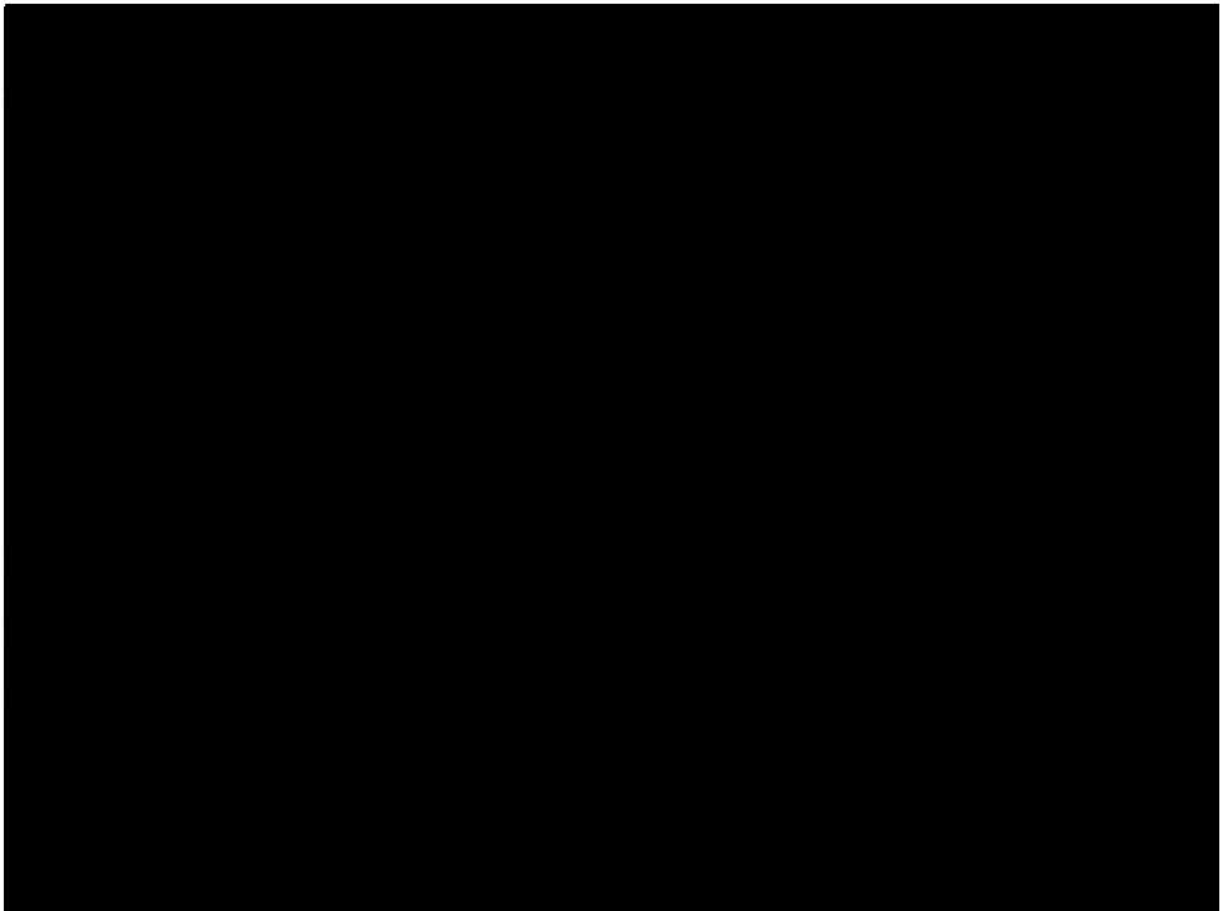
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Court Reporter: Katherine Eismann, CSR, CRR, RDR  
(702)431-1919 eismann.csr@gmail.com

Proceedings reported by machine shorthand, transcript produced  
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Jon Anfinson - Direct

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JON ANFINSEN,

having been duly sworn, was examined and testified as follows:

COURTROOM ADMINISTRATOR: State your full name and spell it for the record.

THE WITNESS: My name is Jon Anfinson. That's spelled J-O-N. The last name is A-N-F-I-N-S as in Sam E-N.

THE COURT: Go ahead.

MS. AOYAGI: Thank you.

DIRECT EXAMINATION

BY MS. AOYAGI:

Q. Good afternoon, Mr. Anfinson.

Jon Anfinson - Direct

1 A. Good afternoon.

2 Q. I am just going to start by asking you a few questions  
3 about your background, and then we'll talk a little bit about  
4 your involvement with Malom.

5 Where do you currently live?

6 A. I'm sorry?

7 Q. Where do you currently live?

8 A. I am hard of hearing, so you will have to speak into the  
9 mike.

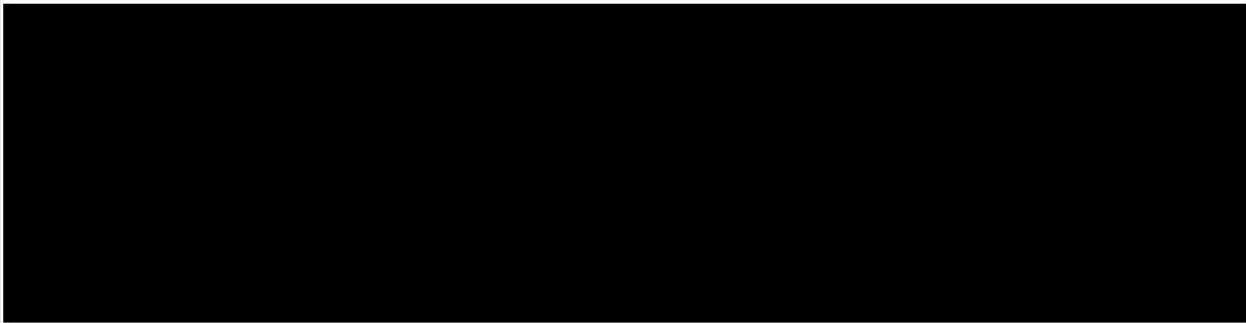
10 Q. Could you tell the jury where you currently live? Is that  
11 better?

12 A. I live in Alachua, Florida, near Gainesville.

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Jon Anfinson - Direct

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Q. I'm going to show you a document that's been marked as Exhibit 701. This has not yet been admitted into evidence.

Do you recognize this document? You can just look on your screen.

A. Yes, I do.

Q. And is this a joint venture agreement that you entered into with Malom Group?

A. Yeah, it's -- it is right. It's the -- the Joint Venture Agreement is the heading. The agreement is not just this paragraph, but it's -- this is like the preamble to it.

Q. Right. It's the document.

A. Okay.

MS. AOYAGI: Move to admit Exhibit 701 into evidence.

MR. SMITH: No objection.

MS. LAZO: None, Judge.

THE COURT: 701 is received.

(Exhibit 701 admitted.)

BY MS. AOYAGI:

Q. Do you recall where you got this document?

A. This document started out as a draft from Anthony or Tony

Jon Anfinson - Direct

1 Brandel.

2 Q. Uh-huh.

3 A. And it was -- worked with him to try to get to a final  
4 joint venture agreement.

5 Q. And who is Anthony Brandel?

6 A. He -- the only thing I knew was that he was with a group  
7 in -- in Las Vegas, M.Y. Consultants, and I won't go farther  
8 than that.

9 Q. Okay. And so he gave you this document and worked with  
10 you with respect to this agreement; is that right?

11 A. Yeah. He would send it to me. We would modify it, send  
12 it back, and trying to come to a final document that we all  
13 could move forward with.

14 Q. Okay.

15 A. The goal.

16 Q. In looking at the top of this document, it's as between  
17 Preferred Partners and Malom; is that right?

18 A. That's correct.

19 Q. Okay. And in the first sentence of -- or the first  
20 paragraph of the agreement, there's reference to the evidence?  
21 "The mere existence of cash and cash equivalents in the amount  
22 of \$54 million."

23 What is your understanding of that statement?

24 A. Where are you? Oh, down here? Yeah, it says -- okay.  
25 There's reference to "induce investors to evidence the mere



Jon Anfinson - Direct

1 existence of cash and equivalence in the amount of  
2 \$54 million."

3 Q. Right. And there is a reference to an amount. What is  
4 that -- what does that mean to you?

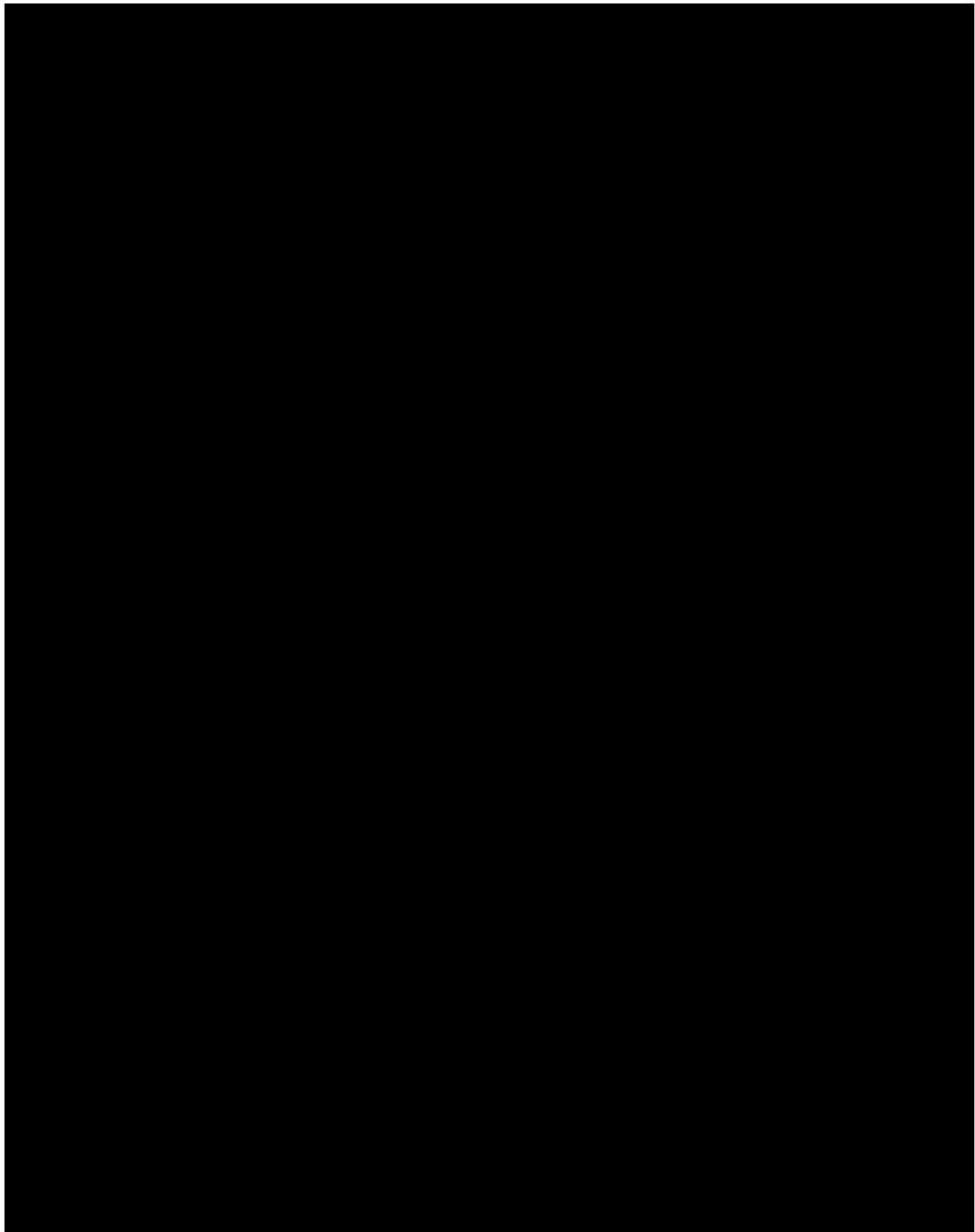
5 A. Well, when we started out, we were responsible to provide  
6 a million dollars to cause Malom to participate in -- in the  
7 process of getting a transaction completed. And when we  
8 couldn't raise it, that \$54 million was what we raised, and  
9 that's where -- that was the source of that number.

10 Q. Okay. So this was -- your initial conversation was that  
11 you would contribute 1 million and get access to a hundred  
12 million. And then you ultimately were able to raise 540,000  
13 and get access to 54 million. Is that --

14 A. Yeah, that's correct.

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Jon Anfinson - Cross



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I think you made it very clear, at the beginning,  
that you recognized that Mr. Brandel worked for a company

Jon Anfinson - Cross

1 called M.Y. Consultants; correct?

2 A. That's correct.

3 Q. All right. And you drew a distinction between M.Y.  
4 Consultants and Malom, or Malom as you were calling them;  
5 right?

6 A. Right.

7 Q. Okay. So it's pretty clear to you that Mr. Brandel was  
8 not an employee of that company. Is that fair to say?

9 A. He was an agent the way some of the documentations that I  
10 saw.

11 Q. There were -- there was correspondence going back  
12 between -- back and forth between you and Mr. Brandel  
13 concerning --

14 A. I never knew if he was employed as an employment  
15 agreement. I never knew what his -- his legal relationship  
16 was.

17 Q. Did it appear to you that he was acting more or less, or  
18 for lack of a better word, as a facilitator in the  
19 transactions?

20 A. I think he was acting as a facilitator perhaps from the  
21 standpoint of getting the paperwork done. But as far as the  
22 transaction itself, bringing together the parties that make up  
23 the transaction, that was basically Micelli and myself, and  
24 Anthony didn't seem to be bringing those people together.

25 Q. Tony wasn't involved in that then?

Jon Anfinson - Cross

1 A. No, he was more or less getting the contracts together.

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# EXHIBIT 9

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEVADA

UNITED STATES OF AMERICA,	)	
	)	Case No. 2:13-cr-439-KJD-VCF
Plaintiff,	)	
	)	Las Vegas, Nevada
vs.	)	December 2, 2015
	)	9:06 a.m.
ANTHONY B. BRANDEL (1) and	)	
JAMES WARRAS (3),	)	
	)	Jury Trial, Day 2
Defendants.	)	
_____	)	


TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE KENT J. DAWSON  
UNITED STATES DISTRICT COURT JUDGE, AND A JURY

APPEARANCES:

For the Government:

BRIAN R. YOUNG  
MELISSA AOYAGI  
Criminal Division, Fraud Section  
1400 New York Avenue, NW  
Washington, DC 20530

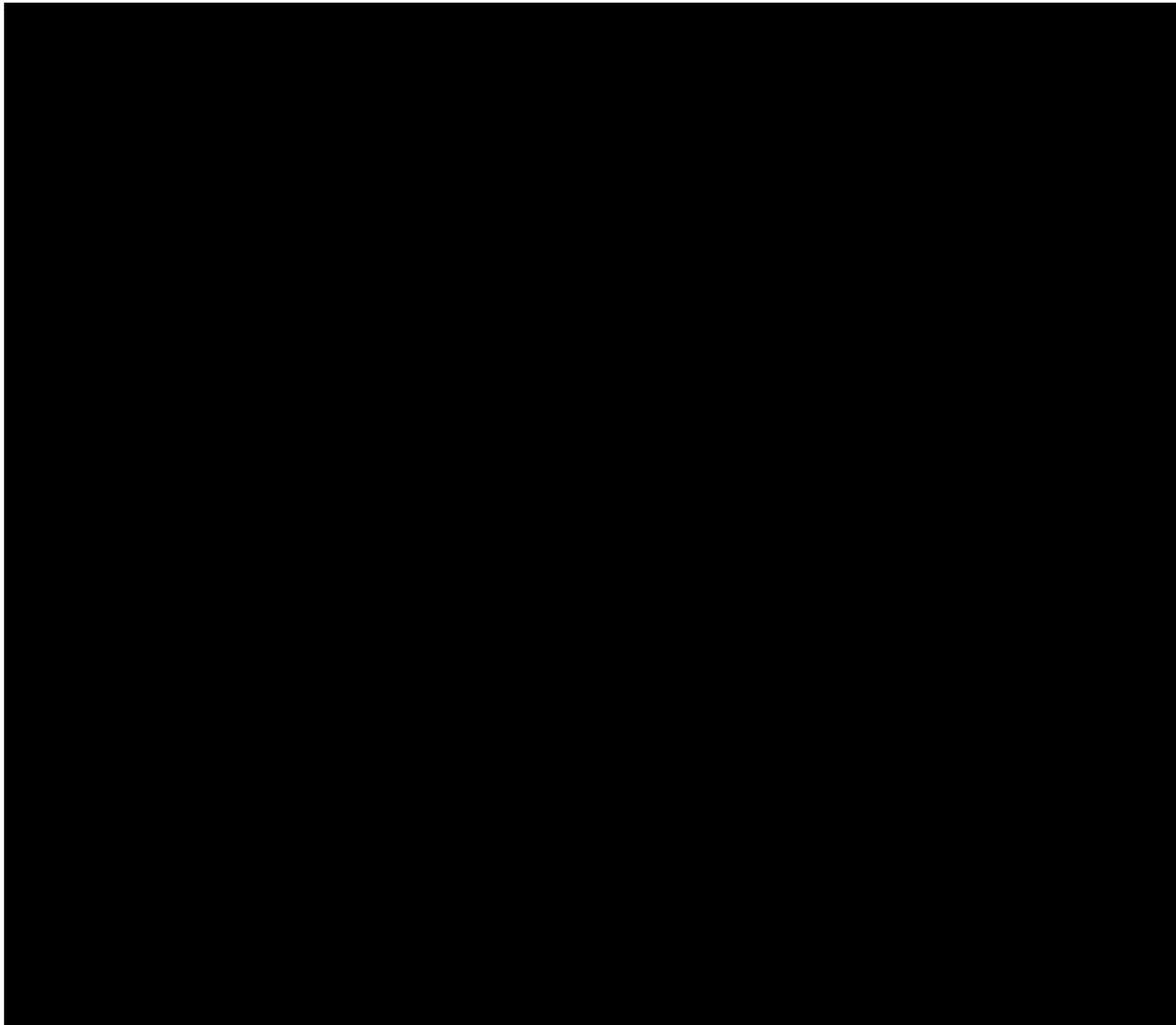
Appearances continued on Page 2.

Court Reporter: Katherine Eismann, CSR, CRR, RDR  


Proceedings reported by machine shorthand, transcript produced  
by computer-aided transcription.

Jon Anfinson - Cross

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LEONARD G. BARRIE,

having been duly sworn, was examined and testified as follows:

COURTROOM ADMINISTRATOR: State your full name and spell it for the record.

THE WITNESS: Leonard Greig Barrie. L-E-O-N-A-R-D, B-A-R-R-I-E. Should I spell Greig? G-R-E-I-G. Junior.

THE COURT: Go ahead.

MS. AOYAGI: Thank you, Your Honor.

Leonard G. Barrie - Direct

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DIRECT EXAMINATION

BY MS. AOYAGI:

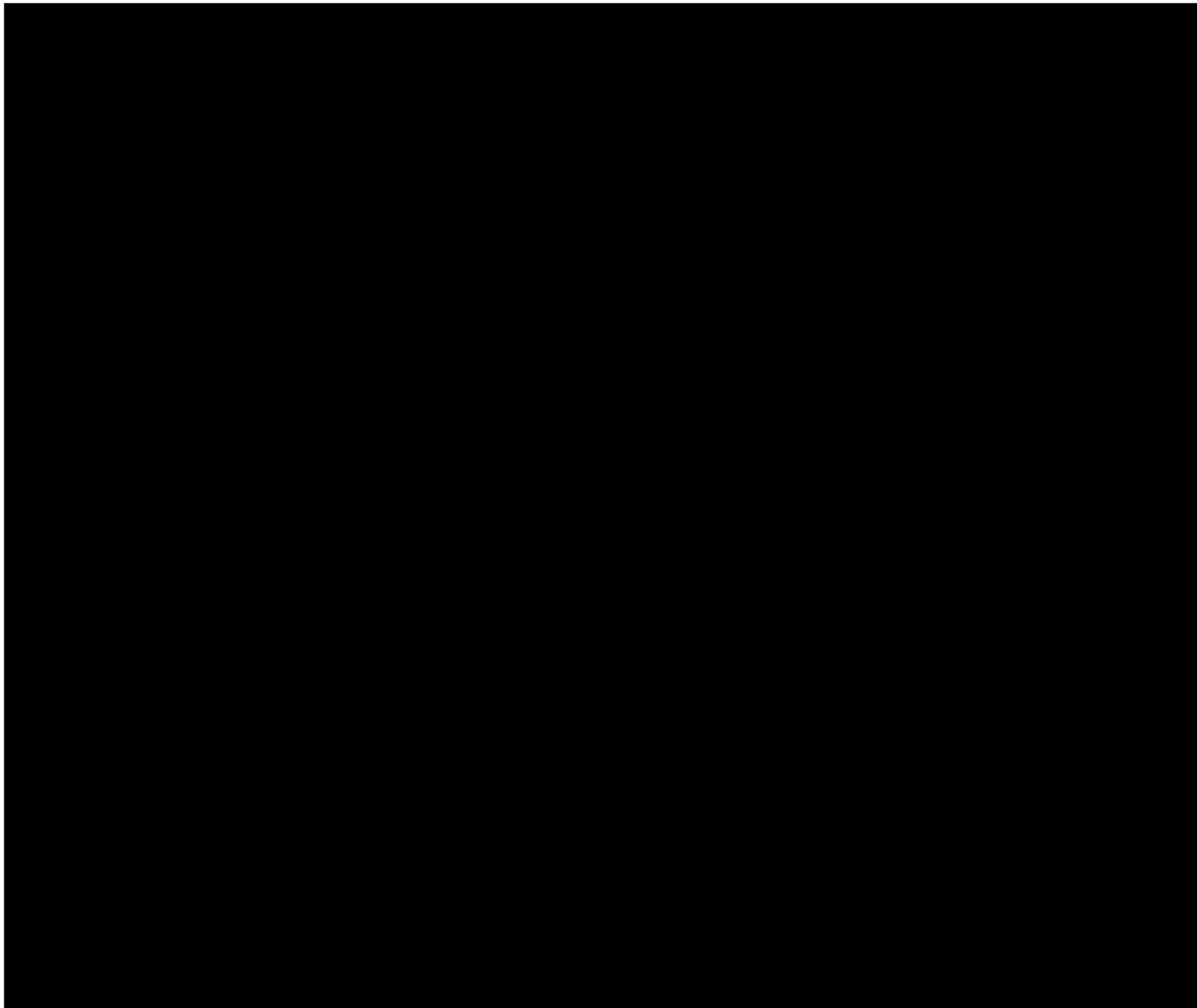
Q. Good afternoon, Mr. Barrie. I wanted to start by asking you a few questions about your background, and then we will talk a little bit about Malom.

Could you tell the jury where you currently live?

A. Scottsdale, Arizona.

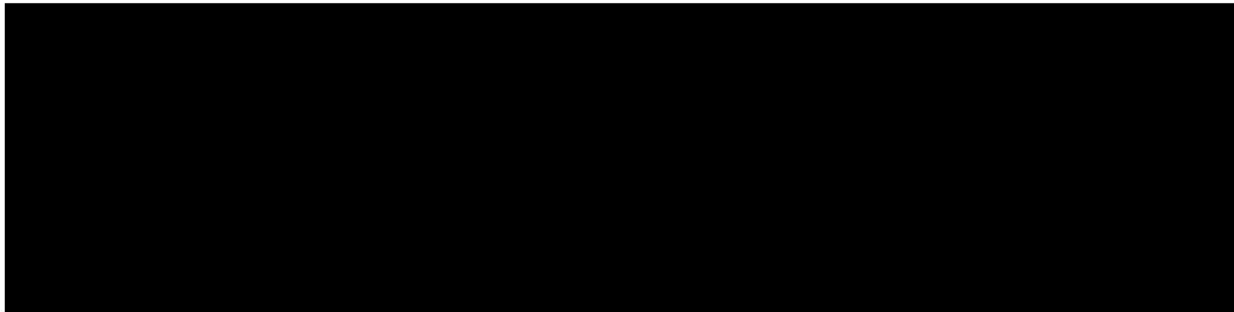
Q. Okay. And do you also spend time in Canada?

A. Yes, in the summertime.





Leonard G. Barrie - Direct



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Q. And so as you're struggling with Bear Mountain, as you are dealing with these issues --

A. Yep.

Q. -- you come into contact with Malom; is that right?

A. Sean Finn at first. Yep.

Q. Okay. And can you tell me a little bit about your contact with Mr. Finn initially?

A. Initially, told him what we were trying to accomplish, and he said he might have an avenue, with a group that he knew, that would be able to help us accomplish that. And that was buying out the debt, at a discount, from HSBC, with, you know, bank -- bank instruments, cash leveraged against the asset and the bank instruments.

Q. And did you speak with Mr. Finn in person or on the phone?

A. Just on the phone.

Q. Okay. And was anyone else on the call?

A. At different times, I had different representatives, bankers, lawyers, with questions over a period of time.

Q. And did Sean Finn tell you anything about Malom at that point?

A. Yeah. Yeah, he kind of said there was a group out of

Leonard G. Barrie - Direct

1 Switzerland that had assets and different things, at different  
2 banks, that could maybe facilitate what we were trying to do.

3 Q. Okay. And did he tell you -- did he explain to you how  
4 precisely the funding would work?

5 A. Yeah. He -- he gave an overall general explanation, and  
6 then there was documents that went back and forth that we would  
7 relate to, and I would pass on to my attorneys or  
8 representatives, and -- with questions, we would go back to  
9 Finn, and he would go back to Malom and get answers.

10 And then we worked through documents to come to when  
11 we did sign the documents kind of thing. So there was a lot of  
12 back and forth over time.

13 Q. And can you give the jury a sense of sort of, at a high  
14 level, what was the arrangement? You would put in a certain  
15 amount of money, and what would that enable --

16 A. Yeah. What we were trying to accomplish was, is HSBC  
17 didn't want to go forward in their -- in their banking, what  
18 they had proposed. They were willing to take a discount on the  
19 loan.

20 So we were trying to get money together to be able to  
21 buy back our development, and keep it going, and keep people  
22 employed. Keep building. And Malom Group was -- if we put up  
23 a certain amount of money, being able to help us do that and  
24 being able to put an instrument or cash that would be able to  
25 be backed from the Swiss banks and be able to buy back our

Leonard G. Barrie - Direct

1 development and keep going forward.

2 Q. And do you recall roughly how much money you would have to  
3 put in in order to entitle you to that funding?

4 A. It was about 1 percent. And originally, Sean Finn wanted  
5 me to put in \$3 million, and -- so we could do the whole thing  
6 at once. Because that's what it was going to take, because we  
7 had a large -- and we wanted to be able to build to go forward.

8 And just over time and other moneys lost on different  
9 deals, we put it down to 300,000 and said, "Let's try to make  
10 this work first. And then if we can do that, we will do a  
11 second round with you guys and see if it works."

12 Q. And this -- what would this 300,000 entitle you to? Was  
13 there an amount?

14 A. Yeah. It was \$30 million that would be put up from a  
15 Swiss bank, and be able to leverage it up and do 10-to-one in a  
16 US bank, and then be able to buy out HSBC was the story.

17 Q. Okay. And do you recall where the deal was supposed to  
18 take place?

19 A. In New York.

20 Q. And was that explained on these calls?

21 A. Yeah. Yeah. Very.

22

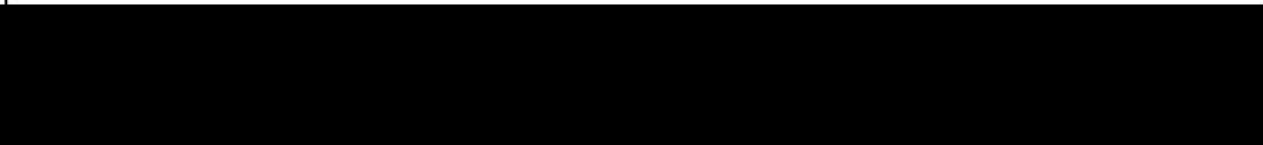
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Leonard G. Barrie - Direct

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Q. Look at the page that's -- it's marked 6088 at the bottom. It's Exhibit C, Notice of Readiness to Proceed.

Do you recall this document?

A. Yes.

Q. And there's a reference at the top to Anthony Brandel. Do you know who that is?

A. I think he was the attorney for the Malom Group.

Q. And do you recall, what was the purpose of this document?

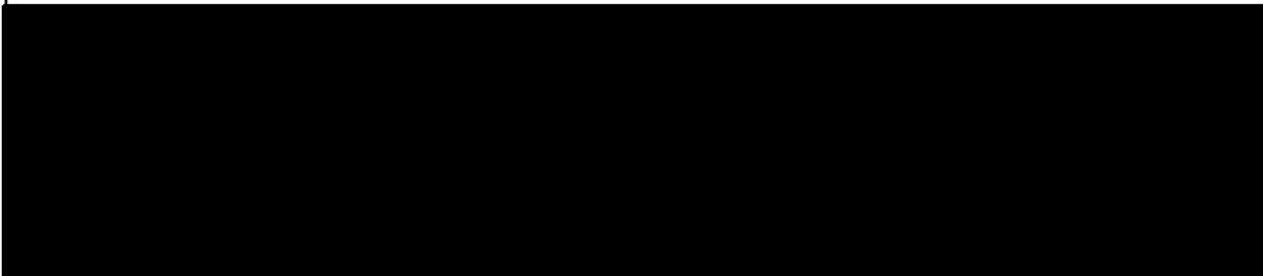
A. This was the letting the deal know it was going to go forward. Kind of like, "Okay. Here we go. Here's the terms. Here's all the financial service. Here's -- here's the deal."

Q. And did this give you comfort that the deal would go forward?

A. Yeah. I mean, he was the attorney for the group. He was out of Las Vegas. He seemed reputable, in our due diligence, and, you know, we were proceeding.

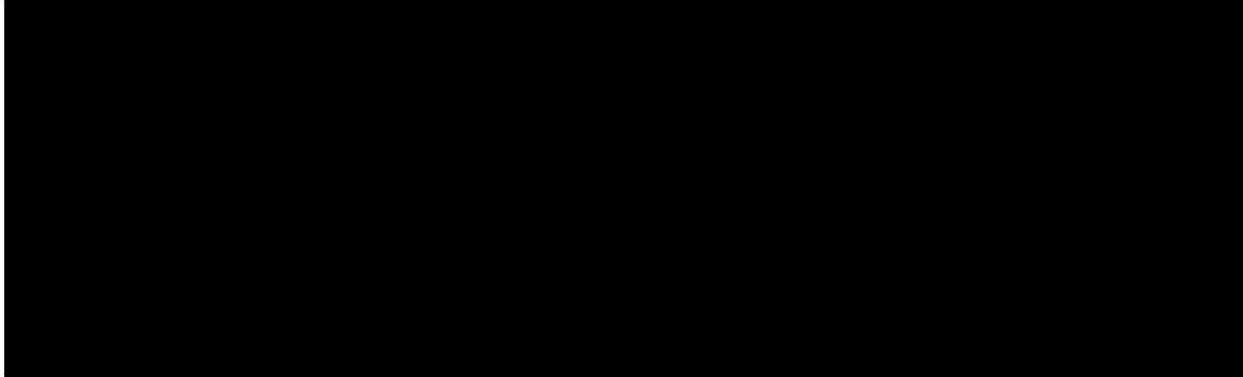
Q. Okay. And so did you decide to send this \$300,000 to escrow?

A. Yes.



Leonard G. Barrie - Direct

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Q. I'm going to show you a document that's been marked as Exhibit 904A. This is a document that has not yet been admitted into evidence.

Do you recognize this document?

A. Yes.

Q. And is this an email exchange between you and somebody mus@malomgroup.com involving Anthony Brandel?

A. Yes.

MS. AOYAGI: Move to admit 904A.

MR. SMITH: No objection.

MS. LAZO: None, Judge.

THE COURT: Received.

(Exhibit 904A admitted.)

BY MS. AOYAGI:

Q. So what -- tell me what happens, between the time when you asked for your refund, and February 3rd, 2011, that prompts these emails -- this email exchange?

A. Toni Hardstone, who was the escrow who we sent it to, completely disappears. She was very capable and very fast at

Leonard G. Barrie - Direct

1 calling and talking to you and emailing you before she got your  
2 money. But once she had our money, it was like she  
3 disappeared.

4 Finn would call me periodically. And then I guess  
5 this is about a week later or five days later. This response  
6 showed up.

7 Q. Okay. And do you know who mus@malomgroup.com is?

8 A. To my knowledge, it was the Martin Schlaepfer guy.

9 Q. And there's a reference here to Mr. Brandel. Were you in  
10 touch with him at that point?

11 A. I think I maybe had one call with him. I didn't have a  
12 lot of contact with him, but he was copied on a lot of the  
13 stuff. And to my knowledge, he was dealing with our  
14 representatives, my lawyers, on doing all the documents,  
15 signing off for the Malom Group. He was their lawyer, to my  
16 knowledge.

17 Q. And what was this -- what is your understanding of what is  
18 being conveyed in this email?

19 A. Basically, that me asking for my money back was crazy,  
20 which I'm still astounded by. But it was basically saying  
21 that -- that they did everything they were supposed to. We  
22 didn't, and I have lost my money, and to stop bothering  
23 Anthony -- or, whatever -- Toni, because it's causing her  
24 distress.

25



Leonard G. Barrie - Direct

1 from the Malom Group after this point?

2 A. A little bit with Sean Finn. But we met with our  
3 attorneys and looked into going after the California escrow  
4 part of it. And just with the amount of money that it was  
5 going to cost, and then realizing there was a lot of other  
6 victims, you know, we -- we left it and went this direction.

7 Q. Did you ever get your refund?

8 A. No. I did get a phone call a couple years later saying  
9 that they were getting the money back together and going to  
10 return my -- our money.

11 Q. And from whom did you get that phone call?

12 A. That was Sean Finn again.

13 Q. Okay. And can you tell me roughly when that call  
14 occurred?

15 A. About a year ago, I think, now, just -- I think --  
16 obviously, after your guys's involvement and doing some  
17 investigations, I -- he sent me an email saying I was going to  
18 sign a document releasing them of any wrongdoing, and they were  
19 going to give me all my money back. And I just kind of laughed  
20 and called the representatives from the FBI.

21 Q. And did you hear from Mr. Schlaepfer again?

22 A. No.

23 Q. And did you ever get your \$300,000 back?

24 A. No.

25 Q. And has that impacted your financial condition?

# EXHIBIT 10



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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEVADA

UNITED STATES OF AMERICA,	)	
	)	Case No. 2:13-cr-439-KJD-VCF
Plaintiff,	)	
	)	Las Vegas, Nevada
vs.	)	December 1, 2015
	)	2:01 p.m.
ANTHONY B. BRANDEL (1) and	)	
JAMES WARRAS (3),	)	
	)	Jury Trial, Day 1
Defendants.	)	
_____	)	Volume 1

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE KENT J. DAWSON  
UNITED STATES DISTRICT COURT JUDGE, AND A JURY

APPEARANCES:

For the Government:

BRIAN R. YOUNG  
MELISSA AOYAGI  
Criminal Division, Fraud Section  
1400 New York Avenue, NW  
Washington, DC 20530

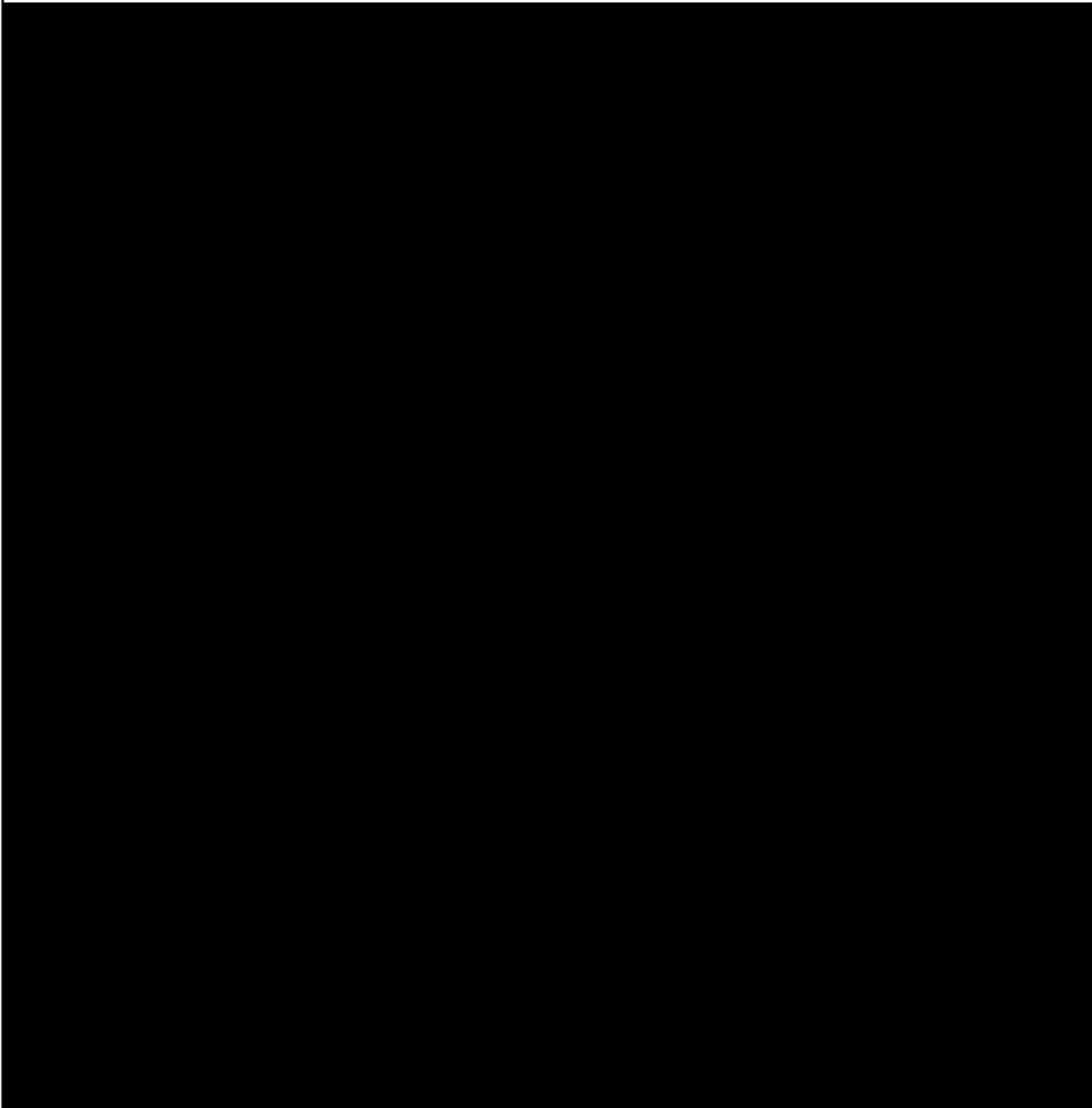
Appearances continued on Page 2.

Court Reporter: Katherine Eismann, CSR, CRR, RDR  
(702)431-1919 eismann.csr@gmail.com

Proceedings reported by machine shorthand, transcript produced  
by computer-aided transcription.

William M. Billingsley - RX

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MICHAEL BELLINO,

having been duly sworn, was examined and testified as follows:

COURTROOM ADMINISTRATOR: State your full name and spell it for the record.

THE WITNESS: Michael Bellino, B-E double L-I-N-O.

THE COURT: Go ahead.

Michael Bellino - Direct

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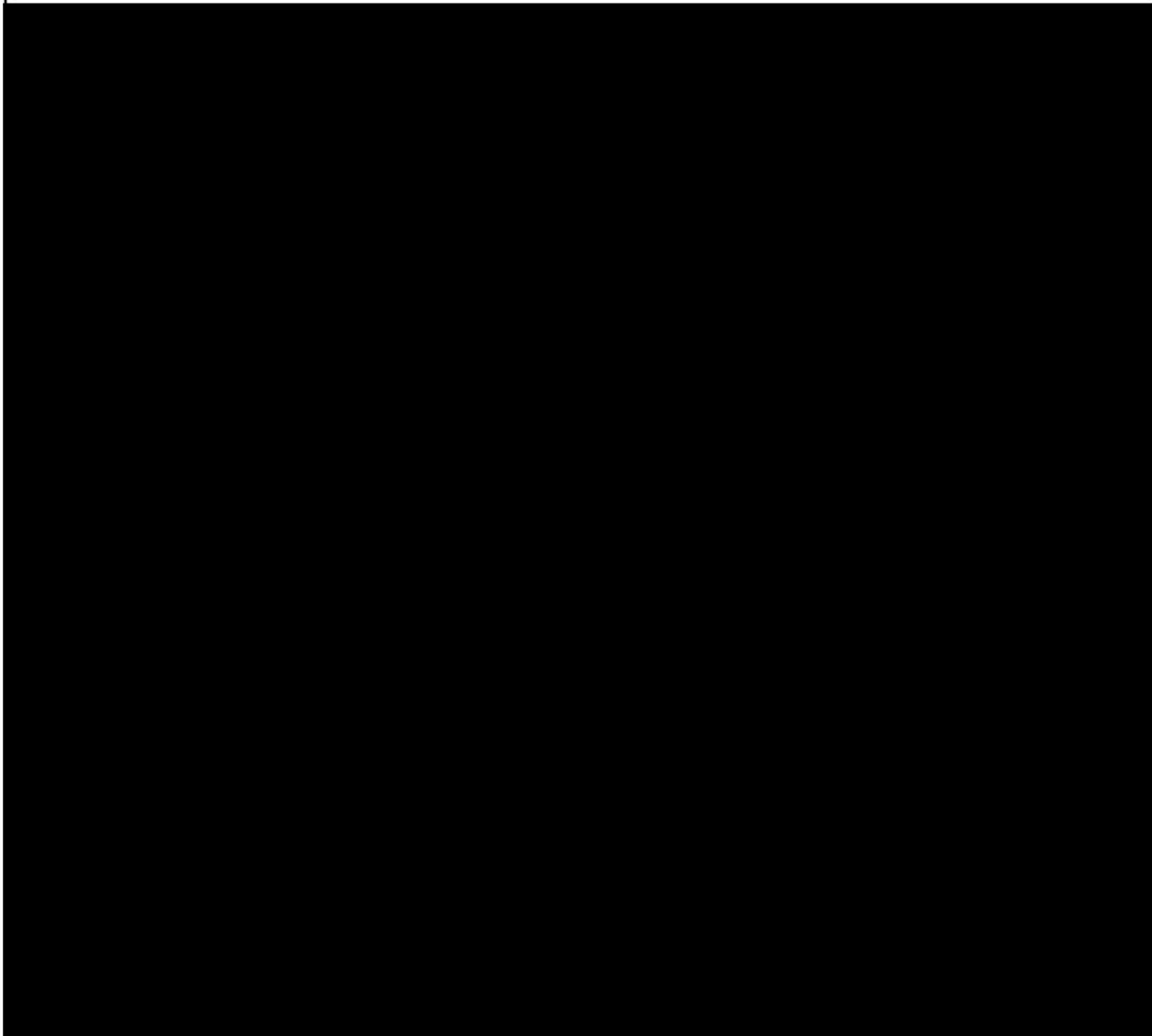
DIRECT EXAMINATION

BY MS. AOYAGI:

Q. Good afternoon, Mr. Bellino. I wanted to start by asking you a few questions about your background, and then we'll talk a little bit about the Malom Group.

Could you please tell the jury where you currently live?

A. Yes, I live in New York, Fort Washington.



Michael Bellino - Direct

1 Q. And what about Bellino Equities?

2 A. It's a real estate development company.

3 Q. Mr. Bellino, have you heard of the Malom Group?

4 A. Yeah.

5 Q. And do you recall when you first heard about Malom?

6 A. Yeah.

7 Q. Roughly.

8 A. Yeah. Four, five years ago.

9 Q. And how did you first hear about Malom?

10 A. Well, I was introduced to a mortgage banker to Malom  
11 Group. His name was Dennis Cody.

12 Q. And can you describe for us how Mr. Cody made this  
13 introduction?

14 A. Well, he told me that he was aware of a certain group that  
15 had a means of raising capital for certain projects. I was  
16 looking to fund a large waste energy project at the time, so I  
17 said I would listen to the proposal.

18 Q. Okay. At this point, did Mr. Cody put you in direct  
19 contact with anyone associated with Malom?

20 A. Yes, put me in on a conference call with Tony Brandel and  
21 some of his associates.

22 Q. Do you recall who else was on that initial conference  
23 call?

24 A. I believe it was Brandel and Tony Micelli. There was a  
25 few other people on the call, but I don't think they were

Michael Bellino - Direct

1 associated with the Malom Group.

2 Q. And are you referring to Mr. Tony Brandel and Joseph  
3 Micelli?

4 A. Yes.

5 Q. And do you recall who did most of the talking on that  
6 initial call?

7 A. It was Tony Brandel.

8 Q. And who is Mr. Brandel?

9 A. Mr. Brandel is an associate of a gentleman from Malom  
10 Group, or -- I think it was Martin Schlaepfer is the owner of  
11 the Malom Group if I am not mistaken.

12 Q. And who is Joseph Micelli?

13 A. Joseph Micelli was the in-house attorney the way it was  
14 described to me at the time.

15 Q. Okay. And who indicated that he was the in-house  
16 attorney? Do you recall?

17 A. Tony. Tony.

18 Q. Mr. Brandel?

19 A. Mr. Brandel.

20 Q. And what was the purpose of the call?

21 A. The purpose of the call is to go over, as I recall, the  
22 terms and conditions of the structure of the deal that they  
23 were proposing.

24 Q. And do you recall roughly when this call occurred?

25 A. Four or five years ago.

Michael Bellino - Direct

1 Q. And other than Mr. Brandel and Mr. Micelli and yourself,  
2 was anyone else on the call? Was Mr. Cody also on the call?

3 A. He may have been on the call. You know, it's a long time  
4 ago. I don't recall exactly, but he probably was on the call.

5 Q. Okay. And do you recall roughly how long the call lasted?

6 A. No.

7 Q. And do you recall what Mr. Brandel told you about Malom?

8 A. Yeah. Malom was a very, very large wealthy individual  
9 that leased his capital for certain costs, certain charges.

10 Q. And can you describe the deal that you were interested in  
11 pursuing or that was -- that was pitched to you?

12 A. Sure. The deal was that Martin's company, Malom, was  
13 going to utilize -- allow us to utilize \$50 million of his  
14 money to go into some kind of a trading platform to raise  
15 large -- you know, obviously make more money from that  
16 investment.

17 Q. And do you recall the numbers that were involved? How  
18 much would you have to invest in order to have a return or to  
19 be part of this opportunity?

20 A. 250,000 would allow me to utilize \$50 million.

21 Q. And did you decide to go ahead and invest?

22 A. Yes.

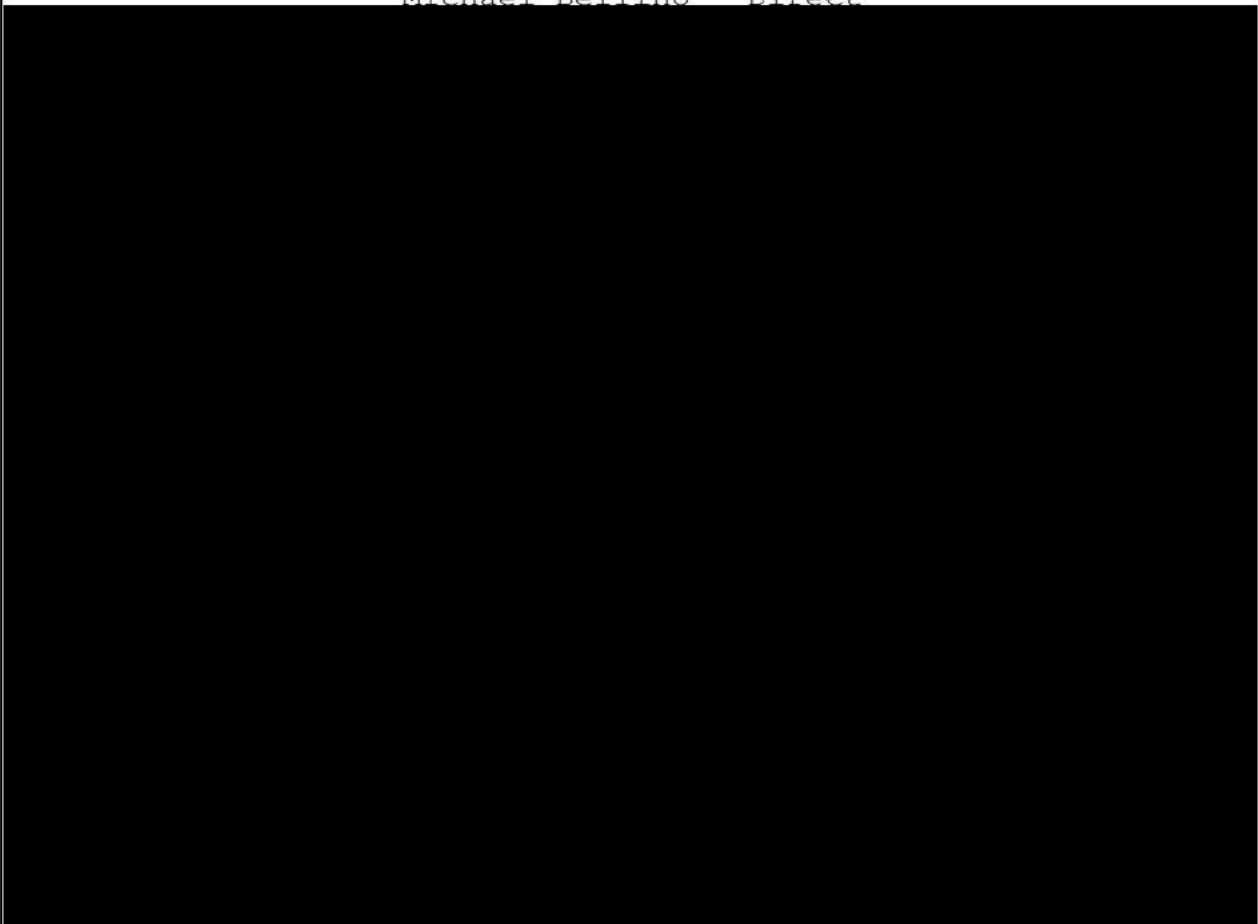
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Michael Bellino - Direct

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Q. Okay. I'm going to show you a document that's been marked as Government Exhibit 304. This is a document that has not yet been admitted into evidence.

It's entitled "Joint Escrow Instructions." Do you recognize this document?

A. Yes.

Q. And is this a joint escrow agreement between Commercial Escrow or between M.Y. Consultants and yourself that says "To Commercial Escrow Services" at the top?

A. Yes.

MS. AOYAGI: Move to admit Exhibit 304.

MR. SMITH: No objection.

Michael Bellino - Direct

1 MS. LAZO: None, Judge.

2 THE COURT: Received.

3 (Exhibit 304 admitted.)

4 BY MS. AOYAGI:

5 Q. Do you recall receiving this document?

6 A. Yes, I do.

7 Q. And what did you understand this document to memorialize?

8 A. Basically, for me to deposit the funds that was agreed  
9 upon subject to the joint venture agreement into an escrow  
10 account. And I would have a certain amount of time to do some  
11 due diligence to ensure that there was no fraud involved. And  
12 within three days, if I didn't object, the money was taken  
13 away.

14 Q. And by taken away, do you mean released from escrow?

15 A. Correct.

16 Q. And do you mean released without any possibility of  
17 return?

18 A. Well, that's what it turned out to be.

19 Q. But was it your understanding at the time that it was a  
20 fee that would be paid and not returned to you regardless of  
21 whether a deal transpired or not?

22 A. No. I believed that if the deal did not transpire and be  
23 executed, that the money would be returned.

24 Q. And do you see the reference to M.Y. Consultants? Do you  
25 know what M.Y. Consultants is?



Michael Bellino - Direct

1 A. I believe that's Tony Brandel's company.

2 Q. And did you have direct communications with Mr. Brandel?

3 A. Yes.

4 Q. And is he the person who indicated to you where to wire  
5 the funds?

6 A. Yes.

7 Q. And where did he tell you -- what did he instruct you to  
8 do?

9 A. Well, he instructed me to wire it according to the terms  
10 and conditions to Antoinette Hardstone's company in San  
11 Francisco.

12 Q. And did you do so?

13 A. Yes.

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEVADA

UNITED STATES OF AMERICA,	)	
	)	Case No. 2:13-cr-439-KJD-VCF
Plaintiff,	)	
	)	Las Vegas, Nevada
vs.	)	December 1, 2015
	)	2:01 p.m.
ANTHONY B. BRANDEL (1) and	)	
JAMES WARRAS (3),	)	
	)	Jury Trial, Day 1
Defendants.	)	
_____	)	Volume 1

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE KENT J. DAWSON  
UNITED STATES DISTRICT COURT JUDGE, AND A JURY

APPEARANCES:

For the Government:

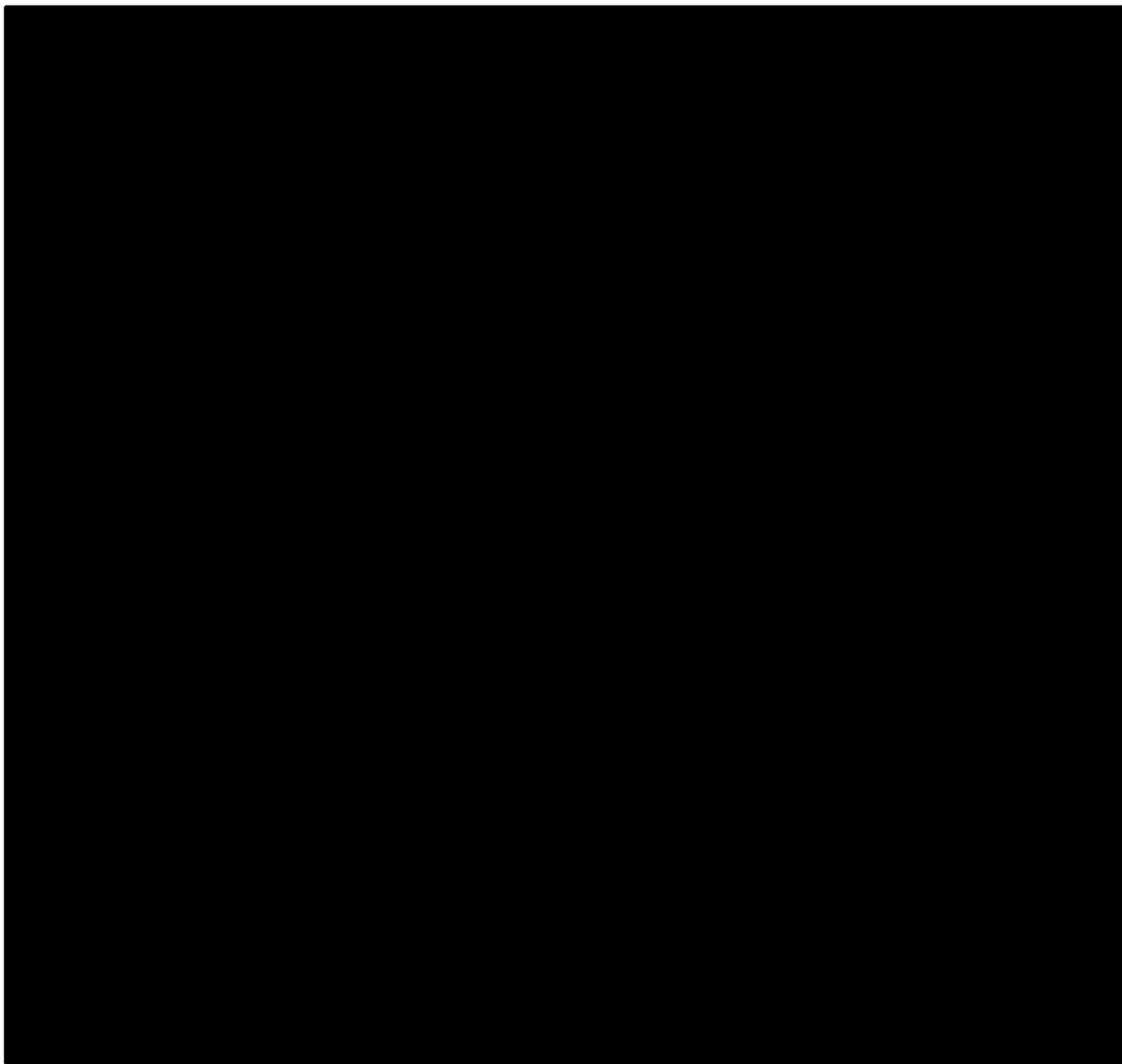
BRIAN R. YOUNG  
MELISSA AOYAGI  
Criminal Division, Fraud Section  
1400 New York Avenue, NW  
Washington, DC 20530

Appearances continued on Page 2.

Court Reporter: Katherine Eismann, CSR, CRR, RDR  
(702)431-1919 eismann.csr@gmail.com

Proceedings reported by machine shorthand, transcript produced  
by computer-aided transcription.

Debra Mitman - RX



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WILLIAM M. BILLINGSLEY,

having been duly sworn, was examined and testified as follows:

COURTROOM ADMINISTRATOR: State your full name and spell it for the record.

THE WITNESS: William M. Billingsley,  
B-I-L-L-I-N-G-S-L-E-Y.

THE COURT: Go ahead.

MS. AOYAGI: Thank you, Your Honor.

William M. Billingsley - Direct

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DIRECT EXAMINATION

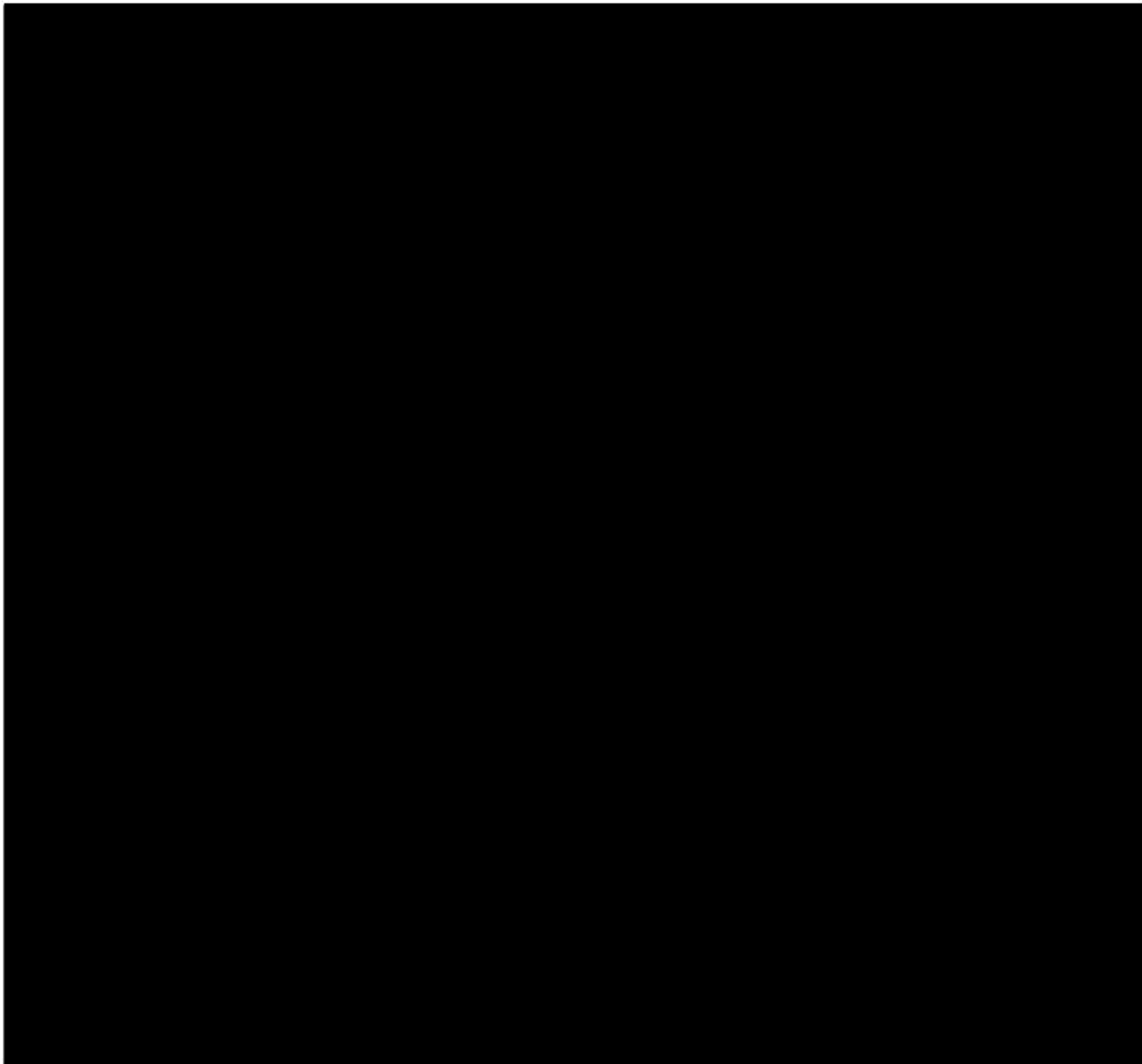
BY MS. AOYAGI:

Q. Good afternoon, Mr. Billingsley.

A. Good afternoon.

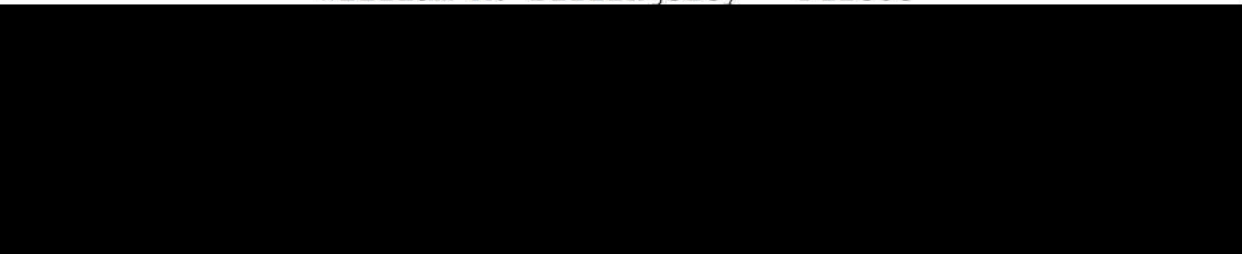
Q. I just want to start by asking you a few questions about your background, and then we will talk a little bit about your involvement with the Malom Group. Where do you currently live?

A. I live in Madison, Mississippi.



William M. Billingsley - Direct

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Q. I wanted to talk a little bit about the Malom Group. Have you heard of the Malom Group?

A. Yes, I have.

Q. And do you recall roughly when you first heard about the Malom Group?

A. It was in the summertime of 2010.

Q. And do you recall from whom you first heard about Malom?

A. Myra Foster is the lady that first mentioned them to me.

Q. And who is Myra Foster?

A. Myra Foster is a principal of the Foster Group, a group down in Florida that I was involved with in an investment opportunity.

Q. And can you give us a brief description of that investment opportunity that you just referenced with respect to Miss Foster?

A. Yes. She was looking for someone to provide an equity in an investment that she was trying to make to purchase some United States Treasuries or United States notes and resell them for a profit. And I was referred to her by a friend of mine that I made through another investment.

Q. And was there a certain amount of money that she needed in order to proceed with this investment?

William M. Billingsley - Direct

1 A. Yes.

2 Q. And can you tell us what that amount was?

3 A. \$330,000.

4 Q. So that was the amount that she needed from you. And was  
5 there an amount that she needed to borrow with that 330?

6 A. Yes, it was -- she was seeking \$11 million, and the  
7 330,000 represented 3 percent equity. Essentially, I guess the  
8 down payment for the loan.

9 Q. Okay. And did she give you a sense of where the  
10 11 million would come from?

11 A. She thought it was coming from the Malom Group.

12 Q. And what is the Malom Group?

13 A. The Malom Group, as I understood it, was an investment --  
14 I guess a company in Switzerland that was making investments in  
15 the United States.

16 Q. And again, what did you have to do to get the 11 million?  
17 Your contribution was what amount?

18 A. My -- my contribution was \$330,000, which represented  
19 3 percent of the 11 million.

20 Q. Okay. And what were you -- were you supposed to send your  
21 money somewhere?

22 A. I was supposed to wire it into an escrow account.

23 Q. Did you decide to proceed with this investment  
24 opportunity?

25 A. I did.

William M. Billingsley - Direct

1 Q. And did you end up wiring the money to the escrow company?

2 A. Yes, I did.

3 Q. I'm going to show you a document that has been marked as  
4 Exhibit 601. This is a document that has not yet been admitted  
5 into evidence. Thanks. Auto adjusting.

6 Do you recognize this document?

7 A. Yes. It's -- can you bring it into a little bit sharper  
8 focus?

9 Q. Is that a little bit better?

10 A. Yes. Thank you.

11 Q. And is this a joint venture agreement dated June 28th,  
12 2010, between Malom and the Foster Group?

13 A. Yes.

14 Q. And is the Foster Group a company associated with Myra  
15 Foster, the person you just mentioned?

16 A. Yes.

17 MS. AOYAGI: Move to admit Exhibit 601 into evidence.

18 THE COURT: Any objection?

19 MR. SMITH: No, Your Honor.

20 MS. LAZO: None, sir.

21 THE COURT: 601 is received.

22 (Exhibit 601 admitted.)

23 BY MS. AOYAGI:

24 Q. If you would refer to the first page and the highlighted  
25 portions of the first page. Is this an agreement between the



William M. Billingsley - Direct

1 Foster Group and Malom related to the investment opportunity  
2 that you just referenced?

3 A. Yes.

4 Q. And if you could look at the highlighted language next to  
5 purpose of the agreement. Could you give us a sense of what  
6 your understanding of that language is?

7 It says, "The purpose of the agreement, together with  
8 the representations and warranties attached hereto and  
9 incorporated herein by this reference as is set forth fully in  
10 Exhibit A, is to induce the investor to evidence the mere  
11 existence of the cash and cash equivalents in the amount of  
12 \$11 million."

13 A. Yes. That's -- my understanding was that the agreement  
14 was to make sure that they could prove that they had  
15 \$11 million available.

16 Q. And by "they" --

17 A. Malom Group.

18 Q. Okay. If you could turn to Page 10 of the document.  
19 Actually, if we could move that a little bit. There is Exhibit  
20 C, notice of readiness to proceed.

21 Do you recognize this page? It's the July 7th, 2010,  
22 letter.

23 A. Yes.

24 Q. And there's a reference at the top to M.Y. Consultants,  
25 Inc., Anthony Brandel. Do you know who Mr. Brandel is?

William M. Billingsley - Direct

1 A. Yes.

2 Q. And who is he?

3 A. He is the person that was the Malom Group chief executive,  
4 I suppose. The one who directed their United States  
5 operations.

6 Q. Okay. And did you ever meet him in person?

7 A. No.

8 Q. If you would take a look at the language that begins, "We  
9 are prepared to execute an investment agreement with the  
10 contract counter-party you are about to introduce us cause --  
11 and thereafter cause our financial institution to accept and  
12 respond to an inquiry." And it ends with \$11 million.

13 What did you understand this highlighted language to  
14 mean?

15 A. That they had \$11 million available to invest in this  
16 venture.

17 Q. And did this give you comfort that Malom had the funds to  
18 follow through on the deal?

19 A. Yes.

20 Q. I'd like to take another -- a look at Page 17 of the same  
21 document. And this is letter from Deutsche Bank. Do you  
22 recall this document?

23 A. Yes.

24 Q. And what -- could you just give us a sense of what this  
25 document is?

William M. Billingsley - Direct

1 A. This is a letter from Deutsche Bank that indicated the  
2 size of the account that was available that -- from which would  
3 come our 11 million-dollar investment.

4 Q. Okay. And again, did this document give you comfort that  
5 Malom would be able to perform on the deal?

6 A. Yes.

7 Q. I'd like to show you another document. This has been  
8 marked as Exhibit 604. And this is another document that has  
9 not yet been admitted into evidence.

10 Do you recognize this document?

11 A. Yes.

12 Q. And this is a document dated June 28th, 2010, between  
13 Anthony Brandel and Myra Foster; is that right?

14 A. Yes.

15 MS. AOYAGI: Move to admit Government Exhibit 604 in  
16 to evidence.

17 THE COURT: Any objection?

18 MR. SMITH: No, Your Honor.

19 MS. LAZO: None, sir.

20 THE COURT: Received.

21 (Exhibit 604 admitted.)

22 BY MS. AOYAGI:

23 Q. Just a few moments ago, we spoke about Anthony Brandel.  
24 Did you speak with Mr. Brandel -- he's also referenced in this  
25 document.

William M. Billingsley - Direct

1 Did you speak to Mr. Brandel at this point in time?

2 A. I can't remember if I spoke to him exactly at that point  
3 in time or not. I -- I had some telephone conversations with  
4 him through the course of this transaction or through the  
5 course of our attempts to get this transaction finalized.

6 Q. Okay. And this is a letter from him to Myra Foster; is  
7 that right?

8 A. Yes.

9 Q. And I just wanted to take a quick look at the highlighted  
10 language in paragraph five. "At this time, the investor's  
11 prepared to enter into a joint venture agreement with you for  
12 your transaction in the amount of \$11 million. The funds are  
13 available at a very well-known bank in Europe that will meet  
14 your transaction requirements. Your price for this joint  
15 venture will be 330,000."

16 And what is your understanding of this language?

17 A. That they are ready to go forward with a transaction with  
18 the Foster Group, and our part is to put 3 percent, the  
19 330,000, 3 percent equity into the -- into the transaction.

20 Q. Okay. Earlier you mentioned that you did wire the money  
21 to escrow. What happened after you wired your money into  
22 escrow?

23 A. The -- there were certain conditions that were -- that had  
24 to be met before the money could be released from the escrow,  
25 and it was my understanding at the time that those conditions

William M. Billingsley - Direct

1 ultimately had been met.

2 Q. Okay. And so did you authorize the release of your money  
3 from escrow?

4 A. Yes.

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# EXHIBIT 12

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEVADA

UNITED STATES OF AMERICA,	)	
	)	Case No. 2:13-cr-439-KJD-VCF
Plaintiff,	)	
	)	Las Vegas, Nevada
vs.	)	December 3, 2015
	)	9:15 a.m.
ANTHONY B. BRANDEL (1) and	)	
JAMES WARRAS (3),	)	
	)	Jury Trial, Day 3
Defendants.	)	
_____	)	


TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE KENT J. DAWSON  
UNITED STATES DISTRICT COURT JUDGE, AND A JURY

APPEARANCES:

For the Government:

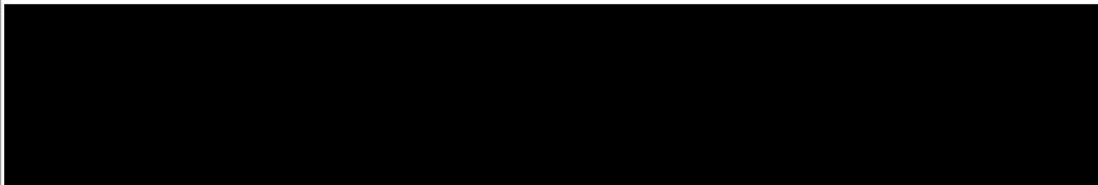
BRIAN R. YOUNG  
MELISSA AOYAGI  
Criminal Division, Fraud Section  
1400 New York Avenue, NW  
Washington, DC 20530

Appearances continued on Page 2.

Court Reporter: Katherine Eismann, CSR, CRR, RDR  


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by computer-aided transcription.

Alan Braunstein - Direct



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DIRECT EXAMINATION

BY MR. YOUNG:

Q. Good afternoon, Mr. Braunstein.

Can you tell the jury where you are physically located right now?

A. Right now I am located in Suite 2009 of the Moakley Courthouse, which is the US Attorney's Office, in Boston, Massachusetts.

Q. And are you unable to travel on an airplane?

A. Yes. For the past number of years, I have been ill. And based on recommendations of doctors, in order to stay healthy, I have stayed off of the airplanes and other public transportation.

Q. Can you tell the jury what your occupation is and where you work, please?

A. I am an attorney, and I work at the law firm of Riemer Braunstein.

Q. What's your area of specialty?

A. My area of practice is particularly bankruptcy law.

Q. And have you ever had a client called USA Springs?

A. Yes.

Q. And did USA Springs file for bankruptcy?

A. USA Springs did file for bankruptcy.



Alan Braunstein - Direct

1 Q. And did you represent USA Springs in that bankruptcy?

2 A. Yes.

3 Q. Now, when you represented USA Springs, did you hear of an  
4 entity call the Malom Group?

5 A. Yes. In the winter or early spring of 2011, I first heard  
6 the name of the Malom Group.

7 Q. Did you speak to somebody named Tony Brandel?

8 A. Yes. During that same time period, I heard the name of  
9 Anthony and/or Tony Brandel.

10 Q. And how did Mr. Brandel introduce himself to you? What  
11 did he say his role was?

12 A. I'm sorry. If you could just speak up a little more. I  
13 really couldn't hear that.

14 Q. Of course. Did Mr. Brandel -- how did he introduce  
15 himself? What did he say his job was?

16 A. Mr. Brandel introduced himself as working, in connection  
17 with Malom Group, as its primary underwriter, working together  
18 with and under the management of James Warras. Working with  
19 Joseph Micelli, as the main underwriter, in connection with a  
20 European bond offering that Malom was proposing to my client,  
21 USA Springs.

22 Q. Who was James Warras?

23 A. I'm sorry?

24 Q. How did James Warras represent himself?

25 A. I only remember talking with Warras once, in that time

Alan Braunstein - Direct

1 period in March, and he was, I believe, the vice president and  
2 the head of the -- represented himself as the head of the US  
3 operations for Malom. He, I believe, was on one phone call.

4 Then subsequently, in October of 2011, I began having  
5 a series of numerous conversations with Mr. Warras.

6 Q. At any point in the scope of your representation of USA  
7 Springs, did you speak with Mr. Brandel about Malom making a  
8 loan to USA Springs?

9 A. Yes. Again during that same period and through, I  
10 believe, late May, maybe early June of 2011, I had numerous  
11 conversations with Mr. Brandel with regard to the funding of  
12 USA Springs.

13 Q. Can you summarize, during the course of those  
14 conversations, what did Mr. Brandel tell you about a loan that  
15 Malom was thinking of making to USA Springs?

16 A. First he told me that Malom had the capability to make the  
17 loan. That Malom had hundreds of millions of dollars in  
18 various banks. That Malom, through its people in Switzerland,  
19 had the wherewithal to sell these bonds.

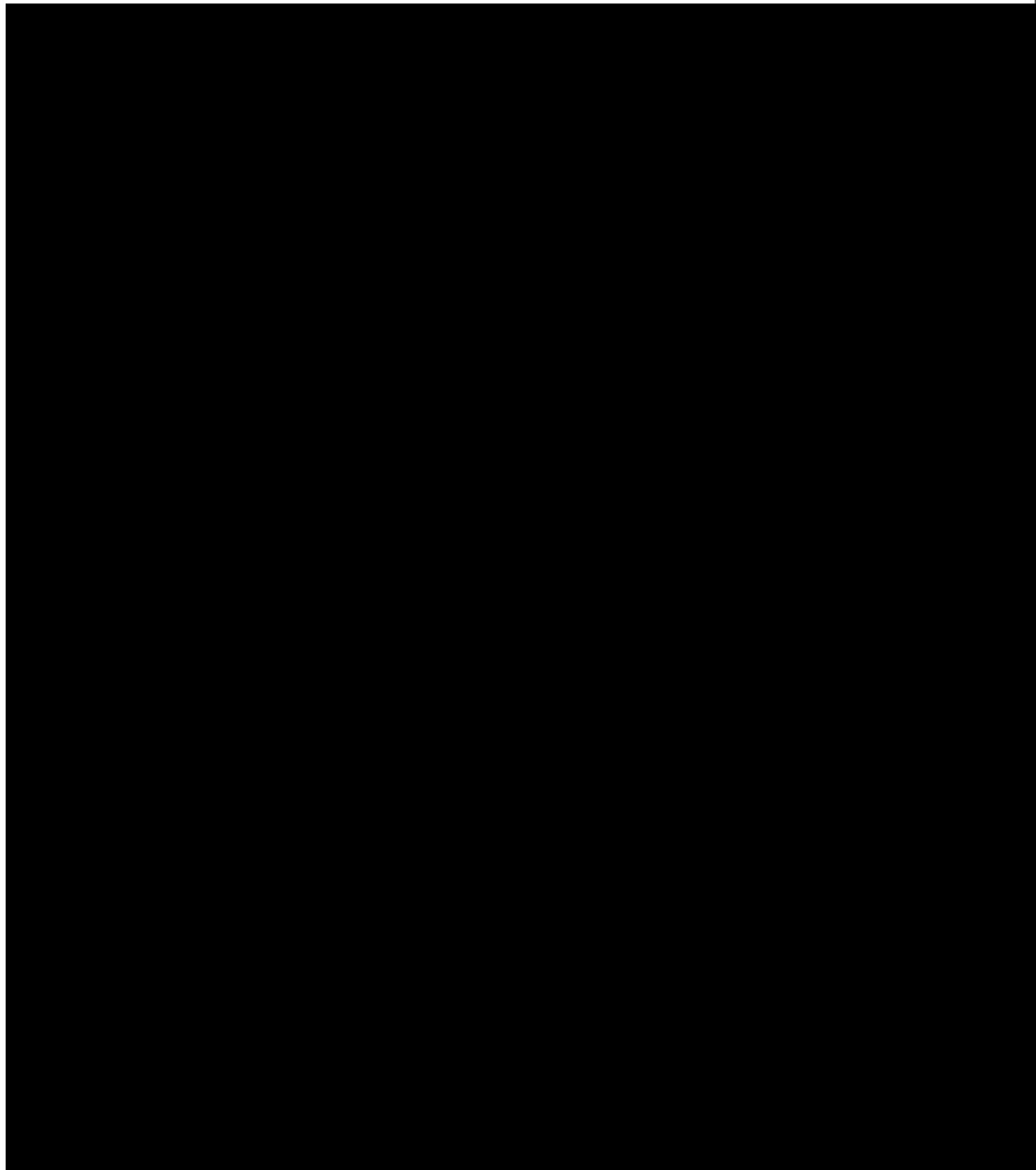
20 That the relationship that Hans-Jurg Lips had with  
21 people, in the banking industry in Europe, made it almost  
22 certain that the funding would be -- or the bonds would be  
23 solicited, and activated, and, most importantly, purchased by  
24 investors in Europe, who Mr. Lips would easily solicit, and  
25 that USA Springs would be funded.

Alan Braunstein - Direct

1 Q. Did Mr. Brandel's representations to you about Malom's  
2 financial condition have any impact on the process of the  
3 bankruptcy?

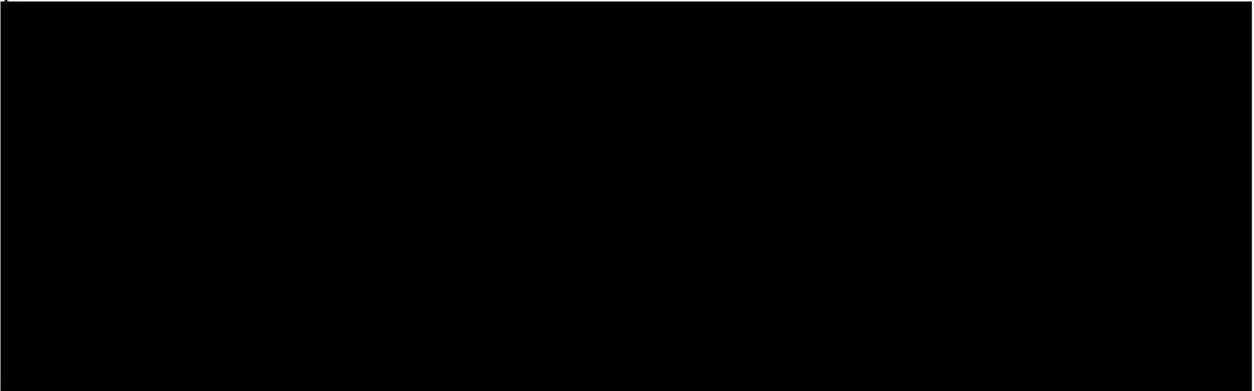
4 A. Well, in order -- the answer is yes.

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Alan Braunstein - Cross

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CROSS-EXAMINATION

BY MR. SMITH:

Q. Good afternoon, Mr. Braunstein. Can you hear me okay?

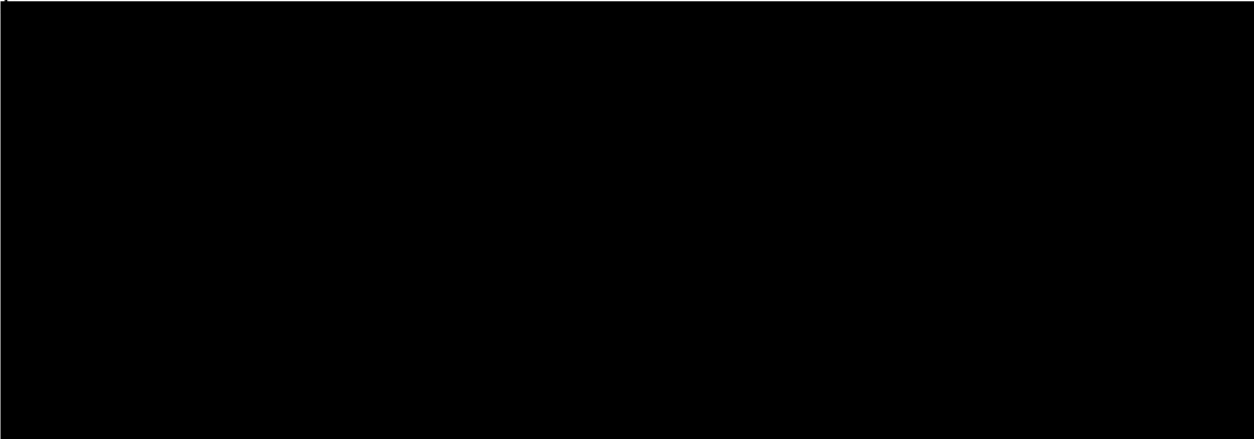
A. I can.

Q. Mr. Braunstein, my name is Brian Smith. I'm the attorney for Anthony Brandel, along with an associate from our office, Christopher Grasso, who is seated at the defense table.

How are you today?

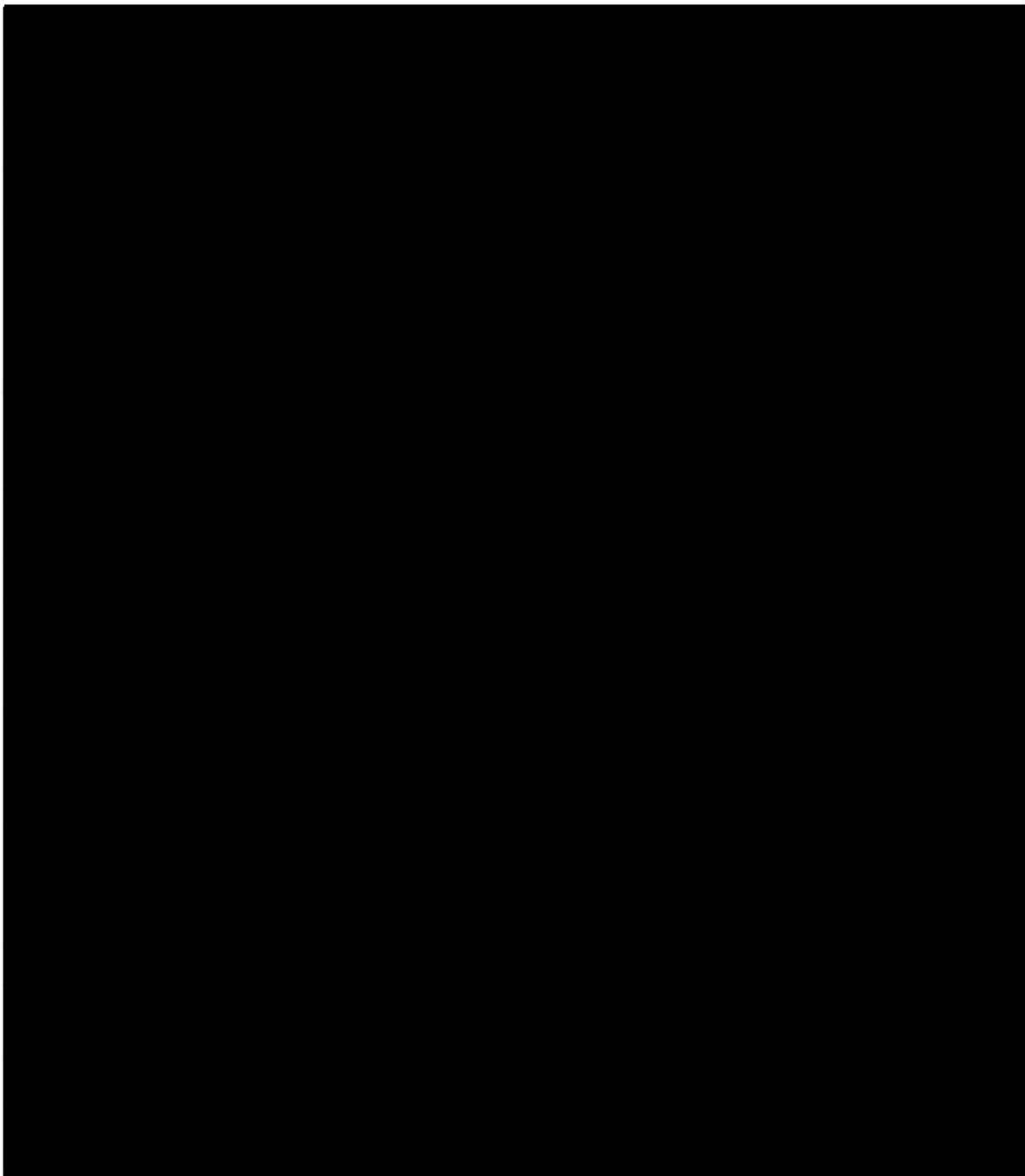
A. I'm well. Thank you.

Q. Okay. Good. Mr. Braunstein, I would like to ask you a few questions about your background, if you don't mind. You mentioned --



Alan Braunstein - Cross

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22 A. And it's my job to take the directives of my client, but  
23 to provide my client, in this case, the other constituents that  
24 had a stake in the case, with the information.

25 Because in no way, in no way was this plan going to

Alan Braunstein - Cross

1 become effective. Remember, I told you we had a plan. It had  
2 been court-approved, but it doesn't become effective unless we  
3 had the money.

4 So all we were doing is sitting, waiting back for the  
5 money that Mr. Warras -- and preceding Mr. Warras,  
6 Mr. Brandel -- had told us was forthcoming.

7 Q. How many attorneys work in your firm, Mr. Braunstein?

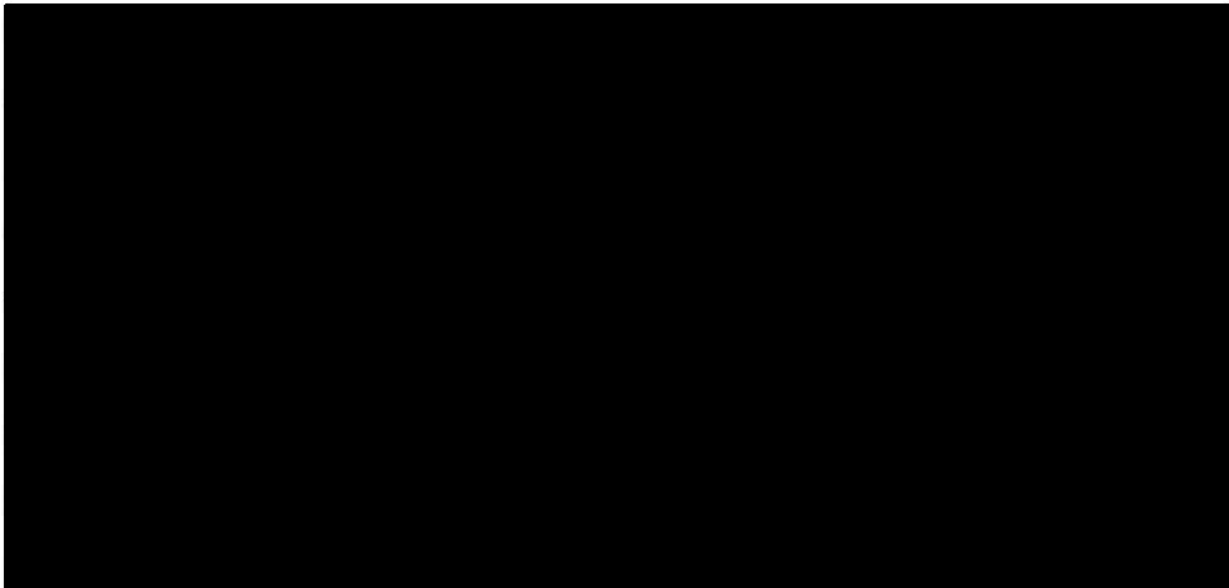
8 A. At this time, over about 100 attorneys.

9 Q. 100? Okay. You said you relied on the representations,  
10 to a great extent, of Anthony Brandel, for your -- what were  
11 your words? Bear with me. I was taking some notes. I'm not  
12 sure if I caught it.

13 I think you stated Brandel's representations to you  
14 had an effect on the reorganization. Is that -- is that what  
15 you said before?

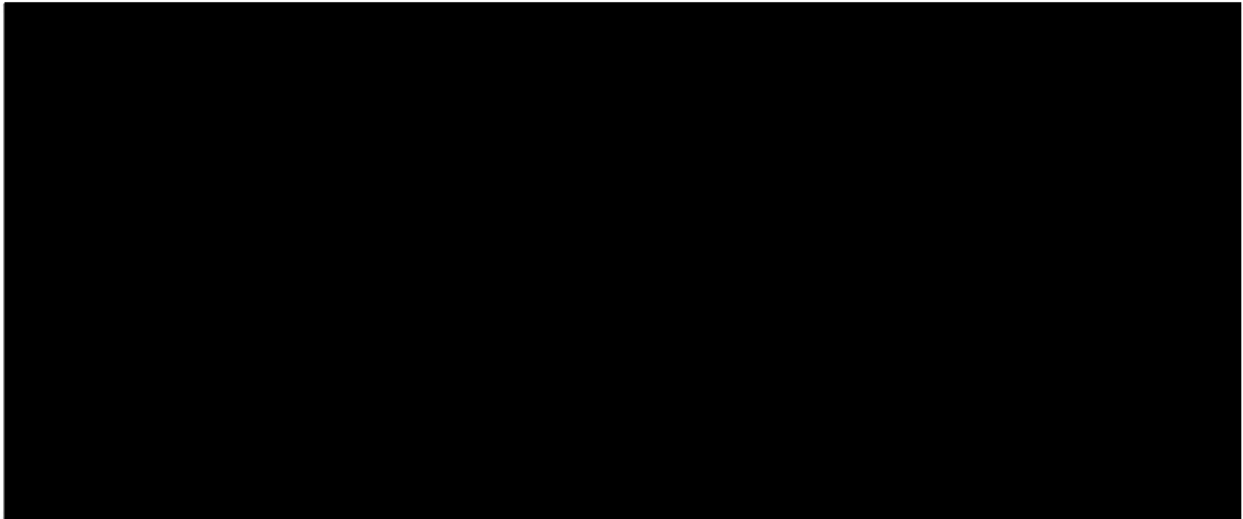
16 A. Yes.

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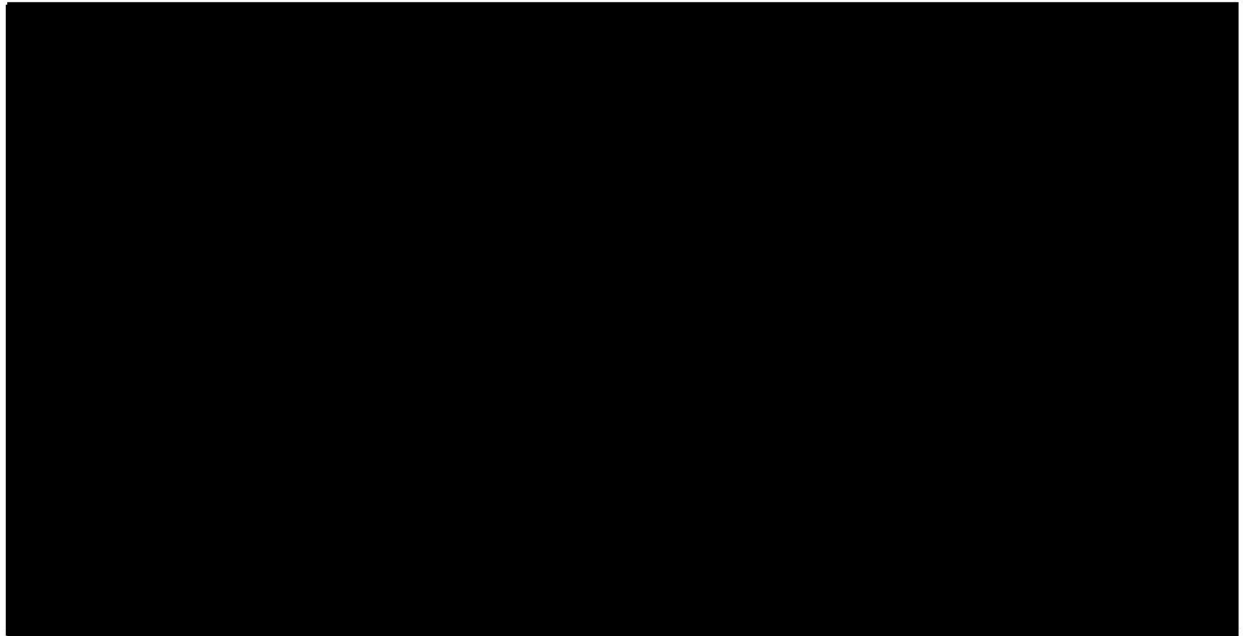
Alan Braunstein - Cross

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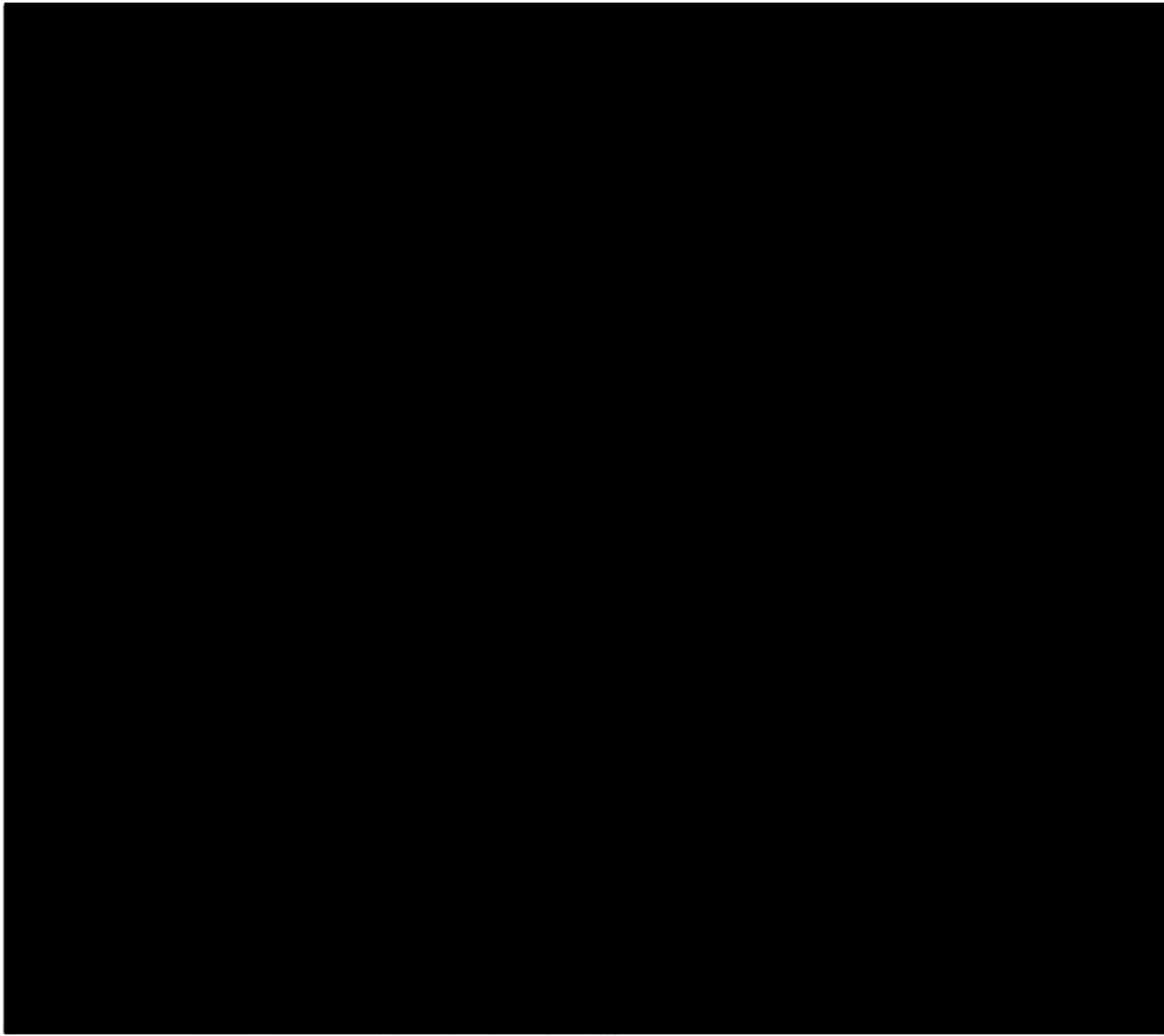
Q. Okay.

A. The conversations with Mr. Brandel, for the most part, was in connection with the bond offerings and the solicitation, by my client, with Mr. Brandel's assistance and participation, of an investor to fund the 1.25 million that was required as a deposit, if you will, to commence the underwriting for the bond.



Alan Braunstein - Cross

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CROSS-EXAMINATION

BY MR. VALLADARES:

Q. Good afternoon, Mr. Braunstein. Can you hear me, sir?

A. Good afternoon. Again, if you could come closer to the  
mike. Sorry to trouble you with that, but it's -- it's --

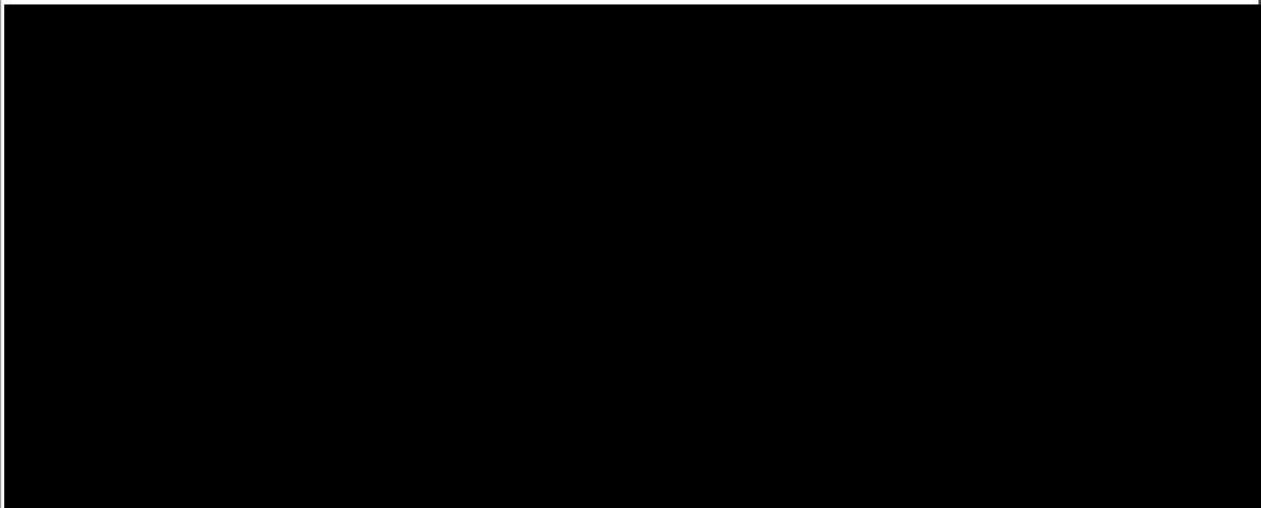
Q. I sure will. Tell me if I'm speaking too loud, okay, into  
that?

A. Now I can't even -- I am sorry. Try closer.



Alan Braunstein - Cross

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My name is Rene Valladares, Mr. Braunstein. I'm just going to ask you some questions here. You have -- you mentioned several times about Mr. Smith.

A. Yes.

Q. And this is Allen Smith?

A. Yes.

Q. And Allen Smith was Malom's lawyer?

A. Yes.

Q. And you had numerous dealings with Mr. Smith?

A. Dealings? I had communications with Mr. Smith solely in connection with this case, if that answers your question.

Q. My mistake. I should have said "communications" as opposed to "dealings," so I appreciate you clarifying that.

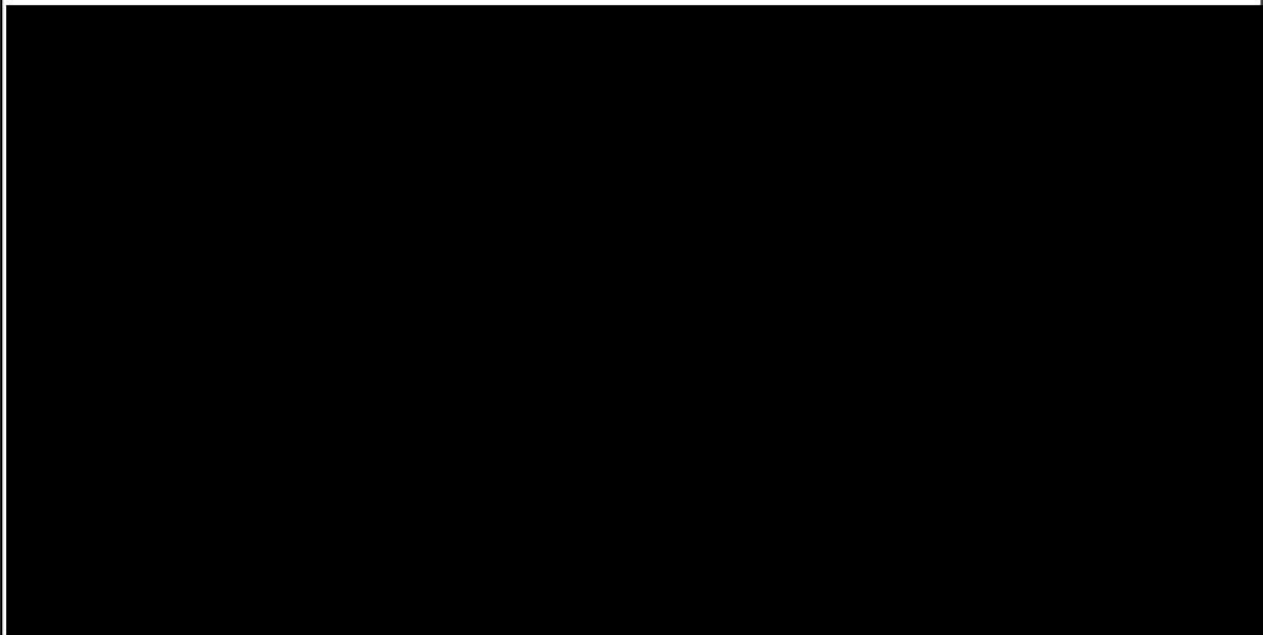
You had numerous communications with Mr. Smith regarding their case? The Malom issue?

A. Yes, that's correct.

Q. And you relied on those communications?

A. On the communications, yes.

Alan Braunstein - Cross



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10 Q. Now you were involved in the transactional part of the  
11 deal with Malom; correct?

12 A. If you mean -- "transactional," meaning preparing the  
13 documentation --

14 Q. Yes.

15 A. -- and facilitating the documentation with the Court and  
16 the negotiations with the creditors' --

17 Q. Yes, sir.

18 A. -- attorneys? Yes.

19 Q. And you were in communication with Mr. Smith in dealing  
20 with those transactional documents; correct?

21 A. No, not necessarily. In revising and finalizing the  
22 initial drafts and comments. Because a lot of the  
23 prenegotiations were -- involved Mr. Micelli and Mr. Brandel,  
24 especially as it relates to soliciting the investor, because  
25 that was the precursor. That was the requirement before we

Alan Braunstein - Cross

1 could get to the stage of doing the documents for the deal.

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# EXHIBIT 13

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEVADA

UNITED STATES OF AMERICA,	)	
	)	Case No. 2:13-cr-439-KJD-VCF
Plaintiff,	)	
	)	Las Vegas, Nevada
vs.	)	December 2, 2015
	)	9:06 a.m.
ANTHONY B. BRANDEL (1) and	)	
JAMES WARRAS (3),	)	
	)	Jury Trial, Day 2
Defendants.	)	
_____	)	


TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE KENT J. DAWSON  
UNITED STATES DISTRICT COURT JUDGE, AND A JURY

APPEARANCES:

For the Government:

BRIAN R. YOUNG  
MELISSA AOYAGI  
Criminal Division, Fraud Section  
1400 New York Avenue, NW  
Washington, DC 20530

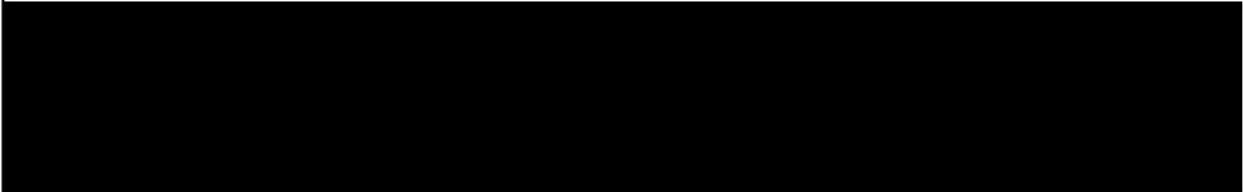
Appearances continued on Page 2.

Court Reporter: Katherine Eismann, CSR, CRR, RDR  


Proceedings reported by machine shorthand, transcript produced  
by computer-aided transcription.

Gary Dobyms - Direct

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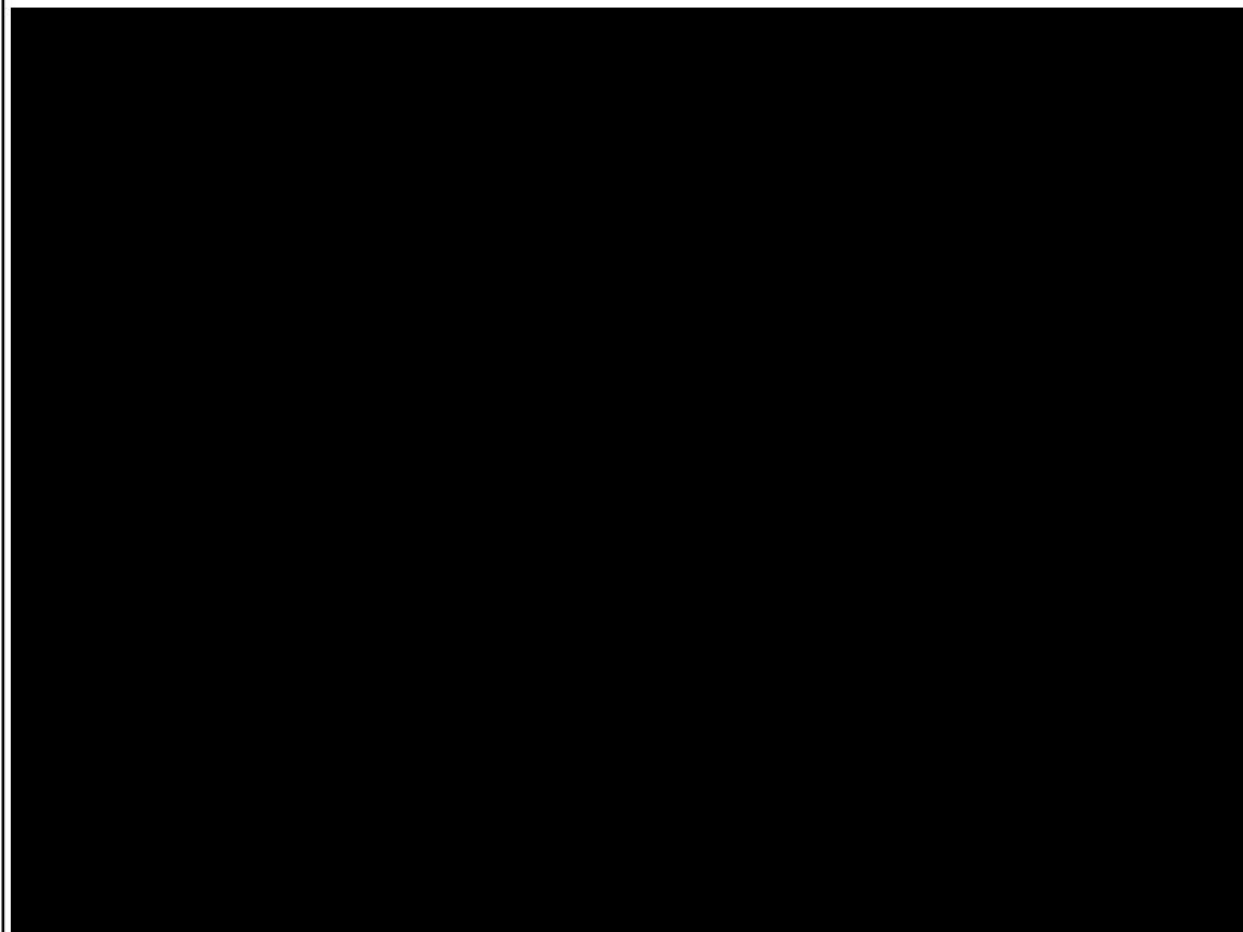
THE WITNESS: My name is Gary Dobyms. My last name is spelled D-O-B-Y-N-S.

DIRECT EXAMINATION

BY MR. YOUNG:

Q. Good morning, Mr. Dobyms. Can you tell the jury where you live, please?

A. I live in a Live Oak, California, just north of Sacramento.



Gary Dobyns - Direct



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Q. Can you tell us who Toni Hardstone was again, please?

A. Toni Hardstone was the owner of Commercial Escrow Services.

Q. And did you have any -- did she put you in touch with somebody named Tony Brandel?

A. Toni Hardstone did not put me in touch with Brandel. Cheryl Robinson put me in touch with Brandel.

Q. All right. And what did Cheryl Robinson tell you about Tony Brandel?

A. Well, that he was the -- he was the USA side of Malom out of Switzerland. He was the boss.

Q. Can you tell us the context? What was going on when Miss Robinson put you in touch with Mr. Brandel? What were you asking Miss Robinson at that point?

A. I was asking Miss Robinson for my money. I wanted my money back. I wanted my 200,000 back out of escrow, because it was a tremendous amount of money to me. And she put me in touch with Tony Brandel, I mean, shortly thereafter.

Q. Did you have a phone conversation with Mr. Brandel?

A. I had a phone conversation with Mr. Brandel, and Cheryl Robinson was on the phone.

Q. And have you had more than one conversation on the phone

Gary Dobyms - Direct

1 with Mr. Brandel?

2 A. I have had many conversations -- phone conversations and  
3 group conversations with a bunch of us at the same time. Many  
4 conversations with Brandel.

5 Q. Did you have any understanding of where Mr. Brandel was  
6 located physically?

7 A. I'm sorry?

8 Q. Did you have any understanding of where Mr. Brandel was  
9 located physically? Where did he live?

10 A. Oh, I knew he was in Las Vegas.

11 Q. Now, tell us about the conversation that you had with  
12 Mr. Brandel on the telephone? When was the first conversation  
13 you can remember having?

14 A. It was shortly -- it was shortly thereafter. I talked  
15 to -- I talked to Toni Hardstone the following Tuesday. And I  
16 had tried to reach her continuously, and I could not reach her.  
17 She would not answer.

18 And she finally picked the phone up on that Tuesday.  
19 And when she realized it was me, she said, "Your money is fine.  
20 Your money is safe. Your money is not going anywhere. Don't  
21 worry about it. I'm in a transaction. I'll call you in 15  
22 minutes." The last time I talked to her.

23 Q. So what happened next?

24 A. I got in touch with Tony Brandel through Cheryl Robinson.

25 Q. And when did that happen? You said a couple days later?



Gary Dobyms - Direct

1 A. It was -- it was a short time thereafter. It was not many  
2 days thereafter, but it was short. And it's the conversation  
3 I'll remember for the rest of my life.

4 Q. What did you ask Mr. Brandel during the conversation?

5 A. I asked Brandel specifically, "Where is my money?"

6 Q. What was his response to you?

7 A. His response was, "What, [REDACTED]? You think we  
8 [REDACTED] work for fucking free?"

9 Q. Are you -- are you inserting those words or are you --

10 A. That is an exact quote.

11 Q. Now, what else did you discuss on the conversation?

12 A. I asked -- I wanted my money. And he -- he said that I  
13 would get my money. That I would still get my money and the  
14 5.5 million, but it was going to take some time.

15 Q. Okay. Did Mr. Brandel deny that -- did he ever, at any  
16 point in the conversation, deny having your money?

17 A. Absolutely not.

18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]

# EXHIBIT 14

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEVADA

UNITED STATES OF AMERICA,	)	
	)	Case No. 2:13-cr-439-KJD-VCF
Plaintiff,	)	
	)	Las Vegas, Nevada
vs.	)	December 2, 2015
	)	9:06 a.m.
ANTHONY B. BRANDEL (1) and	)	
JAMES WARRAS (3),	)	
	)	Jury Trial, Day 2
Defendants.	)	
_____	)	


TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE KENT J. DAWSON  
UNITED STATES DISTRICT COURT JUDGE, AND A JURY

APPEARANCES:

For the Government:

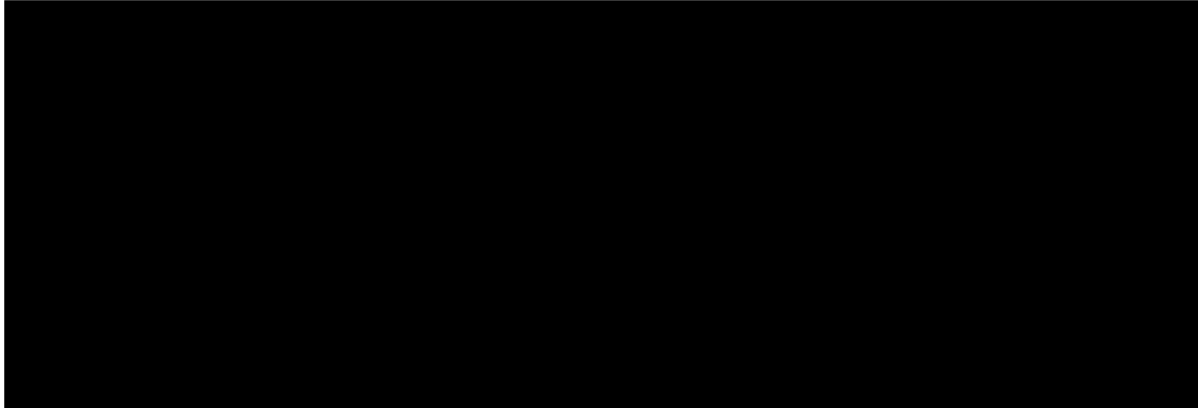
BRIAN R. YOUNG  
MELISSA AOYAGI  
Criminal Division, Fraud Section  
1400 New York Avenue, NW  
Washington, DC 20530

Appearances continued on Page 2.

Court Reporter: Katherine Eismann, CSR, CRR, RDR  


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Travis W. Fox - Direct



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TRAVIS W. FOX,

having been duly sworn, was examined and testified as follows:

COURTROOM ADMINISTRATOR: State your full name and spell it for the record.

THE WITNESS: Travis W. Fox, T-R-A-V-I-S W. F-O-X.

THE COURT: Go ahead.

MS. AOYAGI: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. YOUNG:

Q. Good afternoon, Mr. Fox.

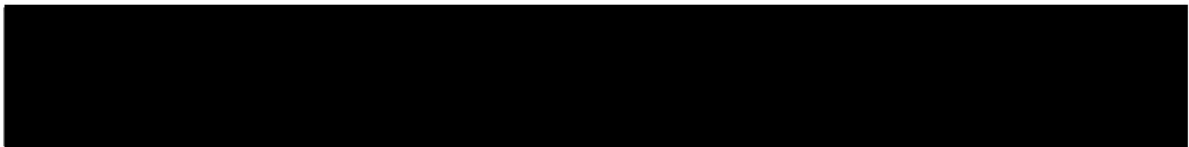
A. Ma'am.

Q. I want to start by asking you a few questions about your background, and then we'll talk a little bit about your interaction with Malom.

A. Yes, ma'am.

Q. Where do you currently live?

A. I live in Newport Beach, California.



Travis W. Fox - Direct

1 Q. Let me talk a little bit about the Malom Group. Have you  
2 heard of Malom?

3 A. I have.

4 Q. And did you first hear about Malom in the context of a  
5 deal that you'd previously entered into involving a company  
6 called Tomachii?

7 A. Yes, ma'am.

8 Q. Let's talk about that initial deal for just one moment.  
9 Could you just give us a brief description of what that deal  
10 was about?

11 A. Yes, ma'am. Tomachii had purportedly patented a  
12 technology on delivering context encrypted to theaters, which  
13 obviously we were interested in. We were approached that they  
14 had a third-party arrangement which was undisclosed at that  
15 time that --

16 THE REPORTER: Could you slow down?

17 THE WITNESS: Yes, ma'am. Sure. How slow would you  
18 like me to go?

19 THE REPORTER: Just breathe.

20 THE WITNESS: I was. That's normal for me. Sorry.

21 MS. AOYAGI: Usually it's me.

22 THE WITNESS: I thought I was going slow. Sorry.

23 THE COURT: She does 220 words a minute. You are  
24 doing 300.

25 THE WITNESS: Yes, sir. All right. We'll go down to

Travis W. Fox - Direct

1 third gear. Yes, ma'am.

2 So, at any rate, Tomachii had this purported  
3 technology. They had approached us, through a third party,  
4 that said that they had third-party funding, and they needed to  
5 show the banking fees capability or proof of funds. And that's  
6 what we were approached for.

7 BY MS. AOYAGI:

8 Q. Okay. So Tomachii had some software that they were  
9 developing; is that right?

10 A. Yes, ma'am.

11 Q. Okay. And the software related to, I guess, security with  
12 respect to films?

13 A. Yeah. Think of film that was encrypted, so that when it's  
14 delivered to the theater, the theft was reduced.

15 Q. Okay. And what was your proposed role in the deal?

16 A. We were just to supply the funds into a locked escrow, and  
17 if the deal consummated, we were to receive our funds back and  
18 a little bit of funds for everybody. And then if not, we got  
19 our money back.

20 Q. And how much were you to put into this deal?

21 A. \$1 million.

22 Q. And was there a time period during which the deal was  
23 supposed to fund?

24 A. 21 days, ma'am.

25 Q. Okay. And during that time period, was the money to be

Travis W. Fox - Direct

1 held in escrow?

2 A. Completely locked, sealed, signed and delivered.

3 Q. Okay. And if the deal didn't fund, what would happen?

4 A. Automatically returned back to Mind Fox Productions.

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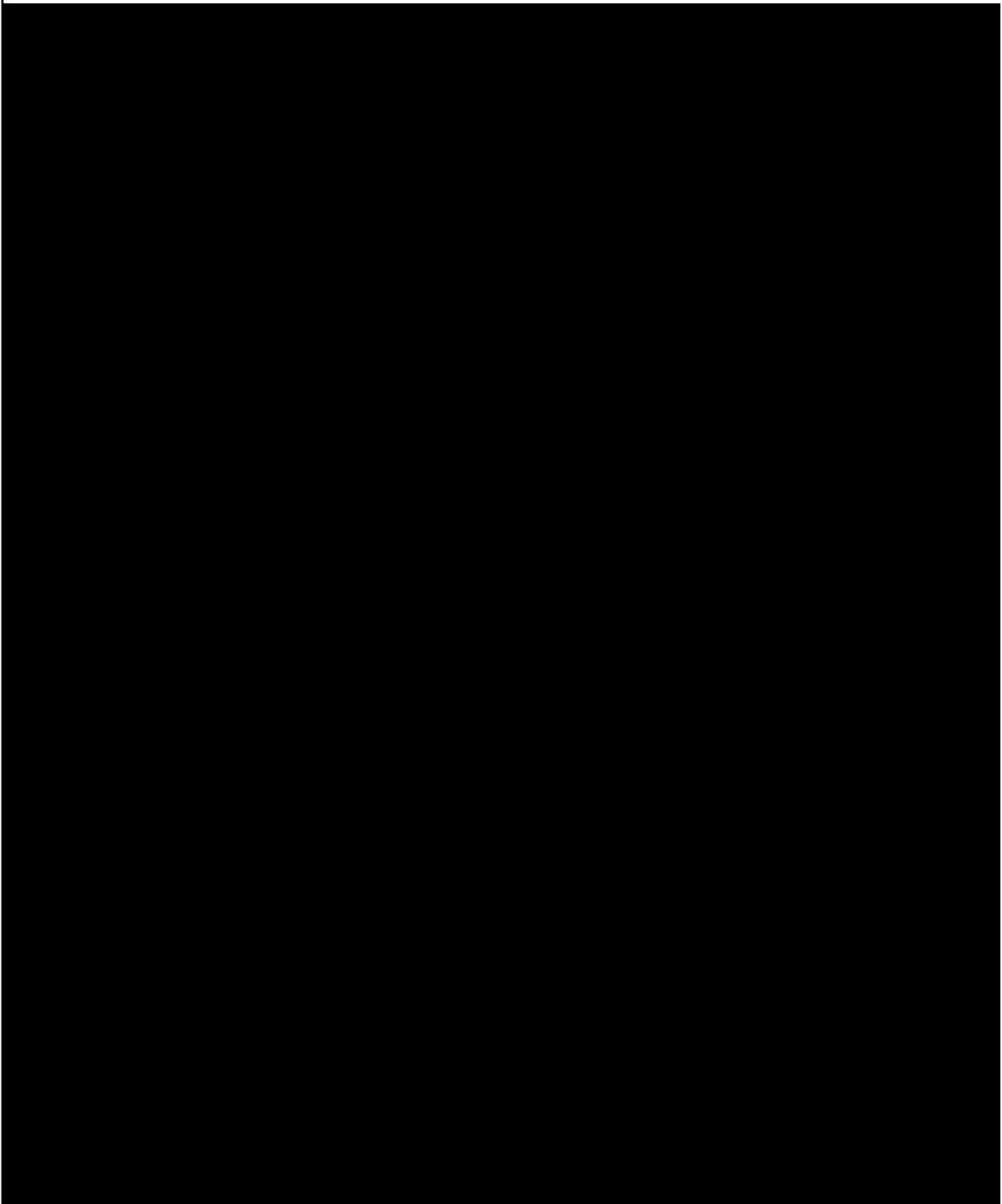
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Travis W. Fox - Direct

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24 Q. If we could take a look at Exhibit C, the notice of  
25 readiness to proceed, same document.



Travis W. Fox - Direct

1 Do you recall this document?

2 A. Forgive me. My eyes aren't that good. Can you blow that  
3 up just a little bit, please?

4 Yes, ma'am, I do.

5 Q. And can you explain to us what this document is?

6 A. Again, this is further representation that what's called a  
7 RWA or ready, willing, and able, that the Malom Group AG was  
8 ready, willing, and able to put up the hundred million dollars  
9 to their part of the transaction at any given moment, and that  
10 they were more than capable of doing so.

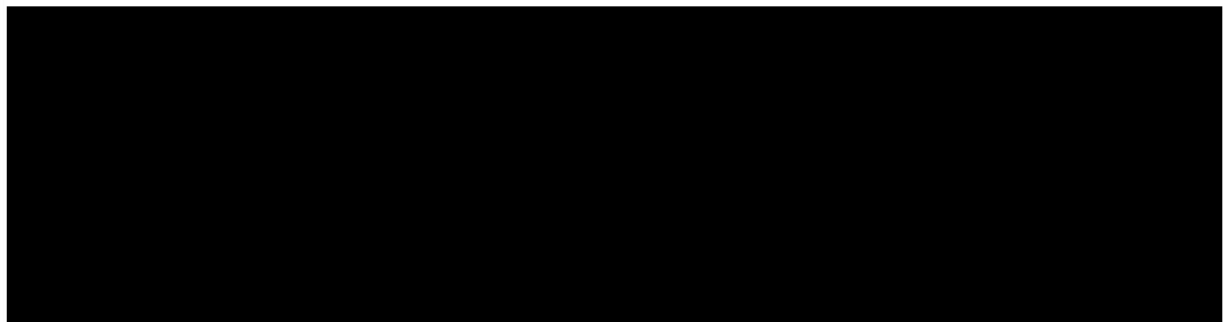
11 Q. And there's a reference at the top to Anthony Brandel.

12 A. Yes, ma'am.

13 Q. I think we saw him on the covering email as well. Do you  
14 know who that is?

15 A. Yes, ma'am. Mr. Brandel was the party that Mr. Vickers  
16 actually executed a second escrow, after the initial escrow of  
17 our funds were absconded, and then took those funds,  
18 Mr. Brandel, directly to the Malom Group. So we -- we assumed  
19 that he was a representative or in some dealing with them as a  
20 representative between him and KVH.

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Travis W. Fox - Direct

1 [REDACTED]

2 Q. Okay. I think you received this document a little bit  
3 later in time?

4 A. Yes, ma'am.

5 Q. So, in around August, did you have --

6 A. Yes, ma'am.

7 Q. -- conversations with him?

8 Could you tell us a little bit about those  
9 conversations?

10 A. Conversations as far as verbal with him were minimal.  
11 Most of my communication with Mr. Brandel was by way of email.  
12 As you can obviously tell by these documents, the agreement  
13 between KVH and Mr. Brandel, and ultimately Malom Group, was  
14 significantly advanced, by the time we figured out where our  
15 funds were and where we were in the deal.

16 He was just someone that we had ultimately figured  
17 out that had benefited from our funds moving and was somehow  
18 involved with Malom Group. So that was about the extent of my  
19 involvement at that point.

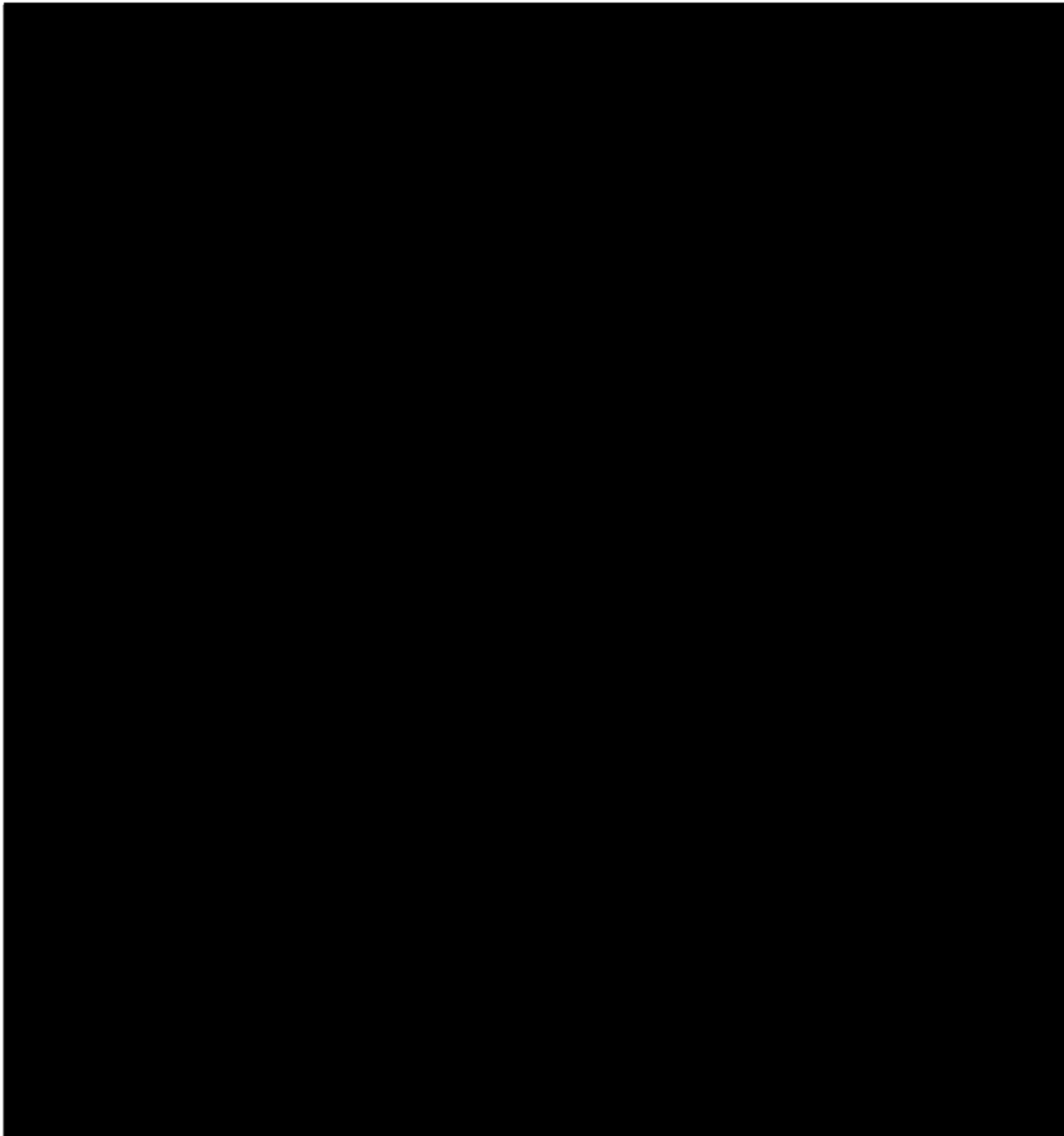
20 Q. Okay. And how was he involved? Was he associated with  
21 the escrow?

22 A. He was a benefit of the second escrow. Mr. Brandel and  
23 Mr. Vickers, when our funds -- the first escrow, the million  
24 dollars was released by Miss Hardstone, Mr. Vickers and  
25 Mr. Brandel immediately entered into a second escrow at the --

Travis W. Fox - Direct

1 at Miss Hardstone's escrow company for 850,000. So, \$150,000  
2 was disbursed to various individuals.

3 That 850,000, between Mr. Vickers and Mr. Brandel,  
4 was immediately vacated, and then funds were disbursed. To my  
5 knowledge, approximately \$650,000 went directly to Malom.



# EXHIBIT 15

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEVADA

UNITED STATES OF AMERICA,	)	
	)	Case No. 2:13-cr-439-KJD-VCF
Plaintiff,	)	
	)	Las Vegas, Nevada
vs.	)	December 2, 2015
	)	9:06 a.m.
ANTHONY B. BRANDEL (1) and	)	
JAMES WARRAS (3),	)	
	)	Jury Trial, Day 2
Defendants.	)	
_____	)	


TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE KENT J. DAWSON  
UNITED STATES DISTRICT COURT JUDGE, AND A JURY

APPEARANCES:

For the Government:

BRIAN R. YOUNG  
MELISSA AOYAGI  
Criminal Division, Fraud Section  
1400 New York Avenue, NW  
Washington, DC 20530

Appearances continued on Page 2.

Court Reporter: Katherine Eismann, CSR, CRR, RDR  


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William Gianopoulos - Direct

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WILLIAM GIANOPOULOS,

having been duly sworn, was examined and testified as follows:

COURTROOM ADMINISTRATOR: State your full name and spell it for the record.

THE WITNESS: My name is William Gianopoulos. Just the last name?

MR. YOUNG: I'm sorry. Go ahead.

THE WITNESS: G-I-A-N-O-P-O-U-L-O-S.

THE COURT: Go ahead.

MR. YOUNG: Thank you, Judge.

DIRECT EXAMINATION

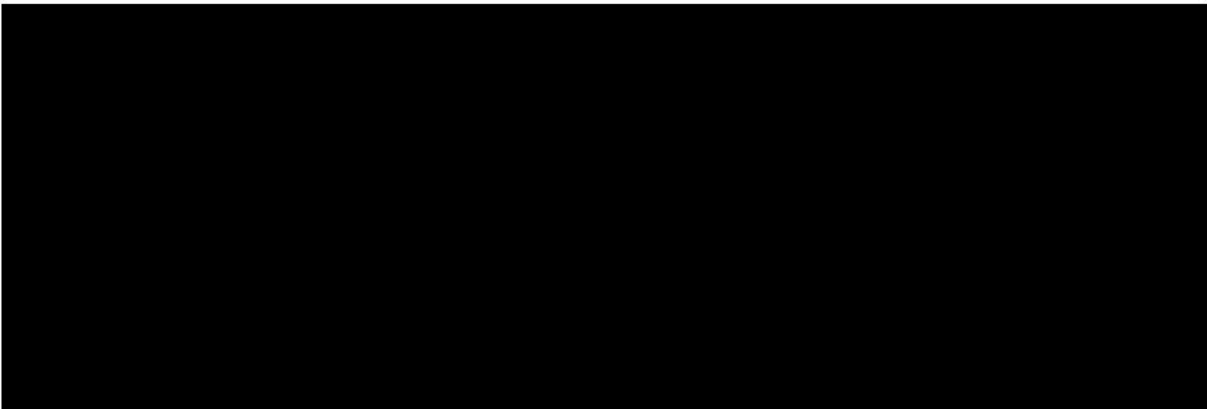
BY MR. YOUNG:

Q. Good afternoon, Mr. Gianopoulos.

A. Good afternoon.

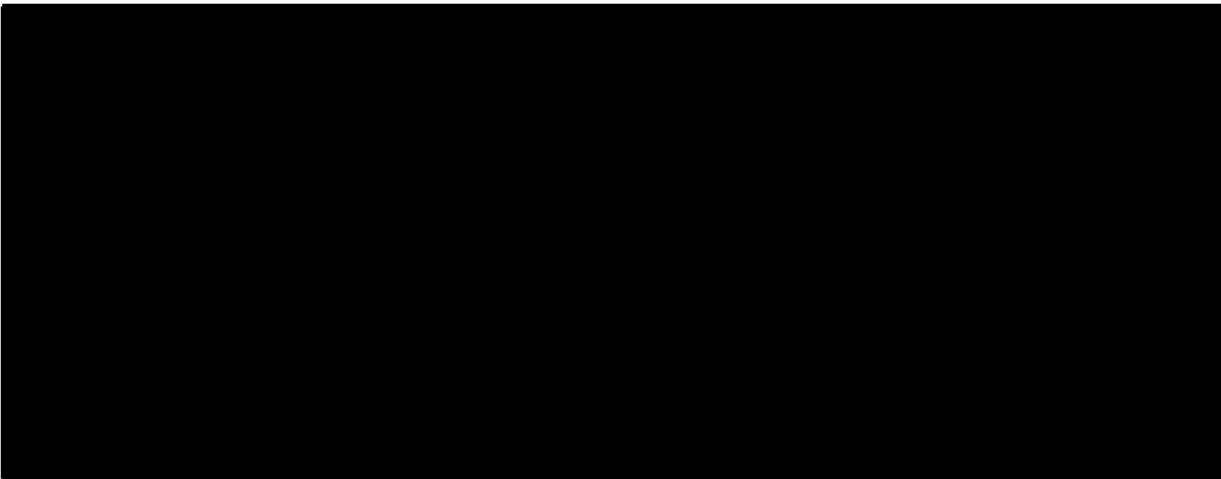
Q. Can you tell the jury where you live?

A. Lawrence, Massachusetts.



William Gianopoulos - Direct

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Q. Yeah. Did you have a meeting, in March of 2011, with people that identified themselves as being associated with the Malom Group?

A. Yes. They came up to appear in bankruptcy court.

Q. Okay.

A. The two gentlemen that I remember being in court -- it was a while ago, but I believe it was Allen Smith, who was supposed to be their attorney, and James Micelli.

Q. And maybe I should have said phone calls. Do you remember having phone calls?

A. Multiple phone calls, yes.

Q. Okay. When did the phone calls, between you and people from Malom Group, begin?

A. I would have said it would have been March, April of 2011.

Q. And for how long did they continue?

A. Oh, they continued for -- actually, for quite some time. For at least two years. But certainly up until the time the funding agreement was -- was put together.

William Gianopoulos - Direct

1 Q. Now, do you remember hearing the name Anthony Brandel?

2 A. Yes.

3 Q. And was he somebody that was on these phone calls?

4 A. Some of the phone calls, yes.

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William Gianopoulos - Direct

1 receive a loan from the Malom Group?

2 A. Yes.

3 Q. And can you tell us what -- what did these people tell you  
4 on the phone calls?

5 A. The way it was explained to us was that they would  
6 actually securitize and sell corporate bonds on the Western --  
7 in the Western Exchange, so on the European Exchange. And so  
8 they -- they basically would underwrite corporate bonds for us  
9 and then sell those bonds -- they said with parties that they,  
10 you know, had -- had basically already had interest with.

11 Q. Okay.

12 A. So the people that they already had relationships with,  
13 and I -- I don't want to jump ahead.

14 Q. No, that's fine. So what was supposed to happen from the  
15 money that Malom Group was going to get from selling these  
16 bonds?

17 A. The money that was received from the sale of the bonds was  
18 supposed to be money that was used to fund what it would take  
19 to complete the building for USA Springs, buy the machineries,  
20 and basically put us in business.

21 Q. During the phone conversations, did you gain any  
22 understanding of the amount of money that was at the disposal  
23 of the Malom Group?

24 A. Well, as far as -- as far as their wealth?

25 Q. Sure.

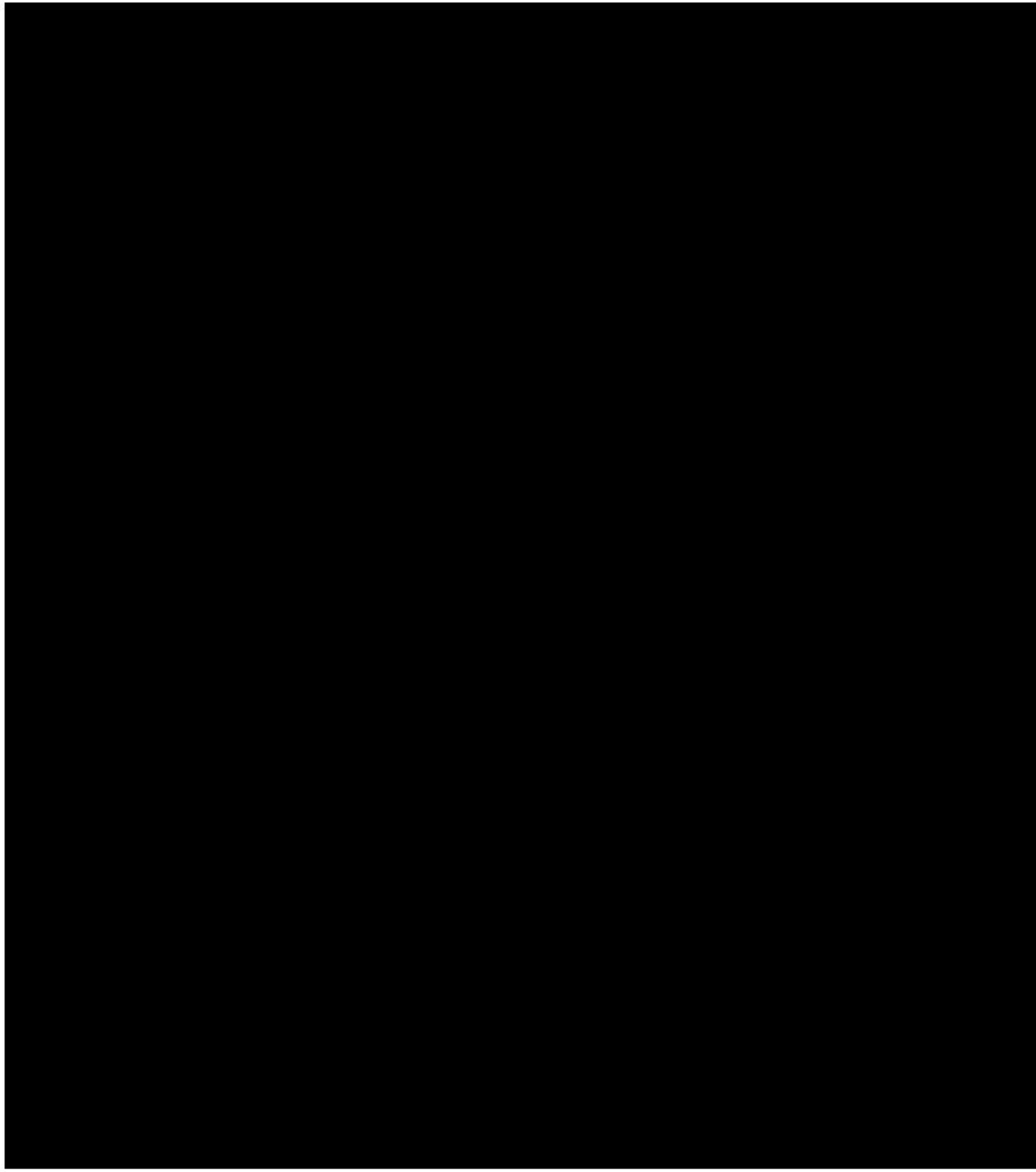
William Gianopoulos - Direct

1 A. Is that what you're asking?

2 Q. Yeah.

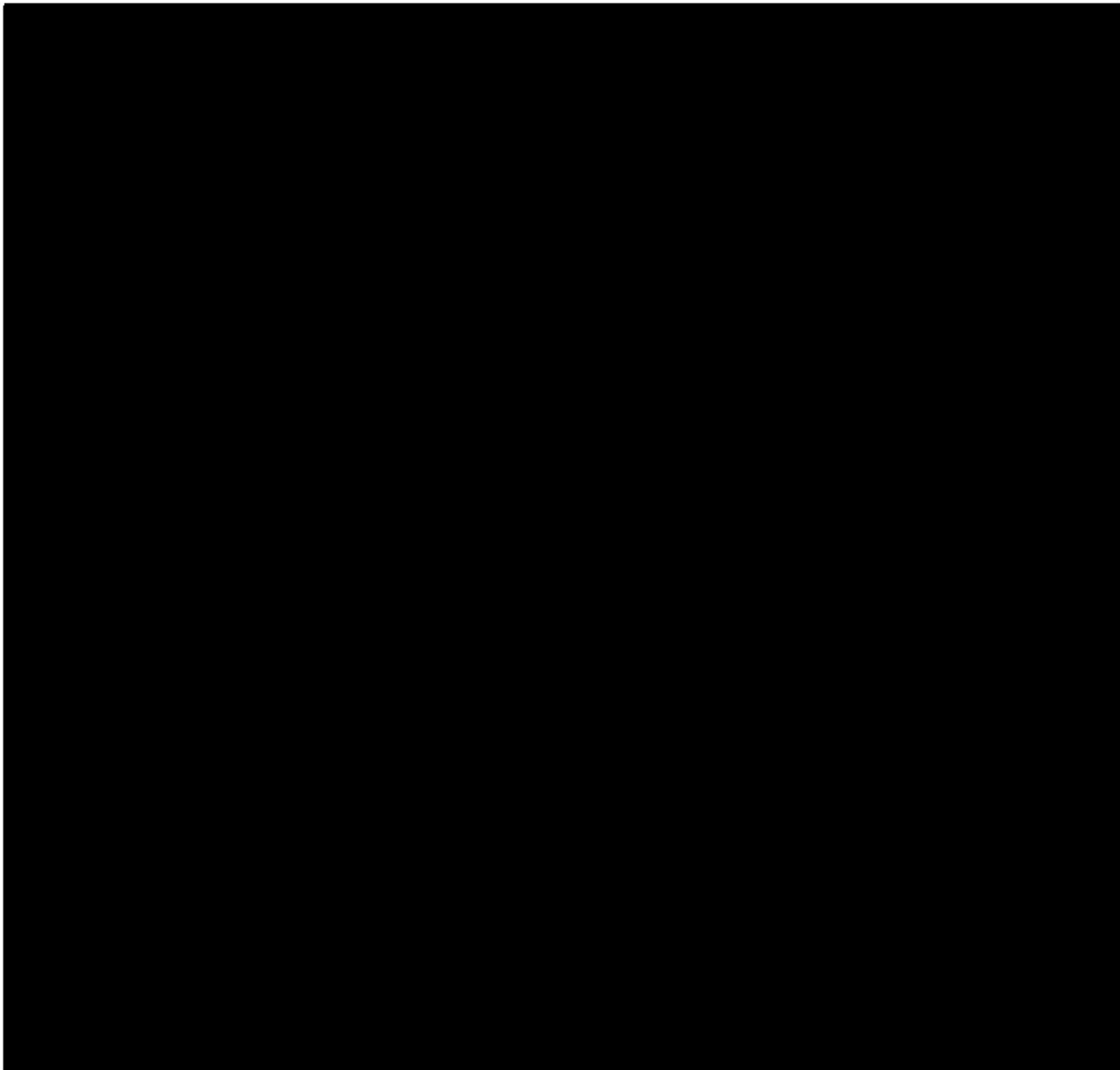
3 A. We were told multiple times that Malom had hundreds of  
4 millions of dollars.

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William Gianopoulos - Direct

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Q. I'm going to show you what's been marked as Exhibit 1107. And do you recognize the bottom as an email from Mr. Brandel to you, "Subject, moving forward"?

A. Right now, all I see is from Anthony Brandel.

Q. I'm sorry. To usasprings@comcast.net.

A. Yes.

MR. YOUNG: Okay. Move the admission of 1107,

William Gianopoulos - Direct

1 please.

2 MR. SMITH: No objection.

3 MR. VALLADARES: No objection, Your Honor.

4 THE COURT: Received.

5 (Exhibit 1107 admitted.)

6 BY MR. YOUNG:

7 Q. Let's back out, please. So that's -- you could see the  
8 email on the bottom there; right? The from and the to?

9 And let's go to where it bleeds over on the second  
10 page. And this is from Mr. Brandel; correct?

11 A. Yes.

12 Q. "Please have Billy raise the 1.2MM. I have gone beyond  
13 the point of no return with Malom Group in keeping this alive,  
14 and we need to make it happen."

15 What's being discussed here?

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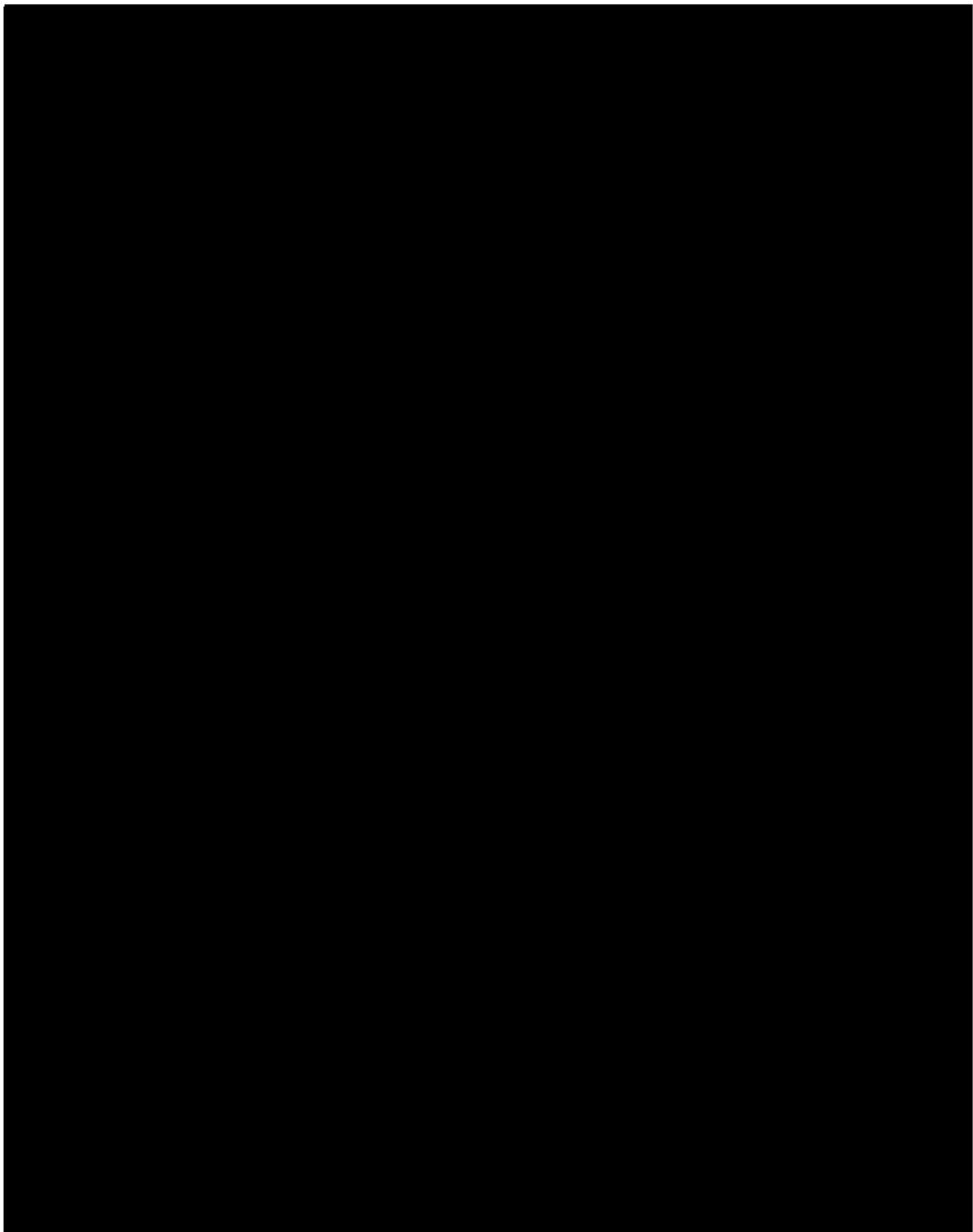
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William Gianopoulos - Direct

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24 Q. And around this time period, did you have a telephone  
25 conversation with Mr. Brandel about your contribution of the

William Gianopoulos - Direct

1 \$1.2 million?

2 A. Yes. I mean, we -- we never intended to be the investors.

3 Q. Sure.

4 A. The offer was really made just to try to help the Canadian  
5 group move forward and continue. What had happened was I got a  
6 call from Tony Brandel saying that, you know, we actually think  
7 it would work better if you put up the money. We can get -- we  
8 can make it work with the 1.2. It will give us enough to  
9 get -- to get the bonds going, to get them rolling, and to get  
10 a position on the European Exchange.

11 And it would be much, much more money pumped into the  
12 company. Because originally, with the Canadian group, if they  
13 put up 2.4, they were going to get double that back as a  
14 success fee. So this was a much -- this was much less coming  
15 out of the funds that were going to fund USA Springs. So he  
16 had asked me, "Why don't you just do -- why don't you just do  
17 it on your own?"

18 Q. Okay.

19 A. "And we'll leave the Canadians out." At first, of course,  
20 I said -- first I said, "No," because I couldn't come up -- I  
21 could -- wasn't even sure I could come up with 1.2, but I  
22 definitely couldn't come up with 2.4.

23 And then he said they thought they could make it work  
24 with the 1.2. So that's -- that's what that particular email  
25 is in reference to.

William Gianopoulos - Direct

1 Q. All right. Fair enough. So let's unpack that. How did  
2 we get from the \$2.4 million figure, which was talked about in  
3 the earlier emails, down to the 1.2, which you ultimately  
4 contributed?

5 A. Well, the way that happened was that previous email that  
6 you read --

7 Q. Uh-huh.

8 A. -- was saying that if the Canadians would just put up the  
9 1.2, to start the process of putting out these corporate bonds,  
10 then in 50 days, they would put -- they would move the money  
11 in. So my original offer was to help back that first 1.2 to  
12 that Canadian group.

13 So, that -- how we got to the 1.2 was, in my  
14 conversation with Tony Brandel, he said, "We can utilize the  
15 1.2 and get this offering out there. And if we need additional  
16 moneys, they will come out of the closing once -- you know,  
17 Malom will cover the rest of the cost, and they will come out  
18 of the closing once -- once the bonds had been sold."

19 Q. Did you have any talks with Mr. Brandel about whether you  
20 would receive any sort of return or interest if you contributed  
21 the 1.2 million?

22 A. I didn't have a conversation with -- with him about that.

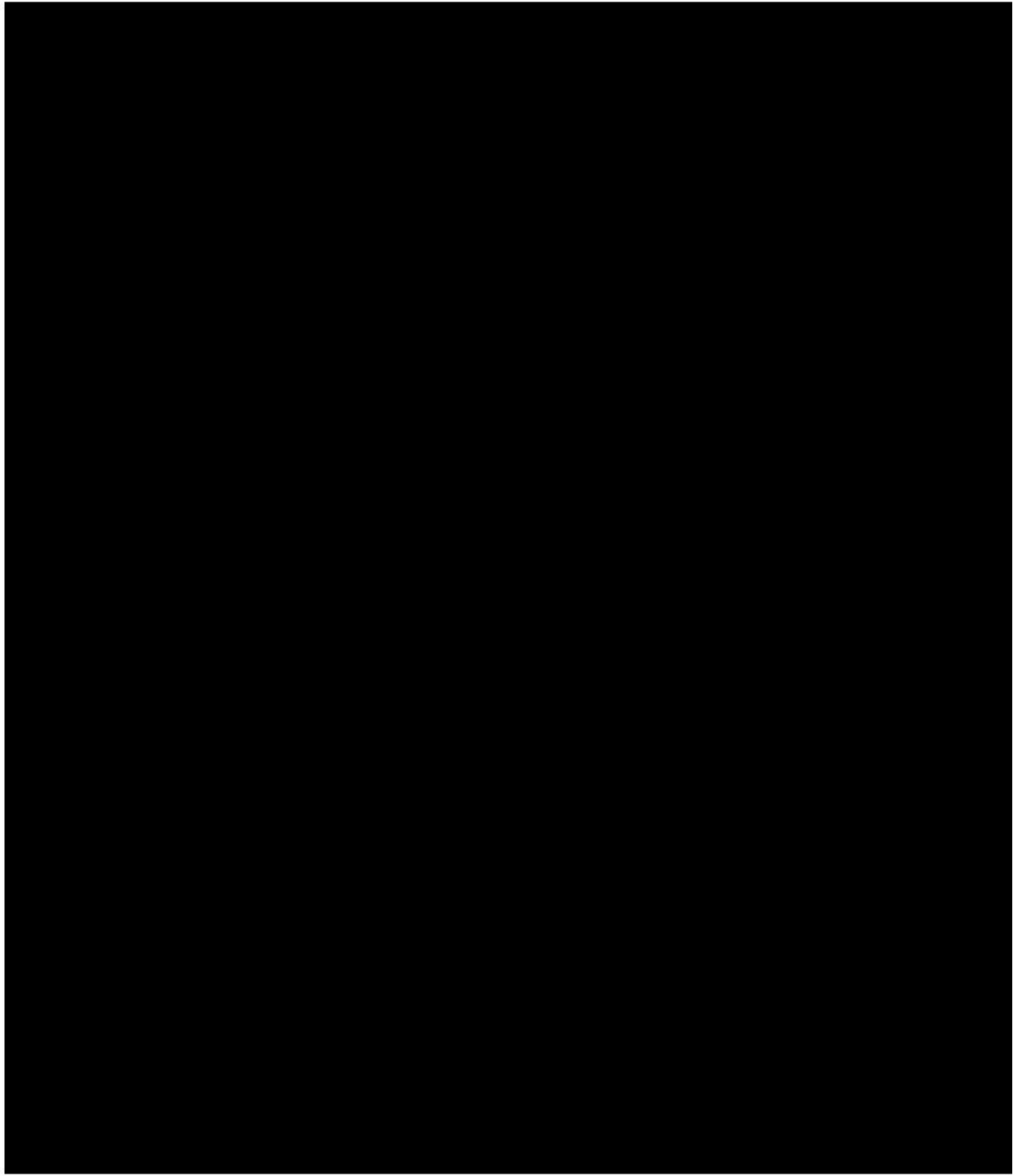
23 Q. Did you have an understanding about what you would  
24 receive?

25 A. Tony said, "You and Cindi will come out real well, too."

William Gianopoulos - Direct

1 You will still get double the amount back." And I said, "No, I  
2 wasn't interested in getting double the investment back." I  
3 said, "I will let Francesco and Alan and everybody else decide  
4 on what that should be."

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# EXHIBIT 16

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEVADA

UNITED STATES OF AMERICA,	)	
	)	Case No. 2:13-cr-439-KJD-VCF
Plaintiff,	)	
	)	Las Vegas, Nevada
vs.	)	December 3, 2015
	)	9:15 a.m.
ANTHONY B. BRANDEL (1) and	)	
JAMES WARRAS (3),	)	
	)	Jury Trial, Day 3
Defendants.	)	
_____	)	


TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE KENT J. DAWSON  
UNITED STATES DISTRICT COURT JUDGE, AND A JURY

APPEARANCES:

For the Government:

BRIAN R. YOUNG  
MELISSA AOYAGI  
Criminal Division, Fraud Section  
1400 New York Avenue, NW  
Washington, DC 20530

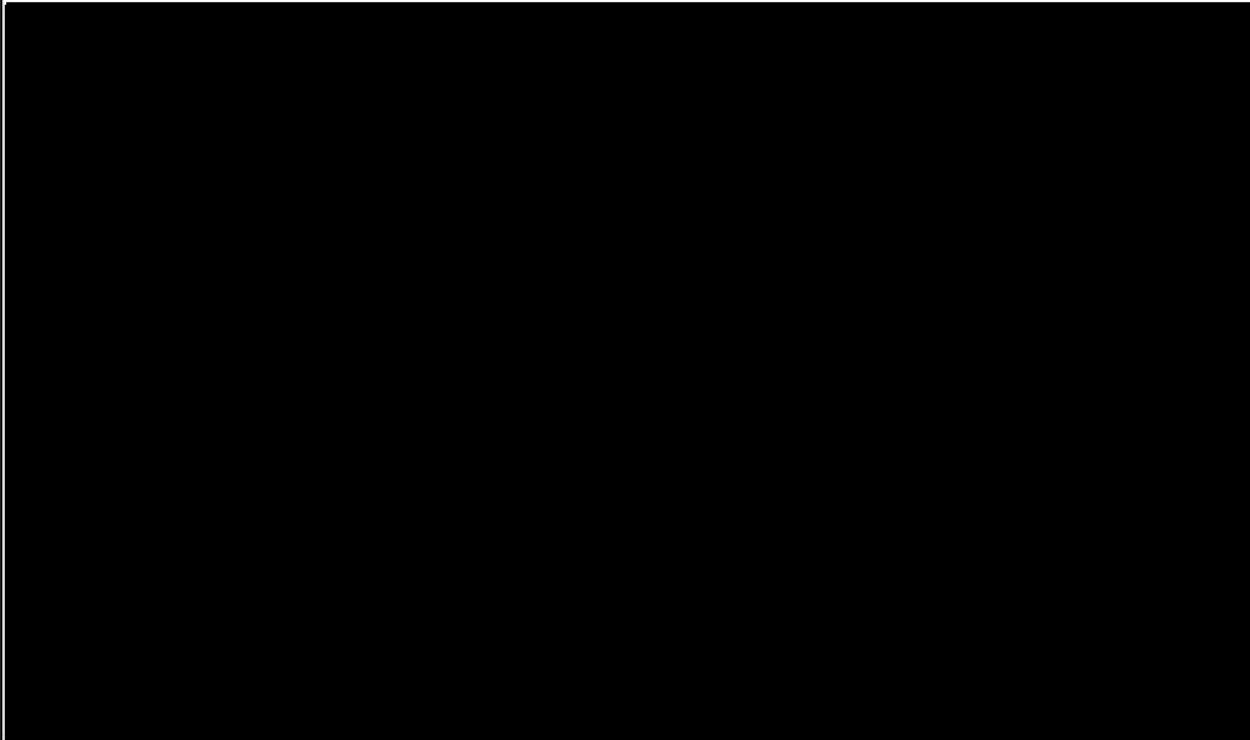
Appearances continued on Page 2.

Court Reporter: Katherine Eismann, CSR, CRR, RDR  


Proceedings reported by machine shorthand, transcript produced  
by computer-aided transcription.

Edward Glazebrook - Direct

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EDWARD GLAZEBROOK,

having been duly sworn, was examined and testified as follows:

COURTROOM ADMINISTRATOR: State your full name and spell it for the record.

THE WITNESS: Edward Glazebrook, G-L-A-Z-E-B-R-O-O-K.

THE COURT: Go ahead.

MS. AOYAGI: Thank you, Your Honor.

DIRECT EXAMINATION

BY MS. AOYAGI:

Q. Good afternoon, Mr. Glazebrook.

A. Good afternoon.

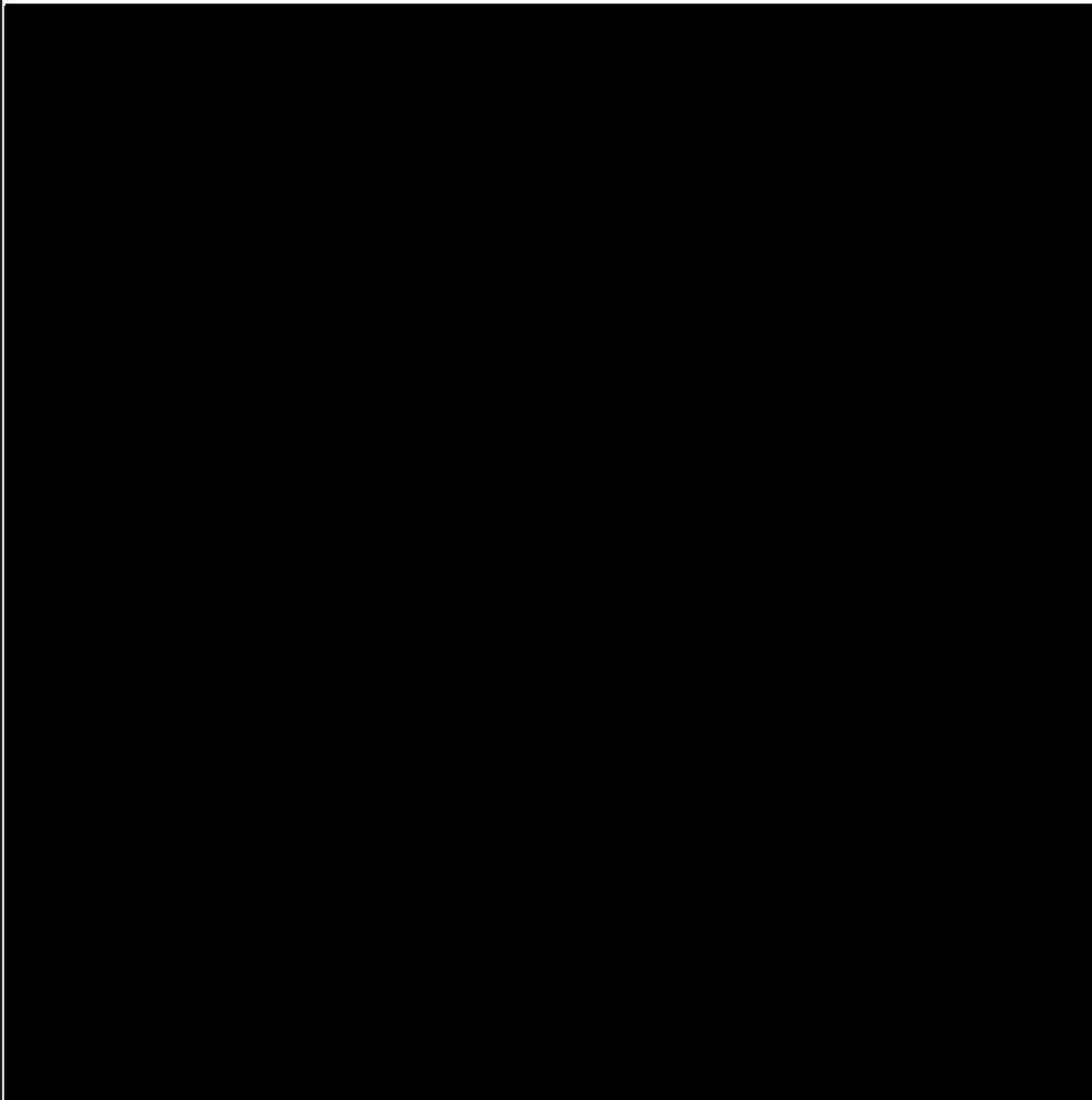
Q. Could you tell the jury where you live?

A. Fresno, California.



Edward Glazebrook - Direct

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20 Q. And have you heard of the Malom Group?

21 A. Yes.

22 Q. And do you recall roughly when you first heard about  
23 Malom?

24 A. We were working with kind of a broker out of Las Vegas,  
25 James Erwin. And he had mentioned the name and product, and

Edward Glazebrook - Direct

1 that they do structured finance.

2 Q. And was that around 2010?

3 A. 2010.

4 Q. And who is James Erwin?

5 A. He has a company. They were doing -- what he would do  
6 basically is connect people that had the funds, that needed the  
7 funds, and was kind of a broker in between, and would do joint  
8 ventures to make -- capitalize on that relationship.

9 Q. So, at that time, did you pursue an investment opportunity  
10 involving Malom?

11 A. No. No.

12 Q. And why not?

13 A. At that time, we didn't have anything. It was just  
14 discussions that we had with James, and we were doing other  
15 things.

16 Q. Did you reconsider investing about a year later?

17 A. We were -- yes. We were approached.

18 Q. Okay.

19 A. My partner Tony had made contact with a Sean Finn.

20 Q. Uh-huh.

21 A. And discussed the opportunities with him. And we had  
22 another partner, John Ewing, who had the funds, basically was  
23 looking to place them. And Sean introduced us at that time.

24 He had an opportunity with the Malom Group, and  
25 that's -- we were -- we had a conference call. We weren't

Edward Glazebrook - Direct

1 aware of what it was until the introduction. And that's when  
2 we met -- or, on the phone, we were talking to Joseph Micelli  
3 and Anthony Brandel, and they were presenting the opportunity  
4 that the Malom Group had.

5 Q. Okay. So you had -- you mentioned a Mr. John Ewing; is  
6 that right?

7 A. Correct.

8 Q. And was he an investor in your company?

9 A. He's the investor. Yes.

10 Q. So he had funds that he was looking to invest?

11 A. \$500,000.

12 Q. Okay. And so Mr. Finn connected you to, I think you said,  
13 Mr. Brandel and Mr. Micelli?

14 A. Correct.

15 Q. So tell me what happened or -- tell me what happened on  
16 the call.

17 A. Basically, they presented an opportunity regarding -- they  
18 had already underwritten -- partially underwritten a private  
19 memorandum offering for International Breeze.

20 Q. Is that --

21 A. IBI.

22 Q. Is that Island Breeze?

23 A. Excuse me. Island Breeze International. And they were  
24 a -- they were a company publicly traded, I recall, out of the  
25 East Coast that needed some funding for a ship. They were

Edward Glazebrook - Direct

1 going to retrofit it and make it a day cruise for a casino,  
2 floating casino.

3 Q. And who was Tony Brandel?

4 A. He was introduced to us at the time. He had a company  
5 called M.Y. Consultants that had a contractual relationship  
6 with the Malom Group and basically represented them, I would  
7 assume.

8 Q. Okay. And who was Joseph Micelli?

9 A. He actually was presented to us as working for the Malom  
10 Group.

11 Q. And what did he do for the Malom Group?

12 A. I know he prepared the documentation, the joint venture  
13 agreements and any of the legal documents that we signed.

14 Q. Okay. And you mentioned that both Mr. Micelli and  
15 Mr. Brandel were on the call.

16 A. Correct.

17 Q. Were there others on the call?

18 A. At the first initial one, Sean Finn, but he didn't talk  
19 much. He just made the introduction, and we listened and asked  
20 questions and --

21 Q. Okay. And did both Mr. Brandel and Mr. Micelli present  
22 this investment opportunity to you?

23 A. Yes.

24 Q. Okay. And did you have further calls about this  
25 investment opportunity?

Edward Glazebrook - Direct

1 A. Yes. There were at least a half dozen before we made the  
2 decision to move forward.

3 Q. And who was on those calls?

4 A. Tony Brandel and Anthony -- or, excuse me. Anthony  
5 Brandel and Joseph Micelli.

6 Q. Okay. And you mentioned that you had an investor who was  
7 looking -- who had \$500,000 to invest. So tell me a little bit  
8 about how this would work with respect to Malom.

9 A. What they were offering, basically, is for the cost of  
10 underwriting, attorney fees, their portion, their finder's fee,  
11 they would complete the underwriting of the offer.

12 And they had said that they already had almost  
13 finished it, so that they wouldn't need the full 90 days, but  
14 just in case. Within 90 days, the 500,000 would cover those  
15 costs, and they had the subscriptions almost presold through  
16 the Börse Exchange in Europe. So they know they had an  
17 interest for the -- for the project, and that it shouldn't be  
18 difficult to fulfill it and fund within that 90 days.

19 Q. Okay. And what was Malom's role in this project as  
20 explained to you by Mr. Micelli and Mr. Brandel?

21 A. They were actually underwriting it, putting it together,  
22 and making the offer to the investors to raise the funds  
23 necessary.

24 Q. And what did you hear about Malom? What did you know  
25 about Malom Group? Who told you that?



Edward Glazebrook - Direct

1 A. Well, the year before, I mean, when -- James told us about  
2 him. And we also -- my partner and I had made a trip. My  
3 partner met with Martin Schlaepfer. I wasn't aware of it at  
4 the time.

5 But, so, he's always been presented as somebody that  
6 was a billionaire, had money, had two successful companies, one  
7 in insurance and one in structured financing. And they also  
8 handled investors' funds as well, and they had clients.

9 Q. And how did you know or what's the basis for your  
10 understanding of what Malom is and their capabilities?

11 A. Early on, they -- they discussed it on the phone and then  
12 provided us with documentation showing their closed  
13 transactions and the history, their resume and their background  
14 and their experience.

15 Q. Okay. And when you say they --

16 A. Malom.

17 Q. -- discussed it on the phone, who are you referring to?

18 A. Hans-Jurg Lips and Martin Schlaepfer.

19 Q. And when you said a moment ago that they conveyed that  
20 information to you on the phone --

21 A. That was --

22 Q. -- who conveyed that information to you?

23 A. At the time, that was Joseph Micelli and Anthony Brandel  
24 on the phone.

25 Q. Okay. And did they also indicate to you Malom's financial

Edward Glazebrook - Direct

1 capabilities?

2 A. Yes.

3 Q. And what did they say on that?

4 A. On more than one occasion, that, you know, they had  
5 hundreds of millions of dollars in various accounts, and that  
6 they can more than -- if this didn't go through, they would be  
7 able to compensate us or refund us the 500,000.

8 Q. Okay. And did you decide to proceed with the investment  
9 opportunity that they pitched to you?

10 A. After reviewing all the documentation, taking into  
11 consideration everything, yes.

12 Q. And so what did you do? Did you wire the money somewhere?

13 A. We wired the funds to Commercial Escrow, and that was a  
14 Toni Hardstone.

15 Q. And how did you know where to wire the money?

16 A. It was within the documents that we signed, the joint  
17 escrow instructions.

18 Q. And could your money be released from escrow without your  
19 authorization?

20 A. No.

21 Q. And where did you get that understanding?

22 A. Within the document itself.

23 Q. And did anyone tell you that? Explain that to you?

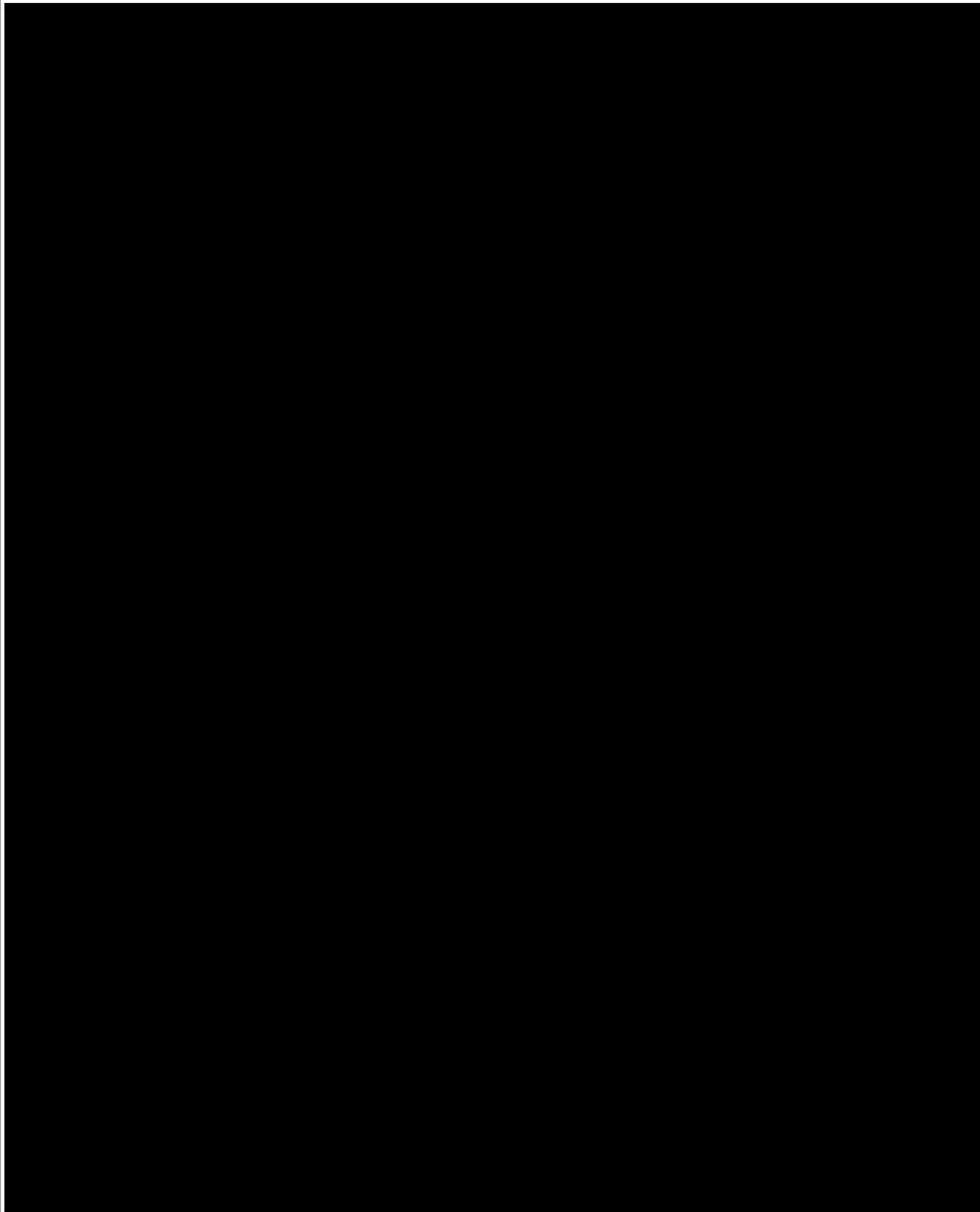
24 A. Yeah. We -- we discussed it.

25 Q. And with whom did you discuss that?

Edward Glazebrook - Direct

1 A. That would be with -- both with Tony Brandel and Joseph  
2 Micelli.

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# EXHIBIT 17

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEVADA

UNITED STATES OF AMERICA,	)	
	)	Case No. 2:13-cr-439-KJD-VCF
Plaintiff,	)	
	)	Las Vegas, Nevada
vs.	)	December 2, 2015
	)	9:06 a.m.
ANTHONY B. BRANDEL (1) and	)	
JAMES WARRAS (3),	)	
	)	Jury Trial, Day 2
Defendants.	)	
_____	)	


TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE KENT J. DAWSON  
UNITED STATES DISTRICT COURT JUDGE, AND A JURY

APPEARANCES:

For the Government:

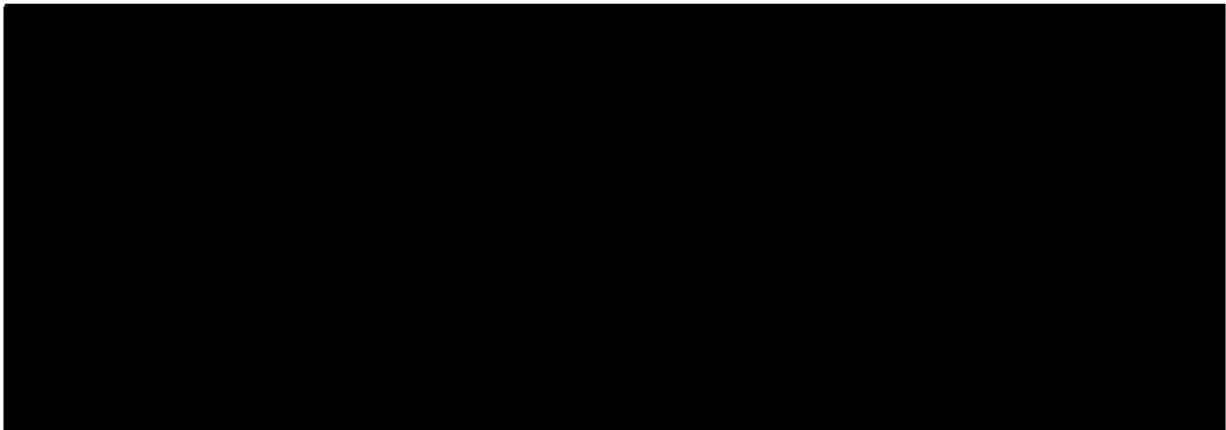
BRIAN R. YOUNG  
MELISSA AOYAGI  
Criminal Division, Fraud Section  
1400 New York Avenue, NW  
Washington, DC 20530

Appearances continued on Page 2.

Court Reporter: Katherine Eismann, CSR, CRR, RDR  


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MICHAEL KOOYMAN,

having been duly sworn, was examined and testified as follows:

COURTROOM ADMINISTRATOR: State your full name and spell it for the record.

THE WITNESS: Michael Kooyman. K-O-O-Y-M-A-N.

THE COURT: Go ahead, counsel.

MR. YOUNG: Thank you, Judge.

DIRECT EXAMINATION

BY MR. YOUNG:

Q. Good morning, Mr. Kooyman.

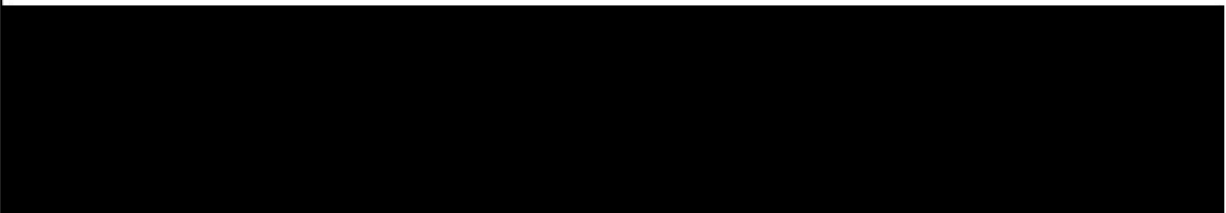
A. Good morning.

Q. Can you tell the jury where you live, please?

A. Say that again?

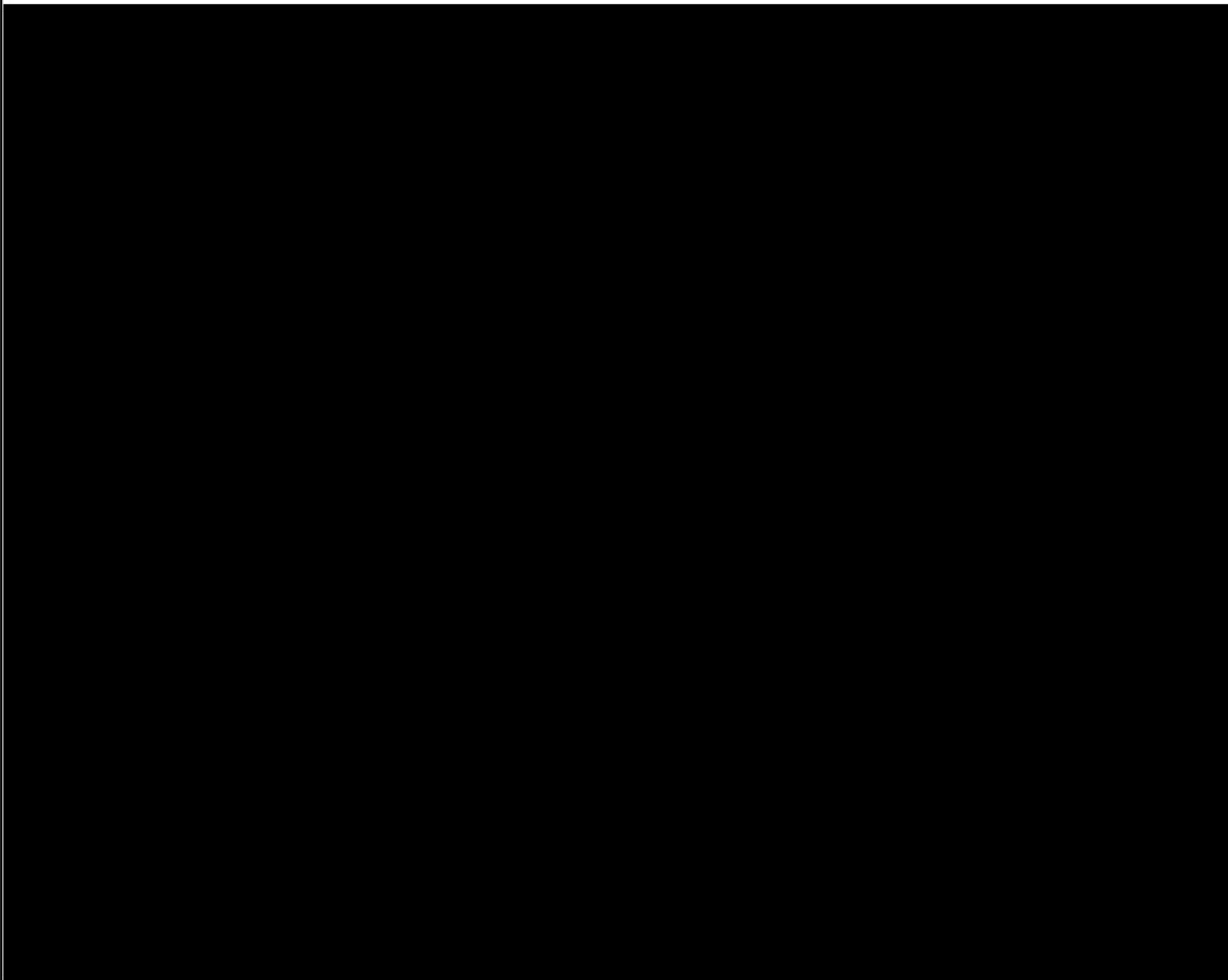
Q. Can you tell the jury where you live, please?

A. I live in Pomona, California.



Michael Kooyman - Direct

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Q. Do you know somebody named Brandy Schaefer and Cheryl Robinson?

A. I know them by phone. I do.

Q. How did you get in touch with Miss Schaefer and Miss Robinson?

A. I was introduced by a -- a broker by the name of Bill, introducing me to a potential investment opportunity.

Q. And when you -- did you speak to these two people on the phone?

A. Yeah, we had a conference call.

Michael Kooyman - Direct

1 Q. And when you spoke to them on the phone, what were you  
2 trying to achieve?

3 A. I was pitched -- I guess that's the term -- or introduced  
4 to a very lucrative investment opportunity, and -- and that was  
5 the -- the summary of the call.

6 Q. Could you tell us about the sort of numbers that were  
7 talked about on the phone call? Well, did you have to  
8 contribute money, and what were you supposed to receive in  
9 return?

10 A. Yeah. It was a 200,000 -- it was conveyed to me. It was  
11 a \$200,000 investment and it would return 5.5 million in 7 to  
12 10 to maybe, worst case, 14 days.

13 Q. Pretty good return on the investment they were describing.

14 A. Yeah.

15 Q. So, after you had that conversation with Miss Schaefer and  
16 Miss Robinson, did you have any -- did you receive any  
17 documents from somebody named Tony Brandel?

18 A. Yeah. Because, you know, that significant amount of  
19 money, then I -- obviously, I needed to see, you know, what  
20 the -- that there was some paper behind it. So I received a  
21 packet.

22 Q. And who did you understand Mr. Brandel to be?

23 A. I think he was the lead, at the time, in representing  
24 the -- what was backing this investment. That was kind of my  
25 understanding. I hadn't talked to him. I don't think I had



Michael Kooyman - Direct

1 talked to him yet until I got the documents and made the  
2 investment.

3 Q. Do you have an understanding of where Mr. Brandel was  
4 located physically?

5 A. I believe it was Nevada.

6 Q. Was that here in Las Vegas?

7 A. I want to say yeah, but I -- I can't -- I can't guarantee  
8 that. But I think that's right.

9 Q. Now, when you received the paperwork from Mr. Brandel, at  
10 that point, had you sent in your money according to the deal  
11 that Miss Schaefer had explained to you?

12 A. I think there were two documents. One was the -- the --  
13 kind of like the memorandum of understanding that kind of laid  
14 out the -- the backing of the deal, and then there was a  
15 separate agreement, like, was an escrow agreement.

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Michael Kooyman - Direct

1 Q. April 19th, 2010.

2 A. Yes.

3 Q. Now, do you remember where you got this document from?  
4 Who provided it to you?

5 A. It was either emailed directly from Brandel or it was  
6 forwarded by the brokers, Cheryl and Brandy from Tony Brandel.

7 Q. Let's go to Page 9 of the document, please.

8 Do you remember seeing something called a  
9 non-solicitation statement here?

10 A. I do.

11 Q. And do you see there's a signature at the bottom?

12 A. I do.

13 Q. And signed by Martin Schlaepfer?

14 A. Yes.

15 Q. Who do you understand Mr. Schlaepfer to be?

16 A. He was the billionaire backing this investment.

17 Q. And how did you understand -- who described Mr. Schlaepfer  
18 to you? How did you understand who he was?

19 A. You know, I was never really given a detailed description  
20 before I invested. I just received this document, and I based,  
21 you know, a hundred percent of my investment on this -- this  
22 packet, which, if -- you know, looking back now, it wasn't the  
23 right thing to do. There wasn't enough due diligence done, but  
24 I just believed this document was factual and it was true.

25 Q. Do you see there's the highlighted portion in the middle?

Michael Kooyman - Direct

1 A. I do.

2 Q. "I hereby" -- and this is Mr. Schlaepfer making  
3 representations that he's not associated with any sort of  
4 central intelligence agency, or the FBI, or anything like that.  
5 Do you know how this language came about or what --

6 A. No, but that's -- you know, a lot of people just use that  
7 standard language.

8 Q. Okay.

9 A. So I probably didn't pay attention to that.

10 Q. Let's go to page 11, please. Do you remember seeing this  
11 client information sheet?

12 A. I did.

13 Q. And also signed by Mr. Schlaepfer?

14 A. It was.

15 Q. And do you see there's representations about money being  
16 at some place called Falcon Bank?

17 A. Yeah, that -- that was a pretty large piece of my  
18 decision, the size of this bank statement that was included in  
19 this packet that -- that Mr. Martin owned, controlled.

20 Q. Now, why was that important for your decision?

21 A. Well, okay. Here is my stupidity. If it's too good to be  
22 true, it's probably too good to be true. And instead of me  
23 doing the due diligence on this packet -- in 2010, we were just  
24 coming out of that banking rescission, so I skipped a few steps  
25 in my due diligence.

Michael Kooyman - Direct

1           And so having seen a document that showed somebody  
2 had \$500 million in a bank, and my portion was only  
3 5.5 million, I figured it was probably a pretty safe bet to put  
4 \$200,000 in, if -- if this information I received on Martin was  
5 true.

6 Q.   Page 13, please. Do you remember seeing this? What  
7 purports to be a bank statement from Falcon Bank?

8 A.   Yeah, this is kind of painful to look at. This is  
9 probably what I based my investment on.

10 Q.   And was this all in the same package?

11 A.   Same package.

12 Q.   All in the same thing that went to you?

13 A.   Uh-huh.

14 Q.   And finally, we will go to Page 14, please.

15           And is this a similar document you remember seeing?

16 A.   It is.

17 Q.   Now, after you received these sorts of papers, did you  
18 decide to go ahead with the investment?

19 A.   I did.

20 Q.   And did you contribute money?

21 A.   I wired \$200,000 to the escrow company.

22 Q.   How did you know which escrow company to send money to?

23 A.   We were given an escrow company and an escrow agreement.

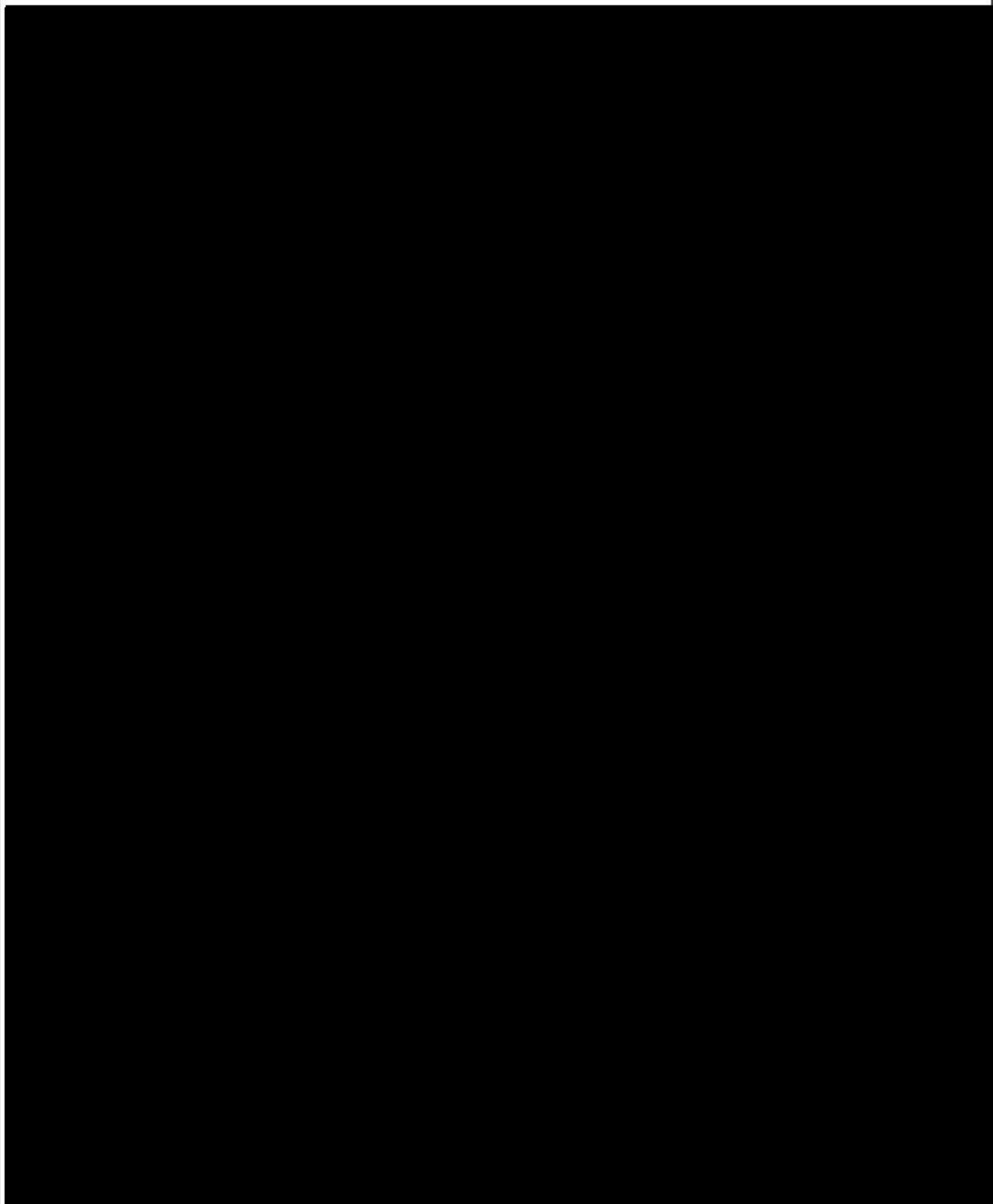
24 Q.   Who told you about that?

25 A.   I don't remember, but it had to be either Cheryl, Brandy,

Michael Kooyman - Direct

1 or Tony. I don't remember though. But it kind of came with  
2 the packet, so I think it maybe even pointed to it to itself.

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# EXHIBIT 18

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEVADA

UNITED STATES OF AMERICA, )  
 ) Case No. 2:13-cr-439-KJD-VCF  
Plaintiff, )  
 ) Las Vegas, Nevada  
vs. ) December 3, 2015  
 ) 9:15 a.m.  
ANTHONY B. BRANDEL (1) and )  
JAMES WARRAS (3), )  
 ) Jury Trial, Day 3  
Defendants. )  
\_\_\_\_\_ )

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE KENT J. DAWSON  
UNITED STATES DISTRICT COURT JUDGE, AND A JURY


APPEARANCES:

For the Government:

BRIAN R. YOUNG  
MELISSA AOYAGI  
Criminal Division, Fraud Section  
1400 New York Avenue, NW  
Washington, DC 20530



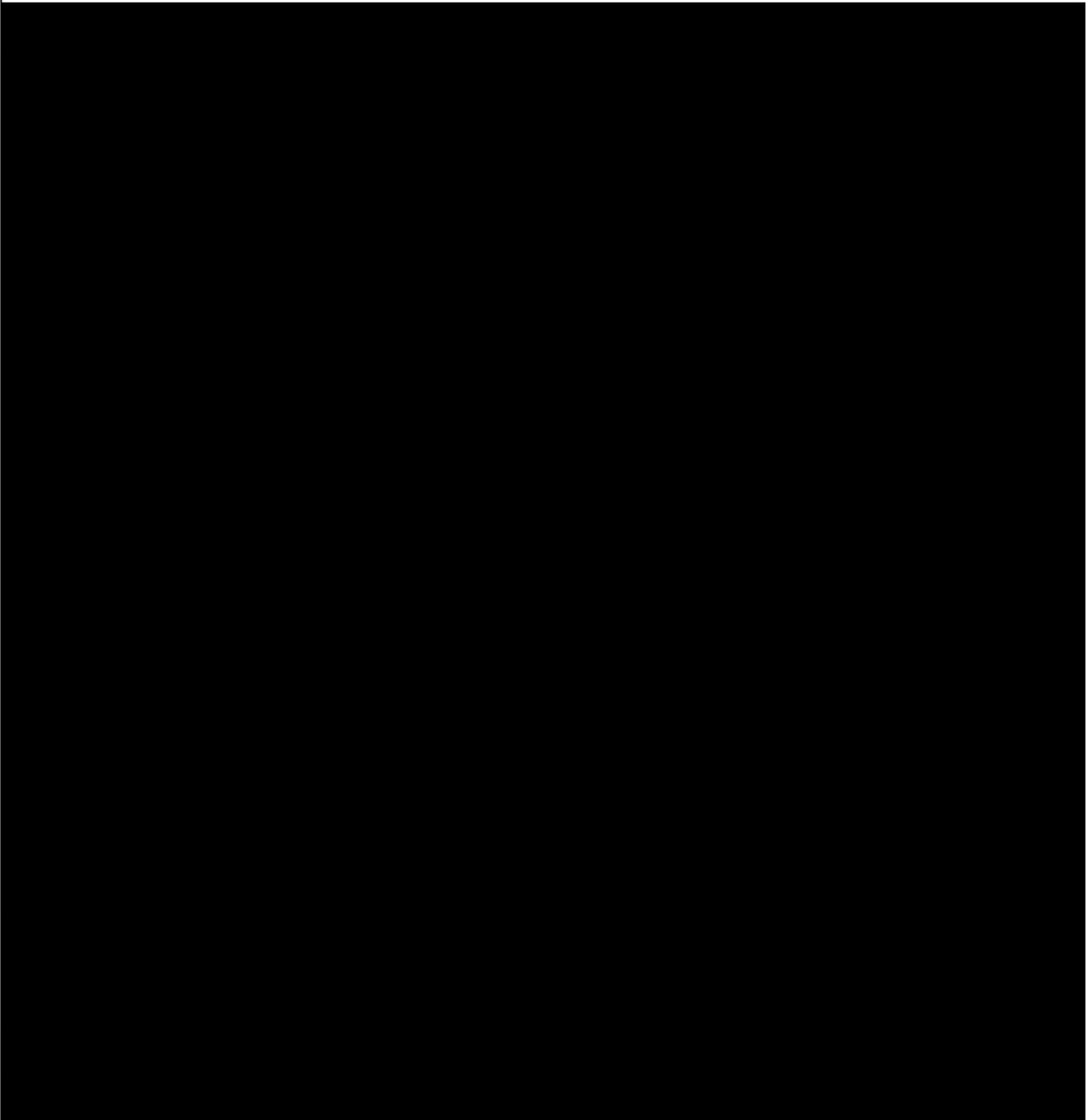
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Court Reporter: Katherine Eismann, CSR, CRR, RDR  


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Geraldine Karonis - Redirect

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GARY MARSH,

having been duly sworn, was examined and testified as follows:

COURTROOM ADMINISTRATOR: State your full name and spell it for the record.

THE WITNESS: Gary Marsh. G-A-R-Y M-A-R-S-H.

THE COURT: Go ahead.



Gary Marsh - Direct

1 MS. AOYAGI: Thank you, Your Honor.

2 DIRECT EXAMINATION

3 BY MS. AOYAGI:

4 Q. Good morning, Mr. Marsh.

5 A. Good morning.

6 Q. Could you please describe for the jury a bit about your  
7 educational background?

8 A. I have a degree in accounting from UNLV.

9 Q. And when did you get that degree?

10 A. '97.

11 Q. Okay. And where do you currently work?

12 A. I work with the FBI.

13 Q. And how long have you worked for the FBI?

14 A. Total, 32 years.

15 Q. And where do you work for the FBI?

16 A. In the Las Vegas Division.

17 Q. And what do you do with the FBI?

18 A. My current position is forensic accountant.

19 Q. And prior to -- or I guess, how long have you been a  
20 forensic accountant for the FBI?

21 A. I have been a forensic accountant for six years.

22 Q. And prior to that, did you have a different title with the  
23 FBI?

24 A. Yeah. It was financial analyst, which I did for 13 years.  
25 Essentially the same job. They just kind of redid the position

Gary Marsh - Direct

1 and changed the titles.

2 Q. Okay. And what type of cases do you primarily work?

3 A. I generally worked white collar crime-type cases.

4 Q. And can you describe, for the jury, your job  
5 responsibilities at the FBI as a forensic accountant?

6 A. Basically, in a nutshell, we assist the case agents in  
7 putting together the financial aspects of the investigation.  
8 Combing through bank records and such.

9 Q. And have you heard of Malom Group?

10 A. Yes, I have.

11 Q. And have you been involved in the investigation with  
12 respect to Malom Group?

13 A. Yes.

14 Q. And how did you become involved in the investigation?

15 A. At the request of the case agents, SA Tierney and SA  
16 Burke, and they received some bank records from the SEC. And  
17 they asked me if I would assist them in reviewing the bank  
18 records.

19 Q. And could you describe what you did? Could you describe  
20 your role in the case?

21 A. Sure. Basically, when we get the bank records from the  
22 bank, in this case, the SEC initially got them, and then we  
23 also went to the banks and did some clean-up.

24 We input the statements into the account, just like  
25 your monthly statement that you would get every month from the

Gary Marsh - Direct

1 bank. And then the bank also provides copies of all the  
2 checks, all the withdrawal slips. If there's deposits into the  
3 account, the wire transfers. If it was checks or cash being  
4 deposited, they have the deposit slip and the checks making up  
5 that deposit.

6 We then input those into the spreadsheet. Once I get  
7 all that done, I make sure the account balances. There's the  
8 same amount of withdrawal money as there is deposit money, then  
9 I try to -- so we've got day-to-day activity on a spreadsheet  
10 for each transaction, withdrawal and deposit.

11 And then, basically, I try to go through and  
12 categorize the items. Such as a cash deposit would be under  
13 cash. And so every cash deposit made would be listed under  
14 that, and try and do a summary sheet summarizing where the  
15 money came from and then where it went to.

16 Q. So, fair to say that you are tracing the money? Tracing  
17 the money flow-through?

18 A. Right. Yes. [REDACTED]

19 Q. And have you performed similar analyses in other cases?

20 A. Yes, I have.

21 Q. Okay. And roughly how many times have you performed  
22 similar analyses?

23 A. You know, I would say I've testified eight previous times  
24 in a criminal trial, and I have reviewed literally hundreds of  
25 bank records throughout the 16 years.

Gary Marsh - Direct

1 Q. And you mentioned a couple of different types of bank  
2 records that you needed to perform your analysis. Did you also  
3 use Fedwire records?

4 A. Yes, we did.

5 Q. Okay. What is Fedwire?

6 A. Fedwire is basically -- it's managed by the US Federal  
7 Reserve System. Just if you have ever wire transferred money,  
8 within the United States, it would go through Fedwire. And  
9 they basically guarantee that the money is going to get there.

10 And so we did -- most of the -- in fact, all of the  
11 wire -- all of the transactions, in this case, were -- were  
12 done through a wire transfer.

13 Q. And you mentioned a number of different types of bank  
14 records that you obtained. For what bank accounts did you get  
15 these records?

16 A. The pertinent bank accounts that we looked at was  
17 Mr. Brandel's personal account, Allen Smith escrow account,  
18 M.Y. Consultants account, Carpe Diem Family Trust, which listed  
19 James Warras and Stephanie Miller as trustees, and Sean Finn  
20 and Odra Finn, a joint account at American Bank.

21 Q. Did you also obtain records for Commercial Escrow  
22 Services?

23 A. Yes. We got -- Commercial Escrow Services, or CES, we  
24 basically targeted just the wire transfers from the investors  
25 that were relating to the Malom Group.

Gary Marsh - Direct

1 Q. And you mentioned Carpe Diem and a family trust. Could  
2 you just explain to us the link to Mr. Warras?

3 A. Yes. He -- basically, in the title of the account, we saw  
4 money flowing to this Carpe Diem Family Trust account. And as  
5 I said, Mr. Warras and Stephanie Miller were listed in the  
6 title of the company.

7 Q. And did you obtain bank records for Joseph Micelli?

8 A. No. Mr. Micelli did not have a bank account during this  
9 time.

10 Q. And how did you collect the information that you just  
11 referenced, the bank records and the like?

12 A. As I said, initially, the SEC sent what they had to  
13 Special Agent Tierney, and then as -- once I got all those  
14 input, there was some cashier's checks, maybe some missing  
15 deposit items. And then we issued a grand jury subpoena to the  
16 banks to get those records, and they were either provided via  
17 hard copy or on a disk.

18 Q. And roughly what time period -- for roughly what time  
19 period did you collect the records?

20 A. The -- the pertinent records that we reviewed were from --  
21 I believe M.Y. Consultants began getting inflows from CES in  
22 roughly November of '09, and I think they stopped in October or  
23 November of 2011.

24 Q. Now, you mentioned a number of different types of items,  
25 like the monthly bank statements, withdrawal slips, deposit

Gary Marsh - Direct

1 slips. Did you also obtain signature cards for the corporate  
2 accounts?

3 A. On the M.Y. Consultants, we did get a signature card,  
4 along with on the Allen Smith account.

5 Q. And what's the significance of a signature card?

6 A. The signature card is -- I'm sure the jury knows that when  
7 you go in to open an account at a bank, they will make you sign  
8 a signature card, which that authorizes -- whoever is on a  
9 signature card has authority to write checks or to withdraw  
10 money into that particular account.

11 Q. And who was the signatory for the M.Y. Consultants  
12 account?

13 A. The M.Y. Consultants account had Anthony Brandel and Jawad  
14 Quassani were on the signature card.

15 Q. And when you received bank records in this case, what did  
16 you do with them?

17 A. As I said, I reviewed them, input them, analyzed them.

18 Q. Okay. And in categorize -- I think you mentioned  
19 categorization of certain of the information. When you were  
20 categorizing the information, did you follow a particular  
21 accounting method?

22 A. We did eventually. I was asked, at some point, to try and  
23 follow the selected investors in the indictment. And in order  
24 to do that, I used -- there's an accounting method, last in,  
25 first out. LIFO. There's also a first in first out, FIFO.

Gary Marsh - Direct

1           In some cases, in trying to trace the money of a  
2 selected investor, it was pretty smooth, in the sense that  
3 there was very little money in the account. You know, the  
4 investor money would come into M.Y. or to the Smith account,  
5 and then it would get shuttled out. Sorry.

6           But in some cases, there was, say, another investor  
7 who was not listed in the indictment. Their funds would come  
8 in roughly around the same time, so you had, let's say, \$90,000  
9 in. And then one of the indicted investor's money comes in.  
10 So you've got a pool of money in there.

11           And so we just tried to be consistent and use one  
12 accounting method, and we decided to use last in, first out.  
13 So, once the last deposit comes in, then any money subsequent  
14 going out would be tied to that investor.

15           As that chain goes along, if another investor's money  
16 comes in, before all of that money goes out, then that person  
17 would -- would have their money then in the -- in the last in  
18 first out chain. [REDACTED]

19 Q. Okay. So this is just an accounting methodology by which  
20 you were trying to tie the inflow of funds to the expenditure  
21 of those same funds?

22 A. Correct.

23 Q. Okay. So could you briefly describe for us the flow of  
24 money that you examined? Just sort of the chronological flow?

25 A. Sure. Basically, when the investors would -- they would

Gary Marsh - Direct

1 wire their money into -- all of them but one party sent the  
2 money into the Commercial Escrow Services account via a wire  
3 transfer. One of the parties did send it to the -- directly to  
4 the Allen Smith Escrow Account.

5 Then once it would go into the CES account, then, at  
6 some point, it would -- it would exit, and it would flow to --  
7 normally to M.Y. Consultants. In some cases, it would get sent  
8 to M.Y., to Smith, might have gone directly to Anthony Brandel.  
9 And -- and then from there, then it would get disbursed out  
10 of -- either the Smith account or the M.Y. Consultants account.

11 Q. So after you looked at -- if I understand you correctly,  
12 you looked at the flow of money, from the investors who were  
13 identified in the indictment, the money that they wired to  
14 escrow, from escrow to M.Y. or elsewhere. And then did you  
15 look at the M.Y. account specifically?

16 A. Yes, I did.

17 Q. Okay. And from the M.Y. account, did you also look at  
18 what Mr. Brandel and what Mr. Warras appeared to have done with  
19 the money?

20 A. I -- yes. The M.Y. was Brandel and Mr. Quassani was also  
21 on the signature card for that.

22 Q. Okay. All right. So let's take a look at Exhibit 1401.  
23 This is a document that has not yet been admitted into  
24 evidence, so please take a moment to review the document.

25 Do you recognize this document?



Gary Marsh - Direct

1 A. Yes, I do.

2 Q. And is -- what is this document?

3 A. There is basically the -- the selected investors, who are  
4 listed in the indictment, just following their -- their money  
5 flow into the Commercial Escrow Services account.

6 Q. Okay. And where did the information in this chart come  
7 from?

8 A. This would have come from the bank records.

9 Q. Okay. And are those bank records contained in  
10 Exhibits 139A through D?

11 A. Yes, they are.

12 Q. And does your chart accurately state the substance of  
13 those records?

14 A. Yes, it does.

15 MS. AOYAGI: Move to admit Government Exhibit 1401.

16 THE COURT: Any objection?

17 MS. LAZO: None, Judge.

18 MR. SMITH: No, Your Honor.

19 THE COURT: 1401 is received.

20 (Exhibit 1401 admitted.)

21 BY MS. AOYAGI:

22 Q. Okay. So can you just explain for us what this chart  
23 shows?

24 A. Basically, again, it's just the investor money from the  
25 indicted investors. There are wire transfers that were sent

Gary Marsh - Direct

1 my understanding is that they would then cash the check and  
2 then provide the funds to Mr. Micelli.

3 Q. And at the bottom, it looks like there are a number of  
4 cash withdrawals. Were you able to tie those to a particular  
5 person in every instance?

6 A. If the withdrawal slip was signed by one of the  
7 signatories, then -- in this case, cash withdrawal slips. I  
8 believe there were two for 5,000 each that were signed by  
9 Mr. Brandel.

10 The Nevada teller cash withdrawals, that would have  
11 had to either have been Mr. Brandel or Mr. Quassani, but it --  
12 the bank records couldn't specifically cite who -- who did  
13 those withdrawals.

14 Q. Okay. And again, who are the signatories to M.Y.  
15 Consultants?

16 A. Anthony Brandel and Jawad Quassani.

17 Q. And again, the two charts that we just reviewed are only  
18 for money flows associated with the selected investors, those  
19 who are listed in that first chart?

20 A. That's correct. Yes.

21 Q. So what did you do next after you looked at the M.Y. and  
22 the Allen Smith corporate accounts?

23 A. I basically then tried to follow the money out of -- any  
24 money that was distributed out of M.Y. to any of the -- the  
25 individuals, such as Mr. Brandel, Mr. Warras, Mr. Finn, and

Gary Marsh - Direct

1 Mr. Micelli.

2 Q. Okay. I'd like to take look at -- I would like to take a  
3 look at Exhibit 1405. This has not yet been admitted.

4 This a chart that you prepared?

5 A. Yes, it is.

6 Q. Based on bank records?

7 A. Yes.

8 MS. AOYAGI: Move to admit 1405.

9 MR. SMITH: No objection.

10 MS. LAZO: No objection.

11 THE COURT: 1405 is received.

12 (Exhibit 1405 admitted.)

13 BY MS. AOYAGI:

14 Q. And what does this chart represent?

15 A. These are the disbursements specifically to Mr. Anthony  
16 Brandel's personal account at Bank of America.

17 Q. Okay. And perhaps we could walk through the chart, just  
18 so that we have an understanding of how to read it. And I  
19 think we could probably read from it here, but let me know if  
20 you need it to be expanded.

21 Maybe just take Mr. Barrie's, the money that's listed  
22 next to him, and just walk us through how to read this chart.

23 A. Sure. Again, Mr. Barrie's -- and using the LIFO method in  
24 tracing Mr. Barrie's funds, his funds were released on  
25 January 20th of 2011. 15,000 of that came into Mr. Brandel's

Gary Marsh - Direct

1 A. It wasn't necessary. Correct.

2 Q. Take a look at Exhibit 1406. This has not yet been  
3 admitted into evidence, so please take a moment to review the  
4 document.

5 Is this a chart that you prepared relating to  
6 disbursements of selected investor funds to Mr. Warras?

7 A. Correct. Yes.

8 Q. And is this, again, based on the bank records?

9 A. Yes, it is.

10 MS. AOYAGI: Move to admit 1406.

11 MR. SMITH: No objection.

12 MS. LAZO: Judge, I would just note that this exhibit  
13 was the subject of prior litigation this Court has denied. We  
14 would just renew, respectfully, the objection.

15 THE COURT: Thank you. 1406 is received.

16 (Exhibit 1406 admitted.)

17 BY MS. AOYAGI:

18 Q. And what does this chart summarize?

19 A. This would be the same as the previous chart with  
20 Mr. Brandel, except these were the disbursements of the  
21 selected investors to Mr. Warras.

22 Q. And did you follow the same analysis that you just  
23 described for Mr. -- the chart relating to Mr. Brandel for this  
24 chart that relates to Mr. Warras?

25 A. Yes, I did.

Gary Marsh - Direct

1 Q. Okay. And can you just walk us through, very quickly  
2 then, how to read this chart, maybe using Mr. Glazebrook as an  
3 example this time --

4 A. Sure.

5 Q. -- since there are two lines there.

6 A. Sure. Sorry. Yes, Mr. Glazebrook was the investor, and  
7 his funds were released on August 9th of 2011. And two  
8 different disbursements were received by Mr. Warras through his  
9 Carpe Diem account. \$5,000 on the 9th and \$35,000 on the 10th.

10 In the first transaction, he had \$72.95 in the  
11 account prior. And on the other one, he had \$3,611.03 in the  
12 account. The first one was received the same day as the  
13 disbursement, and the second one was a day later.

14 Q. Okay. Look at -- and again, the total amount that's  
15 received by Mr. Warras, is that listed here?

16 A. Yes. One -- from these selected investors, \$166,785.

17 Q. And going back to the chart with respect to Mr. Brandel,  
18 what was the total for -- with respect to the selected  
19 investors?

20 A. Off the top of my head, I believe --

21 Q. It's 1405.

22 A. Yeah. It was 217,500.

23 Q. I'd like to show you an exhibit marked 1407, disbursements  
24 of -- is this a chart you prepared? Do you recognize this?

25 A. Yes, it is.

Gary Marsh - Direct

1 A. Right.

2 Q. Did you also calculate the total amount of money that  
3 investors related to -- investors seeking to invest in Malom --  
4 the total amount that was received?

5 A. Yes, I did.

6 Q. And what was that total?

7 A. For each -- each one?

8 Q. Why don't we start with the full total.

9 A. Oh, I am sorry. The total --

10 Q. And then we will walk through each of the individuals  
11 involved.

12 A. Sorry. Yeah. For all of the investors, it was  
13 approximately \$9.9 million came in.

14 Q. Okay. And roughly how much of that was disbursed to -- or  
15 roughly what amount of that could you attribute to Mr. Brandel?

16 A. Mr. Brandel got \$630,000.

17 Q. Mr. Warras?

18 A. 725,000.

19 Q. Mr. Micelli?

20 A. 789,000.

21 Q. Mr. Finn?

22 A. 845,000.

23 Q. Mr. Schlaepfer?

24 A. 2.2 million.

25 Q. And what about Mr. Jurg-Lips {sic}?

Gary Marsh - Cross

1 Q. You did not. So you would have no idea about the amount  
2 of money?

3 A. No, I just followed the money out of the escrow into the  
4 various accounts.

5 Q. The only other question I have for you was the signature  
6 cards for M.Y. Consultants were in the names of Jawad Quassani  
7 and Anthony Brandel; correct?

8 A. That's correct, yes. [REDACTED]

9 Q. Do you remember, Mr. Marsh, if there were titles on those  
10 cards? If there were corporate titles?

11 A. They might have been. Off the top of my head, I don't  
12 remember.

13 MR. SMITH: Okay. Thank you. I have nothing  
14 further.

15 Thank you, Your Honor.

16 THE COURT: Thank you. Further examination?

17 MS. AOYAGI: No, Your Honor. Thank you.

18 THE COURT: Thank you. The witness is excused.

19 Is now a good time to take our break for the lunch?

20 MR. YOUNG: It is, Judge. But I wonder if I could  
21 read a few stipulations at this point.

22 THE COURT: You may.

23 MR. YOUNG: Ladies and gentlemen, the parties  
24 stipulate the wire transfers described in Counts 2 through 13  
25 of the indictment traveled in interstate commerce.

# EXHIBIT 19



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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEVADA

UNITED STATES OF AMERICA,	)	
	)	Case No. 2:13-cr-439-KJD-VCF
Plaintiff,	)	
	)	Las Vegas, Nevada
vs.	)	December 1, 2015
	)	2:01 p.m.
ANTHONY B. BRANDEL (1) and	)	
JAMES WARRAS (3),	)	
	)	Jury Trial, Day 1
Defendants.	)	
_____	)	Volume 1

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE KENT J. DAWSON  
UNITED STATES DISTRICT COURT JUDGE, AND A JURY

APPEARANCES:

For the Government:

BRIAN R. YOUNG  
MELISSA AOYAGI  
Criminal Division, Fraud Section  
1400 New York Avenue, NW  
Washington, DC 20530

Appearances continued on Page 2.

Court Reporter: Katherine Eismann, CSR, CRR, RDR

Proceedings reported by machine shorthand, transcript produced by computer-aided transcription.

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DEBRA MITMAN,

having been duly sworn, was examined and testified as follows:

COURTROOM ADMINISTRATOR: State your full name and spell it for the record.

THE WITNESS: Debra, D-E-B-R-A, Mitman, M-I-T-M-A-N.

DIRECT EXAMINATION

BY MR. YOUNG:

Q. Good afternoon, Miss Mitman.

A. Hi.

Q. Can you tell the jury where you work, please?

A. Capital Equities, Inc.

Q. What do you do for Capital Equities, Inc.?

A. Developer, builder, real estate investments.

Q. You might want to bring the microphone a little bit closer. There you go. And what's the business of Capital Equities, Inc.?

A. Real estate.



Debra Mitman - Direct

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[REDACTED]

Q. Now, let's talk about, do you know somebody named James Erwin?

A. Yes.

Q. And how did you meet Mr. Erwin?

A. Through his father, Jerry Erwin, who is a friend of mine.

Q. What did you understand Mr. Erwin's business to be?

A. Investment broker.

[REDACTED]

Q. And so did you have a conversation with Mr. Erwin about whether he could help you get a loan?

A. Yes, several.

Debra Mitman - Direct

1 Q. And did -- when you had these conversations with  
2 Mr. Erwin, did you guys discuss something called the Malom  
3 Group?

4 A. Yes.

5 Q. And what did Mr. Erwin tell you about the Malom Group?

6 A. He said that he was working with them and -- as a loan  
7 broker. And they had a new program that they were starting in  
8 the US to do refinances and purchases.

9 Q. And did Mr. Erwin introduce you to Mr. Tony Brandel?

10 A. Yes.

11 Q. And do you see Mr. Brandel in the courtroom today?

12 A. Yes.

13 Q. And can you indicate where he's sitting and tell us what  
14 he's wearing?

15 A. At the front table, second person to the left.

16 Q. And did Mr. Erwin introduce you to Joseph Micelli?

17 A. Yes.

18 Q. Now, can you tell us what Mr. Erwin told you Mr. Brandel  
19 and Mr. Micelli could do for you?

20 A. That they would provide financing for either a new  
21 purchase or a refinance on an existing property.

22 Q. Now, do you have any understanding about where Mr. Brandel  
23 and Mr. Micelli were going to get the money to use the  
24 refinancing?

25 A. Yes, through Malom Group.

Debra Mitman - Direct

1 Q. What did you understand the Malom Group to be?

2 A. Just an investment firm, financial dealings, and  
3 represented to have a lot of money.

4 Q. And did you have an understanding about where the Malom  
5 Group was located?

6 A. The Malom AG in Switzerland, and then there was another  
7 company started called Malom US in Nevada.

8 Q. So after you were introduced to Mr. Brandel and  
9 Mr. Micelli, did you have any meetings with them?

10 A. Yes.

11 Q. Now, where did you have your -- how many meetings did you  
12 have with Mr. Brandel and Mr. Micelli?

13 A. Three or four.

14 Q. Okay. Now, can you remember about when your first meeting  
15 took place?

16 A. Yes. It would have been February of 2011.

17 Q. Where did you meet?

18 A. At Mr. Brandel's office, M.Y. Consultants on South Jones  
19 in Las Vegas.

20 Q. Could you tell us who was at the meeting?

21 A. Micelli, Brandel, and Erwin.

22 Q. And you went to the office to have the meeting?

23 A. Yes.

24 Q. And how did Mr. Brandel -- did Mr. Brandel identify  
25 himself or explain what his role is with regard to the Malom

Debra Mitman - Direct

1 Group? [REDACTED]

2 A. Yes.

3 Q. And what did Mr. Brandel tell you about his role with  
4 Malom Group?

5 A. He said he was processing the loans for Malom, and he was  
6 their US contact.

7 Q. What did Mr. Micelli -- how did Mr. Micelli identify  
8 himself to you? [REDACTED]

9 A. Malom's attorney.

10 Q. And what did -- what sorts of -- did they provide you with  
11 any description about what the Malom Group was and what its  
12 business was?

13 A. Just that they were involved in a lot of financial  
14 dealings, loans, bonds, sale of bonds, securities. Various  
15 different financial instruments.

16 Q. And you've described a company called M.Y. Consultants and  
17 another company called Malom Group; is that right?

18 A. Correct. [REDACTED]

19 Q. And did anybody give you any understanding about what the  
20 relationship was between M.Y. consultants and the Malom Group?

21 A. Just that M.Y. Consultants was the processor to do the  
22 loans in the United States.

23 Q. During the meeting, did you explain that you were looking  
24 for a loan?

25 A. Yes. [REDACTED]

Debra Mitman - Direct

1 Q. And did you discuss how much money you were looking to  
2 borrow?

3 A. Yes.

4 Q. Did you guys come to a figure about how much money you  
5 were looking to borrow?

6 A. 10 million.

7 Q. And did you have any discussions about what you would have  
8 to do in order to get that \$10 million loan?

9 A. Yes.

10 Q. And what did you guys talk about?

11 A. Just that they had to approve the project, and they had --  
12 per the contract, they had 90 days to come up with the funds.

13 Q. And you are saying "they." To whom are you referring?

14 A. Malom.

15 Q. Now, did you talk about whether you would have to  
16 contribute any money in order to get this loan?

17 A. Yes, I had to put up a deposit in escrow to obtain the  
18 loan.

19 Q. And how -- did you decide on a number for how much you  
20 would have to come up with for a deposit?

21 A. 400,000 was in the contract.

22 Q. Now how long did this meeting last for approximately?

23 A. Hour.

24 Q. And during the meeting, can you give us a sense for, of  
25 the three participants, in addition to yourself, who was doing

Debra Mitman - Direct

1 most of the talking? [REDACTED]

2 A. Mr. Brandel.

3 Q. Now, did you guys speak about what would happen to this

4 \$400,000 if your 10 million-dollar loan didn't come through?

5 A. Yes. It would -- it was to be refunded to me per the

6 contract. [REDACTED]

7 Q. Who told you that? [REDACTED]

8 A. Well, all of them did, but the contract stated it.

9 Q. And when you say "all of them," to whom are you referring?

10 A. Erwin, Brandel, and Micelli.

11 Q. And did you guys talk about how you were going to send or

12 how you were going to get this \$400,000 to the Malom Group?

13 A. It was to be put into escrow with California Escrow

14 Services in California.

15 Q. Was there any discussion of whether somebody at Malom was

16 making a personal guarantee of this money?

17 A. My agreement was signed by Hans Jurg-Lips.

18 Q. Did anybody provide you with any bank statements?

19 A. Yes.

20 Q. Pertaining to the Malom Group?

21 A. Yes.

22 Q. I'm going to show you what's not yet been admitted into

23 evidence as Exhibit 1005A. Do you recognize this as an email

24 from Mr. Brandel to you?

25 A. Yes. [REDACTED]

[REDACTED]

[REDACTED]



Debra Mitman - Direct

1 MR. YOUNG: Move the admission of Exhibit 1005A.

2 THE COURT: Any objection?

3 MR. SMITH: No, Your Honor.

4 MS. LAZO: No, Judge.

5 THE COURT: 1005A will be received.

6 (Exhibit 1005A admitted.)

7 BY MR. YOUNG:

8 Q. Okay. Miss Mitman, I want to -- let's start from the  
9 bottom of the email, please.

10 A. Okay.

11 Q. Do you see where it says, tony@mycilv.com is highlighted?

12 A. Yes.

13 Q. Whose email address is that?

14 A. Brandel.

15 Q. And who is [REDACTED]

16 A. That's my email address.

17 Q. And does this email reference any bank statements?

18 A. Yes, it does. [REDACTED]

19 Q. And where were those two banks statements from? Or what  
20 were the companies -- what were the two banks that are being  
21 referenced?

22 A. Centrum Bank and Sudtiro1 Bank.

23 Q. And did Mr. Brandel provide with you bank statements from  
24 Centrum Bank and Sudtiro1 Bank?

25 A. Yes, he did. [REDACTED]

Debra Mitman - Direct

1 Q. Let me show you what's not been admitted as 1005B. Do you  
2 recognize this as a bank statement from Sudtiroi Bank that you  
3 received from Mr. Brandel?

4 A. Yes, I do.

5 MR. YOUNG: Move the admission of 1005B, please.

6 THE COURT: Any objection?

7 MR. SMITH: No objection.

8 MS. LAZO: No, sir.

9 THE COURT: 1005B will be received.

10 (Exhibit 1005B admitted.)

11 BY MR. YOUNG:

12 Q. Okay. Miss Mitman, can you tell us what are we looking at  
13 here with Exhibit 1005B?

14 A. A letter from Sudtiroi Bank saying that Malom Group has  
15 the financial capability to -- with funds up to 308 million.

16 Q. Now, what do you understand this letter to be  
17 representing?

18 A. That Malom was worth at least 308 million at this  
19 particular bank.

20 Q. And did this bank -- did this document make any impression  
21 on you as far as your decision to do business with Malom?

22 A. Absolutely.

23 Q. All right. What was the impression?

24 A. My impression was that if anything went wrong in the  
25 escrow with my \$400,000, I would have an opportunity to

Debra Mitman - Direct

1 recuperate it from another source.

2 Q. Did this document make it more or less likely that you  
3 were going do business with Malom Group?

4 A. Definitely more.

5 Q. I'm going to show you what's not yet been received as  
6 Exhibit 1005C. Miss Mitman, do you recognize this as a  
7 statement purporting to be from Centrum Bank that you received  
8 from Mr. Brandel?

9 A. Yes.

10 MR. YOUNG: Move the admission of 1005C, please.

11 MR. SMITH: No objection, Your Honor.

12 THE COURT: Any objection?

13 MS. LAZO: No, sir.

14 THE COURT: 1005C is received.

15 (Exhibit 1005C admitted.)

16 BY MR. YOUNG:

17 Q. All right. Miss Mitman, is this something you've seen  
18 before?

19 A. Yes, I have.

20 Q. And where did you get this?

21 A. Mr. Brandel.

22 Q. And can you tell us what you understood Centrum Bank to  
23 be?

24 A. One of Malom's banks, Malom Group.

25 Q. And what does this document signify to you? How do you

Debra Mitman - Direct

1 view this? [REDACTED]

2 A. Same as the other one. That there were plenty of funds

3 available. As one of Malom's assets.

4 Q. And do you see at the bottom left corner there's

5 highlighted a number?

6 A. Yeah, but it's a little blurry.

7 Q. Okay. What do you understand that number to be

8 signifying? [REDACTED]

9 A. The dollar amount that was in their account.

10 Q. Now, when you -- did you agree to do this deal with Malom?

11 A. Pardon me?

12 Q. Did you agree to do the deal with Malom that you have been

13 describing?

14 A. Yes.

15 Q. And did you have any sort of written funding commitments?

16 A. Yes.

17 Q. I'm going to show you what's not yet been admitted as

18 Exhibit 1001. Do you recognize this as a funding commitment

19 between yourself and the Malom Group?

20 A. Yes, I do.

21 MR. YOUNG: I move the admission of the Exhibit 1001,

22 please.

23 THE COURT: Any objection?

24 MR. SMITH: No, Your Honor.

25 MS. LAZO: None, sir.

[REDACTED]

[REDACTED]

Debra Mitman - Direct

1 THE COURT: 1001 will be received.

2 (Exhibit 1001 admitted.)

3 BY MR. YOUNG:

4 Q. Let's back out to the entirety of the document, please.

5 So, before we get into the specifics, Miss Mitman,  
6 what are we looking at here?

7 A. Funding commitment from Malom Group AG.

8 Q. Now let's go to the highlighted portions, please. Where  
9 did you get this document?

10 A. From Brandel's office.


11 Q. Now, it says, "Obligor Capital Equities, Inc." Is that  
12 that your company?

13 A. Yes, it is.

14 Q. Do you see at the bottom it says "principal funding  
15 amount"?

16 A. Yes.

17 Q. And that number is 10 million?




18 A. Yes. 

19 Q. What does that represent?

20 A. The amount of the loan.

21 Q. Let's go to Page 2 of the document, please. Actually,  
22 let's back out a little bit.

23 Now you see at -- it says -- on the top, it says  
24 "Underwriting fee"?

25 A. Yes.   
  


Debra Mitman - Direct

1 Q. All right. Let's go to some highlighted language. I'm  
2 going to read the highlighted language and ask you how you  
3 understood it. Okay?

4 A. Okay.

5 Q. "The underwriting fee to be advanced by obligor in the sum  
6 of 400,000 US dollars to be paid by Malom Group AG through  
7 Commercial Escrow Services."

8 What is -- what do you understand this language to  
9 mean?

10 A. That was my deposit that I had to pay to obtain the loan  
11 that I funded through Commercial Escrow.

12 Q. Next highlighted portion, please.

13 Now, did your -- did the agreement you signed with  
14 M.Y. Consultants and Malom Group have any sort of reimbursement  
15 language?

16 A. Yes.

17 Q. All right. And are we looking at that language now?

18 A. Yes.

19 Q. I want to read you the language and ask you about some  
20 discussions that you may or may not have had. Okay?

21 A. Okay.

22 Q. "In the event that Malom Group AG is unable to cause  
23 issuance of the credit enhancement or cause the sale of the  
24 loans to be issued and securitized hereafter, in order to fund  
25 the principal funding amount, the underwriting fee in the

Debra Mitman - Direct

1 amount of 400,000 US dollars or in the amount collected by  
2 Malom Group AG from the obligor shall be fully refunded without  
3 any deduction."

4 So what do you understand this language to be  
5 communicating?

6 A. If they don't make the loan, I received my \$400,000 back.

7 Q. And did you have any verbal communications with  
8 Mr. Brandel on this topic?

9 A. Yes, I did.

10 Q. What did he tell you? What were the communications that  
11 you guys had?

12 A. That there wouldn't be any problem. That I would receive  
13 a refund if the loan wasn't made, which is exactly as it states  
14 in the contract.

15 Q. Page 3, please. Now you see this language under "closing  
16 date"?

17 A. Yes.

18 Q. Do you see it says "90 days"?

19 A. Correct.

20 Q. What does that represent to you?


21 A. If they didn't fund it within 90 days, then the agreement  
22 shall be terminated.

23 Q. So, it's a 90-day time frame?

24 A. Correct.

25 Q. So did you end up sending in the \$400,000 to the Malom

Debra Mitman - Direct

1 Group? 

2 A. No, I wired it directly to Commercial Escrow Services.

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# EXHIBIT 20

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEVADA

UNITED STATES OF AMERICA,	)	
	)	Case No. 2:13-cr-439-KJD-VCF
Plaintiff,	)	
	)	Las Vegas, Nevada
vs.	)	December 4, 2015
	)	9:07 a.m.
ANTHONY B. BRANDEL (1) and	)	
JAMES WARRAS (3),	)	
	)	Jury Trial, Day 4
Defendants.	)	Volume 4
_____	)	


TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE KENT J. DAWSON  
UNITED STATES DISTRICT COURT JUDGE, AND A JURY

APPEARANCES:

For the Government:

BRIAN R. YOUNG  
MELISSA AOYAGI  
Criminal Division, Fraud Section  
1400 New York Avenue, NW  
Washington, DC 20530

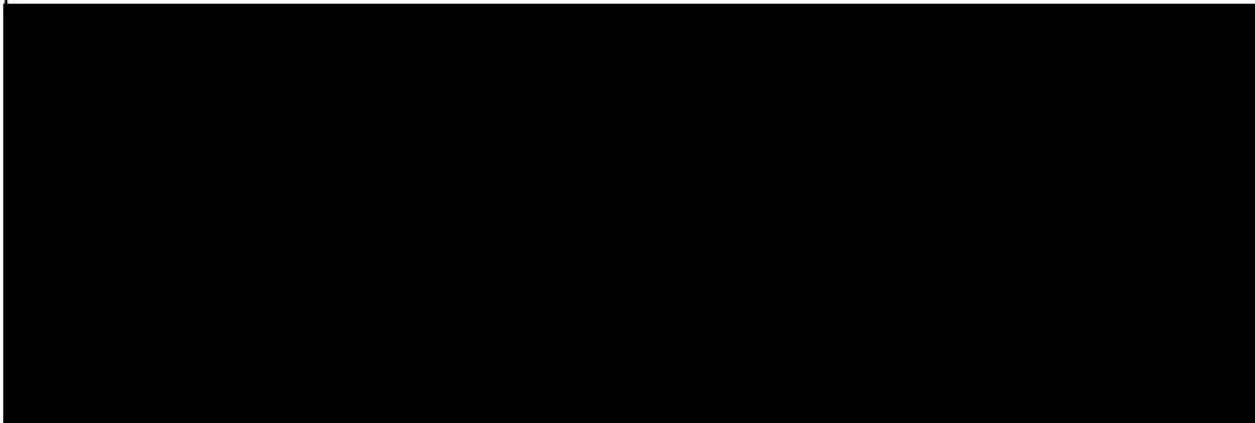
Appearances continued on Page 2.

Court Reporter: Katherine Eismann, CSR, CRR, RDR  


Proceedings reported by machine shorthand, transcript produced  
by computer-aided transcription.

Anthony Brandel - Direct

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Q. Okay. Do you remember Michael Bellino?

A. I do.

Q. What can you tell me about him?

A. Michael Bellino was brought to the table by a gentleman called Andrew Bloom who was a -- held out to be -- himself out to be a broker. He said he had a client that was looking to get into a transaction and wanted to know if -- if Malom would be, you know, willing to, you know, to do a joint venture with him.

And I said, "Well -- I said, "Yeah, they will." But again, there's rules and regulations as to what kind of transactions they are going to do. Unfortunately, when that one came in, you know, before the joint venture agreement was signed and the escrow agreement was put together, they wouldn't release all of the information as to what the transaction was about.

And the reason why, is they wanted to hold everything close to them, is because they were afraid that Malom would just take their deal and run with it and go do it all by

Anthony Brandel - Direct

1 themselves.

2 Q. What type of deal was it?

3 A. It ended up being a trade platform.

4 Q. Okay.

5 A. I don't remember the specifics on that one. It was very  
6 confusing. There was multiple companies that were involved on  
7 that side that -- that came to the table. And I -- I stepped  
8 out of that one. You know, as soon as I put the documents  
9 together that Bellino needed and what Malom needed, I kind of  
10 stepped back out of the way.

11 Of course even -- even though when I step out of the  
12 way, that means I stop doing most of the communicating. I am  
13 on the phone calls, because I need to know if there's anything  
14 else that I have to do, because I was the processing company  
15 for the transactions that Malom wanted done, you know, here in  
16 the US.

17 So, I -- you know, we were -- I had -- I had no  
18 choice but to be on these phone calls, you know. And my  
19 inquiries, if any, was, you know, what kind of documents we are  
20 going to need. What do I need to gather. So -- but I did kind  
21 of step out of that, so I don't have a lot of details on their  
22 transaction. But I do know it ended up being some kind of  
23 trade platform. I couldn't even tell you what the returns were  
24 going to be on that one.

25 Q. Okay.

Anthony Brandel - Direct

1 A. But again --

2 Q. Do you remember how much money he was looking for?

3 A. I think that was for 50 million that Bellino needed. And  
4 again, the transaction that he was going to enter into, he  
5 needed \$50 million to enter into that transaction.

6 He didn't have 50 million, so he wanted Malom to put  
7 their money up, or Martin Schlaepfer, or one of his companies  
8 to put that \$50 million up for him to go into that transaction.  
9 And Martin again charges a fee to do so.

10 Q. Do you remember what the fee was? Ball park?

11 A. I think that was about 2-, 250. Somewhere in that area.

12 Q. Okay. I think that's what he testified to. Did --  
13 what -- what if -- if you recall, what, if any, written  
14 agreements did Mr. Bellino enter into? Do you remember?

15 A. He did sign the escrow agreement, which was with M.Y.  
16 Consultants. And then he signed the -- the joint venture  
17 agreement for -- which is the contract between, you know, him  
18 and Malom or Martin's companies, I should say.

19 Q. Okay. So the parties to these different types of  
20 agreements are not the same entities; correct?

21 A. No, the escrow agreement is totally separate than the --  
22 than the joint venture agreement.

23 Q. The escrow agreement is with --

24 A. But --

25 Q. You said is signed with M.Y. Consultants. Correct?

Anthony Brandel - Direct

1 A. That's correct. Yes.

2 Q. The joint venture agreement?

3 A. Is signed by -- is signed by Malom.

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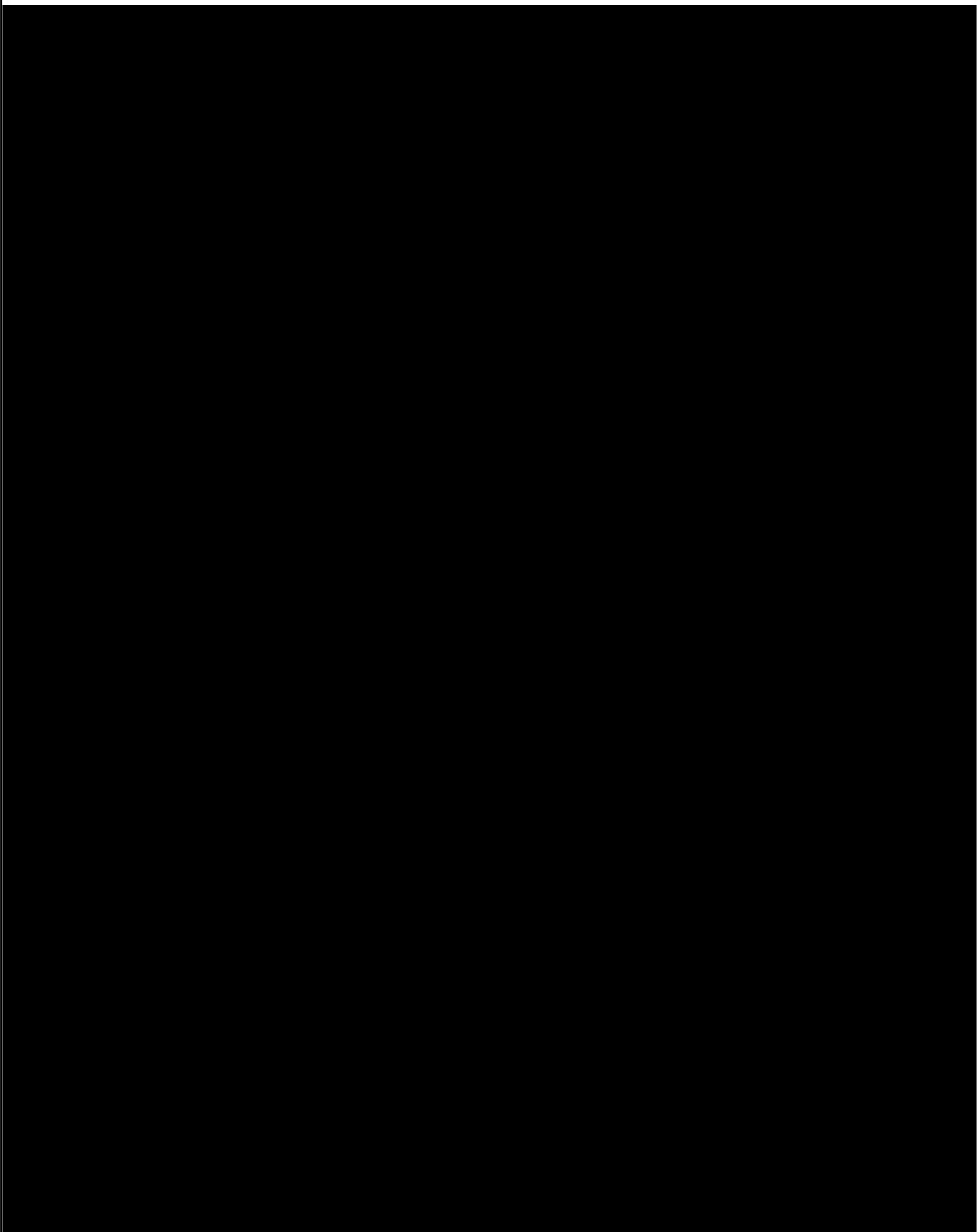
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Anthony Brandel - Direct

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25 Q. Okay. Ed Glazebrook is another person that I would like

Anthony Brandel - Direct

1 to discuss with you for a little bit. Now, do you remember  
2 what Mr. Glazebrook's business was?

3 A. Well, I knew -- when he was introduced from Sean Finn,  
4 Sean Finn actually brought him to the table, because he wanted  
5 a joint venture agreement. He had some kind of a transaction  
6 that he wanted to have done. He wanted Malom to put the money  
7 up for the transaction.

8 But, at this time, we were no longer doing joint  
9 venture agreements. And we just -- you know, I told Sean that,  
10 you know, we are not going to do it. You know, if you want to  
11 do it, you can go directly to Malom, if you want to. You can  
12 ask him yourself. But they said that they are not doing them  
13 anymore.

14 Said the only thing that they want to do, at this  
15 point in time here in the US, is structured financing. So --

16 Q. Okay.

17 A. Do you want me to continue with the whole story?

18 Q. Sorry?

19 A. Do you want me to continue with the whole story?

20 Q. Yeah, I would like to hear it. Yeah.

21 A. How he even got involved and how he even got into contract  
22 with Malom is there was a casino boat in Florida, IBI, which is  
23 International Breeze, Incorporated. I do believe that's what  
24 it stands for.

25 That did apply for a loan with Malom. And they were



Anthony Brandel - Direct

1 having difficulty raising their underwriting fee. Sean  
2 discovered that IBI and Ed Glazebrook knew each other, because  
3 Ed Glazebrook was trying to help them get funding at one time  
4 himself.

5 And so the idea that -- that was brought up is maybe  
6 Ed Glazebrook will back the IBI and put up the underwriting fee  
7 for it. And, you know, that way IBI can get their loan, and --  
8 you know, and Glazebrook can, you know, make some money and  
9 whatever else.

10 And I told Sean, I said, "If you can put that  
11 together, go for it. Whatever deal they want to, you know,  
12 cement as far as what IBI is going to pay back to Glazebrook  
13 for doing that, for loaning them the money, go ahead and get  
14 that all worked out."

15 So they worked a deal out. They came back, and you  
16 know, Ed Glazebrook decided to pay the underwriting fee for --  
17 Q. So were you involved in that?

18 A. I did. I processed all the paperwork.

19 Q. You did.

20 A. I mean, yeah. I mean, and when I say process, I mean, I  
21 gathered what Malom wanted to, you know, submit to the client.  
22 And the client, you know, signed everything up. You know, got  
23 it back, and I started gathering all the documentation that I  
24 needed from IBI to put the full loan package together.

25

# EXHIBIT 21

Selected Investor Funds Sent To Escrow

Investor	Escrow#	Counts In Indictment	Name of Wire Transfer	Sent To Escrow Account	Date of Wire Transfer	Amount
Michael Bellino	4977	1, 3, 15	Bellino Equities LLC	Commercial Escrow Services (CES)	1/14/2010	\$ 250,000.00
Gary Dobyms	5375	1, 13, 17	Gary Dobyms	Commercial Escrow Services (CES)	4/13/2010	\$ 200,000.00
Michael Kooyman	5376	1, 4, 16	Koy Builders Inc	Commercial Escrow Services (CES)	4/16/2010	\$ 200,000.00
Travis Fox	5501	1, 5, 19	Brenda Markstein	Commercial Escrow Services (CES)	5/6/2010	\$ 1,000,000.00
William Billingsley	5612	1, 6, 18	William M. Billingsley	Commercial Escrow Services (CES)	6/24/2010	\$ 330,000.00
Jon Anfinen (Preferred Funding Partners)	5602	1, 7, 21	Angel Casanova	Commercial Escrow Services (CES)	8/13/2010	\$ 100,000.00
			Ron Sanchez	Commercial Escrow Services (CES)	8/16/2010	\$ 100,000.00
			Boulder Enterprises III	Commercial Escrow Services (CES)	8/18/2010	\$ 50,000.00
			Agrarian Country	Commercial Escrow Services (CES)	8/19/2010	\$ 200,000.00
			University Grande of Mobile LLC	Commercial Escrow Services (CES)	8/20/2010	\$ 90,000.00
Len Barrie	6146	1, 9, 22	New York IOLA trust Account, For the Benefit of LGB9 Enterprises	Commercial Escrow Services (CES)	1/10/2011	\$ 300,000.00
Debra Mltman	6314	1, 10	Capital Equities Inc	Commercial Escrow Services (CES)	5/16/2011	\$ 400,000.00
William Glanopoulos	NA	1, 11, 23	Riemer & Braunstein	Allen R Smith, Atty At Law - Escrow Account	6/23/2011	\$ 900,000.00
			Riemer & Braunstein	Allen R Smith, Atty At Law - Escrow Account	6/24/2011	\$ 300,000.00
Ed Glazebrook	6527	1, 12, 24	Global Financing Solutions LLC	Commercial Escrow Services (CES)	7/1/2011	\$ 500,000.00
<b>TOTAL SELECTED INVESTOR FUNDS</b>						<b>\$ 4,920,000.00</b>

GOVERNMENT  
 EXHIBIT  
**1401**  
 2:13-CR-439

Source:  
GX139 A-D

# EXHIBIT 22

## Release of Selected Investor Funds From Escrow

Investor	Wire Sent	Amount	Date of Release From Escrow	# Of Days After Investor Wired Money	Amount	Recipients
Michael Bellino	1/14/2010	\$ 250,000.00	1/15/2010	1	\$ 246,500.00	M.Y. Consultants
Gary Dobyms	4/13/2010	\$ 200,000.00	4/15/2010	2	\$ 196,550.00	M.Y. Consultants
Michael Kooyman	4/16/2010	\$ 200,000.00	4/23/2010	7	\$ 196,500.00	M.Y. Consultants
Travis Fox	5/6/2010	\$ 1,000,000.00	5/26/2010	20	\$ 367,000.00	M.Y. Consultants
			5/26/2010	20	\$ 425,000.00	Allen Smith Escrow
			5/26/2010	20	\$ 200,000.00	David Frederickson
William Billingsley	6/24/2010	\$ 330,000.00	7/8/2010	14	\$ 296,290.00	M.Y. Consultants
			7/8/2010	14	\$ 30,000.00	Anthony Brandel
Jon Anfinen	8/13-20/2010	\$ 540,000.00	9/21/2010	32-39	\$ 334,600.00	M.Y. Consultants
			9/21/2010	32-39	\$ 175,000.00	Allen Smith Escrow
			9/21/2010	32-39	\$ 25,000.00	Anthony Brandel
Len Barrie	1/10/2011	\$ 300,000.00	1/20/2011	10	\$ 176,350.00	M.Y. Consultants
			1/20/2011	10	\$ 100,000.00	Allen Smith Escrow
			1/20/2011	10	\$ 15,000.00	Anthony Brandel
Debra Mitman	5/16/2011	\$ 400,000.00	5/17/2011	1	\$ 76,150.00	M.Y. Consultants
			5/17/2011	1	\$ 300,000.00	Allen Smith Escrow
			5/17/2011	1	\$ 20,000.00	Anthony Brandel
William Glanopoulos	6/23-24/2011	\$ 1,200,000.00	6/24/2011	0-1	\$ 175,000.00	Campos & Campos (Overseas)
			6/24/2011	0-1	\$ 30,000.00	Martin Schlaepfer (Overseas)
			6/24/2011	0-1	\$ 30,000.00	Hans-Jurg Lips (Overseas)
			6/24/2011	0-1	\$ 30,000.00	ATP Ltd
			6/24/2011 & 6/27/2011	0-4	\$ 31,485.00	Carpe Diem (James Warras)
			6/24/2011 & 6/27/2011	0-4	\$ 115,000.00	M.Y. Consultants
			6/27/2011	3-4	\$ 490,500.00	Malom Group AG (Overseas)
			6/27/2011	3-4	\$ 15,000.00	Sila Schlaepfer (Wife of Martin) (Overseas)
			6/28/2011	4-5	\$ 231,700.00	Malom Group AG (Overseas)
Ed Glazebrook	7/1/2011	\$ 500,000.00	8/9/2011	39	\$ 127,000.00	M.Y. Consultants
				39	\$ 358,000.00	Allen Smith Escrow
				39	\$ 10,000.00	Anthony Brandel

GOVERNMENT  
EXHIBIT  
1402  
2:13-CR-439

Source:  
GX139 A-D

# EXHIBIT 23

Disbursements of Selected Investor Funds to Anthony Brandel

Investor	Date of Release	Brandel Balance COB		Escrow Funds Received	Brandel Balance		Date Disbursed	Days Between Release	
	From Escrow	Day Before Receipt of Funds		By Brandel Via MY or CES	After Receipt of Funds	To Brandel	To Brandel	From Escrow To Disbursement	To Brandel
Michael Bellino	1/15/2010	\$ 2,562.51	\$	\$ 15,000.00	\$ 17,562.51	1/15/2010		0	
		\$ 55.13	\$	\$ 3,000.00	\$ 3,055.13	1/29/2010		14	
Gary Dobyns	4/15/2010	\$ 2,961.56	\$	\$ 10,000.00	\$ 12,961.56	4/16/2010		1	
		\$ 12,961.56	\$	\$ 15,000.00	\$ 27,961.56	4/19/2010		4	
		\$ 41.08	\$	\$ 10,000.00	\$ 10,041.08	5/10/2010		25	
Michael Kooyman	4/23/2010								
Travis Fox	5/26/2010	\$ 912.83	\$	\$ 20,000.00	\$ 20,912.83	5/28/2010		2	
		\$ 6,680.41	\$	\$ 4,000.00	\$ 10,680.41	7/6/2010		41	
William Billingsley	7/8/2010	\$ 9,075.66	\$	\$ 30,000.00	\$ 39,075.66	7/8/2010		0	
Jon Anfinen (Preferred Funding Partners)	9/21/2010	\$ 27,301.95	\$	\$ 25,000.00	\$ 52,301.95	9/21/2010		0	
Len Barrie	1/20/2011	\$ 17.25	\$	\$ 15,000.00	\$ 15,017.25	1/20/2011		0	
Debra Mitman	5/17/2011	\$ (28.85)	\$	\$ 20,000.00	\$ 19,971.15	5/17/2011		0	
William (Bill) Gianopoulos	6/24 & 27/2011	\$ (317.01)	\$	\$ 10,000.00	\$ 9,682.99	6/24/2011		0	
		\$ 2,626.52	\$	\$ 15,000.00	\$ 17,626.52	6/28/2011		1-4	
Ed Glazebrook	8/9/2011	\$ 300.02	\$	\$ 20,000.00	\$ 20,300.02	8/9/2011		0	
		\$ 5,197.02	\$	\$ 5,500.00	\$ 10,697.02	8/11/2011		2	
<b>TOTALS</b>									
				\$ 217,500.00					

GOVERNMENT  
EXHIBIT  
1405  
2:13-CR-439

# EXHIBIT 24



Disbursements of Selected Investor Funds to James Warras

Investor	Date of Release From Escrow	Warras Balance COB		Escrow Funds Received		Warras Balance		Date Disbursed To Warras	Days Between Release	
		Day Before Receipt of Funds		By Warras Via MY or Smith Accts		After Receipt of Funds			From Escrow To Disbursement	To Warras
Michael Bellino	1/15/2010	\$	1,426.89	\$	10,000.00	\$	11,426.89	1/15/2010		0
Gary Dobyns	4/15/2010									
Michael Kooyman	4/23/2010									
Travis Fox	5/26/2010	\$	17,107.93	\$	25,000.00	\$	42,107.93	5/27/2010		1
William Billingsley	7/8/2010	\$	11,120.40	\$	5,000.00	\$	16,120.40	7/9/2010		1
Jon Anfinen (Preferred Funding Partners)	9/21/2010	\$	19,706.26	\$	25,000.00	\$	44,706.26	9/22/2010		1
Len Barrie	1/20/2011	\$	1,634.81	\$	14,000.00	\$	15,634.81	1/20/2011		0
Debra Mitman	5/17/2011	\$	3,030.52	\$	15,000.00	\$	18,030.52	5/18/2011		1
		\$	5,194.72	\$	1,300.00	\$	6,494.72	5/27/2011		10
William (Bill) Gianopoulos	6/24 & 27-28/2011	\$	778.62	\$	26,485.00	\$	27,263.62	6/24/2011		0
		\$	26,900.80	\$	5,000.00	\$	31,900.80	6/27/2011		0-3
Ed Glazebrook	8/9/2011	\$	72.95	\$	5,000.00	\$	5,072.95	8/9/2011		0
	8/9/2011	\$	3,611.03	\$	35,000.00	\$	38,611.03	8/10/2011		1
<b>TOTALS</b>		\$		\$	<b>166,785.00</b>	\$				

GOVERNMENT  
EXHIBIT  
**1406**  
2:13-CR-439

OS Received 03/13/2023

# EXHIBIT 25

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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,  
Plaintiff,  
v.  
ANTHONY BRANDEL, ET AL.,  
Defendants.

Case No. 2:13-CR-00439-KJD-VCF

**JURY INSTRUCTIONS**

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INSTRUCTION NO. 1

Members of the jury, now that you have heard all the evidence, it is my duty to instruct you on the law that applies to this case. A copy of these instructions will be available in the jury room for you to consult.

It is your duty to weigh and to evaluate all the evidence received in the case and, in that process, to decide the facts. It is also your duty to apply the law as I give it to you to the facts as you find them, whether you agree with the law or not. You must decide the case solely on the evidence and the law and must not be influenced by any personal likes or dislikes, opinions, prejudices, or sympathy. You will recall that you took an oath promising to do so at the beginning of the case.

You must follow all these instructions and not single out some and ignore others; they are all important. Please do not read into these instructions or into anything I may have said or done any suggestion as to what verdict you should return that is a matter entirely up to you.

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INSTRUCTION NO. 2

The indictment is not evidence. The defendants have pleaded not guilty to the charges and asserted a defense of good faith. A defendant is presumed to be innocent unless and until the government proves him guilty beyond a reasonable doubt. In addition, a defendant does not have to testify or present any evidence to prove innocence. The government has the burden of proving every element of the charges beyond a reasonable doubt.

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INSTRUCTION NO. 3

Proof beyond a reasonable doubt is proof that leaves you firmly convinced the defendant is guilty. It is not required that the government prove guilt beyond all possible doubt.

A reasonable doubt is a doubt based upon reason and common sense and is not based purely on speculation. It may arise from a careful and impartial consideration of all the evidence, or from lack of evidence.

If after a careful and impartial consideration of all the evidence, you are not convinced beyond a reasonable doubt that the defendant is guilty, it is your duty to find the defendant not guilty. On the other hand, if after a careful and impartial consideration of all the evidence, you are convinced beyond a reasonable doubt that the defendant is guilty, it is your duty to find the defendant guilty.

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INSTRUCTION NO. 4

A defendant in a criminal case has a constitutional right not to testify. You may not draw any inference of any kind from the fact that Mr. Warras did not testify.

Mr. Brandel has testified. You should treat this testimony just as you would the testimony of any other witness.

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INSTRUCTION NO. 5

The evidence from which you are to decide what the facts are consists of:

- (1) the sworn testimony of any witness;
- (2) the exhibits which have been received into evidence; and
- (3) any facts to which the parties have agreed.



INSTRUCTION NO. 6

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In reaching your verdict you may consider only the testimony and exhibits received in evidence. The following things are not evidence and you may not consider them in deciding what the facts are:

1. Questions, statements, objections, and arguments by the lawyers are not evidence. The lawyers are not witnesses. Although you must consider a lawyer’s questions to understand the answers of a witness, the lawyer’s questions are not evidence. Similarly, what the lawyers have said in their opening statements, will say in their closing arguments and at other times is intended to help you interpret the evidence, but it is not evidence. If the facts as you remember them differ from the way the lawyers state them, your memory of them controls.

2. Any testimony that I have excluded, stricken, or instructed you to disregard is not evidence. In addition, some evidence was received only for a limited purpose; when I have instructed you to consider certain evidence in a limited way, you must do so.

3. Anything you may have seen or heard when the court was not in session is not evidence. You are to decide the case solely on the evidence received at the trial.

INSTRUCTION NO. 7

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Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as testimony by a witness about what that witness personally saw or heard or did. Circumstantial evidence is indirect evidence, that is, it is proof of one or more facts from which you can find another fact.

You are to consider both direct and circumstantial evidence. Either can be used to prove any fact. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. It is for you to decide how much weight to give to any evidence.

INSTRUCTION NO. 8

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In deciding the facts in this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, or part of it, or none of it.

In considering the testimony of any witness, you may take into account:

- (1) the witness’s opportunity and ability to see or hear or know the things testified to;
- (2) the witness’s memory;
- (3) the witness’s manner while testifying;
- (4) the witness’s interest in the outcome of the case, if any;
- (5) the witness’s bias or prejudice, if any;
- (6) whether other evidence contradicted the witness’s testimony;
- (7) the reasonableness of the witness’s testimony in light of all the evidence; and
- (8) any other factors that bear on believability.

The weight of the evidence as to a fact does not necessarily depend on the number of witnesses who testify. What is important is how believable the witnesses were, and how much weight you think their testimony deserves.

INSTRUCTION NO. 9

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You are here only to determine whether the defendant is guilty or not guilty of the charges in the indictment. The defendant is not on trial for any conduct or offense not charged in the indictment.

INSTRUCTION NO. 10

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A separate crime is charged against one or more of the defendants in each count. The charges have been joined for trial. You must decide the case of each defendant on each crime charged against that defendant separately. Your verdict on any count as to any defendant should not control your verdict on any other count or as to any other defendant.

All the instructions apply to each defendant and to each count unless a specific instruction states that it applies only to a specific defendant or count.

INSTRUCTION NO. 11

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The indictment charges that the offenses alleged in the indictment were committed “on or about” certain dates.

Although it is necessary for the government to prove beyond a reasonable doubt that the offense was committed on a date reasonably near the date alleged in the indictment, it is not necessary for the government to prove that the offense was committed precisely on the date charged.

INSTRUCTION NO. 12

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2  
3 The indictment in this case charges the defendants with wire fraud, securities fraud, and  
4 conspiracy to commit wire fraud and securities fraud in several ways using the word “and.” Where the  
5 indictment alleges multiple acts, it is sufficient if the government proves beyond a reasonable doubt the  
6 offense in the disjunctive, in other words, using the word “or” instead of “and.” For example, Count One  
7 of the indictment alleges that the defendants did “combine, conspire, **and** agree with others” to commit  
8 wire fraud and securities fraud. It is sufficient if the government proves that the defendant you are  
9 considering did “combine, conspire, **or** agree with others” to commit wire fraud **or** securities fraud, with  
10 all of you unanimously agreeing which of these acts, if any, the defendant you are considering  
11 committed.  
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INSTRUCTION NO. 13

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Certain charts and summaries have been received into evidence. Charts and summaries are only as good as the underlying supporting material. You should, therefore, give them only such weight as you think the underlying material deserves.



INSTRUCTION NO. 14

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You have heard testimony that the defendant made a statement. It is for you to decide (1) whether the defendant made the statement, and (2) if so, how much weight to give to it. In making those decisions, you should consider all the evidence about the statement, including the circumstances under which the defendant may have made it.

INSTRUCTION NO. 15

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3       You have heard evidence that the defendant committed other crimes, wrongs, or acts not charged  
4 here. You may consider this evidence only for its bearing, if any, on the question of the defendant's  
5 intent, motive, opportunity, preparation, plan, knowledge, identity, absence of mistake, and/or absence of  
6 accident and for no other purpose. You may not consider this evidence as evidence of guilt of the crime  
7 for which the defendant is now on trial.

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INSTRUCTION NO. 16

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You have heard evidence that a civil Order of Prohibition and Revocation was issued against Mr. Warras by the Commissioner of Securities for the State of Wisconsin for conduct not charged here. You may not consider the prior civil Order as evidence of guilt for which Mr. Warras is now on trial.

INSTRUCTION NO. 17

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2  
3 A defendant may be found guilty of wire fraud or securities fraud, even if the defendant  
4 personally did not commit the act or acts constituting the crime but aided and abetted in its commission.  
5 To prove a defendant guilty of wire fraud or securities fraud by aiding and abetting, the government must  
6 prove each of the following beyond a reasonable doubt:

7 First, wire fraud or securities fraud was committed by someone;

8  
9 Second, the defendant aided, counseled, commanded, induced or procured that person with  
10 respect to at least one element of wire fraud or securities fraud;

11  
12 Third, the defendant acted with the intent to facilitate wire fraud or securities fraud; and

13  
14 Fourth, the defendant acted before the crime was completed.

15  
16 It is not enough that the defendant merely associated with the person committing the crime,  
17 or unknowingly or unintentionally did things that were helpful to that person, or was present at the scene  
18 of the crime. The evidence must show beyond a reasonable doubt that the defendant acted with the  
19 knowledge and intention of helping that person commit wire fraud or securities fraud.

20  
21 A defendant acts with the intent to facilitate the crime when the defendant actively  
22 participates in a criminal venture with advance knowledge of the crime and having acquired that  
23 knowledge when the defendant still had a realistic opportunity to withdraw from the crime.

24  
25 The government is not required to prove precisely which defendant actually committed the  
26 crime and which defendant aided and abetted.

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INSTRUCTION NO. 18

An act is done knowingly if the defendant is aware of the act and does not act (or fails to act) through ignorance, mistake, or accident. You may consider evidence of the defendant’s words, acts, or omissions, along with all the other evidence, in deciding whether the defendant acted knowingly.

INSTRUCTION NO. 19

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You may find that a defendant acted knowingly if you find beyond a reasonable doubt that the defendant:

1. was aware of a high probability that the information that he provided to investors concerning the investment programs described in the indictment was false; and
2. deliberately avoided learning the truth.

You may not find such knowledge, however, if you find that the defendant actually believed that the information he provided to investors concerning the investment programs was truthful, or if you find that the defendant was simply careless.

INSTRUCTION NO. 20

1  
2  
3 Defendants Anthony Brandel and James Warras are charged in Count One of the indictment with  
4 conspiring to commit wire fraud and securities fraud in violation of Section 371 of Title 18 of the United  
5 States Code. In order for the defendant you are considering to be found guilty of that charge, the  
6 government must prove each of the following elements beyond a reasonable doubt:

7  
8 First, beginning at least as early as October 2009, and continuing through in or about October  
9 2013, there was an agreement between two or more persons to commit at least one crime as charged in  
10 the indictment; and

11  
12 Second, the defendant became a member of the conspiracy knowing of at least one of its objects  
13 and intending to help accomplish it; and

14  
15 Third, one of the members of the conspiracy performed at least one overt act for the purpose of  
16 carrying out the conspiracy.

17  
18 A conspiracy is a kind of criminal partnership an agreement of two or more persons to commit  
19 one or more crimes. The crime of conspiracy is the agreement to do something unlawful; it does not  
20 matter whether the crime agreed upon was committed.

21  
22 For a conspiracy to have existed, it is not necessary that the conspirators made a formal  
23 agreement or that they agreed on every detail of the conspiracy. It is not enough, however, that they  
24 simply met, discussed matters of common interest, acted in similar ways, or perhaps helped one another.  
25 You must find that there was a plan to commit at least one of the crimes alleged in the indictment as an  
26

1 object of the conspiracy with all of you agreeing as to the particular crime which the conspirators agreed  
2 to commit.

3  
4 One becomes a member of a conspiracy by willfully participating in the unlawful plan with the  
5 intent to advance or further some object or purpose of the conspiracy, even though the person does not  
6 have full knowledge of all the details of the conspiracy. Furthermore, one who willfully joins an existing  
7 conspiracy is as responsible for it as the originators. On the other hand, one who has no knowledge of a  
8 conspiracy, but happens to act in a way which furthers some object or purpose of the conspiracy, does  
9 not thereby become a conspirator. Similarly, a person does not become a conspirator merely by  
10 associating with one or more persons who are conspirators, nor merely by knowing that a conspiracy  
11 exists.

12  
13 An overt act does not itself have to be unlawful. A lawful act may be an element of a conspiracy  
14 if it was done for the purpose of carrying out the conspiracy. The government is not required to prove  
15 that the defendant personally did one of the overt acts.



INSTRUCTION NO. 21

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3 A conspiracy may continue for a long period of time and may include the performance of many  
4 transactions. It is not necessary that all members of the conspiracy join it at the same time, and one may  
5 become a member of a conspiracy without full knowledge of all the details of the unlawful scheme or the  
6 names, identities, or locations of all of the other members.

7  
8 Even though a defendant did not directly conspire with the other defendants or other conspirators  
9 in the overall scheme, the defendant has, in effect, agreed to participate in the conspiracy if the  
10 government proves each of the following beyond a reasonable doubt that:

- 11 1. the defendant directly conspired with one or more conspirators to carry out at least one of the  
12 objects of the conspiracy,
- 13 2. the defendant knew or had reason to know that other conspirators were involved with those  
14 with whom the defendant directly conspired, and
- 15 3. the defendant had reason to believe that whatever benefits the defendant might get from the  
16 conspiracy were probably dependent upon the success of the entire venture.

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19 It is not a defense that a person's participation in a conspiracy was minor or for a short period of  
20 time.

INSTRUCTION NO. 22

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In this case, regarding the alleged conspiracy, the indictment charges that the defendants conspired to commit wire fraud and to commit securities fraud. In other words, the defendants are charged with conspiring to commit two separate substantive crimes. The government does not have to prove that the defendant willfully conspired to commit both crimes. It is sufficient if the government proves beyond a reasonable doubt that the defendant willfully conspired to commit one of those crimes. But to return a verdict of guilty, you must all agree on which of the two crimes the defendant conspired to commit.

INSTRUCTION NO. 23

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If you decide that the defendant was a member of a scheme to defraud and that the defendant had the intent to defraud, the defendant may be responsible for other co-schemers' actions during the course of and in furtherance of the scheme, even if the defendant did not know what they said or did.

For the defendant to be guilty of an offense committed by a co-schemer in furtherance of the scheme, the offense must be one that the defendant could reasonably foresee as a necessary and natural consequence of the scheme to defraud.

INSTRUCTION NO. 24

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3 The words “fraud,” “fraudulent,” or “defrauding” mean to trick, deceive, injure, or damage in  
4 some way.

5 A statement which is untrue or a representation which is false rises to the level of “fraud” when  
6 the person making it knew the statement to be untrue or knew the representations to be false at the time  
7 that the statement or representation was made.

8 A statement which is untrue or a representation which is false may also rise to the level of  
9 “fraud” when the person making the statement or making the representation is acting with the intent to  
10 trick, deceive, injure, or damage or is making the statement or representation with reckless indifference  
11 to its truth, accuracy, or falsity.

12 If you find that the evidence has established beyond a reasonable doubt that Defendant acted with  
13 a fraudulent intent, or said another way, an intent to defraud, it is unimportant whether the defendant was  
14 successful and accomplished the plan or was unsuccessful and did not accomplish it. It is not necessary  
15 for the government to prove that anybody was actually defrauded or that Defendant actually profited by  
16 any fraudulent transaction.

17 On the other hand, even though some individual may have lost money in the transactions shown  
18 by the evidence, this does not rise to the level of fraud unless the evidence establishes beyond a  
19 reasonable doubt that the transaction was designed and intended by the Defendant to deceive, or trick, or  
20 injure, or damage.

INSTRUCTION NO. 25

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2  
3 Defendant Anthony Brandel is charged in Counts Fifteen, Sixteen, Seventeen, Eighteen, Twenty-  
4 One, Twenty-Two, Twenty-Three, and Twenty-Four of the indictment with securities fraud in violation  
5 of federal securities law.

6  
7 Defendant James Warras is charged in Counts Fifteen, Sixteen, Seventeen, Nineteen, Twenty-  
8 Three, and Twenty-Four of the indictment with securities fraud in violation of federal securities law.

9  
10 In order for the defendant to be found guilty of that charge, the government must prove each of  
11 the following elements beyond a reasonable doubt:

12  
13 First, the defendant willfully used a device or scheme to defraud someone, made an untrue  
14 statement of a material fact, failed to disclose a material fact that resulted in making the defendant's  
15 statements misleading, or engaged in any act, practice, or course of business that operates or would  
16 operate as a fraud or deceit upon any person as detailed in the indictment.;

17  
18 Second, the defendant's acts were undertaken, statement was made, or failure to disclose was  
19 done in connection to the execution of an investment contract;

20  
21 Third, the defendant directly or indirectly used an interstate wire or other instruments of  
22 interstate commerce in connection with these acts, making this statement, or this failure to disclose; and

23  
24 Fourth, the defendant acted knowingly.  
25  
26

1 “Willfully” means intentionally undertaking an act, making an untrue statement, or failing to  
2 disclose for the wrongful purpose of defrauding or deceiving someone. Acting willfully does not require  
3 that the defendant know that the conduct was unlawful. You may consider evidence of the defendant’s  
4 words, acts, or omissions, along with all the other evidence, in deciding whether the defendant acted  
5 willfully.

6  
7 “Knowingly” means to make a statement or representation that is untrue and known to the  
8 defendant to be untrue, to fail to state something that the defendant knows is necessary to make other  
9 statements true, to make a statement with reckless disregard as to its truth or falsity, or to fail to make a  
10 statement with reckless disregard that the statement is necessary to make other statements true in respect  
11 to a material fact or intentional conduct that is undertaken to control or affect the price of securities. An  
12 act, statement, or failure to disclose is made or done knowingly if the defendant is aware of the act,  
13 making the statement, the failure to disclose and did not act or fail to act, make the statement, or fail to  
14 disclose through ignorance, mistake or accident. The government is not required to prove that the  
15 defendant knew that his acts were unlawful, it was unlawful to make the statement, or his failure to  
16 disclose was unlawful. You may consider evidence of the defendant’s words, acts, or omissions, along  
17 with all the other evidence, in deciding whether the defendant acted knowingly.

18  
19 “Reckless” means highly unreasonable conduct that is an extreme departure from ordinary care,  
20 presenting a danger of misleading investors, which is either known to the defendant or so obvious that  
21 the defendant must have been aware of it.

22  
23 A fact is material if there is a substantial likelihood that a reasonable investor would consider it  
24 important to making the decision to purchase or sell securities, or enter into an investment contract.

1           It is not necessary that an untrue statement passed through the interstate wires or other  
2 instruments of interstate commerce so long as the interstate wires or other instruments of interstate  
3 commerce were used as a part of the purchase or sale transaction.

4  
5           It is not necessary that the defendant made a profit or that anyone actually suffered a loss.  
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INSTRUCTION NO. 26

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A “device” is an invention, a contrivance, or the result of some plan or design.

A “scheme” is a design or a plan formed to accomplish some purpose.

There is nothing about the terms “device” or “scheme” which in themselves imply anything fraudulent. The terms are plain English words that are neutral.

A “device or scheme to defraud” as used in these instructions, however, means the forming of some invention, contrivance, plan, or design to trick or to deceive in order to obtain money or something of value.

A scheme to defraud does not necessarily end when victims part with money. If you unanimously find beyond a reasonable doubt that a scheme to defraud existed, you may conclude that actions taken to evade detection were critical to hiding the scheme were part of the scheme itself, even if you find those actions occurred after victims parted with money, but only if the government proved beyond a reasonable doubt that the scheme, as originally conceived, included a specific plan to evade detection.



INSTRUCTION NO. 27

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3 The definition of “security” for purposes of the securities fraud offenses in the indictment  
4 includes an “investment contract.” In turn, an “investment contract” includes any contract, transaction or  
5 scheme whereby a person (1) invests his money (2) in a common enterprise, (3) with an expectation of  
6 profits produced solely through the efforts of the promoter or of someone other than themselves.  
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INSTRUCTION NO. 28

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Counts Fifteen through Nineteen and Twenty-One through Twenty-Four of the indictment allege certain types of fraudulent conduct “in connection with the purchase or sale of any security.” The government must prove beyond a reasonable doubt, therefore, that there were purchases or sales of securities and that the “fraud or deceit” described in the indictment had some relationship to or was connected with these sales or purchases.

The government need not show, however, that Defendant, or anyone associated with him bought or sold the securities in question.

INSTRUCTION NO. 29

1  
2  
3 Defendant James Warras is charged in Counts Counts Three through Five and Eleven through  
4 Thirteen of the indictment with wire fraud in violation of 18 U.S.C. § 1343 of the United States Code.

5  
6 Defendant Anthony Brandel is charged with Counts Three, Four, Six, Seven, and Nine through  
7 Thirteen of the indictment with wire fraud in violation of 18 U.S.C. § 1343 of the United States Code.

8  
9 In order for the defendants to be found guilty of that charge, the government must prove each of  
10 the following elements beyond a reasonable doubt:

11  
12 First, the defendant knowingly devised and intended to devise a scheme or plan to defraud, or a  
13 scheme or plan for obtaining money or property by means of false or fraudulent pretenses,  
14 representations, or promises;

15  
16 Second, the statements made or facts omitted as part of the scheme were material; that is, they  
17 had a natural tendency to influence, or were capable of influencing, a person to part with money or  
18 property;

19  
20 Third, the defendant acted with the intent to defraud, that is, the intent to deceive or cheat; and

21  
22 Fourth, the defendant used, or caused to be used, an interstate wire communication to carry out  
23 or attempt to carry out an essential part of the scheme.

24  
25 In determining whether a scheme to defraud exists, you may consider not only the defendant's  
26 words and statements, but also the circumstances in which they are used as a whole.

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A wiring is caused when one knows that a wire will be used in the ordinary course of business or when one can reasonably foresee such use.

It need not have been reasonably foreseeable to the defendant that the wire communication would be interstate in nature. Rather, it must have been reasonably foreseeable to the defendant that some wire communication would occur in furtherance of the scheme, and an interstate wire communication must have actually occurred in furtherance of the scheme.

INSTRUCTION NO. 30

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3 If you should decide that a particular statement or a particular omission was false or misleading  
4 at the time that it was made, then you must determine if the fact stated or omitted was a “material” fact  
5 or a “material” omission under the evidence received in this case.

6  
7 In order for you to find a “material” fact or a “material” omission, the government must prove  
8 beyond a reasonable doubt that the fact misstated or the fact omitted was of such importance that it could  
9 reasonably be expected to cause or to induce a person to act to invest or to cause or to induce a person  
10 not to act or invest.

11  
12 The securities fraud statute under which in Counts Fifteen through Nineteen and Twenty-One  
13 through Twenty-Four of the indictment is brought is concerned only with such “material” misstatements  
14 or such “material” omissions and does not cover minor, or meaningless, or unimportant ones.

INSTRUCTION NO. 31

1  
2 Good faith is a complete defense to the charges in this case. A person who acts, or causes another  
3 person to act, on a belief or an opinion honestly held is not punishable under these statutes merely  
4 because the belief or opinion turns out to be inaccurate, incorrect, or wrong. The burden of establishing  
5 lack of good faith and criminal intent rests upon the government. A defendant is under no burden to  
6 prove his or her good faith; rather the prosecution that is, the government must prove bad faith or  
7 knowledge of falsity beyond a reasonable doubt. A defendant does not act in “good faith” if, even though  
8 he honestly holds a certain opinion or belief, that defendant also knowingly makes material false or  
9 fraudulent pretenses, representations, or promises to others.

10  
11 While the term “good faith” has no precise definition, it means, among other things, a belief or  
12 opinion honestly held, an absence of malice or ill will, and an intention to avoid taking unfair advantage  
13 of another.

14  
15 In determining whether or not the government has proven beyond a reasonable doubt that the  
16 defendant acted with an intent to obtain money or property by means of false or fraudulent pretenses,  
17 representations, or promises, or whether the defendant acted in good faith, the jury must consider all of  
18 the evidence in the case bearing on the defendant's state of mind.

19  
20 A belief that a victim will be repaid and will sustain no loss, even if that belief is held in good  
21 faith, is not a defense to a charge of securities or wire fraud. It is also not a defense to charges of  
22 securities fraud and wire fraud that the victim may have been gullible or negligent. The laws against  
23 fraud are designed to protect the naive and careless as well as the experienced and careful.

24  
25 While good faith is a defense to securities fraud and wire fraud, an honest belief in the ultimate  
26 success of the enterprise is not, in itself, a defense.

INSTRUCTION NO. 32

1  
2  
3 Because you must base your verdict only on the evidence received in the case and on these  
4 instructions, I remind you that you must not be exposed to any other information about the case or to the  
5 issues it involves. Except for discussing the case with your fellow jurors during your deliberations:

- 6  
7 1. Do not communicate with anyone in any way and do not let anyone else communicate with you  
8 in any way about the merits of the case or anything to do with it. This includes discussing the  
9 case in person, in writing, by phone or electronic means, via email, text messaging, or any  
10 Internet chat room, blog, website or other feature. This applies to communicating with your  
11 family members, your employer, the media or press, and the people involved in the trial. If you  
12 are asked or approached in any way about your jury service or anything about this case, you must  
13 respond that you have been ordered not to discuss the matter and to report the contact to the  
14 court.
- 15 2. Do not read, watch, or listen to any news or media accounts or commentary about the case or  
16 anything to do with it; do not do any research, such as consulting dictionaries, searching the  
17 Internet or using other reference materials; and do not make any investigation or in any other way  
18 try to learn about the case on your own.

19  
20  
21 The law requires these restrictions to ensure the parties have a fair trial based on the same  
22 evidence that each party has had an opportunity to address. A juror who violates these restrictions  
23 jeopardizes the fairness of these proceedings. If any juror is exposed to any outside information, please  
24 notify the Court immediately.

INSTRUCTION NO. 33

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Some of you have taken notes during the trial. Whether or not you took notes, you should rely on your own memory of what was said. Notes are only to assist your memory. You should not be overly influenced by your notes or those of your fellow jurors.



INSTRUCTION NO. 34

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The punishment provided by law for the crimes alleged is for the Court to decide. You may not consider punishment in deciding whether the government has proved its case against the defendant beyond a reasonable doubt.

INSTRUCTION NO. 35

1  
2  
3 When you retire, you should elect one member of the jury as your foreperson. That person will  
4 preside over the deliberations and speak for you here in court.

5 You will then discuss the case with your fellow jurors to reach agreement if you can do so. Your  
6 verdict, whether guilty or not guilty, must be unanimous.

7 Each of you must decide the case for yourself, but you should do so only after you have  
8 considered all the evidence, discussed it fully with the other jurors, and listened to the views of your  
9 fellow jurors.

10 Do not be afraid to change your opinion if the discussion persuades you that you should. But do  
11 not come to a decision simply because other jurors think it is right.

12 It is important that you attempt to reach a unanimous verdict but, of course, only if each of you  
13 can do so after having made your own conscientious decision. Do not change an honest belief about the  
14 weight and effect of the evidence simply to reach a verdict.

15 Your verdict must be based solely on the evidence and on the law as I have given it to you in  
16 these instructions. However, nothing that I have said or done is intended to suggest what your verdict  
17 should be -- that is entirely for you to decide.

18 The arguments and statements of the attorneys are not evidence. If you remember the facts  
19 differently from the way the attorneys have stated them, you should base your decision on what you  
20 remember.

21 After you have reached unanimous agreement on a verdict, your foreperson will fill in the verdict  
22 forms that have been given to you, sign and date them and advise the marshal outside your door that you  
23 are ready to return to the courtroom.

24 If it becomes necessary during your deliberations to communicate with me, you may send a note  
25 through the marshal or bailiff, signed by your foreperson or by one or more members of the jury. No  
26 member of the jury should attempt to communicate with me except by a signed writing, and I will

1 communicate with any member of the jury on anything concerning the case only in writing, or orally  
2 here in open court. If you send out a question, I will consult with the lawyers before answering it, which  
3 may take some time. You may continue your deliberations while waiting for the answer to any question.  
4 Remember that you are not to tell anyone --including me -- how the jury stands, numerically or  
5 otherwise, on the question of the innocence or guilt of the Defendant, until after you have reached a  
6 unanimous verdict or have been discharged.

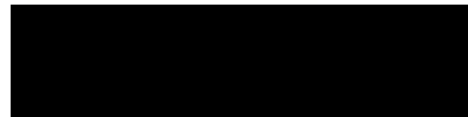
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INSTRUCTION NO. 36

A verdict form has been prepared for you. After you have reached unanimous agreement on a verdict, your foreperson will fill in the form that has been given to you, sign and date it and advise the Court that you are ready to return to the courtroom.

DATED this 7th day of December 2015.



Kent J. Dawson  
United States District Judge

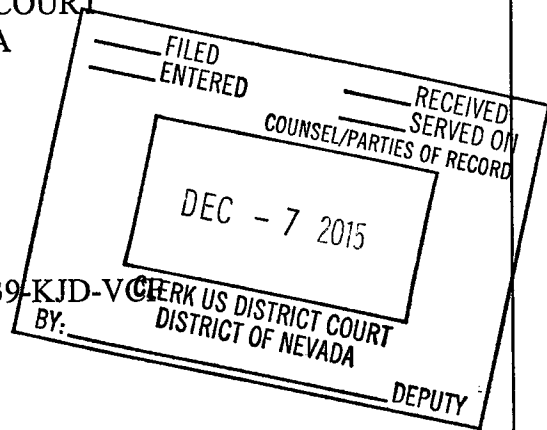
# EXHIBIT 26

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

-oOo-

1 UNITED STATES OF AMERICA, )  
2 )  
3 Plaintiff, )  
4 )  
5 VS. )  
6 )  
7 ANTHONY BRANDEL, ET AL., )  
8 Defendants. )

2:13-cr-439-KJD-VCF



VERDICT

9 We, the jury in the above entitled case, upon our oaths, do say:

10 That we find the Defendant, ANTHONY BRANDEL:

11 Guilty of Count One (conspiracy) charged in the Indictment herein.  
12 (Not Guilty-Guilty)

13 Guilty of Count Three (wire fraud as to Michael Bellino) charged in the Indictment  
14 herein.  
15 (Not Guilty-Guilty)

16 Guilty of Count Four (wire fraud as to Michael Kooyman) charged in the Indictment  
17 herein.  
18 (Not Guilty-Guilty)

19 Guilty of Count Six (wire fraud as to William Billingsley) charged in the Indictment  
20 herein.  
21 (Not Guilty-Guilty)

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(Not Guilty-Guilty)

Guilty of Count Seven (wire fraud as to Jon Anfinson) charged in the Indictment herein.

(Not Guilty-Guilty)

Guilty of Count Nine (wire fraud as to Len Barrie) charged in the Indictment herein.  
(Not Guilty-Guilty)

Guilty of Count Ten (wire fraud as to Debra Mitman) charged in the Indictment herein.

(Not Guilty-Guilty)

Guilty of Count Eleven (wire fraud as to William and Cindi Gianopoulos) charged in the Indictment herein.

(Not Guilty-Guilty)

Guilty of Count Twelve (wire fraud as to Ed Glazebrook) charged in the Indictment herein.

(Not Guilty-Guilty)

Guilty of Count Thirteen (wire fraud as to Gary Dobyms) charged in the Indictment herein.

(Not Guilty-Guilty)

Guilty of Count Fifteen (securities fraud as to Michael Bellino) charged in the Indictment herein.

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(Not Guilty-Guilty)

Guilty of Count Sixteen (securities fraud as to Michael Kooyman) charged in the  
Indictment herein.

(Not Guilty-Guilty)

Guilty of Count Seventeen (securities fraud as to Gary Dobyms) charged in the  
Indictment herein.

(Not Guilty-Guilty)

Guilty of Count Eighteen (securities fraud as to William Billingsley) charged in the  
Indictment herein.

(Not Guilty-Guilty)

Guilty of Count Twenty-One (securities fraud as to Jon Anfinson) charged in the  
Indictment herein.

(Not Guilty-Guilty)

Guilty of Count Twenty-Two (securities fraud as to Len Barrie) charged in the  
Indictment herein.

(Not Guilty-Guilty)

Guilty of Count Twenty-Three (securities fraud as to William Gianopoulos and Cindi  
Gianopoulos) charged in the Indictment herein.

(Not Guilty-Guilty)

Guilty of Count Twenty-Four (securities fraud as to Ed Glazebrook) charged in the



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Indictment herein.

(Not Guilty-Guilty)

That we find the Defendant, JAMES WARRAS:

Guilty of Count One (conspiracy) charged in the Indictment herein.

(Not Guilty-Guilty)

Guilty of Count Three (wire fraud as to Michael Bellino) charged in the Indictment herein.

(Not Guilty-Guilty)

Guilty of Count Four (wire fraud as to Michael Kooyman) charged in the Indictment herein.

(Not Guilty-Guilty)

Guilty of Count Five (wire fraud as to Travis Fox) charged in the Indictment herein.

(Not Guilty-Guilty)

Guilty of Count Eleven (wire fraud as to William and Cindi Gianopoulos) charged in the Indictment herein.

(Not Guilty-Guilty)

Guilty of Count Twelve (wire fraud as to Ed Glazebrook) charged in the Indictment herein.

(Not Guilty-Guilty)

Guilty of Count Thirteen (wire fraud as to Gary Dobyms) charged in the Indictment herein.

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(Not Guilty-Guilty)

Guilty of Count Fifteen (securities fraud as to Michael Bellino) charged in the Indictment herein.

(Not Guilty-Guilty)

Guilty of Count Sixteen (securities fraud as to Michael Kooyman) charged in the Indictment herein.

(Not Guilty-Guilty)

Guilty of Count Seventeen (securities fraud as to Gary Dobyms) charged in the Indictment herein.

(Not Guilty-Guilty)

Guilty of Count Nineteen (securities fraud as to Travis Fox) charged in the Indictment herein.

(Not Guilty-Guilty)

Guilty of Count Twenty-Three (securities fraud as to William Gianopoulos and Cindi Gianopoulos) charged in the Indictment herein.

(Not Guilty-Guilty)

Guilty of Count Twenty-Four (securities fraud as to Ed Glazebrook) charged in the Indictment herein.

(Not Guilty-Guilty)

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DATED this 7 day of Dec, 2015.

\_\_\_\_\_  
FOREPERSON

Respectfully submitted,  
DANIEL G. BOGDEN  
United States Attorney

ANDREW WEISSMANN  
Chief, Fraud Section, Criminal Division  
U.S. Department of Justice

/s Brian Young  
BRIAN YOUNG  
Assistant Chief  
MELISSA AOYAGI  
Trial Attorney

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**CERTIFICATE OF ELECTRONIC SERVICE**

I certify that on the date set forth below, I electronically filed the foregoing document with the Clerk of the Court using the ECF system, which will send notification of such filing to counsel of record for the defendants.

Dated: December 5, 2015

/s/ Melissa Aoyagi  
MELISSA AOYAGI  
Trial Attorney  
U.S. Department of Justice  
Criminal Division, Fraud Section

# EXHIBIT 27



**UNITED STATES OF AMERICA**  
SECURITIES AND EXCHANGE COMMISSION

**ATTESTATION**

I HEREBY ATTEST

*that:*

*A diligent search has this day been made of the records and files of this Commission and the records and files do not disclose that any registration statements have been received in this Commission, under the name of Malom Group AG, pursuant to the provisions of any of the Acts administered by the Commission.*

on file in this Commission

11/04/2014

*Date*



Joseph Horneman, Management and Program Analyst

It is hereby certified that the Secretary of the U.S. Securities and Exchange Commission, Washington, DC, which Commission was created by the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is official custodian of the records and files of said Commission and was such official custodian at the time of executing the above attestation, and that he/she, and persons holding the positions of Deputy Secretary, Assistant Director, Records Officer, Branch Chief of Records Management, and the Program Analyst for the Records Officer, or anyone of them, are authorized to execute the above attestation.

For the Commission



Secretary

# EXHIBIT 28



UNITED STATES OF AMERICA  
SECURITIES AND EXCHANGE COMMISSION

ATTESTATION

I HEREBY ATTEST

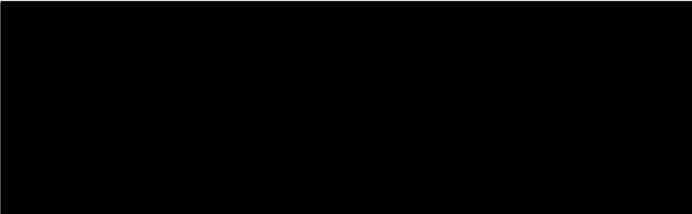
that:

*A diligent search has this day been made of the records and files of this Commission and the records and files do not disclose that any registration statements or exemptions have been received in this Commission, under the name of ANTHONY B. BRANDEL, pursuant to the provisions of any of the Acts administered by the Commission.*

on file in this Commission

06/20/2017

Date



Loretta Cassatt, Branch Chief

It is hereby certified that the Secretary of the U.S. Securities and Exchange Commission, Washington, DC, Commission was created by the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is the official custodian of the records and files of said Commission and was such official custodian at the time of executing the above attestation, and that he/she, and persons holding the positions of Deputy Secretary, Assistant Director, Records Officer, Branch Chief of Records Management, Records and Information Management Specialist, and the Program Analyst for the Records Officer, or any one of them, is authorized to execute the above attestation.

For the Commission





# EXHIBIT 29

# U.S. Securities and Exchange Commission

## Division of Enforcement

### Prejudgment Interest Report

#### SEC V. MALON PREJUDGMENT INTEREST WARRAS AND BRANDEL

Quarter Range	Annual Rate	Period Rate	Quarter Interest	Principal+Interest
Violation Amount				\$4,920,000.00
08/01/2011-09/30/2011	4%	0.67%	\$32,889.86	\$4,952,889.86
10/01/2011-12/31/2011	3%	0.76%	\$37,451.99	\$4,990,341.85
01/01/2012-03/31/2012	3%	0.75%	\$37,223.04	\$5,027,564.89
04/01/2012-06/30/2012	3%	0.75%	\$37,500.69	\$5,065,065.58
07/01/2012-09/30/2012	3%	0.75%	\$38,195.58	\$5,103,261.16
10/01/2012-12/31/2012	3%	0.75%	\$38,483.61	\$5,141,744.77
01/01/2013-03/31/2013	3%	0.74%	\$38,034.82	\$5,179,779.59
04/01/2013-06/30/2013	3%	0.75%	\$38,741.91	\$5,218,521.50
07/01/2013-09/30/2013	3%	0.76%	\$39,460.60	\$5,257,982.10
10/01/2013-12/31/2013	3%	0.76%	\$39,758.99	\$5,297,741.09
01/01/2014-03/31/2014	3%	0.74%	\$39,188.77	\$5,336,929.86
04/01/2014-06/30/2014	3%	0.75%	\$39,917.31	\$5,376,847.17
07/01/2014-09/30/2014	3%	0.76%	\$40,657.80	\$5,417,504.97
10/01/2014-12/31/2014	3%	0.76%	\$40,965.24	\$5,458,470.21
01/01/2015-03/31/2015	3%	0.74%	\$40,377.72	\$5,498,847.93
04/01/2015-06/30/2015	3%	0.75%	\$41,128.37	\$5,539,976.30
07/01/2015-09/30/2015	3%	0.76%	\$41,891.33	\$5,581,867.63
10/01/2015-12/31/2015	3%	0.76%	\$42,208.09	\$5,624,075.72
01/01/2016-03/31/2016	3%	0.75%	\$41,950.07	\$5,666,025.79
04/01/2016-06/30/2016	4%	0.99%	\$56,350.64	\$5,722,376.43
07/01/2016-09/30/2016	4%	1.01%	\$57,536.46	\$5,779,912.89
10/01/2016-12/31/2016	4%	1.01%	\$58,114.97	\$5,838,027.86
01/01/2017-03/31/2017	4%	0.99%	\$57,580.55	\$5,895,608.41
04/01/2017-05/31/2017	4%	0.67%	\$39,411.74	\$5,935,020.15
<b>Prejudgment Violation Range</b>			<b>Quarter Interest Total</b>	<b>Prejudgment Total</b>
<b>08/01/2011-05/31/2017</b>			<b>\$1,015,020.15</b>	<b>\$5,935,020.15</b>

# EXHIBIT 30

**JOINT ESCROW INSTRUCTIONS**

To: **Commercial Escrow Services, Inc. (hereinafter, "Escrow Holder")**  
**Antoinette Hardstone (hereinafter, "Escrow Officer")**

The Parties described in Section 1.01, jointly request, authorize and instruct you to open an escrow for the purpose of completing the transaction described herein in accordance with the terms, conditions and procedures set forth herein. The escrow shall be identified by the following identifier:

**Escrow No.: 39-4979-AH**

This identifier shall be referenced in all communications and shall not be altered for the duration of this transaction.

**ARTICLE I**  
**The Parties**

**Section 1.01. The Parties.**

The Parties to these Joint Escrow Holder Instructions are:

**M.Y. Consultants Inc. (hereinafter, "Provider");**

and,

**Michael L Bellino, individually (hereinafter, "MLB").**

Provider and MLB may sometimes herein be referred to in the singular by the word "Party"; and, may sometimes be collectively referred to herein as "The Parties".

**ARTICLE II**  
**Preliminary Recitals**

**Section 2.01. Designation as Joint Escrow Holder Instructions.**

Provider and MLB deem this document to be and do hereby lodge with you these operative Joint Escrow Instructions (hereinafter, "Instructions").

**Section 2.02. Date for Commencement of the Transaction.**

The date for commencement of the transaction is the date that MLB has deposited with Escrow Holder the sum of Two Hundred Fifty Thousand USD (US\$250,000.00); and said funds are cleared and credited to Escrow Holder's account at the banking coordinates provided in Exhibit "A" attached hereto (hereinafter, "Commencement Date").

*Joint Escrow Instructions*

Page 1 of 9

SEC-CES0030935  
SEC-Swiss-000000171

**Section 2.03. Underlying Transaction.**

MLB has requested Provider to introduce MLB to an Investor that would be willing to enter into a Joint Venture with MLB for the benefit of MLB that is able to cause a verifiable Proof of Funds identifying that the Investor has on deposit cash and cash equivalents in the amount of not less than Fifty Million USD US Dollars (US\$50,000,000.00) at a recognized and respected financial institution

**ARTICLE III**

**Escrow Holder's Indemnification, Duties and Rights**

**Section 3.01. Indemnity for Claims, Loss, Damage, or Liability.**

Provider and MLB hereby agree to be jointly and severally liable to indemnify and hold Escrow Holder and Escrow Holder's property, free and harmless from any and all claims, loss, damage, or liability arising as a result of the performance by Escrow Holder of its duties due to:

1. The failure of any term or condition of this escrow.
2. Escrow Holder's failure to ascertain or comply with the terms of any document, other than these Instructions or an amendment hereof duly executed by The Parties.
3. Escrow Holder's exercise of discretion in any particular manner or situation in which Escrow Holder is authorized by these Instructions to exercise discretion.
4. Any reason except Escrow Holder's gross negligence or willful misconduct in following these Instructions or acting as Escrow Holder of this escrow.

**Section 3.02. Payment of Costs and Expenses.**

"Provider" agrees to be liable to reimburse Escrow Holder for all costs and expenses incurred by Escrow Holder in fulfilling these Instructions and in the performance of its duties as Escrow Holder.

**Section 3.03. Payment of Fees for Services.**

"Provider" agrees to be liable to pay Escrow Holder a reasonable fee for services in acting as Escrow Holder in fulfilling these Instructions and in the performance of its duties as Escrow Holder pursuant to Escrow Holder's letter agreement with Provider.

**Section 3.04. Disregard of Contract.**

The duties of Escrow Holder are to be determined solely by these Instructions and any amendments jointly submitted by The Parties. Escrow Holder shall not be responsible to interpret the provisions of any document purported to be the underlying agreement between The Parties or, any knowledge or understanding of nor accept in escrow any document purported to be the underlying agreement of The Parties.

*Joint Escrow Instructions*

  
Page 2 of 9

**Section 3.05. Genuineness of Documents.**

Escrow Holder is not responsible to undertake an investigation of the authenticity of the documents delivered to escrow. Escrow Holder shall assume that instruments, documents and other writings that are deposited in escrow are genuine; and, that they were duly executed by the person or persons represented as having been the person(s) who executed them. MLB shall at its own efforts investigate the authenticity of each and every document delivered to escrow by MLB's independent due diligence and such documents shall be deemed authentic if not proven otherwise by MLB within two (2) banking days of the documents being delivered to MLB by Escrow Holder.

**Section 3.06. Conflicting Demands or Claims.**

Escrow Holder is not obligated to and shall not make a determination or resolve conflicting demands or claims to funds, instruments, documents, or items deposited in escrow, nor conflicting demands or claims concerning the validity, interpretation, or performance of these Instructions. If conflicting demands or claims are made Escrow Holder shall follow the provisions of these Instructions only and any demand or claims inconsistent herewith are hereby deemed void ab initio by The Parties and shall be disregarded by Escrow Holder.

If a conflicting demand or claim is made by The Parties on a material issue or duty of Escrow Holder that is not provided for herein, Escrow Holder is instructed and only authorized to refrain from carrying out any instructions or performing any duties not consistent with these Instructions until resolution of the conflict.

**Section 3.07. Interpleader Action.**

Notwithstanding the foregoing, in the event a conflicting demand or claim on a material issue or duty of Escrow Holder remains unresolved by The Parties for more than seven (7) days, Escrow Holder shall file an action in Interpleader with a court of competent jurisdiction for resolution of the conflict. In that action, Escrow Holder shall be entitled to an award for attorneys' fees and costs expended and earned in bringing the action. Upon lodging with the court all funds and writings, Escrow Holder's duties to The Parties shall terminate.

**Section 3.08. Cooperation of Parties.**

The Parties shall cooperate with Escrow Holder in carrying out these Instructions in order to complete this escrow. The Parties shall deposit in escrow upon the written request of Escrow Holder, all monies, instruments, documents, authorizations, or other items reasonably necessary to enable Escrow Holder to satisfy its duties as Escrow Holder in carrying out the provisions of these Instructions.

**Section 3.09. Funds and Instruments Deposited in Escrow.**

Escrow Holder is authorized to deposit all funds received in escrow in an escrow account maintained in Escrow Holder's name at a State or National Bank insured by an agency of the United States Government, including but not limited to a parent, affiliate or subsidiary of Escrow Holder; and, to retain those funds in such an account until disbursed pursuant to these Instructions.

*Joint Escrow Instructions*



Page 3 of 9

SEC-CES0030937  
SEC-Swiss-000000173

Escrow Holder shall not be liable to The Parties for accrued interest, if any, while the funds remain in Escrow Holder's account. For purposes of these Instructions, funds deposited into escrow are deemed deposited when the funds have been confirmed as on deposit in Escrow Holder's account and are available for subsequent disbursements.

**ARTICLE IV**  
**Procedure Protocols**

**NOTE:** Escrow Holder shall not make any disbursement of funds except as described hereinbelow.

**The Close of Escrow shall be contingent upon the timely happening and perfect performance of each of the following events:**

**Section 4.01. MLB Deposits US \$250,000.00 into Escrow Holder's Account.**  
Immediately upon the execution of these Instructions, MLB shall deposit into the custody of Escrow Holder a Services Fee in the amount of Two Hundred Fifty Thousand US Dollars (\$250,000.00) by wire transfer to the bank coordinates provided in Exhibit "A" attached hereto and incorporated herein by this reference as if set forth in full.

Upon the Financial Services Fee being duly credited to Escrow Holder's account free of holds, Escrow Holder shall notify Provider of the Two Hundred Fifty Thousand U.S. Dollars (\$250,000.00) having been deposited and that the funds are available for a Close of Escrow.

**Section 4.02. Provider Delivers Documents to Escrow Holder.**  
Upon receiving notice from Escrow Holder that the Service Fee of Two Hundred Fifty Thousand US Dollars (\$250,000.00) has been deposited with Escrow Holder, Provider shall deliver to Escrow Holder and to MLB the "Financial Management Agreement" (FMA), between Investor and Krako International Services Inc. "Evidence of Account-Joint Venture Agreement" together with "Notice of Readiness to Proceed" naming a well respected bank to be used for the MLBs transaction, "Sample MT799 SWIFT Message", "Client Information Sheet" from investor, Authorization to Verify and Authenticate", "Investors Passport", "Affidavit of Non-Solicitation", duly executed by the Investor introduced by Provider, and any reasonable document that evidences cash or cash equivalents under the control of Investor in the amount of not less than Two Hundred Fifty Thousand USD (\$250,000.00).

**Section 4.03. Escrow Holder Receives Documents.**  
Upon Escrow Holder's receipt of the documents described above, Escrow Holder shall deliver to MLB the documents attached to Provider's electronic mail to MLB at the electronic mail address provided for MLB in Section 5.05 hereinbelow, whereupon escrow shall be prepared to close. MLB shall have two (2) banking days to verify all documents delivered as being genuine or to discover that they are not what they have been purported to be by the Provider.

*Joint Escrow Instructions*

  
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**Section 4.04. Close of Escrow.**

The Close of Escrow shall take place with Escrow Holder disbursing to Provider the Financial Services Fee by the means and to the location that Provider shall solely designate to Escrow Holder, if upon the third (3<sup>rd</sup>) day following the delivery to MLB of the documents, and MLB fails to notify Escrow Holder in writing that the documents delivered are not acceptable due to specifically identified misrepresentations or fraud and attaching thereto third party proof of the misrepresentation or fraud.

If on or before the third (3<sup>rd</sup>) day following delivery to MLB of the documents to MLB, MLB sends written notification that the documents delivered to MLB are not acceptable due to specifically identified misrepresentations or fraud and attaching thereto third party proof of the misrepresentation or fraud, Provider shall have two (2) business days within which time to correct any specifically identified deficiency with escrow remaining open. In the event that Provider shall correct the deficiency within such time, MLB shall be granted two (2) additional days to identify that the substituted documents are not acceptable due to specifically identified misrepresentations or fraud and attaching thereto third party proof of the misrepresentation or fraud; and should MLB not communicate such to Escrow Holder, it shall be assumed that the substituted documents are acceptable to MLB whereupon there shall be a Close of Escrow with disbursement of the Financial Services Fee to Provider. However, in the event that Provider shall fail to correct the specifically identified deficiency or states that the deficiency cannot be corrected, Escrow Holder shall immediately thereafter refund the entire Financial Services Fee to MLB free of any claims of right of Provider.

Upon the Close of Escrow, Escrow Holder shall be relieved of any further duties to The Parties.

**Section 4.05. Failure of Escrow to Close.**

For purposes of these Instructions, this escrow shall be deemed to have Closed when each condition precedent as described in Section 4.04 is perfectly performed. If escrow cannot close due to Provider's failure to provide documents within ten (10) days of the execution of these Instructions, Escrow Holder shall upon written demand of MLB immediately re-deliver to MLB all funds then held in escrow deposited by MLB. Delivery shall be in such manner and to such location as MLB shall hereafter designate in writing. Upon Escrow Holder returning all funds then held in escrow deposited by MLB, Escrow Holder shall be relieved of any further duties to The Parties.

**ARTICLE V**  
**General Provisions**

**Section 5.01. Sole Instructions.**

Unless and until subsequently amended or cancelled in the manner provided herein, these Instructions shall constitute the complete and only Escrow Instructions of The Parties. The Parties hereby revoke any prior Instructions that Escrow Holder may have received.

*Joint Escrow Instructions*



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**Section 5.02. Time of Essence.**

Time is of the essence with respect to the perfect performance, occurrence, fulfillment and satisfaction of each and every term and condition of these Instructions.

**Section 5.03. Amendments.**

Once these Instructions have been executed and deposited with Escrow Holder, they may only be modified by a written amendment executed by all The Parties. No amendment or modification of Instructions shall be valid or effective unless and until being duly executed by all The Parties and being lodged with Escrow Holder. Any purported oral amendment or modification of these Instructions is ineffective and invalid.

**Section 5.04. Cancellation of Escrow / Force Majeure.**

A cancellation of this escrow can only be effected by means of supplementary escrow instructions; or, a written notice that complies with the respective provisions of these Instructions relating to Amendments; or, this Section relating to unilateral cancellation for the non-occurrence of a condition precedent due to force majeure. Upon cancellation of escrow pursuant to this Section, all funds, instruments, documents, and other items placed in the custody and control of Escrow Holder shall be returned to the Party that deposited it.

**Section 5.05. Notices.**

Any notice that is required or permitted under these Instructions must be in writing, signed by The Party giving the notice and must be delivered to Escrow Holder the other Parties by either: (1) certified mail postage prepaid return receipt requested; (2) facsimile with proof of transmission; or, (3) electronic mail. A notice not complying with this Section is ineffective. Notice shall be deemed given if by mail at the time of receipt; if by facsimile or electronic mail at the time of the completed transmission. Notices shall be given at the addresses, facsimile numbers or, electronic mail addresses as follows:

**Escrow Holder:** Commercial Escrow Services, Inc.  
3478 Buskirk Avenue, Ste 242.  
Pleasant Hill, CA, 94523  
Attn: Antoinette Hardstone, Escrow Officer  
Facsimile No.:  
Telephone No.: 925-933-9960  
Electronic Mail: [toni@commercialescrow.com](mailto:toni@commercialescrow.com)

**Provider:** M.Y. Consultants, Inc.  
2780 So. Jones Avenue, Suite# 215  
Las Vegas, Nevada 89146  
Facsimile No.: 702-876-8732  
Telephone No.: 702-876-3464  
Attn: Anthony Brandel, Director of Operation  
Electronic Mail: [Tony@mycily.com](mailto:Tony@mycily.com)



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**MLB:** Michael L. Beltino,  
9 Soundview land  
Sandspoint N.Y. 11050  
Facsimile No.: 516-354-6762  
Telephone No.: 516-354-6583  
Cellular No.: 917-731-8626  
Electronic Mail: libertyashes@aol.com

**Section 5.06. Waiver.**

A term or condition of these Instructions may only be waived by a written waiver that has been executed by The Party or Parties the term or condition was intended to benefit; and, the waiver must be deposited with Escrow Holder. Any purported oral waiver of a term or condition contained herein shall be ineffective and wholly invalid.

**Section 5.07. Assignments and Delegations Prohibited.**

The rights of a Party hereto may not be transferred or otherwise assigned to a third person or entity. The duties of a Party hereto may not be transferred or otherwise delegated to a third person or entity.

**Section 5.08. Governing Jurisdiction.**

These Instructions shall be governed and all rights and liabilities under it determined in accordance with the laws of the State of Nevada and exclusively in the courts thereof.

**Section 5.09. Attorneys' Fees.**

Notwithstanding the provisions of Section 3.07, if a Party brings any legal action or seeks arbitration regarding any provision of these Instructions, the Party deemed to be less at fault in the litigation or arbitration shall be entitled to recover reasonable attorneys' fees from the Party deemed more at fault. This is in addition to any other relief granted.

**Section 5.10. Binding on Heirs.**

These Instructions shall be binding on and shall inure to the benefit of the affiliates and subsidiaries, heirs, executors, administrators and successors of The Parties, as well as, Escrow Holder.


These Instructions shall become binding on the date last executed by a Party and only upon execution by all Parties hereto.

M.Y. Consultants Inc.

By:   
Anthony Brandel, Director of Operations

Dated: 1-11-10

Michael L. Beltino,

By:   
Michael L. Beltino,

Dated: 1-14-10

**Request for Acknowledgment of Acceptance**

**Escrow Holder, please acknowledge receipt and acceptance of these instructions with attached Exhibit "A", indicating your agreement to serve as Escrow Holder pursuant to the terms and conditions set forth herein by executing and returning to The Parties the acknowledgment and acceptance set forth below.**

**Acknowledgment and Acceptance by Escrow Holder**

**I, Antoinette Hardstone for and on behalf of Commercial Escrow Services, Inc., hereby acknowledge receipt of the foregoing Joint Escrow Instructions with attached Exhibit "A". Commercial Escrow Services, Inc. hereby agrees to establish escrow for the transaction to be conducted by/between M.Y. Consultants, Inc., together with Michael L Bellino,; and, agree to serve as Escrow Holder pursuant only to the expressed terms and conditions as fully contained and set forth in the Joint Escrow Instructions and such additional instructions or amendments as may be jointly submitted to us by The Parties.**

Commercial Escrow Services, Inc.

By: Antoinette Hardstone, Escrow Officer

Dated: \_\_\_\_\_

*Joint Escrow Instructions*



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**Exhibit "A"**

**COMMERCIAL ESCROW SERVICES, INC.**  
3478 Buskirk Avenue, Ste 242  
Pleasant hill, CA. 92523  
Toni Hardstone, Escrow Officer  
Phone: 925-933-9960  
Email: toni@commercialescrow.com

**WIRING INSTRUCTIONS**

**BANK: UNION BANK OF CALIFORNIA**  
1980 SATURN STREET  
MONTEREY PARK, CA 91755

**ROUTING #: 122000496**

**CREDIT TO NAME: COMMERCIAL ESCROW SERVICES, INC.**  
**ESCROW TRUST ACCOUNT**

**ACCOUNT #: 9120087727**

**AMOUNT: \$ 250,000.00**

**ESCROW NO: 39-4977-AH**

*Joint Escrow Instructions*

  
  
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# EXHIBIT 31

[REDACTED]

June 28, 2010

Myra Foster  
Foster Group Inc.

Joint Venture

Thank you for your request regarding our investor to participate in your buy/sell transactions. Our investor has allowed us to bring him potential clients that have a need to show capability to perform, which allows them to enter into certain contracts. Most buy/sell transactions require the buyer to show that they have the ability to perform so that they can tie up certain products which at that time allows them to enter into a contract selling the product.

We do not move money into the name of the client for many reasons, mostly due to the fact that it puts the client in a position of misrepresentation of the funds which could be considered bank fraud. We on the other hand leave the funds in the investor's name, and the client and the investor sign a Joint Venture to enter into contracts together, using the strength of the investor's bank accounts.

Our services are less expensive than most companies offering proof of funds in the client's name, and our service will not ever be considered fraudulent.

To ensure the Clients full satisfaction, upon escrow being setup, we will immediately send all executed documents to the client. Upon close of escrow, the investor will respond to an MT 799 SWIFT Message inquiry within three banking days of receiving said inquiry

At this time the investor is prepared to enter into a Joint Venture Agreement with you for your transaction in the amount of Eleven Million USD (\$11,000,000.00). The funds are available at a very well known bank in Europe, that will meet your transaction requirements. Your price for this Joint Venture will shall be \$330,000.00

The following are the documents that you will receive from the investor upon fee being deposited into escrow:

1. Executed Joint Venture Agreement.
2. Representations and Warrantics.
3. Sample of the MT 799 or 760.
4. Commitment Letter (Notice of Readiness to Proceed) to issue the SWIFT.
5. Investor's Client Information Sheet and Compliance Package required by the specified transaction party that client has brought forward. Investor reserves the right to refuse any document contained in the compliance package in the event it puts the investor's funds or company at a perceptible risk of loss.
6. Authorization to Verify and Authenticate.
7. Investor's Passport.
8. Affidavit of Non-Solicitation
9. Letter from Bank (Proof of Funds)

M.Y. Consultants is not a United States Securities dealer or Broker, nor a U.S. Investment Advisor. M.Y. Consultants Inc. is not a licensed attorney nor a law firm. This document and or any of the attachments are never to be considered a solicitation for any purpose in any form or content. M.Y. Consultants Inc. does not represent or warrant the validity or the outcome of the transactions brought to us by you that the investors Joint Venture is needed for. M.Y. Consultants Inc. is only providing an investor for you, to help facilitate your transaction.

If you have any questions, please feel free to contact me @ Office: 702-876-3464 or Cell: 702-807-8439

[REDACTED]  
M.Y. Consultants Inc.  
Anthony Brandel – Director of Operations

2780 S. JONES STE 205, LAS VEGAS NV 89146 \* PHONE: 702-876-3464 FAX: 702-876-8732

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