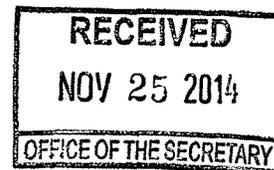


UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION



ADMINISTRATIVE PROCEEDING
File No. 3-16101

In the Matter of

GARY HARRISON LANE,

Respondent.

MOTION BY DIVISION OF
ENFORCEMENT FOR SUMMARY
DISPOSITION AGAINST
RESPONDENT GARY HARRISON
LANE PURSUANT TO COMMISSION
RULE OF PRACTICE 250;
DECLARATION OF CHRISTINE
CONNOLLY; EXHIBITS

I. INTRODUCTION

The Division of Enforcement (“Division”) moves pursuant to Rule 250 of the Commission’s Rules of Practice for summary disposition in this follow-on proceeding against Gary Harrison Lane (“Lane”) brought pursuant to Section 15(b) of the Securities Exchange Act of 1934 (“Exchange Act”) and Section 203(f) of the Investment Advisers Act of 1940 (“Advisers Act”). The Division requests that Lane be barred from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, and nationally recognized statistical rating organization, and from participating in any offering of penny stock.

II. ARGUMENT

A. Summary Disposition Is Appropriate Based On Lane’s Felony Conviction

The Securities and Exchange Commission (“Commission”) instituted this proceeding with an Order Instituting Proceedings (“OIP”) on September 11, 2014, pursuant to Section 15(b) of the Exchange Act and Section 203(f) of the Advisers Act. This proceeding is a follow-on proceeding based upon the criminal proceeding *United States of America v. Gary H. Lane*, 3:12-CR-00078-RCJ-VPC (D. Nev.). In that criminal proceeding, Lane was indicted on 12 counts of mail fraud in violation of 18 U.S.C. Section 1341 and five counts of attempt to evade or defeat tax in violation of 26 U.S.C. Section 7201. Declaration of Christine Connolly (“Connolly Dec.”), Ex. 1. On September 3, 2013, Lane pleaded guilty to all counts in the indictment. Connolly Dec., Ex. 2. On February 20, 2014, the court entered a judgment sentencing Lane to 120 months in prison, followed by five years of supervised release, and restitution of \$2,103,226. Connolly Dec., Ex. 3.

Lane was served with the OIP on September 11, 2014 by USPS Certified Mail, which was delivered on September 15, 2014. On September 15, 2014, the Division also served Lane by USPS Certified Mail, which was delivered on September 18, 2014, with a letter offering the Division’s

investigative files for inspection and copying pursuant to Rule of Practice 230. Connolly Dec., Ex. 4. As of the date of this Motion, Lane has not filed an Answer. Further, the only contact the Division has had with Lane is a voice message from Lane on October 21, 2014. Division counsel has been unable to reach Lane at the number provided in the voice message. Connolly Dec., at 6.

At a prehearing conference on October 28, 2014, the Administrative Law Judge granted the Division leave to file a motion for summary disposition. Rule 250(a) of the Commission's Rules of Practice permits a party to move “for summary disposition of any or all allegations of the order instituting proceedings” before hearing with leave of the hearing officer. 17 C.F.R. § 201.250(a). Rule 250(b) provides that a hearing officer may grant a motion for summary disposition if there is no genuine issue with regard to any material fact and the party making the motion is entitled to summary disposition as a matter of law. 17 C.F.R. § 201.250(b); *see also In the Matter of Kent D. Nelson*, S.E.C. Release No. 371, 2009 WL 454556 at *1 (February 24, 2009) (citing 17 C.F.R. § 201.250(b)). Moreover, it is well-established that:

By analogy to Rule 56 of the Federal Rules of Civil Procedure, a factual dispute between the parties will not defeat a motion for summary disposition unless it is both genuine and material. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986). Once the moving party has carried its burden, ‘its opponent must do more than simply show that there is some metaphysical doubt as to the material facts.’ *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). The opposing party must set forth specific facts showing a genuine issue for a hearing and may not rest upon the mere allegations or denials of its pleadings. At the summary disposition stage, the hearing

officer's function is not to weigh the evidence and determine the truth of the matter, but rather to determine whether there is a genuine issue for resolution at a hearing. *See Anderson*, 477 U.S. at 249.

Nelson, 2009 WL 454556 at *2.

Summary disposition is appropriate based on Lane's guilty plea and felony conviction in the criminal proceeding *United States of America v. Gary H. Lane*, 3:12-CR-00078-RCJ-VPC (D. Nev.). There is no genuine issue with regard to any material fact and pursuant to Section 15(b)(6) of the Exchange Act and Section 203(f) of the Advisers Act, the Division is entitled, as a matter of law, to an order permanently barring Lane from association with any broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, and nationally recognized statistical rating organization, and from participating in any offering of penny stock. The Commission has repeatedly upheld use of summary disposition in cases such as this, where the respondent has been enjoined or convicted and the sole determination concerns the appropriate sanction. *See In the Matter of Gary M. Kornman*, S.E.C. Release No. 2840, 2009 WL 367635 at *3, *10-11 (February 13, 2009), pet. denied, 592 F.3d 173 (D.C. Cir. 2010); *In the Matter of Jeffrey L. Gibson*, S.E.C. Release No. 2700, 2008 WL 294717 at *5-6 & nn.21-24 (collecting cases) (February 4, 2008), pet. denied, 561 F.3d 548 (6th Cir. 2009). Under Commission precedent, the circumstances in which summary disposition in a follow-on proceeding involving fraud is not appropriate "will be rare." *In the Matter of John S. Brownson*, S.E.C. Release No. 46161, 2002 WL 1438186 at *2 n.12 (February 22, 2002), pet. denied, 66 Fed.Appx. 687 (9th Cir. 2003).

B. The Court Should Bar Lane From The Securities Industry

1. Legal Standard For Imposition Of A Bar

Section 15(b)(6)(A) of the Exchange Act, as amended by Section 925 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (“Dodd-Frank”) provides, in part: “With respect to any person ... at the time of the alleged misconduct, who was associated ... with a broker or dealer ... the Commission, by order, shall censure, place limitations on the activities or functions of such person, or suspend for a period not exceeding 12 months, or bar any such person from being associated with a broker, dealer, investment adviser, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, or from participating in an offering of penny stock, if the Commission finds, on the record after notice and opportunity for a hearing, that such censure, placing of limitations, suspension, or bar is in the public interest and that such person – ... (ii) has been convicted of any offense specified in subparagraph (B) of [Section 15(b)(4)] within 10 years of the commencement of the proceedings under this paragraph” Section 15(b)(4)(B) defines such offense, in part, as “any felony ... which the Commission finds – (i) involves the purchase or sale of any security, ... the making of a false report, ... perjury, ... (ii) arises out of the conduct of the business of a broker, dealer ... (iii) involves the larceny, theft ... forgery ... fraudulent conversion, or misappropriation of funds ... or (iv) involves the violation of section ... 1341 ... of title 18 [of United States Code]”

Similarly, Section 203(f) of the Advisers Act, as amended by Section 925 of Dodd-Frank, authorizes the Commission to censure, place limitations on the activities of, or suspend or bar a person associated with an investment adviser at the time of the alleged misconduct from acting as or being associated with an investment adviser, broker, dealer, municipal securities dealer, municipal advisor, transfer agent, or nationally recognized statistical rating organization, if such sanctions are in the public interest and the person has been convicted of certain crimes described in Section 203(e), including violations of section 1341 of the United States Code.

With respect to Lane's felony conviction for tax evasion, the Commission has long barred individuals based on convictions involving dishonesty that are not securities-related. See *Kornman v. SEC*, 592 F.3d 173, 180 (D.C. Cir. 2010) (citing with approval the Commission's policy that "the importance of honesty for a securities professional is so paramount that [the Commission has] barred individuals even when [a respondent's] conviction was based on dishonest conduct unrelated to securities transactions or securities business") (quoting *Kornman*, 2009 WL 367635 at *7); *In the Matter of Don Warner Reinhard*, S.E.C. Release No. 3139, 2011 WL 121451 at *5-6 & n.27 (January 14, 2011) (holding conviction for tax violation relevant to determine whether an individual is fit to work in an industry where honesty and rectitude concerning financial matters is critical); *In the Matter of Ahmed Mohamed Soliman*, S.E.C. Release No. 1482, 1995 WL 237220 at *2-3 (April 17, 1995) (revoking registration and imposing broker-dealer and investment adviser bars based on a misdemeanor conviction for submitting false documents to the Internal Revenue Service); *In the Matter of Bruce Paul*, S.E.C. Release No. 21789, 1985 WL 548579 at *2 (February 26, 1985) (imposing broker-dealer bar with right to reapply for conviction of making false statements on income tax returns). The securities business is "a field where opportunities for dishonesty recur constantly." *Soliman*, 1995 WL 237220 at *3.

2. Imposition Of A Bar Is Appropriate

There are three elements for determination of whether the Division's proposed sanction is proper: (a) whether Lane was associated with a broker-dealer and/or investment adviser at the time of his misconduct; (b) whether Lane was convicted of an applicable felony; and (c) whether it is in the public interest to bar him.

a. Lane Was Associated With A Registered Entity

According to the criminal indictment to which Lane pleaded guilty, the criminal conduct occurred between May 2002 and May 2011, while Lane was a financial advisor with Banc of America Investments Services, Inc. (“BAI”) and subsequently Merrill Lynch, Pierce, Fenner & Smith Incorporated (“Merrill Lynch”). Connolly Dec., Ex. 1. FINRA records confirm Lane’s association with BAI and Merrill Lynch during this period. Connolly Dec., Ex. 5. Further, according to FINRA records, BAI and Merrill Lynch were dually registered with the Commission as a broker-dealer and as an investment adviser during the time that Lane was associated with them. Connolly Dec., Ex. 6 and 7.

b. Lane Was Convicted Of A Felony

On August 8, 2012, Lane was indicted on 12 counts of mail fraud in violation of 18 U.S.C. Section 1341 and five counts of attempt to evade or defeat tax in violation of 26 U.S.C. Section 7201. Connolly Dec., Ex. 1. The mail fraud counts of the criminal indictment alleged, among other things, that Lane with intent to defraud, devised a scheme and artifice to defraud and obtain money by materially false and fraudulent pretenses, representations, and promises. This criminal conduct occurred between May 2002 and March 2011, while Lane was a financial advisor with BAI and subsequently Merrill Lynch. The attempt to evade or defeat tax counts of the criminal indictment alleged, among other things, that Lane willfully attempted to evade and defeat a large part of the income tax due and owing by him to the United States of America by preparing and causing to be prepared and by signing and causing to be signed false and fraudulent income tax returns. This criminal conduct occurred between April 2007 and March 2011. Connolly Dec., Ex. 1. On September 3, 2013, Lane pleaded guilty to all counts in the indictment. Connolly Dec., Ex. 2. On February 20, 2014, the court entered a judgment sentencing Lane to 120 months in prison, followed by five years of supervised release, and restitution of \$2,103,226. Connolly Dec., Ex. 3.

c. An Industry Bar Is In The Public Interest

In determining whether an administrative sanction is in the public interest, the Commission considers the factors outlined in *Steadman v. SEC*, 603 F.2d 1126, 1140 (5th Cir. 1979): (1) the egregiousness of a respondent's actions; (2) the isolated or recurrent nature of the violations; (3) the degree of scienter involved; (4) the respondent's assurances against future violations; (5) the respondent's recognition of the wrongful nature of his conduct; and (6) the likelihood the respondent's occupation will present opportunities for future violations. *See also In the Matter of KPMG Peat Marwick, LLP*, S.E.C. Release No. 1360, 2001 WL 47245 at *23-26 (January 19, 2001), *aff'd sub nom KPMG v. SEC*, 289 F.3d 109 (D.C. Cir. 2002); *Peak Wealth Opportunities*, 2013 WL 812635 at *9-10; *Christopher Seeley*, 2013 WL 5561106 at *14. No one factor controls. *SEC v. Fehn*, 97 F.3d 1276, 1295-96 (9th Cir. 1996).

Lane's actions were egregious. During his guilty plea, Lane agreed to the following facts (Connolly Dec., Ex. 2): During his employment with BAI and Merrill Lynch, Lane devised a scheme to route investor money to his spouse's E*Trade account. Lane told investors that their funds would be invested in U.S. Treasury Bonds and corroborated the investments with false confirmations. Lane gave investment monies to his spouse who mailed them to her E*Trade account. The monies were subsequently withdrawn for Lane's personal use or used to pay other investors. Lane never purchased any U.S. Treasury Bonds. Under this fraudulent scheme, Lane obtained in excess of \$4.4 million and diverted in excess of \$2.7 million to his/his family's personal use. Lane also filed false and fraudulent individual tax returns for the years 2006 through 2010 by substantially underreporting his taxable income. The gross income not reported was the funds that Lane obtained from investors under the fraudulent scheme.

Lane's actions were recurrent and occurred over several years, from about May 2002 to about March 2011. For the same reasons as discussed in the preceding paragraph, Lane showed a high level of scienter. Lane never purchased any U.S. Treasury Bonds, knowingly created false confirmations, and used investor money for his personal use or to make payments to other investors.

Lane has not appeared or defended in this case, and so has not given any assurances against future violations of the securities laws. The fifth factor, Lane's recognition of his wrongful conduct, is the one factor that may not weigh in favor of a bar. Lane pleaded guilty in the criminal case, which involved acknowledging his misconduct. Further, during the sentencing hearing on February 10, 2014, Lane made a statement, including that he was "deeply saddened and sorry...for involving such truly decent people in this nightmare." Connolly Dec., Ex. 8. Lastly, unless Lane is barred from the securities industry he will have the chance to reoffend.

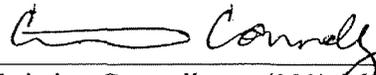
Lane's conduct extended well beyond Dodd-Frank's enactment. Dodd-Frank was signed into law on July 21, 2010. Lane's conduct continued to about March 2011. Thus, there is no question of retroactivity in the application of any Dodd-Frank provisions to Lane's conduct. Indeed, imposition of the Dodd-Frank collateral bars is especially appropriate here given the need to protect the investing public prospectively from Lane.

III. CONCLUSION

Based on the undisputed fact that Lane has been convicted of an applicable felony per Section 15(b)(4)(B) of the Exchange Act and Section 203(e) of the Advisers Act, and the undisputed facts establishing that the Steadman factors favor imposition of a bar, the Division's motion for summary disposition should be granted and Lane should be barred pursuant to Section 15(b) of the Exchange Act and Section 203(f) of the Advisers Act.

Dated: November 24, 2014

Respectfully submitted,



Christine Connolly (323) 965-3301
Marc J. Blau (323) 965-3975
Securities and Exchange Commission
Los Angeles Regional Office
444 S. Flower Street, Suite 900
Los Angeles, CA 90071

COUNSEL FOR
DIVISION OF ENFORCEMENT

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-16101

In the Matter of

GARY HARRISON LANE,

Respondent.

DECLARATION OF CHRISTINE
CONNOLLY IN SUPPORT OF
MOTION BY DIVISION OF
ENFORCEMENT FOR SUMMARY
DISPOSITION AGAINST
RESPONDENT GARY HARRISON
LANE PURSUANT TO COMMISSION
RULE OF PRACTICE 250

I, Christine Connolly, declare pursuant to 28 U.S.C. § 1746 as follows:

1. I am one of the attorneys representing the Division of Enforcement in this action. I have personal knowledge of the following facts and, if called as a witness, would testify competently thereto.

2. Attached as Exhibit 1 is a certified copy of the Indictment in *United States of America v. Gary H. Lane*, 3:12-CR-00078-RCJ-VPC (D. Nev.).

3. Attached as Exhibit 2 is a certified copy of the September 3, 2013 Minutes of Proceedings in *United States of America v. Gary H. Lane*, 3:12-CR-00078-RCJ-VPC (D. Nev.).

4. Attached as Exhibit 3 is a certified copy of the Judgment in *United States of America v. Gary H. Lane*, 3:12-CR-00078-RCJ-VPC (D. Nev.).

5. Attached as Exhibit 4 is a copy of the September 15, 2014 letter to Lane offering the Division's investigative files for inspection and copying pursuant to Rule of Practice 230.

6. On October 21, 2014, Lane left a voicemail message for me at my Commission telephone number. Lane indicated that he had received several communications from the Division and was wondering what the complaint and sanctions were. Lane provided a call back telephone number. However, Division counsel was unable to reach Lane at the number provided. Lane is currently incarcerated at the Federal Correctional Institution in Sheridan, Oregon and may not receive incoming telephone calls.

7. Attached as Exhibit 5 is a copy of a FINRA record regarding Lane.

8. Attached as Exhibit 6 is a copy of a FINRA record regarding BAI.

9. Attached as Exhibit 7 is a copy of a FINRA record regarding Merrill Lynch.

10. Attached as Exhibit 8 is a certified copy of the February 10, 2014 Minutes of Proceedings in *United States of America v. Gary H. Lane*, 3:12-CR-00078-RCJ-VPC (D. Nev.).

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

Executed on November 24, 2014, in Los Angeles, California.

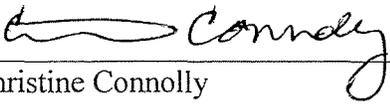
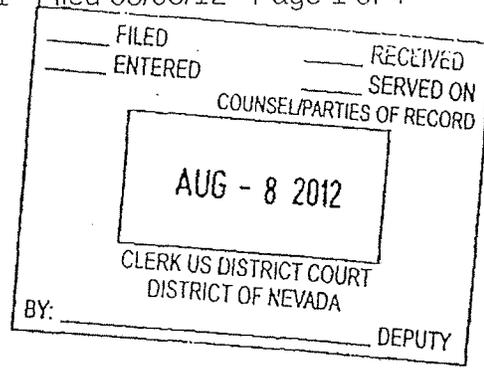

Christine Connolly

EXHIBIT 1



1 DANIEL G. BOGDEN
United States Attorney
2 RONALD C. RACHOW
Assistant United States Attorney
3 100 West Liberty Street, Suite 600
Reno, Nevada 89501
4 Tel: (775) 784-5438
Fax: (775) 784-5181
5 Attorneys for Plaintiff

6 UNITED STATES DISTRICT COURT
7 DISTRICT OF NEVADA

8 UNITED STATES OF AMERICA,)
9 Plaintiff,)
10 v.)
11 GARY H. LANE,)
12 Defendant.)

Criminal No.
INDICTMENT FOR VIOLATION OF:
TITLE 18, UNITED STATES CODE
SECTION 1341 - Mail Fraud (Counts 1 thru 12)
TITLE 26, UNITED STATES CODE
SECTION 7201 - Attempt to Evade or Defeat
Tax (Counts 13 through 17)

3:12-cr-00078-RCJ -VPC

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16 THE GRAND JURY CHARGES THAT:

17 COUNT ONE
18 Mail Fraud

19 1. At all times relevant to this indictment, GARY H. LANE, Defendant herein, was a financial
20 advisor employed by Bank of America Investment Services which later merged with Merrill Lynch,
21 hereinafter referred to as "BAI/MER". The Defendant was employed in this position until March, 2011.
22 During the course of his employment, Defendant developed a scheme to fraudulently entice investors to
23 invest monies with him through the use of an E-Trade account rather than following appropriate
24 BAI/MER procedures. The Defendant looked for investors who were elderly or lacked investing
25 experience and had a desire for high returns and aversion to risk.

26 2. As part of the scheme, LANE told each of these prospective investors that their funds were to be
27 invested in United States Treasury Bonds which would pay better than six percent interest (6.0%) and
28

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Clerk, United States District Court
By [Signature]
Deputy Clerk

1 which would mature within two years. Upon receiving investment monies from the victims, the
 2 Defendant would corroborate the putative trade by creating false confirmations and distributing these
 3 false confirmations by mail. Lane also directed his spouse to open and maintain an E-Trade account in
 4 her own name. The Defendant would then take the investment monies and give them to his spouse who
 5 mailed them directly to her E-Trade account through use of the United States Mail. Once the funds were
 6 in the E-Trade account, they were withdrawn at the direction of the Defendant and used for his own use
 7 or to "pay" other investors' "interest" on their investments in order to continue the scheme.

8 3. The Defendant's promises of purchasing United States Treasury Bonds for the investors were
 9 never fulfilled and in fact, there was never in existence during the relevant time period any United States
 10 Treasury Bond with a rate of return in excess of six percent and a maturity period of two years or less.

11 4. At a time unknown to the grand jury but no later than May 16, 2002 and continuing through
 12 March 7, 2011 in the District of Nevada and elsewhere, the Defendant GARY H. LANE, with the intent
 13 to defraud devised the above described scheme and artifice to defraud and obtain money by materially
 14 false and fraudulent pretenses, representations, and promises.

15 5. On or about January 15, 2010 in the District of Nevada for purposes of executing or attempting
 16 to execute the above-described scheme and artifice to defraud and deprive, Defendant knowingly
 17 deposited and caused to be deposited into, and to be sent and delivered by the United States Mail a check
 18 received from SEF to E-Trade account ****-7536 in the amount of \$200,000; all in violation of Title 18,
 19 United States Code, Section 1341.

20 COUNTS 2 through 12 incorporate by reference Paragraphs 1 through 4 of Count One and
 21 Paragraph 5 as if fully described therein, except for date of offense, transaction type and description,
 22 amount and investor.

A	B	C	D	E	F
Count	Date	Transaction Type	Description	Deposits	Investor
2	03/24/2010	Deposit	Check Deposit	50,000	RB
3	04/05/2010	Deposit	Check Deposit	100,000	RAS
4	06/04/2010	Deposit	Check Deposit	200,000	SEF

5	06/28/2010	Deposit	Check Deposit	500,000	HA
6	09/23/2010	Deposit	Check Deposit	500,000	MW
7	11/15/2010	Deposit	Check Deposit	250,000	MW
8	11/22/2010	Deposit	Check Deposit	200,000	SEF
9	12/08/2010	Deposit	Check Deposit	50,000	RB
10	12/20/2010	Deposit	Check Deposit	78,000	RYA
11	02/07/2011	Deposit	Check Deposit	100,000	RB
12	03/07/2011	Deposit	Check Deposit	50,000	RB

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

COUNT 13
Evasion of Income Tax

On or about April 14, 2007 in the District of Nevada, GARY H. LANE, Defendant herein, a resident of Washoe County, Nevada, did willfully attempt to evade and defeat a large part of the income tax due and owing by him to the United States of America for calendar year 2006 by preparing and causing to be prepared and by signing and causing to be signed a false and fraudulent U.S. Individual Income Tax Return, Form 1040, which was filed with the Internal Revenue Service wherein for said calendar year he listed as adjusted gross income the sum of \$109,644, taxable income of \$762, and that the amount of tax due and owing thereon was a sum of \$38 whereas, as he then and there well knew and believed, his taxable income for the said calendar year was substantially in excess of that heretofore stated and that upon said additional taxable income, an additional tax was due and owing to the United States of America; all in violation of Title 26, United States Code, Section 7201.

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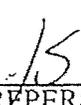
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1 Counts 14 through 17 incorporate by reference Count 13 as if fully described therein, except for
2 the calendar year, date filed, adjusted gross income, taxable income and amount of tax due and owing.

3 Count	Calendar Year	Date Filed	Adjusted Gross Income	Taxable Income	Amount of Tax Due and Owing
4 14	2007	04/11/2008	201,898	27,268	3,299
5 15	2008	04/06/2009	346,406	103,765	18,627
6 16	2009	04/08/2010	235,793	2,930	294
7 17	2010	03/08/2011	684,812	25,641	3,006

8 All in violation of Title 26, United States Code, Section 7201.

9
10 A TRUE BILL:

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13 _____
14 FOREPERSON

15 DANIEL G. BOGDEN
16 United States Attorney

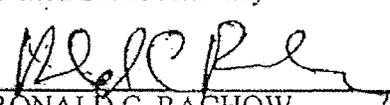
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18 _____
19 RONALD C. RACHOW
20 Assistant United States Attorney
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EXHIBIT 2

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
BEFORE THE HONORABLE ROBERT C. JONES, DISTRICT JUDGE
---o0o---

UNITED STATES OF AMERICA, :
 :
Plaintiff, : No. 3:12-CR-78-RCJ-VPC
 :
-vs- : September 3, 2013
 :
GARY H. LANE, : Reno, Nevada
 :
Defendant. :
 :

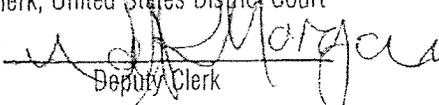
TRANSCRIPT OF CHANGE OF PLEA

APPEARANCES:

FOR THE PLAINTIFF: RONALD RACHOW
Assistant United States Attorney
Reno, Nevada

FOR THE DEFENDANT: LAURENCE P. DIGESTI
Attorney at Law
Reno, Nevada

Reported by: Margaret E. Griener, CCR #3, RDR
Official Reporter
400 South Virginia Street
Reno, Nevada 89501
(775) 329-9980

CERTIFIED TO BE A TRUE COPY
Clerk, United States District Court
By 
Deputy Clerk

MARGARET E. GRIENER, RDR, CCR NO. 3, OFFICIAL REPORTER
(775) 329-9980

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RENO, NEVADA, TUESDAY, SEPTEMBER 3, 2013, 8:46 A.M.

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THE COURT: In the matter of Gary Lane.

MR. DIGESTI: Good morning, your Honor.

THE COURT: Good morning. Appearances, please,
Mr. Rachow.

MR. RACHOW: Ron Rachow for the government, your
Honor.

MR. DIGESTI: Larry Digesti, your Honor, on
behalf of Gary Lane who is present.

THE COURT: Thank you. And this is the time, I
understand, for a change of plea?

MR. DIGESTI: Correct, your Honor.

THE COURT: In order to take a valid change of
plea, Mr. Lane, I do have to ask you questions under oath. If
you would raise your right hand and be sworn, please.

(The defendant was sworn.)

THE COURT: And, counsel, defendant has been
furnished with a copy of the indictment, of course.

MR. DIGESTI: Yes, your Honor.

THE COURT: This is to the 17th count?

MR. DIGESTI: Correct.

THE COURT: Mr. Rachow, does this in any way
limit -- two questions before I proceed to take a plea. Does

1 this in any way limit the related conduct that may be
2 considered under our PSR?

3 MR. RACHOW: The only limitation would be is if
4 there were any relevant conduct for restitution purposes
5 outside the terms of this plea, but I think everything is
6 covered in here, your Honor.

7 THE COURT: So, in other words, for restitution
8 purposes it's limited to the 17th count.

9 MR. RACHOW: That's correct.

10 I would note that the victims themselves received
11 recovery from the bank so it's the Bank of America that's left
12 holding the bag.

13 THE COURT: I see. You know, you're aware, I'm
14 sure, with Mr. Sullivan I had another case similar just
15 recently where the parties entered into a plea agreement that
16 thereby limited the restitution amount on a fraud type case to
17 the single count, and I required Mr. Sullivan to notice it up.
18 I could approve it, but I, in essence, needed input from
19 victims before I permitted that to go forward.

20 MR. RACHOW: In this case, your Honor, there's
21 no limitation because he's pleading straight up.

22 The only thing the law would prohibit the Court from
23 doing would be to order restitution in excess of what he pled
24 to under the statute, but I believe it's somewhere around
25 \$4 million as alleged in the indictment, and there's no way

1 anyone is ever going to see it anyway.

2 THE COURT: And he's pleading straight up, not
3 pursuant to an agreement.

4 MR. RACHOW: There's no agreement.

5 THE COURT: So, of course, when he's sentenced
6 you'll be dismissing the other counts.

7 MR. RACHOW: There are no other counts, he's
8 pleading to everything.

9 THE COURT: Oh. Well, then, I'm a little
10 confused. Of course, I don't look at the plea agreement until
11 the hearing on purpose, but the 17th count -- what do you mean
12 pleading to everything?

13 MR. RACHOW: He's pleading to all 17 counts.

14 THE COURT: Oh, okay.

15 MR. RACHOW: There's no deal at all.

16 MR. DIGESTI: Your Honor, there's no plea
17 agreement that was signed in this case.

18 THE COURT: I misunderstood.

19 MR. DIGESTI: Upon review, the one that was
20 originally presented by the government, in my opinion it was
21 overly burdensome and there was just too many waivers that the
22 government was asking Mr. Lane to agree to --

23 THE COURT: Okay.

24 MR. DIGESTI: -- so it was decided to just come
25 in and plead to the 17.

1 THE COURT: Okay. Very good.

2 And do you waive a reading of the indictment at this
3 time, counsel?

4 MR. DIGESTI: Yes, your Honor.

5 THE COURT: And, sir, Mr. Lane, do you
6 understand the charges against you, sir?

7 THE DEFENDANT: Yes, I do.

8 THE COURT: Okay. And just for the record, I
9 apologize for asking, do you read, write and understand the
10 English language, sir?

11 THE DEFENDANT: Yes, I do.

12 THE COURT: Okay. And how does he intend to
13 plead?

14 MR. DIGESTI: Mr. Lane, your Honor, will enter a
15 plea of guilty.

16 THE COURT: And is that correct, sir, to the 17
17 counts?

18 THE DEFENDANT: Yes, it is.

19 THE COURT: Okay. All right. Let me proceed
20 with these questions then. The main purpose is to make sure
21 you understand that you have the right to a trial as opposed
22 to a guilty plea so I'll just go through this list of
23 questions.

24 First, a little bit about yourself. How old are
25 you?

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THE DEFENDANT: I'm 60 years old.

THE COURT: And how far did you go in school?

THE DEFENDANT: I've got a bachelor's degree.

THE COURT: In the last 24 hours have you taken any drugs, medicine, pills of any kind or drunk any alcoholic beverages?

THE DEFENDANT: No alcohol, but I have medication that the jail provides me.

THE COURT: Okay.

THE DEFENDANT: Blood pressure medication.

THE COURT: Blood pressure. Does any of it affect your ability to comprehend or understand?

THE DEFENDANT: No, it does not, your Honor.

THE COURT: All right. And have you ever been treated for any mental illness of any kind?

THE DEFENDANT: No, I have not, your Honor.

THE COURT: And do you, in fact, understand what is happening here today?

THE DEFENDANT: Yes, I do.

THE COURT: And, counsel, do either of you have any doubt as to the defendant's competence to plead?

MR. DIGESTI: No, your Honor.

MR. RACHOW: Not by the government, your Honor.

THE COURT: Based upon those representations I find the defendant competent to plead in this matter.

1 The second matter has to do with your attorney,
2 Mr. Digesti. Have you had ample opportunity to discuss your
3 case with him, and are you satisfied to have him represent you
4 here?

5 THE DEFENDANT: I certainly am, your Honor.

6 THE COURT: Thank you. The third area has to do
7 with your right to a trial. You do understand that under our
8 constitution and laws instead of a guilty plea you are
9 entitled to a trial by jury, that in order to convict you
10 unanimously 12 of them would have to all agree that you are
11 guilty.

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: And that during such a trial there's
14 a presumption of innocence. That means that you don't have to
15 prove that you are innocent, the government has to prove your
16 guilt by competent evidence and beyond a reasonable doubt. Do
17 you understand that?

18 THE DEFENDANT: I do, your Honor.

19 THE COURT: Also that witnesses for the
20 government have to come here to court on the stand in your
21 presence and testify. Your attorney could cross-examine them.
22 Yes?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: And also that your attorney could
25 call witnesses on your behalf as well. You understand that.

1 THE DEFENDANT: I certainly do.

2 THE COURT: And also at such a trial there's a
3 right to remain silent. That means you don't have to testify
4 if you don't want to, and no one can take any negative
5 inference from that fact.

6 Do you understand that right?

7 THE DEFENDANT: Yes, I do, your Honor.

8 THE COURT: If we proceed with a guilty plea,
9 you understand you will waive those rights as we have
10 discussed them.

11 THE DEFENDANT: Yes, I do, your Honor.

12 THE COURT: Also, for example, you'll be
13 admitting -- instead of a jury verdict, you'll be admitting
14 that you committed the offenses charged here. You understand
15 that.

16 THE DEFENDANT: I do, your Honor.

17 THE COURT: And also you will be waiving your
18 right to remain silent because in a few minutes I will ask you
19 what you did, you'll be telling me under oath. Do you
20 understand that?

21 THE DEFENDANT: I do, your Honor.

22 THE COURT: Are you willing today to give up
23 your right to remain silent in order for me to accept your
24 guilty plea?

25 THE DEFENDANT: I am, your Honor.

1 THE COURT: You've read a copy of the charges
2 against you?

3 THE DEFENDANT: I have.

4 THE COURT: And you've discussed them with your
5 attorney, he's explained them to you?

6 THE DEFENDANT: Yes, he has.

7 THE COURT: I'm also required to explain to you
8 the same charges, especially the elements that make them up
9 which the government would have to prove at trial.

10 You've been charged in Counts 1 through 12 of the
11 indictment with a violation of Title 18 US code 1341. This
12 section makes it a crime for anyone to be guilty of mail
13 fraud.

14 This is mail fraud, right, not wire fraud, mail
15 fraud?

16 MR. RACHOW: That's correct, your Honor.

17 THE COURT: The elements of this offense are
18 fourfold:

19 First, the defendant knowingly participated in or
20 devised a scheme or plan to defraud, or a scheme or plan for
21 obtaining money or property by means of false or fraudulent
22 pretenses, representations or promises;

23 Second, the statements made or facts omitted as part
24 of the scheme were material, that is, they had a natural
25 tendency to influence or were capable of influencing a person

1 to part with money or property;

2 Third, the defendant acted with the intent to
3 defraud, that is, the intent to deceive or cheat; and

4 Fourth, the defendant used or caused to be used the
5 mails to carry out or attempt to carry out an essential part
6 of the scheme. That's why we're here in federal court.

7 You've been charged in Counts 13 through 17 of the
8 indictment with a violation of 18 USC 1341. This section
9 makes it a crime for anyone to be guilty of attempting to
10 evade or defeat a tax.

11 Four elements again:

12 First, the defendant owed more federal income tax
13 for the calendar year listed than was declared due on the
14 defendant's income tax return for that calendar year;

15 Second, the defendant knew that more federal income
16 tax was owed than was declared due on the defendant's income
17 tax return;

18 Third, the defendant made an affirmative attempt to
19 evade or defeat such additional tax; and

20 Fourth, in attempting to evade or defeat such
21 additional tax, the defendant acted willfully.

22 You understand that that's what the government would
23 have to prove in all of those Counts 1 through 17.

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: And that by pleading guilty you're

1 admitting to me that they could prove it.

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Are you aware of the maximum penalty
4 and fine for those counts?

5 THE DEFENDANT: I am, your Honor.

6 THE COURT: For example, are you aware that the
7 maximum possible penalty under the 17 counts is a fine of
8 250,000, or a term of imprisonment of 20 years, or both?

9 THE DEFENDANT: Yes, I do, your Honor.

10 THE COURT: And this is in the aggregate,
11 Mr. Rachow?

12 MR. RACHOW: Pardon me?

13 THE COURT: This is in the aggregate? In other
14 words, he can't be sentenced separately on each count.

15 MR. RACHOW: He can, your Honor, but the Court
16 would normally run them all concurrently.

17 THE COURT: Right.

18 Okay. Do you understand that, sir?

19 THE DEFENDANT: Yes, I do, your Honor.

20 THE COURT: Also, that an assessment fee,
21 special assessment fee of \$100 per count will be imposed,
22 1700, at the time of sentencing. You understand that.

23 THE DEFENDANT: Yes, I do, your Honor.

24 THE COURT: You also understand in every
25 criminal case in which a defendant may be sentenced to more

1 than a year in prison, in addition the Court can order
2 supervised release to follow that imprisonment, in this case
3 not to exceed three years.

4 THE DEFENDANT: Yes, I do, your Honor.

5 THE COURT: And that while on supervised release
6 you're required to abide by conditions specified by the Court.
7 If you violate those conditions, the Court can send you back
8 for additional internment time.

9 THE DEFENDANT: Yes, I do, your Honor.

10 THE COURT: And while on supervised release, if
11 you -- again, if that release is revoked for any reason, you
12 can be in prison for the full term, up to the full term
13 without credit for the time you'd already spent in that
14 condition. You understand that.

15 THE DEFENDANT: Yes, I do, your Honor.

16 THE COURT: Okay. Now, then, this is not
17 pursuant to a plea agreement, correct, counsel?

18 MR. DIGESTI: Correct, your Honor.

19 THE COURT: But any and all offers received from
20 the government counsel, did you convey those to the defendant?

21 MR. DIGESTI: I did.

22 THE COURT: And do you acknowledge receiving any
23 and all offers and negotiations for plea through your
24 attorney, sir?

25 THE DEFENDANT: Yes, I do.

1 THE COURT: And you are, in fact, acting here on
2 the advice of your attorney?

3 THE DEFENDANT: I am, your Honor.

4 THE COURT: All right. Let's see. A few other
5 questions.

6 You understand that the Court can order you to make
7 restitution to any victim of this offense. You understand
8 that.

9 THE DEFENDANT: Yes, I do, your Honor.

10 THE COURT: And that the offenses you're
11 pleading guilty to are felony offenses, you understand that.

12 THE DEFENDANT: I do, your Honor.

13 THE COURT: If your plea is accepted, you will
14 be adjudged guilty of a felony, and that may deprive you of
15 valuable civil rights such as the right to vote, the right to
16 serve on a jury, the right to possess any kind of a firearm.
17 Yes?

18 THE DEFENDANT: I do, your Honor.

19 THE COURT: And, counsel, is your client a US
20 citizen?

21 MR. DIGESTI: Yes, your Honor.

22 THE COURT: Has anyone threatened you or forced
23 you to plead guilty, sir?

24 THE DEFENDANT: No, they have not.

25 THE COURT: And this is a voluntary plea on your

1 part then, sir?

2 THE DEFENDANT: It is indeed, your Honor.

3 THE COURT: Okay. Has anybody made any promise
4 to you regarding sentence or otherwise that caused to you
5 plead guilty?

6 THE DEFENDANT: No, they have not.

7 THE COURT: You understand it's up to the Court
8 to set the sentence.

9 THE DEFENDANT: Yes, I do, your Honor.

10 THE COURT: Okay. There is a Sentencing Reform
11 Act of 1984 that guides our conclusions on sentencing. It
12 sets up a Sentencing Commission which issues guidelines for
13 judges to consult. They're not binding on the Court, but they
14 establish for each type of offense and for each type of
15 background a guideline range for sentences.

16 Have you and your attorney discussed those
17 guidelines --

18 THE DEFENDANT: Yes, we have, your Honor.

19 THE COURT: -- and he's answered all of your
20 questions?

21 THE DEFENDANT: He certainly has.

22 THE COURT: Okay. And you understand that it
23 takes about 90 days. We submit the matter to our probation
24 department, not the government's but the US Court's probation
25 department. They interview you to give a report on your

1 background and also to make recommendations regarding that
2 guideline.

3 But, again, once the guideline is determined at
4 sentencing, it's for the Court, again, to determine that
5 sentence. You understand that.

6 THE DEFENDANT: I do, your Honor.

7 THE COURT: And whether I go above or below the
8 guideline, you would still be obligated and bound by your
9 guilty plea. You understand that.

10 THE DEFENDANT: I do, your Honor.

11 THE COURT: Okay. You understand, too, that
12 both you -- in the situation where there is no plea agreement,
13 both you and the government retain your rights to appeal any
14 sentence. You understand that.

15 THE DEFENDANT: I do, your Honor.

16 THE COURT: Okay. Last question in this regard
17 is relevant conduct. You understand that if the government
18 doesn't prosecute any of these charges, or doesn't prosecute
19 other charges, still any and all relevant conduct to these
20 present charges can be considered in that presentence report
21 and could affect your sentence.

22 THE DEFENDANT: Yes, I do, your Honor.

23 THE COURT: All right. Counsel, in the plea
24 memorandum from the government there is a section on facts to
25 support a guilty plea. Have you read that and reviewed it

1 with the defendant?

2 MR. DIGESTI: Your Honor, we've looked at it,
3 but it's not a plea memo, this is just a memo by the
4 government so --

5 THE COURT: That's correct.

6 MR. DIGESTI: But we did review it.

7 THE COURT: And is there any reason why he
8 cannot allocute to any or all of these facts as listed, namely
9 that they're not true?

10 MR. DIGESTI: No, we're not disputing the facts,
11 your Honor. We'll stipulate that there's a factual basis for
12 the plea.

13 THE COURT: Okay. And, let's see. Mr. Lane,
14 you've read that section on facts supporting a guilty plea,
15 have you not, sir?

16 THE DEFENDANT: Yes, I have.

17 THE COURT: I'm going to read it to you and ask
18 you under oath if it's all true.

19 The defendant was a financial adviser employed by
20 Bank of America Investment Services which later merged with
21 Merrill Lynch. The defendant was employed in this position
22 until March 2011.

23 During the course of this employment the defendant
24 developed a scheme to fraudulently entice investors to invest
25 moneys with him through the use of an e-Trade account rather

1 than following his employer's procedures.

2 The defendant looked for investors who were elderly
3 or lacked investing experience and had a desire for high
4 returns and an aversion to risk. The defendant told each of
5 these prospective investors that their funds were to be
6 invested in United States Treasury bonds which would pay
7 better than six percent and which would mature within two
8 years.

9 Upon receiving investment moneys from the victims,
10 the defendant would corroborate the putative trade by creating
11 false confirmations and distributing these false confirmations
12 by mail.

13 The defendant also directed his spouse to open and
14 maintain an e-Trade account in her own name. The defendant
15 would then take the investment moneys and give them to his
16 spouse who mailed them directly to her e-Trade account through
17 use of the US mails. Once the funds were in that account,
18 they were withdrawn at the direction of the defendant and used
19 for his own use or to pay other investors interest on their
20 own investments in order to further the scheme.

21 The defendant's promises of purchasing US treasury
22 bonds for the investors was never fulfilled and, in fact,
23 there were never in existence during the relevant time period
24 any United States Treasury bond with a rate of return in
25 excess of six percent and a maturity period of two years or

1 less.

2 During the existence of this scheme the defendant
3 obtained in excess of 4.4 million and diverted in excess of
4 2.7 million for his own use or the use of his family. The
5 funds obtained from investors were gross income to the
6 defendant which was not reported on his tax returns for the
7 years of 2006 through 2010, and he failed to pay the income
8 tax due and owing on those amounts to the IRS. The tax loss
9 to the IRS is \$1,010,772.

10 Is all of that a true statement, sir?

11 MR. DIGESTI: Your Honor, there are portions of
12 this that we don't agree to.

13 THE COURT: Can you tell me which portions?

14 MR. DIGESTI: Yeah. If we go back to the very
15 last sentence under paragraph four, facts supporting guilty
16 plea, where it reads that the defendant looked for investors
17 who were elderly or lacked investing experience.

18 THE COURT: Okay.

19 MR. DIGESTI: A lot of these investors were
20 sophisticated investors, your Honor, so that's not a complete
21 and accurate --

22 THE COURT: Some of them were elderly and lacked
23 experience, but you're just saying that you disagree with this
24 statement he looked for --

25 MR. DIGESTI: Yeah. Some of them may have been

1 elderly, but, likewise, they did not necessarily lack
2 investing experience. They could have been elderly and
3 sophisticated investors. And we're not prepared to stipulate
4 to that as being a factually correct statement.

5 THE COURT: Now, you understand that at
6 sentencing, and based upon even hearsay in the probation's
7 sentencing report, the Court can make a finding to that
8 effect. You understand that.

9 MR. DIGESTI: We understand that, your Honor,
10 we're just not prepared to stipulate to that at this point.

11 THE COURT: Okay. Without that stipulation as
12 to the last sentence, is that a sufficient allocution,
13 Mr. Rachow?

14 MR. RACHOW: It is, your Honor. I believe the
15 defendant is just saying that there were numerous investors
16 who were sophisticated, the factual pattern that the
17 government believes occurred, he was looking for elderly and
18 unsophisticated investors, but he also had more sophisticated
19 investors.

20 THE COURT: Okay. And if that makes a
21 difference in sentencing, everybody understands the Court will
22 decide that based upon what's presented to me at the time of
23 sentencing. Do you understand that, counsel?

24 MR. DIGESTI: Yes, your Honor.

25 THE COURT: And do you understand that,

1 Mr. Lane?

2 THE DEFENDANT: Yes, I do, your Honor.

3 THE COURT: Is all the rest of it, other than
4 that sentence, true and correct, sir?

5 MR. DIGESTI: In that entire statement of facts,
6 your Honor?

7 THE COURT: Right.

8 MR. DIGESTI: There's one other thing we're not
9 agreeing to, and that's the tax loss to the IRS. We're not
10 stipulating to that amount.

11 THE COURT: Do you admit that there is a tax
12 loss to the IRS?

13 MR. DIGESTI: We admit that there is a tax loss,
14 but we're not prepared to stipulate that it's \$1.01 million.

15 I believe that that's an element of the offense
16 which directly impacts and can impact sentencing in terms of
17 the offense level, and I do not have sufficient documentation
18 in my discovery file that would allow us to stipulate to that
19 amount.

20 THE COURT: Well, see, I still have to approve
21 your guilty plea, and I have to make a finding that all of the
22 elements are included within the four corners of his
23 allocution.

24 So, let's see. The elements include knew that more
25 federal income tax was owed than was declared due on the

1 defendant's income tax return.

2 MR. DIGESTI: Your Honor, we're not disputing --

3 THE COURT: And it certainly has to be more than
4 a dollar.

5 MR. DIGESTI: I agree, and there's a lot of
6 territory between a dollar and a million.

7 We're not disputing the fact that there's income tax
8 returning [sic], we're just not prepared to stipulate to the
9 actual amount that the government is claiming at this point in
10 time as restitution for that offense.

11 And that's -- we're not denying it, obviously, but,
12 again, the amount that's due and owing in my opinion is not an
13 element of the offense.

14 THE COURT: It is to the extent it's immaterial
15 or material.

16 MR. DIGESTI: Well --

17 THE COURT: In other words, I'm not going to
18 accept his guilty plea if he just deprived the government of
19 5,000 bucks.

20 MR. DIGESTI: Well, your Honor, we're being
21 placed in a situation where we're being asked to stipulate to
22 an amount.

23 THE COURT: I'm not asking you to stipulate to
24 the amount, but there is an element here of materiality. I
25 haven't listed it, but I'm not going to accept his guilty plea

1 unless it's in a material amount, and, in my mind, it's got to
2 be more than five or ten grand.

3 MR. DIGESTI: No, I understand, your Honor, but
4 it also, if I understand correctly, could impact the offense
5 level in this case.

6 THE COURT: That's correct.

7 MR. DIGESTI: And then that precludes us at time
8 of sentencing, perhaps, to argue for something less if we
9 stipulate to --

10 THE COURT: Okay. Let me repeat what I said.

11 MR. DIGESTI: Okay.

12 THE COURT: Hopefully you'll get it this time.

13 I won't accept his guilty plea unless he's willing
14 to stipulate or allocute to -- I don't care about the amount,
15 but whatever the amount is, it's in excess of, or well in
16 excess of five or \$10,000.

17 MR. DIGESTI: I can stipulate to that.

18 THE COURT: And do you stipulate to that,
19 Mr. Lane?

20 THE DEFENDANT: Yes, I do, your Honor.

21 THE COURT: Okay. You tell me first with
22 respect to the 17 counts, sir -- I'm sorry, 1 through 12, what
23 you did in your own words, please.

24 THE DEFENDANT: I solicited funds from clients
25 and told them that I was going to be purchasing treasury

1 securities with those funds when, in fact, they were indeed,
2 as the -- you just read, deposited into an e-Trade account
3 where the money -- some of the moneys were withdrawn. Most of
4 the funds were used for trading higher-risk securities,
5 derivatives and options and some stock.

6 THE COURT: Okay. And with regard to the latter
7 counts, attempting to evade or defeating the tax, what did you
8 do, sir?

9 THE DEFENDANT: I did not claim those funds that
10 I received from the clients on my income tax.

11 THE COURT: Okay. And then there's a chart in
12 the indictment, Counts 2 through 12.

13 MR. DIGESTI: May I have just a moment, your
14 Honor?

15 THE COURT: Yes.

16 MR. DIGESTI: Thank you, your Honor.

17 THE COURT: And is that chart correct, sir?

18 Counts 2 through 12 incorporate by reference
19 paragraphs one through four except for date of offense, and
20 these are deposit amounts that were made.

21 THE DEFENDANT: Yes, it looks accurate. I don't
22 have a way to be absolutely certain, but it does look
23 accurate, yes, your Honor.

24 THE COURT: Okay. And then there's a chart in
25 Count 13, evasion of income tax, and it says Counts 14 through

1 17 incorporate all of Count 13, and except for the calendar
2 year, date filed, adjusted gross income, taxable income and
3 amount of tax due and owing, and then it lists what was
4 actually filed, 2007 through 2010, the date of filing, the
5 adjusted gross income as reported on the return, taxable
6 income, and the amount of tax due and owing per those returns.

7 Is all of that accurate?

8 THE DEFENDANT: Again, I'm --

9 THE COURT: Not sure.

10 THE DEFENDANT: No, not certain that's accurate.

11 THE COURT: Okay. Here's what 13 says.

12 On or about April 14, Gary Lane did willfully
13 attempt to evade and defeat a large part of the income tax due
14 and owing by him to the United States of America for calendar
15 year 2006.

16 And you understand that under tax law willfully has
17 an important meaning. It means that you knew that additional
18 moneys were owing and you did intend to evade the tax.

19 Do you understand that meaning, sir?

20 THE DEFENDANT: I understand the meaning, yes,
21 sir.

22 THE COURT: In other words, we don't convict
23 people of tax evasion for innocently not paying their taxes,
24 you understand that. This requires an element of willful, in
25 other words, you knew you owed additional amounts and you

1 intended not to pay it or to evade it.

2 MR. DIGESTI: Can I have a moment, your Honor?

3 THE COURT: You bet.

4 (Discussion held off the record.)

5 THE DEFENDANT: I do, your Honor.

6 THE COURT: Okay. Without listing the million
7 dollar amount at all, it goes on to say that you listed as
8 adjusted gross income the sum of 109,000 some odd taxable
9 income of \$762 for that year described there, and whereas he
10 then and there well knew and believed his taxable income was
11 substantially in excess of that.

12 Is that a true statement, sir?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: Okay. All right. Is that a
15 sufficient allocation for the government?

16 MR. RACHOW: It is, your Honor.

17 We would ask that the Court also include an
18 admission from the defendant as to the counts that aren't
19 listed in the table which would be Count 1 and Count 13.

20 THE COURT: That they are, in fact, true.

21 MR. RACHOW: Right.

22 THE COURT: The allegations of the grand jury
23 are in fact true.

24 MR. RACHOW: Correct.

25 THE COURT: And will your client so affirm,

1 counsel?

2 MR. DIGESTI: Just a moment, your Honor.

3 (Discussion held off the record.)

4 MR. RACHOW: Your Honor, that's not necessarily
5 as to all the facts of the scheme, only to the amounts that
6 they -- in the intent.

7 MR. DIGESTI: Yes, your Honor. He's prepared to
8 admit to the allegations in Count 1.

9 THE COURT: And is that correct, sir, Mr. Lane?

10 THE WITNESS: Yes, it is, your Honor.

11 THE COURT: Is that sufficient?

12 MR. RACHOW: It is, your Honor. The Court went
13 through Count 13 with him line by line.

14 THE COURT: Yeah. Okay.

15 All right. How do you plead then, sir, guilty or
16 not guilty, to all 17 counts?

17 THE DEFENDANT: Guilty, your Honor.

18 THE COURT: And are you pleading guilty because
19 in truth and fact you are guilty and not for any other reason?

20 THE DEFENDANT: I'm guilty.

21 THE COURT: Okay. Since you know your right to
22 a trial, since this is a voluntary plea, since you know the
23 punishment and the maximum penalties that can be imposed, I
24 conditionally accept your guilty plea at this time.

25 By conditional it just means that I will first look

1 at that presentence report, you'll look at it, too, and then
2 at the sentencing hearing about 90 days hence I will accept
3 the guilty plea finally.

4 THE DEFENDANT: Thank you, your Honor.

5 THE COURT: Let's see. It is for this reason
6 that I ask you to sign this form because under our criminal
7 rules I can't look at the presentence report, you can't
8 either, until after I finally accept the guilty plea, but I'm
9 not willing to do that unless, of course, you consent in
10 writing. You can give me permission to look at the
11 presentence report before I finally accept the guilty plea.

12 Do you understand that purpose for the form?

13 THE DEFENDANT: I do, your Honor.

14 THE COURT: And, counsel, is there any reason
15 why he shouldn't sign this?

16 MR. DIGESTI: No, not at all, your Honor.

17 THE COURT: Okay. If you'll sign it then,
18 please, I will also approve it.

19 MR. DIGESTI: Your Honor, the document shows a
20 date in the month of August. Do you want me to
21 interlineate --

22 THE COURT: Would you, please. Yes, please.

23 It is the finding of the Court in the case of the
24 United States versus Gary H. Lane that the defendant is fully
25 competent and capable of entering an informed plea, that his

1 plea of guilty is a knowing and voluntary one and supported by
2 an independent basis in fact containing all of the essential
3 elements of the offense charged, therefore the plea is
4 conditionally accepted at this time.

5 Mr. Lane, I will now order that presentence
6 investigation report. Again, it takes about 90 days or so.

7 In the meantime, the probation officer will make an
8 appointment to interview you for the report. I do urge your
9 full cooperation in giving information to the officer because
10 the report is, frankly, very important in determining your
11 sentence. However, you do have the right to have your counsel
12 with you when you give information to the officer.

13 And you will have the opportunity to read the
14 report, object to its contents or comment on its contents
15 prior to the time of sentencing, and at sentencing, if you
16 wish, you may address the Court relative to an appropriate
17 sentence, or you may ask counsel simply to speak on your
18 behalf.

19 A sentencing date, please.

20 THE CLERK: Your Honor, sentencing is set for
21 Monday, December 16th, 2013, at 9:30 a.m.

22 THE COURT: Your attorney will remind you of
23 that date and time.

24 If there's no objection, I'll just simply continue
25 defendant in current custody status.

1 MR. RACHOW: That's fine, your Honor.

2 MR. DIGESTI: Thank you, your Honor. Was that
3 9:30 on the 16th of December?

4 THE CLERK: Yes, 9:30 a.m.

5 MR. DIGESTI: Thank you, your Honor.

6 THE COURT: Thank you, Mr. Lane.

7 THE DEFENDANT: Thank you, your Honor.

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

12 /s/Margaret E. Griener 4/11/2014
13 Margaret E. Griener, CCR #3, RDR
Official Reporter

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EXHIBIT 3

UNITED STATES DISTRICT COURT
District of Nevada

UNITED STATES OF AMERICA)

JUDGMENT IN A CRIMINAL CASE

v.)

GARY H. LANE)

Case Number: 3:12-CR-0078-RCJ-VPC

USM Number: 47674-048

Laurence Digesti, CJA
Defendant's Attorney

THE DEFENDANT:

pleaded guilty to count(s) One through Seventeen as charged in the Indictment

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

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

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count(s)</u>
18 U.S.C. § 1341	Mail Fraud	03/2011	1 - 12
26 U.S.C. § 7201	Attempt to Evade or Defeat Tax	03/2011	13 - 17

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

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

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

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

CERTIFIED TO BE A TRUE COPY
Clerk, United States District Court
By [Signature]
Deputy Clerk



February 10, 2014
Date of Imposition of Judgment

[Signature]
Signature of Judge
ROBERT C. JONES
UNITED STATES DISTRICT JUDGE
Name and Title of Judge

Date February 20, 2014

DEFENDANT: GARY H. LANE
CASE NUMBER: 3:12-CR-0078-RCJ-VPC

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: **120 months as to Counts One through Twelve; and 60 months as to Counts Thirteen through Seventeen, all counts concurrent.**

X The court makes the following recommendations to the Bureau of Prisons:
-that the defendant be designated to a FCI facility near Eugene, Oregon.

X The defendant is remanded to the custody of the United States Marshal.
 The defendant shall surrender to the United States Marshal for this district:
 at _____ a.m. p.m. on _____.
 as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
 before 2 p.m. on _____.
 as notified by the United States Marshal.
 as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____ a _____
_____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: GARY H. LANE
CASE NUMBER: 3:12-CR-0078-RCJ-VPC

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: Five years as to Counts One through Twelve; and three years as to Counts Thirteen through Seventeen, all counts concurrent.

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

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

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court, not to exceed 104 tests annually.

- The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. *(Check, if applicable.)*
- The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. *(Check, if applicable.)*
- The defendant shall cooperate in the collection of DNA as directed by the probation officer. *(Check, if applicable.)*
- The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense. *(Check, if applicable.)*
- The defendant shall participate in an approved program for domestic violence. *(Check, if applicable.)*

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

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

STANDARD CONDITIONS OF SUPERVISION

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

DEFENDANT: GARY H. LANE
CASE NUMBER: 3:12-CR-0078-RCJ-VPC

SPECIAL CONDITIONS OF SUPERVISION

1. **Possession of Weapons** - You shall not possess, have under your control, or have access to any firearm, explosive device, or other dangerous weapons, as defined by federal, state, or local law.
2. **Warrantless Search** - You shall submit to the search of your person, property, residence or automobile under your control by the probation officer or any other authorized person under the immediate and personal supervision of the probation officer, without a search warrant to ensure compliance with all conditions of release.
3. **Debt Obligations** - You shall be prohibited from incurring new credit charges, opening additional lines of credit, or negotiating or consummating any financial contracts without the approval of the probation officer.
4. **Access to Financial Information** - You shall provide the probation officer access to any requested financial information, including personal income tax returns, authorization for release of credit information, and any other business financial information in which you have a control or interest.
5. **Employment Restriction** - You shall be restricted from engaging in employment, consulting, or any association with any banking/investment business for the period of five years.
6. **Gambling Prohibition** - You shall not enter, frequent, or be involved with any legal or illegal gambling establishment or activity, except for the purpose of employment, as approved and directed by the probation officer.
7. **Gambling Addiction Treatment** - You shall refrain from any form of gambling and shall participate in a program for the treatment of gambling addiction, at your own expense, as approved and directed by the probation officer, based upon your ability to pay.
8. **Internal Revenue Service Compliance** - You shall cooperate and arrange with the Internal Revenue Service to pay all past and present taxes, interest, and penalties owed. You shall file timely, accurate, and lawful income tax returns and show proof of same to the probation officer.
9. **Report to Probation Officer After Release from Custody** - You shall report, in person, to the probation office in the district to which you are released within 72 hours of discharge from custody.

Upon a finding of a violation of probation or supervised release, I understand that the court may (1) revoke supervision, (2) extend the term of supervision, and/or (3) modify the conditions of supervision.

These conditions have been read to me. I fully understand the conditions and have been provided a copy of them.

Defendant's signature

Date

Signature of the U.S. Probation Officer/Designated Witness

Date

DEFENDANT: GARY H. LANE
 CASE NUMBER: 3:12-CR-0078-RCJ-VPC

CRIMINAL MONETARY PENALTIES

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

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 1,700.00 (\$100.00 per count)	\$ waived	\$ 2,103,226.00

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

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

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
Clerk of the Court Attention: Finance Case No. 3:12-CR-0078-RCJ-VPC 333 Las Vegas Blvd. South, Room 1334 Las Vegas, NV 89101			

For disbursements to the following:

Bank of America Investment Services c/o Fulbright & Jaworski LLP 2200 Ross Avenue, Suite 2800 Dallas, Texas 75201-2784	\$2,078,000.00
United States Internal revenue Service c/o Special Agent Mark Terry 200 S. Virginia Street Reno, Nevada 89501	\$ 25,226.00

TOTALS \$ _____ \$ 2,103,226.00

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

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: GARY H. LANE
 CASE NUMBER: 3:12-CR-0078-RCJ-VPC

SCHEDULE OF PAYMENTS

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

- A Lump sum payment of \$ 2,104,926.00 due immediately, balance due
 - Not later than _____, or
 - in accordance C, D, E, or F below; or
- B Payment to begin immediately (may be combined with C, D, or F below); or
- C Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F Special instructions regarding the payment of criminal monetary penalties:
 Any unpaid balance shall be paid at a monthly rate of not less than 10% of any income earned during incarceration and/or gross income while on supervision, subject to adjustment by the Court based upon ability to pay.

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

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

- Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.
- The defendant shall pay the cost of prosecution.
- The defendant shall pay the following court cost(s):
- The defendant shall forfeit the defendant's interest in the following property to the United States:

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

EXHIBIT 4



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
LOS ANGELES REGIONAL OFFICE
444 S. FLOWER STREET, SUITE 900
LOS ANGELES, CALIFORNIA 90071

September 15, 2014

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Gary Harrison Lane
Inmate Register # 47674-048
FCI Sheridan
[REDACTED]

Re: In the Matter of Gary Harrison Lane (LA-4380)

Dear Mr. Lane:

Pursuant to SEC Rule of Practice § 201.230, documents related to this matter are available for inspection and copying at the Securities and Exchange Commission's offices in Los Angeles, California. Please note, however, that pursuant to SEC Rule of Practice § 201.230(f), a respondent in an SEC proceeding is responsible for bearing the cost of copying. If you wish to make arrangements for such inspection and copying, please contact me at [REDACTED]

Sincerely,

A handwritten signature in cursive script that reads "Christine Connolly".

Christine Connolly
Program Specialist

7011 0470 0003 3894 0221

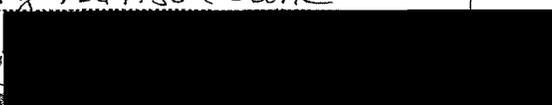
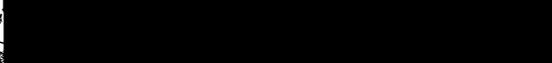
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CERTIFIED MAIL[®] RECEIPT
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For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$	0.50
Certified Fee		0.30
Return Receipt Fee (Endorsement Required)		0.00
Restricted Delivery Fee (Endorsement Required)		0.00
Total Postage & Fees	\$	0.80

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SEP 15 AM 9:56
Postmark Here

Sent To Eary Harrison Lane
 Street, Apt. No., or PO Box No. 
 City, State, ZIP+4 

PS Form 3800, A

UNITED STATES POSTAL SERVICE

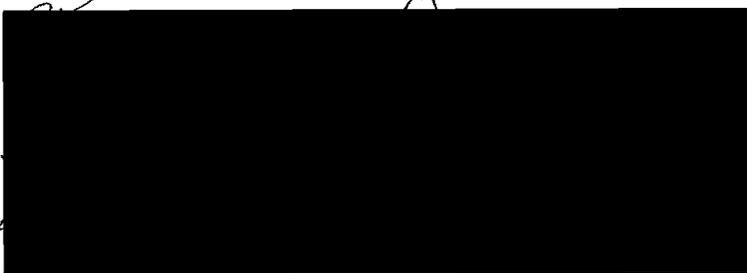
OR 970
18 SEP '14

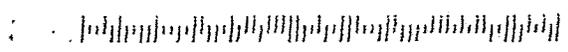


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USPS
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PS L

• Sender: Please print your name, address, and ZIP+4 in this box •

Christine Connolly


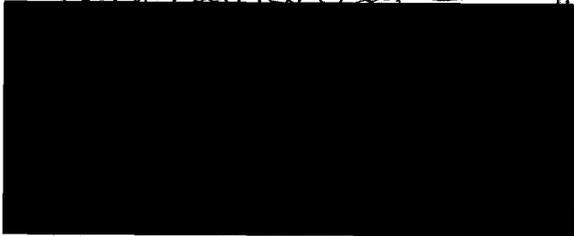


SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Erin Harrison Lane



COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) B. Date of Delivery

[Signature] 9/18

C. Signature
X *[Signature]* Agent
 Addressee

D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

2. Article Number (Copy from service label)

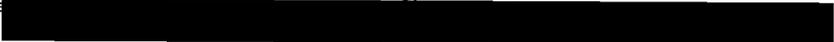


EXHIBIT 5

BrokerCheck Report
GARY HARRISON LANE

Report #55084-80335, data current as of Monday, November 03, 2014.

<u>Section Title</u>	<u>Page(s)</u>
Report Summary	1
Broker Qualifications	2 - 3
Registration and Employment History	4 - 5
Disclosure Events	6

BrokerCheck offers information on all current, and many former, registered securities brokers, and all current and former registered securities firms. FINRA strongly encourages investors to use BrokerCheck to check the background of securities brokers and brokerage firms before deciding to conduct, or continue to conduct, business with them.

- **What is included in a BrokerCheck report?**

BrokerCheck reports for individual brokers include information such as employment history, professional qualifications, disciplinary actions, criminal convictions, civil judgments and arbitration awards. BrokerCheck reports for brokerage firms include information on a firm's profile, history, and operations, as well as many of the same disclosure events mentioned above.

Please note that the information contained in a BrokerCheck report may include pending actions or allegations that may be contested, unresolved or unproven. In the end, these actions or allegations may be resolved in favor of the broker or brokerage firm, or concluded through a negotiated settlement with no admission or finding of wrongdoing.

- **Where did this information come from?**

The information contained in BrokerCheck comes from FINRA's Central Registration Depository, or CRD® and is a combination of:

- o information FINRA and/or the Securities and Exchange Commission (SEC) require brokers and brokerage firms to submit as part of the registration and licensing process, and
- o information that regulators report regarding disciplinary actions or allegations against firms or brokers.

- **How current is this information?**

Generally, active brokerage firms and brokers are required to update their professional and disciplinary information in CRD within 30 days. Under most circumstances, information reported by brokerage firms, brokers and regulators is available in BrokerCheck the next business day.

- **What if I want to check the background of an investment adviser firm or investment adviser representative?**

To check the background of an investment adviser firm or representative, you can search for the firm or individual in BrokerCheck. If your search is successful, click on the link provided to view the available licensing and registration information in the SEC's Investment Adviser Public Disclosure (IAPD) website at <http://www.adviserinfo.sec.gov>. In the alternative, you may search the IAPD website directly or contact your state securities regulator at <http://www.finra.org/Investors/ToolsCalculators/BrokerCheck/P455414>.

- **Are there other resources I can use to check the background of investment professionals?**

FINRA recommends that you learn as much as possible about an investment professional before deciding to work with them. Your state securities regulator can help you research brokers and investment adviser representatives doing business in your state.



Using this site/information means that you accept the FINRA BrokerCheck Terms and Conditions. A complete list of Terms and Conditions can be found at

brokercheck.finra.org



For additional information about the contents of this report, please refer to the User Guidance or www.finra.org/brokercheck. It provides a glossary of terms and a list of frequently asked questions, as well as additional resources.

For more information about FINRA, visit www.finra.org.

Thank you for using FINRA BrokerCheck.

GARY H. LANE**Report Summary for this Broker**

This report summary provides an overview of the broker's professional background and conduct. Additional information can be found in the detailed report.

This broker is not currently registered.

Broker Qualifications

This broker is not currently registered.

This broker has passed:

- 0 Principal/Supervisory Exams
- 1 General Industry/Product Exam
- 2 State Securities Law Exams

Registration History

This broker was previously registered with the following securities firm(s):

**MERRILL LYNCH, PIERCE, FENNER & SMITH
INCORPORATED**
CRD# 7691
RENO, NV
10/2009 - 03/2011

**BANC OF AMERICA INVESTMENT SERVICES,
INC.**
CRD# 16361
RENO, NV
07/1999 - 10/2009

BA INVESTMENT SERVICES, INC.
CRD# 12965
OAKLAND, CA
04/1997 - 07/1999

Disclosure Events

All individuals registered to sell securities or provide investment advice are required to disclose customer complaints and arbitrations, regulatory actions, employment terminations, bankruptcy filings, and criminal or civil judicial proceedings.

Are there events disclosed about this broker? Yes

The following types of disclosures have been reported:

Type	Count
Regulatory Event	2
Customer Dispute	3
Termination	1

Investment Adviser Representative Information

The information below represents the individual's record as a broker. For details on this individual's record as an investment adviser representative, visit the SEC's Investment Adviser Public Disclosure website at

<http://www.adviserinfo.sec.gov>

Broker Qualifications



Registrations

This section provides the self-regulatory organizations (SROs) and U.S. states/territories the broker is currently registered and licensed with, the category of each license, and the date on which it became effective. This section also provides, for every brokerage firm with which the broker is currently employed, the address of each branch where the broker works.

This broker is not currently registered.

Broker Qualifications



Industry Exams this Broker has Passed

This section includes all securities industry exams that the broker has passed. Under limited circumstances, a broker may attain a registration after receiving an exam waiver based on exams the broker has passed and/or qualifying work experience. Any exam waivers that the broker has received are not included below.

This individual has passed 0 principal/supervisory exams, 1 general industry/product exam, and 2 state securities law exams.

Principal/Supervisory Exams

Exam	Category	Date
No information reported.		

General Industry/Product Exams

Exam	Category	Date
General Securities Representative Examination	Series 7	08/16/1980

State Securities Law Exams

Exam	Category	Date
Uniform Securities Agent State Law Examination	Series 63	08/08/1989
Uniform Investment Adviser Law Examination	Series 65	03/30/1998

Additional information about the above exams or other exams FINRA administers to brokers and other securities professionals can be found at www.finra.org/brokerqualifications/registeredrep/.



Registration and Employment History

Registration History

The broker previously was registered with the following firms:

Registration Dates	Firm Name	CRD#	Branch Location
10/2009 - 03/2011	MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED	7691	RENO, NV
07/1999 - 10/2009	BANC OF AMERICA INVESTMENT SERVICES, INC.	16361	RENO, NV
04/1997 - 07/1999	BA INVESTMENT SERVICES, INC.	12965	OAKLAND, CA
03/1991 - 03/1997	INVEST FINANCIAL CORPORATION	12984	TAMPA, FL
12/1990 - 02/1991	AMERICAN EXPRESS FINANCIAL ADVISORS INC.	6363	MINNEAPOLIS, MN
12/1990 - 02/1991	IDS LIFE INSURANCE COMPANY	6321	MINNEAPOLIS, MN
07/1989 - 06/1990	DEAN WITTER REYNOLDS INC.	7556	PURCHASE, NY
08/1980 - 01/1989	MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED	7691	

Employment History

This section provides up to 10 years of an individual broker's employment history as reported by the individual broker on the most recently filed Form U4.

Please note that the broker is required to provide this information only while registered with FINRA or a national securities exchange and the information is not updated via Form U4 after the broker ceases to be registered. Therefore, an employment end date of "Present" may not reflect the broker's current employment status.

Employment Dates	Employer Name	Employer Location
12/2009 - Present	BANK OF AMERICA, NA	RENO, NV
10/2009 - Present	MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED	RENO, NV
07/1999 - Present	BANC OF AMERICA INVESTMENT SERVICES, INC.	RENO, NV
07/1999 - Present	BANC OF AMERICA INSURANCE SERVICES, INC.	RENO, NV
03/1991 - Present	CENTRAL SQUARE CO. INC.	ROSEVILLE, CA

Registration and Employment History



Other Business Activities

This section includes information, if any, as provided by the broker regarding other business activities the broker is currently engaged in either as a proprietor, partner, officer, director, employee, trustee, agent or otherwise. This section does not include non-investment related activity that is exclusively charitable, civic, religious or fraternal and is recognized as tax exempt.

No information reported.

Disclosure Events



What you should know about reported disclosure events:

1. All individuals registered to sell securities or provide investment advice are required to disclose customer complaints and arbitrations, regulatory actions, employment terminations, bankruptcy filings, and criminal or civil judicial proceedings.
2. **Certain thresholds must be met before an event is reported to CRD, for example:**
 - o A law enforcement agency must file formal charges before a broker is required to disclose a particular criminal event.
 - o A customer dispute must involve allegations that a broker engaged in activity that violates certain rules or conduct governing the industry and that the activity resulted in damages of at least \$5,000.
3. **Disclosure events in BrokerCheck reports come from different sources:**
 - o As mentioned at the beginning of this report, information contained in BrokerCheck comes from brokers, brokerage firms and regulators. When more than one of these sources reports information for the same disclosure event, all versions of the event will appear in the BrokerCheck report. The different versions will be separated by a solid line with the reporting source labeled.
4. **There are different statuses and dispositions for disclosure events:**
 - o A disclosure event may have a status of *pending, on appeal, or final*.
 - § A "pending" event involves allegations that have not been proven or formally adjudicated.
 - § An event that is "on appeal" involves allegations that have been adjudicated but are currently being appealed.
 - § A "final" event has been concluded and its resolution is not subject to change.
 - o A final event generally has a disposition of *adjudicated, settled or otherwise resolved*.
 - § An "adjudicated" matter includes a disposition by (1) a court of law in a criminal or civil matter, or (2) an administrative panel in an action brought by a regulator that is contested by the party charged with some alleged wrongdoing.
 - § A "settled" matter generally involves an agreement by the parties to resolve the matter. Please note that brokers and brokerage firms may choose to settle customer disputes or regulatory matters for business or other reasons.
 - § A "resolved" matter usually involves no payment to the customer and no finding of wrongdoing on the part of the individual broker. Such matters generally involve customer disputes.

For your convenience, below is a matrix of the number and status of disclosure events involving this broker. Further information regarding these events can be found in the subsequent pages of this report. You also may wish to contact the broker to obtain further information regarding these events.

	Pending	Final	On Appeal
Regulatory Event	1	1	0



Customer Dispute	0	3	N/A
Termination	N/A	1	N/A



Disclosure Event Details

When evaluating this information, please keep in mind that a disclosure event may be pending or involve allegations that are contested and have not been resolved or proven. The matter may, in the end, be withdrawn, dismissed, resolved in favor of the broker, or concluded through a negotiated settlement for certain business reasons (e.g., to maintain customer relationships or to limit the litigation costs associated with disputing the allegations) with no admission or finding of wrongdoing.

This report provides the information exactly as it was reported to CRD and therefore some of the specific data fields contained in the report may be blank if the information was not provided to CRD.

Regulatory - Final

This type of disclosure event may involves (1) a final, formal proceeding initiated by a regulatory authority (e.g., a state securities agency, self-regulatory organization, federal regulatory such as the Securities and Exchange Commission, foreign financial regulatory body) for a violation of investment-related rules or regulations; or (2) a revocation or suspension of a broker's authority to act as an attorney, accountant, or federal contractor.

Disclosure 1 of 1

Reporting Source:	Regulator
Regulatory Action Initiated By:	FINRA
Sanction(s) Sought:	Other: N/A
Date Initiated:	09/13/2011
Docket/Case Number:	2011027048601
Employing firm when activity occurred which led to the regulatory action:	BANC OF AMERICA INVESTMENT SERVICES, INC./MERRILL LYNCH, PIERCE, FENNER & SMITH, INC.
Product Type:	Debt-Corporate Debt-Government
Allegations:	FINRA RULES 2010, 2150(A), NASD RULES 2110, 2330(A) - GARY HARRISON LANE CONVERTED A TOTAL OF \$4.93 MILLION IN CHECKS TO HIS PERSONAL USE FROM CUSTOMERS WHO WERE MISLED BY HIM INTO BELIEVING THEY WERE INVESTING IN U.S. TREASURY BONDS AND/OR CORPORATE BONDS AND INSTEAD OF INVESTING THE MONEY, LANE, WITHOUT AUTHORIZATION, DEPOSITED CHECKS DRAWN IN THE ACCOUNTS INTO A RELATIVE'S ACCOUNT TO EFFECTUATE THE ABOVE CONVERSION OF THE CUSTOMERS' FUNDS FOR HIS PERSONAL USE. IN FURTHERANCE OF THIS SCHEME AND IN AN EFFORT TO DISGUISE HIS CONVERSION, LANE MADE A TOTAL OF MORE THAN \$736,000 IN



PAYMENTS TO SOME OF THE AFFECTED CUSTOMERS VIA CASH PAYMENTS OR BY TRANSFERRING FUNDS FROM HIS RELATIVE'S ACCOUNT TO A BANK ACCOUNT BEARING THE NAME OF THE UNITED STATES FROM WHICH CASHIER'S CHECKS WERE ISSUED TO THE CUSTOMERS. TO CONCEAL HIS CONVERSION, LANE CREATED AND PROVIDED HIS CUSTOMERS FICTITIOUS RECEIPTS AND TYPED CERTIFICATIONS PURPORTING TO CONFIRM HIS CUSTOMERS' NON-EXISTENT INVESTMENTS IN U.S. TREASURY BONDS AND/OR CORPORATE BONDS. BY CREATING AND PROVIDING HIS CUSTOMERS FICTITIOUS RECEIPTS AND CERTIFICATIONS CONCERNING THEIR PURPORTED OWNERSHIP IN NON-EXISTENT INVESTMENTS, LANE FAILED TO OBSERVE HIGH STANDARDS OF COMMERCIAL HONOR AND JUST AND EQUITABLE PRINCIPLES OF TRADE IN VIOLATION OF NASD RULE 2110- AND FINRA RULE 2010.

Current Status: Final

Resolution: Acceptance, Waiver & Consent(AWC)

Does the order constitute a final order based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct? No

Resolution Date: 09/13/2011

Sanctions Ordered: Bar (Permanent)

If the regulator is the SEC, CFTC, or an SRO, did the action result in a finding of a willful violation or failure to supervise? No



(1) willfully violated any provision of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, or any rule or regulation under any of such Acts, or any of the rules of the Municipal Securities Rulemaking Board, or to have been unable to comply with any provision of such Act, rule or regulation?

(2) willfully aided, abetted, counseled, commanded, induced, or procured the violation by any person of any provision of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, or any rule or regulation under any of such Acts, or any of the rules of the Municipal Securities Rulemaking Board? or



(3) failed reasonably to supervise another person subject to your supervision, with a view to preventing the violation by such person of any provision of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, or any rule or regulation under any such Acts, or any of the rules of the Municipal Securities Rulemaking Board?

Sanction 1 of 1

Sanction Type: Bar (Permanent)
Capacities Affected: ANY CAPACITY
Duration: N/A
Start Date: 09/13/2011
End Date:

Regulator Statement

WITHOUT ADMITTING OR DENYING THE FINDINGS, LANE CONSENTED TO THE DESCRIBED SANCTION AND TO THE ENTRY OF FINDINGS; THEREFORE, HE IS BARRED FROM ASSOCIATION WITH ANY FINRA MEMBER IN ANY CAPACITY.



Regulatory - Pending

This type of disclosure event involves a pending formal proceeding initiated by a regulatory authority (e.g., a state securities agency, self-regulatory organization, federal regulatory agency such as the Securities and Exchange Commission, foreign financial regulatory body) for alleged violations of investment-related rules or regulations.

Disclosure 1 of 1

Reporting Source: Regulator

Regulatory Action Initiated By: UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Sanction(s) Sought: Other: N/A

Date Initiated: 09/11/2014

Docket/Case Number: 3-16101

Employing firm when activity occurred which led to the regulatory action: BANC OF AMERICA INVESTMENT SERVICES, INC. AND MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED

Product Type: No Product

Allegations: SEC ADMIN RELEASE 34-73077; IA RELEASE 40-3915; / SEPTEMBER 11, 2014: THE SECURITIES AND EXCHANGE COMMISSION DEEMS IT APPROPRIATE AND IN THE PUBLIC INTEREST THAT PUBLIC ADMINISTRATIVE PROCEEDINGS BE, AND HEREBY ARE, INSTITUTED PURSUANT TO SECTION 15(B) OF THE SECURITIES EXCHANGE ACT OF 1934 ("EXCHANGE ACT") AND SECTION 203(F) OF THE INVESTMENT ADVISERS ACT OF 1940 ("ADVISERS ACT") AGAINST GARY HARRISON LANE ("RESPONDENT" OR "LANE"). ON SEPTEMBER 3, 2013, LANE PLEADED GUILTY TO 12 COUNTS OF MAIL FRAUD IN VIOLATION OF 18 U.S.C. SECTION 1341 AND FIVE COUNTS OF ATTEMPT TO EVADE OR DEFEAT TAX IN VIOLATION OF 26 U.S.C. SECTION 7201 BEFORE THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEVADA. 3:12-CR-00078-RCJ-VPC. ON FEBRUARY 20, 2014, A JUDGMENT IN THE CRIMINAL CASE WAS ENTERED AGAINST LANE. HE WAS SENTENCED TO A PRISON TERM OF 120 MONTHS FOLLOWED BY FIVE YEARS OF SUPERVISED RELEASE AND RESTITUTION OF \$2,103,226.

Current Status: Pending

Regulator Statement IN VIEW OF THE ALLEGATIONS MADE BY THE DIVISION OF ENFORCEMENT, THE COMMISSION DEEMS IT NECESSARY AND APPROPRIATE IN THE PUBLIC INTEREST THAT PUBLIC ADMINISTRATIVE PROCEEDINGS BE INSTITUTED. IT IS FURTHER ORDERED THAT THE ADMINISTRATIVE LAW JUDGE SHALL ISSUE AN INITIAL DECISION NO LATER THAN 210 DAYS FROM THE DATE OF SERVICE OF THIS ORDER, PURSUANT TO RULE



360(A)(2) OF THE COMMISSION'S RULES OF PRACTICE.



Customer Dispute - Settled

This type of disclosure event involves a consumer-initiated, investment-related complaint, arbitration proceeding or civil suit containing allegations of sale practice violations against the broker that resulted in a monetary settlement to the customer.

Disclosure 1 of 3

Reporting Source: Firm

Employing firm when activities occurred which led to the complaint: BANC OF AMERICA INVESTMENT SERVICES, INC. AND MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED

Allegations: THE CUSTOMER ALLEGES THAT THE REGISTERED REPRESENTATIVE MISAPPROPRIATED FUNDS BY LEADING HIM TO BELIEVE HE WAS INVESTING IN GOVERNMENT BONDS.

Product Type: Debt-Government

Alleged Damages: \$100,000.00

Is this an oral complaint? No

Is this a written complaint? Yes

Is this an arbitration/CFTC reparation or civil litigation? No

Customer Complaint Information

Date Complaint Received: 05/07/2012

Complaint Pending? No

Status: Settled

Status Date: 07/23/2012

Settlement Amount: \$35,000.00

Individual Contribution Amount: \$0.00

Disclosure 2 of 3

Reporting Source: Firm

Employing firm when activities occurred which led to the complaint: BANC OF AMERICA INVESTMENT SERVICES, INC. AND MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED

Allegations: ATTORNEY FOR THE CUSTOMER ALLEGES THAT INVESTMENTS WERE



MADE IN U.S. TREASURY BONDS THROUGH THE FINANCIAL ADVISOR IN THE AMOUNT OF \$950,000. ATTORNEY FOR THE CUSTOMER BELIEVES THAT THE MONEY HAS BEEN MISAPPROPRIATED.

Product Type: Debt-Government
Alleged Damages: \$950,000.00
Is this an oral complaint? No
Is this a written complaint? Yes
Is this an arbitration/CFTC reparation or civil litigation? No

Customer Complaint Information

Date Complaint Received: 04/25/2011
Complaint Pending? No
Status: Settled
Status Date: 12/08/2011
Settlement Amount: \$987,094.33
Individual Contribution Amount: \$0.00

Disclosure 3 of 3

Reporting Source: Firm
Employing firm when activities occurred which led to the complaint: MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED

Allegations: CUSTOMER ALLEGES THAT INVESTMENTS WERE MADE IN U.S. TREASURY BONDS THROUGH THE FINANCIAL ADVISOR IN THE AMOUNT OF \$250,000. CLIENT BELIEVES THAT THE MONEY HAS BEEN MISAPPROPRIATED.

Product Type: Debt-Government
Alleged Damages: \$250,000.00
Is this an oral complaint? No
Is this a written complaint? Yes
Is this an arbitration/CFTC reparation or civil litigation? No



Customer Complaint Information

Date Complaint Received:	04/06/2011
Complaint Pending?	No
Status:	Settled
Status Date:	04/22/2011
Settlement Amount:	\$345,064.00
Individual Contribution Amount:	\$0.00

**Employment Separation After Allegations**

This type of disclosure event involves a situation where the broker voluntarily resigned, was discharged, or was permitted to resign after being accused of (1) violating investment-related statutes, regulations, rules or industry standards of conduct; (2) fraud or the wrongful taking of property; or (3) failure to supervise in connection with investment-related statutes, regulations, rules, or industry standards of conduct.

Disclosure 1 of 1

Reporting Source:	Firm
Employer Name:	MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED
Termination Type:	Discharged
Termination Date:	03/23/2011
Allegations:	ALLEGATIONS OF SUSPECTED IMPROPRIETIES IN CLIENT ACCOUNTS
Product Type:	Debt-Government

End of Report



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EXHIBIT 6

**BANC OF AMERICA SECURITIES
LLC**

Report Summary for this Firm



This report summary provides an overview of the brokerage firm. Additional information for this firm can be found in the detailed report.

Main Office Location

ONE BRYANT PARK
NEW YORK, NY 10036

Mailing Address

ONE BRYANT PARK
NY1-100-17-01
NEW YORK, NY 10036

Business Telephone Number

646-855-5000

Firm Profile

This firm is classified as a limited liability company.

This firm was formed in Delaware on 12/03/1997.

Its fiscal year ends in December.

Disclosure Events

Brokerage firms are required to disclose certain criminal matters, regulatory actions, civil judicial proceedings and financial matters in which the firm or one of its control affiliates has been involved.

Firm History

Information relating to the brokerage firm's history such as other business names and successions (e.g., mergers, acquisitions) can be found in the detailed report.

Are there events disclosed about this firm? **Yes**

Firm Operations

This brokerage firm is no longer registered with FINRA or a national securities exchange.

The following types of disclosures have been reported:

Type	Count
Regulatory Event	88
Civil Event	2
Arbitration	4

This firm is a brokerage firm and an investment adviser firm. For more information about investment adviser firms, visit the SEC's Investment Adviser Public Disclosure website at:

<http://www.adviserinfo.sec.gov>

Registration Withdrawal Information

This section provides information relating to the date the brokerage firm ceased doing business and the firm's financial obligations to customers or other brokerage firms.



**This firm terminated or
withdrew registration on:** 11/01/2010

**Does this brokerage firm owe
any money or securities to
any customer or brokerage
firm?** No

EXHIBIT 7

**MERRILL LYNCH, PIERCE, FENNER
& SMITH INCORPORATED****Report Summary for this Firm**

SEC# 8-7221

Main Office Location

ONE BRYANT PARK
NEW YORK, NY 10036
Regulated by FINRA New York Office

Mailing Address

222 BROADWAY
NY3-222-12-05
NEW YORK, NY 10038

Business Telephone Number

800-637-7455

This firm is a brokerage firm and an investment adviser firm. For more information about investment adviser firms, visit the SEC's Investment Adviser Public Disclosure website at:

<http://www.adviserinfo.sec.gov>

This report summary provides an overview of the brokerage firm. Additional information for this firm can be found in the detailed report.

Firm Profile

This firm is classified as a corporation.
This firm was formed in Delaware on 11/10/1958.
Its fiscal year ends in December.

Firm History

Information relating to the brokerage firm's history such as other business names and successions (e.g., mergers, acquisitions) can be found in the detailed report.

Firm Operations

This firm is registered with:

- the SEC
- 18 Self-Regulatory Organizations
- 53 U.S. states and territories

Is this brokerage firm currently suspended with any regulator? **No**

This firm conducts 23 types of businesses.

This firm is affiliated with financial or investment institutions.

This firm has referral or financial arrangements with other brokers or dealers.

Disclosure Events

Brokerage firms are required to disclose certain criminal matters, regulatory actions, civil judicial proceedings and financial matters in which the firm or one of its control affiliates has been involved.

Are there events disclosed about this firm? **Yes**

The following types of disclosures have been reported:

Type	Count
Regulatory Event	472
Civil Event	5
Arbitration	996

Firm Profile

This firm is classified as a corporation.

This firm was formed in Delaware on 11/10/1958.

Its fiscal year ends in December.



Firm Names and Locations

This section provides the brokerage firm's full legal name, "Doing Business As" name, business and mailing addresses, telephone number, and any alternate name by which the firm conducts business and where such name is used.

MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED

Doing business as **MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED**

SEC# 8-7221

Main Office Location

ONE BRYANT PARK
NEW YORK, NY 10036

Regulated by FINRA New York Office

Mailing Address

222 BROADWAY
NY3-222-12-05
NEW YORK, NY 10038

Business Telephone Number

800-637-7455

Other Names of this Firm

Name	Where is it used
MERRILL LYNCH PETRIE DIVESTITURE ADVISORS	AK, AL, AR, AZ, CA, CO, CT, DC, DE, FL, GA, HI, IA, ID, IL, IN, KS, KY, LA, MA, MD, ME, MI, MN, MO, MS, MT, NC, ND, NE, NH, NJ, NM, NV, NY, OH, OK, OR, PA, PR, RI, SC, SD, TN, TX, UT, VA, VT, WA

MERRILL LYNCH PETRIE PARKMAN & CO.

WI, WV, WY
AK, AL, AR, AZ, CA,
CO, CT, DC, DE, FL,
GA, HI, IA, ID, IL, IN,
KS, KY, LA, MA, MD,
ME, MI, MN, MO,
MS, MT, NC, ND,
NE, NH, NJ, NM, NV,
NY, OH, OK, OR, PA,
PR, RI, SC, SD, TN,
TX, UT, VA, VT, WA,
WI, WV, WY

EXHIBIT 8

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
BEFORE THE HONORABLE ROBERT C. JONES, DISTRICT JUDGE
---o0o---

UNITED STATES OF AMERICA, :
 :
Plaintiff, : No. 3:12-CR-78-RCJ-VPC
 :
-vs- : February 10, 2014
 :
GARY H. LANE, : Reno, Nevada
 :
Defendant. :
 :

TRANSCRIPT OF SENTENCING

APPEARANCES:

FOR THE PLAINTIFF: RONALD RACHOW
Assistant United States Attorney
Reno, Nevada

FOR THE DEFENDANT: LAURENCE P. DIGESTI
Attorney at Law
Reno, Nevada

FOR U.S. PROBATION: DAN McCAW

Reported by: Margaret E. Griener, CCR #3, RDR
Official Reporter
400 South Virginia Street
Reno, Nevada 89501
(775) 329-9980



MARGARET E. GRIENER, RDR, CCR NO. 3, OFFICIAL REPORTER
(775) 329-9980

1 RENO, NEVADA, MONDAY, FEBRUARY 10, 2014, 1:44 P.M.

2 ---o0o---

3

4 THE COURT: Thank you. In United States versus
5 Gary H. Lane. Appearances, please.

6 MR. RACHOW: Ron Rachow for the government, your
7 Honor.

8 THE COURT: Mr. Rachow.

9 MR. DIGESTI: Larry Digesti, Your Honor, on
10 behalf of Gary Lane.

11 THE COURT: Mr. Digesti, thank you. And
12 Mr. Lane, thank you, sir.

13 THE DEFENDANT: Thank you.

14 THE COURT: All right. This is the time set for
15 imposition of sentence in your case, Mr. Lane, 3:12-CR-78.

16 On September 3rd of last year you appeared before
17 the Court and entered a plea of guilty to Counts 1 to 12, mail
18 fraud, a violation of 18 USC Section 1341, and Counts 13 to
19 17, attempt to evade or defeat tax, 26 USC 7201.

20 I've reviewed the presentence report -- and this was
21 plea agreement, correct?

22 MR. DIGESTI: No, your Honor.

23 THE COURT: No, it was a straightup plea.

24 And the Court accepts your guilty plea and
25 adjudicates you guilty of these charges.

1 Now, let's deal first, Mr. Digesti, with the finding
2 on the guideline range applicable. You've reviewed the
3 presentence report with the defendant?

4 MR. DIGESTI: Yes, your Honor.

5 THE COURT: And you filed a formal objection.
6 The probation department filed an addendum.

7 Do you have continuing objections that you want to
8 raise on the record? I'm not calling for them yet; do you
9 have.

10 MR. DIGESTI: Yes, your Honor.

11 THE COURT: And do you have additional
12 objections that you needed to add to our agenda or just what's
13 stated in the objections?

14 MR. DIGESTI: Just what's stated, your Honor.

15 THE COURT: And, Mr. Lane, you read the report,
16 sir, and discussed it with your attorney?

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

18 THE COURT: And did you have any additional
19 objections other than what your attorney stated in the
20 objections?

21 THE DEFENDANT: No, I did not.

22 THE COURT: Okay. Thank you.

23 Let's hear the report first, please, and then we'll
24 handle any objections.

25 PROBATION OFFICER: The guideline range was

1 calculated as follows using a multiple-count adjustment based
2 on more than one count of conviction.

3 The base offense level is 7. There's an 18-level
4 increase for the amount of loss. Two levels are added for
5 sophisticated means, two levels are added for vulnerable
6 victim, and two levels are added for abuse of position of
7 trust, resulting in an adjusted offense level of 31.

8 Group two, associated with Counts 13 through 17, the
9 base offense level is 22. There's a two-level increase for
10 the amount of tax loss -- excuse me, 22 based on the tax loss,
11 and two levels are added as the defendant failed to report or
12 correctly identify the source of income exceeding \$10,000 on
13 any year of any criminal activity.

14 The adjusted offense level is 24 for that group.

15 The multiple-count adjustment was applied resulting
16 in a combined offense level of 32.

17 A three-level reduction for acceptance of
18 responsibility was applied resulting in a total offense level
19 for all counts of a level of 29.

20 Defendant's criminal history score was 2 resulting
21 in a criminal history category of II. Combined with a total
22 offense level of 29, the resulting guideline range is 97 to
23 121 months.

24 Probation is precluded in this case. The supervised
25 release range is two to five years. The fine range is 15,000

1 to 150,000. Restitution is recommended in the amount of
2 \$2,103,226.

3 THE COURT: Now, that was based upon a
4 limitation per the complaint. It's my understanding that you
5 determined that some \$4 million was paid out by Bank of
6 America to clients.

7 PROBATION OFFICER: That is correct, your Honor.

8 THE COURT: Okay. But this figure comes from
9 the limitation in the complaint.

10 PROBATION OFFICER: That is correct.

11 THE COURT: Okay.

12 PROBATION OFFICER: And special assessments
13 totaling \$1700 is due and payable immediately.

14 THE COURT: Okay. And the restitution is
15 intended for Bank of America, or does that include tax to the
16 U.S. Government?

17 PROBATION OFFICER: One second, your Honor.

18 Page 14 at the bottom of paragraph 64 outlines the
19 victims in this case.

20 THE COURT: Fourteen.

21 PROBATION OFFICER: And paragraph 64 also
22 itemizes the amount of restitution that is recommended to each
23 victim.

24 THE COURT: Paragraph what?

25 PROBATION OFFICER: Sixty-four.

1 THE COURT: Sixty-four.

2 Let's see. The Bank of America, restitution in the
3 amount of 25,000 with interest payable to the IRS. So those
4 are the delineated amounts.

5 PROBATION OFFICER: That's correct.

6 THE COURT: Okay. And the addendum, the
7 objections and your response to the objections?

8 PROBATION OFFICER: Did your Honor want me to go
9 through those, is that --

10 THE COURT: Yes, I want your position, and then
11 I want to hear the objections.

12 PROBATION OFFICER: Okay, your Honor.

13 The first objection we received was to paragraph 19
14 which references a two-level increase for sophisticated means.

15 Our response was as noted in the offense conduct
16 portion of the report, specifically paragraphs 7, 10 and 15,
17 in which the defendant created false confirmations of his
18 fraudulent activity and distributed them to investors by
19 e-mail and United States mail in an attempt to give the
20 appearance of legitimacy of the fraud. The defendant's
21 employer eventually became aware of the fraud through these
22 fraudulent confirmations.

23 Mr. Lane also a created an e-Trade account using his
24 wife's information unbeknownst to her in order to conceal the
25 fraud from his employer and investors.

1 The second objection we received was to paragraph 20
2 and the application of a two-level increase for vulnerable
3 victim.

4 Pursuant to the guideline of 3A1.1, application note
5 2, vulnerable victim means a person, A, who is a victim of the
6 offense of conviction for which the defendant is accountable
7 under 1B1.3 which is relevant conduct, and, B, who is
8 unusually vulnerable due to age, physical or mental condition,
9 or who is otherwise particularly susceptible to criminal
10 conduct.

11 As noted in the indictment and at paragraph 6 of
12 this report, Lane looked for investors who were elderly or
13 lacked investment experience and had desire for high returns
14 and aversion to risk, thus the defendant targeted victims who
15 were particularly vulnerable to this type of fraud.

16 THE COURT: Okay. Thank you.

17 Let's hear the objections, please.

18 And you are objecting not only to specific
19 paragraphs, but also to the guideline calculation.

20 MR. DIGESTI: That's correct, your Honor.

21 THE COURT: Okay.

22 MR. DISGESTI: Your Honor, the objections that
23 remain are outlined in the sentencing memorandum that I
24 prepared for the benefit of the Court.

25 I would indicate originally when I received the

1 original presentence report there were a number of other
2 additional objections which were made which I was able to
3 resolve directly with the department, and based upon that
4 discussion, then, the revised presentence report was
5 generated, and then I went ahead and filed formally the
6 objections to the revised portion of the presentence report.

7 Also -- and I'll jump back in a minute, but also
8 attached to the defendant's sentencing memorandum in this
9 case, your Honor, there were three letters from members of the
10 family which I'm sure the Court's had an opportunity to
11 review.

12 The first objection would be with respect to the
13 two-level enhancement suggested by the department for
14 employing a sophisticated means.

15 I think the legal analysis and the legal argument is
16 set forth succinctly in the sentencing memorandum with
17 reference to pertinent cases which we believe have some
18 application in this case.

19 What we have here, your Honor, basically is a Ponzi
20 scheme, nothing more sophisticated than that.

21 Mr. Lane approached a number of different investors,
22 people that he had -- that had done business with him in the
23 past, made representations that their money would be invested
24 in bonds, treasury bonds, I believe, and that a certain rate
25 of interest would be returned to them over the term.

1 The allegation at paragraph 19 of the presentence
2 report that Mr. Lane took elaborate steps to conceal the
3 offense from his employer at the time just simply do not
4 exist. This was an independent, outside agreement that
5 occurred outside the scope of his employment. There was
6 really not much to be done in terms of concealing anything
7 from his employer because his employer simply was not aware of
8 Mr. Lane's venture.

9 People would be approached, people invested, the
10 money that was invested was put into an e-Trade account in his
11 wife's name. The money went into the account, never found its
12 way to any purchase of any treasury bonds or any investments.

13 There was nothing particularly sophisticated about
14 the means that were employed by Mr. Lane in this particular
15 case, and I believe that taking a look at the cases and the
16 argument that we have advanced in our sentencing memorandum
17 requires a little bit more than what is actual and what
18 actually occurred here and what the government has been able
19 to show.

20 It is the burden of the government I submit, your
21 Honor, and I submit it respectfully, that they must show, the
22 government must show that the fraud in question when viewed as
23 a whole was notably more intricate than that of the
24 garden-variety fraudulent scheme, and the *Hance* case, which is
25 an Eighth Circuit case, 2007, which is cited, stands for that

1 proposition.

2 And, again, this was a Ponzi scheme. Money comes
3 in, money goes out, and at the end the Pyramid crumbles and
4 there's simply not enough to pay.

5 "Creating false artifices, such as creating
6 false accounts or renting a post-office box," for
7 example, "under assumed names, are common means of
8 carrying out the fraud and do not qualify as
9 'sophisticated means' fraud."

10 And, again, I'm quoting from the *Hance* case, and
11 even that is far more than what we have here. There were no
12 post-office boxes, there were no false accounts, there was
13 nothing other than receiving the money, cashing the checks and
14 depositing them into an e-Trade account in Gary's -- Leslie,
15 who was at the time Gary's spouse, into her particular
16 account.

17 I don't know how much more can be said other than
18 the legal analysis, and I think the case law in this case,
19 your Honor, supplies ample argument.

20 And for the government simply to argue that a
21 two-level enhancement in this case is appropriate because, in
22 the government's opinion, there was a real sophisticated
23 scheme here that was employed by the defendant, I think, is a
24 stretch.

25 And, again, I reiterate that the government must

1 demonstrate something beyond the garden-variety type of fraud.
2 That really is all we have in this case. It was a Ponzi
3 scheme, it was nothing more and it was nothing less than that.

4 There's also a Second Circuit case, your Honor, that
5 I've cited that stands for the proposition that,

6 "The 'sophisticated means' adjustment is
7 warranted only when the conduct shows a greater -- a
8 greater level of planning or concealment than a
9 'typical' fraud of its kind."

10 And that's the *United States versus Ghaddar* case,
11 it's a Seventh Circuit decision, your Honor, in 2012.

12 The government simply relies upon the fact of
13 setting up an e-Trade account and creating false confirmation
14 letters -- whatever that means, I don't know what a false
15 confirmation letter is, I haven't seen it -- either by
16 themselves or taken together do not raise the level of
17 intricacy in this case beyond, again, the garden-variety
18 fraudulent offense.

19 And even putting the money into an e-Trade account
20 that was in an assumed name, it went into the account of his
21 wife, and how easily traceable would that be back to Mr. Lane.

22 And I would submit that if it did require -- or if
23 we did have the sophisticated means of fraud that the
24 government is relying upon for the two-level enhancement, the
25 least that should have been done or could have been done was

1 to create a false account under an assumed name making it much
2 more difficult to trace than what actually occurred in this
3 particular case.

4 The government also goes on to argue that this
5 scheme was so sophisticated that the purpose, of course, was
6 to preclude detection but ultimately also prevent the employer
7 from discovering the fraudulent scheme. And, again, as I
8 indicated in my sentencing memorandum, and this is -- deals
9 specifically, I think, with the tax counts, that in *United*
10 *States versus Stokes*, it says that it's irrelevant that -- how
11 long it took his employer or an employer to figure out the
12 scheme.

13 "In a scheme to evade taxes, the question of
14 when and how his employer discovered an embezzlement
15 does not support a sophisticated means finding."

16 And also -- that's *United States versus Stokes*, and
17 that's a Fifth Circuit case, 1993.

18 And then there's *United States versus Hart*, an
19 Eighth Circuit case in 2003, that states,

20 "For purposes of an evasion case, the issue
21 is whether the transfer of monies between various
22 accounts impeded the IRS's ability to trace the
23 income and outgo."

24 Well, this account was in his wife's name. How much
25 easier and simple does it get or does it need to be for the

1 IRS to trace this money.

2 And it's our position, respectfully, your Honor,
3 that the two-level enhancement for sophisticated means which
4 is being requested in this case is not appropriate, it's not
5 supported by the evidence in this case, and in my opinion, the
6 government has failed to carry the burden required in order to
7 legitimately and reasonably request the two-level enhancement
8 under the sophisticated means argument.

9 Do you want me to continue with the other
10 objections, your Honor, or are you kind of taking these
11 piecemeal?

12 THE COURT: No, any and all objections, please.

13 MR. DIGESTI: Okay. The second objection would
14 be the two-level increase for the vulnerable victim argument
15 in this case.

16 And in the presentence report, paragraph 20, the
17 allegation, and it's simply that, it's an allegation, and, in
18 my opinion, respectfully, it's not supported by the evidence
19 in this case, that some of the investors, they don't say all,
20 they say some of the investors were elderly and therefore
21 susceptible to Mr. Lane's conduct in enticing them to invest
22 in his fraudulent scheme.

23 Paragraph six of the report further states that
24 Mr. Lane looked for investors who were elderly or lacked
25 investing experience and had a desire for high returns and

1 aversion to risk. I submit that anyone that invests,
2 regardless of their age, is looking for high returns. After
3 all, that's the purpose of investing for the most part, and
4 also looking at the risk factor.

5 So those two components in and of themselves really
6 means very, very little. It doesn't just apply to a specific
7 class of investors, but I submit to the Court that it applies
8 reasonably across the board to anyone regardless of age who go
9 forward to invest their moneys with whomever.

10 The vulnerable victim enhancement, your Honor, I
11 believe in this case fails for three different reasons. First
12 and foremost, the vulnerable victim, the person must have
13 actually suffered a loss, and that's *United States versus*
14 *Wright*, a 1993 Sixth Circuit case.

15 Now, we know in this case that the bank ended up
16 paying restitution to all of the named individuals, and I'm
17 obviously working off of the individuals that are identified
18 in the indictment, and the victims have all been made whole.
19 Their losses have been recouped.

20 Further, one additional point, and I think it's
21 very, very significant and I certainly would ask this Court to
22 take it into account, Mr. Lane actually made interest payments
23 to these various investors over the course of time, and that's
24 not anything that's really been discussed or analyzed in any
25 of the presentence report notes and findings that I've been

1 able to look at.

2 But there's one investor, Hoosha (phonetic) -- I'm
3 going to slaughter the last name -- it's Andsroony. I'm going
4 to spell it, your Honor, A-n-d-s-r-o-o-n-y. And she is named
5 or identified in Count 5 of the indictment, and she had
6 invested approximately \$500,000, I believe, from what I could
7 see in reviewing the reports.

8 Over the term, she had been paid approximately
9 \$300,000 in interest payments on her \$500,000 investment.
10 That's money that she got to keep as far as I know, profit
11 that she made with Mr. Lane for the investment.

12 And the government emphasizes the vulnerable victim
13 aspect of this case because of the age and the amount of --
14 well, the victim's age and the unsophisticated nature of their
15 investment experiences. The fact of the matter is, your
16 Honor, that these individuals that did invest with Mr. Lane as
17 identified, for the most part were individuals that had known
18 Mr. Lane for a long period of time.

19 With many of them, it was not only a business
20 relationship that they had, but it was a friendship, a
21 personal relationship. Now, clearly, one might think that,
22 well, with that said, it makes the fraud even more compelling.
23 How could, you know, Gary take care of his friend this way,
24 why would he do that to his friends?

25 Well, the enhancement that I'm arguing against is

1 not an enhancement because you defrauded your friend or people
2 that you've known for over 20 years, the enhancement that I'm
3 arguing against is one of the vulnerable victim because of age
4 and the amount of unsophistication that these individuals may
5 have had with their investments.

6 This Ms. Andsroony, who -- her stated age is
7 78 years old, and I don't know if that was at the time of the
8 investments or if that's her current age, but, in any event,
9 the government in opposing my sentencing memorandum made note
10 of this particular individual and her age. Well, the fact of
11 the matter is that this individual had known Gary Lane since
12 1999, they had been friends, and she got to know Gary when her
13 investment accounts were transferred to Bank of America where
14 Gary was an employee.

15 She said Mr. Lane was a charming individual. She
16 trusted him. Over time, as a matter of fact, she trusted him
17 so much, your Honor, that she made him the executor of her
18 estate in the event of her death.

19 She admitted that Gary would give her interest
20 payments a little at a time to make up for the loss. She
21 received nothing in the form of mail from Gary, and he
22 delivered everything to her in person at her home. That was
23 the sophisticated means that the government would say
24 justified a two-level increase here. There's nothing in the
25 mail, just went over and talked to her, gave her the

1 information that he had available for her.

2 She made two different investments in the amount of
3 200,000 to \$300,000, and over the term she had invested
4 approximately \$1.3 million with Mr. Lane. She wasn't
5 defrauded that amount, but that's the amount of money she had
6 at her disposal, part of her estate to invest.

7 Even though she may have been 78 years old, again, I
8 don't know if that's today or if that was back in 2007, but
9 what that does demonstrate and what it tells me is there is a
10 certain amount of sophistication that an individual must have
11 in order to attain and achieve that type of an investment nest
12 egg that you have that type of money and that type of funds
13 available to you to invest.

14 And, again, over the term she had been paid
15 approximately \$300,000 in interest payments from Gary Lane as
16 part of this Ponzi scheme.

17 Another individual, your Honor, Suellen Fondren
18 (phonetic), she was born in 1942 so I put her age at
19 approximately 68, and she's named in Counts 1, 4 and 8 of the
20 indictment. She made her money managing real estate, real
21 estate investments, so she is a sophisticated investor, if you
22 will, had Bank of America maintain her investments after the
23 death of her husband in 2006.

24 She did not do anything with her investments for
25 approximately a year. She had an investment portfolio of

1 approximately 1.6 -- between 1.6 and \$2 million that she had
2 accumulated. Again, to me, if an individual has the ability
3 to accumulate those types of funds for investment purposes, I
4 do not see how that individual legitimately could be
5 considered to be a vulnerable victim and unsophisticated in
6 the investment community, and, again, here's a relatively
7 young individual. I'd hate to think anyone at age 68 is
8 elderly in that respect.

9 Mr. Lane had been her financial adviser for 15 to
10 20 years. He had known this person. And, again, it goes to
11 the trust factor. I mean, are they friends, or was Mr. Lane
12 truly seeking out elderly people, vulnerable victims, in order
13 to approach with this scheme.

14 Ms. Fondren would receive approximately between 400
15 and \$500,000 a year she would receive on her investments with
16 the mini-storage facilities that she owned in Southern
17 California. Again, I submit that that cuts against the
18 argument that she's a vulnerable victim.

19 She may have been a dear friend who trusted
20 Mr. Lane, and he defrauded a dear friend, but that does not
21 justify, nor is it the basis for, a two-level increase under
22 the vulnerable victim analysis.

23 Immediately upon discovery, or shortly after the
24 discovery, Ms. Fondren settled with Merrill Lynch for the sum
25 of \$762,000 which included the amount lost in the e-Trade.

1 She got interest, she got attorney's fees and accounting fees,
2 so she actually got more than what she had invested with
3 Mr. Lane.

4 There's another individual by the name of Robin
5 Barnish (phonetic). I believe she's 56 years old, she was
6 born in 1957. She's mentioned in Counts 2, 9, 11 and 12 of
7 the indictment.

8 She had met Mr. Lane in 2002, had been doing
9 business with him from 2000 to 2011, and not only, again, had
10 developed a professional business relationship but had
11 developed a personal relationship with Mr. Lane and his wife.
12 She considered Gary to be a good friend.

13 She provided nine checks over a period of time
14 starting on July 31st, 2007, through February 28th, 2011, and
15 the total amount of her investments was \$950,000 that she
16 deposited with Mr. Lane with these checks.

17 College graduate, BA degree. She testified -- or
18 didn't testify, but she indicated to the federal authorities
19 that her decision to invest with Mr. Lane was personal in
20 nature.

21 From 2007, her first investment, until 2011, she
22 received approximately three to \$5,000 a month in interest.
23 That's a period of 43 months. She collected anywhere from
24 \$129,000 all the way up to possibly 200 and -- I believe, if
25 I'm reading my writing correctly, 280 or \$290,000 in interest

1 which she got to keep on her \$950,000 investment. And this is
2 kind of important because, again, it reinforces the whole
3 theory of the Ponzi scheme of what this is about.

4 And, secondly, there's a passage in the presentence
5 report that says all of this money that Mr. Lane had invested
6 with him over the period of time was diverted for his own
7 personal use. That's not true; not all of it. A lot of it
8 was paid out to these investors over a period of time
9 consistent with the agreement that Gary had with these
10 different individuals.

11 Now, this information, your Honor, is information
12 that's available to the government. I received it as part of
13 the discovery, and I got it off of the 302 forms which is the
14 summary of the statements taken by the agents of these
15 different individuals.

16 So with respect to Ms. Robin Boetsch or Barnish,
17 excuse me, that's not information that I got independently,
18 that's information directly from the government.
19 Forty-three months of anywhere from three to \$5,000 a month in
20 interest only she received from this investment that she had
21 with Gary.

22 Marvin Walburn (phonetic), your Honor, he is another
23 individual that's identified in Count 6 and Count 7 of the
24 indictment, again, information that I obtained from the
25 government's documents in the 302 forms and summary reports

1 which were provided. He went to the Bank of America, he was
2 referred to Mr. Lane. He had invested in bonds in the past so
3 he had some experience. He made his money in construction and
4 in investing real estate.

5 He started with Gary investing in state bonds,
6 insurance bonds and banking investments. Over the period of
7 time, his investments with Gary gradually increased to more
8 than \$900,000. In September of 2010, he invested \$500,000.
9 Two months later, because apparently he must have been getting
10 a good return on his \$500,000 investment by way of interest,
11 he invested another \$250,000 with Mr. Lane.

12 The purpose of going through this, your Honor, is to
13 try to demonstrate and give a different picture other than
14 bald allegations as to the vulnerable victim that the
15 government is attempting to identify here to support a
16 two-level increase enhancement under the sentencing
17 guidelines.

18 This is all information that I obtained from the
19 government's file. It's not anything new. It should not be
20 at all surprising to anyone.

21 And what we have here, I think, if we try to put
22 this thing in some type of context, and we can't look at age
23 alone. There's a number of different cases that I've cited in
24 my presentencing -- excuse me, in my sentencing memorandum
25 that speak to that issue.

1 It's been held time and again, and by the Ninth
2 Circuit, that the fact that a victim is elderly by itself does
3 not -- I repeat, does not make him a vulnerable victim as a
4 matter of law, and that's *United States versus Luca, L-u-c-a*,
5 a 1999 Ninth Circuit case.

6 And it is not enough to support a finding by saying
7 that people of that class are more likely than the rest of the
8 general population to become victims of the particular crime
9 at issue, and that's the *Castellanos* case, also a Ninth
10 Circuit case, 1996.

11 And the purpose of going back and informing the
12 Court a little bit more about these individuals, how long they
13 had known Gary, their investment history with him, how much
14 money they had been paid in interest over the term and their
15 dealings -- specific dealings with Gary as they pertain to
16 this case, the amount of financial ability that these
17 individuals had, that they were able -- through their own
18 means, they were able to accumulate and have the opportunity
19 to invest those sums of money, leads me to believe, and I
20 think reasonably so, your Honor, that these individuals had
21 and they were sophisticated to a certain extent in the
22 investment community.

23 They made their money in real estate, other personal
24 investments, to be in a position where they could accumulate
25 that kind of wealth, if you will, to be able to even invest

1 any amount of money in this scheme that we have and I have
2 identified as a Ponzi scheme.

3 You know, there's an old saying your Honor, if
4 it's -- if it looks too good to be true, it's probably not
5 true. And I'm not blaming anybody, I'm not pointing the
6 finger in any way trying to minimize the responsibility and
7 the culpability that my client has.

8 But these were individuals that were savvy in the
9 investment business, they were used to making a lot of money
10 on their investments, and when they were given an opportunity
11 to invest with Gary Lane, an individual that they knew both
12 professionally and on a personal basis, and invest this money
13 and get a rate of return that they were promised that they
14 were going to get, well, I think the rest is history.

15 They saw an opportunity to make a little bit more
16 money to enhance that nest egg that they had, but to say that
17 they were vulnerable and unsophisticated and didn't know what
18 they were doing, I think, is a real, real stretch based upon
19 the evidence that we have in this case, and, more importantly,
20 what the government, in my opinion, has failed to prove.

21 The only thing they can point to is the age of one
22 or two of the investors to say that they were elderly,
23 therefore they're automatically vulnerable, and we have a
24 Ninth Circuit case that tells us that if that is the analysis,
25 as a matter of law, that's not the case.

1 And there's another passage that I think actually --

2 THE COURT: Counsel, you're going to have to
3 start winding up, sir. I have other matters set this
4 afternoon.

5 MR. DIGESTI: I understand, your Honor.

6 But this language out of the *Luca* case is -- I think
7 is telling.

8 "Based upon the evidence in the record that
9 the individual was, in fact, unusually vulnerable,"
10 not just vulnerable, but unusually vulnerable,
11 "because of the advanced age."

12 And that's a passage and that's a quote out of the
13 *Luca* case that I've cited.

14 With respect to the third objection, it deals with
15 the criminal history of Mr. Lane, your Honor, and we are
16 asking, and I am asking for Mr. Lane on his behalf, for a
17 downward departure from a criminal history category II to a I,
18 and, again, the basis is outlined in my sentencing memorandum
19 to the Court.

20 And it's our position that the criminal history II
21 overstates his criminal history. Gary is 60 years old. He
22 has, absent the state charges which resulted in the criminal
23 history category II, no other criminal history.

24 The state charges, your Honor, respectfully,
25 occurred over a period of 17 days. It was a casino marker,

1 March 2nd, 2011, for \$5,000 at the Atlantis. He had gambled
2 there before. He was able to borrow money to gamble by
3 signing a marker. Two weeks later, 17 days later, I believe,
4 on the 19th of March, 2011, he signs a \$5,000 marker at the
5 Grand Sierra. They were not repaid. He was arrested.

6 And markers in the State of Nevada come under the
7 umbrella of the statutory provision that talks about drawing
8 and passing checks with insufficient funds. That's what he
9 was charged with.

10 And if you take a look at the pleading very
11 carefully, you will see he was drawing and passing a series of
12 checks within 90 days. Well, first of all, they were not
13 checks, they were not insufficient funds, they were casino
14 markers, and there was not a series passed within 90 days.

15 He ended up pleading to two counts. They charged
16 each transaction separately. They could have charged just as
17 easily, and it would have made much more legal sense to charge
18 both as one transaction that he would have passed two within a
19 period of 90 days. One casino marker is not a series. A
20 series is two or more.

21 So there was some problems, I submit to the Court,
22 your Honor, in the manner in which a state's charge was
23 handled, and for that, for that criminal activity, he gets a
24 total of, I believe, two or three criminal history points that
25 put him into a Category II.

1 When Gary was arrested for those charges, and that
2 was in 2012, I believe it was in August of 2012, he could have
3 easily bailed out on those state charges, but he did not
4 because I am told that there was a federal hold that had been
5 placed on him that would have prevented him from being
6 released from custody.

7 I have tried, and I can't tell you how many
8 different ways that I have tried and the calls that I have
9 made, to find out when the federal hold was placed on
10 Mr. Lane, and no one had been able to provide and give me that
11 information.

12 So -- and what happened then, he takes a deal, if
13 you will, through the Washoe County District Attorney's
14 office, and he ends up pleading to the two gross misdemeanor
15 counts, and he is then sentenced to time served which is
16 182 days that he had been in custody, and then after his
17 sentencing on the state charge he comes into the federal
18 system and he's here.

19 So respectfully, your Honor, I believe that the
20 circumstances and understanding exactly what the state charge
21 was is important. It's not insufficient funds checks as the
22 government has alleged in opposing my sentencing memorandum.
23 They were casino markers which allowed him to play which he
24 had signed in the past with the casinos, and specifically the
25 Atlantis, and which were always paid back, they were always

1 paid back.

2 So I understand we're under a time crunch, I
3 apologize for being lengthy, but, as you can see, there's a
4 lot to this case, and I think the points that I attempted to
5 make on Mr. Lane's behalf are legitimate, your Honor, and I
6 would stand on not only the oral argument that I made here
7 this afternoon, but also the written presentation.

8 THE COURT: Thank you. Just in determining the
9 guidelines, please, response on those three objections.

10 MR. RACHOW: Well, your Honor, first, with all
11 due deference to the defense, I believe they've made the
12 government's case as far as sophisticated means.

13 We had a scam that went on for a number of years.
14 We had an individual keeping separate accounts. A Ponzi
15 scheme by definition, it seems to me, falls into sophisticated
16 means.

17 But there's even a little more that comes in here
18 which goes to the second one, vulnerable victims, is he used
19 individuals he courted, made close family friends, individuals
20 who gave gifts to his children, and used that particular
21 relationship to get them to trust him, going so far as to
22 actually tell one these are legal papers, but don't show it to
23 a lawyer because you'll get in trouble.

24 I think maybe the quickest way to save time
25 concerning arguing about this if it's a disputed matter is to

1 call the case agent who is in the back who can describe two or
2 three victims that they dealt with and our impressions of
3 them.

4 I would also note before doing that that the Court
5 only has to find that there was only one vulnerable victim.
6 The Court doesn't have to find that all the victims were
7 vulnerable, and the government has never claimed that they
8 were all vulnerable, but certain ones were.

9 Before I call the agent, I'm not sure, the Court
10 might inquire if there are any victims that are present in the
11 courtroom that would like the opportunity.

12 THE COURT: I'll give any and all victims an
13 opportunity to speak but only after I determine the
14 guidelines.

15 MR. RACHOW: Very well. I will call Special
16 Agent Erron Terry of the FBI.

17 THE COURT: Yes, please.

18 Thank you, sir, just be careful of the step. Please
19 come up by the chair, and raise your right hand.

20 E R R O N T E R R Y,
21 called as a witness on behalf of the Government,
22 was sworn and testified as follows:

23 THE CLERK: Please be seated.

24 Please state your name for the record.

25 THE WITNESS: My name is Erron, E-r-r-o-n,
Terry, T-e-r-r-y.

1 THE CLERK: And city and state you reside in,
2 sir.

3 THE WITNESS: I reside in Reno, Nevada.

4 THE COURT: Thank you, sir. You may ask.

5 DIRECT EXAMINATION

6 BY MR. RACHOW:

7 Q Sir, what is your business, profession or occupation?

8 A I am a special agent for the Federal Bureau of
9 Investigation.

10 Q And as such did you become involved in the investigation
11 concerning Mr. Lane?

12 A I did.

13 Q And did you work with other agents?

14 A I did.

15 Q And did you personally interview any of the victims?

16 A I did.

17 Q And could you describe -- well, did you interview a man
18 by the name Mark Walburn?

19 A I did.

20 Q Could you describe for the Court, please, just his age,
21 his bearing, his ability to relate and your sense of his
22 sophistication?

23 A Well, his age, as I recall, Mr. Walburn was in his 80s,
24 physically doing reasonably well for a man in his 80s, but as
25 he said to me when I showed up at his apartment door or condo

1 to -- or house, rather, to interview him, that basically all
2 he did was ride a stationary bicycle and watch TV now.

3 He had been a construction site manager, and for
4 years he had invested with his wife in small real estate
5 investments in Hawaii where they resided. They moved here,
6 and this is where I met him.

7 Q Did he indicate during that interview whether or not he
8 had ever provided anything to Gary Lane in the form of a
9 monetary instrument with no amount filled in because he
10 trusted him?

11 A Oh, sure. What Mr. Walburn said in terms of -- I don't
12 recall, I'd have to look at my 302 to refresh my memory as to
13 the specifics of the manner in which he made payment. I know
14 that he provided instruments to Mr. Lane and did so out of --
15 on the basis of trust.

16 And if the question were to vulnerability or
17 reliance on Mr. Lane's reputation or representations to him, I
18 think if one reviews my 302s, he was very straightforward in
19 saying he knew nothing about the investment business.

20 I won't in this courtroom recite the language he
21 used, but he was really direct.

22 Q Okay. Let's move on. Did you interview another alleged
23 victim in this case who was a slot attendant?

24 A Yes, I did.

25 Q Who was that?

1 A That was Rony Abera (phonetic), I believe.

2 Q Can you spell the last name for the record?

3 A I believe it is A-b-e-r-a.

4 She was a recent immigrant to the United States who
5 came to know Gary Lane at the casino where she worked. She
6 knew him there because he regularly frequented the place as a
7 client, and, according to her, he approached her, or kind of
8 proposed to her to invest with him saying you ought to invest
9 with me.

10 And she was extremely naive in investments and gave
11 him everything she had saved in her years of living alone and
12 working here at the casino industry. She just handed it over
13 to him.

14 Q Where was she from?

15 A It was Africa, an African nation I should say.

16 Q And did she have any family here with her?

17 A She was living alone at the time. She may have had
18 relatives in the United States somewhere, but she was not
19 residing with them. She was on her own and alone to make her
20 big decisions about when and with whom to invest. She had no
21 one to turn to.

22 Q Did you question her about her background in investing?

23 A Yes.

24 Q And what was her response?

25 A It was less colorful than Mr. Walburn's, but it was

1 extremely direct that she had no history or understanding, she
2 just relied on Mr. Lane and did so because he looked so very,
3 very successful.

4 Q And, finally, I'll just ask you about one other victim.
5 We have problems pronouncing the name, I think it's
6 Arasremy --

7 A Hoosha Andsroony (phonetic).

8 Q And can you describe her physically.

9 A Ms. Andsroony is probably in her late 80s now, is
10 extremely physically fragile, lives in a little tiny place up
11 in Sparks by herself on the -- on her inheritance which she
12 inherited from her father.

13 She did not make the large amount of money that she
14 had to invest with Gary, she inherited it from her father, and
15 she lives on very little of it, and she herself is very
16 unsophisticated when it comes to investments or financial
17 matters.

18 Q Did she have anything to say about any documents she may
19 have received from Mr. Lane?

20 A Oh, yeah, she got a lot of documents from Mr. Lane. We
21 got them in the course of the investigation.

22 They were guarantees that she was going to make
23 money, that she wouldn't lose money. He gave her notes. She
24 got all sorts of things, frankly, that had nothing to do with
25 proper investments, and it worked, if that's what you're

1 asking.

2 MR. RACHOW: Thank you. That's all the
3 questions I have. Pass the witness.

4 THE COURT: Do you have questions?

5 CROSS-EXAMINATION

6 BY MR. DIGESTI:

7 Q What do you mean it worked?

8 A She was fooled. She thought they were legitimate. She
9 thought the investment she was making with Gary Lane was a
10 legitimate investment.

11 Q Because she was getting interest payments, right?

12 A She was getting interest payments, but that's not the
13 entire question you asked. It worked because Gary fooled her.

14 Q But she was happy with Gary because --

15 A She was terrified of Gary, sir.

16 Q Terrified?

17 A Scared, yes.

18 Q But, nevertheless, she was pleased with Mr. Lane's
19 investment because she was getting paid interest, wasn't she?

20 A She was pleased with the investment payment.

21 Q Okay. And how much did she get over the term from Gary
22 Lane, do you recall?

23 A I don't recall. I would have to review some of the
24 documents.

25 Q Okay. And how long had she known Gary Lane?

1 A It may be close to what you said.

2 Q 1999?

3 A Somewhere in there. She probably met him while he was
4 managing her legitimate investments at Merrill Lynch or
5 whatever preceded Merrill Lynch, and then she carried over
6 with him when it became Merrill Lynch at the Bank of America.

7 Q So she had an investment history before she ever met
8 Mr. Lane.

9 A She was investing in very straightforward, simple
10 securities like Kemper Securities and Kemper Insurance
11 Securities.

12 It was hardly a sophisticated investment background,
13 it's something people do when they're safeguarding their
14 money. It's a very low-risk, low-interest, very safe kind of
15 investment favored by senior citizens and those who are not
16 sophisticated in investments.

17 Q Thank you for your comments, but my question was, she had
18 an investment history before she met Mr. Lane, correct?

19 A She was probably investing at Kemper Securities or
20 something like that. I have to review the documents to be
21 specific.

22 Q And another individual that you testified to was -- is it
23 Rony Abera?

24 A Yes.

25 Q How old is she?

1 A She is probably, what, 50 something. I don't recall.

2 I'd have to look at my 302s to see her date of birth.

3 Q If I came up with 48, is that close enough?

4 A That would probably be close, yeah.

5 Q Okay. When did she meet Mr. Lane?

6 A I'd have to look at my 302.

7 Q If I were to represent to you that in your 302 you report
8 that she met Mr. Lane in 1999, 2000, that time period, is
9 that --

10 A That's probably fair.

11 Q -- consistent with your recollection of what you wrote?

12 A I don't recall what I wrote actually.

13 Q Okay. And what is the extent of her education?

14 A I believe she had an education -- I think she got an
15 education in Africa which she found less than sufficient to do
16 anything with here, but I believe she had some sort of college
17 education.

18 Q She had a college degree, correct?

19 A From Africa, yes.

20 Q But a college degree nevertheless?

21 A Nevertheless, yes.

22 Q Yes. Okay. And did she also have an investment history
23 prior to meeting Mr. Lane?

24 A She might have been investing in something prior to
25 meeting Gary. I'd have to look at my 302.

1 Q Okay. And the -- I think the third individual that you
2 discussed was Mr. Walburn?

3 A Yes.

4 Q Is that correct?

5 A Yes.

6 Q And in your interview with Mr. Walburn, he also indicated
7 to you, did he not, that he had received interest payments
8 from Gary consistent with this investment?

9 A I don't know about consistent. I think consistency was
10 the issue that was the problem. He did receive an interest
11 payment or interest payments, yes, sir.

12 Q Do you know how much he received?

13 A I don't recall. I'd have to look at the 302.

14 Q Okay. I think that's all you discussed, correct? I had
15 three in my notes, or were there others that I missed, not
16 that you spoke with but that --

17 A No, I understand.

18 Q But that you were asked questions on by Mr. Rachow.

19 A I was asked questions about three.

20 Q Three, and I think we covered them, correct, the three
21 that I just asked you about?

22 A Those are the three that -- yeah.

23 MR. DIGESTI: Okay. Yeah. Thank you.

24 THE COURT: Thank you. Anything else?

25 Thank you, sir, that's all. You may step down.

1 All right. The matter on the three objections is
2 submitted. I'll determine the guideline range, make a
3 finding.

4 I do overrule your objections, sir. On
5 sophisticated, if I were looking -- first of all, the
6 probation department is a branch -- is part of the third
7 branch, not the government, so any allegations or statements
8 in the presentence report comes from the judiciary's own
9 employees that are hired to help the Court in assessing the
10 guidelines and making a finding in that regard.

11 Second, more importantly, the sophisticated means
12 enhancement is totally appropriate. If I were looking at this
13 from a brand-new perspective, I would say not only that
14 enhancement but an enhancement for violating a position of
15 trust ought to be applied as well. That's not recommended
16 here, and I'm not adopting that. But a sophisticated means is
17 particularly appropriate here. I adopt the suggested finding
18 of the presentence report and Probation Department regarding
19 facts underlying that.

20 The Ponzi scheme employed here was a sophisticated
21 means in and of itself. The use of documentations, alleged
22 accounts, confirmation statements, notes and other documents
23 given to victims were evidence of that sophistication whose
24 primary intent was not only to allow the Ponzi scheme to
25 continue for some period of time and prevent its discovery but

1 allow it to be used as additional fraudulent representations
2 upon those victims.

3 The means were very sophisticated. He was in a
4 peculiar position to impose such means, and he used them, and
5 it incurred additional fraud charges, allowed him to set
6 himself up in that position of trust.

7 With respect to vulnerable victims, I have to
8 overrule the objection. There's, first, not any evidence at
9 all submitted by the defendant that these people were not
10 vulnerable, unsophisticated. There's argument but no evidence
11 at all. There's not a single bit of evidence presented that
12 any of these particular victims claimed as unsophisticated
13 vulnerable victims had sophistication in investment.

14 The fact that they have accumulated substantial
15 funds has no cut at all one way or the other as to whether
16 they're sophisticated investors.

17 One woman acquired her funds by inheritance from her
18 husband. Another person acquired their funds through the
19 construction industry, I assume due to good work and
20 investment in real estate, but even investment in real estate,
21 if they're not a real estate broker, doesn't mean that they're
22 sophisticated in real estate investments if they're just
23 enjoying inflationary growth. But, more importantly, it does
24 not indicate sophistication with respect to investments
25 generally, and, in particular, bond or exempt bond

1 opportunities.

2 Their age is a factor. Their state of physical
3 condition is a factor. The government has cited just three in
4 addition to the general conclusion that the Probation
5 Department arrived at, and I would find for purposes of this
6 hearing that they were vulnerable both due to age, to lack of
7 sophistication for which there's no evidence, as well as trust
8 and long periods of trust inculcated, incurred by the
9 defendant with respect to some of these participants,
10 especially the elderly and aged ones and ones that had little
11 or no prior investment experience.

12 Finally, the request for downward departure I have
13 to deny. I make a ruling as a matter of law that Probation
14 correctly calculated prior conviction in calculating their
15 category level.

16 Therefore, I make the ultimate finding with respect
17 to the guidelines that a level 29, I believe it was, an
18 ultimate level 29, after the various credits that he's
19 entitled to, is appropriate, and a criminal history category
20 II is appropriate.

21 On Counts 1 to 12 there's up to 30 years per count
22 statutory; on 13 to 17 up to five years per count. The
23 guideline provisions are 97 to 121 months, and the
24 recommendation, of course, is 120 months, but that's not part
25 of the finding.

1 The finding is 97 to 121 months. And, again, the
2 recommendation, not the finding, is that they ought to run
3 concurrent. Supervised release, two to five years with
4 restitution in the amount of two million one 0 three two two
5 six.

6 Let's turn now to finally, to the extent that you
7 haven't already argued them, the 3553 factors, the statutory
8 factors that the Court must consider, anything additional
9 there that you have not covered.

10 And before you start, please, government and then
11 counsel, are there any victim statements that the government
12 is obligated to tender?

13 MR. RACHOW: I'm not aware of any, your Honor.
14 I would inquire if there are any victims in the courtroom that
15 would desire to speak.

16 THE COURT: Are there any victims in the
17 courtroom that desire to speak?

18 (No audible response.)

19 THE COURT: Okay. One last finding, too, on the
20 victims. The victims clearly include the persons who were
21 defrauded directly by Mr. Lane.

22 The fact that someone stepped up, like Bank of
23 America, both on a moral and legal obligation to reimburse
24 those persons, does not accrue to the benefit of Mr. Lane. He
25 doesn't get the benefit of reimbursement by insurance

1 companies, by ultimate payers, by someone who recognizes a
2 moral or legal obligation. That benefit does not accrue to
3 him.

4 It may well count with respect to restitution. It
5 doesn't here, of course, because Bank of America itself ends
6 up as an ultimate victim as well, and the restitution amount
7 is about half of what actually it could have been calculated
8 at based upon the limitation in the complaint.

9 So that's a finding with respect to restitutionary
10 amounts and victims.

11 3553 factors, please, and a recommendation of
12 sentence.

13 MR. RACHOW: Well, your Honor, this particular
14 sentencing is more detailed than most of them that we usually
15 go through, so I think most of the factors are self-evident.

16 Just mentioning them as we look at the top, the
17 seriousness of the crime, this is an ongoing crime for a
18 number of years with vulnerable victims involved and
19 substantial amounts of money, so that's about as serious as it
20 can get.

21 Throw in the fact he didn't pay taxes on it, which
22 maybe is understandable when he's stealing money, but it still
23 is an offense. Under the law, if you have income, no matter
24 how you get it, you've got to pay taxes. So both of those are
25 serious crimes.

1 To promote respect for the law, the word needs to go
2 out, not only to this defendant but also to the public and
3 others that might be so situated, that you've got to respect
4 the law. You can't take advantage of people. You can't lie
5 and cheat in order to get their money.

6 Just punishment actually calls for a substantial
7 amount of confinement in this particular case. Given the
8 length of the ongoing fraud, the sophistication used and the
9 type of victims, we believe that the recommendation by the
10 probation officer is appropriate.

11 Sometimes prosecutors get a little wrapped up in a
12 case and go for the high end just because they're prosecutors,
13 or they get a personal interest. In this case, after taking a
14 look at the recommendation by the independent probation
15 office, we would submit that that is a reasonable and
16 appropriate recommendation in the case.

17 Deterrence to criminal conduct, well, it can
18 obviously deter him by a pretty substantial period of
19 confinement, and hopefully others that learn about it will
20 know that if you engage in conduct like this and get caught,
21 you're going away for a long time.

22 So that serves a twofold purpose. It's protecting
23 the public from further crimes of the defendant, of course.

24 As far as providing for his needed education or
25 training, he had education, he had training. He chose to

1 abuse it. Right now he just needs -- that should be a very
2 minor consideration. There's probably nothing that's going to
3 come out of the penal system that should affect the sentence
4 one way or the other.

5 And, finally, to avoid sentencing disparities,
6 generally, as long as you're within the guideline range which
7 has been determined nationwide from the Sentencing Commission,
8 it would seem that would avoid any sentencing disparities.

9 And on that, I would submit it.

10 THE COURT: Thank you so much.

11 I'm not considering anything in excess of the
12 guideline range, counsel, when you answer. If I were to do
13 so, of course, I would have to give you notice and an
14 opportunity to counter it, therefore I'm limiting myself to
15 the guideline range, or below, and we'll allow you, please, to
16 address the 3553 factors.

17 MR. DIGESTI: Your Honor, I'm not going to go
18 through and address each one individually. I believe they're
19 sufficiently covered in the memorandum that I filed on behalf
20 of Mr. Lane in this case.

21 By way of correction, or perhaps I misunderstood,
22 but when the Court was entering its findings from the bench,
23 you made reference, or the Court made reference to the abuse
24 of trust which you were not going to consider. I would
25 indicate to the Court that that's already been considered in

1 the presentence report, and there was a two-level enhancement
2 for a violation of trust which, of course, Mr. Lane did not
3 object to and did not contest.

4 THE COURT: Very good. I take your correction.
5 I appreciate that, and, of course, I would conclude that it is
6 properly assessed.

7 MR. DIGESTI: Thank you, your Honor.

8 With respect to the recommended sentence, the
9 government makes the argument that the message must be sent
10 and people need to know that if you engage in this type of
11 behavior or conduct, there are consequences, and I agree.

12 But I think if we're looking at a sentence that's
13 reasonably fashioned, reasonable under the circumstances of
14 this case and falls squarely within the federal sentencing
15 guidelines upon which the Court is relying here today, I would
16 suggest to your Honor that a sentence of 97 months, the low
17 end of the guidelines, would be appropriate. Ninety-seven
18 months is a long time.

19 And one thing that we cannot escape, and I know the
20 Court has made its rulings in this case, but the fact remains
21 that all of the investors that invested with Mr. Lane in this
22 scheme were promised, I think, a six or seven percent return,
23 and all of them made a significant amount of money by payment
24 of interest on their investments.

25 Now, that's a fact. We can't hide it, we can't walk

1 away from it. So, again, I don't want to beat up on anybody,
2 but they had an opportunity to make more money, and sometimes
3 greed will stand in the way of reason, and it cuts both ways.

4 And I'm not here to beat up on any of these victims
5 and these people, that's not my purpose. But if we are
6 looking at a sentence within the guidelines that's reasonable
7 and just under the circumstances as they apply to this
8 particular case, then I would suggest to your Honor that an
9 appropriate sentence would be 97 months. Thank you.

10 THE COURT: Thank you so much. You're not
11 required to make an extra statement, Mr. Lane, but I certainly
12 welcome it. If you wish to make a statement, I will consider
13 it in addition to what your counsel has said, or you may
14 simply stand on your counsel's statement.

15 Do you wish to make any additional statement, sir?

16 THE DEFENDANT: I would like to read a prepared
17 statement.

18 THE COURT: If you would, please. If you would
19 just stand right there.

20 THE DEFENDANT: Stand here?

21 THE COURT: Yes.

22 THE DEFENDANT: Upon hearing that a warrant had
23 been issued for my arrest, I took the first flight I could
24 make out of the Akron airport in Ohio back to Reno. I was
25 arrested just 12 days later on August 31st, 2012, and that was

1 the first and only time I have ever been arrested. In the
2 18 months that have passed since that day, I've spent
3 12 months in county jail without a single incident.

4 Additionally, I was granted a release in March of
5 last year that ended in August 12th when I remanded myself
6 back to custody to start serving some of my time. During the
7 five and a half months of supervised release, I followed
8 intently the guidelines set forth by Pretrial Services, again
9 without incident.

10 It has now been almost three years since I was
11 called into my manager's office at Merrill Lynch and
12 confronted with the questions I knew someday I would be
13 facing.

14 From that moment I was told not to contact any of my
15 clients. No more lunches, dinners, smoked trout, Cleveland
16 Indian baseball games, no longer assisting with personal
17 situations, helping to pick out a new car or painting the
18 front of the home.

19 I was, indeed, close to those handful of clients
20 that participated, some friendships going back over 20 years.
21 From daily contact for years to a complete severing of any
22 contact leaves a painful emptiness. It has been difficult for
23 each of them and daily anguish and frustration for me.

24 It goes without saying how deeply saddened and sorry
25 I am for involving such truly decent people in this nightmare.

1 It was never my intention.

2 Thank you, your Honor.

3 THE COURT: Thank you, sir. I appreciate your
4 statement. Please be seated there.

5 The range here is 97 to 121 months. I started this
6 hearing with a conception that we ought to be somewhere down
7 around 97 months. The defendant does not have a criminal
8 history or a background other than the marker checks under
9 state law for which he was convicted.

10 On the other hand, I'm really persuaded after
11 listening to the arguments on the 3553 factors that it needs
12 to be towards the high end.

13 You don't have a criminal past, Mr. Lane. In fact,
14 you have a sophisticated and welcome past and experience level
15 and education level. And I believe your statement that you
16 feel sorrow, but obviously that didn't turn you around in the
17 ongoing fraud.

18 The main things that persuade me that this needs a
19 higher end sentence is that this was a continuing Ponzi
20 scheme. You didn't pay people interest, you paid people with
21 other people's money, and the only way that you could make
22 payments to them in order to defer their discovery was by
23 victimizing new people.

24 So the fraud accelerated, it grew, because -- not
25 because you felt sorry, you may well have felt sorry --

1 THE DEFENDANT: I felt sorry.

2 THE COURT: -- but not enough to correct or stop
3 yourself. You paid people because you didn't want to be
4 discovered, and the only way you could do that is to victimize
5 more people.

6 Many of them, not all of them, many of them were in
7 a very vulnerable position. They trusted you. You were in a
8 position of trust.

9 And so the main factor that argues to me is the fact
10 it was ongoing. Even though you felt regret and like you were
11 doing something wrong, it didn't cause you to correct your
12 pattern which means that you really need a little more time in
13 prison to think about the problem, and the fact that you
14 really were in positions of trust.

15 This isn't something that happened one time, I
16 walked into a bank or with a good friend and talked them out
17 of \$500,000. You did it over a period of time and in a
18 sophisticated way to deter their discovery and lead them on to
19 investing more moneys, and, simply speaking, the law has to
20 stop that on your behalf and has to stop it on behalf of
21 others similarly situated.

22 I agree with all of the statements of the government
23 on the individual 3553 factors. I've considered every single
24 one of the factors listed there. I agree with the statements
25 and incorporate them here by the government, and, accordingly,

1 I have to impose the 120-month sentence.

2 I appreciate your surrendering yourself and already
3 serving some of the time. You'll get credit, of course, for
4 all of that, and if you serve in a good manner, as apparently
5 you've started to do, you will get other good time credit. I
6 think it's about 54 days a year for each year sentence.

7 But, nevertheless, it does need a lengthy sentence,
8 sir, and I just hope and pray that during the course of that
9 incarceration period you'll come to the same conclusion
10 yourself.

11 You have turned the corner, I believe, in
12 recognizing that it was wrongful and in deciding not to do it
13 again, but, of course, my experience is that sometimes you
14 need reenforcement in the way of a prison sentence to make
15 sure that turning a corner is permanent. Therefore I will
16 impose that.

17 If you would stand right there with your attorney,
18 please.

19 I do hereby commit you to the Bureau of Prisons for
20 a term of 120 months. Supervised release is imposed for a
21 term of 60 months. The 120 months is on Counts 1 through 12
22 concurrent, and 60 months is to Counts 13 to 17 imprisonment,
23 all concurrent with the 120 months for Counts 1 to 12,
24 therefore total time is 120 months.

25 Supervised release is two to five years. I commit

1 you to five years of supervised release on Counts 1 to 12 and
2 three years as to Counts 13 to 17, again, all counts
3 concurrent so the total time is five years.

4 A fine I am waiving due to the tremendous
5 restitution obligation that's imposed upon you and your own
6 financial condition.

7 Restitution is ordered in the amount of \$2,103,226
8 payable immediately. Of course, the normal sentence
9 recommended balance of payment schedule is agreed to by the
10 Court. You shall pay it at the amount of a monthly rate of
11 not less than ten percent of any income earned during
12 incarceration and/or gross income while on supervised release,
13 so ten percent subject to adjustment by the Court based upon
14 ability to pay.

15 A special assessment, of course. Here you are
16 obligated for \$1700, \$100 per count, and that's due
17 immediately.

18 While on supervised release, Mr. Lane, you are
19 obligated to abide by conditions specified by the Court. They
20 involve standard conditions always required and then some
21 special conditions.

22 The standard conditions are, number one, you shall
23 not commit another federal, state or local crime during the
24 term of supervision.

25 Second, you shall not possess illegal controlled

1 substances. Revocation of supervision is mandatory for
2 possession of illegal controlled substances.

3 Third, the defendant shall refrain from any unlawful
4 use of a controlled substance and shall submit in that regard
5 to one drug test within 15 days of commencement of
6 supervision, and, please, no more than 104 drug tests annually
7 thereafter. Revocation, again, is mandatory for refusal to
8 comply.

9 Number four, you shall submit to DNA collection and
10 analysis as directed by the probation officer.

11 In addition, the following special conditions are
12 imposed. First, possession of weapons. You shall not
13 possess, have under your control, or have any access to any
14 firearm, explosive device or other dangerous weapon as defined
15 by federal, state or local law.

16 Second, warrantless search. You shall submit to the
17 search of your person, property, residence or automobile under
18 your control, and without a search warrant, to ensure
19 compliance with all these conditions of release but only by
20 the probation officer having direct supervision over you or
21 any immediate or authorized person under the immediate
22 supervision of the probation office, and, again, for the
23 purpose of ensuring compliance with just these conditions of
24 release.

25 Third, debt obligations. You shall be prohibited

1 from incurring new credit charges, opening additional lines of
2 credit, or negotiating or consummating any financial contracts
3 without the approval of the probation officer.

4 Access to financial information. You shall provide
5 the probation officer access to any requested financial
6 information including personal income tax returns,
7 authorization for release of credit information, and any other
8 business financial information in which you have a control or
9 interest.

10 Fifth, employment restriction. Because of the
11 potential gambling problem and the banking investment tie-in,
12 you shall be restricted from engaging in employment,
13 consulting or any association with any banking investment
14 business for the period, the supervised release period, of
15 five years.

16 Sixth, gambling prohibition. You shall not enter,
17 frequent, or be involved with any legal or illegal gambling
18 establishment or activity except for the purpose of employment
19 as approved and directed by the probation officer.

20 Seventh, gambling addiction treatment. You shall
21 refrain from any form of gambling and shall participate in a
22 program for the treatment of gambling addiction at your own
23 expense, but only as approved and directed by the probation
24 officer, based upon your ability to pay.

25 Eighth, Internal Revenue Service compliance. You

1 shall cooperate and arrange with the Internal Revenue Service
2 to pay all past and present taxes, interest and penalties
3 owed. You shall file timely, accurate and lawful income tax
4 returns and show proof of the same to the probation officer.

5 And, finally, reporting upon your release. You
6 shall report in person to the probation office in the district
7 to which you are released within 72 hours of discharge from
8 custody.

9 You have not waived any rights of appeal, sir, in
10 your guilty plea, and therefore I simply notify you that if
11 you wish to file a notice of appeal, you must do it within
12 15 days of the entry of the judgment. If you could not afford
13 it, an attorney would be appointed to represent you in the
14 appeal and a transcript of these proceedings prepared at
15 government expense.

16 The record will reflect giving to you a copy of the
17 supervised release conditions, and I welcome any request for
18 recommendation as to placement or otherwise.

19 MR. DIGESTI: May I have just a moment, your
20 Honor?

21 THE DEFENDANT: My family is in Eugene, Oregon,
22 my son, my daughter and my wife.

23 THE COURT: You would request placement to
24 Eugene -- near Eugene, Oregon?

25 THE DEFENDANT: Yes, please.

1 THE COURT: Of course, it's up to the Bureau of
2 Prisons, but I can make recommendation. They usually follow
3 that if they can. It also depends on your level of
4 designation securitywise. So I'll make that recommendation,
5 please.

6 THE DEFENDANT: Thank you, your Honor.

7 THE COURT: Thank you. Thank you, sir, and good
8 luck.

9 THE DEFENDANT: Thank you.

10 MR. DIGESTI: Your Honor, one additional matter
11 if I may?

12 THE COURT: Please.

13 MR. DIGESTI: I was appointed by the Court to
14 represent Mr. Lane. At this time I would ask to be relieved
15 as counsel, and I would ask that the Federal Public Defender's
16 office be appointed to represent Mr. Lane on appeal. He will
17 be filing a notice of appeal in this case.

18 THE COURT: I will do that immediately upon the
19 expiration of the time period for filing a notice of appeal.
20 In other words, you have to file a notice of appeal. But I
21 will release you at that time and designate -- assuming we --
22 we already have the affidavit and such on file, right, that
23 was predicate to your appointment?

24 MR. DIGESTI: Oh, yes.

25 THE COURT: And I will substitute the Public

1 Defender.

2 MR. DISGESTI: Is there anything in addition to
3 the notice of appeal which I need to file, your Honor, in
4 order to be relieved?

5 THE COURT: I don't believe so.

6 MR. DIGESTI: Very well. Thank you.

7 THE COURT: Thank you. Thank you, sir.

8 -o0o-

9

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

12 /s/Margaret E. Griener 4/11/2014
13 Margaret E. Griener, CCR #3, RDR
14 Official Reporter

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RECEIVED

In the Matter of Gary Harrison Lane
Administrative Proceeding File No. 3-16101

Service List

Pursuant to Commission Rule of Practice 151 (17 C.F.R § 201.151), I certify that the attached:

MOTION BY DIVISION OF ENFORCEMENT FOR SUMMARY DISPOSITION
AGAINST RESPONDENT GARY HARRISON LANE PURSUANT TO
COMMISSION RULE OF PRACTICE 250; DECLARATION OF CHRISTINE
CONNOLLY; EXHIBITS

was served on November 24, 2014 upon the following in the manner indicated below:

UPS:

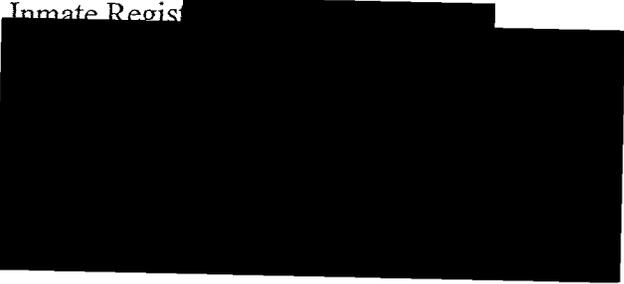
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Securities and Exchange Commission
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Washington, DC 20549

By Email and UPS:

The Honorable James E. Grimes
Administrative Law Judge
Securities and Exchange Commission
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Mr. Gary Harrison Lane
Inmate Regis




Christine Connolly