

HARD COPY

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-18867

In the Matter of

DANIEL JOSEPH TOUIZER,

Respondent.



**DIVISION OF ENFORCEMENT'S MOTION FOR SUMMARY DISPOSITION
AGAINST RESPONDENT DANIEL JOSEPH TOUIZER**

I. INTRODUCTION

The Division of Enforcement (the "Division"), pursuant to Rule 250(b) of the Commission's Rules of Practice, 17 C.F.R. § 201.250(b), moves for summary disposition of this matter. The Division sets forth the grounds below.

II. HISTORY OF THE CASE

The Commission issued the Order Instituting Proceedings ("OIP") on October 12, 2018 pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act"). In summary, the OIP alleges that, while acting as an unregistered broker, Touizer defrauded investors and obtained money and property through false and misleading statements in connection with stock sales. These facts led to Touizer's guilty plea in the criminal case against him.

On December 21, 2018, Touizer moved to stay the matter in light of the pendency of his appeal of the criminal conviction. On March 14, 2019, the Commission denied the motion to stay. Exch. Act Rel. No. 85321.

On June 6, 2019, Touizer filed an answer and a motion for more definite statement. The Division has responded to the motion and it remains pending. The parties subsequently agreed that the Division would file a motion for summary disposition pursuant to a schedule adopted by the Commission. Exch. Act Rel No. 86244 (June 28, 2019).

III. MEMORANDUM OF LAW

a. Touizer's Criminal Case

On November 21, 2017, a grand jury in the Southern District of Florida returned an Indictment against Touizer, charging him with one count of conspiracy to commit mail and wire fraud (18 U.S.C. § 1349), six counts of mail fraud (18 U.S.C. § 1341), one count of wire fraud (18 U.S.C. § 1343), one count of money laundering conspiracy (18 U.S.C. § 1956(h)), and two counts of money laundering (18 U.S.C. § 1956(a)(1)(B)(i)).¹ On May 11, 2018, Touizer pled guilty, pursuant to a plea agreement, to the count of conspiracy to commit mail and wire fraud.² The government agreed to dismiss the remaining counts.³ On July 24, 2018, the district court sentenced Touizer to 68 months in prison.⁴ Touizer's appeal of the judgment of conviction is pending.⁵

b. Facts Determined Against Touizer

Touizer's guilty plea binds him to the facts he admitted. *See Gary L. McDuff*, Exch. Act Rel. No. 74803, at 5 & n.18, 2015 WL 1873119 (Apr. 23, 2015); *Don Warner Reinhard*, Exch. Act Rel. No. 63720, at 11-12, 2011 WL 121451 (Jan. 14, 2011) (respondent who pleaded guilty

¹Exh. 1 (Indictment, DE 26, *United States v. Touizer*, No. 0:17-cr-60286-BB (S.D. Fla.)).

²Exh. 2 (Minute Entry, DE 92).

³Exh. 3 (Judgment, DE 161).

⁴*Id.*

⁵*United States v. Touizer*, No. 18-14951 (11th Cir.).

“cannot now dispute the accuracy of the findings set out in the Factual basis for Plea Agreement”); *Gary M. Kornman*, Exch. Act Rel. No. 59403, at 12, 2009 WL 367635 (Feb. 13, 2009) (criminal conviction based on guilty plea precludes litigation of issues in Commission proceedings), *aff’d*, 592 F.3d 173 (D.C. Cir. 2010).

The facts admitted pursuant to the plea agreement⁶ establish the following:

From 2010 through 2017, Touizer conspired with John Kevin Reech,⁷ Saul Daniel Suster,⁸ and others, to defraud many individuals by means of materially false and fraudulent pretenses, as well as material omissions. Touizer’s scheme raised millions from the sale of stock and other interests in Touizer’s investment companies. Those companies included Omni Guard, Infinity Diamonds, Infinity Direct insurance (d/b/a Covida Holdings), Wheat Capital Management, and Wheat Self-Storage Partners I, II, and III (“Investment Companies”).

Touizer was founder, controlling shareholder and Chief Executive Officer of the Investment Companies. Touizer hired Reech, Suster, and others to, among other things, solicit potential investors from “phone rooms” that Touizer oversaw. In these phone rooms, Reech, Suster and others acted as “fronters,” who called potential investors whose names appeared on the lead lists. Once a person showed interest in investing, Reech, Suster and other fronters referred the potential investor to Touizer so that Touizer could “close” the deal. Touizer acted as the

⁶Exh. 4 (Factual Proffer, DE 94). Touizer reaffirmed the truth of these facts during his plea colloquy. Exh. 5 (Trans., 5/11/2018, at 19:2-22:25, DE 150).

⁷On October 11, 2018, the Commission instituted settled administrative proceedings against Reech under Section 15(b) of the Exchange Act, imposing associational and penny stock bars. *John Kevin Reech*, Exch. Act. Rel. No. 84408.

⁸On October 12, 2018, the Commission instituted administrative proceedings against Suster under Section 15(b) of the Exchange Act. *Saul Daniel Suster*, Exch. Act Rel. No. 84414. The Division’s Motion for Default and Other Relief against Suster is pending.

“closer” on nearly all of the stock sales. Touizer organized and led this criminal conspiracy, which involved more than five participants, and his misconduct was otherwise extensive.

During the offer and sale of the stock, Touizer and his co-conspirators often used aliases or otherwise provided false and fictitious names to investors to hide the defendants’ and co-conspirators’ true identities. To create the illusion that Investment Diamonds and other investment companies were profitable, Touizer paid Suster to falsely pose as an investor. Suster lied to investors by telling them that he was a successful investor in the Investment Companies and that his investments with the companies made him a significant profit.

Touizer and his co-conspirators made materially false and fraudulent statements to investors regarding the use of investor funds. For example, on March 8, 2018, Touizer emailed an Investment Diamond investor that “funds would be used to develop the Advisor Network.” In fact, there was no Advisor Network. Once one of the Investment Companies failed, Touizer often funded the startup of his next company with money raised from previous investors. To create the illusion of success, Touizer sometimes paid new investors “dividends” with prior investors’ money.

Touizer and his employees made other false statements to investors to trick them into investing, including, but not limited to: that no commission or fees would be charged to investors; that the Investment Companies were a “safe” or “profitable” investment, and one where “you won’t lose money”; that the Investment Companies were successful and profitable; that Touizer did not personally take a salary or draw on funds invested in certain Investment Companies; and that investor funds would be used for sales and marketing, working capital and general corporate purposes.

Touizer and his co-conspirators concealed from investors the fact they investor proceeds to pay themselves and their co-conspirators undisclosed commissions and fees.⁹

c. Summary Disposition is Appropriate

Summary disposition should be granted if there is “no genuine issue with regard to any material fact and the party making the motion is entitled to summary disposition as a matter of law.” 17 C.F.R. § 201.250(b).¹⁰ “[S]ummary disposition is ordinarily appropriate in follow-on proceedings.” *James S. Tagliaferri*, Securities Act Rel. No. 10308, at 10-11, 2017 WL 632134 (Feb. 15, 2017) (footnote omitted). To oppose summary disposition, the respondent “may not rely on bare allegations or denials but instead must present specific facts showing a genuine issue of material fact for resolution at a hearing.” *Id.* at 11 (citation, quotation, and footnote omitted).

The facts established by Touizer’s guilty plea show that the Division is entitled to the relief it seeks under Exchange Act Section 15(b)(6)(A), which provides in relevant part:

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

* * * *

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

⁹At sentencing, Touizer’s counsel noted that “[s]ome of the money went to pay, for example, commissions to the codefendants, Suster and Reech.” Exh. 6 (Trans., 7/24/2018, at 11:23-24, DE 171).

¹⁰By notice filed July 12, 2019, the Division advised that its investigative file was available for inspection.

15 U.S.C. § 78o(b)(6)(A). Each of the requirements of these provisions—timely issuance of the OIP, conviction under a qualifying statute, and misconduct committed while Touizer was associated with a broker-dealer—is satisfied here.

i. The Division Timely Filed this Action

The Division must commence a proceeding under Section 15(b)(6)(A)(ii) within “10 years” of the criminal conviction. *See Joseph Contorinis*, Exch. Act Rel. No. 72031, at 4-6, 2014 WL 1665995 (Apr. 25, 2014) (10-year limitations period governs Section 15(b)(6)(A)(ii) proceeding; limitations period runs from date of conviction, not underlying conduct). Here, Touizer was convicted in May 2018 and the OIP was instituted later that same year. Therefore, this matter was timely filed.

ii. Touizer Was Convicted of a Qualifying Offense

Under the Exchange Act Sections 15(b)(4)(B)(iv) and 15(b)(6)(A)(ii), the Commission may sanction Touizer for an offense that “involves” mail fraud, wire fraud, or “the purchase or sale of a security.” Here, Touizer’s conviction for conspiracy to commit mail and wire fraud “involves” both mail and wire fraud, and the underlying conduct involved the sale of stock in the Investment Companies. Therefore this condition is satisfied.

iii. Touizer was Associated with a Broker at the Time of the Misconduct

Exchange Act Section 15(b)(6)(A) requires that Touizer have been associated with a broker at the time of the misconduct. The broker in question need not have been a registered broker. *See Tzemach David Netzer Korem*, Exch. Act Rel. No. 70044, at 12 and n.68, 2013 WL 3864511 (July 26, 2013). The criminal conviction can “supply the factual and legal predicates for finding that” Touizer acted as a broker, even if his broker status was not an element of the criminal offense. *Tagliarferri*, Securities Act Rel. No. 10308, at 5, 2017 WL 632134.

With respect to Touizer's broker status, Exchange Act Section 3(a)(4)(A) defines a "broker" as "any person engaged in the business of effecting transactions in securities for the account of others." 15 U.S.C. § 78c(a)(4)(A). A "person associated with broker" includes any person "controlling . . . such broker." Exchange Act § 3(a)(18), 15 U.S.C. § 78c(a)(18). A person engages in the business of effecting securities by "participat[ing] in purchasing and selling securities involving more than a few isolated transactions; there is no requirement that such activity be a person's principal business or the principal source of income." *Anthony Fields*, Securities Act Rel. No. 9727, at 30, 2015 WL 728005 (Feb. 20, 2015) (quotations and alterations omitted). Indications of broker activity "include holding oneself out as a broker-dealer, recruiting or soliciting potential investors, handling client funds and securities, negotiating with issuers, and receiving transaction-based compensation." *Id.*; *Tagliarferri*, Securities Act Rel. No. 10308, at 6-7, 2017 WL 632134 (respondent acted as a broker by actively finding investors, being closely involved in negotiations, and receiving transaction based compensation).

Here, the facts Touizer admitted show both that he acted as a broker and that he controlled Suster, Reech, and others who were acting as brokers. Touizer acted as a broker through his seven years of participation in the sales process, serving as the closer of transactions that had been "fronted" by other brokers. *SEC v Imperiali, Inc.*, 594 F. App'x 957, 961 (11th Cir. 2014) (defendant was as a broker because he "spoke with investors, acted as the 'closer' for his sales team, and drafted memoranda for potential investors," even though he "did not receive proceeds from sales or initiate cold-calls to investors"). Since he was a broker, Touizer was also a person "controlling . . . such broker," thus satisfying the requirement that he have been a person associated with a broker. *See Allen M. Perres*, Exch. Act. Rel. No. 10287, at 4, 2017 WL 280080

(Jan. 23, 2017) (a finding that an individual “acted as an unregistered broker also establishes that he was associated with a broker”); *cf* *Anthony J. Benincasa*, Advisers Act Rel. No. 1923, 2001 WL 99813, *2 (Feb. 7, 2001) (individual acting as investment adviser would also control the investment adviser, and therefore be a “person associated with an investment adviser”).

Touizer was also a person associated with a broker because he controlled brokers, namely, the “fronters” such as Suster and Reech. The fronters are clearly brokers within the meaning of the Exchange Act: they solicited potential investors over the phone, discussed the stock offerings with them—often lying to the potential investors—and received “undisclosed commissions and fees.” Touizer’s admission that he (1) hired the fronters, who were “his employees” and worked from “‘phone rooms’ that Touizer oversaw,” and (2) “organized and led” the conspiracy establishes that he controlled brokers within the meaning of Exchange Act Section 3(a)(18). Accordingly, the requirement that Touizer acted a person associated with a broker at the time of the misconduct is satisfied.

iv. Industry Bar and Penny Stock Bars Are Appropriate Sanctions

In determining whether “industry and penny stock bars . . . are in the public interest,” the Commission

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

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

at 6, 2017 WL 782152 (Mar. 1, 2017).

Here, these factors weigh in favor of industry and penny stock bars. First, Touizer's actions were egregious. His conviction establishes that he knowingly and willfully engaged in a scheme to defraud investors by fraudulently inducing them to invest in the Investment Companies. Second, this was not a one-time lapse in judgment: Touizer admitted to organizing and leading a scheme involving five or more participants that continued for approximately seven years. Third, his level of scienter was extremely high, giving rise to a criminal conviction.

With respect to the fourth and fifth factors, notwithstanding his guilty plea, Touizer has provided no assurances that he will avoid *future* violations of the law. Although “[c]ourts have held that the existence of a past violation, without more, is not a sufficient basis for imposing a bar[,] . . . the existence of a violation raises an inference that it will be repeated.” *Korem*, Exch. Act Rel. No. 70044, at 10 n.50, 2013 WL 3864511 (quotation and alternations omitted). Touizer can offer no evidence to rebut that inference.

Sixth, although Touizer is currently in custody, he will be released in 2021, and unless he is barred from the securities industry, he will have the chance to again harm investors.

Finally, it serves the public interest to collaterally bar Touizer from all association with the securities industry. The factual proffer states that Touizer's scheme began in 2010 without specifying whether the misconduct started prior to the July 2010 enactment of the Dodd-Frank Act. However, even if the scheme started before the enactment of that Act, the collateral bars authorized therein may be imposed because Touizer's misconduct extended into 2017. *Tagliaferri*, Securities Act Rel. No. 10308, at 10 n.44, 2017 WL 632134 (“Th[e] holding [of *Bartko v. SEC*, 845 F.3d 1217 (D.C. Cir. 2017),] does not affect our ability to impose a collateral bar based on misconduct after Dodd-Frank's effective date.”). Accordingly, the Commission should bar

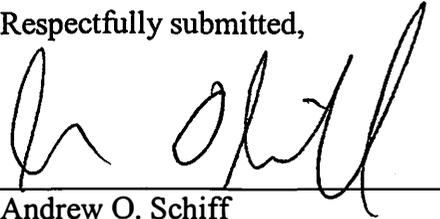
Touizer to the full extent permitted by the Dodd-Frank Act, even if some of his conduct occurred prior to that statute's enactment.

IV. CONCLUSION

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

July 19, 2019

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that an original and three copies of the foregoing were filed with the Securities and Exchange Commission, Office of the Secretary, 100 F Street, N.E., Washington, D.C. 20549-9303, and that a true and correct copy of the foregoing has been served on this 19th day of July 2019, on the following persons entitled to notice:

VIA OVERNIGHT UPS

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Nov 21, 2017

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
17-60286-CR-BLOOM/VALLE
CASE NO.:

- 18 U.S.C. § 1349
- 18 U.S.C. § 1343
- 18 U.S.C. § 1341
- 18 U.S.C. § 1956(h)
- 18 U.S.C. § 1956(a)(1)(B)(i)
- 18 U.S.C. § 2
- 18 U.S.C. § 981(a)(1)(C)
- 18 U.S.C. § 982(a)(1)(C)

UNITED STATES OF AMERICA

vs.

DANIEL JOSEPH TOUIZER,
a/k/a "Joseph Touizer,"
SAUL DANIEL SUSTER, and
JOHN KEVIN REECH,

Defendants.

_____ /

INDICTMENT

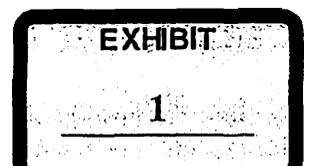
The Grand Jury charges that:

GENERAL ALLEGATIONS

At all times relevant to this Indictment:

1. Omni Guard, LLC ("Omni Guard") was incorporated in the State of Florida in July 2010 and dissolved in September 2012. Its principal place of business was in Broward County, Florida. Omni Guard purportedly sold appliance and automobile maintenance contracts.

2. Infinity Diamonds, LLC ("Infinity Diamonds") was incorporated in the State of Florida in July 2011. In January 2013, Infinity Diamonds filed an Article of Amendment with the State of Florida for a name change to Investment Diamonds LLC ("Investment Diamonds"). Its principal place of business was in Broward County, Florida. Investment Diamonds was dissolved



in January 2014. Investment Diamonds was purportedly a specialized marketer and distributor of rare and valuable colored gems.

3. Infinity Direct Insurance LLC, d/b/a Covida Holdings, LLC (“Covida”) was incorporated in the State of Florida in February 2013 and dissolved in September 2016. Its principal place of business was in Broward County, Florida. Covida was purportedly an insurance agency.

4. Wheat Capital Management, LLC (“WCM”) was incorporated in the State of Delaware and registered to do business in Florida in 2015. Its principal place of business was in Broward County, Florida. WCM was purportedly a self-storage business.

5. Wheat Self-Storage Partners I, LP, Wheat Self-Storage Partners II, LP, and Wheat Self-Storage Partners III, LP (together, the “Wheat LPs”) were incorporated in the State of Florida in 2016. The Wheat LPs were purportedly self-storage businesses.

6. Defendant **DANIEL TOUIZER, a/k/a “Joseph Touizer,”** resided in Aventura, Florida, and was founder, controlling shareholder and Chief Executive Officer of Investment Diamonds, Omni Guard, Covida, WCM, and the Wheat LPs.

7. Defendant **SAUL DANIEL SUSTER** resided in Sunny Isles, Florida, and was a sales agent who sold shares in Investment Diamonds, Omni Guard, Covida, WCM, and the Wheat LPs.

8. Defendant **JOHN KEVIN REECH** resided in Delray Beach, Florida, and was a sales agent who sold shares in Investment Diamonds.

COUNT 1
CONSPIRACY TO COMMIT MAIL AND WIRE FRAUD
(18 U.S.C. § 1349)

1. Paragraphs 1 through 8 of the General Allegations section of this Indictment are realleged and fully incorporated herein by reference.

2. From in or around July 2010, through in or around November 2017, in Miami-Dade and Broward Counties, in the Southern District of Florida, and elsewhere, the defendants,

DANIEL JOSEPH TOUIZER,
a/k/a “Joseph Touizer,”
SAUL DANIEL SUSTER, and
JOHN KEVIN REECH,

did willfully, that is, with the intent to further the objects of the conspiracy, and knowingly combine, conspire, confederate, and agree with each other and others known and unknown to the Grand Jury, to:

(a) knowingly, and with the intent to defraud, devise, and intend to devise a scheme and artifice to defraud and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, knowing that the pretenses, representations, and promises were false and fraudulent when made, and for the purpose of executing such scheme and artifice to defraud, did knowingly cause to be delivered certain mail matter by the United States Postal Service and by private or commercial interstate carrier, according to the directions thereon, in violation of Title 18, United States Code, Section 1341; and

(b) knowingly, and with the intent to defraud, devise, and intend to devise a scheme and artifice to defraud and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, knowing that the pretenses, representations, and promises were false and fraudulent when made, and for the purpose of executing such scheme and artifice to defraud, did knowingly transmit and cause to be transmitted in interstate commerce,

by means of wire communication, certain writings, signs, signals, pictures, and sounds, in violation of Title 18, United States Code, Section 1343.

PURPOSE OF THE CONSPIRACY

3. It was the purpose of the conspiracy for the defendants and their co-conspirators to unjustly enrich themselves by misappropriating investor money for their personal use and benefit by making material representations that were false and fraudulent when made, and concealing and failing to state material facts concerning, among other things, the safety and profitability of investing in Investment Diamonds, Omni Guard, Covida, WCM, and the Wheat LPs through the purchase of stock in these companies, and the defendants' and their co-conspirators' excessive commissions and fees.

MANNER AND MEANS OF THE CONSPIRACY

The manner and means by which the defendants and their co-conspirators sought to accomplish the objects and purpose of the conspiracy included, among others, the following:

4. In or around July 2010, **DANIEL JOSEPH TOUIZER** incorporated Omni Guard, and later incorporated Investment Diamonds, Covida, WCM, and the Wheat LPs.

5. From July 2010 to November 2017, **DANIEL JOSEPH TOUIZER** opened and maintained bank accounts in his name and in the names of his investment companies at financial institutions located in Broward County, Florida. **TOUIZER** and some of his co-conspirators had signing authority on bank accounts, but **TOUIZER** maintained control of at least fifty separate bank accounts linked to his investment companies.

6. From July 2010 to November 2017, **DANIEL JOSEPH TOUIZER** offered investors shares of stock in his investment companies to raise capital for his companies. These "investments" often were made through private placement offerings and claimed fractionalized

ownership interest in his companies. **TOUIZER** personally solicited investors throughout the United States to invest in his companies.

7. Beginning in 2010, **DANIEL JOSEPH TOUIZER** hired sales agents, including **SAUL DANIEL SUSTER** and **JOHN KEVIN REECH**, to solicit, offer and sell shares in the investment companies.

8. The defendants and other co-conspirator sales agents used lead lists obtained by **DANIEL JOSEPH TOUIZER** and others, consisting of contact information for potential investors. Through telemarketing, sales agents contacted potential investors, solicited, offered, and sold shares of stock in the investment companies to investors located throughout the United States.

9. **DANIEL JOSEPH TOUIZER** hired sales agents to solicit potential investors from "phone rooms" that he oversaw. In these phone rooms, sales agents, acting as "fronters," called potential investors whose names appeared on the lead lists. Once a person showed interest in investing in one of **TOUIZER**'s investment companies, the sales person, including **SAUL DANIEL SUSTER** and **JOHN KEVIN REECH**, referred the potential investor to **TOUIZER** so that **TOUIZER** could "close" the deal. **TOUIZER** acted as the "closer" on nearly all of the stock sales.

10. In at least one of the phone rooms operated by **TOUIZER**, he and his co-conspirators used a "Phone-pro's Creed," that was clearly displayed at various work stations in the phone room. The "Creed" stated, among other things: "This is my phone. There are many like it, but this one is mine. My phone is my best friend. It is my life, I must master it as I must master my life. . . . I must think faster than the check writer who is trying to divert me. I must close him before he closes me. . . . My phone and I know that what counts when raising capital is not the fronts we put out, the calls that we made, nor the stories we tell. We know that it is the checks that

we collect that count. We will close Before God, I swear this creed. My phone and I are universal soldiers. We are the masters of our check writers."

11. During the offer and sale of the stock, the defendants and their co-conspirators often used aliases or otherwise provided false and fictitious names to investors to hide the defendants' and co-conspirators' true identities.

12. The defendants and their co-conspirators directed investors to make payments for the investment companies' stock transactions by: (a) transferring funds electronically via interstate wires to bank accounts **DANIEL JOSEPH TOUIZER** controlled; or (b) mailing checks to the investment companies' offices in Broward County, Florida.

13. **DANIEL JOSEPH TOUIZER, SAUL DANIEL SUSTER, and JOHN KEVIN REECH** told investors that the investment companies, such as Investment Diamonds, were performing well. To create the illusion that Investment Diamonds and other investment companies were profitable, **TOUIZER** paid **SUSTER** to falsely and fraudulently pose as an investor. **SUSTER** lied to investors by telling them that he was a successful investor in the investment companies and that his investments with the companies made him a significant profit.

14. **DANIEL JOSEPH TOUIZER, SAUL DANIEL SUSTER, JOHN KEVIN REECH,** and other sales agents falsely told investors that they could expect a 100% return on their investment in the investment companies. On more than one occasion, **TOUIZER** told investors that he expected Investment Diamonds to make over \$36 million in annual sales. Often times, when investors told **TOUIZER** that they lacked sufficient liquid assets to make an investment, **TOUIZER** encouraged them to withdraw funds from their individual retirement accounts ("IRA") in order to invest. **TOUIZER** made these representations even though he knew his businesses were on the verge of complete failure.

15. **DANIEL JOSEPH TOUIZER** often made false statements to investors regarding the use of investor funds. For example, Touizer asserted in an email to an Investment Diamond investor, dated March 8, 2013, that, "funds would be used to develop the Advisor Network." In fact, there was no Advisor Network, and 80% of all Investment Diamond investor funds went to **TOUIZER** for his personal expenses, to pay sales commissions, and not to the business.

16. Once one investment company failed, **DANIEL JOSEPH TOUIZER** often funded the startup of his next investment company with money raised from previous investors. To create the illusion of success, **TOUIZER** sometimes paid new investors "dividends" with prior investors' money.

17. **DANIEL JOSEPH TOUIZER** used the money received from investors for, among other things, undisclosed sales commissions, fees, and other monetary distributions to himself, to his sales agents, and other people he hired.

18. Depending on which investment company stock they offered, the defendants and their co-conspirators stole between 50% and 80% of investor proceeds in undisclosed commissions and fees.

19. To induce investors to provide money to the defendants and their co-conspirators, the defendants and their co-conspirators made and caused others to make numerous materially false and fraudulent statements to investors, and concealed and omitted to state, and caused others to conceal and omit to state, material facts to investors, including, among other things, the following:

Materially False Statements

- (a) That no commission or fees would be charged to investors;
- (b) That sales agents were personally invested in the companies and making significant

money from their investments;

- (d) That the investment companies were a “safe investment,” “profitable investment,” and one where “you won’t lose money;”
- (e) That the value of the investment companies' stock would increase significantly;
- (f) that investors would receive a guaranteed return on investment;
- (g) that the investment companies were successful and profitable
- (h) that the investment companies had received regulatory approval;
- (i) that the investment companies did not issue capital calls;
- (j) that **DANIEL JOSEPH TOUIZER** did not personally take a salary or draw on funds invested in certain investment companies; and
- (k) that investor funds would be used for sales and marketing, working capital and general corporate purposes.

Concealment and Omission of Material Facts

(l) That the defendants and their co-conspirators used between 50% and 80% of investor proceeds to pay themselves and their co-conspirators undisclosed commissions and fees.

20. Over the course of the scheme, **DANIEL JOSEPH TOUIZER, SAUL DANIEL SUSTER, JOHN KEVIN REECH**, and their co-conspirators, falsely and fraudulently caused over 150 individuals to invest in the investment companies, and raised over \$15 million through the sale of stock in the companies **TOUIZER** controlled.

All in violation of Title 18, United States Code, Section 1349.

COUNTS 2-7
MAIL FRAUD
(18 U.S.C. § 1341)

1. Paragraphs 1 through 8 of the General Allegations section of this Indictment are

realleged and fully incorporated herein by reference.

2. From in or around July 2010, through in or around November 2017, in Miami-Dade and Broward Counties, in the Southern District of Florida, and elsewhere, the defendants,

**DANIEL JOSEPH TOUIZER,
a/k/a “Joseph Touizer,”
SAUL DANIEL SUSTER, and
JOHN KEVIN REECH,**

did knowingly, and with the intent to defraud, devise and intend to devise a scheme and artifice to defraud and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, knowing that the pretenses, representations, and promises were false and fraudulent when made, and for the purpose of executing such scheme and artifice to defraud, did knowingly cause to be delivered certain mail matter by the United States Postal Service and by private or commercial interstate carrier, according to the directions thereon, in violation of Title 18, United States Code, Section 1341.

PURPOSE OF THE SCHEME AND ARTIFICE

3. It was the purpose of the scheme and artifice for the defendants and their accomplices to unlawfully enrich themselves by misappropriating investor money for their personal use and benefit by making material representations that were false and fraudulent when made, and concealing and failing to state material facts concerning, among other things, the safety and profitability of investing in Investment Diamonds, Omni Guard, Covida, WCM, and the Wheat LPs' through the purchase of stock in these companies, and the defendants' and their accomplices' excessive commissions and fees.

THE SCHEME AND ARTIFICE

4. Paragraphs 4 through 20 of the Manner and Means section of Count 1 are repeated, realleged, and fully incorporated herein as a description of the scheme and artifice.

USE OF THE MAILS

5. On or about the dates enumerated as specified in each count below, the defendants, for the purpose of executing and in furtherance of the scheme and artifice to defraud and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, knowing that the pretenses, representations, and promises were false and fraudulent when made, did knowingly cause to be delivered certain mail matter by the United States Postal Service and by private or commercial interstate carrier, according to the directions thereon, as more particularly described below:

COUNT	DEFENDANTS	APPROXIMATE DATE	DESCRIPTION OF MAILING
2	DANIEL JOSEPH TOUIZER, a/k/a "Joseph Touizer," and JOHN KEVIN REECH	January 15, 2013	Fair Market Valuation for Self-Directed Accounts Form for investor S.S. on account ending in xxxx020 sent via United States Postal Service from the Southern District of Florida to NuView, IRA, Inc., Lake Mary, Florida
3	DANIEL JOSEPH TOUIZER, a/k/a "Joseph Touizer"	March 8, 2013	Investor C.D. mailed check #662 drawn on investor C.D.'s account in Sugarland, Texas to Investment Diamonds, LLC, located in Fort Lauderdale, Florida
4	DANIEL JOSEPH TOUIZER, a/k/a "Joseph Touizer," and JOHN KEVIN REECH	April 3, 2013	Fair Market Valuation for Self-Directed Accounts Form for investor D.W. on account ending in xxxx087 sent via United States Postal Service from the Southern District of Florida to NuView, IRA, Inc., Lake Mary, Florida

COUNT	DEFENDANTS	APPROXIMATE DATE	DESCRIPTION OF MAILING
5	DANIEL JOSEPH TOUIZER, a/k/a “Joseph Touizer,” and SAUL DANIEL SUSTER	July 24, 2013	Investor W.C. mailed check #2038 drawn on investor W.C.’s account in Fallon, Nevada to Infinity Direct Insurance, LLC, located in Fort Lauderdale, Florida
6	DANIEL JOSEPH TOUIZER, a/k/a “Joseph Touizer,” and SAUL DANIEL SUSTER	August 26, 2013	Investor M.H. mailed check #179 drawn on investor M.H.’s account in Clermont, Florida, to Infinity Direct Insurance, LLC, in Fort Lauderdale, Florida
7	DANIEL JOSEPH TOUIZER, a/k/a “Joseph Touizer”	October 1, 2014	Investor A.W. mailed check #1004 drawn on investor A.W.’s account in Cranston, R.I., to Covida Holdings, LLC located in Fort Lauderdale, Florida

In violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 8
WIRE FRAUD
(18 U.S.C. § 1343)

1. Paragraphs 1 through 6 of the General Allegations section of this Indictment are realleged and fully incorporated herein by reference.

2. From in or around July 2010, through in or around November 2017, in Miami-Dade and Broward Counties, in the Southern District of Florida, and elsewhere, the defendants,

**DANIEL JOSEPH TOUIZER,
a/k/a “Joseph Touizer,”**

did knowingly, and with the intent to defraud, devise and intend to devise a scheme and artifice to defraud and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, knowing that the pretenses, representations, and promises were

false and fraudulent when made, and for the purpose of executing such scheme and artifice to defraud, did knowingly transmit and cause to be transmitted in interstate commerce, by means of wire communication, certain writings, signs, signals, pictures and sounds, in violation of Title 18, United States Code, Section 1343.

PURPOSE OF THE SCHEME AND ARTIFICE

3. It was the purpose of the scheme and artifice for the defendant and his accomplices to unlawfully enrich themselves by misappropriating investor money for their personal use and benefit by making material representations that were false and fraudulent when made, and concealing and failing to state material facts concerning, among other things, the safety and profitability of investing in Investment Diamonds, Omni Guard, Covida, WCM, and the Wheat LPs' through the purchase of stock in these companies, and the defendants' and their accomplices' excessive commissions and fees.

THE SCHEME AND ARTIFICE

4. Paragraphs 4 through 20 of the Manner and Means section of Count 1, only as to defendant **DANIEL JOSEPH TOUIZER, a/k/a "Joseph Touizer,"** are repeated, realleged, and fully incorporated herein as a description of the scheme and artifice.

USE OF THE WIRES

5. On or about the dates enumerated below, the defendant, for the purpose of executing and in furtherance of the scheme and artifice to defraud and to obtain money and property by means of materially and false and fraudulent pretenses, representations, and promises, knowing the pretenses, representations, and promises were false and fraudulent when made, did transmit and caused to be transmitted by wire some communication in interstate commerce to help carry out the scheme to defraud, according to the directions thereon, as more particularly described

below:

COUNT	APPROXIMATE DATE	DESCRIPTION OF WIRE COMMUNICATION
8	October 7, 2014	Investor C.D. wired \$200,000 from a bank account located in Sugarland, Texas to an Infinity Direct Insurance, LLC bank account located in Fort Lauderdale, Florida

In violation of Title 18, United States Code, Sections 1343 and 2.

COUNT 9
Conspiracy to Commit Money Laundering
(18 U.S.C. § 1956(h))

~~(A)~~ (B)

From in or around March 2015, through in or around November 2017, in Miami-Dade and Broward Counties, in the Southern District of Florida, and elsewhere, the defendant,

DANIEL JOSEPH TOUIZER,
a/k/a “Joseph Touizer,”

did willfully, that is, with the intent to further the object of the conspiracy, and knowingly combine, conspire, confederate, and agree with others known and unknown to the Grand Jury, to violate Title 18, United States Code, Section 1956(a)(1)(B)(i), that is, to knowingly conduct a financial transaction affecting interstate commerce, which transaction involved the proceeds of specified unlawful activity, knowing that the property involved in the financial transaction represented the proceeds of some form of unlawful activity, and knowing that such transaction was designed in whole and in part to conceal and disguise the nature, the location, the source, the ownership, and the control of the proceeds of specified unlawful activity.

It is further alleged that the specified unlawful activity is mail fraud and wire fraud, in violation of Title 18, United States Code, Sections 1341 and 1343.

All in violation of Title 18, United States Code, Section 1956(h).

COUNTS 10-11
Money Laundering
(18 .S.C. § 1956(a)(1)(B)(i))

On or about the dates specified as to each count below, in Miami-Dade and Broward Counties, in the Southern District of Florida, and elsewhere, the defendant,

DANIEL JOSEPH TOUIZER,
a/k/a “Joseph Touizer,”

as specified in each count below, did knowingly conduct and attempt to conduct a financial transaction affecting interstate commerce, which transaction involved the proceeds of specified unlawful activity, knowing that the property involved in the financial transaction represented the proceeds of some form of unlawful activity, and knowing that such transaction was designed in whole and in part to conceal and disguise the nature, the location, the source, the ownership, and the control of the proceeds of specified unlawful activity, as set forth below:

Count	Approximate Date of Transaction	Description of Financial Transaction
10	9/2/2015	Transfer of approximately \$2,000 via wire transfer from the account of Infinity Direct Insurance Services, LLC to Wheat Capital Management, LLC.
11	9/10/2015	Transfer of approximately \$6,000 via wire transfer from the account of Infinity Direct Insurance Services, LLC to Wheat Capital Management, LLC.

It is further alleged that the specified unlawful activity is mail fraud and wire fraud, in violation of Title 18, United States Code, Sections 1341 and 1343.

FORFEITURE
(18 U.S.C. §§ 981(a)(1)(C) and 982(a)(1)(c))

1. The allegations of this Indictment are re-alleged, and by this reference fully incorporated herein for the purpose of alleging criminal forfeiture to the United States of America

of certain property in which the defendants, **DANIEL JOSEPH TOUIZER**, a/k/a “**Joseph Touizer**,” **SAUL DANIEL SUSTER**, and **JOHN KEVIN REECH**, have an interest.

2. Upon conviction of a violation, or a conspiracy to violate, Title 18, United States Code, Section 1341 and/or Title 18, United States Code, Section 1343, as alleged in this Indictment, the defendant so convicted shall forfeit to the United States of America, pursuant to Title 18, United States Code, Section 981(a)(1)(C), any property, real or personal, which constitutes or is derived from proceeds traceable to such violation.

3. Upon conviction of a violation, or a conspiracy to violate, Title 18, United States Code, Section 1956, as alleged in this Indictment, the defendant, **DANIEL JOSEPH TOUIZER**, a/k/a “**Joseph Touizer**,” shall forfeit to the United States of America, pursuant to Title 18, United States Code, Section 982(a)(1)(C), any property, real or personal, involved in such violation, or any property traceable to such property.

4. The property, which is subject to criminal forfeiture, includes, but is not limited to, the following:

(a) Real Property:

(1) The real property known and numbered as [REDACTED], [REDACTED] Florida [REDACTED], together with appurtenances, improvements, attachments, fixtures, and easements thereon and/or therein;

(2) The real property known and numbered as [REDACTED] [REDACTED] Pembroke Park, FL [REDACTED] together with appurtenances, improvements, attachments, fixtures, and easements thereon and/or therein;

(3) The real property known and numbered as [REDACTED] Margate, FL [REDACTED] together with appurtenances, improvements, attachments, fixtures, and easements

thereon and/or therein;

(4) The real property known and numbered as [REDACTED], Miami, FL [REDACTED] together with appurtenances, improvements, attachments, fixtures, and easements thereon and/or therein; and

(5) The real property known and numbered as [REDACTED] [REDACTED], Boynton Beach, FL together with appurtenances, improvements, attachments, fixtures, and easements thereon and/or therein;

(b) Personal Property:

Vehicle(s)

(1) One (1) 2013 BMW 750LI (VIN: [REDACTED]); and

Bank Accounts

(1) All principal, deposits, dividends, interest and other amounts credited to account number [REDACTED] held at Wells Fargo, N.A., in the name(s) of Illanit Touizer and/or Daniel Touizer;

(2) All principal, deposits, dividends, interest and other amounts credited to account number [REDACTED] held at Wells Fargo, N.A., in the name(s) of Illanit Touizer and/or Daniel Touizer;

(3) All principal, deposits, dividends, interest and other amounts credited to account number [REDACTED] held at Wells Fargo, N.A., in the name(s) of Illanit Touizer and/or Daniel Touizer;

(4) All principal, deposits, dividends, interest and other amounts credited to account number [REDACTED] held at Regions Bank, N.A., in the name(s) of Wheat Self-Storage Partners I LP;

(5) All principal, deposits, dividends, interest and other amounts credited to account number [REDACTED] held at Regions Bank, N.A., in the name(s) of Wheat Self-Storage Partners I LP;

(6) All principal, deposits, dividends, interest and other amounts credited to account number [REDACTED] held at Regions Bank, N.A., in the name(s) of Wheat Self-Storage Partners III LP;

(7) All principal, deposits, dividends, interest and other amounts credited to account number [REDACTED] held at Regions Bank, N.A., in the name(s) of Wheat Capital Management;

(8) All principal, deposits, dividends, interest and other amounts credited to account number [REDACTED] held at Regions Bank, N.A., in the name(s) of Wheat Capital Management;

(9) All principal, deposits, dividends, interest and other amounts credited to account number [REDACTED] held at Regions Bank, N.A., in the name(s) of Wheat I - Pembroke LLC;

(10) All principal, deposits, dividends, interest and other amounts credited to account number [REDACTED] held at Regions Bank, N.A., in the name(s) of Wheat II - Margate; and

(11) All principal, deposits, dividends, interest and other amounts credited to account number [REDACTED] held at SunTrust Bank, N.A., in the name(s) of Wheat Capital Funding.

(c) Forfeiture Money Judgment(s):

(1) The United States of America will seek entry of a forfeiture money

judgment upon conviction against each defendant so convicted in an amount equal in value to any property, real or personal, which constitutes or is derived from proceeds traceable to the violations alleged in this Indictment and any property, real or personal, involved in the violations alleged in this Indictment, or any property traceable to such property.

All pursuant to Title 18, United States Code, Section 981(a)(1)(C), as made applicable by Title 28, United States Code, Section 2461(c), Title 18, United States Code, Section 982(a)(1)(C), and the procedures set forth at Title 21, United States Code, Section 853.

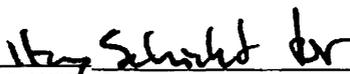
A TRUE BILL








BENJAMIN G. GREENBERG
ACTING UNITED STATES ATTORNEY


ROGER CRUZ
ASSISTANT UNITED STATES ATTORNEY

UNITED STATES OF AMERICA

CASE NO. _____

vs.

CERTIFICATE OF TRIAL ATTORNEY*

DANIEL JOSEPH TOUIZER,
a/k/a "Joseph Touizer," Et Al.,

Defendants.

_____ /

Superseding Case Information:

Court Division: (Select One)

Miami FTL Key West WPB FTP

New Defendant(s) Yes _____ No _____
Number of New Defendants _____
Total number of counts _____

I do hereby certify that:

- I have carefully considered the allegations of the indictment, the number of defendants, the number of probable witnesses and the legal complexities of the Indictment/Information attached hereto.
- I am aware that the information supplied on this statement will be relied upon by the Judges of this Court in setting their calendars and scheduling criminal trials under the mandate of the Speedy Trial Act, Title 28 U.S.C. Section 3161.
- Interpreter: (Yes or No) No English _____
List language and/or dialect _____
- This case will take 10 days for the parties to try.
- Please check appropriate category and type of offense listed below:

(Check only one)

(Check only one)

I	0 to 5 days	_____	Petty	_____
II	6 to 10 days	<u>X</u>	Minor	_____
III	11 to 20 days	_____	Misdem.	_____
IV	21 to 60 days	_____	Felony	<u>X</u>
V	61 days and over	_____		

6. Has this case been previously filed in this District Court? (Yes or No) No

If yes: Judge: Case No. _____
(Attach copy of dispositive order)

Has a complaint been filed in this matter? (Yes or No) No

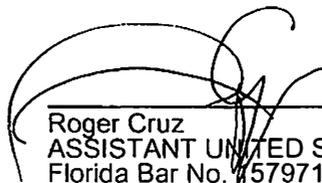
If yes: Magistrate Case No. 17-06341-mj-Bloom/Seltzer

Related Miscellaneous numbers: _____
Defendant(s) in federal custody as of _____
Defendant(s) in state custody as of _____
Rule 20 from the _____ District of _____

Is this a potential death penalty case? (Yes or No) No

7. Does this case originate from a matter pending in the Northern Region of the U.S. Attorney's Office prior to October 14, 2003? _____ Yes X No

8. Does this case originate from a matter pending in the Central Region of the U.S. Attorney's Office prior to September 1, 2007? _____ Yes X No



Roger Cruz
ASSISTANT UNITED STATES ATTORNEY
Florida Bar No. 157971

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

PENALTY SHEET

Defendant's Name: Daniel Joseph Touizer, a/k/a "Joseph Touizer"

Case No: _____

Count 1:

Conspiracy to Commit Mail and Wire Fraud

Title 18, United States Code, Section 1349

* Max. Penalty: 20 years' imprisonment

Counts 2-7:

Mail Fraud

Title 18, United States Code, Section 1341

* Max. Penalty: 20 years' imprisonment as to each count

Count 8:

Wire Fraud

Title 18, United States Code, Section 1343

* Max. Penalty: 20 years' imprisonment

Count 9:

Conspiracy to Commit Money Laundering

Title 18, United States Code, Section 1956(h)

* Max. Penalty: 20 years' imprisonment

***Refers only to possible term of incarceration, overlap does not include possible fines, restitution, special assessments, parole terms, or forfeitures that may be applicable.**

Counts 10-11:

Money Laundering

Title 18, United States Code, Section 1956(h)

* Max. Penalty: 20 years' imprisonment as to each count

***Refers only to possible term of incarceration, overlap does not include possible fines, restitution, special assessments, parole terms, or forfeitures that may be applicable.**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

PENALTY SHEET

Defendant's Name: John Kevin Reech

Case No: _____

Count 1:

Conspiracy to Commit Mail and Wire Fraud

Title 18, United States Code, Section 1349

* Max. Penalty: 20 years' imprisonment

Counts 2,4:

Mail Fraud

Title 18, United States Code, Section 1341

* Max. Penalty: 20 years' imprisonment as to each count

***Refers only to possible term of incarceration, overlap does not include possible fines, restitution, special assessments, parole terms, or forfeitures that may be applicable.**

**U.S. District Court
Southern District of Florida (Ft Lauderdale)
CRIMINAL DOCKET FOR CASE #: 0:17-cr-60286-BB-1**

Case title: USA v. Touizer et al
Magistrate judge case number: 0:17-mj-06341-BSS

Date Filed: 11/21/2017
Date Terminated: 07/25/2018

Date Filed	#	Docket Text
05/11/2018	92	PAPERLESS Minute Entry for proceedings held before Judge Beth Bloom: Change of Plea Hearing as to Daniel Joseph Touizer held on 5/11/2018. Daniel Joseph Touizer (1) Guilty Count 1. Defendant remanded into USM custody. Total time in court: 40 minutes. Attorney Appearance(s): Roger Cruz, Ronald Gainor, Christopher Gerard Lyons, Court Reporter: Yvette Hernandez, 954-769-5698 / Yvette_Hernandez@flsd.uscourts.gov. (ch1) (Entered: 05/11/2018)

PACER Service Center			
Transaction Receipt			
07/18/2019 14:08:25			
PACER Login:	SE8368:4199080:4043519	Client Code:	
Description:	Docket Report	Search Criteria:	0:17-cr-60286-BB Starting with document: 92 Ending with document: 92
Billable Pages:	1	Cost:	0.10

UNITED STATES DISTRICT COURT
Southern District of Florida
Fort Lauderdale Division

UNITED STATES OF AMERICA
v.
DANIEL JOSEPH TOUIZER

JUDGMENT IN A CRIMINAL CASE

Case Number: 17-60286-CR-BLOOM-001
USM Number: 16560-104

Counsel For Defendant: RONALD GAINOR
Counsel For The United States: ROGER CRUZ
Court Reporter: Yvette Hernandez

The defendant pleaded guilty to count(s) 1 of the indictment.

The defendant is adjudicated guilty of these offenses:

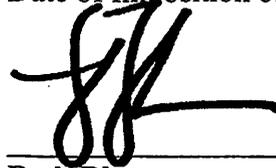
<u>TITLE & SECTION</u>	<u>NATURE OF OFFENSE</u>	<u>OFFENSE ENDED</u>	<u>COUNT</u>
18 USC § 1349	Conspiracy to commit mail & wire fraud	11/2017	1

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

All remaining counts are dismissed on the motion of the government.

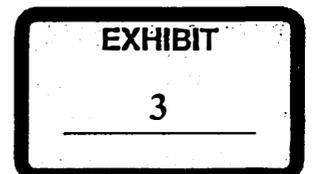
It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant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

Date of Imposition of Sentence: 7/24/2018



Beth Bloom
United States District Judge

Date: 7/25/2018



DEFENDANT: DANIEL JOSEPH TOUIZER
CASE NUMBER: 17-60286-CR-BLOOM-001

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of **sixty-eight (68) months as to count one of the indictment.**

The court makes the following recommendations to the Bureau of Prisons: That the Defendant participate in the RDAP Program administered by the Bureau of Prisons and be designated to a facility in South Florida, preferably Miami due to his young baby living there.

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

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

DEPUTY UNITED STATES MARSHAL

DEFENDANT: DANIEL JOSEPH TOUIZER
CASE NUMBER: 17-60286-CR-BLOOM-001

SUPERVISED RELEASE

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

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.

The defendant shall cooperate in the collection of DNA as directed by the probation officer.

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

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 and shall submit a truthful and complete written report within the first fifteen days of each month;
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: DANIEL JOSEPH TOUIZER

CASE NUMBER: 17-60286-CR-BLOOM-001

SPECIAL CONDITIONS OF SUPERVISION

Association Restriction - The defendant is prohibited from associating with Saul Daniel Suster and John Kevin Reech while on supervised release.

Data Encryption Restriction - The defendant shall not possess or use any data encryption technique or program.

Employment Solicitation Restriction - The defendant shall not be engaged in any business that offers securities, investments, or business opportunities to the public. The defendant is further prohibited from engaging in telemarketing, direct mail, or national advertising campaigns for business purposes without the permission of the Court.

Financial Disclosure Requirement - The defendant shall provide complete access to financial information, including disclosure of all business and personal finances, to the U.S. Probation Officer.

No New Debt Restriction - The defendant shall not apply for, solicit or incur any further debt, included but not limited to loans, lines of credit or credit card charges, either as a principal or cosigner, as an individual or through any corporate entity, without first obtaining permission from the United States Probation Officer.

Permissible Computer Examination - The defendant shall submit to the U.S. Probation Officer conducting periodic unannounced examinations of the defendant's computer(s) equipment which may include retrieval and copying of all data from the computer(s) and any internal or external peripherals to ensure compliance with this condition and/or removal of such equipment for the purpose of conducting a more thorough inspection; and to have installed on the defendant's computer(s), at the defendant's expense, any hardware or software systems to monitor the defendant's computer use.

Permissible Search - The defendant shall submit to a search of his/her person or property conducted in a reasonable manner and at a reasonable time by the U.S. Probation Officer.

Related Concern Restriction - The defendant shall not own, operate, act as a consultant, be employed in, or participate in any manner, in any related concern during the period of supervision.

Self-Employment Restriction - The defendant shall obtain prior written approval from the Court before entering into any self-employment.

Unpaid Restitution, Fines, or Special Assessments - If the defendant has any unpaid amount of restitution, fines, or special assessments, the defendant shall notify the probation officer of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay.

Substance Abuse Treatment - The defendant shall participate in an approved treatment program for drug and/or alcohol abuse and abide by all supplemental conditions of treatment. Participation may include inpatient/outpatient treatment. The defendant will contribute to the costs of services rendered (co-payment) based on ability to pay or availability of third party payment.

DEFENDANT: DANIEL JOSEPH TOUIZER

CASE NUMBER: 17-60286-CR-BLOOM-001

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	\$100.00	\$0.00	RESERVED

The determination of restitution is deferred until Tuesday, August 28, 2018 at 4:00 pm in Miami, 400 North Miami Avenue, Courtroom 10-2. An Amended Judgment in a Criminal Case (AO 245C) will be entered after such determination.

The defendant must make restitution to the attached list of 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>
RESERVED	RESERVED	RESERVED	RESERVED

Restitution with Imprisonment - It is further ordered that the defendant shall pay restitution in the amount of RESERVED. During the period of incarceration, payment shall be made as follows: (1) if the defendant earns wages in a Federal Prison Industries (UNICOR) job, then the defendant must pay 50% of wages earned toward the financial obligations imposed by this Judgment in a Criminal Case; (2) if the defendant does not work in a UNICOR job, then the defendant must pay a minimum of \$25.00 per quarter toward the financial obligations imposed in this order. Upon release of incarceration, the defendant shall pay restitution at the rate of 10% of monthly gross earnings, until such time as the court may alter that payment schedule in the interests of justice. The U.S. Bureau of Prisons, U.S. Probation Office and U.S. Attorney's Office shall monitor the payment of restitution and report to the court any material change in the defendant's ability to pay. These payments do not preclude the government from using other assets or income of the defendant to satisfy the restitution obligations.

Restitution amount ordered pursuant to plea agreement is reserved

* 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.

**Assessment due immediately unless otherwise ordered by the Court.

DEFENDANT: DANIEL JOSEPH TOUIZER
CASE NUMBER: 17-60286-CR-BLOOM-001

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 \$100 due immediately.

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.

This assessment/fine/restitution is payable to the CLERK, UNITED STATES COURTS and is to be addressed to:

U.S. CLERK'S OFFICE
ATTN: FINANCIAL SECTION
400 NORTH MIAMI AVENUE, ROOM 08N09
MIAMI, FLORIDA 33128-7716

The assessment/fine/restitution is payable immediately. The U.S. Bureau of Prisons, U.S. Probation Office and the U.S. Attorney's Office are responsible for the enforcement of this order.

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

<u>CASE NUMBER</u> <u>DEFENDANT AND CO-DEFENDANT NAMES</u> <u>(INCLUDING DEFENDANT NUMBER)</u>	<u>TOTAL AMOUNT</u> <u>RESERVED</u>	<u>JOINT AND SEVERAL</u> <u>AMOUNT</u>

The Government shall file a final order of forfeiture.

Restitution is owed jointly and severally by the defendant and co-defendants in the above case.

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.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Case No.: 17-60286-CR-BLOOM

UNITED STATES OF AMERICA

vs.

DANIEL JOSEPH TOUIZER,
a/k/a "Joseph Touizer,"
Defendant.

FACTUAL PROFFER

Had this case proceeded to trial, Daniel Joseph Touizer and the Government agree that the Government would have proven the following facts beyond a reasonable doubt. The parties agree that these facts, which are true, do not include all facts known to the Government and the defendant relating to the Indictment. The parties agree that these facts are sufficient to prove the guilt of the Defendant as to Count 1 of the above-referenced Indictment:

L. J. Touizer
From some time in 2008, through some time in 2017, in the Southern District of Florida and elsewhere, Daniel Joseph Touizer conspired with John Kevin Reech, Saul Daniel Suster, and others, to defraud many individuals. This Defendant and others participated in a scheme to defraud that raised millions from the sale of stock and other interests in Touizer's investment companies. Those companies included, but are not limited to, Omni Guard, Infinity Diamonds, Infinity Direct insurance (d/b/a Covida holdings), Wheat Capital Management, and Wheat Self-Storage Partners I, II, and III.

This conspiracy occurred by means of materially false and fraudulent pretenses, as well as material omissions, to knowingly devise a scheme and artifice to defraud and to obtain money and property through the delivery of certain mail matter and through certain wire communications, contrary to Title 18, United States Code, Sections 1341 and 1343, and all in violation of Title 18, United States Code, Section 1349.

Touizer was founder, controlling shareholder and Chief Executive Officer of Investment Diamonds, Omni Guard, Covida, WCM, and the Wheat LPs. Touizer hired Reech, Suster, and others to, among other things, solicit potential investors from "phone rooms" that Touizer oversaw. In these phone rooms, Reech, Suster and others acted as a "fronters," who called potential investors whose names appeared on the lead lists. Once a person showed interest in investing, Reech, Suster and other fronters referred the potential investor to Touizer so that Touizer could "close" the deal. Touizer acted as the "closer" on nearly all of the stock sales. Touizer organized and led this criminal conspiracy that involved more than five participants, and his misconduct was otherwise extensive.

EXHIBIT

4

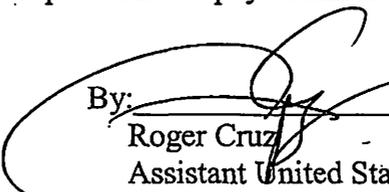
During the offer and sale of the stock, the defendants and their co-conspirators often used aliases or otherwise provided false and fictitious names to investors to hide the defendants' and co-conspirators' true identities. To create the illusion that Investment Diamonds and other investment companies were profitable, Touizer paid Suster to falsely pose as an investor. Suster lied to investors by telling them that he was a successful investor in the investment companies and that his investments with the companies made him a significant profit.

This Defendant and his co-conspirators made materially false and fraudulent statements to investors regarding the use of investor funds. For example, Touizer asserted in an email to an Investment Diamond investor, dated March 8, 2013, that, "funds would be used to develop the Advisor Network." In fact, there was no Advisor Network. Once one investment company failed, Touizer often funded the startup of his next investment company with money raised from previous investors. To create the illusion of success, Touizer sometimes paid new investors "dividends" with prior investors' money.

Touizer and his employees made other false statements to investors to trick them into investing, including, but not limited to: that no commission or fees would be charged to investors; that the investment companies were a "safe investment," "profitable investment," and one where "you won't lose money;" that the investment companies were successful and profitable; that Touizer did not personally take a salary or draw on funds invested in certain investment companies; and that investor funds would be used for sales and marketing, working capital and general corporate purposes.

This Defendant and his co-conspirators concealed from their investors that the defendants and their co-conspirators used investor proceeds to pay themselves and their co-conspirators undisclosed commissions and fees.

Date: 5/11/18

By: 

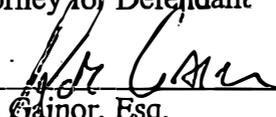
Roger Cruz
Assistant United States Attorney

Date: 5/11/18

By: 

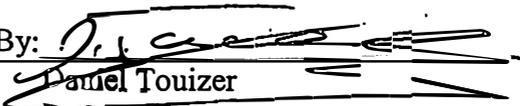
Christopher Lyons, Esq.
Attorney for Defendant

Date: 5/11/18

By: 

Ron Gainer, Esq.
Attorney for Defendant

Date: 5/11/18

By: 

Daniel Touizer
Defendant

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION
CASE NO. 0:17-cr-60286-BB-1

UNITED STATES OF AMERICA,

Plaintiff,

May 11, 2018
2:04 p.m.

vs.

DANIEL JOSEPH TOUIZER,

Defendant.

Pages 1 THROUGH 27

TRANSCRIPT OF PLEA COLLOQUY
BEFORE THE HONORABLE BETH BLOOM
UNITED STATES DISTRICT JUDGE

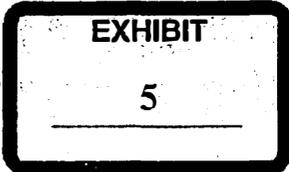
Appearances:

FOR THE GOVERNMENT: UNITED STATES ATTORNEY'S OFFICE
ROGER CRUZ, AUSA
99 Northeast 4th Street
Miami, Florida 33132

FOR THE DEFENDANT: MASE LARA, PA
CHRISTOPHER GERARD LYONS, ESQ.
2601 South Bayshore Drive, Suite 800
Miami, Florida 33133

FOR THE DEFENDANT: RONALD GAINOR, ATTORNEY AT LAW
RONALD GAINOR, ESQ.
3250 Mary Street, Suite 405
Miami, Florida 33131

COURT REPORTER: Yvette Hernandez
U.S. District Court
400 North Miami Avenue, Room 10-2
Miami, Florida 33128
yvette_hernandez@flsd.uscourts.gov



1 (Call to order of the Court, 2:04 p.m.)

2 COURTROOM DEPUTY: Calling Case Number 17-60286,
3 Criminal, United States of America v. Daniel Joseph Touizer.
4 Counsel, please state your appearances.

5 MR. CRUZ: Again, Your Honor, good afternoon. Roger
6 Cruz for the United States. Judge, I have three case agents
7 with me from the FBI. We have Agent Abelard, Agent Brennan,
8 and Agent Kule-Thomas.

9 THE COURT: Good afternoon to each of you.

10 MR. LYONS: Good afternoon, Your Honor. Christopher
11 Lyons on behalf of the Defendant, Daniel Touizer, along with
12 attorney co-counsel Ronald Gainor.

13 THE COURT: Good afternoon to each of you as well.

14 Mr. Touizer, do you need any additional time with your
15 attorneys before we proceed, sir?

16 THE DEFENDANT: No, Your Honor.

17 (Pause in proceedings.)

18 THE COURT: Mr. Touizer, let me ask that you stand,
19 raise your right hand to be placed under oath.

20 DANIEL JOSEPH TOUIZER, DEFENDANT, SWORN

21 COURTROOM DEPUTY: Thank you.

22 THE COURT: Go ahead and have a seat, sir.

23 Do you understand that you are now under oath, and if
24 you answer any of my questions falsely your answers may later
25 be used against you in a prosecution for perjury for making a

1 false statement?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: What is your full name, sir?

4 THE DEFENDANT: Daniel Joseph Touizer.

5 THE COURT: Mr. Touizer, how old are you, sir?

6 THE DEFENDANT: Forty-four.

7 THE COURT: How far did you go in school?

8 THE DEFENDANT: High school.

9 THE COURT: Did you complete high school?

10 THE DEFENDANT: Yes. In Canada.

11 THE COURT: Are you able to fully read and write in
12 English?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: Have you ever been diagnosed with or
15 treated for any type of mental illness?

16 THE DEFENDANT: No, Your Honor.

17 THE COURT: Are you suffering from any type of
18 physical or medical illness?

19 THE DEFENDANT: No, Your Honor.

20 THE COURT: Are you taking any medication?

21 THE DEFENDANT: No, Your Honor.

22 THE COURT: Are you under the influence of any drugs
23 of any kind or alcoholic beverages of any kind?

24 THE DEFENDANT: No, Your Honor.

25 THE COURT: Have you received a copy of the

1 Indictment, the charges that are pending against you?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: Have you had a full opportunity to discuss
4 the charges and the case in general with each of your
5 attorneys?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: And have each of your attorneys answered
8 all of your questions?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: Are you fully satisfied with the counsel,
11 the representation, and the advice given to you in this case by
12 your --

13 THE DEFENDANT: Yes.

14 THE COURT: -- attorneys, Christopher Lyons and Ron
15 Gainor?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: Mr. Touizer, before the Court is -- is
18 there a seventeenth page? The signature is Page 16 of 17. Am
19 I missing a page?

20 MR. CRUZ: Judge, it's a blank sheet. I do apologize.
21 Seventeen was just a printing error. So the last page was a
22 blank piece of paper.

23 THE COURT: All right. Then Mr. Touizer, before the
24 Court is a 16-page Plea Agreement. Did you read it completely?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: Did you understand every word?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: Did your attorneys answer all of your
4 questions?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: Does this 16-page Plea Agreement represent
7 in its entirety the agreement you have with the United States
8 Government?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: Are there any other promises or
11 representations that have been made?

12 THE DEFENDANT: No, Your Honor.

13 THE COURT: Pursuant to this Plea Agreement, you agree
14 to plead guilty to Count 1 of the Indictment, which charges you
15 with conspiracy to commit wire and mail fraud, in violation of
16 Title 18, United States Code, Section 1349. And in exchange,
17 the Government agrees to move for dismissal of Counts 2 through
18 9 after you are sentenced as to Count 1. Is that your
19 understanding of the agreement?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: Has anyone forced you or threatened you to
22 enter into this agreement?

23 THE DEFENDANT: No, Your Honor.

24 THE COURT: Has anyone made any promises or assurances
25 to you, other than what's set forth in the agreement, to

1 persuade you to enter into it?

2 THE DEFENDANT: No, Your Honor.

3 THE COURT: Mr. Touizer, do you have the Indictment in
4 front of you, sir?

5 THE DEFENDANT: I believe so.

6 Yes, Your Honor.

7 THE COURT: Have you read completely this Indictment?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Did you understand every paragraph?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: Referring to Count 1, "Conspiracy to
12 Commit Mail and Wire Fraud," this count incorporates by
13 reference Paragraphs 1 through 8 of the General Allegations.
14 Did you read and understand those paragraphs?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: Count 1 then continues to Paragraph 2
17 before "Purpose of the Conspiracy." Did you read and
18 understand that paragraph?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: Did you read Paragraph 3, "Purpose of the
21 Conspiracy," and understand it?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: Did you read and understand Paragraphs 4
24 through 19, the "Manner and Means of the Conspiracy"?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: Did you read and understand the
2 "Materially False Statements" in Paragraph 19(a) through (k)?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: Did you read and understand the
5 "Concealment and Omission of Material Facts," Paragraph 19(l)?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: Count 1 then continues: "Over the course
8 of the scheme, Daniel Joseph Touizer, Saul Daniel Suster, John
9 Kevin Reech, and their co-conspirators, falsely and
10 fraudulently caused over 150 individuals to invest in the
11 investment companies and raised over \$15 million through the
12 sale of stock in the companies Touizer controlled, all in
13 violation of Title 18, United States Code, Section 1349."

14 Mr. Touizer, how do you plead to Count 1 of the
15 Indictment?

16 THE DEFENDANT: Guilty, Your Honor.

17 THE COURT: Has anyone forced you or threatened you to
18 enter your plea of guilty to this charge?

19 THE DEFENDANT: No, Your Honor.

20 THE COURT: Has anyone made any promises or assurances
21 to you, other than what's set forth in the Plea Agreement, to
22 persuade you to plead guilty?

23 THE DEFENDANT: No, Your Honor.

24 THE COURT: Are you entering a plea of guilty on your
25 own free will?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: Are you pleading guilty because you have
3 committed the offense of conspiracy to commit mail and wire
4 fraud?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: And do you understand, Mr. Touizer, that
7 the Court can impose a statutory maximum term of imprisonment
8 of up to 20 years?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: Do you understand that that can be
11 followed by a term of supervised release of up to three years?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: Do you understand that, in addition to the
14 term of imprisonment and supervised release, the Court can
15 impose a fine of up to \$250,000 or not more than the greater of
16 twice the gross gains or gross loss resulting from the offense?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: Do you understand that, in addition to
19 those penalties, a special assessment of \$100 will be imposed
20 upon you to be paid at the time of sentencing?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: Do you understand that, pursuant to the
23 Plea Agreement, there will also be restitution and forfeiture
24 that will be ordered as part of the sentence?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: Do you have any questions relating to the
2 sentence to be imposed?

3 THE DEFENDANT: No, Your Honor.

4 THE COURT: Do you understand, Mr. Touizer, that the
5 offense to which you are pleading guilty is a felony offense?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: And you will be adjudicated of that
8 offense, and that adjudication will deprive you of valuable
9 civil rights, such as the right to vote, the right to hold
10 public office, the right to serve on a jury, and the right to
11 possess any type of firearm.

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: Have you discussed with Mr. Gainor or
14 Mr. Lyons the immigration consequences of your guilty plea?

15 THE DEFENDANT: Yes.

16 THE COURT: And have your attorneys answered all of
17 your questions?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: Do you understand, sir, that if you are
20 not a citizen of the United States, in addition to the other
21 possible penalties you are facing, a plea of guilty may subject
22 you to deportation, exclusion, or voluntary departure and
23 prevent you from obtaining United States citizenship?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: Have you and your attorneys discussed the

1 advisory sentencing guidelines and how they might apply in your
2 case?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: And have your attorneys answered all of
5 your questions?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: And do you understand, sir, that I will to
8 be not be able to determine the advisory guideline range for
9 your case until after the Presentence Investigation Report has
10 been completed and you and the Government have each had the
11 opportunity to challenge the reported facts and the application
12 of the guidelines that are recommended by the Probation
13 officer, and the sentence that is ultimately imposed may be
14 different from any estimate Mr. Lyons, Mr. Gainor, or anyone
15 else may have given you?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: Do you understand, sir, that after your
18 initial advisory guideline range has been determined, I have
19 the authority in some circumstances to depart upward or
20 downward from that range and I will examine other statutory
21 sentencing factors that may result in the imposition of a
22 sentence that is either greater or lesser than the advisory
23 guideline sentence?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: Do you understand, Mr. Touizer, that

1 parole has been abolished, and if you are sentenced to prison
2 you will not be released on parole?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: Contained within your Plea Agreement are
5 certain recommendations that the parties may make to the Court
6 at the time of sentencing. Do you understand that the Court
7 is -- has no obligation to accept those recommendations and if
8 the Court rejects those recommendations, you will not be
9 permitted to withdraw your plea of guilty?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: By entering your plea of guilty, you are
12 giving up rights that you do have, such as the right to persist
13 in a plea of not guilty and to a trial by jury. Do you
14 understand that, sir?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: At that trial, you would be presumed
17 innocent and the Government would have the sole burden of
18 proving all the elements of this offense beyond and to the
19 exclusion of every reasonable doubt.

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: You have the right to the assistance of
22 counsel, appointed for your defense at trial and every other
23 stage of the proceedings. You have the right to see and hear
24 all the witnesses and have them cross-examined in your defense.
25 And you have the right on your own part to decline to testify

1 unless you voluntarily elected to do so, and the right to
2 compel the attendance of witnesses to testify in your defense.
3 And Mr. Touizer, at that trial, if you decided not to testify
4 or to call any witnesses, those facts could not be used against
5 you. Do you understand, sir, that you do have those rights?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: And by entering your plea of guilty, you
8 are waiving or giving up your right to a trial by jury, as well
9 as all of the other rights associated with a trial?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: Do you have any questions related to the
12 rights that you're giving up?

13 THE DEFENDANT: No, Your Honor.

14 THE COURT: Contained within your Plea Agreement,
15 specifically Paragraph 23, states: "Direct Appeal Waiver." Do
16 you understand, Mr. Touizer, that by law, specifically pursuant
17 to Title 18, United States Code, Section 3742, and Title 28,
18 United States Code, Section 1291, that you have the right to
19 appeal the sentence imposed in this case?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: And in exchange for the undertakings made
22 by the Office of the United States Attorney, you are waiving or
23 giving up your rights conferred by law to appeal any sentence
24 imposed, and that includes any restitution order, any
25 forfeiture order, or to appeal the manner in which the sentence

1 was imposed, unless the sentence exceeds the maximum permitted
2 by statute or is the result of an upward departure or an upward
3 variance from the advisory guideline range that the Court
4 establishes at sentencing. Do you understand that?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: Do you understand that nothing in this
7 agreement affects the Government's right or its duty to appeal.
8 But if the Government does choose to appeal, then you would be
9 released from the waiver of your appellate rights?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: Have you fully discussed this provision
12 with your attorneys?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: Has anyone forced you or threatened you to
15 enter into this provision?

16 THE DEFENDANT: No, Your Honor.

17 THE COURT: Has anyone made any promises or assurances
18 to you other than what's set forth in the Plea Agreement?

19 THE DEFENDANT: No, Your Honor.

20 THE COURT: Have all your questions been answered?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: The Court finds that the waiver of
23 Mr. Touizer's appellate rights were knowingly and voluntarily
24 made.

25 Mr. Touizer, do you have any questions related to the

1 rights that you're giving up by entering your plea of guilty
2 this charge?

3 THE DEFENDANT: No, Your Honor.

4 THE COURT: Mr. Cruz, if the Government will set forth
5 the elements of the offense of conspiracy to commit mail and
6 wire fraud, please.

7 MR. CRUZ: Yes, Your Honor.

8 Under Count 1 of the Indictment, which is the count of
9 which Mr. Touizer's pleading guilty to, there are two essential
10 elements. First and foremost that there's an agreement between
11 two or more parties to commit the crime, in this case, of mail
12 and/or wire fraud. And secondly, that this Defendant knew of
13 the agreement and knowingly and willfully joined that
14 agreement.

15 THE COURT: Thank you, Mr. Cruz.

16 Mr. Lyons, has Mr. Cruz accurately set forth the
17 elements of conspiracy to commit mail and wire fraud?

18 MR. LYONS: Yes, Your Honor.

19 THE COURT: And sir, what efforts have you made to
20 discuss the elements with Mr. Touizer, as well as a review of
21 the discovery the Government has provided?

22 MR. LYONS: All of the above, yes.

23 THE COURT: I would like a little bit more of an
24 explanation as to exactly --

25 MR. LYONS: Oh, sure.

1 THE COURT: -- the discussion with regard to the
2 elements of the offense, as well as what you reviewed with
3 Mr. Touizer that would support the elements.

4 MR. LYONS: Sure, Your Honor.

5 May it please the Court -- may I stay seated?

6 THE COURT: Yes. Of course.

7 MR. LYONS: We received discovery from the Government
8 several months ago. Myself and Mr. Gainor, along with an
9 investigative team and a forensic team, have met with
10 Mr. Touizer at least 40 times to discuss the voluminous
11 discovery.

12 Additionally, we have gone over all the necessary
13 counts in the Indictment, specifically Count 1, provided
14 Mr. Touizer with the jury instructions from the Eleventh
15 Circuit regarding the counts and the defenses thereto. We have
16 reviewed internally our forensic and investigative teams'
17 reports, which include looking at all the financial documents
18 provided by the Government, additionally contacting potential
19 witnesses for the Government, most notably investors.

20 Based on the totality of our investigation and
21 extensive plea negotiations with the Government, Mr. Touizer
22 and I came to the conclusion that this Plea Agreement was in
23 his best interest and that the Government's facts as proffered
24 could prove the case beyond a reasonable doubt.

25 THE COURT: And Mr. Lyons, could you be specific with

1 regard to the materially false and fraudulent statements that
2 Mr. Touizer made to investors regarding the use of investor
3 funds?

4 MR. LYONS: Yes, Your Honor.

5 Which was part of the Government's discovery and
6 which -- I'm not sure if you have the Factual Proffer before
7 you. There were several material misrepresentations that were
8 alleged, including such as that "We guarantee investments,"
9 that some of the people that were employed for the various
10 companies for Mr. Touizer represented themselves to potential
11 investors that they themselves had an equity or ownership
12 stake.

13 Additionally, there's investors that allege that
14 representations were made to them that none of the previous
15 companies had failed, when indeed they had. That there were
16 certain guarantees regarding the rate of return on investments.
17 There were material omissions regarding what certain investor
18 money would be allocated to when indeed some of the money went
19 towards consulting and commission fees that were not disclosed
20 to the investors at the time of agreeing to invest the money in
21 the various companies.

22 They are all of that general genre, but I believe
23 there was five or six that are in the Factual Proffer that
24 Mr. Touizer and I have agreed to with the Government were the
25 main material either misrepresentations or material omissions.

1 THE COURT: And were these statements made by
2 Mr. Touizer in an oral or written format or in both?

3 MR. LYONS: Most of them were made orally over the
4 phone, either -- the way it worked, people that -- other
5 co-conspirators who have already pled guilty in this case,
6 Mr. Reech and Mr. Suster, had originally -- with other call
7 room people that were employees or 1099d contractors, would
8 originally solicit the investors from one of these marketing
9 lists that you can purchase. And then if the investor was
10 close to closing on the deal, Mr. Touizer would act mainly as
11 the closer, since he was the CEO and the owner, the majority of
12 the company.

13 There were materials that were exchanged, but I don't
14 think it's alleged that the materials in themselves in any way,
15 such as brochures and infomercials, and things of that genre --
16 I don't believe there's any allegations that those materials
17 were false or misleading, but that the substance of the oral
18 communication to the potential investor was.

19 THE COURT: And with regard to the oral statements,
20 were these recorded or were they through victim statements as
21 to what those individuals --

22 MR. LYONS: There was --

23 THE COURT: -- believed Mr. Touizer represented?

24 MR. LYONS: Both. There was wiretap surveillance that
25 did deal with body cams and things of the nature. But my

1 understanding, from listening -- Mr. Gainor and myself and the
2 investigative team listening to all the calls and the body cam
3 wires, that the majority or all of the majority of the
4 misrepresentations may have been prior to that, and that, if
5 there was any, it was with co-conspirators that have already
6 pled guilty in this case.

7 THE COURT: And did you also receive emails that would
8 support the materially false statements?

9 MR. LYONS: Yes, I did.

10 THE COURT: And were those emails as well reviewed
11 with Mr. Touizer?

12 MR. LYONS: Yes. All of the discovery was reviewed
13 with him.

14 THE COURT: All right. Thank you, sir.

15 Mr. Touizer, is Mr. Lyons accurate? Have you had a
16 full discussion relating to the elements of the offense of
17 conspiracy to commit mail and wire fraud, as well as a full
18 review of all of the discovery that the Government has
19 provided?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: Do you have any questions at all relating
22 to the elements of the offense or any of the information that
23 the Government has provided to you and your attorneys?

24 THE DEFENDANT: No, Your Honor.

25 THE COURT: Mr. Cruz, if the Government will set forth

1 an independent factual basis for the plea.

2 MR. CRUZ: Absolutely, your Honor. I'm going to read
3 from the two-page Factual Proffer that all parties have signed,
4 Judge. There's only one change that we all agreed to. We all
5 initialed it, and you'll see it on the first page, the second
6 paragraph. It's typed "2008." We crossed it out and it's
7 actually 2010.

8 With that, Judge, had this case proceeded to trial,
9 Daniel Joseph Touizer and the Government agree that the
10 Government would have proven the following facts beyond a
11 reasonable doubt. The parties agree that these facts, which
12 are true, do not include all facts known to the Government and
13 the Defendant relating to the Indictment. The parties agree
14 that these facts are sufficient to prove the guilt of the
15 Defendant as to Count 1 of the above-referenced Indictment.

16 From sometime in 2010 through sometime in 2017, in the
17 Southern District of Florida and elsewhere, Daniel Joseph
18 Touizer conspired with Jason Kevin Reech, Saul Daniel Suster,
19 and others to defraud many individuals. This Defendant and
20 others participated in a scheme to defraud that raised millions
21 from the sale of stock and other interests in Touizer's
22 investment companies. These companies included, but are not
23 limited to, Omni Guard, Infinity Diamonds, Infinity Direct
24 Insurance, doing business as Covida Holdings, Wheat Capital
25 Management, and Wheat Self-Storage Partners I, II, and III.

1 This conspiracy occurred by means of materially false
2 and fraudulent pretenses, as well as material omissions, to
3 knowingly devise a scheme and artifice to defraud and to obtain
4 money and property through the delivery of certain mail matter
5 and through certain wire communications, contrary to Title 18,
6 United States Code, Sections 1341 and 1343, all in violation of
7 Title 18, United States Code, Section 1349.

8 Touizer was founder, controlling shareholder, and
9 chief executive officer of Investment Diamonds, Omni Guard,
10 Covida, WCM, and Wheat LPs. Touizer hired Reech, Suster, and
11 others to, among other things, solicit potential investors
12 from, quote/unquote, phone rooms that Touizer oversaw. In
13 these phone rooms, Reech, Suster, and others acted as fronters
14 who called potential investors whose names appeared on the lead
15 list. Once a person showed interest in investing, Reech,
16 Suster and others, fronters, referred the potential investors
17 to Touizer so that Touizer could close that deal. Touizer
18 acted as the closer on nearly all of the stock sales. Touizer
19 organized and led this criminal conspiracy that involved more
20 than five participants, and his misconduct was otherwise
21 extensive.

22 During the offer and sale of the stock, the Defendants
23 and their co-conspirators often used aliases or otherwise
24 provided false and fictitious names to investors to hide the
25 Defendant's and co-conspirators' true identities. To create

1 the illusion that Investment Diamonds and other investment
2 companies were profitable, Touizer paid Suster to falsely pose
3 as an investor. Suster lied to investors by telling them that
4 he was a successful investor in the investment companies and
5 that his investments with the companies made him a significant
6 profit.

7 This Defendant and his co-conspirators made materially
8 false and fraudulent statements to investors during the --
9 regarding the use of investor funds. For example, Touizer
10 asserted in an email to an Investment Diamond investor, dated
11 March 8th, 2013, that, quote, funds would be used to develop
12 the Advisor Network, close quote. In fact, there was no
13 Advisor Network. Once one investment company failed, Touizer
14 often funded the start up of his next investment company with
15 money raised from previous investors. To create the illusion
16 of success, Touizer sometimes paid new investors dividends,
17 quote/unquote, with prior investors' money.

18 Touizer and his employees made other false statements
19 to investors to trick them into investing, including, but not
20 limited to, that no commission or fees would be charged to
21 investors. That the investment companies were a safe
22 investment, profitable investment, and one where you won't lose
23 money. That the investment companies were successful and
24 profitable. That Touizer did not personally take a salary or
25 draw on funds invested in certain investment companies, and

1 that investor funds would be used for sales and marketing,
2 working capital, and general corporate purposes.

3 Finally, Your Honor, this Defendant and his
4 co-conspirators concealed from their investors that the
5 Defendants and their co-conspirators used investor proceeds to
6 pay themselves and their co-conspirators undisclosed
7 commissions and fees.

8 Those are the facts, Your Honor.

9 THE COURT: All right. Thank you, Mr. Cruz.

10 Mr. Touizer, did you hear the statement of facts
11 Mr. Cruz presented to the Court?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: Are those facts true?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: Before the Court, Mr. Touizer, is a
16 two-page Factual Proffer. Did you read this completely?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: Did you understand every word?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: Did your attorneys answer all of your
21 questions?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: Are these facts contained on these two
24 pages true?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: And I also see there is a change, and it
2 states: "From sometime in 2010 through sometime in 2017." Did
3 you initial that change?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: And is this your signature on the second
6 page, sir?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: Referring to the 16-page Plea Agreement,
9 have your attorneys answered all of your questions?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: Is there anything at all within this Plea
12 Agreement that you do not understand or you would like me to
13 explain to you?

14 THE DEFENDANT: No, Your Honor.

15 THE COURT: And is this your signature on the
16 sixteenth page?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: As well, Mr. Gainor, these are your
19 signatures on both documents?

20 MR. GAINOR: Yes, Your Honor.

21 THE COURT: And Mr. Lyons, your signatures as well?

22 MR. LYONS: Yes, Your Honor.

23 THE COURT: And Mr. Cruz, are these your signatures?

24 MR. CRUZ: Yes, Your Honor.

25 THE COURT: Mr. Lyons, do you believe that you

1 received all the discovery in this case?

2 MR. LYONS: I do.

3 THE COURT: Is this Factual Proffer consistent with
4 the true facts in the case?

5 MR. LYONS: It is.

6 THE COURT: Would you agree that if the Government had
7 presented these facts at the time of trial, the Government
8 would meet its burden of proving each of the elements of
9 conspiracy to commit mail and wire fraud?

10 MR. LYONS: Yes, I do.

11 THE COURT: Thank you, sir.

12 Mr. Touizer, do you have any questions at all, sir?

13 THE DEFENDANT: No, Your Honor.

14 THE COURT: It's the finding of the Court that in the
15 case of United States of America v. Daniel Joseph Touizer that
16 the Defendant is fully competent and capable of entering his
17 informed plea of guilty, that Mr. Touizer is aware of the
18 nature of the charge and the consequences of his plea, and
19 Mr. Touizer's plea of guilty is a knowing and voluntary plea
20 that is supported by an independent basis in fact that does
21 contain each of the essential elements of the offense.

22 Mr. Touizer, the Court accepts your plea of guilty to
23 the charge of conspiracy to commit mail and wire fraud, and you
24 are adjudicated guilty of this offense.

25 The Court will defer sentencing in your case,

1 Mr. Touizer, until Friday, July 20th, at 3:30 p.m. in this
2 courtroom.

3 Between now and then, you and Mr. Gainor and Mr. Lyons
4 will be meeting with a probation officer that will ask you many
5 questions in order to complete a Presentence Investigation
6 Report. I would suggest that your answers be as thorough as
7 possible, since the Court will be relying upon those answers.

8 Following the completion of the report, you, as well
9 as the Government, will have a full opportunity to review the
10 report and file any objections to the accuracy of the report.

11 Mr. Cruz, is there a problem with that date, sir?

12 MR. CRUZ: No, Your Honor.

13 I just wanted to alert the Court it's likely that
14 under the local rules -- the sentencing hearing may last longer
15 than the 30 minutes. I wanted to make sure that fits in Your
16 Honor's schedule.

17 THE COURT: How much do you believe that we'll need?

18 MR. CRUZ: Judge, there are certain issues that we
19 have agreed in good faith to resolve. At this juncture,
20 though, even if we resolve that, I think at least an hour's
21 time. If we're going to need more, we'll, of course, alert the
22 Court. And if you need something on the docket, we'd be happy
23 to accommodate that filing.

24 COURTROOM DEPUTY: Let's do Tuesday, July 24th, at
25 3:00, and I'll set an hour.

1 THE COURT: Does Tuesday, July 24th, at 3:00 p.m.,
2 work for the parties?

3 MR. LYONS: Yes, Your Honor.

4 MR. CRUZ: Yes, Your Honor.

5 THE COURT: All right. Then Mr. Touizer, the
6 sentencing hearing will be on Tuesday, July 24th, at 3:00 p.m.
7 in this courtroom. If there are individuals that you would
8 like to have present to support you or to speak on your behalf,
9 please advise them of the date and time of the hearing.

10 As well, if there is anything that you would like to
11 say at that time in mitigation of your sentence, that would be
12 the appropriate time to speak.

13 Do you have any questions at all, Mr. Touizer?

14 THE DEFENDANT: No, Your Honor.

15 THE COURT: Mr. Lyons, is there anything further?

16 MR. LYONS: No, Your Honor.

17 Thank you.

18 THE COURT: Mr. Cruz, anything further?

19 MR. CRUZ: No, Your Honor.

20 Thank you.

21 THE COURT: Okay. Have a good afternoon. Happy
22 Mother's Day to everyone.

23 (Proceedings concluded at 2:33 p.m.)

24

25

1 UNITED STATES OF AMERICA)

2 ss:

3 SOUTHERN DISTRICT OF FLORIDA)

4 C E R T I F I C A T E

5 I, Yvette Hernandez, Certified Shorthand Reporter in
6 and for the United States District Court for the Southern
7 District of Florida, do hereby certify that I was present at
8 and reported in machine shorthand the proceedings had the 11th
9 day of May, 2018, in the above-mentioned court; and that the
10 foregoing transcript is a true, correct, and complete
11 transcript of my stenographic notes.

12 I further certify that this transcript contains pages
13 1 - 27.

14 IN WITNESS WHEREOF, I have hereunto set my hand at
15 Miami, Florida this 21st day of July, 2018.

16
17 /s/Yvette Hernandez
18 Yvette Hernandez, CSR, RPR, CLR
19 Certified Shorthand Reporter
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21 Miami, Florida 33128
22 (305) 523-5698
23 yvette_hernandez@flsd.uscourts.gov
24
25

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION
CASE NO. 0:17-cr-60286-BB-1

UNITED STATES OF AMERICA,

Plaintiff,

July 24, 2018
10:00 a.m.

vs.

DANIEL JOSEPH TOUIZER,

Defendant.

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TRANSCRIPT OF SENTENCING
BEFORE THE HONORABLE BETH BLOOM
UNITED STATES DISTRICT JUDGE

Appearances:

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1 (Call to order of the Court, 10:00 a.m.)

2 COURTROOM DEPUTY: Calling Case Number Criminal
3 17-60286, United States of America v. Daniel Joseph Touizer.
4 Counsel, please state your names for the record,
5 please.

6 MR. CRUZ: Your Honor, good morning. Roger Cruz for
7 the United States. Judge, I have a few people at my counsel
8 table. You met my co-counsel Gysel Valdes. Also from my
9 office is Daren Grove. He's with the Asset Forfeiture Section
10 and also with our office, involved with the day-to-day analysis
11 of these forfeitures and restitutions.

12 Judge, you've met the three case agents that are at
13 counsel's table also. We have Agent Abelard. We have Agent
14 Kule-Thomas and Agent Brandon.

15 THE COURT: Good morning to each of you.

16 Go ahead and have a seat.

17 And on behalf of the Defendant?

18 MR. LYONS: Good morning, Your Honor. Christopher
19 Lyons, along with Mark Shapiro, Howard Srebnick, Ronald Gainor,
20 on behalf of the Defendant, Daniel Touizer, who's before the
21 Court today for sentencing.

22 We also, so the Court -- the names may come up. We
23 have David Goldweitz and Marty Williams from Fiske & Company,
24 who are -- the forensic report. We also have Ross Gaffney, who
25 is our investigator on the matter.

1 THE COURT: All right. Good morning to you. And
2 thank you.

3 Please be seated. Just give me a moment to get into
4 the computer.

5 (Pause in proceedings.)

6 THE COURT: All right. This morning, my law clerk
7 received a phone call from Martin Saavedra, Jr. He had
8 received a subpoena and wanted to inquire as to whether he
9 would be released from the subpoena. I did advise my law clerk
10 to advise him he needed to contact the individual who had
11 served him with the subpoena. I have a note that it was the
12 Defendant.

13 Mr. Lyons, is there a need to secure Martin Saavedra's
14 appearance?

15 MR. LYONS: No, there's not.

16 THE COURT: All right. Then perhaps you may want to
17 contact him and release him from the subpoena.

18 And may I have the name of the Probation officer
19 that's present in the courtroom.

20 PROBATION OFFICER: Good morning, Your Honor. Shannon
21 Culberson on behalf of the Probation office.

22 THE COURT: Good morning.

23 (Pause in proceedings.)

24 THE COURT: Mr. Touizer, good morning once again, sir.

25 As you know, the purpose of today's proceeding is to

1 determine an appropriate sentence in your case, a sentence that
2 is sufficient but is not greater than necessary.

3 You were before this Court on May 11th of this year.
4 And at that time you pled guilty to Count 1 of an 11-count
5 Indictment. Count 1 charged you with conspiracy to commit mail
6 and wire fraud, in violation of 18, United States Code, Section
7 1349.

8 In preparation for today's proceeding, the Court has
9 received and reviewed the following items. I will refer to
10 each by docket entry, since each was filed for record:

11 Docket Entry 93 is your Plea Agreement; Docket Entry
12 94 is your Factual Proffer Statement; Docket Entry 112 is the
13 Preliminary Order of Forfeiture that was subsequently amended
14 by way of a motion that was filed without objection, and that
15 is an Amended Preliminary Order, Docket Entry 144; Docket Entry
16 112 [sic] is the Draft Disclosure of the Presentence
17 Investigation Report; Docket Entry 140 is a Sentencing
18 Memorandum filed on your behalf. And attached to the
19 Sentencing Memorandum are letters that the Court has read, the
20 letters from Arie Corcos; Audi Gozlan; Itzhak Bachar; Matvey
21 Gorzhevsky; Orit Touizer, your sister; Rabbi Eliyahu Abergel;
22 Rabbi Laivi Forta; Rabbi Naftali Perlstein; Valerie Muchnick;
23 Yohan Perez.

24 And the Court has received and reviewed the forensic
25 examinations, two separate reports, from Fiske & Company.

1 Docket Entry 142-5 is the forensic examination of Wheat Capital
2 Management, LLC, Wheat Self-Storage Partners I, LP, Wheat
3 Self-Storage Partners II, LP, and Wheat Self-Storage Partners
4 III, LP, dated July 12th, 2008. Docket Entry 142-6 is the
5 forensic examination by Fiske & Company of Covida Holdings,
6 LLC, Infinity Direct Insurance, LLC, Investment Diamonds, LLC,
7 and OmniGuard, LLC, dated April 9th, 2018.

8 Docket Entry 142 is the Final Addendum 1 Disclosure of
9 the Presentence Investigation Report that did attach these
10 documents; Docket Entry 144, as I stated, is the Amended
11 Preliminary Order that the Court signed of forfeiture; Docket
12 Entry 145 is the Final Addendum 2 Disclosure of the Presentence
13 Investigation Report.

14 The Court then did receive late last night Docket
15 Entry 152, the Defendant's Notice of Stipulations Re
16 Sentencing, as well as Docket Entry 153, a Notice of Filing
17 Affidavit in Support of Departure and Variance. And the Court
18 has read the three affidavits from Eric Bush, Stephen Hofer,
19 and Kevin Mannix.

20 Docket Entry 154, the Court received this morning, was
21 Third-Party Ava Argelo's Sworn Petition Asserting an Interest
22 in Specified Real Property Presently Subject to the Court's
23 Amended Preliminary Order of Forfeiture.

24 Have you had a full opportunity to review each of
25 those documents together with your attorney, Mr. Touizer?

1 THE DEFENDANT: Yes.

2 THE COURT: Do you need any additional time, sir?

3 THE DEFENDANT: No.

4 THE COURT: Are there any additional documents that
5 the Court should have received and reviewed in preparation for
6 today?

7 THE DEFENDANT: No, ma'am.

8 THE COURT: Mr. Lyons?

9 MR. LYONS: No, Your Honor.

10 THE COURT: Mr. Cruz?

11 MR. CRUZ: No, Your Honor.

12 THE COURT: And Mr. Lyons, is there any legal reason
13 why sentence should not be imposed today?

14 MR. LYONS: There is not.

15 THE COURT: All right.

16 There were many objections that have been filed on
17 behalf of the Defendant that would affect the calculation of
18 affidavit advisory guidelines. I recognize that there were
19 certain stipulations regarding sentencing and I want to ensure
20 that the stipulation Docket Entry 152 has resolved all of the
21 outstanding objections.

22 Mr. Lyons, have they?

23 MR. LYONS: I believe so. We've resolved that, Your
24 Honor.

25 To the extent there are unresolved objections, I think

1 the parties agreed that it would be subsumed in the variance
2 argument by both parties. And if we need further testimony,
3 then we'll be prepared to do that.

4 THE COURT: All right. So by virtue of the
5 Defendant's Notice of Stipulations Re Sentencing, have all of
6 the objections that would affect the calculation of the
7 advisory guidelines been addressed and agreed to?

8 MR. LYONS: Yes.

9 THE COURT: All right, then.

10 Are there any objections to the facts contained in the
11 Presentence Investigation Report that the Court should be made
12 aware of?

13 MR. SREBNICK: So Judge, as Mr. Lyons has indicated,
14 there are certain facts alleged throughout the PSI that we do
15 object to, but they don't affect the computation of loss. So
16 they don't affect the computation of the guidelines.

17 In presenting to you reasons for a downward departure
18 and a variance limited to the singular issue that the loss that
19 we've stipulated to overstates the offense, depending on how
20 you digest the materials that we'll present to you this
21 morning, that should resolve anything else regarding facts
22 within those paragraphs.

23 So we would suggest, if it's acceptable to the Court,
24 that we make the presentation. And then before we conclude
25 today, we make whatever necessary adjustments to the factual

1 sections of the PSI.

2 THE COURT: All right. So at this point, can you
3 apprise the Court of the paragraphs that are somewhat in
4 dispute? Because I don't want to rely upon facts contained in
5 the Presentence Investigation Report, unless there are specific
6 factual determinations that would resolve those issues.

7 MR. SREBNICK: So I can tell you the ones that remain
8 in dispute. You'll note that in our stipulation last night we
9 indicated the ones that we've resolved. There's one footnote
10 that I'll bring up to your attention in a moment.

11 So remaining in dispute would be Paragraph 28 of the
12 Presentence Investigation Report, insofar -- well, let me take
13 a step back. One moment, please. If I could just have a
14 moment with Mr. Cruz.

15 (Pause in proceedings.)

16 MR. SREBNICK: So Judge, I think the parties stipulate
17 that Mr. Touizer always identified himself by his name,
18 Touizer. That was the only objection we had. That really has
19 nothing to bear on --

20 THE COURT: Well, but it has to bear with regard to
21 any amendment to be made to the Presentence Investigation
22 Report. So to that extent, let me advise Officer Culberson
23 that Paragraph 28 should be amended to include that -- is it
24 just: "Mr. Touizer at all times used his own name and not an
25 alias"?

1 MR. CRUZ: I -- I'm sorry to --

2 THE COURT: What is the stipulation with regard to
3 Paragraph 28?

4 MR. CRUZ: It would be in addition to what's stated in
5 the paragraph, Judge, that the Defendant used his last name,
6 Touizer, in dealing with the investors. I don't believe any
7 other subtraction is necessary from that paragraph.

8 MR. LYONS: Agreed.

9 THE COURT: All right. Then if I may ask that that be
10 included in Paragraph 28.

11 The next paragraph?

12 MR. SREBNICK: Paragraph 32, insofar as it alleges
13 that 80 percent of funds raised from investors went for
14 Mr. Touizer's personal use, that is the subject of the Fiske
15 report and their analysis that will, we believe, suggest that
16 that percentage is inaccurate.

17 THE COURT: All right.

18 The next paragraph?

19 MR. SREBNICK: Paragraph 32 -- well, 33 -- forgive me,
20 Your Honor -- likewise makes reference to 50 to 80 percent of
21 investor proceeds being misappropriated and we'll be objecting
22 to that percentage.

23 (Pause in proceedings.)

24 MR. SREBNICK: Are you ready?

25 THE COURT: Yes.

1 MR. SREBNICK: 34, similarly, we will present evidence
2 that funds were, in fact, used for business purposes. And
3 while there were, no doubt, misrepresentations made, we will
4 provide the proffer, and supported by evidence, if necessary,
5 that funds were used for the stated purposes of trying to make
6 the businesses succeed.

7 THE COURT: I'm sorry. Can you be very specific as to
8 what portion of that paragraph -- so you're not contesting the
9 making of numerous materially false and fraudulent statements.
10 So what -- what subsection letter are you contesting?

11 MR. SREBNICK: One moment, Your Honor.

12 (Pause in proceedings.)

13 MR. SREBNICK: So Judge, just -- it may be a technical
14 point, but the last sentence, to the extent that it implies
15 that no funds were used for working capital and business
16 purposes, we will prove that, in fact, funds were used for that
17 purpose.

18 THE COURT: But it says that investor funds would be
19 used or sales and marketing, working capital, and general
20 purposes. So what portion of Subsection J is inaccurate?

21 MR. SREBNICK: Maybe I'm not capturing the point.
22 There were false statements made by Touizer to induce
23 investors. Some of the money went to pay, for example,
24 commissions to the codefendants, Suster and Reech. To the
25 extent that the PSI is suggesting that no money went for

1 purposes of sales, marketing, working capital, and general
2 corporate purposes, we're presenting evidence that, in fact,
3 monies were used for those purposes.

4 THE COURT: So if, in fact, that statement was made,
5 it's not false because monies went to working capital?

6 MR. SREBNICK: That's right.

7 THE COURT: All right, then.

8 MR. SREBNICK: Not every dollar went for it because
9 I've just described for you the Suster and Reech scenario.

10 THE COURT: All right. Next paragraph?

11 MR. SREBNICK: 37. We think that paragraph should be
12 removed, insofar as it alleges matters that are the subject of
13 a dismissal of money laundering. I think the prosecution was
14 going to agree to that one.

15 MR. CRUZ: I mean, we agree to dismiss the money
16 laundering counts. It's relevant to the allegations in the
17 Indictment. If Your Honor feels that counts of dismissal
18 should no longer be referred in Her Honor's PSI as to Touizer,
19 then I defer to Your Honor.

20 THE COURT: I'm merely referring to facts that are in
21 dispute. Is that a fact that's in dispute?

22 MR. CRUZ: Well, yes, Judge, it is.

23 THE COURT: All right.

24 The next paragraph?

25 MR. SREBNICK: 38. Just the one sentence that says:

1 "19 million fraud to 150 investors." I think the stipulation
2 resolves that -- that objection.

3 THE COURT: With regard to the 19 million, is there a
4 stipulation that it was less than 150 investors?

5 MR. CRUZ: No, Judge. There is no stipulation as to
6 the number of investors, just the amount of the loss is what
7 we've agreed to for 2B1.1, Judge.

8 THE COURT: Is Mr. Touizer now saying that he and his
9 co-conspirators did not falsely and fraudulently cause over 150
10 individuals to invest in the investment company?

11 MR. SREBNICK: Right. The number they've stipulated
12 to was 10 or more. We will show that of the three entities
13 that remain the subject of the case, OmniGuard, Covida, and
14 Investment Diamonds, the number of investors is approximately
15 46 investors total, approximately. So it's less than 150.

16 THE COURT: All right. The next disputed fact?

17 MR. SREBNICK: Paragraph 42, insofar as it, again,
18 refers to \$19 million and the percentages of 50 to 80 percent
19 of being misappropriated for non-business purposes.

20 THE COURT: Well, it states: "The FBI's forensic
21 accounting shows that \$19 million came into the Touizer
22 investment companies." Is the Defendant prepared to show that
23 the FBI's forensic accounting did not show that?

24 MR. SREBNICK: One moment.

25 (Pause in proceedings.)

1 MR. SREBNICK: If your question, Judge, is: Does the
2 FBI's report allege that, I think it does.

3 THE COURT: Then that paragraph would be consistent
4 with what was provided, correct? You may be disputing the
5 accounting. But, in fact, was that provided and did it show,
6 through the FBI's forensic accountant, that \$19 million came
7 into the Touizer investment companies?

8 MR. SREBNICK: To the extent that it included entities
9 other than the three that are now the subject -- for example,
10 it included Wheat -- then the answer is yes.

11 THE COURT: All right. Then let's address those
12 paragraphs that are truly in dispute.

13 MR. SREBNICK: I'm sorry?

14 THE COURT: Let's address the paragraphs that are
15 truly in dispute factually.

16 MR. SREBNICK: And Judge, in terms of Paragraph 42,
17 you have our point about the 50 to 80 percent. But yes, the
18 FBI report, I think, is making that accusation.

19 THE COURT: All right. Next paragraph?

20 MR. SREBNICK: 43 deals with money laundering again,
21 and we object to that.

22 THE COURT: Well, it states: "The Indictment also
23 charges Touizer with conspiracy to commit money laundering and
24 two counts of substantive money laundering." Has the
25 Indictment -- I mean, it still states that. So that is, in

1 fact, a fact. I'm addressing those facts that are truly in
2 dispute.

3 MR. SREBNICK: To the extent that the second sentence
4 alleges what the Indictment says, then we agree with you.
5 If that's all that that paragraph purports to do, no problem.

6 THE COURT: All right. Any further paragraphs?

7 MR. SREBNICK: Paragraph 44 -- one moment, Your Honor.

8 (Pause in proceedings.)

9 MR. SREBNICK: Nothing on 44. That's just what the
10 witnesses said.

11 Paragraph -- one moment -- 48, which doesn't go to the
12 guideline computation, but it deals with some changing of
13 domain names.

14 Does the prosecution have a position on that?

15 MR. CRUZ: Similar to the Indictment, that's a fact
16 that -- it happened. We feel that it shows one thing. They
17 have an excuse as to why it doesn't show it. I think it should
18 stay.

19 MR. SREBNICK: All right. So that remains in dispute.

20 Paragraph 53. That alleges that: "Of 19 million in
21 stolen funds." We object to that characterization. That
22 alleges that 7 million was withdrawn in cash. What the
23 evidence will show is that the 7 million -- most of it was from
24 Mr. Touizer's personal accounts, not from the investor monies
25 in the three entities that are at issue in the case, OmniGuard,

1 Covida, and Investment Diamonds. The amount of cash that the
2 FBI traced as having been withdrawn from those entities, as
3 corroborated by the Fiske report, is under \$500,000.

4 THE COURT: All right. Any other paragraphs?

5 MR. SREBNICK: No, Your Honor.

6 THE COURT: All right. Then as the Court has, by way
7 of the stipulation, addressed any pending objections that may
8 affect the calculation of the advisory guidelines, Mr. Touizer,
9 the advisory guidelines reflect a base offense level of 7. The
10 parties, by way of their stipulation, have agreed that under
11 2B1.1 the loss amount attributable to Mr. Touizer's relevant
12 conduct is more than 3 and a half million, but less than 9 and
13 a half million. So the offense level is increased by 18.

14 There is no dispute with regard to the offense
15 involving 10 or more victims and resulted in substantial
16 financial hardship to one or more victims. The offense level
17 is further increased by two.

18 And there's no dispute that Mr. Touizer was an
19 organizer or leader of a criminal activity that involved five
20 or more participants or was otherwise extensive. There's an
21 additional four-level increase, resulting in an adjusted
22 offense level of 31.

23 There is no dispute that Mr. Touizer is entitled to a
24 three-level reduction based on his acceptance of
25 responsibility, resulting in a total offense level of 28.

1 Mr. Touizer has a criminal history category of I, resulting in
2 an advisory guideline range of 78 to 97 months. Is that
3 accurate?

4 MR. SREBNICK: Yes, Your Honor.

5 MR. CRUZ: Yes, Your Honor.

6 THE COURT: Mr. Touizer, in considering the 3553(a)
7 factors, I understand that your attorneys will be calling some
8 witnesses, but I did want to advise you, sir, that if there is
9 anything that you would like to say in mitigation of your
10 sentence, certainly you may do so. If there are individuals
11 that you would like to call to speak before the Court, they may
12 certainly come before the Court. I'm certain that your
13 attorneys are going to make argument, but I did want you to
14 know that you had that opportunity, sir.

15 Mr. Srebnick or Mr. Lyons? I'm not certain who is
16 going to be presenting.

17 MR. CRUZ: Your Honor, if I took what Your Honor said,
18 we've moved on to after the calculation and we've all agreed on
19 the advisory guideline sentence that Your Honor will consider
20 in judging Mr. Touizer for his crimes.

21 I'd ask that counsel abide by the terms of our
22 agreement. The Sentencing Memorandum did have a variance
23 section involving certain letters and positions that Your
24 Honor, as always, thoroughly identified and stated that you
25 have read. I'm going to ask that you suspend your disbelief

1 and set those aside because I'm fairly confident that the
2 Defense will ask you to not adjust Mr. Touizer's sentence based
3 on those letters or the positions in the variance motion, other
4 than what Mr. Srebnick artfully already explained.

5 They have a variance motion based solely on the
6 overrepresentation of the loss and the case as a whole. And
7 certain other factors that revolve around the use of funds and
8 marketing and things of that nature. But I'd like to make sure
9 that the rest of the sentencing goes along the path that we've
10 stipulated to.

11 So with that, I turn it over to Mr. Srebnick.

12 MR. SREBNICK: And Judge, I concur.

13 THE COURT: All right.

14 MR. SREBNICK: If I could just have a moment.

15 THE COURT: Certainly.

16 (Pause in proceedings.)

17 MR. SREBNICK: And Your Honor, what we've tried to do
18 today in order to streamline the process, we've spent time
19 yesterday with the Government in person and by phone, at your
20 suggestion. It turned out to be a productive conversation.
21 You've got the guideline range now contemplated by the parties.

22 And then the only issue we're going to ask the Court
23 to consider in deciding whether to depart or vary downward from
24 the recommended sentence of the Government of 78 months is the
25 limited issue of whether the guideline range that has been

1 determined based on that loss figure overstates the seriousness
2 of the offense for the reasons that we've described in that
3 stipulation, from our point of view, that we could -- we can
4 present to you first by way of a proffer. And I think the
5 parties have agreed we will try to proceed by proffer, and that
6 if there's any issue that remains factually a question for you
7 or even for the Government, we do have all the witnesses
8 outside.

9 And if I could lay the framework down, then, for how
10 we come up with the proposition that a departure variance
11 downward for loss overstating the offense fits within the case
12 law. So we cited the case of Forchette. And there's a
13 commentary to the guidelines that specifically contemplates
14 this exact departure variance. It's United States Sentencing
15 Guideline 2B1.1, Comment 20, Subsection (C), Downward Departure
16 Consideration, quote: There may be cases in which the offense
17 level determined under this guideline substantially overstates
18 the seriousness of the offense. In such cases, a downward
19 departure may -- may be warranted."

20 The Government was good enough to cite some cases over
21 the last day or so, one of which was a case called United
22 States v. Marvin. It's at 28 F.3d 663. It's a Seventh Circuit
23 case from 1994. And that case discusses the distinction
24 between two kinds of frauds. And it cited a case called
25 Schneider, and I'd like to read a small passage so we get the

1 framework established here today. "In a case called Schneider,
2 written by Judge Posner of the Seventh Circuit, we distinguish
3 between the true con artist, who has no intention of performing
4 the undertaking he has promised, from the less harmful con
5 artist, who initially lies to get a contract but fully intends
6 to perform the underlying services promised.

7 "In the words of Judge Posner, he said: 'One is where
8 the offender does not intend to perform his undertaking, the
9 contract or whatever, he means to pocket the entire contract
10 price without rendering any service in return. In such cases,
11 the contract price is a reasonable estimate of what we are
12 calling the expected loss.

13 "The other type of fraud is committed in order to
14 obtain a contract that the defendant might otherwise not
15 obtain, but he means to perform the contract and he's able to
16 do so, and to pocket as the profit from the fraud only the
17 difference between the contract price and his costs.

18 "And so it puts a different view of the fraud
19 depending on what were the intentions of the defendant. For it
20 is certainly a fraud to lie to someone to induce them to give
21 the defendant money that the investor would not otherwise have
22 given but for the misrepresentation," and that's what
23 Mr. Touizer has admitted he did. But the characterization up
24 through the last few weeks of this case was that it was
25 Mr. Touizer's intention to simply run off with all of that

1 money and numbers like 50 percent, 80 percent, as high as 90
2 percent was suggested by the FBI.

3 You may recall, Your Honor, that at the time of the
4 detention hearing, you took some testimony and the Defense, at
5 that time, early in the case, presented a witness, some
6 accounting analysis of just the QuickBooks of the businesses
7 that are at issue. And so that we're clear, we're talking
8 about OmniGuard, Covida, and Investment Diamonds. And it's --
9 Docket Entry 29 is your order -- and if I could ask that we use
10 the ELMO. I'm sorry, Judge. I'm not exactly familiar with how
11 we turn it on.

12 And I think there's a switch to convert from the
13 laptop to your screens.

14 There we go.

15 Now, at that time in the case, when you were deciding
16 the issue of detention, the entities of Wheat I, II, III and
17 Capital were a feature of that presentation. Those are no
18 longer part of the discussion of the fraud proceeds that made
19 up the larger number, the \$19 million that's no longer at
20 issue.

21 You noted that testimony was presented by an
22 accountant relying on certain QuickBooks computer files;
23 however, the accountant acknowledged that his testimony was
24 limited to the computer files and did not include a review of
25 any bank records or the actual verification of the information

1 contained in QuickBooks. This would include a critical
2 evaluation as to whether certain investments were made or
3 expenses actually incurred, rather than the commingling and
4 diverting of funds.

5 And so as a Johnny-come-lately to the case, having not
6 been there for the detention hearing, nor was Mr. Lyons,
7 Mr. Gainor, or Mr. Shapiro, but having gone back and tried to
8 catch up, so to speak, it certainly appeared to us that that
9 was an important point. That in order for the Court to better
10 understand how were these funds actually used, it should
11 include a more detailed forensic analysis. And that's where
12 the Fiske team comes in. I believe Mr. Goldweitz is here,
13 Mr. Williams are here, and you've had the benefit of their
14 report.

15 And I'm not an accountant. I'm going to speak in
16 layman's terms. They're available to answer any questions.
17 But what they did is almost precisely what was suggested by the
18 Court, which is take a look at the QuickBooks, but reconcile
19 them with the bank records of these entities. And their
20 conclusion is summarized for you in the Fiske report. And it
21 appears to them -- it is their professional opinion -- and
22 there are a couple of important points about their professional
23 opinion -- first, that despite a lot of discussion about
24 millions of dollars of cash coming out of these companies and
25 disappearing, it turns out that their analysis, which concurs

1 with the FBI's report, is that as to those three entities' cash
2 withdrawals -- and we say "withdrawals." It really means
3 cashier's checks, green dollar bills coming from the bank or
4 even a check payable to cash -- totals roughly \$460,000.

5 But there's an important footnote to that. That
6 includes how much money came out of the entity, not all to
7 Mr. Touizer. Some of it was a check, for example, to
8 Mr. Suster. But what it doesn't reflect, in terms of the FBI's
9 original analysis to Your Honor, is money going in to explain
10 the money coming out. So the FBI gave you a picture of just
11 how much cash came out.

12 And the simplest example that the Fiske team could
13 give me so that I could illustrate it for you -- this is in the
14 Fiske report. It's attached as Exhibit C. And I've done a
15 poor job of highlighting it, but I think we'll be able to zero
16 in on it. Part of the \$460,000 of cash that was withdrawn, you
17 will see it as a check. I'll put my finger on it. Says: "A
18 cashier's check for \$190,000." And so, of course, according to
19 the FBI, that's cash out. But what the FBI's analysis doesn't
20 take into account, that Mr. Touizer, who is the person who
21 takes the cash out, had a short time before, a couple months
22 earlier -- had deposited \$190,000 in.

23 So cash in of 190,000, cash out of 190,000 on the same
24 ledger entry of "Touizer Loan," it has a net effect of zero to
25 the investors of this entity. And I believe this is the

1 entity -- is it Covida -- Covida. That accounts for half
2 almost of the entire cash transactions that are at issue here.
3 It's certainly the largest one that they brought to my
4 attention.

5 And so at least with regard to the concerns that I
6 know the Court had at the beginning of the case about
7 explaining cash out, I thought it was important for the Court
8 to understand that Touizer puts the money into this entity. He
9 lends his personal funds to the entity. He takes the money
10 back. That is net effect of zero.

11 Now, when the Fiske team did their analysis, they had
12 to do a -- they couldn't -- well, they had to set some sort of
13 parameter and they looked at every transaction over two
14 thousand dollars. So to be fair, so that we don't overstate
15 our position, they didn't go down to the transactions below
16 that cutoff. But they believed in their professional opinion
17 that that's an adequate, competent, generally accepted way of
18 doing a reconciliation of QuickBooks to the bank statements.

19 So that we're clear, the Fiske team looked at the bank
20 statements from the banks, the hard evidence, shall we say, to
21 give them comfort that the QuickBooks was accurately reflecting
22 reality of the transactions that were occurring.

23 Now, there's limitations to what an accountant can do.
24 They weren't there in real time. So they have to accept when a
25 document says: "Check payable to" -- and I'll use a name that

1 you mentioned today -- "Eric Bush," who works for some media
2 company, or any of the other so-called consultants who worked
3 for these entities. The Fiske team didn't call those entities,
4 those people, to corroborate that they did the work that they
5 were paid to do. The Fiske team did not call those people to
6 find out what did they do with the money they received.

7 So we took the next step. We hired a private
8 investigator. His name is Ross Gaffney. He's here in court
9 today. I say "we." I can't take any credit for it. I wasn't
10 there when they did it. So I'm here just, again, later in the
11 game.

12 Mr. Gaffney was tasked with contacting as many of the
13 people who received the money from these entities as expenses,
14 meaning company expenses to third parties who are getting
15 so-called fees, consulting fees, and he interviewed them and
16 confirmed through those interviews that each of them did the
17 work that they were obligated to do and that there was no
18 subterfuge, no under-the-table kickback of trying to circle
19 money back to Danny Touizer. We gave you last night, in
20 preparation, the three affidavits; to give you, by way of an
21 example, people who don't live in this community. And rather
22 than make them travel, they opined under oath that they did the
23 job they were hired to do.

24 And to be clear, these are fees not to raise money
25 from investors. These are not people trying to recruit

1 investors. These are fees to entities and people that are
2 providing services to generate sales, revenues. And Mr. Lyons,
3 in a moment, will spend a few minutes describing the three
4 entities so you get a feel for the reality of these entities.
5 That these were companies, as Mr. Lyons and Shapiro will show
6 you, that were making a go of a business venture to try to be
7 profitable. We admit that in the end the three entities
8 failed. They did not succeed in the business community. But
9 there was a genuine effort, hard work, real people working to
10 make a success of these ventures for the benefit of the
11 investors.

12 And so Mr. Gaffney, the investigator, interviewed
13 folks that were receiving payments for services. Then
14 Mr. Shapiro, Mr. Lyons, themselves, spoke to some of these
15 consultants to corroborate what Mr. Gaffney had reported to the
16 Defense team. And then we asked some of them to be here today,
17 who wouldn't have to travel at a great distance, in case
18 there's any question about the bona fides of the payments made
19 to these third parties, who, according to the QuickBooks,
20 corroborated by the bank statements, were receiving payments
21 for services.

22 I think that would probably be -- if I could just
23 check -- I think this would then be, if the Court permits --
24 allow me to transition to my colleagues so you can learn a
25 little bit more about these entities and why Mr. Touizer felt

1 that they were good business opportunities which,
2 unfortunately, in the end did not succeed.

3 THE COURT: Is this going to be through the testimony
4 of Mr. Gaffney?

5 MR. SREBNICK: Yeah. This is a proffer of Gaffney and
6 others, yes.

7 THE COURT: All right. So did Mr. -- is that why the
8 Court has the benefit of these affidavits from Mr. Bush,
9 Mr. Hofer and Mr. Mannix, is through the work of Mr. Gaffney?

10 MR. SREBNICK: I couldn't hear the last thing you
11 said. Through the?

12 THE COURT: Through the work of Mr. Gaffney?

13 MR. SREBNICK: Yes. Reaching out to them, contacting
14 them, et cetera, yes.

15 THE COURT: Okay.

16 MR. LYONS: May it please the Court, Your Honor.

17 THE COURT: Yes, sir.

18 MR. LYONS: Your Honor, as you know, I think about a
19 week ago we submitted a voluminous amount of material on a
20 thumb drive to Ms. Culberson, to the Government, and to your
21 office. We apologize because most of that material deals with
22 all the four Wheat entities. There's aerial photos of all the
23 land that was purchased throughout Dade and Broward County
24 dealing with public storage. There's a few references we're
25 going to make there, but most of that you can put aside for

1 now.

2 We're going to focus on the three companies -- or
3 actually, the first three companies which began in 2010 and
4 ended sometime in 2014. You know, if you do any Google search
5 right now about -- whether it be Forbes Magazine or any of
6 these financial journals, they'll tell you about 80 to 85
7 percent of all businesses that start up in the United States
8 fail within the first 12 to 18 months. I want to emphasize
9 this because I know the Court is very familiar sitting here, as
10 is the Government who prosecutes these type of fraud cases.
11 And as a typical general statement, you know, these fraud cases
12 typically involve, as Mr. Srebnick referred to, a con man.
13 From inception, his plan, his sienta, his mindset is to steal
14 from the investor and put it in his pocket for Ferraris or
15 whatever else he wants.

16 The opposite is true here with Mr. Touizer, who, I
17 think Mr. Srebnick said from the beginning, he actually
18 believed that all these business models would be successful and
19 not only would the investors get their money back, but they
20 would benefit from the profits. He also had skin in the game,
21 and we'll get into that with the Fiske report.

22 But the first company that really starts in this
23 Indictment is in the fall of 2010. It's a company called
24 OmniGuard. It was a very small company, Your Honor. And it
25 raised less than \$700,000. Not that that's a small amount, but

1 when you compare that to Wheat, which is \$17 and a half
2 million, that all went to land and the building
3 infrastructure -- about \$700,000. The company lasted only
4 about six months. What the sole purpose, really, of this
5 company was, the service, the widget, which all these companies
6 had, was they provided maintenance service contracts when
7 people's warranties expired on home appliances, like your
8 washing machine or your automobile insurance warranty expired.

9 And I think it's important to point out, of less than
10 that 700,000 it looks like almost 70 percent of that money was
11 incurred -- and we provided the invoices as part of the filing
12 that the Court's already reviewed of Eric Bush. Eric Bush was
13 the CFO of Havas Edge. I hope I said that right. But Havas
14 Edge is one of the largest communication companies in the world
15 that provide full-service communication support for companies
16 like OmniGuard. And as you see from Mr. Bush's affidavit --
17 and I'm not going to read it again -- but basically they
18 provided Internet advertising, search models, TV advertising.
19 They produced a commercial. We're actually going to play a
20 couple of commercials for you on the other companies. But
21 since this company only lasted about six months, Your Honor,
22 they also provided web design. And for whatever reason, the
23 public -- there were sales centers calling the people: "Did
24 your warranties expire on your television and your washer and
25 dryer?" It just never got off the ground, and really within

1 six months it was done.

2 And then quickly, about a year later, really about
3 2011, which we're going to spend some significant time on,
4 Mr. Touizer had the idea after consulting with experts in the
5 field, to open up Investment Diamonds. Investment Diamonds, I
6 think, total between debt and capital, Your Honor, raised about
7 \$2.7 million. Okay?

8 And I point out first Mr. Stephen Hofer. And that was
9 one of the affidavits I think the Court reviewed. As what the
10 Court probably knows is he is one of the most world-renowned
11 diamond or gemologist experts, specifically with colored
12 diamonds -- I don't know if we still have it over here. He
13 actually is like the godfather of colored diamonds. He's based
14 in New York. And he wrote a book called "Colored Diamonds."
15 And what the business model and the plan was -- and we have a
16 brochure that we're going to show the Court shortly with
17 another consultant fee company -- and while you're getting that
18 set up --

19 THE COURT: It should be on.

20 MR. LYONS: Your Honor, while we're showing this, one
21 of the things I wanted to make a point was that, as we've said
22 consistently with all the entities in the Indictment, there was
23 a real underlying business model, business goals, business
24 plans, and all the business expenditures were related to
25 further those goals.

1 I know I'm repeating myself. But basically, the
2 employees -- when I say "employees," there were real offices,
3 there were real leases, there were real people there. But the
4 majority, Your Honor, were indeed 1099 independent contractors.
5 And you'll see that in all the invoices and all the Goldweitz
6 Fiske reports, that a substantial amount in all the entities
7 went towards these consulting fees, and it wasn't like there
8 were many W-2 employees.

9 In any event, Mr. Hofer was the expert on colored
10 diamonds. The model that was supposed to be successful, that
11 failed, was that Touizer, with Hofer's expertise, and later on
12 Ms. Sanchez, came up with this model where they would buy these
13 rare-colored gems from Israel and within the US at a wholesale
14 price, and that the pitch would be that people would make that
15 as part of their investment portfolio, like people have money
16 in mutual funds, gold, silver, US bonds, treasuries, that there
17 was a market actually for these type of rare-colored diamonds.
18 That was the business model and Mr. Hofer's affidavit speaks
19 for itself.

20 What happened after that -- I'd like to put up,
21 Mr. Shapiro, the brochure -- there was another consulting fee
22 gentleman that, again, Mr. Gaffney spoke to. There was
23 about -- I think Mr. Srebnick was right -- about two dozen
24 people, Your Honor. Not all of them -- some of them were
25 related to Wheat. So we're not going to talk about that. But

1 Richard Wechsler, who received a little under \$200,000, he was
2 the CEO of Lockard & Wechsler. It's a company that basically
3 creates media placement services, planning. And they, in this
4 case, created the brochure. It's very well-done. I'm sure
5 it's several pages. We can flip through it. But this was the
6 plan. This was the mantra that they sold to the public.

7 And I also believe he's in court. He came down today.
8 His name is Steve Farkas. He's present in the court, Your
9 Honor. I think he came over from the Tampa area, and we
10 appreciate that. He was part of what's called Vistamax
11 Productions. And they actually took some money and paid
12 Mr. Farkas to produce a television commercial that went to the
13 mass market throughout the United States.

14 With the Court's permission -- we did cite the link in
15 the Sentencing Memorandum -- we'd like -- as you know, it's a
16 commercial. It's very short. With the Court's permission,
17 we'd like to play it.

18 THE COURT: Certainly.

19 (Video:)

20 "Even in today's troubled financial market, there is a
21 safe haven for your investments. Natural-colored diamonds have
22 been a proven and safe investment for the past 40 years. The
23 stock market, currencies, and even gold are volatile
24 investments affected by economic turmoil and speculation.

25 "Yet, market prices for natural-colored diamonds are

1 increasing between 10 to 20 percent per year. Diamond prices
2 are going up and they are going to continue to go up. Supply
3 is going to dwindle as new diamond deposits become harder to
4 find, reported by CNBC.

5 "Investment Diamonds offers a unique strategy to
6 diversify and protect your portfolio. Call today and speak
7 directly to a rare asset specialist, who will answer your
8 questions and rush you our free diamond investment guide and
9 DVD. Call the number on your screen right now. The sooner you
10 call, the sooner you can turn your investment into a proven,
11 profitable, and portable asset."

12 (End of video.)

13 MR. LYONS: Your Honor, there was also -- we directed
14 you, as -- again, we're still talking about diamonds. Kevin
15 Mannix. He's actually working with a company called Hybrid
16 Media Services, and the Court probably knows he was paid just
17 under a hundred thousand for his services. And again,
18 Goldweitz and his team of people at Fiske & Company can answer
19 any questions about the invoices or anything they reviewed, and
20 also Mr. Gaffney. But basically, the service he provided for
21 diamonds and Touizer was radio and television advertising and
22 Internet advertising. Okay?

23 And finally, as it relates to diamonds, Your Honor,
24 although she worked on other entities later on, Ms. Sanchez,
25 Alejandra Sanchez, who had a business degree, I believe, from

1 FIU, and she was paid -- it looks like about \$300,000 in the
2 diamonds area. But she was really one of Touizer's right-hand
3 mans, not only helping with the infrastructure of leasing of
4 office space, she also was very much involved with Hofer on
5 selecting the diamonds. And I believe, if I'm not mistaken,
6 she was -- also became a certified GI -- a gemologist, that
7 she, on her own, could select diamonds and photographs were
8 taken of diamonds for the brochures and Internet site. And she
9 worked mainly in the marketing department, not only doing
10 internal writing for the marketing of the companies, but also
11 going out and finding other independent contractors, like
12 Mannix, to help with the marketing.

13 And then really what happened in, I think it was 2013,
14 the public didn't have the appetite to buy rare diamonds and
15 the business failed.

16 So then in 2013, the last company that we're going to
17 talk about, Your Honor -- which is called Infinity Direct,
18 otherwise known as Covida. And what Covida's model was --
19 basically was a national insurance service provider in all 50
20 states, licensed, regulated by each state. And the model was
21 basically to provide health and life insurance.

22 What happened, Your Honor -- and I believe the total
23 raised in that company was \$3.7 million between debt and
24 equity. And what happened was, shortly thereafter, Mr. Touizer
25 learned that the United States Congress had passed, with the

1 President's signature, the Affordable Care Act, now called
2 Obamacare. And as soon as that came into place, the model
3 needed to be changed quickly. And after consulting with
4 experts in the field, they started to market from the consumer
5 the -- let's just call it the elderly crowd, 80 and under, who
6 may be looking for end-of-life, you know, expense insurance for
7 funerals and related burial expenses.

8 And we actually have a commercial that deals with that
9 period of transition. If we can play it now.

10 (Video:)

11 "If you're age 80 or younger, call 800-491-7921 to
12 learn more about your guaranteed acceptance, final expense
13 insurance plan through Covida Insurance Services.

14 "The average funeral now costs over \$10,000, but the
15 most government benefits will pay your family is only \$255,
16 leaving your loved ones to pay your debt.

17 "A final expense whole life insurance plan will pay up
18 to \$25,000 for funeral and other final expenses. There's no
19 medical exam, no health questions, and you'll receive lifetime
20 coverage. Your rates will never increase, your benefits will
21 never decrease, and your plan can never be canceled.

22 "To receive free information about the final expense
23 whole life insurance plan, call 800-491-7921. Also, receive a
24 free prescription discount card by calling now.

25 "You have no obligation. Operators are standing by.

1 Call now."

2 (End of video.)

3 MR. LYONS: Your Honor, I direct -- there's two -- we
4 call them, again, 1099 independent contractors. What we tried
5 to do also was include in the presentation the ones either that
6 we thought had a significant role in what they did, and that
7 usually dovetailed with the amount of money that they billed
8 the company.

9 So in Covida, I direct you to Mark Spies (phonetic
10 listing), who is the owner of Red Buffalo, LLC. And what he
11 did at Covida, really, is he ran the day-to-day sales centers,
12 sales staff, and offered all the various different types of
13 insurance products that Covida was doing. I believe he was
14 paid almost a quarter million dollars, \$247,000. And again,
15 the model was to be licensed in all 50 states throughout the
16 United States.

17 There was also an individual who was paid a little
18 under 200,000, who has 30 years' experience in the health care
19 industry. And what Touizer did was brought him in during this
20 transition and said: "I need your help." And his name is
21 Steven Trattner (phonetic listing), like I said. And what he
22 did is act as a consultant for Covida and giving them marketing
23 materials, operational materials, and various products to
24 provide to the customers.

25 And again, after a good-faith attempt of several

1 years, it did not succeed. And just to summarize, Your Honor,
2 we did, in Goldweitz's report -- I call it the Goldweitz's
3 report, but he's the one, if the Court has any questions, that
4 you'll see -- and we're going to get the exact amount. But I
5 think -- one of the things that I think is important that you
6 see from all these consultant fees, not only in the affidavits,
7 but in the summaries of interviews that Mr. Gaffney conducted,
8 some of them are in court today, one of the theories of the
9 Government, I believe, throughout this case, Your Honor, was
10 that these consulting fees were merely a rouse and they were a
11 conduit to give money back into Touizer's pocket.

12 We've taken the steps at great length, great time,
13 great expense, tracking down people from all over the country
14 to speak to them. These are serious people who are the heads
15 of serious companies. And not one person says that one dollar
16 came back to Mr. Touizer. And the reason why that's
17 significant, and the reason why I believe the FBI's analysis is
18 flawed, because they assumed that all these consulting fees
19 were going into Touizer's pocket. And that's why we have,
20 candidly, the wrong percentages that are throughout the
21 criminal complaint, throughout detention hearings, throughout
22 this whole case.

23 And if you look at these services, there really was an
24 underlying business plan. There were products and services
25 provided. Touizer had skin in the game. He made good-faith

1 effort. He dealt with the best professionals and experts in
2 the industry. And unlike Wheat, where investors are going to
3 get money-plus back, these companies failed for the reasons
4 we've already stated.

5 Thank you for giving us time, Your Honor.

6 THE COURT: Thank you, Mr. Lyons.

7 MR. SREBNICK: Judge, there's another area that the
8 Government expressed concern about early in the case. And it
9 was part of the Factual Basis of the plea where Mr. Touizer had
10 assured investors that he would not draw on funds invested in
11 certain investment companies. And it is true that he did draw
12 on funds of the investment companies, meaning, he took an
13 advance on money from the investment companies. I don't think
14 it was categorized as a salary. We can quarrel with the right
15 terminology.

16 But again, the FBI focused on seeing that these
17 entities were paying American Express invoices for expenses
18 that were in part personal expenses of Mr. Touizer. And so to
19 the extent that Touizer assured investors that he would never
20 draw on the funds, he made that misrepresentation. However,
21 the Fiske report, through bank records, went back and went
22 transaction by transaction and have opined in the report that
23 Mr. Touizer would reimburse the company, promptly, I would add,
24 for any expenses that were personal to Touizer that the company
25 advanced for him on a monthly basis.

1 And so it's similar to the assertions made early in
2 the case by the case agent who testified that cash was going
3 out, but not informing the Court that cash was coming in.
4 Here, we have a similar scenario, where, at first blush, it
5 appears that Touizer is funding his personal expenses through
6 payments by these companies for an American Express card. That
7 part is true. But like with any accounting exercise, you need
8 to see both sides of the transactions. And the Fiske team,
9 Goldweitz and Williams, are prepared, if necessary, to confirm
10 what I'm telling you. They've gone back through those
11 transactions and they observed, through bank statements,
12 Mr. Touizer taking money out of Mr. Touizer's personal account
13 and reimbursing those entities, Omni, Covida, Investment
14 Diamonds, for his personal expenses.

15 That is a different scenario than the person who draws
16 on the funds and doesn't pay it back. I think it's quite
17 apparent that that's a very different kind of scheme, where
18 Mr. Touizer, unlike most people that come before the Court, did
19 reimburse long before this investigation began. He would do it
20 on a monthly basis.

21 Frankly, I think many people in the business world use
22 a company credit card. They put some of their personal
23 expenses on it, but they have to promptly reimburse the company
24 for those expenses that are not attributable to business.

25 Now, the Government has been concerned about: How did

1 Mr. Touizer pay back those expenses? Where did he get the
2 money to reimburse the company? The first point that I think
3 is critical, it didn't come from any of the investors of Omni,
4 Covida, and Investment Diamonds. It came from Touizer's
5 personal bank accounts. And so I asked the Fiske team to
6 please go back through Mr. Touizer's financial history to
7 determine what was his income during the years -- either during
8 or preceding the events in question. And they relied on tax
9 returns. And the tax returns show, in the year 2009, [REDACTED]
10 in reported taxable income; in 2010, [REDACTED] reported taxable
11 income; [REDACTED] in 2011.

12 The Government is aware that Mr. Touizer's income in
13 those years came from a company called Cinergy, you may have
14 heard about. I asked Mr. Goldweitz and Mr. Williams about it
15 to make sure that these were real monies being paid to
16 Mr. Touizer. The Fiske team confirms that the tax returns, the
17 corporate tax returns of Covida were themselves audited
18 financial records that formed the basis for the tax returns.
19 And it confirms that Mr. Touizer was receiving income from
20 sources other than the three entities that are the subject of
21 the case, Omni, Covida, and Investment Diamonds. And I believe
22 the Fiske team has tax returns going beyond the years that I
23 have just highlighted for Your Honor.

24 And so any funds -- I say "any." I don't want to be
25 categorical. To our knowledge, the overwhelming majority of

1 funds drawn from the three entities by Mr. Touizer were
2 reimbursed. And so then I asked the Fiske team, at the end of
3 each of these entities' lives, what was the end balance as
4 between Touizer putting money into the companies versus Touizer
5 having received monies from the companies. And the Fiske team
6 confirms that Mr. Touizer had put more of his own money -- and
7 when I say "his own money," I mean monies not from these
8 investors, not from the Omni, Covida, Investment Diamonds
9 investors, income from other sources -- Touizer had put more
10 money into the entities that are the subject of this case than
11 he took out, couple hundred thousand dollars roughly more in
12 than he took out.

13 THE COURT: Mr. Srebnick, if I may ask why we're
14 limiting the examination to just the three entities that you
15 say are the subject here in the case, Omni, Covida, and
16 Investment Diamonds, and why the Court is not looking at WCM
17 and the Wheat LPs?

18 MR. SREBNICK: Because the Government has withdrawn
19 any claim of loss as to those entities, and early in the case
20 we were able to show -- I say "we" -- the Defense team showed
21 you that the monies from Wheat were invested in land. I
22 believe Mr. Grove from the US Attorney's Office, who represents
23 the Forfeiture Section, has been in discussions with the
24 investors of Wheat, the non-Touizer investors in Wheat, and the
25 issue of Wheat appears to have been resolved by the parties in

1 terms of those investors were not the subject of what's
2 remaining here today.

3 MR. CRUZ: Unfortunately, Judge, that's not completely
4 accurate. For purposes of today's sentencing hearing under
5 2B1.1, the Government and the Defense team have agreed to limit
6 the losses. And the manner in which we did that was to remove
7 the Wheat fraud scheme from the loss amount.

8 But as far as his Factual Proffer, which clearly and
9 convincingly states that he did defraud individuals through the
10 Wheat companies, it's clear as day on Docket Entry 94 --

11 THE COURT: Well, that's why I asked the question.
12 I'm not certain why there's this limitation to these three
13 entities and if there was some concession that the Court should
14 be made aware of. But that seems to be inconsistent with the
15 Factual Proffer Statement and to what Mr. Touizer admitted to.

16 MR. SREBNICK: So as to Wheat, Touizer made some of
17 the kinds of statements that were overenthusiastic statements
18 about the possibilities of Wheat and --

19 THE COURT: Well, I'm sorry. Overenthusiastic
20 statements or false and fraudulent statements?

21 MR. SREBNICK: As well as misrepresenting that there
22 had been no prior lawsuits. There's many different categories
23 and some were made to an FBI agent who didn't invest. But my
24 understanding is -- and the Fiske team did do an analysis of
25 Wheat. So if we want to get into it, we're prepared to.

1 THE COURT: I'm not certain why it would not -- I've
2 received a report from Fiske & Company related to the Wheat
3 companies, dated July 12. I merely ask why the limitation is
4 on these three companies.

5 MR. SREBNICK: I was under the understanding until a
6 minute ago, when Mr. Cruz is injecting Wheat back into it -- he
7 actually asked me -- and correct me if I'm wrong. I had Wheat
8 affidavits ready to send to you. And he asked me: "Don't send
9 them to the Court" last night. I assumed that meant Wheat is
10 no longer in dispute. We are happy to address Wheat. Wheat is
11 actually our absolute strongest case before the Court, which is
12 why losses have been taken off the table.

13 So we would welcome the opportunity to include Wheat
14 in the discussion. I don't have the affidavits now to present
15 to you, but we're prepared to tackle Wheat head-on.

16 THE COURT: Well -- and I may be creating more work
17 for everyone, including myself. But in making a proper
18 determination as to whether, in fact, the loss overstates the
19 offense, and in looking at the loss attributable to
20 Mr. Touizer's relevant conduct, that's a large -- it's a large
21 span of dollars, so to speak, 3.5 million but less than
22 9.5 million.

23 And if, within that range, there is an argument to be
24 made with regard to these other companies, then I think it's
25 important for the Court to hear it in making a proper

1 determination as to whether a downward departure or variance is
2 proper because the loss overstates the relevant conduct.

3 MR. SREBNICK: And we would welcome that opportunity
4 to include Wheat in the discussion, if the Government is taking
5 a different position than I understood their position to be,
6 given the stipulation we reached that I understood Wheat was no
7 longer an issue for purposes of loss at all. But if I'm
8 mistaken, we're prepared to address Wheat. We may need to ask
9 you to do it maybe after lunch so I can gather all the
10 affidavits and proceed with Wheat as well.

11 MR. CRUZ: I think that's what I said, as to loss. As
12 to the loss figure, we're not asking the Court to hold them
13 accountable for the loss associated to Wheat, which, if we
14 carefully look at the Indictment, they relate to the money
15 laundering counts. That's where it gets a bit tricky.

16 I know we're all trying to make this efficient. The
17 Government does not intend to show or argue that the Wheat loss
18 is included in the range that we've all now agreed to. But I
19 cannot, and will not, withdraw the statements and admissions,
20 as well as the proof that we have, coupled with the statements
21 in the PSI, as to Wheat. They're similar to what Your Honor
22 said about the Indictment. They're just facts, and we don't
23 intend to address forfeiture and restitution in today's
24 sentencing hearing, either, based mainly on the fact that those
25 issues are unresolved as to how the Wheat entities and the

1 money transfers relate overall to forfeiture and restitution.

2 THE COURT: Okay. But let me just be clear. In
3 determining the actual loss attributable to Mr. Touizer, is it
4 the Government's contention that the Wheat companies factor in
5 or are you solely calculating the amount of the loss
6 attributable to the Defendant to be from Omni, Covida, and
7 Investment Diamonds?

8 MR. CRUZ: Under the 2B1.1 analysis, unrelated
9 whatsoever, Judge. The loss is not a factor in that analysis.
10 The parties have agreed to the stipulation as to the loss.
11 That is unrelated to Wheat. That is a true statement.

12 THE COURT: Okay. Then I think that we don't need to
13 get into affidavits and additional evidence for purposes of
14 this determination.

15 Thank you.

16 MR. SREBNICK: Judge, if I could just have a moment,
17 given the comments. One moment.

18 THE COURT: Certainly.

19 (Pause in proceedings.)

20 MR. SREBNICK: Judge, may we request a five-minute
21 break so we can organize our thoughts and use the washroom?

22 THE COURT: Of course. Let's take a five-minute
23 recess.

24 (Recess from 11:15 a.m. to 11:29 a.m.)

25 THE COURT: Go ahead and have a seat.

1 And Mr. Srebnick, whenever you're ready, sir.

2 MR. SREBNICK: Thank you.

3 I did confirm with Mr. Cruz -- I think we're close to
4 concluding my presentation. I don't think we're going to have
5 a major battle of these facts, but we'll hear from him in a
6 moment. I do want to add a few points before I sit down for
7 good for the first part of the presentation.

8 So Mr. Lyons and Mr. Shapiro showed you the nature of
9 these businesses. I think we have at least four -- OmniGuard
10 was the one that did not do well and within six months closed.
11 Investment Diamonds generated 1,400,000, plus or minus, in
12 revenues during its life span. Covida generated half a million
13 dollars in revenue during its life span. And as you heard,
14 those business ultimately failed.

15 On the issue that I was describing earlier about how
16 much money did Mr. Touizer take from those entities, at the end
17 of the day, when the businesses closed, the number is zero
18 because he had more money into those entities than he took from
19 those entities.

20 Now, the bulk of the money, putting aside Suster and
21 Reech -- they are co-conspirators. So I'll treat monies paid
22 to them as not legitimate business expenses. I'll treat it
23 that way. And those are hundreds of thousands of dollars to
24 Suster and something to Reech. And so we'll agree that that
25 reflects a real loss to the investors.

1 But in terms of all of the fees paid to consultants,
2 including, by way of example, Alexandra Sanchez, who was the
3 one who had received perhaps the most on fees, she's here in
4 court today. She's been under -- we asked her to come. She
5 agreed to come, prepared to defend her hundreds of thousands of
6 dollars in fees that she received to provide services for the
7 entities.

8 I know the Government has some concern because
9 Mr. Touizer and Ms. Sanchez went on some dates. They dated for
10 a short period of time. It's not in dispute. Even so,
11 Ms. Sanchez is prepared to defend the services she rendered.
12 She's prepared to explain what she did to earn her fees. She
13 did not share any money with Mr. Touizer. She did not kick
14 back any money to Touizer. Those were her monies, earned for
15 services related to the business purposes of the entities.

16 I was mentioning to you about Mr. Touizer's other
17 sources of income. I don't think that's really relevant
18 because the only issue is: Do the losses to the investors of
19 Omni, Covida, and Diamonds overstate the seriousness of the
20 conduct of Mr. Touizer as to those entities? Given that he got
21 no personal gain from those entities, that he himself lost more
22 than he gained, what we're proposing to Your Honor is to treat
23 that as the -- as Judge Posner said, the so-called con artist
24 who doesn't take the money and run, to be distinguished from
25 the so-called con artist who lulls people to give money with no

1 intention of applying those funds for any business purpose.
2 And that is the theme of our presentation, limited to that
3 approved -- it's discretionary, of course, but approved basis
4 for a departure or a variance downward.

5 I had misspoke earlier -- I want to correct -- when I
6 said: "Audited financial statements," I said: "Covida." I
7 meant Cinergy. And to remind the Court, Mr. Touizer had
8 taxable income which he reported to the Internal Revenue
9 Service from Cinergy. The Fiske folks have confirmed that the
10 Cinergy financial statements were themselves audited and the
11 Fiske folks have the tax returns of Mr. Touizer for, I think,
12 over 10 years. I think they have tax returns here in court, if
13 the Court wants to see them. And the Fiske team actually has
14 proof of payment of Mr. Touizer's taxes for many of those
15 years. I do believe he has a debt to the IRS today. But over
16 the years, we were able to get proof from records, county
17 records, et cetera, regarding IRS tax liens that were paid by
18 Mr. Touizer. So the Fiske team is prepared, if necessary, to
19 corroborate that.

20 If I could just have a moment.

21 (Pause in proceedings.)

22 MR. SREBNICK: If I understand Your Honor correctly,
23 the Wheat issue, I hope, is no longer a factor in this
24 discussion. But if it is, if it's on your mind at all, we have
25 affidavits and live witnesses that were subpoenaed before we

1 reached the stipulation yesterday who will tell you why they
2 invested in Wheat, that their investments in Wheat were not
3 fraudulently induced. We admit there were some fraudulent
4 inducements as to the FBI agent was told something that
5 Mr. Touizer shouldn't have said. But when it comes to Wheat,
6 if it becomes necessary -- I don't want to dwell on it --
7 investors are here and we have all of the evidence for the
8 money being deployed for the real estate for the self-storage,
9 et cetera.

10 THE COURT: All right. And let me ask it this way,
11 Mr. Srebnick, because I don't want to dwell on it either, if
12 it's not an issue in dispute. But there were facts that
13 supported the stipulation or agreement between the parties that
14 the loss attributable to Mr. Touizer's relevant conduct was in
15 the range of 3.5 to 9.5. So --

16 MR. SREBNICK: I can explain that. The total to Omni,
17 Covida, and Investment Diamonds -- the total amount of investor
18 funds raised 7.2 million. Our view is that that overstates the
19 seriousness of the offense.

20 And you know, forgive me, because I should have
21 started there to make it clear. You're absolutely right. We
22 should have started by telling you we have stipulated -- and
23 the Fiske team is comfortable corroborating it -- 7.2 million
24 was raised in those entities. And we stipulate --
25 Mr. Touizer's pled guilty -- that as to more than 10 of those

1 investors -- and I think there was a total of 46 -- more than
2 10 of those investors were fraudulently induced through
3 statements that were not accurate. And that had those
4 investors been told that -- all the true facts, probably would
5 not have invested in those entities.

6 We believe that there are some investors who weren't
7 fraudulently induced. They didn't need to be. And so we left
8 it in the range of 3 and a half to 9 and a half. We certainly
9 think the amount of fraudulently induced investors is not all
10 7.2 million. But we don't need to quarrel with that because
11 we're limiting our presentation today to say even if every
12 investor, every single one, was lied to -- let's just accept
13 that as a premise for purposes of this departure variance
14 issue. If the Fiske team is right, if the bank records are
15 authentic -- and I don't think anybody denies it -- then we've
16 shown the Court that the monies that these investors gave to
17 Omni, Covida, and Investment Diamonds has been accounted for in
18 the ways that we've described up until now.

19 If I could just have one more moment to confirm with
20 co-counsel.

21 THE COURT: Yes.

22 (Pause in proceedings.)

23 MR. SREBNICK: So Judge, that would conclude my
24 overview of the departure variance, our factual presentation.
25 I'm sure that Mr. Cruz will now take the floor. We're

1 prepared, if there's any lingering doubt about facts -- we have
2 witnesses here. Once Mr. Cruz gives you his proffer, I'd like
3 an opportunity then to make a bit of a legal argument as to why
4 you should consider the departure and to what level.

5 Thank you.

6 THE COURT: Yes. Of course.

7 Mr. Cruz?

8 MR. CRUZ: Judge, you addressed Daniel Touizer earlier
9 today. You asked him if he had any statements, and I don't
10 believe he answered. I do believe he has the right to
11 allocute. So --

12 THE COURT: I actually wasn't finished with -- I'm
13 certain that there will be some witnesses that will speak with
14 regard to the 3553(a) factors. I think we were just addressing
15 the issue with regard to the loss. Perhaps I'm mistaken.

16 MR. SREBNICK: Judge, we've stipulated with the
17 prosecutor that we're limiting our presentation to the issue of
18 the loss overstates the seriousness of the offense. We are not
19 going to call any character-type witnesses. We actually put
20 that in the stipulation to give the Court notice.

21 Our only basis for you to depart downward or vary
22 downward from the Government's recommendation of 78 months is
23 the argument I just made and the facts I just presented.
24 That's it.

25 THE COURT: All right. Then let me -- and I

1 understand there's a stipulation. But in terms of the
2 opportunity to allocute, Mr. Touizer, let me advise you, once
3 again, sir, Mr. Cruz is going to make his presentation. If
4 there is anything that you would like to say in mitigation of
5 your sentence, or there are individuals that you would like to
6 bring forward to speak directly to the Court, you may certainly
7 speak and they may certainly come before the Court.

8 Is there anything that you would like to say,
9 Mr. Touizer?

10 THE DEFENDANT: No, ma'am. Thank you.

11 THE COURT: Sir?

12 THE DEFENDANT: Not at this moment.

13 THE COURT: And when you say "not at this moment,"
14 after Mr. Cruz makes his presentation, if you would like to
15 speak directly to the Court, you may certainly do so. So it's
16 incumbent to let me know. But you do have that opportunity,
17 sir.

18 THE DEFENDANT: Yes. Thank you.

19 THE COURT: Mr. Cruz?

20 MR. CRUZ: Thank you, Your Honor.

21 Judge, as counsel's already stated, there may be cases
22 in which the offense level substantially overstates the
23 seriousness of the offense. And Judge, based on the
24 presentation that was given to you by the many defense
25 attorneys, I'm asking that you not make this one of those

1 cases. Simply put, Judge, the facts and the law that I will
2 briefly go over should compel Your Honor to, in fact, abide by
3 the Government's recommendation of sentencing Daniel Touizer to
4 70 months' imprisonment for the fraud scheme that he's pled
5 guilty to.

6 Now, Judge, if you'll allow me the use of the ELMO,
7 I'd appreciate it.

8 THE COURT: Certainly.

9 MR. CRUZ: I tend to go back to the Presentence
10 Investigation Reports because the Probation officers and the
11 parties, well, they spend a lot of time making sure that we're
12 all on the same page. And although there were certain
13 objections made, I'm very confident that Page 8, Paragraphs 31,
14 32, and 33, especially those sections that I have highlighted
15 and underlined, are no longer in dispute. And Judge, I'm
16 highlighting these paragraphs because I believe these
17 paragraphs encapsulate as to why Your Honor should deny the
18 variance request as to the overstated nature that the Defense
19 is compelling you.

20 Judge, as stated in Paragraph 31 of the Presentence
21 Investigation Report: "Oftentimes, when investors told Touizer
22 that they lacked sufficient liquid assets to make an
23 investment, Touizer encouraged them to withdraw funds from
24 their individual retirement accounts in order to invest.
25 Touizer made these representations even though he knew his

1 businesses were on the verge of complete failure."

2 Judge, those are the reasons, coupled with what
3 Mr. Touizer's admitted to already before Your Honor in open
4 court, under oath, the facts that the Government relied on in
5 preparing for this sentencing hearing -- which, again, we did
6 have some rocky road as far as objections and whatnot. But as
7 we stand here today, I believe no one's going to bicker with
8 what happened before Your Honor on May 11th, 2018.

9 On that day, it was the day that Your Honor, in the
10 case of Daniel Touizer, with two counsel, myself, and the same
11 court reporter, held the plea colloquy. On that date, Judge,
12 Mr. Touizer was, in fact, sworn. "Good afternoon to each of
13 you," Your Honor says. You said: "Mr. Touizer, let me ask you
14 to stand, raise your right hand, to be placed under oath."

15 On that same day, Judge, you asked him about Count 1
16 of this Indictment and you read portions of it, because you're
17 a thorough judge. And you said to him, Judge, on Page 7:
18 "Count 1 then continues: Over the course of the scheme, Daniel
19 Joseph Touizer, your codefendant, Saul Daniel Suster, John
20 Kevin Reech, and their co-conspirators, falsely and
21 fraudulently caused over 150 individuals to invest in the
22 investment companies and raised over \$15 million through the
23 sale of stock in the companies Touizer controlled, all in
24 violation of Title 18, United States Code, Section 1349.

25 "Mr. Touizer, how do you plead to Count 1 of the

1 Indictment?"

2 He pled guilty, Judge.

3 And Your Honor, as you've already referenced in this
4 sentencing hearing, there was a Factual Proffer signed by
5 myself, the two defense attorneys, and most importantly,
6 Mr. Touizer.

7 Judge, on that day, you had me not only make sure that
8 all parties understood the terms of that Factual Proffer, but
9 you asked me to go over the actual facts that were no longer in
10 dispute. And Judge, as usual, I abided by Your Honor's orders
11 and I went ahead and I read into the record how, in fact, the
12 Count 1 facts were agreed upon.

13 And I won't belabor the point, Judge. Instead, I'll
14 turn to the end. After reading the detailed Factual Proffer, I
15 said: "Judge, those are the facts, Your Honor."

16 You said: "All right. Thank you, Mr. Cruz.

17 "Mr. Touizer, did you hear the statement of facts
18 Mr. Cruz presented to the Court?"

19 The Defendant: "Yes, Your Honor."

20 The Court: "Are those facts true?"

21 The Defendant: "Yes, Your Honor."

22 "Before the Court, Mr. Touizer, is a two-page Factual
23 Proffer."

24 Now, Judge, I'll turn to that Factual Proffer. In
25 that Factual Proffer, the Defendant admits to a number of facts

1 that we feel should cause Your Honor to disallow the variance
2 request. In that Factual Proffer, Mr. Touizer, Docket Entry
3 94, went ahead and agreed that it wasn't 2008 that the
4 conspiracy started. He agreed that it was 2010 all the way to
5 2017. He went and agreed -- and I'm going to just go over some
6 of the highlighted material -- that he hired Reech and Suster,
7 among others, to solicit potential investors from phone rooms
8 that Touizer oversaw; that Touizer alone acted as the closer on
9 nearly all these stock sales; that he organized and led this
10 criminal conspiracy involving five participants and that is his
11 misconduct was otherwise extensive.

12 Judge, he admitted that to create the illusion -- and
13 that illusion is what I'd like to focus on, Judge, to combat
14 the case law that Mr. Srebnick relied upon that I provided him,
15 the Marvin case. To create the illusion that Investment
16 Diamonds and other investment companies were profitable,
17 Touizer paid Suster to falsely pose as an investor. Suster
18 lied to the investors by telling them that he was a successful
19 investor in the investment companies and that his investment
20 with the companies made him a significant profit.

21 Also, Judge, Mr. Touizer signed down here on the
22 dotted line, on the 11th of May of this year, agreed that he
23 made materially false statements to investors, including that
24 once one investment company failed, he admitted that he often
25 funded the startup of the next investment company with money

1 raised from previous investors. And to create the illusion,
2 again, of success -- illusion, Your Honor -- Touizer sometimes
3 paid new investors dividends with prior investor money.

4 Finally, Judge, the specific false statements that we
5 relied upon in this bargain for a Factual Proffer that Touizer
6 admitted to, he said that Touizer and his employees made false
7 statements, such as that Touizer did not personally take a
8 salary or draw on funds invested in certain investment
9 companies. And he also made false statements that investor
10 funds would be used for sales and marketing, working capital,
11 and general corporate purposes. In other words, he admits in
12 his Factual Proffer that these statements were accurate and
13 that the statements that he lied about were that the monies
14 that the investors gave him were going to be used for these
15 purposes.

16 Now the Defendant's counsel provide some marketing
17 materials. They tell you that you should reduce his sentence
18 because he -- I wrote it down -- had a good faith in making
19 this work and that it was Obama's fault -- I've recently heard
20 that it was Obamacare's fault for the failure of his insurance
21 business.

22 Now, Judge, the case law that Mr. Srebnick cited, I'd
23 like to address briefly. I have copies for Your Honor. As he
24 said, I gave them to him. If I'm allowed, Judge, I'd like to
25 present you with Marvin and another case I provided, Campbell.

1 May I approach?

2 THE COURT: All right. Certainly.

3 MR. CRUZ: The Marvin case, Judge, Mr. Srebnick's
4 right. In that case, the Seventh Circuit Court of Appeal, in
5 1994, in their written opinion, called Mr. Marvin a con artist.
6 They said that in the six-count indictment against him he was
7 charged with defrauding by wire just five investors. His modus
8 operandi was generally the same with respect to all five
9 investors. He placed ads in newspapers, promising sparkling
10 investment returns. Those are the similar promises that were
11 made by Mr. Touizer here, Judge.

12 More on point, Judge, Marvin argued on appeal that:
13 "The sentencing judge improperly included, in determining the
14 amount of losses to investors that they suffered under
15 Sentencing Guideline 2F1.1, amounts that he spent on," quote,
16 legitimate business expenses.

17 Judge, this Marvin case and the Eleventh Circuit case
18 that I handed you, Campbell, clearly state that these marketing
19 and other appearances or facades, as I like to address, of
20 legitimacy are not to be removed from the total loss amounts
21 before Your Honor. I'd ask that you discount their arguments
22 and not discount his claimed legitimate marketing expenditures.

23 Simply put, Judge, they're wrong about one thing. I'm
24 not bickering about whether or not Touizer spent thousands,
25 hundreds of thousands, of money on what appeared to be actual

1 vendors. I'm not going to do that. I never have. I'm not
2 going to accuse those vendors of kicking back money. I'm not
3 saying those vendors did. I'm saying that it's irrelevant and
4 I'm saying this case law -- not this one yet, but the Campbell
5 law is binding precedent that supports my argument.

6 Simply put, Judge, these two cases stand for the
7 proposition that -- I'll quote here: "The monies he spent as
8 part of his fraudulent scheme do not become legitimate business
9 expenses simply because other legitimate businesses also
10 incurred these expenses. Unlike the Government in
11 Schneider" -- they're distinguishing here -- "the five investor
12 losses were not limited to the amounts necessary to rescind the
13 contract and find a better investment." And here's the other
14 part that I'd like the Court to focus on: "Their losses
15 equaled their entire investment." The Court above said -- in
16 the highlighted language, it says: "Even if we could agree
17 that these expenditures were legitimate, as Marvin claims, they
18 nevertheless were intertwined and an ingredient of Marvin's
19 overall fraudulent scheme. Marvin never intended to return a
20 dime of the investors' investment or even attempt to fulfill
21 his promise to them."

22 Now, I understand Mr. Srebnick's point. He's arguing
23 that: "Well, Mr. Touizer wanted to." But Judge, what's
24 important is he didn't. There are no returned assets.

25 THE COURT: Well, that would have been my question.

1 Are there any returns on the investments to the 150 investors?

2 MR. CRUZ: Judge, the case here demonstrates that the
3 only money returned to investors were those monies that were
4 used to perpetuate the fraud scheme. In other words, as the
5 Factual Proffer -- I'll highlight it, if you would like it
6 again. The money that was returned to investors were other
7 investor money. That's admitted to, not in those exact words,
8 but you can extrapolate from the admission in the Factual
9 Proffer and the other parts of the PSI that the money returned
10 shouldn't be credited under the guidelines.

11 In fact, what should be -- if you really want to look
12 at the guidelines, and the commentary -- and if I may, Judge,
13 it's more akin to note -- 2B1.1, comment (M), note 3, (F),
14 Roman numeral iv, Judge. "In this case, a fraudulent scheme,
15 such as a Ponzi scheme loss, should not be reduced by money or
16 the value of the property transferred to the individual
17 investor in the scheme."

18 In other words, Judge, you haven't heard any argument
19 from counsel for the Defense that, no, you should reduce the
20 loss by what was given back because simply there's no legal
21 basis or argument to be made that the money that he took in,
22 even though at the time he was using one pot to pay others,
23 should be somehow discounted.

24 So Judge, no, this case involves multiple millions of
25 dollars. We do have a disagreement as to the amount raised

1 from investors in this case. They said, I think -- I don't
2 want to misquote -- 7.2, 7.5, something like that. But as you
3 know, and I yesterday made crystal clear, and in my filing I
4 asked for more time because I didn't have with me a capable
5 forensic accountant to testify and come back with that number.
6 But I'm submitting to Your Honor that it's close. We would
7 submit to Your Honor that it's closer to 9.

8 And again, I want to make sure I'm being overly
9 cautious, just like Mr. Srebnick and you were. There's no
10 Wheat. There's no Wheat I in that number. There's no Wheat
11 Capital, no Wheat Management. I submit to Your Honor that
12 there's approximately -- approximately, 9 million. That's
13 really, in my opinion, not a great deviation from what they are
14 arguing. They simply argued that it was around 7, 7 and
15 change, of what Touizer raised from his investors.

16 Let's just take that number, Judge. Your Honor,
17 that's \$7 million dollars of, I submit the PSI supports, are
18 investment dollars, money that Mr. Touizer used not from Wheat
19 or a group of rich folks, no. These are people and their
20 retirement dollars. It says it: "Investment retirement
21 accounts."

22 Judge, the other case I'd like to briefly go over,
23 which is more in line with the binding precedent that I
24 mentioned, is the Campbell case, Judge. I'll do what I can to
25 be efficient. As you can see, I've taken the liberty to put

1 some flags on Your Honor's copy. I already did provide this to
2 counsel. It's an Eleventh Circuit case, recent, Judge, 2014,
3 US v. Campbell. Your Honor, in that case, the gentleman
4 Campbell, well, he defrauded the State of Alabama to the tune
5 of \$7 million. The scheme was ultimately uncovered and so on
6 and so forth.

7 If we turn the Page, Your Honor, I'd like to focus
8 your attention Page 6, Judge. And in that -- I used to know
9 where the -- oh, there it is. There we go.

10 Your Honor, in that case, the Defendant equally
11 appealed the application of the sentencing guidelines, as you
12 can see, under 2B1.1. The man essentially argued, Campbell
13 did, that he reached the range by calculating the amount that
14 he gained as opposed to what the total fraud amount was.
15 That's what he tried to argue on appeal. He contended that the
16 institute that was the subject of his fraud was a legitimate
17 non-profit that was actively engaged in promoting Alabama small
18 businesses. And while some of the funds were admittedly
19 misspent, that should not convert 100 percent of the
20 institute's fundings into a loss. He's basically arguing,
21 Judge, similar to here, that he didn't intend to misspend all
22 the money. In fact, he's arguing that some of it was
23 legitimately spent.

24 At the lower court, Campbell requested that the loss
25 amount be credited for the institute's legitimate operating

1 expenses. And then the Government's counterargument was
2 similar to my argument here, Judge. As the Government put it
3 there, those expenses were simply part of creating the cover
4 for the Defendant's conduct.

5 And then on Page 9, the Eleventh Circuit goes into the
6 analysis that we're all familiar with and we're not disagreeing
7 about. However, in this case, the Campbell case, the Eleventh
8 Circuit reiterates that, in line with this purpose, courts have
9 held that a fraudster may not receive a credit for value that
10 is provided to his victims for the sole purpose of enabling him
11 to conceal or perpetuate his scheme, nor may he deduct the cost
12 he incurred in running a fraudulent scheme.

13 Finally, Judge, the holding that I would like to focus
14 on in Campbell is simply: "Where here a defendant's conduct
15 was permeated with fraud, a district court does not err by
16 treating the amount that was transferred from the victims to
17 the fraudulent enterprise as a starting point for calculating
18 the victims' pecuniary harm. The district court would have
19 been justified in finding the amount of loss to be the entire
20 3.32 million."

21 And what's important here, Judge, as I'll let Your
22 Honor review the rest of it -- what's important here, Judge, is
23 that he made the same arguments that the operating expenses,
24 these monies spent on non-fraud scheme conduct, should be
25 credited, should be a factor, Judge. The Defense is asking you

1 to vary based on the same factors that the Campbell court did
2 not find persuasive. The Campbell court, similar to what we're
3 asking Your Honor to do, should not in any way allow the
4 Defendant to sidestep his responsibility for causing the
5 pecuniary harm that he's admitted to by simply saying: "Well,
6 I spent it on diamonds. I spent it on advertisement. I paid a
7 painter. I created the illusion," as he admitted to twice in
8 his Factual Proffer, "of legitimacy," when, in fact, Judge,
9 this was an illegitimate scheme to defraud, I submit to Your
10 Honor, from the very beginning.

11 Judge, the Factual Proffer, similar to the statements
12 contained therein, should not be bickered. This is what was
13 agreed to. This is what Your Honor saw him swear to. Same
14 goes for Suster, in which he admitted to defrauding investors
15 with Daniel Touizer to the tune of 150 individuals. Same goes
16 to Codefendant Reech. Reech had the same proffer with the 150
17 investor number, Judge. That's Docket Entry 73, Reech.

18 Briefly, in rebuttal to "the Government's analysis
19 doesn't hold water, check out his tax returns," and "No, no, no
20 there was other sources of income that he paid the investors
21 back with," first of all, Judge, we would submit to Your Honor
22 that Mr. Touizer, the convicted felon who stands before you
23 today -- his tax returns should have no weight. His tax
24 returns should not be a measure of truthfulness as to how much
25 he actually made in income or, for that matter, the sources.

1 If you look carefully at the Fiske report, you'll have
2 a very difficult time, as Mr. Srebnick admitted in his
3 presentation, to finding just how Mr. Touizer made any other
4 money to pay back people with. Mr. Srebnick adequately
5 addressed the fact that they're relying on his tax returns for
6 this other source of income. Judge, the source of income has
7 been admitted to the Factual Proffer, and I submit to Your
8 Honor to decide. As far as what can be discerned from the bank
9 records, are interbank transfers from one investor's funds to
10 the other. Again, admitted to -- I don't want to belabor the
11 point -- in the Factual Proffer.

12 Under the 3553 factors, Judge, but more importantly,
13 under the argument of counsel as to why you should downward
14 vary, legally, there is no reason. But more importantly,
15 factually -- as I started out my presentation, factually, the
16 source of funds that are at the core of this case are the main
17 reason why Your Honor should deny the request of a variance.
18 And we ask that Your Honor honor the Government's request and
19 its bargained-for position in its Plea Agreement to sentence
20 Mr. Touizer at the low end of the guidelines.

21 Seventy-eight months is an appropriate sentence that,
22 as Your Honor stated early on in this sentencing hearing,
23 adequately addresses those factors and deters and punishes the
24 Defendant and others that are similarly situated.

25 Thank you, Judge.

1 THE COURT: Thank you, Mr. Cruz.

2 Mr. Cruz, are there any witnesses that the Government
3 is seeking to call, including any victims that have been
4 notified?

5 MR. CRUZ: No, Your Honor. Similar to the Defense, we
6 have no witnesses to call.

7 THE COURT: But did you, in fact, notify the victims
8 and give them an opportunity to be here?

9 MR. CRUZ: Under the Victim's Act, yes, Judge. We've
10 provided ample notice of the hearing itself and we have no
11 victim witnesses to call as witnesses, Judge.

12 THE COURT: Are there any victim impact statements to
13 be read to the Court?

14 MR. CRUZ: Not at this time, Judge.

15 THE COURT: Were there any provided to the Probation
16 officer that your office received?

17 MR. CRUZ: I'd have to turn to the Probation officer.
18 I'm unaware of any from my office, Judge.

19 PROBATION OFFICER: Your Honor, I don't know that we
20 received any victim impact statements. We did receive
21 declarations of victim loss from several victims, which
22 information has been forwarded to the Government. But it's my
23 understanding that there are still some details to be resolved
24 by way of restitution.

25 THE COURT: And I understand that the restitution may

1 be an issue. But with regard to the victims' statements
2 themselves, are there any statements to be read to the Court?

3 MR. CRUZ: No, Your Honor.

4 THE COURT: All right.

5 MR. SREBNICK: Your Honor, I'd like to begin by
6 responding to Mr. Cruz's citations to the cases. He cites to
7 the Campbell case, and the Campbell case was not a variance or
8 departure issue. The Campbell case was: How do we compute
9 loss? Do legitimate business expenses, according to the
10 defendant in that case, constitute a credit against the loss
11 computation? So we haven't made that argument to Your Honor.
12 We've stipulated to the loss figure.

13 So Mr. Cruz's citation to Campbell would be apposite
14 if we had been arguing: How do you compute loss? And in the
15 Campbell case, the Court concluded that it was a, quote,
16 fraudulent enterprise to convert Alabama's money to their own
17 personal use; that it was a sham organization, which served no
18 legitimate purpose. That's at Page 1304 in Campbell. And what
19 the Court -- the Eleventh Circuit said in Campbell is that --
20 and I've got it on -- I don't have the old-school format. I do
21 it single column because it's easier to read on the iPad.

22 If the defendant returned any money to the victim, or
23 rendered any legitimate services to the victim before the fraud
24 was detected, the loss amount must be reduced by the fair
25 market value of the returned money or the services rendered.

1 So using Wheat by way of example, there's real estate, there's
2 property. So all of that gets credited against a loss
3 computation. I use that by way of example. We concede that as
4 to Omni, Covida, and Investment Diamonds there's no credit that
5 would offset loss because the investors, in large measure,
6 sustained actual losses. And so we're not disputing that there
7 were actual losses.

8 So Campbell is a case that would have gone to the
9 question of whether the loss computation should be something
10 different where there actually are legitimate services given to
11 the investors or money credited to the investors. This case
12 does not address at all the issue of a downward variance or
13 downward departure, where, as we've shown, the Defendant did
14 not take the investors' money for personal lifestyle expenses
15 to the detriment of the investors; a separate analysis
16 altogether.

17 Consistent with that point, I had shown you, or
18 discussed with you, a couple of Seventh Circuit cases. So
19 OmniGuard, Covida, and Diamonds doesn't perfectly fit to get a
20 credit, as I've just described. And so we've stipulated to the
21 loss. But where you have a defendant who did not take the
22 money and run, that's a different -- a different defendant than
23 the defendant, for example, in Campbell, who converted
24 Alabama's money for their own personal use and there was
25 nothing to the business, nothing to the enterprise that

1 Alabama's money was going to in the first place.

2 THE COURT: But are you making the argument,
3 Mr. Srebnick, that at no time did Mr. Touizer convert any of
4 the investments by these investors for his own personal use?
5 Is the argument that one hundred percent of the monies received
6 from these investors went into the legitimate business
7 expenses?

8 MR. SREBNICK: A hundred percent of the money went
9 into the accounts of Omni, Covida, and Diamonds. Payments were
10 made for Suster and Reech for their commissions, which the
11 Court has already heard about. That's, quote, fraudulent
12 expenses because they shouldn't be paid to be luring investors
13 fraudulently. And then the Fiske report establishes through a
14 forensic analysis of QuickBooks, plus bank statements: Where
15 did all the other money go? And to answer your question, if we
16 say the term: Did Mr. Touizer convert it for his personal
17 use -- and by that, I understand that to mean his lifestyle
18 expenses, his cars and homes and personal expenses. What he
19 did do, as I think I've described, those companies did, from
20 month to month, advance for payment of an American Express
21 card, which did include personal expenses. But he reimbursed
22 the entity the following month, as many businesses do.

23 So when the books closed, if we do a snapshot of the
24 business at the end of the business, from beginning to end, at
25 the end, when you count up how much money did Touizer himself

1 put into those businesses, subtract out how much money Touizer
2 ended up with, he put in more than he took out because he
3 reimbursed for the personal expenses.

4 THE COURT: Then where is the question answered, when
5 there is a factual dispute -- for example, Paragraph 53 -- and
6 I understand that the \$19 million in stolen funds -- I
7 understand the Defense is disputing the \$19 million and now has
8 come to an agreement with regard to the loss. But it states
9 that: "Touizer either withdrew or had his co-conspirators
10 withdraw nearly \$7 million in cash." Are you saying that none
11 of the facts support that that money was withdrawn?

12 MR. SREBNICK: So to be clear, we dispute the 19
13 million because 17.5 of it is Wheat, or at least some -- I
14 don't know how the Government came up with 19 I, confess.

15 THE COURT: Well, let's talk about the monies that
16 were withdrawn in cash. It goes on to state that: "Based on
17 the nature of cash withdrawals, this money is unaccounted for."
18 Did Fiske & Company do an analysis of the monies that were
19 withdrawn in cash and where those monies went?

20 MR. SREBNICK: The answer is: As to Omni, Covida, and
21 Investment Diamonds, Fiske analyzed all the cash that came out
22 of those entities. I started at the beginning of my
23 presentation telling you that that number is \$460,000, and
24 that -- by way of example, I showed you a cashier's check entry
25 where 190,000 had been put in by Mr. Touizer himself. That was

1 the point of money in equaled by money out with regard to that
2 \$190,000 cashier's check.

3 THE COURT: And I realize that you did not directly
4 dispute this statement, but it states: "What is accounted for
5 by the forensic accounting in this case is that Touizer moved
6 hundreds of thousands of dollars overseas, mainly to Israel and
7 Canada."

8 MR. SREBNICK: And we've conceded -- it's not even a
9 concession. It's just a fact -- he has personal bank accounts
10 that are not investor monies from these three investment
11 companies. That personal bank account, or bank accounts, did
12 make transfers to Israel, where he has family. We don't deny
13 that.

14 THE DEFENDANT: And diamonds.

15 MR. SREBNICK: And if I can just have a moment.
16 There's some other factual issue.

17 (Pause in proceedings.)

18 MR. SREBNICK: So Judge, I've taken the opportunity to
19 consult with co-counsel and Mr. Touizer, and we stand by the 7
20 million we assume is referenced here in this paragraph was an
21 analysis by the FBI of Mr. Touizer's personal bank accounts,
22 checks written to cash, cash withdrawals over many years. It
23 is not \$7 million of cash being withdrawn from Omni, Covida, or
24 Investment Diamonds. It couldn't possibly be, because the
25 amount of money investors -- of investor money raised for those

1 three entities is roughly 7.2 million.

2 So it's just not -- there's no connection between the
3 two. But we've done better than that, because Fiske went
4 through the bank statements of those three entities, and
5 they're here to tell you -- and if we need to, I'm happy to
6 call Mr. Goldweitz up to the stand. He did the analysis.
7 \$460,000 of cash total from the three entities combined, of
8 which, by way of example, 190,000 was Touizer lending money
9 from his own personal account to the entity. But if you have
10 any question, I'd rather not leave any doubt. Mr. Goldweitz
11 can come to the podium, he can raise his right hand, and he can
12 answer any questions you have.

13 THE COURT: And let me just -- because I'm actually
14 looking at the facts that were disputed. You've referenced 46
15 investors, and Mr. Touizer admitted in his plea colloquy that
16 there were 150 investors. Where did the 46 number come up?

17 MR. SREBNICK: So if we go back to the plea colloquy,
18 or the Factual Basis for the plea, 150, I assume, includes
19 Wheat. And so to the extent that there's investors included in
20 Wheat that Mr. Touizer made a false statement to, my
21 understanding is that would be Wheat, which is beyond the 46
22 that are related to the three entities in question here.

23 But if I could just have one second.

24 (Pause in proceedings.)

25 MR. SREBNICK: Judge, I don't see the 150 in

1 Mr. Touizer's Factual Basis. I do recall that the prosecution
2 and the defense agreed that the number of investor victims was
3 more than 10, I thought less than 50. So I'm not sure.

4 THE COURT: Actually, it's his plea colloquy, where --
5 on Page 7, Docket Entry 150, where the Court reads the
6 Indictment: "Over the course of the scheme, Daniel Joseph
7 Touizer, Saul Daniel Suster, John Kevin Reech, and their
8 co-conspirators falsely and fraudulently caused over 150
9 individuals to invest in the investment companies and raised
10 over \$15 million through the sale of stock in the companies
11 Touizer controlled. How do you plead to Count 1 of the
12 Indictment?"

13 "Guilty, Your Honor."

14 MR. SREBNICK: Right. And so the Indictment alleged
15 it. We agree that if you include Wheat, it includes that.
16 When the Factual Basis was crafted, it did not include 150. To
17 the contrary, the Plea Agreement, actually with the agreement
18 of the Government, was limited to 10 to 50. So that's my
19 understanding. I wasn't there. So the best I can do is
20 recreate history from the records that are currently available.

21 MR. CRUZ: The signed Factual Proffer says "many." It
22 says "many."

23 THE COURT: Okay.

24 MR. LYONS: Your Honor, if I may just -- I think it
25 will help clarify. What the Fiske report does -- if you take

1 the total investors and what their capital contribution was to
2 each entity, we did a schedule that breaks down the name of
3 every investor to match it to each company, how much they
4 invested. What I can tell the Court is between Omni, Diamonds
5 and Covida, you have 47 investors that total about 7 million.

6 If you include in Wheat, which was part of the guilty
7 plea, but is not part of this argument on loss, you add a
8 hundred investors from Wheat alone. That puts it around the
9 150. So I don't know if that helps clarify, but --

10 THE COURT: It does. It does. Thank you.

11 MR. LYONS: Okay. And the total amount raised in
12 Wheat was 17 and a half million. So if you add that in --
13 which again, there are many mistakes forensically -- the total
14 amount raised is 24 and a half million, if you include Wheat,
15 with over 150 investors. Some investors -- which is in the
16 Goldweitz report -- they were counted as investors by the FBI,
17 but it's actually the same investor who may have invested two
18 or three times in each new entity with new money. No money was
19 rolled in, other than one interest payment with the consent of
20 the investor.

21 You know -- but I know it's confusing because of what
22 he pled to versus the number of investors and the total amount
23 that we're dealing with on loss.

24 THE COURT: All right.

25 MR. SREBNICK: And in the Plea Agreement, Docket Entry

1 93, at Page 4 -- someone could pull the guidelines, but I
2 believe if it's more than 10, but less than 50, there's a
3 particular adjustment, and that's the one the parties agreed
4 to.

5 And so I'd like to return, if I could then, to the
6 authority for a downward variance departure. If it's
7 undisputed -- and I heard the prosecutor say he was not going
8 to dispute the legitimacy of payments for the services by the
9 Hofers and the Sanchezes and the people that were doing work
10 for these companies. And there's no evidence being presented
11 to you -- none -- that Mr. Touizer had any significant personal
12 financial gain from these three entities. He did, again, draw
13 money, but reimbursed. And that is, of course, a benefit, for
14 someone to pay my American Express bill ahead of schedule. I
15 accept that. But at the end of the day, he reimbursed the
16 companies in real time for those expenses.

17 And so, if we look to the Marvin case that the
18 prosecution cited to the Court, and Judge Posner's case in the
19 Schneider case, those also were cases where the issue was: How
20 do you compute loss? It was not a departure case. We cited
21 the Forchette case, an Eastern District of Wisconsin case cited
22 in our memo, and it really doesn't require a lot of legal
23 analysis because the guidelines specifically tell you that you
24 may depart downward if it overstates the seriousness.

25 I think the only decision for really the Court to make

1 is, if you're satisfied that the roughly \$7.2 million is
2 accounted for, meaning, you're satisfied that Touizer did not
3 take the money and run, I think you come to two conclusions.
4 One, that's a very different picture than the picture you had
5 of him on the day you met him at the pretrial detention
6 hearing. Because the picture that was painted for you was
7 somebody who took 80 percent of the money and absconded with
8 the funds. And you were not satisfied, understandably so,
9 relying just on the QuickBooks, but you telegraphed what might
10 be a useful analysis.

11 And so I think the Fiske team has responded with a lot
12 of work that is corroborated by the bank statements. And so if
13 you're satisfied that Mr. Touizer did not personally gain \$7
14 million, if you're satisfied that these were businesses, albeit
15 ultimately failures -- were designed to try to create value for
16 the investors, that there was real work, real people trying to
17 do real business, then the decision is: Do you treat
18 Mr. Touizer the same way as you would treat someone who you
19 knew took the \$7 million for their own lifestyle expenses?

20 And I submit to you that that's the whole point of
21 this departure variance. Once you're satisfied that the loss
22 overstates Mr. Touizer's gain and the seriousness, because it
23 wasn't your classic fraud of take the money and run, then you
24 do have the discretion to decide that this case warrants
25 something below the 78 months that's at the bottom of the

1 guidelines that the Government's recommending.

2 And to put it into context, the codefendants, Reech
3 and Suster, were sentenced by the Court, and they certainly
4 have a lesser role in the offense by a large measure. But
5 Mr. Suster was an educated person, a business school graduate,
6 I believe. He went to New York University. I read his
7 transcript. I don't know him. He was involved in these
8 businesses for the entire period of time. And frankly, it's a
9 mystery to me how he was able to allocute at his plea that 80
10 percent of the money was misappropriated, when we now have the
11 Fiske report that establishes exactly where the money went.
12 Maybe he felt pressured. Maybe he felt he had to simply sign
13 on the dotted line. But whatever the reason is, we know the
14 facts now.

15 And Mr. Suster, who, for seven years, was working in
16 these businesses, he received a sentence of 30 months.
17 Mr. Reech received a lower sentence, and my understanding is
18 he's been indicted on additional separate matters.

19 We think Mr. Touizer should get a sentence higher than
20 Mr. Suster. He had a greater role than Mr. Suster. He got a
21 higher guideline range as a result. But what I propose to the
22 Court is a variance that would be proportional to the sentence
23 that's been imposed against the codefendants. And so what I'm
24 suggesting to the Court, Mr. Suster -- his guideline range was
25 determined based on a loss figure of up to one and a half

1 million dollars. Presumably, that's based on a theory that
2 that's what Mr. Suster is responsible for. I read the
3 sentencing transcript, and the agreement that was reached is
4 that he would only be held responsible for his direct
5 involvement.

6 But the guidelines really attribute to every defendant
7 that which is reasonably foreseeable, even if they weren't
8 directly involved. And so to the extent that Mr. Suster -- it
9 was reasonably foreseeable to him that the amounts raised were
10 more than one and a half million dollars, then I submit to the
11 Court that in fashioning a variance downward, we consider that
12 sentence -- he was sentenced to 30 months. If the same loss
13 table -- if there was a downward departure down to the loss
14 table that Mr. Suster accepted responsibility for, that would
15 generate a four-level downward departure. And that's what I'm
16 suggesting to the Court, a four-level downward departure or a
17 variance four levels down. That would produce a guideline
18 range of 51 to 63 months.

19 We believe that, for someone who did not take the
20 money and run, a sentence of 51 months in prison, at the lowest
21 end of that downward departure suggested range, is sufficient
22 punishment to punish Mr. Touizer for not being honest with the
23 people who were entitled to his honesty. That's more than four
24 years in prison. And I submit to the Court that four years in
25 prison is enough time to affect someone's life in a harsh,

1 harsh way.

2 If he had taken the money and run, he'd be facing 72
3 to 97. If he doesn't run with the money, but tries to make a
4 go of it, I think 51 months is a sentence that's adequate.
5 It's proportional to what you imposed. It's almost double what
6 you gave Suster. It's nearly triple what you gave Reech. And
7 that is the proposal I would make.

8 If I could have a moment with Mr. Touizer, to see if
9 he has anything he wants --

10 THE COURT: Certainly. And let me just ask you,
11 Mr. Srebnick, in addressing the proportionality with regard to
12 Mr. Suster -- Mr. Reech is somewhat different because there was
13 a 5K in that case. But addressing Mr. Suster, he admitted that
14 his gain was \$321,000. How much is Mr. Touizer's gain?

15 MR. SREBNICK: From these three entities, you've
16 heard --

17 THE COURT: How much did he personally profit? If
18 you're claiming the loss overstates the gain, what was the gain
19 that the Defendants believe is the accurate amount?

20 MR. SREBNICK: Gained to Mr. --

21 THE COURT: Touizer.

22 MR. SREBNICK: -- Touizer directly? Negative, zero.
23 He put more money into these three entities than he ever got
24 out. He didn't have a salary -- he didn't have -- he drew
25 money, as I described.

1 THE COURT: Well, that's the -- right. It somewhat
2 belies the facts because he had an American Express account.
3 You've already somewhat conceded that there were monies that
4 were sent to Israel and Canada. He certainly had somewhat of a
5 lifestyle. So how much did he gain? If the argument is that
6 the loss overstates the gain, how much did he gain? Are you
7 saying that over the course of this seven-year period
8 Mr. Touizer did not gain any monies?

9 MR. SREBNICK: From these three entities, zero. He
10 did have other sources of income, which are in his tax returns,
11 that the Fiske team has discussed with me. I've proffered it
12 includes millions of dollars from a company called Cinergy, who
13 had audited financial statements prepared by a reputable CPA
14 firm, who also did the tax returns of that entity, which
15 coincide with the taxable income that was paid to Mr. Touizer.
16 So he made money from other sources, no doubt.

17 THE COURT: How much? If I look at the relevant
18 conduct, how much did Mr. Touizer gain from this fraudulent
19 episode, this conspiracy?

20 MR. SREBNICK: From 2010 to 2017, regarding Omni,
21 Covida, and Investment Diamonds, zero. From other sources, not
22 part of those entities, he has other income, as I've described.

23 THE COURT: So how much total? If I'm looking --
24 because you're asking me to look at proportionality. If I'm
25 looking at the amount that Mr. Touizer gained from 2010 to

1 2017, how much did he gain?

2 MR. SREBNICK: One moment.

3 (Pause in proceedings.)

4 MR. SREBNICK: Judge, if you're asking me to include
5 Wheat, it's still zero. If you're asking me to include
6 Cinergy, it's going to be millions of dollars.

7 If I could just consult with Mr. Goldweitz.

8 (Pause in proceedings.)

9 MR. SREBNICK: Judge, I don't have an exact figure,
10 but I can give you a large figure that should solve the issue.
11 He earned from the Cinergy-related enterprise over \$5 million
12 during beginning -- let's say, 2008 until -- I don't know when
13 it ended, but it's well over \$5 million.

14 THE COURT: I'm speaking of from July 2010 to November
15 2017.

16 MR. SREBNICK: As to just -- I don't have the exact
17 number.

18 THE COURT: Can you bring forward one of the
19 accountants that took the time to look at all of the companies.

20 I just don't want to feel limited because we're
21 addressing three companies or four companies, when, in fact,
22 the Court has a responsibility to look at all of the relevant
23 conduct.

24 Good afternoon, Mr. Goldweitz.

25 MR. CRUZ: Judge, we'll stipulate that the tax returns

1 say what -- it's in the report. It says that Touizer made \$12
2 million dollars, but it doesn't really provide us the source of
3 the funds; the source.

4 THE COURT: Do we know, Mr. Goldweitz? And I think
5 that's the Court question, is -- is the argument's being made
6 that the loss, with regard to the actual loss to the victims,
7 overstates the gain ultimately to Mr. Touizer. And I'm trying
8 to find out what the actual loss was to this gentleman -- I
9 mean -- I'm sorry -- the gain was to this gentleman.

10 In other words, from the monies that were brought into
11 these companies, I see that there were several American Express
12 payments that were made. How much did Mr. Touizer actually
13 profit?

14 MR. GOLDWEITZ: When you -- thank you.

15 For the three entities in question, Investment
16 Diamonds, OmniGuard, and Covida, Mr. Touizer did use the
17 American Express card, but then he reimbursed the entities for
18 the monies that represented his personal use. I don't view
19 that as benefiting because he paid it back. I'm not sure if
20 you are defining it the same way.

21 THE COURT: And you're speaking of the three
22 companies. You had an opportunity to look at all of the
23 QuickBooks and the spreadsheets in this case and the
24 information that was provided by the Government. Mr. Touizer,
25 in his Factual Proffer Statement, said: "Once the investment

1 company failed, Touizer often funded the startup of his next
2 investment company with money raised from previous investors."
3 Did you look at the money that went into a company and then the
4 money that then was diverted to another company?

5 MR. GOLDWEITZ: Yes. We looked at all the deposits
6 that went into those three entities in excess of \$2,000. That
7 was our cutoff. We looked at all monies that came out of the
8 entities in excess of \$2,000, excluding paychecks to employees
9 and excluding intracompany transfers. Each entity had more
10 than one bank account. So we -- when we saw the money going
11 from one account to the other within the same entity, we didn't
12 look at that any further.

13 But with the information that we did look at, we did
14 not see Mr. Touizer take money out that he then put into
15 another business. The only thing we did see was, when
16 Mr. Touizer borrowed money from the business in the form of
17 American Express activity and other times he would borrow money
18 from the business, he always paid it back. And when the
19 businesses closed, he was owed money. He was owed [REDACTED] by
20 one entity. If you would like, I could give you the exact
21 numbers. But when you add all three entities up, it was
22 hundreds of thousands of dollars that Mr. Touizer did not
23 ultimately get paid back.

24 THE COURT: And in looking at all of the companies
25 that you analyzed, what amount did Mr. Touizer receive in

1 salary or commissions or any income?

2 MR. GOLDWEITZ: There was \$200,000 that he received in
3 a -- which was originally classified as a guaranteed payment
4 that ultimately was a commission. And in the -- are you
5 including the Wheat entities?

6 THE COURT: I'm including all of the entities that you
7 analyzed.

8 MR. GOLDWEITZ: In the Wheat entities -- in the Wheat
9 entities, we didn't see any money, either, going to him
10 directly.

11 THE COURT: So it's only \$200,000 total over the
12 course of seven years or annually?

13 MR. GOLDWEITZ: There was also 7,500 from another
14 entity. I have all the records in the boxes there. But even
15 when you take into account the \$200,000 that Mr. Touizer took
16 in either commission or guaranteed payment, depending on how it
17 was classified --

18 THE COURT: Is that annually?

19 MR. GOLDWEITZ: No. Just at one time.

20 He was still -- when you take that 200,000 and
21 subtract it from the monies he put in, he was still short. He
22 still was owed money. He still was owed money.

23 So if one was to say he didn't earn that [REDACTED], and
24 it should have been a repayment of loan, as opposed to income,
25 he was still owed money when the entities stopped doing

1 business. And I described that in my report.

2 Forgive me, I'm losing my voice.

3 MR. CRUZ: May I briefly voir dire him, Judge, on that
4 point?

5 THE COURT: Certainly.

6 I'm assuming, Mr. Srebnick, you have no objection to
7 that?

8 MR. SREBNICK: No problem.

9 THE COURT: All right. Mr. Cruz?

10 VOIR DIRE

11 BY MR. CRUZ:

12 Q. Mr. Goldweitz, are we correct that your company came up
13 with approximately \$7 million, a bit more for these investors
14 that we have now talked about -- not the Wheat folk, the other
15 ones, about 7.2 million; is that right?

16 A. Yes, sir.

17 Q. And you've told this Court that Mr. Touizer, whenever he
18 removed money from those 7 million, he put it back; is that
19 right?

20 A. Yes, sir.

21 Q. Isn't it also true that you have zero bank records that
22 show where Touizer got the money that he supposedly paid back
23 these loans that he took out? Isn't that true?

24 A. I don't have the records of where he got the money to pay
25 back the loans. I have the records which show where he did not

1 get the money to pay back the loan.

2 Q. But the question is: You have no information whatsoever,
3 other than the QuickBooks that we talked about at his detention
4 hearing, to demonstrate to this Court where Touizer got the
5 money to pay back what he claims were loans from the 7-plus
6 million dollars in this case, right?

7 A. That's not accurate. If you were to look at the tax
8 returns that were prepared by an independent CPA firm, from
9 2004 through 2014, you will see significant income earned and
10 generated by Mr. Touizer, separate and apart from the entities
11 that are being discussed here today, significant -- millions
12 and millions of dollars.

13 Q. General accounting practices would dictate that you, in
14 fact, would obtain the primary source, which would be the bank
15 records, to show the source of the money that you claim
16 Mr. Touizer rightfully paid back that he extracted from the 7
17 million; is that right?

18 A. We were --

19 MR. GOLDWEITZ: If I could -- Your Honor, can I please
20 get my report?

21 THE COURT: Yes. Of course.

22 Mr. Goldweitz, I'm going to ask that you make it
23 easier for the court reporter. If you can just come over here
24 to use a microphone, because I may have additional questions at
25 this point.

1 MR. CRUZ: Now that he's witness, Judge, should we
2 swear him?

3 THE COURT: I didn't expect him to be a witness. But
4 at this point, if you're seeking to ask questions, then I'm
5 going to place the gentleman under oath.

6 DAVID GOLDWEITZ, WITNESS, SWORN

7 COURTROOM DEPUTY: Thank you.

8 State your name again.

9 THE WITNESS: David Goldweitz.

10 COURTROOM DEPUTY: Spell it, for the record, please.

11 THE WITNESS: G-O-L-D-W-E-I-T Z.

12 THE COURT: Go ahead and have a seat, Mr. Goldweitz.

13 BY MR. CRUZ:

14 Q. Mr. Goldweitz, if Mr. Touizer had the money to begin with
15 over the eight-year period, and he simply just repaid the money
16 that he raised from the investors, why bother with raising the
17 money from the investors? Why not just fund the business
18 themselves?

19 MR. LYONS: Object to the form, Your Honor. Calls for
20 speculation.

21 THE COURT: Sustained.

22 BY MR. CRUZ:

23 Q. Back to my original question. You don't have the primary
24 checking account, bank statements that demonstrate the flow of
25 funds from Touizer's personal accounts to the payback of the

1 loans, as you mention in your report, do you?

2 A. Yes, I do. We do. If you were to look at Page 7 of our
3 initial report --

4 THE WITNESS: -- dated April 9th, Your Honor.

5 BY MR. CRUZ:

6 Q. I have it here, Mr. Goldweitz.

7 A. Excuse me?

8 If you would look at Page 7. It describes Infinity
9 Insurance. "Touizer" -- forgive the misspelling of his name --
10 "Deposits in Payments." It talks about how Mr. Touizer
11 deposited into Infinity Insurance \$1,346,791. Payments to
12 Mr. Touizer from Infinity Insurance amounted to \$1,022,573,
13 leaving a balance owed to Mr. Touizer of \$324,218.

14 Now, what's important is that there are two footnotes. If
15 you could please look at footnote 1. It says: "A hundred
16 percent of Touizer deposits had been reconciled from QuickBooks
17 to the Infinity Insurance bank statements and all but 30" -- it
18 says: "However, 38,509 of the 1,346,791 in deposits could not
19 be traced back to Touizer's bank statements or canceled checks
20 because the documents could not be located in the discovery
21 provided."

22 That means that out of the 1,346,791, we were able to trace
23 \$1,308,000, approximately, that came out of Touizer's bank
24 accounts.

25 Q. But the source of the funds in that bank account, sir, you

1 have no testimony as to that, right?

2 A. That's correct. I have no testimony, except for the tax
3 returns.

4 Q. And it's quite possibly possible, isn't it, sir, that the
5 money that was used to draw on that account came from other
6 investors? Isn't that true?

7 A. I have -- that's -- I'm speculating. That would be
8 speculation.

9 Q. That's my point, Mr. Goldweitz. I don't want to speculate
10 as to the source of the funds that you claim Mr. Touizer used
11 to pay back the \$7.2 million that's at issue in this case.

12 A. The facts that I have in front of me are tax returns which
13 reflect [REDACTED] of income over many years. And after
14 taxes, that would leave Mr. Touizer with sufficient money to
15 repay these amounts of money.

16 Q. Sure. We're not tax preparers like yourself, a
17 distinguished gentleman who's prepared taxes. But am I not
18 mistaken that the tax returns that you looked at didn't have
19 any bank records or checks or the source of the funds that
20 Touizer made his money on in those taxes? Isn't that true?

21 A. That is true. The income is broken down category by
22 category. And a certain amount of that income, which came from
23 Cinergy, was reflected in the audited financial statements of
24 Cinergy, was reflected in the Cinergy tax returns, which were
25 prepared by the same CPA firm that prepared both the certified

1 audit, as well as Mr. Touizer's personal return. So that CPA
2 firm had knowledge of all the transactions and tied all of that
3 in in preparing his personal return.

4 Q. But if the CPA firm got it wrong, it's not their fault,
5 right? The individual that swears to the accuracy of those tax
6 returns are -- he's right behind me -- Daniel Touizer, correct?

7 A. Actually, as a preparer of the tax return -- tax returns --
8 we have a responsibility and we can be fined with preparer
9 penalties if we were to grossly overstate or misrepresent items
10 on that -- on the tax return. So we also -- as I say "we," as
11 CPAs bear responsibility as well.

12 Q. But you didn't prepare those taxes?

13 A. I did not.

14 Q. And you weren't involved with the preparation with
15 Mr. Touizer of his taxes?

16 A. I was not.

17 MR. CRUZ: I have no further questions, at this time,
18 Judge. Thank you.

19 THE COURT: All right. Thank you, sir.
20 Thank you, Mr. Goldweitz.

21 MR. SREBNICK: Judge, if I could just ask
22 Mr. Goldweitz: Do you know who this CPA firm is that did that?
23 Speak into the microphone.

24 THE WITNESS: Gerstle, Rosen, Goldenberg.

25 MR. SREBNICK: Are you familiar with them?

1 THE WITNESS: I -- I mean, in practicing 41 years,
2 I've heard of them. They're a very reputable firm.

3 MR. SREBNICK: Okay. And one more question. Mr. Cruz
4 was asking you about where Mr. Touizer -- where Mr. Touizer's
5 personal bank account got the money that then was used to
6 reimburse the three entities that we're talking about today.
7 And you didn't trace back beyond Touizer's bank account,
8 correct?

9 THE WITNESS: Correct.

10 MR. SREBNICK: But you could see it came from
11 Touizer's personal bank account?

12 THE WITNESS: Correct. Absolutely.

13 MR. SREBNICK: Did the Government produce anything in
14 discovery that you saw where investors were sending money to
15 Mr. Touizer's bank accounts?

16 THE WITNESS: We did not see any evidence of that from
17 the discovery.

18 MR. SREBNICK: The monies that went into Omni, Covida,
19 and Diamonds from investors went into the entities' accounts?

20 THE WITNESS: Yes.

21 MR. SREBNICK: That's all I have, Judge.

22 THE COURT: All right. Thank you.

23 Thank you, Mr. Goldweitz.

24 MR. SREBNICK: Judge, I'd like to address, if this is
25 the appropriate time -- I know you're interested in the Factual

1 Basis of the plea, where it says: "Once one investment company
2 failed, Touizer often funded the startup of his next investment
3 company with money raised from previous investors." And I
4 understood that to mean -- and I wasn't there. But previous
5 investors would invest in subsequent companies. So there are
6 investors from company A, who then invested in company B. Now,
7 I wasn't there. I don't know what Mr. Cruz's view is. But I
8 know that is a fact, that previous investors went into
9 subsequent entities. I just offer that to put some color on
10 that admission. But Mr. Goldweitz's analysis speaks for itself
11 about the source of the funds for these entities.

12 I hope we've answered your question. And what I hear
13 Your Honor saying, and I hear Your Honor focusing on, what was
14 Mr. Touizer's wealth, whether it's from the entities in the
15 Indictment, meaning Covida, Omni, and Investment Diamonds, and
16 we'll include Wheat for the sake of discussion, for the reasons
17 you've heard already. And our position is simply that those
18 investors, those companies that I've just mentioned, were not
19 the investors who funded the lifestyle of Mr. Touizer. Because
20 as you heard from Mr. Goldweitz, end of day, Touizer's net
21 negative. He had put more money into those entities than he
22 took out.

23 But it is true that Mr. Touizer was independently a
24 wealthy person. We don't deny that. It is true he made a lot
25 of money. And it is true that investors, some of whom were

1 harmed, suffered that consequence because these companies
2 failed. Those are accepted facts. I don't deny any of those
3 things. But in terms of the seriousness of the offense --
4 putting aside the offender, but the offense itself, when you
5 describe a scenario where monies are being used almost
6 exclusively with the footnotes that we've heard today, to try
7 to make a successful business venture, does that warrant a
8 different sentence than your typical defendant who absconds
9 with the funds.

10 And if I could just have a moment to confer with
11 counsel and Mr. Touizer.

12 THE COURT: Certainly.

13 (Pause in proceedings.)

14 MR. LYONS: Your Honor, just briefly, may I have a
15 two-minute summary of some issues before we're done with our
16 presentation?

17 THE COURT: Yes. Certainly.

18 MR. LYONS: All right. I wanted to actually make two
19 points to end on, Your Honor. I know you're familiar with all
20 this case law where -- you know, the commentary to the
21 application note regarding 2B1 loss table and the strict
22 application of that. There's many quotes all over the country
23 where district courts are frustrated by this loss amount. They
24 feel very restricted by it. And I think there's many judges
25 who have said -- there's a judge out in New York in the

1 Southern District saying that this loss table is the single
2 most outcome determinative factor in sentencing in these type
3 of crimes, and same I think would go with health care as
4 well -- and the Court's very familiar with that. And it's
5 generally that the loss somehow equates to the criminal
6 conduct.

7 We're suggesting to the Court where you have someone
8 who did attempt in good faith to present an underlying business
9 model, consulted with people, and the facts in the record are
10 undisputed that he did not -- and I want to, again, pause and
11 say did not take investor money and put it in his pocket; that
12 all of the expenses were used to make the business succeed, it
13 did not succeed. This is not a case where they're telling
14 people: "We have Gordon Ramsay, the best French chef," and
15 then the restaurant opens up and it serves fish and chips.
16 That's not the case here. You go back to Hofer in New York,
17 the foremost authority on gems. They had real inventory. They
18 had real sales.

19 Good-faith efforts were made by a lot of people. And
20 that has to distinguish this case from the person from
21 inception who wants to take investor money and buy the Ferrari,
22 and there has to be some recognition of that. Whether he's a
23 good businessman, whether he's a salesman, whether he's
24 puffery, and all those other things, well taken, Your Honor.
25 He's admitted to that. He lied to investors to get them to

1 invest. But he didn't take their money and put it in his
2 pocket. And the reason we thought it was relevant that
3 sophisticated, well-recognized auditors have come into
4 companies and said this man made \$12 million not on the heels
5 of the investors in this Indictment, over a period of a
6 decade -- why was that important? Because the \$7 million in
7 cash that was taken out over a decade matches basically his net
8 income that he made during that period of time.

9 Secondly, Your Honor, going back, we've been trying to
10 look at transcripts of bond hearings and factual proffers and
11 plea agreements. Let's go back to Mr. Touizer's Acceptance of
12 Responsibility Letter. He says first and foremost: "I'm sorry
13 to the people that trusted me and invested money in the
14 companies. I failed you. I will make it my mission to repay
15 you." Oftentimes, unfortunately, in these type of fraud cases,
16 where the person has swindled investors and bought Ferraris and
17 homes in the Caribbean, and homes in Las Vegas -- here, he
18 literally has -- which is good. He's fully cooperated with the
19 United States Attorney's Office, so that restitution can be
20 made to the victims.

21 And that's why it was important for the Court to
22 see -- I believe there's been one purchase and sale agreement
23 submitted to the Court for approval on Wheat. There's other
24 entities that Mr. Touizer has a substantial interest in. And
25 there's a process that's very complicated, through the

1 Department of Justice -- it's called Restoration to
2 Identifiable Victims. But Mr. Touizer has pledged the profits
3 that are going to come out of the Wheat. He's an 80 percent
4 owner of Wheat Capital Management. Those profits from the sale
5 of real land, real buildings, real infrastructure, real
6 construction loans with banks who believe in the project, real
7 investors -- that money's going to go to identifiable victims.
8 And he's also fully cooperated with that, and will continue to
9 fully cooperate.

10 And again, it doesn't change the fact, Your Honor --
11 and you know this -- if you invest -- all of us throughout our
12 lives have invested in something. We believed in it. We got
13 talked into it. We had second thoughts about it. Whether the
14 intentions were noble or not, whether the person acted in good
15 faith or not, at the end of the day, we lost money and people
16 are not happy.

17 But here, there has to be a distinction between what
18 we call pilfering and losing the money because of bad business
19 decisions or a bad business model, and we're asking you to
20 please consider those in terms of the extent of any variance
21 under the commentary.

22 Thank you.

23 THE COURT: All right. Thank you.

24 Is there anything further?

25 MR. CRUZ: Judge, it wasn't addressed in their

1 presentation until late. As far as this whole -- what I see as
2 potential possible maybe restitution because of this hopeful
3 sale of Wheat, I would ask Your Honor not to take that into
4 consideration. I have in Touizer's -- in my hand, his sworn
5 financial statement. And at best, what we have in here is his
6 five percent stake in this limited partnership at Wheat.
7 According to his own pen, it's worth \$229,000. So even if we
8 were to look at that, and take it as truth, Judge, that's not
9 going to recuperate the losses to the investors.

10 So Judge, we stand by our position, and we stand by
11 the statements contained in the proffer, and we'd ask for the
12 sentence already mentioned.

13 Thank you.

14 THE COURT: All right. And I don't believe that it's
15 appropriate at this time to address the issue of restitution.
16 I think, similar to Mr. Suster and Mr. Reech, the Court will
17 schedule that -- I believe it's on August 28th at 4:00 p.m., so
18 we can address the restitution. Unless, Mr. Cruz, you're
19 telling me that that has been resolved as far as Mr. Touizer is
20 concerned.

21 MR. CRUZ: No, Judge. But similar to the 2B1.1
22 stipulation that we reached yesterday, we hope to, in fact,
23 reach an agreement as to that. I believe Mr. Grove, my
24 colleague, has something to say about that, if Your Honor will
25 allow it.

1 THE COURT: Yes. Of course.

2 MR. GROVE: Yes, Your Honor.

3 There is also some outstanding issues regarding
4 forfeiture.

5 THE COURT: Yes. There was an objection this morning,
6 which leads the Court -- and I was going to discuss whether
7 there should be an ancillary proceeding with regard to at least
8 that property.

9 MR. GROVE: That one, Your Honor, I'm actually -- I
10 was just looking at that on my phone. We would probably
11 require discovery in that matter. And so we'll file the
12 appropriate response either this afternoon or tomorrow, Your
13 Honor, just requesting the time to conduct discovery on that
14 property. But that is property that the Defendant has admitted
15 constitutes proceeds of the crime that he has pled guilty to,
16 and it is part of our Preliminary Order of Forfeiture as a
17 result of that. It's directly traceable to the fraud scheme
18 that the Defendant pleaded guilty to -- or the conspiracy, I
19 should say.

20 But that aside, the easy part, Your Honor, is the
21 Amended Preliminary Order of Forfeiture. So we're asking that
22 the Court please announce that forfeiture as part of the
23 Defendant's sentence and incorporate that in the judgment
24 accordingly.

25 The other part, which is more difficult, is the

1 forfeiture money judgment, which was agreed upon in the Plea
2 Agreement, not a specific number, but instead that the
3 Defendant and the Government would agree either on or before
4 sentencing to a forfeiture money judgment some sum equal in
5 value to the proceeds derived from or traceable to the
6 conspiracy that the Defendant pleaded guilty to. It doesn't
7 look like we're anywhere near that at this point.

8 And so normally -- well, not normally. What's
9 required by the federal rules is that the Court announce
10 forfeiture as part of the sentence. Otherwise, essentially,
11 it's lost. So what I would suggest as maybe a possible remedy
12 is that there be some acknowledgment on the part of the
13 Defendant that a forfeiture money judgment will be made part of
14 this sentence and included in an amended judgment later, but
15 that we schedule maybe as part of the restitution hearing --
16 although they're going to be different issues. But maybe in
17 that same hearing we could handle a forfeiture money judgment.
18 And I believe that that would preserve the Government's right
19 to that as part of the Defendant's sentence, so long as the
20 Defendant acknowledges that this money judgment will be part of
21 his sentence.

22 THE COURT: Well, the Defendant has acknowledged in
23 his Plea Agreement that the Preliminary Order of Forfeiture is
24 incorporated into the judgment. The issue that we have is we
25 have a third party, Ava Argelo, that is claiming one of the

1 properties is hers.

2 MR. GROVE: Right. And --

3 THE COURT: What I'm suggesting is that there be
4 ancillary proceedings under the statute with regard to this
5 claim. But that doesn't -- with the exception of that
6 property, it doesn't affect the other bank accounts and other
7 property that Mr. Touizer has agreed to.

8 MR. GROVE: No, it doesn't. Basically, that
9 Preliminary Order of Forfeiture is only final as to the
10 Defendant. Any third party can come in in an ancillary
11 proceeding and set that aside.

12 THE COURT: Exactly.

13 MR. GROVE: So that should be of no moment. The real
14 issue is the actual forfeiture money judgment. At this point,
15 I don't believe the Court is prepared to enter -- and, in fact,
16 the Government's not prepared to argue a figure because we're
17 not in agreement.

18 And just to be clear, Your Honor, two different things
19 have been sort of discussed here. And that is loss to the
20 victims and then gain by the Defendant. And those are the two
21 issues that divide forfeiture and restitution. Restitution
22 will be: What amount did the victims lose in this conspiracy?
23 And then for forfeiture it's: How much did the Defendant gain
24 in this conspiracy? And as I said, it does not appear that
25 we're anywhere close to agreeing on a figure because I

1 believe ...

2 MR. SREBNICK: Judge, I think we can agree with
3 Mr. Grove's proposed procedure since we're coming back. We are
4 coming back anyway for a restitution hearing, and the financial
5 questions overlap, although, are not congruent, that it would
6 be efficient for us to resolve any lingering dispute at that
7 point. You've heard our presentation through the proffer and
8 Goldweitz's about no personal gain, but we don't have a problem
9 if we want to defer that, subject to the conditions Mr. Grove
10 just suggested.

11 THE COURT: What is it that the Government is asking
12 Mr. Touizer to admit to that's not incorporated in this Amended
13 Preliminary Order of Forfeiture with regard to the bank
14 accounts and the real property? I understand that you have not
15 determined the amount and you have stated that --

16 MR. GROVE: Essentially, that's the property, Your
17 Honor, that is directly traceable to the crimes, and the
18 Defendant's admitted that. What we're asking for is a debt.
19 We would like the Court to enter a debt against the Defendant
20 personally that would encompass the amount that he gained from
21 the conspiracy to which he pleaded guilty to. That would be
22 punitive in nature, as opposed to restitution, which is an
23 attempt to make victims whole.

24 But specifically in the Plea Agreement, the Defendant
25 agreed to forfeit specific property that he says is traceable

1 to the crimes. And then he also agreed to a debt owed to the
2 Government in an amount to be agreed upon on or before
3 sentencing. We haven't come to that agreement.

4 THE COURT: Then that is critical because that's part
5 of the agreement.

6 MR. GROVE: And specifically, that's Paragraph 14 of
7 the Plea Agreement, Docket Entry 93.

8 THE COURT: "The Defendant knowingly and voluntarily
9 agrees that the parties shall determine the amount of the
10 forfeiture money judgment by agreement either before or at
11 sentencing in this case."

12 So with that understanding, that there is a Plea
13 Agreement expressing that action, then why don't I suggest that
14 we just take a recess for lunch and give you an opportunity to
15 come up with an agreed amount that Mr. Touizer recognizes that
16 he's responsible for. But that's part of his Plea Agreement.
17 So there's no reason why the Court would not enforce that.

18 MR. SREBNICK: What time would you like us back?

19 THE COURT: I'll see you back in an hour.

20 MR. CRUZ: Judge, I know you want to take the break
21 and have us resolve it. But what Mr. Grove, the expert in
22 asset forfeiture, says is that the law will allow us to reserve
23 that ruling for another day, if Your Honor will allow that,
24 after we're done with the punishment phase.

25 THE COURT: Well, why can't the parties determine the

1 amount of forfeiture money judgment? Is there a reason why it
2 can't be determined now?

3 MR. CRUZ: Because I'm fairly confident that that
4 specific number's in dispute. That's why we've argued with the
5 numbers. And as you might recall, the forensic accountant --
6 I'm at a disadvantage -- that's assigned, is unavailable. So
7 without that information readily available, you might recall
8 yesterday we had the hearing -- I don't feel that I'm prepared
9 to adequately negotiate that specific number.

10 THE COURT: Well, Mr. Srebnick or Mr. Lyons, is
11 Mr. Touizer in agreement that the Court will enter judgment
12 that will reflect that there will be a forfeiture money
13 judgment, the precise amount to be determined at a later
14 proceeding?

15 MR. SREBNICK: Yeah. We could do it at a later
16 proceeding, if that's what you're asking.

17 THE COURT: I'm asking that only because the
18 Government needs more time. But it's part of the Plea
19 Agreement, so it had to be agreed to by the parties.

20 MR. LYONS: We agree to that.

21 MR. SREBNICK: Yes. That's fine.

22 THE COURT: Mr. Touizer, you have no objection to
23 that, sir?

24 THE DEFENDANT: No.

25 THE COURT: All right, then. There's no need for the

1 recess.

2 Is there anything further?

3 MR. SREBNICK: Could we just have two minutes to speak
4 with Mr. Touizer, so he can decide if there's anything else
5 he'd like to say to the Court?

6 THE COURT: Yes. Did we need to take another break?

7 MR. SREBNICK: That would be fine. If we could have
8 five minutes, that would be great.

9 THE COURT: We'll take another five-minute recess.

10 (Recess from 1:06 p.m. to 1:22 p.m.)

11 THE COURT: Go ahead and have a seat.

12 Mr. Srebnick, we took a break for you to speak with
13 Mr. Touizer. Is there anything further?

14 MR. SREBNICK: No, Judge. Mr. Touizer has expressed
15 himself through his Statement of Acceptance of Responsibility
16 and he just reiterates it at this time.

17 Thank you, Judge.

18 THE COURT: All right.

19 Mr. Touizer, let me start by saying, at the beginning
20 of this hearing, the Court advised that it was the Court's
21 responsibility to impose a sentence that is sufficient but not
22 greater than necessary. And much argument was made today with
23 regard to the limited issue, that is, the guideline range
24 overstates the seriousness of the offense and whether a
25 downward departure is appropriate. And in analyzing that

1 issue, I also don't want to lose sight that the Court has
2 considered many other factors in making its determination as to
3 an appropriate sentence in your case.

4 As I stated to Mr. Suster and Mr. Reech, your
5 co-conspirators, this was a significant criminal offense, in
6 which many individuals were harmed. In your particular
7 circumstance, it was over the course of seven years. And I
8 start by saying that legally and factually, based on your
9 statements to the Court at the plea colloquy and in your
10 written statement, you cannot escape your own words stated to
11 the Court under oath. And those words, as I remind you, are
12 the following:

13 "From 2010 through 2017, Daniel Joseph Touizer
14 conspired with John Kevin Reech, Saul Daniel Suster, and others
15 to defraud many individuals. This Defendant and others
16 participated in a scheme to defraud that raised millions from
17 the sale of stock and other interests in Touizer's investment
18 companies. These companies included, but are not limited to,
19 OmniGuard, Infinity Diamonds, Infinity Direct Insurance, doing
20 business as Covida Holdings, Wheat Capital Management, and
21 Wheat Self-Storage Partners I, II, and III.

22 "This conspiracy occurred by means of materially false
23 and fraudulent pretenses, as well as material omissions to
24 knowingly devise a scheme and artifice to defraud and to obtain
25 money and property through the delivery of certain mail matter

1 and through certain wire communications."

2 Your statement then continues that: "This Defendant
3 and his co-conspirators made materially false and fraudulent
4 statements to investors during and regarding the use of
5 investor funds. Touizer asserted an email to an Investment
6 Diamond investor, dated March 8th, 2013, that funds would be
7 used to develop the Advisor Network. In fact, there was no
8 Advisor Network. Once one investment company failed, Touizer
9 often funded that startup of his next investment company with
10 money raised from previous investors.

11 "To create the illusion of success, Touizer sometimes
12 paid new investors dividends with prior investors' money.
13 Touizer and his employees made other false statements to
14 investors to trick them into investing, including, but not
15 limited to, that no commission or fees would be charged to
16 investors; that the investment companies were a safe
17 investment, profitable investment, and one where you won't lose
18 money; that the investment companies were successful and
19 profitable; that Touizer did not personally take a salary or
20 draw on funds invested in certain investment companies; and
21 that investor funds would be used for sales and marketing,
22 working capital, and general corporate purposes.

23 "They concealed from their investors that the
24 Defendants and their co-conspirators used investor proceeds to
25 pay themselves and their co-conspirators undisclosed

1 commissions and fees."

2 Those were facts presented in court. And I asked you
3 if you heard the statement of facts presented, and you said:
4 "Yes." And then I asked if those facts were true, and you
5 said: "Yes." And then I referred to a written statement of
6 facts that were verbatim, and asked if that was your signature
7 after asking whether you had an opportunity to have all your
8 questions answered.

9 So those were your statements to the Court and those
10 were your admissions with regard to this offense. As we know,
11 the sole purpose of this lengthy proceeding today is for the
12 limited issue of whether the loss, which the Court now
13 understands is \$7.2 million, that is accounted for -- whether
14 that loss overstates the offense. And by agreement with the
15 Government, that issue related to three entities, Omni, Covida,
16 and Investment Diamonds.

17 The Court received, by way of the two Fiske reports --
18 one being the report that the Court was asked to focus on --
19 that the businesses had goals, had a model, had consultants,
20 had marketing. The Court saw a video and received affidavits
21 from individuals that were involved in receiving monies through
22 their services. And the Court accepts, based on the testimony
23 presented, that with regard to that evidence that the services
24 provided by those individuals, because it was not disputed,
25 were legitimate.

1 The Court was also asked to consider the case law with
2 regard to whether you are to be considered a true con artist,
3 who takes the money and runs, or one that places money back
4 into the business and is a less harmful con artist. The law
5 governing this circuit states that where a defendant's conduct
6 was permeated with fraud, a district court does not err by
7 treating the amount that was transferred from the victim to the
8 fraudulent enterprise as the starting point for calculating the
9 victim's pecuniary harm. But then the guidelines then tell the
10 Court that there may be cases where the offense level
11 determined under the guidelines substantially overstates the
12 seriousness of the offense. And in such cases, a downward
13 departure may be warranted.

14 I recognize that, like many other cases, in financial
15 fraud cases such as this, the loss calculation often drives the
16 sentence, or, at least in this case, the advisory guideline
17 range. And I also recognize that companies need to be fed with
18 capital and legitimate business expenses need to be paid to
19 ensure an ongoing existence.

20 Over a course of seven years, the existence of these
21 businesses certainly helped to perpetuate the fraud. And while
22 the Court certainly recognizes that, as presented here today,
23 there were many expenses that were borne in a legitimate manner
24 to consultants and for payment of expenses to continue the
25 existence of the company, I can't help but question whether the

1 seven years of engaging in this criminal conduct was realized
2 and made possible because of the continuation of these
3 investments.

4 But here, I'm asked to answer a limited issue. And
5 that is, based on what the Court has reviewed, what the Court
6 has been presented with, including the Fiske report and the
7 information provided in that report, whether, in fact, the
8 guideline range in this case overstates the seriousness of the
9 offense and whether the loss in this case is overstated.

10 The loss is what the parties have agreed to in terms
11 of the actual loss. It's the \$7.2 million. That's what you
12 agreed to. The question is whether you yourself gained, to
13 that extent, as Mr. Srebnick stated, as whether you took the
14 money and ran. I don't find that based on what has been
15 presented.

16 At the same time, I do recognize that, from July of
17 2010 to November 2017, you defrauded at least 46 investors;
18 that you had control of least 50 separate bank accounts that
19 were linked to these investment companies; that you admitted,
20 and did not contest, that you were the leader and the
21 organizer; and that you not only started these companies, but
22 you were the chief executive officer. That's made clear from
23 the Presentence Investigation Report and from the facts
24 presented, to which you did not dispute.

25 So with regard to the facts and the objections, based

1 on what has been presented, while certainly there's been a
2 claim that there were 46 investors, I leave that to be decided
3 at the restitution hearing. But with regard to the amount of
4 the fraud tied to Mr. Touizer, by virtue of the parties'
5 agreement, it's \$7.2 million.

6 I also note, Mr. Touizer, that with the exception of a
7 petty theft offense as a juvenile and certain driving offenses
8 at the age of 44, other than this criminal episode over the
9 course of seven years, that you have had no involvement in the
10 criminal justice system. I recognize that for the last 10
11 years you financially supported your sister Orit and that you
12 have been in custody since September of 2017. And as a result,
13 you have not met your four-month-old daughter, Yam Mazo. I
14 also note that for purposes of rehabilitation that you are
15 interested in substance abuse treatment, and that will be part
16 of the Court's sentence.

17 But in the end, the Court must make a determination
18 based on the case law and what has been presented as to whether
19 you are entitled to a downward departure or a downward
20 variance, taking into consideration your long sustained
21 involvement in this conspiracy, and also that you were the
22 founder and controlling shareholder and the CEO of these
23 companies, to which were the subject of this hearing.

24 But in the end, as the parties have stipulated to the
25 loss amount attributable to you, and recognizing that it has

1 been undisputed today that many of these expenses were
2 legitimate business expenses to ensure the ongoing existence of
3 the company, I can't say, as was said in the cases presented,
4 that it was all a sham to perpetuate the business. But I do
5 recognize that the business was the vehicle in which you
6 created the illusion of investments for many individuals that
7 have been harmed and deserve to be reimbursed.

8 So Mr. Touizer, I bring out these factors because I
9 believe that in this case you played a different role than
10 Mr. Suster and Mr. Reech. Mr. Suster provided information,
11 although much was already known to the Government, that
12 assisted in your very prosecution. And the Court took that
13 into consideration when it sentenced Mr. Suster. He also
14 profited over a shorter span of time. And the amount that he
15 admitted that he personally gained was a smaller amount than
16 the amount that you're responsible for.

17 In addition, your co-conspirator, Mr. Reech, provided
18 substantial assistance, and that's why he received the sentence
19 that he did. You sit in a much different place. But in the
20 end, the Court needs to make a decision as to what is
21 sufficient but not greater than necessary to serve the goals of
22 sentencing and to serve as an adequate deterrent to you and to
23 others that are similarly situated. And this Court is driven
24 by the evidence and the facts presented to it. And I do find
25 that with regard to what has been presented as to these three

1 companies, that perhaps looking at the loss amount that drives
2 forward the advisory guideline, that perhaps a slight variance
3 is justified.

4 As such, after considering all the statements, the
5 Presentence Report, which contains the advisory guidelines, and
6 a full consideration of the statutory factors of 18, United
7 States Code, Section 3553(a), the Court believes that a
8 sentence somewhat below the advisory guideline range will
9 provide sufficient punishment and deterrence.

10 It's the finding of the Court, Mr. Touizer, that you
11 are not able to pay a fine, but restitution is mandatory and
12 shall be ordered.

13 It will be the judgment of the Court, Mr. Touizer,
14 that you will be committed to the Bureau of Prisons to be
15 imprisoned for a total of 68 months as to Count 1.

16 It is further ordered that pursuant to 18, United
17 States Code, Section 3664, Subsection (d), Subsection (5), as
18 the victims' losses are not yet ascertainable, the Court will
19 set a date for the final determination of the victims' losses.
20 And as the hearing is already scheduled for Mr. Suster and
21 Mr. Reech, the Court will schedule that for -- I believe it is
22 August 28th at 4:00 p.m., and that will be the date for the
23 hearing.

24 Upon your release from imprisonment, you shall be
25 placed on supervised release for a term of three years.

1 Within 72 hours of your release, you shall report in
2 person to the Probation office in the district where you are
3 released.

4 While on supervised release, you shall comply with the
5 mandatory and standard conditions of supervised release. That
6 includes not committing any crimes. You are prohibited from
7 possessing a firearm or other dangerous device. You shall not
8 unlawfully possess a controlled substance and you shall
9 cooperate in the collection of DNA.

10 You shall also comply with the following special
11 conditions: There will be an association restriction with
12 regard to your codefendants. I am going to order substance
13 abuse treatment. There is a financial disclosure requirement,
14 no new debt restriction, a self-employment restriction, an
15 employment solicitation restriction, a permissible search, and
16 a data encryption restriction.

17 The Court is going to require the payment of any
18 unpaid restitution, fines, or special assessments.

19 Since you've answered to the one count in the
20 Indictment, you shall immediately pay to the United States a
21 special assessment of \$100.

22 As the parties acknowledged, your right, title, and
23 interest in certain property has been identified in the
24 Preliminary Order of Forfeiture; however, since there has not
25 been an agreement pursuant to the Plea Agreement, the Court

1 will schedule that for hearing. But I will incorporate the
2 Preliminary Order of Forfeiture into the final judgment, to be
3 amended upon the parties' agreement with regard to the total
4 amount that is to be substituted.

5 Now that the sentence has been imposed, do you or
6 Mr. Lyons or Mr. Srebnick object to the Court's findings of
7 fact or the manner in which the sentence was pronounced?

8 MR. SREBNICK: Judge, can I have one minute to consult
9 with counsel about one issue?

10 THE COURT: Certainly.

11 (Pause in proceedings.)

12 MR. SREBNICK: Your Honor, thank you.

13 And we're grateful for the departure variance that you
14 provided. We do have one factual issue that I want to put on
15 the record for purposes of the subsequent hearings. We have
16 agreed, of course, pursuant to the stipulation, that the loss
17 amount exceeds 3.5. We also stipulate that the total amount of
18 investor monies raised was 7.2 million.

19 We do believe that -- and we've told this to the
20 prosecutor -- there are investors who were not themselves
21 induced by any false misrepresentations. There may be a subset
22 who aren't necessarily falling within the same category of
23 investors as those who incurred direct fraudulent inducements.
24 So that number may be different at the hearing to come.

25 That's all.

1 MR. CRUZ: He brought up the number, the 7.2. I
2 mentioned that number for argument purposes only. As I said
3 earlier, our numbers are, I believe, 9 million. But as I've
4 repeatedly mentioned to Your Honor, I don't have a witness that
5 can validate that that's available. So I'll make sure that
6 that person's available at the hearing to provide testimony as
7 to the approximate 9 million that I've mentioned repeatedly in
8 the hearing.

9 THE COURT: And then, once again, we had a hearing
10 yesterday to determine whether the hearing -- the sentencing
11 hearing should be continued, and I advised the parties that
12 certainly it would be to your benefit to see if you can resolve
13 is issue. But in the end, I did state that, if it was
14 necessary, we would take testimony and then continue if need
15 be. That's what the Court heard today, that the parties had
16 stipulated that that is the -- the amount of loss is within
17 that range.

18 Are you saying, Mr. Cruz, that while you agree it's
19 within that range for purposes of the guidelines, that the
20 Government believes that it's more than 7.2 million?

21 MR. CRUZ: Yes, Judge. As I said earlier in the
22 hearing, I said that I'm confident that it's approximately 9
23 million in funds raised. And I only agreed to the 7.2 to avoid
24 any further debate because 7.2, for purposes of 2B1.1, I
25 thought was right smack close to 9. That's the only reason I

1 said that. If I caused the Court to misunderstand what I
2 meant, then I apologize.

3 So I've mentioned the 9 million. I only agreed to the
4 7.2 as what they say is the number. That's all.

5 THE COURT: All right. Then that will be determined
6 at the appropriate time in terms of the actual loss to each of
7 the investors.

8 MR. CRUZ: Yes, Your Honor.

9 THE COURT: And it would be incumbent upon the
10 Government to reach out to the investors to make that
11 determination.

12 MR. CRUZ: And of course, as I said earlier also, in
13 the same breath, we'll looking forward to working in good faith
14 as we did to resolve the number for the 2B1.1. Hopefully,
15 we'll resolve it without the need of a hearing. But if we need
16 a hearing, I'll have a witness that's capable and competent to
17 testify to that.

18 MR. SREBNICK: And Judge, the only other thing we'd
19 request, if the Court would consider a recommendation -- we
20 know it's not binding, but a recommendation to a designation at
21 the Florida -- excuse me -- at the Federal Prison Camp in
22 Miami, which is the closest one to his family.

23 THE COURT: I'll make that recommendation.

24 MR. SREBNICK: Did you recommend the RDAP already?

25 THE COURT: I did not. I didn't ask for any

1 recommendations. I believe, at this point, it's incumbent upon
2 the Court to ask whether there are any objections to the
3 Court's findings of fact or the manner in which the sentence
4 was pronounced.

5 MR. SREBNICK: Only the one I just mentioned about the
6 precise loss figure within the accepted range, the stipulated
7 range. That's the only one.

8 THE COURT: All right. Then I'll make the
9 recommendation with regard to the Florida facility and the RDAP
10 program.

11 Let me also advise you, Mr. Touizer, within your Plea
12 Agreement is the waiver of your right to appeal. To the extent
13 that it has not been fully waived, let me advise you that any
14 Notice of Appeal must be filed within 14 days after entry of
15 the judgment. And if you're unable to to pay the cost of the
16 appeal, you may apply for leave to appeal in forma pauperis,
17 which means there would be no cost to you.

18 Mr. Cruz?

19 MR. CRUZ: Judge, pursuant to the terms of the Plea
20 Agreement, we move to dismiss the remaining counts of the
21 Indictment as to this Defendant.

22 THE COURT: That motion is granted.

23 The Court will schedule the restitution hearing, as I
24 stated, for August 28th at 4:00 p.m. And perhaps the parties
25 can work together so that that would avoid having an

1 evidentiary hearing. But please let the Court know if the
2 hearing needs to be more than the 30 minutes that have been
3 allotted.

4 MR. CRUZ: Yes, Your Honor.

5 THE COURT: Mr. Touizer, do you have any questions,
6 sir?

7 THE DEFENDANT: No.

8 THE COURT: Sir?

9 THE DEFENDANT: No.

10 THE COURT: Is there anything further in Mr. Touizer's
11 case?

12 MR. CRUZ: No, Your Honor.

13 THE COURT: Anything from the Government?

14 MR. CRUZ: Not from the Government, Your Honor.

15 Thank you.

16 THE COURT: The best of luck to you, Mr. Touizer.

17 (Proceedings concluded at 1:49 p.m.)

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1 UNITED STATES OF AMERICA)

2 ss:

3 SOUTHERN DISTRICT OF FLORIDA)

4 C E R T I F I C A T E

5 I, Yvette Hernandez, Certified Shorthand Reporter in
6 and for the United States District Court for the Southern
7 District of Florida, do hereby certify that I was present at
8 and reported in machine shorthand the proceedings had the 24th
9 day of July, 2018, in the above-mentioned court; and that the
10 foregoing transcript is a true, correct, and complete
11 transcript of my stenographic notes.

12 I further certify that this transcript contains pages
13 1 - 119.

14 IN WITNESS WHEREOF, I have hereunto set my hand at
15 Miami, Florida this 25th day of August, 2018.

16
17 /s/Yvette Hernandez
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