UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	No. 23 CR 193
v.	)	
	)	Hon. Sara L. Ellis
SEAN GRUSD	)	

GOVERNMENT'S SENTENCING MEMORANDUM

Sean Grusd stole $23 million from more than a dozen victims. His con-job—which he conceived and executed all on his own over a period of two years—started by convincing the victims that he was an oracle for investing in private financial technology (Fintech) companies. He then persuaded the victims to send money as investments in new Fintech funds that he started. But those investments were a total sham. Defendant instead sent the victims' money to his personal bank accounts and spent it on his lavish lifestyle—expensive cars, luxury condos in Chicago and Montreal, travel and entertainment, female attention, and other extravagancies. When the victims started asking questions about the status of those investments, defendant went to extraordinary lengths to cover up his scheme, including by creating fake stock certificates, forging purported purchase contracts, and fabricating bank statements.

By the time his fraud was uncovered, all the victims' money was gone. Defendant has not repaid anything. Far from it, he engaged in *another* post-plea fraud to make it appear that he had the funds to make the victims whole. The brazenness of defendant's conduct cannot be overstated, and the harm he caused is

remarkable. The reports from defendant's mitigation expert regarding his childhood challenges—primarily, that he has [redacted] from childhood bullying and insufficient attention of his mother—may be generally mitigating as to his background, but they do not meaningfully reduce defendant's responsibility for this crime, and they do not reduce the need for just punishment or general deterrence.

In short, defendant's theft of over $20 million warrants a substantial term of incarceration. The government recommends a term of 84 months' incarceration—which is 13 months less than the sentence recommended by the probation office.

I. OFFENSE CONDUCT[1]

Defendant executed his scheme through a series of three entities he formed, with corresponding corporate bank accounts on which he was the sole signatory: Dylan Ventures, November Acquisitions, and December Acquisitions.

A. Dylan Ventures: $925,000 Fraud

Defendant launched the scheme in early 2021 with the creation of Dylan Ventures. He provided his targets with marketing materials containing numerous lies about that fund's purported investment history and successes. Among other things, defendant's promotional materials falsely claimed that Dylan Ventures had

[1] These facts are derived from the Presentence Investigation Report (PSR), the Plea Agreement, and the Government's Version of the Offense (GVO).

been a hugely successful ground-floor investor in notable startups such as Instacart, Coinbase, and Shippo.

Defendant also lied about his personal and family background. To gain the victims' confidence, he created an alter ego of himself as a tech-savvy investor whiz-kid. First, he claimed to have graduated from Harvard Law School after receiving a mechanical engineering degree from California Berkeley—both lies (he went to Berkely but for "legal studies"). Second, he falsely claimed to have developed a software application, using his supposed engineering background, that he sold to Apple for millions of dollars. Third, he falsely touted a supposed relationship with the CEO of Citadel Investments, including that he managed that CEO's personal portfolio and brought him on as an initial investor in Dylan Ventures. Finally, defendant shamelessly dragged his own brother's name into his deceptions. Specifically, he falsely listed his brother—who was and had been a highly-reputable senior executive of multiple Fortune 500 technology and media companies—as a manager of Dylan Ventures. In reality, none of defendant's family, including that brother, had any clue what defendant was doing, let alone that he was using their names to further his fraud.

Based on defendant's false representations, four victims wired $925,000 to Dylan Ventures' bank account to invest in that supposed fund. Defendant immediately transferred that money to his personal checking accounts, where he spent it on unrelated personal items.

B. November Acquisitions: $10 Million Fraud

By November 2021, after depleting all the funds he had stolen through Dylan Ventures, defendant created November Acquisitions for the second phase of his scheme. Using his same false background and fabricated investment history, defendant persuaded a group of five victims to invest $10 million. He falsely claimed that he would invest their money in the stock of a privately held financial technology company ("Company A"). In particular, he falsely claimed to already own $50 million in Company A shares, which he said he would contribute to November Acquisitions at a discount. And, to give the victims additional confidence in the investment, defendant falsely told them that other high-profile investors were already part of the venture. However, there were no such shares and there was no investment.

Yet again, defendant immediately diverted the victims' money—this time the $10 million—to his personal checking account. He spent virtually all that money in by mid-January 2022. Some of the more extravagant expenditures included five Teslas for more than $150,000 each, which he gave to each of five women he met online; two Porsches for over $300,000; tens of thousands in dollars in Cartier jewelry; $500,000 in artwork; millions of dollars in real estate; plus various food, entertainment, and travel expenditures.

C. December Acquisitions: $12.2 Million Fraud

In late December 2021, defendant pitched a third investment through another entity he created, December Acquisitions. He falsely stated that the fund would buy

$100 million worth of stock in another privately held financial technology company ("Company B"). Over the next four months, a dozen or more victims invested a total of approximately $12.2 million.

Yet again, as soon as the victims wired those funds into the entity's account, defendant diverted that money to his personal checking account and quickly spent it. Those expenditures included additional extravagancies, including more luxury cars (this time, Aston Martins, Range Rovers, a Maserati, and a $640,000 McLaren), an engagement ring for defendant's then-fiancé, and almost $900,000 in Amex charges. Defendant also purchased two condominiums for himself (one in Montreal and one in Chicago), additional real estate developments for millions of dollars, and more artwork. He also transferred money to his fiancé and other individuals.

In defendant's sentencing memorandum, while acknowledging in one part that defendant used the proceeds of his scheme to "fund a luxurious lifestyle," he claimed in another part that he "rarely benefited from the fraudulent activities." Def. Memo., pp. 6 and 20. While it is true that defendant purchased some high-priced items for women he knew, the claim that he "rarely" spent the proceeds directly on himself is just wrong. As the attached excerpted summary of defendant's bank account shows, he used millions of dollars of those proceeds alone for his own personal day-to-day expenditures, including expensive travel and vacations, entertainment, restaurants, shopping, transportation, utilities, home improvements, artwork, groceries, credit card payments, healthcare, and more. *See* Exhibit 1. Moreover, he misappropriated

the entire $23 million in proceeds for his own benefit regardless of whether all the purchased items went to himself or to his chosen beneficiaries.

D. Defendant's Fabricated Documents and Efforts to Prevent Discovery of the Scheme

Eventually, some of the victim got nervous about their investments. They began demanding proof that defendant's entities actually owned the shares of Company A and Company B as defendant claimed. In April 2022, after having ignored those inquiries for a time, defendant realized he needed to do something to prevent the victims from discovering his scheme. So, he fabricated stock certificates and sent them to victims—purporting to show that November Acquisitions and December Acquisitions had purchased a total of $150 million in shares of Company A and Company B, respectively. Defendant's fabrication of those stock certificates included forging electronic signatures of executives of those two companies.

Around the same time, defendant concocted a story to further lull certain of the victims into believing that their investments were about to pay off. He claimed that a third-party venture capital firm ("VC Firm A") agreed to purchase a portion of the Company B stock from December Acquisitions at a large profit. That was a lie. There was no transaction. To support that lie, defendant fabricated an agreement apparently signed by VC Firm A, in which that firm supposed agreed to buy some of the Company B stock for $20 million. But again, defendant had simply forged the electronic signature of the counterparty.

When that deal did not close by the date reflected in the phony contract, defendant lied again. He claimed that VC Firm A now wanted to buy all of December Acquisitions' shares in Company B, but that the closing needed to be pushed back to accommodate that change. To support that lie, defendant forged another purchase agreement, this time for $266 million worth of shares. When that supposedly expanded deal again failed to close on time, defendant falsely claimed that VC Firm A had asked to push it back again because of "financial turbulence in the market" and because VC Firm A purportedly was courting a Dubai investor to help close the deal. By mid-August 2022, defendant stated that a definitive closing date had been set for September 15, and he sent the investors a forged amended purchase agreement reflecting that new closing date. Every bit of that story was false.

Around that same time in Fall 2022, defendant falsely claimed to have a personal net worth of almost one *billion* dollars, as reflected on his net worth statement. His assets supposedly included: $116 million in Apple shares; $100 million in Instacart shares; $800 million in Flexport shares; $10 million in another company; $5 million in Dylan Ventures; over $33 million in December Acquisitions (Company B stock); $1 million in November Acquisitions (Company A stock); a $100 million interest in the Chelsea Football Club; and a $6 million interest in the Salem Red Sox.

By mid-October 2022, when the closing date for the supposed deal with VC Firm A came and went, defendant lied again by saying that VC Firm A had reneged on the deal and that he was going to have December Acquisitions sue for breach of

contract. He retained a law firm to draft a civil complaint, which that firm did, and he sent the draft to one of the victims. Of course, defendant never intended to file the fraudulent complaint against VC Firm A.

Instead, defendant tried to change the subject by falsely claiming that another venture capital firm ("VC Firm B") agreed to buy 50% of the Company B shares for $133 million. Defendant sent to one victim a forged agreement purporting to be electronically signed by the principal of VC Firm B. Of course, yet again, no agreement existed. Through November and December 2022, defendant made repeated lulling statements to victims that the deal with VC Firm B was near closing.

In late December 2022, one of the victims spoke with defendant and pressed for proof that the VC Firm B deal was going to happen. Defendant responded that the $133 million was already in an escrow account, and he promised to send the victim a copy of the bank statement as proof. Defendant then created a phony account statement from Silicon Valley Bank, reflecting that $133 million was on deposit (when, in fact, the balance was zero), and he sent it to the victim. That victim shared it with another victim, who called Silicon Valley Bank to confirm the money was in escrow. Instead, the bank advised that there was no balance. The next day, those two victims confronted defendant during another call, and defendant eventually admitted that the bank statement and share certificates were forgeries and that he had not purchased any shares of Company A or Company B with the victims' money. Instead, he stated that the proceeds were all gone.

E. Defendant's Lies and Fabrication of Documents During the Presentence Investigation

Defendant pleaded guilty to an information on May 10, 2023, and the Court referred the matter to the probation office for a presentence investigation. On July 8, 2024, the government filed an emergency motion to revoke defendant's bond because of the discovery of his ongoing and additional fraudulent conduct relating to his pending criminal and civil cases, including the presentence investigation. R. 46. The Court decided to let defendant remain free on bond pending his sentencing, although the Court advised defendant that it could consider that conduct as an aggravating factor at sentencing. Arguably, such conduct would warrant an enhancement for obstruction of justice under § 3C1.1. However, the government believes the Court can assess that conduct as an aggravating factor under § 3553(a).

Specifically, in Spring 2024, after retaining his fifth set of lawyers in this case (from the law firm Nixon Peabody), defendant executed another scheme to defraud. That scheme involved causing Nixon Peabody to provide false information and, ultimately, fabricated documents in connection with both his criminal and civil cases. Specifically, upon appearing in his civil case, defendant's lawyers advised the victims' lawyers that defendant was the beneficiary of a family trust that could be used as a source to pay full restitution, and defendant wanted to resolve the civil case by providing that full restitution before sentencing in this case. In June 2024, based on defendant's representations, counsel for both sides began drafting a settlement

agreement to effectuate that repayment. The victims expended substantial legal fees pursuing that settlement based on defendant's representations.

As part of the presentence investigation in this case, defendant similarly provided false personal financial information to the Probation Department, including information regarding the fabricated family trust. Defendant claimed that his grandmother established the trust for his benefit (called the "Gosling Family Trust"). He provided the probation officer with a copy of the supposed trust instrument, and he claimed that his beneficial interest was worth approximately $100 million, but that he would not receive payments until he turned 35 in July 2026. PSR, pp. 13-14. Those documents were all fakes.

On June 18, 2024, through his counsel, defendant also provided the government with a copy of the trust documents, as well as a purported Wells Fargo bank statement for that trust. That bank statement (parts excerpted below) reflected a supposed balance of exactly $50 million in that account:

Wells Fargo Combined Statement of Accounts

Primary account number: [redacted]6912 ■ May 1, 2024 - May 31, 2024 ■ Page 1 of 5

WELLS FARGO

SEAN GRUSD
GOSLINGS FAMILY TRUST
4235 1/2 ALLOTT AVENUE
SHERMAN OAKS CA 91423-4368

Questions?

Available by phone 24 hours a day, 7 days a week:
Telecommunications Relay Services calls accepted
1-800-CALL-WELLS (1-800-225-5935)
TTY: 1-800-877-4833
En español: 1-877-337-7454

Online: wellsfargo.com/biz

Write: Wells Fargo Bank, N.A. (348)
P.O. Box 6995
Portland, OR 97228-6995

Summary of accounts

Checking/Prepaid and Savings

Account	*Page*	*Account number*	*Ending balance last statement*	*Ending balance this statement*
Intiate Business Checking	2	[redacted]8912	23,155,000.00	23,155,000.00
Business Market Rate Savings Account	3	[redacted]8155	26,845,000.00	26,845,000.00
	Total deposit accounts		**$50,000,000.00**	**$50,000,000.00**

According to information that Wells Fargo has provided to the government, that bank statement is fabricated—Wells Fargo has no account records pertaining either to defendant individually or the "Goslings Family Trust." Indeed, defendant fabricated that document in precisely the same way he fabricated the Silicon Valley Bank statement during his offense of conviction, by editing the PDF to insert tens of millions of dollars that do not exist but using different size/type fonts for those figures and showing those millions of dollars in an account that bears no interest.

On June 26, 2024, not knowing that defendant was perpetrating yet another fraud against them, the victims executed the settlement agreement with defendant

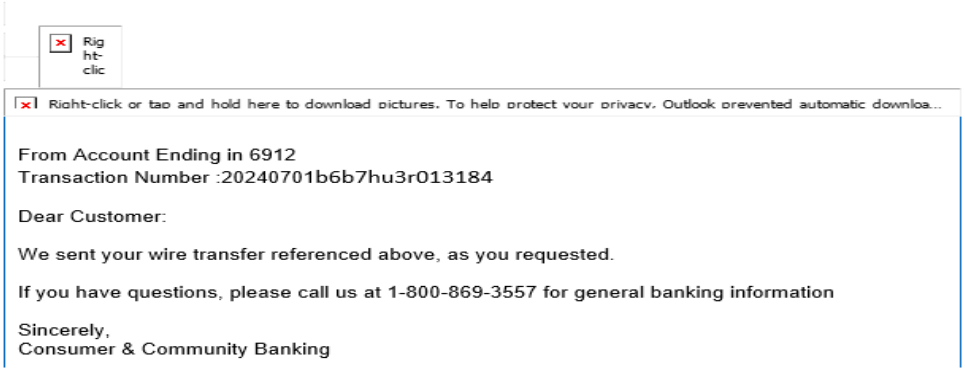
in the civil Case. According to that agreement, defendant promised to pay almost $20 million to those victims within three days. Defendant had falsely represented through his counsel that the restitution would be funded from a loan against the supposed family trust, and he represented in the settlement agreement that "the funds used to make the Settlement Payment are from a legal source and are not proceeds from any criminal conduct."

Defendant intentionally misled his own lawyers so that they would communicate those lies to the victims and the government. For example, on June 3, 2024, one of defendant's lawyers emailed the victims' counsel, stating, "Sean has disclosed to me the source of the funds. It is a legitimate source. He has also shared with me a bank statement showing sufficient funds to close the settlement." But those assurances were not enough for the victims, so their counsel pressed for additional proof about the source of funds. Defendant authorized his lawyers to share those supposed details on an "attorneys only" basis, which they later did on a phone call.

On July 1, 2024, the Monday following the execution of the settlement agreement, the victims' counsel emailed defense counsel for an update on the $20 million wire transfer. According to the settlement agreement, the funds were supposed to be wired to an account set up for the victims at Wintrust Bank. Defendant's lawyer responded that he "just heard that the wire was transmitted to the designated account" and was waiting for the "reference #."

Later that day, defendant forwarded to his lawyer an email chain containing a purported wire confirmation from Wells Fargo Bank, which his lawyer Hotaling then forwarded to the victims' counsel. That confirmation email purported to include a 22-digit "Transaction Number"—*i.e.*, the Federal Reserve's reference number for the wire, as follows:

---------- Forwarded message ---------
From: **Wells Fargo** <no.reply.alerts@wellsfargo.com>
Date: Mon, July 1, 2024, 9:03 AM
Subject: We sent your wire transfer
To: <grusd03@gmail.com>



But no wire was received at the victims' Wintrust account. In a subsequent email and phone call with the victims' counsel, defendant's lawyer stated that there was a "snafu" with the wire. He relayed defendant's explanation that there had been a typo in the account number for the recipient account at Wintrust, so the wire got kicked back, but that a second wire was being ordered. He then sent the victims' counsel an email with another purported Federal Reserve Reference Number for that second supposed wire. However, that number only had 21 digits—whereas the format for a Fedwire number has 22 digits:

Gary and Amy –
Here is the federal reference number that was just provided to us. As I explained to Amy, there was a snafu with one of the numbers on the account into which the funds were being transferred. That has now been double and triple checked. The federal reference number for tracking purposes is 20240701b6b7hu2r00656.
Chris

Again, defendant simply fabricated those numbers and transactions.

The following morning, July 2, 2024, after no wire hit the victims' account at Wintrust, the victims' counsel again spoke by phone with defendant's lawyer. During that call, defendant's lawyer stated that he was scheduled to have a call with a Wells Fargo banker to find out what happened with the wire. He also stated that it was defendant—and not Wells Fargo itself—who had provided him with the bank statement showing the purported balance in that account.

Later that same day, after he was supposed to have had the call with Wells Fargo, defendant's Nixon Peabody lawyers called the victims' counsel to say they were withdrawing from representing defendant. They also advised the government that same day that they were withdrawing from this case, and they then filed their motion to withdraw.

II. THE § 3553(a) FACTORS

A. Nature and Circumstances of the Offense

Defendant's fraud was brazen and unmitigated. His criminal conduct was not an isolated episode. It was an appalling stream of deliberate choices over almost two years targeting numerous victims and resulting in huge losses. That scheme involved many aspects—each one coming on the heels of the other after he had already stolen and misused the proceeds from the prior phase. And each time defendant lied, he lied

again to cover up the prior lie. And when those lies were not enough, he fabricated document after document to conceal them. Defendant shamelessly engaged in that conduct over and over throughout that two-year period, and he then continued to engage in similar misconduct even after pleading guilty. He never paused once. He never thought for a moment about the harm he was doing to his victims—financial and emotional. He never cared about the immense deception he was executing. And he would not have stopped on his own. Defendant acted like a conman throughout—because he was one. There is no way to soften that conclusion.

Additionally, the identity of and effect on defendant's victims—individuals, not corporations or businesses—is aggravating. While some of the victims had sufficient available assets to invest, others invested a large portion of their life savings with defendant. One victim's $2 million in losses were so substantial that he and his wife could no longer afford their house or the tuition for their children's private school. *See* Exhibit T to Government's Supplemental Version of the Offense; *also see* PSR, ¶ 19. Another victim, now 82 years old, reported that his $300,000 investment with defendant represented "years of dedicated work, diligent savings, and the financial stability I had painstakingly achieved." *See* Exhibit S to the GVO, pp. 2-3 of pdf.

Another victim similarly reported that his financial loss "represented an enormous sum of money to me and my family" and "will take years to try to fix and overcome," noting the challenges and betrayal he faced from defendant's fraud:

> With college fast approaching for our oldest [child] we thought we had found a relatively safe chance to invest in two well-known companies

> ([Company A] and [Company B]) through Mr. Grusd. Both were well run businesses with excellent prospects for growth. Unfortunately, the money I invested, the money that was the product of YEARS of hard work and sacrifice by myself and my wife was squandered in a matter of months by Mr. Grusd. I will never forget having to explain to my wife that our money was simply gone. It was not lost because of a reckless investment in a failing company. It was not lost in an effort to get rich quick by buying a cryptocurrency. It was lost because someone set out to deceive, lie, and falsify with ZERO regard for the damage he was inflicting upon others. His actions reflect a complete lack of empathy and regard for the lives he was disrupting, leaving behind financial chaos and a massive amount of stress. These are the actions of a sociopath.

Id., pp. 4-5 of pdf.

Consequently, the nature and extent of defendant's conduct, and the harm resulting from it, are substantial and warrant a substantial period of incarceration.

B. Defendant's History and Characteristics

Defendant's primary argument in mitigation is based on reports from his mitigation expert, Dr. Reading. Specifically, according to those reports and based on information from defendant's mother, defendant had certain challenges as a young child, including a [redacted] disability and [redacted] the latter of which his expert attributes to childhood bullying by peers and/or insufficient attention from family members. Such childhood difficulties or resulting conditions are generally mitigating background factors. However, defendant's youth was also characterized by socioeconomic privilege. His decision to engage in his complex and long-lasting fraud scheme, quite simply, was not *caused* by bullying when he was eight years old, by lack of love or attention from his parents, or by being overshadowed

by his brothers. The motive for his crime was financial. Whether that is called "greed" or something else hardly matters. He wanted money, he wanted it now, and he wanted it the easy way. Whether to increase the size of his bank account, as a means to increase his social standing, or a combination of both, his animating desire was money. And the fact that a small portion of defendant's extravagant purchases were for things he gave to multiple women is not mitigating. Those expenditures were not out of charity. They were for his own perceived social benefit. Again, whether that was to gain social status, personal friendships, or romance is beside the point.

Nevertheless, defendant's mitigation expert opines that defendant possessed an "extreme motive to succeed" resulting from his childhood challenges, and that defendant's criminality was linked, at least in part, to that motivation. Reading Rpt., pp. 19-20. Of course, ambition for social and financial success is good, and it can be especially laudable when fueled by past difficulties, including disabilities or trauma. However, defendant made a choice in how to bring about that desired success: He could either work hard for it or take the easy way through fraud. Although the circumstances of his youth may have provided his motivation to succeed, they in no way predetermined the path he would take toward that success.

Indeed, defendant proved that he could work hard when needed. He apparently worked hard to get into and graduate from one of the most prestigious colleges in the country, the University of California, Berkely. After college, he reportedly had several sought-after jobs in finance, including, by 2017, as a junior partner for a New York

investment firm where he earned $170,000 a year. But defendant found the pace and degree of that success insufficient. So, well into his adulthood and after all those intervening events, defendant reached a fork in the road. He made a conscious turn toward fraud as a far easier and quicker means to success than continuing to work hard for that goal. That deliberate turn is not the least bit mitigating of his offense conduct.

Defendant also reported to his mitigation expert, as repeated in the expert's report, two other challenges he felt he had in his youth: (1) being deprived of his mother's approval; and (2) feeling overshadowed by his older brothers' successes. Reading Rpt., p. 20. Although the importance of children being raised in nurturing and accepting families should not be minimized, the lack of a nurturing home often coincides with the child coming from a broken and/or underprivileged family. In contrast, defendant's youth was not marked by deprivation of any financial, medical, or educational needs. *See* PSR, ¶ 49. Defendant's family life did not involve any physical or emotional abuse. *Id.* Nor was defendant or his family afflicted by drug addiction or alcohol abuse. *Id.*

In short, defendant grew up in a stable, safe, privileged family and community—far ahead of so many millions of other children who have no such advantages. He was raised by two parents—both doctors. His father, who defendant described as his "best friend" (*id.*, p. 7), was a practicing radiologist.[2] His mother is

[2] Defendant's father became the target of a federal fraud investigation, resulting in his conviction and imprisonment. Those events occurred after defendant was already an adult

still a practicing psychologist. His parents apparently paid for his entire college education, annual trips to South Africa while growing up, and the other hallmarks of an upper-middle class teenage experience—tennis, piano, karate. *Id.*, p. 6. In fact, notwithstanding defendant being "angry at his mother because he has not felt validated by her" (*id.*), his mother clearly loves her son and has shown that love by, among other things, providing hundreds of thousands of dollars to defendant to pay his defense lawyers and mitigation expert in this case.

Again, the bullying and any resulting trauma that defendant suffered as a child is generally mitigating as to defendant's personal characteristics. However, those circumstances do not counter the seriousness and calculated nature of his conduct here or the need for a substantial sentence to reflect the other goals of sentencing. While such childhood traumas may have been formative, his conduct decades later was the exercise of his free will. Many children experience far worse trauma and even disabilities, yet very few succumb to criminal impulses as adults. Here, the many intervening years between defendant's childhood events and his crimes—particularly given the nature of his financial fraud—seriously dilutes the mitigation arising from those earlier circumstances. That is especially so where defendant's lengthy and multi-faceted scheme involved repeated and calculated lies and fabrications, the sole purpose of which was stealing over $20 million. At each

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and had moved away, but before defendant embarked on his own criminal scheme. Notably, instead of taking his father's experience as a cautionary tale for his own conduct, defendant rationalized it as an "injustice" by the judicial system against his father. *Id.*, p. 7.

point during that sustained scheme, defendant had the opportunity to reflect and abandon his misconduct, but he chose to continue his egregious deceptions. Those decisions were not knee-jerk reactions. Whether defendant's criminal motivation, personality, or even psychology may be linked in some part to the circumstances of his childhood, he is solely responsible for the many decisions he made years later to engage in fraud.

The government engaged Dr. Diana Goldstein to review defendant's mitigation reports. *See* Exhibit 2. Her review challenges any suggestion that [redacted] could have caused defendant to act in an involuntary or [redacted] in connection with his expansive and repetitive criminal frauds. Specifically, she states that the nature of defendant's fraud is "too complex to be carried out in some involuntary/automatic or diminished mental state." *Id.*, p. 5. Her review also observes that almost 4% of the world's population has suffered [redacted], with the highest rates for individuals who have been [redacted]. To date, however, "the neurobiology of the disorder is not fully understood and available." *Id.*, p. 3. Moreover, her review notes the absence of sufficient evidence demonstrating that defendant has actually ever suffered [redacted] based on events from decades ago. *Id.* But even assuming he has, she notes that there is no compelling evidence from the available research and literature that [redacted] is linked to engaging in fraudulent behavior. *Id.* In her expert view, defendant's behavior is "better explained by antisocial personality traits or psychopathy." *Id.*, pp. 3-4.

Defendant's mitigation expert also attempts to explain defendant's conduct by suggesting that defendant was able to rationalize his crimes: Defendant "assum[ed] the money he was spending would be ultimately replenished by the returns on his investments." Reading Rpt., p. 22. That conclusion misses the mark. Most perpetrators of investment fraud schemes share that same rationalization—always hoping they can fill the hole with future success or new money. Additionally, that conclusion relies on the false premise that defendant thought the investments would be successful and result in sufficient returns to cover his spending. In fact, there were *no* investments of any kind. Immediately after receiving the investment proceeds into the purported investment accounts, defendant transferred all that money to his personal bank accounts—showing he never intended to use any of it for any of the represented purposes. Thus, in contrast to most investment frauds that involve at least some actual assets backing the investments (although the proceeds being procured through false representations), defendant's scheme was a complete sham from the beginning. There was nothing to rationalize and nothing which mitigates defendant's intent.

Defendant's apparent comments to his mitigation expert reveals another important factor in aggravation: Defendant seeks to minimize his own conduct and instead to blame others. First, he appears to have told his expert that it was only "*[t]oward the end* . . . [that] he realized what he was doing was criminal." *Id.* pp. 3-4 (emphasis added). That is just plain false. Defendant was stealing money throughout

his nearly two-year scheme, he never used a single dollar of the proceeds for any promised investment or other legitimate purpose, and he continuously lied about, fabricated, and concealed all the facts. He acted with the intent to defraud throughout, not just "toward the end."

Second, even now, defendant blames others for being caught in his own crime or failing to support him after having been caught. He complains that his brothers have "betrayed" him and that his mother has not been supportive (despite her funding his defense). *Id.*, p. 4. And more egregiously, he falsely blames one of the *victims* for somehow causing him to engage in his crime. *Id.* ("[Defendant] contends he was *played by [the victim].*" Although that victim and his family members *lost* their entire large investment to defendant from *his* fraud, defendant asserts that he was somehow "groomed" and "manipulated" by that victim. Def. Memo., pp. 10-11, 16.[3] Such blame-the-victim statements raise substantial concerns about the degree of defendant's remorse for his sole role in conceiving and executing his scheme.

C. Deterrence, Just Punishment, and Promoting Respect for the Law

A substantial sentence of incarceration is also necessary to accomplish the other goals of sentencing. First, although recidivism rates generally may be lower for white-collar offenses than other types, defendant's conduct here, his age, his continuing misconduct after his guilty plea, and his apparent efforts to minimize his

[3] In fact, as described above, defendant had provided false personal financial statements to that victim claiming that he had a net worth of almost $1 billion.

culpability suggest that specific deterrence is still an important factor. Additionally, the need for just punishment and promoting respect for the law is paramount in a case like this, particularly where the harm to victims is substantial and likely will never be remedied. This was an expansive and significant fraud scheme, involving many victims and a lot of stolen money. Defendant did it all on his own. And, in doing so, he caused significant harm to his victims—both monetarily and emotionally.

Moreover, schemes like this one are also pernicious and call for sentences sufficient to deter fraudulent conduct by others. Curiously, defendant argues in his sentencing memorandum that general deterrence is not at play because his scheme was *so* large and complex. Def. Memo., p. 4. But it is when such larger offenses go insufficiently punished that potential perpetrators conclude they can get away with the smaller ones. Additionally, investment fraud schemes like defendant's decrease overall trust in the financial markets as a whole—whether in public or private transactions—and harm the overall well-being of our economy. The interests of general deterrence and promoting respect for the law are thus weighty in fashioning an appropriate sentence for such offenses.

IV. RESTITUTION

As noted in the plea agreement, restitution of $23,155,000 should be ordered to the various victims in the amounts set forth in the victim import spreadsheet provided to the Court.

V. SUPERVISED RELEASE CONDITIONS AND TERM

The government has no objection to the mandatory conditions of release set forth on pages 15-16 of the PSR, particularly conditions (1), (2), and (5).

The government also has no objection to the recommended discretionary and special conditions of Supervised Release set forth on pages 16-20 of the PSR and concurs with the probation officer's rationales for these conditions. Specifically, the government agrees that discretionary conditions (4), (5), (6), and (8), and special conditions (4), (11), and (13) promote the statutory factors of affording adequate deterrence to criminal conduct, protecting the public from further crimes by the defendant, and assisting the defendant in reintegrating into society upon his release.

The government further agrees that discretionary conditions (14), (15), (16), (17), (18), and (23) promote the statutory factor of allowing for effective monitoring of defendant during any supervised release term imposed.

The government further agrees that special conditions (3), (5), (6), (7), (8), (10) and (11) promote the statutory factor of the need to provide restitution.

The government recommends a three-year term of supervised release, based on the Section 3553(a) factors addressed above, particularly the needs to provide restitution to the victims, to protect the public, and to monitor and deter the defendant.

VI. CONCLUSION

For the foregoing reasons, the government respectfully recommends that the Court impose a term of 84 months' incarceration, which is consistent with the advisory Guidelines range and the other factors set forth in 18 U.S.C. § 3553(a).

Respectfully submitted,

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