

21-2761

United States Court of Appeals
for the
Second Circuit

UNITED STATES OF AMERICA,
Appellee,

v.

BRENT BORLAND,
Defendant-Appellant.

On Appeal from the United States District Court for the
Southern District of New York

No. 1:18-cr-487-1, Hon. Katherine Polk Failla

DEFENDANT-APPELLANT BRENT BORLAND'S PRINCIPAL BRIEF

Kyle Singhal
Shon Hopwood
HOPWOOD & SINGHAL PLLC
1701 Pennsylvania Ave., N.W.
Washington, DC 20006
Telephone: (817) 212-9041
kyle@hopwoodsinghal.com
Counsel for Brent Borland

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STATEMENT REGARDING ORAL ARGUMENT

Borland requests oral argument. The district court grappled extensively with the question presented, which is whether and how the “collateral exception” in U.S.S.G. § 2B1.1’s Application Note 3(E)(ii) applies here, where the collateral pledged to Borland’s investor-victims included difficult-to-value real estate in Belize. (The district court took two rounds of briefing and held a separate hearing on loss amount to resolve this specific question. *See* Loss-Amount Hearing Transcript, Docket Entry 83, App. A196.) Determining whether collateral like Borland’s counts as collateral “pledged or otherwise provided” under note 3(E)(ii) is a matter of first impression. And the record below is complex, containing thousands of pages of submissions regarding the valuation of Borland’s collateral. Borland respectfully submits that oral argument may thus aid the panel.

JURISDICTIONAL STATEMENT

The district court had jurisdiction under 18 U.S.C. § 3231. This Court has jurisdiction under 28 U.S.C. § 1291 and 18 U.S.C. § 3742.

STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

Whether the district court erred in ruling that Application Note 3(E)(ii) to United States Sentencing Guidelines § 2B1.1 did not apply to the court's calculation of Borland's Guidelines sentence range, resulting in a procedurally unreasonable sentence, where:

1. The Guidelines punishment range of 151 to 188 months of imprisonment was the result of a 22-level increase for a loss amount of \$26.1 million;
2. Borland's restitution obligation was based on his loss amount;
3. The Application Note provided that loss amount "shall be reduced" by the "fair market value of collateral" "pledged or otherwise provided by the defendant"; and
4. The district court declined to offset the loss amount by even a "reasonable estimate" of the value of the collateral, as required by Application Note 3(C) to United States Sentencing Guidelines § 2B1.1.

STATEMENT OF THE CASE

I. Factual Background

Since 2008, Appellant Brent Borland has dedicated his life and career to an ambitious country-building project in Belize. Together with Marco Caruso, Borland's 50/50 partner since 2010, Borland built a group of entities (together, the "Placencia Group") to own, develop, and manage thousands of acres of beachfront property, including a condo hotel, a 156-lot residential development, a marina, a casino, a golf course, an airport, a private island, and more. *See* Borland's First Sentencing Letter, D.E. 47 at 2, App. A32.¹ Over more than a decade, Borland and Caruso directed tens of millions of invested dollars into Placencia Group real estate, as evidenced by valuations presented below, including audits by Deloitte-affiliated accounting firms. *See, e.g.*, 2019 Valuation Letters, D.E. 105-1 (Exh. D) at 36-43, App. A303-A310; 2011-2013 Auditors' Reports, D.E. 107-1 (Exh. F) at 1-39, App. A331-A369. In short, in stark contrast to so many white-collar fraud cases in which money simply disappears into borrowers' pockets, Borland and Caruso invested millions of *real* dollars into large swaths of *real* waterfront property, constructing significant infrastructure as they worked to bring their ambitious master-planned development to life.

¹ "D.E." refers to entries in the district court's docket. "App." Refers to the Appendix filed contemporaneously with this Brief.

To that end, in 2014, Borland and Caruso² formed an investment vehicle, the Belize Infrastructure Fund (“BIF”), through which to receive and manage short-term loans for their development projects. *See* Borland’s First Sentencing Letter, D.E. 47 at 3-5, App. A33-A35. In 2016, Borland created a second entity, Borland Capital Group LLC (“BCG”) to raise longer-term capital for infrastructure projects. *Id.* Investors, whether investing funds through BIF or BCG, would sign a loan agreement and a security agreement wherein Borland pledged real property in Belize as collateral for the investors’ loans. *Id.* As is relevant to this proceeding, Borland raised \$21.9 million from a total of 41 investors through BIF and BCG.³ The largest

² Caruso remains in Belize and has not been indicted. The Government has aptly referred to Caruso as “an unindicted co-conspirator.” Sentencing Transcript, D.E. 115 at 17:4, App. A400.

³ On November 4, 2020, the parties stipulated that the loss amount in this matter was \$21.9 million. *See* Joint Letter, D.E. 89, App. A280. Well after that stipulation and shortly before Borland’s October 5, 2021 sentencing hearing, the Government identified an additional \$4.2 million in loss. *See* Government’s Third Sentencing Letter, D.E. 106 at 9, App. A319. At sentencing, the Government mentioned the additional loss amount but agreed to honor its stipulation to the \$21.9 million loss amount for the purpose of sentencing. *See* Sentencing Transcript, D.E. 115 at 8, App. A391. The district court ultimately found a loss amount of \$26.1 million (an amount that includes the additional \$4.2 million), resulting in a 22-level increase in offense level (rather than a 20-level increase for a loss amount under \$25 million). But the district court imposed the “same sentence” that it would have imposed without the additional \$4.2 million loss amount. *See* Sentencing Transcript, D.E. 115 at 78:16-79:4, App. A459-A460. Of course, the district court did not actually impose the “same sentence” as it otherwise would have because, as part of Borland’s sentence, it imposed a restitution obligation of \$26.1 million, which includes the additional \$4.2 million loss. *See* Section I.C, *infra*.

investor, Copper Leaf, LLC (“Copper Leaf”), invested \$8 million, and the remaining 40 investors collectively invested \$13.9 million. *See* Borland’s Third Sentencing Letter, D.E. 105 at 7, App. A289. Most if not all of these 41 lenders were sophisticated, accredited investors, several of whom traveled to Belize to view the airport development, to conduct independent due diligence concerning the properties that had been pledged as collateral (including Borland and Caruso’s international airport project), and to meet with Borland or Caruso prior to investing. *See* Borland’s Second Sentencing Letter, D.E. 71 at 4, App. A151.

The loan agreements described the collateral. For Copper Leaf, its original loan agreement with BIF designated four single-family homes and six residential lots as collateral, and a modification agreement (executed when Copper Leaf increased its investment) specified that a golf course was pledged as additional collateral. *See* Loan Agreement, D.E. 71-1 at 18 (Exh. B at 14), App. A172; Modification Agreement, D.E. 71-1 at 28 (Exh. E at 1), App. A179. The loan agreement also permitted Borland “to substitute similar properties with equal or greater value as collateral.” Loan Agreement, D.E. 71-1 at 16 (Exh. B at 12), App. A170. Attorney David Filler (“Filler”), acting as Borland and Caruso’s escrow agent by holding title to pledged collateral, represented in response to Copper Leaf’s due-diligence requests that, upon default, Copper Leaf would receive proceeds from the sale of assets held as collateral, including a “second backstop of assets” in the event

that liquidation of the collateral produced insufficient proceeds to repay the outstanding debt. Filler Rodriguez Letter, D.E. 71-1 at 21-22 (Exh. C at 1-2), App. A175-A176. And Filler had power of attorney to liquidate collateral in Belize upon Borland's default. *See, e.g.*, Power of Attorney, D.E. 47-5 (Exh. E), App. A73-A76 (granting power of attorney over 1586.13 acres of land in Placencia Estates); *see also* Filler Rodriguez Letter, D.E. 47-6 (Exh. F), App. A78 (confirming that 1586.13 acres of land in Placencia Estates had been placed into the escrow as collateral for BIF debt).⁴

For the other 40 lenders, loan agreements (whether with BIF or BCG) likewise specified parcels of real estate as collateral, with an 1125-acre plot owned by Placencia Group entity MEL—and holding an airport—pledged as additional collateral under a substitute-assets provision. *See, e.g.*, BCG Note, D.E. 47-3 at 2 (Exh. C), App. A63, A70 (pledging, through Placencia Group entity Mayan Lagoon, “one single family home, one ocean[-front] condominium,” and five lots as collateral for debt in the amount of \$1,750,000, and identifying “the Placencia International

⁴ The grantor of this Power of Attorney was Placencia Estates Development LLC (“PED”). Borland and his wife are each 50% owners of Bella Group LLC (“Bella”) (a company organized in Nevis). Bella and Caruso were each 50% owners of PED, and Borland was a manager of PED. *See* Corporate Registry, D.E. 47-8 (Exh. H) at 2, App. A82. Bella and Caruso were also each 50% owners of Mayan Lagoon Estates Limited (“Mayan Lagoon”), M.E.L. Investments Ltd (“MEL”), and Rendezvous Island Ltd (“Rendezvous”), all three of which are Placencia Group entities organized under the laws of Belize. *See, e.g.*, Corporate Filings, D.E. 47-12 (Exh. L) at 6, App. A89 (listing Borland as a director of MEL).

Airport” and other real estate as additional collateral). Some collateral was pledged to multiple investors, but the aggregate value of the collateral, according to audits and reports filed below, well exceeded the total amount of the BIF and BCG notes. *See, e.g.*, 2019 Valuation Letters, D.E. 105-1 (Exh. D) at 37, App. A304 (appraising the 1125-acre MEL-held airport development at \$11,251,300 in 2019); *id.* at 43, App. A310 (appraising PED-held real estate at \$32,300,000 in 2019).

II. Procedural History

On May 16, 2018, the Securities and Exchange Commission (“SEC”) filed a complaint against Borland in the Southern District of New York, accusing him of fraud in relation to the BIF and BCG notes. *See* S.D.N.Y. No. 1:18-cv-04352-PKC. On July 12, 2018, Borland was criminally indicted for one count of conspiracy to commit securities and wire fraud, in violation of 18 U.S.C. § 371; one count of securities fraud, in violation of 15 U.S.C. § 78j; and one count of wire fraud, in violation of 18 U.S.C. 1343. *See* Indictment, D.E. 11. The Government accused Borland of misappropriating investors’ funds and making material misstatements to the investors, among other allegations. *Id.* The SEC action was then stayed (and remains so) pending the resolution of this criminal matter. *See* Order Granting Stay, D.E. 22 in No. 1:18-cv-04352-PKC (S.D.N.Y. Sep. 25, 2018).

On February 13, 2019, Borland pleaded guilty to the criminal charges without a plea agreement in place. *See* Plea Hearing Transcript, D.E. 28 at 16:1-19; 25:21-

24, App. A17, A26; *see also* 2/13/2019 Docket Entry (minute order), App. A6. Borland admitted to making material omissions, namely, of his and Caruso's prior default on two loans; these omissions formed the factual basis for the guilty plea. *See* Plea Hearing Transcript, D.E. 28 at 28-29, App. A29-A30. But Borland retained his right to appeal the district court's determination of his fraud loss amount for purposes of calculating the applicable Guidelines sentence range: the idea was that Borland would admit guilt, stipulate to a gross loss amount, and then argue why the value of pledged collateral should offset that loss amount to avoid a loss-amount enhancement to his offense level. *See* Borland's Third Sentencing Letter, D.E. 105 at 2, App. A284 ("Borland pleaded guilty to Counts One, Two and Three of the indictment without a plea agreement with the government, in part because he wanted to advance arguments about the 'credit for loss' provision set forth in Application Note 3(E)(ii).").

The district court took two rounds of sentencing submissions and, on August 5, 2020, held a hearing on loss amount, primarily to determine whether Borland's loss amount should be reduced by the value of collateral pledged to the investors under U.S.S.G. § 2B1.1's Application Note 3(E)(ii). *See* Borland's First Sentencing Letter, D.E. 47, App. A31; Government's First Sentencing Letter, D.E. 55, App. A118; Borland's First Sentencing Reply, D.E. 56, App. A135; Borland's Second Sentencing Letter, D.E. 71, App. A158; Government's Second Sentencing Letter,

D.E. 73, App. A182; Borland's Second Sentencing Reply, D.E. 76, App. A192; Loss-Amount Hearing Transcript, D.E. 83, App. A196. The district court ultimately held that U.S.S.G. § 2B1.1's Application Note 3(E)(ii) "DOES NOT apply to the calculation of the Guidelines, and the collateral exception is denied." 8/5/2020 Docket Entry (minute order), App. A11 (capitalization in original).

The district court then took a third round of submissions prior to its October 5, 2021 sentencing hearing. *See* Borland's Third Sentencing Letter, D.E. 105, App. A283; Government's Third Sentencing Letter, D.E. 106, App. A311; Borland's Third Sentencing Reply, D.E. 107, App. A328; Sentencing Transcript, D.E. 115, App. A384. At sentencing, Judge Katherine Polk Failla started with a base offense level of 7; added 22 levels for loss amount, 4 levels for number of victims, and 2 levels each for role and sophisticated means; and subtracted 3 levels for acceptance of responsibility, resulting in a total offense level of 34 and a Guideline range of 151 to 188 months of imprisonment after factoring in Borland's zero criminal-history points. Sentencing Transcript, D.E. 115 at 79, App. A460. Without the 22-level enhancement for loss amount, Borland's Guideline range would have been 10 to 16 months of imprisonment. *See* U.S.S.G. Ch. 5 Pt. A (Sentencing Table). The court ultimately sentenced Borland to 60 months of imprisonment on the conspiracy count and 84 months of imprisonment on each fraud count, to run concurrently. *See* Sentencing Transcript, D.E. 115 at 84, App. A465. This appeal follows.

III. Post-Arrest Factual Developments

The world did not stop upon Borland's arrest in July 2018. Instead, the 41 investors began taking steps to make themselves whole by acquiring (or pursuing litigation to acquire) Borland and Caruso's assets in Belize. The investors broke into two camps: Copper Leaf, the largest lender at \$8 million, acted alone; the other 40 lenders joined forces, led by investor Dyke Rogers.⁵ *See* Borland's Second Sentencing Reply, D.E. 76 at 2-3, App. A193-A194. On July 13, 2018 (the day after Borland's arrest), Copper Leaf sued Borland, Caruso, and BIF in the Southern District of New York, seeking its \$8 million investment plus interest and costs. *See* Complaint, D.E. 1 in *Copper Leaf, LLC v. Borland*, No. 1:18-cv-06377-JFK (S.D.N.Y.). On October 4, 2018, Copper Leaf received a default judgment in the amount of \$10,235,711.93 against BIF. *See* Default Judgment, D.E. 42 in S.D.N.Y. No. 1:18-cv-06377-JFK, App. A476. Copper Leaf received similar default judgments against Borland and Caruso. *See* D.E. 67 and 80 in S.D.N.Y. No. 1:18-cv-06377-JFK. Copper Leaf then sought to domesticate those judgments in Belize—only to find that, after learning of the judgments, Caruso had filed fraudulent resignation papers in Belize, on behalf of Borland, purporting to remove Borland as

⁵ One of the 40 investors, Louis Cushman also sued Borland individually. Cushman received—and was paid—a \$400,000 settlement rather than receiving collateral. *See* Loss-Amount Hearing Transcript, D.E. 83 at 43:4-6, App. A238; Sentencing Transcript, D.E. 115 at 10:5-8, App. A393; Borland's First Sentencing Reply, D.E. 56 at 7, App. A141.

an owner and controlling co-director of certain Placencia Group entities, apparently in order to permit Caruso then (as sole owner) to transfer certain Placencia Group assets to the *other 40 investors*. See Borland's Second Sentencing Letter, D.E. 71 at 7-8, App. A154-A155 (explaining that Dyke Rogers formed a new entity on behalf of himself and the other 39 investors in the 40-investor group and that this entity has acquired "1186.13 acres owned by Placencia Estates Development from Marco Caruso without Borland's knowledge or required approval"); Quaranta Letter, D.E. 105-1 (Exh. C) at 33-35, App. A300-A302.

The ownership and fraudulent-transfer disputes remain pending in both Belizean and American courts. And on May 24, 2021, Caruso filed a Rule 60(b) motion to set aside Copper Leaf's default judgment in the Southern District of New York. See Order, D.E. 121 in S.D.N.Y. No. 1:18-cv-06377-JFK. Nevertheless, on September 21, 2021 (two weeks prior to Borland's sentencing), Copper Leaf's lead counsel John Quaranta wrote a letter in support of Borland (from Borland's *largest victim*) explaining that "Borland owns . . . sufficient real property assets in Belize to make Copper Leaf *and the others* whole." Quaranta Letter, D.E. 105-1 (Exh. C) at 35, App. A302 (emphasis added).

For ease of reference, the following is a list of relevant other litigation, of

which Borland asks this Court to take judicial notice under Fed. R. Evid. 201:⁶

1. *SEC v. Borland*, No. 1:18-cv-04352-PKC (S.D.N.Y.). This matter is stayed pending the resolution of Borland's criminal case.
2. *Copper Leaf, LLC v. Borland*, No. 1:18-cv-06377-JFK (S.D.N.Y.). This matter has substantial ongoing litigation relevant to the ownership and valuation of Borland's collateral. As discussed above, Caruso has moved to set aside Copper Leaf's judgment, with an evidentiary hearing on that motion now scheduled for August 24, 2022. *See* Order, D.E. 121 in S.D.N.Y. No. 1:18-cv-06377-JFK. Borland has in turn sued Caruso and others for contribution, conversion, and fraud, among other claims. *See* Third-Party Complaint, D.E. 122 in S.D.N.Y. No. 1:18-cv-06377-JFK. Documents from ongoing litigation (including deposition transcripts) attached to Borland's complaint reveal that the 40 investors under Dyke Rogers's leadership believe Borland's collateral in Belize to be worth millions of dollars, contrary, for instance, to representations made by Rogers at Borland's sentencing.

⁶ Courts of appeals routinely take judicial notice of pleadings filed in other litigation matters, at least to establish the fact of such litigation. *See Liberty Mut. Ins. Co. v. Rotches Pork Packers, Inc.*, 969 F.2d 1384, 1388 (2d Cir. 1992) ("A court may take judicial notice of a document filed in another court 'not for the truth of the matters asserted in the other litigation, but rather to establish the fact of such litigation and related filings.'") (quoting *Kramer v. Time Warner Inc.*, 937 F.2d 767, 774 (2d Cir. 1991)). Borland asks this Court to take judicial notice of the listed litigation matters and the filings from said matters that are referenced in this brief and provided in the Appendix.

Compare 4/18/2022 Rogers Deposition Transcript, D.E. 122-8 at 18 (67:17-25) in S.D.N.Y. No. 1:18-cv-06377-JFK, App. A534 (“What I had said in the sentencing hearing was true. At that point I felt like that property was worth about 4 million dollars. [. . .] overall I value that property at somewhere around 4 million dollars”) *with* Sentencing Transcript, D.E. 115 at 41, App. A422 (Rogers stating to Judge Failla, “I would submit that the value on that is considerably less than \$4 million,” and proposing a “valuation of \$625,000”).

3. *Copper Leaf, LLC v. Filler*, No. 1:18-cv-22939-MGC (S.D. Fla.). Copper Leaf sued Filler for breach of fiduciary duty and other claims pertaining to liquidation of the collateral. Filler filed a motion for summary judgment, briefing on which was completed June 28, 2022. Litigation is ongoing.
4. *Copper Leaf, LLC v. Mayan Lagoon Estates Ltd.*, No. 1:19-cv-21152-MGC (S.D. Fla.). Copper Leaf sued Mayan Lagoon Estates, a Placencia Group entity, for fraud. Jury trial is set for January 23, 2023. *See* 12/9/2021 Order, D.E. 88 in S.D. Fla. No. 1:19-cv-21152-MGC.

5. Belize Litigation:

- a. *Copper Leaf LLC v. Belize Infrastructure Fund I, LLC*, Claim No. 141 of 2019 (Supreme Court of Belize). Copper Leaf sought to domesticate its approximately \$10 million default judgments in Belize. The

Belizean courts have stayed litigation pending the resolution of Caruso's motion to set aside the default judgment in *Copper Leaf, LLC v. Borland*, No. 1:18-cv-06377-JFK (S.D.N.Y.).

- b. *Borland v. Caruso*, Claims 623, 624, 625, and 626 of 2020 (Supreme Court of Belize). Borland, his wife, and Copper Leaf sued Caruso and others to set aside Caruso's fraudulent divestment of Borland from the Placencia Group entities, so that Borland may provide Placencia Group assets to all investors (including Copper Leaf) and not only to the 40 investors under Dyke Rogers's leadership. Records of the Belize litigation are in the public record, but they are not readily accessible online. Some documents in the Belize Litigation have been filed as attachments in the S.D.N.Y. litigation and are provided in the Appendix herein for the Court's reference. *See* Belize Litigation Documents, D.E. 122-4 in *Copper Leaf, LLC v. Borland*, No. 1:18-cv-06377-JFK (S.D.N.Y.), App. A488-A508; Barrow & Williams Letter, D.E. 122-2 in *Copper Leaf, LLC v. Borland*, No. 1:18-cv-06377-JFK (S.D.N.Y.), App. A478 (appraising approximately 43 acres of Borland's waterfront collateral at U.S. \$200,000 per acre (\$8.6 million) as of July 31, 2019, despite Dyke Rogers's statement at Borland's sentencing indicating that the entire 1186.13-acre plot containing those 43 acres was worth

only \$625,000, Sentencing Transcript, D.E. 115 at 41, App. A422).

IV. Rulings Submitted for Review

Borland appeals from the district court's order that U.S.S.G. § 2B1.1's Application Note 3(E)(ii) "DOES NOT apply to the calculation of the Guidelines" range in his case. 8/5/2020 Docket Entry (minute order), App. A11 (capitalization in original). And Borland thus appeals the sentence imposed (including his custodial sentence and his restitution order) as procedurally unreasonable. *See* Restitution Order, D.E. 109, App. A370; Judgment, D.E. 110, App. A375. Borland asks this Court to remand for resentencing so that the district court may take evidence, make a factual finding as to the fair market value of the collateral on the date of resentencing, and recalculate Borland's loss amount, and so that the district court may then impose a sentence and restitution obligation in accordance therewith.

SUMMARY OF THE ARGUMENT

The district court committed procedural error in ruling that Application Note 3(E)(ii) to United States Sentencing Guidelines § 2B1.1 did not apply to the calculation of Borland's Guideline punishment range. "In a case involving collateral pledged or otherwise provided by the defendant," Note 3(E)(ii) requires a district court to reduce a defendant's loss amount by "the fair market value of the collateral at the time of sentencing." In three rounds of sentencing submissions, Borland provided the district court with evidence that the collateral he had pledged to the investors in this matter was sufficient to offset his loss amount in full, meaning that no loss-amount enhancement should have applied to his Guideline calculation. The district court declined to apply Note 3(E)(ii), instead imposing a 22-level enhancement based on a stipulated loss amount of \$26.1 million, resulting in a Guideline range of 151 to 188 months of imprisonment. Even though the district court ultimately imposed a below-Guidelines sentence of 84 months of imprisonment, Borland's sentence is more than five times the high end of the 10-to-16-month Guideline range that he would have faced without the loss-amount enhancement.

Following this Court's caselaw, property counts as "collateral" that has been "pledged or otherwise provided" under Note 3(E)(ii) so long as it is provided as security for a debt. The debtor need not provide the creditor with a mortgage, an

ownership interest, or a recorded instrument, for instance. Unlike the predecessor Guideline's application note, Note 3(E)(ii) does not require the creditor to have liquidated the collateral (indeed, it applies expressly to unliquidated collateral), and it does not limit the loss-amount reduction to what the lender "can expect to recover." The point of Note 3(E)(ii) is that the Guideline range should reflect the diminished culpability of a wire-fraud defendant who puts up collateral compared with that of a defendant who simply takes money and runs.

Here, Borland presented the district court with evidence that he, either personally or through entities that he owned and directed, pledged real property in Belize worth tens of millions of dollars to each of the 41 investors. This property included a 1586.13-acre waterfront parcel, an 1125-acre parcel with an airport, a golf course, and numerous residential homes and lots. But the district court ruled that contingencies in the investors' redemption of the collateral, together with ownership and fraudulent-transfer disputes that have arisen among the 41 investors in the wake of Borland's arrest, made it too difficult to identify the collateral, and the court thus declined to apply Note 3(E)(ii) altogether. This was error: Borland's pledge of collateral satisfies the plain text of Note 3(E)(ii), which does not limit collateral to contingency-free collateral that requires no steps or mechanism for redemption. And the litigation that has arisen among the investors only bolster the proposition that Borland's collateral has real value. Rather than deny an offset to loss amount

entirely, the district court should have either made a reasonable estimate of the fair market value of Borland's collateral as required by the Guidelines or, if the investors' disputes were so concerning, waited until pending civil litigation resolved those disputes before sentencing Borland based on an inflated Guideline range.

The district court's Guideline range calculation was incorrect as a result of its failure to offset loss amount by the fair market value of Borland's collateral under Note 3(E)(ii). And the district court then based restitution on the erroneous loss amount. Borland thus asks this Court to reverse and remand for a *de novo* resentencing at which the district court may take evidence, make a factual finding as to the fair market value of the collateral on the date of resentencing, and recalculate Borland's loss amount, so that the district court may then impose a sentence and restitution obligation in accordance therewith.

STANDARD OF REVIEW

This Court reviews a district court's sentencing decision for procedural and substantive reasonableness. *See United States v. Cavera*, 550 F.3d 180, 189-90 (2d Cir. 2008) (en banc). Borland's issue on appeal is a procedural-reasonableness challenge because Borland argues that the district court erred in calculating the appropriate punishment range under the Sentencing Guidelines. *See United States v. Hsu*, 669 F.3d 112, 120 (2d Cir. 2012) (cleaned up) ("A district court commits procedural error where it makes a mistake in its Guidelines calculation [. . .] or rests its sentence on a clearly erroneous finding of fact."); *see also Gall v. United States*, 552 U.S. 38, 51 (2007). This Court reviews the district court's legal determinations *de novo*. *Hsu*, 669 F.3d at 120.

As discussed in Section I.C, *infra*, Borland believes that his request for resentencing on restitution (in addition to resentencing on the custodial portion of his sentence) follows logically from his challenge to loss amount, in which case this Court reviews it for abuse of discretion. *United States v. Zangari*, 677 F.3d 86, 91 (2d Cir. 2012). But to the extent that Borland's challenge to his restitution obligation was not preserved, that issue is reviewed for plain error. *See United States v. Carter*, 489 F.3d 528, 537 (2d Cir. 2007) ("Under the plain error standard, there must be (1) error, (2) that is plain, and (3) that affects the defendant's substantial rights.") (quoting *Johnson v. United States*, 520 U.S. 461, 466-67 (1997)).

ARGUMENT

I. THE DISTRICT COURT COMMITTED PROCEDURAL ERROR IN RULING THAT APPLICATION NOTE 3(E)(II) TO U.S.S.G § 2B1.1 DID NOT APPLY TO THE CALCULATION OF BORLAND’S GUIDELINE RANGE.

Even post-*Booker*, a district court must calculate a defendant’s punishment range under the United States Sentencing Guidelines before imposing a sentence that comports with the sentencing aims of 18 U.S.C. § 3553(a). In calculating a Guideline range, a district court must follow not only the Guidelines themselves but also any accompanying application note “unless it is inconsistent with the underlying guideline.” *United States v. Romero*, 904 F.3d 238, 242 (2d Cir. 2018).

And even when a district court ultimately decides to depart from the Guidelines in imposing a sentence, procedural reasonableness requires the court first to go through the process of calculating the Guideline range correctly; doing so is never optional. *See Gall v. United States*, 552 U.S. 38, 49 (2007) (“[A] district court should begin all sentencing proceedings by correctly calculating the applicable Guidelines range. As a matter of administration and to secure nationwide consistency, the Guidelines should be the starting point and the initial benchmark.”) (internal citation omitted); *United States v. Ortiz*, 621 F.2d 82, 85 (2d Cir. 2010) (requiring district court first to “correctly” calculate the Guidelines range “even if a non-Guidelines sentence is imposed”); *see also United States v. Sachsenmaier*, 491 F.3d 680, 685 (7th Cir. 2007) (“The district courts must calculate the advisory

sentencing guideline range accurately, so that they can derive whatever insight the guidelines have to offer” before deviating from them.).

In wire-fraud cases like this one, the calculation of a defendant’s Guidelines offense level begins with a base level of seven, which then rises quickly with loss amount, following the loss table in U.S.S.G. § 2B1.1(b)(1). Here, Borland’s loss amount of \$26.1 million increased his offense level by 22 and ultimately resulted in an offense level of 34 (after other enhancements and a three-level credit for acceptance of responsibility), producing a Guideline range of 151 to 188 months of imprisonment. *See* Sentencing Transcript, D.E. 115 at 77, App. A458. Without the 22-level enhancement for loss amount, Borland’s offense level would have been 12, and his Guideline range would have been only 10 to 16 months of imprisonment. *See* U.S.S.G. Ch. 5 Pt. A (Sentencing Table).

The Guidelines stipulate that a defendant’s loss amount “shall be reduced by” certain specified amounts, one of which is, “[i]n a case involving collateral pledged or otherwise provided by the defendant, the amount the victim has recovered at the time of sentencing from disposition of the collateral, or if the collateral has not been disposed of by that time, *the fair market value of the collateral at the time of sentencing.*” U.S.S.G. § 2B1.1, app. n. 3(E)(ii) (emphasis added). Here, as discussed below, the district court erroneously declined to apply this provision, resulting in a Guideline range that was incorrectly based on \$26.1 million of loss, despite

competent evidence of collateral worth at least that amount. Even though the district court ultimately varied downward to a sentence of 84 months of imprisonment, that sentence is more than *five times* the upper end of the Guideline range that would have applied without the 22-level loss-amount enhancement. Imposing such a sentence without correctly calculating the applicable Guideline range was error, and this Court should reverse for a resentencing hearing at which the district court offsets Borland’s loss amount—potentially to zero—by the fair market value of the collateral that Borland pledged or otherwise provided to the investors.

A. Application Note 3(E)(ii) requires the district court to reduce loss amount by the “fair market value of collateral” that is “pledged or otherwise provided by the defendant.”

1. The Text of the Application Note

Application Note 3(E)(ii)’s text is straightforward: loss amount must be reduced by the fair market value of unliquidated “collateral” that has been “pledged or otherwise provided,” using its value on the date of sentencing. U.S.S.G. § 2B1.1, app. n. 3(E)(ii) [hereinafter, the “Application Note” or “Note 3(E)(ii)”].⁷ This Court uses “basic statutory construction rules when interpreting the Sentencing Guidelines,” giving words ““their common meaning, absent a clearly expressed manifestation of contrary intent.”” *United States v. Kennedy*, 233 F.3d 157, 160 (2d

⁷ For collateral that has already been liquidated, loss amount is simply reduced by the amount “recovered at the time of sentencing.” Note 3(E)(ii).

Cir. 2000) (quoting *United States v. Demerritt*, 196 F.3d 138, 141 (2d Cir. 1999)). So this Court should identify the common meaning of “collateral” and of “pledged or otherwise provided” and then determine whether the district court erred in denying to offset Borland’s loss amount by the fair market value of any such collateral.

Collateral is simply “[p]roperty that is pledged as security against a debt.” BLACK’S LAW DICTIONARY 278 (8th ed. 2004); *cf.* U.C.C. § 9-102(a)(12) (“‘Collateral’ means the property subject to a security interest or agricultural lien.”). Although property may become collateral by means of a formal process such as by mortgage, there is no requirement that it do so in order to count as collateral for a debt; in some cases, a security interest in collateral may even attach *orally*, at least to personal property. *See* U.C.C. § 9-203; *see also* *Barton v. Chem. Bank*, 577 F.2d 1329, 1334 (5th Cir. 1978) (explaining that the Uniform Commercial Code “intended to allow oral security agreements” in certain cases). And property may be pledged as collateral—and thus become subject to a creditor’s security interest—upon the execution of a simple security agreement that need not be filed or recorded in order to take effect. *Cf.* U.C.C. § 9-203(b)(1-3) (explaining conditions for attachment of security interest).⁸ In short, so long as a creditor has given value to a

⁸ U.C.C. § 9-203(b) sets forth three requirements for a security interest in collateral to be enforceable:

“(1) value has been given;

debtor and the debtor has at least some rights in property being pledged as collateral, a security agreement between the creditor and the debtor that describes such property as collateral is sufficient to establish that the property is in fact collateral.

Nor does the phrase “pledged or otherwise provided” narrow the set of permissible collateral. Collateral may be pledged without any securitization, transfer of title, or recording. *See, e.g., Moldo v. Matsco, Inc.*, 252 F.3d 1039, 1053 (9th Cir. 2001) (“Judge Learned Hand wrote, in 1922, that it ‘is everywhere agreed that the significant distinction between a pledge and a mortgage is that in the first the creditor gets no title, . . . while in the second he does.’” (quoting *Ex parte Crombie & La Mothe, Inc.*, 289 F. 509, 509 (S.D.N.Y. 1922))); *see also* Leonard A. Jones, A TREATISE ON THE LAW OF COLLATERAL SECURITIES AND PLEDGES § 2, at 4 (Edward M. White rev., 3d ed. 1912) (defining a “pledge” as “something more than a mere lien and something less than a mortgage”), cited in BLACK’S LAW DICTIONARY 1175 (7th ed. 1999). And even if “pledge” implied some specific kind of mechanism, the

(2) the debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and

(3) one of the following conditions is met:

(A) the debtor has authenticated a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned; [. . .].” U.C.C. § 9-203(b).

Although the UCC applies primarily to transactions in personal property, its language relating to collateral and security interests is nevertheless useful here, because Note 3(E)(ii) does not treat collateral differently depending on whether it is real property or personal property.

“or otherwise provided” language militates against a narrow reading of the Application Note’s scope.

Finally, Application Note 3(C) informs a sentencing court’s duty in applying Note 3(E)(ii). Note 3(C) provides that the “court need only make a reasonable estimate” of loss amount in light of the evidence. U.S.S.G. § 2B1.1, app. n. 3(C). So it is fair to say that a court’s obligation in assessing the value of collateral is also to make a reasonable estimate. But, as discussed in Section I.B, *infra*, the district court failed even to do that in this case.

2. *Applicable Caselaw*

This Court has issued published opinions in four cases involving Note 3(E)(ii)’s application to loss amount. Two of these cases deserve mention.⁹ In *United States v. Turk*, 626 F.3d 743 (2d Cir. 2010), this Court upheld the district court’s rejection of a loss-amount reduction for collateral where the defendant argued, contrary to the plain text of Note 3(E)(ii), that the value of the collateral should be measured “at the time her fraud was discovered”—rather than at the time of

⁹ Each of the other two cases only cursorily addresses Note 3(E)(ii) in a footnote. In *United States v. Vilar*, 729 F.3d 62 (2d Cir. 2013), this Court rejected a defense argument that loss amount should have been reduced by the amount of money held in defendants’ bank accounts, because said money had not even been “designated as collateral for the debt owed the victim.” *Vilar*, 729 F.3d at 96 n.34. Likewise, in *United States v. Rigas*, 583 F.3d 108 (2d Cir. 2009), this Court affirmed the district court’s denial of a loss-amount offset where the collateral had been pledged only to certain banks and not to the investor-victims who bore hundreds of millions of dollars in losses. *Rigas*, 583 F.3d at 120 n.2.

sentencing, which happened to be after the housing market had collapsed. *Turk*, 626 F.3d at 748 (recognizing the applicability of Note 3(E)(ii) but observing that the “collateral had no meaningful value at the time of sentencing”).

In *United States v. Lacey*, 699 F.3d 710 (2d Cir. 2012), this Court upheld the district court’s calculation of loss amount in a mortgage-fraud case in which the defendants bought homes at low prices from distressed homeowners, sold the homes at higher prices to straw buyers who financed their purchases through mortgage lenders, and then pocketed the proceeds (leaving the mortgage lenders high and dry when the straw buyers inevitably defaulted on their loans). *Lacey*, 699 F.3d at 712–13. In assessing the fair market value of the collateral (the homes), the district court used the low prices paid by the defendants. *Id.* at 719. The defendants argued that the court should instead have used the appraisal values submitted to the mortgage lenders in support of the straw buyers’ mortgage-loan applications. *Id.* This Court affirmed on the grounds that the defendants’ purchase price was an appropriate measure of value (after all, it was a negotiated price rather than a fraudulently inflated one) and that evidence before the district court showed that the appraisals “may not have been reliable.” *Id.* at 720. All *Lacey* stands for is the proposition that when a district court offsets loss amount by the value of pledged collateral, the court does not clearly err by using the collateral’s sale price at some previous point in time

as a surrogate for its fair market value at the time of sentencing, where that sales price provides a “reasonable estimate” of the loss. *Id.* at 719.

In this case, however, the Government argued below that *Lacey* proved two additional propositions. First, in the second round of sentencing submissions, the Government argued that the reduction for collateral in *Lacey* was appropriate only because “the victim banks *owned* the real property as a result of the straw buyers’ default.” Government’s Second Sentencing Letter, D.E. 73 at 3, App. A184 (emphasis in original). The government argued that, “here, where there is no dispute that the victim investors did not own *any* property as a result of Borland’s default,” the reduction should not apply. *Id.* (emphasis in original). But that view misreads both *Lacey* and the plain text of Note 3(E)(ii); property need not be pledged to a mortgagee bank such that title passes to the bank automatically upon default in order for the property to count as collateral.

Second, at Borland’s loss-amount hearing, the Government argued, “based on the Court’s opinion in *Lacey*,” that Borland’s intended loss amount must be the face value of the investments, “however you cut it.” Loss-Amount Hearing Transcript, D.E. 83 at 40:13–41:10, App. A235-A236. The district court understood the Government to be arguing that because Borland’s loss amount was *intended* rather than *actual* loss amount, Note 3(E)(ii) did not apply. *Id.* at 42-43, App. A237-A238. But the district court correctly rejected that deployment of *Lacey*, observing that

even a calculation of intended loss amount “can include an offset for the value of the property.” *Id.* at 41:15–19, App. A236; *see United States v. Calkins*, 193 F. App’x 417, 420–21 (6th Cir. 2006) (“The district court erred in concluding that the defendant’s intended loss, *i.e.*, his intent not to pay off the construction loans, would eliminate an offset for pledged collateral.”). And the district court rejected the Government’s implication that it was sentencing Borland based on intended rather than actual loss in the first place.¹⁰ In short, neither *Turk* nor *Lacey* undercuts Borland’s argument that the district court is obligated to calculate at least a reasonable estimate of the fair market value of pledged collateral and to reduce fraud loss by that amount.

It is also worth mentioning that, unlike its predecessor, Note (3)(E)(ii) does not require the collateral to be collected or readily liquid in order for its value to offset loss amount. *See United States v. Abbey*, 288 F.3d 515, 518 (2d Cir. 2002) (observing that the predecessor Guideline’s application note allowed a credit only for “the amount the lending institution has recovered (or can expect to recover)” from the disposition of collateral). And this makes sense: the loss-amount table

¹⁰ *See* Loss-Amount Hearing Transcript, D.E. 83 at 39:13–40:11 (“One of the things I don’t understand about the government’s argument is an insistence in discussing actual versus intended loss. [. . .] It seems here that there is an actual loss that can be ascertained [. . .]. So I’m not sure, first of all, that an intended loss would result in different numbers. And I’m not sure why you’re asking me to focus on intended rather than actual.”).

results in sky-high Guideline ranges for those with an eight-figure loss amount, but surely the culpability (and thus the appropriate punishment) of a defendant who simply steals eight figures far exceeds that of a defendant who receives eight-figure investments, owns and pledges eight-figure collateral, and makes misrepresentations along the way so as to incur fraud charges. The liquidity of the collateral should not (and based on the plain text of the Application Note, does not) weigh against a reduction of loss amount by its fair market value. Note 3(E)(ii) rightly punishes the bare thief more harshly than a defendant like Borland, and this Court should not read additional requirements into the Note that would result in treating the two the same.

B. The district court committed procedural error by failing to calculate at least a “reasonable estimate” of the value of Borland’s collateral.

In the proceedings below, Borland presented the district court with evidence that he pledged property, either personally or through a Placencia Group entity in which he had a controlling interest, as collateral to each of the 41 investors. For investor Copper Leaf, for instance, its original loan agreement designated four single-family homes and six residential lots as collateral, and a modification agreement (executed when Copper Leaf increased its investment) specified that a golf course was pledged as additional collateral. *See* Loan Agreement, D.E. 71-1 at 18 (Exh. B at 14), App. A172; Modification Agreement, D.E. 71-1 at 28 (Exh. E at 1), App. A179.

And for the other 40 lenders, loan agreements likewise specified parcels of real estate as collateral, with an 1125-acre plot owned by Placencia Group entity MEL—and holding an airport—pledged as additional collateral. *See, e.g.*, BCG Note, D.E. 47-3 (Exh. C), App. A63, A70 (pledging, through Placencia Group entity Mayan Lagoon, “one single family home, one ocean[-front] condominium,” and five lots as collateral for debt in the amount of \$1,750,000, and identifying “the Placencia International Airport” and other real estate as additional collateral).

In multiple rounds of sentencing submissions, Borland presented evidence such as audits and appraisals indicating that the aggregate value of the collateral well exceeded the total loss amount. *See, e.g.*, 2019 Valuation Letter, D.E. 105-1 (Exh. D) at 37, App. A304 (appraising the 1125-acre MEL-held airport development at \$11,251,300 in 2019); *id.* at 43, App. A310 (appraising PED-held real estate at \$32,300,000 in 2019); 2011-2013 Auditors’ Reports, D.E. 107-1 (Exh. F) at 25, App. A355 (listing MEL assets as worth more than 27 million Belize dollars (approximately U.S. \$14 million) even in 2013, prior to the investment activity that led to the charges in this matter); Mayan Lagoon Appraisal, D.E. 49-2 (Exh. X) at 4, App. A111 (appraising Mayan Lagoon land at U.S. \$18.5 million in 2008). And Borland presented a detailed accounting to the district court explaining why the fair market value of the collateral exceeded loss amount, which Borland incorporates

herein by reference. *See* Borland’s First Sentencing Letter, D.E. 47 at 13-21, App. A43-A51.

Borland also presented evidence that he and Caruso had granted power of attorney to an attorney, David Filler, to act as Borland’s escrow agent to liquidate the collateral in the event of Borland’s default. *See* Power of Attorney, D.E. 47-5 (Exh. E), App. A73-A76 (granting power of attorney over 1586.13 acres of land in Placencia Estates); *see also* Filler Rodriguez Letter, D.E. 47-6 (Exh. F), App. A78 (confirming that 1586.13 acres of land in Placencia Estates had been placed into the escrow as collateral for BIF debt); Filler Rodriguez Letter, D.E. 71-1 at 21-22 (Exh. C at 1-2), App. A175-A176.

The Government took issue with Borland’s Note 3(E)(ii) argument at each step. *See* Government’s First Sentencing Letter, D.E. 55 at 7, App. A124 (arguing that “there is no evidence that Borland or Caruso . . . ever took steps to actually ‘pledge’ or secure any property as collateral”); Government’s Second Sentencing Letter, D.E. 73 at 4, App. A185 (arguing that it was “fatal to Borland’s argument” that Borland “never provided his victims with an *ownership interest* in any collateral”) (emphasis added); Government’s Third Sentencing Letter, D.E. 106 at 5, App. A315 (arguing that “the property purportedly serving as collateral was improperly pledged”). Curiously, however, the Government never put on its own evidence of the fair market value of the collateral. Nor did it even attempt to assess

the fair market value of the investors' interest in the collateral: the Government could have called an expert or produced its own appraisal—but it did not, and the Government conceded at the loss-amount hearing that it had no independent expertise in property valuation. *See* Loss-Amount Hearing Transcript, D.E. 83 at 26:23-24, App. A221 (“Your Honor, I am not an expert on property valuation. I’ll just note that at the outset.”); *id.* at 34:23-24, App. A229 (“We have not, as is clear from the papers, endeavored to appraise the property ourselves.”).

The Government vociferously challenged Borland’s valuations despite its admitted ignorance of the value of Borland’s collateral and its lack of competent counterevidence. At the loss-amount hearing, the district court asked the Government, concerning the PED property, “how do I know the land isn’t worth \$32 million?” *Id.* at 34:18-19, App. A229. The Government responded by attempting to argue that the land was in fact worth only \$650,000, incorrectly stating that the Dyke Rogers group of 40 investors paid only that sum of money to Caruso in exchange for it after Caruso had fraudulently divested Borland from ownership. *Id.* at 34:20-22, App. A229. In fact, the Rogers group purportedly acquired an interest in both the PED land and the MEL airport property in exchange for a complete “release [of] Caruso from any liability” relating to their investments, indicating that their interest

in the land was worth at least the \$18.1 million they had invested.¹¹ *See* Caruso/Rogers Memorandum of Understanding, D.E. 48-5 (Exh. R) at 2, App. A105; *see* Loss-Amount Hearing Transcript, D.E. 83 at 53:19-24, App. A248 (defense counsel’s argument that the only reason the Rogers investors would have released Caruso from liability is that they believed they were being made whole by receipt of the collateral, implying that the collateral was worth at least the amount of their investments). And filings in the parallel civil litigation corroborate both that the Rogers group gave Caruso a full release in exchange for a purported interest in the collateral and that the collateral is in fact worth millions of dollars.¹² *See*

¹¹ *See* n.3, *supra*: Copper Leaf invested \$8 million, and the Rogers group was initially listed as having invested \$13.9 million, but shortly before sentencing, the Government identified an additional \$4.2 million from among the Rogers group, bringing their total investment to \$18.1 million, and bringing the total loss amount to \$26.1 million. At the time of the loss-amount hearing, however, the Rogers investors were thought to have invested only \$13.9 million, explaining the use of that figure at that hearing. *See, e.g.*, Loss-Amount Hearing Transcript, D.E. 83 at 55:18-56:1, App. A250-A251.

¹² This was a “purported” interest because Caruso lacked power to transfer PED property unilaterally. After Borland’s arrest, Caruso allegedly filed fraudulent resignation papers in Belize on behalf of Borland purporting to remove Borland as an owner of the Placencia Group entities, apparently in order to permit Caruso (as sole owner) to transfer certain Placencia Group assets to the Rogers group. *See* Borland’s Second Sentencing Letter, D.E. 71 at 7-8, App. A154-A155 (explaining that Caruso purported to transfer PED property “without Borland’s knowledge or required approval”); Quaranta Letter, D.E. 105-1 at 33-35 (Exh. C), App. A300-A302 (describing fraudulent conveyance). Borland’s position is that Caruso’s transfers are void and will be reversed as fraudulent in Belize; nevertheless, the implied value of the Rogers group’s release of Caruso is evidence of the fair market value of the PED property. *See* Courtenay Coye Letter, D.E. 48-3 (Exh. P) at 12-13, App. A102-A103

4/11/2022 Rogers Deposition Transcript, D.E. 122-7 at 29-30 (109-114) in *Copper Leaf, LLC v. Borland*, No. 1:18-cv-06377-JFK (S.D.N.Y.), App. A513-A514; *id.* at 48 (186:15-17), App. A516 (Rogers: “We got the deeds [to the PED property], and at some point we gave [Caruso] a copy of the release.”); 4/18/2022 Rogers Deposition Transcript, D.E. 122-8 at 13 (47:9-11) in *Copper Leaf, LLC v. Borland*, No. 1:18-cv-06377-JFK (S.D.N.Y.), App. A528 (Rogers: “The Panther [PED] Property we didn’t buy. We agreed to a release of claims against Mr. Caruso in exchange for the Panther Property.”); Barrow & Williams Letter, D.E. 122-2 in *Copper Leaf, LLC v. Borland*, No. 1:18-cv-06377-JFK (S.D.N.Y.), App. A478 (valuing approximately 43 waterfront acres of the property at U.S. \$200,000 per acre (\$8.6 million) as of July 31, 2019).

The district court rejected the Government’s arguments in part: the court ultimately “agree[d] with the defense that the *Turk* decision does not by its terms require the securitization of the property in question.” *See* Loss-Amount Hearing Transcript, D.E. 83 at 80:10-11, App. A275. And the court rejected the Government’s speculative, low-ball valuations of the collateral. *Id.* at 81:10-12, App. A276 (declining to find “that the Placencia Estates property isn’t sufficient or

(letter from Belizean counsel expressing an opinion that the resignation papers filed by Caruso were fraudulent).

isn't valued at the value that the defense tells me *because I have no basis not to*") (emphasis added).

But the court found that "the interplay of the default provisions and the substitute asset provisions render[ed] it very difficult to identify what in fact was to be conveyed," *id.* at 80:19-21, App. A275, and that there were "far too many contingencies and far too many open issues for me to find that [Note 3(E)(ii)] applies here." *Id.* at 81:13-14, App. A276. In short, the district court acknowledged that it lacked a basis to disagree with Borland's provided property valuation but then denied him the reduction to loss amount that Note 3(E)(ii) entitles him to, because of "contingencies" and because of the ongoing ownership disputes that have arisen in the wake of Borland's arrest. *See id.* at 80-81, App. A275-A276. This was procedurally unreasonable, because the district court departed from the plain text of Note 3(E)(ii), proceeding as though only readily liquid collateral (or some other subset of collateral) sufficed under the Application Note. Of course, the Application Note has no such requirement, and "contingencies" or other "issues" should have, at most, factored into the district court's estimation of the value of the collateral rather than militating against its inclusion altogether.

As for the ownership and fraudulent-transfer disputes, Note 3(E)(ii) covers collateral "pledged . . . by the defendant," and it is undisputed that the pledges were made by Borland, either personally or through an entity of which he was an owner.

See Corporate Registry, D.E. 47-8 (Exh. H) at 2, App. A82; Corporate Filings, D.E. 47-12 (Exh. L) at 6, App. A89; *see also* n.4, *supra*. Caruso’s fraudulent filings and purported conveyances have no bearing on whether the collateral was “pledged . . . by” Borland. Note 3(E)(ii) (emphasis added). And if the district court did not know how to grapple with the ownership disputes and their impact on Borland’s loss amount, the district court could have waited to let the parallel litigation run its course. After all, the Belizean courts will decide, one way or another, whether Caruso’s transfers of Borland’s property were void: if they are, then the property remains unliquidated collateral (the fair market value of which should offset Borland’s loss amount) that should be liquidated and provided to all victims. If Caruso’s transfers were valid, then the property that the Rogers investors received, at a minimum, should be credited against Borland’s loss amount and restitution obligations as liquidated collateral.

The ongoing ownership disputes, moreover, only further support the proposition that the collateral *has real value*. Aside from the purported conveyances from Caruso to the Rogers investors, investor Copper Leaf has secured a \$10.2 million judgment that it is seeking to domesticate in Belize, and Copper Leaf is in litigation against the Rogers investors in a bid to settle these ownership disputes so that all the investors may be made whole. As Copper Leaf (Borland’s largest victim) wrote in support of Borland at sentencing: “Borland owns . . . sufficient real

property assets in Belize to make Copper Leaf *and the others* whole.” Quaranta Letter, D.E 105-1 at 35, App. A302 (emphasis added).

The district court’s decision not to apply Note 3(E)(ii) resulted in a 22-level enhancement for loss amount, producing a total offense level of 34 and a Guideline range of 151 to 188 months of imprisonment. Sentencing Transcript, D.E. 115 at 79, App. A460. Without the 22-level enhancement for loss amount, Borland’s Guideline range would have been 10 to 16 months of imprisonment. *See* U.S.S.G. Ch. 5 Pt. A (Sentencing Table). Although the district court varied downward in imposing an 84-month sentence, that sentence far overstates Borland’s culpability if the fair market value of the collateral was sufficient to offset his loss amount.¹³

¹³ Although the district court did not revisit its determination on Note 3(E)(ii) at sentencing, it took a statement from Dyke Rogers, who told the district court that a portion of PED collateral was worth “considerably less than \$4 million” and implied that it should be valued at only \$625,000 because “the Belizean government agreed to accept a reduced valuation for tax purposes.” Sentencing Transcript, D.E. 115 at 41, App. A422. Rogers also attacked Borland’s valuation of the MEL airport property on the grounds that “[t]he Belizean government agreed to assessing a value of only \$325,000 on the airport property for tax purposes.” *Id.* at 42, App. A423. The district court did not enter findings based on Rogers’s statements—rightfully so, because a negotiated tax-assessment valuation may represent only a fraction of a property’s “fair market value,” and because these tax-assessment valuations were not measures of what anyone paid for the collateral. Note 3(E)(ii).

But neither did the district court undertake its obligations to make at least a “reasonable estimate” of the value of the collateral. U.S.S.G. § 2B1.1, app. n. 3(C). On remand, Borland can show, for instance, that Rogers’s statements at Borland’s sentencing hearing were flatly contrary to his subsequent deposition testimony in the S.D.N.Y. civil litigation. *See* 4/18/2022 Rogers Deposition Transcript, D.E. 122-8 at 18 (67:17-25) in S.D.N.Y. No. 1:18-cv-06377-JFK, App. A534 (“What I had said in the sentencing hearing was true. At that point I felt like that property was worth

In sum, rather than making even a “reasonable estimate” of the fair market value of Borland’s collateral, the district court declined to apply Note 3(E)(ii) altogether. U.S.S.G. § 2B1.1, app. n. 3(C). That was procedurally unreasonable, and this Court must reverse.

C. This Court should remand for *de novo* resentencing at which the district court recalculates Borland’s loss amount and restitution obligation.

When this Court reverses a sentence without vacating an underlying conviction, it has the option to remand either for a limited resentencing or for *de novo* resentencing. *United States v. Malki*, 718 F.3d 178, 182 (2d Cir. 2013). Borland seeks *de novo* resentencing so that the district court may properly recalculate Borland’s loss amount (after reducing it by the fair market value of pledged collateral as of the date of the resentencing), recalculate his Guideline range, impose an appropriate custodial sentence in accordance therewith, and reassess his restitution obligation in light of the recalculated loss amount.

This Court should order *de novo* resentencing because Borland’s restitution obligation flowed directly from the loss amount. *See* Sentencing Transcript, D.E. 115 at 9-10, App. A392-A393 (discussing restitution obligation as reflecting loss

about 4 million dollars. [. . .] overall I value that property at somewhere around 4 million dollars”). And, on remand, Borland will present competent evidence that the present-day valuation of the collateral, by any reasonable estimate, exceeds his loss amount. *See, e.g.*, Barrow & Williams Letter, D.E. 122-2 in *Copper Leaf, LLC v. Borland*, No. 1:18-cv-06377-JFK (S.D.N.Y.), App. A478-A479.

amount). And if the district court's calculation of actual loss was incorrect, then its calculation of restitution was likewise incorrect. *United States v. Carboni*, 204 F.3d 39, 47 (2d Cir. 2000) (vacating restitution order; "[a]lthough the district court did not err in calculating Fleet's loss for purposes of setting the offense level, we must separately analyze loss with respect to the restitution order because a court's power to order restitution is limited to actual loss."). It is for this reason that, even though Borland did not specifically object to the restitution amount at sentencing, this Court should review his challenge to restitution under the usual abuse-of-discretion standard rather than for plain error. *See* Sentencing Transcript, D.E. 115 at 87:3, App. A468; *United States v. Zangari*, 677 F.3d 86, 91 (2d Cir. 2012).

But if this Court takes the view that Borland's challenge to his restitution obligation was not preserved and is thus reviewed for plain error, the district court's error was plain. *See United States v. Carter*, 489 F.3d 528, 537 (2d Cir. 2007) ("Under the plain error standard, there must be (1) error, (2) that is plain, and (3) that affects the defendant's substantial rights.") (quoting *Johnson v. United States*, 520 U.S. 461, 466-67 (1997)). The district court itself recognized that a proper restitution order would need to be based on an actual loss figure that was reduced by the fair market value of collateral. *See* Loss-Amount Hearing Transcript, D.E. 83 at 43 (Court: "If we're going to start talking about restitution, doesn't that mean at some

point you have to undertake an appraisal of the property to see what the victims got? Or something else?”).

The district court’s use of the parties’ stipulated loss amount—without any offset for collateral—was plain error because it is well established that restitution must be based on actual loss to the victim. *United States v. Boccagna*, 450 F.3d 107, 109 (2d Cir. 2006). Failing to reduce restitution to account for collateral “impermissibly awards a victim restitution in excess of its compensable loss.” *Id.* Here, there is plainly *some* collateral as is clear from both the evidence of record and the substantial ongoing litigation among the investors concerning the collateral. Yet the district court did not offset Borland’s restitution amount by even one dollar. The result is that, if Borland were to fulfill the entire restitution obligation imposed, a windfall would accrue to the investors to the extent of their acquisition of the collateral. The restitution order thus prejudices Borland by subjecting him to a greater obligation than is necessary to make the investors whole.

Under any standard of review, the district court’s restitution order is erroneous for failing to take into account the value of Borland’s pledged collateral. This Court should remand for a *de novo* resentencing at which the district court takes evidence, makes a factual finding as to the fair market value of the collateral on the date of resentencing, recalculates Borland’s loss amount, and then imposes a sentence and restitution obligation in accordance therewith.

CONCLUSION

For the foregoing reasons, this Court should reverse Borland's sentences on all three counts as procedurally unreasonable and remand for resentencing.

Date: July 21, 2022

Respectfully submitted,

/s/ Kyle Singhal

Kyle Singhal

Shon Hopwood

HOPWOOD & SINGHAL PLLC

1701 Pennsylvania Ave., NW #200

Washington, D.C. 20006

Telephone: (817) 212-9041

kyle@hopwoodsinghal.com

Counsel for Brent Borland

CERTIFICATE OF COMPLIANCE

I certify that the foregoing brief complies with Fed. R. App. P. 27 and 32 because it contains 9,852 words and was typed in 14-point Times New Roman font.

Respectfully submitted,

/s/ Kyle Singhal

Kyle Singhal

Counsel for Brent Borland

21-2761

United States Court of Appeals
for the
Second Circuit

UNITED STATES OF AMERICA,
Appellee,

v.

BRENT BORLAND,
Defendant-Appellant.

On Appeal from the United States District Court for the
Southern District of New York

No. 1:18-cr-487-1, Hon. Katherine Polk Failla

**DEFENDANT-APPELLANT BRENT BORLAND'S APPENDIX
VOLUME I (PAGES A1-A298)**

Kyle Singhal
Shon Hopwood
HOPWOOD & SINGHAL PLLC
1701 Pennsylvania Ave., N.W.
Washington, DC 20006
Telephone: (817) 212-9041
kyle@hopwoodsinghal.com
Counsel for Brent Borland

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**U.S. District Court
Southern District of New York (Foley Square)
CRIMINAL DOCKET FOR CASE #: 1:18-cr-00487-KPF-1**

Case title: USA v. Borland

Date Filed: 07/12/2018

Magistrate judge case number: 1:18-mj-04035-UA

Date Terminated: 10/19/2021

Assigned to: Judge Katherine Polk Failla

Defendant (1)

Brent Borland

TERMINATED: 10/19/2021

represented by **David Alan Gehn**

David Gehn, Esq
1345 Avenue of Americas
New York, NY 10105
(212) 370-1300
Fax: (212) 370-7889
Email: dgehn@gusraekaplan.com
TERMINATED: 07/16/2018
LEAD ATTORNEY
Designation: Retained

Florian Miedel

Miedel & Mysliwiec, LLP
80 Broad Street Suite 1900
New York, NY 10004
212-616-3042
Fax: 800-507-8507
Email: fm@fmamlaw.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Designation: CJA Appointment

Robert M. Baum

Federal Defenders of New York Inc. (NYC)
52 Duane Street
10th Floor
New York, NY 10007
212-417-8700
Fax: 212-571-0392
Email: robert_baum@fd.org
TERMINATED: 01/06/2020
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
*Designation: Public Defender or Community
Defender Appointment*

Amy Gallicchio

Federal Defenders of New York
52 Duane Street
New York, NY 10007
(212)-417-8728
Fax: (212)-571-0392
Email: Amy_Gallicchio@fd.org

TERMINATED: 01/06/2020
ATTORNEY TO BE NOTICED
*Designation: Public Defender or Community
Defender Appointment*

Christopher Paul Madiou
Christopher Madiou
50 Broad Street
Suite 1609
New York, NY 10004
917-408-6484
Fax: 212-571-9149
Email: chris@madioulaw.com
ATTORNEY TO BE NOTICED
Designation: CJA Appointment

Sabrina P. Shroff
Sabrina Shroff
80 Broad Street
19th Floor
Ste New York
New York, NY 10004
646-763-1490
Email: sabrina_shroff@fd.org
ATTORNEY TO BE NOTICED
*Designation: Public Defender or Community
Defender Appointment*

Pending Counts

18:371.F 18:371.F CONSPIRACY TO
COMMIT SECURITIES FRAUD & WIRE
FRAUD

(1)

15:78J.F MANIPULATIVE AND DECEPTIVE
DEVICES (SECURITIES FRAUD)

(2)

18:1343.F FRAUD BY WIRE, RADIO, OR
TELEVISION

(3)

Highest Offense Level (Opening)

Felony

Terminated Counts

None

Highest Offense Level (Terminated)

None

Complaints

15:78J.F CONSPIRACY TO COMMIT
SECURITIES FRAUD, 17: 240.10b-5
SECURITIES FRAUD , 18:371.F
CONSPIRACY TO DEFRAUD THE UNITED
STATES, 18:1343.F WIRE FRAUD

Disposition

IMPRISONMENT: eighty-four (84) months.
SUPERVISED RELEASE: Three (3) years.

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SUPERVISED RELEASE: Three (3) years.

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SUPERVISED RELEASE: Three (3) years.

Disposition

Disposition

Plaintiff**USA**

represented by **Edward Arthur Imperatore**
Morrison & Foerster LLP
250 West 55th St
New York, NY 10019
212-468-4320
Email: EImperatore@mofo.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Designation: Assistant US Attorney

Negar Tekeei
United States Attorney's Office, S.D.N.Y.
One Saint Andrew's Plaza
New York, NY 10007
(212) 637-2482
Fax: (212) 637-2527
Email: negar.tekeei@usdoj.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED
Designation: Assistant US Attorney

Date Filed	#	Docket Text
05/11/2018		SEALED ORAL ORDER as to Sealed Defendant 1. (Signed by Magistrate Judge Barbara C. Moses on 5/11/2018)(dif) [1:18-mj-04035-UA] (Entered: 05/18/2018)
05/11/2018	<u>1</u>	COMPLAINT as to Brent Borland (1). In Violation of 15 U.S.C. 78j (b), 78FF; 17 C.F.R. 240.10b-5; 18 U.S.C. 371, 1343 and 2 (Signed by Magistrate Judge Barbara C. Moses) (dif) [1:18-mj-04035-UA] (Entered: 05/18/2018)
05/16/2018		Arrest of Brent Borland. (dif) [1:18-mj-04035-UA] (Entered: 05/18/2018)
05/16/2018	<u>3</u>	NOTICE OF ATTORNEY APPEARANCE: Retained Attorney David Alan Gehn appearing for Brent Borland. (dif) [1:18-mj-04035-UA] (Entered: 05/18/2018)
05/16/2018		Attorney update in case as to Brent Borland. Attorney David Alan Gehn for Brent Borland added.. (dif) [1:18-mj-04035-UA] (Entered: 05/18/2018)
05/16/2018	<u>4</u>	Minute Entry for proceedings held before Magistrate Judge Barbara C. Moses: Initial Appearance as to Brent Borland held on 5/16/2018., Deft Appears with Retained Attorney David A. Gehn and AUSA Edward Imperatore for the government. AGREED CONDITIONS OF RELEASE: \$2,000,000 PRB; 3 FRP'S; Secured by Property: All Equity in 43 North Haven Way, Sag Harbor, NY 11963; Travel Limited to SDNY/EDNY; Surrender Travel Documents (& No New Applications); Pretrial Supervision As Directed by PTS; Deft to Submit to Urinalysis, If Positive, Add Condition of Drug Testing/Treatment; Deft Not to Possess Firearm/Destructive Device/Other Weapon; Deft to Be Released on Own Signature, Plus the Following Conditions; Signature of Wife, Alana Borland; Gov'r Estimates Equity to Be Approximately \$900,000, If Not, Gov't May Seek Additional Security or Other Modification. Gov't Notes that the Posting of the Real Property at 43 North Haven Way is Not Intended to Abrogate or Limit the TRO and Asset Freeze Order Issued Earlier Today by Judge Castel in SEC v Borland, 18-CV-4352 (SDNY); Ms. Borland is Provisionally Accepted as First FRP for Purposes of Deft's Release, Subject to Further Consideration by USAO; Ms. Borland is to Surrender her Passport and Make No New Application for Travel Documents; By 5/18/18, All 3 FRP'S to Sign; Passport To Be Surrendered by 5/23/18; Property To Be Posted and Deft to Surrender All Firearms to Local Police; Other; Deft is Not to Travel by Air (Commercial or Private), Solicit Any Investment or Have Any Contact with Investors in Belize Fund or Related Entities; (Preliminary Hearing set for 6/15/2018 at 10:00 AM before Judge Unassigned.) (dif) [1:18-mj-04035-UA] (Entered: 05/18/2018)

05/16/2018	<u>5</u>	AGREEMENT TO FORFEIT REAL PROPERTY by Brent Borland. Personal Recognizance Bond in the amount of \$ 2,000,000 PRB, 3 FRP'S; Secured by Property: All Equity in 43 North Haven Way, Sag Harbor, NY 11963; Travel Limited to SDNY/EDNY; Surrender Travel Documents (& No New Applications); Pretrial Supervision As Directed by PTS; Deft to Submit to Urinalysis, If Positive, Add Condition of Drug Testing/Treatment; Deft Not to Possess Firearm/Destructive Device/Other Weapon; Deft to Be Released on Own Signature, Plus the Following Conditions; Signature of Wife, Alana Borland; Gov't Estimates Equity to Be Approximately \$900,000, If Not, Gov't May Seek Additional Security or Other Modification; Gov't Notes that the Posting of the Real Property at 43 North Haven Way is Not Intended to Abrogate or Limit the TRO and Asset Freeze Order Issued Earlier Today by Judge Castel in SEC v Borland, 18-CV-4352 (SDNY), Ms. Borland is Provisionally Accepted As First FRP for Purposes of Deft's Release, Subject to Further Consideration by USAO; Ms. Borland is to Surrender her Passport and Make No New Application for Travel Documents; By 5/18/18 All 3 FRP'S to Sign; Passport to Be Surrendered by 5/22/18; Property To Be Posted and Deft to Surrender All Firearms to Local Police; Other; Deft is Not to Travel by Air (Commercial or Private), Solicit Any Investment or Have Any Contact with Investors in Belize Fund or Related Entities (dif) [1:18-mj-04035-UA] (Entered: 05/18/2018)
05/17/2018	<u>6</u>	ENDORSED LETTER as to Brent Borland addressed to Magistrate Judge Barbara C. Moses from David A. Gehn, Esq dated 5/17/2018 re: USA v Brent Borland, 18 Mag 4035. Mr. Gehn respectfully request that Your Honor correct the condition and order that only Alana Borland surrender her passport and the other two FRP'S. Application Granted, So Ordered. (Signed by Magistrate Judge Barbara C. Moses on 5/17/2018)(dif) [1:18-mj-04035-UA] (Entered: 05/18/2018)
05/22/2018	<u>10</u>	ENDORSED LETTER as to Brent Borland addressed to Magistrate Judge Barbara C. Moses from David A. Gehn, Esq dated 5/18/2018 re: USA v Brent Borland, 18 Mag 4035. Mr. Gehn respectfully request that Your Honor modify the Order that Mr. Borland have until May 22, 2018 to obtain the third FRP signature. Application Granted, So Ordered. (Signed by Magistrate Judge Barbara C. Moses on 5/22/2018)(dif) [1:18-mj-04035-UA] (Entered: 07/09/2018)
05/24/2018	<u>7</u>	ENDORSED LETTER as to Brent Borland addressed to Magistrate Judge Barbara C. Moses from David A. Gehn, Esq dated 5/23/2018 re: USA v Brent Borland, 18 Mag 4035. Mr. Gehn respectfully request that Your Honor extend the deadline for the defendant to fully execute the confession of judgment until 5/25/2018. Application Granted, So Ordered. (Signed by Magistrate Judge Barbara C. Moses on 5/24/2018)(dif) [1:18-mj-04035-UA] (Entered: 05/24/2018)
06/15/2018	<u>8</u>	AFFIRMATION of AUSA Edward Imperatore in Support by USA as to Brent Borland, the government is requesting a 30-day continuance until 7/15/18. (jbo) [1:18-mj-04035-UA] (Entered: 06/20/2018)
06/15/2018	<u>9</u>	ORDER TO CONTINUE IN THE INTEREST OF JUSTICE as to Brent Borland. Time excluded from 6/15/18 until 7/15/18. (Signed by Magistrate Judge Gabriel W. Gorenstein on 6/15/18)(jbo) [1:18-mj-04035-UA] (Entered: 06/20/2018)
07/12/2018	<u>11</u>	INDICTMENT FILED as to Brent Borland (1) count(s) 1, 2, 3. (jm) (Main Document 11 replaced on 7/13/2018) (ft). (Entered: 07/12/2018)
07/12/2018		Case Designated ECF as to Brent Borland. (jm) (Entered: 07/12/2018)
07/16/2018		Minute Entry for proceedings held before Judge Katherine Polk Failla: Arraignment as to Brent Borland (1) Count 1,2,3 held on 7/16/2018. Plea entered by Brent Borland Not Guilty. Deft. Brent Borland pres. W/Attys. David Alan Gehn & Robert Baum. A.U.S.A. Edward Imperatore pres. Ct. Rep. Vincent Bologna pres. Deft. Arraigned & advised of rights. Deft. Enters a plea of not guilty as charged in Ind. 18CR.0487(KPF). Defense Counsel David Alan Gehn's application to be relieved as counsel is granted. Fld. Financial Affdvt. Federal Defender Robert Baum is appointed for all purposes. Next conf. Set for 10/12/18 at 3:00pm. T.E. in the interest of justice from 7/16/18 to 10/12/18. Deft. Cont'd. Released on bail as previously set. (Pretrial Conference set for 10/12/2018 at 03:00 PM before Judge Katherine Polk Failla.) (jbo) (Entered: 07/17/2018)
07/16/2018	<u>12</u>	CJA 23 Financial Affidavit by Brent Borland. APPROVED: (Signed by Judge Katherine Polk Failla on 7/16/2018); Attorney Robert M. Baum. (bw) (Entered: 07/24/2018)
07/16/2018		Attorney update in case as to Brent Borland. Attorney Robert M. Baum for Brent Borland added. Attorney David Alan Gehn terminated. (bw) (Entered: 07/24/2018)

07/24/2018	<u>13</u>	LETTER MOTION addressed to Judge Katherine Polk Failla from Negar Tekeei / Edward Imperatore dated July 24, 2018 re: Protective Order . Document filed by USA as to Brent Borland. (Tekeei, Negar) (Entered: 07/24/2018)
07/24/2018	<u>14</u>	PROTECTIVE ORDER as to Brent Borland...regarding procedures to be followed that shall govern the handling of confidential material.... (Signed by Judge Katherine Polk Failla on 7/24/2018) (ap) (Entered: 07/24/2018)
07/25/2018	<u>15</u>	NOTICE OF ATTORNEY APPEARANCE: Sabrina P. Shroff appearing for Brent Borland. Appearance Type: Public Defender or Community Defender Appointment. (Shroff, Sabrina) (Entered: 07/25/2018)
07/25/2018	<u>16</u>	NOTICE OF ATTORNEY APPEARANCE: Amy Gallicchio appearing for Brent Borland. Appearance Type: Public Defender or Community Defender Appointment. (Gallicchio, Amy) (Entered: 07/25/2018)
08/14/2018	<u>17</u>	TRANSCRIPT of Proceedings as to Brent Borland re: Conference held on 7/16/18 before Judge Katherine Polk Failla. Court Reporter/Transcriber: Vincent Bologna, (212) 805-0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 9/4/2018. Redacted Transcript Deadline set for 9/14/2018. Release of Transcript Restriction set for 11/13/2018. (McGuirk, Kelly) (Entered: 08/14/2018)
08/14/2018	<u>18</u>	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Brent Borland. Notice is hereby given that an official transcript of a Conference proceeding held on 7/16/18 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (McGuirk, Kelly) (Entered: 08/14/2018)
08/14/2018	<u>19</u>	TRANSCRIPT of Proceedings as to Brent Borland re: Conference held on 7/16/18 before Judge Katherine Polk Failla. Court Reporter/Transcriber: Vincent Bologna, (212) 805-0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 9/4/2018. Redacted Transcript Deadline set for 9/14/2018. Release of Transcript Restriction set for 11/13/2018. (McGuirk, Kelly) (Entered: 08/14/2018)
08/14/2018	<u>20</u>	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Brent Borland. Notice is hereby given that an official transcript of a Conference proceeding held on 7/16/18 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (McGuirk, Kelly) (Entered: 08/14/2018)
09/11/2018	<u>21</u>	LETTER by Brent Borland addressed to Judge Katherine Polk Failla from Robert M. Baum, Attorney dated September 11, 2018 re: Bail Modification (Baum, Robert) (Entered: 09/11/2018)
09/11/2018	<u>22</u>	MEMO ENDORSEMENT as to Brent Borland on re: <u>21</u> LETTER by Brent Borland addressed to Judge Katherine Polk Failla from Robert M. Baum, Attorney dated September 11, 2018 re: Bail Modification. ENDORSEMENT: SO ORDERED. (Signed by Judge Katherine Polk Failla on 9/11/2018) (ap) (Entered: 09/11/2018)
10/10/2018	<u>23</u>	ENDORSED LETTER as to Brent Borland addressed to Judge Katherine Polk Failla from Robert M. Baum, dated 10/10/2018, re: Defense counsel writes to request an adjournment of the status conference, currently scheduled for Friday, October 12, 2018. If the Court grants this application, it is requested that the Court exclude the time from speedy trial calculations pursuant to 18 U.S. C. §3161 (h) (7)(A), in the interests of justice. ENDORSEMENT: Application GRANTED. The status conference currently scheduled for October 12, 2018, is hereby ADJOURNED to November 28, 2018, at 4:00 p.m. It is further ORDERED that time is excluded under the Speedy Trial Act between October 12, 2018, and November 28, 2018. The Court finds that the ends of justice served by excluding such time outweigh the interests of the public and the defendant in a speedy trial because it will permit defense counsel to continue to review discovery. (Pretrial Conference set for

		11/28/2018 at 04:00 PM before Judge Katherine Polk Failla) (Signed by Judge Katherine Polk Failla on 10/10/2018) (lnl) (Entered: 10/11/2018)
10/22/2018	<u>24</u>	LETTER by Brent Borland addressed to Judge Katherine Polk Failla from Robert M. Baum, Attorney dated October 19, 2018 re: Bail Modification (Baum, Robert) (Entered: 10/22/2018)
10/22/2018	<u>25</u>	MEMO ENDORSEMENT as to Brent Borland on re: <u>24</u> LETTER by Brent Borland addressed to Judge Katherine Polk Failla from Robert M. Baum, Attorney dated October 19, 2018 re: Bail Modification. ENDORSEMENT: Application GRANTED. (Signed by Judge Katherine Polk Failla on 10/22/2018) (ap) (Entered: 10/22/2018)
11/28/2018		Minute Entry for proceedings held before Judge Katherine Polk Failla: Pretrial Conference as to Brent Borland held on 11/28/2018 (Pretrial Conference set for 3/7/2019 at 02:00 PM before Judge Katherine Polk Failla.) Defendant Brent Borland present with attorneys Robert M. Baum, Amy Gallicchio and Sabrina P. Shroff. AUSA Edward Arthur Imperatore and AUSA Negar Tekeei present. Court reporter Paula Speer present. Next conference set for March 7, 2019 at 2:00 p.m. Defendant continued released. Time excluded in the interests of justice to 3/7/2019. (jw) (Entered: 01/07/2019)
01/04/2019	<u>26</u>	TRANSCRIPT of Proceedings as to Brent Borland re: Conference held on 11/28/18 before Judge Katherine Polk Failla. Court Reporter/Transcriber: Paula Speer, (212) 805-0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 1/25/2019. Redacted Transcript Deadline set for 2/4/2019. Release of Transcript Restriction set for 4/4/2019. (McGuirk, Kelly) (Entered: 01/04/2019)
01/04/2019	<u>27</u>	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Brent Borland. Notice is hereby given that an official transcript of a Conference proceeding held on 11/28/18 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (McGuirk, Kelly) (Entered: 01/04/2019)
02/13/2019		Minute Entry for proceedings held before Judge Katherine Polk Failla: Change of Plea Hearing as to Brent Borland held on 2/13/2019. Plea entered by Brent Borland (1) Guilty as to Count 1,2,3. Defendant Brent Borland present with attorneys Robert M. Baum and Amy Gallicchio. AUSAs Edward Arthur Imperatore and Negar Tekeei present. Postal Inspector Diana Chau present. Court reporter Kelly Surina present. Defendant allocuted and advised of rights. Defendant withdraws previously entered not guilty plea, and enters a plea of GUILTY as charged in Counts One, Two and Three of Indictment 18cr487. Plea accepted. PSR ordered. Sentencing date set for Friday, June 21, 2019 at 3:00 p.m. Defendant's sentencing submission due two weeks prior to sentencing. Government's sentencing submission due one week prior to sentencing. Defendant continued released, and bail conditions as previously set still apply. (See transcript.) (Sentencing set for 6/21/2019 at 03:00 PM before Judge Katherine Polk Failla.) (jbo) (Entered: 02/14/2019)
02/13/2019		Change of Not Guilty Plea to Guilty Plea as to Brent Borland (1) Count 1,2,3. (jbo) (Entered: 02/14/2019)
02/13/2019		Order of Referral to Probation for Presentence Investigation and Report as to Brent Borland. (Signed by Judge Katherine Polk Failla on 2/13/19)(jbo) (Entered: 02/14/2019)
02/13/2019		Terminate Hearings as to Brent Borland: Pretrial Conference. (tn) (Entered: 03/07/2019)
03/05/2019	<u>28</u>	TRANSCRIPT of Proceedings as to Brent Borland re: Plea held on 2/13/19 before Judge Katherine Polk Failla. Court Reporter/Transcriber: Kelly Surina, (212) 805-0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 3/26/2019. Redacted Transcript Deadline set for 4/5/2019. Release of Transcript Restriction set for 6/3/2019. (McGuirk, Kelly) (Entered: 03/05/2019)
03/05/2019	<u>29</u>	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Brent Borland. Notice is hereby given that an official transcript of a Plea proceeding held on 2/13/19 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed,

		the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (McGuirk, Kelly) (Entered: 03/05/2019)
03/11/2019	<u>30</u>	LETTER by Brent Borland addressed to Judge Katherine Polk Failla from Robert M. Baum, Attorney dated March 11, 2019 re: Bail Modification (Baum, Robert) (Entered: 03/11/2019)
03/12/2019	<u>31</u>	MEMO ENDORSEMENT as to Brent Borland on re: <u>30</u> LETTER by Brent Borland addressed to Judge Katherine Polk Failla from Robert M. Baum, Attorney dated March 11, 2019 re: Bail Modification. ENDORSEMENT: Application GRANTED. (Signed by Judge Katherine Polk Failla on 3/11/2019) (ap) (Entered: 03/12/2019)
03/18/2019	<u>32</u>	TRANSCRIPT of Proceedings as to Brent Borland re: Plea held on 2/13/19 before Judge Katherine Polk Failla. Court Reporter/Transcriber: Kelly Surina, (212) 805-0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 4/8/2019. Redacted Transcript Deadline set for 4/18/2019. Release of Transcript Restriction set for 6/17/2019. (McGuirk, Kelly) (Entered: 03/18/2019)
03/18/2019	<u>33</u>	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Brent Borland. Notice is hereby given that an official transcript of a Plea proceeding held on 2/13/19 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (McGuirk, Kelly) (Entered: 03/18/2019)
04/24/2019	<u>34</u>	LETTER by Brent Borland addressed to Judge Katherine Polk Failla from Robert M. Baum, Attorney dated April 24, 2019 re: Bail Modification (Baum, Robert) (Entered: 04/24/2019)
04/24/2019	<u>35</u>	MEMO ENDORSEMENT as to Brent Borland on re: <u>34</u> LETTER by Brent Borland addressed to Judge Katherine Polk Failla from Robert M. Baum, Attorney dated April 24, 2019 re: Bail Modification. ENDORSEMENT: Application GRANTED. (Signed by Judge Katherine Polk Failla on 4/24/2019) (ap) (Entered: 04/24/2019)
05/03/2019	<u>36</u>	LETTER by Brent Borland addressed to Judge Katherine Polk Failla from Robert M. Baum, Attorney dated May 3, 2019 re: Request that the Court permit probation to file a Final Presentence Report (Baum, Robert) (Entered: 05/03/2019)
05/06/2019	<u>37</u>	ENDORSED LETTER as to Brent Borland addressed to Judge Katherine Polk Failla from Robert M. Baum dated 5/3/19 re: This letter is submitted on behalf of my client Brient Borland, to request that the Court permit Probation to file a Final Presentence Report May 17, 2019, rather than May 7, 2019 as they are currently required to do....ENDORSEMENT: Application Granted.. (Signed by Judge Katherine Polk Failla on 5/6/19)(jw) (Entered: 05/06/2019)
05/29/2019	<u>39</u>	LETTER MOTION addressed to Judge Katherine Polk Failla from Robert M. Baum dated May 29, 2019 re: adjournment of sentencing hearing currently scheduled for Friday, June 21, 2019 . Document filed by Brent Borland. (Baum, Robert) (Entered: 05/29/2019)
05/29/2019	<u>40</u>	MEMO ENDORSEMENT as to Brent Borland (1) granting <u>39</u> LETTER MOTION addressed to Judge Katherine Polk Failla from Robert M. Baum dated May 29, 2019 re: adjournment of sentencing hearing currently scheduled for Friday, June 21, 2019. ENDORSEMENT: Application GRANTED. The sentencing, previously scheduled for June 21, 2019, is hereby ADJOURNED to September 11, 2019, at 3:00 p.m., in Courtroom 618 of the Thurgood Marshall Courthouse, 40 Foley Square, New York, New York 10007. (Signed by Judge Katherine Polk Failla on 5/29/2019) (ap) (Entered: 05/29/2019)
05/29/2019		Set/Reset Hearings as to Brent Borland: Sentencing set for 9/11/2019 at 03:00 PM in Courtroom 618, 40 Centre Street, New York, NY 10007 before Judge Katherine Polk Failla. (ap) (Entered: 05/29/2019)
08/20/2019	<u>41</u>	LETTER by Brent Borland addressed to Judge Katherine Polk Failla from Robert M. Baum, Attorney dated August 20, 2019 re: Adjournment of Sentencing Hearing (Baum, Robert) (Entered: 08/20/2019)
08/20/2019	<u>42</u>	MEMO ENDORSEMENT as to Brent Borland on re: <u>41</u> LETTER by Brent Borland addressed to

		Judge Katherine Polk Failla from Robert M. Baum, Attorney dated August 20, 2019 re: Adjournment of Sentencing. ENDORSEMENT: Application GRANTED. The sentencing hearing is adjourned to October 11, 2019 at 3:00 p.m. SO ORDERED. (Sentencing set for 10/11/2019 at 03:00 PM before Judge Katherine Polk Failla) (Signed by Judge Katherine Polk Failla on 8/20/2019) (lnl) (Entered: 08/20/2019)
09/25/2019	<u>43</u>	CONSENT LETTER MOTION addressed to Judge Katherine Polk Failla from Edward Imperatore dated 9/25/19 re: joint motion to set briefing schedule and adjourn sentencing date . Document filed by USA as to Brent Borland. (Imperatore, Edward) (Entered: 09/25/2019)
09/25/2019	<u>44</u>	LETTER MOTION addressed to Judge Katherine Polk Failla from Robert M. Baum, Esq. dated September 25, 2019 re: bail modification . Document filed by Brent Borland. (Baum, Robert) (Entered: 09/25/2019)
09/25/2019	<u>45</u>	MEMO ENDORSEMENT as to Brent Borland (1) granting <u>43</u> CONSENT LETTER MOTION addressed to Judge Katherine Polk Failla from Edward Imperatore dated 9/25/19 re: joint motion to set briefing schedule and adjourn sentencing date. ENDORSEMENT: Application GRANTED. The parties shall adhere to the following briefing schedule: Defendant's brief is due October 25, 2019; the Government's brief is due November 22, 2019; and Defendant's reply brief is due December 6, 2019. The sentencing hearing previously scheduled for October 11, 2019 is ADJOURNED sine die. SO ORDERED. (Signed by Judge Katherine Polk Failla on 9/25/2019) (lnl) (Entered: 09/25/2019)
09/25/2019		Set/Reset Deadlines/Hearings as to Brent Borland: Defendant's Brief due by 10/25/2019. Government's Brief due by 11/22/2019. Defendant's Reply Brief due by 12/6/2019. (lnl) (Entered: 09/25/2019)
09/25/2019	<u>46</u>	MEMO ENDORSEMENT as to Brent Borland (1) granting <u>44</u> LETTER MOTION addressed to Judge Katherine Polk Failla from Robert M. Baum, Esq. dated September 25, 2019 re: bail modification. ENDORSEMENT: SO ORDERED. (Signed by Judge Katherine Polk Failla on 9/25/2019) (lnl) (Entered: 09/25/2019)
10/25/2019	<u>47</u>	Sentencing Letter by Brent Borland addressed to Honorable Katherine Polk Failla from Robert M. Baum, Attorney dated 10/25/2019. (Attachments: # <u>1</u> Exhibit a, # <u>2</u> Exhibit b, # <u>3</u> Exhibit c, # <u>4</u> Exhibit d, # <u>5</u> Exhibit e, # <u>6</u> Exhibit f, # <u>7</u> Exhibit g, # <u>8</u> Exhibit h, # <u>9</u> Exhibit i, # <u>10</u> Exhibit j, # <u>11</u> Exhibit k, # <u>12</u> Exhibit l, # <u>13</u> Exhibit m)(Baum, Robert) (Entered: 10/25/2019)
10/25/2019	<u>48</u>	Sentencing Letter by Brent Borland addressed to Honorable Katherine Polk Failla from Robert M. Baum, Attorney dated 10/25/2019. (Attachments: # <u>1</u> Exhibit n, # <u>2</u> Exhibit o, # <u>3</u> Exhibit p, # <u>4</u> Exhibit q, # <u>5</u> Exhibit r, # <u>6</u> Exhibit s, # <u>7</u> Exhibit t, # <u>8</u> Exhibit u, # <u>9</u> Exhibit v, # <u>10</u> Exhibit w) (Baum, Robert) (Entered: 10/25/2019)
10/25/2019	<u>49</u>	Sentencing Letter by Brent Borland addressed to Honorable Katherine Polk Failla from Robert M. Baum, Attorney dated 10/25/2019. (Attachments: # <u>1</u> Exhibit y, # <u>2</u> Exhibit x, # <u>3</u> Exhibit aa, # <u>4</u> Exhibit bb, # <u>5</u> Exhibit cc)(Baum, Robert) (Entered: 10/25/2019)
10/28/2019	<u>50</u>	Sentencing Letter by Brent Borland addressed to Honorable Katherine Polk Failla from Robert M. Baum, Attorney dated October 25, 2019 re: Sentencing Letter. (Attachments: # <u>1</u> Exhibit Z1, # <u>2</u> Exhibit Z2, # <u>3</u> Exhibit Z3, # <u>4</u> Exhibit Z4, # <u>5</u> Exhibit Z5)(Baum, Robert) (Entered: 10/28/2019)
11/18/2019	<u>51</u>	LETTER MOTION addressed to Judge Katherine Polk Failla from Negar Tekeei dated November 18, 2019 re: Extension of Time . Document filed by USA as to Brent Borland. (Tekeei, Negar) (Entered: 11/18/2019)
11/19/2019	<u>52</u>	MEMO ENDORSEMENT as to Brent Borland (1) granting <u>51</u> LETTER MOTION addressed to Judge Katherine Polk Failla from Negar Tekeei dated November 18, 2019 re: Extension of Time. ENDORSEMENT: Application GRANTED. (Signed by Judge Katherine Polk Failla on 11/19/2019) (lnl) (Entered: 11/19/2019)
11/19/2019		Set/Reset Deadlines/Hearings as to Brent Borland: Brief due by 12/6/2019. Reply to Response to Brief due by 12/20/2019. (lnl) (Entered: 11/19/2019)
11/19/2019	<u>53</u>	LETTER MOTION addressed to Judge Katherine Polk Failla from Robert M. Baum, Esq. dated November 19, 2019 re: bail modification . Document filed by Brent Borland. (Baum, Robert) (Entered: 11/19/2019)

11/20/2019	<u>54</u>	MEMO ENDORSEMENT as to Brent Borland (1) on <u>53</u> LETTER MOTION addressed to Judge Katherine Polk Failla from Robert M. Baum, Esq. dated November 19, 2019 re: bail modification. ENDORSEMENT: SO ORDERED. (Signed by Judge Katherine Polk Failla on 11/19/2019) (Inl) (Entered: 11/20/2019)
12/06/2019	<u>55</u>	Sentencing Letter by USA as to Brent Borland addressed to the Honorable Katherine Polk Failla from Negar Tekeei / Edward Imperatore dated December 6, 2019 re: Sentencing. (Tekeei, Negar) (Entered: 12/06/2019)
12/20/2019	<u>56</u>	SENTENCING SUBMISSION by Brent Borland. (Baum, Robert) (Entered: 12/20/2019)
12/23/2019	<u>57</u>	LETTER MOTION addressed to Judge Katherine Polk Failla from Robert M. Baum, Esq. dated December 23, 2019 re: assignment of new counsel . Document filed by Brent Borland. (Baum, Robert) (Entered: 12/23/2019)
12/23/2019	<u>58</u>	MEMO ENDORSEMENT as to Brent Borland on re: <u>57</u> LETTER MOTION addressed to Judge Katherine Polk Failla from Robert M. Baum, Esq. dated December 23, 2019 re: assignment of new counsel. ENDORSEMENT: The parties are hereby ORDERED to appear for a conference on January 6, 2020, at 11:00 a.m. (Status Conference set for 1/6/2020 at 11:00 AM before Judge Katherine Polk Failla) (Signed by Judge Katherine Polk Failla on 12/23/2019) (ap) (Entered: 12/23/2019)
01/06/2020	<u>59</u>	NOTICE OF ATTORNEY APPEARANCE: Florian Miedel appearing for Brent Borland. Appearance Type: CJA Appointment. (Miedel, Florian) (Entered: 01/06/2020)
01/06/2020		Minute Entry for proceedings held before Judge Katherine Polk Failla: Attorney Appointment Hearing as to Brent Borland held on 1/6/2020. Defendant Brent Borland present with attorneys Robert M. Baum and Amy Gallicchio. AUSA(s) Negar Tekeei present. U.S. Postal Inspector John Castro present. CJA attorney Florian Miedel present. Court reporter Karen Gorlaski present. Attorneys Robert Baum and Amy Gallicchio are relieved as counsel for Defendant, and CJA attorney Florian Miedel is substituted as attorney of record for the defendant. The next Pretrial Conference is set for Tuesday, April 14, 2020 at 11:00 a.m. If the parties agree, a joint letter regarding the status of the case is to be filed by April 7, 2020. Defendant continued released. (See transcript). (Pretrial Conference set for 4/14/2020 at 11:00 AM before Judge Katherine Polk Failla.) (jbo) (Entered: 01/07/2020)
01/06/2020		Attorney update in case as to Brent Borland. Attorney Robert M. Baum and Amy Gallicchio terminated. (jbo) (Entered: 01/07/2020)
02/04/2020	<u>60</u>	TRANSCRIPT of Proceedings as to Brent Borland re: Conference held on 1/6/2020 before Judge Katherine Polk Failla. Court Reporter/Transcriber: Karen Gorlaski, (212) 805-0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 2/25/2020. Redacted Transcript Deadline set for 3/6/2020. Release of Transcript Restriction set for 5/4/2020. (McGuirk, Kelly) (Entered: 02/04/2020)
02/04/2020	<u>61</u>	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Brent Borland. Notice is hereby given that an official transcript of a Conference proceeding held on 1/6/2020 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (McGuirk, Kelly) (Entered: 02/04/2020)
03/03/2020	<u>62</u>	CONSENT LETTER MOTION addressed to Judge Katherine Polk Failla from Florian Miedel dated 03-03-2020 re: Temporary modification of travel restrictions . Document filed by Brent Borland. (Miedel, Florian) (Entered: 03/03/2020)
03/04/2020	<u>63</u>	MEMO ENDORSEMENT as to Brent Borland (1) granting <u>62</u> CONSENT LETTER MOTION addressed to Judge Katherine Polk Failla from Florian Miedel dated 03-03-2020 re: Temporary modification of travel restrictions. ENDORSEMENT: Application GRANTED. (Signed by Judge Katherine Polk Failla on 3/3/2020) (ap) Modified on 3/5/2020 (ap). (Entered: 03/04/2020)
04/01/2020	<u>64</u>	CONSENT LETTER MOTION addressed to Judge Katherine Polk Failla from Florian Miedel dated 04-01-2020 re: Request for Adjournment . Document filed by Brent Borland. (Miedel, Florian)

		(Entered: 04/01/2020)
04/01/2020	<u>65</u>	MEMO ENDORSEMENT <u>64</u> LETTER MOTION Reschedule Conference as to Brent Borland...ENDORSEMENT...Application GRANTED. The Court is aware of the considerable efforts Mr. Miedel has undertaken in making emergency motions for his clients in light of the COVID-19 crisis. The conference previously scheduled for April 14, 2020, is hereby ADJOURNED to June 8, 2020 at 3:00pm. The time for Defendant to notify the Court of any further submissions is hereby extended to May 29, 2020. (Signed by Judge Katherine Polk Failla on 4/1/2020) (jw) (Entered: 04/02/2020)
04/01/2020		Set/Reset Deadlines/Hearings as to Brent Borland:Defendant Replies due by 5/29/2020 (jw) (Entered: 04/02/2020)
04/15/2020	<u>66</u>	NOTICE OF ATTORNEY APPEARANCE: Christopher Paul Madiou appearing for Brent Borland. Appearance Type: CJA Appointment. (Madiou, Christopher) (Entered: 04/15/2020)
05/29/2020	<u>67</u>	LETTER by Brent Borland addressed to Judge Katherine Polk Failla from Florian Miedel dated 05-29-2020 re: Notifying Court of Submission Schedule and Seeking Adjournment of Conference (Miedel, Florian) (Entered: 05/29/2020)
05/29/2020	<u>68</u>	MEMO ENDORSEMENT as to Brent Borland on <u>67</u> LETTER by Brent Borland addressed to Judge Katherine Polk Failla from Florian Miedel dated 05-29-2020 re: Notifying Court of Submission Schedule and Seeking Adjournment of Conference. ENDORSEMENT: Application GRANTED. The status conference scheduled for June 8, 2020 is hereby ADJOURNED sine die. The Court will reschedule the conference once it has received briefing on the sentencing issues. SO ORDERED. (Signed by Judge Katherine Polk Failla on 5/29/2020) (lnl) (Entered: 05/29/2020)
06/12/2020	<u>69</u>	CONSENT LETTER MOTION addressed to Judge Katherine Polk Failla from Florian Miedel dated 06-12-2020 re: Request for Extension of Time to File Submission . Document filed by Brent Borland. (Miedel, Florian) (Entered: 06/12/2020)
06/12/2020	<u>70</u>	MEMO ENDORSEMENT as to Brent Borland (1) granting <u>69</u> CONSENT LETTER MOTION addressed to Judge Katherine Polk Failla from Florian Miedel dated 06-12-2020 re: Request for Extension of Time to File Submission. ENDORSEMENT: Application GRANTED. (Signed by Judge Katherine Polk Failla on 6/12/2020) (ap) (Entered: 06/12/2020)
06/16/2020	<u>71</u>	SENTENCING SUBMISSION by Brent Borland. (Attachments: # <u>1</u> Exhibit A-H)(Miedel, Florian) (Entered: 06/16/2020)
06/17/2020	<u>72</u>	ORDER as to Brent Borland. Defendant Borland submitted a supplemental sentencing submission on June 16, 2020. (Dkt. #71). The Government is hereby ORDERED to respond on or before July 8, 2020. Defendant Borland may submit a reply to the Government's submission on or before July 15, 2020. SO ORDERED. (Signed by Judge Katherine Polk Failla on 6/17/2020)(jbo) (Entered: 06/18/2020)
06/17/2020		Set/Reset Deadlines as to Brent Borland: Replies due by 7/15/2020. Responses due by 7/8/2020. (jbo) (Entered: 06/18/2020)
07/08/2020	<u>73</u>	SENTENCING SUBMISSION by USA as to Brent Borland. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C)(Tekeei, Negar) (Entered: 07/08/2020)
07/15/2020	<u>74</u>	CONSENT LETTER MOTION addressed to Judge Katherine Polk Failla from Florian Miedel dated 07-15-2020 re: Request for Brief Extension of Deadline . Document filed by Brent Borland. (Miedel, Florian) (Entered: 07/15/2020)
07/16/2020	<u>75</u>	MEMO ENDORSEMENT granting <u>74</u> CONSENT LETTER MOTION filed by Brent Borland (1), addressed to Judge Katherine Polk Failla from Attorney Florian Miedel dated 07-15-2020 re: Request for Brief Extension of Deadline. ENDORSEMENT: Application GRANTED. SO ORDERED. (Signed by Judge Katherine Polk Failla on 7/15/2020) (bw) (Entered: 07/16/2020)
07/16/2020	<u>76</u>	SENTENCING SUBMISSION by Brent Borland. (Miedel, Florian) (Entered: 07/16/2020)
07/22/2020	<u>77</u>	ORDER as to Brent Borland: The Court is in receipt of Defendant Borland's sentencing submissions regarding the calculation of loss amount pursuant to the United States Sentencing Guidelines (see Dkt. #47, 56, 71, 76), as well as the Government's responses (see Dkt. #55, 73). The parties are

		hereby ORDERED to appear for a videoconference on August 4, 2020 at 2:00 p.m. The conference will proceed via videoconference, with audio access as follows: Dial-in: (917) 933-2166; Conference ID: 125325744. The Court will provide instructions for accessing the conference for video participants separately. (Status Conference set for 8/4/2020 at 02:00 PM before Judge Katherine Polk Failla) (Signed by Judge Katherine Polk Failla on 7/21/2020) (ap) (Entered: 07/22/2020)
08/04/2020		NOTICE OF HEARING as to Brent Borland: The conference scheduled for August 4, 2020 at 2:00 p.m. has been adjourned to August 5, 2020 at 2:00 p.m. The conference will proceed via video conference, with audio access as follows: Dial-in: (917) 933-2166; Conference ID: 125325744. (Status Conference set for 8/5/2020 at 02:00 PM before Judge Katherine Polk Failla.) ***No PDF is attached to this entry. (tn) (Entered: 08/04/2020)
08/05/2020		Minute Entry for proceedings held before Judge Katherine Polk Failla: Oral Argument as to Brent Borland held on 8/5/2020. Defendant Brent Borland present with attorneys Florian Miedel and Christopher Madiou. AUSA(s) Negar Tekeei and Edward Arthur Imperatore present. Court reporter Kelly Surina present. The Court rules that U.S.S.G. § 2B1.1 DOES NOT apply to the calculation of the Guidelines, and the collateral exception is denied. Defendant shall file a letter regarding the status of the case in one month. Defendant continued released. (See transcript). (lnl) (Entered: 09/02/2020)
08/28/2020	<u>78</u>	LETTER addressed to Judge Katherine Polk Failla from Edwin Comet dated 8/20/2020 re: Letter from US Justice Coalition Victim Impact Statement dated for August 20, 2020 (jw) (Entered: 08/28/2020)
09/04/2020	<u>79</u>	CONSENT LETTER MOTION addressed to Judge Katherine Polk Failla from Florian Miedel dated 09-04-2020 re: Request for more time to Report to the Court re Sentencing . Document filed by Brent Borland. (Miedel, Florian) (Entered: 09/04/2020)
09/04/2020	<u>80</u>	MEMO ENDORSEMENT as to Brent Borland (1) granting <u>79</u> CONSENT LETTER MOTION addressed to Judge Katherine Polk Failla from Florian Miedel dated 09-04-2020 re: Request for more time to Report to the Court re Sentencing. ENDORSEMENT: Application GRANTED. The parties are hereby ORDERED to advise the Court of the status of the case by October 5, 2020. (Signed by Judge Katherine Polk Failla on 9/4/2020) (ap) (Entered: 09/04/2020)
09/14/2020	<u>81</u>	CONSENT LETTER MOTION addressed to Judge Katherine Polk Failla from Florian Miedel dated 09-14-2020 re: Request for Expansion of Travel Restrictions . Document filed by Brent Borland. (Miedel, Florian) (Entered: 09/14/2020)
09/14/2020	<u>82</u>	MEMO ENDORSEMENT <u>81</u> LETTER MOTION Accordingly, I respectfully ask the Court to expand Mr. Borland's conditions of release to included travel to, and residency in, the Southern District of Florida...ENDORSEMENT...Application GRANTED. Mr. Borland's conditions of release are hereby modified to permit Mr. Borland to travel between the Southern and Eastern Districts of New York and the Southern District of Florida, to reside in the Southern District of Florida, and to be supervised by Pretrial Services in SDFL. (Signed by Judge Katherine Polk Failla on 9/15/2020) (jw) (Entered: 09/15/2020)
09/18/2020	<u>83</u>	TRANSCRIPT of Proceedings as to Brent Borland re: Conference held on 8/5/20 before Judge Katherine Polk Failla. Court Reporter/Transcriber: Kelly Surina, (212) 805-0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 10/9/2020. Redacted Transcript Deadline set for 10/19/2020. Release of Transcript Restriction set for 12/17/2020. (McGuirk, Kelly) (Entered: 09/18/2020)
09/18/2020	<u>84</u>	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Brent Borland. Notice is hereby given that an official transcript of a Conference proceeding held on 8/5/20 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (McGuirk, Kelly) (Entered: 09/18/2020)
10/01/2020	<u>85</u>	Victim Impact Letter as to Brent Borland addressed to The Honorable Katherin Polk Failla from Tom & Michelle Simes dated 9/15/2020. (lnl) (Entered: 10/01/2020)
10/02/2020	<u>86</u>	LETTER MOTION addressed to Judge Katherine Polk Failla from Negar Tekeei / Edward

		Imperatore dated October 2, 2020 re: Joint Status Update . Document filed by USA as to Brent Borland. (Tekeei, Negar) (Entered: 10/02/2020)
10/05/2020	<u>87</u>	MEMO ENDORSEMENT <u>86</u> LETTER MOTION The parties respectfully submit this joint letter in response to the Courts September 4, 2020 Order (Dkt. 80) directing the parties to advise the Court of the status of this case by October 5, 2020. The parties are continuing to make progress in narrowing the potential issues in dispute. Accordingly, we respectfully request permission to provide the Court with a status update within 30 days which will identify the remaining issues in dispute, if any, and present a proposal for proceeding toward sentencing...ENDORSEMENT...Application GRANTED, on the understanding that no further extensions will be sought. The parties are hereby ORDERED to submit to the Court, on or before November 4, 2020, a further status update and proposal for proceeding toward sentencing. (Signed by Judge Katherine Polk Failla on 10/5/20) (jw) (Entered: 10/05/2020)
10/29/2020	<u>88</u>	ORDER as to Brent Borland. This Order is entered, pursuant to Federal Rule of Criminal Procedure 5(f), to confirm the Governments disclosure obligations under Brady v. Maryland, 373 U.S. 83 (1963), and its progeny, and to summarize the possible consequences of violating those obligations. For purposes of this Order, the Government includes all current or former federal, state, and local prosecutors, law enforcement officers, and other officers who have participated in the prosecution, or the investigation that led to the prosecution, of the offense or offenses with which the defendant is charged. The Government has an affirmative obligation to seek from such sources all information subject to disclosure under this Order. If the Government fails to comply with this Order, the Court, in addition to ordering production of the information, may: (i) specify the terms and conditions of such production; (ii) grant a continuance; (iii) impose evidentiary sanctions; (iv) impose sanctions on any responsible lawyer for the Government; (v) dismiss charges before trial or vacate a conviction after trial or a guilty plea; or (vi) enter any other order that is just under the circumstances. (Signed by Judge Katherine Polk Failla on 10/29/20)(jw) (Entered: 10/29/2020)
11/04/2020	<u>89</u>	LETTER by USA as to Brent Borland addressed to Judge Katherine Polk Failla from Negar Tekeei dated November 4, 2020 re: Joint Status Update Document filed by USA. (Tekeei, Negar) (Entered: 11/04/2020)
11/05/2020	<u>90</u>	MEMO ENDORSEMENT as to Brent Borland on re: <u>89</u> LETTER by USA as to Brent Borland addressed to Judge Katherine Polk Failla from Negar Tekeei dated November 4, 2020 re: Joint Status Update. ENDORSEMENT: The Court is pleased to hear that the parties have resolved the remaining disputes and are ready to proceed to sentencing. The parties are hereby ORDERED to appear for sentencing on February 11, 2021, at 3:00 p.m. Defendant's sentencing submission is due on or before January 28, 2021; the Government's submission is due on or before February 4, 2021. (Sentencing set for 2/11/2021 at 03:00 PM before Judge Katherine Polk Failla) (Signed by Judge Katherine Polk Failla on 11/5/2020) (ap) (Entered: 11/05/2020)
01/15/2021	<u>91</u>	CONSENT LETTER MOTION addressed to Judge Katherine Polk Failla from Florian Miedel dated 01-15-2021 re: Adjournment of Sentencing . Document filed by Brent Borland. (Miedel, Florian) (Entered: 01/15/2021)
01/15/2021	<u>92</u>	MEMO ENDORSEMENT as to Brent Borland on <u>91</u> CONSENT LETTER MOTION addressed to Judge Katherine Polk Failla from Florian Miedel dated 01-15-2021 re: Adjournment of Sentencing. ENDORSEMENT: Application GRANTED. Sentencing in this matter is ADJOURNED to March 23, 2021, at 3:00 p.m. in Courtroom 618 of the Thurgood Marshall Courthouse, 40 Foley Square, New York, New York 10007. The defense sentencing submission is due on or before March 9, 2021; the Government's submission is due on or before March 16, 2021. SO ORDERED. (Sentencing set for 3/23/2021 at 03:00 PM in Courtroom 618, 40 Centre Street, New York, NY 10007 before Judge Katherine Polk Failla) (Signed by Judge Katherine Polk Failla on 1/15/2021) (lnl) (Entered: 01/15/2021)
02/18/2021	<u>93</u>	CONSENT LETTER MOTION addressed to Judge Katherine Polk Failla from Florian Miedel dated 02-18-2021 re: Permission to Travel Feb 23-25. Document filed by Brent Borland. (Miedel, Florian) (Entered: 02/18/2021)
02/18/2021	<u>94</u>	MEMO ENDORSEMENT <u>93</u> LETTER MOTION To request the Court to permit Mr. Borland to travel from the Southern District of Florida to San Antonio, Texas on February 23, 2021 and to

		return on February 25, 2021...ENDORSEMENT...Application GRANTED. (Signed by Judge Katherine Polk Failla on 2/18/21) (jw) (Entered: 02/18/2021)
02/22/2021	<u>95</u>	LETTER MOTION addressed to Judge Katherine Polk Failla from Florian Miedel dated 02-22-2021 re: Adjournment of Sentencing . Document filed by Brent Borland. (Attachments: # <u>1</u> Exhibit A) (Miedel, Florian) (Entered: 02/22/2021)
02/23/2021	<u>96</u>	LETTER RESPONSE in Opposition by USA as to Brent Borland addressed to Judge Katherine Polk Failla from Edward Imperatore dated 2/23/2021 re: <u>95</u> LETTER MOTION addressed to Judge Katherine Polk Failla from Florian Miedel dated 02-22-2021 re: Adjournment of Sentencing .. (Imperatore, Edward) (Entered: 02/23/2021)
02/24/2021	<u>97</u>	LETTER REPLY TO RESPONSE to Motion by Brent Borland addressed to Judge Katherine Polk Failla from Florian Miedel dated 02-24-2021 re <u>95</u> LETTER MOTION addressed to Judge Katherine Polk Failla from Florian Miedel dated 02-22-2021 re: Adjournment of Sentencing .. (Miedel, Florian) (Entered: 02/24/2021)
02/25/2021	<u>98</u>	MEMO ENDORSEMENT <u>95</u> LETTER MOTION Reschedule Sentencing re: <u>95</u> LETTER MOTION addressed to Judge Katherine Polk Failla from Florian Miedel dated 02-22-2021 re: Adjournment of Sentencing ...ENDORSEMENT...The Court is in receipt of Defendant's letter motion requesting adjournment of his sentencing (Dkt. #95), the Government's response in opposition (Dkt. #96), and Defendant's above reply (Dkt. #97). Defendant's requested is GRANTED. Sentencing in this matter is ADJOURNED to May 26, 2021, at 3:00 p.m. (Signed by Judge Katherine Polk Failla on 2/25/21) (jw) (Entered: 02/25/2021)
02/25/2021		Set/Reset Deadlines/Hearings as to Brent Borland: Sentencing set for 5/26/2021 at 03:00 PM before Judge Katherine Polk Failla(jw) (Entered: 02/25/2021)
05/07/2021	<u>99</u>	LETTER MOTION addressed to Judge Katherine Polk Failla from Florian Miedel dated 05-07-2021 re: Adjournment of Sentencing . Document filed by Brent Borland. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2)(Miedel, Florian) (Entered: 05/07/2021)
05/10/2021	<u>100</u>	LETTER by USA as to Brent Borland addressed to Judge Katherine Polk Failla from Negar Tekeei / Edward Imperatore dated May 10, 2021 re: Opposition to Motion for Adjournment of Sentencing Document filed by USA. (Tekeei, Negar) (Entered: 05/10/2021)
05/11/2021	<u>101</u>	MEMO ENDORSEMENT as to Brent Borland on <u>100</u> LETTER by USA as to Brent Borland addressed to Judge Katherine Polk Failla from Negar Tekeei/Edward Imperatore dated May 10, 2021 re: Opposition to Motion for Adjournment of Sentencing. ENDORSEMENT: The Court is in receipt of Defendant's letter motion for a further adjournment of sentencing (Dkt. #99) and the Government's above response in opposition (Dkt. #100). Defendant's request is GRANTED. Sentencing is ADJOURNED to October 5, 2021, at 3:00 p.m. in Courtroom 618 of the Thurgood Marshall United States Courthouse, 40 Foley Square, New York, NY 10007. Defendant is advised that no further adjournments will be granted under any circumstances. SO ORDERED. (Sentencing set for 10/5/2021 at 03:00 PM in Courtroom 618, 40 Centre Street, New York, NY 10007 before Judge Katherine Polk Failla) (Signed by Judge Katherine Polk Failla on 5/11/2021) (lnl) (Entered: 05/11/2021)
09/03/2021	<u>102</u>	NOTICE of Change of Address as to Brent Borland. New Address: Law Offices of Christopher Madiou, 50 Broad Street, Suite 1609, New York, NY, USA 10004, 917-408-6484. (Madiou, Christopher) (Entered: 09/03/2021)
09/17/2021	<u>103</u>	LETTER by USA as to Brent Borland addressed to Judge Katherine Polk Failla from Negar Tekeei / Edward Imperatore dated September 17, 2021 re: Defendant's Request for a Remote Sentencing Document filed by USA. (Tekeei, Negar) (Entered: 09/17/2021)
09/17/2021	<u>104</u>	MEMO ENDORSEMENT as to Brent Borland on re: <u>103</u> The Government prefers to proceed in person for sentencing on October 5. However, the Government respectfully submits there is more than a sufficient basis for the Court to find, pursuant to the CARES Act, that sentencing in this case cannot be further delayed without serious harm to the interests of justice and should proceed by videoconference on October 5....ENDORSEMENT...The Court is in receipt of both Defendant's September 16, 2021 letter requesting remote sentencing in this matter and the Government's above letter stating that it does not object to Defendant's request. For thereasons set forth in the parties' letters, the Court finds that it is appropriate to proceed with remote sentencing in this matter.

		Accordingly, the in-person sentencing scheduled for October 5, 2021 is hereby CONVERTED to proceed by video. Public dial-in information and instructions for video participants will be sent separately in advance of sentencing. Defendant's September 16, 2021 letter shall be filed under seal, viewable only to the parties and the Court (Signed by Judge Katherine Polk Failla on 9/17/21)(jw) (Entered: 09/17/2021)
09/21/2021	<u>105</u>	SENTENCING SUBMISSION by Brent Borland. (Attachments: # <u>1</u> Exhibit Exs. A - E)(Madiou, Christopher) (Entered: 09/21/2021)
09/28/2021	<u>106</u>	SENTENCING SUBMISSION by USA as to Brent Borland. (Attachments: # <u>1</u> Exhibit A - F) (Tekeei, Negar) (Entered: 09/28/2021)
10/03/2021	<u>107</u>	SENTENCING SUBMISSION by Brent Borland. (Attachments: # <u>1</u> Exhibit F-G)(Miedel, Florian) (Entered: 10/03/2021)
10/04/2021		NOTICE OF REMOTE PUBLIC AUDIO ACCESS DIAL-IN as to Brent Borland re: <u>104</u> Memo Endorsement: The conference scheduled for 10/5/2021 at 3:00 p.m. will be held via video conference with public audio access at (917) 933-2166, Conference ID 816 119 041#. Instructions to video participants will be sent separately in advance of the conference. ***No PDF is attached to this entry. (tn) (tn) (Entered: 10/04/2021)
10/05/2021		Minute Entry for proceedings held before Judge Katherine Polk Failla: Sentencing held on 10/5/2021 for Brent Borland (1) Count 1,2,3. Defendant Brent Borland present with attorneys Florian Miedel and Christopher Paul Madiou. AUSA Negar Tekeei present. Court reporter Eve Giniger present. (See Judgment.) (jbo) (Entered: 10/06/2021)
10/05/2021	<u>109</u>	ORDER OF RESTITUTION as to Brent Borland. (Signed by Judge Katherine Polk Failla on 10/5/2021) (ap) (Entered: 10/18/2021)
10/06/2021	<u>108</u>	CONSENT PRELIMINARY ORDER OF FORFEITURE/MONEY JUDGMENT as to Brent Borland. IT IS HEREBY STIPULATED AND AGREED, by and between the United States of America, by its attorney Audrey Strauss, United States Attorney, Assistant United States Attorneys, Edward A. Imperatore and Negar Tekeei of counsel, and the Defendant, and his counsel, Florian Miedel, Esq. and Christopher Madiou, Esq., that As a result of the offenses charged in Counts One through Three of the Indictment, to which the Defendant pled guilty, a money judgment in the amount of \$26,584,970 in United States currency (the "Money Judgment"), representing the amount of proceeds traceable to the offenses charged in Counts One through Three of the Indictment that the Defendant personally obtained, shall be entered against the Defendant. Pursuant to Rule 32.2(b)(3) of the Federal Rules of Criminal Procedure, the United States Attorney's Office is authorized to conduct any discovery needed to identify, locate or dispose of forfeitable property, including depositions, interrogatories, requests for production of documents and the issuance of subpoenas (Signed by Judge Katherine Polk Failla on 10/5/2021)(jw) (Entered: 10/07/2021)
10/19/2021	<u>110</u>	JUDGMENT IN A CRIMINAL CASE as to Brent Borland (1). THE DEFENDANT: pleaded guilty to counts One, Two, and Three. NO OPEN COUNTS. IMPRISONMENT: Concurrent terms of sixty (60) months on Count One, and eighty-four (84) months on each of Counts Two and Three, for an aggregate term of eighty-four (84) months. The court makes the following recommendations to the Bureau of Prisons: The Court recommends that the Defendant be designated to FCI Miami, or, if there is no space available in that facility, then to a facility of an appropriate security level as close as possible to the Southern District of Florida, with space in its RDAP program. The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons: @ before 2 p.m. on 1/7/2022. SUPERVISED RELEASE: Three (3) years on each count to run concurrently. See SPECIAL CONDITIONS OF SUPERVISION. ASSESSMENT: \$300.00 due immediately. RESTITUTION: \$26,184,970.00. Name of Payee: See Order of Restitution dated 10/5/21. The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g). Special instructions regarding the payment of criminal monetary penalties: While serving the term of imprisonment, the Defendant shall make installment payments toward his restitution obligation, and may do so through the Bureau of Prisons' (BOP) Inmate Financial Responsibility Plan (IFRP). Pursuant to BOP policy, the BOP may establish a payment plan by evaluating the Defendant's six-month deposit history and subtracting an amount

		determined by the BOP to be used to maintain contact with family and friends. The remaining balance may be used to determine a repayment schedule. BOP staff shall help the Defendant develop a financial plan and shall monitor the inmate's progress in meeting his restitution obligation. Any unpaid amount remaining upon release from prison will be paid in monthly installment payments of not less than an amount equal to 15 percent of the Defendant's gross monthly income, payable on the first of each month to commence 30 days after the date of the judgment or his release from custody if imprisonment is imposed. The defendant shall forfeit the defendant's interest in the following property to the United States: \$26,584,970.00 (See Consent Preliminary Order of Forfeiture/Money Judgment dated 10/5/2021). (Signed by Judge Katherine Polk Failla on 10/19/2021) (ap) (Entered: 10/19/2021)
10/28/2021	111	SEALED DOCUMENT placed in vault. (nmo) (Entered: 10/28/2021)
10/28/2021	112	SEALED DOCUMENT placed in vault. (nmo) (Entered: 10/28/2021)
11/01/2021	<u>113</u>	NOTICE OF APPEAL by Brent Borland from <u>110</u> Judgment. (nd) (Entered: 11/01/2021)
11/01/2021		Transmission of Notice of Appeal and Certified Copy of Docket Sheet as to Brent Borland to US Court of Appeals re: <u>113</u> Notice of Appeal. (nd) (Entered: 11/01/2021)
11/01/2021		Appeal Record Sent to USCA (Electronic File). Certified Indexed record on Appeal Electronic Files as to Brent Borland re: <u>113</u> Notice of Appeal were transmitted to the U.S. Court of Appeals. (nd) (Entered: 11/01/2021)
12/20/2021	<u>115</u>	TRANSCRIPT of Proceedings as to Brent Borland re: Conference held on 10/5/21 before Judge Katherine Polk Failla. Court Reporter/Transcriber: Eve Giniger, (212) 805-0300, Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 1/10/2022. Redacted Transcript Deadline set for 1/20/2022. Release of Transcript Restriction set for 3/21/2022. (Moya, Goretti) (Entered: 12/20/2021)
12/20/2021	<u>116</u>	NOTICE OF FILING OF OFFICIAL TRANSCRIPT as to Brent Borland. Notice is hereby given that an official transcript of a Conference proceeding held on 10/5/21 has been filed by the court reporter/transcriber in the above-captioned matter. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.... (Moya, Goretti) (Entered: 12/20/2021)
01/03/2022	<u>117</u>	LETTER MOTION addressed to Judge Katherine Polk Failla from Florian Miedel dated 01-03-2022 re: Adjournment of surrender date <i>on 1-7-22</i> . Document filed by Brent Borland. (Miedel, Florian) (Entered: 01/03/2022)
01/04/2022	<u>118</u>	LETTER RESPONSE to Motion by USA as to Brent Borland addressed to Judge Katherine Polk Failla from Negar Tekeei / Edward Imperatore dated January 4, 2022 re: <u>117</u> LETTER MOTION addressed to Judge Katherine Polk Failla from Florian Miedel dated 01-03-2022 re: Adjournment of surrender date <i>on 1-7-22</i> .. (Tekeei, Negar) (Entered: 01/04/2022)
01/04/2022	<u>119</u>	MEMO ENDORSEMENT as to Brent Borland re: <u>118</u> Response to Motion, filed by USA - Adjournment of surrender date on 1-7-22... ENDORSEMENT: The Court is in receipt of Defendant Brent Borland's request to adjourn his surrender date (Dkt. #117) and the Government's above opposition. For the reasons stated above, Mr. Borland's application is DENIED. The Clerk of Court is directed to terminate the motion at docket entry 117. SO ORDERED. (Signed by Judge Katherine Polk Failla on 1/4/22)(jbo) (Entered: 01/04/2022)
01/04/2022	<u>120</u>	LETTER MOTION addressed to Judge Katherine Polk Failla from Florian Miedel dated 01-04-2022 re: Renewed Request for one week extension of surrender date . Document filed by Brent Borland. (Miedel, Florian) (Entered: 01/04/2022)
01/04/2022	<u>121</u>	MEMO ENDORSED granting <u>120</u> LETTER MOTION Renewed Request for one week extension of surrender date as to Brent Borland (1)... ENDORSEMENT: Application GRANTED. For the reasons stated above, the Court extends Mr. Borland's surrender date to January 14, 2022. No further extensions of the surrender date will be granted. The Clerk of Court is directed to terminate the motion at docket entry 120. SO ORDERED. (Signed by Judge Katherine Polk Failla on 1/4/22) (jbo) (Entered: 01/05/2022)

missed it.

The Court may allocute Mr. Borland on the fact that he's waiving his right to subpoena witnesses and elicit evidence in the trial.

THE COURT: I don't know that I've asked that specific question. What I do ask is that there are means and methods that his attorneys would have in obtaining evidence for him which would be the right to have subpoenas issued or process used to compel witnesses.

Does that suffice, or would you like something more specific?

MR. IMPERATORE: It does, your Honor. I may have just missed it.

THE COURT: That's fine. I commit to you it was asked.

So the record is doubly clear, Mr. Borland, do you understand that a consequence of entering a guilty plea is that you will not be able to subpoena witness or to otherwise obtain material for your defense for a trial that this guilty plea would obviate? Are you aware of that, sir?

THE DEFENDANT: Yes, your Honor.

THE COURT: Thank you.

Sir, let me then talk to you please about the charges in the indictment. We talked about that document a little while ago.

1 In Count One of the indictment, you're charged with
2 conspiracy with two objects. This would be a conspiracy to
3 commit securities fraud and a conspiracy to commit wire fraud.
4 Count One arises under the criminal conspiracy provision which
5 is Section 371 of Title 18 of the United States Code.

6 In Count Two, you are charged with the substantive
7 offense of securities fraud in violation of Title 15, U.S.
8 Code, Sections 78j(b) and 78ff; Title 17 of the Code of Federal
9 Regulations, Section 240.10b-5, and Title 18, U.S. Code,
10 Section 2.

11 And then further in Count Three, you're charged with
12 the substantive offense of wire fraud in violation of Title 18,
13 U.S. Code, Sections 1343 and 2.

14 Are you aware, sir, that these are the charges
15 contained in this charging instrument?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: And is it your intention to plead guilty
18 to all three of them?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: I'm going to ask for your attention this
21 time, and I will pay attention as well. We're going to ask the
22 prosecutors to outline for us both the elements of these
23 offenses.

24 Mr. Imperatore, thank you.

25 MR. IMPERATORE: Yes, your Honor. The elements of the

1 conspiracy charged in Count One are as follows: First, that
2 two or more persons entered the unlawful agreement charged in
3 Count One, namely, to commit securities fraud and wire fraud;
4 second, that the defendant knowingly and willfully became a
5 member of the conspiracy; and third, that one of the members of
6 the conspiracy knowingly committed at least one overt act.

7 As the Court mentioned, there are two objects of the
8 conspiracy charged in Count One. The first are securities
9 fraud. The elements of a securities fraud are the following:

10 First, that in connection with the purchase or sale of
11 stock or shares in a company, the defendant did any one or more
12 of the following:

13 A, employ a device, scheme, or artifice to defraud; or
14 B, made an untrue statement of a material fact or omitted to
15 state a material fact which made what was said under the
16 circumstances misleading; or C, engaged in an act, practice, or
17 course of business that operated or would operate as a fraud or
18 deceit upon a purchaser or seller.

19 Second, that the defendant acted unlawfully,
20 knowingly, willfully, and with the intent to defraud; and
21 third, that the defendant used or caused to be used any means
22 or instruments of transportation or communication in interstate
23 commerce or the use of the mails or any facility of the
24 National Securities Exchange in furtherance of the fraudulent
25 conduct.

1 The second object of the conspiracy charged in Count
2 One is wire fraud. The elements of wire fraud are the
3 following:

4 First, that there was a scheme or artifice to defraud
5 or to obtain money or property by materially false and
6 fraudulent pretenses, representations, or promises; second,
7 that the defendant knowingly participated in the scheme or
8 artifice to defraud with knowledge of its fraudulent nature and
9 with specific intent to defraud; and third, that in execution
10 of that scheme, the defendant used or caused the use of the
11 interstate wires, that is, wires between states. So that's
12 Count One.

13 Count Two charges the defendant with securities fraud,
14 the substantive offense. And the elements of securities fraud
15 are the same as I just outlined with respect to the securities
16 fraud object of the conspiracy charged in Count One.

17 Count Three charges the defendant with wire fraud, and
18 the elements of wire fraud are the same as I just outlined with
19 respect to the wire fraud object of the conspiracy charged in
20 Count One.

21 In addition, as to each count, the government would
22 prove by a preponderance of the evidence that venue is proper
23 here in the Southern District of New York.

24 THE COURT: Thank you.

25 Mr. Borland, were you able to hear and follow the

1 prosecutor just now?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Do you understand, sir, that if this case
4 were to proceed to trial, that is what the government would
5 have to prove with respect to each of the counts in this case?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: I will focus now, sir, on the penalties
8 that are associated with each of these offenses. And in
9 particular, I will focus on the maximum penalties.

10 And I'm using the term "maximum" deliberately. I want
11 to talk to you about the most that could possibly be imposed,
12 which is not necessarily what you're going to receive.

13 The reason why my focus is on the maximum penalties,
14 sir, is that I want to make sure you understand that by
15 entering a plea of guilty, you are exposing yourself to the
16 possibility of receiving any combination of punishments up to
17 the statutory maximum terms that I'm about to describe.

18 Do you understand each of those things, sir?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: I will focus first on restrictions on your
21 liberty. The maximum term of imprisonment for Count One is
22 five years' imprisonment, the maximum term of imprisonment for
23 Count Two is 20 years' imprisonment, and the maximum term of
24 imprisonment for Counts Three is 20 years' imprisonment. So
25 all told, the aggregate maximum term of imprisonment is 45

1 years.

2 Are you aware of each of these things, sir?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: Are you also aware that any term of
5 imprisonment could be followed by a term of what's called
6 supervised release? And for each of these offenses, the
7 maximum term of supervised release is three years.

8 Are you aware of that?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: Let me talk to you for a moment about
11 supervised release. When I use the term "supervised release,"
12 what I mean is a period of time where you are subject to
13 supervision by the United States Probation Office. There are
14 terms and conditions of supervised release that you would have
15 to follow.

16 If you were unable or unwilling to follow the terms
17 and conditions of supervised release, the possibility exists
18 that your term of supervised release would be revoked. You
19 could be sent to prison to serve time without a jury trial.

20 If that were to happen, if your supervised release
21 term were to be revoked and you were sent to prison, you would
22 not get any credit for any time that you may have previously
23 spent serving a sentence of imprisonment. You also would not
24 get any credit for any time that you spent on supervised
25 release in compliance with the terms and conditions.

1 Do you understand each of those things, sir?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Do you also understand that there is no
4 parole in the federal system, and if you are sentenced to a
5 term of imprisonment, you would not be released early on
6 parole?

7 There is an opportunity to earn credit for good
8 behavior, but even then, you would have to serve approximately
9 85 percent of any term of imprisonment imposed.

10 Are you aware of that, sir?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: In addition to these restrictions on your
13 liberty, the maximum possible penalties that are associated
14 with each of these counts involve certain financial penalties.

15 The maximum allowable fine in this case is seen as the
16 greatest of one of three things, and this is the same system
17 for each of the counts. So the maximum fine is the greatest of
18 an absolute number or twice the gross pecuniary gain derived
19 from the offense or twice the gross pecuniary loss to persons
20 other than yourself.

21 In these offenses, the maximum allowable fine for
22 Count One is \$250,000; for Count Two is \$5,000,000; and for
23 Count Three is \$250,000.

24 Are you aware of that, sir?

25 THE DEFENDANT: Yes, your Honor.

1 THE COURT: In addition, I have the ability to order
2 restitution to any person or entity who has been injured as a
3 result of your conduct. I can order you to forfeit any
4 proceeds that you may have derived from the offense or any
5 property that you may have used to commit or to facilitate the
6 commission of the offense. And I must order a mandatory
7 special assessment of \$100 per count of conviction.

8 Do you understand, sir, that these are the maximum
9 possible penalties that are associated with this offense?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Mr. Borland, I need to ask you a series of
12 questions now, and my experience is that not all of these
13 questions will apply to you. So please don't be surprised if
14 I'm asking them. I'll explain why during the course of my
15 asking you these questions.

16 Are you a United States citizen?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: I ask because some people who appear
19 before me are not. A guilty plea can have adverse immigration
20 consequences that would need to be discussed. But since you
21 are a U.S. citizen, you would not have that possibility, and
22 I'll ask you something different.

23 Do you understand that as a result of your guilty plea
24 here, you might lose certain valuable civil rights, to the
25 extent you have them today or could obtain them in the future?

1 These would include such things as the right to vote, the right
2 to hold public office, the right to serve on a jury, and the
3 right to possess a firearm.

4 Are you aware of these things, sir?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Sir, to the best of your knowledge, are
7 you being prosecuted in any other jurisdiction?

8 THE DEFENDANT: No, your Honor.

9 THE COURT: At this time you're not serving any jail
10 sentences, are you, sir?

11 THE DEFENDANT: No, your Honor.

12 THE COURT: I ask because some people come to me with
13 multiple proceedings going on at the same time. Resolution of
14 the criminal case before me does not necessarily resolve any
15 other matters that you might have.

16 Is there a parallel proceeding with the Securities
17 Exchange Commission or with some other self-regulatory
18 organization?

19 MR. IMPERATORE: There is, your Honor. With the SEC.

20 THE COURT: I understand.

21 Mr. Borland, do you understand that whatever you do in
22 this case -- it may or may not have consequences in that case.
23 My suspicion is the plea in this case wouldn't cause the SEC to
24 drop the investigation it has.

25 The point is you understand that what we're addressing

1 in this proceeding is the criminal case, not the civil case,
2 not anything else. Yes, sir?

3 THE DEFENDANT: I understand that. Yes, your Honor.

4 THE COURT: Sir, without giving me the details, have
5 you and your attorneys discussed the process of sentencing?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Do you understand that there are several
8 sentencing factors that I must consider that are commonly
9 referred to as 3553(a) factors because that's the statute where
10 they're contained? But they give me some things to think about
11 in imposing sentence.

12 Are you aware of this, sir?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: One of the factors that I must consider is
15 something called the United States Sentencing Guidelines, and I
16 mentioned that very briefly at the beginning of this
17 proceeding.

18 Is that a term with which you're familiar?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: If I use the term "guidelines" or
21 "sentencing guidelines," that is what I'm referring to. What
22 I'd like to make sure you understand, sir, is that if anyone
23 has attempted to predict for you what your ultimate sentence
24 will be, their prediction could be incorrect.

25 I will be the person sentencing you in the future, and

1 I do not have the information that I needed to have to give you
2 any guidance about what your sentence might be.

3 I need to hear from you later on in this proceeding.

4 I need to hear from the probation office and the presentence
5 investigation report. I need to hear from both sides in their
6 sentencing submissions.

7 So do you understand, sir, that no one can today
8 predict with any confidence what your ultimate sentence will
9 be?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Do you also understand that if your
12 sentence is different from what anyone may have suggested to
13 you that it might be, if it is different from what you expect
14 or hoped for, if it is different from any discussions you may
15 have had with the government about applicable ranges, you would
16 not be permitted to withdraw your guilty plea based on
17 dissatisfaction with your sentence?

18 Are you aware of that, sir?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: It is my understanding that there is no
21 plea agreement between you and your attorneys and the attorneys
22 for the government.

23 Am I correct?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: So instead, you've been given what is

commonly referred to as a Pimentel letter.

Do you have a copy of that document with you, sir?

THE DEFENDANT: Yes, your Honor.

THE COURT: I have been given something in preparation for this proceeding, and it is a letter that is dated February 5 of 2019, from the United States Attorney's Office to Mr. Baum, Ms. Gallicchio, and Ms. Shroff of the Federal Defenders.

Is that the letter that you have in front of you, sir?

THE DEFENDANT: Yes, your Honor.

THE COURT: I think it's fair to say that this document recites the charges to which you are now proposing to plead guilty, and it discusses the government's view, as of the time of this letter, as to how the guidelines apply.

Do you have that same understanding, sir?

THE DEFENDANT: Yes, your Honor.

THE COURT: No one is making you any commitments about the sentencing range that might apply or about any ultimate sentence that you may receive?

THE DEFENDANT: No, your Honor.

THE COURT: And you understand as well that in that case in particular, I'm not bound by the government's thoughts about how the guidelines apply, and I have an independent obligation to calculate the guidelines and to consider the guidelines in connection with the other factors that are set

1 forth in Section 3553(a).

2 Are you aware of that, sir?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: I should have asked you just for
5 completeness. We mentioned this Pimentel letter. I know you
6 have a copy in front of you.

7 Have you read this document, sir?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Have you had whatever time you needed to
10 discuss this document with your attorneys?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: You've heard me make reference to it.

13 Do you understand the purpose of this document and
14 what is being said and not said in this document?

15 THE DEFENDANT: I do, your Honor.

16 THE COURT: I understand.

17 Sir, has anyone made you any promise or offered you
18 any type of inducement in order to get you to plead guilty here
19 today?

20 THE DEFENDANT: No, your Honor.

21 THE COURT: Has anyone forced you or threatened you in
22 order to get you to plead guilty here today?

23 THE DEFENDANT: No, your Honor.

24 THE COURT: Has anyone made you any promise as to what
25 your ultimate sentence will be?

1 THE DEFENDANT: No, your Honor.

2 THE COURT: Could you please tell me in your own words
3 what you did that makes you believe you're guilty of the
4 charges in this indictment.

5 Why don't I begin by asking: Do you have notes to aid
6 you in speaking with me, sir?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: That's very common and very
9 understandable. I want to understand that ultimately the
10 information that is being communicated is from you and not from
11 someone else. Am I correct?

12 THE DEFENDANT: It is from me, your Honor.

13 THE COURT: I will hear from you now, sir. Thank you.

14 THE DEFENDANT: With respect to Count One, between
15 2014 and 2018, I agreed with one other person to solicit loans
16 to fund a real estate project in Belize. We did so through the
17 use of emails and phone calls.

18 In soliciting the loans and then executing loan
19 agreements, we knowingly failed to disclose a material fact to
20 the lender, that is, that the project had already defaulted on
21 other loans which we solicited for the same project. I
22 personally met with at least one investor regarding this loan
23 in my office in New York. I knew that what I was doing was
24 wrong.

25 With respect to Count Two, between 2014 and 2018, I

1 personally solicited loans for a real estate project in Belize
2 using emails, phone calls, and personal conversations. I
3 subsequently executed loan agreements with the lenders, but I
4 failed to disclose a material fact that the project had already
5 defaulted on other loans which I had solicited for the same
6 project. I knew that what I was doing was wrong.

7 Count Three, the loans that I solicited in Counts One
8 and Two based on a material omission in fact were wire
9 transferred to me in New York.

10 THE COURT: I think I understood you earlier, sir, to
11 be saying that at the time you engaged in this conduct, you
12 understood that it was illegal and wrong. Correct?

13 THE DEFENDANT: Correct.

14 THE COURT: All right. One moment, please.

15 (Pause)

16 THE COURT: Sir, I heard you just a few moments ago
17 speak of soliciting loans. You'll excuse me if this is very
18 picky.

19 When you were soliciting loans, were these loans in
20 the traditional sense, or were they investments? I don't know
21 what the individuals that you were soliciting were going to get
22 in return.

23 THE DEFENDANT: It was a traditional where loan there
24 was a principal that was loaned by the lender. The borrower
25 received the loans and invested in the project in Belize. And

Federal Defenders OF NEW YORK, INC.

52 Duane Street-10th Floor, New York, NY 10007
Tel: (212) 417-8700 Fax: (212) 571-0392

David E. Patton
*Executive Director
and Attorney-in-Chief*

October 25, 2019

BY ECF AND HAND

Honorable Katherine Polk Failla
United States District Judge
Southern District of New York
40 Foley Square Room 2103

**Re: United States v. Brent Borland
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Dear Judge Failla,

We respectfully write on behalf of our client, Brent Borland, pursuant to an agreement with the Government, and approved by the Court, whereby the parties hope to address the sole issue of calculation of the loss amount pursuant to the United States Sentencing Guidelines. The parties differ as to whether an enhancement is applicable for loss pursuant to U.S.S.G. §2B1.1. Mr. Borland contends that no enhancement is applicable because of the application of the "credit for loss" provision set forth in Application Note 3(E)(ii). Furthermore, we argue that Probation's decision to add relevant conduct to the loss amount, which is supported by the Government, is not warranted under the specific facts of this case. Accordingly, there is zero loss in this case and no enhancement for loss under the Guidelines is warranted.

Relevant History

As a college graduate with a Degree in Business Administration, Brent Borland received two majors in real estate and urban land development and finance. He pursued an MBA Degree for one year but left to commence employment for a tech start-up in New York City. After leaving New York due to issues associated with September 11, 2001, Borland moved his focus into real estate. In the mid 2000's he formed his real estate firm Canyon Acquisitions.

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In 2005, Mr. Borland became focused on a country building project in the Caribbean Basin country of Belize. He met a resident of Placencia, Belize, Marco Caruso, who owned a hotel there and who had acquired several thousand acres of property in the name of various Belize entities which he controlled prior to the events in the Indictment. In early 2008, an agreement was reached between Borland and Caruso, where Borland would serve as a real estate broker for the purchase of real estate from Caruso by Canadian investors. This was prior to the conduct charged in the Indictment. The deposits placed by buyers towards the purchase of real estate were deposited with an independent, third party escrow agent. The deposits were sent directly to Caruso by the escrow agent, providing for the construction and development of the properties. In consideration for acting as real estate broker, Canyon was paid a traditional real estate brokerage commission.

In connection with this business arrangement, Mr. Borland retained a Belize law firm, Courtenay Coye LLP, to establish agreements related to the parameters of Mr. Borland's efforts to broker the sale of real estate. Mr. Coye worked with Mr. Borland to secure assets from Caruso as security for the Canyon buyers in the event of the developer's (Caruso) default.

In 2010, Caruso and Borland agreed to a 50% partnership in the six entities that owned the land that Caruso was developing. Courtenay Coye filed all the necessary documents with the Corporate Registry of Belize and the Central Bank of Belize to establish that 50% ownership and Mr. Borland's voting rights in the controlling companies.

Over the following years, tens of millions of dollars were sent directly to Caruso for the development of the Belize projects, which included condominium ocean front residences, a golf course, a marina, a hotel, a private island resort, a casino, and an international airport.

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After becoming partners with Mr. Caruso, Mr. Borland had every contractual assurance from Caruso that the money he raised through the sale of real estate during the time of their partnership would be used exclusively to further the development of the properties they owned together. Mr. Borland sought to take additional steps to protect the investors who provided the funds to develop the properties. Borland required that Caruso obtain independent third-party audits from a recognized firm. They engaged Deloitte Touche Tohmatsu's correspondent auditing firm Castillo Sanchez and Burrell, to conduct annual audits on all projects. The audits demonstrated that all Canadian buyer's funds were invested in the Belize projects. (The audit demonstrated that no money had been diverted for personal use contrary to the Government's assertions).

In 2014, Caruso asked Borland to form an investment vehicle for Caruso and Borland to raise debt in the form of loans from U.S. investors for use in the development of the aforementioned Belize properties. It was agreed that some of the assets owned by Borland and Caruso would serve as collateral for the loans. A Belize law firm was retained to research and determine the most efficient and effective way to structure the loan agreements. A provision to allow for the use of substitute assets of any collateral pledged was inserted in the loan agreements. It was also recommended to use an escrow agent to secure the collateral for the benefit of the lenders. The law firm of Filler Rodriguez, in Miami, Florida, was retained for this purpose. Borland and Caruso then formed the Belize Infrastructure Fund (BIF) as the vehicle to manage and control the loans as a flow through entity to the Caruso and Borland project entities. In 2016, Borland Capital Group, LLC (BCG) was used as a vehicle to raise funds for infrastructure projects.

Specifically, related to the charges set forth in the Indictment before the Court, each BIF lender and BCG lender signed a loan agreement and a security and pledge agreement, whereby real property was set aside in the Filler Rodriguez Escrow as collateral for their loan. Although some of the loan agreements specified that the collateral would be the same

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property, based on a template loan agreement created by Caruso's Belize lawyer, the loan agreements also had a "substitute assets" provision, which allowed the borrowers (Borland and Caruso's Companies), in the event of a default on the loan agreement, to provide other property equal to or greater in value than the loan from the lender. See Exhibit A, Letter from David Filler, Esq. Each loan agreement was signed by Mr. Borland and Caruso. See Exhibit B Sample Loan Agreements.

As an example, in the Agreement with Deborah and Benjamin Zager, see Exhibit C, Section III(4) specifically references that the lender will be pooled with other lenders for the same collateral, an issue raised by the Government as an indication of Mr. Borland's deception, yet agreed to by the lender. The agreement with Pioneer Navigation, see Exhibit D, indicates that the use of funds is defined as "debt refinancing of the Company's outstanding bank loans." Other loans indicated that the funds were to be used for "operating capital" of BCG and BIF. These provisions, governing the use of funds were a matter of contract between the parties, and broadened the scope of the application of the loan proceeds encompassing conduct which the Government represents is Mr. Borland's fraud.

To ensure the ability of the lender to collect on the collateral promised, a Power of Attorney was granted to Filler Rodriguez by Caruso and Borland for the Belize entities, covering numerous properties owned and controlled by Borland and Caruso. In the event of a default on the loans, the pledged collateral held in the Filler Escrow, would allow for the sale of the properties on behalf of the BIF Lenders to cover the amount of the loans. The total appraised value of the collateral in the Filler Escrow was far in excess of the total loan amounts. See Exhibit E, Power of Attorney documents. Filler provided a letter to Caruso and Borland confirming assets in the Filler Escrow pledged by Caruso and Borland for the benefit of the Lenders. See Exhibit F, Filler Escrow Cover Letter dated 11.9.2017.

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All of the BIF Loans were intended to be short term bridge loans to an exit with a larger financing. The BCG Loans were for much longer term of twenty-four months under very different uses, terms and conditions than the BIF Loans contrary to the Government's assertions that all proceeds were intended for the airport and all loans were short term, high interest rate loans.

Mr. Borland took numerous steps to obtain more permanent financing which would allow for the re-payment of all loans.

Although Mr. Borland acknowledged in his plea allocution that he obtained loans by fraudulently making omissions of material facts, he never intended to steal money from any of the approximately 40 investors in the Belize development properties set forth in the Indictment. In fact, in instances such as these, where collateral is provided to lenders, the Guidelines provide a mechanism for the application of credits against any loss. As set forth below, applying that principle here, results in no loss for purposes of Guidelines calculations. Each of the investors, after much due diligence, personally verified the existence of the properties, and the progress of the development projects. Contrary to the Government's assertions, as set forth more fully below, the property was real and not impaired; the value of the property far exceeded the worth of the loan; and Mr. Borland took all steps necessary to provide for the transfer these assets in the event of a default on the loans.

In fact, demonstrating that the 40 victims suffered no loss and that the property and projects were real and substantive, virtually all of the lenders recently agreed to a new loan arrangement negotiated by Caruso, whereby they accepted "substitute assets" as set forth in the loan agreements, to satisfy their debt from Borland and Caruso. See section II D *infra*. This "settlement" negotiated by Caruso, unknown to Mr. Borland, and accepted by almost all lenders in the Indictment, demonstrates that the proposal for development of Belize property is real, and that the lenders are willing to accept the

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substitute assets set forth in their loan agreements. Most important, it demonstrates that the value of the Belize land as collateral is far in excess of the loans made.

On behalf of our client Brent Borland, we submit this Sentencing Memorandum to assist the Court in accurately calculating the Sentencing Guidelines as it applies to the loss in this case.

I. The Applicability Of A Credit Against Loss For Collateral

Guidelines Section 2B1.1, Application Note 3(E)(ii), plainly sets forth the method for calculation of a loss, once the actual loss has been determined. The plain reading of the application note directs the Court, in a case involving collateral pledged, to determine the fair market value of the collateral at the time of sentencing and apply it against the loss amount as a credit. The Second, First, Third, Fourth, Fifth, Sixth and Tenth Circuits have all endorsed the plain reading of this provision.

It is well settled, that "Commentary in the Guidelines Manual that interprets or explains a guideline is authoritative unless it violates the Constitution or a federal statute, or is inconsistent with, or a plainly erroneous reading of, that guideline." Stinson v. United States, 508 U.S. 36, 38 (1993). The Second Circuit views the Commentary as binding authority unless it is inconsistent with the underlying guideline. See United States v. Pedragh, 255 F.3d 240, 244, (2d Cir. 2000).

In United States v. Abbey, 288 F.3d 515, 518 (2d Cir. 2002), the Court discusses the application of the commentary to the prior fraud Guideline, section 2F1.1, and notes that the Sentencing Commission considers the remainder of a loan, after applying the proceeds of the disposition of the collateral to the balance, to be the actual loss attributable to the defendant. The successor to 2F1.1, Section 2B1.1, is even more specific in its language directing the calculation of loss. In later cases, the Second Circuit noted that application note 3(E)(ii) demonstrates that the Sentencing Commission "knows how to provide for an

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offset against actual loss." United States v. Komar, 529 Fed. Appx. 28, at *29, (2d Cir. 2013).

As Abbey shows, the plain language of A.N. 3(E)(i) reduces the loss amount where collateral has been sold and proceeds remitted to the victim. There should be no dispute that a credit would be appropriate in such circumstances. We merely seek to apply the other factual circumstance contemplated by A.N. 3(E)(ii)- i.e., where the collateral has not yet been sold. In such circumstances, where "the collateral has not been disposed of by [sentencing], the fair market value of the collateral at the time of sentencing" is credited against the loss. AN 3(E)(ii). These dual aspects of Application Note 3(E) are illustrated in United States v. Nawaz, 555 F. Appx. 19 (2d Cir. 2014). Nawaz concerned a series of mortgage loans with real property as collateral, with only some of the collateral having been sold by the time of sentencing. Id. at 25-26. The Second Circuit concluded "that the district court used an acceptable method of calculating loss when it credited against loss the appraisal value of properties that had not been sold at the time of sentencing and the foreclosure sale of the properties that had been sold." Id.

The Tenth Circuit has held that the Sentencing Guidelines explicitly dictate how to measure loss in cases where collateral is pledged. They have interpreted Commentary Note 3(E)(ii-iii) as mandating the measure of loss by applying the credit against loss analysis. United States v. Morris, 744 F.3d 1373, 1374-1375, (10th Cir. 2014).

In United States v. Turk, 626 F.3d 743, (2d Cir. 2010), the Court agreed with the reasoning of the District Court in United States v. Mallory, 709 F.Supp. 2d 455, (E.D. Va. 2010), which adopted a two step process for determining loss: first, determine the reasonably foreseeable pecuniary harm; second, calculate the credit against loss from the sale or market value of the collateral at the time of sentencing. Turk at 750. The District Court's reasoning and decision in Mallory was subsequently affirmed by the Fourth Circuit which adopted the two step

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approach in the calculation of loss and the application of the credit against loss in A.N. 3(E)(ii). United States v. Mallory, 461 F. Appx. 352, 361, (4th Cir. 2012). Similarly, in United States v. Drayer, 364 F.Appx. 716, (2d Cir. 2010), the Court remanded the case to the District Court to consider what "credits against loss" the defendant is entitled to (referring to the older version of the current A.N. 3(E)(ii)).

The Fifth Circuit applied A.N. 3(E) noting that "generally, the value of real, immovable property will be recoverable should the owner default." United States v. Goss, 549 F.3d 1013, 1018, (5th Circuit 2008). They directed that the "District Court, for its loss calculation, should deduct the fair market value of collateral likely to be recovered from the total value of the loans..." Id. at 1019. The Tenth Circuit, adopting the Second Circuit's two step process in United States v. Crowe, 735 F.3d 1229 (10th Cir. 2013), held "courts must deduct from the calculated loss the amount actually recovered or actually recoverable by the creditor from sale of the collateral. ... Where the collateral is held by the institution at the time of sentencing, then the fair market value of the collateral at the time of sentencing is properly credited instead." Id. At 1238-1239

The Third Circuit agreed, in reference to A.N. 3(E)(ii), that "a common sense reading of the Application Note's straightforward language," warrants its application to situations involving a traditional notion of collateral. United States v. Dullum, 560 F.3d 133, 139, (3rd Cir. 2009).

A. Mr. Borland's Property Constitutes Collateral

In accepting the application of a credit against loss, the Sixth Circuit would require the District Court to first determine the existence of collateral. "A threshold requirement to invoke this provision is that an item constitute 'collateral.'" (United States v. Terbrack, 399 F.Appx. 105, 108, (6th Cir. 2010)). "Collateral generally implies the existence of a security interest held by a creditor in property owned by a debtor." Id.

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at 108. Similarly, in United States v. Weidner, 437 F.3d 1023 (10th Cir. 2006), the Circuit vacated the sentence and remanded to the District Court to consider the amount of collateral provided in order to determine the loss amount.

The Government may urge the Court to interpret the word "collateral" in its narrowest form, by adding to its meaning restrictive language that which would require the security to be a filed lien. Such an interpretation would substantially limit the application of the Guidelines' "credit for loss" and render the application note virtually meaningless. Undoubtedly, the Government would point to the language in Turk. (There, the defendant had solicited loans from investors promising them that as collateral for their loans, they would hold recorded first mortgages in the buildings subject to their investment. That was a lie. In dicta, the Court noted that the buildings were not collateral, because the victim's mortgages were never recorded. Id. at 748-749. They quoted the Black's Law Dictionary definition of collateral as "property subject to a security interest." Id. at 748-749. The Court however, went on to note that "[We] need not resolve today, whether, if such preservation of value had occurred, Woolf Turk would have been entitled to treat the buildings as 'collateral' with respect to the unsecured individual investors and thereby invoked the credit-against-loss provisions of Application Note 3(E)(ii). Because the purported collateral had no meaningful value at the time of sentencing, we assume *arguendo* that it was collateral, but worthless or nearly so." Id. at 749 (emphasis added).

A factor underlying the Court's analysis of secured loans in Turk, was clearly the fact that the defendant falsely told investors that she would record the mortgages against property she owned in order to secure the loans, but in fact did not record the loans leaving the lender's loans unsecured. She then took out bank loans that were secured by recorded mortgages in the same property. That left the unsecured investors at a total loss in relation to the secured lenders.

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Subsequent decisions of the Second Circuit regarding the application of a credit against loss for collateral have not defined the term. The Circuit reiterated in United States v. Nawaz, supra, at 25, that a credit against any loss "in a case involving collateral pledged or otherwise provided by the defendant" is reduced by the fair market value of the collateral at the time of sentencing, using the appraisal value of properties that had not been sold.

While the Government's suggested definition of "collateral" is too narrow, there are limits to the definition. The Sixth Circuit rejected a definition of collateral which would have included "all assets owned by a debtor" for a debt "whenever an unsecured creditor ... could litigate to recover them." See United States v. Terbrack, 399 F. Appx. 105, 108 (6th Cir. 2010). However, the Circuit affirmed the use of credit against loss of an escrow account that was unsecured against the fraudulent loan. The Court recognized that neither the Guidelines nor the Application Notes define this financial term. They noted that among the Black's Law Dictionary definitions of collateral is "property that is pledged as security against a debt." *Id.* at 108.

The plain meaning of the language set forth in Application Note 3(E)(ii) rejects the narrow definition which will undoubtedly be urged by the Government. If the Sentencing Commission had wanted to restrict the application of collateral in such a manner, they needed only to have used more restrictive language such as "**secured** collateral pledged," or "collateral pledged subject to a **lien**." In using the terms "collateral pledged or otherwise provided," it connotes a broader interpretation. The alternative use of collateral as "pledged," or "otherwise provided," in its plainest meaning, represents that "pledged" collateral is merely "promised" collateral. Collateral "otherwise provided," constitutes a wide range of means by which collateral can be promised, which may include a legal filing. In fact, the Blacks Law Dictionary definition of collateral includes the broad statement of "property that is pledged as security against a debt." The term "security" is defined as "collateral

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pledged to guarantee the fulfillment of an obligation; especially the assurance that a creditor will be repaid." Blacks Law Dictionary, 10th Edition. This definition comports entirely with the facts of this case.

In United States v. Dullum, supra, at 139, the Court found that where the defendant had written a bad check, he was not entitled to a credit in the amount of his other available bank account funds because there was no agreement between the defendant and the victim bank that granted the bank a security interest in those funds as collateral. Unlike in Dullum, where there was no collateralization agreement, Mr. Borland and each of his lenders signed an agreement entitling them to recourse against collateral pledged by Borland in the event of a default.

In United States v. Goss, 549 F.3d 1013, (5th Cir. 2008), the Court noted that The Federal Sentencing Guidelines Handbook: Text and Analysis, Roger W. Haines, Jr. et al., 330-331 (2007 ed.), states that "[I]mmovable collateral such as real estate properly pledged to the victim will **virtually always** be credited against loss." Id. at 387. The Sixth Circuit has approved collateral as credit for loss in the form of the appraised value of real property as well as wine-making equipment and even a wine inventory. United States v. Kraus, 656 F.Appx. 736, 738 (6th Cir. 2016).

Borland and Caruso specifically pledged real property as collateral. That collateral was not subject to a filed lien. However, unlike the collateral referred to in Turk, the debtors here did not represent that the property was in fact secured by a lien in favor of the creditors, and the New York property involved in Turk was subject to the UCC, unlike the property pledged by Borland and Caruso which was located in Belize and beyond the range of the UCC.

B. The Security Interests Did Not Need To Be Recorded

The Guidelines have no requirement that the lender's interests in the collateral be recorded. Nor is there a

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requirement that the collateral be disposed of prior to sentencing, or that it must be readily susceptible to disposition. Indeed, although the victims here have first-position interests in the collateral, the prevailing definition of collateral is sufficiently broad to include, for example, a second position interest (such as the junior interest held by a bank that grants a second mortgage on a house). It is true that in Turk, the Second Circuit discussed in dicta that certain properties "arguably were not collateral" where the lenders were falsely told that they held recorded, first-position mortgages on subject properties. But Turk involved properties in New York State, where an unrecorded mortgage is legally "**void** against any lien on the same real property that is recorded in good faith." Turk, supra, 626 F.3d at 748 (emphasis added). And, Turk rejected the zero loss argument in that case because, by the time of sentencing, the properties that were purportedly pledged as collateral to the victims had **already been liquidated**, with less than one percent of the liquidation proceeds going to the victims (after first-position mortgagee banks and other secured creditors first received their shares). Here, on the contrary, no such liquidation of the above-described property has occurred. So Turk does not militate against a zero loss amount here.

C. Substitution Of Collateral Was Proper

Neither does it matter that Borland reserved the right to substitute collateral for the initially pledged property. As a matter of generally applicable law, a borrower has the right to substitute property as alternative collateral for the collateral initially pledged unless the security agreement or other contract between the borrower and lender dictates otherwise. See e.g. Kinzel v. Bank of America, 850 F.3d 275, 278-79 (6th Cir. 2017) (describing terms of loan management agreement in which borrower had the right and duty to deposit collateral with lender in order to maintain collateral-to-value ratio). And indeed, the financing agreements here **expressly permitted** Borland to substitute collateral, without requiring notice thereof to the lenders. See Exhibit B and Exhibit C, Sample BIF and BCG Notes.

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II. Each Specific Loan Contained Real Property Pledged To The Lender As Collateral, and Owned By Mr. Borland

A. The Loan Agreements and Pledging of Collateral

Each of the victims set forth in the Indictment had loans which were secured by collateral as documented in the lending agreements. Collateral was pledged as security to secure the loan in the event of a default.

Sixteen lenders invested funds through the Borland Capital Group ("BCG"). Each lender signed a term sheet and note that contained a "real estate pledge and security agreement. See Exhibit C, Zagar/BCG Note Page 6. The real estate pledge unambiguously grants the lender a security interest in all property listed as collateral in the "list of pledged properties." Id. at 8. The property listed as collateral in each BCG note included, at the time of initial contracting, residential lots and developments known as the Placencia residence project in Placencia, Belize. This project was owned by Mayan Lagoon Estates Limited. Borland owned a 50% interest through his company, Bella Group, LLC. He was also a Director of Mayan Lagoon permitting him to pledge the properties as collateral. Each note gave the lender the right to "sell the collateral" in the event of a default. See Exhibit C, Id. at 4, paragraph 8c. Thus, under a definition which provides that collateral is property subject to a security interest, it is undeniable that BCG lenders had a security interest in the listed property, which was pledged as collateral.

Twenty-five lenders invested through the Belize Infrastructure Fund ("BIF"). Each lender signed a term sheet and note that likewise contained a real estate pledge and security agreement. See Exhibit B, pages 5-7. As with BCG notes, the BIF notes gave the lenders the right to "sell the collateral" upon default. Thus, BIF lenders also had a security interest in the listed property, which was pledged as collateral.

The Loan Agreements were drafted by an attorney selected by

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Mr. Borland's business partner, Marco Caruso. In addition to securing the loans with collateral, Mr. Borland's attorney, David Filler, of the firm of Filler Rodriguez, LLP, located in Miami Beach, Florida was given a Power of Attorney in order to ensure that the lenders were able to more quickly receive the collateral in the event of a default. Mr. Filler was given the authority to sell the collateral property to protect against any loss. The Power of Attorney was executed by Mr. Caruso and registered with the government of Belize. Mr. Borland has a 50/50 ownership arrangement in the secured property with Marco Caruso, his business partner. All of the secured property is owned by companies controlled by Borland and Caruso as 50/50 partners. See Exhibit F.

Pursuant to the Power of Attorney held by David Filler, Esq., the borrower for the loans, (Borland Capital Group and Belize Infrastructure Fund) executed a Note and Security Pledge Agreement providing certain units (deeds) of real estate, as collateral for the lender. In the event of default, the firm of Filler Rodriguez was authorized to put the assets up for sale and provide the lenders with the proceeds of the sale. All documents were held in escrow by David Filler, Esq. In a letter to Borland and Caruso, Filler acknowledged possession of the documents, acknowledged that the Law Firm was given authority to dispose of the property, and identified the specific property subject to the Power of Attorney. See Exhibit E and Exhibit F.

Regardless of the Power of Attorney, which was done to ensure a prompt repayment of the loans, the total value of Mr. Borland's holdings in Belize which was set forth as collateral for the loans, is far in excess of the \$21.9M borrowed. The specified collateral in each loan or the substitute assets pledged in each loan have been recently appraised and valued at more than \$43,000,000.

B. The Real Property As Collateral And The Appraised Value:

The land subject to the loan agreements (collateral) negotiated by Brent Borland and Marco Caruso was appraised

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recently by a Certified Environmental Inspector, and Senior Certified Valuer with experience in real estate sales, purchases, development, appraisal and construction of Belize properties, Calvin E.S. Neal, of Belstate Realtors, Belize. Both the property owned by Placencia Estates Development LLC and M.E.L. Investments LTD are substitute assets available to the lenders as collateral for their loans.

Mr. Neal examined the property held by Placencia Estates Development LLC, which consists of two parcels of land totaling 1586 acres. There are 1,276.40 undeveloped acres of land, plus 132 waterfront lots and 264 single family lots. In his appraisal, Mr. Neal noted that they are duly recorded at the Belize Lands Registry, and concluded that the market value as of August 14, 2019 is estimated to be \$32,300,000. Mr. Neal's appraisal found that the undeveloped 1276.40 acres are valued at \$12,764,000. The 132 waterfront lots have an appraised value of \$7,260,000. The 264 single family lots are valued at \$12,276,000, for a total of \$32,300,000. See Exhibit G, Appraisal of Placencia Estates Development, LLC.

The land owned by Placencia Estates Development LLC was purchased in 2008 and the purchase was registered and recorded in Belize. As of a January 18, 2019 filing, Placencia Estates Development LLC is owned by Marco Caruso, Michela Bardini (Caruso's wife), Brent Borland, and Alana LaLorra Borland (Brent's wife), in equal shares. See Exhibit H, Certified report from the Belize Companies and Corporate Affairs Registry. See Exhibit I, Membership certificates. See Exhibit J, Deed of Conveyance for the purchase of the 1586 acres by Placencia Estates Development on September 3, 2008. See Exhibit K: Deloitte Touche Tohmatsu audit of Placencia Estates Development.

Additionally, Mr. Neal examined property located in Belize, held by M.E.L. Investments Ltd (M.E.L.). M.E.L. is the registered owner of 1,125.13 acres of land. The Riversdale International Airport (Placencia Airport) is located on land owned by M.E.L. The land was purchased by M.E.L. on June 8, 2009. M.E.L. Investments Ltd is a duly registered and incorporated limited

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liability company under the laws of Belize. In a Special Resolution filing registered with the government of Belize dated October 30, 2009, M.E.L.'s Board of Directors consisted of two groups. Group I is Marco Caruso and Michela Bardini. Group II is Brent Borland and Alana LaTorra Borland. All decisions regarding the Company must be made by both groups. Each of the Directors are permanent "and cannot be removed by members or directors resolution but only through voluntary resignation." See Exhibit L: Supporting Ownership documents supporting Borland's 50% ownership and 50% voting control of M.E.L. Investments, Ltd. See Exhibit M: Certified report from the Belize Companies and Corporate Affairs Registry provided by Mark Hulse of Baker Tilley. See Exhibit N, Deloitte Touche Tohmatsu audit of Placencia Estates Development page 16 Section 5.

Mr. Neal examined the property held by M.E.L. Investments. M.E.L. consists of 1125.13 acres. Mr. Neal noted that they are duly recorded at the Belize Lands Registry and concluded that the market value as of June 10, 2019 is estimated to be \$11,251,300. See Exhibit O, Calvin Neal Appraisal for M.E.L. and supporting documentation.

The total value of the two properties in the Filler Escrow for the benefit of the BIF Lenders and BCG Lenders as of the date of sentencing is \$43,551,300.

C. Mr. Borland's Ownership of The Collateral Property

In late 2009, Mr. Borland engaged a Belize law firm, Courtney Coye LLP, in connection with a partnership agreement with Marco Caruso. In the partnership agreements, Mr. Borland would become a 50% equal partner with Caruso, in all of Caruso's Belize companies and that a Belize limited liability company by the name of Bella Group LLC, controlled by Brent Borland and Alana Borland, was to hold the 50% ownership in each of Caruso's companies. See Exhibit P, Legal Opinion from Courtney Coye Esq., at Paragraph 4.

The Caruso companies include, among others, M.E.L.

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Investments LTD, and Placencia Estates Development LLC, two companies with property assets recently appraised as \$43,551,300. **It was the assets of these companies which Mr. Borland and Mr. Caruso pledged as collateral for the Belize loans totaling \$21.9 million.**

Between November 2009 to February 2010, on behalf of Mr. Borland and his Company, Canyon, Mr. Coye personally drafted and registered with the Belize Companies and Corporate Affairs Registry and the Central Bank of the Government of Belize ownership documents on behalf of Mr. Borland. See Exhibit Q, Central Bank of Belize approval of Borland's 50% ownership of M.E.L. Investments and Mayan Lagoon Estates. See Exhibit P, Coye Opinion Letter at paragraph 5. At present Mr. Borland is a 50% owner of all the property held by Placencia Estates Development LLC and M.E.L. Investments Ltd which amounts to property appraised at over \$43 Million at time of sentencing. See Exhibit I, Membership certificates of ownership. See Exhibit L, Supporting Ownership documents.

In anticipation of our Sentencing Memorandum, Mr. Coye was asked to search the Belize Companies and Corporate Affairs Registry for the following companies: Rendezvous, Mayan Lagoon, and Placencia Estates. Mr. Coye discovered that in relation to Mayan Lagoon and Rendezvous, actions were taken by Caruso to remove Borland and his wife as 50% co-owners. Most of these actions were in the form of resolutions filed in approximately 2018, after Mr. Borland was arrested. The actions taken by Caruso were an attempted fraudulent conveyance to divest himself from his connection to Mr. Borland, and protect his investments from restitution claims.

Mr. Coye has opined that based on information known to him, these actions taken by Caruso were fraudulent. See Exhibit P, Coye Opinion Letter, at paragraph 20. As examples, Mr. Coye explains in detail that actions taken to divest Mr. Borland of ownership are invalid because, generally, the resolutions were not passed in the manner required by the Articles of Incorporation for each company. Id. at Paragraphs 20(a)-(g). In

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fact, it is Mr. Coye's legal opinion that Brent Borland and Alana Borland remain as 50% owners of Mayan Lagoon Estates. *Id.* at paragraph 20 (e). Mr. Coye's opinion letter was prepared solely for the Court in relation to issues presented at Mr. Borland's sentencing hearing.

Each of the lender/victims set forth in the Indictment, had loans which were secured by collateral as documented, from the outset, in the lending agreements. Collateral was pledged as security to secure the loan in the event of a default.

Sixteen lenders invested funds through the Borland Capital Group ("BCG"). Each lender signed a term sheet and note that contained a "real estate pledge and security agreement. *See* Exhibit C at Page 6. The real estate pledge unambiguously grants the lender a security interest in all property listed as collateral in the "list of pledged properties." *Id.* at Page 8. The property listed as collateral in each BCG note included, at the time of initial contracting, residential lots and developments known as the Placencia residence project in Placencia, Belize. This project was owned by Mayan Lagoon Estates Limited. Mr. Borland owned a 50% interest through his company, Bella Group, LLC. He was also a Director of Mayan Lagoon, permitting him to pledge the properties as collateral. (His partner Caruso also joined). Each note gave the lender the right to "sell the collateral" in the event of a default. *Id.* at 4, paragraph 8c. Thus, under a definition which provides that collateral is property subject to a security interest, it is undeniable that BCG lenders had a security interest in the listed property, which was pledged as collateral.

Twenty-five lenders invested through the Belize Infrastructure Fund ("BIF"). Each lender signed a term sheet and note that likewise contained a "real estate pledge and security agreement." *See* Exhibit B at pages 5-7. As with BCG notes, the BIF notes gave the lenders the right to "sell the collateral" upon default. Thus, BIF lenders also had a security interest in the listed property, which was pledged as collateral.

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The Loan Agreements were drafted by an attorney selected by Mr. Borland's business partner, Marco Caruso. In addition to securing the loans with collateral, Mr. Borland's attorney, David Filler Esq., was given a Power of Attorney in order to ensure that the lenders were able to more quickly receive the collateral in the event of a default. Mr. Filler was given the authority to sell the collateral property to protect against any loss. The Power of Attorney was executed by Mr. Borland and Mr. Caruso and registered with the government of Belize. Mr. Borland has a 50/50 ownership arrangement in the secured property with Marco Caruso, his business partner. All of the secured property is owned by companies controlled by Mr. Borland and Caruso as 50/50 partners. See Exhibit F.

Pursuant to the Power of Attorney held by David Filler Esq., the borrower for the loans, (Borland Capital Group and Belize Infrastructure Fund) executed a Note and Security Pledge Agreement providing certain units (deeds) of real estate, as collateral for the lender. In the event of default, the firm of Filler Rodriguez was authorized to put the assets up for sale and provide the lenders with the proceeds of the sale. All documents were held in escrow by David Filler, Esq. In a letter to Borland and Caruso, their attorney acknowledged possession of the documents, acknowledged that the Law Firm was given authority to dispose of the property, and identified the specific property subject to the Power of Attorney. See Exhibit F and Exhibit E.

Regardless of the Power of Attorney, which was done to ensure a prompt repayment of the loans, the total value of Mr. Borland's holdings in Belize which was set forth as collateral for the loans, is far in excess of the \$21.9M borrowed. The specified collateral in each loan or the substitute assets pledged in each loan have been recently appraised and valued at more than \$32,000,000.

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D. The Belize Lenders Have Acknowledged The Substitute Assets Provision Of Their Loans By Accepting Such Property To Resolve The Debt

In a letter to Probation regarding the loss issues currently raised by Mr. Borland, the Government wrote "Borland has not shown that he actually pledged or otherwise provided any real collateral, and, therefore, cannot demonstrate that the fair market value of any such collateral should reduce the loss amount." In a "Memorandum of Understanding" and a subsequent Agreement between Marco Caruso and approximately 37 of the 40 Belize lenders (two lenders reached agreements to settle with Mr. Borland, and a third is currently attempting to enforce a judgment), Caruso agreed to provide the lenders with a 50% interest in the Riversdale International Airport (newly renamed) to resolve their claims against him. The 37 Lenders including Dyke Rogers received equity in the projects in consideration for terminating their loan agreements and claims against Borland and Caruso.

The Government has continually questioned the legitimacy and the very existence of the airport. They have raised the airport as the very symbol of Mr. Borland's continuing fraud. The actions taken by the 37 victims demonstrates the viability and value of the substitute assets promised to lenders. It demonstrates that the Government's claim to Probation is indeed wrong and that the credit for loss surely applies in this case.

During a conference call with Marco Caruso and his attorney, undersigned counsel was advised by Mr. Caruso that he had reached a "settlement" with the victims in this case. Subsequently, counsel was able to obtain documents which demonstrated that indeed there was such a settlement, which was unknown by Mr. Borland. In August 2018, the "Memorandum of Understanding" was signed by Marco Caruso and one of the Belize investors, Dyke Rogers, who was acting on behalf of the "Investor Group." The Memorandum of Understanding specified that the parties allege that Borland "engaged in inappropriate misconduct in connection with the raising of funds in certain properties and/or entities

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located in the Country of Belize (the 'Claims')". See Exhibit R, Memorandum of Understanding. It goes on to note that "the Parties have agreed to execute this Agreement to **settle the Claims.**" (emphasis added). The Parties further agreed to form an entity for the purpose of acquiring ownership of the Riversdale International Airport. Id.

To that end, Dyke Rogers, in October 2018, on behalf of Mr. Borland's lenders, and Marco Caruso, reached an agreement in which a company was formed, RIA Partners, LP, for the purpose of settling all claims related to the Belize loans. Each individual lender would purchase a percentage interest in the Company. See Exhibit S, RIA Partners, LP Subscription Agreement. "The Company intends to exchange releases of the claims with Caruso for a twenty-three and one-half percent (23.5%) ownership interest in a to-be-formed entity, currently expected to be Riversdale International Airport, LLC". Id. at page 1. The remaining 76.5% "will be owned by Caruso and an entity owned by Dyke Rogers." See Exhibit S, (with Exhibit C attached), section V(B). This exhibit to the Subscription Agreement makes clear that the purpose of the Agreement is to release Caruso from any liability from claims of the Belize investors in the Indictment. Id. at I.(D). It was therefore necessary for all lenders to assign their claims to the Company formed, RIA, which they did. Id. Thirty eight assignments of claims were made to Dyke Rogers on behalf of all lenders.

Not only did all Belize investors thereby agree to accept substitute assets in settlement of their debts represented by their BIF and BCG loan agreements, but they demonstrated the viability of the Riversdale International Airport project, a constant source of derision by the Government, when they agreed to invest an additional \$15M to complete the airport. (The government has consistently claimed that Borland's efforts to raise additional funds to complete the airport project was a direct example of his fraud).

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III Relevant Conduct

A. The Facts Underlying The 2007-2010 Conduct

Mr. Borland's company Canyon Acquisition, LLC (Canyon), was a licensed real estate corporation in the State of Florida from approximately 2005 to 2011. Canyon was introduced to a company called Home Equity investment Rewards (HEIR) and its founder, Archie Robertson around 2005 to 2006. Mr. Robinson formed HEIR as a wealth building club utilizing his influence in the community as a pastor. He recruited consultants to find prospective Canadian families to invest in numerous Heir opportunities. Heir required families to pay an HEIR membership fee of \$10,000 to receive an HEIR "Roadmap." (This is HEIR's version of a financial advisory plan for each of their clients). Often, HEIR recommended re-financing of the client's home for which HEIR received a fee. The Heir Roadmap was the financial plan provided by HEIR directing clients to put funds into various Heir opportunities, one of which was Canyon. Each HEIR client was assigned an HEIR consultant to assist in the management and deployment of their finances, and to provide guidance as to investments according to the HEIR Roadmap. There were approximately five investment opportunities including Canyon which HEIR supported and recommended when Canyon was solicited in 2007.

If an Heir client was interested in purchasing real estate in one of Canyon's projects, the Heir consultant would contact a Canyon representative to request paperwork for review. That paperwork included the Canyon Master Joint Venture Agreement ("MJVA"). The Heir consultant would review the MJVA with their clients and discuss an appropriate investment. The MJVA was entered into by each investor with Canyon prior to purchasing real estate from Caruso. The HEIR consultant would review the MJVA and the purchase contracts with their clients and execute the purchase of real estate according to the HEIR Roadmap for each client. Canyon acted as a real estate broker. Canyon made no representation regarding the development of the property by Caruso. Canyon representatives dealt with Heir consultants concerning investments, not the actual investor.

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For example, Anna and Kelvin Lee were introduced to Canyon by HEIR and its founder Archie Robinson, in September, 2008. Pursuant to their HEIR Roadmap, the Lee's executed a purchase contract and addendum for a condominium unit to be developed by Caruso. Anna and Kelvin Lee placed a deposit towards that purchase with the escrow agent. As the developer and seller of the real estate purchased by the Lee's, Marco Caruso received over 90% of their deposit. Canyon was paid a real estate brokerage fee by the escrow agent (Daniel Holliday Esq.) according to the purchase contracts. See Exhibit T, fully executed Anna and Kelvin Lee Copal Purchase contract; See Exhibit U, addendum; See Exhibit V, fully executed Memorandum of Understanding; See Exhibit W, fully executed MJVA.

The MJVA clearly establishes Canyon as the broker in the real estate purchase with Caruso. In section 9(a)(I) of the MJVA, the Canyon buyer acknowledges that there is no assurance that the unit or project will commence or be built. In Section 9C of the MJVA, the Canyon Buyer acknowledges that Canyon is not responsible for the information provided from Caruso, the developer. In Section 9(d) of the MJVA, the Canyon buyer agrees that Canyon did not make any guarantees regarding returns or performance. In Section 10 of the MJVA, the Canyon Buyer indemnifies Canyon from the contractual obligations of Caruso as the developer.

The Lee's Memorandum of Understanding (common to all Canyon buyers) calls for Mayan Lagoon Estates and Caruso as the developer to place a 49.41 acre parcel of land in escrow with Courtney Coye, Esq., as collateral to protect the buyers in the event of default by Caruso. Caruso provided an appraisal of the land valuing it at \$18,500,000. See Exhibit V and Exhibit X, Appraisal of 49.1 acres.

In June, 2009, Caruso asked Borland to form a Canadian investment offering that would allow Caruso to access registered retirement savings funds from Canadian families to invest directly into Caruso projects. Borland, as Caruso's agent, hired Borden Ladner Gervais ("BLG"), a Canadian securities firm

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to structure the Placencia Capital Trust ("PCT"). Courtney Coye Esq., in Belize was retained to handle all Belize legal work for PCT and Canyon.

On December 2, 2009, Caruso entered into a Master Agreement with Canyon and the PCT. See Exhibit Y, PCT Master Agreement. An agreed upon term of the Master Agreement required each of Caruso's Belize entities to enter into a shareholder agreement with Canyon and PCT. Borland wanted some security set aside for he benefit of Canyon buyers and PCT investors. Under the Master Agreement, 30% equity in each of Caruso's six project entities in Belize would be allocated to a new class of shares to be set aside as pledged collateral as additional security for PCT investors and Canyon buyers, with Courtney Coye as the escrow agent.

As part of the investment process with Caruso as developer and promoter of the PCT, investors were required to sign the PCT offering Memorandum ('PCT OM"). See Exhibit Z, Placencia Capital Trust (PCT) OM.

B. Events From 2007 to 2010 Do Not Constitute Relevant Conduct

Probation claims, and the Government argues, that relevant conduct by Mr. Borland, increases the loss amount beyond the \$21.9M which the Government claims is the loss amount attributed to the conduct set forth in the Indictment. It is the Government's position that the conduct set forth in Paragraph 47 of the PSR is part of the same course of conduct, common scheme, and plan. The Government is wrong.

The conduct claimed to be "relevant" to the instant offense at the outset was not criminal, and therefore is not applicable to the relevant conduct analysis. Moreover, it does not qualify as relevant conduct by definition.

The Guidelines provide that "common scheme or plan," and the "same course of conduct," are closely related concepts. See U.S.S.G. §1B1.3 AN 5(B). To be found as a common scheme or plan,

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offenses not set forth in the Indictment must be substantially connected to each other by a common actor, (such as common victims, common accomplices), common purpose or similar modus operandi. AN 5(B)(i). In order to be found as relevant conduct, where the events are not part of a common scheme or plan, they must qualify as the "same course of conduct." See U.S.S.G. §1B1.3 A.N. 5(B)(ii). Reviewing the factors appropriate to this determination demonstrate that these events, which occurred more than 4 years prior to the instant indictment are not similar and do not even constitute fraud. ("At its most basic, conduct must be 'criminal or unlawful' to constitute relevant conduct." United States v. Schroeder, 536 F.3d 746, 452 (7th Cir. 2006) (quoting United States v. Frith, 461 F.3d 914, 917 (7th Cir. 2006)).

There is no correlation or connection between the events in Canada which took place between 2007 and 2010, and the allegations set forth in the Indictment which occurred more than four years later. There were no intervening events connecting the two. The earlier event involved a sale of real estate in the form of single-family home lots or condominiums in a specific project. Mr. Borland and his company acted as a broker in the sale. The investments were made by each investor after consultation with a third party independent investment advisor.

Unlike the conduct in the Indictment, payments were not made to Mr. Borland. The funds were handled by an independent third party. The third party sent the funds directly to the developer of the property, Marco Caruso. The events set forth in the current Indictment involved payment of a loan directly to Mr. Borland, through a company which differed from the company involved in the earlier events. The payments were loans, differing from the real estate purchases alleged as relevant conduct.

In the Canadian transactions, Mr. Borland did not make any false or misleading statements as broker for Caruso's development projects. Hence no fraud. Buyers purchased units of real property, which they still maintain today, although many agreed to settlements where they received free and clear title to

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property in replacement for the interest in property in their investment. See Exhibit AA, Release and Termination Agreement for Peter Ross and Exhibit BB title to Lot Number 223. Mr. Ross gave a full indemnification of Borland and Canyon in consideration for receipt of title. Many other Canadian families similarly were made whole and signed full releases.

The differences between the offense conduct and the conduct argued as relevant conduct are stark. For the conduct deemed to be relevant conduct, Mr. Borland did not solicit loans for his own purposes. He acted as a real estate broker in the sale of tangible real estate. The investments in property were real, not fictional. The terms were subject to contracts between the seller (Caruso) and the Canadian buyers. The Canadian clients paid for financial advisory services and counseling regarding these investments by a private investment club in which they were members. HEIR referred and recommended their members to invest in a number of projects, one of which involved Mr. Borland. Unlike the offense of conviction, Mr. Borland did not solicit these sales directly from buyers. HEIR had numerous consultants who would meet directly with their investors in their homes and the consultants advised these individuals to invest in numerous projects, one of which was Belize property. It was the HEIR consultants who counseled these individuals to take second mortgages or equity loans to invest. After consultation, the individual investors chose the investment that they determined was most appropriate to their needs.

Many of these Canadian HEIR investors lost all their money in other HEIR deals unrelated to Canyon when the real estate market crashed between 2008 and 2010. However, their purchase of real property in Belize still exists today, governed by the contracts they signed with Marco Caruso, the developer of the properties. They identify their complaint as the inability to get their initial investment back. Their investment is governed by the terms of the contract they signed with Mr. Caruso.

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The Ontario Securities Commission investigated allegations by Canadian buyers. A subsequent settlement with the OSC confirms that the matter was reduced to an administrative issue around registration as a security versus a real estate purchase. See Exhibit CC Letter from Michael Diaz Esq., of Diaz Reus, LLP

In the case of Placencia Capital Trust, the Canadian investors have the 30% Canyon Security (memorialized in the PCT Master Agreement) in each of the six Caruso project entities protecting their investments and the projects themselves are still viable as evidenced by the current BIF and BCG lenders and their negotiations regarding substitute assets as well as their intent to invest \$15M in the international airport project.

To qualify as relevant conduct due to the same course of conduct, if it is first determined to be criminal conduct, the acts alleged must be sufficiently connected or related to each other "as to warrant the conclusion that they are part of a single episode, spree, or ongoing series of offenses." U.S.S.G. §1B1.3 AN 5(B)(ii). In making that determination, the Court is advised to consider several factors including the degree or similarity of the offenses, the regularity of the offenses, and the time interval between the offenses. Of course, the first determination must be whether the conduct proposed as relevant conduct is even criminal.

The conduct attributed to Mr. Borland more than four years earlier, is far from being part of a single episode. The Application Notes point out that when one of the factors to consider is absent, a stronger showing of the other factors is required. By example, if the conduct alleged is remote to the offense of conviction, as it is here, a stronger showing of similarity or regularity is necessary to compensate for the absence of temporal proximity. The four-year period of time between the alleged relevant conduct and the offense set forth in the Indictment by itself would warrant the conclusion that this is not the same course of conduct. The temporal proximity issue has resulted in the denial of relevant conduct for periods of time far less than four years. The Ninth Circuit has noted that a

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year after the sale of drugs, the defendant was subsequently convicted of conspiracy to distribute drugs. The earlier event was found to be "too remote in time from the crimes of the current convictions to be considered relevant conduct." United States v. James, 192 Fed.Appx. 690, 692-93, 2006 WL 2085367, (9th Cir. 2006). See also United States v. Hahn, 960 F.2d 903, 911 (9th Cir. 1992) (finding that offenses were not part of the same course of conduct in part because they occurred five months apart). "'Where the gap in time' between the offenses 'is as long as ... two years ... [the court] must be cautious and exacting in permitting such relatively stale dealings to be included in the same course of conduct as the offense of conviction.'" United States v. Ruiz, 178 F.3d 877, 882, (7th Cir. 1999) (quoting United States v. Cedano-Rojasa, 999 F.2d 1175, 1180, (7th Cir. 1993)). See also United States v. Dugger, 485 F.3d 236, 242, (4th Cir. 2007) (where uncharged distribution of drugs was committed more than a year before offense of conviction sale of drugs, not same course of conduct.)

In United States v. Johnson, 324 F.3d 875 (7th Cir. 2003), the Court examined a one year gap between state drug conspiracy activities and federal drug sales. "While lapse of time between the two offenses is not itself dispositive of the question of relevance, it does suggest the separate character of the two episodes." Id. at 889. Other factors also played a role in the court's determination. Both events were drug distribution charges, one involved cocaine, the other crack. One was a conspiracy, the other was not.

Here the Government would argue that both cases involved fraud in property transactions in Belize. Both involved the same actors, Mr. Borland and Marco Caruso. But that simplifies the events in the same way that all drug transactions, were rejected as relevant conduct because they are similar, ignoring the details of each transaction. The Government relies on the kind of analysis which most Circuit court's reject. That is, conduct in both are examples of fraud, and both involves property in Belize.

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These are the same generalized arguments rejected in cases where the Government argued that the relevant conduct and conduct of conviction are both drug trafficking.

In the Government's alleged relevant conduct, money was not given to Mr. Borland but sent directly to Caruso through a third party. The money was not deemed to be a loan as in the instant Indictment, rather it was an investment in real property. No one was directly offered collateral to induce their investment, their interest in the property itself was a matter of contract. No one was promised high rates of return or immediate interest on their investment. They would reap profits when the property was developed and sold by Caruso. Although participants Borland and Caruso were the same in each event, the roles were different. Borland acted merely as an agent and received a commission from Caruso, not from any investor. Each of the Canadian investors were advised by paid consultants they had chosen (HEIR). "The relevant conduct guideline 'must not be read to encompass any offense that is similar in kind to the offense of conviction, but that does not bear the required relationship to that offense.'" Johnson, 324 F.3d at 879, citing United States v. Bacallao, 149 F.3d 717 719-20 (7th Cir. 1998). The Seventh Circuit concluded that the mere fact that the defendant has engaged in other drug transactions is not sufficient to justify treating those transactions as relevant conduct. Similarly, the Second Circuit has rejected as relevant conduct under the theory of same course of conduct, comparing sexual acts against young children to the Indictment which charged sexual acts against teenagers. United States v. Wernick, 691 F.3d 108, 116-17 (2d Cir. 2012). Here, even some temporal overlap did not make this relevant conduct.

For relevant conduct to be considered as part of a common scheme or plan, the Court must examine the conduct to determine whether they are connected by factors such as common victims, common accomplices, common purpose, or similar modus operandi. U.S.S.G. 1B1.3 AN 5(B)(i). The proposed relevant conduct has no common victims, no common purpose, and no similarity of modus operandi. The victims were all from Canada as opposed to the convicted conduct, all U.S. citizens. The purpose was to invest

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in real estate by purchasing a specifically numbered unit in a specific project which was to be developed and sold in order for the Canadian buyer to profit. This is in stark contrast to direct loans to Mr. Borland which promised certain returns in the form of interest and provided assets as collateral. The modus operandi in Canada involved consultations by investors with a third-party investment advisor (HEIR) who counseled and advised on the investor's investment decisions with subsequent investments provided to someone other than Mr. Borland through a third party.

The Sixth Circuit has cautioned against finding relevant conduct as a common scheme or plan where the similarity is too broad, involving only nature of the offense. United States v. Bowns, 2019 WL 4309677 (6th Cir. 2019). For example, leaving a firearm under the pillow, is not relevant conduct to possession of two charged firearms. Sale of drugs on different occasions is not relevant conduct because the only similarity was the type of drug sold. Acquiring ownership rights to property is not the same as a short-term loan with guarantees of interest and collateral, particularly where one involves the defendant receiving a broker's commission and the other is a direct loan paid to the defendant.

The Government's arguments made to Probation were that Borland misappropriated investors' funds, to pay his personal expenses and therefore it is part of the same course of conduct. There is no evidence in the relevant conduct to support that assertion.

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CONCLUSION

Based on the foregoing, there is no loss and no relevant conduct which may be considered to increase any loss amount. The Government has not met their burden of proof. Accordingly, pursuant to the United States Sentencing Guidelines, Section 2B1.1, the offense level is a base level of 7 and no enhancements for loss are warranted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert M. Baum", with a long horizontal flourish extending to the right.

Robert M. Baum
Amy Gallicchio
Assistant Federal Defenders

cc: Edward Imperatore, Esq.
Negar Tekeei Esq.
Assistant United States Attorneys

EXHIBIT C


signed 1/30/17

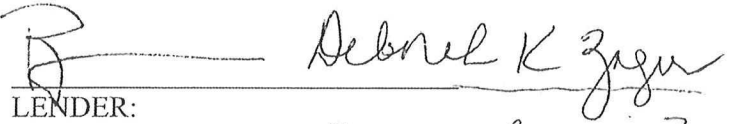
SUMMARY OF TERMS FOR A
BRIDGE FINANCING
BY
BORLAND CAPITAL GROUP, LLC

THIS SUMMARIZES THE PRINCIPAL TERMS OF A BRIDGE FINANCING FOR BORLAND CAPITAL GROUP, LLC. THIS SUMMARY AND TERMS CONTAINED HEREIN HAVE BEEN AGREED TO BY BOTH PARTIES; HOWEVER, THERE IS NO OBLIGATION ON THE PART OF ANY NEGOTIATING PARTY UNTIL A DEFINITIVE AGREEMENT IS SIGNED. THIS SUMMARY DOES NOT CONSTITUTE EITHER AN OFFER TO SELL OR AN OFFER TO PURCHASE SECURITIES.

Amount to be Raised:	\$1,750,000 (the "Bridge Financing"). The Company reserves the right to increase the size of Bridge Financing.
Type of Security:	Secured Note (the "Note")
Parties:	<u>Issuer:</u> Borland Capital Group, LLC , a Delaware limited liability company (" <u>Company</u> " or " <u>Borrower</u> ") <u>Investor or Lender:</u> _____ (" <u>Investor</u> " or " <u>Lender</u> ")
Closing Date:	On or before January 31 st , 2017
Maturity Date:	The loan will have a term of twenty-four (24) months and shall be due on January 31 st , 2019
Interest Rate:	The Borrower will pay monthly interest at a rate of 15% per annum from the Funding Date up until to January 31 st , 2019.
Interest Payments:	10% interest shall be paid monthly and 5% interest shall accrue.
Prepayment Penalty:	Lender shall be paid a full year of interest if the principal balance is re-paid within the first 12 months. There is no prepayment penalty after the first year after the closing date.
Penalty Interest:	Penalty Interest shall accrue at the rate of 24% per annum after the Maturity Date.
Amortization:	None
Collateral:	The Note will be collateralized (backed) by one single family home, one ocean front condominium, two improved residential lots and three improved single family home golf course lots in the Placencia Residences development (the "Collateral"), as listed and defined in Note and Security & Pledge Agreement. The value of Collateral has

	been appraised to be \$3.5 million. Title of Collateral will be held in escrow by Filler Rodriguez, LLP 1688 Meridian Avenue, Suite 900 Miami, Beach, FL 33139
Security/Escrow:	Title to the Collateral will be held in escrow Filler Rodriguez, LLP until the Note has been repaid in full.
Personal Guarantee:	Brent Borland and Marco Caruso agrees to give a personal guarantee (covering Belize assets only) for any deficit of the remaining obligation of unpaid principal and interest. Belize assets shall include, but are not limited to, the Placencia International Airport, Placencia Marina, the Placencia Hotel & Residences, the Placencia Estates & Golf Course, Rendezvous Island and the Borluso Grande Casino.
Equity Rights Coverage:	1.00% equity (warrants) in Placencia International Airport Project priced at \$0.01 per warrant. 2.00% equity(warrants) in Placencia Marina.
Resort Usage:	Investor shall have seven (7) days usage of The Placencia Resort each year for each \$200,000 invested for the term of the loan. This free week per year usage cannot be accrued.
Use of Proceeds:	The net proceeds of the Bridge Financing will be used for operating capital of Borland Capital Group.
Change of Control:	The Maturity Date of the Note will accelerate immediately upon a "change of control" (as defined in the Note); in addition, Investor will be entitled to receive consideration equal to any amounts to which they would be entitled by virtue of their equity rights.


 BORROWER:
 Borland Capital Group, LLC
 BY: Brent Borland
 ITS: Director


 LENDER:
 [INSERT INVESTOR] Deborah K Zager
 BY:
 ITS: _____

Note

Date: January 24th, 2016

BORROWER: **Borland Capital Group, LLC** (the "Corporation", "Company" or the "Borrower")
PLACENCIA, BELIZE

LENDER: **DEBORAH AND BENJAMIN ZAGER** (collectively "Lender")

\$100,000 US Dollar Loan
(\$1,750,000 master loan)

1. BORROWER'S PROMISE TO PAY

In return for a Bridge Note ("Loan") in the amount of US \$100,000.00 made on or before January 30th, 2017, Borrower promises to pay US \$100,000.00 (the "Principal"), plus interest, to the order of the Lender, on the Maturity Date (defined below) pursuant the terms and conditions herein. All dollar amounts referred to herein are in US dollars.

2. INTEREST

Interest will be charged on unpaid principal until the full amount of principal has been paid. The Borrower will pay monthly interest at a rate of 10% per annum and accrue interest of 5% per annum from the Funding Date up until to January 30th, 2019. Penalty Interest shall accrue at the rate of 24% per annum commencing the day after the Maturity Date. Interest will be due and payable on the first business day of each month commencing March 1st, 2017.

3. TERM

The Loan will have a term of twenty-four (24) months and shall be due on January 30th, 2019 (the "Maturity Date").

4. PAYMENTS

Location of Payments

The Borrower will pay the Principal and accrued interest when the Loan is paid (retired) at such place as the Lender requests.

Prepayment Penalty

Lender shall be paid a full year of interest if the principal balance is returned in full within the first 12 months from the date of this Note. There is no prepayment penalty after the first year from the date of this Note.

5. SECURITY – PERSONAL GUARANTEE

The Security and its terms for the Loan are set forth on Exhibit A. The Personal Guarantees (by the "Guarantors") are set forth on Exhibit B.

6. EQUITY RIGHTS COVERAGE

Lender shall receive five point seven basis points (0.057%) equity, in the form of 10 year warrants, in the Placencia International Airport Project, priced at \$0.01 per warrant and eleven point four three basis points (0.1142%) equity, in the form of 10 year warrants, in Placencia Marina, priced at \$0.01 per warrant. The warrant represents a non-dilutive position in the equity.

7. **FULL DISCHARGE**

The Guarantors shall be entitled to a full release of the Personal Guarantee and Collateral upon full payment of principal and interest described hereunder

8. **BORROWER'S FAILURE TO PAY AS REQUIRED**

The Company acknowledges the Investor shall have the right to select a "Lender's Representative" 30 days after the maturity date, provided the Company has not fully paid all the outstanding Principal and interest. The foregoing provisions may only be waived by the Lender. The Lender's Representative will make all decisions relating to the Note and the Collateral in the event of default.

a. *Default*

If the Borrower does not satisfy the amounts due on the Loan on the Maturity Date, the Borrower will be in default and interest will accrue at a rate of 24% per annum from the date of default until the outstanding Loan balance and unpaid interest are satisfied. In addition, all actual out-of-pocket costs of the Lender in connection with enforcing the obligations hereunder after default (including any costs incurred by Borrower's failure to cooperate in the remedy) shall be added to the principal amount owing under this Note, and shall be considered as additional principal due until paid. In addition, if the borrower fails to make any monthly interest payment on a timely basis the loan shall be considered in default, penalty interest shall begin to accrue at the rate of 24% per annum and all outstanding amounts still owed (including principal and interest) will be considered due immediately. Borrower shall be entitled to a 10-day grace period prior to being considered in default. Lender will have the right to waive this provision if desired.

b. *Notice of Default*

If the Borrower is in default, the Lender (or Lender's Representative) shall send the Borrower a 30-day written notice (the "Cure Notice") telling the Borrower that if it does not pay the current outstanding amounts of Principal and interest due, the Lender may pursue its rights to sell the Security pursuant to the process set forth below.

c. *Sale of Collateral Property*

Upon a default and 30 days after Lender's Cure Notice, Lender (Lender's Representative) and Borrower shall work together to sell the collateral described in the Real Estate Pledge and Security Agreement attached as Exhibit A, the terms of which are incorporated herein by this reference. In such instance, the Lender shall have the following options:

- i. Lender shall sell the property at the current fair market value defined as average sale price of comparable properties over the preceding 24-month period, and Lender shall have the right to compel Borrower to cooperate in the sale and execute such documents as are necessary for the sale to be effective. Should the property not sell at above referenced price after a 60-day period, Lender shall have the right to lower the price to the extent that would reasonably be expected to attract buyers, but still obtain a fair price for the seller. Upon closing, Lender shall receive any outstanding Principal and unpaid interest. Borrower shall receive the balance of any remaining amounts collected above the outstanding Principal and interest due Lender. All costs of sale shall be charged to the Borrower.
- ii. In the event the sale price is less than the total amount owed to Lender, then Borrower

shall be obligated to cover the difference between the sale amount and the amount owed per the Personal Guarantee attached as Exhibit B below

- iii. Lender hereby acknowledges and understands that the security being pledged may not be highly liquid and may require a significant period of time to sell given seasonal real estate market conditions.

9. OBLIGATIONS OF PERSONS UNDER THIS LOAN

The Guarantors of this Loan are also obligated to the terms and conditions of this Note. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Loan, is also obligated to keep all of the promises made in this Loan. The Lender may enforce its rights under this Loan against each Guarantor individually or against all Guarantors together after it has exhausted all the required remedies against the Borrower as required in above and in Exhibit A annexed hereto.

10. ACCELERATION

If the Borrower is in default Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is delivered within which Borrower must pay all sums due under this Loan. If Borrower fails to pay these sums prior to the expiration of this period, Lender may accelerate without further notice or demand on Borrower.

11. APPLICABLE LAW

This Loan shall deem to be made in and governed by the laws of the country of Belize (regardless of the laws that might otherwise govern under applicable principles of conflicts of law) as to all matters, including but not limited to matters of validity, construction, effect, performance and remedies; provided that it shall be enforceable in the United States as well. The parties to this agreement consent to the exclusive venue and jurisdiction of the courts located in the country of Belize or Miami, Florida where applicable at lender's discretion.



BORROWER:

Borland Capital Group, LLC

BY: its Manager

By: Brent Borland



EXHIBIT A

REAL ESTATE PLEDGE AND SECURITY AGREEMENT

Party A (Pledgor): Mayan Lagoon Estates, LTD.

Party B (Pledgee): Lender

I. General

Party A uses the real estate property listed in the following table to establish a pledge as guarantee on the performance of its obligations to repay the loan from Party B.

II. Description of the Real Estate Property

Location: Placencia, Stann Creek District, Belize

Owner: Mayan Lagoon Estates, LTD.

Term of the pledge: 24 months or until repaid

Description: See "List of Pledged Property" attached hereto for details

Value of the pledged property: \$3,500,000

III. Rights and Responsibilities

1. The property pledged hereunder will be occupied and managed by Party A. Party A must maintain such property in sound condition during the period of its occupation. Party B shall have the right to inspect such property.

2. Prior to obtaining Party B's written consent, Party A shall not transfer or encumber in any way this pledged property. Pledgor shall not permit any mortgages or liens to attach to the pledged property until the loan is repaid in its entirety. If Pledgor elects to sell the pledged property, Party B may require that the proceeds must be paid first to the satisfaction of the entire remaining obligation under the Note, with any unpaid balance paid off concurrently by Pledgor, unless otherwise specifically agreed to by Pledgee.

3. If there is any damage to this pledged property (except natural wear and tear), Party A must immediately notify Party B of the damage situation and take all measures possible to prevent the spread of loss. If the value of this pledged property deteriorates so much as a result of Party A's negligence that they obviously cannot be used, or are insufficient, as guarantee for the performance of its loan repayment obligations, Party A shall have the responsibility to provide new guarantee, or to increase the guarantee, in order to make up for the insufficiency.

4. If the Borrower fails to repay the Loan in accordance with this Agreement, Party B shall have the right to dispose of the pledged property per the terms of the Note above. Since the Lender is investing less than the \$1,500,000 total investment amount, Lender acknowledges that other investors may be pooled to obtain the \$1,500,000 total investment secured by the \$3,000,000 in collateral described in the List of Pledged Properties below. Borrower has the right to substitute similar properties with equal or greater value as collateral. If the Pledgor fails to repay the loan in accordance with Note Agreement above to which this Pledge is attached and is a part, Party B shall have the right to dispose of the pledged property per the terms of the Note above.



5. If, due to Force Majeure, the pledged property is completely or partially lost or damaged, or their value is decreased, Party A must promptly notify all the parties involved, a substitute other equivalent collateral. In no event shall such Force Majeure reduce or limit, Party A's responsibility to repay the loan.

V. Resolution of Dispute

Any dispute in connection with the performance of this contract must first be resolved through consultation between the parties hereto; if such consultation fails, the parties hereto may settle the dispute under the Laws of Belize or Miami, Florida at Lender's discretion.

Party A (signature):



Brent Borland – Director
Mayan Lagoon Estates, LTD.



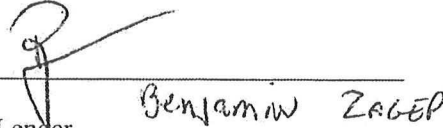
Marco Caruso - Director
Mayan Lagoon Estates, LTD.

Address:

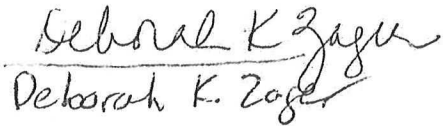
The Placencia Hotel, Placencia, Stann Creek District, Belize, C.A.

Legal Representatives: Mayan Lagoon Estates, LTD

Party B (signature):



Legal Representative: Lender



Address:

Date of execution:

LIST OF PLEDGED PROPERTIES

Pledgee	Lender
Pledgor	Mayan Lagoon Estates, LTD
Location of Pledged Properties	The Placencia Residences Project, Placencia, Stann Creek District, Belize
Ownership Title	Held in escrow with Filler Rodriguez, LLP
Term of the Pledge	24 months or until repaid
Land Use Type	Residential X Purpose of Land Use N/A
Description of the Seven Properties	
One Single Family Home Property: Placencia North Block 36 Parcel 2169 Known as Lot 13 of the subdivision and with horizontal improvements therein and an approx. 2250 square foot home.	
One Oceanfront Condominium Property: Placencia North Block 36 Known as Copal Beach Resort Condominiums, known as Unit 204 Building A of the subdivision and with horizontal improvements therein and an approx. 2400 square foot condominium.	
Two Improved Single Family Home Lagoon Lots: Placencia North Block 36 Parcel 2169 Known as Lot 138 and Lot 139 of the subdivision with horizontal improvements therein.	
Three Improved Single Family Home Golf Course Lots: Riversdale Area in subdivision plan known as Panther Estates Gold Course & Residences known as Lot 315, Lot 316 and Lot 317 of the subdivision with horizontal improvements therein.	
Total Pledged Value: \$3,500,000.00	

EXHIBIT B

PERSONAL GUARANTEE

We, Brent Borland and Marco Caruso, jointly, hereby agree to personally guarantee (Belize assets only) the above for any deficit remaining on the outstanding obligation, after Lender has fully exercised and completely exhausted its default remedies under Section 7(C) of the Note; provided that if Borrower prevents Lender from exercising its remedies, or fails to cooperate with Lender as required in Section 7(C), or the Collateral under the Real Estate Pledge and Security Agreement is impaired, the undersigned shall be responsible for the entire outstanding obligation. Belize assets shall include, but are not limited to, the Placencia International Airport, Placencia Marina, the Placencia Hotel & Residences, the Placencia Estates & Golf Course, Rendezvous Island and the Borluso Grande Casino.



INDIVIDUALLY: Brent Borland

Address:

The Placencia Hotel

Placencia, Stann Creek District, Belize, C.A.



INDIVIDUALLY: Marco Caruso

Address:

The Placencia Hotel

Placencia, Stann Creek District, Belize, C.A.



DEBORAH KAHAN ZAGER 11-87 1745
BENJAMIN ZAGER 15-3/540
406

Pay to the Order of Portland Capital Group Date 12-31-17
One hundred thousand and 100/100 \$ 100,000.00
PNC BANK PNC Bank, N.A. 040 Dollars

For EGG Bridge

[Signature]
6765

PNB
1000

EXHIBIT E

BELIZE

THIS POWER OF ATTORNEY is made this 30th day of October 2017 BETWEEN **PLACENCIA ESTATES DEVELOPMENT LLC** a Company duly formed and existing under the Laws of Nevis with registered office situated at 15 "A" Street Belize City Belize (hereinafter called "The Donor") of the One Part AND **FILLER RODRIGUEZ LLP** with registered office situated at 1688 Meridian Avenue Suite 900 Miami Beach Florida 33139 (hereinafter called "The Donee") of the Other Part.

WHEREAS:

- (1.) We **PLACENCIA ESTATES DEVELOPMENT LLC** are under and by virtue of a Deed of Conveyance dated 3rd September 2008 recorded in ~~Deed Book Vol. 33 of 2008 folios 1111-1128~~ seized of a freehold interest being 25 parcel of land being the remainder of Subdivision of parcel of land comprising 1586.13 acres.
- (2.) We **PLACENCIA ESTATES DEVELOPMENT LLC** are desirous of appointing **FILLER RODRIGUEZ LLP** to be our Lawful Attorney as Escrow Agent for the purpose of transferring or disposing of the said parcels of land described in the schedule hereto and hereby promise to ratify and confirm whatever our Attorney shall lawfully do or cause to be done to the said parcels of land.
- (3.) ALL THOSE PIECES OR PARCESL OF LAND being the remaining portion of 1586.13 acres and more particularly described as Lot Nos. 146,153, 154, 160, 161, 185, 186, 248, 252, 255, 259, 262, 268, 270, 275, 278, 329, 330, 346, 347, 348, 358, 362, 363, and 364 as shown on a Subdivision plan of Survey Entry No. 14457 Register No. 13 situated West of Placentia Lagoon near Riversdale Village, Stann Creek District Belize.

The Company hereby ratify and confirm everything which any representative shall do or purport to do by virtue of this POWER OF ATTORNEY

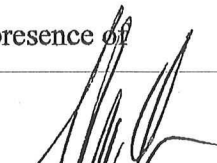
IN Witness whereof PLACENTIA ESTATES DEVELOPMENT LLC has caused

Its Common Seal to be affixed hereunto the day and year first before written.



Signed Sealed and Delivered)
By MARCO CARUSO)
(Director))

In the presence of

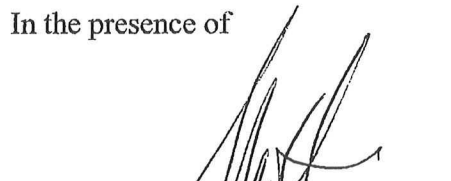

WITNESS



MARCO CARUSO

Signed Sealed and Delivered)
By MICHELA BARDINI)
(Director))

In the presence of


WITNESS



MICHELA BARDINI



We **MARCO CARUSO** and **MICHELA BARDINI** Directors of **PLACENCIA ESTATES DEVELOPMENT LLC** a Company duly formed and existing under the Laws of Nevis with registered office situated at 15 "A" Street Belize City Belize hereby acknowledge that I did sign seal and delivered the within-written Power of Attorney as for my act and deed.

SWORN at

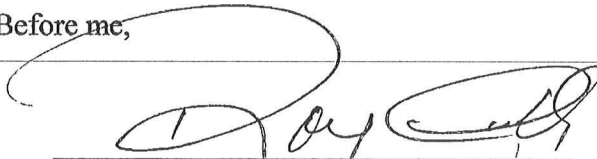
This 30th day of October


MARCO CARUSO (Director)


2017

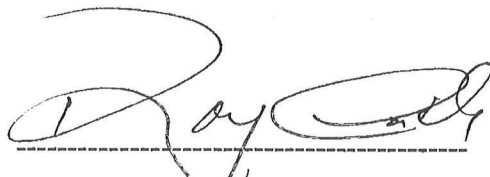

MICHELA BARDINI (Director)

Before me,


Justice of the Peace



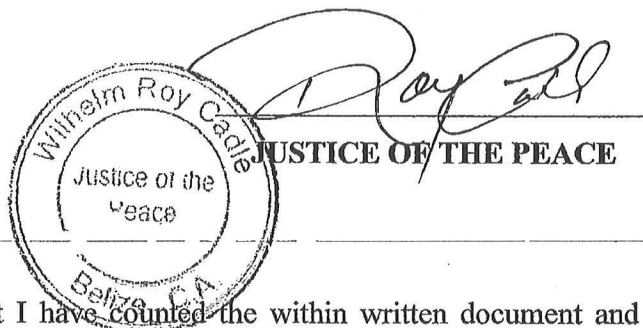
BE IT REMEMBERED that on the 30th day of October, 2017 personally appeared before me the within named **MARCO CARUSO** Director of **PLACENCIA ESTATES DEVELOPMENT LLC** a Company duly formed under and existing Laws of Nevis with registered office situated at 15 "A" Street Belize City Belize hereby acknowledged before me that I did sign and seal and delivered the within-written Power of Attorney as and for my act and deed and that the signature "MC"  is in my own proper handwriting.


Justice of the Peace



BE IT REMEMBERED that on the 30th day of October
2017

Personally appeared before me the within named **MICHELA BARDINI**
Director **PLACENCIA ESTATES DEVELOPMENT LLC** a company duly
formed under and existing Law of Nevis with registered office situated at 15 "A"
Street Belize City Belize hereby acknowledged before me that I did sign and seal
and delivered the within-written Power of Attorney as for my act and deed and
that the signature "MB" Michele Bordini is in my own proper
handwriting.



I hereby certified that I have counted the within written document and that it
contains ----- folios of seventy two words each and ----- words over and no
more

Witness my hand this 30th of October Two Thousand and Seventeen

[Signature]

This document was prepared and drawn by me **MARCO CARUSO** (Director)
of **PLACENCIA ESTATE DEVELOPMENT LLC** one of the parties thereto

[Signature]
MARCO CARUSO (DIRECTOR)



EXHIBIT F



VIA Email:

November 9, 2017

VIA EMAIL

Brent Borland
Marco Caruso
Belize Infrastructure Fund, I LLC
4700 NW 2nd Avenue, Suite 101
Boca Raton, FL 33431

RE: Documents in Escrow

Dear Mr. Borland & Mr. Caruso:

Please be advised that Filler Rodriguez, LLP (the "Firm") is holding the following documents in escrow (the "Documents"):

- I. LAND CERTIFICATES: Placentia North, Block 36, Parcel 2129 Issued to Mayan Lagoon Estates Limited of The Plantation, Placentia Peninsula, Stann Creek District. (Known by Developer as Lots 30, 31 & 32 in the Placentia Residences Project)
- II. DEED OF CONVEYANCE: Certified Copy of the Deed of Conveyance to Placencia Estates Development, LLC governing:
 - a. ALL THAT piece or parcel of land containing approximately 977 acres situate between Riversdale and Blair Atholl, Stann Creek District and bounded and described as shown by Plan attached to Minister's Fiat Grant No. 140 of 1991 dated April 15, 1991 TOGETHER with all buildings and erections standing and being thereon.
 - b. ALL THAT piece or parcel of land containing approximately 609.13 acres situate in the Riversdale Area, Stann Creek District, and bounded and described as shown by plan attached to Minister's Fiat Grant No. 835 of 2000 TOGETHER with all buildings and erections standing and being thereon.
- III. POWER OF ATTORNEY: From Placencia Estates Development, LLC to the Firm.

FILLER RODRIGUEZ, LLP
1688 Meridian Ave., Suite 900
Miami Beach, Florida 33139
dfiller@fillerrodriguez.com

T: 305.672.5007
F: 305.672.0470
fillerrodriguez.com

- a. The Power of Attorney (“POA”) has been issued to the Firm, and acknowledged by Belize Justice of the Peace Honorable Wilhelm Roy Cradle, covering twenty-five (25) single-family home lots in the Placencia Estates Development project. The managers of Placencia Estates Development, LLC have appointed the Firm as its “Lawful Attorney as Escrow Agent for purpose of transferring or disposing of the said parcels of land described in the schedule hereto and hereby promise to ratify and confirm whatever our Attorney shall lawfully do or cause to be done to the said parcels of land.”
- b. The POA refers to “ALL THOSE PIECES OR PARCELS OF LAND” as follows:
 - i. Lot #146
 - ii. Lot #153
 - iii. Lot #154
 - iv. Lot #160
 - v. Lot #161
 - vi. Lot # 185
 - vii. Lot # 186
 - viii. Lot # 248
 - ix. Lot # 252
 - x. Lot # 255
 - xi. Lot # 259
 - xii. Lot # 262
 - xiii. Lot # 268
 - xiv. Lot # 270
 - xv. Lot # 275
 - xvi. Lot # 278
 - xvii. Lot # 329
 - xviii. Lot # 330
 - xix. Lot # 346
 - xx. Lot # 347
 - xxi. Lot # 348
 - xxii. Lot # 358
 - xxiii. Lot # 362
 - xxiv. Lot # 363
 - xxv. Lot # 364

Nothing set forth in this letter shall in any way interpret, modify or change the Documents. The description of the Documents set forth above is for reference purposes only, the Documents speak for themselves and copies can be provided upon request. Should you have any questions regarding their accuracy, validity or construction, you must consult Belizean Counsel. We are holding the Documents for escrow purposes only and have not commenced any investigations, analysis or providing any legal opinion as to their completeness, validity or value.

You have provided to me and indicated that you may be providing to others, descriptions of the Documents to third parties along with appraisals. Please be advised that this Firm in no way represents the accuracy or completeness of the Documents, the descriptions of the Documents or any other documents or supporting information provided by you to any third party. Furthermore, this Firm does not in any way acknowledge, represent or approve of any values, methods of calculation or any other information set forth in the appraisals.

Very truly yours,

A handwritten signature in black ink, appearing to read "David Filler". The signature is fluid and cursive, with the first name "David" and last name "Filler" clearly distinguishable.

DAVID FILLER, ESQ.
For the Firm

EXHIBIT H



BELIZE COMPANIES AND CORPORATE AFFAIRS REGISTRY

Ground Floor of Garden City Hotel, Mountain View Boulevard, City of Belmopan, Cayo District, Belize,
Central America.

Tel: 011-501-822-0421

Fax: 011-501-822-0422

PLACENCIA ESTATES DEVELOPMENT LLC

(File #775)

INCORPORATION DATE: 21st April, 2009

ADDRESS: 15 "A" Street, Belize City, Belize

FINANCIAL STATEMENT: 2013 - \$16,883.203 bzd

2012 - \$18,023.048 bzd

MANAGERS:

Marco Caruso
Placencia, Stann Creek District, Belize

Michela Bardini
Placencia, Stann Creek District, Belize

Brent Borland
4700 NW 2nd Ave. Ste 101, Boca Raton, FL 33431,
United States

Alana Latorra Borland
4700 NW 2nd Ave. Ste 101, Boca Raton, FL 33431,
United States

DIRECTORS:

Marco Caruso

Placencia, Stann Creek District, Belize

Michela Bardini
Placencia, Stann Creek District, Belize

ANNUAL RETURN: 21st April, 2013

OTHER DOCUMENTS ON FILE:

17/12/2013 - Penalty Waiver

APPOINTMENT OF DIRECTOR

(MARCO CARUSO 25TH April, 2008)

GOOD STANDING: 8TH January, 2014.

PARTICULARS FOR AN OVERSEAS COMPANY

FOR REGISTRATION pursuant to Section 251.

NAME OF COMPANY: PLACENCIA ESTATES DEVELOPMENT LLC

WHERE INCORPORATED: NEVIS

ADDRESS: 15 "A" Street, Belize City, Belize

PRESENTED BY: PRUDENTIAL TRUST CORPORATION LIMITED

FOR AND ON BEHALF OF

PLACENCIA ESTATES DEVELOPMENT LLC

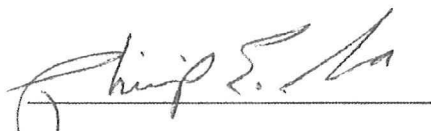

Phillip Sosa/ Research Clerk

EXHIBIT L

**The Companies Act
(Chapter 250 of the Laws of Belize,
Revised Edition, 2000)**

**Name of Company: M.E.L. INVESTMENTS LTD.
NOTICE OF INCREASE OF SHARE CAPITAL**


Pursuant to Section 45(1) of the Act

**TO: The Registrar of Companies
General Registry,
Belize City,
Belize.**

M.E.L. INVESTMENTS LTD. hereby gives you notice pursuant to Section 45(1) of the The Companies Act, Chapter 250 of the Laws of Belize, Revised Edition, 2000, that by an Ordinary Resolution of the Company passed on the day 2nd of November 2009, that the share capital of the company be increased from \$10,000.00 (consisting of 100 ordinary shares of \$100.00 each) to \$20,000.00 (consisting of 200 shares of \$100.00 each) by the creation of an additional 100 shares of \$100.00 each, ranking for dividend and in all respects pari passu with the existing ordinary shares of the company.

(Share Capital increased by \$10,000.00)

DATED 2nd day of November, 2009



DIRECTOR



DIRECTOR

M.E.L. INVESTMENTS LTD.
(INCORPORATED UNDER THE COMPANIES ACT,
CHAPTER 250 OF THE LAWS OF BELIZE,
REVISED EDITION, 2000)

SPECIAL RESOLUTION

IT IS HEREBY CERTIFIED that at a meeting of the Company, M.E.L. INVESTMENTS LTD., convened at Placencia Inn & Resort, Placencia Road, Stann Creek District, Belize on the 23rd day of October, 2009 the under-mentioned resolution was passed and duly confirmed as a Special Resolution at a subsequent meeting of the Company held at Placencia Inn, Placencia Road, Stann Creek District, Belize on the 30th day of October, 2009.


“BE IT RESOLVED:

- (1) That the Articles of Association of the Company be amended by adding after Article 142 the following Articles:


143. That notwithstanding any other provision in these Articles:

- (1) That the affirmative vote from one of each directors for Group #1: Marco Caruso and Michela Bardini and Group #2: Brent Borland and Alana LaTorra Borland shall be required to make any board resolution or any decision effective for the entity in question; and
- (2) That the following four directors: Marco Caruso, Michela Bardini, Brent Borland and Alana LaTorra Borland shall serve as permanent directors on the Board and cannot be removed by members or directors resolution but only through voluntary resignation.

DATED this 30th day of October, 2009.



Shareholder



Shareholder

43.00
Nov 1040224
NOV 17 2009
REGISTRAR GENERAL

The Companies Act
(Chapter 250 of the Laws of Belize,
Revised Edition, 2000)

Name of Company: M.E.L. INVESTMENTS LTD.

NOTICE OF AMENDMENT TO THE ARTICLES OF ASSOCIATION

Pursuant to Section 13 of the Act


TO: The Registrar of Companies
General Registry,
Belize City,
Belize.


M.E.L. INVESTMENTS LTD. Hereby gives you notice pursuant to Section 13 of the The Companies Act, Chapter 250 of the Laws of Belize, Revised Edition, 2000, that by a Special Resolution of the Company passed on the 30th day October of 2009, that the Articles of Association of the Company be amended by adding after Article 142 the following Articles:

143. That notwithstanding any other provision in these Articles:

- (1) That the affirmative vote from one of each directors for Group #1: Marco Caruso and Michela Bardini and Group #2: Brent Borland and Alana LaTorra Borland shall be required to make any board resolution or any decision effective for the entity in question; and
- (2) That the following four directors: Marco Caruso, Michela Bardini, Brent Borland and Alana LaTorra Borland shall serve as permanent directors on the Board and cannot be removed by members or directors resolution but only through voluntary resignation.

DATED 30th day October 2009


Shareholder


Shareholder

\$ 3.00
Nov 17 2009
REGISTRAR GENERAL

THE COMPANIES ACT
(Chapter 250 of the Laws of Belize, Revised Edition, 2000)

RETURN OF ALLOTMENTS
(Pursuant to Section 90)

NAME OF COMPANY: **M.E.L. INVESTMENTS LTD.**

Presented this 2nd day of November, 2009

RESOLUTION OF BOARD ALLOTING SHARES


Made this 2nd day of November, 2009

1. THAT the following ordinary shares be hereby allotted to the following persons respectively, viz.:

Nos.		Name	Address	Occupation
101-200	Allotted to	BELLA GROUP LLC	4700 NW 2 ND Ave, Ste 101 Boca Raton, FL 33431 USA	Corporation

and that the secretary be directed to register such person as the holder of such shares respectively.

Dated this 2nd day of November, 2009



(Director)



(Director)

M.E.L. INVESTMENTS LTD.
(INCORPORATED UNDER THE COMPANIES ACT
CHAPTER 250 OF THE LAWS OF BELIZE, R.E. 2000)

RESOLUTION OF DIRECTORS

Made at a Meeting of M.E.L. INVESTMENTS LTD.
Held at Placencia Inn & Resort, Placencia Road, Stann Creek District, Belize
On this 16th day of October 2009

B3.00
Kath 104092-1
NOV 17 2009
Hodgins
REGISTRAR GENERAL

I, the undersigned being Director of M.E.L. INVESTMENTS LTD. DO HEREBY CONSENT
TO AND ADOPT the following special resolution:

RESOLVED:

1. That the following person be and is hereby appointed Director to the company.

Brent Borland
4700 NW 2nd Avenue, Suite 101
Boca Raton, FL 33431
United States
Businessman

Alana Borland
4700 NW 2nd Avenue, Suite 101
Boca Raton, FL 33431
United States
Businesswoman

Michela Bardini
c/o The Placencia Resort, Placencia
Stann Creek District
Belize
Businesswoman

2. That the secretary be directed to update the register of Directors accordingly.

DATED this 15th day of October, 2009


3. DIRECTOR

THE COMPANIES ACT
CHAPTER 250 OF THE LAWS OF BELIZE
(Revised Edition 2000)


M.E.L. INVESTMENTS LTD.

RESOLUTION


At an Extraordinary meeting of the Board of Directors of the company duly convened and held at C/O THE PLACENCIA INN AND RESORT, PLACENCIA ROAD, STANN CREEK DISTRICT, BELIZE on the 2nd day of November, 2009 IT WAS RESOLVED that:

1) That the share capital of the company be increased from \$10,000.00 (consisting of 100 ordinary shares of \$100.00 each) to \$20,000.00 (consisting of 200 shares of \$100.00 each) by the creation of an additional 100 shares of \$100.00 each, ranking for dividend and in all respects pari passu with the existing ordinary shares of the company.

DATED the 2nd day of November, 2009



DIRECTOR



DIRECTOR

EXHIBIT P



LAMON H. COURTENAY SC
CHRISTOPHER B. COYE
DENISE A.T. COURTENAY SC

PRICILLA J. BANNER
ILIANA N. SWIFT
STACEY N. CASTILLO
SOL I. ESPEJO
GAVIN H. COURTENAY

30th August 2019

Robert Baum
Federal Defenders of New York
52 Duane Street 10th Floor
New York, New York 10007
USA

Dear Sir,

Re: Sentencing Hearing for Brent Borland

We have been requested to (i) provide a statement of facts describing the legal and corporate services which we have provided in the past to Canyon Acquisitions LLC ("Canyon") represented by Brent Borland, (ii) to conduct certain searches at the Belize Companies and Corporate Affairs Registry in relation to certain companies; and (iii) to provide an opinion in connection with the findings revealed by our searches for the use and benefit of the Court in the sentencing hearing to be held for Brent Borland. We submit this statement of facts and legal opinion pursuant to such request.

1. In or about mid-2008 to early 2009 we were engaged by Canyon represented by Brent Borland, among other matters, to provide certain professional legal and related corporate services in connection with the proposed investment by Canyon in certain companies which were, at the time, owned or controlled by Marco Caruso, namely:
 - (a) **M.E.L. INVESTMENTS LTD.** a company duly incorporated and existing under and by virtue of the Companies Act, Chapter 250 of the Laws of Belize, with its registered office situate at Placencia Inn & Resort, Placencia Road, Stann Creek District, Belize ("MEL");
 - (b) **PLACENCIA ESTATES DEVELOPMENT LLC** a company duly incorporated and existing under and by virtue of the laws of Nevis with its registered office situate at Main Street, Charlestown, Nevis ("Placencia Estates");
 - (c) **RENDEZVOUS ISLAND LTD.** a company duly incorporated and existing under and by virtue of the Companies Act, Chapter 250 of the Laws of Belize, with its registered office situate at Plantation, Placencia Peninsula, Stann Creek District, Belize ("Rendezvous");
 - (d) **THE PLACENCIA LAND AND DEVELOPMENT CO. LTD.** a company duly incorporated and existing under and by virtue of the Companies Act, Chapter 250 of the Laws of Belize, with its registered office situate at Plantation, Placencia Peninsula, Stann Creek District, Belize ("Placencia Land");

15 A Street
P.O. Box 234
Belize City, Belize
Tel: +(501) 223-1476/1478/0279
Fax: +(501) 223-0214

Main Street
Placencia Village
Stann Creek, Belize
Tel: +(501) 523-3282

Barrier Reef Drive
San Pedro Town
Ambergris Caye, Belize
Tel: +(501) 226-4763

Email: advice@courtenaycoye.com
Website: www.courtenaycoye.com

- (e) **THE PLACENCIA MARINA LTD.**, a company duly incorporated and existing under and by virtue of the Companies Act, Chapter 250 of the Laws of Belize, with its registered office situate at Plantation, Placencia Peninsula, Stann Creek District, Belize ("**Placencia Marina**"); and
- (f) **MAYAN LAGOON ESTATES LTD.**, a company duly incorporated and existing under and by virtue of the Companies Act, Chapter 250 of the Laws of Belize, with its registered office situate at Plantation, Placencia Peninsula, Stann Creek District, Belize ("**Mayan Lagoon**");

(a to f above each a "**Project Entity**" and collectively the "**Project Entities**").

2. Our services included the drafting and preparing of (i) a master agreement ("**Master Agreement**") by which Canyon and/through Placencia Capital Management I LLC ("**Placencia Capital**"), a Canyon-related entity, would invest in the Project Entities or any of them; (ii) ancillary share purchase agreements for or in respect of the shares (or membership interest) of each Project Entity ("**the Share Purchase Agreements**"); (iii) ancillary shareholder agreements for or in respect of each Project Entity ("**the Shareholder Agreements**"); and (iv) associated resolutions and notices in furtherance thereof.
3. Under the terms of the proposed Master Agreement, among other things, Placencia Capital would be granted the option to invest several millions in the Project Entities or any of them through the grant of a share purchase option (or option to purchase a membership interest, as applicable) by each Project Entity to Placencia Capital subject to the terms and conditions set forth in the Share Purchase Agreements to be entered into by Placencia Capital and the respective Project Entities.
4. In or about October 14, 2009, we were informed by Brent Borland that Marco Caruso had agreed that Brent Borland shall become a full 50% partner in each of the Project Entities and further that a Nevis limited liability company by the name of Bella Group LLC controlled by Brent Borland and Alana Borland was to hold the said 50% ownership interest in each of the Project Entities.
5. Between November 2009 to February 2010, on behalf of Canyon, we registered the following documents with the Belize Companies and Corporate Affairs Registry in connection with MEL:
 - (a) Resolution of Directors dated 15th October, 2009 evidencing a resolution made by the directors of MEL at a meeting held on the 16th October, 2009 authorising the appointment of Brent Borland, Alana Borland and Michela Bardini as directors of MEL;
 - (b) Special Resolution dated 30th October, 2009 evidencing a resolution made by the shareholders of MEL at a meeting held on the 23rd October, 2009 and confirmed at a subsequent meeting held on the 30th October, 2009 authorising the amendment of the Articles of Association of MEL by the insertion of a new article providing that the affirmative vote of one director from each of Group No. 1 (comprised of Marco Caruso and Michela Bardini) and Group No. 2 (comprised of Brent Borland and Alana Borland) is required to make any board resolution or any decision effective and further that Marco

- Caruso, Michela Bardini, Brent Borland and Alana Borland should serve as permanent directors of MEL and not be subject to removal by a members or director's resolution ("the MEL Special Resolution");
- (c) Notice to the Registrar of Companies of the MEL Special Resolution;
 - (d) Resolution of Directors dated 2nd November, 2009 evidencing a resolution made by the directors of MEL at an extraordinary meeting of the Board of Directors held on the 2nd November, 2009 authorising the increase of the authorized share capital of MEL from \$10,000 (divided into 100 ordinary shares of \$100.00 each) to \$20,000 (divided into 200 shares of \$100.00 each) by the creation of an additional 100 shares of \$100.00 each, ranking for dividend and in all respects *pari passu* with the existing ordinary shares of MEL ("the MEL Share Capital Increase Resolution");
 - (e) Notice to the Registrar of Companies of the MEL Share Capital Increase Resolution;
 - (f) Resolution of the Board Allotting Shares dated 2nd November, 2009 authorizing the allotment by MEL of 100 ordinary shares numbered 101 to 200 to Bella Group LLC; and
 - (g) Return of Allotment dated 2nd November, 2009 in respect of the 100 shares allotted to Bella Group LLC.
6. Between November 2009 to December 2009, on behalf of Canyon, we registered the following documents with the Belize Companies and Corporate Affairs Registry in connection with Rendezvous:
- (a) Resolution of Directors dated 15th October, 2009 evidencing a resolution made by the directors of Rendezvous at a meeting held on the 15th October, 2009 authorising the appointment of Brent Borland, Alana Borland and Michela Bardini as directors of Rendezvous;
 - (b) Resolution of the Board Allotting Shares dated 19th October, 2009 authorizing the allotment by Rendezvous of 4999 ordinary shares numbered 00003 to 05001 to Romax Development Ltd. and 4999 ordinary shares numbered 05002 to 10,000 to Bella Group, LLC;
 - (c) Return of Allotment dated 19th October, 2009 in respect of the shares allotted to Romax Development Ltd. and to Bella Group, LLC ("the Rendezvous Return of Allotment");
 - (d) Special Resolution dated 30th October, 2009 evidencing a resolution made by the shareholders of Rendezvous at a meeting held on the 30th October, 2009 and confirmed at a subsequent meeting held on the 30th October, 2009 authorising the amendment of the Articles of Association of Rendezvous by the insertion of a new article providing that the affirmative vote of one director from each of Group No. 1 (comprised of Marco Caruso and Michela Bardini) and Group No. 2 (comprised of Brent Borland and Alana Borland) is required to make any board resolution or any decision effective and further that Marco Caruso, Michela Bardini, Brent Borland and Alana Borland should serve as permanent directors of Rendezvous and not be subject to removal by a members or director's resolution ("the Rendezvous Special Resolution"); and
 - (e) Notice to the Registrar of Companies of the Rendezvous Special Resolution.
7. Between October 2009 to November 2009, on behalf of Canyon, we registered the following documents with the Belize Companies and Corporate Affairs Registry in connection with Placencia Land:

- (a) Resolution of Directors dated 15th October, 2009 evidencing a resolution made by the directors of Placencia Land at a meeting held on the 15th October, 2009 authorising the appointment of Brent Borland and Alana Borland as directors of Placencia Land;
 - (b) Resolution of Directors dated 19th October, 2009 evidencing a resolution made by the directors of Placencia Land at an extraordinary meeting of the Board of Directors held on the 19th October, 2009 authorising the increase of the authorized share capital of Placencia Land from \$10,000 (divided into 10,000 ordinary shares of \$1.00 each) to \$12,334 (divided into 12,334 shares of \$1.00 each) by the creation of an additional 2,334 shares of \$1.00 each, ranking for dividend and in all respects pari passu with the existing ordinary shares of Placencia Land (“the **Placencia Land Share Capital Increase Resolution**”);
 - (c) Notice to the Registrar of Companies of the Placencia Land Share Capital Increase Resolution;
 - (d) Special Resolution dated 30th October, 2009 evidencing a resolution made by the shareholders of Placencia Land at a meeting held on the 23rd October, 2009 and confirmed at a subsequent meeting held on the 30th October, 2009 authorising the amendment of the Articles of Association of Placencia Land by the insertion of a new article providing that the affirmative vote of one director from each of Group No. 1 (comprised of Marco Caruso and Michela Bardini) and Group No. 2 (comprised of Brent Borland and Alana Borland) is required to make any board resolution or any decision effective and further that Marco Caruso, Michela Bardini, Brent Borland and Alana Borland should serve as permanent directors of Placencia Land and not be subject to removal by a members or director’s resolution (“the **Placencia Land Special Resolution**”); and
 - (e) Notice to the Registrar of Companies of the Placencia Land Special Resolution.
8. Between October 2009 to December 2009, on behalf of Canyon, we registered the following documents with the Belize Companies and Corporate Affairs Registry in connection with Placencia Marina:
- (a) Resolution of Directors dated 15th October, 2009 evidencing a resolution made by the directors of Placencia Marina at a meeting held on the 15th October, 2009 authorising the appointment of Brent Borland, Alana Borland, Marco Caruso and Michela Bardini as directors of Placencia Marina;
 - (b) Special Resolution dated 30th October, 2009 evidencing a resolution made by the shareholders of Placencia Marina at a meeting held on the 30th October, 2009 and confirmed at a subsequent meeting held on the 30th October, 2009 authorising the amendment of the Articles of Association of Placencia Marina by the insertion of a new article providing that the affirmative vote of one director from each of Group No. 1 (comprised of Marco Caruso and Michela Bardini) and Group No. 2 (comprised of Brent Borland and Alana Borland) is required to make any board resolution or any decision effective and further that Marco Caruso, Michela Bardini, Brent Borland and Alana Borland should serve as permanent directors of Placencia Marina and not be subject to removal by a members or director’s resolution (“the **Placencia Marina Special Resolution**”);
 - (c) Notice to the Registrar of Companies of the Placencia Marina Special Resolution;
 - (d) Resolution of the Board Allotting Shares dated 19th October, 2009 authorizing the allotment by Placencia Marina of 4999 ordinary shares numbered 00003 to 05001 to

- Romax Development Ltd. and 4999 ordinary shares numbered 05002 to 10,000 to Bella Group, LLC;
- (e) Return of Allotment dated 19th October, 2009 in respect of the shares allotted to Romax Development Ltd. and to Bella Group, LLC;
 - (f) Transfer of Share instrument dated the 20th November, 2009 executed by Prudential Trust Corporation Ltd. (“Prudential”) as transferor and Bella Group LLC as transferee for the transfer of one share numbered 00001 in the share capital of Placencia Marina by Prudential to Bella Group LLC; and
 - (g) Transfer of Share instrument dated the 20th November, 2009 executed by Prudential Trust Corporation Ltd. (“Prudential”) as transferor and Romax Development Ltd. as transferee for the transfer of one share numbered 00002 in the share capital of Placencia Marina by Prudential to Romax Development Ltd.
9. Between October 2009 to December 2009, on behalf of Canyon, we registered the following documents with the Belize Companies and Corporate Affairs Registry in connection with Mayan Lagoon:
- (a) Resolution of Directors dated 15th October, 2009 evidencing a resolution made by the directors of Mayan Lagoon at a meeting held on the 15th October, 2009 authorising the appointment of Brent Borland, Alana Borland and Michela Bardini as directors of Mayan Lagoon;
 - (b) Resolution of Directors dated 19th October, 2009 evidencing a resolution made by the directors of Mayan Lagoon at an extraordinary meeting of the Board of Directors held on the 19th October, 2009 authorising the increase of the authorized share capital of Mayan Lagoon from \$10,000 (divided into 10,000 ordinary shares of \$1.00 each) to \$20,000 (divided into 20,000 shares of \$1.00 each) by the creation of an additional 10,000 shares of \$1.00 each, ranking for dividend and in all respects *pari passu* with the existing ordinary shares of Mayan Lagoon (“the **Mayan Lagoon Share Capital Increase Resolution**”);
 - (c) Notice to the Registrar of Companies of the Mayan Lagoon Share Capital Increase Resolution;
 - (d) Resolution of the Board Allotting Shares dated 20th October, 2009 authorizing the allotment by Mayan Lagoon of 10,000 ordinary shares numbered 10,001 to 20,000 to Bella Group, LLC;
 - (e) Return of Allotment dated 20th October, 2009 in respect of the 10,000 shares allotted to Bella Group LLC (“the **Mayan Lagoon Return of Allotment**”);
 - (f) Special Resolution dated 30th October, 2009 evidencing a resolution made by the shareholders of Mayan Lagoon at a meeting held on the 23rd October, 2009 and confirmed at a subsequent meeting held on the 30th October, 2009 authorising the amendment of the Articles of Association of Mayan Lagoon by the insertion of a new article providing that the affirmative vote of one director from each of Group No. 1 (comprised of Marco Caruso and Michela Bardini) and Group No. 2 (comprised of Brent Borland and Alana Borland) is required to make any board resolution or any decision effective and further that Marco Caruso, Michela Bardini, Brent Borland and Alana Borland should serve as permanent directors of Mayan Lagoon and not be subject to removal by a members or director’s resolution (“the **Mayan Lagoon Special Resolution**”); and
 - (g) Notice to the Registrar of Companies of the Mayan Lagoon Special Resolution.

10. Between October 2009 to November 2009, on behalf of Canyon, we submitted the following documents to the registered agent of Placencia Estates:
 - (a) Written Consent of Manager Holding Majority of Voting Units of Placencia Estates Development LLC dated the 15th October, 2009 appointing Brent Borland and Alana Borland as Managers of Placencia Estates;
 - (b) Membership Certificate No. 1 dated the 15th October, 2009 issued by Placencia Estates to Bella Group, LLC in respect of a 50% membership interest in Placencia Estates;
 - (c) Membership Certificate No. 2 dated the 15th October, 2009 issued by Placencia Estates to Romax Development Ltd. in respect of a 50% membership interest in Placencia Estates; and
 - (d) Written Consent of Managers Holding Majority of Voting Units of Placencia Estates Development LLC dated the 30th October, 2009 authorising the amendment of the voting rights of members of Placencia Estates so that the affirmative vote of one manager from each of Group No. 1 (comprised of Marco Caruso and Michela Bardini) and Group No. 2 (comprised of Brent Borland and Alana Borland) is required to make any board resolution or any decision effective for Placencia Estates and further that Marco Caruso, Michela Bardini, Brent Borland and Alana Borland should serve as permanent directors of Placencia Estates and not be subject to removal by a members or director's resolution ("the Placencia Estates Special Resolution").
11. On or about March 16, 2010, we were informed by Brent Borland for Canyon that the Master Agreement and a Shareholder Agreement in respect of Placencia Marina had been executed and were provided by Brent Borland with electronic and hard copies thereof.
12. Each of the Master Agreement and the Placencia Marina Shareholder Agreement was dated December 2, 2009.
13. We are unaware whether any other Shareholder Agreements or any Share Purchase Agreements were executed. We are also unaware of whether any option has been exercised by Placencia Capital in respect of the shares or membership in any Project Entity other than Placencia Marina.
14. Our engagement by Canyon in connection with Placencia Capital and the Project Entities or otherwise was completed in 2010.
15. For purposes of this statement, we have been asked to conduct a search of the records at the Belize Companies and Corporate Affairs Registry for Rendezvous, Mayan Lagoon and Placencia Estates only and to provide our view in respect of the search results for the said companies.
16. Our search of the records on file and available for inspection at the Belize Companies and Corporate Affairs Registry in July, 2019 in respect of Rendezvous has revealed that:

- (a) there has been filed on the 4th May, 2015 a Transfer of Share instrument dated the 9th April, 2010 executed by Madeleine Estephan Lomont as transferor and Michela Bardini as transferee for the transfer of 1 share in the share capital of Rendezvous by Madeleine Estephan Lomont to Michela Bardini.
- (b) there has been filed on the 4th May, 2015 a Copy of Register of Directors or Managers of Rendezvous Island Ltd. dated 13th April, 2010 listing Marco Caruso, Belize Corporate Services Ltd., Brent Borland, Alana Borland and Michela Bardini as the directors of Rendezvous and an Amended List of Persons Holding Shares in Mayan Lagoon Estates Limited dated 13th April, 2010 listing Michela Bardini, Belize Corporate Services Ltd., Romax Development Ltd. and Bella Group LLC as the shareholders of Rendezvous.
- (c) there has been filed on the 4th May, 2015 a Copy of Register of Directors or Managers of Rendezvous Island Ltd. dated 13th April, 2011 listing Marco Caruso, Belize Corporate Services Ltd., Brent Borland, Alana Borland and Michela Bardini as the directors of Rendezvous and an Amended List of Persons Holding Shares in Mayan Lagoon Estates Limited dated 13th April, 2011 listing Michela Bardini, Belize Corporate Services Ltd., Romas Development Ltd. and Bella Group LLC as the shareholders of Rendezvous.
- (d) there has been filed on the 4th May, 2015 a Copy of Register of Directors or Managers of Rendezvous Island Ltd. dated 13th April, 2013 listing Marco Caruso, Belize Corporate Services Ltd., Brent Borland, Alana Borland and Michela Bardini as the directors of Rendezvous and an Amended List of Persons Holding Shares in Mayan Lagoon Estates Limited dated 13th April, 2013 listing Michela Bardini, Belize Corporate Services Ltd., Romax Development Ltd. and Bella Group LLC as the shareholders of Rendezvous.
- (e) there has been filed on the 4th May, 2015 a Copy of Register of Directors or Managers of Rendezvous Island Ltd. dated 13th April, 2014 listing Marco Caruso, Belize Corporate Services Ltd., Brent Borland, Alana Borland and Michela Bardini as the directors of Rendezvous and an Amended List of Persons Holding Shares in Mayan Lagoon Estates Limited dated 13th April, 2014 listing Michela Bardini, Belize Corporate Services Ltd., Romax Development Ltd. and Bella Group LLC as the shareholders of Rendezvous.
- (f) there has been filed on the 4th May, 2015 a Copy of Register of Directors or Managers of Rendezvous Island Ltd. dated 22nd April, 2015 listing Marco Caruso, Belize Corporate Services Ltd., Brent Borland, Alana Borland and Michela Bardini as the directors of Rendezvous and an Amended List of Persons Holding Shares in Mayan Lagoon Estates Limited dated 22nd April, 2015 listing Michela Bardini, Belize Corporate Services Ltd., Romax Development Ltd. and Bella Group LLC as the shareholders of Rendezvous.
- (g) the Annual Returns of the Rendezvous filed on the 20th March, 2017 and 18th January, 2018 listed Marco Caruso, Belize Corporate Services Ltd., Brent Borland, Alana Borland and Michela Bardini as the directors of Rendezvous and Michela Bardini, Belize Corporate Services Ltd., Romax Development Ltd. and Bella Group LLC as the shareholders of Rendezvous.
- (h) there has been filed on the 17th April, 2018 a Notice of Resignation of Director dated 1st January, 2018 purportedly signed by Brent Borland notifying the Registrar of Companies of his resignation as a director of Rendezvous ("the **Brent Borland Resignation Resolution**").
- (i) There has been filed on the 17th April, 2018 a Notice of Resignation of Director dated 1st January, 2018 purportedly signed by Alana Borland notifying the Registrar of Companies of her resignation as a director of Rendezvous ("the **Alana Borland Resignation Resolution**").

- (j) there has been filed on the 21st August, 2018 a Director's Resolution dated the 1st January, 2018 signed by Michela Bardini and Marco Caruso authorizing the making of a call of \$1 per share on the 4,999 shares issued to Bella Group LLC with a payment date of 31st January, 2018.
 - (k) there has been filed on the 21st August, 2018 a Director's Resolution dated 1st February, 2018 signed by Michela Bardini and Marco Caruso authorizing, among other matters, the making of a second call on the 4,999 shares issued to Bella Group LLC with a payment date of 28th February, 2018.
 - (l) there has been filed on the 22nd August, 2018 a Director's Resolution dated the 5th March, 2018 signed by Michela Bardini and Marco Caruso authorizing the immediate forfeiture of the 4,999 shares issued to Bella Group LLC.
17. Our search of the records on file and available for inspection at the Belize Companies and Corporate Affairs Registry in July, 2019 in respect of Mayan Lagoon has revealed that:
- (a) the Annual Return filed by Mayan Lagoon on the 22nd July, 2010 (and made up to the 13th July, 2010) did not reflect the allotment of 10,000 ordinary shares to Bella Group, LLC which was made on 20th October, 2009 and did not list Brent Borland or Alana Borland as directors of Mayan Lagoon. Furthermore, it did not reflect the transfer of 5000 shares purportedly made by Madeleine Estephan Lomont to Michela Bardini on 9th July, 2010 and it listed Madeleine Estephan Lomont as a director of Mayan Lagoon.
 - (b) the Annual Return filed by Mayan Lagoon on the 9th August, 2013 (and made up to the 13th July, 2013) did not reflect the allotment of 10,000 ordinary shares to Bella Group, LLC which was made on 20th October, 2009 and did not list Brent Borland or Alana Borland as directors of Mayan Lagoon. Furthermore, it did not reflect the transfer of 5000 shares purportedly made by Madeleine Estephan Lomont to Michela Bardini on 9th July, 2010 and it listed Madeleine Estephan Lomont as a director of Mayan Lagoon.
 - (c) the Annual Return filed by Mayan Lagoon on the 18th July, 2014 (and made up to the 13th July, 2014) did not reflect the allotment of 10,000 ordinary shares to Bella Group, LLC which was made on 20th October, 2009 and did not list Brent Borland or Alana Borland as directors of Mayan Lagoon. Furthermore, it did not reflect the transfer of 5000 shares purportedly made by Madeleine Estephan Lomont to Michela Bardini on 9th July, 2010 and it listed Madeleine Estephan Lomont as a director of Mayan Lagoon.
 - (d) there has been filed on the 4th May, 2015 a Transfer of Share instrument dated the 9th July, 2010 executed by Madeleine Estephan Lomont as transferor and Michela Bardini as transferee for the transfer of 5000 shares in the share capital of Mayan Lagoon by Madeleine Estephan Lomont to Michela Bardini.
 - (e) there has been filed on the 4th May, 2015 a Notice of Resignation of Director signed by Madeleine Lomont Estephan notifying the Registrar of Companies of her resignation as a director of Mayan Lagoon with effect from the 9th July, 2010.
 - (f) there has been filed on the 4th May, 2015 a Copy of Register of Directors or Managers of Mayan Lagoon Estates Limited dated 13th July, 2010 and an Amended List of Persons Holding Shares in Mayan Lagoon Estates Limited dated 13th July, 2010 listing Marco Caruso and Michela Bardini as the only shareholders and directors of Mayan Lagoon.
 - (g) there has been filed on the 4th May, 2015 a Copy of Register of Directors or Managers of Mayan Lagoon Estates Limited dated 13th July, 2011 and an Amended List of Persons Holding Shares in Mayan Lagoon Estates Limited dated 13th July, 2011 listing Marco Caruso and Michela Bardini as the only shareholders and directors of Mayan Lagoon.

- (h) there has been filed on the 4th May, 2015 a Copy of Register of Directors or Managers of Mayan Lagoon Estates Limited dated 13th July, 2012 and an Amended List of Persons Holding Shares in Mayan Lagoon Estates Limited dated 13th July, 2012 listing Marco Caruso and Michela Bardini as the only shareholders and directors of Mayan Lagoon.
- (i) there has been filed on the 4th May, 2015 a Copy of Register of Directors or Managers of Mayan Lagoon Estates Limited dated 13th July, 2013 and an undated Amended List of Persons Holding Shares in Mayan Lagoon Estates Limited listing Marco Caruso and Michela Bardini as the only shareholders and directors of Mayan Lagoon.
- (j) there has been filed on the 4th May, 2015 a Copy of Register of Directors or Managers of Mayan Lagoon Estates Limited dated 13th July, 2014 and an Amended List of Persons Holding Shares in Mayan Lagoon Estates Limited dated 13th July, 2014 listing Marco Caruso and Michela Bardini as the only shareholders and directors of Mayan Lagoon.
- (k) there has been filed on the 4th May, 2015 a Copy of Register of Directors or Managers of Mayan Lagoon Estates Limited dated 22nd April, 2015 and an Amended List of Persons Holding Shares in Mayan Lagoon Estates Limited dated 22nd April, 2015 listing Marco Caruso and Michela Bardini as the only shareholders and directors of Mayan Lagoon. There has also been filed a Summary of Share Capital and Shares of Mayan Lagoon Estates Limited made up on the 22nd April, 2015 stating that the authorized share capital of the company is \$10,000 divided into 10,000 shares of \$1.00 each.
- (l) the Annual Returns filed for the years 2016, 2017 and 2018 listed Marco Caruso and Michela Bardini as the only shareholders and directors of Mayan Lagoon.
- (m) there has been filed on the 28th December, 2018 a record of a resolution purportedly passed at a meeting of the Board of Directors of Mayan Lagoon purportedly held on the 17th October, 2009 terminating the directorship of Brent Borland and Alana Borland with immediate effect (“the Mayan Lagoon Termination of Directorship Resolution”).
- (n) there has been filed on the 28th December, 2018 a Director’s Resolution dated 1st December, 2009 which appears to have been signed by Marco Caruso and Madeleine Lomont Estephan authorizing the making of a call of \$1 per share on the 10,000 shares issued to Bella Group LLC with a payment date of 1st January, 2010.
- (o) there has been filed on the 28th December, 2018 a Director’s Resolution dated 2nd January, 2010 which appears to have been signed by Marco Caruso and Madeleine Lomont Estephan authorizing, among other matters, the making of a second call on the 10,000 shares issued to Bella Group, LLC with a payment date of 1st February, 2010.
- (p) there has been filed on the 28th December, 2018 a Director’s Resolution dated 15th February, 2010 which appears to have been signed by Marco Caruso and Madeleine Lomont Estephan authorizing the immediate forfeiture of the 10,000 shares issued to Bella Group LLC.
- (q) there has been filed on the 28th December, 2018 a Director’s Resolution dated 1st July, 2018 which appears to have been signed by Michela Bardini authorizing the making of a call of \$1 per share on the 5,000 ordinary shares issued to Marco Caruso with a payment date of 1st July, 2018.
- (r) there has been filed on the 28th December, 2018 a Director’s Resolution dated 1st August, 2018 which appears to have been signed by Michela Bardini authorizing, among other matters, the making of a second call on the 5,000 ordinary shares issued to Marco Caruso with a payment date of 1st August, 2018.
- (s) there has been filed on the 28th December, 2018 a Director’s Resolution dated 1st September, 2018 which appears to have been signed by Michela Bardini authorizing the immediate forfeiture of the 5,000 shares issued to Marco Caruso.

- (t) the Annual Return filed by Mayan Lagoon on the 8th July, 2019 listed Michela Bardini as the sole member of Mayan Lagoon and Marco Caruso and Michela Bardini as directors of Mayan Lagoon.
18. Our search of the records on file and available for inspection at the Belize Companies and Corporate Affairs Registry in August, 2019 in respect of Placencia Estates has revealed that:
 - (a) the Annual Return filed by Placencia Estates on the 7th January, 2014 (and made up to the 21st April, 2010) listed Marco Caruso, Michela Bardini, Brent Borland and Alana Borland as the managers of Placencia Estates and Marco Caruso and Michela Bardini as the directors of of Placencia Estates. A list of members was not filed.
 - (b) the Annual Return filed by Placencia Estates on the 7th January, 2014 (and made up to the 21st April, 2011) listed Marco Caruso, Michela Bardini, Brent Borland and Alana Borland as the managers of Placencia Estates and Marco Caruso and Michela Bardini as the directors of of Placencia Estates. A list of members was not filed.
 - (c) the Annual Return filed by Placencia Estates on the 7th January, 2014 (and made up to the 21st April, 2012) listed Marco Caruso, Michela Bardini, Brent Borland and Alana Borland as the managers of Placencia Estates and Marco Caruso and Michela Bardini as the directors of of Placencia Estates. A list of members was not filed.
 - (d) the Annual Return filed by Placencia Estates on the 7th January, 2014 (and made up to the 21st April, 2013) listed Marco Caruso, Michela Bardini, Brent Borland and Alana Borland as the managers of Placencia Estates and Marco Caruso and Michela Bardini as the directors of of Placencia Estates. A list of members was not filed.
 - (e) the Annual Return filed by Placencia Estates on the 6th March, 2015 (and made up to the 31st July, 2014) listed Marco Caruso and Michela Bardini as the Directors/Managers of Placencia Estates and Marco Caruso, Michela Bardini, Brent Borland and Alana Borland as the members of Placencia Estates.
 - (f) the Annual Return filed by Placencia Estates on the 31st August, 2017 (and made up to the 21st April, 2015) listed Marco Caruso and Michela Bardini as the Directors/Managers of Placencia Estates and Marco Caruso, Michela Bardini, Brent Borland and Alana Borland as the members of Placencia Estates.
 - (g) the Annual Return filed by Placencia Estates on the 31st August, 2017 (and made up to the 21st April, 2016) listed Marco Caruso and Michela Bardini as the Directors/Managers of Placencia Estates and Marco Caruso, Michela Bardini, Brent Borland and Alana Borland as the members of Placencia Estates.
 - (h) the Annual Return filed by Placencia Estates on the 31st August, 2017 (and made up to the 21st April, 2017) listed Marco Caruso and Michela Bardini as the Directors/Managers of Placencia Estates and Marco Caruso, Michela Bardini, Brent Borland and Alana Borland as the members of Placencia Estates.
 - (i) the Annual Return filed by Placencia Estates on the 18th January, 2019 (and made up to the 21st April, 2018) listed Marco Caruso and Michela Bardini as the Directors/Managers of Placencia Estates and Marco Caruso, Michela Bardini, Brent Borland and Alana Borland as the members of Placencia Estates.
19. We have been instructed by Brent Borland that at no time did either he or Alana Borland resign as directors of Rendezvous and that the signatures on the Brent Borland Resignation Resolution and the Alana Borland Resignation Resolution were forged. We have further been instructed that there was no Board of Directors meeting of Mayan Lagoon held on October 17, 2009, no notice of any such meeting was given to either of Brent Borland or Alana Borland,

that the Mayan Lagoon Termination of Directorship Resolution is wholly fraudulent and that they were not given notice of a call on the shares of Bella Group, LLC in Rendezvous or Mayan Lagoon as required by the Articles of Association of each company. In relation to Placencia Estates, Brent Borland instructs that neither he nor Alana Borland have resigned as Managers or authorized the termination their office of Manager.

20. Based on the foregoing facts, assuming the statements made to us by Brent Borland as set forth herein are true, complete and accurate and on the assumption that the records and documents we have examined and instructions we have received are true, complete and accurate, and that there are no other resolutions, agreements, deeds, documents or arrangements which affect the transactions contemplated thereby, we are of the opinion that:
 - (a) to the extent that the Brent Borland Resignation Resolution and the Alana Borland Resignation Resolution are fraudulent they shall not be valid under Belize law with the result that Brent Borland and Alana Borland remain directors of Rendezvous;
 - (b) the resolutions purportedly passed on 1st January, 2018, 1st February, 2018 and 5th March 2018 authorising the making of a call on the shares of Bella Group, LLC in Rendezvous and forfeiture of such shares are invalid as they were not passed in the manner required by the Articles of Association of Rendezvous as amended on the 30th October, 2009;
 - (c) the forfeiture of the shares of Bella Group, LLC in Rendezvous is not valid for the following reasons:
 - a. the company and its directors did not take the requisite corporate action to authorize the forfeiture of the said shares;
 - b. the directors failed to issue a call notice as required by the Articles of Association of Rendezvous;
 - c. the call was not made *pari passu* as required under Belize law; and
 - d. there was no more money required to be paid to Rendezvous by Bella Group, LLC on the value of its shares as confirmed by the Rendezvous Return of Allotment.
 - (d) the Mayan Lagoon Termination of Directorship Resolution is not valid under Belize law on the grounds that (i) the directorship of Brent Borland and Alana Borland can only be terminated by an extraordinary resolution of shareholders of Mayan Lagoon under the Articles of Association of Mayan Lagoon (not by a resolution of directors), and (ii) to the extent that the said purported resolution is fraudulent;
 - (e) Brent Borland and Alana Borland remain directors of Mayan Lagoon;
 - (f) the resolutions purportedly passed on the 28th December, 2018, 2nd January, 2010 and 15th February, 2010 authorising the making of a call on the shares of Bella Group, LLC in Mayan Lagoon and forfeiture of such shares are invalid as they were not passed in the manner required by the Articles of Association of Mayan Lagoon as amended on the 30th October, 2009;
 - (g) the forfeiture of the shares of Bella Group, LLC in Mayan Lagoon is not valid for the following reasons:
 - (i) the company and its directors did not take the requisite corporate action to authorize the forfeiture of the said shares;
 - (ii) the directors failed to issue a call notice as required by the Articles of Association of Mayan Lagoon;
 - (iii) the call was not made *pari passu* as required under Belize law; and

(iv) there was no more money required to be paid to Mayan Lagoon by Bella Group, LLC on the value of its shares as confirmed by the Mayan Lagoon Return of Allotment.

21. While we have not seen evidence of any resolution passed in accordance with the Operating Agreement of Placencia Estates authorizing the removal of Brent Borland and Alana Borland as Managers of Placencia Estates, we are unable to opine on whether Brent Borland and Alana Borland remain Managers of Placencia Estates as this is a matter of Nevis law.

This opinion is confined to the matters expressly opined on herein and is rendered for your benefit in connection with the relevant set of facts and circumstances as presented to us and as we understand them to be. It is given on the basis of the laws of Belize as they are in force and applied by Belize courts at the date of this opinion. We have made no investigation of, and express no opinion on, the laws of any other jurisdiction. It may not be disclosed or transmitted to any other party SAVE as required for the sentencing hearing of Brent Borland. This opinion may not be relied upon by you or any other purpose. It may not be disclosed or transmitted to any other party. It may not be relied on by any other party for any other purpose. It may not be quoted or referred to in any public document or filed with anyone SAVE as required for the sentencing hearing of Brent Borland without our prior written consent.

We trust that the forgoing will be of assistance to you. Please do not hesitate to contact us should you require clarification on the aforementioned.

Yours sincerely

COURTENAY COYE LLP



PER: CHRISTOPHER COYE
ATTORNEY-AT-LAW

EXHIBIT R

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding ("Agreement") is made and entered into by and between Marco Caruso ("Caruso"), on the one hand, and Dyke Rogers on behalf of a group of investors (the "Investor Group") listed on Schedule A hereto. Caruso and the Investor Group are collectively referred to herein as the "Parties".

WHEREAS, the Investor Group consists of several investors who, as creditors, invested in certain entities under the control of Brent Borland (the "Borland Entities").

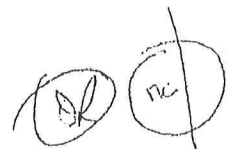
WHEREAS, the Investor Group have alleged that Borland, directly or indirectly, engaged in inappropriate misconduct in connection with the raising of funds in certain properties and/or entities located in the Country of Belize (the "Claims").

WHEREAS, the Parties have agreed to execute this Agreement to settle the Claims;

WHEREAS, the execution of this Agreement shall not be deemed an admission of liability, or an admission or concession to the truth of any allegation, statement or act made by either of the Parties. Caruso specifically denies that he or any entities within his control have engaged in any wrongdoing or have any liability for the Claims alleged by the investors and expressly denies that he or any of his entities have committed a violation of any applicable right, duty, statute, or regulation but desire to avoid the legal fees and expenses that necessarily will result from further disputes with the investors;

WHEREAS, in connection with the terms and conditions set forth herein, it is anticipated that the Parties shall enter into a comprehensive settlement agreement that shall release Caruso from any liability, exposure from the Claims that the Investor Group have against him and that said settlement agreement shall be submitted to the Court in Belize for approval.

NOW THEREFORE, the Parties enter into this Memorandum of Understanding as set forth herein:



TRANSFER OF PROPERTY

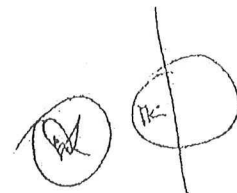
1. The Parties hereto shall form an entity for the purpose of acquiring approximately 500 – 600 acres of specifically designated property (the “Acquiring Acres”) currently owned by Plascencia Estates Development LLC (“PED”). The new entity shall be referred to herein as the “Acquiring Land Entity.” The Acquiring Land Entity shall be equally owned by Caruso and the Investor Group on a fifty-fifty basis.

2. Caruso represents that he has either ownership or control of PED and that he has the ability to properly and fully convey and deliver, without lien, encumbrance or other objection, the Acquiring Acres to the Acquiring Land Entity, it being the intent of the Parties that the Acquiring Land Entity shall own free and clear the Acquiring Acres.

TRANSFER OF AIRPORT

3. The Parties hereto shall form an entity for the purpose of acquiring the ownership of the airport located in Plascencia (the “Plascencia Airport”), including all property and buildings thereon by either an asset sale or stock sale, whichever transaction accomplishes the transfer of the entirety of the Plascencia Airport. The new entity shall be referred to herein as the “Airport Entity.” The Airport Entity shall be equally owned by Caruso and the Investor Group on a fifty-fifty basis.

4. Caruso represents that he has either ownership or control of the Plascencia Airport and that he has the ability to properly and fully convey and deliver, without lien, encumbrance or other objection, the Plascencia Airport to the Airport Entity, it being the intent of the Parties that the Airport Entity shall own free and clear the Plascencia Airport.

Two handwritten signatures, each enclosed within a circle. The signature on the left appears to be 'JW' and the one on the right appears to be 'RK'.


AIRPORT RAISE

5. Upon the formation of the Acquiring Entity and the Airport Entity, and the transfer of all assets therein, the Parties shall commence the process of raising, on a best efforts basis, \$15 million to complete the Plascencia Airport.

6. In connection therewith, the Parties shall each dilute their interest in the Plascencia Airport equally, so that the entity/persons providing said financing shall receive thirty percent of the Airport Entity.

7. The Parties shall forthwith take all steps to proceed with the transactions contained herein.

**IT IS SPECIFICALLY UNDERSTOOD THAT IS AGREEMENT IS NOT BINDING
BETWEEN THE PARTIES BUT SHALL BE THE SKELETON OUTLINE OF
COMPREHENSIVE AGREEMENTS THAT WILL FORM EACH OF THE
ANTICIPATED TRANSACTIONS**


Marco Caruso

AUGUST 6 2018

Investor Group

By: 

Dyke Rogers

AUG 7, 2018

EXHIBIT X

Cansino's Land Consultants Co. Ltd.

Orange Walk Town, Orange Walk District, Belize

APPRAISAL REPORT: MAYAN LAGOON ESTATES LTD. (301/08)

Date: May 26th, 2008.

Client: Mayan Lagoon Estates Ltd.

PROPERTY DESCRIPTION: ALL THAT PIECE OR PARCEL OF LAND BEING situated on the northern section of the Placencia Peninsula, Stann Creek District; Placencia North Registration Section, Block 36, Parcel 2228. Total Acreage: 49.41 Acres

PERSON, FIRM OR BANK REQUESTING APPRAISAL: For: Mayan Lagoon Estates Ltd. at the request of Mr. Marco Caruso

PURPOSE OF APPRAISAL: To ascertain the current market value of the subject property described herein.

TITLE PARTICULARS: The subject property is appraised on the assumption of Good Marketable Title in fee simple possession

DATE OF INSPECTION: May 22nd, 2008.



APPRAISAL REPORT: LAND OWNERSHIP/VACANT. MAYAN LAGOON ESTATES LTD.
FILE NO. 301/08

ADDRESS OF PROPERTY:
Placencia Peninsula, Stann Creek
District, Belize, Placencia North
Registration Section, Block 36,
Parcel 2228

Appraiser: Cansino's Land Consultants Co. Ltd.
Address: Orange Walk Town, Orange Walk District, Belize
Tel: Cell: 610-1153

APPLICANTS NAME: MAYAN LAGOON ESTATES LTD.
LEGAL DESCRIPTION: ALL THAT PIECE OR PARCEL OF LAND BEING situated on the northern
section of the Placencia Peninsula, Stann Creek District; Placencia North Registration Section, Block 36,
Parcel 2228. Total Acreage: 49.41 Acres. Bounded and delineated as shown on the Survey Plan at the Office
of the Commissioner of Lands and Surveys, Belmopan TOGETHER with all buildings and erections or
improvements thereon.
Municipality or District: Stann Creek District
Assessment Land: Parcel 2228 (Block 36)
Total: 1 Parcel
Taxes: PAID
Year: 2008
Purpose of Appraisal: To estimate the Market Value
Property Rights Appraised: Fee Simple
Occupied By: Owner
Highest & Best Use: Residential/Commercial/Resort/Condominium

Neighborhood Description:						
Nature of District		Trend of District		Conformity of Subj.	Supply	Demand
Residential	X	Improved	X	Inferior	Good	High X
Rural		Stable	X	Similar	Fair	Good
Mixed		Deteriorating		Superior	Poor X	Poor
Resort/Residential	X	Transition		Low		

Covenants in place on property: YES, (amendable by owner, Mayan Lagoon Estates Ltd.).
Summary, including ADVERSE INFLUENCES IN AREA if any (E.G. commercial/industrial properties, unkempt properties, major traffic arteries, etc.)
There are no adverse influences in the area of the Subject Property (see maps and aerial/ground photos attached for details). It has natural beach sand on the lagoon shoreline and good vegetation throughout property. The property is above sea level. The property is currently in the process of being developed. Telephone is available via Belize Telemedia Ltd.; Water is available via Plantation Water Services, Power is available via Belize Electricity Ltd. Waste pickup via municipal service.



APPRAISAL REPORT: LAND OWNERSHIP/VACANT, MAYAN LAGOON ESTATES LTD.
FILE NO. 301/08

Site Description:

Site Division: Surveyed Plot
 Site Area: 49.41 Acres
 Source: Land Registry
 Topography: Flat, above sea level
 Configuration: See maps attached
 Zoning: Rural/Resort/Residential

Comments on any positive/Negative features (e.g. regarding conforming of zoning, effects of easements, value trends, etc.)

The Subject Property conforms to the zoning regulation of the municipality, It is not encumbered by rights of easements save and except the 30ft reserve along the lagoon mandated by the Laws of Belize. The fact of being the only block remaining undivided and owned by one entity on the Placencia Peninsula, along with the Resort Site/Resort/Residential designation, give this property a premium value. The Value trend is rising with good Market attraction in this high Market Zone and very exclusive area. The neighboring high-end developments of The Placencia Hotel and Residences and Copal Beach Resort prove the viability of the area. THE SUBJECT PARCEL IS VACANT, VOID OF ANY PERMANENT BUILDINGS OR STRUCTURES.

Cost Approach

Source of Cost Data: Manual: X Local Contractor: X Other:

Land Value: Parcel 2228; 49.41 acres @ \$310,000.00 US per acre =	\$15,317,100.00 US
Latent Value 20%	\$3,063,420.00 US
Indicated Value as at May, 2008	\$18,380,520.00 US
Value by the cost approach (rounded)	\$18,500,000.00 US

Direct Comparison Approach

Conclusion: Having inspected the Subject Property and taken into account all the relevant factors including the Market condition, I have concluded that the Current Market Value is \$18,500,000.00 US with a Forced Sale Value of \$ NA . It is so Valued accordingly

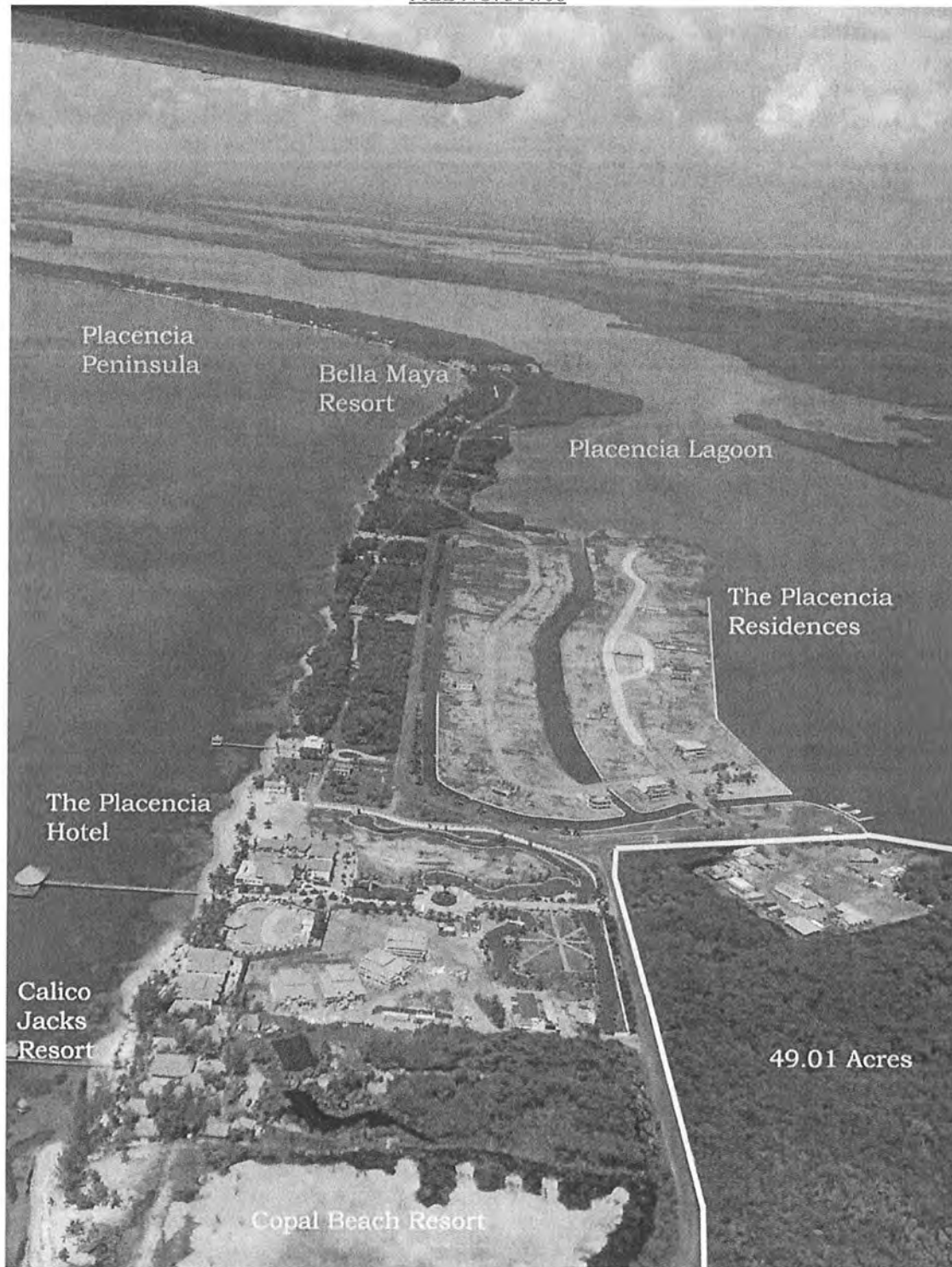
Value by the Direct Comparison Approach (rounded) \$18,500,000.00 US

Final Estimate of Value/ Comment on Reasonable Exposure Time: Within one year at Indicated Value.

As a Result of my appraisal and analysis it is my opinion that the market value of the subject property as at May 26th, 2008 is \$18,500,000.00 US. This report was completed on May 26th, 2008.

Cansino's Land Consultants Co. Ltd.

APPRAISAL REPORT: LAND OWNERSHIP/VACANT. MAYAN LAGOON ESTATES LTD.
FILE NO. 301/08



49.41 Acres Aerial View From North Showing Copal Beach, The Placencia Hotel and Residences, Calico Jack's Resort and Bella Maya Resort

A handwritten signature in cursive script, likely belonging to the appraiser or a related party.

APPRAISAL REPORT: LAND OWNERSHIP/VACANT, MAYAN LAGOON ESTATES LTD.
FILE NO. 301/08

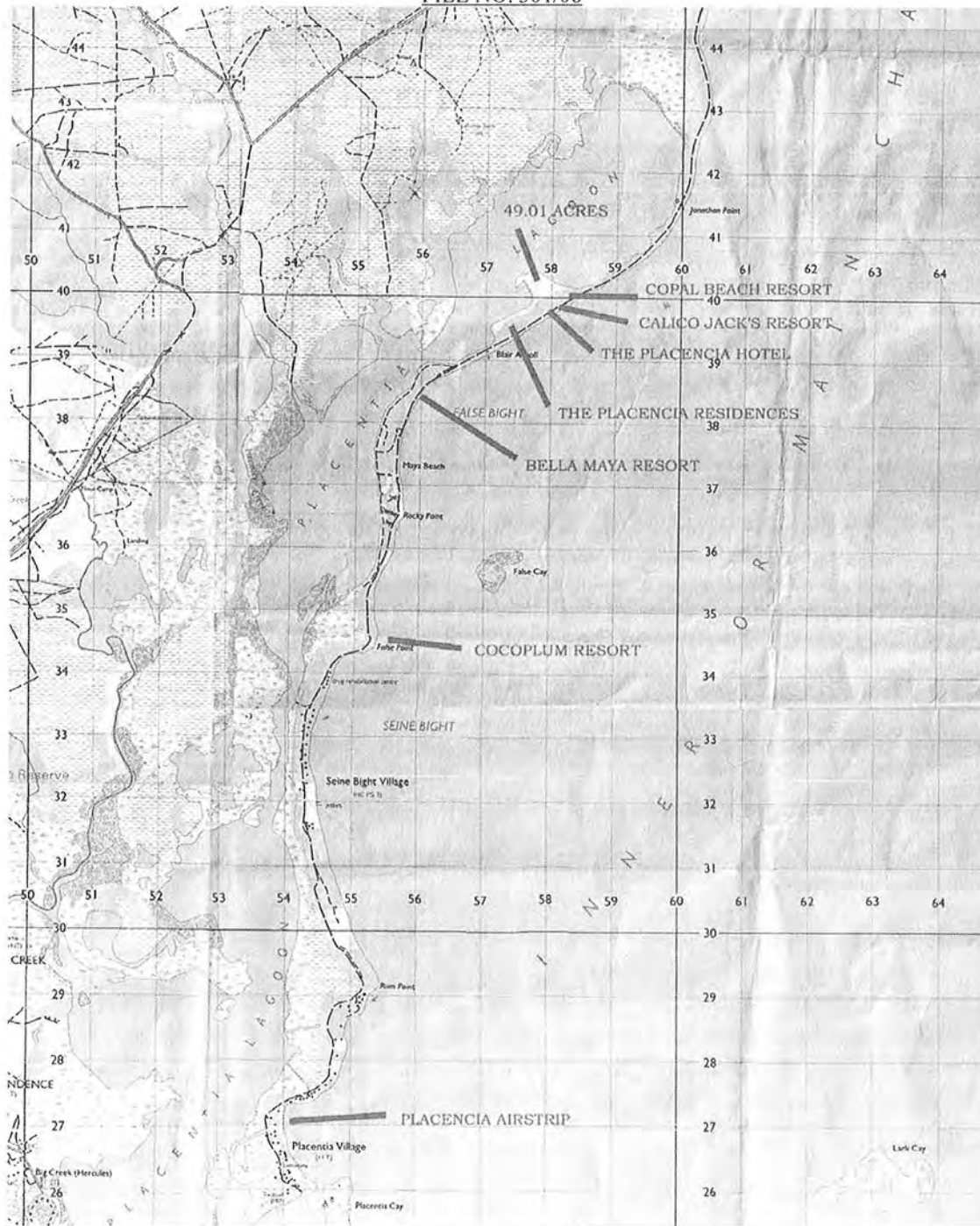


49.41 Acres Aerial View From East Showing The Placencia Hotel and Residences and Calico Jack's Resort



49.41 Acres Aerial View From Northwest Showing The Placencia Hotel and Residences, Copal Beach Resort, Calico Jack's Resort, Bella Maya Resort and Cocoplum Resort

APPRAISAL REPORT: LAND OWNERSHIP/VACANT. MAYAN LAGOON ESTATES LTD.
FILE NO. 301/08



Placencia Peninsula Map

APPRAISAL REPORT: LAND OWNERSHIP/VACANT, MAYAN LAGOON ESTATES LTD.
FILE NO. 301/08

BELIZE

ASSUMPTIONS AND LIMITING CONDITIONS

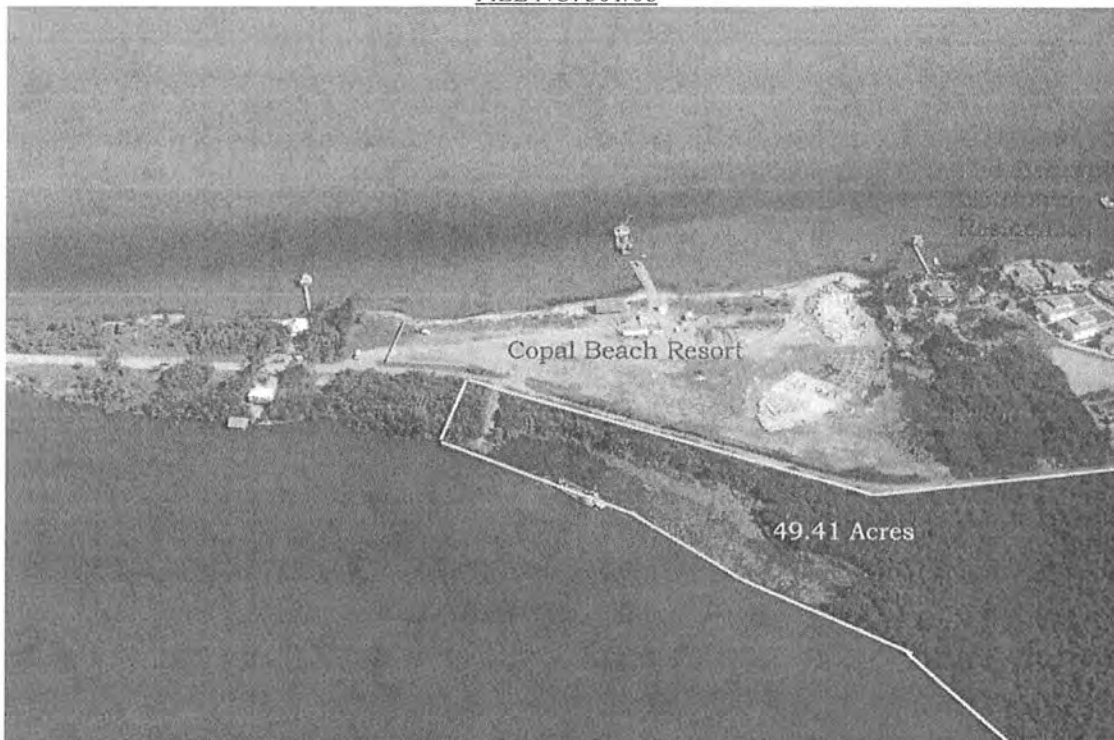
1. No responsibility is assumed for the legal description or for matters including legal or title considerations. Title to the property is assumed to be marketable unless otherwise stated.
2. All descriptions, relevant data and reasons supporting our analysis, opinions and conclusions have been retained in our files.
3. It is assumed that there are no hidden or apparent conditions of the property, internal or external that render subject property more or less valuable.
4. It is assumed that the utilization of the land and improvements are within the boundaries of subject property lines and there is no encroachment unless noted in the report.
5. Possession of the report, or copy thereof does not carry with it the right of publication, but may be limited to the "right to testimony 'sub-judice'". It may not be used for any purpose by any person other than to the party to whom it is addressed, without the written consent of the appraiser and in any event only with the proper written qualifications and only in its entirety.
6. The subject property is appraised free and clear of any and all liens and encumbrances.

Dated this 26th day of May, 2008.



Cansino's Land Consultants Co. Ltd.

APPRAISAL REPORT: LAND OWNERSHIP/VACANT, MAYAN LAGOON ESTATES, LTD.
FILE NO. 301/08



49.41 Acres From West Showing The Placencia Hotel & Residences, Copal Beach Resort & Calico Jack's



APPRAISAL REPORT: LAND OWNERSHIP/VACANT, MAYAN LAGOON ESTATES LTD.
FILE NO. 301/08



Signature



U.S. Department of Justice

*United States Attorney
Southern District of New York*

*The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007*

December 6, 2019

BY ECF

The Honorable Katherine Polk Failla
United States District Judge
Southern District of New York
40 Foley Square
New York, New York 10007

Re: *United States v. Brent Borland*, 18 Cr. 487 (KPF)

Dear Judge Failla:

The Government writes in response to defendant Brent Borland's October 25, 2019 letter ("Def. Ltr.") regarding (i) the loss calculation, pursuant to U.S.S.G. § 2B1.1, in the Probation Department's Presentence Investigation Report (the "PSR"), and (ii) relevant conduct to be considered at sentencing, including with respect to the loss calculation (Dkt. 48).¹ In his letter, the defendant argues that, under the "credit for loss" provision of U.S.S.G. § 2B1.1, "there is zero loss in this case and no enhancement for loss . . . is warranted." Def. Ltr. at 1. In a case in which investors in the wire and securities fraud scheme to which he pled guilty lost more than \$21.9 million, and have no prospect of ever recovering those funds, the defendant's assertion that there is "zero loss" is contrary to well-established case law and defies common sense. With respect to the relevant conduct to be considered at sentencing, the Government reserves the right to present evidence to the Court regarding a related and overlapping fraudulent scheme in which the defendant participated, and respectfully requests that the Court reserve ruling until after the legal issues related to the defendant's primary loss argument are resolved.

I. Offense Conduct and Procedural History

From approximately 2014 through March 2018, Borland solicited and received approximately \$21.9 million from approximately 40 investors based upon representations that he would use the investors' money to construct an airport in Belize. PSR ¶ 13. Borland promised investors high rates of return on their investments, which he represented were temporary "bridge financing." *Id.* Borland solicited funds from victim investors in the scheme through two entities: Belize Infrastructure Fund I, LLC ("BIF") and Borland Capital Group, LLC ("BCG"). *Id.* ¶ 10-

¹ Throughout this letter, "PSR" refers to the Revised Final Pre-Sentence Investigation Report dated February 15, 2019; "Dkt. []" refers to docket entries in this case; "Def. Ltr." refers to the defendant's October 25, 2019 letter (Dkt. 48), and "Def. Ltr. Ex. []" refers to exhibits files in connection with the defendant's October 25, 2019 letter; and Ex. A refers to a Victim Impact Statement submitted in this case.

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11. Borland provided each investor with a term sheet labeled “Summary of Terms for a Bridge Financing” (“Term Sheet”), a promissory note (“Note”), a “Personal Guarantee” signed by him and his Belizean business partner, Marco Caruso (“Caruso”), and a document labeled “Real Estate Pledge and Security Agreement” (“Real Estate Agreement”). In the course of soliciting investments in the scheme, Borland also represented to investors that, in addition to the personal guarantees that he and Caruso were providing, their investments would be fully secured by real property in Belize that was unencumbered by any liens or obligations. *Id.*

In truth, however, Borland misappropriated millions of dollars of investors’ funds and used those funds for his own personal benefit. *Id.* ¶ 14. For example, Borland diverted at least approximately thirty percent of the approximately \$21.9 million invested by victims to himself to pay for a variety of personal expenses, including his mortgage payments, credit card bills, and luxury automobiles. *Id.* In contrast to Borland’s representations that investors would receive high rates of return within a specified time frame, all known investors in the scheme lost money. *Id.* And while Borland represented that the investments would be secured by real property, the property purportedly serving as collateral was improperly pledged to multiple investors and, in some cases, did not even exist in the manner described by Borland in documents he provided to the investors. *Id.* In addition, Borland solicited investments without disclosing that BIF and BCG had already defaulted on Promissory Notes issued to prior investors, and that those investors had not been repaid. *Id.* ¶¶ 28, 55.

On or about May 11, 2018, the Honorable Barbara Moses, United States Magistrate Judge, Southern District of New York, signed a sealed complaint, *United States v. Brent Borland*, 18 Mag. 4035, charging Borland with the following crimes in connection with the scheme to raise funds to construct an airport in Belize (the “Airport Scheme”): one count of conspiracy to commit securities fraud and wire fraud, in violation of Title 18, United States Code, Section 371; one count of securities fraud, in violation of Title 15, United States Code, Sections 78j(b) and 78ff, Title 17, Code of Federal Regulations, Section 240.10b-5, and Title 18, United States Code, Section 2; and one count of wire fraud, in violation of Title 18, United States Code, Sections 1343 and 2.

Borland was arrested on May 16, 2018, and released the same day on bail conditions. On or about July 12, 2018, a grand jury in this District returned Indictment 18 Cr. 487 (KPF) (the “Indictment”), charging Borland with the following offenses, all in connection with the Airport Scheme: (1) conspiracy to commit securities fraud and wire fraud, in violation of Title 18, United States Code, Section 371 (Count One); (2) securities fraud, in violation of Title 15, United States Code, Sections 78j(b) & 78ff; Title 17, Code of Federal Regulations, Section 240.10b-5; and Title 18, United States Code, Section 2 (Count Two); and (3) wire fraud, in violation of Title 18, United States Code, Sections 1343 and 2 (Count Three).

On February 13, 2019, Borland entered a guilty plea without a plea agreement to Counts One, Two, and Three of the Indictment, after receiving a letter from the Government pursuant to the suggestion of the Court in *United States v. Pimentel*, 932 F.2d 1029, 1034 (2d Cir. 1991).

II. The Loss Amount for the Airport Scheme is Approximately \$21.9 Million.

As conveyed in the Government's September 25, 2019 letter to the Court (Dkt. 43), the parties are in discussions to resolve various disputed issues relating to the application of the United States Sentencing Guidelines (the "Guidelines" or "U.S.S.G."), reflected in the Presentence Report. In the course of these discussions, the parties identified a legal dispute ripe for resolution by the Court, namely, whether the "Credits Against Loss" provision of U.S.S.G. § 2B1.1 cmt. 3(E)(ii) applies in this case to reduce the loss amount at sentencing.

Borland does not dispute that: (i) at least 40 victims invested at least \$21.9 million into the Airport Scheme; (ii) he defrauded these victims; (iii) in connection with the scheme, all of the loans made by investors defaulted; (iv) the personal guarantees he signed are worthless; and (v) but for one victim who received partial payment after suing Borland in this District, none of the victims have been repaid to date. What Borland disputes is the loss amount set forth in the PSR, which incorporates the full principal of the loans that Borland fraudulently obtained, and asks the Court to credit against that loss amount property that he claims is worth more than \$43,000,000. Borland has failed to demonstrate that the loss amount should be anything less than the full principal of the loans he fraudulently obtained.

First, Borland's arguments relate only to his *actual* loss amount, and fail to address his *intended* loss amount, which measures the pecuniary harm that Borland intended to inflict. Because none of Borland's victims has been repaid the approximately \$21.9 million they collectively invested, Borland's *intended* loss amount is at least between \$9.5 million and \$25,000,000, pursuant to U.S.S.G. § 2B1.1(b)(1)(K), and provides an independent basis to reject Borland's arguments.

Second, if the Court considers a calculation of the *actual* loss amount, well-established case law holds that Application Note 3(E)(ii) does not warrant a credit against the actual loss amount here, where there is no evidence that the victims have any security interest in the property Borland argues he "pledged or otherwise provided." Indeed, even the records proffered by Borland in support of his claim – assuming for the purposes of this submission only that they are authentic and accurate – prove that *zero collateral* was ever "pledged or otherwise provided" to the victims.

Third, Borland's argument that the victims have accepted "substitute assets" and resolved their debt is a red herring, and unsupported by the very records Borland submitted to the Court.

For these reasons and for the reasons set forth below, the Court should reject Borland's arguments and find that, as a legal matter, the loss amount for the Airport Scheme constitutes the full principal of the loans that Borland fraudulently obtained, which is approximately \$21.9 million.

A. Applicable Law

Under U.S.S.G. § 2B1.1, which applies to this case, a defendant's offense level is based in part on the amount of "loss" involved in the offense. *See* U.S.S.G. § 2B1.1(b)(1)(A)-(P). "Loss" is defined by the Guidelines as "the greater of actual loss or intended loss." *Id.*, comment. (n.3(A)).

"Actual loss" is defined, in turn, as "the reasonably foreseeable pecuniary harm that resulted from the offense." *Id.*, comment. (n.3(A)(i)). And "reasonably foreseeable pecuniary harm" is itself defined as "pecuniary harm" — that is, "harm that is monetary or that otherwise is readily measurable in money" — that "the defendant knew or, under the circumstances, reasonably should have known, was a potential result of the offense." *Id.*, comment. (n.3(A)(iii), (iv)). Intended loss is "the pecuniary harm that the defendant purposely sought to inflict; and [] includes intended pecuniary harm that would have been impossible or unlikely to occur." U.S.S.G. § 2B1.1 cmt. n. 3(A)(ii).

The "Guidelines do not require that the sentencing court calculate the amount of loss with certainty or precision." *United States v. Bryant*, 128 F.3d 74, 75-76 (2d Cir. 1997). Instead, a court "need only make a reasonable estimate of the loss," given the "available information." U.S.S.G. § 2B1.1, cmt. n. 3(C).

When calculating loss, Application Note 3(E) of U.S.S.G. § 2B1.1, titled "Credits Against Loss," provides that in certain cases the loss amount may be reduced by funds returned or recovered. To the extent relevant to the defendant's arguments here, it directs that "[i]n a case involving collateral pledged or otherwise provided by the defendant," the "loss shall be reduced by . . . the amount the victim has recovered at the time of sentencing from disposition of the collateral, or if the collateral has not been disposed of by that time, the fair market value of the collateral at the time of sentencing." *Id.*, cmt. (n.3(E)(ii)). Thus, "[i]n cases where the defendant has pledged collateral to secure a fraudulent loan, actual loss should be measured by the net value, not the gross value, of what was taken." *United States v. James*, 592 F.3d 1109, 1114 (10th Cir. 2010) (internal quotation marks and brackets omitted). The Second Circuit has held that, although Application Note 3(E)(ii) "accurately describes the calculation of *actual* loss," the note "cannot be mechanically followed where *intended* loss is higher," because the larger intended amount is a better "measure for the defendant's culpability" than is the actual loss. *United States v. Lacey*, 699 F.3d 710, 720 (2d Cir. 2012) (emphasis in original) (quoting *United States v. McCoy*, 508 F.3d 74, 79 (1st Cir. 2007)). Thus, "a sentencing court need not apply the fair market value as an offset in calculations of intended loss; it need only off-set the loss amount by however much it finds the defendant did not intend loss." *Id.* Moreover, as the Application Note makes clear, collateral cannot reduce the loss unless it was pledged or otherwise provided "by the defendant." U.S.S.G. § 2B1.1 cmt. 3(E)(ii); *see United States v. Gibson*, 197 F. App'x 661, 664 (9th Cir. 2006).

If, at the time of sentencing, the victim of the fraud has received nothing from disposition of the collateral, or if the collateral has not been sold at the time of sentencing and there is no reasonable prospect of the victim receiving anything for it, there is no credit and the loss amount is the full value of the original loan. *See, e.g., United States v. Goss*, 549 F.3d 1013, 1018-19 (5th Cir. 2008) (in a mortgage lending fraud scheme, where the lenders owned the collateral, remanding

to the district court for a loan-by-loan inquiry to determine what would be the fair market value of any recovered collateral, including a fact-intensive assessment of “the likelihood of recovery”) ; *United States v. Jimenez*, 513 F.3d 62, 85-86 (3d Cir. 2008) (district court did not err in refusing to reduce the loss amount for “any potential future recovery from the sale of the pledged real estate because of the speculative nature of any recovery”); *see also, e.g., United States v. Mayo*, 14 F.3d 128, 133 (2d Cir. 1994) (holding the same with respect to a Guidelines precursor to Application Note 3(E)).

Application Note 3(E)(ii) is regularly used in mortgage fraud cases, where victims have held a secured property interest in the collateral at issue. *See, e.g., United States v. Nawaz*, 555 Fed. Appx. 19, 25-26 (2d Cir. 2014) (in a summary order, affirming the district court’s use of foreclosure sale values in its loss calculation formula during defendants’ sentencing for mortgage fraud conspiracy, when it credited against loss the appraisal values of properties that had not been sold at the time of sentencing and foreclosure sale values of properties that had been sold); *United States v. Parish*, 565 F.3d 528, 535 (8th Cir. 2009) (holding that the equation used to calculate actual loss to the lenders in a fraudulently obtained mortgage scheme is the amount of the fraudulently obtained mortgage loans minus any payments made on the loan principal and the value of the collateral at the time of sentencing).

Thus, Application Note 3(E)(ii) has been held to be properly applied in cases involving loans when those loans were properly secured by assets. It has not been applied to other varieties of investment schemes or to situations in which a defendant has not pledged collateral through a secured interest to the victim. *See, e.g., United States v. Komar*, 529 F. App’x 28, 29 (2d Cir. 2013) (in summary order, rejecting the defendant’s argument that the value of victim investors’ equity in a partnership that owned property should have been applied as an offset to the loss amount, holding that the Guidelines “application notes significantly omit any direction to apply the value of an equity stake as a credit against actual loss,” and finding that “the Sentencing Commission knows how to provide for an offset against actual loss, but has chosen not to do so in the circumstances urged by” the defendant); *United States v. Shuster*, 361 Fed. Appx. 208, 211 (2d Cir. 2010) (in a summary order, finding that Application Note 3(E)(ii) did not apply in an investment fraud scheme, stating: “We are unaware of any precedent for treating the kind of investment fraud that appellant was involved in—essentially a Ponzi scheme—as a fraud involving ‘collateral pledged or otherwise provided.’”); *United States v. Dullum*, 560 F.3d 133, 139 (3d Cir. 2009) (rejecting the defendant’s argument that a loss resulting from a fraudulent check “should be reduced to zero because [the defendant] had other funds in his bank accounts to offset the bad check,” holding instead that the “straightforward language” of the Guidelines supports the interpretation that “collateral” acts as an offset to a loss in “situations involving a traditional notion of [pledged] collateral,” not fraud that is “more akin to theft”); *United States v. Crandall*, 525 F.3d 907, 913 (9th Cir. 2008) (Application Note 2(E)(ii), the precursor to the current Application Note 3(E), does not apply to fraudulent condominium conversion scheme where “[d]efendants did not pledge or otherwise provide collateral to any of the victims”); *United States v. Deavours*, 219 F.3d 400, 402-04 (5th Cir. 2000) (applying the precursor to Application Note 3(E), distinguishing a fraudulent borrower who has pledged collateral to secure a loan from a defendant in a Ponzi scheme who pays money to victims “not to compensate [them] for their losses, or to extricate

themselves from wrongdoing, but conversely to extend their criminal activities and the profitability thereof”).

B. Borland’s Intended Loss for the Airport Scheme is in Excess of \$21.9 Million

As a threshold matter, Borland’s argument that his victims’ losses are purportedly collateralized by real property relates solely to his *actual* loss amount. *See, e.g., Lacey*, 699 F.3d at 720 (holding that that, although Application Note 3(E)(ii) “accurately describes the calculation of *actual* loss,” the note “cannot be mechanically followed where *intended* loss is higher,” since the larger intended amount is a better “measure for the defendant’s culpability” than is the actual loss). Borland does not advance any argument relating to his *intended* loss amount. Given that virtually none of Borland’s victims has been repaid the approximately \$21.9 million they collectively invested, there can be no serious dispute that Borland’s intended loss amount is at least \$9.5 million, pursuant to U.S.S.G. § 2B1.1(b)(1)(K). For this reason alone, Borland’s arguments should be rejected in their entirety.

It is well established that “[d]istrict courts ‘may presume that the defendant intended the victims to lose the entire face value’ of the claim.” *United States v. McFadden*, 689 F. App’x 76, 80 (2d Cir. 2017) (quoting *United States v. Confredo*, 528 F.3d 143, 152 (2d Cir. 2008)); *United States v. Jean*, 647 F. App’x 1, 3 (2d Cir. 2016) (same). In *Confredo*, for example, the defendant had submitted numerous false loan applications. The Second Circuit held that it was proper for the district court to presume that the defendant intended a loss equal to the combined face value of all the loans applied for, but that the defendant “should have an opportunity to persuade the sentencing judge that the loss he intended was less than the face amount of the loans.” *Confredo*, 528 F.3d at 152. But as the Second Circuit more recently held, “*Confredo* in no way limits the role of objective evidence of intended loss,” and “the term ‘intended loss’ may fairly be read to encompass a defendant’s reasonable expectation of loss.” *Lacey*, 699 F.3d at 719 (citing *McCoy*, 508 F.3d at 79). Furthermore, “[t]o the extent that defendants argue[] that they intended or expected a lesser loss . . . the district court [is] entitled to find them not credible.” *Lacey*, 699 F.3d at 719.

Here, Borland is presumed to have intended a loss of the full face value of the Notes, a total of approximately \$21.9 million. This is particularly true given that he solicited new investments while concealing from investors that prior loans were in default, that no property had been sold to make those investors whole, and that he was using the same property to “secure” multiple Notes. Now, more than five years after the first of his series of fraudulent loans defaulted, no property has been sold to compensate any of the victims. In these circumstances, Borland’s self-serving claim that he expected that victims would be repaid is not credible, particularly when he was misappropriating a substantial portion of victim funds for himself and his family. The loss amount here is thus determined by the value of the funds Borland acquired by fraudulently inducing his victims into entering into the Notes. For the Airport Scheme, that amount is approximately \$21.9 million.

Thus, the applicable intended loss amount for the Airport Scheme is greater than \$21.9 million, and certainly at least \$9.5 million, pursuant to U.S.S.G. 2B1.1(b)(1)(K). Here, as

described below, the intended loss and the actual loss amounts for this scheme are the same. But, even if the actual loss amount is ultimately determined to be less than the intended loss amount, the intended loss would exceed the actual loss amount and would therefore be the appropriate measure of loss. *See Lacey*, 699 F.3d at 720; *Carboni*, 204 F.3d at 47 (“[W]here the intended loss is greater than the actual loss, the intended loss is to be used.” (citation and internal quotation marks omitted)).

C. The “Credits Against Loss” Provision of the Guidelines Does Not Apply in this Case, and the Actual Loss Amount for the Airport Scheme is \$21.9 Million.

The conclusion that Borland’s intended losses are at least approximately \$21.9 million is an independent basis to reject his arguments. Even if the Court were to reach Borland’s arguments about his actual losses, those arguments are equally meritless and should be rejected. With regard to his actual loss amount, Borland asserts that there is “zero loss” and that “no enhancement” for loss is warranted here, where more than 40 victims have lost more than \$21.9 million to Borland with no hope of future compensation from Borland. In support of this claim, Borland asks the Court to apply the “Credits Against Loss” provision of U.S.S.G. § 2B1.1, Application Note 3(E)(ii), arguing that more than \$43,000,000 in “substitute assets” are available for the victims to recover from and that should, therefore, be credited against the \$21.9 million loss amount to reduce his loss to zero. The Court should reject this argument, as the “Credits Against Loss” provision does not apply in this case and does not decrease the actual loss amount to the victims.

1. No Collateral Has Been “Pledged” or “Otherwise Provided” Under the Terms of Application Note 3(E)(ii).

First, there is no evidence that Borland or Caruso – or, for that matter, any of the entities purportedly controlled by Borland or Caruso, or anyone in their employ – ever took steps to actually “pledge” or secure any property as collateral for the loans made in connection with the Airport Scheme. U.S.S.G. § 2B1.1, Application Note 3(E)(ii). In fact, the documents provided by Borland, taken at face value – and assuming for the purposes of this submission only that they are authentic and accurate – prove that Borland did *not* actually “pledge” any collateral and that the victims have no security interest in any of the collateral Borland now purports to offer. For example, the “Appraisal Review” submitted by Borland for the land holdings of Placencia Estates Development LLC, *see* Def. Ltr. Ex. G, was completed after the appraiser “inspected the Subject Property Records,” and is premised on the assumption that the property at issue “is held Freehold, without encumbrance,” because, presumably, no encumbrances were discovered in the inspection process. Nor, for that matter, was the property inspector “aware of any financial agreements or other such matters affecting the Subject Property.” *Id.* The same is true of additional property purportedly owned by M.E.L. Investments Limited that Borland offers as “collateral.” Def. Ltr. at 15-16, Ex. O (review of 1125.13 acres in Belize held by M.E.L. Investments). The “Report on Property” for the lands owned by M.E.L. Investments Limited shows no liens or encumbrances on the property Borland provides as “collateral” that has purportedly “secured” his victims loans. The documents proffered by Borland do not establish any relationship between the appraised property and the parcels listed in the purported loan agreements. Nonetheless, one fact remains clear: the victims have no security interest in any of them. Therefore, because “[c]ollateral is ‘property

subject to a security interest,’ . . . and the victims here held no such interest,” Application Note 3(E)(ii) does not apply here. *See United States v. Turk*, 626 F.3d 743, 748 (2d Cir. 2010).

The Second Circuit’s opinion in *United States v. Turk*, 626 F.3d 743 (2010), is instructive. In *Turk*, the defendant falsely told individual investors that she would record mortgages against property she owned in order to secure large loans, but in fact she did not record the mortgages, leaving the investors’ loans unsecured. 626 F.3d at 745. She also took out bank loans that were secured by recorded mortgages in the same property. *Id.* When the properties were later sold in bankruptcy, the unsecured investors lost virtually all of their money. *Id.* at 745–46. On appeal, Turk challenged the district court’s finding that the investors’ actual losses were nearly the full value of the loans. Turk argued that, pursuant to Application Note 3(E)(ii), the loss amount should have been treated as zero because the properties in which her victims thought they were investing arguably had some market value when her fraud was discovered. *Id.* at 748. Rejecting that argument, the Second Circuit found that “[t]o begin with, the buildings arguably were not collateral at all because the victims’ mortgages were never recorded.” *Id.* The Second Circuit held that “[c]ollateral is ‘property subject to a security interest,’ . . . and the victims here held no such interest.” *Id.* (quoting Black’s Law Dictionary (9th ed. 2009) (citing U.C.C. § 9–102(a)(12)).² Because the collateral the defendant relied on had no value, the court did not resolve whether, if value of the collateral had been preserved, the defendant would have been entitled to treat the buildings as “collateral” with respect to the unsecured individual investors and thereby have invoked the credit-against-loss provisions of Application Note 3(E)(ii). *Id.* at 749. With respect to the reasonable foreseeability of the pecuniary harm to the victims, the court applied the two-step analysis employed by the district court decision in *United States v. Mallory*, 709 F. Supp. 2d 455 (E.D. Va. 2010), to calculate loss under § 2B1.1: “first, the determination of the foreseeable pecuniary harm resulting from the fraud, and, second, the determination of any credits against loss from the sale of the collateral, as required by Application Note 3(E)(ii).” *Id.* at 749. Under step one of this rubric, “the initial loss amount was the full principal of the loans [the defendant] fraudulently obtained.” *Id.* at 750. As to step two, the court held that it was “irrelevant that some theoretical value remained in the collateral at the time the fraud was discovered, because the victims had no interest in the collateral and ultimately obtained no value from its sale, nor did any value remain in the collateral at the time of sentencing.” *Id.* Because the court held that the actual loss was the full loan value, which was necessarily at least as great as the intended loss, it did not separately consider the intended loss amount. *Id.* at 748 n. 3.

As in *Turk*, whatever property Borland is now offering as “collateral” is not “collateral pledged” because the victims’ security interests were never recorded. Applying the *Mallory* two-step analysis employed by *Turk*, the harm foreseeable to Borland is the “full principal of the loans

² Borland argues that this holding in *Turk* is distinguishable because the victims in *Turk* were misled into believing that the loans were secured by first mortgages on several properties. Def. Ltr. at 9. That is an incorrect reading of the central holding in *Turk* regarding whether the defendant was entitled to application of the “Credits Against Loss” provision, as the *misrepresentation* had nothing to do with the Second Circuit’s decision that “[c]ollateral is ‘property subject to a security interest,’ . . . and the victims here held no such interest.” *Id.* at 748–49.

[he] fraudulently obtained,” and, because the victims have no interest in the collateral, no credits against loss are required under Application Note 3(E)(ii).

Second, unable to demonstrate that there is any “property subject to a security interest,” Borland instead directs the Court to the fraudulent *contractual* agreements that he lured victims into entering as evidence that he “pledged” or “secured” collateral – or some contractually unidentified substitute assets – in connection with each loan agreement. *See* Def. Ltr. at 18. But those provisions in no way secure or “pledge” the property interest contemplated by Application Note 3(E)(ii) and the cases in which it is applied. The Government is unaware of any case in which Application Note 3(E) has been used to reduce the Guidelines loss amount in a circumstance analogous to those presented here, and Borland has cited no such authority. In addition, again citing no precedent whatsoever, Borland urges the Court to adopt a broad interpretation of “collateral . . . otherwise provided” to include “merely ‘promised’ collateral.” *Id.* at 10. In fact, the weight of authority rejects this broad interpretation and application of the Credits Against Loss provision. *See supra* Section I.A. (collecting cases). So, too, should the Court.

Third, even the records provided by Borland in support of this argument illustrate the fraudulent nature of his so-called “pledge” or “promise,” and demonstrate why Application Note 3(E)(iii) should not apply here. The bridge financing paperwork for a loan by one of the victims to the Belize Infrastructure Fund, attached as Exhibit B to Borland’s submission (the “BIF Agreements”), comprising a “Summary of Terms,” a “Personal Guarantee” (which turned out to be worthless), and a “Real Estate Pledge and Security Agreement” do not purport to pledge any property. As is relevant here, the “Summary of Terms” states:

- “The Note will be collateralized (backed) by one improved residential lot and one single family home in the Placencia Residences development (the “Collateral”), as listed and defined in Exhibit A. . . . Title of Collateral will be held in escrow by Filler Rodriguez LLP . . . Borrower has the right to substitute similar properties with equal or greater value as collateral.”
- “The Note will be senior to all existing and future indebtedness of the Company (the “Borrower). Neither the Company nor any Sister Company shall be permitted to issue any debt that in any way encumbers any of the Collateral. The foregoing provisions may only be waived by Investor.”
- “Title to the Collateral will be held in escrow Filler Rodriguez, LLP until the Note has been repaid in full.”

Def. Ltr. Ex. B. Of course, that language does not purport to “pledge” or otherwise provide” the property within the meaning of U.S.S.G. § 2B1.1, Application Note 3(E)(ii). No right was granted to any property by the language reflected in the “Summary of Terms” sheet, Borland continued to “issue . . . debt” that listed the same property as purported collateral (without informing the investors). In the event of default, the BIF Note states:

- “The Company acknowledges the Investor shall have the right to select a ‘Lender’s Representative’ within 180 days after the Bridge Note matures . . . provided the Company has not fully repaid principal and interest. . . . The Lender’s Representative will make all decisions relating to the Note and the Collateral in the event of default.”
- “Upon a default, Lender (or Lender’s Representative) and Borrower shall work together to sell the collateral described in the Real Estate Pledge and Security Agreement . . . the terms of which are incorporated herein by this reference.”
- “In the event Borrower fails to cure the default within the time specified, Lender shall have the following options: i. Lender shall sell the property at the current fair market value, and Lender shall have the right to compel Borrower to cooperate in the sale and execute such documents as are necessary for the sale to be effective.”

Id. Again, of course, Borland did not work with any investors to sell any collateral, nor have any of the Lenders been able to sell any property on their own – because any interest they would have had in such property was not secured so that they could, by right, sell any such property. The so-called “Real Estate Pledge and Security Agreement” also fails to give the investor any security interest in any real property. In relevant part, it states:

- “Party A [the pledgors, “Maya Lagoon Estates, LTD,” Borland, Caruso, and BIF] uses the real estate property listed in the following table to establish a pledge as a guarantee on the performance of its obligations to repay the loan from Party B [the investor].”
- “Pledgor shall not permit any mortgages or lines to attach to the pledged property until the loan is repaid in its entirety.”
- “Borrower has the right to substitute similar properties with equal or greater value as collateral. If the Pledgor fails to repay the loan in accordance with Note Agreement above to which this Pledge is attached and is a part, Party B shall have the right to dispose of the pledged property per the terms of the Note above.”
- In the “List of Pledged Properties” section, the agreement states that the “ownership title” to the property is to be “Held in escrow with Filler Rodriguez, LLP,” and describes a particular parcel of land, “Placencia North Block 36 Parcel 2169 Known as Lot 84,” while stating that “Borrower has the right to substitute similar properties with equal or greater value as collateral.”

Id. As Borland concedes, he listed the same property in the “Real Estate Pledge and Security Agreements” of multiple investors, despite the agreements’ guarantees that he would not do so. And, rather than providing a property interest in any collateral – identified or substitute – the List of Pledged Properties section, like other sections of the investment documents, only states that ownership title in the property that is listed will be held in escrow. The plain language of the documents appears to provide that, when this loan defaulted, the only right the investor had was to take the contractual agreements to the “escrow” agent, and hope that the “escrow” agent had

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title to some property that the investor will have the “right to compel” Borland to “cooperate” in selling and executing whatever documents were “necessary for the sale to be effective.” Read in their entirety, these vague terms neither “pledged collateral” nor “provided” collateral to the investors. At best, they theoretically provided an option for an investor to ask the “escrow” agent for a title to some unidentified property that, only with the cooperation of Borland or the true owner of the unidentified property they might be able to sell. And, if Borland or the true owner or the escrow agent would not cooperate in transferring title or selling the unidentified property, the only remaining option for an investor under these circumstances appears to be litigation to attempt to recover their losses. That is a far cry from the “collateral pledged or otherwise provided” that courts have held is appropriate to apply as credits against loss.

Indeed, proof that the only real option afforded to investors by the language of the fraudulent contracts was through litigation, and not the sale of “collateral pledged or otherwise provided,” exists in the multiple legal actions brought by victim investors against Borland, the “escrow” agent, David Filler, Caruso, and various Borland and Caruso entities. For example, after Borland defaulted on repayment to victim investor Louis Cushman, Cushman filed a civil complaint in this District against Borland to recover his investment. Rather than offer to hand over the title to “collateral pledged or otherwise provided” that purportedly “secured” Cushman’s investment – as Borland would have the Court believe is possible based on the language of his fraudulent contractual agreements – the purported “escrow agent,” David Filler, led Borland’s defense in the case, which was ultimately settled. *See Cushman v. Borland, et al.*, 17 Civ. 1795 (ALC) (SDNY).

Likewise, when another investor, Copper Leaf, LLC, who had provided formal notification of a default to Borland, Caruso, and BIF, was unable to recover its investment, it initiated legal action in this District to attempt to recover funds. Rather than hand over the title to what he now claims was “collateral pledged or otherwise provided,” pursuant to what he claims were the terms of their contractual agreement, Borland (who had been properly served with all filings related to the case), Caruso, and BIF failed to answer the complaint or appear in the case and default judgment was entered against all three. *Copper Leaf, LLC v. Borland et al.*, 18 Civ. 6377 (JFK) (SDNY). Copper Leaf is attempting to enforce the judgment in Belize but has yet to recover any money (or, for that matter, obtain any “collateral pledged or otherwise provided”). Copper Leaf has even sought relief from the so-called “escrow” agent, David Filler, without success, and filed a complaint in the Southern District of Florida, alleging that Filler created a fraudulent escrow agent letter, and breached his escrow agent fiduciary duties owed to Copper Leaf. That litigation is currently stayed. *See Copper Leaf LLC v. David F. Filler et al.*, 18 Civ. 22939 (MGC) (SDFL). Setting aside the allegations in Copper Leaf’s complaint against Filler, the mere *fact* of the litigation undermines Borland’s argument that the fraudulent loan agreements provided substitute property to “secure” investor funds, and calls into question the April 19, 2017 letter from Filler to Copper Leaf that Borland attaches to his submission. *See* Def. Ltr. at 4, Exhibit A (letter from Filler to Copper Leaf stating that Filler is “currently holding \$11,000,000 of Belizean real property assets in the form of deeds for \$5,500,000 of currently issued and outstanding note obligations, including acting as collateral for the Note obligation held by Copper Leaf”). Once again, rather than perform what Borland argues is the role of the “escrow” agent in the fraudulent investment contracts he induced his victims into entering, the “escrow” agent – Filler – is engaged in litigation,

none of which has resulted in the provision of any money or “collateral pledged or otherwise provided” to Copper Leaf (or any other victim).

In truth, whether Borland even has any ownership or interest in the “collateral pledged or otherwise provided” under the terms of the fraudulent contracts remains unresolved, as Borland and Caruso are now engaged in contentious litigation of their own over Borland’s interest Mayan Lagoon Estates, Ltd., the entity that purportedly owns the “collateral pledged or otherwise provided.” In a civil complaint filed by Copper Leaf against Mayan Lagoon Estates, Ltd., Borland filed a counterclaim against Caruso alleging, among other things, that Caruso fraudulently divested Borland’s ownership interest in Mayan Lagoon Estates, Ltd. *See Copper Leaf, LLC v. Mayan Lagoon Estates Ltd.*, 19 Civ. 21152 (MGC) (SDFL), Dkt. 38 (Borland’s Answer, Amended Counterclaim, and Third Party Claim).³ Borland concedes that his “ownership” of the purported collateral is currently in dispute. *See* Def. Ltr. at 17 (accusing Caruso of engaging in fraudulent practices to divest Borland of ownership interest in various entities).

Against this backdrop, it is plain that *zero collateral* was ever “pledged or otherwise provided” by Borland, Caruso, or any of the entities under their control to the victims in this case. Unlike the liens and mortgages – i.e., the types of “collateral pledged or otherwise provided” that courts have applied as credits against loss – investors here are left with no recourse but a cause of action against various individuals and entities in order to attempt to recoup their losses.

These facts are analogous to the facts presented in *United States v. Terbrack*, 399 Fed. Appx. 105 (6th Cir. 2010), in which the defendant in a mortgage fraud case argued that the district court should have applied as credits against loss five items: (1) a settlement that his mortgage-loan business, Marathon, had received from a title company, (2) an allegedly misdirected check, (3) a fidelity bond, (4) cash on hand related to a bankruptcy proceeding, and (5) the value of servicing a loan portfolio. 399 Fed. Appx. 105 at 108.⁴ The defendant’s theory was that his mortgage-loan

³ In what appears to be another effort to reduce the applicable loss, restitution, and forfeiture amounts in this case, Borland has attempted to cooperate with Copper Leaf’s counsel to prove that he maintains an ownership interest in “Mayan Lagoon Estates, Ltd.” To the extent Borland’s recent efforts to attempt to assist Copper Leaf in being made whole are an attempt to reduce his sentencing exposure in this case, any amounts that Copper Leaf may or may not obtain through litigation would not offset the loss amount attributable to Borland in this case. *See United States v. Payne*, 127 Fed. Appx. 638, 640-41 (4th Cir. 2005) (finding that the district court did not err in concluding that the proceeds of the sale of a house should not be credited against the intended loss calculation because such collateral was not provided “as part of [the] offense,” but rather, was pledged after “the offense . . . had been discovered”); *United States v. Austin*, 479 F.3d 363, 369 (5th Cir. 2007) (explaining that “assets pledged up until the time the offense is discovered” can be used to offset the loss calculation “because the pledge of assets is not an attempt to buy a sentence reduction or continue the fraud, but instead to effectuate a reduction of the actual or intended loss”).

⁴ In *Terbrack*, the court did not have occasion to decide whether approximately \$287,000 that had been held in the escrow account, and which Ginnie Mae had realized after liquidation, were collateral such that they should serve as a credit under Application Note 3(E)(ii), because the

business's "regulatory and contractual relationship with Ginnie Mae [the victim] caused all of Marathon's assets to constitute Ginnie Mae's collateral because Ginnie Mae could proceed against any of them in court." *Id.* The defendant also pointed to "a guaranty contract between Ginnie Mae and Marathon, which provides that upon Marathon's default, Marathon 'shall automatically give up and forfeit, and hereby release to Ginnie Mae, all of its right, title, and interest' to any and all assets and proceeds 'related in any way to the Mortgages.'" *Id.* Holding that the defendant's argument "require[d] an excessively broad definition of collateral," the Sixth Circuit found that, "[a]lthough the guaranty contract requires Marathon to 'forfeit' and 'release' its assets to Ginnie Mae upon default, it *does not grant to Ginnie Mae a security interest in those assets*; it merely gives Ginnie Mae *legal grounds* should it decide to litigate." *Id.* (emphasis added). Further, the defendant's argument "implied that all assets owned by a debtor should be considered 'collateral' for a debt whenever an unsecured creditor, such as Ginnie Mae here, could litigate to recover them," which was a definition "broader than any common understanding of that term." *Id.* Accordingly, the Sixth Circuit upheld the district court's "legal conclusion" that none of the five items were collateral within the meaning of the "Credits Against Loss" provision of the Guidelines. The same analysis applies here. Like the *Terbrack* defendant, Borland relies on his (and his company's) *contractual* relationship with the victims in arguing that he has "pledged collateral," pointing to the term sheets, notes, and other contractual clauses as proof of his "pledge." But, like the guaranty contract at issue in *Terbrack*, these provisions do not grant the victims a "security interest" in the "collateral;" they merely give the victims *legal grounds* should the victims decide to litigate. As Sixth Circuit did in *Terbrack*, the Court should reject this "excessively broad" definition of collateral. As the Sixth Circuit found, "[c]ollateral generally implies the existence of a security interest held by a creditor in property owned by a debtor." *Id.* (citing Black's Law Dictionary 218 (8th ed. 2005) (defining collateral as "[p]roperty that is pledged as security against a debt; the property subject to a security interest or agricultural lien")). *Id.*

Finally, even if the contractual provisions to which Borland points as evidence of "collateral pledged or otherwise provided" could possibly warrant a credit against loss under Application Note 3(E)(ii) – which, for the reasons stated above, they do not – the Application Note makes clear that what is deemed "collateral" cannot reduce the loss unless it was pledged or otherwise provided "by the defendant." U.S.S.G. § 2B1.1 cmt. 3(E)(ii); *see United States v. Gibson*, 197 F. App'x 661, 664 (9th Cir. 2006). The Real Estate Agreements that Borland signed in connection with the scheme at times list the "Pledgor" as "Mayan Lagoon Estates, LTD.; Marco Caruso; Brent Borland; and Belize Infrastructure Fund I, LLC," *see* Def. Ltr. Ex. B, and other times just "Mayan Lagoon Estates, LTD," *see* Def. Ltr. Ex. C. Without variation, the Real Estate Agreements list Mayan Lagoon Estates, LTD. as the "Owner" of the property "pledged." *See* Def. Ltr. Exs. B and C. Thus, to the extent any party has pledged or provided collateral, it would be Mayan Lagoon Estates, Ltd., the entity whose ownership is currently in dispute by Borland and

Government conceded those funds should be credited against loss (as they had been recovered by the victim) and the parties did not contest the issue on appeal. *Id.* at 108 n.1; *see also* Brief for the United States, *United States v. Terbrack*, No. 0914-64, Document 617074708, 2009 WL 3867281 (6th Cir. Nov. 4, 2009) (district court ruled that only \$287,049.11 of funds that had been held in an escrow account could be credited against loss because that was the sum Ginnie Mae had actually realized after liquidation).

Caruso, or some combination of individuals and entities whose ownership interests in the property remain unclear.

2. No Victims Have Accepted “Substitute Assets” to Resolve the Debts Owed Them.

In support of his argument that he has pledged “substitute assets” as collateral to satisfy the debts owed to his victims, Borland points to an agreement that his victims entered into with Caruso as proof that “the Belize lenders have acknowledged the substitute assets provision of their loans by accepting such property to resolve the debt.” Def. Ltr. at 20. That argument is wholly unsupported by the records that Borland offers, and, should the Court require testimony on this topic, would be easily refuted by testimony from the victims. Based on the records alone, Borland’s assertion that “virtually all of the lenders recently agreed to a new loan arrangement negotiated by Caruso, whereby they accepted ‘substitute assets’ as set forth in the loan agreements, to satisfy their debt from Borland and Caruso,” Def. Ltr. at 5, strains credulity.⁵ The Court should swiftly reject these arguments.

First, the “Memorandum of Understanding” attached to Borland’s submission as Exhibit R, in no way substitutes any assets that would (or are even designed to) compensate the victims for their losses in the Airport Scheme. Instead, the Memorandum of Understanding and the “Subscription Agreement” (Def. Ltr. Ex. S) provide a mechanism for investors, including those who were victimized in Borland’s scheme, to invest in a new company, RIA Partners, LP (“RIA”) for the purpose of developing certain property in Belize over which Caruso held some ownership rights. The RIA Subscription Agreement makes it clear that the investors in RIA were investing new funds to develop certain property, which Caruso would transfer title to in exchange for a release of liability as to him (and him alone) for any claims related to the Airport Scheme:

Whereas, the purchase price for such subscriber’s interest shall be: (i) a cash contribution in the amount of \$3,000 for every .426% subscribed to hereunder . . . plus (ii) assignment to the company of his rights, claims, causes of action, counter-claims, and damages held as of the Effective Date against Marco Caruso, and any entities wholly owned or controlled by him . . . that relate to or arise from the Airport Project.

Def. Ltr. Ex. O at 1. As further described in the Assignments signed by the investors who chose to enter into the Subscription Agreement:

⁵ The Victim Impact Statement provided by one such victim, attached as Exhibit A, wholly undercuts Borland’s argument in this regard, and states, in relevant part: “I have been contacted by Borland’s attorneys who say the lenders have reached a settlement or have been made whole, or have released their claims against Borland. None of this is true. To be crystal clear, everyone [sic] of the investors lost 100% of their investment from Borland’s massive fraud and none of them, including me, have received back a penny or obtained what they believed they bargained for in connection with Borland’s Belize transaction.” Ex. A (emphasis in original).

By a non-binding Memorandum of Understanding signed by Caruso on August 6, 2018 . . . , Caruso agreed in principal to (1) transfer all of the Development Land which he receives at the conclusion of a contemplated receivership proceeding for the property to an entity (the “Land Development Entity”) owned one-half by Caruso and one-half by Panther Properties, LP, a Texas limited partnership (“Panther”) and (2) to transfer the airport property to Riversdale International Airport, LLC an entity that will be owned to the extent of 23.5% by RIA Partners LP, a Texas limited partnership (“RIA”) and to the extent of 76.5% by Caruso and an entity owned by Dyke Rogers.

Def. Ltr. Ex. S. The Assignment also explains that the transactions contemplated in the Memorandum of Understanding were conditioned on an agreement that “releases Caruso from any liability from claims of the investors in RIA related to the Belize Projects” – referring to the Airport Scheme. Thus, the RIA investment opportunity was just that – an opportunity for investors, including investors victimized in the Airport Scheme, to invest in a new company to develop the airport and other property in Belize in which Caruso held an ownership interest.

Second, as is clear by the plain language of the documents Borland proffers, the RIA investment opportunity has nothing to do with Borland and resolves no claims against him. Steps taken by a victim in this case to assist other victims by creating a new investment opportunity have no relevance to the loss amount in this case, and do not change the analysis that there was “collateral pledged or otherwise provided” to the victims that could possibly offset the loss calculation.

Finally, even if Caruso – or Borland – had entered into a civil settlement with all of the victims of the Airport Scheme, any such settlement or payments would be irrelevant to loss under the Guidelines. *See, e.g.*, U.S.S.G. § 2B1.1 cmt. n.3(E)(i) (providing that loss is reduced by the money returned to the victim but only to the extent the money is returned “before the offense was detected”).

Accordingly, Application Note 3(E)(ii) does not apply, and the actual loss amount in this case is the same as the intended loss amount, which is approximately \$21.9 million.

III. Borland’s Canadian Scheme is Relevant Conduct that the Court Should Consider at Sentencing.

At present, the Government reserves the right to present evidence to the Court regarding a related and overlapping fraudulent scheme in which Borland, Caruso, and others also participated. Because the Government’s arguments regarding the scheme are largely factual, and could be affected by the Court’s ruling on the legal issue the parties originally agreed to brief – the applicability of the “Credits Against Loss” provision of the Guidelines to the Airport Scheme, the Government respectfully requests that the Court reserve ruling on the “relevant conduct” issue raised in Borland’s letter. *See* Def. Ltr. 24-30. If, after the Court’s ruling on the “Credits Against Loss” issue, the Government and defense counsel cannot agree on whether this relevant conduct

applies to increase the loss amount, the Government expects the evidence at a *Fatico* hearing would demonstrate, in sum, the following:

From approximately 2007 through 2018, Borland and others engaged in a scheme to defraud individuals of money and property in connection with real estate investments related to Canyon Acquisitions, LLC (“Canyon”), one of the entities commonly involved in the Airport Scheme. In the course of its ongoing investigation, the Government has learned that Borland’s fraudulent conduct through Canyon – and other related entities – in fact dated back to at least as early as 2007, and included Borland’s efforts to solicit investments from Canadian investors by (a) misrepresenting to investors that their funds would be used to construct real estate projects in Belize, among other places, and (b) falsely promising investors a high rate of return within a specified period of time (the “Canadian Scheme”). Instead, as with Airport Scheme, Borland misappropriated investors’ proceeds, which he diverted in substantial part to pay his personal expenses.⁶ The Government has also adduced evidence that Borland engaged in similar schemes with respect to purported real estate investments in the Dominican Republic (prior to the charged scheme) and in a Ritz hotel in Westchester (after the charged scheme).

Borland’s efforts to mislead Canadian investors are part of the common scheme or plan, and the same course of conduct, as his purported efforts to raise funds for the project in the Airport Scheme. Both efforts were substantially connected by: (1) a common entity, namely, Canyon; (2) common accomplices, namely, Marco Caruso and Brent Borland; (3) a common purpose, namely, to, at least in part, misappropriate funds for personal use; and (4) involved a similar *modus operandi*, namely, misrepresentations that investor funds would be used for construction projects in Belize, and falsely promising investors a high rate of return within a specified time period. *See* U.S.S.G. § 1B1.3, Application Note 5(B)(i) (a “Common scheme or plan” and “same course of conduct” are closely related concepts; “[F]or two or more offenses to constitute part of a common scheme or plan, they must be substantially connected to each other by at least one common factor, such as common victims, common accomplices, common purpose, or similar *modus operandi*.”). In addition, both efforts were part of the same course of conduct in that they were part of a spree or ongoing series of offenses that involved similar conduct that was repeated over the course of approximately 10 years. *See* U.S.S.G. § 1B1.3, Application Note 5(B)(i) (“Offenses that do not qualify as part of a common scheme or plan may nonetheless qualify as part of the same course of conduct if they are sufficiently connected or related to each other as to warrant the conclusion that they are part of a single episode, spree, or ongoing series of offenses. Factors that are appropriate to the determination of whether offenses are sufficiently connected or related to each other to be

⁶ It would be inaccurate to say that the Ontario Securities Commission (“OSC”) found there was no fraud with respect to the Canadian Scheme, as Borland argues. *See* Def. Ltr. at 27. The OSC came to a negotiated civil settlement with Borland, Caruso, Canyon, and related entities. *See* March 22, 2013 Settlement Agreement In the Matter of HEIR Home Equity Investment Rewards Inc., et al. (available at http://www.osc.gov.on.ca/documents/en/Proceedings-SET/set_20130322_heir-home-equity-et-al-canyon.pdf). This negotiated civil settlement related to the unregistered offering of securities, and did not involve an admission of culpability regarding fraudulent misstatements to investors.

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considered as part of the same course of conduct include the degree of similarity of the offenses, the regularity (repetitions) of the offenses, and the time interval between the offenses.”).

* * *

Accordingly, the Court should reject Borland’s request to apply the “Credits Against Loss” provision to reduce the loss amount in this case, and reserve ruling on the impact of Borland’s relevant conduct.

Respectfully submitted,

GEOFFREY S. BERMAN
United States Attorney

By: _____/s/
Edward Imperatore
Negar Tekeei
Assistant United States Attorneys
(212) 637-2327 / 2482

CC (by ECF): Robert Baum, Esq.
Amy Gallicchio, Esq.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA :

-V- : 18 Cr. 487 (KPF)

BRENT BORLAND, :

Defendant. :

-----X

DEFENDANT'S SENTENCING SUBMISSION

Federal Defenders of New York
Attorney for Defendant

BRENT BORLAND

52 Duane Street, 10th Floor
New York, NY 10007
Tel. (212) 417-8760

Robert M. Baum, Esq.
Of Counsel

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Federal Defenders OF NEW YORK, INC.

52 Duane Street-10th Floor, New York, NY 10007
Tel: (212) 417-8700 Fax: (212) 571-0392

David E. Patton
Executive Director
and Attorney-in-Chief

December 20, 2019

BY ECF AND EMAIL

Honorable Katherine Polk Failla
United States District Judge
Southern District of New York
40 Foley Square, Room 2230
New York, New York 10007

**Re: United States v. Brent Borland
18 Cr. 487 (KPF)**

Dear Judge Failla:

This letter is respectfully submitted on behalf of my client Brent Borland, in response to the sentencing submission by the Government dated December 6, 2019.

The Government argues that Mr. Borland's assertion that there is "zero loss" "is contrary to well-established case law and defies common sense." See Government Letter ("Gov't. Ltr.") at 1. The Government is wrong. The assertion of "zero loss" represents a Guidelines argument, not a factual statement about the case. The Guidelines specifically set forth a procedure for applying a credit against a loss, and well established case law has consistently applied that principle to the calculation of loss for purposes of the Guidelines, under facts virtually identical to the instant offense.

The Government also asserts that there are certain facts which are not in dispute. Mr. Borland does not agree that "the personal guarantees he signed are worthless." Gov't. Ltr. at 3. The contractual settlement of their debt, by 37 victims with the very person who also signed every personal guarantee and loan agreement with Mr. Borland, (Marco Caruso), unequivocally demonstrates that the personal guarantees and pledge of collateral were not "worthless."

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The Government's arguments are unavailing, unsupported by case law or the facts of this case. There is not a single case that has held that in order to obtain a credit against loss for collateral pledged or otherwise provided, the collateral must be secured by a lien. The plain language of the Guidelines supports this conclusion.

**I. The Actual Loss Subject To A
Guidelines Credit Is \$21.9 Million**

Brent Borland has acknowledged that he fraudulently solicited loans by making material omissions of fact. The loans he solicited and received created an actual loss of \$21.9 million. No additional funds were solicited, no additional funds were lost. Mr. Borland does not contest that the loss amount (before application of the Guidelines credit for loss provision), is less than the actual value of the loans he solicited. There is no larger "intended loss" amount. Both the actual loss and intended loss are the same. The Government can point to no facts which support a higher intended loss amount, and in fact concedes that the actual loss and intended loss are the same, \$21.9 million. See Gov't. Letter at Points B and C, pages 6-7.

The Second Circuit has explained in United States v. Turk, 626 F.3d 743 (2d Cir. 2010), the appropriate calculation of loss under the specific fact pattern of this case. Here, both parties agree that actual loss is defined as "the reasonably foreseeable pecuniary harm that resulted from the offense." U.S.S.G. §2B1.1(b)(1), A.N. 3(A)(I). In Turk, the Court found that the deceit of the defendant, resulting in the fraudulent obtaining of the loans, results in the total loss of the loans which constitutes "reasonably foreseeable pecuniary harm." Id. at 750. This actual loss is step one in determining for Guidelines purposes whether the credit for loss should then be applied. Step two is determining whether this actual loss is reduced by the fair market value of collateral pledged or otherwise provided at the time of sentencing. Id. at 750-51. See also United States v. Crowe, 735 F. 3d. 1229, 1238 (10th Cir. 2013) (the reasonably foreseeable pecuniary harm in loan fraud cases will "almost invariably include the full amount of unpaid principal on the fraudulently obtained loan ..."). To the extent that the Government suggests that only actual loss rather than intended

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loss may be subject to a credit, that argument has been rejected by Crowe, Id. at 1237 ("loss equals actual loss (or intended loss) minus credits against loss."), and the Sixth Circuit in United States v. Kraus, 656 Fed. Appx. 736, 739 (2016), ("[w]here pledged collateral is involved, determining loss is a two step process. First, sentencing courts must use the greater of actual or intended loss."); as well as by the Ninth Circuit in United States v. Morris, 744 F.3d 1373, 1374-75 (9th Cir. 2014) (In mortgage fraud cases that involve collateral, the credit against loss provision mandates that the "measure of loss (actual or intended loss) be reduced by ... the fair market value of the collateral as of the date of conviction.").

II. The Credit For Loss Provision Of The Guidelines Applies Under The Facts of This Case

The Government has argued that Application Note 3(E)(ii) applies only where loans were properly secured by assets and "has not been applied to other varieties of investment schemes or to situations where a defendant has not pledged collateral through secured interest to a victim." Gov't. Letter at 5. They cite to the decision in United States v. Komar, 529 F. Appx 28 (2d Cir. 2017), in which the Court rejected equity in a partnership as a credit against loss. They endorse the Court's reasoning that the Guidelines omit any direction to apply an equity stake. At the same time, they reject Mr. Borland's argument, also endorsed by the rationale in Komar, that the "the Sentencing Commission knows how to provide for an offset against actual loss, but has chosen not to do so ...," in reference to an equity stake. Id. at 29. As suggested in Mr. Borland's original submission, if the Sentencing Commission had intended to limit the credit to a secured lien, the language in AN 3(E)(ii) would have referred to "**secured** collateral pledged," or "collateral subject to a **lien**." The absence of such qualifying language which would exclude an equity stake in Komar, also excludes the necessity that the collateral be subject to a lien.

The Government's premise that credit for loss has not been

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applied to other varieties of investment schemes or instances where collateral is unsecured is also flawed and incorrect. In Kraus, *supra*, 656 Fed. Appx. at 739, the Sixth Circuit accepted the application of farm equipment as collateral against a loss, and denied the credit for a wine inventory, not because it wasn't appropriate collateral, but because a credit wasn't warranted based on the defendant's attempt to dispose of the wine inventory and efforts at deceit related to its value. *Id.* at 742-43. None of these items of property were subject to a lien. In addition, a credit for loss was applied here where the underlying crime was making a materially false statement. In United States v. Terback, 399 Fed. Appx. 105 (6th Cir. 2010), the Court accepted an escrow account, which was not subject to a lien, as collateral and applied that as a credit against loss. In Terback, the Government **conceded** that an escrow account constitutes collateral. *Id.* at FN 1. The Government's citation to United States v. Dullum, 560 F.3d 133 (3rd Cir. 2009), is inapposite to the facts of this case. Dullum wanted funds in his bank accounts to be credited to a loss in a bank fraud case involving fraudulent checks. The court rejected this as a credit because "Dullum's bank accounts were not formally **pledged** as collateral." *Id.* at 139. (Emphasis added). The Court further found that there was no **agreement** with the bank that funds could be taken from his accounts to offset the fraudulent check. Mr. Borland specifically pledged property as collateral (or substitute assets), which the lenders agreed to accept in the event of a default. We agree with the Government that a Ponzi scheme is not subject to a credit against loss. Mr. Borland did not engage in a Ponzi scheme. His offense is equivalent to a mortgage fraud where a loan is given on false pretenses and property serves as collateral for the loan. These are the cases in which property generally qualifies as collateral for the loan and AN 3(E)(ii) applies.

**III. Mr. Borland Provided Collateral
Within The Meaning of A.N. 3(E)(ii)**

The Government places great reliance on the Court's decision in United States v. Turk, *supra*, 626 F.3d 743, arguing that it stands for the proposition that collateral must be secured by a lien in order to be credited against a loss. Gov't letter at 8. That was not the holding of Turk, and the Government seems to

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recognize that. Gov't letter at 8. ("Because the collateral the defendant relied on had no value, **the court did not resolve** whether, if the value of the collateral had been preserved, the defendant would have been entitled to treat the buildings as 'collateral' with respect to the unsecured individual investors and thereby have invoked the credit-against-loss provisions of Application Note 3(E)(ii).") (emphasis added). The key to the Court's ruling was the rejection of the defendant's contention regarding the calculation of loss; that loss is the decline in value of what was promised as collateral, not as the Government argues, the issue of collateral. See Gov't. Letter at FN2. (The central holding in Turk relates to the application of credits against loss and the meaning of collateral). In fact, as the Court went on to explain in Turk, "we assume *arguendo* that it was collateral" Id. at 749. No court has specifically held that collateral must be secured by a lien in order to be used as a credit against loss.

Mr. Borland does not contend that all assets held by a borrower are subject to a credit against loss. However, where real property is "pledged or otherwise provided" it does constitute collateral. Mr. Borland has argued that "pledged" means "promised." In fact, Websters Third World International Dictionary, 1986, Merriam-Webster, defines pledge as "(d): An agreement involving the delivery of security but without the transfer of title of objects capable of physical delivery as distinguished from a common-law mortgage" It can also be defined as a guarantee, or to assure or promise the performance of

The Government's argument that Mr. Borland's pledge of collateral merely gives a lender the grounds to litigate and therefore cannot be collateral, does not comport with the facts of this case. We agree with the Court's position in United States v. Terback, supra, 399 Fed. Appx. 105, that legal grounds to litigate does not constitute collateral. However, Mr. Borland provided much more than that. It should be noted that the "lien" which the Government holds sacred, does not give the lien holder the right to property either. It merely provides that the lien holder is in a superior position to other creditors and the lien may prevent sale of the property to someone other than the lien holder. Mr. Borland has never tried to sell the property or in

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any way divest the lenders of their rights under the pledge of collateral agreed to by both parties to the loan.

What makes the facts of Mr. Borland's case so compelling for application of the credit against loss, is that the pledge of collateral which was guaranteed by contract, was freely and knowingly agreed to by the lenders. It was then supported by actions which allowed for the sale of property, to repay the loan, in the event of default. Mr. Borland's efforts to ensure the availability of the property for sale, went so far as to provide his attorney, David Filler, Esq., with the authority to sell the collateral in the event of default and repay the loan. He was provided a Power of Attorney, signed and executed by Mr. Borland and Marco Caruso, who were both signatories to every loan. They also were both owners of the property provided as collateral. The Power of Attorney was executed and registered with the government of Belize (where the property is located). Mr. Filler was also provided with the deeds to the property. Not one single lender made a claim under the default provisions of the contract, nor requested the sale or transfer of property prior to Mr. Borland's arrest. Mr. Borland and his co-owner of the Belize properties, Marco Caruso, intentionally and knowingly signed all relevant legal documents so that their attorney, Mr. Filler, could easily sell or transfer the property.

The legal actions against Mr. Borland, cited by the Government, with the argument that these actions demonstrated Mr. Borland's intent not to sell or transfer the property, is inaccurate and disingenuous. Gov't. Letter at 11. The Government cites two lawsuits by investors. The Government writes regarding the civil action by Louis Cushman, "[R]ather than offer to hand over the title to what he now claims was 'collateral pledged or otherwise provided,'" the case was defended by Mr. Filler and then otherwise settled. Gov't. Letter at 11. In fact, Mr. Cushman refused to settle for the substitute assets offered by Mr. Borland and demanded a cash settlement which was ultimately reached.

Another civil action was instituted by the largest lender, Copper Leaf, LLC, who loaned \$8 million of the \$21.9 actual loss amount. The Government writes that "[R]ather than hand over the title to what he now claims was 'collateral pledged or otherwise

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provided,' Borland ... failed to answer the complaint or appear in the case and default judgment was entered" Gov't letter at 11. The Government goes on to allege that "the mere fact of the litigation undermines Borland's argument that the fraudulent loan agreements provided substitute property to 'secure' investor funds." Gov't. Letter at 11.

The Government surely is aware that Mr. Filler's response to Copper Leaf's civil action was first to deny the allegations in their complaint, and to seek a temporary stay of the proceedings because David Filler's compliance with respect to documents requested and communications with his client were complicated by Mr. Borland's request that such items not be turned over during the pendency of his criminal case on the grounds of attorney-client privilege and the Fifth Amendment. In fact, as an alternative to his request for a stay, Mr. Filler requested the court's permission to produce the documents and reveal communications with Mr. Borland.

Regarding Mr. Borland's response to the civil action, the Government knows that Mr. Borland did not have funds to retain an attorney and any response that he might make during the pendency of the civil case, would have impacted on his Fifth Amendment privilege. As a result, he accepted a default judgment and has been in constant contact with Copper Leaf's attorney in an effort to secure the substitute assets set forth in their loan agreement. Mr. Caruso has resisted every attempt to obtain the substitute assets and Copper Leaf has filed suit in Belize to enforce their judgment against Mr. Caruso, aided by affirmations by Mr. Borland.

What is most disingenuous about the Government's argument that Mr. Borland has made no attempts to provide the substitute assets in the loan agreements, is their knowledge that prior to the institution of the criminal action, the SEC filed an action against Mr. Borland and sought a preliminary injunction. Judge Castel signed an Order freezing his assets and prohibiting Mr. Borland from "transferring, pledging, encumbering, or otherwise disposing of any assets (including money, real or personal property, ...)." See SEC v. Borland, 18 Cv. 4352 (PKC).

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Even though Mr. Borland would like to ensure the transfer of property or sale of assets he secured as collateral, he was prohibited from doing so.

**IV. The Value And Ownership Of The
Collateral Warrants Application
Of The Credit Against Loss Provision**

The Government takes the position that the credit against loss provision is inapplicable because Mr. Borland's ownership of Mayan Lagoon Estates LTD., is in litigation. This argument ignores the relevant facts before the Court. Although Mr. Borland believes that his ownership rights were illegally removed, supported by a letter from his Belize attorney who filed the documents giving him 50% ownership, it is true that the matter is in litigation. See Exhibit P, Borland letter dated 10/25/19. But that is inconsequential to the issues before the Court.

The Government acknowledges that the loan agreements had a substitute assets provision which was agreed to by each lender. The Power of Attorney and related documents allowing Mr. Borland's attorney to sell the collateral property and transfer assets to lenders was authorized in executed documents by Mr. Caruso and Mr. Borland which were filed in Belize. That Power of Attorney still exists. Even if Mr. Caruso now claims that Mr. Borland has no ownership rights in Mayan Estates LTD, his authorization to sell property to repay lenders on default, is still valid. Beyond that, Mr. Borland provided deeds and documents showing his ownership rights in three parcels of land which have been appraised at \$43,551,300 million. It is that land, as substitute assets, which serves as collateral for the loans. The Government has not contested his ownership in any of the appraised properties which are subject to the credit against loss provision of AN 3(E)(ii). It is also notable, that Mr. Borland is a 50% owner of M.E.L. Investments LTD. The property owned by M.E.L., is one of the three appraisals provided to the Court pursuant to AN3(E)(ii). M.E.L. owns the land which contains the Riversdale International Airport (Placencia Airport). The Government's response related to a new agreement by all but two lenders to accept an interest in this property, effectively

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endorses its authenticity and value. Mr. Borland obtained an appraised value of that property as a substitute asset and collateral, of \$11,252,300. See Exhibit G, Borland Letter dated 10/25/19.

V. Agreement By Belize Lenders With Caruso

The Government seeks to characterize the agreements recently entered into by all but two of the Belize investors alleged to be subject to Mr. Borland's fraud, as "an investment opportunity." See Gov't letter at 15. They misread the documents and misapprehend its significance. Investors who provided loans of approximately \$12.9 to develop land projects in Belize have now signed an agreement with one of the individuals who received most of the proceeds of their loans, and who signed all relevant documents guaranteeing their loans. The loan agreements signed by Mr. Caruso and Mr. Borland promised that in the event of default, they would receive property designated as collateral, to secure their loans. Now, 37 of 39 investors, receive an ownership share in the very property contemplated as collateral for their loans, (albeit as a substitute asset), owned by Mr. Borland and Mr. Caruso, at no cost to them. That property, has already been appraised at over \$11 million. In return, they happen to release the co-signer of all their loans from civil liability which of course is related to the default on the loans. The Government argues, straining credulity, (but creatively), that this is just an investment, despite all the coincidences which directly connect this settlement to their outstanding loans. We do not argue at this point that this constitutes restitution, only that it is clear and convincing evidence of facts which contradict many of the Government's arguments in this case. It conclusively demonstrates that the property which is collateral is real, and has a value equal to or in excess of the loans secured. There is no overlooking the clear import of this agreement with investors. They have accepted property in lieu of their debt (which they characterize as only owing to Caruso), which happens to be land also owned by Mr. Borland, and which constitutes the collateral property to secure their loans.

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The Government has premised most of their fraud arguments on the "Airport Scheme." The agreement by the lenders to own land which contains the airport, and to invest additional funds in its development, establishes the bona fides of the airport. It was never a scheme, just an "investment opportunity." Documents provided by Mr. Borland, demonstrate that in fact, he is a 50% owner, of this property pledged by Mr. Caruso.

**VI. Application Of The Rule Of Lenity
Demonstrates That Credit For Loss
Requires Only Collateral Pledged
Not A Filed Lien On Property**

Mr. Borland has argued that the plain meaning of the language in Application Note 3(E)(ii) referring to "collateral pledged or otherwise provided by the defendant," encompasses the substitute assets offered as collateral by the loan agreements entered into and agreed upon by all the lender/victims in this case. The Government has contested that interpretation and requests that the Court read into the Guideline a more restrictive definition that would limit the application of a credit against any loss to only those instances where the collateral is secured by a lien. No case law has defined the use of the term collateral in the Guidelines.

In such instances, the rule of lenity is applicable. "[W]here there is ambiguity in a criminal statute, doubts are resolved in favor of the defendant." United States v. Bass, 404 U.S. 336, 348 (1971). This principle, the rule of lenity, applies to the Sentencing Guidelines. See United States v. Simpson, 319 F.3d 81, 86 (2d Cir. 2002). In applying the rule of lenity to the Guidelines, the provision of law must be ambiguous. Although Mr. Borland has argued that the plain meaning of the Guideline is clear, the Government's arguments demonstrate that at worst, it is ambiguous.

The Supreme Court's decision in United States v. Santos, 553 U.S. 507, 128 S. Ct. 2020, (2008), is instructive. Considering whether the term "proceeds" in the federal money-laundering statute means receipts or profits, the Court found that the term

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was ambiguous and applied the rule of lenity to hold that the more defendant-friendly "profits" definition was the correct interpretation. Writing for the plurality in a divided decision, Judge Scalia held that the term "proceeds" was to be taken as "profits" not gross receipts. He held that the statute did not define "proceeds," and when a term is undefined, "we give it its ordinary meaning." *Id.* at 511. Judge Scalia recognized that "proceeds" can either mean "receipts" or "profits," and that both meanings are accepted in ordinary usage. The Government argued that dictionaries generally prefer the "receipts" definition over the "profits" definition, but the Court concluded that any preference is too slight to conclude that "receipts" is the *primary* definition. *Id.* at 511. Where there is no more reason to believe that the use of a word such as "proceeds" means "receipts" than there is to think it means "profits," "the tie must go to the defendant." *Id.* at 513. The rule of lenity requires that ambiguous criminal laws be interpreted in favor of the defendants subjected to them. *Id.* at 514, citing cases.

"This venerable rule not only vindicates the fundamental principle that no citizen should be held accountable for a violation of a statute whose commands are uncertain, or subjected to punishment that is not clearly prescribed. ... and it keeps courts from making criminal law in Congress's stead."

Id. at 514.

Accordingly, should the Court not adopt Mr. Borland's arguments about the clear meaning of the Guideline language, the rule of lenity would mandate the interpretation most favorable to Mr. Borland.

Pursuant to U.S.S.G. §2B1.1, the calculation of loss for Guidelines purposes would result in a base offense level of 7. Considering the enhancements for loss calculated under the guidance of AN 3(E)(ii), the total loss calculation is 7, because

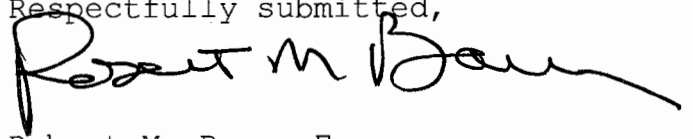
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the value of the collateral provided as credit exceeds the value
of the fraudulently induced loans.

Respectfully submitted,



Robert M. Baum, Esq.
Amy Gallicchio
Assistant Federal Defenders

RMB/wt

cc: Edward Imperatore, Esq.
Negar Tekeei, Esq.
Assistant United States Attorneys



June 16, 2020

Hon. Katherine Polk Failla
 United States District Judge
 United States District Court
 Southern District of New York
 40 Foley Square
 New York, New York 10007

Re: United States v. Brent Borland, 18 Cr. 487 (KPF)

Dear Judge Failla,

Pursuant to an agreement by the parties, which was endorsed by the Court, prior counsel for Mr. Borland filed a sentencing brief on October 25, 2019 (10/25/19 Borland Submission), the primary purpose of which was to argue that application of the "credit for loss" provision set forth in Application Note 3(E) (ii) to USSG § 2B1.1 applied to the facts of Mr. Borland's case, resulting in a guidelines loss amount of zero. The government responded on December 6, 2019 (Govt. Response), and Mr. Borland's prior counsel submitted a reply brief on December 20, 2019 (12/20/19 Borland Reply). Shortly thereafter, and before the issue was decided, Mr. Borland asked for and received new counsel. We now file this supplemental submission in support of Mr. Borland's argument that the "credit for loss" provision in Application Note 3(E)(ii) results in zero loss under the guidelines. Other than where clearly stated, this submission is not intended to serve as a substitute for Mr. Borland's prior briefing; rather it is provided as a supplement to, and a restatement of, Mr. Borland's prior arguments.

A. Introduction

The law is clear that the determination of loss under USSG § 2B1.1 requires a two-step process: "first, the determination of the foreseeable pecuniary harm resulting from the fraud, and second, the determination of any credits against loss from sale of the collateral, as required by Application Note 3(E)(ii)." *United States v. Turk*, 626 F.3d 743, 749 (2d Cir. 2010). Here, the parties agree that the foreseeable pecuniary harm was approximately \$21.9 million, which constitutes the amount of the yet-to-be-repaid loans issued by 41 identified investors to entities controlled by Mr. Borland.¹

¹ The government makes a somewhat impenetrable argument that while the intended loss and actual loss are both \$21.9 million (*see* Govt. Response at 6, 15), even if the actual loss is offset by pledged collateral as envisioned by Application Note 3(E)(ii), the intended loss should still result in points under § 2B1.1(b)(1). *See* Govt. Response at 6-7. Such an interpretation, however, would eviscerate Application Note 3(E) because the credit against loss provision could then only apply in unlikely situations where there was only actual loss and no intended loss. That is not the law. Indeed, as explained in the cases cited in the 12/20/19 Borland Reply at pp. 2-3, "loss equals actual loss (*or*

According to Application Note 3(E)(ii) to USSG § 2B1.1,

Loss shall be reduced by the following . . .

In a case involving collateral pledged or otherwise provided by the defendant, the amount the victim has recovered at the time of sentencing from disposition of the collateral, or if the collateral has not been disposed of by that time, the fair market value of the collateral at the time of sentencing.

Here, each loan agreement between Borland/Caruso and the investor victims identified Belizean improved real property, owned by Mr. Borland and Mr. Caruso, as collateral for the loan, and offered the investors a mechanism for liquidating or obtaining an ownership interest in the collateral in case the loan went into default. The primary area of dispute between the parties is whether the collateral was sufficiently “pledged or otherwise provided” by Mr. Borland as a matter of law to trigger the application of the credit against loss provision in Application note 3(E)(ii).

B. Argument

In his two prior submissions, Mr. Borland makes the argument that the loans obtained by Mr. Borland and Marco Caruso totaling \$21.9 million in loss to investors were collateralized by real property, which together has been appraised at amounts well above the value of the loans. In response, the government argues first that Mr. Borland did not “pledge or otherwise provide” collateral because investors did not have liens on the properties and the collateral was not recorded, and thus was not proper collateral as envisioned by the guidelines. *See Govt. Resp.* at 7-9. Second, the government contends that the contractual agreements between Mr. Borland, Mr. Caruso, and the lenders were, in any event, insufficient to trigger the application of the credit against loss provision. *See id.* at 9-13. For the reasons set forth below, the government’s narrow interpretation of the offset provision is incorrect, and the Court should calculate loss based on Application Note 3(E)(ii).

1. Application Note 3(E)(ii) Does not Require a Recorded Security Interest

First, the government claims that notwithstanding the plain language of the Application Note, “pledge or otherwise provide,” necessarily means giving the lender a recorded security interest in the collateral, such as a lien. In so doing, the government relies principally on inapplicable dicta from the Second Circuit’s decision in *United States v. Turk*, 626 F.3d 743 (2d Cir. 2010). In *Turk*, the defendant and her partner told individual investors that,

intended loss) minus credits against loss.” *United States v. Crowe*, 735 F. 3d. 1229, 1237 (10th Cir. 2013) (emphasis added). *See also United States v. Calkins*, 193 F. App’x 417, 420–21 (6th Cir. 2006) (“The district court erred in concluding that the defendant’s intended loss, *i.e.*, his intent not to pay off the construction loans, would eliminate an offset for pledged collateral.”).

as collateral for their loans, they would hold *recorded first* mortgages in the buildings at issue. This was a lie. In truth, no mortgages were recorded for the individual investors and they were – contrary to what they were led to believe when they agreed to “invest” with Woolf Turk – unsecured creditors. By the time the scheme was discovered, and banks holding recorded mortgages to the collateral properties were paid off, the economic downturn of 2008 led the properties to have lost most of their remaining value and the individual investors could not be repaid. *See id.* at 745-746.

The defendant in *Turk* argued that because the financial downturn was not foreseeable to her at the time of the fraud, she should not be held accountable for the loss in value of the properties and should, in fact, be credited for the value of the properties at the time the fraud was discovered (a year before the 2008 crisis). *See id.* at 748. The Second Circuit rejected that argument, observing that “it cannot possibly be the case that the decline of the *collateral's* value must be foreseeable in order to calculate loss amount if the offset is set as of the time of sentencing, as the defendant can never know what the collateral's value will be at that arbitrarily chosen time.” *Id.* at 750-51.

The government does not, however, rely on *Turk* for its *holding*, which is a rejection of the notion that extrinsic factors such as economic forces controlling the value of collateral should be considered in determining credit against losses under Application Note 3(E)(ii). *Id.* at 749 (“we hold that the decline in value in any purported collateral need not have been foreseeable to Woolf Turk in order for her to be held accountable for that entire loss.”). Instead, the government urges the Court to accept the *Turk* court’s musing in *dicta* that “the buildings arguably were not collateral at all because the victims’ mortgages were never recorded.” However, the court goes on to clarify that it

need not resolve today whether, if such a preservation of value had occurred, Woolf Turk would have been entitled to treat the buildings as “collateral” with respect to the unsecured individual investors and thereby have invoked the credit-against-loss provisions of Application Note 3(E)(ii). Because the purported collateral had no meaningful value at the time of sentencing, we assume *arguendo* that it was collateral, but worthless or nearly so.

Id. at 749.

Indeed, there is no legal requirement that real property must be recorded or secured to serve as the collateral envisioned in Application Note 3(E). Rather, the guidelines inquiry is whether the collateral (1) exists, (2) was pledged (or otherwise provided), and (3) continues to maintain a value that the borrower can obtain by selling it. Thus, in *United States v. Kraus*, 656 Fed. Appx. 736, 739 (6th Cir. 2016), for example, the Sixth Circuit approved of the district court crediting the value of pledged farm equipment as collateral, and even in *United States v. Terbrack*, 399 F. App’x 105, 109 (6th Cir. 2010), a case heavily cited by the government for the notion that the traditional definition of collateral requiring a security interest should govern the guidelines,² the district court credited the defendant’s escrow account against loss even

² In fact, *Terbrack* only reached the uncontroversial conclusion that the defendant’s proposed definition of collateral – namely, all assets that could be recovered through litigation – was “excessively broad.” *Id.* at 108. It did not hold as a matter of law that collateral as envisioned in Application Note 3(E) had

though the account was not subject to a lien. The Sentencing Commission chooses its words carefully, knows how to limit the application of Application Note 3(E), and could have required secured or recorded liens. It did not. No court has imposed such a limit on this provision and this Court should reject the government's attempt to add restrictions that do not exist.

2. Brent Borland Pledged Collateral to Secure All Loans

Every loan agreement executed between the 41 lenders on the one hand, and Brent Borland and Marco Caruso on the other, contained specifically identified improved real property pledged as collateral in case of default. The properties pledged are valued at well above the loan amounts; they exist and continue to be available for investors as a vehicle to recoup their losses. Accordingly, Application Note 3(E)(ii)'s credit against loss provision should be applied to offset the \$21.9 million loss in this case.

As set forth extensively in Mr. Borland's original submission, every lender who signed a loan agreement with Mr. Borland and Marco Caruso agreed to accept the collateral pledged as part of the contract. It is worth noting that most, if not all, of the lenders were sophisticated professional investors and knew how to conduct due diligence to ensure that their investment choices were suitable. Indeed, several lenders traveled to Belize to discuss their investments with Marco Caruso and to view the airport development as well as the collateral properties pledged in case of default. *See e.g.* Exhibit A, email exchange regarding a due diligence trip by certain investors in May 2017.

Brent Borland and Marco Caruso own a significant amount of improved real estate in Belize. While certain properties were identified as collateral in several of the loan agreements, each loan agreement also contained a substitute asset provision so that if, during the course of the loan, the pledged property proved insufficient, the loan would be collateralized by the substitute assets. The substitute assets, which consist of vast tracts of undeveloped land and other improved real estate assets owned by Borland and Caruso, were not only appraised at amounts well above the value of the loans, but they were voluntarily placed into escrow with Borland's and Caruso's escrow agent in Florida for the precise purpose of providing lenders assurance. The existence of these substitute assets, as well as their proper role as collateral for the loans, was fully documented, accepted and agreed to by each of the lenders.

to be subject to a lien by the borrower. The government's reliance on another case, *United States v. Komar*, 529 F. App'x 28, 29 (2d Cir. 2013), is similarly misplaced. *Komar* held that a *different* Application Note, 3(C)(v), did not allow for credit against the victim's equity stake in the partnership which was the subject of the fraud. In fact, the court contrasted the circumstances in *Komar* with those applicable to Note 3(E). *Id.* at 29 ("These provisions, neither of which applies here, demonstrate that the Sentencing Commission knows how to provide for an offset against actual loss, but has chosen not to do so in the circumstances urged by *Komar*.")

a. Specifically Pledged Collateral

Many of the loan agreements between Borland/Caruso and the lenders contained pledged collateral located in the Placencia Residences Project, Stann Creek District, Placencia, Belize. *See e.g.* PSR at ¶40. These properties were situated in Block 36, Parcel 2129,³ and were identified by lot numbers. *See e.g.* Exhibit B, Loan Agreement with Copper Leaf LLC, at 15. These lots were valued at \$10 million based on their waterfront location and villa constructions, and therefore covered the loans of a significant number of lenders. The deeds or land certificates for these properties were held in escrow by Florida-based attorney David Filler, who was instructed to assist the lenders in liquidating these properties in case of default. *See* Exhibits E and F to 10/25/19 Borland Submission.

In 2016, Copper Leaf LLC agreed to invest \$5 million into Belize Infrastructure Fund (BIF), Borland's and Caruso's investment vehicle, thereby becoming BIF's largest investor. *See* Exhibit B, Copper Leaf Loan Agreement. The parties agreed that BIF would pledge \$10 million worth of collateral, which was identified in the loan agreement as a number of lots situated in Block 36, Parcel 2169 (2129). *See id.* at 15. Prior to the signing of the agreement, as part of its in-depth due diligence process, Copper Leaf requested information specifically about the pledged collateral, as well as about the procedures for redeeming that collateral in case of default. In response, David Filler, BIF's attorney and escrow agent for the pledged collateral, sent a detailed letter explaining default procures for the benefit of the lenders, the 2 to 1 collateral value requirement and the reason for venue in Florida to benefit the lenders in event of a Borland/Caruso default. *See* Exhibit C, 12/15/16 Letter from Filler to Copper Leaf. Based on the assurances set forth in the Filler letter, Copper Leaf signed the loan agreement and invested \$5 million.

Over the next several months, following further due diligence, Copper Leaf agreed with BIF to advance additional funds for a total investment of \$8 million. Copper Leaf's decision to invest more funds came after Copper Leaf executives took a trip to Belize in March 2017, where they toured the development projects and saw with their own eyes the properties serving as collateral for their loan. *See* Exhibit D, Copper Leaf Due Diligence Trip Itinerary and confirming email.⁴ They toured the 1,586.13 acres of residential resort land earmarked to become the Placencia Panther Golf Course and development (owned by Borland and Caruso), and walked the runway on the airport development project. Copper Leaf's due diligence team, assisted and supported by Gary Danklefsen, Senior Managing Partner of Cushman & Wakefield, a specialist in international real estate development due diligence services, selected the 1586.13 acres owned by Placencia Estates Development LLC to be placed in escrow with Filler as collateral for Copper Leaf's additional investment, which the parties also understood to serve as substitute collateral for all 41 investors. On June 12, 2017, the parties signed a Modification Agreement to their original loan agreement that incorporated the new terms, including the new 1,586.13 acres of pledged collateral. *See* Modification Agreement, Exhibit E.

³ Parcel 2129 is occasionally referred to as Parcel 2169 in various documents. This was a transcription error that was compounded over time. However, Parcel 2129 and 2169 are one and the same.

⁴ The attached email from Vance Trinh, who was the agent who connected Copper Leaf with Mr. Borland and Mr. Caruso, and accompanied Copper Leaf executives on their due diligence trip to Belize, refers to Copper Leaf in house counsel Kristofer Larson and CFO Kenneth Bussey.

In a letter dated November 9, 2017, Escrow agent David Filler confirmed that he was in possession of the deeds for the 1,586.13 acres of land encompassing the golf course residential development project and additional assets owned by Caruso and Borland. *See* Exhibit F to 10/25/19 Borland Submission. Moreover, Borland and Caruso, as owners of Placencia Estates Development LLC, provided David Filler with a Power of Attorney, registered with the government of Belize, to proceed on his own, without Caruso or Borland's approval, with transfers or liquidation of the 1,586.13 acres of the development, various developed lots within the master planned development, and other additional assets. *See* Exhibit E to 10/25/19 Borland Submission.

These documents show that BIF's loan agreement with the single largest investor, Copper Leaf LLC, which invested \$8 million of the \$21.9 million (36.5%) at issue, included a specific, identified piece of collateral – namely 1,586.13 acres of land in Belize worth \$32 million.⁵ *See* Exhibit G to 10/25/19 Borland Submission (Appraisal), and 10/25/19 Borland Submission at 15 (discussion of appraisal). The value of the land added up to significantly more than the amount of the loan, and Copper Leaf, a sophisticated investment firm, was satisfied with the 1,586.13 acres as collateral. Because the collateral was properly “pledged or otherwise provided,” the fair market value of the collateral must be deducted from the loss amount under USSG § 2B1.1. Moreover, the remaining 40 investors signed loan agreements with Borland and Caruso in which they agreed to accept pledged specific, identified, property as collateral – namely the lots contained in Block 36, Parcel 2129 – valued at \$10 million. The fair market value of these lots, therefore, should also be deducted from the total loss amount pursuant to Application Note 3(E)(ii).

b. Substitute Assets

The Borland/Caruso lenders agreed to the substitution of assets for the pledged collateral, which Borland and Caruso in fact did substitute, in the event the pledged lots in parcel 2129/2169 were insufficient to cover the loan amounts. As confirmed in an email by David Filler's counsel, Lawrence A. Kellogg, to Mr. Borland's prior attorney, Robert Baum, on November 30, 2018, Borland and Caruso had placed a number of other assets into escrow to serve as substitute collateral for the 41 outstanding bridge loans.⁶ These assets included

- the Placencia Estates Development discussed above, appraised at \$32.3 million;
- A Luxury Boutique Hotel in Antigua, Guatemala, (Posada De Los Leones), along with four acres of land for additional development, estimated to be worth \$9.7 million;
- Rendezvous Island, a resort off the coast of Belize, with an appraised land value of \$29.4 million, and an appraised development value of an additional \$43 million (*see* Exhibit F, Rendezvous Island Appraisal Report Update).

⁵ This was in addition to the number of lots pledged in the original loan agreement, valued at \$10 million.

⁶ The email from David Filler's attorney Kellogg to Robert Baum contained three attachments, entitled Batches 1-3, which consisted of the various deeds and underlying documents that established what properties Borland and Caruso had placed into escrow with David Filler. The documents are voluminous and are therefore not attached. They are, however, available to the Court upon request.

In other words, the deeds and land certificates Borland and Caruso placed into escrow with the escrow agent David Filler encompassed real property worth multiples of the \$21.9 million in outstanding loans, and more than securely collateralized those loans. As David Filler explained to Copper Leaf in his 12/15/16 letter, there was a mechanism in place to redeem the collateral in case of default – a mechanism that applied to all 41 lenders:

Question 3: How sale of escrow assets will work in worst case scenario?

Response: Upon Borrower default under the Note and Security & Pledge Agreement, Filler Rodriguez as escrow agent will put the assets up for sale. As closings occur, 100% of the funds will come into the Filler Rodriguez escrow account (holding the title in escrow was designed to protect the lender). The funds will be distributed first to you as the borrower until 100% of the principal and interest is paid. Upon full lender satisfaction, any remaining proceeds will be sent to the borrower.

Exhibit C, 12/15/16 Letter from Filler to Copper Leaf.

To date, two of the lenders have initiated legal action against Mr. Borland. Neither sought to follow the default procedures allowing them and the escrow agent to redeem the pledged or substitute collateral prior to filing suit. The first, Louis Cushman, did not want to redeem the collateral and reached a civil settlement instead. *See* 12/20/19 Borland Reply, at 7. The second, Copper Leaf, obtained judgments against Mr. Borland because by the time the Copper Leaf lawsuit was brought, the SEC had initiated proceedings against Mr. Borland and successfully moved to freeze his assets, which prevented him from assisting Copper Leaf in the transfer of pledged collateral. However, Copper Leaf is now proceeding against *Marco Caruso* in Belize in order to recoup its investment and is doing so with the cooperation and assistance of Mr. Borland. *See id.* at 8.

The most compelling evidence demonstrating the legitimacy of the substitute collateral is the undisputed fact that Dyke Rodgers (one of the 41 lenders) and a group of 39 additional victims have accepted direct ownership interests in the Airport land and project and 1,186.13 acres of the Placencia Estates Development project in exchange for releasing Marco Caruso from any liability under the notes in question. *See* 10/25/19 Borland Submission at 20-21. At the time the earlier submission was filed, prior counsel was only aware of a memorandum of understanding between Dyke Rodgers, the remaining investors, and Marco Caruso, as well as a subscription agreement between Rodgers' newly formed RIA Partners and the 39 Borland/Caruso investors. *See* Exhibits R and S to 10/25/19 Borland Submission. In these agreements, Marco Caruso agreed to give the investors an ownership interest in the land owned by Placencia Estates Development which owns the 1,586.13 acres, and another entity which owns the international airport land and project.

Since then, Copper Leaf's attorneys have informed counsel that on February 27, 2019, Dyke Rodgers, as director of a new corporation, Panther Properties, LP (on behalf of himself as controlling general partner and the other 39 investors as limited partners), purchased 1,186.13 acres owned by Placencia Estates Development from Marco Caruso without Borland's

knowledge or required approval. *See* Exhibit G, Deed of Conveyance.⁷ Marco Caruso sold this land to Panther Properties for BZ \$1.25 million (about US \$650,000), when that same land was officially appraised at \$32.3 million on August 15, 2019. *See* Exhibit G to 10/25/19 Borland Submission. Rather than have the land sold at its fair market value and recoup their initial loan amount, Dyke Rodgers and the 39 investors preferred to own the land and associated improvements, obviously seeing its potential value. The deal between the Dyke Rodgers controlled investment group and Caruso also included ownership interests in the land encompassing the Placencia airport project, owned by M.E.L. Investments, of which Mr. Borland was 50% owner. *See* Exhibit H, 2/5/19 Transfer of Title Certificate to RIA, Ltd; Exhibit O to 10/25/19 Borland Submission (title search and appraisal). That land was not pledged as collateral, but was included in Borland's and Caruso's personal guarantee underlying every loan agreement.

When viewing these conveyances in conjunction with the Memorandum of Understanding, it is clear that Caruso sold the 1,186.13 acres of Placencia Estates Development well below their fair market value for the benefit he received in return: termination of 40 of the 41 loan agreements in dispute and a full release from all civil liability. In effect, both parties got what they wanted. Caruso was released from all liability and satisfied the default provisions of the loan agreements: he sold or provided ownership interests in the pledged or substituted collateral property to 40 of the 41 investors. Dyke Rodgers and the 39 other lenders, on the other hand, converted their \$13,900,000 of loan principal into ownership of assets valued at \$32.3 million, with development possibilities of millions more, including the airport land and development that they had agreed to fund in the first place.⁸

The government's claim that the 2019 deal between these investors and Marco Caruso was simply a new investment opportunity for the victims unrelated to the loans – even though it concerned *the very land that was pledged as collateral* as well as the land and development project that the bridge loans had been used to fund – is factually incorrect. The 1,586.13 acres were specifically pledged as collateral for Copper Leaf's loan and were included as substitute assets for Dyke Rodgers and the 39 other lenders. As noted, that land was appraised in 2019 at \$32.3 million, well above the \$21.9 million of the outstanding loans. It is therefore not surprising that Dyke Rodgers and the other 39 investors sought ownership in the Placencia Estates acreage in consideration for full satisfaction of their \$13.9 million loan agreements.

The government cites Dyke Rodgers's victim impact statement (Exhibit A to Govt. 12/6/19 Submission), in which he states that he merely enlisted help from Caruso in identifying other investment opportunities in Belize in exchange for releasing Caruso from any

⁷ As set forth in the deed, Marco Caruso appears to have carved out 400 acres from the original 1586.13 that are not part of the sale.

⁸ Whether Caruso was legally permitted to transfer this property without Mr. Borland's consent is a separate question, currently being disputed in the courts of Belize. *See* Section c. below. However, either the transfer was legal, and the investors have received the collateral to which they agreed to in the loan agreements; or the transfer was not legal, in which case the sale will be undone, but the property would remain redeemable based on the fact that the land deed was held in escrow by the escrow agent and was available for redemption. In either case, the collateral exists and is available at the market rate at the time of sentencing under Application Note 3(E)(ii).

civil liability. *See* Govt. Response at 14. This statement is misleading at best. Caruso did not “help identify” investment opportunities for Dyke Rodgers and the 39 other investors. He offered ownership stakes in property he owned with Borland, property that had been pledged as substitute collateral for the exact loans at issue, as well as the airport land and project which the loans were intended to fund. In other words, the Dyke Rodgers investment group did not go out and seek *new* investment opportunities in Belize. The group received consideration, in the form of ownership interests, in properties that had served as the exact collateral for the underlying loans. To suggest that these events are unrelated is simply wrong.

c. Ownership dispute

Following Mr. Borland’s arrest, Marco Caruso took steps in Belize to fraudulently divest Mr. Borland of his 50% ownership stake in some of the companies the two jointly owned. “Most of these actions were in the form of resolutions filed in approximately 2018, after Mr. Borland was arrested. The actions taken by Caruso were an attempted fraudulent conveyance to separate himself from his connection to Mr. Borland and protect his investments from restitution claims.” 10/25/19 Borland Submission at 17. A legal opinion from a Belize law firm, attached as Exhibit P to the 10/25/19 submission, lays out the illegal machinations Mr. Caruso engaged in to separate himself from Mr. Borland.⁹

As a result, the February 2019 sales of the 1186.9 acres in the Placencia Estates Development and the airport land and development to Dyke Rodgers and the 39 investors was also fraudulent. In the Memorandum of Understanding, Exhibit R to 10/25/19 Borland Submission, Caruso falsely represented that he had full ownership of Placencia Estates Development and had the authority to fully convey its assets. These assertions were false because Caruso was not the sole owner and required Borland’s approval for any sale. Moreover, in conveying the 1186.9 acres to the Dyke Rodgers controlled investment group, Caruso sold all but 400 acres of the unencumbered collateral for Copper Leaf’s \$8 million loan, in blatant violation of the loan agreement with Copper Leaf.

Application Note 3(E)(ii) envisions the intended or actual loss to be reduced by the fair market value of pledged or otherwise provided collateral at the time of sentencing. By sentencing, the legal disputes between Mr. Borland and Mr. Caruso may well be worked out. More importantly, however, both men were signatories to the loan agreements and the authorizations for pledged and substitute assets to be moved into escrow for easy sale by David Filler. Thus, whether or not Borland is a 50% owner of some of these entities at the time of sentencing, Caruso, by being a co-signor on the loans, agreed to the sale of collateral in case of default. Accordingly, the ownership dispute is ultimately beside the point. Either the collateral has already been redeemed by 40 of 41 investors by separate closings on February 5 and February 27, 2019, or ownership interests in the properties can be provided through the

⁹ It should be clear to the Court that Marco Caruso was fully engaged in every aspect of the “scheme” charged in the indictment. He was a co-signor to all loan agreements, selected the collateral to be pledged, led investors on tours of the properties in Belize, and received the bulk of the funds lent by the investors. He sent, received, or was copied on virtually all email correspondence between BIF and the investors. His failure to be named as a codefendant in the indictment against Mr. Borland, therefore, remains mystifying.

procedures set up by David Filler, the escrow agent. Thus, for purposes of Application Note 3(E)(ii), the “pledged or otherwise provided” collateral remains available to be redeemed.

C. Conclusion

The circumstances of this case are complicated and unusual. Brent Borland admitted to making material omissions to investors in his Belize projects by failing to reveal that he and Caruso were in default on several earlier loans. While he was in the process of securing a \$45 million master loan for his and Caruso’s international airport project, which would have been used in part to repay the short term bridge loans at issue in this case, Mr. Borland was arrested, his assets were frozen, and as a result the discussions for a master loan were terminated. Since his arrest, the investor group controlled by Dyke Rodgers has worked out a deal with Marco Caruso in Belize in which they obtained ownership interests in large portions of acreage of significant value with lucrative development possibilities. The asset transfer of property serving as collateral for the underlying loans was a de facto repayment of the loans, in addition to holding the potential for far greater returns in the future. Meanwhile, the largest investor, Copper Leaf, is working *with* Mr. Borland to take legal action against Mr. Caruso in Belize to recoup its investments that were fraudulently conveyed, hidden and/or divested by Caruso.

Ultimately, at sentencing, the Court will determine Mr. Borland’s true level of culpability and the degree to which these sophisticated, professional investors were harmed. The current legal issue now before the Court, however, is discrete: whether the collateral pledged or otherwise provided in the loan agreements executed between Mr. Borland and Mr. Caruso on the one hand, and the 41 investors on the other, offset the loss amount under the guidelines. For the reasons set forth above, we submit that Application Note 3(E)(ii) to USSG § 2B1.1 applies and the Court should credit the fair market value of the collateral at sentencing against the \$21.9 million loss.¹⁰

Respectfully submitted,

/s/

Florian Miedel
Christopher Madiou
Attorneys for Brent Borland

Cc: All Counsel

¹⁰ In recognition of the limited nature of the issue presently before the Court, we withdraw Section III (pp. 22-30) of Mr. Borland’s October 25, 2019 submission concerning relevant conduct. The question of relevant conduct may or may not become pertinent at a later time, but it is not now properly before the Court.

Exhibit B

LOAN AGREEMENT

THIS LOAN AGREEMENT ("Agreement") is made by and between **BELIZE INFRASTRUCTURE FUND I**, a New York limited liability company, whose address is 79 Madison Avenue, 2nd Floor, New York NY 10016 ("Borrower"), and **COPPER LEAF, LLC**, a Washington limited liability company ("Lender"), whose address is 17837 1st Avenue South, PMB 310, Normandy Park, WA 98148. Borrower and Lender shall be referred to jointly herein as "the Parties."

RECITALS

A. Borrower is an infrastructure and commercial real estate company with headquarters located in New York City and requires additional operating capital for short term business needs.

B. Lender has funds available and is willing to loan them to Borrower.

NOW, THEREFORE, in consideration of the covenants and agreements contained herein, the Parties hereto agree as follows:

AGREEMENT

I. TERMS OF LOAN

1.1 Loan Amount. Lender hereby agrees to loan to Borrower an amount not to exceed Five Million and 00/100 Dollars (\$5,000,000.00), all in funds of the United States of America (the "Loan Amount"). Borrower acknowledges that the loan funds will be used by Borrower to finish build-out of an airport in Belize and for other business purposes. Borrower agrees to do whatever is required to ensure that Lender is secured to Lender's satisfaction.

1.2 Promissory Note. Borrower's repayment obligation shall be evidenced by a promissory note (the "Note").

1.2.1 Interest. The Note shall bear interest at the rate of fifteen percent (15.0%) per annum, compounding monthly, on amounts due thereunder.

1.2.3 Maturity Date. The entire principal balance under the Note, plus accrued but unpaid interest and fees, and all other amounts contemplated under the Note shall be due and payable in full no later than January 1, 2019 (the "Maturity Date"), unless extended by mutual consent of Borrower and Lender.

1.2.4 Default Provisions. The Note shall contain a provision requiring that in the event of default of the Note or any other instruments or documents executed by Borrower in connection with the Loan, the Note shall accrue a default interest rate of twenty percent (20.0%) per annum. In the event of a default of the Note or any other instruments or documents executed by

Borrower in connection with the Loan, there will be a Fifty Thousand and 00/100 Dollar (\$50,000.00) fee.

1.3 Funding. After the completion of the Loan Documents to the sole satisfaction of the Borrower, Borrower will receive Three Million and 00/100 Dollars (\$3,000,000.00). The remaining loan balance of Two Million and 00/100 Dollars (\$2,000,000.00) will be funded on or before March 31, 2017. Lender reserves the right to increase the amount of the remaining tranche based on additional due diligence and contingencies.

1.4 Payments. Borrower shall make monthly payments to Lender beginning April 1, 2017, and continuing through December 1, 2018, per Exhibit B – Repayment Schedule attached hereto (each, a “Monthly Payment”).

The entire principal balance of Five Million and 00/100 Dollars (\$5,000,000.00), plus accrued but unpaid interest and fees, and all other amounts contemplated under the Note shall be due and payable in full no later than January 1, 2019, unless extended by mutual consent of Borrower and Lender.

If the entire principal balance, accrued and unpaid interest and all other amounts contemplated under the Note are not paid in full by January 1, 2019, there will be a One Hundred Thousand and 00/100 Dollars (\$100,000.00) penalty. The entire One Hundred Thousand and 00/100 Dollars (\$100,000.00) penalty will be paid on or before February 1, 2019.

1.5 Documentation and Loan Fee: There is a one-time non-refundable documentation fee and loan processing fee of Twenty Five Thousand and 00/100 Dollars (\$25,000.00). Borrower has paid Seven Thousand Five Hundred and 00/100 Dollars (\$7,500.00) towards the non-refundable documentation fee and loan processing fee. The balance of the non-refundable documentation fee and loan processing fee in the amount of Seventeen Thousand Five Hundred and 00/100 Dollars (\$17,500.00) is due at the time of the funding of the initial amount in Section 1.3 above.

1.6 Loan Fee: There is a loan fee of Seventy Five Thousand and 00/100 Dollars (\$75,000.00). This fee will be due and payable at Maturity.

1.7 Equity Rights: The Lender, or assigns, shall be entitled to 5.00% non-diluted equity (warrants) in Placencia International Airport Project priced at an Exercise Price per share equal to \$0.01. The Lender, or assigns, shall be entitled to 1.00% non-diluted equity (warrants) in Placencia International Marina Project priced at an Exercise Price per share equal to \$0.01. These warrant options, if not exercised, will expire on December 31, 2021. The Company and Guarantors affirm they are duly authorized to offer and execute the above warrants and all rights associated therewith. Exhibit A, attached hereto, outlines basic terms as provided by borrower, as example related to all equity rights provided in this Section.

II. SECURITY

2.1 Security Agreement. The Loan shall be secured by a Security Agreement and UCC-1 Financing Statement covering the assets and receivables of Borrower, including all of

Borrower's rights in The Placencia Residences Project, Placencia, Stann Creek District, Belize as set forth in Exhibit A to the Promissory Note.

2.2 Personal Guaranty. The Loan shall also be secured by a Guaranty Agreement executed individually by the principals of Borrower, Brent Borland, and Marco Caruso.

III. CONDITIONS PRECEDENT TO DISBURSEMENT OF LOAN FUNDS

The Loan funds are to be disbursed on the Closing Date only upon the undersigned's compliance with the following conditions:

3.1 Evidence of Entity Status. The undersigned shall furnish Lender with the social security/ tax I.D. numbers, current addresses and phone numbers of all parties who are to sign on or guarantee the Note, together with evidence of the authority of persons signing on behalf of Borrower.

3.2 Authority to Enter Into Loan. Borrower shall furnish Lender with evidence satisfactory to Lender that Borrower is duly authorized to enter into the Loan transaction and said transaction does not violate any other agreements of Borrower.

3.3 Indemnification. Borrower shall indemnify Lender, including each party owning an interest in the Loan and their respective officers, directors, employees and consultants (each, an "**Indemnified Party**") and defend and hold each Indemnified Party harmless from and against all claims, injury, damage, loss and liability, cost and expense (including attorneys' fees, costs and expenses) of any and every kind to any persons or property by reason of (i) any brokerage commissions or finder's fees claimed by any broker or other party in connection with the Loan; (ii) the operation or maintenance of Borrower's business; (iii) any breach of representation or warranty, Event of Default under this Agreement or any Loan Documents; (iv) any matter relating to the condition of the security being pledged as collateral for the Loan including, but not limited to, the presence of hazardous materials and the like; or (v) any other matter arising in connection with the Loan, Borrower or the Property.

IV. BORROWER'S REPRESENTATIONS, COVENANTS, AND WARRANTIES

4.1 Corporate Existence. Borrower is a corporation duly existing and in good standing under the laws of its jurisdiction, and that Borrower is duly qualified and in good standing to do business in said jurisdiction and in each jurisdiction where such qualification is required because of the nature of its activities or properties and where the failure to qualify would have a material adverse effect on Borrower's financial condition, prospects, profits, operations, business or properties. Borrower has all requisite corporate power and authority to own, pledge, mortgage and operate its properties and to conduct its business as now or currently proposed to be conducted and to effect the transactions contemplated by this Agreement.

4.2 Authorization; No Conflict. Borrower's execution, delivery and performance of the documents necessary to memorialize the Loan and the additional obligations contemplated in this Agreement and the Loan Documents are within Borrower's corporate powers, have been duly authorized by all necessary corporate action, require no governmental, regulatory, or other

approval, and do not and will not contravene or conflict with any provision of: (i) law, (ii) any judgment, decree or order, or (iii) any provision of any agreement binding upon Borrower or upon any property of Borrower. Borrower and agents are duly authorized to secure the Note with assets of Mayan Lagoon Estates, Ltd.

4.3 Validity and Binding Nature. The Loan Documents are (or, when duly signed and delivered, will be) the legal, valid and binding obligations of Borrower enforceable against Borrower in accordance with their respective terms.

4.4 Compliance with Applicable Laws. Borrower is in compliance with the requirements of all applicable laws, rules, regulations and orders of all governmental authorities (including, without limitation, environmental laws, rules, regulations, and orders) the breach of which would have a material adverse effect on Borrower's business or the value of assets pledged as security hereunder.

4.5 Confidentiality. Borrower agrees to keep this transaction and the subject matter thereof completely confidential at all times during the term of the loan and after the loan is repaid in full.

4.6 Representation and Warrants. Borrower represents and warrants the following:

- Related party relationships and transactions have been appropriately accounted for and disclosed.
- Guarantees, whether written or oral, under which the Companies and related are contingently liable, have been disclosed.
- We have no knowledge of any fraud or suspected fraud that affects the Companies. Furthermore, we have no knowledge of any allegations of fraud or suspected fraud affecting the Companies and communicated by employees, former employees, analysts, regulators, or others.
- We have no knowledge of any instances of noncompliance or suspected noncompliance with laws and regulations.
- We have disclosed to you all known actual or possible litigation, claims, and assessments.
- The Companies has satisfactory title to all owned assets, and there are no liens or encumbrances on such assets nor has any asset been pledged as collateral for any other loans or borrowings.
- We have responded fully and truthfully to all inquiries made to us by you during your review of this loan.

4.7 Covenants. Until the Loan is repaid in full, Borrower shall:

4.7.1 Reports. Promptly deliver to Lender such information concerning Borrower's business operations and Borrower's finances as Lender may request from time to

time, but at a minimum Borrower will provide a Balance Sheet and Income Statement, on accrual basis, annually, certified as to accuracy.

4.7.2 Insurance. Maintain such insurance: (a) as is required by law, by the Loan Documents, or otherwise by Lender, (b) as is necessary to protect the assets pledged as security from hazard, (c) as is customarily maintained by similarly situated companies, (d) list Copper Leaf, LLC as a payee on all such policies.

4.7.3 Taxes and Liabilities. Pay and discharge: (a) all taxes, assessments, and governmental charges or levies imposed on Borrower or its property, (b) all lawful claims that, if unpaid, might by law become a lien on Borrower's property, and (c) all other payments when due to creditors whose liens on assets pledged as security are senior to Lender's liens.

4.7.4 Conduct of Business. Conduct its business in the usual and customary manner and not make any material change in the nature of the business.

4.7.5 Inspections and Appraisals. At any time and from time to time, Lender, in its sole discretion, may: (a) conduct or have conducted by an appraiser acting on Lender's behalf, one or more appraisals of assets pledged as security, (b) inspect or have inspected by an agent assets pledged as security.

4.7.6 Other Loans. Notify Lender in writing of any intent to borrow additional loan(s) from third parties at least sixty (60) days prior to any such additional loan(s) until the full Loan Amount, including interest, is paid in full. If Borrower seeks additional loan(s), Lender has the right, at its sole option, to foreclose on the promissory note and demand full payment immediately.

4.7.7 Adverse Material Change. Notify Lender in writing of any adverse material change to its business within twenty-four (24) hours. If such an adverse material changes occurs, Lender has the right, at its sole option, to foreclose on the promissory note and demand full payment immediately.

4.7.8 Prepayment of Note in Part or Full. Notify Lender in writing of any plan to pay additional principal payment in excess of \$100,000.00 or in full, within 90 days of such action and get written approval from Lender confirming agreement to payment. If such notice is not given within 90 days of delivering such paid, borrower shall be required to pay penalty of 90 days interest on portion of principal paid, but not authorized under this section.

V. GENERAL PROVISIONS

5.1 Collection Account. Borrower shall make all payment when due to Copper Leaf, LLC at 17837 1st Avenue South, PMB 310, Normandy Park, WA 98148, or such other place as Lender designates.

5.2 Commercial Purposes of Loan. By executing this Agreement, Borrower expressly represents and warrants that the sole purpose of the Loan is to obtain capital for business and is for commercial purposes only.

5.3 Default Provisions. The occurrence of one or more of the following events shall constitute an event of default:

5.3.1 A breach of any of the terms of this Agreement, the Note or the Security Agreement.

5.3.2 The entry of a decree or order by a court having jurisdiction in the premises adjudging Borrower a bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Borrower under the federal Bankruptcy Act or any other applicable federal or state law, or appointing a receiver, liquidator, assignee or trustee of Borrower, or any substantial part of its property, or ordering the winding up or liquidation of its affairs.

5.3.3 The institution by Borrower of proceedings to be adjudicated a bankrupt or insolvent, or the consent by it to the institution of bankruptcy or insolvency proceedings against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under the federal Bankruptcy Act or any other applicable federal or state law, or the consent by it to the filing of any such petition or to the appointment of a receiver, liquidator, assignee or trustee of the company, or of any substantial part of its property, or the making by it of an assignment for the benefit of creditors or the admission by it in writing of its inability to pay its debts generally as they become due, or the taking of corporate action by Borrower in furtherance of such action.

5.3.4 In the event of default as set forth herein, without demand or notice, all principal and any unpaid interest shall become immediately due and payable, and Lender shall, at its sole option, be entitled to enforce the terms of this Agreement by: a) suing for all past amounts due hereunder; and/or b) pursuing all other appropriate legal remedies available under this Agreement, the Note or the Security Agreement. Failure to exercise any of these options shall not waive the right to exercise the same in the event of any subsequent default. In the event of such default, the undersigned promises to pay all collection expenses, including reasonable attorneys' fees incurred with or without suit and on appeal.

5.4 Notices. Any notices permitted or required under this Agreement shall be made by personal delivery, or registered mail - return receipt requested, and deemed given upon the date of personal delivery or acceptance, addressed as follows:

If to Borrower: Belize Infrastructure Fund I, LLC
79 Madison Ave, 2nd Floor
New York NY 10016

If to Lender: Copper Leaf, LLC
17837 1st Avenue South, PMB 310
Normandy Park, WA 98148



If to Guarantors: Brent Borland
79 Madison Ave, 2nd Floor
New York NY 10016
and- Marco Caruso
79 Madison Ave, 2nd Floor
New York NY 10016

5.5 Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of New York. The parties agree that venue shall be in New York County, New York. Borrower agrees to personal jurisdiction in New York County, New York and waives any right to dispute such jurisdiction based on an inconvenient forum or similar basis.

5.6 Titles and Captions. All section titles or captions contained in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.

5.7 Entire Agreement. This Agreement contains the entire understanding between and among the parties and supersedes any prior understandings and agreements among them respecting the subject matter of this Agreement. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the parties hereto.

5.8 Pronouns and Plurals. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the identity of the person or persons may require.

5.9 Computation of Time. In computing any period of time pursuant to this Agreement, the day of the act, event or default from which the designated period of time begins to run shall be included, unless it is a Saturday, Sunday or a legal holiday, in which event the period shall begin to run on the next day which is not a Saturday, Sunday or legal holiday, in which event the period shall run until the end of the next day thereafter which is not a Saturday, Sunday or legal holiday.

5.10 Presumption. This Agreement or any section thereof shall not be construed against any party due to the fact that said Agreement or any section was drafted by said party.

5.11 Further Action. The parties hereto shall execute and deliver all documents, provide all information and take or forbear from all such action as may be necessary or appropriate to achieve the purposes of the Agreement.

5.12 Savings Clause. If any provision of this Agreement, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.



5.13 Disputes. The parties agree that any dispute relating to the subject matter of this Agreement shall have venue in the Supreme Court in New York County, New York. It is further agreed that in the event of a dispute, the party shall be entitled to their reasonable attorney's fees and costs, with or without suit or on appeal.

5.14 Authority. The parties hereto represent and warrant that they have authority to execute this Agreement and bind themselves to the obligations set forth herein.

5.15 Counterparts. This Agreement may be executed in two or more counterparts, in original form or by facsimile, each of which shall be deemed to be an original but all of which shall constitute one and the same agreement.


DATED by the parties hereto on the 30th day of December, 2016.

BORROWER:

BELIZE INFRASTRUCTURE FUND I, LLC
A New York limited liability company

By: 
BRENT BORLAND, Manager

BELIZE INFRASTRUCTURE FUND I, LLC
A New York limited liability company

By: 
VANCE THINH, Agent

LENDER:

COPPER LEAF, LLC
a Washington limited liability company

By: 
RODGER D. MAY, Manager

Note

Date: December 30, 2016

BORROWER: **Belize Infrastructure Fund I, LLC** (the "Corporation", "Company" or the "Borrower") PLACENCIA, BELIZE

LENDER: **Copper Leaf, LLC** (collectively "Lender")

\$5,000,000.00 US Dollar Loan

1. BORROWER'S PROMISE TO PAY

In return for a Bridge Note ("Loan") in the amount of US \$5,000,000.00 made on or before March 31, 2017, Borrower promises to pay US \$5,000,000.00 (the "Principal"), plus interest and fees, to the order of the Lender, under on the Maturity Date (defined below) pursuant the terms and conditions herein. All dollar amounts referred to herein are in US dollars.

2. INTEREST

Interest will be charged on unpaid principal until the full amount of principal has been paid. The Borrower will pay 15.00% per annum compounded monthly from the Funding Date up until to January 1, 2019.

3. TERM

The Loan will have a term of twenty-four (24) months and shall be due on January 1, 2019 (the "Maturity Date").

4. PAYMENTS

Location of Payments

The Borrower will pay Principal and unpaid interest and fees when the Loan is paid (retired) at such place as the Lender requests. Borrower will pay monthly interest payments per attached repayment schedule Exhibit C due beginning April 1, 2017, and the 1st of every month thereafter. Loan fee of \$75,000.00 will be due at maturity.

Prepayment Penalty

Lender shall be paid a full year of interest if the principal balance is re-paid within the first 12 months from the date of this Note. There is no prepayment penalty after the first year from the date of this Note.

Assignment

Borrower cannot assign any of its obligations without 60 days notice to Lender and only with Lender's express written permission.

Adverse Material Change. Notify Lender in writing of any adverse material change to its business or to the Placencia International Airport Project within twenty-four (24) hours. If such an adverse material changes occurs, Lender has the right, at its sole option, to foreclose on the promissory note and demand full payment immediately.

5. SECURITY – PERSONAL GUARANTEE

The Security and it's terms for the Loan are set forth on Exhibit A. The Personal Guarantees (by the "Guarantors") are set forth on Exhibit B.

6. EQUITY RIGHTS COVERAGE

Lender shall receive five percent (5.00%) non-diluted equity in the form of warrants in Placencia International Airport Project priced at \$0.01 per warrant. Lender shall receive one percent (1.00%) non-diluted equity in the form of warrants in The Placencia Marina Project priced at \$0.01 per warrant.

7. FULL DISCHARGE

The Guarantors shall be entitled to a full release of the Personal Guarantee and Collateral upon full payment of principal and interest described hereunder

8. BORROWER'S FAILURE TO PAY AS REQUIRED

The Company acknowledges the Investor shall have the right to select a "Lender's Representative". The foregoing provisions may only be waived by the Lender. The Lender's Representative will make all decisions relating to the Note and the Collateral in the event of default.

a. Default

If the Borrower does not satisfy the amounts due on the Loan on the Maturity Date, the Borrower will be in default and interest will accrue at a rate of 20% % per annum plus a Fifty Thousand and 00/100 Dollar (\$50,000.00) penalty with interest accruing from the date of default until the outstanding Loan balance and unpaid interest are satisfied. In addition, all actual out-of-pocket costs of the Lender in connection with enforcing the obligations hereunder after default (including any costs incurred by Borrower's failure to cooperate in the remedy) shall be added to the principal amount owing under this Note, and shall be considered as additional principal due until paid.

b. Notice of Default

If the Borrower is in default, the Lender (or Lender's Representative) shall send the Borrower a 30 day written notice (the "Cure Notice") telling the Borrower that if it does not pay the current outstanding amounts of Principal and interest due, the Lender the Lender may pursue its rights to sell the Security pursuant to the process set forth below.

c. Sale of Collateral Property

Upon a default and 30 days after Lender's Cure Notice, Lender (Lender's Representative) and Borrower shall work together to sell the collateral described in the Real Estate Pledge and Security Agreement attached as Exhibit A, the terms of which are incorporated herein by this reference. In such instance, the Lender shall have the following options:

- i. Lender shall sell the property at the current fair market value defined as average sale price of comparable properties over the preceding 24 month period, and Lender shall have the right to compel Borrower to cooperate in the sale and execute such documents as are necessary for the sale to be effective. Upon closing, Lender shall receive any outstanding Principal and unpaid interest. Borrower shall receive the balance of any remaining amounts collected above the outstanding Principal and interest due Lender. All costs of sale shall be charged to the Borrower.
- ii. In the event the sale price is less than the total amount owed to Lender, then Borrower



shall be obligated to cover the difference between the sale amount and the amount owed per the Personal Guarantee attached as Exhibit B below

- iii. Lender hereby acknowledges and understands that the security being pledged may not be highly liquid and may require a significant period of time to sell given seasonal real estate market conditions.

9. OBLIGATIONS OF PERSONS UNDER THIS LOAN

The Guarantors of this Loan are also obligated to the terms and conditions of this Note. Any person who takes over these obligations, including the obligations of a guarantor, surety or endorser of this Loan, is also obligated to keep all of the promises made in this Loan. The Lender may enforce its rights under this Loan against each Guarantor individually or against all Guarantors together after it has exhausted all the required remedies against the Borrower as required in above and in Exhibit A annexed hereto.

10. ACCELERATION

If the Borrower is in default Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is delivered within which Borrower must pay all sums due under this Loan. If Borrower fails to pay these sums prior to the expiration of this period, Lender may accelerate without further notice or demand on Borrower.

11. APPLICABLE LAW

This Loan shall deemed to be made in and governed by the laws of the State of New York (regardless of the laws that might otherwise govern under applicable principles of conflicts of law) as to all matters, including but not limited to matters of validity, construction, effect, performance and remedies; provided that it shall be enforceable in the United States as well. The parties to this agreement consent to the exclusive venue and jurisdiction of the courts located in the county of New York, New York where applicable at lender's discretion.



BORROWER:

Belize Infrastructure Fund I, LLC

BY: its Manager

By: Brent Borland



EXHIBIT A

REAL ESTATE PLEDGE AND SECURITY AGREEMENT

Party A (Pledgor): Mayan Lagoon Estates, LTD.

Party B (Pledgee): Copper Leaf, LLC

I. General

Party A uses the real estate property listed in the following table to establish a pledge as guarantee on the performance of its obligations to repay the loan from Party B.

II. Description of the Real Estate Property

Location: Placencia, Stann Creek District, Belize

Owner: Mayan Lagoon Estates, LTD.

Term of the pledge: 24 months or until repaid

Description: See "List of Pledged Property" attached hereto for details

Value of the pledged property: \$10,000,000.00

III. Rights and Responsibilities

1. The property pledged hereunder will be occupied and managed by Party A. Party A must maintain such property in sound condition during the period of its occupation. Party B shall have the right to inspect such property at any time.

2. Prior to obtaining Party B's written consent, Party A shall not transfer or encumber in any way this pledged property. Pledgor shall not permit any mortgages or liens to attach to the pledged property until the loan is repaid in its entirety. If Pledgor elects to sell the pledged property, Party B may require that the proceeds must be paid first to the satisfaction of the entire remaining obligation under the Note, with any unpaid balance paid off concurrently by Pledgor, unless otherwise specifically agreed to in writing by Pledgee.

3. If there is any damage to this pledged property (except natural wear and tear), Party A must immediately notify Party B of the damage situation and take all measures possible to prevent the spread of loss. If the value of this pledged property deteriorates so much as a result of Party A's negligence that it cannot be used, or is insufficient, as a guarantee for the performance of its loan repayment obligations, Party A shall have the responsibility to provide a new guarantee, or to increase the guarantee, in order to make up for the insufficiency.

4. If the Borrower fails to repay the Loan in accordance with this Agreement, Party B shall have the right to dispose of the pledged property per the terms of the Note above. Borrower has the right to substitute similar properties with equal or greater value as collateral. If the Pledgor fails to repay the loan in accordance with Note Agreement above to which this Pledge is attached and is a part, Party B shall have the right to dispose of the pledged property per the terms of the Note above.

5. If, due to Force Majeure, the pledged property is completely or partially lost or damaged, or



their value is decreased, Party A must promptly notify all the parties involved, and immediately substitute other equivalent collateral. In no event shall such Force Majeure reduce, excuse or limit, Party A's responsibility to repay the loan.

V. Resolution of Dispute

Any dispute in connection with the performance of this contract must first be resolved through consultation between the parties hereto; if such consultation fails, the parties hereto may settle the dispute under the Laws of New York at Lender's discretion.

Party A (signature):



Brent Borland – Director
Mayan Lagoon Estates, LTD.



Marco Caruso - Director
Mayan Lagoon Estates, LTD.

Address:

The Placencia Hotel. Placencia, Stann Creek District, Belize, C.A.

Legal Representatives: Mayan Lagoon Estates, LTD

Party B (signature):



Legal Representative: Lender

Address:

Date of execution:



LIST OF PLEDGED PROPERTIES

Pledgee	Lender		
Pledgor	Mayan Lagoon Estates, LTD		
Location of Pledged Properties	The Placencia Residences Project, Placencia, Stann Creek District, Belize		
Ownership Title	Held in escrow with Filler Rodriguez, LLP		
Term of the Pledge	24 months or until repaid		
Land Use Type	Residential	X	Purpose of Land Use N/A
Description of the Twelve Properties			
<p>Four Single Family Home Properties: Placencia North Block 36 Parcel 2169 Known as Lot 48 of the subdivision and with horizontal improvements therein and an approx. 2400 square foot home. Placencia North Block 36 Parcel 2169 Known as Lot 17 of the subdivision and with horizontal improvements therein and an approx. 5000 square foot home. North Block 36 Parcel 2169 Known as Lot 31 of the subdivision and with horizontal improvements therein and an approx. 10,000 square foot home. North Block 36 Parcel 2169 Known as Lot 58 of the subdivision and with horizontal improvements therein and an approx. 3000 square foot home.</p> <p>Six Improved Single Family Home Lots: Placencia North Block 36 Parcel 2169 Known as Lot 83, Lot 82, Lot 81, Lot 32, Lot 33, Lot 34 of the subdivision with horizontal improvements therein.</p>			
Total Pledged Value: \$10,000,000.00			

EXHIBIT B

PERSONAL GUARANTEE

We, Brent Borland and Marco Caruso, jointly and severally, hereby agree to personally guarantee for Belize assets only (including but not limited to the Placencia International Airport, Placencia Marina, the Placencia Hotel & Residences, the Placencia Estates & Golf Course, Rendezvous Island and the Borluso Grande Casino), the above for any deficit remaining on the outstanding obligation, after Lender has fully exercised and completely exhausted its default remedies under Section 7(C) of the Note; provided that if Borrower prevents Lender from exercising its remedies, or fails to cooperate with Lender as required in Section 7(C), or the Collateral under the Real Estate Pledge and Security Agreement is impaired, the undersigned individuals shall be jointly and severally liable and responsible for the entire outstanding obligation.



INDIVIDUALLY: Brent Borland

Address:

The Placencia Hotel

Placencia, Stann Creek District, Belize, C.A.

And:

79 Madison Avenue, 2nd Floor

New York NY 10016



INDIVIDUALLY: Marco Caruso

Address:

The Placencia Hotel

Placencia, Stann Creek District, Belize, C.A.

And:

79 Madison Avenue, 2nd Floor

New York NY 10016



Exhibit C



December 15, 2016

Rodger May
 Gary Danklefsen
 Copper Leaf
 Sent Via Email: gary.danklefsen@comre.com

RE: Due Diligence Request Response

Dear Gentlemen:

The following is an outline of our response to your due diligence requests from the \$5 million Bridge Loan term sheet executed on Monday December 12, 2017.

- **Question 1: Provide understanding of how the assets are held**
 - Response: The borrower (Borland Capital Group) executes a Note and Security & Pledge Agreement providing certain units (deeds) of real estate as collateral for your loan. Titles to the units (the deeds) are held in escrow with Filler Rodriguez, LLP (our law firm) as escrow agent under the terms of the Note and Security & Pledge Agreement. The titles are held until the borrower fully satisfies all payments of principal and interest to you as the lender. Upon full satisfaction, the titles are released back to the borrower.
- **Question 2: Why held in Florida escrow account?**
 - Response: The security is held in a Florida escrow account to insure that you as a US Lender do not have to litigate in Belize in the event of default. This was designed to further protect the lender. The borrower has utilized this structure with the Note and Security & Pledge Agreement as it has been well received by lenders. .
- **Question 3: How sale of escrow assets will work in worst case scenario?**
 - Response: Upon Borrower default under the Note and Security & Pledge Agreement, Filler Rodriguez as escrow agent will put the assets up for sale. As closings occur, 100% of the funds will come into the Filler Rodriguez escrow account (holding the title in escrow was designed to protect the lender). The funds will be distributed first to you as the borrower until 100% of the principal and interest is paid. Upon full lender satisfaction, any remaining proceeds will be sent to the borrower.

FILLER RODRIGUEZ, LLP
 1688 Meridian Ave., Suite 900
 Miami Beach, Florida 33139
 dfiller@fillerrodriguez.com

T: 305.672.5007
 F: 305.672.0470
 C: 305.788.8335

- **Question 4: How second backstop of assets will work (450m Belize assets) in case of escrow shortfall?**
 - Response: This structure provides 2 to 1 coverage worth of collateral on your loan (\$10 million worth of collateral value covering the \$5 million loan). By way of the borrower pledging the additional assets of approximately \$450 million in total value, this will insure that they will provide additional real estate to sell on your behalf as the lender. The sale of the additional real estate will go through the same procedures as explained in Question 3 above. The personal guarantee (covering Belize assets only) by the owners of The Placencia Group is additional recourse for the lender to satisfy the obligations of the borrower under the Note and Security & Pledge Agreement.
- **Question 5: Do we get a deed?**
 - Response: The deeds are not placed in the name of the lender. The deeds remain titled in the name of the entities that own the property being pledged. The deeds are placed into escrow in the name of the borrower as this avoids the following fees and taxes: (i) a 2% lien registration fee; (ii) a 5% title transfer fee, and (iii) a 12.5% General Sales Tax. This is the most efficient and cost effective solution to provide security and avoid the above fees and taxes.
- **Question 6: History of land use in Belize and government control and condemnation, taxes, infrastructure costs? Land use issues such as wetlands, environmental, native species**
 - Response: This question is not applicable to the projects or the collateral assets in question as all TPG projects have received Environmental Compliance Plans and Environmental Impact Assessments from the Department of Environment and the Land Department prior to construction. The assets provided by the borrower are subdivided, separated titled and in some instances improvements (homes, hotels, condos) have been constructed on them.
- **Question 7: What is the form of government, poverty level, sustainability etc.**
 - Excerpt from The World Bank Report of Belize: A small, upper-middle income country with a population of approximately 350,000 and a per capita income of US\$ 6,130 (current, Atlas method) in 2015, Belize has undergone significant economic transformation over the last two decades, mainly due to the growing tourism industry and to the commercial oil discovery in 2005. Tourism and Agriculture are the main sources of income and employment. Tourism employs 28 percent of the population and represents 21 percent of GDP while agriculture employs 10 percent of the labor force and contributes 13 percent of GDP, mostly through exports of sugar and tropical fruits. The country also hosts the largest living barrier reef in the world and is a paradise for divers and marine wildlife. Its small-size economy, high dependence on exports and imports, and exposure to natural disasters make the country particularly vulnerable to terms-of-trade shocks and volatility. Real GDP growth slowed from 4.1 percent in 2014 to 0.9 in 2015, amid lower oil exports and decreased agricultural and fishery outputs. On the upside, the US economic expansion has boosted the tourism sector.

- *Geography and Affiliations:* Belize (formerly British Honduras) was a British Colony before attaining independence on the 21st September 1981. Belize is a full participating member of CARICOM (Caribbean Community), Sistema de la Integración Centroamericana, the Organization of American States and the United Nations. Belize is also a member of the Commonwealth of Nations.
 - *Form of Government:* Belize maintains a peaceful and stable democracy. It is a constitutional monarchy with two legislative houses (Senate [12 members]; House of Representative [31 members]). The Head of State is British Queen Elizabeth II represented by Governor General, Colville Young. The political system is based on the British Westminster Model and there are two principal political parties, namely, the People's United Party (PUP) and the United Democratic Party (UDP). Governments serve for a tenure of five years.
 - *Legal System:* Belize's legal system is a direct offspring of the English common law system. The Supreme Court is the high court of first instance with appeals lying to the itinerant Court of Appeal comprising of three judges. Appeals thereafter lie to the Caribbean Court of Justice based in Trinidad. Up until July 2010, Belize's final appellate court was the Judicial Committee of the Privy Council which sits in London, England.
 - *Sustainability:* Belize's Department of Environment protects development on land and over water throughout the country of Belize.
 - *Poverty Levels:* From the analysis of the data of the Belize National Survey, 25.3 percent of households in Belize, and 33.0 percent of individuals were poor on the basis of their expenditure on food and non-food items. Moreover, 9.6 percent of households and 13.4 percent of individuals were considered to be extremely poor or indigent: their level of expenditure was not high enough to enable them to satisfy their basic food requirements. The level of poverty among the youth and elderly was 31.6 percent and 27.6 percent respectively, and 32.8 percent and 33.1 percent for male and female heads of households.
- **Question 8: What could threaten our interest and historical regime issues on the Island;**
 - Per the response above, given the Common Law underpinnings in Belize, your interests as a lender are protected by the processes set forth above, and further, there are no nationalization issues in the country of Belize such as in Venezuela.

We have provided these responses as a courtesy and nothing set forth herein can be construed as providing you with legal advice as you must seek your own legal advice from an attorney of your choosing. The information regarding Belize in questions 6-8 are informational in general and have been pulled from a variety of websites and the borrower. Please feel free to reach out to us with any additional requests.

Sincerely,



David Filler

Exhibit E

MODIFICATION AGREEMENT

THIS MODIFICATION AGREEMENT (this "**Agreement**"), dated as of the date set forth below and made effective June 6, 2017 between Belize Infrastructure Fund I, LLC, ("**Borrower**"), and Copper Leaf, LLC ("**Lender**").

RECITALS

- A. On or about December 30, 2016, Borrower executed a Note with Lender for the principal sum of Five Million and 00/100 Dollars (\$5,000,000.00), U.S. funds (the "**Loan**"). The loan was to be used for commercial purposes only.
- B. Borrower further executed a Real Estate Pledge and Security Agreement. The Real Estate Pledge and Security Agreement are collectively referred to herein as the "**Loan Documents**."
- C. The original Maturity Date of the Note is January 1, 2019.
- D. Borrower has requested to increase principal the loan amount to Five Million and Five Hundred Thousand and 00/100 Dollars (\$5,500,000.00 USD). Lender agrees to Borrower's request to increase the loan amount and modify the Loan Documents accordingly. Per previous discussions, Lender also agrees to fund an additional Two Million and Five Hundred Thousand and 00/100 Dollars (\$2,500,00.00 USD).

Now, therefore, in and for the mutual covenants set forth herein, the representations and covenants by Borrower, and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

1. INCREASE OF PRINCIPAL AMOUNT. The parties agree that the principal loan amount will increase to Five Million and Five Hundred Thousand and 00/100 Dollars (\$5,500,000.00 USD). Additionally, the parties also agree that an additional Two Million and Five Hundred Thousand and 00/100 Dollars (\$2,500,00.00 USD) will be available for funding if requested by Borrower.

2. ADDITIONAL COLLATERAL. The parties agree that Borrower will add what is referred to as the "Placencia Panther Golf Course as additional collateral as security for the Note. A copy of the appraisal with a full legal description is attached to the revised Real Estate Pledge and Security Agreement and is incorporated herein.

3. EFFECT OF REMAINING PROVISIONS. Except as set forth herein, the remaining terms of the Loan Documents do not change. Borrower agrees to sign the necessary documents to modify the Loan Documents as necessary to reflect this modification.

4. GENERAL PROVISIONS

4.1 Attorneys' Fees and Collection Costs. Borrower shall be responsible for paying all of Lender's attorneys' fees and collection costs in the event Borrower is in default hereunder, including, without limitation, any fees incurred by Lender to assert or protect Lender's rights in any bankruptcy, insolvency, receivership, or similar proceeding.

4.2 Notices. All notices and demands relating hereto shall be in writing and shall be deemed to have

been given (a) upon receipt, when delivered by hand or by electronic facsimile transmission (with confirmation of transmission), or (b) upon actual delivery by overnight courier, or (c) upon receipt, after mailing by regular first-class mail or certified mail return receipt requested, addressed to each party at the addresses set forth at the beginning of this Agreement, or at any other address designated by notice served in accordance herewith.

4.3 Entire Agreement. This Agreement, the Loan Documents, and any exhibits attached hereto and thereto contain the entire understanding between Borrower and Lender with respect to the subject matter hereof, and supersedes any prior understandings and agreements between Borrower and Lender regarding the subject matter of this Agreement and the Loan Documents.

4.4 Binding Effect. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the parties hereto.

4.5 Non-Exercise. The non-exercise by Lender of any of its rights hereunder in any instance shall not constitute a waiver thereof in that or any subsequent instance. No course of dealing and no delay on the part of Lender in exercising any right, power, or remedy shall operate as a waiver thereof or otherwise prejudice Lender's rights, powers, or remedies. No right, power, or remedy conferred by this Agreement shall be exclusive of any other right, power, or remedy referred to herein or hereafter accessible at law, in equity, by statute, or otherwise.

4.6 Invalidity. If any provision of this Agreement is found by a court of competent jurisdiction to be invalid or unenforceable as written, then the parties intend and desire that such provision be enforceable to the full extent permitted by law, and that the invalidity or unenforceability of such provision shall not affect the validity or enforceability of the remainder of this Agreement.

4.7 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard for the principles of conflicts of law. Borrower submits irrevocably to the jurisdiction and venue of any state or federal court in New York County, New York selected by Lender in any action to enforce, interpret, or defend this Note and agrees irrevocably not to assert in any such action the doctrine of *forum nonconveniens*.

4.8 Amendments. The terms and conditions of this Agreement shall not be waived, altered, modified, amended, supplemented, or terminated in any manner whatsoever except by a written instrument duly executed by both Borrower and Lender.

4.9 Time is of the Essence. Time is of the essence for the performance of all obligations under this Agreement.

4.10 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original but all of which shall constitute one and the same agreement.

DATED by the parties hereto on the 12th day of June, 2017.

BORROWER: BELIZE INFRASTRUCTRE FUND I, LLC LENDER: COPPER LEAF, LLC

By:

Name: Brent Borland



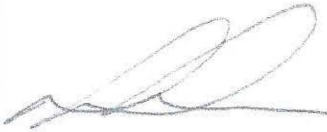
By:

Name: Rodger May



By

Name: Marco Caruso





U.S. Department of Justice

*United States Attorney
Southern District of New York*

*The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007*

July 8, 2020

BY ECF

The Honorable Katherine Polk Failla
United States District Judge
Southern District of New York
40 Foley Square
New York, New York 10007

Re: *United States v. Brent Borland*, 18 Cr. 487 (KPF)

Dear Judge Failla:

The Government writes in response to defendant Brent Borland's June 16, 2020 letter ("Suppl. Ltr.") regarding the loss calculation, pursuant to U.S.S.G. § 2B1.1, in the Probation Department's Presentence Investigation Report (the "PSR") (Dkt. 71). In three submissions to the Court (Dkt. 47, 56, and 71), Borland has not identified any legal authority supporting his argument that, pursuant to U.S.S.G. § 2B1.1, Application Note 3(E)(ii) (the "Credits Against Loss provision"), the purported value of certain properties should reduce his agreed-upon foreseeable loss amount of \$21.9 million. The properties in question include properties that Borland did not identify to the vast majority of his 41 victims and remain mired in legal battles over ownership. It is undisputed that not one of those properties has ever been sold to compensate Borland's victims for the losses they sustained as a result of Borland's fraud. As discussed below and in the Government's December 6, 2019 submission, the weight of authority rejects Borland's unsupported interpretation and application of the Credits Against Loss provision. *See* Dkt. 55 (12/6/2019 Gov't Sentencing Letter) at Section I.A. (collecting cases)). So, too, should this Court.

In his first submission, Borland urged the Court to hold that the Credits Against Loss provision means that "collateral (pledged) or otherwise provided" means "merely 'promised' collateral." Dkt. 47 at 10. In his second submission, Borland advanced that argument again, stating—without citation to any legal authority—that the provision's reference to "pledged" means 'promised.'" Dkt. 56 (12/20/2019 Def. Ltr.) at 5.¹ In his third submission, Borland simply

¹ In his second submission, Borland also asked the Court to apply the rule of lenity to adopt his broad interpretation of "collateral pledged or otherwise provided," arguing that "[n]o case law has defined the use of the term collateral in the Guidelines." Dkt. 56 (12/20/2019 Def. Ltr.) at 10-11. That is incorrect, as the Second Circuit defined "collateral" in *United States v. Turk*, 626 F.3d 743 (2d Cir. 2010), when evaluating the same Credits Against Loss provision: "Collateral is 'property subject to a security interest.'" *Id.* at 749 (citing Black's Law Dictionary (9th ed. 2009)). In addition, courts have consistently applied or interpreted the Credits Against Loss provision without invoking the rule of lenity. *See* Dkt. 55 (12/6/2019 Gov't Sentencing Letter) at 5-6 (collecting

The Honorable Katherine Polk Failla
July 8, 2020

Page 2

asserts that “the collateral pledged or otherwise provided in the loan agreements executed by” Borland “offset the loss amount under the guidelines.” Dkt. 71 at 10. But his argument is without legal support. Here, there is no dispute that (1) but for one victim who received partial payment after suing Borland in this District, none of the victims have been repaid to date; (2) no victim has a secured interest or property right that could be asserted in Belize or the United States that would assist them in acquiring any property—specifically listed or as a “substitute asset”—to recover their losses; and (3) Borland failed to release any property to any victim—either before he was charged in this case or sued by the United States Securities and Exchange Commission or at any time afterward—as compensation for their losses. Borland offers no legal authority for the proposition that, under these facts the Credits Against Loss provision should reduce his intended or actual loss amount.

Accordingly, and for the reasons described below, Borland’s loss amount is the full principal of the loans he fraudulently obtained, which is \$21.9 million.

I. Borland’s Intended Loss is in Excess of \$21.9 Million.

In a footnote to his Supplemental Letter, and in his original Reply Letter (Dkt. 56), Borland advances the argument that Application Note 3(E)(ii) should be applied to his intended loss amount. *See* Suppl. Ltr. at 1 n.1; Dkt. 56 at 2-3. That is not the law in this Circuit.

Controlling Second Circuit precedent holds that “although Application Note 3(E)(ii) ‘accurately describes the calculation of *actual* loss,’ the note ‘cannot be mechanically followed where *intended* loss is higher,’ since the larger intended amount is a better ‘measure for the defendant’s culpability’ than is the actual loss.” *United States v. Lacey*, 699 F.3d 710, 720 (2d Cir. 2012) (agreeing with “several of [its] sister Circuits”) (citing *United States v. McCoy*, 508 F.3d 74, 79 (1st Cir. 2007); *United States v. McCormac*, 309 F.3d 623, 628–29 (9th Cir. 2002); and *United States v. Williams*, 292 F.3d 681, 686 (10th Cir. 2002)). “Thus, a sentencing court *need not apply* the fair market value as an offset in calculations of intended loss; it need only offset the loss amount by however much it finds the defendant did not intend loss.” *Id.*

In *Lacey*, the defendants and their co-conspirators operated a mortgage fraud scheme in which they identified distressed properties, often already in the first stages of foreclosure, and resold them for a profit. The shell company purchased the property at a favorable price in a “short sale” from a financially distressed homeowner by negotiating with the homeowner’s mortgage lender. *Id.* at 713. The defendants then resold the property at a higher price to a “straw buyer” who had no intention of actually living at the property or making all of the loan payments, and

cases). The Credits Against Loss provision is not ambiguous, and thus does not justify invocation of the rule of lenity. *See United States v. Simpson*, 319 F.3d 81, 87 (2d Cir. 2002) (declining to apply the rule of lenity to a Guideline provision, holding that “in order for the rule of lenity to apply to a criminal law—or in this case, to a Guideline—the provision of law at issue must be ambiguous.”); *see also Muscarello v. United States*, 524 U.S. 125, 138–39 (1998) (the rule of lenity applies when “there is a grievous ambiguity or uncertainty in the statute”) (citations and internal quotation marks omitted).

whose loans were based on false mortgage applications and documentation in order to make it more likely that the loans would be approved. *Id.* At sentencing, the defendants asked the district court to value each property according to the (high) appraisals submitted to the lender banks when the straw buyers purchased the properties and then obtained the mortgages, and to credit those values against the loss amount. *Id.* at 719. The district court rejected that approach, and instead calculated the intended loss amount based on the difference between the (low) short-sale price and the fraudulently-obtained (high) loan amount in estimating the defendants' intended loss. *Id.* at 719-20. The Second Circuit affirmed this method. *Id.* In doing so, it held: "In the case of a loan secured by an interest in real property, the sentencing court may—given appropriate evidence—draw the inference that the intended loss should include an offset for the value of the property. But that is because it would be unlikely for even a nefarious defendant to intend the improbable result that real property be destroyed or otherwise rendered valueless." *Id.* (emphasis added). Thus, in *Lacey*, where the victim banks owned the real property as a result of the straw buyers' default—and, therefore, "it would be unlikely for even a nefarious defendant to intend the improbable result that real property be destroyed or otherwise rendered valueless"—it was reasonable for the district court to calculate the intended loss amount by subtracting the short-sale price (finding that it was a more reliable valuation of the property held by the victim lenders) from the fraudulently-obtained loan amounts. *Id.*

That is not the case here, where there is no dispute that the victim investors did not own any property as a result Borland's default—neither the few parcels of land that Borland actually listed in the investment materials submitted to each victim nor the unidentified collection of properties (whose ownership, he concedes, is in dispute) that he now argues served as "substitute assets" for the fraudulently listed single parcel. Even Borland does not argue—because he cannot—that he did not intend that his victims lose the \$21.9 million that he fraudulently induced them to invest into his scheme. Accordingly, this Court "may presume that the defendant intended the victims to lose the entire face value of the claim." *United States v. McFadden*, 689 F. App'x 76, 80 (2d Cir. 2017) (quoting *United States v. Confredo*, 528 F.3d 143, 152 (2d Cir. 2008)); *United States v. Jean*, 647 F. App'x 1, 3 (2d Cir. 2016) (same). As set forth in the Government's opening opposition, this is particularly true given that: (a) Borland solicited new investments, including by signing worthless personal guarantees, while concealing from investors that (i) prior loans were in default and had not been repaid (notwithstanding his "personal guarantee"), (ii) no property had been sold to make those investors whole, and (iii) he used the same property to "secure" multiple investors' Notes, all while pledging that he had not done so; and (b) absent amounts recovered by a single victim after litigation, not a single investor has been repaid and no property has been sold to make those investors whole. See Dkt. 55 (12/6/2019 Gov't Sentencing Letter) at 6; Dkt. 47 (10/25/2019 Def. Ltr.), Ex. B.

Borland's reliance on *United States v. Calkins*, 193 F. App'x 417 (6th Cir. 2006), is similarly misplaced. In *Calkins*, the Sixth Circuit recognized that under the "intended loss theory a court may decline to reduce the intended loss by the collateral pledged where the district court finds that the defendant intended to deprive the lender of its collateral. Such a finding has been supported where the defendant conceals the collateral." 193 F. Appx. at 421. Tellingly, *Calkins* focused on the intent of the defendant rather than the existence of the collateral in concluding that, because there was "no way in which [the defendant] could conceal the collateral," the district court

erred in finding that the defendant “intended to permanently deprive the banks of the collateral.” *Id.* at 421. In *Calkins*, unlike in this case, the victim lenders (banks) held a “first security interest” in the condominium units that the court held to be collateral. *Id.* at 419–22. And the court expressly rejected the defendant’s argument that “previously unsecured personal payments or payments from third parties should count as collateral,” *id.* at 422, just as the Court, here, should reject Borland’s arguments that (1) the unsecured listed property and (2) the unsecured assortment of “substitute assets” that Borland did not identify to investors should count as collateral.

Accordingly, the applicable intended loss amount is greater than \$21.9 million, and certainly at least \$9.5 million, pursuant to U.S.S.G. 2B1.1(b)(1)(K).

A. The Credits Against Loss Provision Does Not Apply Because No Collateral Has Been “Pledged” or “Otherwise Provided,” and the Actual Loss Amount is \$21.9 Million.

In his Supplemental Letter, Borland concedes—as he must—that he never provided his victims with an ownership interest in any collateral. *See* Dkt. 71 (Def. Suppl. Ltr.) at 2 (arguing that the “loan agreements” “identified . . . real property . . . as collateral for the loan, and *offered the investors a mechanism for liquidating or obtaining an ownership interest in the collateral in case the loan went into default*”) (emphasis added). This is fatal to Borland’s argument. In these circumstances, Borland concedes that there is, at best, only “a mechanism” to obtain liquidation or an ownership interest. *Id.* That is a far cry from the type of “collateral pledged or otherwise provided” that has been held to warrant application of the Credits Against Loss provision, such as in mortgage fraud cases, where victims held secured property interests in the collateral at issue. *See, e.g., United States v. Nawaz*, 555 F. Appx. 19, 25-26 (2d Cir. 2014); *United States v. Parish*, 565 F.3d 528, 535 (8th Cir. 2009). Where, as here, the victims’ interests were *not* secured by real property interests, courts have rejected the application of the credit-against-loss provision in Application Note 3(E)(ii). *See* Dkt. 55 (12/6/2019 Gov’t Sentencing Letter) at 5 (collecting cases). Borland’s argument boils down to a contention that the value of any property he owns, even property he never used to secure victims’ investments or even identified to investors, can be used to reduce his loss amount to zero. This nonsensical argument is without support and should be rejected.

Notwithstanding this controlling precedent, Borland advances essentially three main arguments in support of his Credits Against Loss argument: first, that the Government is urging too narrow an interpretation of Application Note 3(E)(ii); second, that he “pledged or otherwise provided” specific property listed in the fraudulent investment contracts he provided to his victims; and, third, the “substitute assets” unidentified in those fraudulent investment contracts are now identified and should be credited against the loss because the victims could have (but did not) seek to obtain them. The Court should reject each of these arguments.

A. Controlling Precedent Defining “Collateral Pledged Or Otherwise Provided” Does Not Support Borland’s Claim.

Contrary to Borland’s suggestion, the Government does *not* “claim[] that . . . ‘pledge or otherwise provide’ [in Application Note 3(E)(ii)] necessarily means giving the lender a recorded

security interest in the collateral, such as a lien.” See Suppl. Ltr at 2. Instead, the Government advances the non-controversial argument, based on controlling precedent, that because “[c]ollateral is ‘property subject to a security interest,’ . . . and the victims here held no such interest,” Application Note 3(E)(ii) does not apply here. See Dkt. 55 at 7-8 (citing *United States v. Turk*, 626 F.3d 743, 749 (2d Cir. 2010)). In *Turk*, which is more fully described in the Government’s December 6, 2019 Letter (see Dkt. 55 at 8-9), the Second Circuit evaluated the defendant’s argument that, pursuant to Application Note 3(E)(ii), the loss amount should have been treated as zero because the properties in which her victims thought they were investing arguably had some market value when her fraud was discovered. 627 F.3d at 748. The Second Circuit rejected this argument, stating:

To begin with, the buildings arguably were not collateral at all because the victims’ mortgages were never recorded. Under New York law, an unrecorded mortgage on a given piece of real property is void as against any lien on the same real property that is recorded in good faith, such as those the banks held here. See N.Y. Real Prop. Law § 291; see also *Hudson Valley Fed. Credit Union v. N.Y. State Dep’t of Taxation and Fin.*, 28 Misc.3d 1001, 906 N.Y.S.2d 680, 686 (N.Y.Sup.Ct.2010) (discussing effects of failure to record a mortgage). Collateral is “property subject to a security interest,” BLACK’S LAW DICTIONARY (9th ed.2009) (citing U.C.C. § 9–102(a)(12)), and the victims here held no such interest.

Id. at 748–49 (2d Cir. 2010). The same is true here. Regardless of whether the first part of the statement—“the buildings arguable were not collateral at all because the victims’ mortgages were never recorded”—is framed as *dicta* (as Borland would argue) or part of the Second Circuit’s holding is of no moment. As the Second Circuit held in *Turk*, “[c]ollateral is ‘property subject to a security interest,’” and the victims in *Turk*—like the victims here—held no such interest.

In support of his contrary argument that “there is no legal requirement that real property must be recorded or secured to serve as the collateral envisioned in Application Note 3(E),” and that the appropriate Guidelines inquiry is “whether the collateral (1) exists, (2) was pledged (or otherwise provided), and (3) continues to maintain a value that the borrower can obtain by selling it,” Borland fails to cite to a single controlling opinion. See Suppl. Ltr. at 3. Instead, Borland points to *United States v. Kraus*, 656 F. App’x 736 (6th Cir. 2016), for the proposition that even “the value of pledged farm equipment” suffices as collateral that can be credited. Def. Ltr. at 3; Dkt. 56 (12/20/2019 Def. Ltr.) at 3-4. But *Kraus* undermines Borland’s argument and instead supports the principle, consistent with the Second Circuit’s holding in *Turk*, that in order for collateral to be credited against loss, it must be property subject to a security interest. See *Turk*, 626 F.3d at 749.

In *Kraus*, as discussed in further detail below, the farm equipment and other property that was credited against the loss amount was already *in the Government’s possession* at the time of sentencing because the Government held a secured interest in it, which is why there was no dispute that the equipment (and lands) could be properly credited against loss. 656 F. App’x at 740-42.

The defendant, Kraus, pled guilty to making a materially false, fictitious, or fraudulent statement or representation to the United States Department of Agriculture, Farm Services Agency (“USDA–FSA”) in connection with the agency’s administration of the Direct Loan Program, in violation of 18 U.S.C. § 1001. *Id.* at 737. In connection with his application for a loan from the Direct Loan Program to support the operation of a vineyard on property in Ohio, Kraus was required to execute a federal form FSA-2028, which was “a security agreement that granted USDA-FSA a security interest in all crops harvested from the vineyard, farm machinery and equipment, wine making equipment and supplies, bulk and bottled wine, the proceeds thereof, as well as collateral obtained after the date of the agreement.” *See United States v. Kraus*, 14 Cr. 256 (JZ) (N.D. Ohio) (Dkt. 25-1 (copy of search warrant affidavit for Kraus’s property) at 5. It was therefore undisputed that, under the terms of the USDA-FSA loans to Kraus, the USDA-FSA possessed a security interest in his grapes, wine, equipment, and real estate. Brief of the United States, *United States v. Kraus*, No. 15-3725 (2015 WL 5306423). Likewise, it was undisputed that the USDA-FSA held liens on the real estate at issue. *Id.* at 11. A copy of federal form FSA-2028 demonstrates precisely why—the form, styled as a “Security Agreement,” explicitly refers to the USDA-FSA’s security interest as a lien:

Secured Party, at its option, with or without notice as permitted by law may (a) declare the unpaid balance on the Note and any indebtedness secured by this Security Agreement immediately due and payable; (b) enter upon the premises and cultivate and harvest crops, take possession of, repair, improve, use, and operate the collateral or make equipment usable, for the purpose of protecting or preserving the collateral or *this lien*, or preparing or processing the collateral for sale, and (c) exercise any sale or other rights accorded by law.

FSA-2028 at 6, available at https://www.reginfo.gov/public/do/PRAViewIC?ref_nbr=201308-0560-002&icID=1567 (emphasis added). Thus, in *Kraus*, the dispute as to the real property and vineyard equipment at issue was not *whether* it should be credited against the loss amount, but what *value* the district court should give to it because, as the parties agreed, the Government had a secured interest in the form of a lien. *See* 656 F. App’x at 740-42.

Borland’s reliance on *Terback*—which is described in detail in the Government’s December 6, 2019 letter, Dkt. 55 at 12-13—is equally puzzling because it, too, undermines his argument. In *Terback*, the Sixth Circuit *rejected* a defendant’s argument that is analogous to Borland’s, holding that a defendant’s claim that guaranty contracts granting a victim *legal grounds* to litigate were *not* a security interest that would qualify for a credit against loss. And, as the Government previously stated, Dkt. 55 at 12-13, the court did not have occasion to decide whether approximately \$287,000 (in funds, not purported deeds or titles) that had been held in the escrow account, and which Ginnie Mae had realized after liquidation, were collateral such that they should serve as a credit under Application Note 3(E)(ii), because the Government in that case *conceded* those funds should be credited against loss (as they had already been recovered by the victim) and the parties did not contest the issue on appeal. *See* Dkt. 55 at 12 n.4. As *Terback* held, “[c]ollateral generally implies the existence of a security interest held by a creditor in property owned by a

debtor.” *Id.* (citing Black’s Law Dictionary 218 (8th ed. 2005) (defining collateral as “[p]roperty that is pledged as security against a debt; the property subject to a security interest or agricultural lien”). *Id.* Borland neither pledged nor provided any such security interest or lien to his victims, and none of the papers purportedly held in escrow have been recovered, assigned to, or in any way provided to the victims in this case (unlike in *Terback*, where the funds in escrow had already been recovered by the victim). Borland offers only:

- A “Land Certificate” for “Placencia North” “Block 36” “Parcel 2129,” which relates to lots that were fraudulently listed in multiple victims’ Notes and agreement, contrary to the representations Borland made to those victims, and which indicate that “Mayan Lagoon Estates Limited” is the proprietor of the unencumbered land, *see* Ex. A (Land Certificate dated October 18, 2005);²
- An October 28, 2017 “certified copy” of a “Deed of Conveyance,” dated September 3, 2008, regarding properties conveyed to “Placencia Estates Development LLC,” *see* Ex. B (also found at Dkt. 47 (10/25/2019 Def. Ltr.), Ex. J); and
- A “Power of Attorney,” dated October 30, 2017, from Placencia Estates Development, LLC to the law firm Filler Rodriguez regarding the firm’s appointment as an “escrow agent for purpose of transferring or disposing” certain parcels of land, which includes copies of “land certificates,” “deeds of conveyance,” and other paperwork related to various entities and properties, *see* Ex. C (also found at Dkt. 47 (10/25/2019 Def. Ltr.), Ex. E).

As described in further detail below, as Borland appears to concede, this paperwork is not “property subject to a security interest,” nor is it in any way “held” by the victims such that Borland should receive a credit against the loss amount. *See Turk*, 626 F.3d at 749.

B. The “Specific Property” Listed is Not Collateral Pledged or Otherwise Provided.

With respect to the property listed in the Real Estate Agreements Borland entered into with his victims, Borland argues that he should receive a credit against loss for the fair market value of (a) property listed in agreements with one victim, Copper Leaf LLC, and (b) property listed in agreements with approximately 40 investors. Suppl. Ltr. at 5-6. The crux of Borland’s argument is that various of these victims conducted due diligence, received letters from the purported “escrow” agent, and signed agreements with Borland in which specific property was listed to “secure” their investments. *Id.* These arguments are nonsensical. Borland’s fraud was sophisticated, and the fact that he was able to dupe his victims notwithstanding their earnest efforts—through in-person visits, lawyers, or otherwise—to ensure their investments would be protected only proves that how sophisticated Borland’s scheme was. Borland failed to disclose to his victims that (i) all of the loans made by prior investor victims had defaulted and Borland had

² Counsel for Borland provided the Government with this document, which is referenced in Borland’s most recent submission, *see* Suppl. Ltr. at 6 n.6, and in Exhibit F to Borland’s October 25, 2019 submission, *see* Dkt. 47, Ex. F (November 9, 2017 letter from Filler Rodriguez to Borland and Marco Caruso, listing “Land Certificate”).

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failed to repay them notwithstanding “specific property” listed to “secure” those loans or the “personal guarantees” Borland had provided, (ii) contrary to the promises contained in the plain language of the “Real Estate Pledge and Security Agreements,” Borland used the same property to “secure” multiple notes, none of which had been transferred, sold, or otherwise disposed of to make a single investor whole, and (ii) he was misappropriating millions of dollars of his victims’ funds for his own personal benefit.

Against this backdrop, it is utterly irrelevant if the victims had been “satisfied” by the properties that Borland and his “escrow” agent identified to them—the properties became a vehicle used to lure investors, who, to this day, have no recourse against the property. That Borland took steps in October or November 2017 (*see* Ex. C (Power of Attorney dated October 30, 2017)—well after the majority of his victims had invested, and well after Borland had already defaulted on many of their loans—to place copies of various property-related materials in the possession of an “escrow” agent is meaningless when the victims have no recourse against the property. Borland’s argument that the “deeds or land certificates for these properties were held in escrow by Florida-based attorney David Filler, who was instructed to assist the lenders in liquidating these properties in case of default,” Suppl. Ltr. 5, as proof that they were “pledged collateral” is similarly unavailing. Were this true, then Filler would have assisted Borland’s victims in liquidating the properties. He has not. Similarly, Borland’s reliance on the December 15, 2016 letter from Filler to his victim, Copper Leaf, setting forth the “mechanism” by which he argues the sale of the “escrow assets” would work in the event of default is confounding since, as Borland must concede, those procedures *were never* followed: upon Borland’s default, the “escrow” agent did not sell the assets, no funds went into the “escrow” account, and no funds were distributed to any investor. *See* Suppl. Ltr. at 7, Ex. C.³

Even the hypothetical “mechanism” or scenario for potential recovery advanced by Borland contains too much uncertainty, and does not qualify as “collateral pledged or otherwise provided” for purposes of the Credits Against Loss provision. *See, e.g., United States v. Rorke*, 15 Cr. 011 (KPF) (Dkt. 58 (5/13/2016 Sentencing Tr.) at 29-30 (declining to apply the Credits Against Loss provision when, *inter alia*, the proffered value of the intellectual property at issue relied on “many, many contingencies,” no funds had been transferred to the victims, and problems existed regarding the nature of the pledge, its validity, and priority of creditors making a claim for funds). Borland listed the same property in multiple victims’ agreements, falsely promising to his victims that they would have priority over all existing and future indebtedness and that no debt would be issued that encumbered any of the listed collateral. *See, e.g.,* Dkt. 47 (10/25/2019 Def.

³ Borland’s arguments that certain victims—Louis Cushman and Copper Leaf—*chose* not to “follow the default procedures allowing them and the escrow agent to redeem the pledged or substitute collateral prior to filing suit” are also unavailing. If the procedures were “default” and conferred a truly secured interest in the property, the victims would not have had to resort to legal action to seek recovery. Similarly, Borland would not have had to initiate a “process of securing a \$45 million master loan” for the airport project in order to “repay the short term bridge loans at issue” (*see* Suppl. Ltr. at 10) if the specific or so-called “substitute” properties were assets redeemable by the victims.

Ltr.), Ex. B (“The Note will be senior to all existing and future indebtedness of the Company (the ‘Borrower’). Neither the Company nor any Sister Company shall be permitted to issue any debt that in any way encumbers any of the Collateral. The foregoing provisions may only be waived by Investor.”). Thus, even in a hypothetical scenario in which Borland’s victims had some interest in the listed property and it was available to be sold (neither of which is true), it is unclear whose potential claim would take priority or how those funds would be disbursed, which, in addition to the litigation and pending ownership disputes, would significantly reduce any likelihood of real recovery for the victims.

Further proof that the paperwork upon which Borland relies is hardly “collateral pledged or otherwise provided” for purposes of the Credits Against Loss provision is that a group of the victims recently *purchased* (not sold) the land described in the certified copy of the Deed of Conveyance for Placencia Estates Development LLC in February 2019 for approximately \$650,000. *See* Suppl. Ltr. at 7-8. As Borland admits, that is the same land that he specifically identified to Copper Leaf as “collateral” for their investment, and which Borland argues is worth \$32.3 million.⁴ *See* Suppl. Ltr. at 8. In other words, the “certified copy” of the Deed of Conveyance that Borland argues was safely in escrow was entirely worthless to the victims. It provided no interest—secured or otherwise—at all. Thus, the specific property listed in Borland’s fraudulent investment contracts does not constitute “collateral pledged or otherwise provided.”

C. The “Substitute Assets” are Not Collateral Pledged or Otherwise Provided.

Borland’s argument that his loss amount should be reduced by the value of the so-called “substitute assets”—assets that Borland did not use to secure the investments or even identify to investors—fares no better. First, even if the “substitute assets” existed in the form that Borland proffers, and even if they were not mired in litigation over ownership disputes (which they are)—Borland *still* provides no precedent to support his argument that assets a defendant seeks to substitute for specific listed property should be credited against loss under Application Note 3(E)(ii). Second, even if those “substitute assets” *had* been identified in Borland’s fraudulent investment documents with each victim (which they were not), paperwork held in escrow provided *no* security interest to the victims. It is because they had no security interest in the property that the victims were able to freely purchase some of it from Marco Caruso. *See supra* Section II.B.

Finally, to the extent that Borland complains he had lawful ownership of the property described in the copies of various documents provided to the “escrow agent,” and that the reason why he cannot transfer those assets to the victims in this case is as a result of his arrest and the SEC action, those arguments again prove the point: the assets are out of reach of the victims, who

⁴ The Government reserves the right to challenge Borland’s valuation of the various properties he identifies in his submissions, including the appraisals that Borland proffers to argue that 1,586.13 acres of land in Belize identified to Copper Leaf and the lots contained in Block 36, Parcel 2129 (listed in multiple victims’ agreements) are valued at \$32 million and \$10 million, respectively. The “Appraisal Review” submitted by Borland for the land holdings of Placencia Estates Development LLC, *see* Dkt. 47 (10/25/2019 Def. Ltr.) at Ex. G, for example, does not detail the methodology behind the valuation and warrants further scrutiny.

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never held an interest—secured or otherwise—in them, and as such, cannot be credited against loss. This is *not* the scenario envisioned by the Credits Against Loss provision—that a defendant may reduce his culpability by crediting against the loss amount property that victims have no right to, no access to, and, even under the scenario proffered by Borland, would have to wait many years until litigated disputes are resolved and ownership rights are ascertained before they have a hope (and not a certainty) of recovery.

* * *

More than six years after the first of his series of fraudulent loans defaulted, no victim has been compensated absent litigation. No property—specifically identified, substitute asset, or otherwise—has been sold to compensate any victim; no property right or secured interest has been conferred to compensate any victim; and no property right or secured interest is held by any victim. Accordingly, Application Note 3(E)(ii) does not apply, and the intended and actual loss amount in this case is approximately \$21.9 million.

Respectfully submitted,

AUDREY STRAUSS
Acting United States Attorney

By: _____/s/
Negar Tekeei
Edward Imperatore
Assistant United States Attorneys
(212) 637-2482 / 2327

CC (by ECF): Florian Miedel, Esq.
Christopher Madiou, Esq.
Attorneys for Brent Borland



Miedel & Mysliwiec LLP

July 16, 2020

Hon. Katherine Polk Failla
United States District Judge
United States District Court
Southern District of New York
40 Foley Square
New York, New York 10007

Re: **United States v. Brent Borland, 18 Cr. 487 (KPF)**

Dear Judge Failla,

We write to reply to the government's July 8 response to our June 16 Supplemental Memorandum in Support of our argument that application of the "credit for loss" provision set forth in Application Note 3(E) (ii) to USSG § 2B1.1 applies to the facts of Mr. Borland's case.

As an initial matter, the government again asserts that Application Note 3(E)(ii) covers only actual loss, not intended loss, citing language in *United States v. Lacey*, 699 F.3d 710, 720 (2d Cir. 2012) that the Application Note "cannot be mechanically followed where intended loss is higher, since the larger intended amount is a better measure for the defendant's culpability than is the actual loss." *See* Govt. July 8 Response at 2. That assertion, however, whether correct or not, is beside the point. The parties agree that the actual loss and the intended loss are both the approximately \$21.9 million in outstanding loans at issue here, as indeed the government concedes in the last sentence of its memo. *See id.* at 10 ("Application Note 3(E)(ii) does not apply, and the intended and actual loss amount in this case is approximately \$21.9 million."). We are not aware of any facts which would elevate the intended loss beyond the claimed \$21.9 million.

The government also argues that the "mechanism" for redemption of the collateral as set forth in the loan agreements between Mr. Borland and Mr. Caruso on the one hand, and the investors on the other, was insufficient for purposes of the Application Note because it "at best" provided a pathway to liquidation of the collateral and/or an ownership stake. *See* Govt. July 8 Response at 4. But, of course, even a secured interest in pledged collateral, such as a lien, necessarily only provides a "mechanism" for redeeming the collateral. Contrary to what the government argued in earlier submissions, the loan agreements did not merely offer a chance to litigate – rather, they set forth a process that started with a default notice being filed by the lender, and ended with liquidation of the collateral properties by the escrow agent. As noted before, no lenders in this case availed themselves of this process.

It is also important to observe that nearly half of the 41 loans at issue here – namely those that were executed between Borland Capital Group (BCG) and lenders – were longer term loans that had not come due by the time Mr. Borland was arrested in May 2018, or for

which extensions had been negotiated. *See e.g.* Exhibit C to 10/25/19 Borland Submission (BCG-Zager Loan, maturity date January 2019). Indeed, a number of the victims offered extensions to Borland and Caruso, but when Mr. Borland was arrested and charged with fraud, unsurprisingly all discussions about extensions, repayments, or redemptions of collateral came to a halt. Even the loan agreement with Copper Leaf, which was the single largest lender, was not in default. The parties had been in continual negotiations about the terms of repayment, and extensions had been granted. Copper Leaf only initiated litigation *after* Mr. Borland's arrest following allegations that he had been engaged in a fraudulent scheme. To be clear, Mr. Borland does not contest that none of the lenders had been fully repaid by the time he was arrested, but the true state of facts is considerably more nuanced than the government asserts.

While we can take issue with other assertions in the government's memorandum, most have been previously addressed and we do not need to repeat ourselves.¹ We do, however, wish to focus on one issue that the government has simply glossed over, but which is central to the Court's decision here – the fact that up to 40 of the 41 investors now have taken ownership interests in the very property that served as substitute collateral in the loan agreements.

The government dismisses this profound and overarching development by first stating that these ownership interests are irrelevant for the application note analysis because the lenders *purchased* the real estate from Marco Caruso, it was not given to them as redeemed collateral. That argument, however, ignores the fact that the property was, for all practical purposes, given to them by Caruso as co-borrower in this matter. They paid \$650,000 for tracts of land appraised at \$32 million last summer.² They received essentially \$31.3 million of real estate in exchange for forgiveness of their joint total of approximately \$13.9 million in outstanding loans, which Caruso, as co-signor, was still obligated to repay pursuant to the loan agreements in dispute. Thus the “purchase” is a red herring – an agreement to provide Marco Caruso with immediate cash – but the purchase does not change the fact that this deal was a transfer of real property as repayment (and then some) for the outstanding loans.

The government also suggests that the very fact that Marco Caruso could transfer these properties to the lenders when the deeds were in escrow with the escrow agent proves that the redemption procedures in place were ineffectual. In so doing, the government pretends as if Marco Caruso was some third party unconnected to the loan agreements. In fact, Marco Caruso was a co-signor of *all* 41 of the loan agreements at issue, and a full participant in every aspect of the charged fraud. He personally selected the collateral to be pledged, received the vast majority of the \$21.9 million from the loans, and solely and individually deployed the victims' funds in the development projects he oversaw in Belize. It is true that Caruso entered into the new agreements with the 40 lenders without the explicit consent of Mr. Borland, and

¹ For instance, as is clear from our previous memorandum, we have a very different view of the cases cited by the government at pp. 5-7 of its response. However, the Court is either familiar with these cases already, or will become familiar with them, and will draw its own conclusions about the correct holdings. *See e.g. United States v. Turk*, 626 F.3d 743 (2d Cir. 2010).

² Of course, this argument relies on the valuation of the property as set forth in the August 2019 Appraisal (*See* Exhibit G to 10/25/19 Borland Submission), which the government has indicated it may challenge. *See* Govt. July 8 Submission at 9, FN 4. If necessary, the Court could order a hearing to determine the accuracy of the appraisal.

that the legality of those conveyances has to be resolved in the Belizean courts.³ However, for purposes of Application Note 3(E)(ii), up to \$13.9 million (consisting of the outstanding loans of all investors except Copper Leaf) have been repaid in the form of the substitute collateral property, worth more than twice that amount.⁴

The government's position appears to be that Mr. Borland should receive no credit against the \$21.9 million loss amount, even though (1) Placencia Estates Development, with an appraised value of \$32.3 million, was set aside as substitute collateral as part of the loan agreements well before Mr. Borland was accused of unlawful conduct; (2) 40 of the 41 lenders have received an ownership interest in Placencia Estates; (3) in exchange, the 40 lenders have released Marco Caruso from all contractual liability for those loans; and (4) Marco Caruso was a 50% partner with Mr. Borland in all matters relating to the Belize loans (and was a co-signor, co-borrower and co-pledgor on each loan agreement) and is therefore an unindicted co-conspirator.

This argument makes no sense. The lenders have agreed (in the Memorandum of Understanding, *see* Exhibit R to 10/25/19 Borland Submission) to terminate the very contracts at issue and to convert their 'lost funds' into real property equity interests, thereby releasing Caruso from liability for the 40 loans in dispute. Caruso and Borland were a joint entity, and the 40 lenders have received consideration for the loans issued to Borland/Caruso in the form of the collateral. In other words, the loans were repaid or forgiven in exchange for ownership interests in Placencia Estates and the airport development. If the loans were forgiven or repaid as to Caruso, they were also necessarily forgiven or repaid as to Borland. And even if Caruso could somehow convince the Belizean courts that he was the sole owner of these properties (which he was not), he cannot divorce himself from his obligation under the loan agreements, which he co-signed and from which he received the bulk of the proceeds.⁵

There can be little dispute that for *restitution* purposes, these facts suggest that the investors (except Copper Leaf so far) have been made whole. The government can hardly argue that simply because the investors paid \$650,000 for property worth \$32 million that was specifically pledged as substitute collateral, the loan amounts remain outstanding for Borland (but not for Caruso). But the agreement giving ownership to the 40 investors is also relevant for Application Note 3(E)(ii) purposes because it was this property that served as substitute

³ Indeed, through his legal action in Belize against Caruso, Borland seeks to ensure that not only the 40 investors who cut a deal with Caruso are made whole, but also Copper Leaf, which was not included in the recent agreement.

⁴As noted in our prior submission, the investors obtained ownership interests in 1,186.13 acres owned by Placencia Estates Development – which had been specifically pledged as collateral in the loan agreement with Copper Leaf and had been included as substitute collateral for all other investors – as well as the land encompassing the Placencia airport project, which was not pledged as collateral but was included in Borland's and Caruso's personal guarantee underlying every loan agreement. *See* Borland Supplemental Submission at 7-8. The August, 2019, \$32.3 million appraisal covered only the Placencia Estates Development acreage. In other words, the total land and projects obtained by Dyke Rodgers and the 39 investors from Caruso is worth significantly more.

⁵ If the government somehow suggests that Caruso is an innocent party, we welcome the opportunity to challenge that argument at a hearing.

collateral when the loan agreements were signed, it was this property that was placed in escrow with the escrow agent for redemption purposes, and all of this occurred before Mr. Borland was accused of illegality. The lenders received the value of collateral pledged or otherwise provided.

In sum, while the government continues to repeat its untenable position that the ‘assets are of out of reach’ of the victims, events since Mr. Borland’s arrest have demonstrated that not only are these assets within reach, they are now in the possession of 40 of the 41 victims. Accordingly, the total of the loan amounts for the 40 lenders should be credited against loss under Application Note 3(E)(ii). Moreover, because the property was also specifically pledged to Copper Leaf as collateral, and Copper Leaf is in the process, with Mr. Borland’s help, of recouping its loan from Marco Caruso in Belize and will have presumably done so by the time of sentencing, Copper Leaf’s loan amount should also be credited.

Respectfully submitted,

/s/

Florian Miedel
Christopher Madiou
Attorneys for Brent Borland

Cc: All Counsel

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

18 CR 487 (KPF)

5 BRENT BORLAND,

6 Defendant.

Conference

7
8 New York, N.Y.
9 August 5, 2020
2:00 p.m.

10 Before:

11 HON. KATHERINE POLK FAILLA,

12 District Judge

13 APPEARANCES

14 AUDREY STRAUSS

15 Acting United States Attorney for the
Southern District of New York

16 BY: NEGAR TEKEEI

EDWARD A. IMPERATORE

17 Assistant United States Attorneys

18 MIEDEL & MYSLIWIEC, LLP

19 BY: FLORIAN MIEDEL

-AND-

CHRISTOPHER PAUL MADIOU

20 Attorneys for Defendant

1 (Case called)

2 THE DEPUTY CLERK: Please state your name federal
3 court beginning with the government.

4 MS. TEKEEI: Good afternoon, your Honor. Negar Tekeei
5 on behalf of the United States. And also joining me is Edward
6 Imperatore.

7 THE COURT: Ms. Tekeei, thank you very much. Will you
8 be handling the responsibilities this afternoon?

9 MS. TEKEEI: Yes, your Honor.

10 THE COURT: You'll excuse me. Are you appearing by
11 phone or video? I only have you showing up by phone.

12 MS. TEKEEI: Your Honor, I'm on by both phone and
13 video.

14 THE COURT: I see. Let me see what I can do to have
15 you appear on my screen. Thank you. There you are. I
16 appreciate that. Thank you very much, and good afternoon to
17 you.

18 Mr. Imperatore, good afternoon to you as well.

19 MR. IMPERATORE: Good afternoon, your Honor.

20 THE COURT: Mr. Miedel.

21 MR. MIEDEL: Good afternoon, your Honor. Florian
22 Miedel and Christopher Madiou for Brent Boreland who is here
23 with us.

24 THE COURT: Thank you.

25 Mr. Miedel, are you also taking the lead this

1 afternoon?

2 MR. MIEDEL: Yes, your Honor.

3 THE COURT: I welcome you.

4 And Mr. Boreland, are you able to see and hear me at
5 this time, sir?

6 THE DEFENDANT: Yes, your Honor. I can hear and see
7 you.

8 THE COURT: Thank you. You'll please let me know if
9 there is anything that causes that to change.

10 Mr. Miedel, without getting into the substance of any
11 privileged communications, have you spoken with Mr. Boreland
12 about his rights to have this particular proceeding conducted
13 in person and his ability as well to waive that right and to
14 have it conducted by video as we are doing now?

15 MR. MIEDEL: Yes, your Honor. We've discussed it, and
16 he waives his right to be present by person and agrees to
17 appear by video.

18 THE COURT: All right. May I inquire of your client
19 directly, sir?

20 MR. MIEDEL: Of course.

21 THE COURT: Thank you.

22 Mr. Boreland, I believe you understand -- and this is
23 the realization I had from speaking with your attorney -- that
24 normally you would have the right to have this conference take
25 place in open court. You would be present. Your attorneys

1 would be present. The government would be present as well.

2 But because of restrictions on court access occasioned
3 by the pandemic and because of difficulties with
4 transportation, modes of transportation, we've been doing a lot
5 of these proceedings by video. We can do that if you knowingly
6 and voluntarily waive your right to have the proceeding
7 conducted in person.

8 In speaking with Mr. Miedel, I understand that you
9 have had this discussion with him and that you do wish to
10 waive.

11 So I will ask you, sir: Without going into the
12 specifics, have you spoken about the rights that you have and
13 your ability to waive those rights with Mr. Miedel or with your
14 attorneys?

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

16 THE COURT: Thank you.

17 Is it your wish today, sir, to proceed by video rather
18 than in person with the understanding that your attorneys are
19 also present for this proceeding, also appearing by video, and
20 that you have the ability to speak with them privately at any
21 time if you wish to?

22 THE DEFENDANT: I understand. Yes. It is my intent,
23 your Honor. Yes.

24 THE COURT: Thank you.

25 Given the conversation that I've just had with you,

1 sir, and given my discussions that I've had with your attorney,
2 I am finding that you are knowingly and voluntarily waiving
3 your right to have this proceeding take place in person, and we
4 will proceed by video.

5 You may have seen at the beginning of this conference
6 a little banner on the Skype program indicating that the
7 proceeding was being recorded. I did that. That is me who is
8 doing that, and I'm doing that so that I have a backstop just
9 in case there are some problems, as I don't expect there will
10 be. It is I who is doing it.

11 One more housekeeping measure. Welcome. Thank you.
12 I appreciate that you're able to do this today. It seems that
13 we were foiled in our efforts to get this done yesterday
14 because of the fact that none of us could stay on the internet
15 long enough to have such a conference.

16 But that is resolved we hope, and I hope that all is
17 well for you and your families, both on account of recent
18 weather situations and on account of the obvious coronavirus
19 pandemic.

20 Mr. Miedel, I want to be sure that I understand
21 precisely what it is the investors in this case whom the
22 government has described as victims have obtained.

23 My understanding is it's not as though today right now
24 they have any money in their hands. I understood that there
25 was a second transaction undertaken by which they would get an

1 interest in property in Belize.

2 Perhaps you can explain to me what it is that they
3 actually have today.

4 MR. MIEDEL: Yes, your Honor. I think we set that out
5 in our latest submission I think from July 16 in which we --
6 well, the June 16 and the July 16 submissions in which we
7 attached the agreements that existed between David Filler and
8 his group of investors on the one hand and Marco Caruso down in
9 Belize on the other.

10 What our understanding that they had received is
11 ownership interest in the vast portion of the 1,586.13 acres
12 that compromise The Placencia Estates land development.

13 I can't recall the exact number. It's something like
14 1,100 something acres in that transaction they received from
15 Marco Caruso. So they own that land right now, and that's our
16 understanding.

17 The question is of course how much is that land worth
18 and does that ownership interest essentially serve as the
19 redemption of the collateral. That's the issue before us.

20 THE COURT: Yes. That I do understand. Thank you.
21 That's not a transaction in which your client had any
22 involvement. Correct?

23 MR. MIEDEL: He did not. But it's a complicated
24 matter because that transaction is contested in the Belize
25 courts because, in our view, it was a fraudulent conveyance by

1 Marco Caruso because he didn't actually have the authority to
2 sell that land out from under both Mr. Boreland and also out
3 from under the fact that that very land was pledged as
4 collateral for, among others, the Copper Leaf LLC investors who
5 provided \$8 million in loans.

6 That being said, however --

7 THE COURT: No. Please. Let's not go to "that being
8 said." You're alighting on the point that I want to talk
9 about, and we'll eventually talk about Copper Leaf.

10 Right now today these individuals whom I'm going to
11 call "victims" just in the shorthand because no one is
12 disputing that they are -- they don't have anything. They
13 have, in theory, an ownership interest that your client is
14 contesting.

15 I hope you recognize, because I think you should, that
16 there is a disconnect. There are several here, but one of them
17 is in saying going to Belize and contesting these transactions
18 in the first instance and then saying it's a bit of a whipsaw;
19 but if they're real, then this suffices, then there is in fact
20 no loss. That's the problem that I'm having.

21 I don't know that you can have it both ways. I don't
22 know that you can argue so vociferously that the transaction is
23 a fraud and then say, but also there's no loss.

24 MR. MIEDEL: This is our point, that the legal issues
25 are going to get resolved in Belize one way or the other. If

1 they're resolved in the victims' favor, rather, in Marco
2 Caruso's favor, then the victims have been made whole through
3 that land transaction.

4 If they're not, then Mr. Boreland will authorize that
5 land transaction or the return of that collateral pursuant to
6 the terms as set forth in the loan agreements and in the way
7 that it was envisioned to be done.

8 Essentially the victims here obtained the collateral
9 in a way that wasn't spelled out in the loan agreements but in
10 a different way, and they received ownership interest that
11 land. But the result would be the same in the end. Either
12 they get it this way or they get it through the mechanism set
13 forth in the loan agreements.

14 THE COURT: What is the guarantee that I have that
15 Mr. Boreland is going to gift these property interests over to
16 the victims in this case, seeing as in one suit he let it go
17 into default and then in the other he contested their right to
18 it?

19 You can tell me about the Fifth Amendment. I
20 appreciate the Fifth Amendment. I understand it. But you have
21 to understand that this complicates the arguments you're trying
22 to make to me now.

23 MR. MIEDEL: Right. First of all, a power of attorney
24 exists that was signed by both Caruso and Boreland to authorize
25 David Filler to essentially sell that land or figure out a way

1 to provide that collateral to the victims.

2 THE COURT: Mr. Miedel, please stop. Mr. Filler never
3 did that.

4 MR. MIEDEL: Nobody ever requested it.

5 THE COURT: This is victim blaming in which you're
6 undertaking right now. That is where you are because you're
7 saying, yes, there was a mechanism, but no one bothered to ask
8 for it because they weren't getting the money.

9 You're saying that had they, Mr. Filler would have
10 just completely turned over the collateral? I don't see
11 anything in this record that gives me that confidence.

12 MR. MIEDEL: The problem is that nobody -- I'm not
13 sure anybody put in a default notice. Maybe one of the victims
14 did before Mr. Boreland was arrested. Once he was arrested or
15 the SEC made its claims before that, he was accused of fraud.
16 At that point, the victims obviously felt like they wanted to
17 be made whole.

18 But there was a mechanism in place which was
19 contractually agreed upon between the victims and Mr. Boreland
20 and Caruso on the other hand which was if you say the loan is
21 in default, file a default notice. And then the next step is
22 to contact David filler and procure the collateral. That was
23 all set forth in the loan agreements.

24 THE COURT: But, sir, that presupposes that the loan
25 agreements were not themselves the product of fraud. I

1 understood by your client's guilty plea that he was
2 acknowledging that they were the product of fraud.

3 I would have thought that that would have made them
4 void from the start and that we wouldn't have to go through the
5 process of default or going through Mr. Filler because the
6 transaction should never have been entered into.

7 MR. MIEDEL: Well, what Mr. Boreland admitted to was
8 that he failed to notify investors/lenders/victims that he had
9 previously defaulted on other loans. There is nothing in the
10 loan agreements themselves that is specifically fraudulent.

11 It's that information that is fraudulent or that
12 omission that is fraudulent. Once the SEC began its case and
13 then the U.S. Attorney's Office brought charges against
14 Mr. Boreland, everything came to a halt. At that point, there
15 was no way to do anything.

16 Mr. Boreland couldn't transfer any assets. He
17 couldn't sell anything. Mr. David filler, who was named in the
18 lawsuit, obtained counsel as well. So everything was sort of
19 frozen. But the fact is that if all parties cooperate, which
20 includes the government, those assets can be turned over to the
21 victims, and they can be made whole.

22 Now, they've taken a different route which was to go
23 down there to Marco Caruso and have him essentially give them
24 that land and absolve him of all liability. But like we said
25 in the last memorandum, if they're absolving him of liability,

1 then it's the same situation because he was a cosigner to the
2 loans.

3 THE COURT: I think I need to back up a little bit,
4 sir. I sense a certain amount of hairsplitting here, sir.

5 There were false statements made to investors
6 regarding these projects. Now, the one to which your client
7 admitted -- and that's the one that I've got here for purposes
8 of the instant offense -- is that there had already been
9 defaults in the project previously that were not disclosed.

10 It would seem to me that the transactions were
11 therefore predicated on a fraud. Your client admitted to
12 withholding material information from investors.

13 So if indeed these were fraudulent transactions, it's
14 strange that you're obligating the victims of these fraudulent
15 transactions to go through the process that one would do in a
16 default.

17 Is it an event of default if the whole thing was
18 predicated on a lie?

19 MR. MIEDEL: Well, no. I hear what you're saying,
20 your Honor. But in practical terms, I'm not sure how that
21 would have worked. Many of those loans were still going on at
22 the time that Mr. Boreland was arrested. So there were
23 extensions given.

24 There were discussions between Mr. Boreland and
25 Mr. Caruso on the one hand and the lenders on the other about

1 how long to extend those loans, the fact that there was going
2 to be a massive loan that they were going to obtain, that they
3 were close to obtaining; that would essentially pay back all
4 the short-term bridge loans.

5 All that was helping at the time, and then he was
6 arrested, at which point he couldn't do anything else. So
7 you're right that the loan agreements were procured based on a
8 material omission. And as a result, the loan agreements
9 themselves may be invalid.

10 But the fact is that at the time he was arrested,
11 everybody was still sort of working together trying to figure
12 out how to repay these loans.

13 THE COURT: I just want to make sure I understand the
14 logical conclusions of the argument you're now making. It
15 sounds like what you're saying is because there was a way, at
16 least prior to Mr. Boreland's arrest, to distribute the
17 collateral in a way that reduced or perhaps even negated the
18 losses, the fact that it couldn't be done after his arrest or
19 it was complicated by the terms of the arrest means that the
20 collateral provision can still be used.

21 That's the part that I'm having difficulty with. I'm
22 not sure I agree with the government that *Turk* requires
23 securitization of the collateral because the *Turk* case by its
24 terms speaks a lot of what we don't have to decide today
25 because of the specific facts of that case. So I'm not

1 prepared to say that.

2 But I would think when you look at the application
3 note and you look at pledged or provided, it's got to be
4 something more than a thing that could have happened if only
5 the government hadn't stopped the fraud. That's the problem
6 that I'm having.

7 So instead of blaming the victims for not making use
8 of the default proceeding, you're blaming the government for
9 not allowing the fraud to persist any longer.

10 And if that means that I have to find the collateral
11 exception applies because they didn't know that they should
12 have let it go a little further, I find that strange. So tell
13 me why perhaps I've misperceived your argument.

14 MR. MIEDEL: No. I'm not trying to blame the victim.
15 What I'm saying, is stepping back for a minute, there is
16 collateral. There are 1,586 acres of land that were appraised
17 just last year at \$32 million.

18 Setting aside whatever the value is, whether that's an
19 accurate appraisal or not, that can be resolved down the road,
20 but it's worth something. It's actual land. And 40 of the 41
21 victims currently own that land.

22 So the flip side of this -- so what the government is
23 saying is that Mr. Boreland owes \$21.9 million in losses. He's
24 caused \$21.9 million in losses. Yet the victims are sitting on
25 millions of dollars of property that was in fact the very land

1 that was pledged.

2 THE COURT: Let me stop you right there, Mr. Miedel,
3 because it wasn't pledged. A lot of what you're saying depends
4 on whether I accept your view of the substitute asset
5 provision.

6 MR. MIEDEL: Correct.

7 THE COURT: That's kind of the point. That is
8 actually another concern that I have with this whole argument.
9 And I'm not saying I won't ultimately agree with it, but please
10 understand I do need to probe it before I do.

11 MR. MIEDEL: Sure.

12 THE COURT: The idea of the substitute asset provision
13 concerns me because basically it suggests that if your
14 malefactor is fortuitous enough to have some property lying
15 around that they can use to repay the victims, you're actually
16 arguing that there should be no loss here.

17 The property that was identified in the respective
18 agreements is -- or at least often was -- not the property that
19 the victims now have or at least have an ownership interest in.
20 So I'm not sure how far you wish me to stretch the substitute
21 asset provision. That is the concern I have about using it
22 here.

23 MR. MIEDEL: Two things. It was not substitute assets
24 but direct pledge assets for Copper Leaf, and that's \$8 million
25 of loans right there.

1 THE COURT: Has Mr. Caruso resolved with Copper Leaf?

2 MR. MIEDEL: No. Not yet.

3 THE COURT: So much for that.

4 MR. MIEDEL: So much for that at the present moment.

5 But we believe that by the time of sentencing, Copper Leaf will
6 have obtained that. If they haven't done it, we're in a
7 different situation. That is something that's being worked on
8 presently.

9 The deed was held in escrow by David Filler for that
10 1,586 acres. It was listed in the power of attorney. So it
11 was there for use as collateral, not just for Copper Leaf
12 because Copper Leaf only paid \$8 million; whereas the value of
13 that land was appraised at \$32 million. So therefore, it could
14 serve as collateral as well for the remaining victims.

15 It was substitute assets, yes. But it was actually
16 put into escrow and held in escrow for that very purpose for
17 those additional victims as well. And they of course now have
18 it.

19 THE COURT: If I were to agree with you that this
20 property could be considered as collateral, it would seem to me
21 that we'd never really get to zero because then wouldn't I just
22 be asked by the government and wouldn't I in fact be able to
23 consider the gains to your client rather than the losses to the
24 victims, which I'm told approximate \$3.4 million?

25 MR. MIEDEL: What's \$3.4 million?

1 THE COURT: The gains to your client, sir, according
2 to the PSR.

3 MR. MIEDEL: The gains from what? That particular
4 transaction?

5 THE COURT: The transactions that bring him before me
6 now.

7 MR. MIEDEL: You mean the money that he allegedly took
8 out of the \$21.9 million loans?

9 THE COURT: Yes. Mr. Miedel, let me be more precise
10 and less subtle because I clearly am not a master of subtlety.

11 You may have an argument ultimately that the unique
12 confluence of circumstances in this case would warrant a
13 variance, a downward variance under 3553(a), even if things
14 were not formally or this transaction or these transactions do
15 not formally fit within the rubric of the collateral exception.

16 I'm not excluding that possibility, and I actually
17 happen to think that's your stronger argument, although I still
18 need to hear from you and from the government.

19 What I'm saying is you want me to find that there is
20 no actual or intended loss. And I'm telling you if I did that,
21 would not the government ask me to instead use the measure of
22 gains as the enhancement under the guidelines?

23 And then we're still talking about a number that was
24 presented to me as \$3.4 million.

25 MR. MIEDEL: Well, your Honor, I'm not sure that's how

1 it works. I think that you find the loss, step one, under
2 *Turk*. And the loss is agreed upon at \$21.9 million.

3 You then credit the amount of the collateral against
4 that loss, but it's not that you can't figure out what the loss
5 is. The loss is what it is. It's just that it receives a
6 credit.

7 So I don't think that it would necessarily then go to
8 the third step of figuring out what the gain was. Apart from
9 that, I think we have a factual dispute with the government
10 about the nature of that gain and whether it was inappropriate
11 or not under the terms of the loan agreements.

12 THE COURT: Well now we go right back to this idea
13 that these contracts were okay and it was okay for him to make
14 false statements in connection with the entry into the
15 contracts but still take money from them.

16 I have difficulty believing -- I'm not the one who
17 pled to fraud here. Your client is. I would be concerned if
18 he was saying, I'm nonetheless entitled to the millions of
19 dollars, if indeed he took millions of dollars, from these
20 transactions. You may be able to persuade me that he is, but
21 that doesn't sound right to me.

22 Your larger point, sir, is because loss can be
23 calculated, I need not resort to gains. And what I'm saying to
24 you is I'm not so sure. Part of the reason we're having this
25 discussion is because there are some very obtuse issues about

1 what constitutes collateral and how to value it in this
2 instance.

3 So that's why I'm asking whether gain is a metric that
4 can be used. You're telling me that you believe it cannot.

5 MR. MIEDEL: Well, to be honest with you, I haven't
6 researched that.

7 THE COURT: I would prefer that, sir. Yes.

8 MR. MIEDEL: I hesitate to take a strong position on
9 that. But my initial feeling was what I said, which is loss
10 can be assigned here. But ultimately, of course, a court can
11 consider gain if there is no better way of assessing loss.

12 THE COURT: One of the things I was thinking about as
13 I began preparing for this proceeding was the degree to which I
14 actually needed to resolve the issue. We know from as far back
15 as *Crosby*, the first major Second Circuit decision after *Booker*
16 came out, that judges don't necessarily have to resolve
17 guidelines disputes if they're not going to have an impact at
18 sentencing.

19 I suppose you may argue to me that the metric of loss
20 or at least the parties' views as to the loss are so disparate
21 that it has to be decided. Perhaps it does. That's why we're
22 having this conference. That's where I was.

23 It would seem to me that if I found no loss, there
24 would very likely be an upward variance to account for the fact
25 that the victims had to pay to get this ownership interest they

1 now purport to have and they're still being stymied in those
2 efforts by your client's contest of what happens down there.

3 Or I could find that the collateral exception did not
4 apply and that the loss figure was \$21.9 million, and I could
5 vary downward because of the strange circumstances leading to
6 the ownership interest the victims may now have.

7 I'll hear from you very briefly on that point, and
8 then I have one more issue before turning to the government.

9 MR. MIEDEL: Yes. I think you're absolutely right,
10 your Honor. There are all kinds of different ways of resolving
11 this, but you do have a responsibility of finding the
12 appropriate guideline range before you decide whether to vary
13 upward or downward. So that's the purpose of this whole
14 exercise clearly.

15 Ultimately, all the arguments that we've made here are
16 equally applicable in the 3553(a) context.

17 THE COURT: Mr. Miedel, this may have been in the
18 predecessor sentencing submission to yours. But I believe
19 there's a representation that your client took all steps
20 necessary to provide for the transfer of these assets, by which
21 I believe you mean the properties, in the event of default.

22 Why were all steps necessary? I'm not sure how that
23 can be said, given the current situation.

24 MR. MIEDEL: Well, I'm not sure that Mr. Madiou and I
25 were the ones who said that.

1 THE COURT: Okay.

2 MR. MIEDEL: No. There were certain mechanisms, as I
3 said, in place. Mr. Boreland materially omitted obviously
4 relevant information, and that's why we're here.

5 But he was still nonetheless operating under what he
6 believed was a contractual agreement with the lenders, and both
7 sides were going to abide by the contractual terms of those
8 agreements, unless they were changed somehow. And some of them
9 were changed in the sense that the length of the loan was
10 extended and so forth.

11 But his intention was to pay back or, if in fact it
12 went into default, to move forward with the process that had
13 been set up. As we talked about before, once he was arrested,
14 he couldn't take those additional steps. But he is certainly
15 willing and able to take those additional steps.

16 THE COURT: By the time of sentencing, he will not
17 have taken those steps.

18 MR. MIEDEL: He can't take those steps. He can't,
19 for example, transfer any property.

20 THE COURT: Exactly. How is that different from
21 Ms. Turk? Ms. Turk would have been really happy had there not
22 been a real estate crash and those properties not lost so much
23 in value. But to use an expression that has come out more
24 recently, it is what it is.

25 Here, your client may not be able to because of the

1 things that happened after he was arrested, but the fact still
2 remains he didn't set things up, or things were not able to be
3 done.

4 He's done nothing since his arrest to effect the
5 transfer of the collateral over to the victims. And to the
6 contrary, he's actually stood in the way in the few litigations
7 that have been undertaken.

8 He may have been doing it for noble reasons, or he may
9 have been doing it for strategic reasons, but it still remains.
10 He's not helping the matter, and we don't have the collateral.

11 MR. MIEDEL: Well, a couple things, your Honor.
12 First, in *Turk* obviously, there were extrinsic conditions like
13 the downturn. Here, what stands in the way of him doing it is
14 the government, which is a party to these proceedings. And
15 obviously we could all sit down together and figure out a way
16 to make this happen, if the government wanted to.

17 Sorry. I lost my train of thought on the second
18 issue.

19 THE COURT: That's all right. Take your time, please,
20 sir.

21 MR. MIEDEL: When you said that he stood in the way of
22 these victims being reimbursed, he's in fact, as we've noted,
23 assisted Copper Leaf in its efforts to be made whole. He is
24 cooperating with them. He is helping in every which way he
25 can, and they are working with him to try to obtain the value

1 of what they're owed down in Belize.

2 So I actually don't think he's standing in the way of
3 that at all. In fact, he wants to make the victims whole. But
4 he is obviously limited in his abilities by being a defendant
5 here and being under an order from the SEC.

6 THE COURT: Did he not default in another case?

7 MR. MIEDEL: Which case?

8 THE COURT: There's another civil action brought by
9 another victim here.

10 And he defaulted in the case, did he not?

11 MR. MIEDEL: That case, I think the victim was
12 Cushman -- the parties settled that case, and Cushman was paid
13 money as opposed to redeeming the collateral which was his
14 option which he didn't want.

15 So rather than seek the sale of a particular property
16 and be paid, he obtained a settlement. That's the prerogative
17 of the victim to do that. But that doesn't mean that the
18 collateral isn't available to him to redeem.

19 THE COURT: All right. Thank you.

20 Ms. Tekeei, I'm turning to you now, please. I want to
21 begin with the factual matter of your understanding as to what
22 interests, what rights, the victims now have.

23 MS. TEKEEI: Your Honor, there is one set of victims
24 who has purchased the land, that is, The Placencia Estates
25 development, from Marco Caruso in Belize.

1 THE COURT: Ms. Tekeei, excuse me. Your voice is
2 coming in very faintly. I have great difficulty hearing you,
3 and I just want to make sure the record is clear for those of
4 us in attendance and for the court reporter. Thank you.

5 MS. TEKEEI: I apologize, your Honor. We did test
6 this before, and it was fine. My apologies.

7 Can you hear me now?

8 THE COURT: Not well.

9 MS. TEKEEI: Is this better at all?

10 THE COURT: It is. I'll see how it goes. As you were
11 speaking, it was very choppy.

12 MS. TEKEEI: All right. I can certainly switch audio
13 devices, your Honor. I am at the office. So I had tested this
14 before, and it was working previously. My apologies.

15 Our understanding of the victims' rights as to the
16 Placencia Estates development property, which, as the Court has
17 noted, is the substitute asset that Mr. Boreland had identified
18 to one set of victims, which is Copper Leaf, but had not
19 identified to the other set of victims, the approximately 40
20 other victims in this case, is that those victims purchased
21 that property from Marco Caruso in Belize; that they paid money
22 for it through a transaction or a series of transactions.

23 And as a result of that, they obtained the right to
24 the deed of conveyance and the deed to that property. So they
25 now own that.

1 THE COURT: One moment, please. Thank you.

2 I just want to dig a little deeper into what you were
3 just saying. The Placencia Estates property was a substitute
4 asset, or it was identified, as you say, only to Copper Leaf.
5 But there is a substitute assets provision.

6 Is there some suggestion that that provision is
7 fraudulent or something I can't consider?

8 MS. TEKEEI: Your Honor has already hit on this point
9 that the loan agreements themselves were fraudulent.
10 Your Honor will recall that during Mr. Boreland's plea
11 proceeding, while he did discuss the omissions made in
12 connection with the transactions, the government, during that
13 plea proceeding, also pointed the Court to the multiple other
14 misrepresentations held within those loan agreements.

15 Among those were the fact that Mr. Boreland said that
16 the parcels listed in the loan agreements had not been
17 previously listed in other investor agreements and that each
18 investor had the sole right to those parcels. That is among
19 many misrepresentations that were contained on the face of the
20 loan agreements themselves.

21 So because the loan agreements themselves are
22 fraudulent -- again, that's one of the misrepresentations -- we
23 also believe that the substitute assets provision is fraudulent
24 and cannot be relied on in the rubric that your Honor has
25 already recognized.

1 To boot, the substitute assets were not identified to
2 the vast majority of the victims in this case who on their own,
3 in an attempt to try to further some ability to invest in
4 Belize or come together knowing that they were not going to be
5 recouped for their losses, purchased the land from Marco
6 Caruso, not from Mr. Boreland.

7 THE COURT: Ms. Tekeei, excuse me.

8 Yes, they did purchase it. But according to the
9 defense, they purchased it at a fraction of its appraised
10 value. They paid less than a million dollars I thought for
11 something that is supposedly worth \$32 million or something on
12 that order.

13 So you do have the argument to be made -- and you are
14 making it -- that it wasn't as though the property passed free
15 and clear as it was suggested in the loan agreements, but here
16 we are. They did get it for something substantially less than
17 what it was worth.

18 So how, if at all, should I consider that?

19 MS. TEKEEI: Thank you, your Honor.

20 That's precisely the point that I was going to turn to
21 next. The value of the property, as proffered by Mr. Boreland,
22 is based on an appraisal that was done during the course of
23 this case.

24 And that appraisal on its face demonstrates that it is
25 invalid. On its face, that appraisal states that the reviewer

1 was not aware of any financial agreements that were related to
2 that property.

3 However you would want to slice or dice that, whether
4 it's a lien or the very fraudulent agreements that are at stake
5 in this case, it is unclear that that appraiser was ever made
6 aware that at least 41 victims might possibly, under the
7 contingencies scenario that Mr. Boreland posited in the
8 fraudulent agreements, have some interest in that land that was
9 recognizable. That is because --

10 THE COURT: Excuse me.

11 I don't understand why that necessarily matters for
12 the appraisal. You can appraise the value of property and
13 still learn later that there were folks who claimed an interest
14 in it. I thought the point was what is this piece of property
15 worth, not what is it worth and then think about all of the
16 liens that possibly exist on it.

17 You have asked -- I believe in your submission, you've
18 contested the actual appraisal value, and you've said that if I
19 do consider this, you do want to have the property appraised
20 because you're not sure it would get to \$32 million.

21 I'm just not sure that the fraud and the collateral
22 can't be separated for purposes of appraisal.

23 MS. TEKEEI: Your Honor, I am not an expert on
24 property valuation. I'll just note that at the outset. But
25 the appraisal itself sets forth that there are no agreements

1 that the appraiser is aware of. And it says we have not taken
2 into account the impact of any such financial arrangements.

3 To me, that implies that there would be an impact on
4 the value of the property, given that there might be 40 some
5 odd people who may or may not have a claim to it in valuing the
6 property.

7 To your point, your Honor, that is slightly different
8 than what is the property worth today, but the appraisal review
9 itself lists that as a factor. Again, without being a property
10 value expert, it's clearly something that's a valid question
11 and a valid line of putting this particular appraisal into
12 question.

13 THE COURT: I want to understand the point that you
14 were making immediately prior to that which talked about that
15 these agreements were invalid because they were predicated on
16 fraud.

17 I might agree with you, but I would think that the
18 collateral provision often comes into play where there is some
19 fraud in the underlying agreement respecting the collateral.

20 So the idea is it's a shame that you were defrauded,
21 but there is something here of value that can be used by you to
22 remediate your damages. So I guess what you're saying is that
23 they can't rely on the substitute asset provision.

24 But I guess the broader point I'm trying to understand
25 is do you believe that there is no set of circumstances, no

1 legal theory, in which The Placencia Estates property can be
2 fit within the collateral exception to the guidelines?

3 MS. TEKEEI: Yes, your Honor. And that is because
4 while we understand your Honor's point made earlier that *Turk*
5 does not go so far as to say that the interest has to be
6 securitized -- I think that was the word that your Honor
7 used -- it does fall in line with the cases that distinguish
8 collateral is specifically applied as a credit against loss
9 where the victims have a right of access to a property
10 interest, a secure interest to that property, setting aside
11 what the defendant may or may not choose to do in cooperating
12 to help them recover it, in providing information, in positions
13 taken in litigation. They have a property interest or a right.

14 In other words, they own that property either by a
15 bank mortgage fraud scenario, default provisions that
16 immediately place the property into the bank or the lender's
17 hands or a lien that's been filed. There are multiple
18 different scenarios.

19 I'll note, your Honor, that in those cases, the
20 agreements themselves, for example, in the bank mortgage fraud
21 case, there is no allegation that the agreement, which is
22 prepared by the bank, is itself fraudulent.

23 What is fraudulent are the statements and
24 representations and misrepresentations that the defendants in
25 those cases made to the banks or the lenders in those

1 agreements.

2 In this case, the agreement itself is in fact
3 fraudulent. And unlike, for example, *Kraus* case which the
4 defense cited and we cited in our briefs, in that case the
5 reason why various types of collateral were counted as credits
6 against loss -- that's the Third Circuit case, your Honor -- is
7 because the government held that property once the defendant
8 defaulted in that case. And the agreement at question there
9 was a government form that the defendant had put
10 misrepresentations into.

11 Here, we have a situation where Mr. Boreland has
12 created agreements that contain within them fraudulent
13 misrepresentation to his creditors, the victims in this case,
14 which, going back to the prior point, is another reason why
15 neither the specific parcels that are listed, nor the
16 substitute assets that Mr. Boreland now proffers to the Court,
17 should count as collateral that should be credited against
18 loss.

19 There is simply no case that we have found, your
20 Honor, that would stretch that provision to what Mr. Boreland
21 hopes that it can be stretched to today and argues that the
22 Court should stretch it to.

23 Even if you were to say that there is a default
24 provision that the victims should have followed in this case,
25 your Honor, there are too many contingencies involved in that

1 default provision for the Court to award Mr. Boreland a credit
2 against the loss amount here.

3 The Court has already touched upon this issue, but I
4 think it's really important to go into because first
5 Mr. Boreland blamed the victims for not following the default
6 provisions. And now he's blaming the government for not
7 allowing him to release collateral to the victims. Neither of
8 those situations is true.

9 The paperwork that was put into escrow with the
10 so-called "escrow agent" is precisely that. If you look only
11 at the deed of conveyance that Mr. Boreland says he placed into
12 escrow, it's a certified copy of a deed of conveyance. It
13 isn't even an actual deed of conveyance.

14 If he had placed the actual deed of conveyance into
15 escrow, Marco Caruso would not have been able to convey that
16 deed of conveyance to the 40 some odd other victims in this
17 case. So what is in escrow is subject to further scrutiny.

18 This is not a case -- and I say this because it's
19 important -- where the government is holding Mr. Boreland up
20 from allowing victims to recoup their losses.

21 Quite the opposite. What he now proffers to the Court
22 as collateral that should be credited against his loss is not
23 so. And there are multiple contingencies involved in whether
24 that collateral exists, whether it exists in the form he
25 provided, and whether it could ever be provided to the victims.

1 If you look only at the default language in the
2 documents, it says that the victims have a right to take the
3 loan agreement to the so-called "escrow agent." Then they have
4 to hope that the agent has possession of or title to some
5 property because, again, Mr. Boreland did not identify to the
6 victims what was with the escrow agent, Mr. Filler. He only
7 identified that to Copper Leaf, not to the balance of the other
8 victims.

9 Then the victim has to hope that this escrow agent
10 would recognize that that victim has some right to compel
11 Mr. Boreland to cooperate in selling or executing or delivering
12 or taking the steps necessary for the property to be sold,
13 again, without any clue as to the actual value of that
14 property, without any certainty as to who owns that property or
15 who has the ability to sell it.

16 Read in their entirety, the terms of the agreement,
17 the fraudulent agreement, neither pledged collateral nor
18 provided it to the investors for purposes of credit against the
19 loss provision.

20 Your Honor also touched upon this, which is that as
21 Mr. Boreland admits, the very ownership of all of this
22 collateral, whether it was listed as specific property or
23 whether it's in Mr. Boreland's mind as a substitute asset that
24 he has provided to the victims, the ownership is under dispute
25 in Belize, in part because Mr. Boreland has put it in dispute.

1 And we have the unfortunate situation where one set of
2 victims who understandably wants to recover something and wants
3 to be able to obtain restitution for their loss in Belize will
4 be pitted against another set of victims who now under the laws
5 of Belize sitting here today owns that property.

6 What this has created are, frankly, too many
7 contingencies that even if you don't take *Turk* to the extreme
8 scenario of a securitized right or interest to the property,
9 this is not the scenario that the guidelines envisioned.

10 And it's not the scenario that any of the cases that
11 Boreland has cited or any of the cases that the government has
12 reviewed and envisions when they credit and allow a defendant
13 to reduce his culpability because of collateral that's been
14 provided to the victims.

15 THE COURT: Ms. Tekeei, what do you mean when you say
16 that the proceedings in Belize regarding the ownership of
17 Placencia pit one group of victims against another?

18 Is it Copper Leaf versus everyone else?

19 MS. TEKEEI: Your Honor, it is a difficult situation
20 to describe because, as we understand it, the set of victims
21 who purchased the land from Marco Caruso now have the deed for
22 that land, so Placencia Estates property. So they own that
23 property.

24 Mr. Boreland is contesting Mr. Caruso's conveyance of
25 that, as Mr. Miedel phrased it, the fraudulent conveyance. So

Mr. Boreland is working, as he has framed it, with Copper Leaf to dispute that Caruso had the ownership that would have allowed him to convey that property to the other set of victims, though effectively Mr. Boreland and Copper Leaf are disputing that the other victims rightfully have that property to begin with.

So we have this very uncomfortable, frankly, and unusual situation with a defendant who has argued and is attempting to reduce his loss amount in this case by so-called "cooperating" with one set of victims, effectively pitting himself against another set of victims.

That only draws into further questions the validity of Mr. Boreland's claim that he had any ownership interest in or has the ability, even today, to provide the victims with any of the so-called "specific property" that was listed or the so-called "substitute assets" that he now offers.

THE COURT: What about the argument that the defense is making that these victims, perhaps understandably, entered into a second transaction with Mr. Caruso in order to get something out of the investments that they made and having elected to accept this property as compensation for their losses, property that, according to the defense, is worth more than their investments?

It's inappropriate for Mr. Caruso to be absolved and not Mr. Boreland.

1 MS. TEKEEI: Your Honor, a number of responses to that
2 argument. First, the fact that the victims now have this
3 property is a far cry from having made them whole, however it
4 is that they received it.

5 And all that the victims did when they purchased this
6 property was to release Mr. Caruso, not Mr. Boreland, from
7 liability for the fraudulent agreement which they entered into
8 with Mr. Boreland.

9 Sitting here today, the investors have not been made
10 whole, however it is that they received those agreements. The
11 land is not worth what Mr. Boreland says it is, and efforts --

12 THE COURT: Stop right there, Ms. Tekeei.

13 The land is not worth what Mr. Boreland says it is.

14 Well, what is it worth? How do I know that? I
15 imagine you're going to avert again to the comment you made
16 earlier that the person who did appraise it in the middle of
17 this mess was unaware of the many competing claims for it.

18 Separate and apart from that, how do I know the land
19 isn't worth \$32 million?

20 MS. TEKEEI: Your Honor, the victims paid \$650,000 for
21 it. That is the sale marker. They paid for it. It was not
22 provided to them. They paid that amount of money for it.

23 We have not, as is clear from the papers, endeavored
24 to appraise the property ourselves. And the value of the
25 property is less important and the fact that even if the Court

1 were to consider that the victims now own that property through
2 some sort of settlement with Mr. Caruso, not with
3 Mr. Boreland -- it was after Mr. Boreland was arrested and his
4 crimes were revealed.

5 The guidelines specifically state that settlement with
6 victims that happen after an offense is detected -- and this is
7 the commentary at Note 3(E)(i) -- are not to reduce the loss
8 amount. In this case, it wasn't even Boreland who settled with
9 the victims. It was a third party. It was Michael Caruso.

10 If you commit a fraud in years one through five, 2014
11 through 2018, you defraud 40 victims out of approximately
12 \$40 million and you're arrested in year six, and in year seven,
13 other people are taking steps to help those victims invest,
14 reinvest, attempt to recover some losses in exchange for a
15 release from liability, you as the defendant don't get a
16 benefit of those efforts to reduce your own liability pursuant
17 to the credit against loss provision, and that's what
18 Mr. Boreland is attempting to do.

19 THE COURT: I don't know that that's correct. I'm not
20 sure that *Turk* is so stringent with those requirements. I
21 think the actual provision says that -- and I'll read it -- "In
22 a case involving collateral, pledged or otherwise provided by
23 the defendant, the amount the victim has recovered at the time
24 of sentencing from disposition of the collateral or if the
25 collateral has not been disposed of by that time, the fair

market value of the collateral at the time of sentencing."

It doesn't seem to me to require that that collateral have been transferred to the victim before the arrest, before the plea, before the conviction, as long as they get something by the time of sentencing. I think I'd agree with you if, for example, they were settling with Mr. Caruso regarding Placencia Estates years from now, years after the sentencing.

But I'm not sure that there can't be a settlement involving collateral undertaken by someone who is not Mr. Boreland and Mr. Boreland can get no credit for it. That's the part I'm disputing. Let me understand why you believe it that way.

MS. TEKEEI: Your Honor, let's just take a step back because your Honor read from the guidelines provision which says "by the defendant," a collateral pledge or otherwise provided by the defendant.

There is no reason to believe, based on all of our arguments that we've already made and what's in our papers, that Mr. Boreland actually pledged any collateral to any victim.

This all confirms -- the very conversation that we're having, your Honor, confirms that the victims have no reason to believe that they will ever be repaid for their losses. The point I was making about the civil settlement is that that does not reduce the loss under the guidelines, no matter who enters

1 into it.

2 But here, just taking a step back as what we have here
3 before us, your Honor, this is a situation where the defendant
4 has not provided, otherwise provided or pledged, collateral to
5 the victim. That is the primary argument for all the reasons
6 that we've stated before.

7 Your Honor asked earlier for Mr. Miedel to describe
8 what steps he's taken to secure the land in Belize for the
9 victims. The answer to that is he took no steps to secure the
10 land in Belize for the victims.

11 Everything he's doing now, however one would
12 characterize it, is an attempt to reduce the liability in this
13 case. And the entire discussion that we're having, given the
14 passage of time from the first loan that was in default back in
15 2014 to today, six years later, undermines the whole notion
16 that victims were ever going to be repaid and undermines the
17 notion that victims will ever be repaid or have any certainty
18 that they will be repaid. Again, that's not the scenario
19 envisioned.

20 THE COURT: Ms. Tekeei, to that point, you keep saying
21 there is no certainty that the victims will be repaid. I have
22 read many sentencing letters, victim impact statements, in
23 connection with this case. And they are heartbreaking. But
24 they were written, I understand, before these settlements with
25 Mr. Caruso regarding The Placencia Estates.

1 So I don't think you're arguing -- maybe you are --
2 that having received this land they have not been made whole.
3 Perhaps you are. Perhaps you're arguing that this isn't what
4 they signed on for and, while they're accepting it as some sort
5 of salve because it's better than nothing, that this isn't
6 enough to make them whole.

7 MS. TEKEEI: I think it's both, your Honor. They
8 accepted a settlement from Marco Caruso in exchange for
9 releasing him and only him from liability and received, after
10 they paid for it -- in other words, they invested more of their
11 hard-earned money into the land that is at issue here and
12 really the substitute assets or so-called "substitute assets"
13 that Mr. Boreland is offering.

14 I don't think any victim here feels like they have
15 been made whole, your Honor, even though they now have some
16 ownership right that Mr. Boreland and others may still be
17 disputing to the land that Mr. Boreland says the Court should
18 consider as a substitute asset.

19 THE COURT: When I was speaking with Mr. Miedel, he
20 indicated that what stands in the way of a certain amount of
21 resolution and a certain amount of peace for the victims is the
22 government. In fact, he suggested that the defense and the
23 government could get together and work through some of the
24 impediments to making the victims whole.

25 Have you been approached by defense counsel regarding

1 such a meeting or an undertaking?

2 MS. TEKEEI: Your Honor, prior defense counsel made
3 the arguments to us that are being made before the Court now,
4 which is to say they argued that the government should take the
5 position that the loss was zero because of the arguments that
6 the Court is now hearing.

7 Mr. Imperatore will correct me. Prior defense counsel
8 and current defense counsel, to my memory and my recollection,
9 have never asked the government to assist in recovering the
10 land or recognizing a right to the land or acquiring it or
11 selling it in order to make the victims in this case whole.

12 THE COURT: Ms. Tekeei, I'm changing topics.

13 One of the things I don't understand about the
14 government's argument is an insistence in discussing actual
15 versus intended loss.

16 It would seem, I think with appropriate respect, that
17 the government might be conflating a number of different
18 contexts. It seems here that there is an actual loss that can
19 be ascertained, namely, the amount of investments from the
20 victims. We can talk later about whether there are credits
21 against that loss.

22 But when I think of intended loss, I think of two
23 contexts, neither of which is present here. And one is the
24 sting transaction where actually it was only because of the
25 intervention of the government that there were no losses. And

1 then, rather than having an actual loss of zero, there is an
2 intended loss that is understood.

3 And I've seen other cases in the Second Circuit where
4 there's been discussion of evidence or the lack thereof that a
5 defendant intended greater losses than actually had occurred.

6 Here, right now, the investments were received. They
7 are on the order of \$21.9 million. It would appear that maybe
8 one person got paid back, Mr. Cushman, and no one else.

9 So I'm not sure, first of all, that an intended loss
10 would result in different numbers. And I'm not sure why you're
11 asking me to focus on intended rather than actual.

12 MS. TEKEEI: Thank you, your Honor.

13 Let me clarify, if I can. We are aware of and cite
14 the Court and point the Court in our briefing to the notion
15 that the Court may presume that a defendant intended his
16 victims to lose the entire face value of the claim.

17 So when the entire face value of the claim is
18 approximately \$22 million, as it is here, then that is, the
19 defendant's would argue, the intended loss amount.

20 Here, where the defendant is saying the Court should
21 also consider that there is some collateral out there that
22 should reduce the loss amount, which in this case the intended
23 and actual loss amounts so far are the same, we wanted to make
24 sure the Court considered that this is unlike the credit and
25 what the defendant is asking the Court to recognize is unlike

1 the situation where a bank has ownership of a house and
2 therefore it would have been impossible for the defendant to
3 have intended, if the house were worth a million dollars, to
4 negate the entire amount, absent some catastrophe that
5 destroyed the home. This is different from that situation.

6 This is a situation where there is no house. The
7 defendants did not provide property. The victims have no right
8 to property. So his intended loss amount is the face value of
9 the loans, however you cut it. We understood that, and we make
10 that argument based on the Court's opinion in *Lacey*.

11 THE COURT: Just one moment, please, because I have
12 *Lacey* here.

13 Even in *Lacey*, Ms. Tekeei, and I'm looking in
14 particular at page 720 of the decision. So it would be 699
15 F.3d at 720. The court admits the possibility that even in an
16 intended loss case, the district court can draw the inference
17 that the intended loss amount, which to you is the whole amount
18 of the investments, can include an offset for the value of the
19 property.

20 That's because, as they say, it's unlikely for even a
21 nefarious defendant to intend the improbable result that real
22 property be destroyed or otherwise rendered valueless.

23 Perhaps what you're arguing to me this afternoon is
24 that I should first of all find intended loss in the sense that
25 Mr. Boreland intended every dollar of investment to have been

procured by fraud and taken and that he didn't care enough about the real property or the putative collateral to warrant the offset that is specified in *Lacey*. Maybe that's what you're arguing.

I'll hear from you.

MS. TEKEEI: I think that's fair, your Honor. What we're arguing is that this is not, as I said earlier, a case where there is property left such that the defendant could not have intended the full amount of loss.

Here, there is no such property. This defendant, the nefarious defendant here and the nefarious defendant in *Lacey*, did not take the steps necessary to secure the property. So what the victims were left with is nothing.

To the extent that the Court thinks that there might be a credit applied because under the credit and loss provision, the actual loss amount -- we don't think that this is a scenario where he should get credit for that in the intended loss amount.

THE COURT: What then am I to do with the settlements arrived at by the victim with Mr. Caruso? Is that something I would be factoring in as restitution?

MS. TEKEEI: Thank you, your Honor.

While we have not -- I have not looked so carefully yet at restitution -- I don't know the answer to that, your Honor. I don't want to speak out of turn.

1 I'd have to look at that a little bit more carefully
2 to be able to answer the Court with some authority on whether
3 what the victims have now or whether the amounts that have been
4 provided -- I think, for example, Mr. Cushman who received
5 money from Mr. Boreland -- that amount would be factored into
6 restitution.

7 Whether a civil settlement with Mr. Caruso by which
8 the victims now have right to property, even though it's being
9 disputed by Mr. Boreland and Copper Leaf, should credit against
10 restitution, I'm not sure.

11 My initial reaction is there are still too many
12 contingencies for it to be credited against restitution, even
13 under the scenario that Mr. Boreland posits, but I'd have to
14 think about that a little bit more.

15 THE COURT: You've asked but not vociferously about
16 your ability to take your own appraisal of the property. And I
17 understand why you believe it doesn't need to be done at this
18 stage because you believe that the collateral exception, just
19 by its terms, does not apply. I'm neither agreeing nor
20 disagreeing at this point.

21 If we're going to start talking about restitution,
22 doesn't that mean at some point you have to undertake an
23 appraisal of the property to see what the victims got? Or
24 something else?

25 MS. TEKEEI: I think that would assume that the

1 settlement then counts for restitution, your Honor. I don't
2 know the answer to that. I'd have to think about that a little
3 bit more.

4 THE COURT: Okay. I am again changing topics,
5 Ms. Tekeei.

6 You've asked me to consider -- one moment. I'm losing
7 Mr. Miedel, perhaps momentarily.

8 (Pause)

9 THE COURT: Ms. Tekeei, I assume that Mr. Imperatore
10 is deliberately turning off his video feed. Mr. Miedel was my
11 principal oralist for the defense. So I do wish to have him
12 back before we continue.

13 MR. IMPERATORE: Your Honor, this is Mr. Imperatore.
14 I just want to respond to that. I have been listening
15 throughout this presentation. At some point, my screen froze.
16 I don't know if you can see me, but I certainly can hear. And
17 I am participating right now by audio.

18 THE COURT: I thought you had something better to look
19 at, sir. But I take your explanation. I understand that you
20 are still here.

21 I see Mr. Miedel is returning. I'm not sure what you
22 told him, but I am happy to have his return.

23 MR. MADIOU: I was going to tell your Honor that I was
24 communicating with him offline.

25 THE COURT: And Mr. Imperatore is also returning to

1 the fold. I am doubly blessed.

2 Mr. Miedel, have you been able to hear, even if we
3 haven't seen you, the last few minutes of my conversation with
4 Ms. Tekeei?

5 MR. MIEDEL: I would say I missed the last 30 seconds
6 or so of your conversation.

7 THE COURT: I won't speak for her, but I believe I can
8 accurately summarize it to be that on the issue of restitution,
9 I believe the government is still evaluating whether they would
10 consider the settlements with Mr. Caruso to count against the
11 restitution figure. That's a point that they're not yet
12 arguing to me today. I think they want to think about it more
13 carefully.

14 MR. MIEDEL: I heard that, but I think you asked if
15 the government would be interested in an appraisal, if at some
16 point there would need to be an appraisal. I don't think I
17 heard an answer to that.

18 THE COURT: I don't think I was given an answer to
19 that. What Ms. Tekeei said was because they haven't decided
20 whether the transaction would count for restitution purposes,
21 they haven't decided whether they would need the appraisal.

22 MR. MIEDEL: Okay.

23 THE COURT: Ms. Tekeei, go ahead, if I've misstated
24 you.

25 MS. TEKEEI: No, your Honor. You're correct. I would

just add, as I'm thinking about it, that the circumstances of Mr. Caruso's conveyance of property to the victims suggests that Mr. Boreland is not the one repaying them or attempting to repay them. So that's another reason why I'd want to think about whether it should count as restitution.

THE COURT: Ms. Tekeei, Mr. Boreland tells me through his counsel that he and his wife had a 50 percent interest in these properties or some interest in these properties that was taken from him, stripped from him, by Mr. Caruso.

Do you dispute that? Do you think actually Mr. Boreland never had an interest in any of these properties?

MS. TEKEEI: Your Honor, we have reviewed the letter that Mr. Boreland provided and attached to his materials by an attorney who reviewed the ownership interest in some of the properties at some point.

I don't think that I'm disputing right now or we're disputing right now that at some point Mr. Boreland may have had some interest in the properties or in those entities.

I think what is more relevant is that his ownership is currently in dispute and any ability for the victims to recoup, to the extent that it depends on that ownership, is in flux.

THE COURT: Okay. Ms. Tekeei, I was changing topics when we lost Mr. Miedel. So I'm going to do my changing of topics now.

You've asked me or you've demurred on discussing with

me what I'll call the Canyon transaction. I believe I'm stating that correctly. This is the earlier 2005, a much earlier transaction, that may or may not be relevant conduct.

First of all, am I calling the transaction correctly? Is it something that you understand when I use that term?

MS. TEKEEI: I do, your Honor. I believe what the Court is referring to are transactions entered into by various Canadian investors with Mr. Boreland. And, yes, through an entity that is one of the entities that was used in connection with this particular aspect of the scheme.

And that is the set of facts that the parties -- I think Mr. Boreland at one point was arguing that the Court should not consider that and is now no longer arguing that, which is why we didn't address it in our response to his latest submissions.

THE COURT: Then let me please check that because I did see that the Federal Defenders was arguing against its inclusion. I thought Mr. Miedel was not walking away from that, but let me check in with him.

Mr. Miedel, your view on Canada or at least the Canadian transactions.

MR. MIEDEL: Yes, your Honor. We listed in our June 16 submission that it was our understanding from both speaking with the government and with prior counsel that the purpose of this particular briefing involved Application Note

3(E) and that therefore the inclusion of discussion about whether something constituted relevant conduct or not, specifically the Canadian issue, was really not properly before the Court.

So what we said in our June 16 submission was that not to walk away from our dispute about it, but that we considered this particular briefing to be about the application note.

And once there was a ruling on that, then the government was going to decide whether they were going to pursue their argument about this being relevant conduct or not. And then we could contest it at that point. We didn't want to mush these two issues together.

THE COURT: Ms. Tekeei, my initial reaction on the materials that I have read is that this is not relevant conduct. It doesn't mean that I won't consider it under 3553(a).

There are other provisions that make clear that there are a number of things that I can consider. So it wasn't obvious to me that it's relevant conduct, although I appreciate the argument being made that it's a pattern or almost an MO on Mr. Boreland's part.

That said, it is at paragraph 37 of the presentence investigation report as it now stands. It is of interest to me. And whether we call it relevant conduct or something else, I think both sides should be prepared to address the issue

1 because it matters to me if the Belize episode was a one-time
2 thing or a continuation of conduct that happened in other
3 places.

4 Ms. Tekeei, I've asked you, I believe -- I'll confirm
5 that by looking at my notes. One other question, please.

6 Only because once in a while people mention these
7 things to me, there is this what I find interesting, perhaps
8 not always relevant, theory called the right to control theory.
9 I think most recently the Second Circuit addressed it in the
10 *Binday* decision involving insurance policies. I think it was
11 addressed in the *Castro* decision. I can think of some other
12 cases.

13 I didn't believe the government was proceeding under a
14 right to control theory, but I just wanted to understand
15 whether you were and, if so, what your arguments were.

16 MS. TEKEEI: The Court has stumped me. I'm not
17 familiar with the right to control theory. I'm happy to look
18 into it to provide the Court with an articulate answer to that.
19 Sitting here today, I'm not prepared to, your Honor.

20 THE COURT: Of course. And I won't put Mr. Miedel on
21 a similar spot. The case that I've seen it addressed in
22 greatest detail most recently is called *Binday*. I believe as
23 well there's a case called *United States v. Castro* where it's
24 addressed, and I'm sure that those cases themselves cite other
25 cases.

1 It's fine if you're not arguing it. I just want to
2 know because I do. So I will leave that to both of you to talk
3 to me about perhaps even as we get closer to sentencing
4 guidelines.

5 Ms. Tekeei, with that question answered as it was, I
6 don't have additional things to inquire about with you. But if
7 my questioning of you has left statements that you wanted to
8 make in response to questions that I asked of the defense
9 unmade, I will let you make those just for completeness. If
10 there are things that you want to tell me that I didn't know
11 enough to ask you about, please do so now.

12 MS. TEKEEI: Thank you, your Honor.

13 I'm just reviewing my notes to make sure that I've
14 covered all the arguments that I intended to. If the Court
15 would give me just one moment.

16 THE COURT: Of course.

17 MS. TEKEEI: Your Honor, I hesitate because I don't
18 want to repeat arguments that I have made before. I think it's
19 important, at least to us, to step back for a moment and look
20 at the case law, the language of the provisions, and then the
21 scenario that Mr. Boreland is positing here.

22 In each of the cases in which the application note at
23 issue has been applied to allow a defendant to reduce his
24 liability by receiving a credit against the loss, the
25 collateral that was pledged or otherwise provided did not carry

1 with it all of the strings attached -- here, fraudulent loan
2 agreements, reliance on the whims or desires of the defendant
3 to put the paperwork together, to identify the property, to
4 provide instructions to so-called "escrow agent."

5 This is not the scenario envisioned. Instead, in
6 those cases, the victims could recover directly against the
7 property. Our victims had been sold and they received money by
8 the time of sentencing from the sale of those proceeds, not
9 because they had an ownership right in that property.

10 Here, where Mr. Boreland in these agreements
11 fraudulently listed as to the specific assets multiple times
12 those very same assets in multiple agreements and then has
13 conjured substitute assets after the fact that he says he will
14 now provide -- all of the assets listed in the substitute
15 assets are mired in legal disputes and litigation in a foreign
16 country -- is not the situation where courts have applied a
17 credit against loss.

18 Here, the victims would have to wait potentially, even
19 under the scenario proffered by Mr. Boreland, years until
20 litigation, property right disputes, are resolved and any
21 ownership rights are ultimately ascertained. And that's before
22 they have any hope and, again, not the certainty of recovery
23 based on that collateral. So there is no precedent for the
24 scenario that Mr. Boreland posits here.

25 I don't think I have anything further to say, your

Honor, unless you have more specific questions.

THE COURT: No. I've asked the questions I have.

Mr. Miedel, I'll hear from you in reply. Why don't we begin with the point that Ms. Tekeei was just making.

We've talked about *Turk* a lot this afternoon. But I think another recent decision or relatively speaking was the decision whose name I will now mangle, *Gabayzadeh*. That speaks about property or things recovered by victims as of the time of sentencing. I think that is as well contained in the application note.

Here, perhaps the parties are going to seek to delay sentencing until the Belize matter is resolved. But right now today, the victims have an ownership interest that is clouded and that ultimately may be taken away from them.

How would that suffice as collateral under the application note?

MR. MIEDEL: Well, your Honor, first of all, I mean the application note says the value of collateral -- it doesn't have to be in the possession of the victims at the time of sentencing. It has to be the value of the collateral at the time of sentencing.

But here, the victims in fact currently own the 1,586 acres. I want to talk a little bit more about that because you were talking about it with Ms. Tekeei.

What mystifies us or continues to mystify us about the

1 government's position here is that the government acts like
2 Marco Caruso is some third party who has nothing to do with
3 anything and somehow managed to just provide these victims with
4 some recourse.

5 But the fact is that Mr. Caruso and Mr. Boreland were
6 joined at the hip in these proceedings. They both signed loan
7 agreements. There is plenty of correspondence that involves
8 Mr. Caruso with all these loan agreements.

9 Mr. Caruso was the one who mailed via FedEx the deeds
10 to the escrow agent in 2017 to ensure that the Placencia
11 Estates development was in fact in escrow. He is in the thick
12 of it.

13 So to suggest that because he wasn't arrested or
14 charged somehow suggests that he has nothing to do with this is
15 simply not the case. If the victims in this case, the 40
16 investors who went down there and transacted for this land, if
17 they released him from liability, then they have been made
18 whole.

19 That is essentially the argument, that they would not
20 have then purchased land for \$650,000 and in turn released
21 Marco Caruso, who was a cosignatory to the loans, unless they
22 believed that they were being made whole because otherwise they
23 could have bought that land for \$650,000 and pursued Caruso in
24 the Belizean courts for the remaining \$12.5 million.

25 THE COURT: Mr. Miedel, I thought they were working

1 with Mr. Caruso because he's the one who had the actual deed of
2 conveyance and that's why they were able to work with him.

3 So saying they're working with him and released him,
4 it seems to me that for them, that may have been the price of
5 doing business. They wanted the land. He held the document
6 that stood in the way of their obtaining the land, and that was
7 what they did in order to get it back.

8 I'm not sure that that means -- it does mean that
9 they've released him. Perhaps holding their noses, they did
10 so. I'm not sure they're now going to come to me and say, we
11 rescind our prior victim impact statements. We've been made
12 whole. I don't see how they are.

13 I do understand that what you're saying I need to
14 consider at the time of the sentencing is the value of the
15 collateral and not necessarily whether it's been reduced to
16 cash.

17 But I'm not convinced that these victims have an
18 interest in the property because if your client's lawsuit in
19 Belize wins out, if Copper Leaf wins out, then they don't.
20 Then they don't.

21 MR. MIEDEL: Let me address that because I want to be
22 clear that Mr. Boreland is not trying to take this away from
23 the 40 victims and give it to Copper Leaf. Copper Leaf is
24 suing Caruso in Belize because that's the only place where they
25 can pressure him to make them whole.

1 The point is not to deprive the 40 victims of their
2 returns, but it is to add Copper Leaf to the list of victims
3 being made whole, to complete the list.

4 So there is no intention on Mr. Boreland's part to
5 undo the transaction against the 41 victims in the sense of
6 depriving them of the property. He is simply trying to assist
7 Copper Leaf in ensuring that Copper Leaf is made whole as well
8 because that's the ultimate intention.

9 THE COURT: But, sir, stop please.

10 At the time of sentencing, if the Belize matter isn't
11 resolved, then my victims have no clear ownership interest in
12 the property.

13 MR. MIEDEL: Well, I don't know if that's true because
14 currently the way things stand, until a court changes it, they
15 do. There is always a possibility of litigation against
16 properties or against ownership or questions of ownership in
17 any real estate proceeding.

18 But the fact is as of now, if we were sentencing
19 today, these victims own that property. The question would be
20 what is that property worth and does it redeem their \$13
21 million losses.

22 THE COURT: Excuse me, sir. \$13 million or
23 \$21.9 million?

24 MR. MIEDEL: Subtracting the \$8 million for Copper
25 Leaf. That's a separate matter. We're talking about the 40 of

1 the 41. Their investment I guess is about \$13 million.

2 The other fact is not only are we talking about the
3 1,586 acres of Placencia Estates, the victims also obtained
4 ownership in the land on which the airport sits.

5 Now we concede that that particular land was not
6 explicitly pledged in the loan agreements, but it was certainly
7 for the purpose of these particular lands. It was for
8 developing that particular land, and now the investors obtained
9 ownership in that land as well.

10 So Ms. Tekeei keeps saying that these victims will
11 never be made whole. Assuming these numbers are correct, they
12 have been made whole. They have gotten well beyond their
13 initial investment. That is why the valuation of that land and
14 those properties is obviously very important for purposes of
15 sentencing.

16 THE COURT: Mr. Miedel, you said to me earlier that
17 what stands in the way is the government.

18 How are they standing in the way?

19 MR. MIEDEL: As I said earlier, if somehow the
20 transaction between Marco Caruso and the 40 victims is undone,
21 then the alternative way for them to obtain the collateral
22 would be to go through the mechanism set in place through David
23 Filler and the escrow agent and all that stuff.

24 THE COURT: How is the government preventing that from
25 happening? I did not understand that the government was at all

involved in the settlement of the 40 claims with Mr. Caruso.

MR. MIEDEL: Right. Exactly. The problem is Mr. Boreland is not allowed to engage in any kind of financial transactions under the terms of the SEC. So he cannot even authorize the escrow agent, for example, to conduct transactions on his behalf.

So that's where the government could step in and say, okay. We're going to sit down. And we will let you do this. We will let you authorize the escrow agent to do what you need to do to sell these properties and so on. That would be a possibility.

THE COURT: I find that remarkably Pollyanna-ish, sir. I need to understand that a little bit better.

You want the government to permit Mr. Boreland to authorize Mr. Filler, who now has separate counsel and is running away from any involvement in these transactions, to be involved in these transactions?

Moreover, sir, you want him to be involved with transactions despite the fact that another transaction has already taken place with Mr. Caruso.

MR. MIEDEL: Right. As you have rightly pointed out, this is a complicated situation. If for whatever reason the transaction in Belize is undone, then we are back to where we are --

THE COURT: How does this government in this case undo

that transaction? What troubles me, sir -- no. These are your words: "What stands in the way is the government."

What did they do?

MR. MIEDEL: I'm not saying that the government can undo or has any influence whatsoever on the legal matter in Belize. I'm saying that if that transaction is done by the courts in Belize for some reason, then Mr. Boreland could do what was envisioned in the loan agreements to go forward and release the collateral here in Florida.

THE COURT: That was not your best argument, sir. I'll let you continue.

MR. MIEDEL: Your Honor, I'm really sorry about this. Can I step away for one minute? I have to plug in my computer. Otherwise, I'm going to lose you.

THE COURT: Yes.

MR. MIEDEL: Thank you.

(Pause)

MR. MADIOU: Your Honor, when Mr. Miedel comes back, if we could just have a brief moment to confer with our client. We have our cell phones. We are dialed in on the computer.

So hopefully we can get our conversation done on the cell phone and maybe just mute and pause the video while we do that, if that's okay at some point.

THE COURT: All right.

(Pause)

MR. MADIOU: Your Honor, with apologies, Mr. Miedel just sent me a message that he needed a moment to get back on line. I'm sorry about that.

THE COURT: Okay.

(Pause)

MR. MADIOU: Your Honor, at this point, I am going to mute both my audio and my video. I am still here. I'm just going to call Mr. Boreland and Mr. Miedel so we can have a conference while he also figures out his laptop issue.

THE COURT: Okay. Although I believe this is he who may be coming into the conference right now.

MR. MADIOU: Okay.

MR. MIEDEL: I'm back.

THE COURT: What Mr. Madiou has proposed is that each of you are going to turn off the video and mute your audio momentarily and then return to the conference.

MR. MIEDEL: Thank you, your Honor.

MR. MADIOU: Thank you, your Honor.

THE COURT: Thank you.

(Pause)

MR. MIEDEL: We're back.

THE COURT: Thank you.

Mr. Miedel, something you wanted to add?

MR. MIEDEL: Yes, your Honor. Thank you.

We were just talking about what Mr. Boreland can do.

1 What he can not do under the terms of this SEC order is
2 transfer any kind of property. So in that sense, even if he
3 were able to and could transfer property, he's prevented from
4 doing so by the government. That's what I meant before.

5 The other thing is he also cannot talk to the victims
6 themselves to try to resolve these disputes. So, again, this
7 only really is an issue if -- this would only be an issue if
8 the transaction in Belize is undone, which we just don't know.

9 THE COURT: Would you be arguing, sir, that the
10 collateral exception would apply if there were property that
11 your client had that was not necessarily affiliated with or the
12 subject of these agreements? They just had it? No.
13 Presumably there has to be some interrelationship --

14 MR. MIEDEL: Of course.

15 THE COURT: -- between the property that you're
16 proposing as collateral and the exception.

17 Here you've now told me what the government is
18 preventing him from doing, the transferring of property. I'm
19 not sure I disagree with that proscription.

20 Are you suggesting that because of that, he is somehow
21 being precluded from the application of the collateral
22 exception?

23 Let me try that again with a little bit more
24 coherence. There are many reasons why the government is
25 arguing that the collateral exception doesn't apply. And again

1 I'm trying to understand what the government has done to stand
2 in the way. What you're saying is he can't transfer any
3 property.

4 What property did he have to transfer that would
5 otherwise have been within the exception?

6 Or is the idea that perhaps he could have fought
7 harder with Mr. Caruso or something? I guess I'm just trying
8 to understand all of that.

9 MR. MIEDEL: Your Honor, I'm talking specifically
10 about property that was pledged or served as a substitute asset
11 in this case. So, for example, I think all of the loan
12 agreements had specifically pledged property in the
13 development -- lot 31, lot 34, that type of thing.

14 He, if he were allowed to transfer property, would be
15 able to facilitate the transfer of those lots, for example, to
16 the victims if they wanted them as collateral.

17 THE COURT: Mr. Miedel, so that I understand, are you
18 saying that if he had the ability to transfer property, the
19 exact and precise properties that are mentioned in each of the
20 relevant investment agreements as collateral, he would now be
21 able to transfer?

22 MR. MIEDEL: Yes. I'm saying that the mechanism would
23 be followed. The property could be sold. Each of these
24 properties collateralized a loan at a 2 to 1 ratio.

25 So let's say one of the lenders paid \$150,000 and the

1 property sold for \$2 million. Then the lender gets \$150,000
2 and the other lenders for whom that same property was
3 collateralized also get paid up to the amount of the same of
4 the property.

5 Those lots were pledged specifically in the loan
6 agreements, and they would be something that he could
7 facilitate the sale of.

8 THE COURT: I think this is a little bit different
9 from what you've been arguing to me up until this point.
10 You've been talking about the Placencia Estates property, which
11 of course is the property that was pledged or at least
12 identified to Copper Leaf and is now the subject of
13 considerable dispute.

14 But what you're actually saying is if only the
15 government didn't prevent me from transferring properties, then
16 everybody could be made whole because the very properties that
17 are identified in their agreements are the properties that I
18 could assist them in transferring.

19 MR. MIEDEL: Your Honor, not quite, because I think
20 that the pledged properties, if you take out the substitute
21 assets completely, would probably be insufficient to cover the
22 \$21.9 million in loans. But with the Placencia Estates
23 development included, they would be, in fact, well beyond the
24 \$21.9 million.

25 THE COURT: And the non-Placencia Estates properties

today are able to be transferred right now today?

MR. MIEDEL: Well, the first step obviously would be Mr. Boreland would have to be free to initiate the process of authorizing the agent and all that stuff. Let's say he was.

Hold on one second, please.

THE COURT: Yes. Mr. Miedel, what I'm trying to understand is how come Mr. Caruso doesn't have his hands on these properties as well.

MR. MIEDEL: Those properties are co-owned.

THE COURT: According to Mr. Caruso, he's got them all.

MR. MIEDEL: Yes. Can I have just one second to consult with my client about this? Because he seems to be having something to say to me.

THE COURT: Yes. He is being quite animated right now. I'll let you speak with him. What I'm saying is be careful. If you're really telling me that the victims could receive restitution if only the government would get out of the way, that's a very serious statement.

And I really need to understand it better because Ms. Tekeei is going to get the question next. If you need to take another break to speak with your client, please do so.

MR. MIEDEL: Thank you.

(Pause)

MR. MIEDEL: Thank you, your Honor.

1 THE COURT: You may continue, Mr. Miedel.

2 MR. MIEDEL: So it is my understanding that those lots
3 are -- the deeds for those lots remain in the possession of the
4 escrow agent, David Filler, who has a power of attorney to act
5 on them pursuant to instructions set forth in the notes, in the
6 loan agreements.

7 So Mr. Boreland would obviously authorize the sale of
8 those properties. I honestly don't know frankly enough about
9 real estate law at this point to know what the situation would
10 be if, for example, Marco Caruso stood in the way. But we
11 don't think he could because he himself signed the power of
12 attorney to allow David Filler to move without their consent.

13 THE COURT: Can we agree that this is nowhere
14 discussed in any of your submissions to me?

15 MR. MIEDEL: I'm not sure -- I think we talked about
16 that in -- we didn't only talk about the Placencia Estates. We
17 talked about the collateral as a whole, which included the
18 pledged collateral, which we talked about in our June 16 memo.
19 And then there was a separate section about substitute assets
20 which is where we talked about the Placencia Estates.

21 In the section about essentially pledged collateral
22 which involves those lots, we talked about the power of
23 attorney and the fact that those could be redeemed under the
24 procedures sets forth in the loan agreements.

25 THE COURT: You proposed that this very thing could

1 happen, that if only the government would step out of the way,
2 that Mr. Boreland could convince Mr. Filler to discharge his
3 obligation as escrow agent and to effectuate the sale of these
4 properties?

5 MR. MIEDEL: We believe we could.

6 THE COURT: I'm asking.

7 MR. MIEDEL: Yes.

8 THE COURT: I don't really recall you making that
9 argument with this much clarity in any of your written
10 submissions.

11 MR. MIEDEL: The written submissions were about the
12 fact that this collateral exists and is redeemable under the
13 procedures as were set out. Therefore, it can be considered as
14 collateral for purposes of the application note.

15 The actual practical procedures of how that would
16 happen, we didn't go into detail on. No. That's true. That's
17 how I envision that it would happen. There's a power of
18 attorney that is signed by both owners of the property that
19 allows David Filler to move on it.

20 THE COURT: Ms. Tekeei, I was not aware that this was
21 an argument that was going to be made today. I'd like your
22 response to it, if you have one.

23 MS. TEKEEI: Your Honor, let me first start out by
24 saying I think the freeze that Mr. Miedel is discussing is in
25 the SEC case against Mr. Boreland which is before Judge Castel.

1 In that case, the SEC sought to freeze Mr. Boreland's
2 assets. Judge Castel entered a freeze order. I'm not at this
3 moment able to pull up that freeze order to determine what it
4 encompasses, but I understand that Mr. Imperatore has and has
5 reviewed it.

6 MR. IMPERATORE: Your Honor, this is Edward
7 Imperatore. I am jumping in on this.

8 The argument is a little bit of a surprise to the
9 government because there have been three rounds of briefing
10 that has spanned several months and this is the first time that
11 this has ever been raised.

12 I have pulled up in the last couple of minutes the
13 freeze order that was entered in this case. I'll give
14 your Honor the docket number. This is *Securities and Exchange*
15 *Commission v. Brent Boreland, et al.*, 18 CV 4352. This is
16 before Judge Castel, document number 7. It was styled as a
17 proposed order to show cause, temporary restraining order, and
18 order freezing assets.

19 THE COURT: Mr. Imperatore, you're audio is coming in
20 quite poorly. You and Ms. Tekeei must have gotten your
21 equipment from the same supplier. It's very difficult to
22 understand you.

23 MR. IMPERATORE: Your Honor, can you hear me better
24 now? I'm just going to talk directly into my cell phone. Is
25 this better?

1 THE COURT: Much.

2 MR. IMPERATORE: Would your Honor like me to repeat?
3 I just provided the docket number and the caption to the
4 document.

5 THE COURT: I have those. Thank you.

6 MR. IMPERATORE: Thank you.

7 So, your Honor, this is an order -- it was a proposed
8 order that was brought at the same time as the SEC's action,
9 and it was entered by Judge Castel. It was never contested by
10 Mr. Boreland, and the case was stayed pending the resolution of
11 the criminal case.

12 So just in the last couple of minutes, I have pulled
13 up this document. And I understand the argument that is being
14 advanced by the defense is this idea that somehow the entry of
15 this order somehow restricts Mr. Boreland's ability to provide
16 land that's located in Belize to victims.

17 And I think there are several problems with that
18 argument. But I think most obviously, your Honor, in the
19 PDF -- this is at PDF page 5 into page 6 -- the relief that's
20 being sought and that was entered by Judge Castel provides to
21 the following: Property "held by or under the direct or
22 indirect control of the defendants or relief defendants,
23 whether held in any --"

24 THE COURT: Sir, tell me, please, what paragraph this
25 is and what page.

MR. IMPERATORE: I'm sorry, your Honor. This is a paragraph that begins: "It is further ordered." It is under subheading 2 on PDF page 5. In other words, if your Honor looks at the heading --

THE COURT: I see it.

MR. IMPERATORE: The II heading.

THE COURT: Yes.

MR. IMPERATORE: This is a long clause. I'm just going to address part of it. It applies broadly to essentially the transfer of properties "held by, or under the direct or indirect control of the defendants or relief defendants, whether held in any of their names or for their direct or indirect beneficial interest, wherever situated, in whatever form such assets may presently exist and wherever located within the territorial jurisdiction of the United States courts."

So it appears -- this is I think an obvious jurisdictional limit to a civil order by definition. And I'm just reading this sort of live as this argument is going on here. It appears to me on first glance that this applies only to property located within the territorial jurisdiction of the United States courts. It would not appear to me that this would include property in Belize.

The order goes on to include specific property which are bank accounts in the United States. There is no land in

1 Belize that is the subject of that order, although the lawsuit
2 brought by the SEC does relate to that subject matter. So I
3 think for that reason alone, the argument fails.

4 I think there are some other sort of obvious points
5 here. One is -- I think your Honor has alluded to this, but I
6 just want to hit it directly. These victims, your Honor, lost
7 money in this scheme years ago. They have been begging for
8 their money back. They have been trying for years to get
9 compensated for millions of dollars of losses.

10 We are aware of no effort undertaken by Mr. Boreland
11 ever to repay them in connection with this SEC restraining
12 order. I think it's an insult to the victims to suggest that
13 somehow the entry of this order, which was done to preserve
14 assets and prevent them from being dissipated by Mr. Boreland,
15 as he had done in connection with the scheme, somehow is
16 keeping the victims from being repaid.

17 That is a specious argument, your Honor. It should be
18 rejected. It fails under the text of this order, it fails
19 common sense, and it's an insult to the people who are trying
20 to get their money back.

21 THE COURT: Mr. Imperatore, if Mr. Boreland left this
22 conference and called Mr. Filler and was able to persuade him
23 to sell those properties, would you or your colleagues at the
24 SEC be arguing that somehow he was in contempt of some court
25 order?

1 MR. IMPERATORE: No, your Honor.

2 THE COURT: Really? Okay. I just want to know that.

3 MR. IMPERATORE: Your Honor, if he's trying to sell
4 them now in order to repay the victims, I'd have to consult
5 with the SEC. I think this is their order. I don't know the
6 answer to that sitting here today.

7 THE COURT: Then please don't answer so quickly that
8 it's not a problem.

9 The issue, sir -- eventually we'll get around to a
10 decision. But my inclination at this time as to the Placencia
11 Estates property, as to the victims who now have ownership
12 interest in it, I don't think that suffices under the
13 collateral exception. And I'll explain why later on.

14 But if the actual collateral that was the subject of
15 the agreements in which the victims entered were given to them,
16 I'm not sure what your argument can be. Your argument could be
17 that it's an awfully long period of time and it would have been
18 nice if he had done it years ago. But I'm not sure if it's
19 outside of the scope of the exception, and that's the issue.

20 So I think -- and I'm telegraphing my views here. I
21 think defense counsel have a very tough road to hoe with the
22 Placencia Estates, just given a number of issues that we've
23 been addressing this afternoon.

24 But I don't know, because I don't know enough to know,
25 whether the same arguments could be made with these other

1 properties that I've really just now heard about. So I don't
2 know what you want to do. I don't know if you want to talk to
3 the Commission and then talk to defense counsel and then tell
4 me more about them, but I'll hear from you.

5 MR. IMPERATORE: Your Honor, I would just note we
6 can't speak for the SEC and their interpretation of the scope
7 of their order and we're not a party to this. To come back --
8 I'm simply reiterating points that Ms. Tekeei has made and I
9 think that your Honor has articulated too.

10 We have to come back to the text of this. We're
11 talking about the application of a particular guideline
12 provision which relates to collateral pledged or provided by
13 the defendant.

14 There is no reason on this record to believe that this
15 was collateral pledged or provided by the defendant. It's even
16 a step removed from the other properties that have been really
17 the subject of this argument advanced by the defense.

18 To take a step back here, your Honor, it makes
19 absolutely no sense to say if I loan money to your Honor and I
20 give you a piece of paper that has a substitute assets
21 provision and I happen to own property somewhere in the world,
22 it would be under the guidelines a nullity to say, oh, this
23 piece of paper, which contains a substitute assets provision,
24 means that it links up to some other property I own and
25 therefore you're collateralized. It just strains common sense.

1 THE COURT: Mr. Imperatore, to respond, I'm not
2 disagreeing with you necessarily on your view of the substitute
3 assets provision, though I'm not sure I would be as dramatic as
4 you were just.

5 My issue I was told -- perhaps I'm misperceiving the
6 record. I was told that the properties at issue that we've
7 just been most recently discussing are ones that were in fact
8 the subject or the collateral that was identified in the
9 respective agreements with the victims.

10 MR. IMPERATORE: Your Honor, if I can have a moment,
11 please.

12 THE COURT: Yes.

13 MR. IMPERATORE: I think Ms. Tekeei will handle this
14 response.

15 MS. TEKEEI: Your Honor, if I may.

16 THE COURT: You may.

17 MS. TEKEEI: Thank you, your Honor.

18 To the extent the Court is referring to the properties
19 that were specifically listed in the loan agreements, which is
20 what I think the Court is now referring to and not the
21 so-called "substitute assets" --

22 THE COURT: That's correct.

23 MS. TEKEEI: Those properties, as I understand
24 Mr. Boreland's briefing and as we understand it, are properties
25 owned by Mayan Lagoon Estates Limited. For example, if the

1 Court looks at one exhibit, Exhibit A to our July 8 submission,
2 it's a land certificate that's dated October 18, 2005, that
3 covers Placencia North, block 36, parcel 2129.

4 Those are owned by Mayan Lagoon Estates Limited,
5 which, as Mr. Boreland now argues and says and as we understand
6 based on the pending litigation, he's now been divested of any
7 interest in Mayan Lagoon Estates Limited. So there are a
8 number of counterarguments to whether even the specific
9 property should be counted as a credit against loss.

10 The first argument, as your Honor is already aware, is
11 that that property was listed -- the specific properties were
12 listed in multiple loan agreements to multiple investors.

13 So it is unclear who has what right to what amount of
14 any portion of those funds -- who is the first creditor, who
15 could possibly be the second creditor, who could be the third.
16 That was part of the fraud that he listed in those agreements,
17 the land multiple times to multiple individuals.

18 While certificates related to those lands might be
19 held in escrow with Mr. Filler, there is no reason to believe
20 sitting here today that even if Mr. Boreland were able to tell
21 Mr. Filler, please release these lands, that that would happen
22 because the lands are owned by Mayan Lagoon Estates Limited.
23 They're not owned by Mr. Boreland.

24 So there is still a question mark or multiple question
25 marks and contingencies as to whether that land would be able

1 to compensate any of the victims at all, much less how much
2 compensation they would receive from that land, were they to
3 have access to it, were it to be sold for their benefit.

4 THE COURT: Thank you.

5 Mr. Miedel.

6 MR. MIEDEL: Yes, your Honor. The ownership issue is
7 obviously a problem in that that's part of the litigation
8 that's happening that Copper Leaf is pursuing about the
9 conveyances.

10 In terms of the properties --

11 THE COURT: Mr. Miedel, to that point, you said to me
12 a little while ago that if only -- and I'm overstating the
13 issue now -- if only the SEC would permit Mr. Boreland to act,
14 he could instruct his escrow agent to release these properties
15 for sale to the victims. I guess he could give them to them or
16 sell them and give them the proceeds.

17 Now you're saying to me that in fact he can't; that if
18 he made that phone call, it is unlikely -- perhaps you'll tell
19 me otherwise -- that it is unlikely that Mr. Filler would
20 respond with the same alacrity that you suggested a few moments
21 ago because it is itself the subject of litigation in Belize.
22 It too is the subject of dispute.

23 Is that correct?

24 MR. MIEDEL: Yes. The problem is that there are a
25 number of different entities that Mr. Boreland and Mr. Caruso

own together that Mr. Caruso successfully, temporarily we hope, divested Mr. Boreland of some of them but not all of them.

Ms. Tekeei is correct to note that Mayan Lagoon Estates, which owns the pledged properties, is one of the properties that Mr. Caruso successfully divested Mr. Boreland of. So that is an additional hurdle.

THE COURT: Then, sir, why did you tell me that the SEC was standing in the way? The impediment here is that there is a Belize investigation as to who actually owns this stuff. You have in fact misled me, sir.

MR. MIEDEL: Your Honor, I'm sorry. I certainly didn't intend to do that. Part of it is that the ownership disputes are so complicated, given the different entities, that I failed to recall that it was Mayan Lagoon that owned these particular plots.

But the point is that even if those legal disputes can be resolved -- and that may be possible through a settlement for a negotiation involving the parties -- Mr. Boreland, we believe under the terms of the SEC order, is prevented from transferring any kind of property.

By the way, a lot of these issues involve Florida law because that's where the escrow agent is and that's where the deeds are. So the way we read the SEC order, it would cover any transactions taking place in the United States, even if the land itself is in Belize.

1 In any event, the second issue that you identified or
2 that Ms. Tekeei identified is that these lots were essentially
3 pledged to multiple investors. That's only because the plots
4 themselves were worth more than the amount of the loan.

5 In fact, several investors were explicitly told in
6 their loan agreements that these particular lots were pledged
7 to multiple investors up to the 2 to 1 ratio of the collateral.

8 If the SEC said to us, listen. Feel free to try to
9 get these things transferred, we would go about trying to do
10 that. Whether that would be successful, I don't know at this
11 point, but that would certainly be our intention.

12 And then your Honor would have to determine at the
13 time of sentencing whether the victims were made whole or
14 whether there's a reasonable possibility of them being made
15 whole at that time or not.

16 THE COURT: You've said that the ball is in the SEC's
17 court. I disagree. I'm not sure anything prevented you from
18 reaching out to Mr. Filler through his counsel and seeing what
19 would happen if you were to obtain permission for the transfer
20 of the properties, if he in fact were to respect a request of
21 Mr. Boreland for transfer of the properties or for getting them
22 ready for either transfer to the victims or a reduction to
23 proceeds.

24 So to say that the SEC has prevented us, again, that's
25 an overstatement. You haven't even tried. You haven't even

approached them to suggest that this was a way to satisfy the collateral exception of the guidelines. Maybe you wish to do that, but you haven't done it today.

Let me hear from you on anything else, Mr. Miedel.

MR. MIEDEL: One other matter is if the victims have been made whole through the Placencia Estates development, whether it's counted as collateral against loss or not, is a separate matter.

If they've been made whole because they now own land that is worth possibly millions of dollars more than the loans that they paid, then also they don't need to be made whole by the sale of the Mayan Lagoon Estates lots. So the two are interrelated.

THE COURT: All right. Anything else, sir?

MR. MIEDEL: No, your Honor.

THE COURT: I'm assuming, Mr. Miedel, that you've spoken with Mr. Madiou and everyone has presented their arguments to me.

Correct, sir?

MR. MIEDEL: May I just have one moment, please, to consult with our client before we wrap it up?

THE COURT: Yes.

MR. MIEDEL: Thank you.

(Pause)

MR. MIEDEL: Thank you, your Honor.

1 THE COURT: Of course.

2 MR. MIEDEL: Part of the disadvantage of coming into a
3 case a year and a half after it commences is that some of the
4 facts that happened before our involvement I'm not as clear
5 about.

6 But Mr. Boreland reminds me that Mr. Baum, who was his
7 previous counsel, had several conversations with Mr. Filler and
8 also actually with Marco Caruso and Copper Leaf in an effort to
9 reach some resolution.

10 And Mr. Filler's position was that he couldn't do
11 anything because of the SEC asset freeze; that he could not
12 help Mr. Boreland move any kind of properties because of the
13 asset freeze.

14 The other thing that he wanted me to convey to you,
15 which is correct, is that, again, while there is a legal
16 dispute about the ownership of Mayan Lagoon, Mr. Filler has the
17 power of attorney signed by both Mr. Caruso and Mr. Boreland
18 which frees him to act without their consent, assuming that the
19 procedures there are taken as they were.

20 So, in other words, if Mr. Filler is directed to sell
21 the property, then he presumably can go ahead and try to sell
22 that property and redeem.

23 THE COURT: Mr. Miedel, could you please repeat this
24 one point. I'm not understanding the most recent thing that
25 you've said to me.

MR. MIEDEL: The power of attorney that was signed by Mr. Caruso and Mr. Boreland we think arguably eliminates the requirement that Mr. Caruso approve any kind of sale that David Filler engages in because he has already given David Filler the power of attorney to act on his behalf in the sale of these properties.

THE COURT: And yet there is still right now litigation regarding the ownership of Mayan Lagoon. Yes?

MR. MIEDEL: That's correct.

THE COURT: So it would be interesting for Mr. Filler to act on Mr. Boreland's say-so knowing, as I suspect he does, about the litigation. No one has said to me that Mr. Filler would absolutely do it if only he were asked. So I understand that.

All right. Mr. Miedel, anything else you'd like me to know?

MR. MIEDEL: Only that -- perhaps this is something that can be done between the parties. If the SEC and the government agree for us to reach out to Mr. Filler to try to see whether we can get this moving, we would certainly be happy to do that.

THE COURT: Okay. Go ahead. Finish your thought, sir.

MR. MIEDEL: That's all.

THE COURT: All right. Thank you.

1 When I set this for 2:00, I did not anticipate that we
2 would have 2 1/2 hours of oral argument. I do have a 4:30
3 conference, and I have a court reporter who deserves our thanks
4 and a break.

5 But I believe that I can resolve this much of the
6 issue right now. I do not believe that the collateral
7 exception applies as I've hinted at earlier. The issue here is
8 whether there was collateral pledged or otherwise provided by
9 the defendant.

10 And I agree with the defense that the *Turk* decision
11 does not by its terms require the securitization of the
12 property in question. And I think it admits the possibility
13 that there may be other mechanisms in place that would permit
14 the exception to apply.

15 But I think, however it is defined, whether by
16 security interest or not, the defendants who can successfully
17 argue for this exception had access to the collateral that does
18 not exist here.

19 I think in the first instance the interplay of the
20 default provisions and the substitute asset provisions render
21 it very difficult to identify what in fact was to be conveyed.

22 But more than that, on the facts of this case, I'm not
23 willing to find that the collateral exception applies where the
24 victims did not use the mechanism that was applied -- but I
25 don't blame them for not so doing -- and ended up having to pay

extra for property that was not the property that was initially pledged but was perhaps, perhaps, brought in with the substitute assets provision but even now do not have clear title to that property, no matter what Mr. Miedel tells me, because there is litigation in Belize contesting the ownership; that at least at its current incarnation pits the Copper Leaf entity against a class of other victims.

There is a question about ownership. There are questions about payment. I don't know -- and I won't say -- that the Placencia Estates property isn't sufficient or isn't valued at the value that the defense tells me because I have no basis not to. But there are, as was noted by the government, far too many contingencies and far too many open issues for me to find that it applies here.

I said earlier -- and I will say it again -- I think it is a very creditable argument under 3553(a). But I am not able to find -- and I won't find -- that it fits neatly within the credits against loss provision of the guidelines.

With that in mind, I think we ought to talk about sentencing. But I think, Mr. Miedel, you might want to speak with your client and Mr. Madiou and maybe counsel for Mr. Filler and see if there is another stab at this argument that you wish to take using the Mayan Lagoon properties or something other than the facts that I have right now.

I'm not going to foreclosure its success. Simply on

1 the record I have before me, what I've been given, it does not
2 fit within the exception.

3 So what is it that the parties wish to do? Do you
4 want to get back to me about the scheduling of a sentencing
5 date after you've had a chance to look at this issue a little
6 bit more?

7 I see a nod from Mr. Madiou. But Mr. Miedel, I've
8 been speaking with you this afternoon.

9 MR. MIEDEL: Yes. That would be great. We would
10 certainly welcome that opportunity. The other issue is also
11 that there remain a number of factual disputes that are set
12 forth in the presentence report that the government and the
13 defense probably need to sit down and talk through to see if
14 any of these can be ironed out or whether we're going to end up
15 having to have a Fatico hearing or some sort of proceeding in
16 which your Honor will have to make fact-findings.

17 THE COURT: It's curious to me, sir, that we had this
18 proceeding then. I thought this was our Fatico hearing. But
19 now you're telling me that I should expect another Fatico
20 hearing because you're still disputing the presentence
21 investigation report.

22 MR. MIEDEL: Well, this issue was only about whether
23 the collateral could be applied against the loss. It wasn't
24 any kind of evidentiary hearing about facts that the government
25 is urging upon the Court about Mr. Boreland's fraud more

generally.

As I think you can see in the presentence report, there's a whole section in there about things that were disputed by prior counsel which we are largely adopting. Unless we can resolve those disputes or those disputes ultimately don't matter for the Court's determination, I think we may need to have a hearing.

THE COURT: All right. If they are the disputes that were identified to me by the Federal Defenders, I suspect they are disputes that matter to me.

MR. MIEDEL: Sure.

THE COURT: So they're not ones that I can overlook.

So how much time would you like? Or do you just want to keep it open and recognize that I will not forget about you and that I will be expecting a letter from you at some point?

MR. MIEDEL: Let's do that. Maybe we can check in in about 30 days and see where we are at that point.

THE COURT: Yes. For now let that check in by letter. I'm happy to meet with you, but I'm not ordering it. That's fine. We can do that.

MR. MIEDEL: Yes.

THE COURT: Then I will expect to hear from you in about a month.

MR. MIEDEL: Okay.

THE COURT: All right. Thank you.

1 Ms. Tekeei, as you were the first person who was my
2 oralist today, is there anything else you wish to bring to my
3 attention in this proceeding?

4 MS. TEKEEI: No, your Honor. Thank you very much.

5 THE COURT: Of course.

6 Mr. Miedel, anything else today?

7 MR. MIEDEL: No, your Honor. Thank you.

8 THE COURT: Thank you all very much. Stay well. Stay
9 safe. I will hear from you in a month. We're adjourned.

10 MS. TEKEEI: Thank you, your Honor.

11 MR. IMPERATORE: Thank you, your Honor.

12 MR. MIEDEL: Thank you, your Honor.

13 MR. MADIOU: Thank you, your Honor.

14 (Adjourned)



U.S. Department of Justice

*United States Attorney
Southern District of New York*

*The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007*

November 4, 2020

BY ECF

The Honorable Katherine Polk Failla
United States District Judge
Southern District of New York
40 Foley Square
New York, New York 10007

Re: *United States v. Brent Borland*, 18 Cr. 487 (KPF)

Dear Judge Failla:

The parties respectfully submit this joint letter in response to the Court's October 5, 2020 Order (Dkt. 87) directing the parties to advise the Court of the status of this case by November 4, 2020 and to provide a proposal for proceeding toward sentencing.

As the parties have previously reported (*see* Dkt. 86), since the August 4, 2020 proceeding in this case, the parties have been working diligently to identify and resolve potential factual and legal disputes—including as they relate to the defendant's prior objections to the United States Probation Office's Presentence Investigation Report ("PSR")—in advance of sentencing. As a result of these discussions, the parties have resolved disputes regarding the defendant's prior objections regarding (a) the United States Sentencing Guidelines ("Sentencing Guidelines" or "U.S.S.G.") enhancements in the PSR, including related to relevant conduct, and (b) factual assertions in the PSR to which the defendant previously objected, and are prepared to proceed to sentencing.

Sentencing Guidelines Enhancements and Range

The parties agree that the Sentencing Guidelines apply as follows:

1. The base offense level is 7, pursuant to U.S.S.G. § 2B1.1(a)(1). PSR ¶ 59.
2. An addition of 20 levels is warranted, pursuant to U.S.S.G. § 2B1.1(b)(1)(k), because the loss caused by the defendant's conduct in the charged scheme was approximately \$22 million. Although the PSR calculates a 22-level enhancement for a loss amount of greater than \$25 million but less than \$65 million, pursuant to U.S.S.G. § 2B1.1(b)(1)(L), that enhancement includes the loss amount related to the scheme described in paragraph 47 of the PSR. The Court may consider the conduct described in paragraph 47 as relevant to the factors enumerated in 18 U.S.C. 3553(a). However,

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- the Government is no longer seeking an enhancement of the loss amount based on this conduct.
3. An addition of four levels is warranted, pursuant to U.S.S.G. § 2B1.1(b)(2)(B), because the offense resulted in substantial financial hardship to 5 or more victims. PSR ¶ 61.
 4. An addition of two levels is warranted, pursuant to U.S.S.G. § 2B1.1(b)(10)(B) and (C), because a substantial part of the fraudulent scheme was committed from outside the United States, and the offense involved sophisticated means. PSR ¶ 62.
 5. An addition of two levels, pursuant to U.S.S.G. § 3B1.1(c), because the defendant was an organizer, leader, manager, or supervisor in criminal activity. PSR ¶ 64.

Accordingly, the parties agree that, with a three-level reduction for acceptance of responsibility (PSR ¶¶ 68-69), the total offense level is 32. With a total adjusted offense level of 32 and a Criminal History Category of I, the defendant's Sentencing Guidelines range is 121 to 151 months' imprisonment.

The Defendant's Prior Objections to Factual Assertions in the PSR

The defendant withdraws all prior objections to the PSR, with the exception of certain objections to paragraphs 14, 41, and 47, which are resolved as follows:

Paragraph 14: The parties agree to the following modification to paragraph 14, which is emphasized in bold and underlined:

In truth and in fact, however, BORLAND misappropriated millions of dollars of investors' funds and used those funds for his own personal benefit. BORLAND diverted at least 30 percent of the more than \$25 million invested by victims to pay himself to pay for a variety of personal expenses, including his mortgage payments, credit card bills, and luxury automobiles. In contrast to BORLAND's representations that investors would receive high rates of return within a specified time frame, all known investors in the scheme lost money. Moreover, while BORLAND represented that the investments would be secured by real property, the property purportedly serving as collateral was improperly pledged to multiple investors and, in some cases, did not even exist **in the manner identified and described in investors' notes.**

Paragraph 41: The parties agree to the following modification to paragraph 14, which is emphasized in bold and underlined:

Based upon the case agent's interview of Victim-1 and review of public property records from Belize, the real property that purportedly secured Victim-1's \$1 million note purchase does not appear to exist **in the manner identified and described in Victim-1's note.**

Hon. Katherine Polk Failla

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Paragraph 47: The parties agree to the following modification to paragraph 47, which is emphasized in bold and underlined:

From at least 2007 through at least 2010, BORLAND engaged in a scheme to defraud individuals of money and property in connection with real estate investments related to Canyon Acquisition, among other entities. BORLAND and others solicited investments from numerous investors, including investors located in Canada, in which BORLAND (1) misrepresented to investors that the entire of their investment funds would be used to construct real estate projects in Belize, among other places, and **(2) instead spent a portion of investors' proceeds in ways not specified by the agreements.**

Sentencing

The defendant requests that sentencing be scheduled for early February 2021, which will allow him time to prepare his final sentencing submission. The Government has no objection to this request.

Respectfully submitted,

AUDREY STRAUSS

Acting United States Attorney

By:



Edward Imperatore

Negar Tekei

Assistant United States Attorneys

(212) 637-2327 / 2482

CC (by ECF): Florian Miedel, Esq.
Christopher Madiou, Esq.
Counsel for Brent Borland

CHRISTOPHER MADIOU

50 BROAD STREET
SUITE 1609
NEW YORK, NY 10004

P (917) 408 - 6484
F (212) 571 - 9149
CHRIS@MADIOULAW.COM

WWW.MADIOULAW.COM

September 21, 2021

The Honorable Katherine Polk Failla
Thurgood Marshall
United States Courthouse
40 Foley Square
New York, NY 10007
By ECF

Re: *United States v. Brent Borland*, 18 Cr. 487 (KPF)

We submit this letter in advance of Brent Borland's sentencing, which is scheduled for October 5, 2021.¹ We have received the Presentence Investigation Report ("PSR") and reviewed it with Mr. Borland. Our objections to the Guidelines are accurately reflected in the parties' joint letter of November 4, 2020 (Dkt. 89) and will be discussed further below.

Introduction

A fraud of this kind begins when someone makes a series of misguided rationalizations to himself, as Mr. Borland did here. Even when sincerely held—and characterized as "forward-looking statements" (as in the securities market) or "truthful hyperbole" (e.g., Trump brands)—those internal justifications are not a defense to a self-motivated crime, and they are, of course, meaningless to victims who lose money. Nevertheless, they are important for understanding the origins of a defendant's criminal conduct, and what punishment is sufficient but not greater than necessary to address it. For the reasons that follow, we respectfully ask the Court to sentence Mr. Borland to a term of incarceration far below the stipulated advisory Guidelines. We urge the Court to do so because (1) the fraud Guidelines of U.S.S.G. §2B1.1 are inherently flawed and call for incarceration far greater than what is necessary under 18 U.S.C. §3553(a); (2) Mr. Borland has actively sought to make amends for his conduct by assisting his largest victim investor to recoup its losses; (3) his medical condition, which will make his custodial confinement harsher and more dangerous; and (4) his unique personal history and the potential he has to make amends and rebuild his life as a productive member of society.

Mr. Borland will be sentenced by the Court for making a series of misrepresentations to investors in connection with real estate development projects in Belize. Mr. Borland devoted the last decade of his life trying to realize his vision for Belize, and in some projects he succeeded. He fervently believed that given time and capital, his plan would come to fruition and both he and his investors would see significant returns. When he raised money from investors, he omitted

¹ The Court is aware that we have repeatedly sought adjournments of sentencing to allow for the completion of relevant litigation in Belize. Unfortunately, Copper Leaf, LLC, the largest investor/victim, which is spearheading the lawsuits in Belize with Mr. Borland's assistance, has come to believe that the defendants are using Mr. Borland's sentencing as a strategic litigation advantage and have purposefully slowed down the progress of the cases in Belize. Accordingly, the parties agree that sentencing should proceed now, even though the litigation is not complete.

material facts and, in some instances, described collateral incorrectly or pledged it to multiple parties. But even in doing so, he believed that the value of the collateral he actually owned would cover the money he was borrowing, which is why he and his partner, Marco Caruso, included a personal guarantee in all loan instruments. If a creditor served him with notice of default, he planned to liquidate his real estate holdings and make the investor whole. The Court will recognize this argument from our litigation surrounding the credit against loss provision. At our August 4, 2020 hearing on that issue, Your Honor noted that this argument was “a very creditable argument under 3553(a). But [did not fit] neatly within the credits against loss provision of the guidelines.”²

Mr. Borland faces a staggering Guidelines imprisonment range and will serve time in prison—during the rapidly evolving pandemic—for his harmful rationalizations; he will forfeit precious time with his young daughters; he will be unable to care for his wife, who suffers from a rare kidney disorder, or his aging mother-in-law; he will receive substandard medical care for his complex and potentially life-threatening medical conditions. He has and will continue to suffer punishment, and he is ready to accept the Court’s judgment of his actions. When all the relevant sentencing factors are weighed, we respectfully submit that the goals of 18 U.S.C. §3553(a) are satisfied by a sentence significantly below the advisory Guidelines.

A. Procedural History

On February 13, 2019, Mr. Borland pleaded guilty to Counts One, Two and Three of the indictment without a plea agreement with the government, in part because he wanted to advance arguments about the “credit for loss” provision set forth in Application Note 3(E) (ii) to U.S.S.G. § 2B1.1. Prior counsel for Mr. Borland filed a sentencing brief on October 25, 2019 making that argument, but shortly thereafter was relieved and undersigned counsel were appointed. We supplemented those arguments on June 16, 2020 and July 16, 2020, and the Court conducted a hearing on August 4, 2020 where Your Honor held that “there are ... far too many contingencies and far too many open issues for me to find that [the credit against loss provision] applies here.”³

The parties subsequently engaged in extensive negotiations to resolve the outstanding PSR objections, which prior counsel had filed on May 14, 2019. The parties’ joint letter of November 4, 2020 (Dkt. 89) accurately reflects our view of the Guidelines and the offense conduct. However, for the reasons explained herein, we submit that the guidelines range of 121 to 151 months’ incarceration far exceeds a sentence which would be sufficient but not greater than necessary to achieve the goals of §3553(a).

² Dkt. 83, August 4, 2020 hearing transcript at 81.

³ *Id.*

B. Brent Borland⁴

Despite living in material affluence, Brent's upbringing was difficult. His home was steeped in the toxicity of an abusive father and an alcoholic mother. Brent's earliest model for interpersonal relationships was characterized by manipulation and abuse. His father was a highly respected head and neck surgeon who served as Head of Surgery for Phoenix General Hospital, as well as owning multiple outpatient surgery centers. Outwardly, the family appeared the model of privilege, which makes Brent's upbringing atypical of most defendants the Court sentences. But within the Borland family there was an environment of emotional neglect and physical abuse. These aspects of his upbringing forged a part of Brent's identity that is at the center of his current legal situation: an obsession to control the uncontrollable, and the ability to disconnect his actions from the harm he caused.

Outside of the home, Brent's father was admired for his talent, drive, charisma, and impressive intellect. But at home, he tortured Brent's mother with mental abuse. Their fights filled the house with rage and terrified Brent and Ryan on an almost daily basis. Their father's behavior was erratic, constantly switching from manic highs and dark lows. As a child, Brent never knew who to believe or what would happen next. He and Ryan walked on eggshells, always bracing for a fight.

When his parents separated, Brent wanted to live with their father and Ryan wanted to live with their mother. During child custody proceedings the Court ordered that both children stay with their mother. When Brent turned 12 years old, he was allowed to choose his caregiver and he asked again to live with his father, while Ryan opted to stay with their mother. A bitter fight ensued; Brent's mother made Ryan pack Brent's bags and leave them outside.

Adding to this toxic environment is the fact that during the upheaval surrounding their divorce, Brent was sexually abused by his older cousin. For a period spanning close to six years, this cousin forced himself on Brent, who was so traumatized by the events inside his house that he mistook sexual abuse for physical comfort and affection. Fortunately, Brent eventually had the strength to tell his mother, who believed and supported him.

Not surprisingly, unhealthy traits began to manifest in Brent. He became angry and short-tempered, like his father. Ryan describes Brent trying to take control of every situation and having a compulsive need to be right. Between the sexual abuse and his parents' acrimony, Brent developed chronic hypervigilance—an obsessive need to control and protect his reality. Brent has likened his mental state to an air traffic controller, always monitoring the skies, keeping tabs on a thousand details at once, and always on guard for incoming disaster.

⁴ This section draws on interviews conducted by defense investigator Katherine Carter of Mr. Borland, his brother Ryan Borland, his mother-in-law Beverly LaTorra and his wife Alana Borland. Additionally, letters of support from Alana, Beverly, and Ryan—along with other close friends of Mr. Borland's—are attached as Exhibit A.

Brent's father remarried a younger woman when Brent was in the eighth grade. His new wife, Jan, had two daughters younger than Brent. His homelife was again beset by discord and dysfunction. Brent's stepmother was ill-tempered and one of his stepsisters struggled with mental illness, drug addiction, and alcohol abuse.

Meanwhile, Brent's mother remarried a successful lawyer from a wealthy family. But his father's cruelty had caused lasting damage to Brent's mother. While they were married, Brent's father made sport of humiliating her in front of their friends, cruelly reminding her that she never went to college. As a result, his mother's daily glass of wine turned to bottles of vodka as she descended into severe alcoholism. Her drinking destroyed her new marriage and her life.

Despite, or perhaps because of, the chaos of his home life, Brent was an overachiever. He found success in school and in sports. He was blessed with athletic talent, and played soccer, baseball, tennis, volleyball, and swam competitively. He was disciplined and sought out leadership positions on the field. He reveled in strategizing and playmaking. He remembers the thrill and acceptance of being out on the field, scoring points while the crowd cheered. Brent found support and acceptance in athletics and scholastics that he sorely lacked from his father. While his mother rarely missed a game, his father never attended a single one. And so, Brent gravitated towards teachers and coaches that nurtured his talents.

In 1988, Brent matriculated to Southern Methodist University where he earned a degree in real estate and finance. He was a star on the swim team and enjoyed stable relationships. In college, Brent sought out the security, stability, and peace he never found at home. Swimming rewarded his discipline, focus and drive.

Brent's mother divorced and remarried for a third time during Brent's college years. Her alcoholism became worse. Brent recalls visiting her in rehabs. He pitied her and resented her all at once. At the time, he was incapable of understanding the severity of her illness.

After college, Brent arrived in New York to be the finance director at a start-up, high-tech collectible company. CyberAction produced digital trading cards to be ordered and downloaded over the internet. They featured fully embedded sound, video, and other interactive features. CyberAction held an exclusive online license from Major League Baseball. Brent had an office in the Flatiron building along with other internet pioneers. He learned the world of business quickly. He was an excellent leader, a natural entrepreneur and he sought out high risk-endeavors and had a nose for the next big thing.

Brent took to New York City's pace and attitude; he felt at home. After his success at CyberAction, he formed a consulting company where he worked with other entrepreneurs and helped them design business plans. He found himself working eighty hours per week while still enjoying an active social life. Brent was always moving—standing still meant facing his demons.

Brent's building shook when the first plane made impact on September 11, 2001. He remembers running down toward the World Trade Center and doing what he could to assist. He saw people stumbling through the dust cloud with missing limbs. He watched people jump to

their deaths from skyscrapers. The trauma of that day left him in a daze for over a year. Soon after, he moved to Los Angeles, where he lived a high-flying lifestyle, numbly unable to process the compounding trauma that he could not seem to escape.

In 2003, Brent met his future wife, Alana. The couple moved to Southern Florida where the real estate market was booming. Brent made connections with developers and financiers and entrenched himself in the real estate business.

In 2005, Brent founded Canyon Acquisitions, which connected buyers, lenders, and builders. Brent continued to work at a frenzied pace. He describes handling hundreds of e-mails and dozens of phone-calls each day, the air traffic controller of his business.

In 2007, Alana and Brent married. In February 2008, Alana's father had a massive stroke around the same time that Brent's father suffered a major heart attack. Brent's dad recovered in time to travel to New Orleans for Brent's brother Ryan's wedding.

Before Ryan's wedding, their mother was finally doing well and had been sober for eight months. Both Ryan and Brent were concerned, however, that the social pressure of a large event, coupled by their father's presence would cause their mother to relapse. It did. Five days before the wedding, Brent's mother began drinking again. Ryan wanted to protect his wife and his new family, and that meant disinviting his mother to the wedding. She responded with wailing grief. That phone conversation was the last one Ryan ever had with his mother.

Three days before Ryan's wedding, Brent's mother committed suicide, shooting herself with a .22 caliber handgun that their father had given her. In a desperate attempt at family preservation, Brent and his father agreed to keep the news from Ryan until after the wedding. Alana, pregnant, was barely able to contain her grief through the rehearsal dinner, ceremony, and reception, while Brent was shattered but remained stoic.

A few months later, Brent and Alana welcomed their first daughter, [REDACTED]. In 2011, Alana gave birth to their second daughter, [REDACTED], who was tragically stillborn, an experience that was devastating to both Alana and Brent. Their third daughter, [REDACTED], was born a year later. Despite his traumatic upbringing, Alana describes Brent as a gentle, attentive, and hands-on father whom their daughters adore.

Alana suffers from [REDACTED]. As the Court is aware, the Borlands recently moved to Florida so that that Alana can receive better medical care and have the support of her aging mother.

Throughout traumatic and destabilizing events, Brent always found comfort in his work, but that fixation on work was also a core problem. Busyness is Brent's "drug" of choice—it is what he uses to fill the void within. Even while grieving the enormous loss of his mother, and his

stillborn daughter, he stayed numbly engaged in high-stakes deal-making because focusing on his pain was too much to bear. Brent is also, according to Alana, a functional alcoholic. His drinking went hand-in-hand with external stressors, of which there were many. Brent describes a trait developed during his childhood where he steps outside himself to “power-through emotional turbulence.” This dangerous childhood adaptation to, and avoidance of, trauma has stayed with him into adulthood.

C. The Offense Conduct

In 2008, Mr. Borland met Marco Caruso, a land developer in Belize. The two men hit it off and began discussing development projects on the Placencia Peninsula in Belize. Mr. Borland had access to investors looking to invest in real estate projects and Mr. Caruso owned undeveloped land, which both saw as an opportunity for development. Mr. Borland and Caruso entered into a 50/50 partnership to develop the land into a resort paradise, with luxury beachfront condominium hotels, a golf course lined with single-family homes, private villas, an ocean-front marina, and Belize’s second international airport. For the next decade, Mr. Borland and Mr. Caruso sold millions of dollars in real estate and continued to develop the properties by raising additional capital.

The vast tracts of waterfront real estate co-owned by the two men were worth sizeable sums of money. But they were worth vastly more if the land were fully developed, if the airport could be built and operational, if their vision of this Belizean paradise could be realized. In order to develop the land consistent with this vision, however, Borland and Caruso needed ever increasing sums of capital. Building in a third world country was difficult—necessary permits took longer than expected to be granted, construction materials became scarce, weather caused havoc, political administrations changed, resulting, for example, in the airport project to be delayed. Despite these difficulties, the development continued to progress. Significant infrastructure was put in place, including construction of water and power utilities, a 100-room hotel, and over 100 single family homes and villas. Roads were paved and the runway for the international airport was built. Mr. Borland remained optimistic, and he remained committed to his vision—he simply needed more time and more money. And ultimately, that was the problem.

Mr. Borland stands before the Court having admitted to his involvement in a fraud that has caused significant harm to a number of investors. He raised money consistent with his vision but not always with the realities of the project. He made promises he could not keep; he omitted material information that would have caused investors to balk; and he led existing investors along while trying to find new investors to bankroll the continued development of the project and to repay outstanding debts. And even worse, throughout those years, while investors parted with their money to fund the Belize project, Mr. Borland and Caruso paid themselves. Paying bills and taking a salary is perhaps not unreasonable in deals where the loans were regularly repaid, but much harder to stomach in a situation where investors were strung along.

Mr. Borland now appreciates the harm he has caused. He also understands that his good intentions—making his investors whole and creating wealth for everyone who trusted him—

mean little when those who entrusted their money to him have still not been repaid. He is prepared to accept the consequences of his actions.

As set out in the parties' November 4, 2020 joint letter (Dkt. 89), Mr. Borland has admitted to misappropriating investors' proceeds by neglecting to explain exactly how investment dollars would be spent. Mr. Borland admits that he used a portion of investment proceeds to run his business, pay his staff and himself without appropriate explanation in the loan agreements. He has also admitted that the real property, which was used to secure the investors' investments, was at times improperly pledged to multiple investors and did not exist in the manner described in the investors' loan documents.

To properly understand the context and scope of the conduct, however, it is important to note that Mr. Borland did not act alone. Marco Caruso was Mr. Borland's partner from the inception of the Placencia projects in 2008. The two men worked together to make their vision for the Placencia peninsula a reality and they shared in successes and failures. They courted investors together, took in money together, and when misrepresentations and omissions were made to investors, they did that together too. For instance, the largest aggrieved investor, Copper Leaf, LLC, lent Mr. Borland and Marco Caruso \$5,000,000 in 2016 and then \$3,000,000 more in 2017, after representatives from Copper Leaf traveled to Belize on a due diligence trip hosted by Mr. Caruso.⁵ Both men signed personal guarantees for the full amount of the loans. The Copper Leaf loan, like the other loans in question, was secured with property jointly owned by Mr. Borland and Caruso and held in escrow by David Filler, Esq., an attorney based in Miami. After Mr. Borland was charged by the SEC and arrested on the instant indictment in 2018, Copper Leaf sued Mr. Borland and Mr. Caruso in the S.D.N.Y. and was granted a default judgment against both men for the amount of its loans plus attorney's fees and expenses.⁶ In its complaint, Copper Leaf details \$1,284,000 being transferred from its investment proceeds to Mr. Caruso's bank account, a portion of which was used as a down payment on a luxury condominium in Miami for Mr. Caruso's relatives.⁷ Yet, inexplicably, Mr. Caruso was not charged criminally for his wrongdoing.⁸ We do not argue that the government's failure to charge Caruso diminishes the severity of Mr. Borland's crime. Nonetheless, we believe it is important for the Court to appreciate the entire context of this fraud, including Mr. Caruso's participation.

⁵ See Exhibit B, complaint in *Copper Leaf LLC v. Caruso, et. al.*, 2020-022955-CA-01, Dkt. 2 at ¶¶ 10, 19.

⁶ *Id.* at ¶¶ 21-23.

⁷ *Id.* at ¶¶ 29-33.

⁸ Moreover, as the Court knows, 40 of the investor victims have released Caruso from any civil legal liability in exchange for ownership of assets in Belize that Caruso was not legally authorized to convey. See below.

D. Discussion

The Guidelines attempt to achieve justice by “further[ing] the basic purposes of criminal punishment: deterrence, incapacitation, just punishment, and rehabilitation.”⁹ But there are inherent limitations to their formulaic approach. In this case, the analysis does not account for Mr. Borland’s traumatic personal history, his path leading up to the offense conduct, or his efforts to make amends after his arrest. Nor does the loss in this case directly correspond with culpability. For the reasons that follow, we ask the Court to impose a significant variance pursuant to 18 U.S.C. §3553(a).

As the Court knows, the Supreme Court has directed district courts not “to presume that a sentence within the applicable Guidelines range is reasonable.”¹⁰ As the Sentencing Commission admits, “[t]he appropriate relationships among [sentencing] factors are exceedingly difficult to establish, for they are often context specific. [...] Thus, it would not be proper to assign points for each kind of harm and simply add them up, irrespective of context[.]”¹¹ Reducing the enormous task of sentencing another human to merely performing Guidelines arithmetic leaves out essential considerations about a person’s unique history and characteristics. “Whereas apples and oranges may have but a few salient qualities, human beings in their interactions with society are too complicated to be treated like commodities, and the attempt to do so can only lead to bizarre results.”¹²

1. The Guidelines range call for a range of imprisonment which is significantly greater than what is necessary to achieve the goals of §3553(a) because the loss guidelines are fundamentally flawed.

While we do not dispute the accuracy of the Guideline calculation in the PSR, Mr. Borland’s Guideline imprisonment range is illogical. This is largely because §2B1.1 is not based on empirical data and leads to disproportionate sentencing outcomes. These fundamental flaws have caused many courts to question the mechanical application of §2B1.1.¹³

In *Algahaim*, for example, the Second Circuit echoed the criticism of many district courts by finding that the Sentencing Commission “let the amount of loss, finely calibrated into sixteen categories, become the principal determinant of the adjusted offense level and hence the

⁹ U.S.S.G. Ch. 1 Pt. A (2).

¹⁰ *Gall v. United States*, 552 U.S. 38, 50 (2007).

¹¹ U.S.S.G. Ch. 1 Pt. A (3).

¹² *United States v. Gupta*, 904 F. Supp. 2d 349, 350 (S.D.N.Y. 2012).

¹³ *See United States v. Algahaim*, 842 F.3d 796, 800 (2d Cir. 2016).

corresponding sentencing range” thereby causing an “unusualness . . . that a sentencing court is entitled to consider” in determining whether to impose a non-Guidelines sentence.¹⁴

In *United States v. Johnson*, Judge Garaufis (E.D.N.Y.) echoed the Second Circuit’s caution, when explaining his rationale for a below-Guidelines sentence for a defendant convicted after trial of a large-scale fraud.

As far as this court can tell, the Sentencing Commission’s loss-enhancement numbers do not result from any reasoned determination of how the punishment can best fit the crime, nor any approximation of the moral seriousness of the crime. It is no wonder that Judge Stefan Underhill, concurring in a recent Second Circuit opinion, called the loss enhancement Guideline “fundamentally flawed, especially as loss amounts climb.” *United States v. Corsey*, 723 F.3d 366, 380 (2d Cir. 2013) (Underhill, J., concurring); *see also United States v. Gupta*, 904 F. Supp. 2d 349, 351 (S.D.N.Y. 2012) (Rakoff, J.) (“By making a Guidelines sentence turn, for all practical purposes, on [loss enhancement], the Sentencing Commission ... effectively guaranteed that many such sentences would be irrational on their face.”). Given the feeble underpinnings of the loss enhancement, it is particularly galling that this factor is often more or less solely responsible for a white-collar offender’s Guidelines sentence. Accordingly, Judge Underhill opined that, because the loss Guideline “was not developed by the Sentencing Commission using an empirical approach based on data about past sentencing practices ..., district judges can and should exercise their discretion when deciding whether or not to follow the sentencing advice that guideline provides.” *See Corsey*, 723 F.3d at 379 (op. of Underhill, J.). I agree with Judge Underhill, and refuse to mechanistically impose such an illogical sentence. That this situation continues unabated is a great shame for the many offenders sentenced under this Guideline who do not receive a sentence that makes any sense for the actual crime of conviction.¹⁵

It is not disputed that the loss amount here falls between \$9.5 and \$25 million. But the increase of *twenty* offense level points to Mr. Borland’s Guidelines range clearly implicates the concerns expressed by the Second Circuit in *Algahaim* and by Judge Garaufis in *Johnson*.

The loss categories set forth in §2B1.1 are not based on empirical data or any logical policy concerns. Indeed, the Second Circuit was generous when calling the Guidelines’ bracketing method “unusual.”¹⁶ In drafting §2B1.1, the Sentencing Commission arbitrarily ascribed certain loss amounts to trigger an increase in a defendant’s offense level. These

¹⁴ *Id.*

¹⁵ Court’s Sentencing Memorandum *United States v. Johnson*, 16 Cr. 457 (NGG), Dkt. 233 at 8 (E.D.N.Y. Apr. 25, 2018).

¹⁶ *See Algahaim*, 842 F.3d at 800 (2d Cir. 2016).

increases are entirely random, devoid of logic. For example, a fraud that involved more than \$6,500 increases the offense level by 2 points, while a loss of over \$15,000 increases it by 4 points. There is no explanation as to why a difference of \$8,500 doubles the increase. The next 2-point increase comes only after the fraud causes a loss greater than \$40,000. The logic is absent: an \$8,500 difference in loss amount has equal impact as a \$25,000 difference. The difference between a scheme involving a loss amount of \$6,500.01 and one involving a loss amount of \$15,000.01 is 4 points. But the difference between a scheme involving a loss amount of \$250,000,000.01 and one involving a loss amount of \$550,000,000.01 is also 2 points. Therefore, a spread of \$8,500 and \$300 million may have an identical impact on a Guidelines calculation.

We submit that §2B1.1's arbitrary construction warrants a significant downward variance here. Twenty points are added to Mr. Borland's offense level based on the amount of loss alone. This increase results in his custodial sentencing range skyrocketing from 10-16 months to 121-151 months and does not connect to actual conduct by Mr. Borland. It does not, for instance, take into account the money Mr. Borland and Caruso put back into the various projects and does not factor in what Mr. Borland personally gained from the offense, a fraction of the total loss. In short, §2B1.1 is a blunt instrument when surgical precision—to determine the sentence *sufficient*, but not greater than necessary—is needed.

As the Court is aware, loss can be either actual or intended. For now,¹⁷ the actual loss is at least \$21.9 million—however, this was never the intended loss. Unlike fraudulent schemes designed entirely to rob the victims of their money, Mr. Borland's fraud was different. There is no question he obtained funds through misrepresentations and material omissions. However, the intent was always to finish developing the land, sell it, and to repay investors with interest.

He does receive other enhancements which are directly relevant to actual criminal conduct—e.g., 4 points are added because the offense resulted in financial hardship to five or more victims (U.S.S.G. §2B1.1(b)(2)(B)), 2 points are added because the fraud was conducted outside the United States and involved sophisticated means (U.S.S.G. §2B1.1(b)(10)(B)), and 2 more points are added because Mr. Borland was an organizer in the fraud (U.S.S.G. §3B1.1(c)). In contrast, §2B1.1's loss table increases Mr. Borland's custodial sentence tenfold and places his advisory Guidelines imprisonment range at an illogically high starting point, without a direct connection to his actual conduct.

2. Post-conviction conduct and assistance to Copper Leaf.

As the Court may recall, Copper Leaf, LLC, was the largest investor in Mr. Borland's and Marco Caruso's Belize real estate development deals. Between 2016 and 2017, Copper Leaf

¹⁷ As is discussed below, 40 of the 41 victims are currently in possession of land in Belize set aside as collateral for Mr. Borland's loans. The victims acquired this property from Caruso in exchange for releasing him from liability. That conveyance is the subject of a lawsuit filed by the largest investor, Copper Leaf, against Caruso and the other 40 investors. The land and partial development have significant value. When the litigation is completed, it is likely that there will be no actual loss.

invested \$8 million in the projects, accounting for more than one-third of the \$21.9 million investment fraud charged in the indictment. In 2018, Copper Leaf obtained judgments against Mr. Borland and Mr. Caruso in the Southern District of New York. Recognizing that all the available assets are situated in Belize, Copper Leaf sought to enforce its U.S. judgments in Belize. As detailed in a February 19, 2021 letter from Copper Leaf's counsel, John Quaranta, Copper Leaf came to learn that Caruso had unlawfully divested Mr. Borland of his ownership interest in several jointly owned entities in Belize shortly after Mr. Borland's arrest, thereby preventing Copper Leaf from enforcing its judgments against Mr. Borland.¹⁸

While Copper Leaf was in the process of using the court systems to seek redress, other victims of Mr. Borland's and Mr. Caruso's fraud chose a different path. A group of investors led by Dyke Rogers traveled to Belize to make a deal with Marco Caruso; the Rogers investors obtained significant tracts of partially developed land from Mr. Caruso in exchange for releasing him from all legal obligations related to the fraud. Mr. Caruso, however, provided them with real estate assets that he was not free to convey because (1) the property was jointly owned with Mr. Borland, and (2), some of the land was pledged as collateral for Copper Leaf's investment. The Copper Leaf lawsuit in Belize asserts that the Rogers investors either did not know that Caruso had unlawfully divested Borland of his co-ownership interest or did not care.

In the summer of 2020, Mr. Borland agreed to assist Copper Leaf to reclaim his ownership stake in the Belizean assets so that Copper Leaf could enforce its judgment against him and Caruso. By doing so, Mr. Borland could then also repay the other victims, the Rogers investors included, by either giving them the property in question or selling the land and distributing the proceeds. According to Mr. Quaranta, Mr. Borland's assistance was "essential" to Copper Leaf's efforts to recoup its losses. As Mr. Quaranta writes, Mr. Borland has "spent hundreds of hours accumulating documents and information He has never denied my requests for information. He has been humble and remorseful."¹⁹ Mr. Borland will also be a necessary witness at any trial or hearing on behalf of himself and Copper Leaf, and he remains fully committed to assisting Copper Leaf in the ongoing litigation.

In addition to increasing Copper Leaf's chances of recovery, Mr. Borland's assistance to his largest victim is critical to the Court's analysis under §3553(a)(1) because it evinces a desire by Mr. Borland to make amends for his criminal conduct. At this point, Mr. Borland has no assets to be able to compensate his victims. With his ownership reinstated, however, Mr. Borland will possess assets with sufficient value to repay all his victims.

The issue of valuation is important but complicated. There are two assets now owned by the Dyke Rogers group in Belize. The first is a 1586 acre partially developed tract of land formerly owned by Placencia Estates Development. This holding has been formally appraised

¹⁸ This letter was previously submitted to the Court in connection with a request for an adjournment of sentencing. *See* Dkt. 95, Exhibit A.

¹⁹ *See* Exhibit C, September 20, 2021 Letter from John Quaranta in connection with sentencing.

more than once, most recently in 2019.²⁰ The 2019 appraisal concluded that the Placencia Estates development was worth \$32.3 million, as is, even without further development. A 2015 report and valuation of the same properties estimated values in excess of \$80 million, assuming the project was fully developed.²¹ The second entity now owned by the Dyke Rogers group is the land on which the international airport construction has begun. The land on which the airport sits was appraised in 2019 at \$11.2 million.²² Fully developed, of course, the airport is vastly more valuable. In other words, the assets currently held by the Dyke Rogers group of investors are appraised at values well in excess of the identified loss.

In contrast, the Belize defendants—Caruso and the Dyke Rogers group of investor victims—have suggested that the property they obtained from Caruso was worth far less, claiming that they *paid* Caruso \$650,000 for the land. Such an assertion is unfounded, given the vast amount of acreage at issue, and is belied by facts set out in Mr. Quaranta’s September 20, 2021 letter. First, upon the issuance of an injunction to prevent the properties to be conveyed during the litigation, the defendants sought an injunction bond from Copper Leaf in the amount of \$4.2 million, which was purported to represent 10% of the assets’ value.²³ Second, and perhaps even more telling, the defendants claimed that the injunction prevented them from selling one of the 109 lots in the development, for which they had found a buyer willing to pay \$249,000. Assuming an average price of \$249,000 per lot, the development alone, without consideration of all the other assets, is worth at least \$27.1 million. Notably, the defendants have never offered their own, formal appraisal of the assets. Third, Dyke Rogers and his partners, like Copper Leaf, are sophisticated investors that are savvy enough not to throw good money after bad. These investors would not be engaging in such acrimonious litigation, with its significant attendant costs, if the return on the investment were not considerable.

The government will argue, as the Rogers investors have in Belize, that Mr. Borland’s assistance is driven solely by self-interest and an attempt to lessen his custodial sentence. In part, they are correct. Mr. Borland, like every other criminal defendant, does not wish to go to jail. But his support and truthful assistance to Copper Leaf’s litigation efforts are mitigating regardless of whether he in part wants to lessen his own custodial term. He has accepted responsibility for his role in this offense by pleading guilty. He has further accepted responsibility by truthfully cooperating with Copper Leaf and agreeing to help them recover their lost investment. Indeed, like every cooperating witness who receives a letter pursuant to U.S.S.G. §5K1.1, he is motivated both by the need to make amends and to lessen his exposure to the suffering of federal prison.

²⁰ See Neal Appraisals, dated June 19, 2019 and August 15, 2019, previously submitted to Court at Dkt. 47-7, and attached here as Exhibit D.

²¹ See Exhibit E, Burke 2015 Report and Valuation, at 32.

²² See Exhibit D.

²³ See Exhibit C, Quaranta September 20, 2021 letter, at 3.

We recognize that Mr. Borland's alliance with one investor against 40 others produces an uncomfortable tension. However, as explained above, his assistance to Copper Leaf is the only way to allow *all* investors to be made whole, including the largest of those investors. It was always Mr. Borland's intention to liquidate assets pledged as collateral (or otherwise) to make investors whole. Once Caruso fraudulently divested Mr. Borland of his co-ownership, Mr. Borland could not follow through on his intention. Mr. Borland remains committed, as Mr. Quaranta asserts in his letter, that once his ownership stake is reinstated and Copper Leaf has recouped its losses, for the remaining investors to be repaid: "I believe he sincerely wants to repay Copper Leaf (and all of his other investors) and the principal reason Borland cannot, is because he was doubled crossed by his unindicted co-conspirator, Marco Caruso."²⁴

3. Mr. Borland's history and characteristics compel a below-Guidelines sentence.

The traumatic events in Mr. Borland's life have shaped who he is in profound ways and paved the way to his criminal sentencing. As a boy, he grew up in a household perpetually on edge. He and his brother Ryan were always bracing for an explosive fight between his parents or a violent rebuke by their domineering father. The divorce and separation from his brother unsettled him further. He lacked what all children need: the feeling of safety and stability in his homelife. At school he sought this stability in activities which he could control—academics, sports, and friends. If he applied himself and worked hard, he could achieve success and thus control his environment and earn positive reinforcement from his teachers, coaches, and friends. When he graduated from college, he entered the world of business with the same mentality: if he was willing to put in the hard work and long hours, he could shape his own destiny. His busyness also allowed him to escape the trauma he has never fully processed: his parents' toxic relationship, the sexual abuse he suffered, and his mother's suicide.

In many ways it is no surprise that when the opportunity to develop land in Belize presented itself, he jumped at the chance. For Mr. Borland, creating his own island paradise, complete with palatial villas, a full-scale resort, casino, golf course, luxury yacht marina and international airport, was a way to control his future. He was creating a safe, fantasy island of escape and total control. Of course, there is no way to control one's future—or much of anything for that matter—but his personal trauma history primed him to work compulsively to make the project a success. It was indeed a compulsion. By his own admission, Mr. Borland worked at a frenzied pace, flying between New York, Florida, and Belize, and always working at break-neck speed. He was trying to do the improbable: taking undeveloped land in a third world country and making it a haven for those seeking escape. In the process, he became consumed with the fantastical possibilities of his plans and made egregious errors in judgment.

Mr. Borland was always one deal away from realizing his vision. When he did secure a deal or loan, he poured the funds back into his projects and continued to expand. He stands before the Court because during these frenzied years of development he took shortcuts that were both illegal and unethical. He omitted critical information which he himself as an investor would have expected to know; he pledged properties he owned as collateral to more than one investor

²⁴ *Id.*

without their knowledge or consent; he took investment proceeds for himself and his businesses without properly disclosing these payments to investors, essentially avoiding the risks that the investors, whose money he was using, took on. In short, he committed crimes in an effort to propel the project forward.

As we acknowledged at the outset, Mr. Borland's internal justifications are not a defense, and they are irrelevant to the many victims who lost money. But, the history of Mr. Borland, and how and why he came to make these criminal mistakes are relevant to 18 U.S.C. §3553(a) when this Court determines an appropriate punishment.

E. Conclusion – A Reasonable Sentence

The Second Circuit has held, that if “a defendant twice served five or six years and thereafter committed another serious offense, a current sentence might not have an adequate deterrent effect unless it was substantial[.] Conversely, if a defendant served no time or only a few months for the prior offenses, a [shorter] sentence ... might be expected to have the requisite deterrent effect.”²⁵ Here, Mr. Borland misled investors, people who trusted him. That conduct did real harm to real people. So far, investors have not been repaid, and are out vast sums of money. And for that Mr. Borland will be punished—he will likely serve time in federal prison away from his loving family during his children's formative years.

Brent Borland's post-incarceration conduct, including his voluntary assistance to Copper Leaf, has demonstrated real change. That essential cooperation with the largest victim compels significant consideration at sentencing. With his help, Copper Leaf and the other investors have an opportunity to be made whole. And as the attached letters show, he is a committed and loving family man, even in the face of overwhelming stress. Mr. Borland has used his time at liberty productively, and he has finally committed himself to sobriety.²⁶

Mr. Borland will be sentenced by the Court amidst the on-going Covid-19 pandemic and the Bureau of Prison's abysmal response to that crisis. These are traumatic times, but especially for those who are incarcerated. Mr. Borland will experience the harshest incarceration possible amidst BOP's efforts to keep the virus at bay—he will unquestionably do harder time because of the pandemic.²⁷ Our system has traditionally measured punishment in days, months, and years, but not by harshness or severity. Indeed, the Court is well aware that the Covid-19 pandemic has

²⁵ *United States v. Mishoe*, 241 F.3d 214, 220 (2d Cir. 2001).

²⁶ Because of his alcoholism, we respectfully request that the Court recommend him for BOP's 500-hour RDAP program.

²⁷ “The trial judge cannot close his or her eyes to the conditions a particular defendant being sentenced will necessarily experience in prison.... the prison environment must be considered by the sentencing judge in estimating total harm and benefits to prisoner and society—a utilitarian as well as a compassionate exercise.” *United States v. D.W.*, 198 F.Supp.3d 18, 23 (E.D.N.Y. 2016 J. Weinstein).

altered the reality of incarceration.²⁸ Mr. Borland will experience constant lockdowns, no physical contact with loved ones, cold food, no exercise, lack of consistent hygienic products and opportunities to shower, and a pervasive fear of a deadly virus. There is no reason to believe that these horrific conditions will measurably improve inside the BOP system anytime soon. Therefore, it is likely that Mr. Borland will experience harsher imprisonment for the foreseeable future.

Covid-19 is a significant factor at sentencing, especially when considering Mr. Borland's medical condition. As explained in our sealed submission of September 16, 2021, Mr. Borland began experiencing

[REDACTED]

We respectfully ask the Court to consider Mr. Borland's unique custodial reality during the deadly pandemic, and its intersection with his compromised health, when making its sentencing decision.

Finally, we appreciate that the Court must consider the significant financial harm caused by Mr. Borland, the concerns of the victims, and the factors in 18 U.S.C. § 3553(a) traditionally favoring incarceration. However, there are unique mitigating factors that place this outside traditional fraud cases and compel significant consideration.

²⁸ See *United States v. Ortiz*, 19 Cr. 0198 (KPF)(SDNY), Dkt. 52 at 54-5 (“[...] [P]art of the reason for my downward variance was the conditions of confinement, which I think are – through no one at BOP’s fault – substantially harder than they would be if you were serving them at other times in history. I do think it’s very difficult to be confined for 21 to 24 hours [per day]. I do think that the conditions in terms of your ability to have proper hygiene, your ability to practice social distancing, have all been compromised, and that has very much weighed into my decision[.]”)

²⁹ [REDACTED]

³⁰ *Id.*

For the foregoing reasons, and after all the relevant §3553(a) factors are weighed, we respectfully submit that a sentence significantly below the advisory Guidelines is sufficient but not greater than necessary to achieve a just result.

Respectfully submitted,

/s/Christopher Madiou
and
/s/Florian Miedel
Counsel for Brent Borland

cc. AUSAs Negar Tekei and Edward Imperatore (by email and ECF)

21-2761

United States Court of Appeals
for the
Second Circuit

UNITED STATES OF AMERICA,
Appellee,

v.

BRENT BORLAND,
Defendant-Appellant.

On Appeal from the United States District Court for the
Southern District of New York

No. 1:18-cr-487-1, Hon. Katherine Polk Failla

**DEFENDANT-APPELLANT BRENT BORLAND'S APPENDIX
VOLUME II (PAGES A299-A536)**

Kyle Singhal
Shon Hopwood
HOPWOOD & SINGHAL PLLC
1701 Pennsylvania Ave., N.W.
Washington, DC 20006
Telephone: (817) 212-9041
kyle@hopwoodsinghal.com
Counsel for Brent Borland

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Exhibit C

QUARANTA P.A.

John M. Quaranta, Esq.
john.quaranta@quaranta.law

September 20, 2021

BY ELECTRONIC MAIL

Florian Miedel, Esq.
MIEDEL & MYSLIWIEC LLP
80 Broad Street
Suite 1900
New York, New York 10004
fm@fmamlaw.com

Re: United States v. Brent Borland, 18 Cr. 487 (KPF)

Dear Mr. Miedel:

This law firm represents Copper Leaf, LLC, the largest victim of your client, Brent Borland's fraudulent scheme. As you know from my three previous letters to you, Copper Leaf is actively involved in litigation in Belize attempting to recoup its \$8 Million investment, attorneys' fees, and costs.¹ You have asked me to provide you with a status report of the litigation in Belize and the assistance Mr. Borland has provided Copper Leaf in its attempt to be made whole.

To refresh your recollection, Copper Leaf is attempting to collect its SDNY judgments in Belize from Mr. Borland's co-conspirator, Marco Caruso, who in turn stole Borland's assets so we could not execute upon them. I refer herein to those earlier letters concerning the status of the litigation concerning Copper Leaf /Borland on the one hand, and Caruso/Dyke Roger's investment group of 40 Borland/Caruso investors, on the other.

Since my last letter to you, it has become apparent that the litigation strategy of the Caruso/Roger's investment group is to delay the litigation in Belize until after Mr. Borland is incarcerated and unable to testify at the trial.² In that regard, the Caruso/Roger's investment group have instructed their attorneys to stay the Belizean litigation for a variety of unfounded legal reasons. Nonetheless, their strategy has taken a lot of time off the clock.

To counter their delay tactics, Copper Leaf has filed a motion in the Belize Supreme Court requesting that the court accelerate the trial date of Copper Leaf's first filed action to

¹ On December 14, 2018, Copper Leaf was awarded final judgment by the against Borland for \$10,235,711.93 [ECF No. 57] by the Honorable John F. Keenan in the case styled *Copper Leaf v. Belize Infrastructure Fund, et. al.*, Case No. 1:18-cv-06377-JFK (SDNY). In the same case, Copper Leaf obtained a final judgment against Borland's unindicted co-conspirator, Marco Caruso [ECF No. 79] for \$10,235,711.93.

² Belize's rules of civil procedure do not normally allow for depositions in general, nor to perpetuate the testimony of a witness unavailable at trial.

domesticate its judgment from the SDNY in Belize. We have requested an immediate trial, or failing that, a request that the Belizean trial court allow Mr. Borland to give his trial testimony³ now, before his surrender date. We do not know if that is going to be successful. But to the extent that Judge Failla in Borland's criminal matter does intend to sentence Borland to incarceration, it would be in Copper Leaf's best interests for that surrender date be after Mr. Borland provides his trial testimony in Belize.

As you know, when Copper Leaf first went to Belize to collect on its judgment in late 2019, Copper Leaf came to learn that all of Borland's assets in Belize had been fraudulently stolen by Borland's co-conspirator Marco Caruso. Caruso was able to forge resignation letters and back date documents with the Belize Corporate Registrar in order to make it appear, on paper, that Borland had no assets upon which we could execute to satisfy our judgment. We later came to learn that Caruso transferred some of those assets to the Dyke Rogers investment group of the 40 other defrauded Borland investors. Caruso has pitted defrauded Borland investors against defrauded Borland investors, and for some reason, the U.S. Attorneys refuse to charge him with his contribution to stealing Copper Leaf's \$8 Million. Ultimately, it became clear to us that the only way we could get our money back was through the assistance of Mr. Borland.

In that regard, Mr. Borland (and his wife Alana) entered into the June 26, 2020, Conduct of Litigation Agreement with Copper Leaf that allowed Borland and Copper Leaf to jointly sue Caruso and others to reinstate the stolen assets back into Borland's name. Once in Mr. Borland's name, the agreement contemplates that the assets would be liquidated and that Copper Leaf be paid first, with the rest of the funds to go to Borland to pay his defrauded investors. Enclosed is a screenshot from page two of the Agreement:

WHEREAS, the Parties agree that it is in their joint interest for COPPER LEAF to: a) obtain monetary damages from Defendants to the maximum extent possible; and b) recover the corporate powers and assets that Mr. Caruso and others have wrongfully taken from the BORLAND PARTIES by, among other things, obtaining court rulings: i) declaring the forfeitures of shares and/or membership units held by the BORLAND PARTIES in those aforementioned companies to be void; ii) declaring certain resignations by MR. BORLAND and MRS. BORLAND as directors of certain of the Defendants to be void as forgeries; iii) declaring certain transactions entered into by the Defendants to be void; iv) obtaining issuance of injunctive relief freezing the assets of the Defendants; v) appointing a receiver to identify, pursue, and manage recovered assets; and vi) obtaining whatever other relief will advance the Parties' purposes. The Parties agree that the ultimate goals of litigation and related efforts and proceedings are to obtain full repayment of the Total Loan Agreement Amount due COPPER LEAF and for MR. BORLAND to reach a settlement, termination and release agreement with Mr. Dyke Rodgers and approximately 39 other former Belize Infrastructure Fund/Borland Group investors (collectively, the "Rodgers Group")

³ In Belize civil trials are tried to a judge and not a jury.

to, *inter alia*, execute settlement agreement whereby the Rodgers Group releases BORLAND PARTIES from all obligations related to their loan agreements including but not limited to full release, indemnification and full satisfaction of obligations under their various loan agreements.

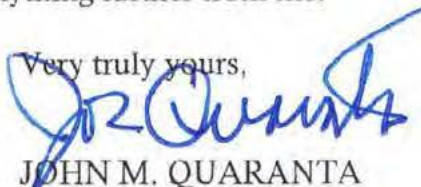
In connection with this matter, I met Mr. Borland via phone with his prior criminal attorney over two years ago. Since that time, Mr. Borland has expended a lot of time and energy in assisting Copper Leaf reclaim its investment. Without exaggeration, Mr. Borland has spent hundreds of hours accumulating documents and information that I have requested. He has never denied any of my requests for information. He has been humble and remorseful. I believe he sincerely wants to repay Copper Leaf (and all of his other investors) and the principal reason Borland cannot, is because he was doubled crossed by his unindicted co-conspirator, Marco Caruso.⁴

It has become clear that Borland owns (assuming our Belizean litigation is successful) sufficient real property assets in Belize to make Copper Leaf and the others whole. Our Belizean counsel assures us that the real property is "real" as it exists and has value. As a first example, with regards to the Belize litigation lawsuit against Caruso related to Mayan Lagoon Estates, Copper Leaf and Mr. Borland jointly sought (and received) a temporary injunction against Caruso prohibiting him from transferring 108 Mayan Lagoon parcels pre-trial. In response, Caruso sought an injunction bond to be paid by Copper Leaf and/or Borland in the amount of \$4.2 Million, an amount Caruso claimed was 10% of the \$42 Million appraised value of the property.

Furthermore, Caruso tried to convince the Belizean Court that he needed a bond in the amount of \$4.2 Million because by entry of the injunction freeze, Caruso lost out on a sale for lot number 56 in the Mayan Lagoon Section of Placencia Belize. According to Caruso's affidavit filed in support of the bond, this alleged lost sale of lot number 56 was for \$249,000 USD; and there were 108 other lots for sale in the same tied-up circumstances. 109 lots at an average selling price of \$249,000 equals \$26,892,000, which surpasses the value of the Borland investors' initial investment (not accounting for interest or appreciation). Moreover, Mayan Lagoon Estates is only one of the set of properties at issue in the Belize litigation which include the additional golf course and airport parcels.

Based on Caruso's and the Rodger's group's own admissions, the property co-owned by Borland is sufficiently valuable to repay Copper Leaf and the other investors.

Kindly let me know if you need anything further from me.

Very truly yours,

JOHN M. QUARANTA

JMQ/kr

⁴ Here, I am speaking solely for myself and not on behalf of my client, Copper Leaf.

Exhibit D

BELSTATE REALTORS

REF.:556/2019

Calvin E.S. Neal, CEI, SCV
Certified Environmental Inspector
Senior Certified Valuer
Senior Justice of the Peace



2 Belize Street
P.O. Box 243
Belmopan, Belize, C.A.
Tel: 501-822-2709
Cell: 501-610-1591
Email: belrealtor@gmail.com

June 10, 2019

Mr. Mark Hulse CPA
Baker Tilly Hulse
12 Baymen Avenue
Belize City, Belize.

Dear Sir,

RE: M.E.L. INVESTMENTS LIMITED

On your request, I have examined the Company's Register and attached herewith is the Certificate of Incorporation which requires updating of returns for 2017 through 2019. Research revealed that said "M.E.L. Investments Limited", is the registered owner of 1,125.13 acres of land situated in Riverdale Estate/South SC/Seine Bight layout; registered by Title in Transfer, Certificate of Title Volume 54 Folio 13 dated 8th June 2009. (See attached)

Opinion of Value is say: \$11,251,300 USD

[ELEVEN MILLION, TWO HUNDRED FIFTY-ONE THOUSAND, THREE HUNDRED DOLLARS] {USD}

Dated this 10th day of June 2019

FOR BELSTATE REALTORS LIMITED



CALVIN E.S. NEAL SR CEI, SVC CIC
Senior Certified Valuer

CEI Certified Environmental Inspector
SCV Senior Certified Valuer
CIC Certified International Real Estate Consultant

REPORT ON PROPERTY
OF
M.E.L. INVESTMENT LTD.
1125.13 ACRES

8th June, 2009

Transfer Certificate Title, Vide Volume NO. 54 Folio No.13 between BELIZE FOOD PRODUCT LIMITED ("THE VENDOR") and M.E.L. INVESTMENT LIMITED ("THE PURCHASER").

SCHEDULE

All that piece or parcel of land being 1125.13 acres, situated in the Riversdale Estate, South Stann Creek and Seine Bight, Stann Creek District, Belize. Shown on Entry No. 1815 Register No. 3. **SEE ATTACHED**

11st February, 2000

Transfer Certificate Title, Vide Volume No. 35 Folio No.126 between RIVERSDALE DEVELOPMENT LIMITED ("THE VENDOR") and BELIZE FOOD PRODUCT LIMITED ("THE PURCHASER").

SCHEDULE

All that piece or parcel of land being 1125.13 acres, situated in the Riversdale Estate, South Stann Creek and Seine Bight, Stann Creek District, Belize. Shown on Entry No. 1815 Register No. 3. **SEE ATTACHED**

26th August, 1994

Transfer Certificate Title, Vide Volume No. 28 Folio No.22 between EUGENE ZABANEH ("THE VENDOR") and RIVERSDALE DEVELOPMENT LIMITED ("THE PURCHASER").

SCHEDULE

All that piece or parcel of land being 1125.13 acres, situated in the Riversdale Estate, South Stann Creek and Seine Bight, Stann Creek District, Belize. Shown on Entry No. 1815 Register No. 3. **SEE ATTACHED**

Researcher


NAMES AND ADDRESSES of the persons who are Directors of
M.E.L. INVESTMENTS LTD.
on the 1st day of October, 2016

NAMES	ADDRESSES
1. MARCO CARUSO	Placencia Village Stann Creek District Belize Businessman
2. BRENT BORLAND	4700 NW 2 nd Ave., Suite 101 Boca Raton, FL 33431 U.S.A. Businessman
3. ALANA LATORRA BORLAND	4700 NW 2 nd Ave., Suite 101 Boca Raton, FL 33431 U.S.A. Businesswoman
4. MICHELA BARDINI	c/o Placencia Resort Placencia Village Stann Creek District Belize City Businesswoman


MUSA & BALDERAMOS LLP for and on behalf
of M.E.L. INVESTMENTS LTD.

LIST of Persons holding shares in M.E.L. INVESTMENTS LTD. on the 1st day of October, 2016

And persons who have held therein at any time since the date of the last return showing their Names and Addresses and an account of share so held

FOLIO IN REGISTER LEDGER CONTAINING PARTICULARS	NAMES AND ADDRESSES AND OCCUPATION				ACCOUNT OF SHARES			
	SURNAME	CHRISTIAN NAME	ADDRESS	OCCUPATION	Number of Shares Held By Existing Members At Date Of Return	Particulars of Shares Transferred Since Date of Last Return by Persons who are still Members	Particulars of Shares Trans- ferred Since The Date of Last Return by Persons Who have ceased to be Members	
1.	BELLA GROUP LLC		4700 NW 2 nd Avenue Suite 101 Boca Raton, FL 33431 U.S.A.	Corporation	100			
2.	PRUDENTIAL TRUST CORPORATION LIMITED		No. 15 "A" Street Belize City Belize	Company	1			
3.	ROMAX DEVELOPMENT LTD.		Plantation Peninsula Stann Creek District Belize	Company	99			
					Number	Date of Registration Of Transfer	Number	Date of Regis- tration Of Transfer
					 MUSA & BALDERAMOS LLP for and on behalf of M.E.L. INVESTMENTS LTD.			

BELSTATE REALTORS

REF. 532/2019

Calvin E.S. Neal, CEI, SCV
Certified Environmental Inspector
Senior Certified Valuer
Senior Justice of the Peace



2 Belize Street
P.O. Box 243
Belmopan, Belize, C.A.
Tel: 501-822-2709
Fax: 501-822-2880
Email: belrealtor@btl.net

August 15, 2019

Mr. Mark Hulse CPA
Baker Tilly Hulse
No. 12 Baymen Avenue
Belize City, Belize

Dear Sir

Re: Appraisal Review (opinion) of Land holdings of PLACENCIA ESTATES DEVELOPMENT LLC
situate Blair Athol/ Riversdale Area, Stann Creek District, Belize

In accordance with your instructions we have carried out an inspection and Appraisal of the above Subject Property and submit our findings in this Report.

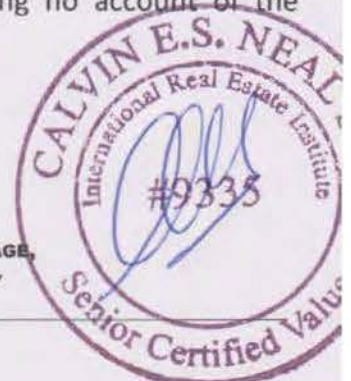
The Summary Appraisal Report is intended to comply with the Appraisal requirements in SR 2-2 of the Uniform Standards of Professional Appraisal Practice (USPAP) and the provisions set forth by the International Real Estate Institute (IREI). As such, this Appraisal Report presents reasoning and analysis used in the development of our Appraisal opinions. Detailed supporting documentation concerning data, reasoning and analysis will be retained in our files.

This Appraisal Report is prepared for the purpose defined. The Report has been prepared to provide Open Market Value. The date of inspection and valuation is determined to be June 10, 2019 to August 14, 2019 based on Official data and records provided by the Belize Lands Registry.

The Market Value was established assuming that the Subject Property is held Freehold, without encumbrance and offered with the benefit of vacant possession taking no account of the business conducted thereon.

WE OFFER THE BEST IN REAL ESTATE SERVICES INCLUDING BROKERAGE,
SALES, PURCHASE, APPRAISAL, CONSTRUCTION & CONSULTANCY

- Over 20 Years Experience -



- Case 1:18-cr-00487-KPF Document 105-1 Filed 09/21/21 Page 42 of 90
1. A willing Seller and Buyer
 2. That, prior to the date of valuation, there had been a reasonable period (having regard to the nature of the Subject Property and the state of the Market) for the proper marketing of the interest for the agreement of the price and terms and for the completion of the Sale;
 3. That the state of the Market, level or Values and other circumstances were, on any earlier assumed date of exchange of contracts, the same as on the date of valuation.
 4. That no account is taken of any additional bid by a prospective purchaser with a special interest; and
 5. That both parties to the transaction have acted knowledgeably, prudently and without prejudice or compulsion.

Taxes

Our Values exclude the impact of Taxes within Belize.

Disposal Costs

Our Values excluded the impact of disposal costs. They represent gross values.

Finance Agreements

We are not aware of any financial agreements or other such matters affecting the Subject Property. We have not taken the impact of any financial arrangements into account concluding our values and have valued the Subject Property on the Freehold assumption.

Environmental

We have made no investigation into environmental factors that may affect the Subject Property. Your attention is drawn to the Assumptions and Limiting Conditions in this regard.

Assets Excluded

Goodwill, Going Concern, Utensils, Furnishing & fittings, Vehicles, Machinery & Equipment, Workers' compensation.

Assets Included

Real Estate comprising land in its vacant form, described as 1276.40 acres, 132 Waterfront Lots and 264 single family Lots which are duly recorded at the Belize Lands Registry.



Case 1:18-cr-00487-KPF Document 105-1 Filed 09/21/21 Page 43 of 90

Belstate Realtors Ltd.

File No.:532/2019

Valuation Conclusion

Having inspected the Subject Property Records and taking into account all the relevant factors including Market condition, it is our informed opinion, and we have come to the conclusion that the Market Value as at August 14 2019 is estimated to be:

	USD
1. 1276.40 Acres (undeveloped) \$ 10,000 p.a. =	\$ 12,764,000
2. 132 Waterfront Lots, 13200 Linear feet @ say \$ 550 per footage say =	\$ 7,260,000
3. 264 single family lots @ say \$ 46, 500 per lot =	\$ 12,276,000
Opinion of Value say =	\$ 32,300,000

Dated this 15th day of August 2019

FOR BELSTATE REALTORS LIMITED



CALVIN E.S. NEAL SR CEI, SVC CIC
Senior Certified Valuer



CEI Certified Environmental Inspector
SCV Senior Certified Valuer
CIC Certified International Real Estate Consultant

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----	X	
	:	
UNITED STATES OF AMERICA	:	
	:	
- v. -	:	18 Cr. 487 (KPF)
	:	
BRENT BORLAND,	:	
	:	
	:	
Defendant.	:	
-----	X	

THE GOVERNMENT’S SENTENCING MEMORANDUM

AUDREY STRAUSS
United States Attorney for the
Southern District of New York
One St. Andrew’s Plaza
New York, New York 10007

Negar Tekeei
Edward Imperatore

Assistant United States Attorneys
- Of Counsel –

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PRELIMINARY STATEMENT

The Government respectfully submits this memorandum in advance of the sentencing of defendant Brent Borland, who pleaded guilty in this case to conspiracy to commit securities fraud and wire fraud, securities fraud, and wire fraud for his role as a leader in a scheme that deceived more than 40 victims into investing at least approximately \$26.1 million based on false representations that, among other things, he would use the investors' money to construct an airport in Belize and they would receive high rates of return on their investments. Borland himself misappropriated millions of dollars of victim investor funds for his own benefit, including payments toward his luxury home in Florida, his wife's credit card bill, and luxury automobiles. To date, but for one victim who received partial payment after suing Borland in this District, none of the victims has been repaid.

The United States Probation Department calculates that the advisory Sentencing Guidelines range applicable to the defendant's conduct is 151 to 188 months' imprisonment. PSR at 30.¹ The Probation Department has recommended a Guidelines sentence of 151 months' imprisonment. *Id.* On November 4, 2020, the parties submitted a joint letter resolving disputes related to Borland's objections to the PSR, including, among other things, an agreement that the applicable Guidelines range, which was affected by an agreement that the loss caused by Borland's conduct was approximately \$22 million, was 121 to 151 months' imprisonment. *See* Dkt. 89 at 2. As described in further detail below, the Government has since learned of additional victims of Borland's fraud, causing an increase in the total amount of loss to approximately \$26.1 million, raising Borland's Guidelines offense level, and resulting in an applicable Guidelines range of 151 to 188 months'

¹ "PSR" refers to the Probation Department's Final Presentence Investigation Report dated May 24, 2019; "Dkt." refers to docket entries in this case, unless otherwise noted; and "Ex. []" refers to an exhibit attached to this memorandum.

imprisonment. In accordance with its agreement and for the reasons set forth below, the Government respectfully submits that a sentence within the parties' agreed-upon Guidelines range of 121 to 151 months' imprisonment is both necessary and appropriate to adequately punish Borland for his misconduct in this case, to reflect the gravity of his crimes, to promote respect for the law, to deter him from reoffending again, to deter others from emulating his misdeeds, and to protect the public from further crimes by him.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

I. Summary of Offense Conduct

From approximately 2014 through March 2018, Borland solicited and received approximately \$26.8 million from approximately 40 investors based upon representations that he would use the investors' money to construct an airport in Belize. PSR ¶ 13. Borland promised investors high rates of return on their investments, which he represented were temporary "bridge financing." *Id.* Borland solicited funds from victim investors in the scheme through two entities: Belize Infrastructure Fund I, LLC and Borland Capital Group, LLC. *Id.* ¶ 10-11. To effectuate the scheme, Borland personally solicited investments from victims, and used in person meetings, telephone calls, and emails to lure victim investors. *See id.* ¶¶ 15-38.

Borland provided each victim investor with a term sheet labeled "Summary of Terms for a Bridge Financing," a promissory note, a "Personal Guarantee" signed by him and his Belizean business partner, Marco Caruso ("Caruso"), and a document labeled "Real Estate Pledge and Security Agreement." In the course of soliciting investments in the scheme, Borland also represented to investors that, in addition to the personal guarantees that he and Caruso were providing, their investments would be fully secured by real property in Belize that was unencumbered by any liens or obligations. *Id.*

In truth, however, Borland misappropriated at least approximately \$7.5 million dollars of victim investors' funds and used those funds for his own personal benefit. *Id.* ¶ 14. For example, Borland diverted millions of dollars invested by victims to himself to pay for a variety of personal expenses, including his mortgage payments, credit card bills, and luxury automobiles. *Id.* Borland created and used multiple entities to receive and disburse proceeds of his fraud through numerous corporate and personal bank accounts in order to conceal his use of victim proceeds and funnel money to himself. Borland carried out the scheme with the help of others whom he managed, including a co-conspirator who worked for Borland, and his wife and mother-in-law, who, among other things, disbursed victim funds and controlled bank accounts through which victim funds were disbursed.

In contrast to Borland's representations that investors would receive high rates of return within a specified time frame, all known investors in the scheme lost money. *Id.* And while Borland represented that the investments would be secured by real property, the property purportedly serving as collateral was improperly pledged to multiple investors and, in some cases, did not even exist in the manner identified and described by Borland in documents he provided to the investors. *Id.*

This was not Borland's first fraudulent scheme. It is undisputed that, from at least 2007 through at least 2010, Borland engaged in a scheme to defraud victims, mainly from Canada, of money and property in connection with real estate investments related to Canyon Acquisition, among other entities (the "Canadian Scheme"). *Id.* ¶ 47. In both the instant scheme and the Canadian Scheme, Borland followed a similar playbook. For example, in the Canadian Scheme, Borland, Caruso, and others solicited investments from numerous investors, including investors located in Canada, during which Borland (1) misrepresented to investors that the entirety of their

investment funds would be used to construct real estate projects in Belize, among other places, and (2) instead spent a portion of investors' proceeds in ways not specified by the agreements. *Id.* Borland carried out the Canadian Scheme in part through Canyon Acquisitions, one of the same shell companies he employed in the instant scheme. As in the instant scheme, Borland attempted to further deceive Canadian investors whom he had defrauded and cover up his scheme by purportedly offering to "convert" their worthless investment securities into holdings of land in Belize. *See, e.g.,* Ontario Securities Commission Settlement, ¶ 27 ("Commencing in early 2012, [Borland and others] made offers to the Canyon Investors to exchange their investments in the Canyon Securities for land in the Panther Golf Course and Estates ("Panther Estates") in Belize. The investors who accepted the offer terminated their agreements with the Canyon Respondents in respect of the Canyon Securities in order to receive title to lots of the Panther Estates.").²

As reflected in the victim impact statements submitted to the Court, once Borland's Canadian Scheme had concluded, Borland embarked on yet another fraudulent scheme to steal money from investors in a purported project relating to a Ritz hotel in Westchester County. The allegations regarding Borland's conduct in that scheme are strikingly similar to Borland's criminal conduct in the Airport Scheme: false promises of safe investments to be repaid with interest, purportedly backed by real estate and worthless personal guarantees, and dozens of aggrieved investors still owed millions of dollars when Borland and others failed to keep their false promises.

² The settlement is available at: https://www.osc.ca/sites/default/files/pdfs/proceedings/set_20130322_heir-home-equity-et-al-canyon.pdf. The resulting order of the Ontario Securities Commission is available at https://www.osc.ca/sites/default/files/pdfs/proceedings/rad_20130328_heir-home-equity-et-al-canyon.pdf.

II. Procedural History and Guilty Plea

On or about May 11, 2018, the Honorable Barbara Moses, United States Magistrate Judge, Southern District of New York, signed a sealed complaint, *United States v. Brent Borland*, 18 Mag. 4035, charging Borland with securities and wire fraud offenses in connection with the scheme to raise funds to construct an airport in Belize (the “Airport Scheme”).

Borland was arrested on May 16, 2018 and released the same day on bail conditions. On or about July 12, 2018, a grand jury in this District returned Indictment 18 Cr. 487 (KPF) (the “Indictment”), charging Borland with the following offenses, all in connection with the Airport Scheme: (1) conspiracy to commit securities fraud and wire fraud, in violation of Title 18, United States Code, Section 371 (Count One); (2) securities fraud, in violation of Title 15, United States Code, Sections 78j(b) & 78ff; Title 17, Code of Federal Regulations, Section 240.10b-5; and Title 18, United States Code, Section 2 (Count Two); and (3) wire fraud, in violation of Title 18, United States Code, Sections 1343 and 2 (Count Three).

On February 13, 2019, Borland entered a guilty plea without a plea agreement to Counts One, Two, and Three of the Indictment, after receiving a letter from the Government pursuant to the suggestion of the Court in *United States v. Pimentel*, 932 F.2d 1029, 1034 (2d Cir. 1991) (the “*Pimentel* letter”). In the *Pimentel* letter, the Government calculated an applicable Guidelines offense level of 34 and a Criminal History Category of I, resulting in a sentencing Guidelines range of 151 to 188 months’ imprisonment. PSR ¶ 7.

III. Presentence Investigation Report and Guidelines Calculation

The Probation Office, consistent with the *Pimentel* letter, calculates that Borland has a total Guidelines offense level of 34, which includes a 22-level enhancement for a loss amount of greater than \$25 million but less than \$65 million (U.S.S.G. § 2B1.1(b)(1)(L)), a four-level enhancement

because Borland's offense resulted in substantial hardship for more than five victims (U.S.S.G. § 2B1.1(b)(2)), a two-level enhancement because a substantial part of the fraudulent scheme was committed from outside of the United States, and the offense involved sophisticated means (U.S.S.G. § 2B1.1(b)(10)(B) and (C)), and a two-level enhancement based on Borland's role as an organizer, leader, manager, and supervisor of the charged criminal activity (U.S.S.G. § 3B1.1(c)). PSR ¶¶ 56-70. The loss amount calculated by the Probation Office includes (a) approximately \$21.9 million in loss to the victims of the Airport Scheme, PSR ¶ 13, and (b) approximately \$3.1 million in loss to victims related to Borland's Canadian Scheme. PSR ¶ 47 and pp. 27-28. Borland has no prior charged criminal conduct, resulting in a Criminal History Category of I. *Id.* ¶ 74. Accordingly, based on a total offense level of 34 and a Criminal History Category of I, the Probation Office calculates that Borland's Guidelines range of imprisonment is 151 to 188 months' imprisonment. *Id.* ¶ 178.

Borland previously lodged multiple objections to the Guidelines calculations and summary of offense conduct in the PSR. In particular, Borland disputed the loss calculation set forth in the PSR, arguing that, under the "Credits Against Loss" provision of U.S.S.G. § 2B1.1, "there is zero loss in this case and no enhancement for loss . . . is warranted" because the victims' losses were purportedly collateralized by real property. Dkt. 48. Borland also argued that his scheme to defraud Canadian investors in other Belizean development projects was not relevant conduct that should be considered in calculating the loss amount in this case. Dkt. 48 at 24-30. After extensive litigation and oral argument, the Court rejected Borland's credits against loss argument, holding that there were "far too many contingencies and far too many open issues" to find that it applied in this case. Dkt. 83 at 80-81. Subsequent to the Court's decision on the "Credits Against Loss" and relevant conduct objections raised by Borland, the parties worked to identify and resolve

potential factual and legal disputes in advance of sentencing. *See* Dkt. 89. As a result of those discussions, the parties agreed, among other things, that the Government would not seek an enhancement based on the loss to victims in the Canadian scheme. The parties also agreed that the loss caused by Borland's conduct in the charged Airport Scheme was approximately \$22 million, resulting in a 20-level (and not 22-level) enhancement in the Guidelines level pursuant to U.S.S.G. § 2B.1(b)(1)(k). *Id.* at 1. As a result, the parties then agreed that the total offense level was 32, and, with a Criminal History Category of I, the applicable Guidelines range of imprisonment was 121 to 151 months' imprisonment.

As noted above, since the parties November 4, 2020 letter, and in preparation for sentencing, the Government has learned about additional victims of Borland's Airport Scheme, resulting in an increased calculation of more than approximately \$26.1 million in loss to victims of that scheme. The increased loss calculation results in a return to the PSR's calculation of a 22-level enhancement for a loss amount of greater than \$25 million but less than \$65 million (U.S.S.G. § 2B1.1(b)(1)(L)), and the resulting Guidelines range of imprisonment is 151 to 188 months' imprisonment based on a total offense level of 34 and a Criminal History Category of I.

After interviewing Borland and his wife, reviewing property information for Borland's "newly-renovated," 5,100 square foot luxury home in Delray Beach, Florida (currently listed for sale for \$4,999,999),³ and visiting Borland's luxury home in Sag Harbor, New York (currently valued at more than \$6 million),⁴ the Probation Department has recommended that the Court impose a sentence of 151 months of imprisonment on Borland. PSR at 30. In making its

³ *See* [REDACTED] (listing for Borland's Delray Beach, Florida home identified in PSR ¶ 87, including photographs and description of property).

⁴ *See* [REDACTED] (photographs, description of property, and estimated value of Borland's Sag Harbor, New York property identified in PSR ¶¶ 86, 88).

recommendation, the Probation Department observed that Borland was the “architect of this scheme,” and was likely “motivated by the prospect of financial gain.” *Id.* at 31. The Probation Department also considered “the significant amount of loss caused by [Borland’s] scheme,” and “the degree of damage that it has wrought on the lives of a large number of people.” *Id.*

DISCUSSION

Based on the facts set forth above, this Court should sentence Borland to a term of imprisonment within the parties’ agreed-upon Guidelines range of 121 to 151 months’ imprisonment in order to meet the goals of sentencing enumerated by Congress in Title 18, United States Code, Section 3553(a). Several of the factors that sentencing courts must consider under Section 3553(a), in addition to the advisory Guidelines, call for such a sentence for Borland. The Section 3553(a) factors applicable here include the need for the sentence imposed to reflect the seriousness of Borland’s offense conduct, to promote respect for the law, to provide just punishment, to account for Borland’s history and characteristics, to afford adequate deterrence to Borland and other similarly situated individuals, and to protect the public from further crimes by Borland. These considerations weigh heavily in favor of a sentence within the parties agreed-upon Guidelines range of 121 to 151 months’ imprisonment. Borland requests a “sentence significantly below the advisory Guidelines.” Dkt. 105 at 2.

I. The Nature and Seriousness of Borland’s Criminal Conduct and the Need for Just Punishment Warrant a Substantial Sentence of Imprisonment.

The nature and seriousness of Borland’s brazenly fraudulent offense conduct and the need to impose just punishment weigh decidedly in favor of a Guidelines sentence of incarceration. *See* 18 U.S.C §§ 3553(a)(1), (a)(2)(A). In his sentencing submission, Borland elides the seriousness of his offense conduct with respect to the Airport Scheme, the gravity of the offenses he committed, and the impact of those offenses on his victims. The Court should not be swayed by Borland’s

self-serving attempt to cast blame on others for the effect of his crimes – first, his business partner, Marco Caruso, Dkt. 105 at 6-7, 13, and second, the victims of his crimes who engaged in self-help when it became clear that Borland was never going to repay them for their losses by participating in a new investment opportunity in Belize related to the property Borland had falsely promised would secure their investments, Dkt. 105 at 12-13. Borland’s undeniably criminal conduct speaks for itself. Day in and day out, for a period of approximately four years, Borland perpetuated a fraudulent scheme that directly caused losses of a \$26.1 million to more than 40 victims. The methods Borland employed to lure his victims and effectuated his fraud evince the serious nature of this conduct and his role, and include, *inter alia*: (i) preparing scores of fictitious “Term Sheets,” “Real Estate Agreements,” and “Personal Guarantees” with material misrepresentations and omissions, (ii) countless direct communications with victims, luring them into his scheme and then lulling them with false promises of repayment to stave off detection of his fraud, and (iii) diverting more than \$7.5 million of victim proceeds for personal use throughout the scheme, notwithstanding victims’ countless demands for repayment of their funds.⁵

Borland’s argument that the loss enhancement under U.S.S.G. § 2B1.1(b)(1) is excessive or “arbitrary” is meritless. While there may be circumstances in which the loss amount overstates

⁵ Borland appears to seek some credit for or acknowledgement of steps taken toward developing an airport and other construction projects in Belize, advancing a theme that he was trying to “realize his vision for Belize.” See Dkt. 105 at 1, 6. However, the fact that Borland expended funds – even those he fraudulently raised from victims in the Airport Scheme – toward development projects in Belize does not prove that he was a legitimate businessperson trying to further legitimate developments. It only demonstrates that Borland was trying to make himself and his ventures *appear* legitimate, even after victims demanded repayment and aspects of his scheme began to unravel. Like many fraudulent schemes involving access to millions of dollars of fraud proceeds, it is unsurprising that there was a semblance of a pseudo-legitimate enterprise that developed over time, and the fact that Borland spent some of his ill-gotten gains toward development of land in Belize provides cold comfort to his victims who are still owed more than \$26.1 million. That Borland orchestrated similar fraudulent schemes in the past, such as the Canadian Scheme, underscores the calculated nature of Borland’s fraud.

the seriousness of an economic offense, that concept has no applicability here, in light of Borland's primary responsibility for the fraud, the millions of dollars of fraudulent proceeds he used to fund his personal lifestyle, and the harm suffered by his victims. The cases cited by Borland do not call for a contrary conclusion. Although the Second Circuit in *United States v. Alghaim*, criticized the Sentencing Commission's decision to allow the amount of loss to become the principle determinant of the adjusted offense level under U.S.S.G. § 2B1.1, it did "not rule that the sentences were imposed in error," but found that a remand was appropriate "to permit the sentencing judge to consider whether the significant effect of the loss enhancement, in relation to the low base offense level, should result in a non-Guidelines sentence." 842 F.3d 796, 800 (2d Cir. 2016). In this case, where victims lost at least approximately \$26.1 million as a result of Borland's fraud, have not been repaid and have no guarantee of ever being fully repaid, and suffered substantial harm caused by Borland's actions, a substantial sentence within the parties' agreed upon Guidelines range is warranted. *United States v. Johnson* is also inapposite. See *United States v. Johnson*, No. 16 Cr. 457, 2018 WL 1997975, at *2-3 (E.D.N.Y. Apr. 27, 2018). *Johnson* concerned a loss enhancement that was based on gain from fraudulent trades (not victims' losses) and where, as of the time of sentencing, victims had "undoubtedly been made whole, and then some." *Id.* Thus, unlike the circumstances in this case, the loss enhancement in *Johnson* did not correlate to actual losses suffered by victims.

Indeed, in many ways, the approximately \$26.1 million in loss to victims understates the severity of the harm caused by Borland's actions. The financial and emotional effects suffered by the victims in this case have been severe and continue to this day. The letters submitted by victims of Borland's Airport Scheme illustrate in personal and poignant terms the financial and personal devastation that Borland inflicted. By now, the Court has reviewed and considered the many

victim impact statements submitted in connection with this case, and these statements will not be quoted at length here. However, a few statements bear emphasizing:

- Victim A,⁶ who lost approximately \$1,850,000 in Borland’s Airport Scheme, wrote: “[T]his was obviously a devastating event for me, both financially and emotionally. I have lost nearly 80% of my retirement savings and have virtually no hope of making an appreciable amount of the loss during my lifetime.” Ex. A (Victim Impact Statement of Victim A).
- Victim B, who lost more than \$700,000 in Borland’s Airport Scheme, wrote that the funds he lost were “a major part of” his and his wife’s retirement plan. Victim B wrote about the false assurances Borland provided that his funds would be returned and the “very frequent updates full of excuses as to why things weren’t going as planned,” and how he loaned money to make additional investments based on those promises. Victim B also wrote that the funds he “scraped together” after Borland’s false promises used all of his discretionary savings. Ex. B (Victim Impact Statement of Victim B).
- Victim C, who lost approximately \$2 million in Borland’s Airport Scheme, wrote that the loss was “substantial” and “added significant stress” to his family. Ex. C (Victim Impact Statement of Victim C).
- Victim D, who lost approximately \$500,000 in Borland’s Airport Scheme, wrote about the significant financial impact on him and his family, including the loss of college savings funds for his children, and “a level of stress that [he] was not prepared for,” including adverse effects on his relationship with his wife and his job performance. Ex. D (Victim Impact Statement of Victim D).
- Victim E, whose family trust lost approximately \$150,000 in Borland’s Airport Scheme, wrote about how the loss of funds impacted his ability to pursue plans for starting his own company, causing him to face “extraordinary difficulty” in starting the new company and a significant adverse effect on the company’s success. Ex. E (Victim Impact Statement of Victim E).
- Victim F, who lost approximately \$500,000⁷ in Borland’s Airport Scheme, wrote that the loss “has materially affected my family, making college tuition, where this short term loan would have been utilized, a nightmare to cover. I have never had money stolen from me as Mr. Borland has done, and the anguish of losing so much money that

⁶ Based on privacy concerns raised by some of the victims in this case, the Government respectfully requests permission to file these excerpted victim impact statements with redactions for names and other personal identifying information.

⁷ Victim F’s impact statement reflects a loss amount of approximately \$200,000. However, Victim F invested twice, for a total loss amount of \$500,000.

we worked for years to accumulate is a terrible pain.” Ex. F (Victim Impact Statement of Victim F).

The letters reflect that Borland’s victims will suffer emotional, psychological, and financial consequences from his fraud that will undoubtedly outlast any sentence that Borland will serve. Borland lured these and other victims into investing their hard-earned money based on material misrepresentations and omissions, used more than \$7.5 million in victim funds to fund his and his family’s luxury lifestyles, and made no legitimate effort to repay his victims until well after his arrest in this case. There is no dispute that Borland caused substantial hardship to more than five of his victims. The magnitude of the impact of Borland’s fraud on the lives of his victims and their families, and the seriousness of the harm he inflicted, cannot be overstated, and militate forcefully in favor of a substantial sentence.

Borland argues that the Court should consider his post-arrest efforts to liquidate property in Belize, which, Borland concedes, has resulted in his “alliance with one investor against 40 others,” Dkt. 105 at 13, as a mitigating factor under § 3553(a)(1) because “it evinces a desire . . . to make amends for his criminal conduct,” *id.* at 11. But rather than acknowledge the extent of suffering he caused (and continues to cause) his victims, or appreciate the significant adverse impact of his refusal to liquidate property and repay his victims in the years before his fraud was detected, Borland uses this criminal case as a forum to impugn his victims and the steps they took after his arrest to purchase the land that Borland had falsely promised would secure their investments. In doing so, Borland attempts to distract the Court from his criminal conduct by embroiling the Court in acrimonious allegations made in pending litigation in Belize over the ownership of property Borland values at several million dollars, arguing that, if he and one of his victims prevail in that ongoing litigation, he intends to repay each of his victims in full. *See* Dkt. 105 at 12. Those efforts, which Borland concedes are also driven by self-interest and an attempt

to lessen his custodial sentence, *see* Dkt. 105 at 12, ring hollow in the face of the many contingencies involved in whether they will bear fruit for the victims – for example, whether Borland will prevail in the pending (and thus far seemingly unending) litigation and all of its stages, how much money the property will actually be worth if it is liquidated, what percentage of any proceeds will be directed to Borland (as opposed to other plaintiffs in the litigation), and whether Borland, a serial fraudster, will actually use any proceeds that are directed to him to repay the victims of this crime. That Borland used similar tactics in the Canadian Scheme to purportedly “convert” securities into holdings in Belize real estate in order to deceive his investors and evade scrutiny underscores that Borland’s conduct is an aggravating rather than a mitigating factor.

Against this backdrop, the impact of harm caused by Borland, the lies he peddled to victims, and the nature and seriousness of the offenses in which he participated cannot be ignored and militate in favor of a substantial sentence of incarceration.

II. A Guidelines Sentence of Incarceration is Also Necessary to Afford Adequate Deterrence, Promote Respect for the Law, and to Protect the Public from Further Crimes by Borland.

A Guidelines sentence of incarceration is also necessary to deter Borland from yet again returning to fraud as a way of earning income in the future, to deter others contemplating fraud from emulating Borland’s misdeeds, and to protect the public from further crimes by Borland. *See* 18 U.S.C. § 3553(a)(1)(2)(B)-(C).

As detailed above, the Airport Scheme was not Borland’s first criminal scheme. Borland perpetrated the Airport Scheme after he had duped victims in the Canadian Scheme, using false promises about investment funds being used to construct real estate projects in Belize when, instead, Borland misappropriated his victims’ funds. PSR ¶ 47. The victim impact statements also reflect that Borland defrauded yet another group of investors in a project relating to the

construction of a hotel in Westchester. Detection of these other schemes and litigation by aggrieved investors did nothing to deter Borland from engaging in the Airport Scheme. General deterrence, too, is particularly important here in light of the nature of the fraudulent scheme at issue – stealing money from innocent victims for one’s own purposes. A significant sentence will serve to deter others who may consider engaging in similar crimes, and buttress confidence in the financial market by sending the message to the investing public that individuals who raise money through lies and deceit for their personal benefit will be adequately punished.

III. Borland’s Personal History and New Medical Concerns Do Not Support the Significant Variance He Seeks.

Borland’s personal history and circumstances, and the letters of support he submits, do not mitigate the nature and seriousness of his criminal conduct, and they do not obviate the need for a sentence of incarceration that would serve as just punishment and afford adequate deterrence to criminal conduct. Borland embarked on the Airport Scheme after he had already carried out the Canadian Scheme and duped multiple other victims out of their hard-earned money. On the heels of allegations of fraud with respect to the Canadian Scheme, Borland chose to lie to his Airport Scheme victims repeatedly. First, he lied to gain their trust and their money. Then, after he had used his victims’ money and had no real prospect of repaying their investments, he provided them with false assurances that they would be repaid, all in an effort to lull his victims and attempt to conceal his fraud. That Borland engaged in such calculated conduct despite certain advantages and material comfort he has enjoyed in his life is an aggravating factor. Over and over again, Borland chose to use his victims’ hard-earned money to support himself and his family, ignoring the substantial harm he was causing his victims and their families in the process. These were concrete choices made by Borland and Borland alone, and resulted in a trail of devastated victims

over course of his multi-year fraudulent scheme. As difficult as Borland's past may have been, it does not obviate the need for a substantial sentence in this case.

The same is true for the new medical concerns that Borland claims. There is nothing to indicate that Borland cannot receive adequate treatment for his new medical concerns while in the custody of the Bureau of Prisons, or that he will not be medically cleared to receive the COVID-19 vaccine in advance of serving a sentence of incarceration. The Government respectfully submits that the Court can, and should, impose the sentence that it would have imposed in the absence of COVID-19.

RESTITUTION AND FORFEITURE

Borland consents to the entry of an Order of Restitution in the amount of \$26,184,970 to the victims of the Airport Scheme. The Government has provided a proposed Preliminary Order of Forfeiture to Borland, which Borland is currently considering. The Government will provide the Court with a proposed Order of Restitution and Preliminary Order of Forfeiture at sentencing.

CONCLUSION

For the foregoing reasons, the Government respectfully submits that a sentence of imprisonment within the parties' agreed-upon Guidelines range of 121 to 151 months of imprisonment would be reasonable and just in this case.

Respectfully submitted,

AUDREY STRAUSS
United States Attorney

By: _____/s/
Negar Tekeei
Edward Imperatore
Assistant United States Attorneys
(212) 637-2482 / 2327



October 3, 2021

Hon. Katherine Polk Failla
United States District Judge
United States District Court
Southern District of New York
40 Foley Square
New York, New York 10007

Re: United States v. Brent Borland, 18 Cr. 487 (KPF)

Dear Judge Failla,

We write briefly to reply to the government's sentencing memorandum, filed on September 28, 2021.

At a recent sentencing, the Court expressed particular interest in the motivations behind the defendant's crime, stating that those motivations, not surprisingly, had an impact on the Court's view of the case and its decision on sentencing. As is apparent from the sentencing submissions and the prior litigation in this case, there is a wide gulf between the government's and the defense's views of Mr. Borland's motivations for the crimes to which he pled guilty. For the reasons below, we urge the Court to accept that the defense has the better of the argument.

At the outset, we should acknowledge where the two sides agree: Mr. Borland committed a serious financial crime by fraudulently inducing investors to provide loans for projects in Belize that have, as of yet, failed to come to fruition and therefore prevented those investors from recouping their loans and interest. Furthermore, along the way, Mr. Borland paid himself and his co-conspirators from investor funds without telling them or detailing that he would do so in loan agreements. This is serious misconduct that has led to investor losses in excess of \$20 million. And, as we stated in our sentencing submission, the motivations behind the actions that caused those losses are of little importance to the investors who lost money. They do, however, matter to Your Honor and are relevant to the Court's §3553(a) analysis.

As it sometimes does, the government here divides the world into black and white with little regard for the complexity and ambiguity that always drives human behavior. Offenders are reduced to bad guys motivated entirely by greed and nefarious self-interest, and, according to the government, Mr. Borland is a prime example. Labeling his investment efforts as the "airport scheme" or the "Canadian scheme," the government suggests that Mr. Borland's decade long endeavors in Belize were nothing but a smash and grab job, principally designed to convince unsuspecting investors to part with their money so he could live the high life, with no intention of ever repaying them. Indeed, the government goes so far as to argue that even Mr. Borland's completed development projects in Belize, and the millions of dollars invested in

those building projects, were merely a ruse to procure more money from investors that he could then use for his own selfish purposes. *See* Govt. Sentence Memo at 9 (fn. 5). The evidence suggests otherwise.

Brent Borland describes the Belize development projects as his life's work. For the last decade, he has put almost all his efforts and much of his personal income into the projects. Financial audits conducted by Belize's local affiliate of international auditing firm Deloitte Touche & Tohmatsu between 2011 through 2013 concluded that over \$69 million dollars were invested in the five projects.¹ A working hotel and resort, The Placencia, was built and continues to be in operation. *See* <https://www.theplacencia.com/>. Hundreds of homes, condominiums, single family homes and lots were built, roads were constructed, canals were dug, and an 8000 foot runway for the international airport was paved. Indeed, even some of the victims who submitted impact statements discussed their visits to Belize and how impressed they were with the progress of development.

The government's argument suffers from two significant flaws. First, if the entire purpose of the "scheme" was to solicit as much money as possible from investors in order to steal it, there was no good reason for Mr. Borland to put more than two-thirds of the funds acquired directly into the projects.² There was no reason to fight with contractors, negotiate with the Belizean government about building permits and environmental clearances, order construction materials – all of which Mr. Borland did. There was no reason to build, develop, and sell lots and properties – all of which occurred – and then to reinvest the profits back into the projects. Instead, Mr. Borland could have made minimal efforts to make the development "appear legitimate" (Govt. Memorandum at 9) and take most of the money for himself. Indeed, if Mr. Borland's intention was as the government argues, there would have been no purpose in acquiring the land and spending millions to turn it into a resort paradise in the first place. There are numerous successful criminal schemes where fraudsters persuade unsuspecting people of non-existent investment opportunities and run off with their victims' money. This is not one of them.

The second problem with the government's argument is that it ignores the fact that many of the victims in this case are seeking to acquire the very land and development in Belize that was the subject of the original investments. Dyke Rogers and his group of investors, for example, now own both the airport and golf course projects, and the only reason to do so is to continue the development that Mr. Borland and Mr. Caruso started. Both Dyke Rogers and Copper Leaf are sophisticated investors who know an opportunity when they see it. Certainly, their efforts in Belize are, in part, about recouping their losses. But both are smart enough to know not to throw good money after bad, and both have invested significant efforts and

¹ The audits for two of the projects, Placencia Estates Development, LLC, and M.E.L. Investments are attached as Exhibit F, showing a total investment of \$42 million as of 2013. These two projects, notably, are currently owned by Dyke Rogers and his group of investors.

² While we do not quibble with the \$7.5 million figure that the government says was "diverted" to Mr. Borland's personal use, nor with the fact that Mr. Borland spent significant sums on himself and his family, it is worth noting that a sizeable portion of that amount went to paying employees and running his business, the purpose of which was to continue the developments in Belize.

resources to take ownership of these assets. They have done so because they see the projects' potential, as Mr. Borland has for years.

In uncharacteristically unskeptical fashion, the government continues to suggest that the \$650,000 Dyke Rogers paid Marco Caruso for partially developed land in exchange for relieving Caruso of civil liabilities represents the value of the 1840 acres³ acquired by the Rogers group. Calling it a "new investment opportunity," the government accepts wholesale the notion that even though Caruso purchased the 1586.13 acres of bare land associated with the golf course development in 2008 for \$4.9 million,⁴ 1431.3 acres of that land, now in the possession of Dyke Rogers and his group, and partially developed, are only worth \$650,000. That is simply not true, as evidenced not only by the appraisals submitted with the original sentencing submission, but by Caruso's own claim that just one of the lots in the development of 108 had a buyer willing to spend \$249,000. *See* Quaranta Letter, Exhibit C to Defense Sentencing Submission.

The point of focusing on this issue yet again is not to diminish Mr. Borland's culpability. The fact remains that investors have not recouped their funds and remain unpaid, some for years. The point is that there is actual value in the properties in Belize, and the reason there is value is because Brent Borland has spent more than a decade trying to realize his dream. Contrary to the government's assertions, therefore, Mr. Borland's motivation was *not* to *steal* investor funds. There is no question he persuaded people to part with their money in unlawful ways, and there is no question that he lived, quite comfortably, off a portion of those monies. In so doing, he committed the crimes for which he must now face the consequences. Nonetheless, while he must pay for the lies and omissions, for the callousness and lack of concern, for placing his own comfort above that of his investors, he should not have to pay for a crime he did not, in fact, commit: a straight-up larceny of numerous victims whom he never intended to repay. That is not Mr. Borland's crime, and we urge the Court to take his genuine motivations, however misguided, into account in determining the appropriate sentence.

Thank you for your consideration.

Respectfully,

/s/

Florian Miedel
Christopher Madiou
Attorneys for Brent Borland

Cc: Government Counsel

³ 415.69 acres constituted the airport land, and 1431.3 acres the golf course development. *See* Exhibit G, Conveyance Documents.

⁴ *See* Exhibit E to Defense Sentencing Submission, at 29-30.

Exhibit F

***Placencia Estates
Development, LLC***

(A DEVELOPMENT STAGE ENTERPRISE)

***Financial Statements for the Year Ended
December 31, 2012 and Forty Six Months
Ended December 31, 2011 and
Independent Auditors' Report***

PLACENCIA ESTATES DEVELOPMENT, LLC
(A Development Stage Enterprise)

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Castillo Sanchez & Burrell, LLP

40 A Central American Blvd
P.O. Box 1235
Belize City
Belize

Tel: +501 227 3030/5866
Fax: +501 227 5702
www.CSB-LLP.com
info@CSB-LLP.com

Partners:
Giacomo Sanchez, CPA
Claude Burrell, CPA CMA

Consultant:
Julian Castillo, CA

Audit & Risk Advisory

Business Solutions

Outsourcing

Real Estate

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Paralegal

INDEPENDENT AUDITORS' REPORT

To the Board of Directors and Shareholders of: Placencia Estates Development, LLC.

Report on the Financial Statements

We have audited the accompanying financial statements of Placencia Estates Development, LLC, which comprise of the statements of financial position as at December 31, 2012 and 2011, statements of changes in equity and statement of cash flows for the year and forty six months then ended respectively, and a summary of significant accounting policies and other explanatory notes.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with International Financial Reporting Standards. This responsibility includes: designing, implementing and maintaining internal controls relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error; selecting and applying appropriate accounting policies; and making accounting estimates that are reasonable in the circumstances.

Auditor's Responsibility

Our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit in accordance with International Standards on Auditing. Those standards require that we comply with ethical requirements and plan and perform the audit to obtain reasonable assurance whether the financial statements are free from material misstatement. An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

Independent Correspondent Firm to Deloitte Touche Tohmatsu

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We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the financial statements present fairly, in all material respects, the financial position of Placencia Estates Development, LLC as at December 31, 2012 and 2011 and of its financial performance and its cash flows for the year and forty six months then ended respectively, in accordance with International Financial Reporting Standards.

Castillo Sanz & Burns LLP

Chartered Accountants

April 11, 2013

PLACENCIA ESTATES DEVELOPMENT, LLC
(A DEVELOPMENT STAGE ENTERPRISE)

STATEMENT OF FINANCIAL POSITION
YEAR ENDED DECEMBER 31, 2012 AND 2011 (IN BELIZE DOLLARS)

	<u>Notes</u>	<u>2012</u>	<u>2011</u>
<u>ASSETS</u>			
FIXED ASSETS - NET	2d, 3	<u>\$18,023,048</u>	<u>\$16,883,203</u>
TOTAL ASSETS		<u>\$18,023,048</u>	<u>\$16,883,203</u>
<u>LIABILITIES AND EQUITY</u>			
CURRENT LIABILITIES:			
Accrued interest	2f	<u>\$ 5,314,032</u>	<u>\$ 4,023,136</u>
Total current liabilities		<u>5,314,032</u>	<u>4,023,136</u>
NON-CURRENT LIABILITIES:			
Shareholders' loans	2f, 5	<u>16,504,230</u>	<u>15,803,400</u>
Total non-current liabilities		<u>16,504,230</u>	<u>15,803,400</u>
TOTAL LIABILITIES		<u>21,818,262</u>	<u>19,826,536</u>
EQUITY:			
Share capital	6	-	-
Accumulated deficit	4	<u>(3,795,214)</u>	<u>(2,943,333)</u>
TOTAL EQUITY		<u>(3,795,214)</u>	<u>(2,943,333)</u>
TOTAL LIABILITIES AND EQUITY		<u>\$18,023,048</u>	<u>\$16,883,203</u>

The financial statements on pages 3 to 5 were approved and authorized for issue by the Board of Directors on April 12, 2013 and are signed on its behalf by:

) Director

The notes on pages 6 to 17 are an integral part of these financial statements.

PLACENCIA ESTATES DEVELOPMENT, LLC
(A DEVELOPMENT STAGE ENTERPRISE)

STATEMENT OF CHANGES IN EQUITY
YEAR ENDED DECEMBER 31, 2012 AND FORTY SIX MONTHS ENDED
DECEMBER 31, 2011 (IN BELIZE DOLLARS)

	Share Capital	Deficit	Total Equity
March 1, 2008	\$ -	\$ -	\$ -
Loss for the period	<u>-</u>	<u>(2,943,333)</u>	<u>(2,943,333)</u>
December 31, 2011	-	(2,943,333)	(2,943,333)
Loss for the period	<u>-</u>	<u>(851,881)</u>	<u>(851,881)</u>
December 31, 2012	<u><u>\$ -</u></u>	<u><u>\$(3,795,214)</u></u>	<u><u>(3,795,214)</u></u>

The notes on pages 6 to 17 are an integral part of these financial statements.

PLACENCIA ESTATES DEVELOPMENT, LLC
(A DEVELOPMENT STAGE ENTERPRISE)

STATEMENT OF CASH FLOWS
YEAR ENDED DECEMBER 31, 2012 AND FORTY SIX MONTHS ENDED
DECEMBER 31, 2011 (IN BELIZE DOLLARS)

	<u>2012</u>	<u>2011</u>
OPERATING ACTIVITIES:		
Loss for the period	\$ <u>(851,881)</u>	\$ <u>(2,943,333)</u>
Operating loss before working capital changes	<u>(851,881)</u>	<u>2,943,333</u>
Increase in interest payable	<u>1,046,489</u>	<u>2,943,333</u>
Net cash provided by operating activities	<u>194,608</u>	<u>-</u>
INVESTING ACTIVITIES:		
Acquisition of fixed assets – net	<u>(895,438)</u>	<u>(15,803,400)</u>
Net cash used in investing activities	<u>(895,438)</u>	<u>(15,803,400)</u>
FINANCING ACTIVITIES:		
Proceeds from shareholders' loans	<u>700,830</u>	<u>15,803,400</u>
Net cash provided by financing activities	<u>700,830</u>	<u>15,803,400</u>
NET CHANGE IN CASH AND BANK BALANCES	-	-
CASH AND BANK BALANCES, BEGINNING OF PERIOD	<u>-</u>	<u>-</u>
CASH AND BALANCES, END OF PERIOD	\$ <u>-</u>	\$ <u>-</u>

The notes on pages 6 to 17 are an integral part of these financial statements.

PLACENCIA ESTATES DEVELOPMENT, LLC
(A DEVELOPMENT STAGE ENTERPRISE)

NOTES TO FINANCIAL STATEMENTS
YEAR ENDED DECEMBER 31, 2012 AND FORTY SIX MONTHS ENDED DECEMBER
31, 2011 (IN BELIZE DOLLARS)

1. STATUS

Status – Placencia Estates Development, LLC (the “Company”) is a limited liability company incorporated on April 22, 2008 under the Nevis Limited Liability Company Ordinance of 1995. The Company’s principal activity is ownership of a golf course and marina in Placencia, Stann Creek District, Belize. The company is domiciled in Nevis. The Company’s registered office is located at Main Street, Charlestown, Nevis.

The Company is in the developmental stage and its infrastructure is under construction.

Statement of compliance – The financial statements have been prepared from records maintained in the financial accounting system of the Company, in accordance with International Financial Reporting Standards (IFRS).

2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

- a. Basis of presentation – The financial statements have been prepared on the historical cost basis except for the revaluation of certain non-current assets and financial instruments. Historical cost is generally based on the fair value of the consideration given in exchange for assets.
- b. Functional and presentation currency – The financial statements are presented in Belize dollars, which is the Company’s functional currency.
- c. Change in accounting policies – The accounting policies adopted are consistent with those used in the previous financial period except that the Company has adopted the following standards, amendments and interpretations which did not have any effect on the financial performance or position of the Company.

Adoption of New Standards, Amendments and Interpretations Effective from January 1, 2012:

New and revised IFRSs applied with no material effect on the Company’s financial statements:

The following new and revised IFRSs have also been adopted in these financial statements. The application of these new and revised IFRSs has not had any material impact on the amounts reported for the current and prior years but may affect the accounting for future transactions or arrangements.

- IFRS 7 - Disclosures - Transfers of financial assets (Amendment). Amendment to enhance disclosures for financial assets. These disclosures relate to assets transferred (as defined under IAS 39). If the assets transferred are not derecognised entirely in the financial statements, an entity has to disclose information that enables users of financial statements to understand the relationship between those assets which are not derecognised and their associated liabilities.

PLACENCIA ESTATES DEVELOPMENT, LLC
(A DEVELOPMENT STAGE ENTERPRISE)

NOTES TO FINANCIAL STATEMENTS (CONTINUED)
YEAR ENDED DECEMBER 31, 2012 AND FORTY SIX MONTHS ENDED DECEMBER
31, 2011 (IN BELIZE DOLLARS)

2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

c. Change in accounting policies (continued)

- If those assets are derecognised entirely, but the entity retains a continuing involvement, disclosures have to be provided that enable users of financial statements to evaluate the nature of, and risks associated with, the entity's continuing involvement in those derecognised assets. Effective implementation date is for annual periods beginning on or after 1 July 2011 with no comparative requirements.
- IAS 12 - Deferred Tax: Recovery of Underlying Assets (Amendment); This amendment to IAS 12 includes a rebuttable presumption that the carrying amount of investment property measured using the fair value model in IAS 40 will be recovered through sale and, accordingly, that any related deferred tax should be measured on a sale basis. The presumption is rebutted if the investment property is depreciable and it is held within a business model whose objective is to consume substantially all of the economic benefits in the investment property over time, rather than through sale. Specifically, IAS 12 will require that deferred tax arising from a non-depreciable asset measured using the revaluation model in IAS 16 should always reflect the tax consequences of recovering the carrying amount of the underlying asset through sale. Effective implementation date is for annual periods beginning on or after 1 January 2012.
 - IFRS 1 First-time Adoption of International Financial Reporting Standards (Amendment) —Severe hyperinflation and Removal of Fixed Dates for First-time Adopters. Amends IFRS 1 to replace references to a fixed date of '1 January 2004' with 'the date of transition to IFRSs', thus eliminating the need for companies adopting IFRSs for the first time to restate derecognition transactions that occurred before the date of transition to IFRSs. Effective for annual periods beginning on or after 1 July 2011.
 - Amendment to IAS 1, 'Financial statement presentation' regarding other comprehensive income. The main change resulting from these amendments is a requirement for entities to group items presented in 'other comprehensive income' (OCI) on the basis of whether they are potentially reclassifiable to profit or loss subsequently (reclassification adjustments). The amendments do not address which items are presented in OCI. Effective implementation date is for annual periods beginning on or after 1 July 2012.

PLACENCIA ESTATES DEVELOPMENT, LLC
(A DEVELOPMENT STAGE ENTERPRISE)

NOTES TO FINANCIAL STATEMENTS (CONTINUED)
YEAR ENDED DECEMBER 31, 2012 AND FORTY SIX MONTHS ENDED DECEMBER
31, 2011 (IN BELIZE DOLLARS)

2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

c. Change in accounting policies (continued)

There are new standards and amendments to standards and interpretations which might be relevant to the Company and issued but not yet effective. Early adoption is permitted. These will be adopted if required.

The Company has not applied the following new and revised IFRSs that have been issued but are not yet effective:

- IAS 27, Separate Financial Statements (2011). Amended version of IAS 27 which now only deals with the requirements for separate financial statements. The Standard requires that when an entity prepares separate financial statements, investments in subsidiaries, associates, and jointly controlled entities are accounted for either at cost, or in accordance with IFRS 9 Financial Instruments. Applicable to annual reporting periods beginning on or after 1 January 2013. Early application of IAS 27 is permitted, provided that an entity also applies the requirements of IFRS 10, IFRS 11, IFRS 12 and IAS 28 (as revised in 2011) at the same time.
- IAS 28 Investments in Associates and Joint Ventures (2011). This Standard supersedes IAS 28 Investments in Associates and prescribes the accounting for investments in associates and sets out the requirements for the application of the equity method when accounting for investments in associates and joint ventures. Applicable to annual reporting periods beginning on or after 1 January 2013. Early adoption is permitted. Early application of IAS 28 is permitted, provided that an entity also applies the requirements of IFRS 10, IFRS 11, IFRS 12 and IAS 27 (as revised in 2011) at the same time.
- IFRS 9 Financial Instruments (2009) - Classification and measurement. Effective for annual periods beginning on or after 1 January 2015. Early adoption is permitted. Early adopters with an initial application date before 1 January 2012 need not restate comparative information for prior periods.
- IFRS 10 Consolidated Financial Statements/ IAS 27 Separate Financial Statements. - Effective for annual periods beginning on or after 1 January 2013. Earlier application is permitted if the entity also applies the requirements of IFRS 11 Joint Arrangements, IFRS 12 Disclosure of Interests in Other Entities, IAS 27 (as revised in 2011) and IAS 28 (as revised in 2011) at the same time.
- IFRS 11 Joint Arrangements/ IAS 28 Investments in Associates and Joint Ventures. - Effective for annual periods beginning on or after 1 January 2013. Early application of IFRS 11 is permitted, provided that an entity also applies the requirements of IFRS 10, IFRS 12, IAS 27 (as revised in 2011) and IAS 28 (as revised in 2011) at the same time.

PLACENCIA ESTATES DEVELOPMENT, LLC
(A DEVELOPMENT STAGE ENTERPRISE)

NOTES TO FINANCIAL STATEMENTS (CONTINUED)
YEAR ENDED DECEMBER 31, 2012 AND FORTY SIX MONTHS ENDED DECEMBER
31, 2011 (IN BELIZE DOLLARS)

2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

c. Change in accounting policies (continued)

- IFRS 12 Disclosure of Interests in Other Entities. - Effective for annual periods beginning on or after 1 January 2013. An entity may early adopt IFRS 12 before adopting IFRS 10, IFRS 11, IAS 27 and IAS 28. Entities are also encouraged to provide some of the information voluntarily without necessarily adopting all of IFRS 12 before its effective date.
 - IFRS 13 Fair Value Measurement. Effective for annual periods beginning on or after 1 January 2013. Applied prospectively. Early application is permitted and must be disclosed.
 - IAS 19, 'Employee benefits', was amended in June 2011. The impact would be to immediately recognise all past service costs; and to replace interest cost and expected return on plan assets with a net interest amount that is calculated by applying the discount rate to the net defined benefit liability (asset). Effective implementation date is for annual periods beginning on or after 1 January 2013. Early adoption is permitted.
 - IFRS 7 Offsetting of financial assets and financial liabilities (Amendment) – Amends the disclosure requirements in IFRS 7 Financial Instruments: Disclosures to require information about all recognised financial instruments that are set off in accordance with paragraph 42 of IAS 32 Financial Instruments: Presentation. Applicable to annual periods beginning on or after 1 January 2013. Early adoption is permitted.
 - IAS 32 Offsetting Financial Assets and Financial Liabilities (Amendment) – Amends IAS 32 Financial Instruments: Presentation to clarify certain aspects in the application of the offsetting rules and requires additional disclosure on financial instruments subject to netting arrangements. Applicable to annual periods beginning on or after 1 January 2014. Early adoption is permitted.
- d. Fixed assets – Fixed assets are carried at cost and, except for land and golf course are depreciated using the straight line method at the following rates:

Buildings	2.5%
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Additions and major improvements are capitalized. Maintenance and repairs are charged against revenue in the year incurred.

When fixed assets are disposed of, the cost and related accumulated depreciation are removed from the accounts and the resulting gain or loss on disposal is reflected in the results of operations.

PLACENCIA ESTATES DEVELOPMENT, LLC
(A DEVELOPMENT STAGE ENTERPRISE)

NOTES TO FINANCIAL STATEMENTS (CONTINUED)
YEAR ENDED DECEMBER 31, 2012 AND FORTY SIX MONTHS ENDED DECEMBER
31, 2011 (IN BELIZE DOLLARS)

2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)

d. Fixed assets (continued) _

An item is derecognized upon disposal or when no further future economic benefits are expected from its use or disposal. Any gain or loss arising on derecognition of the asset (calculated as the difference between the net disposal proceeds and the carrying amount of the asset) is included in the income statement in the year the asset is derecognized.

- e. Foreign currency transactions – Transactions in foreign currencies during the year are translated into Belize dollars at the rates ruling on the dates of the transactions. Foreign currency balances outstanding at the balance sheet date are translated at the rates ruling on that date. Gains or losses on ordinary foreign exchange transactions are included in the results of operations. The official rate of exchange for the US dollar is fixed at BZ\$2 = US\$1.

- f. Financial instruments – Financial assets and the financial liabilities are recognized when an entity becomes a party to the contractual provision of the instrument.

Initial recognition and measurement

Financial assets and financial liabilities are initially measured at fair value. Transaction costs that are directly attributable to the acquisition or issue of the financial assets and financial liabilities (other than financial assets and financial liabilities at fair value through profit or loss) are added to or deducted from the fair value of the financial assets or financial liabilities, as appropriate, on initial recognition. Transaction costs directly attributable to the acquisition of the financial assets or financial liabilities at fair value through profit or loss are recognised immediately in profit or loss.

Financial assets

Financial assets are classified into the following specified categories: financial assets ‘at fair value through profit or loss’ (FVTPL), ‘held-to-maturity’ investments, ‘available-for-sale’ (AFS) financial assets and ‘loans and receivables.’ The classification depends on the nature and purpose of the financial assets and is determined at the time of initial recognition. All regular way purchases or sales of financial assets are recognised and derecognized on a trade date basis. Regular way purchases or sales are purchases or sales of financial assets that require delivery of assets within the time frame established by regulation or convention in the marketplace.

PLACENCIA ESTATES DEVELOPMENT, LLC
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NOTES TO FINANCIAL STATEMENTS (CONTINUED)
YEAR ENDED DECEMBER 31, 2012 AND FORTY SIX MONTHS ENDED DECEMBER
31, 2011 (IN BELIZE DOLLARS)

2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

f. Financial instruments (continued)

Effective interest method

The effective interest method is a method of calculation the amortized cost of a debt instrument and of allocating interest income over the relevant period. The effective interest rate is the rate that exactly discounts estimated future cash receipts (including all fees and points paid or received that form an integral part of the effective interest rate, transaction costs and other premiums or discounts) through the expected life of the debt instrument, or, where appropriate, a shorter period, to the net carrying amount on initial recognition.

Income is recognised on an effective interest basis for debt instruments other than those financial assets classified as at FVTPL.

Impairment of financial assets

Financial assets, other than those at FVTPL, are assessed for indicators of impairment at the end of each reporting period. Financial assets are considered to be impaired when there is objective evidence that, as a result of one or more events that occurred after the initial recognition of the financial asset, the estimated future cash flows of the investment have been affected.

For AFS equity investments, a significant or prolonged decline in the fair value of the security below its cost is considered to be objective evidence of impairment.

For all other financial assets, objective evidence of impairment could include:

- Significant financial difficulty of the issuer or counterparty; or
- Breach of contract, such as a default or delinquency in interest or principal payments; or
- It becoming probably that the borrower will enter bankruptcy or financial re-organization; or
- The disappearance of an active market for that financial asset because of financial difficulties.

For certain categories of financial assets, such as trade receivables, assets that are assessed not to be impaired individually are, in addition, assessed for impairment on a collective basis. Objective evidence of impairment for a portfolio of receivables could include the Company's past experience of collective payments, an increase in number of delayed payments in the portfolio past the average credit period of 60 days, as well as observable changes in national or local economic conditions that correlate with default on receivables.

PLACENCIA ESTATES DEVELOPMENT, LLC
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NOTES TO FINANCIAL STATEMENTS (CONTINUED)
YEAR ENDED DECEMBER 31, 2012 AND FORTY SIX MONTHS ENDED DECEMBER
31, 2011 (IN BELIZE DOLLARS)

2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

f. Financial instruments (continued)

For financial assets carried at amortised cost, the amount of the impairment loss recognised is the difference between the asset's carrying amount and the present value of estimated future cash flow, discounted at the financial asset's original effective interest rate.

For financial assets carried at cost, the amount of the impairment loss is measured as the difference between the asset's carrying amount and the present value of the estimated future cash flows discounted at the current market rate of return for a similar financial asset. Such impairment loss will not be reversed in subsequent periods.

The carrying amount of the financial asset is reduced by the impairment loss directly for all financial assets with the exception of trade receivables, where the carrying amount is reduced through the use of an allowance account. When trade receivable is considered uncollectible, it is written off against the allowance account. Subsequent recoveries of amounts previously written off are credited against the allowance account. Changes in the carrying amount of the allowance account are recognised in the profit or loss.

When an AFS financial asset is considered to be impaired, cumulative gains or losses previously recognised in other comprehensive income are reclassified to the profit or loss in the period.

For financial assets measured at amortised cost, if, in a subsequent period, the amount of the impairment loss decreases and the decrease can be related objectively to an event occurring after the impairment was recognised, the previously recognised impairment loss is reversed through profit or loss to the extent that the carrying amount of the investment at the date the impairment is reversed does not exceed what the amortised cost would have been had the impairment not been recognised.

In respect of AFS equity securities, impairment losses previously recognised in profit or loss are not reversed through profit or loss. Any increase in fair value subsequent to an impairment loss is recognised in other comprehensive income and accumulated under the heading of investments revaluation reserve. In respect of AFS debt securities, impairment losses are subsequently reversed through profit or loss if an increase in the fair value of the investment can be objectively related to an event occurring after the recognition of the impairment loss.

PLACENCIA ESTATES DEVELOPMENT, LLC
(A DEVELOPMENT STAGE ENTERPRISE)

NOTES TO FINANCIAL STATEMENTS (CONTINUED)
YEAR ENDED DECEMBER 31, 2012 AND FORTY SIX MONTHS ENDED DECEMBER
31, 2011 (IN BELIZE DOLLARS)

2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

f. Financial instruments (continued)

Derecognition of financial assets

The Company derecognizes a financial asset only when the contractual rights to the cash flows from the asset expire, or when it transfers the financial asset and substantially all the risks and rewards of ownership of the asset to another entity. If the Company neither transfers nor retains substantially all the risks and rewards of ownership and continues to control the transferred asset, the Company recognizes its retained interest in the asset and associated liability for amounts it may have to pay. If the Company retains substantially all the risks and rewards of ownership of a transferred financial asset, the Company continues to recognise the financial asset and also recognises a collateralized borrowing for proceeds received.

On derecognition of a financial asset in its entirety, the difference between the asset's carrying amount and the sum of the consideration received and receivable and the cumulative gain or loss that had been recognised in the other comprehensive income and accumulated in equity is recognised in profit or loss.

On derecognition of a financial asset other than in its entirety (e.g. when the Company retains an option to repurchase part of the transferred asset), the Company allocates the previous carrying amount of the financial asset between the part it continues to recognise under the continuing involvement, and the part it no longer recognises on the basis of the relative fair values of those parts on the date of the transfer. The difference between the carrying amount and the allocated to the part that is no longer recognised and the sum of the consideration received for the part no longer recognised and any cumulative gain or loss allocated to it that had been recognised in other comprehensive income is recognised in profit or loss.

A cumulative gain or loss that had been recognised in other comprehensive income is allocated between the part that continues to be recognised and the part that is no longer recognised on the basis of the relative fair values of those parts.

Classification as debt or equity

Debt and equity instruments issued by a group entity are classified as either financial liabilities or as equity in accordance with the substance of the contractual arrangements and definitions of a financial liability and an equity instrument.

Equity instruments

An equity instrument is any contract that evidences a residual interest in the assets of an entity after deducting all of its liabilities. Equity instruments issued by the Company are recognised at proceeds received, net of direct issue costs.

Repurchase of the Company's own equity instruments is recognised and deducted directly in equity. No gain or loss is recognised in profit or loss on the purchase, sale, issue or cancellation of the Company's own equity instruments.

PLACENCIA ESTATES DEVELOPMENT, LLC
(A DEVELOPMENT STAGE ENTERPRISE)

NOTES TO FINANCIAL STATEMENTS (CONTINUED)
YEAR ENDED DECEMBER 31, 2012 AND FORTY SIX MONTHS ENDED DECEMBER
31, 2011 (IN BELIZE DOLLARS)

2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

f. Financial instruments (continued)

Compound instruments

The component parts of compound instruments (convertible notes) issued by the Company are classified separately as financial liabilities and equity in accordance with the substance of the contractual arrangement and the definition of a financial liability and equity instrument. Conversion option that will be settled by the exchange of a fixed amount of cash or another financial asset for a fixed number of the Company's own equity instruments is an equity instrument.

At the date of issue, the fair value of the liability component is estimated using the prevailing market interest rate for similar non-convertible instruments. This amount is recorded as a liability on and amortised cost basis using the effective interest method until extinguished upon conversion or at the instrument's maturity date.

The conversion option classified as equity is determined by deducting the amount of the liability component from the fair value of the compound instrument as a whole. This is recognised and included in equity, net of income tax effects, and is not subsequently remeasured. In addition, the conversion option classified as equity will remain in equity until the conversion option is exercised, in which case, the balance recognised in equity will be transferred to [share premium/other equity]. When the conversion option remains unexercised at the maturity date of the convertible note, the balance recognised in equity will be transferred to [retained profits/other equity]. No gain or loss is recognised in profit or loss upon conversion or expiration of the conversion option.

Transaction costs that relate to the issue of the convertible notes are allocated to the liability and equity components in proportion to the allocation of the gross proceeds. Transaction costs relating to the equity component are recognised directly in equity.

Transaction costs relating to the liability component are included in the carrying amount of the liability component and are amortised over the lives of the convertible notes using the effective interest method.

Financial liabilities

Financial liabilities are classified as either financial liabilities 'at FVTPL' or 'other financial liabilities'.

Other financial liabilities

Other financial liabilities (including borrowings and trade and other payables) are subsequently measured at amortised cost using the effective interest method.

The effective interest method is a method of calculating the amortised cost of a financial liability and of allocating interest expense over the relevant period.

PLACENCIA ESTATES DEVELOPMENT, LLC
(A DEVELOPMENT STAGE ENTERPRISE)

NOTES TO FINANCIAL STATEMENTS (CONTINUED)
FORTY SIX MONTHS ENDED DECEMBER 31, 2011 (IN BELIZE DOLLARS)

2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

f. Financial risk management:

The effective interest rate is the rate that exactly discounts the estimated further cash payments (including all fees and points paid or received that form and integral part of the effective interest rate, transaction costs and other premiums or discounts) through the expected life of the financial liability, or (where appropriate) a shorter period, to the net carrying amount on initial recognition.

The Company's other financial liabilities include shareholders' loan and accrued interest. See note 8.

Financial guarantee contracts

A financial guarantee contract is a contract that requires the issue to make specified payments to reimburse the holder for a loss it incurs because a specified debtor fails to make payments when due in accordance with the terms of a debt instrument.

Financial guarantee contracts issued by the Company are initially measured at their fair values and, if not designated as at FVTPL, are subsequently measured at the higher of:

- The amount of the obligation under the contract, as determined in accordance with IAS 37 Provisions, Contingent Liabilities and Contingent Assets; and
- The amount initially recognised less, where appropriate, cumulative amortization recognised in accordance with the revenue recognition policies.

Derecognition of financial liabilities

The Company derecognizes financial liabilities when and only when, the Company's obligations are discharged, cancelled or they expire. The difference between the carrying amount of the financial liability derecognized and the consideration paid and is payable is recognised in profit or loss.

Liquidity risk - The Company's exposure to liquidity risk is managed by sourcing the funds needed from its own resources or from related parties.

Market risk – The Company incurs interest rate risk and currency risk exposure mainly in respect of overseas trade purchases made in currencies other than Belize dollars. Its exposure to losses from currency risk is mitigated by the fact that trade liabilities are quoted in US dollars and the official exchange rate for the Belize dollar is tied to the US dollar.

- g. Impairment – The carrying amount of the Company's assets are reviewed at each balance sheet date to determine whether there is an indication of impairment. If such indication exists, the asset's recoverable amount is estimated. An impairment loss is recognized whenever the carrying amount of an asset or its cash-generating unit exceeds its recoverable amount. Impairment losses are recognized in the income statement.

PLACENCIA ESTATES DEVELOPMENT, LLC
(A DEVELOPMENT STAGE ENTERPRISE)

NOTES TO FINANCIAL STATEMENTS (CONTINUED)
FORTY SIX MONTHS ENDED DECEMBER 31, 2011 (IN BELIZE DOLLARS)

2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

- h. Use of estimates and judgments – The preparation of financial statements in conformity with IFRS requires management to make estimates, judgments and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reported period. Actual results could differ materially from those estimates.
- i. Segment reporting – The Company has one reportable segment.

3. FIXED ASSETS – NET

	Land	Buildings	Golf course and grounds improvements	Total
<u>Cost</u>				
Brought forward, January 1, 2012	\$10,000,000	\$ -	\$6,883,203	\$16,883,203
Additions	<u>-</u>	<u>308,573</u>	<u>831,272</u>	<u>1,139,845</u>
Carried forward, December 31, 2012	<u>\$10,000,000</u>	<u>\$308,573</u>	<u>\$7,714,475</u>	<u>\$18,023,048</u>

The Company has capitalized \$1,079,803 in borrowing costs during the reporting period.

The project is situated on the parcel of land that is approximately 609.13 acres situated in the Riversdale area, Stann Creek District.

4. ACCUMULATED DEFICIT

	<u>2012</u>	<u>2011</u>
Licenses and permits	\$ -	\$ 10,000
Interest expense	800,000	2,933,333
Professional fees	8,009	-
Property taxes	<u>43,872</u>	-
Loss for the period	851,881	2,943,333
Balance, beginning of period	<u>2,943,333</u>	-
Balance, end of period	<u>\$3,795,214</u>	<u>\$2,943,333</u>

5. SHAREHOLDERS' LOAN

	<u>2012</u>	<u>2011</u>
\$40,000,000 facility from shareholders, Marco Caruso and Brent Borland that attracts simple interest at 8% per annum to be repaid by balloon payments within 5 years of initial drawdown. The loan is secured by a Corporate guarantee. At December 31, 2012 the undrawn portion totaled \$23,495,770.	<u>\$16,504,230</u>	<u>\$15,803,400</u>
	<u>\$16,504,230</u>	<u>\$15,803,400</u>

PLACENCIA ESTATES DEVELOPMENT, LLC
(A DEVELOPMENT STAGE ENTERPRISE)

NOTES TO FINANCIAL STATEMENTS (CONTINUED)
YEAR ENDED DECEMBER 31, 2012 AND FORTY SIX MONTHS ENDED
DECEMBER 31, 2011 (IN BELIZE DOLLARS)

6. SHARE CAPITAL

The Company was incorporated as a limited liability company without a share capital.

7. RELATED PARTY TRANSACTIONS

The Company enters into business transactions with its affiliate, Maya Rio Construction Company Limited, in the normal course of business. The sales to and purchases between affiliates are made at normal market prices.

During the period the only transactions carried out were related to construction/development costs.

There were no balances outstanding between affiliates at the reporting date.

8. ANALYSIS OF FINANCIAL ASSETS AND LIABILITIES BY MEASUREMENT BASIS

Financial assets and financial liabilities are measured on an ongoing basis either at fair value or at amortised cost. The principle accounting policies in Note 2f describe how financial instruments are measured, and how income and expenses, including fair value gains and losses, are recognised. The following table analyses the financial assets and liabilities in the statement of financial position by the class of financial instrument to which they are assigned, and therefore by the measurement basis:

Financial Liabilities	Other financial liabilities at amortised cost	
	<u>2012</u>	<u>2011</u>
	\$	\$
Accrued interest	5,314,032	4,023,136
Shareholders' loan	16,504,230	15,803,400
Total financial liabilities	21,818,262	19,826,536

* * * * *

M.E.L. Investments Ltd.

(A DEVELOPMENT STAGE ENTERPRISE)

***Financial Statements for the Years Ended
December 31, 2013 and 2012 and
Independent Auditors' Report***

M.E.L. INVESTMENTS LTD.
(A Development Stage Enterprise)

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Castillo Sanchez & Burrell, LLP

40 A Central American Blvd
P.O. Box 1235
Belize City
Belize

Tel: +501 227 3020/5666
Fax: +501 227 5792
www.CSB-LLP.com
info@CSB-LLP.com

Partners:
Giacinto Sanchez, CPA
Gordon Burrell, CPA

Consultant:
Julian Cast, Jr., CPA

Audit & Risk Advisory

Business Solutions

Outsourcing

Trust Estates

Corporate

Forensic

INDEPENDENT AUDITORS' REPORT

**To the Board of Directors and Members of:
M.E.L. Investments Ltd**

Report on the Financial Statements

We have audited the accompanying statements of financial position of M.E.L. Investment Ltd (the "Company") as of December 31, 2013 and 2012 and the related statements of comprehensive income, changes in members' deficit, and cash flows for the years ended December 31, 2013 and 2012. These financial statements are the responsibility of the Company's management.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with International Financial Reporting Standards. This responsibility includes: designing, implementing and maintaining internal controls relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error; selecting and applying appropriate accounting policies; and making accounting estimates that are reasonable in the circumstances.

Auditors' Responsibility

Our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit in accordance with International Standards on Auditing. Those standards require that we comply with ethical requirements and plan and perform the audit to obtain reasonable assurance whether the financial statements are free from material misstatement. An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Independent Correspondent Firm to Deloitte Touche Tohmatsu

SECOND CIRCUIT NO. 21-2761 APPENDIX PAGE A353

Opinion

In our opinion, the financial statements present fairly, in all material respects, the financial position of M.E.L. Investment Ltd. as at December 31, 2013 and 2012 and of its financial performance and its cash flows for the years then ended, in accordance with International Financial Reporting Standards.

Emphasis of matter

As discussed in Note 3 of the notes to the accompanying financial statements, the financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in the footnotes (note 3), the Company has assets of \$27,263,306 and liabilities of \$28,587,559. In addition, the Company has an accumulated deficit of (\$1,329,203) and has not generated revenues for both periods presented. Those conditions raise substantial doubt about the Company's ability to continue as a going concern. The accompanying financial statements do not include any adjustments that might result from the outcome of this uncertainty.

A handwritten signature in blue ink, reading "Castillo Sanchez Duran, LRP".

Chartered Accountants
Belize City, Belize
October 3, 2014

M.E.L. INVESTMENTS LTD.
(A DEVELOPMENT STAGE ENTERPRISE)

STATEMENTS OF FINANCIAL POSITION
DECEMBER 31, 2013 AND 2012 (IN UNITED STATES DOLLARS)

	<u>Notes</u>	<u>2013</u>	<u>2012</u>
<u>ASSETS</u>			
FIXED ASSETS - NET	1f, 3	<u>\$27,263,306</u>	<u>\$25,556,466</u>
TOTAL ASSETS		<u>\$27,263,306</u>	<u>\$25,556,466</u>
<u>LIABILITIES AND EQUITY</u>			
CURRENT LIABILITIES:			
Accrued interest		<u>\$ 6,561,977</u>	<u>\$ 4,837,292</u>
Total current liabilities		<u>6,561,977</u>	<u>4,837,292</u>
NON-CURRENT LIABILITIES:			
Shareholders' loans	4	<u>22,025,582</u>	<u>21,980,789</u>
Total non-current liabilities		<u>22,025,582</u>	<u>21,980,789</u>
TOTAL LIABILITIES		<u>28,587,559</u>	<u>26,818,081</u>
EQUITY:			
Share capital	5	<u>4,950</u>	<u>4,950</u>
Accumulated deficit		<u>(1,329,203)</u>	<u>(1,266,565)</u>
Total equity		<u>(1,324,253)</u>	<u>(1,261,615)</u>
TOTAL LIABILITIES AND EQUITY		<u>\$27,263,306</u>	<u>\$25,556,466</u>

The financial statements on pages 3 to 6 were approved and authorized for issue by the Board of Directors on October 6, 2014 and are signed on its behalf by:

_____) Director

The notes on pages 7 to 17 are an integral part of these financial statements.

M.E.L. INVESTMENTS LTD.
(A DEVELOPMENT STAGE ENTERPRISE)

STATEMENTS OF COMPREHENSIVE INCOME
DECEMBER 31, 2013 AND 2012 (IN UNITED STATES DOLLARS)

	<u>2013</u>	<u>2012</u>
Revenues:		
Sales	\$ -	\$ -
Cost and other deductions:		
Depreciation expense	(44,958)	(55,250)
Bank interest and bank charges	<u>-</u>	<u>(51,666)</u>
Loss from operating activities	(44,958)	(106,916)
Interest expense	(17,680)	(66,438)
Loss for the period	(62,638)	(173,354)
Total comprehensive income	\$(62,638)	\$(173,354)

The notes on pages 7 to 17 are an integral part of these financial statements.

M.E.L. INVESTMENTS LTD.
(A DEVELOPMENT STAGE ENTERPRISE)

STATEMENTS OF CHANGES IN EQUITY
DECEMBER 31, 2013 AND 2012 (IN UNITED STATES DOLLARS)

	Share capital	Accumulated deficit	Total accumulated deficit
December 31, 2011	\$4,950	\$ (1,093,211)	\$(1,088,261)
Loss for the period	<u>-</u>	<u>(173,354)</u>	<u>(173,354)</u>
December 31, 2012	4,950	(1,266,565)	(1,261,615)
Loss for the period	<u>-</u>	<u>(62,638)</u>	<u>(62,638)</u>
December 31, 2013	<u>\$4,950</u>	<u>\$(1,329,203)</u>	<u>\$(1,324,253)</u>

The notes on pages 7 to 17 are an integral part of these financial statements.

M.E.L. INVESTMENTS LTD.
(A DEVELOPMENT STAGE ENTERPRISE)

STATEMENTS OF CASH FLOWS
DECEMBER 31, 2013 AND 2012 (IN UNITED STATES DOLLARS)

	<u>2013</u>	<u>2012</u>
OPERATING ACTIVITIES:		
Loss for the period	\$ (62,638)	\$ (173,354)
Adjustment for:		
- Depreciation	<u>44,958</u>	<u>55,250</u>
Operating loss before working capital changes	<u>(17,680)</u>	(118,104)
Increase in accrued interest	<u>1,724,685</u>	<u>-</u>
Net cash provided by operating activities	<u>1,707,005</u>	<u>(118,104)</u>
INVESTING ACTIVITIES:		
Acquisition of fixed assets	<u>(1,751,798)</u>	(1,153,522)
Net cash used in investing activities	<u>(1,751,798)</u>	<u>(1,153,522)</u>
FINANCING ACTIVITIES:		
Repayment of long term debt	-	(1,588,164)
Proceeds from directors' loans	<u>44,793</u>	<u>2,859,790</u>
Net cash provided by financing activities	<u>44,793</u>	<u>1,271,626</u>
NET CHANGE IN CASH AND BANK BALANCES	-	-
CASH AND BANK BALANCES, BEGINNING OF PERIOD	<u>-</u>	<u>-</u>
CASH AND BALANCES, END OF PERIOD	<u>\$ -</u>	<u>\$ -</u>

The notes on pages 7 to 17 are an integral part of these financial statements.

M.E.L. INVESTMENTS LTD.
(A DEVELOPMENT STAGE ENTERPRISE)

NOTES TO FINANCIAL STATEMENTS
YEARS ENDED DECEMBER 31, 2013 AND 2012 (IN UNITED STATES DOLLARS)

1. STATUS AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Status – M.E.L. Investments Ltd. (the “Company”) is a private company incorporated in Belize on October 1, 2008 under the Companies Act Chapter 250 of the Substantive Laws of Belize (Revised Edition 2000). The Company’s principal activity is the construction of an international airport in Placencia, Stann Creek District.

The Company is in the developmental stage and its infrastructure is under construction.

Summary of Significant Accounting Policies -

- a. Statement of compliance – The financial statements have been prepared from records maintained in the financial accounting system of the Company, in accordance with International Financial Reporting Standards (IFRS).
- b. Basis of presentation – The financial statements have been prepared on the historical cost basis except for the revaluation of certain non-current assets and financial instruments. Historical cost is generally based on the fair value of the consideration given in exchange for assets.
- c. Functional and presentation currency – The financial statements are presented in United States dollars, whilst the functional currency of the Company is Belize dollars. The official rate of exchange for the US dollar is fixed at BZ\$2 = US\$1.
- d. Foreign currency transactions – Transactions in foreign currencies during the year are translated into US dollars at the rates ruling on the dates of the transactions. Foreign currency balances outstanding at the balance sheet date are translated at the rates ruling on that date. Gains or losses on ordinary foreign exchange transactions are included in the results of operations.
- e. Change in accounting policies – The accounting policies adopted are consistent with those used in the previous financial period except that the Company has adopted the following standards, amendments and interpretations which did not have any effect on the financial performance or position of the Company.

Adoption of New Standards, Amendments and Interpretations Effective from April 1, 2013:

IFRS 13 Fair Value Measurement

IFRS 13 provides guidance on how to measure fair value under IFRS when fair value is required or permitted, as well as introducing additional disclosure requirements for:

- Items measured at fair value in the statement of financial position

M.E.L. INVESTMENTS LTD.
(A DEVELOPMENT STAGE ENTERPRISE)

NOTES TO FINANCIAL STATEMENTS (CONTINUED)
YEARS ENDED DECEMBER 31, 2013 AND 2012 (IN UNITED STATES DOLLARS)

1. STATUS SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

e. Change in accounting policies (Continued)

- Items where fair value is required to be disclosed in the notes to the financial statements.

Standards issued but not yet effective

The standards and interpretations that are issued, but not yet effective, up to the date of issuance of the Company's financial statements are disclosed below. The Company intends to adopt these standards, if applicable, when they become effective.

IFRS 9 Financial instruments (classification and measurement)

IFRS 9, as issued reflects the first phase of the IASB's work on the replacement of IAS 39 and applies to classification and measurement of financial assets and financial liabilities as defined in IAS 39. The standard was initially effective for annual periods beginning on or after January 1, 2013, but Amendments to IFRS 9 Mandatory Effective Date of IFRS 9 and Transition Disclosures, issued in December 2011, moved the mandatory effective date to January 1, 2015. The release of IFRS 9 (2013) on November 19, 2013 contained consequential amendments which bring into effect a substantial overhaul of hedge accounting; it removed the mandatory effective date of IFRS 9 'January 1, 2015' and permits an entity to apply the requirements on the presentation of gains and losses on financial liabilities designated as 'fair value through profit or loss' without applying the other requirements. When all projects are completed an effective date will be added. However, IASB has tentatively decided that the mandatory effective date will be no earlier than annual periods beginning on or after January 1, 2017.

The Company will quantify the effect of all phases when the final standard becomes effective.

IFRS 10, IFRS 12 and IAS 27 Amendments to Investment Entities

Amends IFRS 10 Consolidated Financial Statements, IFRS 12 Disclosure of Interest in Other Entities and IAS 27 Separate Financial Statements to provide 'investment entities' (as defined) an exemption from the consolidation of particular subsidiaries and instead require that an investment entity measure the investment in each eligible subsidiary at fair value through profit or loss in accordance with IFRS 9 Financial Instruments or IAS 39 Financial Instruments: Recognition and Measurement, additional disclosures on investment entities and requires an investment entity to account for its investment in a relevant subsidiary in the same way in its consolidated and separate financial statements (or to only provide separate financial statements if all subsidiaries are unconsolidated). The amendment is effective for annual periods beginning on or after January 1, 2014.

The amendment will have no financial impact on the Company's financial statements.

M.E.L. INVESTMENTS LTD.
(A DEVELOPMENT STAGE ENTERPRISE)

NOTES TO FINANCIAL STATEMENTS (CONTINUED)
YEARS ENDED DECEMBER 31, 2013 AND 2012 (IN UNITED STATES DOLLARS)

1. STATUS SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

e. Change in accounting policies (Continued)

IAS 19 Employee Benefits: Employee Contributions (Amendment).

Amends IAS 19 Employee Benefits to clarify the requirements that relate to how contributions from employees or third parties that are linked to service should be attributed to periods of service. In addition, it permits a practical expedient if the amount of the contributions is independent of the number of years of service, in that contribution, can, but are not required, to be recognised as a reduction in the service cost in the period in which the related service is rendered. The amendment is effective for annual periods beginning on or after January 1, 2014.

The amendment will have no financial impact on the Company's financial statements.

IAS 32 Offsetting Financial Assets and Financial Liabilities — Amendment to IAS 32 These amendments clarifies the meaning of “currently has a legally enforceable right to setoff”. The amendment also clarifies the application of the IAS 32 offsetting criteria to settlement systems (such as central clearing house systems) which apply gross settlement mechanisms that are not simultaneous. The amendment becomes effective for annual periods beginning on or after January 1, 2014.

This amendment is not expected to impact the Company financial position or performance.

IAS 36 Impairment of Assets – Recoverable Amount Disclosures for Non-Financial Assets (Amendment)

Amendment to reduce the circumstances in which the recoverable amount of assets or cash generating units is required to be disclosed, clarify the disclosures required, and to introduce an explicit requirement to disclose the discount rate used in determining impairment (or reversals) where recoverable amount (based on fair value less costs of disposal) is determined using a present value technique. The amendment is effective for annual periods beginning on or after January 1, 2014.

The Company will adopt this amendment when it becomes effective and present requisite disclosures when applicable.

IAS 39 Financial Instruments: Recognition and Measurement – Novation of Derivatives and Continuation of Hedge Accounting (Amendment).

Amendment to clarify that there is no need to discontinue hedge accounting if a hedging derivative is novated, provided certain criteria are met. The amendment is effective for annual periods beginning on or after January 1, 2014.

The Amendment will not have an impact on the Company's financial statement.

M.E.L. INVESTMENTS LTD.
(A DEVELOPMENT STAGE ENTERPRISE)

NOTES TO FINANCIAL STATEMENTS (CONTINUED)
YEARS ENDED DECEMBER 31, 2013 AND 2012 (IN UNITED STATES DOLLARS)

1. STATUS SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

e. Change in accounting policies (Continued)

IFRIC 21 – Levies

Provides guidance on when to recognize a liability for a levy imposed by a government, both for levies that are accounted for in accordance with IAS 37 *Provisions, Contingent Liabilities and Contingent Assets* and those where the timing and amount of the levy is certain. The amendment is effective for annual periods beginning on or after January 1, 2014.

The Amendment will not have any effect on the Company's financial statements.

Annual Improvements 2011-2013 Cycle

The following improvements are effective for annual periods beginning on or after January 1, 2014. The adoption of the below amendments are not expected to have any material impact on the Company's financial performance or financial position.

IFRS 1 First-time Adoption of International Financial Standards

Clarify which versions of IFRSs can be used on initial adoption (amends basis for conclusions only).

IFRS 2 Share-based Payment

The improvement amends the definitions of 'vesting condition' and 'market condition' and adds definitions for 'performance condition' and 'service condition'.

IFRS 3 Business Combinations

The amendment requires contingent consideration that is classified as an asset or a liability to be measured at fair value at each reporting date.

IFRS 3 Joint Arrangements

Clarify that IFRS 3 excludes from its scope the accounting for the formation of a joint arrangement in the financial statements of the joint arrangement itself.

IFRS 8 Operating Segments

The amendment requires disclosure of the judgments made by management in applying the aggregation criteria to operating segments; clarify reconciliations of segment assets only required if segment assets are reported regularly.

IFRS 13 Fair Value Measurement

This improvement clarify that issuing IFRS 13 and amending IFRS 9 and IAS 39 did not remove the ability to measure certain short-term receivables and payables on an undiscounted basis (amends basis for conclusions only).

M.E.L. INVESTMENTS LTD.
(A DEVELOPMENT STAGE ENTERPRISE)

NOTES TO FINANCIAL STATEMENTS (CONTINUED)
YEARS ENDED DECEMBER 31, 2013 AND 2012 (IN UNITED STATES DOLLARS)

1. STATUS SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

e. Change in accounting policies (Continued)

Clarify the scope of the portfolio exception for measuring fair value. The exception applies only to financial assets and financial liabilities within the scope of IAS 39 Financial Instruments: Recognition and Measurement or IFRS 9 Financial Instruments.

IAS 16 Property, Plant and Equipment and IAS 38 Intangible Assets

This improvement clarify that the gross amount of property, plant and equipment is adjusted in a manner consistent with a revaluation of the carrying amount.

IAS 24 Related Party Disclosures

This improvement clarifies how payments to entities providing management services are to be disclosed.

IAS 40 Investment Property

Clarifying the interrelationship of IFRS 3 and IAS 40 when classifying property as investment property or owner-occupied property.

f. Fixed assets – Fixed assets are carried at cost and, except for land are depreciated using the straight line method at the following rates:

Equipment	25%
Vehicles	25%

Additions and major improvements are capitalized. Maintenance and repairs are charged against revenue in the year incurred.

When fixed assets are disposed of, the cost and related accumulated depreciation are removed from the accounts and the resulting gain or loss on disposal is reflected in the results of operations.

An item is derecognized upon disposal or when no further future economic benefits are expected from its use or disposal. Any gain or loss arising on derecognition of the asset (calculated as the difference between the net disposal proceeds and the carrying amount of the asset) is included in the income statement in the year the asset is derecognized.

g. Accounts payable, borrowings and other liabilities – Trade payables and other non-derivative financial liabilities are recognized initially at fair value and in the case of borrowings include attributable transaction costs.

M.E.L. INVESTMENTS LTD.
(A DEVELOPMENT STAGE ENTERPRISE)

NOTES TO FINANCIAL STATEMENTS (CONTINUED)
YEARS ENDED DECEMBER 31, 2013 AND 2012 (IN UNITED STATES DOLLARS)

1. STATUS SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

- h. Financial instruments – Financial assets and the financial liabilities are recognized when an entity becomes a party to the contractual provision of the instrument.

Initial recognition and measurement

Financial assets and financial liabilities are initially measured at fair value. Transaction costs that are directly attributable to the acquisition or issue of the financial assets and financial liabilities (other than financial assets and financial liabilities at fair value through profit or loss) are added to or deducted from the fair value of the financial assets or financial liabilities, as appropriate, on initial recognition. Transaction costs directly attributable to the acquisition of the financial assets or financial liabilities at fair value through profit or loss are recognised immediately in profit or loss.

Financial assets

Financial assets are classified into the following specified categories: financial assets ‘at fair value through profit or loss’ (FVTPL), ‘held-to-maturity’ investments, ‘available-for-sale’ (AFS) financial assets and ‘loans and receivables.’ The classification depends on the nature and purpose of the financial assets and is determined at the time of initial recognition. All regular way purchases or sales of financial assets are recognised and derecognized on a trade date basis. Regular way purchases or sales are purchases or sales of financial assets that require delivery of assets within the time frame established by regulation or convention in the marketplace.

Effective interest method

The effective interest method is a method of calculation the amortized cost of a debt instrument and of allocating interest income over the relevant period. The effective interest rate is the rate that exactly discounts estimated future cash receipts (including all fees and points paid or received that form an integral part of the effective interest rate, transaction costs and other premiums or discounts) through the expected life of the debt instrument, or, where appropriate, a shorter period, to the net carrying amount on initial recognition.

Income is recognised on an effective interest basis for debt instruments other than those financial assets classified as at FVTPL.

Classification as debt or equity

Debt and equity instruments issued by a group entity are classified as either financial liabilities or as equity in accordance with the substance of the contractual arrangements and definitions of a financial liability and an equity instrument.

Equity instruments

An equity instrument is any contract that evidences a residual interest in the assets of an entity after deducting all of its liabilities. Equity instruments issued by the Company are recognised at proceeds received, net of direct issue costs.

M.E.L. INVESTMENTS LTD.
(A DEVELOPMENT STAGE ENTERPRISE)

NOTES TO FINANCIAL STATEMENTS (CONTINUED)
YEARS ENDED DECEMBER 31, 2013 AND 2012 (IN UNITED STATES DOLLARS)

1. STATUS SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

h. Financial Instruments (Continued)

Repurchase of the Company's own equity instruments is recognised and deducted directly in equity. No gain or loss is recognised in profit or loss on the purchase, sale, issue or cancellation of the Company's own equity instruments.

Compound instruments

The component parts of compound instruments (convertible notes) issued by the Company are classified separately as financial liabilities and equity in accordance with the substance of the contractual arrangement and the definition of a financial liability and equity instrument. Conversion option that will be settled by the exchange of a fixed amount of cash or another financial asset for a fixed number of the Company's own equity instruments is an equity instrument.

At the date of issue, the fair value of the liability component is estimated using the prevailing market interest rate for similar non-convertible instruments. This amount is recorded as a liability on and amortised cost basis using the effective interest method until extinguished upon conversion or at the instrument's maturity date.

The conversion option classified as equity is determined by deducting the amount of the liability component from the fair value of the compound instrument as a whole. This is recognised and included in equity, net of income tax effects, and is not subsequently remeasured. In addition, the conversion option classified as equity will remain in equity until the conversion option is exercised, in which case, the balance recognised in equity will be transferred to [share premium/other equity].

When the conversion option remains unexercised at the maturity date of the convertible note, the balance recognised in equity will be transferred to [retained profits/other equity]. No gain or loss is recognised in profit or loss upon conversion or expiration of the conversion option.

Transaction costs that relate to the issue of the convertible notes are allocated to the liability and equity components in proportion to the allocation of the gross proceeds. Transaction costs relating to the equity component are recognised directly in equity. Transaction costs relating to the liability component are included in the carrying amount of the liability component and are amortised over the lives of the convertible notes using the effective interest method.

Financial liabilities

Financial liabilities are classified as either financial liabilities 'at FVTPL' or 'other financial liabilities'.

Other financial liabilities

Other financial liabilities (including borrowings and trade and other payables) are subsequently measured at amortised cost using the effective interest method.

M.E.L. INVESTMENTS LTD.
(A DEVELOPMENT STAGE ENTERPRISE)

NOTES TO FINANCIAL STATEMENTS (CONTINUED)
YEARS ENDED DECEMBER 31, 2013 AND 2012 (IN UNITED STATES DOLLARS)

1. STATUS SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

h. Financial Instruments (Continued)

The effective interest method is a method of calculating the amortised cost of a financial liability and of allocating interest expense over the relevant period.

The effective interest rate is the rate that exactly discounts the estimated further cash payments (including all fees and points paid or received that form and integral part of the effective interest rate, transaction costs and other premiums or discounts) through the expected life of the financial liability, or (where appropriate) a shorter period, to the net carrying amount on initial recognition.

The Company's financial assets classified as current portion of long term debt, accrued interest, long term debt and shareholders' loan payable. See also note 8

Financial guarantee contracts

A financial guarantee contract is a contract that requires the issuer to make specified payments to reimburse the holder for a loss it incurs because a specified debtor fails to make payments when due in accordance with the terms of a debt instrument.

Financial guarantee contracts issued by the Company are initially measured at their fair values and, if not designated as at FVTPL, are subsequently measured at the higher of:

- The amount of the obligation under the contract, as determined in accordance with IAS 37 Provisions, Contingent Liabilities and Contingent Assets; and
- The amount initially recognised less, where appropriate, cumulative amortization recognised in accordance with the revenue recognition policies.

Derecognition of financial liabilities

The Company derecognizes financial liabilities when and only when, the Company's obligations are discharged, cancelled or they expire. The difference between the carrying amount of the financial liability derecognized and the consideration paid and is payable is recognised in profit or loss.

i. Financial risk management:

The Company's activities expose it to a variety of financial risks: market risk (including foreign exchange and interest rate risks), credit risk and liquidity risk

Liquidity risk - The Company's exposure to liquidity risk is managed by sourcing the funds needed from its own resources or from related parties.

Market risk – The Company incurs interest rate risk and currency risk exposure mainly in respect of overseas trade purchases made in currencies other than Belize dollars. Its exposure to losses from currency risk is mitigated by the fact that trade liabilities are quoted in US dollars and the official exchange rate for the Belize dollar is tied to the US dollar.

M.E.L. INVESTMENTS LTD.
(A DEVELOPMENT STAGE ENTERPRISE)

NOTES TO FINANCIAL STATEMENTS (CONTINUED)
YEARS ENDED DECEMBER 31, 2013 AND 2012 (IN UNITED STATES DOLLARS)

1. STATUS SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (Continued)

- j. Impairment – The carrying amount of the Company's assets are reviewed at each balance sheet date to determine whether there is an indication of impairment. If such indication exists, the asset's recoverable amount is estimated. An impairment loss is recognized whenever the carrying amount of an asset or its cash-generating unit exceeds its recoverable amount. Impairment losses are recognized in the income statement.
- k. Use of estimates and judgments – The preparation of financial statements in conformity with IFRS requires management to make estimates, judgments and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reported period. Actual results could differ materially from those estimates.

2. GOING CONCERN

The Company's financial statements are prepared using the International Financial reporting standards applicable to a going concern, which contemplates the realization of assets and liquidation of liabilities in the normal course of business. The Company has not yet established an ongoing source of revenues sufficient to cover its operating costs and allow it to continue as a going concern. During the year ended December 31, 2013, the Company realized a loss of \$62,638, and has incurred an accumulated deficit of \$1,329,203. The ability of the Company to continue as a going concern is dependent on the Company obtaining adequate capital to fund operating losses until it becomes profitable. If the Company is unable to obtain adequate capital, it could be forced to cease operations.

In order to continue as a going concern, the Company will need, among other things, additional capital resources. Management's plan is to obtain such resources for the Company by obtaining capital from investors and/or revenue sufficient to meet its minimal operating expenses and seeking equity and/or debt financing. However, management cannot provide any assurances that the Company will be successful in accomplishing any of its plans.

The ability of the Company to continue as a going concern is dependent upon its ability to successfully accomplish the plans described in the preceding paragraph and eventually secure other sources of financing and attain profitable operations. The accompanying financial statements do not include any adjustments that might be necessary if the Company is unable to continue as a going concern.

NOTES TO FINANCIAL STATEMENTS (CONTINUED)
YEARS ENDED DECEMBER 31, 2013 AND 2012 (IN UNITED STATES DOLLARS)

3. FIXED ASSETS – NET

<u>Cost</u>	<u>Land</u>	<u>Construction in progress</u>	<u>Equipment</u>	<u>Vehicles</u>	<u>Total</u>
Brought forward January 1, 2013	\$2,250,000	\$23,261,508	\$195,000	\$26,000	\$25,732,508
Additions	-	1,751,798	-	-	1,751,798
Carried forward, December 31, 2013	<u>2,250,000</u>	<u>25,013,306</u>	<u>195,000</u>	<u>26,000</u>	<u>27,484,306</u>
<u>Accumulated Depreciation</u>					
Brought forward, January 1, 2013	-	-	154,375	21,667	176,042
Additions	-	-	40,625	4,333	44,958
Carried forward, December 31, 2013	<u>-</u>	<u>-</u>	<u>195,000</u>	<u>26,000</u>	<u>221,000</u>
<u>Net Book Value</u>					
December 31, 2013	<u>\$2,250,000</u>	<u>\$25,013,306</u>	<u>\$ -</u>	<u>\$ -</u>	<u>\$25,263,306</u>
December 31, 2012	<u>\$2,250,000</u>	<u>\$23,261,508</u>	<u>\$ 40,625</u>	<u>\$ 4,333</u>	<u>\$25,556,466</u>

The Company has capitalized \$1,751,798 (2012 - \$2,266,253) in borrowing costs during the reporting period.

4. SHAREHOLDERS' LOAN

	<u>2013</u>	<u>2012</u>
Loan facility from shareholder, Marco Caruso that attracts simple interest at 8% per annum to be repaid by balloon payments within 5 years of initial drawdown. Secured by a Corporate guarantee.	\$ 500,000	\$ 500,000
Loan facility from shareholders, Marco Caruso and Brent Borland that attracts simple interest at 8% per annum to be repaid by balloon payments within 5 years of initial drawdown. Secured by a Corporate guarantee.	6,000,000	6,000,000
\$20,000,000 facility from shareholders, Marco Caruso and Brent Borland that attracts simple interest at 8% per annum to be repaid by balloon payments within 5 years of initial drawdown. Secured by a Corporate guarantee.	<u>15,525,582</u>	<u>15,480,789</u>
	<u>\$22,025,582</u>	<u>\$21,980,789</u>

NOTES TO FINANCIAL STATEMENTS (CONTINUED)
YEARS ENDED DECEMBER 31, 2013 AND 2012 (IN UNITED STATES DOLLARS)

5. SHARE CAPITAL

	<u>2013</u>	<u>2012</u>
Authorized:		
10,000 ordinary shares of \$0.50 each	<u>\$5,000</u>	<u>\$5,000</u>
Issued and fully paid:		
9,900 ordinary shares of \$0.50 each	<u>\$4,950</u>	<u>\$4,950</u>

6. RELATED PARTY TRANSACTIONS

The Company has a loan outstanding to its Directors, Marco Caruso and Brent Borland. See note 5 for details.

The Company enters into business transactions with its affiliate, Maya Rio Construction Company Limited, in the normal course of business. The sales to and purchases between affiliates are made at normal market prices. During the period the only transactions carried out were related to construction/ development costs.

There were no balances outstanding between affiliates at the reporting date.

7. FINANCIAL INSTRUMENTS

Financial assets and financial liabilities are measured on an ongoing basis either at fair value or at amortised cost. The principle accounting policies in Note 1h describe how financial instruments are measured, and how income and expenses, including fair value gains and losses, are recognised. The following table analyses the financial assets and liabilities in the statement of financial position by the class of financial instrument to which they are assigned, and therefore by the measurement basis:

Financial liabilities	Other financial liabilities	
	<u>2013</u>	<u>2012</u>
Directors' loan	<u>\$22,025,582</u>	<u>\$21,980,789</u>
Total financial liabilities	<u>\$22,025,582</u>	<u>\$21,980,789</u>

8. TAXATION

The Company pays 12.5% (10% previous to April 1, 2010) General Sales Tax on all imports and purchases. Due to the status of the Company this tax is borne by the Company rather than being claimed back from the Government net of taxes collected on sales, as would be the case if the Company was operating and registered with the General Sales Tax Department.

Once the Company's annual gross revenues exceed \$75,000 it subject to the Business Tax of 1.75% on gross revenues.

* * * * *

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

BRENT BORLAND,

Defendant.

Order of Restitution

18 Cr. 487 (KPF)

Upon the application of the United States of America, by its attorney, Audrey Strauss, United States Attorney for the Southern District of New York, Edward Imperatore and Negar Tekeei, Assistant United States Attorneys, of counsel; the presentence report; the Defendant's conviction on Counts One, Two, and Three of the above Indictment; and all other proceedings in this case, it is hereby ORDERED that:

1. **Amount of Restitution.** BRENT BORLAND, the Defendant, shall pay restitution in the total amount of \$26,184,970 to the victims of the offenses charged in Counts One, Two, and Three of the Indictment. The names, addresses, and specific amounts owed to each victim are set forth in the Schedule of Victims attached hereto. Upon advice of a change of address, the Clerk of the Court is authorized to send payments to the new address without further order of this Court.

2. **Apportionment Among Victims.** Restitution shall be paid to the victim(s) identified in the Schedule of Victims, attached hereto, on a pro rata basis, whereby each payment shall be distributed proportionally to each victim based upon the amount of loss for each victim, as set forth more fully in the Schedule of Victims.

3. **Schedule of Payments.** Pursuant to 18 U.S.C. § 3664(f)(2), in consideration of the financial resources and other assets of the Defendant, including whether any of these assets are jointly controlled; projected earnings and other income of the Defendant; and any financial

obligations of the Defendant; including obligations to dependents, the Defendant shall pay restitution in the manner and according to the schedule that follows:

a. In the interest of justice, restitution shall be payable in installments pursuant to 18 U.S.C. § 3572(d)(1) and (2).

b. While serving any term of imprisonment, the Defendant shall make installment payments toward his restitution obligation, and may do so through the Bureau of Prisons' (BOP) Inmate Financial Responsibility Plan (IFRP). Pursuant to BOP policy, the BOP may establish a payment plan by evaluating the Defendant's six-month deposit history and subtracting an amount determined by the BOP to be used to maintain contact with family and friends. The remaining balance may be used to determine a repayment schedule. BOP staff shall help the Defendant develop a financial plan and shall monitor the inmate's progress in meeting his restitution obligation. Any unpaid amount remaining upon release from prison will be paid in monthly installment payments of not less than an amount equal to 15 percent of the Defendant's gross monthly income, payable on the first of each month to commence 30 days after the date of the judgment or his release from custody if imprisonment is imposed.

4. **Payment Instructions.** The Defendant shall make restitution payments by certified check, bank check, money order, wire transfer, credit card or cash. Checks and money orders shall be made payable to the "SDNY Clerk of the Court" and mailed or hand-delivered to: United States Courthouse, 500 Pearl Street, New York, New York 10007 - Attention: Cashier, as required by 18 U.S.C. § 3611. The Defendant shall write his/her name and the docket number of this case on each check or money order. Credit card payments must be made in person at the Clerk's Office. Any cash payments shall be hand delivered to the Clerk's Office using exact change and shall not be

mailed. For payments by wire, the Defendant shall contact the Clerk's Office for wiring instructions.

5. **Transfer of Assets.** Defendant shall not transfer, assign, dispose, remove, conceal, pledge as collateral, waste, or destroy any real or personal property with the effect of hindering, delaying, or defrauding the United States or victims. Defendant shall not otherwise dissipate or encumber any property worth more than \$50,000 without the prior approval of the United States.

6. **Identification of Assets.** Within 30 days of this order, Defendant shall specifically identify to the United States all assets held individually or jointly, directly or indirectly, valued at more than \$50,000 which have been transferred to any third party since April 1, 2014, including the location of each asset and the identity of the third parties holding such assets, including any trusts and/or business entities. Defendant shall fully cooperate with the United States in the identification and liquidation of assets to be applied toward restitution, including recovery from third parties and/or repatriation from foreign countries. Upon the request of the United States, Defendant shall execute any and all documents necessary to make assets available to satisfy restitution, including transfers of title if needed, and releases or waivers of any and all rights he may have in and to such property, including all exemptions under federal and state law.

7. **Additional Provisions.** The Defendant shall notify, within 30 days, the Clerk of Court, the United States Probation Office (during any period of probation or supervised release), and the United States Attorney's Office, 86 Chambers Street, 3rd Floor, New York, New York 10007 (Attn: Financial Litigation Unit) of (1) any change of the Defendant's name, residence, or mailing address or (2) any material change in the Defendant's financial resources that affects the Defendant's ability to pay restitution in accordance with 18 U.S.C. § 3664(k). If the Defendant discloses, or the Government otherwise learns of, additional assets not known to the Government

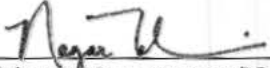
at the time of the execution of this order, the Government may seek a Court order modifying the payment schedule consistent with the discovery of new or additional assets.

8. **Restitution Liability.** The Defendant's liability to pay restitution shall terminate on the date that is the later of 20 years from the entry of judgment or 20 years after the Defendant's release from imprisonment, as provided in 18 U.S.C. § 3613(b). Subject to the time limitations in the preceding sentence, in the event of the death of the Defendant, the Defendant's estate will be held responsible for any unpaid balance of the restitution amount, and any lien filed pursuant to 18 U.S.C. § 3613(c) shall continue until the estate receives a written release of that liability.

9. **Sealing.** Consistent with 18 U.S.C. §§ 3771(a)(8) & 3664(d)(4) and Federal Rule of Criminal Procedure 49.1, to protect the privacy interests of victims, the Schedule of Victims attached hereto shall be filed under seal, except that copies may be retained and used or disclosed by the Government, the Clerk's Office, and the Probation Department, as need be to effect and enforce this Order, without further order of this Court.

AGREED AND CONSENTED TO:

AUDREY STRAUSS
United States Attorney for the
Southern District of New York

By: 
Edward Imperatore/Negar Tekeei
One Saint Andrew's Plaza
New York, NY 10007
Tel.: (212) 637-2327/2482

10/4/2021
DATE

~~BRENT BORLAND~~

By: 
Brent Borland

10/4/21
DATE

By: Florian Miedel
Florian Miedel, Esq.
Christopher Madiou, Esq.
Counsel for Brent Borland

10/4/21
DATE

SO ORDERED:

Katherine Polk Failla
HONORABLE KATHERINE POLK FAILLA
UNITED STATES DISTRICT JUDGE

10/05/21
DATE

UNITED STATES DISTRICT COURT

Southern District of New York

UNITED STATES OF AMERICA

v.

BRENT BORLAND

JUDGMENT IN A CRIMINAL CASE

Case Number: 18-cr-00487-KPF-1

USM Number: 85693-054

Florian Miedel, Esq. and Christopher Paul Madiou, Esq.
Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) One, Two, and Three☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. § 371	Conspiracy to Commit Securities Fraud and Wire Fraud	3/31/2018	One
15 U.S.C. § 78j(b) & 78ff	Securities Fraud	3/31/2018	Two

The defendant is sentenced as provided in pages 2 through 8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.☐ The defendant has been found not guilty on count(s) _____☐ Count(s) NO OPEN COUNTS ☐ is ☐ are dismissed on the motion of the United States.

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

10/5/2021

Date of Imposition of Judgment



Signature of Judge

Honorable Katherine Polk Failla, U.S. District Judge

Name and Title of Judge

10/19/2021

Date

DEFENDANT: BRENT BORLAND
CASE NUMBER: 18-cr-00487-KPF-1

ADDITIONAL COUNTS OF CONVICTION

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. § 1343	Wire Fraud	3/31/2018	Three

Case 21-2761, Document 56-1, 07/22/2022, 3352481, Page80 of 87

DEFENDANT: BRENT BORLAND
CASE NUMBER: 18-cr-00487-KPF-1

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:
Concurrent terms of sixty (60) months on Count One, and eighty-four (84) months on each of Counts Two and Three, for an aggregate term of eighty-four (84) months.

- ☒ The court makes the following recommendations to the Bureau of Prisons:
The Court recommends that the Defendant be designated to FCI Miami, or, if there is no space available in that facility, then to a facility of an appropriate security level as close as possible to the Southern District of Florida, with space in its RDAP program.
- ☐ The defendant is remanded to the custody of the United States Marshal.
- ☐ The defendant shall surrender to the United States Marshal for this district:
- ☐ at _____ ☐ a.m. ☐ p.m. on _____.
- ☐ as notified by the United States Marshal.
- ☒ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
- ☒ before 2 p.m. on 1/7/2022.
- ☐ as notified by the United States Marshal.
- ☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

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

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: BRENT BORLAND
CASE NUMBER: 18-cr-00487-KPF-1

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of:

Three (3) years on each count to run concurrently

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must 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 above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☒ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

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

DEFENDANT: BRENT BORLAND
CASE NUMBER: 18-cr-00487-KPF-1**STANDARD CONDITIONS OF SUPERVISION**

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____

Date _____

DEFENDANT: BRENT BORLAND
CASE NUMBER: 18-cr-00487-KPF-1

SPECIAL CONDITIONS OF SUPERVISION

1. You must provide the probation officer with access to any requested financial information.
2. You must not incur new credit charges or open additional lines of credit without the approval of the probation officer unless you are in compliance with the installment payment schedule.
3. The defendant shall submit his/her person, and any property, residence, vehicle, papers, computer, other electronic communication, data storage devices, cloud storage or media, and effects to a search by any United States Probation Officer, and if needed, with the assistance of any law enforcement. The search is to be conducted when there is reasonable suspicion concerning violation of a condition of supervision or unlawful conduct by the person being supervised. Failure to submit to a search may be grounds for revocation of release. The defendant shall warn any other occupants that the premises may be subject to searches pursuant to this condition. Any search shall be conducted at a reasonable time and in a reasonable manner.
4. It is recommended that you be supervised by the district of residence.

DEFENDANT: BRENT BORLAND
CASE NUMBER: 18-cr-00487-KPF-1**CRIMINAL MONETARY PENALTIES**

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

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
TOTALS	\$ 300.00	\$ 26,184,970.00	\$	\$	\$

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

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

<u>Name of Payee</u>	<u>Total Loss***</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
See Order of Restitution dated 10/5/2021			

TOTALS	\$	0.00	\$	0.00
---------------	----	------	----	------

☐ Restitution amount ordered pursuant to plea agreement \$ _____

☒ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

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

DEFENDANT: BRENT BORLAND
CASE NUMBER: 18-cr-00487-KPF-1

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 \$ 300.00 due immediately, balance due
- ☐ not later than _____, or
☒ in accordance with ☐ C, ☐ D, ☐ E, or ☒ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☒ Special instructions regarding the payment of criminal monetary penalties:
While serving the term of imprisonment, the Defendant shall make installment payments toward his restitution obligation, and may do so through the Bureau of Prisons' (BOP) Inmate Financial Responsibility Plan (IFRP). Pursuant to BOP policy, the BOP may establish a payment plan by evaluating the Defendant's six-month deposit history and subtracting an amount determined by the BOP to be used to maintain contact with family and friends. The remaining balance may be used to determine a repayment schedule. BOP staff shall help the Defendant develop a financial plan and shall monitor the inmate's progress in meeting his restitution obligation. Any unpaid amount remaining upon release from prison will be paid in monthly installment payments of not less than an amount equal to 15 percent of the Defendant's gross monthly income, payable on the first of each month to commence 30 days after the date of the judgment or his release from custody if imprisonment is imposed.

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

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

☐ Joint and Several

Case Number Defendant and Co-Defendant Names (including defendant number)	Total Amount	Joint and Several Amount	Corresponding Payee, if appropriate
---	--------------	-----------------------------	--

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☒ The defendant shall forfeit the defendant's interest in the following property to the United States:
\$26,584,970.00 (See Consent Preliminary Order of Forfeiture/Money Judgment dated 10/5/2021.)

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVT assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

Criminal Notice of Appeal - Form A

NOTICE OF APPEAL

United States District Court

Southern District of New York

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: Nov 01 2021

Caption:

United States v.

Brent Borland

Docket No.: 18-CR-487
Katherine Polk Failla
(District Court Judge)

Notice is hereby given that Brent Borland appeals to the United States Court of Appeals for the Second Circuit from the judgment ☒, other ☐ (specify) entered in this action on October 19, 2021 (date).

This appeal concerns: Conviction only ☐ Sentence only ☒ Conviction & Sentence ☐ Other ☐

Defendant found guilty by plea ☒ trial ☐ N/A ☐

Offense occurred after November 1, 1987? Yes ☒ No ☐ N/A ☐

Date of sentence: October 5, 2021 N/A ☐

Bail/Jail Disposition: Committed ☒ Not committed ☐ N/A ☐

Appellant is represented by counsel? Yes ☒ No ☐ If yes, provide the following information:

Defendant's Counsel: Florian Miedel and Christopher Madiou

Counsel's Address: 80 Broad Street, Suite 1900
New York, NY 10004

Counsel's Phone: 212-616-3042

Assistant U.S. Attorney: Negar Tekeei and Edward Imperatore

AUSA's Address: One St. Andrew's Plaza
New York, NY 10007

AUSA's Phone: 212-637-2327/2482

Florian Miedel

Signature

LA58BORS

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

18 Cr. 487 (KPF)

5 BRENT BORLAND,

6 Defendant.

Remote Conference

7 -----x
8 New York, N.Y.
9 October 5, 2021
3:00 p.m.

10 Before:

11 HON. KATHERINE POLK FAILLA,

12 District Judge

13 APPEARANCES

14 AUDREY STRAUSS

15 United States Attorney for the
Southern District of New York

16 NEGAR TEKEEI

Assistant United States Attorney

17 FLORIAN MIEDEL

18 CHRISTOPHER P. MADIOU

Attorneys for Defendant

LA58BORS

(The Court and parties appearing by videoconference)

(case called)

THE DEPUTY CLERK: Counsel, please state your name for the record, beginning with the government.

MS. TEKEEI: Good afternoon, your Honor. Negar Tekeei on behalf of the United States.

THE COURT: Good afternoon and thank you.

I don't know which of Mr. Madiou or Mr. Miedel is going to introduce themselves first.

MR. MIEDEL: Good afternoon. I am appearing here today with Mr. Madiou, who is my co-counsel, for Mr. Boreland, who also joins us.

THE COURT: Thank you very much.

Mr. Madiou, good afternoon to you.

MR. MADIOU: Good afternoon.

THE COURT: Mr. Boreland, good afternoon to you as well, sir.

THE DEFENDANT: Good afternoon, your Honor.

THE COURT: Mr. Miedel, should I be directing my questions this afternoon to you or to Mr. Madiou, or have you sort of separated the issues that each of you will be speaking on?

MR. MIEDEL: Your Honor, I will be taking the lead. If I am injured on the battlefield, I am sure Mr. Madiou will step in for me.

LA58BORS

1 MR. MADIOU: I am happy to do that.

2 THE COURT: I have no doubt.

3 Mr. Miedel, may I please understand, sir, that you
4 have spoken with Mr. Boreland about his right to have this
5 proceeding take place in person and his related ability to
6 waive that right and to have this proceeding take place by
7 videoconference?

8 MR. MIEDEL: Yes, your Honor, we have discussed it
9 extensively.

10 THE COURT: May I speak with Mr. Boreland in
11 particular about this waiver?

12 MR. MIEDEL: Certainly.

13 THE COURT: Thank you.

14 Mr. Boreland, please understand, sir, that throughout
15 this proceeding I may be asking you some questions. And when I
16 am asking you questions about your discussions with your
17 attorney, those questions are designed to ensure that you have
18 discussed certain topics. I am not asking you, sir, to tell me
19 the specifics of your conversations with your attorney. I just
20 want to know that you have covered certain things.

21 So, my first of those questions is whether you and
22 your attorneys have discussed the fact that you have the right
23 to have this proceeding take place in person, and that you also
24 have the ability to waive that right and to have the proceeding
25 take place by videoconferencing?

LA58BORS

1 THE DEFENDANT: Yes, your Honor, we have discussed
2 that.

3 THE COURT: And it is your wish today, sir, having
4 spoken with your attorneys, to have the proceeding take place
5 by videoconferencing?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Thank you, sir.

8 Mr. Miedel, this being a sentencing proceeding, the
9 CARES Act requires certain findings to be made. Certain of the
10 findings have been made already by our chief judge Laura Taylor
11 Swain, but I before going further must find that the interests
12 of justice would be substantially harmed if this proceeding
13 were to be further delayed. I believe, Mr. Miedel, from your
14 letter or your colleague's letter to me that the concern is
15 that Mr. Boreland has certain health conditions for which the
16 vaccine is contraindicated, and that your desire to have
17 resolution in this matter, my prior indications that I would
18 not adjourn the proceedings further, and the ongoing pandemic
19 and related travel issues are what is bringing us here today.
20 But if there are other factual proffers, Mr. Miedel, that you
21 would like me to make, I would be happy to hear them.

22 MR. MIEDEL: No, your Honor, those are all correct.

23 THE COURT: Thank you.

24 Ms. Tekeei, do you believe that those factual
25 statements that I have just made are sufficient to permit me to

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1 make the finding that further delay to this proceeding would
2 cause substantial harm to the interests of justice?

3 MS. TEKEEI: Yes, your Honor.

4 If I may just add, and I apologize if I missed the
5 Court's recitation, but it is our view that the victims'
6 interests in proceedings free from unreasonable delay and in
7 achieving finality as to the overall resolution of this case is
8 also a factor for the Court to consider and is a sufficient
9 basis to proceed by videoconference today under the CARES Act.

10 THE COURT: Ms. Tekeei, thank you. I was concerned
11 about issues of delay and issues of finality. I phrased them
12 in terms of the concerns of the defense, and I should have as
13 well considered the interests of the victims. So thank you,
14 and I find that as well. It is absolutely correct. And for
15 all of these reasons, all the facts that we have just been
16 discussing among ourselves, I am finding that further delay
17 would cause substantial harm to the interests of justice. And
18 I will permit these proceedings to take place by
19 videoconferencing.

20 I am aware, as all of you on this videoconferencing
21 platform are aware, that we have had substantial briefing
22 previously about certain guidelines issues, and in speaking
23 about the sentence, it's not my intention to list those briefs
24 or the transcript of that particular proceeding. For this
25 sentencing proceeding, what I have are a presentence

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1 investigation report, dated May 24th of 2019. I have defense
2 sentencing submissions that are dated September 21st and
3 October 3rd of 2021. I have many exhibits to those defense
4 submissions, and they include letters from family and
5 supporters. They include as well audited financial statements.
6 And I have a government sentencing submission, dated September
7 28th of 2021, with certain of the victim impact statements. I
8 as well have, to my right, and I can hold them up, a number of
9 victim impact statements that I have received and that the
10 parties are aware of. So I have reviewed those as well in
11 connection with this proceeding.

12 Mr. Miedel, from your perspective, are there other
13 materials from the defense that I should have? With the
14 exception of the preliminary order of forfeiture, the order of
15 restitution, and the sealed list of victims which I received
16 yesterday.

17 Mr. Miedel, with that collection, is there anything
18 else I need?

19 MR. MIEDEL: Nothing else, your Honor.

20 THE COURT: Ms. Tekeei, is there anything else you
21 think that I should have?

22 MS. TEKEEI: One item that your Honor already has and
23 is reflected on the docket, I don't have the docket number in
24 front of me, but it's the parties' joint letter dated November
25 4th of 2020.

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1 THE COURT: And I am holding it in my hand and you all
2 can see it. I do have that. The version I have is the version
3 without the docket number on it, and yet I am confident that we
4 are speaking about the same document. Actually, that is going
5 to be my next series of questions, to speak to the parties
6 about how this document impacts the presentence investigation
7 report that I am holding in my other hand.

8 So let me then do that. Let's speak a little bit
9 about the presentence investigation report.

10 It is my understanding, as a result of the November
11 4th letter that Ms. Tekeei just mentioned, that the parties
12 have consented to certain modifications to paragraphs 14, 41
13 and 47. I also think, as a consequence of the guideline
14 stipulations to which the parties have agreed, that there needs
15 to be changes to paragraphs 60, 66, 70, 124 and the sentencing
16 recommendation pages. Those paragraphs are the -- it's the
17 offense level, then the adjusted offense level, then the
18 finally adjusted offense level, the resulting guidelines range,
19 and then the sentencing recommendation pages list a different
20 guidelines range than that to which the parties are arguing to
21 me.

22 I also think that the first page of the presentence
23 investigation report needs to be changed to reflect new
24 counsel. And those were, I believe those were the changes that
25 I was intending to make.

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1 Ms. Tekeei, were there others that you contemplated?

2 MS. TEKEEI: No, your Honor. With the caveat, as is
3 laid out in the government's sentencing submission, that since
4 the parties' November 4th submission to the Court, and in an
5 effort to prepare for restitution and sentencing -- and counsel
6 for the defense are also aware of this and have been involved
7 in this to a certain extent -- the government has been able to
8 identify additional victims of the scheme that is charged in
9 the current indictment, which increased the loss amount to over
10 the \$25 million threshold that is currently the level 20 under
11 2B1.1, and results now in a loss amount of between 25 million
12 but no greater than 60 million, which is a level 22. And the
13 government stands by its agreement in the November 4th letter.

14 I apologize, your Honor. I see you waving. I didn't
15 mean to interrupt you.

16 THE COURT: You're not interrupting me. You were
17 confusing me and you were just about to unconfuse me. What I
18 think you are saying is you are abiding by the agreements in
19 the November 4th letter, but you are nonetheless telling me,
20 for restitution purposes, and perhaps as well for your
21 sentencing arguments, that the loss figure, in fact, exceeded
22 the next threshold.

23 MS. TEKEEI: That is correct, your Honor.

24 THE COURT: This I do understand, and I will
25 understand your arguments, and yet I am also accepting the

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1 parties' stipulations as to the guidelines. I am not sure that
2 a two-level difference would make a lot of difference in this
3 sentencing, but I do understand it. So I was a little bit
4 confused there.

5 Ms. Tekeei, why don't I just put a finer point on it.
6 You are putting forward a series of guidelines calculations to
7 which you and the defense have stipulated. But are you
8 nonetheless telling me, as I figure out what the guidelines
9 are, I should figure out a higher enhancement for the loss
10 amount?

11 MS. TEKEEI: Your Honor, we are not seeking a higher
12 enhancement for the loss amount. We are standing by our
13 agreement as reflected in the November 4th letter. However, we
14 want to make sure that the record, especially as it relates to
15 restitution, is accurate in that the amount that is
16 attributable to the scheme in the indictment as charged is, in
17 fact, greater than the \$25 million threshold that led to the
18 level 20 in the enhancement. And so those are the facts that
19 we want to make sure that the Court is aware of. We, the
20 government, are not, in fact, seeking the higher guidelines
21 level given our prior stipulation.

22 THE COURT: Thank you.

23 Ms. Tekeei, related to that point. I understand from
24 the proposed orders that I received yesterday that the parties
25 agree that both restitution and forfeiture should be set at

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1 \$26,584,970. Is that your understanding as well?

2 MS. TEKEEI: There is a slight correction to that,
3 your Honor, which is that the restitution amount, which is set
4 forth in our proposed order, is slightly lower than the
5 forfeiture amount. That is because one of the victims was able
6 to obtain a settlement, a litigated settlement, with Mr.
7 Boreland and received \$400,000, or approximately \$400,000,
8 which we have not calculated as part of restitution since under
9 the victim restitution act and the authority under that act a
10 victim cannot be made more than whole. And so the forfeiture
11 order, in fact, reflects a slightly higher amount than the
12 restitution order.

13 THE COURT: Excuse me. I think what was confusing me
14 was that on the first -- I see. It's restitution in the amount
15 of \$26,184,970. Please excuse me. I saw all of the other
16 numbers matching, and I should have realized that the
17 difference was a \$400,000 difference. So I appreciate the
18 difference between the restitution and forfeiture figures.

19 Ms. Tekeei, from the government's perspective, let me
20 begin by asking whether you have had a sufficient opportunity
21 to review the presentence investigation report in this case.

22 MS. TEKEEI: Yes, your Honor.

23 THE COURT: We have talked about certain changes to
24 the guidelines that are occasioned by our discussions. We have
25 talked about certain changes to paragraphs that are occasioned

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1 by the parties' agreement to add certain language to the
2 paragraphs. We have talked about the restitution and
3 forfeiture figures. Other than the changes that naturally flow
4 from what we have just been discussing, do you -- by "you," I
5 mean the government -- have any additional objections to the
6 presentence investigation report?

7 MS. TEKEEI: No, we do not, your Honor.

8 THE COURT: Thank you.

9 Mr. Miedel, I turn to you, sir. You have heard me
10 discuss, and hopefully now get correct, the restitution and
11 forfeiture figures, and, as well, the changes to certain
12 paragraphs in the presentence investigation report. With the
13 changes that I have outlined for you, do you have any other
14 objections to the presentence investigation report, sir?

15 MR. MIEDEL: No, your Honor.

16 THE COURT: Let me ask the antecedent question, which
17 is, have you and has your client had a sufficient opportunity
18 under Federal Rule of Criminal Procedure 32 to review the
19 presentence investigation report in this case?

20 MR. MIEDEL: Yes, I believe he has.

21 THE COURT: May I speak with Mr. Boreland about this
22 issue, sir?

23 MR. MIEDEL: Certainly.

24 THE COURT: Mr. Boreland, you have heard me speak
25 about the presentence investigation report in this case. I am

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1 holding a copy of it up that you will just see the handwritten
2 annotation where I am noting new counsel. But, sir, is this a
3 document that you have seen?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Is it a document that you have read, sir?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Have you had a sufficient opportunity to
8 speak about it with your attorney?

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

10 THE COURT: Attorneys, sir. Excuse me. No disrespect
11 intended.

12 Mr. Boreland, you have heard me speak about certain
13 changes to the presentence investigation report that are the
14 product of the discussions that you and the government have
15 had. Other than those changes, do you have any objections to
16 the contents of the report?

17 THE DEFENDANT: No, I do not, your Honor.

18 THE COURT: Sir, do you happen to have a copy of the
19 report nearby?

20 THE DEFENDANT: I do not, your Honor.

21 THE COURT: That's fine. I am going to ask your
22 attorneys some questions and then I will return to you.

23 Mr. Miedel, beginning at page 32 of the report, there
24 are mandatory, and then standard, and then special conditions
25 of supervised release. May I understand that you have reviewed

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1 these with Mr. Boreland?

2 MR. MIEDEL: I have reviewed them with Mr. Boreland,
3 and Mr. Boreland has reviewed them on his own as well.

4 THE COURT: Sir, there are four special conditions
5 that are suggested, and I will summarize them unless anybody
6 wants me to read them in greater detail.

7 There is a directive that Mr. Boreland provide the
8 probation officer with access to requested financial
9 information; a directive that he not incur new credit charges
10 or open additional lines of credit without the approval of the
11 probation officer unless he is in compliance with any payment
12 schedule that may be set; that he submit his person, property,
13 residence, vehicle, computer devices, and other things to
14 search by the probation office if there is a reasonable
15 suspicion of contraband or a violation of the conditions of
16 supervised release; and there is a recommendation, not a
17 directive, that Mr. Boreland be supervised in his district of
18 residence.

19 Mr. Miedel, I am confident that you have reviewed
20 these conditions with your client. Do you have any objections
21 to any of the special conditions, sir?

22 MR. MIEDEL: No, your Honor.

23 THE COURT: Sir, one thing that is at issue in this
24 case and that's raised in your submission and in the
25 presentence investigation report is your client's history of

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1 alcohol abuse. Sometimes there are special conditions
2 regarding treatment or testing for alcohol abuse. Do you wish
3 to have such a condition, sir, or is it your wish instead, or
4 your expectation, that participation in the residential drug
5 abuse program at any federal facility might address those
6 issues?

7 MR. MIEDEL: To answer that, your Honor, I agree with
8 the latter. I think that any such participation should address
9 those issues.

10 THE COURT: Mr. Miedel, if I refer to the conditions
11 of supervised release collectively as the mandatory, standard
12 and special conditions of supervised release, will you and your
13 client accept that and thereby relieve me of having to read
14 them word for word into the record?

15 MR. MIEDEL: Yes, definitely.

16 THE COURT: Thank you.

17 Mr. Boreland, you have heard me speaking with your
18 attorney about the conditions of supervised release. And there
19 are certain mandatory conditions, such as not committing
20 another crime and not possessing a firearm, there are standard
21 conditions that speak to your relationship with your
22 supervising probation officer, and then the four special
23 conditions that I have outlined. May I confirm with you, sir,
24 that you have reviewed those with your attorney?

25 THE DEFENDANT: I have, your Honor.

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1 THE COURT: May I also confirm, sir, that you have no
2 objection to the four special conditions of supervised release?

3 THE DEFENDANT: I have no objections, your Honor.

4 THE COURT: May I also confirm, sir, that I may refer
5 to all of the conditions collectively as the mandatory,
6 standard, and special conditions of supervised release without
7 reading them word for word into the record?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: I thank you in advance for that.

10 Let me just please note, and you will understand why I
11 am making this observation in a moment, I am doing my level
12 best to look at each of you as each of you speaks to me, but
13 occasionally your little box on this video conferencing
14 platform moves, and I am just trying to follow you around. So
15 please take no offense if it does not appear that I am looking
16 at you. I am looking to whomever I hope to be speaking with at
17 that time, at least I am trying.

18 Let me ask a couple of additional questions, please,
19 that are in the vein of just certain factual issues I would
20 like to resolve before I hear the parties' submissions. And
21 let me note that, as modified by our discussions this
22 afternoon, I am otherwise adopting the presentence
23 investigation report, its factual statements, and its
24 guidelines calculations. Again, I will talk about them in
25 greater detail in a little while, but I don't want to forget to

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1 adopt that.

2 So, Ms. Tekeei, let me please begin with you.

3 Ms. Tekeei, I want to preface all of my questions by
4 saying, if there is information that I just shouldn't have for
5 one reason or another -- ongoing investigation, none of my
6 business, stay in my own lane -- I will understand that, but I
7 do want to ask the question nonetheless. There have been
8 several arguments made about the absence of Mr. Caruso from the
9 charging instrument, and it may be that there may be issues
10 with -- I don't actually know what is his citizenship status,
11 or where he is located, or what he knows, or any number of
12 things, but should I ever expect to see Mr. Caruso before me?

13 MS. TEKEEI: Your Honor, I suspected that the Court
14 would ask about Mr. Caruso. I want to be as direct as I can.
15 I think the Court understands that I am limited. But with the
16 Court's permission, I can sort of give you our current view of
17 Mr. Caruso based on what we know at this point. Which is that
18 Mr. Caruso is Mr. Boreland's or was Mr. Boreland's business
19 partner. He is associated with various of Mr. Boreland's
20 entities and properties that were used in furtherance of this
21 scheme. He, Mr. Caruso, it's our understanding, received money
22 from the scheme, but did not have any or certainly as much
23 control over the investor funds that Mr. Boreland was raising.
24 Those funds went directly to bank accounts that were controlled
25 by Mr. Boreland and not by Mr. Caruso.

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1 Under the preponderance standard for admissibility of
2 a co-conspirator's statements, which the Court is familiar
3 with, *Bourjaily*, it is certainly our view that Mr. Caruso would
4 be considered an unindicted co-conspirator at this time. But
5 Mr. Boreland is the undisputed leader of this particular
6 scheme. We would have to give some serious thought as to
7 whether Mr. Caruso understood all of the misrepresentations
8 that Mr. Boreland was making to the victim investors as he
9 lured them into the investment, and also about how Mr. Boreland
10 was using the victims' funds, particularly through the bank
11 accounts that Mr. Boreland controlled.

12 So I don't intend to evade the Court's question. I
13 want to make sure that we have provided the Court with the
14 information that we can about Mr. Caruso.

15 THE COURT: Thank you.

16 Related to your answer, I thought I understood from
17 the government's sentencing submission that both Mr. Boreland's
18 wife and mother-in-law may have had some access to or some
19 involvement in the bank accounts. Did I understand your
20 argument correctly? And what do you want me to deduce from
21 that, if anything?

22 MS. TEKEEI: The answer is yes, your Honor. I don't
23 think that it is in dispute that both Mr. Boreland's
24 mother-in-law and his wife directed funds, potentially at Mr.
25 Boreland's direction, that were from the victims, including

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1 toward, I think, personal interests of theirs. Our view of
2 those individuals is similar to -- and that is a view that
3 informs our belief that Mr. Boreland was a supervisor or leader
4 in this scheme. They are two of the individuals we identified
5 to defense counsel in support of that enhancement in the
6 presentence investigation report, and that's not currently in
7 dispute.

8 THE COURT: Should I expect to see either of them
9 before me in the coming months?

10 MS. TEKEEI: Your Honor, I would prefer not to answer
11 that question at this time.

12 THE COURT: OK. Ms. Tekeei, either now or in
13 connection with your general sentencing presentation I would
14 like to understand better than I currently do what I am going
15 to call, just for shorthand, the Canada fraud, and what I am
16 going to call, just for shorthand, and without being especially
17 concerned about its accuracy, the Westchester writs fraud. I
18 believe what you're saying to me is that I should consider them
19 in my evaluation or consideration of the 3553(a) factors here.
20 And I am certainly willing to do that, if I am supposed to, but
21 I need to understand more than I currently do. I have a lot of
22 information about what happened in Belize. I have much less
23 information about what happened in Westchester.

24 Now, if you don't want me to consider either of those
25 things, that's fine, too. But again, I understood your

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1 submission to say that this also suggests or it goes to Mr.
2 Boreland's intent, and it goes to the accuracy of certain
3 sentencing arguments that are being made to me. So again, if
4 you would like to tell me now, here is an opportunity. If you
5 would like to save it till your main sentencing presentation,
6 that's fine as well.

7 MS. TEKEEI: I am happy to address the Court's
8 questions.

9 On the Canadian scheme, the parties had stipulated and
10 agreed to the facts that the Court can and should rely on. And
11 that is -- I am blanking on the paragraph -- it's one of the
12 paragraphs in the presentence investigation report that we all
13 agreed to amend. The facts that we have agreed to, and we
14 believe collectively that the Court can and should consider,
15 are that, from approximately 2007 through 2010, Mr. Boreland
16 engaged in a scheme to defraud individuals of money and
17 property in connection with real estate investments related to
18 Canyon Acquisition, among other entities. And that Mr.
19 Boreland and others solicited investments from numerous
20 investors, including investors located in Canada, during which
21 Mr. Boreland first misrepresented to investors that all of
22 their investment funds would be used to construct real estate
23 projects in Belize, among other places, and second, instead,
24 spent a portion of those investors' proceeds in ways that were
25 not specified in those agreements. Those are the undisputed

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1 facts that we think the Court can and should rely on. I think
2 for context we cited in the sentencing submission to a couple
3 of filings by the Canadian's SEC. Those are public filings.
4 We wanted to make the Court aware of them. I believe we may
5 have also cited them in some of our prior papers.

6 With respect to the Westchester Trump allegations,
7 your Honor, we, like the Court, received a wave of victim
8 impact statements that related to other activities by Mr.
9 Boreland. The activities that I have described, or the conduct
10 that I have described with respect to the Canadian scheme, that
11 the parties have agreed to, we could not ignore the allegations
12 about the properties and the project in Westchester,
13 particularly because some of the same victims in the charged
14 scheme alleged that they are also victims in that scheme. And
15 I am careful, and I think we were careful in our submission, to
16 caveat those facts as allegations. We can't ignore them. We
17 have not expended yet the resources to really investigate that
18 aspect of the scheme. We have been focused on -- or that
19 aspect of Mr. Boreland's conduct. We have been really focused
20 on this case and this litigation.

21 So the Court can consider all of these statements that
22 have been submitted, and we wanted to not ignore those
23 allegations. But we are not seeking to enter into a dispute
24 about those allegations at this time.

25 THE COURT: One moment, please. Thank you.

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1 Ms. Tekeei, one of the things that the defense has
2 suggested to me is that I can discern Mr. Boreland's either
3 good faith or his belief in the bona fides of the Belize
4 project by the fact that he also included a personal guarantee
5 along with the collateral that were used to secure some of the
6 loans that he received. What is the government's perspective,
7 if there is any, on the significance of the personal guarantee?

8 MS. TEKEEI: Your Honor, we believe that was part and
9 parcel of the fraud. He provided the personal guarantee in
10 order to provide, as we have alleged, false assurance to his
11 victims that he would be able to repay them. In fact, he
12 provided that personal guarantee to multiple of the victims,
13 notwithstanding having defaulted on prior loans and prior
14 repayment obligations.

15 So as is alleged in the complaint and in the
16 indictment, and I think in our other papers, that was a
17 significant aspect of the scheme. Many of the victims have
18 conveyed in the submissions to the Court, and also in
19 interviews, that the personal guarantees were something that
20 they relied on in making their investment decision.

21 THE COURT: Thank you.

22 Ms. Tekeei, I don't have a sense, despite seeing -- I
23 have seen many victim impact statements. I don't have a sense
24 whether the government believes, or whether there is evidence
25 to suggest, that Mr. Boreland preyed on a certain category of

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1 victim investors. For example, I have seen or been a party to
2 prosecutions where there was a religious theme to the
3 investors, and, therefore, the private placement memorandum
4 were couched with a degree of religiosity to them. I don't
5 know how these victims were found.

6 One moment. I have lost Mr. Madiou. But he is coming
7 back, so that's fine.

8 Ms. Tekeei, is there some sense from the government's
9 investigation that Mr. Boreland preyed on a particularly
10 vulnerable or unsophisticated type of investor?

11 MS. TEKEEI: No, your Honor, that is not what our
12 investigation has shown.

13 THE COURT: OK.

14 MS. TEKEEI: At least not with respect to the scheme
15 in this indictment.

16 THE COURT: Yes. Thank you.

17 Ms. Tekeei, are you aware of the civil litigations
18 that are discussed in the sentencing submissions, and what
19 would you like me to know about them?

20 MS. TEKEEI: Your Honor, we are generally aware of
21 them. We had seen some of the filings on both sides. I am
22 happy to convey to you what is our understanding and our view
23 of them, which is that we have really focused in these
24 proceedings on Mr. Boreland's offense conduct and the impact of
25 his offense conduct on his victims. We have hesitated to

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1 become embroiled in a debate over the current and pending
2 litigation, in part because, as the Court is aware, victims are
3 involved on both sides of that litigation.

4 THE COURT: I missed you. Could you say that again?

5 MS. TEKEEI: Sure. I have heard a little bit of
6 feedback. I am happy to repeat again.

7 We hesitate to get embroiled in a debate over the
8 merits of that litigation on either side, in particular,
9 because victims are involved on both sides. As we understand
10 it, there are contentious allegations being made on both sides
11 of that litigation. We wanted to keep and want to keep the
12 focus of our arguments to the Court and in our sentencing
13 submission in this proceeding on Mr. Boreland's conduct and its
14 impact on the victims, and we hesitate to get involved in what
15 is a pretty acrimonious litigation.

16 THE COURT: Thank you.

17 Mr. Miedel, I have some questions that are specific to
18 the defense, but I know you have been paying attention to my
19 discussions with Ms. Tekeei. So if there is something that you
20 want to say with respect to any of the questions that I have
21 asked her, you may do so, or I can proceed to the questions
22 that I have that are specific to you and your client.

23 MR. MIEDEL: Your Honor, why don't you proceed, and if
24 there are any questions or any issues that remain undiscussed,
25 I can raise them then.

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1 THE COURT: Thank you.

2 Sir, I would like to understand now the medical
3 conditions and issues that are faced by Mr. Boreland and his
4 family. If you would like me to seal this portion of the
5 sentencing transcript because of the sensitivity of the
6 information, please tell me, and I will do so.

7 MR. MIEDEL: Yes, your Honor, that will be good.

8 THE COURT: I am asking our court reporter, please,
9 just to seal this portion of the transcript which deals with
10 sensitive medical information.

11 Thank you, Mr. Miedel.

12 (Continued on next page)

13 (Pages 25-26 sealed)

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1 THE COURT: What would you like me to know, Mr.
2 Miedel, that you haven't already told me about the civil
3 litigations. I thought I understood that they were effectively
4 in a standstill.

5 MR. MIEDEL: As the Court may know, John Quaranta, who
6 is the attorney for Copper Leaf, which is the largest victim in
7 the case and is the plaintiff in the lawsuit in Belize that Mr.
8 Boreland has joined and is allied with, is on the line. And so
9 if there are specific questions about the litigation, he might
10 be in a better position to answer them than I am. But my
11 understanding is that the case was moving toward trial, but
12 Copper Leaf at least is of the belief that the defendants in
13 the lawsuit think that it is to their litigation advantage to
14 wait or delay until Mr. Boreland is incarcerated, and therefore
15 have, in Copper Leaf's view at least, thrown obstacles in the
16 way of having this case reach resolution. However, at some
17 point this case will be resolved either by settlement or by
18 trial.

19 THE COURT: At this time, I don't think I need to
20 speak to Mr. Quaranta, but I should ask you this, Mr. Miedel.
21 I was cognizant of the fact that there are number of people
22 listening in on this particular proceeding, and I thought
23 perhaps some of those might be family members or supporters of
24 Mr. Boreland. To the extent that there are, would you just
25 acknowledge that so I may thank them for participating today.

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1 MR. MIEDEL: I believe that only Mr. Boreland's wife
2 is listening in, but he could correct me if I am wrong.

3 THE COURT: Mr. Boreland.

4 THE DEFENDANT: Yes, your Honor. My wife is here with
5 me now.

6 THE COURT: And she is participating by telephone
7 today, sir?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: She is welcome, and I appreciate the
10 submissions that she has made on your behalf. Thank you.

11 Mr. Miedel, do you have a copy of the presentence
12 investigation report nearby?

13 MR. MIEDEL: I do.

14 THE COURT: What for me is page 21 of the report
15 contains a listing of Mr. Boreland's assets. I am a little bit
16 confused, but perhaps I am not actually a little bit confused.
17 Which is, with respect to a lot of the real estate assets, they
18 are contained in parentheses, which suggests that they are in
19 the red and not in the black. Is that how I am to read them,
20 sir?

21 MR. MIEDEL: Yes.

22 THE COURT: In particular, the international real
23 estate, he is \$114 million in the red on that?

24 MR. MIEDEL: Your Honor, I wasn't counsel at the time
25 that this investigation was done and wasn't -- I am not exactly

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1 sure where that rounded up -- clearly a rounded number came
2 from, the \$114 million. There is no question that Mr. Boreland
3 has significant liabilities which are reflected, some of which
4 are reflected in here. I don't want to say that we are
5 certain, or I am certain at least, that this number is exactly
6 accurate of \$114 million.

7 THE COURT: Let me pause for a moment. I am just
8 realizing now that we are talking about things other than
9 medical issues. I should let the court reporter know, with my
10 deep apologies, that once we stopped talking about the medical
11 issues of Mr. Boreland and his family members, I was unsealing
12 the transcript. So certain of these references may be public.

13 Mr. Miedel, it may just be your position that -- I
14 don't want to put words in your mouth, sir, but there is a
15 substantial restitution obligation, a substantial forfeiture
16 obligation. Given that, it is unlikely that I will be imposing
17 a fine, and perhaps for that reason, whether the number in the
18 parentheses is the number that it is, or something smaller or
19 larger than that, may not matter. The actual value of the
20 assets that he has might not matter given the certainty of the
21 restitution and forfeiture obligations. I was just wondering
22 because those are numbers that I couldn't figure out the source
23 of. That's why I wanted to talk to you about them.

24 MR. MIEDEL: Judge, first of all, I think you're right
25 that, at this point, any of Mr. Boreland's assets are frozen

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1 and/or tied up in the Belize litigation, which one of the
2 issues in the Belize litigation is whether he is or is not
3 co-owner of properties that we believe, and I think that the
4 litigants believe, are worth quite a bit of money. But either
5 way, he has no assets at this point that haven't already been
6 seized by the government or frozen by the government and that
7 will go toward forfeiture, restitution, or both.

8 THE COURT: What about the houses, sir?

9 MR. MIEDEL: Well, the house in Florida is
10 fully -- first of all, I think it's frozen. It's under a
11 seizure order.

12 I'm sorry. Mr. Boreland is shaking his head so maybe
13 I'm wrong about that.

14 Mr. Boreland.

15 THE DEFENDANT: The house in Delray was foreclosed and
16 there was a sale, and I believe that there is somewhere around
17 \$650,000 that's remaining in escrow for restitution.

18 THE COURT: Thank you, sir.

19 With respect to the house in Sag Harbor, Mr. Miedel,
20 may I ask your client about that?

21 MR. MIEDEL: Yes, please. He is the expert on that.

22 THE COURT: Thank you.

23 Mr. Boreland, the status of the house in Sag Harbor?

24 THE DEFENDANT: It's frozen under the SEC asset
25 freeze. There is approximately 1.5 million of equity that

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1 remains in that house, but it's ready to be sold at the
2 appropriate time.

3 THE COURT: Thank you, sir.

4 Mr. Miedel, the other questions that I would have for
5 you I think are questions that you will be addressing in your
6 main sentencing submission to me. Again, if there are things
7 that our discussion has sort of caused you to want to call to
8 my attention now, this is an opportunity for you to call them
9 to my attention.

10 MR. MIEDEL: Judge, just going back to some of the
11 questions you asked Ms. Tekeei. Specifically, the question of
12 the Canadian scheme and the Westchester situation, I just
13 wanted to say, especially the Westchester fact scenario, that
14 is something that neither the government nor the defense really
15 focused on. It wasn't part of the indictment. It wasn't part
16 of relevant conduct. My understanding is that this was a real
17 estate development situation that Mr. Boreland was involved in
18 close to the time that he was arrested, and so when he was
19 arrested, it all sort of came to a halt.

20 So that's really all I know about it. I didn't get
21 the sense that the government is seeking or asking you to
22 consider it for sentencing purposes in any event, but I just
23 wanted to sort of add my two cents on that.

24 THE COURT: Sir, to that point, I might even agree
25 with you, except that the government said that it came to learn

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1 after agreeing with you that there were additional losses.

2 Ms. Tekeei, were those additional losses in the
3 original scheme and not in any way related to the Westchester
4 issue that you brought to my attention?

5 MS. TEKEEI: Yes, your Honor. I am happy to speak
6 about the way that we calculated restitution and the defense's
7 consent if the Court wants in more detail. At a very high
8 level, we identified the victims who were involved in or
9 victimized by the scheme in the indictment. We identified the
10 investor agreements related to those victims. And we
11 identified bank records that were related to those victims'
12 investments in the scheme in the indictment. And we were
13 careful to exclude, to the best that we could, and I don't
14 think that the defense has any questions about this, any funds
15 that some of those same victims may have directed toward Mr.
16 Boreland's other projects.

17 We provided counsel for Boreland a reproduction of
18 documents we had already provided that identified for each
19 victim the investor agreements that were related to the
20 restitution amounts, and also the bank records that showed the
21 investors -- or other records that showed the transfers of
22 those amounts to the bank accounts that were controlled by Mr.
23 Boreland. We understand that the defense team has had a chance
24 or had a chance to review them, and in consultation with Mr.
25 Boreland, and so we are confident, to the best of all of our

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1 abilities, that the amounts in the restitution order and the
2 ultimate loss amount that we have cited to the Court reflects
3 the loss to victims in this scheme in the charged indictment.

4 THE COURT: Thank you.

5 Mr. Miedel, let me let you continue if there are
6 follow-up statements you wanted to make.

7 MR. MIEDEL: If you're ready, I would like to be heard
8 on sentencing generally.

9 THE COURT: Yes. May I begin with Ms. Tekeei?

10 MR. MIEDEL: Yes, of course.

11 THE COURT: Thank you.

12 Ms. Tekeei, I think you understand from the questions
13 that I have asked at the *Fatico* hearing and the questions that
14 I have been asking you today what my concerns are. I am trying
15 to understand how I consider Mr. Boreland among many other
16 folks that I have seen involved in securities fraud cases. I
17 would like to understand whether the government's perspective
18 is that he was especially unlucky given the Westchester County
19 matter, or whether all of this was designed just to take as
20 much money from as much people as possible, or perhaps
21 something in between those two poles. But I really would like
22 to understand the government's view as to Mr. Boreland's
23 culpability. And though you have done so in your submission,
24 if there are other arguments you want to make in response to
25 the defense arguments, or perhaps in response to the most

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1 recent arguments that I have seen, now would be the time that I
2 would welcome those arguments. Thank you.

3 MS. TEKEEI: Thank you, your Honor.

4 I think that the depiction of Mr. Boreland that the
5 Court has now seen varies. Mr. Boreland, in his sentencing
6 submissions, including the most recent submission, urges the
7 Court to consider what he characterizes, and the Court has
8 already touched upon this, as his lifelong vision for Belize.
9 He wants the Court to focus on the progress he made in certain
10 development projects there and his hope that, despite his
11 repeated lies and deceit toward his victims, he bore some hope
12 that it would all work out in the end for them. That is an
13 image that is in sharp contrast to the one that's borne out by
14 his undisputed offense conduct in this scheme alone, and in the
15 dozens of letters submitted by the victims of this scheme, the
16 one to which he pled guilty, and by his admitted undisputed
17 conduct in the prior scheme, the one that we have been calling
18 the Canadian scheme.

19 So the image of Mr. Boreland is multifaceted. We are
20 aware of the projects in Belize that he cited, where there has
21 been some development, but it is undisputed that since
22 approximately 2007, Mr. Boreland has been lying to people to
23 obtain their money, and then has been using it in ways that
24 violated that trust and the representations that he made to
25 them. Over and over again Mr. Boreland's victims described how

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1 they trusted him, how he lured them into investing their
2 hard-earned money, sometimes with promises of high interest
3 rates, with promises at times of quick and early returns, and
4 also with false promises of land secured in Belize. Again, all
5 of this is false. And he did this day in and day out for many,
6 many years. He was a convincing liar, your Honor. He was able
7 to in this scheme alone get more than \$26.1 million of his
8 victims' funds.

9 Even while his victims demanded, your Honor, and some
10 of this is borne out in the victim impact letters, they
11 demanded that he repay them, they begged that he repay them,
12 they wanted their money back. But even in the face of all of
13 that, he continued to spend millions of dollars of other
14 people's money on himself and his family. He put his interests
15 ahead of theirs, and undermined the trust that he had somehow
16 lured them into believing that they could have in him.

17 THE COURT: May I pause right there. I would like to
18 engage with you on this point in this regard. It is often the
19 case in securities frauds of this type that I am told that the
20 defendant promised to spend money in a certain way and ended up
21 spending some portion of it on himself or herself. And I don't
22 think the government is arguing that a person who offers an
23 investment opportunity isn't entitled to take some fee,
24 something for themselves. But is the government's argument
25 that the money that was taken was outsized in light of the

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1 amount of investments? Is it that the money was inappropriate
2 given the paucity of progress or actual development in Belize?

3 I am not disagreeing with you as much as I just want
4 to make sure I understand this point. You're not saying he
5 could never take funds for himself. I want to understand what
6 the problem was. Was it the amount? Was it the timing? Was
7 it the fact that it was taken in the face of making false
8 representations about where funds would be spent?

9 MS. TEKEEI: Your Honor, it was all of those things.
10 Some of the victims with whom we spoke, and this may also be
11 reflected in the impact statements, would not have agreed to
12 loan the money if they thought that Mr. Boreland was going to
13 be paying himself from it directly, if they thought that that
14 money would be directed toward his children's private school
15 education or his wife's credit card bills. It's a combination,
16 your Honor. I don't mean to suggest that some of that money
17 wasn't spent toward a development of the airport. We have been
18 clear about that. That's not our suggestion. But the money
19 was obtained, the victims were induced by his fraudulent
20 representations, and substantial amounts of the money were used
21 in ways that were not provided for.

22 THE COURT: Thank you.

23 Please continue.

24 MS. TEKEEI: Your Honor, just briefly, a few more
25 notes because I know and I can tell that the Court has spent a

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1 great deal of time reviewing the parties' submissions and
2 really understands this case.

3 I just want to highlight what is the unfortunate
4 reality of where we are today, which is that Mr. Boreland took
5 his victims' life savings, he took retirement funds, he took
6 college tuition funds, and he kept lying to his victims to
7 cover up his other lies throughout this scheme. We recognize
8 his recent efforts to attempt to reform his life. The Court
9 has acknowledged some of that and has acknowledged his family,
10 and that's certainly a consideration. But we believe that
11 against the backdrop of the devastating impact that this crime
12 has had on Mr. Boreland's victims, those factors just do not
13 mitigate the nature and seriousness of his conduct here, and
14 they do not obviate the need for a sentence of imprisonment
15 that would serve to punish and afford adequate deterrence to
16 Mr. Boreland.

17 THE COURT: Thank you very much. Is there anything
18 else you would like me to know?

19 MS. TEKEEI: Unless the Court has any other questions,
20 no, your Honor.

21 THE COURT: I have asked you a number of questions.
22 Thank you. I think I have the answers.

23 Mr. Miedel, at this time, sir, I would be pleased to
24 hear from you with respect to sentencing. I think you
25 understand, again, from the questions I have been asking you

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1 and the government, what the concerns I have are.

2 MR. MIEDEL: Yes. Thank you, your Honor.

3 Before I go on, I know that the government had
4 indicated that at least one victim was interested in speaking.
5 Would the time for that be now?

6 THE COURT: It would be now. Please excuse me that I
7 did not know that.

8 Ms. Tekeei, are there individuals who have indicated
9 to you their wish to speak at this time?

10 MS. TEKEEI: There are, your Honor. I wasn't sure if
11 the Court was waiting to hear from the parties and Mr. Boreland
12 before allowing the victims to speak. Now would be just as
13 good a time if the Court wants to hear from them. There is one
14 victim who wishes to speak verbally. The Court also, of
15 course, has received dozens of written submissions. There is
16 one victim who has joined by video conference link today and
17 would like to provide a verbal statement to the Court.

18 THE COURT: Thank you. It would be my preference to
19 hear from the victim now and then to hear from defense counsel
20 and defendant.

21 Ms. Noriega, is the victim in a position to join the
22 conference?

23 THE DEPUTY CLERK: Yes, Judge. It's Dyke Rogers and
24 he just turned on his video feed.

25 THE COURT: Mr. Rogers, I am able to see you now, sir.

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1 Are you able to see those of us involved in this proceeding?

2 MR. ROGERS: I am. Thank you, your Honor.

3 THE COURT: Of course, sir. And have you been able to
4 listen to us all at this time?

5 MR. ROGERS: I have.

6 THE COURT: Sir, I will hear from you now.

7 MR. ROGERS: My name is Dyke Rogers, and I am a victim
8 of Brent Boreland in this case. I have previously submitted an
9 impact statement for my personal losses. My purpose in
10 testifying today really is to correct the record on some of Mr.
11 Boreland's letter that he sent concerning his sentencing. He
12 mentions that myself and 39 other investors were victims of his
13 fraudulent actions, that we have come together to invest in
14 other opportunities in Belize, which includes some properties
15 which he may or may not have had an ownership interest in.

16 As the Court is aware, this is not the first or only
17 fraudulent scheme that Mr. Boreland has perpetrated. I think
18 that a number of other fraudulent schemes would probably be
19 known by name -- Canyon Acquisitions, Dominican Republic,
20 Bronxville, Franklin Point, a whole host of other schemes.
21 This is a pattern that Mr. Boreland has done for years.

22 THE COURT: Mr. Rogers, could I ask you to pause for a
23 moment, sir. Just one favor. You mentioned Canyon
24 Acquisitions, the Dominican Republic, Bronxville, and I lost
25 the last name. And then, just more broadly, sir, because, as

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1 you see, I am taking notes, can I just ask you to slow down a
2 bit as you speak.

3 MR. ROGERS: Absolutely.

4 THE COURT: Tell me again the name of the other
5 properties, sir.

6 MR. ROGERS: Some of the names that have been brought
7 to my attention are the Canadian fraud that involved the
8 Dominican Republic, where Mr. Boreland raised over \$50 million
9 that got later traded into the Canadian. And in that
10 particular scheme, he did pick on elderly people, and
11 particularly people with an Evangelical religious bent, and on
12 people who were very unsophisticated investors. This
13 particular scheme we are dealing with here are all pretty
14 sophisticated investors, and we got taken anyway.

15 THE COURT: I will let you continue, sir. Thank you.

16 MR. ROGERS: I know this isn't the only scheme, and I
17 sincerely believe it won't be his last. I propose that he is
18 currently presenting an argument to the Court that is
19 completely fraudulent on its face.

20 Mr. Boreland claims that our group acquired 1586
21 acres. Now, these are from his letters that he submitted to
22 you. It actually was 1431 acres, which is really only
23 important because the other 175 acres were supposed to be used
24 as a partial settlement for a previous scheme involving a group
25 of Canadian investors, which has not been followed through

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1 with.

2 Mr. Boreland claims that our land, which was known as
3 Panther Properties, or the country club area, is worth \$32
4 million, in his letter, and that it was worth \$80 million if
5 fully developed, and that our group has not offered any
6 appraisal to contradict this value.

7 Well, first, it's not our responsibility to provide an
8 appraisal, and I don't know who we would have provided it to.
9 But I would submit that the value on that is considerably less
10 than \$4 million, not 32, not 80. I think those appraisals were
11 somewhat fraudulent, which is one of the ways he was acquiring
12 money. That means it's worth less than 12-and-a-half percent
13 of his lowest estimate, the estimate that he is giving the
14 Court.

15 Now, what do I base that value on? I personally
16 purchased 1271 acres adjoining property, it adjoins the
17 property line, which is better property, from a bank in Belize
18 for \$3.6 million. So roughly the same size property for \$3.6
19 million, which I believe is better property, and it had been
20 for sale for many years. This property is just -- I want to
21 say it's just kind of scrub brush and almost jungle and its
22 value is very limited.

23 As an aside, the Belizean government agreed to accept
24 a reduced valuation of \$625,000 for taxation purposes on the
25 land in question. And they did that because they knew it had

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1 little value unless it was developed, which was going to
2 require millions of dollars.

3 The value of the airport property is also overstated
4 by Boreland to the Court as \$11 million. Unless or until tens
5 of millions of dollars are invested in it, it's worth almost
6 nothing. The Belizean government agreed to assessing a value
7 of only \$325,000 on the airport property for tax purposes.

8 The value of these assets, which Mr. Boreland has
9 claimed ownership, and that's in the suit in Belize, which he
10 represented to the court, your court, is sufficient to repay
11 all of his victims is just simply not true until or unless
12 millions of dollars are further invested.

13 Finally, I would like to address his statements that
14 teaming with one victim, at the expense of 40 others, is
15 demonstrating his goodwill. First, Copper Leaf was offered an
16 opportunity to invest with our group in Belize. They declined,
17 which was certainly their right. They joined with Mr. Boreland
18 to try to capture the assets that are now owned by our
19 investment group. It's fairly disingenuous for Mr. Boreland to
20 say that, should he prevail, his intention is to repay the
21 other victims, which is basically our group, by giving us back
22 the property which we already own, and either that or selling
23 it and distributing the proceeds.

24 All of that said, Mr. Boreland is a consummate con
25 artist. He has committed fraud before this case, in this case,

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1 and even with some of his representations to the Court. And if
2 he receives a light sentence or a supervised release or
3 something like that, I believe he is going to commit fraud
4 again. Because of this, I would urge the Court to impose the
5 maximum sentence allowed under your guidelines.

6 I would go further to say that in our group, or in
7 people that we wanted in our group, I can think of one man in
8 particular who lost \$1,800,000. He is in his 80s. He is no
9 longer an accredited investor because Mr. Boreland took
10 everything he had. And so he was not allowed to participate in
11 our group, which we did all the legal things with the SEC
12 filings and so forth and as a nonaccredited investor he
13 couldn't participate, so he has no chance to try to make some
14 money in Belize to offset some of what he lost from Mr.
15 Boreland because he took it all.

16 There are horror stories in all of the people in our
17 group. Now, frankly, most of the people in our group, they are
18 accredited investors, they are sophisticated people. I won't
19 say that it has wrecked their life to lose the money we lost.
20 But I can say that when somebody steals \$25 million, and used
21 it for things like a million dollars for his wife's credit
22 card, or 30 or 40,000 dollars for tuition on a kindergarten or
23 elementary schoolchild, those are not things that we
24 anticipated, those are not what sophisticated investors would
25 expect, nor are they what we would expect a reputable person to

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1 do with the money that we invested.

2 I think Mr. Boreland's attempts to do his work in
3 Belize, to come back and try to sue all the other investors, to
4 recoup something that in some cases he never owned in the first
5 place, is completely disingenuous. And for him to say he is
6 trying to show good faith by helping one person so that he can
7 then help us all, I don't want to say it's comical, it's sad,
8 it's very sad. I feel for what I read in his letter about his
9 health conditions and his family's health conditions. But,
10 your Honor, the man is a con artist, he is a consummate liar,
11 and I just don't believe that he ought to receive a whole lot
12 of mercy in this situation.

13 THE COURT: Mr. Rogers, thank you very much.

14 Mr. Miedel, I will hear you at this time.

15 MR. MIEDEL: Your Honor, as I mentioned before, Copper
16 Leaf, which is the largest victim in this group of victims in
17 the charged conduct, John Quaranta, who is their attorney and
18 is the one spearheading the litigation in Belize, I think has
19 indicated that he wishes to speak briefly, if that's OK with
20 the Court.

21 THE COURT: It is.

22 Mr. Quaranta.

23 MR. QUARANTA: Good afternoon, your Honor, may it
24 please the Court.

25 My name is John Quaranta, and I represent Copper Leaf,

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1 which is the single largest investor of \$8 million into the
2 Belizean fund.

3 I heard Mr. Rogers talk and it was passionate, and he
4 has every right to be angry, but his anger should be diluted.
5 And my biggest dispute here is that Mr. Caruso, for some reason
6 the government has not charged Mr. Caruso.

7 Your Honor, we went into the Southern District of New
8 York and we got a judgment against both Mr. Caruso and Mr.
9 Boreland on the papers, these loan documents, for \$10 million,
10 and we domesticated them into Belize. And when we did that, we
11 found out that the actual properties in which we invested had
12 been fraudulently taken by Mr. Caruso out of Mr. Boreland's
13 name. And when he did that, we then had absolutely no
14 recourse. Mr. Caruso is fighting in Belize the domestication
15 of that judgment. So, by virtue of Mr. Caruso making a deal
16 with the 39 investors, we are now pitted against each other.
17 It's a shame because Mr. Rogers is probably a nice guy and he
18 is where he is. But he is there because of Marco Caruso, and I
19 just wanted the Court to be apprised of that.

20 THE COURT: Sir, thank you very much.

21 Mr. Quaranta, if you're aware of the sentencing
22 submissions in this case -- and I believe you are. You have
23 indicated to me in writing your belief that Mr. Boreland has
24 assisted the Copper Leaf team in terms of understanding
25 information and understanding more about the case. I don't

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1 think, Mr. Quaranta, that there is anything else you need to
2 add, but since I have you here in this conference, if there is
3 something else you want me to know, you should do that now.

4 MR. QUARANTA: No, your Honor. My letters explain my
5 position.

6 By the way, my position is different than -- my
7 personal position as to Mr. Boreland might be different than my
8 client. My client Copper Leaf has not had the interaction with
9 Mr. Boreland. I personally have found him to be extremely
10 helpful in trying to recover our money.

11 THE COURT: Well, the letter that you wrote to me,
12 sir, was that you qua you or you qua representative of Copper
13 Leaf?

14 MR. QUARANTA: That's true, yes.

15 THE COURT: I am asking a question. There is an
16 answer to that question.

17 Who did you write to me as? Did you write to me for
18 yourself or did you write to me for Copper Leaf who is a
19 victim?

20 MR. QUARANTA: At the end of the day, I wrote to you
21 as the representative of Copper Leaf, your Honor.

22 THE COURT: So when you said to me a moment ago that
23 you and your client may have different views, what is the view
24 you're communicating to me, sir?

25 MR. QUARANTA: Take the view that we both believe what

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1 I said, your Honor.

2 THE COURT: OK. Thank you, sir.

3 Ms. Noriega, are there other victims who have advised
4 you that they wish to speak in connection with this proceeding?

5 THE DEPUTY CLERK: Those are the only two that we were
6 told of, Judge.

7 THE COURT: Thank you very much.

8 Mr. Miedel.

9 MR. MIEDEL: Thank you, your Honor.

10 It was really hard to read the victim impact
11 statements, as I am sure it was for you as well, and even to
12 listen to Mr. Rogers talking about the conduct in this case.
13 Some of those stories in the victim impact statements are
14 heartbreaking, and they rightfully cause one to feel anger and
15 even rage at the person that caused this suffering. Many of
16 these victims trusted Brent Boreland, and not only did he let
17 them down, he misled them, he lied to them, he took their
18 money, and they haven't seen a cent of it since.

19 None of this, your Honor, is in dispute. The question
20 here today is not whether Mr. Boreland must be punished. The
21 question is, how much punishment is sufficient but not greater
22 than necessary? And that's where this case, I think, becomes
23 much more difficult.

24 The government sees this as an easy call. Mr.
25 Boreland stole from investors, used their money to fund a

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1 lavish lifestyle; he must now suffer the consequences. They
2 paint him as a fraudster, a con man, as someone who doesn't
3 care one whit about anyone other than himself. But it is
4 simply not that clear-cut and it's not that easy.

5 First, your Honor, is the issue of motivation and
6 intent. We addressed that specifically in our reply sentencing
7 memo, which I know you have read and I am not going to restate
8 it here. In sum, as we have said before, Mr. Boreland
9 committed this crime to realize his vision in Belize, to
10 accomplish a goal, a dream that he had for many years. He did
11 not set out to steal from people. He was not engaging in a
12 scheme to steal from people, as the government called it. This
13 was not a Madoff-style Ponzi scheme. He committed crimes, yes,
14 unquestionably, but he did it in furtherance of something. Not
15 just to enrich himself, but in order to build what he devoted
16 his life to for the last 12 years.

17 Now, as we have said before, your Honor, all of that
18 probably doesn't matter to the victims who lost their money.
19 Whether he directly stole it from them, or whether it's tied up
20 in interminable projects, either way, the money is gone, or at
21 least for now, and the result is the same. But it does, and I
22 think it should, matter for the Court.

23 The second is the issue of his substantial assistance
24 to Copper Leaf that we have been discussing already today. As
25 Mr. Quaranta stated in his letter, Mr. Boreland has been

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1 instrumental in helping Copper Leaf try to get its money back.
2 And just in response to Mr. Rogers's statement that it's
3 nonsensical that Mr. Boreland would litigate against the 40
4 victims in order to then be able to repay them, it is sensical
5 because the only way that he can provide any relief to all of
6 its victims is by actually being given back the proper
7 ownership stake that he has in the land and the development.
8 And that's what he is trying to accomplish.

9 To be honest with you, I cannot remember ever having a
10 case in which a victim wrote a letter on behalf of the
11 defendant, and this situation I think makes Mr. Boreland's case
12 unusual. It differentiates it from the garden variety fraud
13 cases that we often see in this courthouse.

14 Now, it's true, the legal situation in Belize is
15 complicated and not concluded, unfortunately, as you know we
16 had very much hoped that it would be by the time of sentencing,
17 and the Court was kind enough to adjourn Mr. Boreland's
18 sentence several times to allow for that to happen. It hasn't.
19 But, as I said before, eventually there will either be a trial
20 in this matter or a settlement and it will clarify these
21 issues. And based on our view of the Belize litigation, we
22 firmly believe that Mr. Boreland will be reinstated as the
23 rightful co-owner of the land in development, that was
24 unlawfully seized from him; and once he is reinstated, he will
25 finally be able to do what he has intended to do, which is try

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1 to make the victims whole, starting with Copper Leaf, the
2 biggest investor, and moving on to every last one.

3 As we have tried to make clear, and as Copper Leaf
4 surely believes, and I think as even Mr. Rogers believes, there
5 is real value and tremendous opportunity in Belize. There
6 would otherwise be no reason for these self-described
7 sophisticated investors to expend extraordinary legal fees to
8 litigate about property that is worthless in Belize.
9 Eventually someone is going to finish the developments already
10 well underway there and they will reap the benefits. We hope
11 that it is the victims and that at some point they will be made
12 whole, or even more than whole.

13 Third, your Honor, is the issue of Mr. Boreland's
14 health and the conditions of confinement during COVID. We have
15 already discussed his health conditions. Until we know about
16 the root of his condition, doctors have advised him against
17 taking the COVID vaccine, which we discussed, but which we
18 believe, certainly, is absolutely crucial for him to have
19 before he enters a BOP facility. And once he does enter a BOP
20 facility, he will join the masses of federal prisoners who had
21 to endure conditions of confinement that have rightly been
22 criticized by judges, including yourself, as horrific. We
23 don't know what the future holds, but one thing I think is safe
24 to bank on, that the conditions of Mr. Boreland's confinement
25 will be harsher, assuming the COVID pandemic continues for the

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1 foreseeable future, than they would have been before COVID.

2 These, your Honor, are all reasons to temper the
3 righteous indignation we may all feel after hearing and
4 considering the impact Mr. Boreland's crimes have had on its
5 victims. As I said at the beginning, this is not a question of
6 whether to punish, but how much. Surely, your Honor, it
7 matters that Mr. Boreland's fraud was not a
8 take-the-money-and-run scheme. Surely, it matters that he has
9 provided real and substantial assistance to the largest victim
10 in its efforts to recoup its losses. Surely, Mr. Boreland's
11 background, family history, his current medical condition, the
12 COVID crisis, surely, they all matter. And yet, your Honor,
13 not one of those factors are adequately captured by the
14 sentencing guidelines.

15 It is easy in this business to become desensitized to
16 what it means to spend years in prison. But we have to remind
17 ourselves that prison is horrific. Brent Boreland will suffer.
18 The victims have expressed that they want him to suffer, and he
19 will. But sentencing is not about revenge. Just punishment
20 does not require in this case 12 years or 10 years. A
21 sufficient sentence here falls well below the guidelines
22 because they do not account for the various circumstances
23 present here and that we have discussed and that make this case
24 different.

25 Thank you.

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1 THE COURT: Mr. Miedel, thank you very much.

2 Mr. Boreland, at this time you are invited to speak
3 with me about your sentence. You're not obligated to speak
4 with me, sir, but you are invited to do so. What I will ask,
5 and it's something that you have seen me ask of other folks in
6 this videoconferencing platform, is that you would speak louder
7 and slower than you think you need to, and you can take
8 whatever breaks you need. But as you have been watching, I
9 have been taking notes of what everyone has been saying. I
10 want to make sure that I take down what it is that you are
11 saying.

12 Sir, would you like to speak?

13 THE DEFENDANT: Yes, I would.

14 THE COURT: When you are ready.

15 THE DEFENDANT: Your Honor, I appreciate the
16 opportunity to speak before the Court today. As you can
17 imagine, I am extremely nervous, as this is the single worst
18 day of my life. I sit here before you a man who is taking full
19 responsibility for my actions, and my inactions. The only
20 thing I can offer today is my own personal insight into these
21 matters, and I appreciate the opportunity to do so.

22 First, to the victims here today, and to those who
23 submitted their victim impact statements, I want to sincerely
24 express my deepest and most heartfelt apology. I read every
25 one of your letters several times, and I was both shocked and

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1 horrificed to learn how my actions have affected your lives. I
2 honor and embrace the truth in your words, and I stand here
3 today fully accountable for my failures as a fiduciary for your
4 hard-earned money. Over the three and a half years since my
5 arrest, I have learned the effects of my actions have had on
6 your families, and I will work every day from this day forward
7 to make amends, through restitution and positive action to
8 repay those debts and to somehow heal the wounds that I have
9 created.

10 Now to my family. I want to apologize to my wife
11 Alana and my two beautiful daughters for putting them through
12 this tortuous experience. If we have to spend time apart, I
13 realize my suffering will pale in comparison to what they will
14 experience in my absence, given the serious health concerns our
15 family is facing. I can assure my family and this Court, your
16 Honor, that I will not put my family or any other family
17 through this again. I will live humbly. I will work honestly
18 for a decent wage. And I will strive every day to do the best
19 for my family and to make restitution to the victims' families.
20 One day my two daughters will be old enough to read the
21 documents in these proceedings, and I want my wife and our
22 daughters to know that I will strive daily, I will work
23 tirelessly to not be the person described in those victim
24 impact statements.

25 I would like to take this time, your Honor, to thank

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1 my co-counsel, Florian Miedel and Christopher Madiou. I want
2 to personally acknowledge both gentlemen for their unwavering
3 support, their at times tough assessment of the case and their
4 at times very difficult assessment of the facts and of me
5 personally. The combination of the skill sets of Mr. Miedel
6 and Mr. Madiou provided me with superior counsel, a unique
7 friendship, and incredible support through such a highly
8 complicated case. And for that I am eternally grateful. I owe
9 them a debt of gratitude for shepherding me and my family to
10 this moment.

11 Thank you, your Honor, for allowing me to change
12 counsel back in January of 2020. It was a great decision, with
13 a very positive outcome for me and my family.

14 Your Honor, my arrest on May 16, 2018 was beyond
15 devastating for my family. On that day, our world came
16 crashing down around all of us. I was forced to face the stark
17 reality of my actions, and perhaps, more importantly, my
18 inactions regarding my project in Belize. Over the almost
19 three and a half years since my arrest, I have conducted a deep
20 and thorough forensic self-audit of my 11-year involvement in
21 the Belize project. The following is a brief summary of what
22 brought us to today.

23 In 2007, I flew to Belize and met Marco Caruso. We
24 became fast friends and close business partners. Together we
25 embarked on a country building project, the size and scope of

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1 which had never been done in the Caribbean Basin or in Central
2 America. The project included over a 2,000 acre master plan
3 development and infrastructure project, a privately owned
4 international airport, a 293 slip mega yacht marina, an over
5 1500 acre golf course development, power plant, water utility,
6 and an integrated construction company which was one of the
7 largest private sector employers in the country. Together,
8 Marco and I built and sold hundreds of condominiums,
9 single-family homes and lots, totaling over \$100 million over
10 the course of almost 11 years. Our real estate development
11 project was the biggest Belize had ever seen. In his annual
12 speech to the country, the prime minister of Belize referenced
13 our project as a cornerstone development in the country, with
14 the international airport as the key driver of expansion by
15 creating direct airlift from North America into the southern
16 portion of Belize.

17 In December 2014, the minister of civil aviation of
18 Belize, with the approval from the prime minister, officially
19 opened our airport for the CICA summit, which was hosted by the
20 prime minister at our Placencia resort. The opening of the
21 international airport allowed for dignitaries from Central
22 America and the Caribbean Basin, including the presidents of
23 Nicaragua, Costa Rica, and Guatemala, to fly into our airport
24 and land on the runway that Marco and I built together, the
25 runway we built with our money, our investors' money, and our

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1 tireless dedication over a decade.

2 This country building project we embarked on in 2007
3 was extremely exciting and very captivating. And unfortunately
4 it was for me all-consuming. And it was in that all-consuming
5 state of mind, that all-consuming state of operations where
6 Marco and I failed to deliver on our promise to our investors.
7 Marco's family and my family put everything we had into our
8 project, reinvesting over 90 percent of the \$100 million of
9 revenues back into our various projects to keep things pushing
10 forward, leveraging our own personal residences and everything
11 we had to keep the project alive through the various downward
12 cycles over the course of more than a decade.

13 Throughout those 11 years, we raised funds from
14 investors and took on debt to further our expansive development
15 mandate. Most of those funds have been paid back in full from
16 the revenues generated from hotel operations and real estate
17 sales. Marco and I structured a secured note product to allow
18 investors from the United States to loan us money to further
19 the projects, with the international airport as the top
20 priority. It is our actions around those investments for which
21 I sit before you today.

22 Through harsh self-evaluation and really brutal
23 introspection over the past three and a half years since my
24 arrest I have come to realize the extent of my failures around
25 this project and those investments. The notion that this

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1 project was simply a scheme to enrich, or a ruse to defraud
2 investors to pad our pockets, that notion simply could not be
3 farther from the truth. It is far, far more complicated than
4 that. The Placencia resorts and the various projects was an
5 overly ambitious country building project, driven by two men
6 who, with lack of foresight and perhaps lack of understanding,
7 had limited corporate governance and oversight.

8 I know now that Marco and I were the only ones driving
9 the projects forward. I know that we were so fixated on our
10 development mandate, on the overall success of the project,
11 that some of the safeguards fell by the wayside. We were so
12 desperate to keep the projects moving forward and as a result
13 took steps that hurt our investors. We rationalized our
14 actions as necessary for the betterment and furtherance of the
15 project. Perhaps with capable general counsel advising us
16 along the way we could have avoided some of these critical
17 mistakes, but we, now I, are ultimately responsible. While I
18 didn't appreciate what I was doing at the time, I now know I
19 made intentional decisions and errors in judgment while being
20 blind to the potential negative outcomes to investors.

21 Now I would like to speak to my efforts in Belize with
22 Copper Leaf, the largest victim in this matter, and their lead
23 counsel, Mr. John Quaranta. In his final letter to the Court
24 on September 20th, Mr. Quaranta acknowledged I have worked
25 tirelessly to ensure that all victims are made whole by way of

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1 obtaining an injunction in Belize to allow for a universal
2 settlement for all parties, not just a select few.
3 Unfortunately, we were not given the opportunity to get those
4 matters resolved prior to my sentencing today. But that does
5 not change the fact that 39 of the 40 victims have received
6 full restitution prior to my sentencing. And the notion that
7 we pitted victims against victims and are attempting to unwind
8 those transactions, again, that notion could not be farther
9 from the truth. There is no intention of unwinding the
10 transactions with Dyke Rogers and the other 39 victims. Our
11 strategy is simply and only to ensure Copper Leaf is made
12 whole, in addition to Dyke Rogers and his group.

13 My efforts with the largest victim and their counsel
14 is a reflection of my focus and commitment to make all victims
15 whole. I fully understand the implications of being sentenced
16 today in advance of the resolution of these matters in Belize.
17 After my sentencing today, I will continue to work tirelessly
18 to be a steward for all victims and all stakeholders in the
19 Belize project. Mr. Quaranta, Copper Leaf, and I will prevail
20 in the Belize matters. And to quote a statement in Mr.
21 Quaranta's letter, "Based on Caruso's and Dyke Rogers group's
22 own admissions, the property co-owned by Boreland is
23 sufficiently valuable to repay Copper Leaf and the other
24 investors." From this day forward, I will continue my tireless
25 dedication to ensure that all 40 victims are made whole with

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1 full restitution and zero loss.

2 In summary, on my best days, my career felt like a
3 feast of possibilities. I had the bold vision and the talent
4 to make great things happen. On my worst days, I played some
5 moments for a quick win just to keep the project moving in a
6 forward direction. Each person, each stakeholder, each
7 investor was one part of a master plan to create and to build
8 our massive project in Belize. In my core, I truly wanted
9 everyone to win together, but oftentimes used poor judgment in
10 that search to achieve that goal. As developers, Marco and I
11 had to sell the dream in order to make the dream come true. I
12 firmly believe that the Belize project will be successful in
13 the near future. Unfortunately, in this case, we jumped too
14 far out over our skis and crossed the legal line. For my
15 failure, I stand before you today.

16 Your Honor, I am responsible and fully accountable for
17 my own actions. I owed my investors complete honesty and
18 transparency. I owed my family a life of stability and peace.
19 With willpower and vision, I accomplished everything I ever set
20 my mind to. Now I must focus on atonement, healing, and
21 reconciliation.

22 Looking back with self-reflection, I recognize that I
23 survived multiple traumatic events throughout my life. I must
24 confront the way those experiences may have harmed my thinking,
25 may have harmed my judgment. With the shock of each event,

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1 perhaps my reflex for dissociation and denial grew stronger,
2 and the arc of my business career resulted in an all-consuming
3 obsession and drive to succeed. While I reflect on my actions,
4 I will focus on how I can heal my thinking. I must learn to
5 live with the truth no matter how painful.

6 I believe that my best acts of love and service are in
7 the future. I am determined to show my children how to accept
8 struggle with humility and courage. I want my daughters to see
9 me handle this extremely difficult moment with dignity and
10 grace. When my daughters tell their children about this
11 chapter in our family's story, I want that story to end with
12 togetherness, purpose, growth, and love.

13 This Court will decide how the legal process will end
14 for me. I fully understand the implications of the decisions I
15 made leading up to today. Your Honor, I will never return to
16 another courtroom as a criminal defendant. As you consider the
17 right punishment in this case, please have mercy on me and my
18 family.

19 Thank you very much, your Honor.

20 THE COURT: Thank you.

21 Mr. Boreland, if I could just ask one question as to
22 which I would like a little bit more clarification. Just a few
23 seconds ago you indicated, you had to sell the dream in order
24 to make the dream come true. I did not know in that, sir,
25 whether you were referring to representations that you made

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1 that turned out not to be true, whether it was a question of
2 the disposition of the assets that you did receive, or whether
3 you meant something else. So if you could just provide a
4 little bit of clarification on that point.

5 THE DEFENDANT: It was a reference to the overall
6 motivation that Marco and I had with the project, about selling
7 the dream of this country building project on a day-to-day
8 basis.

9 THE COURT: Mr. Boreland, and by the way, your counsel
10 will jump in if he finds the question inappropriate, earlier in
11 this proceeding you heard the government say that a reason they
12 believe that you were in charge here was that the money went
13 through your accounts and not through Mr. Caruso's.

14 Do you want to speak to that, sir, or not?

15 THE DEFENDANT: I would, your Honor.

16 In the last submission, we included two audits from
17 Deloitte Touche & Tohmatsu. Those two audits were completed by
18 an independent third-party auditing firm, and we had those
19 audits done on those two projects and three other projects in
20 the development. The two projects for the audits that you have
21 received are the two assets that are currently owned by Dyke
22 Rogers and the other, I believe, 38 victims. The total amount
23 invested into those two projects are in excess of 31 million
24 US.

25 Now, this is not an opinion of value. It's not an

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1 appraisal. It's an audit of the funds invested in those
2 projects. So I think the notion that this was a scheme to pad
3 our pockets and to further our lavish lifestyles, again, I
4 think that notion is off base and incorrect. The vast majority
5 of the funds in question in this matter, and throughout my 13
6 years doing business in Belize, have been invested in the
7 projects in Belize.

8 MR. MIEDEL: Your Honor, if I may just interrupt. I
9 think Mr. Boreland may not have understood your question
10 entirely.

11 THE COURT: Yes. My question was not as precise as it
12 could have been. So, Mr. Boreland, I will try again. Although
13 I do appreciate the answer you have just given me.

14 When I spoke with the government earlier in this
15 proceeding about Mr. Caruso and his absence from this
16 indictment, of course the government is not required to explain
17 to me the charging decisions it makes or does not make, or I
18 guess it makes by not making, but one thing the government
19 noted in distinguishing you from Mr. Caruso was that the funds
20 went through accounts that you controlled and that family
21 members also seemed to have written checks on or had some
22 access to. And I understood from Ms. Tekeei's comments that
23 Mr. Caruso did not have a similar tie to the money that was
24 received. You in your discussion with me this afternoon, your
25 statements to me this afternoon, have spoken about and

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1 consistently equalized yourself and Mr. Caruso. You have
2 indicated that you were equals in this. But did he also have
3 access to the money, or was that not the way in which you two
4 divided your work in this matter?

5 Mr. Miedel wants to speak first.

6 MR. MIEDEL: Let me take a stab at that first, and
7 then if Mr. Boreland has anything to add.

8 I believe that Mr. Boreland was in charge of the
9 investment vehicles Belize Investment Fund and BCG through
10 which the money was raised. And then that money was
11 distributed to his partner Caruso in Belize to do the
12 development, pay the contractors, pay the builders, work out
13 fees for the Belizean government, that sort of thing.

14 So in the first instance, I think the money came in
15 through those investment vehicles, but it was then distributed
16 to Mr. Caruso in Belize.

17 THE COURT: Thank you.

18 Mr. Boreland, is that your understanding as well?

19 THE DEFENDANT: With respect to the indicted matter,
20 that is correct. I would say that over 85 percent of the funds
21 in the indicted matter went into the projects in Belize. And
22 discovery in the lawsuits in Belize, the matters that are in
23 Belize, will uncover that and prove that out.

24 With respect to the Canadian component of this, I
25 believe that the dynamic was mischaracterized. There were

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1 escrow agents that were set up to handle the Canadian's funds.
2 So if a Canadian family, let's say, put a \$50,000 deposit on
3 the purchase of a piece of real estate, that 50,000 was sent to
4 an escrow agent, and then my company, pursuant to the contracts
5 between Canyon Acquisitions as the real estate broker and each
6 individual buyer, received a real estate commission, which was
7 clearly outlined and clearly acknowledged by both the Canadian
8 client as well as Canyon, as well as Marco Caruso as the
9 developer. So the entire Canadian, I won't use the word
10 scheme, I will use the word dynamic, Marco Caruso was the
11 mastermind. Marco Caruso received over 90 percent of the funds
12 during those years. I was merely a real estate broker, and I
13 subsequently became his partner after time.

14 So, again, the matters with Mr. Quaranta and Copper
15 Leaf will unveil, through discovery of a number of corporate
16 bank accounts, and will support all of this.

17 THE COURT: Thank you.

18 Mr. Miedel, having now heard from your client, is
19 there anything you wish to say to me before I step off of this
20 conference for a moment to think about my sentence?

21 MR. MIEDEL: Your Honor, when Mr. Boreland was
22 referring to the audits, Deloitte Touche audits, he may have
23 misspoken about the years. I think they are clear from what we
24 provided the audits covered 2011 through 2013.

25 THE COURT: Yes, I did understand that. Thank you.

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1 Ms. Tekeei, now that you have heard everything, I just
2 want to get my parting words from everybody before I retire for
3 a few moments to think about this sentence.

4 Ms. Tekeei.

5 MS. TEKEEI: Your Honor, I just wanted to flag the
6 same issue that Mr. Miedel flagged, which is that the audits
7 that Mr. Boreland referenced in 2011 through 2013 are
8 financials that related to 2011 through 2013, whereas the
9 charged scheme in this case took place from 2014 through 2018.

10 MR. MIEDEL: Your Honor, I think that the point was
11 simply that an audit from, admittedly, 2011 to 2013 showed that
12 there was significant investment in those very properties that
13 Dyke Rogers and his group of investors now have.

14 THE COURT: Thank you.

15 I am going to ask for everyone's patience.

16 Mr. Boreland, were you here in person, you would see
17 that I would be stepping off the bench in the courtroom and
18 going into a robing room, because it is very important to me
19 that I do not have a preconceived idea of sentencing when I
20 begin the process. It is important to me to read everything,
21 but to wait until I hear from everyone before making a decision
22 about sentencing. If you were here, you would see that I have
23 many, many pages of pad with the statements everyone has said
24 to me today. I am going to need a bit of time to think about
25 it. What I am going to ask is, I am going to turn off my

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1 camera and microphone for a few minutes. It will probably be
2 about five or ten minutes that I will be away. If anyone needs
3 to stretch his or her legs, use the facilities, whatever,
4 please do that now. When you are all back and I am ready, I
5 will go on. But I want to emphasize -- and Mr. Miedel and Mr.
6 Madiou are both aware of this -- Mr. Boreland, I am not doing
7 this heighten your anxiety. I am doing this because I believe
8 that the fairest thing is to hear from everyone.

9 Now, I am getting an indication on my
10 videoconferencing platform of a hand being raised, which means
11 that an individual participating by phone wishes to be heard.
12 I know that the area code begins with 301. May I first
13 understand who the person is. You may unmute yourself and
14 speak.

15 Sir, I cannot hear you.

16 MR. COMET: Hello, your Honor. Can you hear me?
17 Thank you very much, your Honor.

18 THE COURT: Who are you, sir?

19 MR. COMET: My name is Edwin Comet. I am the director
20 of the US Justice Coalition. I am also the individual that did
21 supply you with a letter at one point in this process with
22 regard to the Canadian investors.

23 THE COURT: Mr. Comet, if you were on video, you would
24 see and the parties can see that I am holding a letter from you
25 from August 20th of last year.

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1 MR. COMET: Yes, ma'am.

2 THE COURT: Mr. Comet, do you wish to speak as a
3 victim in this case or is there something else?

4 MR. COMET: If allowed, I would just be making one
5 point on behalf of the victims that our organization has
6 attempted to represent.

7 THE COURT: I will hear from you now, sir.

8 MR. COMET: Thank you.

9 Mr. Boreland was speaking just a moment ago in
10 reference to the fact that moneys that ran through Canyon
11 Acquisitions was in fact funneled through an escrow agent,
12 which was an attorney that was, as far as we can tell, employed
13 by Mr. Boreland, to receive the vast majority of the funds. So
14 that was correct. That would be Mr. Holliday.

15 We contacted Mr. Holliday on numerous occasions. He
16 has been less than cooperative. But the one comment that Mr.
17 Boreland made that I found interesting was that he indicated
18 that he was telling those over \$50 million worth of investments
19 to unaccredited, generally elderly investors, but not always,
20 that he has just received a commission or a broker's fee and
21 then all the money from Mr. Holliday was then transferred to
22 Marco. In all of the contracts that I reviewed, and I reviewed
23 many, and all of the folks that I interviewed, which were many,
24 and my background as criminal law enforcement for several
25 decades, not one person was aware, that I spoke with, or any

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1 information I read, that Mr. Boreland simply took a small
2 commission as a broker and that all of the money went to Marco
3 Caruso.

4 So, obviously, it's a lot deeper than that, and I
5 think I pointed out all the points within my letter, but I just
6 wanted to make that one point.

7 THE COURT: Mr. Comet, thank you very much.

8 Mr. Miedel, I don't know if there is anything you wish
9 to respond to, but I will give you that opportunity if you
10 would like to respond, sir.

11 MR. MIEDEL: No, I don't think so. Thank you.

12 THE COURT: Ms. Tekeei, the same question.

13 MS. TEKEEI: No. Thank you, your Honor.

14 THE COURT: I thank you.

15 And let me just pause for a moment to thank very much
16 our court reporter who is doing a wonderful job.

17 I am going to step out of the platform for a few
18 minutes, and I will come back when I can. I thank you very
19 much.

20 (Recess)

21 THE COURT: Thank you very much for your patience.

22 Ms. Noriega, I am noting that, from my
23 videoconferencing platform, there appears to be another hand
24 raised. Is that correct?

25 THE DEPUTY CLERK: The last four digits of that phone

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1 number is --

2 THE COURT: The last four digits are?

3 THE DEPUTY CLERK: 8075.

4 THE COURT: May I ask the person who has indicated a
5 raised hand in this conferencing platform to identify him or
6 herself, please.

7 Please excuse me. You remain muted.

8 MS. JORDAN: Hello.

9 THE COURT: Who is speaking, please?

10 MS. JORDAN: Ms. Jordan.

11 THE COURT: Ms. Jordan, did you in fact intend to have
12 your hand raised in this videoconferencing platform?

13 MS. JORDAN: Yes, it would be possible.

14 THE COURT: Ms. Jordan, do I have your name correctly?
15 Ms. Jordan?

16 MS. JORDAN: Yes.

17 THE COURT: I am Judge Failla. May I ask how you are
18 involved in this case.

19 MS. JORDAN: We invested in 2008 with Mr. Boreland
20 when he was at Canyon Acquisitions in a project in Dominican
21 Republic. And in 2012, when Mr. Boreland tried to settle with
22 Ontario Security Commission, we got converted from Dominican
23 Republic in a project in Belize, where we got three lots,
24 deeded lots. That was the settlement requirement to convert
25 and to have deeds because we did not qualify for this

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1 investment. We received this new contract and we had three
2 dates in the contract to be paid back in a year. After two
3 years, 110,000 each year, up to three years to 330,000.

4 When the time came and we supposed to receive our
5 first deposit, we talked to Mr. Boreland and he promised he
6 will get money from China, from here, there, he delayed it,
7 until three years went by and we never got any of the 110,000
8 each year. Then we took legal action in Belize because there
9 was our lot, and we found out from our lawyers they did not own
10 any of those lots, one of them didn't exist and the other two
11 lots were owned by somebody else.

12 Then we took legal action against Boreland, the
13 company, and Marco Caruso. Mr. Boreland never showed up. He
14 didn't do a defense. So we have a default judgment against
15 him. And we sent him the default judgment to pay us. He said
16 we are fraud and he never intended to pay us. We invested from
17 2008 and we still never saw a penny. And we have a default
18 judgment. We don't have any lots, what he put in the contract.
19 And we talked to Ontario Security Commission and they said we
20 supposed to have those deeded lots. And we never had them and
21 he never paid us, he never intended to pay us.

22 Our life was pretty much destroyed. We took a
23 mortgage out on our house. Since then we have been paying the
24 mortgage, and he said we had the plot. I just wanted to say my
25 say, you know, that happened to us. And even with a default

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1 judgment against him, he never wanted to pay us, and still he
2 doesn't want to pay us.

3 THE COURT: Thank you, Ms. Jordan, for letting me know
4 that. It does sound to me as though this is an investment
5 opportunity that is different than the one that is in my case,
6 but I do appreciate that you want me to know that because you
7 want me to have an understanding of your dealings with Mr.
8 Boreland. So thank you for telling me that, and the parties
9 are aware of that as well.

10 I wanted to speak with counsel before imposing
11 sentence about an issue, and it was the reason why I was
12 offline or away from you for so long. I am not sure. I may
13 have misconstrued the through line, if there is one, between
14 the Canada issue and the charged conspiracy in this case. I
15 understood, because the parties were agreeing to a modified
16 version of paragraph 47, that the parties were agreeing that
17 there was something that appeared to be fraud from 2007 through
18 2010 in Canada through the Canyon Acquisition entity. And the
19 issue, counsel, is this:

20 In listening to Mr. Boreland this afternoon into
21 evening, I thought I heard him say -- and maybe I am not
22 understanding this, maybe I am just telescoping facts -- I
23 thought I heard him to say, in substance, that from 2007 to
24 2010, the issue in Canada involving Canyon Acquisitions, he was
25 working with Mr. Caruso in a subordinate capacity by which he

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1 basically was paid a commission. But then, by the time we got
2 to the fraud that brings us here today, the Placencia matter,
3 he had perhaps a superior position.

4 And so I am trying to understand, and Mr. Miedel, I am
5 going to ask you, and then I am going to ask Ms. Tekeei, is the
6 argument here, Mr. Miedel, that I should look at Canada as a
7 dry run for the charged securities fraud in this case or that
8 somehow Mr. Boreland learned how to commit a fraud by working
9 with Mr. Caruso, or do you want me to consider these two
10 matters in a related capacity, or do you want me to
11 disaggregate them, and if so, why?

12 Mr. Miedel, I ask you first, and then I ask Ms.
13 Tekeei.

14 MR. MIEDEL: I think what we are going to need to do
15 is have a brief conversation with Mr. Boreland in light of the
16 statements he made to you at sentencing. I think we need to
17 discuss that briefly before I can answer your question.

18 THE COURT: All right. Mr. Miedel, I hope I am being
19 clear, and I think you know what I am talking about. Mr.
20 Boreland recounted his relationship with Mr. Caruso over a
21 period of time, and when referring to Canyon Acquisitions, the
22 suggestion was he was just getting a commission. But by the
23 time of this matter, he was the one in charge of the bank
24 accounts through which the money was flowing. So to the extent
25 he was suggesting that he was learning at the feet of Mr.

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1 Caruso, I would like to know that. I also want to know, are
2 you, my defense team, conceding that the conduct alleged in
3 paragraph 47 is fraudulent? And if so, if so, how do I
4 consider it in connection with the remainder of this case?

5 I will let you think about that. I already know that
6 you want to speak to your client about that.

7 Ms. Tekeei, do you want to be heard on this issue or
8 do you want to wait until you hear from Mr. Miedel?

9 MS. TEKEEI: Your Honor, I think it's prudent to wait
10 until we hear from the defense team.

11 THE COURT: All right.

12 By the way, counsel, I am specifically addressing this
13 to counsel, if I misunderstood what Mr. Boreland was saying, or
14 if I have read too much into what he was saying, please tell me
15 that. But I have got notes aplenty of the history of his
16 relationship with Mr. Caruso, and that was what I was
17 understanding, that in the beginning there was Caruso and he
18 was in charge, and now, when it came to this later matter, Mr.
19 Boreland had either equality or primacy. And it matters to me.
20 And I also want to understand, because in speaking with Ms.
21 Tekeei earlier she reminded me that the parties had stipulated,
22 or had agreed, to paragraph 47. Paragraph 47 to me sounds in
23 fraud, and it sounds in a different fraud than the fraud that
24 was charged in this case. And so, if you don't mean that, then
25 I want to know.

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1 Mr. Miedel, Mr. Madiou and Mr. Boreland, I understand
2 you want to be put in a private room to speak.

3 Ms. Noriega, is that a thing that can be done?

4 She advises me that it can. She is just having
5 difficulty unmuting because, of course, we have technical
6 issues. Since she understands this process, and I do not,
7 let's wait for a moment while she places you into a private
8 room.

9 Mr. Miedel, would you be able to either call our
10 chambers' number or e-mail Ms. Noriega just to let her know
11 that we should take you out of the private room?

12 MR. MIEDEL: I will do that. I will e-mail her.

13 MS. TEKEEI: Your Honor, while we are waiting for this
14 moment, one thought did occur to me to just flag for the Court.
15 This may be something that counsel already have in mind and may
16 want to consider. I recall many of the letters from the
17 victims of the Canadian scheme describing representations and
18 misrepresentations made by Mr. Boreland directly to them in
19 connection with that scheme. And that is what drove the
20 government's interest in reaching that stipulated paragraph
21 with Mr. Boreland and what the government has in mind when the
22 government considers Mr. Boreland's role in that scheme.

23 THE COURT: All right. They are aware of that.

24 Now I am understanding that, Ms. Tekeei, the last
25 thing you said may -- I see that they have heard it. I was

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1 under the impression that Mr. Miedel, Mr. Madiou and Mr.
2 Boreland were being moved. So they have heard you and they
3 will do what is appropriate. I see the nods.

4 (Recess)

5 THE COURT: Counsel, thank you very much.

6 Mr. Miedel, is there something you would like me to
7 know?

8 MR. MIEDEL: Yes, your Honor, although I don't see Ms.
9 Tekeei.

10 THE COURT: I see her.

11 MR. MIEDEL: As long as you see her, that's fine.

12 THE COURT: And she is smiling, so I think she is
13 hearing you.

14 MR. MIEDEL: Perfect.

15 Thank you for indulging us.

16 So to clarify, first of all, as Ms. Tekeei stated, the
17 parties agreed and stipulated to paragraph 47 of the
18 presentence report, and we stand by that.

19 To explain a little bit further, Mr. Boreland was
20 essentially the real estate agent for the development that was
21 going on in Belize that was conducted by Marco Caruso. As part
22 of raising funds for that development with the Canadian
23 investors, Mr. Boreland obtained commissions that were paid,
24 and I think those commissions and the extent of those
25 commissions were not spelled out to the investors in the way

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1 that they should have been, and so there were
2 misrepresentations or material omissions made in some of the
3 presentations there, which is the conduct that is --

4 THE COURT: Sir, I will just ask you to slow down a
5 little bit. I am trying to take a lot of notes.

6 MR. MIEDEL: So when we are talking about the conduct
7 that's discussed in paragraph 47, that's what we are talking
8 about, was some of the material omissions or misstatements that
9 Mr. Boreland made to investors in Canada in the process of
10 being the broker, the agent for Marco Caruso.

11 THE COURT: OK. And those investments included not
12 representing, perhaps, the commissions that he might be
13 receiving or how he might be receiving commissions?

14 MR. MIEDEL: Correct.

15 THE COURT: Thank you.

16 Mr. Miedel, do you want to continue? Is there a
17 connection or have I misperceived the history that Mr. Boreland
18 recounted of his dealings with Mr. Caruso? I am asking in
19 particular of whether there is a connection or a through line
20 between this conduct involving Canyon Acquisition and then the
21 more recent conduct charged in the indictment.

22 MR. MIEDEL: Well, there are certain similarities,
23 obviously, because we are talking about Mr. Boreland and Mr.
24 Caruso, we are talking about the leads, but they were different
25 projects altogether. And at the time of the Canadian

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1 investment situation, Mr. Boreland and Mr. Caruso were not yet
2 partners. That happened at the conclusion of that matter, I
3 think not formally until 2010 or so. So there is certainly
4 overlap, but I think that it is not in the direct through line.

5 THE COURT: All right.

6 Mr. Boreland is not suggesting that the Canyon
7 Acquisition was some sort of test run or proving ground or
8 something of that nature?

9 MR. MIEDEL: No, your Honor, definitely not.

10 THE COURT: Or that he learned about committing a
11 fraud from his work on Canyon Acquisition?

12 MR. MIEDEL: No, your Honor.

13 THE COURT: Ms. Tekeei.

14 MS. TEKEEI: I don't have anything to add to that,
15 your Honor.

16 THE COURT: Thank you.

17 I appreciate the clarification. I think that is
18 useful to me.

19 Let me do this. You're seeing me move a bit around
20 this afternoon. It's because I have my notes in so many
21 locations and I will be trying to refer to all of them. Let me
22 describe the sentence that I intend to impose, but I will give
23 each side an opportunity to make legal objections before the
24 sentence is actually imposed.

25 In imposing sentence today, I have considered, as the

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1 parties have suggested to me I consider, certain factors set
2 forth by Congress in Section 3553(a) of Title 18 of the United
3 States Code. These factors include the nature and
4 circumstances of the offense, the history and characteristics
5 of Mr. Boreland, the need for the sentence imposed to reflect
6 the seriousness of the offense, to promote respect for the law,
7 to provide a just punishment for the offense, to afford
8 adequate deterrence to criminal conduct, to protect the public
9 from further crimes by Mr. Boreland, to provide him with needed
10 educational and vocational training, medical care, or other
11 correctional treatment in the most effective manner. I must
12 consider the sentencing guidelines, and I will speak about them
13 momentarily. I must consider the need to avoid unwarranted
14 sentence disparities among similarly situated defendants. And
15 I must consider the need to provide restitution to the victims.

16 My guidelines calculations actually replicate those in
17 the presentence investigation report, and that is because the
18 parties have submitted a restitution order to me that has a
19 higher actual loss figure than the parties initially understood
20 it to be. And that loss figure does, in fact, cross the
21 threshold for a 22 level specific offense level adjustment.
22 But I want to be clear, and I don't think the parties will be
23 surprised by this, I am varying downwardly from the guidelines
24 range. So whether the guidelines range was, as the parties
25 have stipulated, 121 to 151 months, or whether it was, as I am

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1 about to find, 151 to 188 months, I would still be imposing the
2 same sentence.

3 So the base offense level here under guideline section
4 2B1.1 is 7. There is a 22-level enhancement for loss figure.
5 There is a four-level enhancement for the number of victims, a
6 two-level enhancement for sophisticated means and commission of
7 conduct outside of the United States. There is a two-level
8 role enhancement. And that yields an adjusted offense level of
9 37. With three levels of acceptance credit, the finally
10 adjusted offense level is 34. Mr. Boreland has no criminal
11 history points and is in Criminal History Category I. His
12 resulting guidelines range is 151 to 188 months. But as I have
13 just mentioned to the parties, it is my intention to vary
14 downward. I know the government has requested a guideline
15 sentence. The probation office has also requested a guideline
16 sentence. And the defense has asked for a significant downward
17 variance.

18 So let me then, please, explain my thoughts on
19 sentencing. And as I hope is clear from the length of our
20 discussions this afternoon, and from the amount of briefing and
21 discussion that we have had, I have thought a lot about
22 securities fraud cases generally and this one in particular.
23 And as I think Mr. Miedel and Ms. Tekeei noted at the beginning
24 of the sentencing, and in the most recent defense submission,
25 the parties have very different views about what Mr. Boreland

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1 did and why. And so I reflected on my own experience as a
2 prosecutor of securities fraud cases and then as a judge
3 presiding over such cases. And in my own experience, it is
4 rarely the case that someone constructs an investment vehicle
5 solely for the purposes of stealing investment funds. And more
6 often than not what I have found is that folks have great ideas
7 or great ambitions, and at times of trouble, corners are cut,
8 statements are made that are less than true, efforts are
9 undertaken to try and preserve the investment vehicle. And
10 when the investment fails, if it does fail, these failures,
11 these misrepresentations, these material omissions then come
12 out. And so, I don't think this is the case that Mr. Boreland
13 woke up one morning and said today I shall develop a scheme to
14 steal investor funds. And I disagree in part with the
15 government's suggestion that certain investments that were
16 done, certain expenditures that were made were really done more
17 as window dressing.

18 But all of that said, there are things in which the
19 parties agree. There was a fraud. It took place over a series
20 of years. There are many investors who were left in either
21 diminished or dire economic straits, and millions of dollars
22 were lost, and all of that is significant.

23 There are a number of arguments that have been
24 presented to me, and there are some that I don't find as useful
25 or as moving as other arguments. For example, to the extent

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1 the argument was made that Mr. Boreland thought the collateral
2 would be enough to cover even multiple pledges, I don't find
3 that persuasive, because if he really had believed that, he
4 could have told investors just that. He clearly understood
5 that it was preferable to his investors that they believed that
6 property was pledged as collateral for their loan and no
7 others.

8 I also accept that Mr. Boreland may have spent years
9 of his life and much of his own money to try and keep this
10 dream alive, but there remains the fact that he did take
11 significant amounts of the proceeds from investors and spent
12 them on himself and his family.

13 There has been a lot of argument about Mr. Caruso's
14 absence from this particular indictment. And what I will say
15 is, if I see him, I will address him. I don't see his absence
16 as a basis for some sort of discount. And I sense that the
17 scheme with which Mr. Boreland has been charged, his
18 involvement is less.

19 There have also been a lot of post-arrest developments
20 that have been called to my attention. I don't know that Mr.
21 Boreland is, in fact, blaming the victims for engaging in
22 self-help in trying to get things. I don't think that is
23 correct. And Mr. Madiou is shaking his head to confirm my
24 understanding. But I understand why victims feel as though
25 they are without options, and I don't begrudge them for their

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1 efforts on both sides of the V, it would appear, to try and
2 make themselves whole.

3 Mr. Madiou and Mr. Miedel have, as Mr. Boreland noted,
4 done an excellent job. Although I also thought that the
5 federal defenders did an excellent job. But there are many
6 sentencing arguments that were made and they assist me in
7 presenting Mr. Boreland as a person with many layers. And so,
8 many of the arguments, and I will be discussing some of them,
9 have landed with me. Some of them have landed perhaps a little
10 bit less well or perhaps a little bit more neutral. I do
11 understand the Second Circuit cases speaking of loss as an
12 imperfect proxy under the guidelines. I agree with them to a
13 point, although I find them less useful where the loss took
14 place over a period of years. Cases like *Adelson* was more of a
15 one-shot loss of market capitalization, which I think is quite
16 different from what is going on here.

17 Separately, I respect and understand your argument
18 about jail conditions, and I think, Mr. Miedel, you refined it
19 in a very helpful way in this proceeding. I have reduced
20 sentences for those folks who have been serving during the
21 pandemic because their conditions have been qualitatively
22 different. They have been deprived of programming. They have
23 had 23-and-a-half-hour lockdowns. And I think that is much
24 more than I ever intended. Here, we have a different
25 situation, as Mr. Boreland has not spent significant time in

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1 jail. I do, however, understand Mr. Miedel's argument that
2 going forward while there is a pandemic, the conditions of
3 confinement will be different. Perhaps not of the same degree
4 as the folks who have been suffering lockdown for the last year
5 and a half, but I do understand that.

6 And I have been thinking a lot about the arguments
7 about the assistance to Copper Leaf. Ultimately, having heard
8 and read the statements of all of the victims, I find that is a
9 neutral factor. I understand it as an argument for contrition
10 and rehabilitation and atonement, but I am also concerned about
11 picking one side in this. And though I do understand the
12 arguments why you believe picking one side will help all sides,
13 I am just not sure that I can accept them, and so I found that
14 a neutral factor.

15 One thing that I have been thinking about while away
16 from this platform was Mr. Boreland's statement to me, which
17 was quite articulate and quite revelatory. But what is
18 interesting to me is that there is a degree to which there
19 remains this romantic vision of the Belize project. It was, at
20 least at some point, sir, a source for you of great pride.
21 There were developments and there was recognition that you
22 received, and even in your forensic self-audit, there is still
23 a tremendous romanticism that attends to this project. And I
24 don't think that romanticism extends to the victims in this
25 case. I do hope that they received some peace from your

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1 statements to them about your attention to their victim impact
2 statements and your attention to their losses. But I suppose,
3 in listening to you wax eloquent about this Belize project, I
4 can understand how easy it was for you to engage in conduct to
5 try and keep it alive.

6 I do, with respect to that, however, find it
7 noteworthy, if not troubling, that you repeatedly said to me
8 today that you ascribed greater significance to your inaction.
9 Because, to me, it's your actions that bring you here and not
10 your inactions. There were also other statements that gave me
11 pause. A suggestion that you might have avoided all of this
12 with a capable general counsel. The suggestion that safeguards
13 fell by the wayside. The suggestion that somehow this was a
14 failure or deficiencies of corporate governance knowledge, or
15 that you got ahead of your skis. I disagree with almost all of
16 that because you don't need a general counsel to tell you not
17 to lie to people, you don't need a general counsel to know
18 that, if you pledge a security, you can't tell people that you
19 haven't pledged a security. And so I find that there is still,
20 even in your efforts to understand what you did, and to
21 communicate to me what you did, there is still not a
22 full-throated acceptance of responsibility. And that is
23 disappointing, but it is factual.

24 Mr. Miedel said to me earlier that we all agreed that
25 there was a need for punishment, and the question was what is

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1 necessary in light of all of 3553(a) factors, including, in
2 particular, what the lawyers know is its parsimony provision,
3 that it be sufficient, but no greater than necessary. And so
4 the arguments that I have thought about from the defense that
5 did land were arguments about Mr. Boreland's upbringing and his
6 family circumstances, the health issues of himself and of his
7 family, his desire to pay back the victims and to work to pay
8 back the victims, and arguments that I think I understood the
9 defense to be making that deterrence, both specific and
10 general, could be served by a lesser sentence in this case.

11 I have also, and this is something that I focus on a
12 lot, I focused on 3553(a)(6). And when I speak about
13 unwarranted sentence disparities, I think about other folks I
14 have sentenced, other sentencings that I have reviewed in
15 written opinions that I have seen in my work, and so I have
16 tried to contextualize Mr. Boreland with other folks whom I
17 have sentenced.

18 So recognizing that the guidelines range is 151 to 188
19 months, I am varying downward to a term of 84 months'
20 imprisonment. And I will order that that term of imprisonment
21 be followed by term of supervised release of three years with
22 the mandatory, standard, and special conditions that are
23 outlined in the presentence investigation report. I am
24 ordering restitution in the amount of \$26,184,970. And I am
25 ordering forfeiture in the amount of \$26,584,970.

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1 Now, I want to be clear because I am aware that I have
2 two counts here. Count One has a five-year statutory maximum,
3 and so I will be imposing the 60-month term on that. On the
4 second count, I am imposing a concurrent term of 84 months'
5 imprisonment, and that is how I am getting to that. I am
6 ordering concurrent terms of three years of supervised release.
7 And I am ordering, as I must, a special assessment of \$200. I
8 am not imposing a fine given the existence of a significant
9 restitution obligation and a significant forfeiture obligation.

10 And I am realizing as I am talking to you that there
11 are actually three counts, Ms. Tekeei. Am I not correct?

12 MS. TEKEEI: Yes, your Honor.

13 THE COURT: Excuse me, please. My math skills are
14 suspect this afternoon. I will apologize.

15 On Counts Two and Three, it is 84 months. On Count
16 One, it is 60 months. There are three years' concurrent
17 supervised release on all counts. And a \$300 special
18 assessment because there are three counts and not two.

19 I still believe, however, that I may do this as I have
20 set forth.

21 Ms. Tekeei, are there legal objections to the sentence
22 that I intend to impose?

23 MS. TEKEEI: No, your Honor.

24 THE COURT: Thank you.

25 Mr. Miedel, we will talk momentarily about various

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1 recommendations, but are there legal objections to the sentence
2 I intend to impose?

3 MR. MIEDEL: No, your Honor.

4 THE COURT: Then, Mr. Boreland, after considering all
5 of the factors set forth in Section 3553(a), and all of the
6 factors that make up you and that make up the conduct in this
7 case, I find that an aggregate term of 84 months' imprisonment
8 is sufficient, but not greater than necessary, to comport with
9 all of the purposes of sentencing. That will comprise a
10 60-month term on Count One and concurrent terms of 84 months on
11 Counts Two and Three. I am ordering concurrent terms of
12 supervised release to follow with the mandatory, standard, and
13 special conditions that we have spoken about earlier. I am not
14 ordering a fine, but I am imposing restitution in the amount of
15 \$26,184,970, and forfeiture in the amount of \$26,584,970. I am
16 also imposing a \$300 mandatory special assessment.

17 Mr. Boreland, do you understand?

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

19 THE COURT: Mr. Boreland, I am going to speak with
20 your counsel in a moment about various recommendations, but
21 before I do that, I want to make sure that I advise you of your
22 appellate rights. You have the right to appeal from your
23 conviction and from your sentence. And if you wish to file a
24 notice of appeal, please speak with either of your counsel.
25 They are each familiar with the process for filing a notice of

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1 appeal. Generally speaking, you have two weeks from the date
2 the written judgment is entered. It might be entered tomorrow.
3 It might be entered earlier next week. But I want you to be
4 aware of that. But again, if you're interested in appeal,
5 please speak with your counsel. They are familiar with the
6 process.

7 Mr. Miedel, let me hear from you about several issues,
8 sir. I would like to hear from you first about a place of
9 designation. I understand that you are asking me, I believe,
10 for a recommendation for the RDAP program, residential drug
11 abuse program. And I will hear from you about a projected
12 surrender date or whether you and the government would agree to
13 a control date so that we can understand and monitor Mr.
14 Boreland's health issues and his eligibility for a vaccine.

15 MR. MIEDEL: First, as to designation, we would ask
16 that you recommend to the Bureau of Prisons that Mr. Boreland
17 be designated to FCI Miami, which is a low security -- assuming
18 Mr. Boreland qualifies for that, which we expect he would --
19 facility as close to his current home and his family as
20 possible.

21 THE COURT: Mr. Miedel, just because I have had
22 situations where the first choice is not available, failing
23 that, should I ask for anything in the Southern District of
24 Florida?

25 MR. MIEDEL: Yes.

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1 THE COURT: I will do that, sir. Because I would hate
2 for your client to end up in another part of the country.

3 MR. MIEDEL: Of course.

4 THE COURT: Are you continuing, sir, with your request
5 for a RDAP recommendation?

6 MR. MIEDEL: Yes, we are. Thank you.

7 THE COURT: I see that there is a record in the PSR
8 for making such a recommendation. Of course, the Bureau of
9 Prisons will make the decisions that it makes.

10 Mr. Miedel, and then I will turn to Ms. Tekeei,
11 thoughts on a surrender date.

12 MR. MIEDEL: Yes, your Honor. We have talked about
13 this sort of extensively, and what we would like to request
14 is --

15 THE DEFENDANT: Sorry. My battery is going dead.

16 THE COURT: That's understandable, sir. Let's wait
17 for a moment until you begin the recharging process.

18 THE DEFENDANT: Please, go ahead.

19 MR. MIEDEL: We would like to ask for a surrender date
20 to the designated facility at the beginning of January of 2022.
21 Hopefully, that amount of time will allow Mr. Boreland to both
22 learn more about his medical condition and also receive the
23 vaccine so that he can be properly prepared for his arrival at
24 the facility. If something, obviously, significantly changes
25 in terms of his medical condition that we need to discuss with

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1 the Court, we will reach out and discuss it, but that's our
2 preference at this point.

3 THE COURT: OK. Thank you.

4 Ms. Tekeei, I wouldn't think that you would have an
5 objection to the designation, I don't know that the government
6 has a position with respect to the RDAP recommendation, and I
7 would like your position with respect to the surrender date.

8 MS. TEKEEI: You are correct as to the designation and
9 as to the RDAP recommendation.

10 With respect to a surrender date, your Honor, we have
11 received only the medical records that the Court has also
12 received, and we do not think that Mr. Boreland is situated to
13 have a surrender date set three months from now without
14 providing further timely updates to the Court. We would
15 request a surrender date within 30 days with an update as to
16 Mr. Boreland's medical condition and his ability to receive the
17 vaccine, if that is something that the Court is considering and
18 concerned about prior to his entry into a BOP facility.

19 THE COURT: Yes. Ms. Tekeei, my response to that, and
20 consider this a friendly amendment, is that my own experience
21 with designations these days is that they are taking 60 days to
22 designate. Perhaps you are seeing it differently. But for the
23 defendants I am sentencing, it is taking that amount of time to
24 actually get a designation. So do you have different
25 experiences?

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1 MS. TEKEEI: Your Honor, I can't say that our
2 experiences have been different. I think it does depend on the
3 case, and I think it depends on whether the defendant is
4 already incarcerated and in the system. If it is the Court's
5 experience that it will take 60 days anyway for Mr. Boreland to
6 be designated, we certainly defer to you. You have done more
7 sentencings in this era than I certainly have. However, I do
8 think that the update on the medical records is warranted.

9 THE COURT: Mr. Miedel, I am willing to go out the
10 three months, but I am, first of all, accepting some of your
11 statements as an officer of the court. But I agree with the
12 government that I would like -- and it can be sealed, and I
13 think Ms. Tekeei would even let it be ex parte if you could
14 give me some substantiation for the issues that you are
15 raising.

16 Ms. Tekeei, I don't want to speak for you, but if it
17 is sufficiently sensitive that they would just like to send it
18 to me, would you have an objection to my receiving it ex parte?

19 MS. TEKEEI: Your Honor, I am thinking back to a
20 couple of other cases in which defendants have raised medical
21 issues in connection with sentencing and requested delayed
22 surrender dates in those cases, and the medical issues vary
23 from, I think, much more serious to far less serious. Defense
24 counsel and the defendants have had no problem copying the
25 government on correspondence containing the medical records so

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1 that we can review them and assess them as well. Again, we
2 defer to the Court, but in my experience, we have been
3 receiving the medical records without objection from counsel.

4 THE COURT: Mr. Miedel, I would like some
5 substantiation. You can file it under seal.

6 MR. MIEDEL: Thank you, your Honor.

7 Also, I would just note my experience, too, tells me
8 that oftentimes it takes up to 60 days for people to be
9 designated. That alone would take us into early December.
10 There is the issue of, once Mr. Boreland receives whatever
11 notice or notification about his medical condition that he
12 receives in the next week or so, the process of vaccination and
13 the holidays. All of that makes an early January surrender
14 date I think reasonable and appropriate.

15 THE COURT: And I am agreeing with you, sir, so long
16 as we receive some substantiation. Obviously, and I think it
17 goes without saying, we hope that the results of the tests that
18 your client is receiving are positive and beneficial, but yes,
19 I still think an early January date makes sense. If there are
20 problems, you all will tell me what the problems are.

21 Otherwise, I will recommend designation to FCI Miami or,
22 failing that, a facility of similar or appropriate security in
23 that area. And I will recommend placement in the RDAP program.

24 Ms. Tekeei, my understanding is that, given that this
25 was done without a plea agreement, there are no open counts or

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1 underlying charging instruments. Am I correct?

2 MS. TEKEEI: Yes, your Honor.

3 THE COURT: From your perspective, Ms. Tekeei, is
4 there anything else to address in this proceeding?

5 MS. TEKEEI: No, your Honor.

6 THE COURT: Mr. Miedel, is there anything else from
7 your and your client's perspective to address in this
8 proceeding?

9 MR. MIEDEL: No, your Honor. Thank you.

10 THE COURT: May I speak with your client directly?

11 MR. MIEDEL: Of course.

12 THE COURT: Mr. Boreland, it is something I say and I
13 say it repeatedly, but I also say it because I feel this. My
14 hope, sir, is that you and I never see each other in this
15 context again. I wish you success with medical issues and with
16 everything else in this process. I hope that the time passes
17 quickly. I know that your family will support you. Your
18 daughters will, in fact, be proud of you always. And I imagine
19 this is the last chance you and I will have to see each other.
20 So with that, I wish you every success and good luck.

21 As we get ready to leave, I will get a surrender date
22 from my deputy.

23 Ms. Noriega, may I have a date in perhaps the week
24 after New Year's.

25 THE DEPUTY CLERK: January 7, before 2 p.m.

LA58BORS

1 THE COURT: January 7, before 2 p.m.

2 Again, I will listen to the parties if there are
3 issues with the BOP.

4 With that, you have my thanks, all of you, for
5 participating in this process for so long this afternoon.
6 Again, my thanks to all counsel for excellent work on the case.
7 Continued safety and good health to each of you.

8 We are adjourned.

9 (Adjourned)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CASE NO. 1:18-cv-06377-JFK

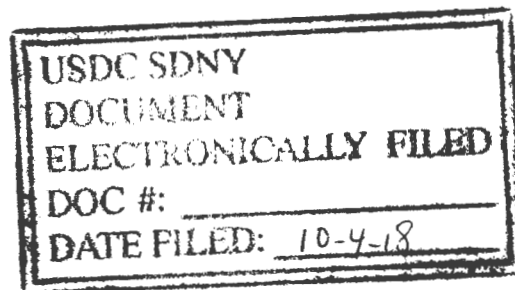
COPPER LEAF, LLC, a Washington
State Limited Liability Company,

Plaintiff,

vs.

BELIZE INFRASTRUCTURE FUND I, LLC,
a Florida Limited Liability Company, BRENT
BORLAND and MARCO CARUSO,

Defendants.



FINAL JUDGMENT AS TO
DEFENDANT BELIZE INFRASTRUCTURE FUND I, LLC

THIS ACTION having been commenced on July 13, 2018 by the filing of the Summons and Complaint, and a copy of the Summons and Complaint having been personally served on Defendant BELIZE INFRASTRUCTURE FUND I, LLC on July 25, 2018, by delivering and leaving copies of the summons and complaint with BELIZE INFRASTRUCTURE FUND I, LCC's registered agent on file with the Florida Department of State, David F. Filler, Esq., 1688 Meridian Avenue, Suite 900, Miami Beach, FL 33139 and a proof of service having been filed on August 6, 2018 and said Defendant not having answered the Complaint, and the time for answering the Complaint having expired, it is hereby:

ORDERED, ADJUDGED AND DECREED that the Plaintiff COPPER LEAF, LLC, a Washington State Limited Liability Company shall have final judgment against Defendant, BELIZE INFRASTRUCTURE FUND I, LLC, in the liquidated amount of \$8,000,000.00 of

COPPER LEAF, LLC vs. BELIZE INFRASTRUCTURE FUND I, LLC, *et al.*

Case No. 1:18-cv-06377-JFK

Final Judgment as to Defendant Belize Infrastructure Fund I, LLC

Page 2

outstanding loan principal, plus a loan fee of \$75,000.00, a default penalty of \$50,000.00, plus prejudgment interest on that total amount of \$8,125,000.00 at 15% from December 30, 2016 to October 5, 2017 in the amount of \$508,974.51, plus loan default prejudgment interest at 20% from October 5, 2017 to September 18, 2018 in the amount of \$1,601,725.42 for a total prejudgment interest sum of \$2,110,699.93, amounting in all for a total of final judgment of **\$10,235,711.93**.

In addition, the Court orders that until paid, this Final Judgment shall carry post-judgment interest pursuant 28 U.S.C. § 1961 at the weekly average one-year constant maturity Treasury yield for the calendar week preceding the date of entry of the judgment, running from the date of entry of the judgment until the judgment satisfied.

ALL FOR WHICH LET EXECUTION IMMEDIATELY ISSUE. SO ORDERED.

Dated: New York, New York

October 4, 2018


for HONORABLE JOHN F. KEENAN
UNITED STATES DISTRICT JUDGE

This document was entered on the docket on _____.

cc: COPPER LEAF, LLC, a Washington
State Limited Liability Company
17837 1st Ave. South, PMB 310
Normandy Park, WA 98148



BARROW & WILLIAMS LLP

Attorneys-at-Law, Notaries Public, Trademark and Patent Agents

Rodwell R. A. Williams, S.C., C. B. E.

Tania M. Moody, BBA., LL.B. (Hons), C.L.E.

Nigel O. Ebanks, B.A. (Hons), LL.B. (Hons), C.L.E.

Stevanni L. Duncan, LL.B. (Hons), C.L.E.

Lissette V. Staine, B.A. (Hons), LL.B. (Hons), C.L.E.

Adler G. L. Waight, LL.B. (Hons), C.L.E.

Our Ref: 19-0259/2019 (1)

BY EMAIL

31st July, 2019

Magali Marin-Young & Co.
Attorneys-at-Law
828 Coney Drive
Belize City
Belize

Attention: Mrs. Magali Marin Young S.C.

WITHOUT PREJUDICE

RE: Claim No. 141 of 2019 Copper Leaf, LLC and Belize Infrastructure Fun I, LLC, Brent Borland and Marco Caruso / Offer made without prejudice pursuant to CPR 35.

The entire contents of this letter of offer is without prejudice and is being made pursuant to Part 35 of the Supreme Court (Civil Procedure) Rules 2005 on behalf of the above-named Third Defendant. We are instructed by the Third Defendant only, with a view to amicably settle this matter and without admitting and or conceding any merits thereof, to offer the Claimant by way of and in full final and complete settlement of its claim against him the following items of real estate.

- (a). 43± acres of land situated on the Placencia Peninsula adjacent and west of the Plantation Sub-division, adjacent to about 2, 459 feet of paved public road, 3,000 feet of lagoon frontage, accessible to water, electricity public service. Eight aerial photos showing the general location of this property is attached. This property is conservatively valued at about US\$200,000.00 per acre by Government of Belize official valuer; and
- (b). Hotel called Posada de los Leones. This is a luxury boutique hotel situated in historic Antigua, Guatemala, with six well-appointed rooms, spa, with roof top terrace for dining. It is conservatively valued at US\$3.5 Million and may be viewed at its website : www.posadadelosleones.com. We are to

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Equity House, 84 Albert Street, P.O. Box 617, Belize City, Belize • Tel: 501-227-5280 • Fax: 501-227-5278

E-mail: attorneys@barrowandwilliams.com
www.barrowandwilliams.com

understand that one Brent Borland may have a 50% interest in this asset and or in its ownership entity called: Centranex S.A.

The foregoing assets are being offered to the Claimant on basis that the parties will each bear their own costs including own attorneys-at-law fees, stamp duty and other expenses attendant on transfer of ownership.

Our client reserves all rights to disclose this offer after trial for purposes of costs pursuant to CPR 35.4 (a).

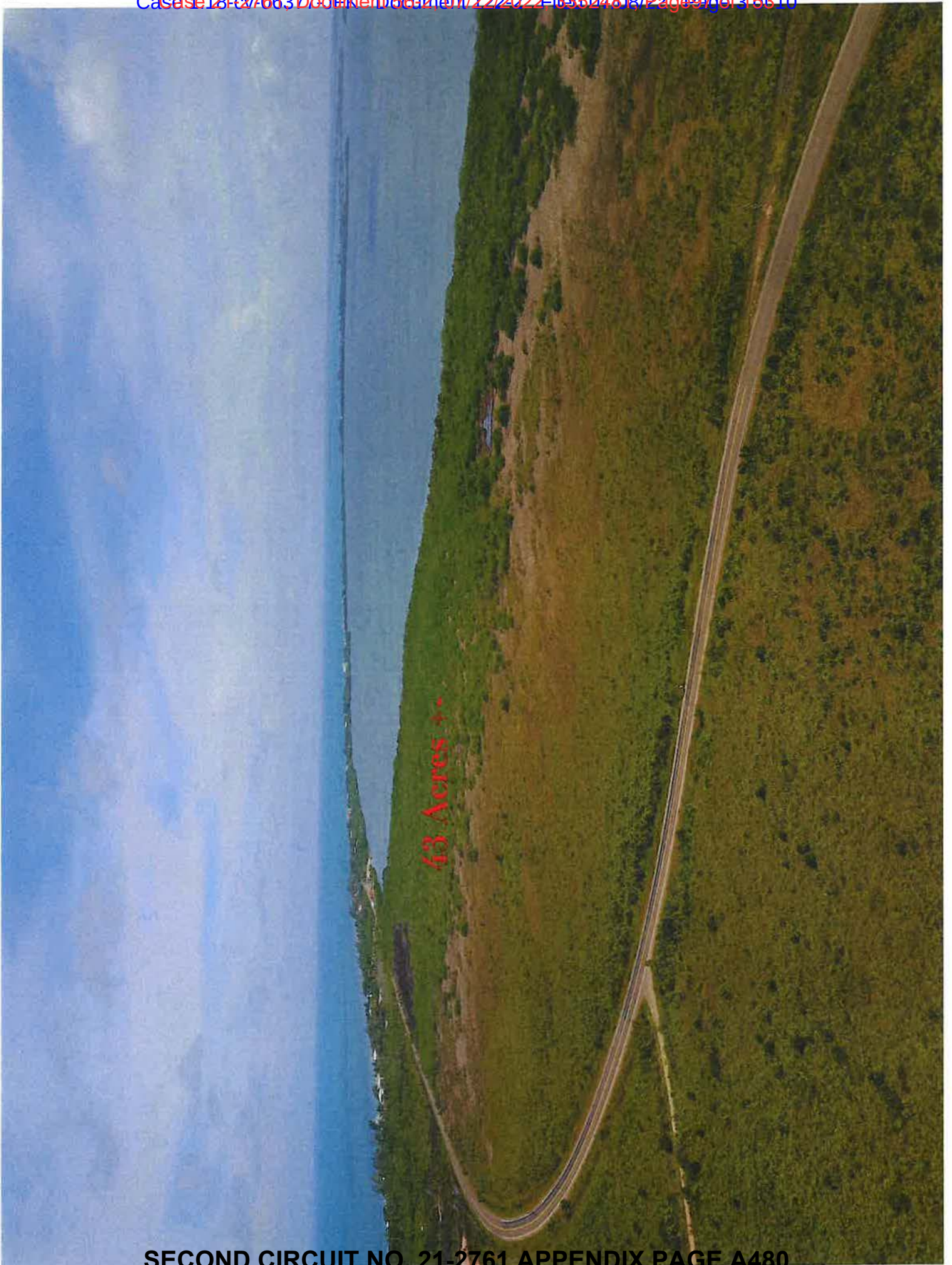
Pursuant to CPR 35. 9(2) this offer shall expire on September 16th, 2019 and should we not hear from you on behalf of your client in writing before the expiration date, we shall treat the offer as having been declined.

We trust that your client will be minded to settle this claim upon the terms stated above, and if so, we propose that the Claimant enter an appropriate deed of release in favour of our client and have the terms herein form the basis for a Tomline Order, accordingly.

Yours faithfully,
BARROW & WILLIAMS, LLC

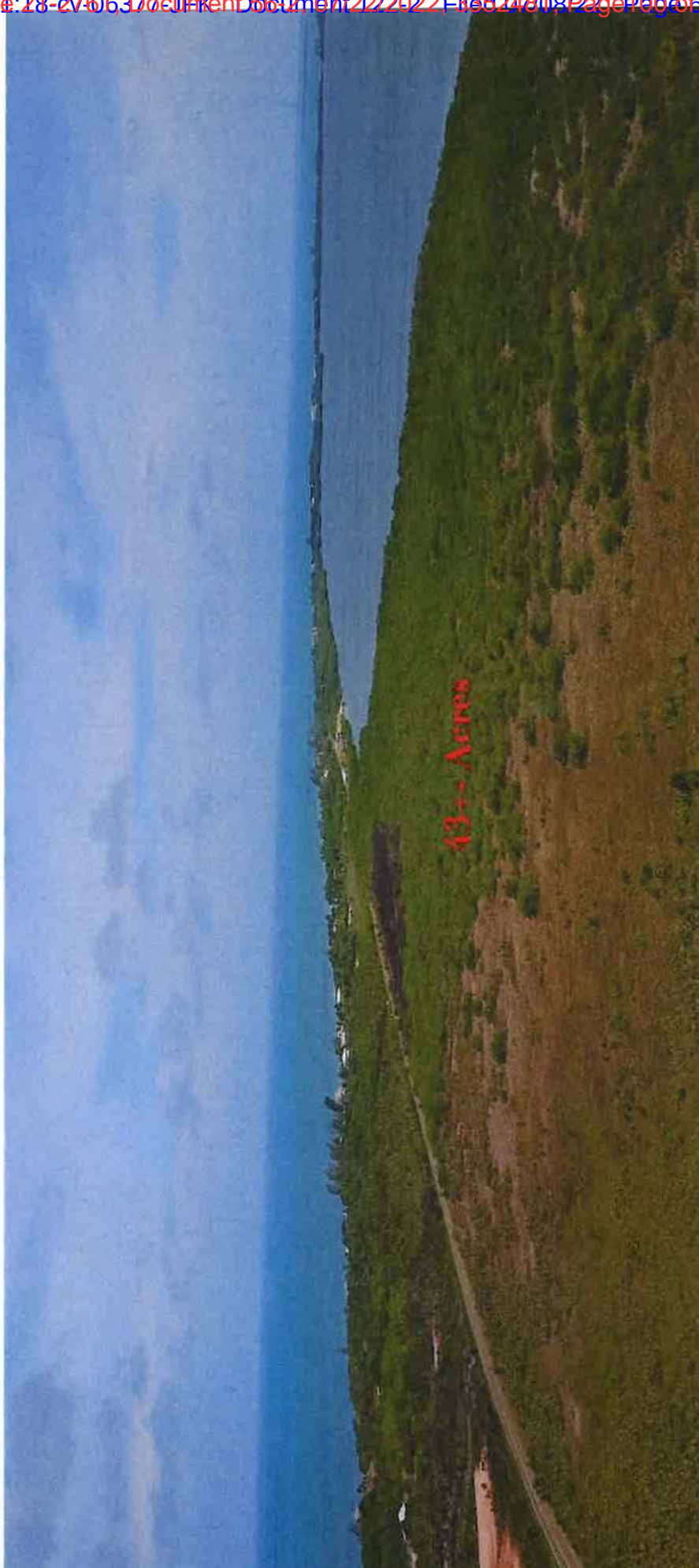

RODWELL R. A. WILLIAMS, S.C., C.B.E.

RRAW/tlb
Encls.















IN THE SUPREME COURT OF BELIZE, A.D. 2020

CLAIM NO. 623 OF 2020

BETWEEN

BRENT BORLAND
ALANA LATORRA BORLAND
COPPER LEAF LLC

1st CLAIMANT
2nd CLAIMANT
3rd CLAIMANT

AND

MARCO CARUSO
MICHELA BARDINI
RICHARD DYKE ROGERS
PLACENCIA ESTATES DEVELOPMENT LLC
PANTHER PROPERTIES LP
REGISTRAR OF LANDS

1st DEFENDANT
2nd DEFENDANT
3rd DEFENDANT
4th DEFENDANT
5th DEFENDANT
INTERESTED PARTY

NOTICE OF APPLICATION TO DISCHARGE INJUNCTION

[CPR 17.4(8)]

The Defendants, **Marco Caruso**, of The Placencia Residences, Placencia Village, Stann Creek District, Belize, **Michela Bardini**, of The Placencia Residences, Placencia Village, Stann Creek District, Belize, **Richard Dyke Rogers**, of 1205 Olive Avenue, Dalhart, Texas, 79022, United States of America, **Placencia Estates Development LLC**, a company duly incorporated under the laws of the Federation of Saint Christopher and Nevis with registered office situate at Main Street, P.O. Box 556, Charlestown, Nevis, **Panther Properties LP** a company duly incorporated under the laws of the State of Texas, United States of America with registered office situate at 1205 Olive Avenue, Dalhart, Texas, 79022, United States of America, (collectively, the **Defendants**) apply to the Court for the following orders:

1. The Freezing Injunction contained in the Order dated December 2nd, 2020, continued December 21st, 2020, be vacated and discharged.
2. The Claimants be directed to take immediate steps to inform in writing anyone to whom it has given notice of the Freezing Injunction, or who it has reasonable grounds for supposing may act upon the Freezing Injunction, that it has ceased to have effect.

3. There be an Inquiry as to damages on the undertaking given by the Claimants at paragraph 1 of the Order, for the purposes of which the following directions shall apply:
 - a. The Defendants shall serve upon the Claimants Points of Claim setting out the loss alleged to have been caused by the Freezing Injunction by _____;
 - b. The Claimants shall serve upon the Defendants Points of Defence by _____; and
 - c. The Defendants shall be at liberty to serve Points of Reply by _____.
 - d. Witness Statements shall be exchanged on or before _____.
 - e. The hearing of the Inquiry is set for _____.
 - f. The costs of complying with these directions be costs in the Inquiry.
4. The Claimants pay the Defendants' costs of this application in the sum of \$_____.
5. Liberty to Apply.
6. Such further and other relief as the Court deems just.

[A draft of the orders sought is attached.]

Grounds of Application

1. The Court is empowered under CPR Rule 17.4(8) and its inherent jurisdiction to discharge any interim order.
2. The Defendants seek the discharge of the Freezing Injunction contained in the Order dated December 2nd, 2020, continued December 21st, 2020, on the following bases:
 - a. The Claimants are seeking to use the Freezing Injunction as an instrument of oppression;
 - b. There is no real risk of dissipation of assets by the Defendants;
 - c. There was material non-disclosure and misrepresentation of the facts by the Claimants at the without notice hearing on December 2nd, 2020;
 - d. The undertaking given by the Claimants is inadequate and worthless; and

- e. The Claimants have unduly delayed in seeking equitable relief.
3. In all circumstances it is just and convenient that the order be discharged.

The affidavits of Marco Caruso dated January 18th, 2021, and Richard Dyke Rogers dated January 15th, 2021 is filed in support of this application.

This Application is filed by **BARROW & WILLIAMS LLP** of Equity House, 84 Albert Street, Belize City, Belize, Attorneys-at-law for and on behalf of the Defendants herein whose address for service is Equity House, 84 Albert Street, Belize City, Belize.

Dated the 18th day of January 2021

BARROW AND WILLIAMS LLP
Attorneys-at-Law for the Defendants


Per: RT. HON. DEAN O. BARROW, S.C.

IN THE SUPREME COURT OF BELIZE, A.D. 2020

CLAIM NO. 623 OF 2020

BETWEEN

**BRENT BORLAND
ALANA LATORRA BORLAND
COPPER LEAF LLC**

**1st CLAIMANT
2nd CLAIMANT
3rd CLAIMANT**

AND

**MARCO CARUSO
MICHELA BARDINI
RICHARD DYKE ROGERS
PLACENCIA ESTATES DEVELOPMENT LLC
PANTHER PROPERTIES LP
REGISTRAR OF LANDS**

**1st DEFENDANT
2nd DEFENDANT
3rd DEFENDANT
4th DEFENDANT
5th DEFENDANT
INTERESTED PARTY**

DRAFT ORDER

The 4th day of February 2021

BEFORE THE HONOURABLE MADAM JUSTICE LISA M. SHOMAN, S.C.

UPON THE APPLICATION of the Defendants by application notice dated January 18th, 2021, to discharge injunction under Part 17.4(8) of the Supreme Court (Civil Procedure) Rules, 2005 coming on for hearing

UPON HEARING Rt. Hon. Dean O. Barrow, S.C., Mr. Rodwell R.A. Williams, S.C., C.B.E., and Mr. Adler G. L. Waight Counsel for the Defendants and Mr. E. Andrew Marshalleck, S.C., and Allister T. Jenkins Counsel for the Claimants

AND UPON reading the First Affidavit of Marco Caruso and Richard Dyke Rogers filed herein

IT IS HEREBY ORDERED THAT:

1. The Freezing Injunction contained in the Order dated December 2nd, 2020, continued December 21st, 2020, is hereby vacated and discharged.

2. The Claimants are directed to take immediate steps to inform in writing anyone to whom it has given notice of the Freezing Injunction, or who it has reasonable grounds for supposing may act upon the Freezing Injunction, that it has ceased to have effect.
3. There will be an Inquiry as to damages on the undertaking given by the Claimants at paragraph 1 of the Order, for the purposes of which the following directions shall apply:
 - a. The Defendants shall serve upon the Claimants Points of Claim setting out the loss alleged to have been caused by the Freezing Injunction by _____;
 - b. The Claimants shall serve upon the Defendants Points of Defence by _____; and
 - c. The Defendants shall be at liberty to serve Points of Reply by _____.
 - d. Witness Statements shall be exchanged on or before _____.
 - e. The hearing of the Inquiry is set for _____.
 - f. The costs of complying with these directions be costs in the Inquiry.
4. The Claimants pay the Defendants' costs of this application in the sum of \$_____.
5. Liberty to Apply.

DATED the day of 2021

BY ORDER

DEPUTY REGISTRAR

On behalf of the Defendants
Affidavit No. 1
Surname of Deponent: Caruso
Initial of Deponent: M.C.
Date sworn: January 18, 2021
Date filed: January 18, 2021
Exhibits: M.C. 1

IN THE SUPREME COURT OF BELIZE, A.D. 2020

CLAIM NO. 623 OF 2020

BETWEEN

BRENT BORLAND
ALANA LATORRA BORLAND
COPPER LEAF LLC

1st CLAIMANT
2nd CLAIMANT
3rd CLAIMANT

AND

MARCO CARUSO
MICHELA BARDINI
RICHARD DYKE ROGERS
PLACENCIA ESTATES DEVELOPMENT LLC
PANTHER PROPERTIES LP
REGISTRAR OF LANDS

1st DEFENDANT
2nd DEFENDANT
3rd DEFENDANT
4th DEFENDANT
5th DEFENDANT
INTERESTED PARTY

AFFIDAVIT OF MARCO CARUSO

I, Marco Caruso, Businessman, of The Placencia Residences, Mile 13 Placencia Road, Stann Creek District, Belize hereby **make oath and say** as follows:

1. I am the First Defendant and make this Affidavit in support of the Defendants' Notice of Application to Discharge Injunction (**Defendants' Application**).
2. I am also a director of the Fourth Defendant (**PED**) and I am authorized to make this affidavit on its behalf and on behalf of the Second Defendant (**Michela**).
3. The statements made within this Affidavit are either within my own knowledge and are true or are based on information or documents supplied to me by others and are true to the best of my knowledge, information and belief.
4. There is now produced and shown to me a paginated bundle of documents, marked Exhibit "**M.C.1**" by me at the time of swearing hereof. The tab number referred to herein corresponds with the equivalent tab number within the bundle of documents.

Background

5. I am a businessman and developer having moved to Belize in 2000.
6. Initially, I operated independently and built and opened Zeboz Caribbean Resort in December of 2003, then started Mayan Lagoon Estates in July of 2004.
7. My vision was to create a series of Resort Developments in the Placencia area, which comprised the Copal Beach Resort, Placencia Estates Development, LLC, Rendezvous Island Resort, Placencia Marina Village, and Placencia International Airport (collectively, the **Placencia Developments**), with The Placencia Hotel (originally named Zeboz Caribbean Resort) and The Placencia Residences (originally named Mayan Lagoon Estates) as the hub.
8. The Placencia Developments were to create a master real estate development project on the southern coast of Stann Creek District, Belize.
9. To carry out these projects I formed the following corporate vehicles: M.E.L. Investments Ltd, Placencia Estates Development LLC, Rendezvous Island Ltd, and The Placencia Land and Development Co. Ltd (collectively, the **Project Entities**).
10. In April 2008, I along with Michela and Brent incorporated PED for the purpose of developing and selling property. A copy of the Certificate of Formation for Placencia Estates Development, LLC can be found at **Tab A**.
11. Madeleine is a national of Belize and has been assisting me for the past two decades.

Genesis of Borland's "Claim"

12. In or around 2008, the Second Claimant (**Brent**) approached me and represented himself as a seasoned realtor and real estate preconstruction seller working on commissions and operating under his company, Canyon Acquisitions. Brent Borland proposed working with me in order to speed up the existing developments, which I had already started. The concept seemed to be good and the ability to get buyers and investors to help fund my projects would give them a very competitive edge.

13. Brent informed me that he intended to undertake those dealings through his company Canyon Acquisitions LLC (**Canyon**) and other associated companies ultimately controlled by him.
14. Brent represented himself as an upstanding and knowledgeable businessman and I decided that I would entertain the business development discussions.
15. After negotiations and discussions, Brent proposed, through his various companies, to acquire fifty percent of the shares in each of the Project Entities in consideration of:
 - a. Payment of Six Million United States Dollars (USD \$6,000,000.00) to me;
 - b. Payment of Four Million Four Hundred Thousand United States Dollars (USD \$4,400,000.00) to Frank Pelly, the then co-owner and shareholder of Rendezvous Island Ltd and the Placencia Land and Development Co. Ltd; and
 - c. The introduction of capital totaling Fifty-Six Million Canadian Dollars (CA \$56,000,000.00) into the Placencia Developments (**Master Agreement Investment**).
16. Though dated 2009, it was in early March 2010, after months negotiating these terms, that a Master Agreement was concluded and signed to memorialize and formalize the understanding between the parties. A copy of the Master Agreement can be found at **Tab B**.
17. Under the Master Agreement, Brent, through his companies Canyon Acquisitions International LLC and Canyon Acquisition LLC, was to acquire financing for the Placencia Developments.
18. The Placencia Capital Management I, LLC, and Placencia Capital Trust I (the counter parties to the Master Agreement), were created as special vehicles to manage investment under the terms of the Master Agreement. These companies are wholly owned by Trustee Wayne Robbins (**Wayne**), who is the only controller and decision maker of the Trust.

19. The Master Agreement was accompanied by a Shareholder Agreement between the Placencia Marina Limited of the one part, and Placencia Capital Management I, LLC of the other part, on behalf of Placencia Capital Trust I. The Shareholder Agreement was for the acquisition of certain shares in the Placencia Marina Limited. A copy of that agreement can be found at **Tab C**.
20. Under the Master Agreement and Shareholder Agreement, Brent committed through his various companies to inject capital of Fifty-Six Million Canadian Dollars (CA \$56,000,000.00) in the Placencia Developments.
21. At all material times and as per letter from Christopher Coye, dated 30th August, 2019 and produced by the Claimants, the defendants were the only managing directors and in control of the company affairs as stated by Borland in his affidavit at **Tab D**.

Brent's Subsequent Failure to Deliver Financing

22. Contrary to what Brent suggests, his companies Canyon Acquisitions International LLC and Canyon failed, through Placencia Capital Management 1, LLC/Placencia Capital Trust 1, to fulfill the conditions of the Master Agreement.
23. On account of Borland's failure to deliver on the Master Agreement Investment stipulations and the failure of Placencia Capital Trust 1, Borland and Robbins, in an effort to salvage the failure, produced a Memorandum of Understanding dated February 15, 2011. In that MOU Borland and his entities undertook to provide all the capital to complete the Placencia Developments. A copy of the Memorandum can be found at **Tab E**.
24. The obligations on Brent and his group of companies were to secure financing for the Placencia Developments only. Brent failed, as well, to do even this.

Brent's Failure to Disclose Issues in Canada

25. Having now the "legitimacy" that he needed, Brent executed a series of frauds that have nearly ruined the Placencia Developments and all that I set out to do.
26. At the time of entering negotiations with me and without my knowledge, Brent, his companies and associates including Wayne, Archibald Robertson, HEIR Home Equity Investment Rewards Inc., FFI First Fruit Investments Inc., Wealth Building Mortgages

Inc., and Eric Deschamps, was already in Canada advertising certain investments without clearance from the Ontario Securities Commission (OSC). Brent and the others had already begun to take investments from persons there and in all Brent raised around Thirty Million Canadian Dollars (CAN\$30,000,000.00), supposedly for projects in the Dominican Republic

27. Around late 2010, Archibald Robertson, President of Home Equity Investment Rewards, disclosed to me the existence of legal issues with the OSC related to Borland's "fund raising" in the Dominican Republic. This had not been disclosed by Borland to me.
28. After the issues with the OSC came to the fore I was charged, though I maintain any involvement to have been unwitting, along with Brent and his cohorts with breaches of the security regulations in Ontario, Canada.
29. This matter dragged on and I, as a developer, was left with a financially stagnant situation caused by Borland's reckless and dishonest behavior.
30. Ultimately the issues with OSC were settled in late 2013. A copy of that settlement can be found at **Tab F**. As will be explained later this settlement included and affected properties owned by PED that Brent is aware of and failed to disclose.

Brent's Further Fraud Against the Investors and Subsequent Arrest

31. In light of the concerning financial situation, Brent reached out to me to assure me that he was working anew on securing a loan and other financing totaling some Fifty-Eight Million United States Dollars (USD \$58,000,000.00.) to restart the Placencia Developments. Brent informed me that the money would take some time to gather, between a year and a year and a half, and that he would make a temporary bridge loan arrangement in the interim to assist.
32. Brent, in his efforts to recover his standing as per the MOU dated February 15, 2011¹, represented that this temporary arrangement would be made through a company called Belize Infrastructure Fund 1 and would total Twelve Million United States Dollars (USD \$12,000,000.00); this was to abide the outcome of his "fundraising efforts" to secure the

¹ Tab E

Fifty-Eight Million United States Dollars (US\$ 58,000,000.00) needed to complete the Placencia Developments.

33. This “bridge financing” was Brent’s sole doing and neither I nor any of the Project Entities had anything to do with it.
34. Brent’s scheme involved him representing himself as part owner of the Placencia Developments and promising high returns to those investors with forged documents that purported to act as security over the assets of the Project Entities. Brent had forged my signature on those documents and soon, June 19th, 2015, I wrote to Brent informing him that he had no permission to use any signature of mine. A copy of that email can be found at **Tab G**.
35. In fact when one looks at the pledges Brent put up as security, one sees that they are not backed by any resolution approving the transaction.
36. Borland would apparently pledge the same parcels over and over and would partially pay out old investors, in order to temporarily placate them, from funds received from new investors; a classic Ponzi Scheme. The Loan Agreement, The Note, The Modification Agreement, and the Guarantee prepared by Brent are contrivances by him to advance the fraud.
37. The majority of Brent’s “investors and lenders” were not paid back at all. Brent also funneled a portion of the investors’ funds for his own use in addition to what he used for other endeavors entirely unrelated to the Placencia Developments
38. I only became aware of Brent’s fraud when the matter broke on the news and after his subsequent arrest and criminal charges. I deny being a party to the scheme and say that Brent perpetuated a fraud against myself, the other defendants and all the Project Entities.
39. It also bears mention that, since I had nothing to do with Brent’s fraud, I have not been named as a co-conspirator along with Brent in any matters concerning the SEC. This is notwithstanding the numerous blatant attempts by Copper Leaf and Borland to drag me into the fray.

Claim 623 and Injunction

40. I now turn to particular pertinent issues raised in Claim 623 of 2020 and their bearing on the injunction that was granted in this claim.
41. PED was incorporated in 2008 to carry out one of the Placencia Developments. As adverted to earlier, Brent and I had already started discussions in early 2008 and operated informally to a degree until the conclusion of the Master Agreement.
42. Brent and Alana were given subsidiary roles in PED as members with Michela and I retaining control as managers. It was always the intent and understood that PED was to be controlled and managed by Michela and me. There were no requirements that the managers had to get any approval from the members.
43. In 2008, PED acquired two large tracts of land (a defunct Shrimp Farm) in Riversdale from the receiver of Nova Laguna Limited (the **Property**). The Property was subdivided not for the purposes of sale but for the purposes of settling with OSC as described above. This was reflected in the OSC settlement agreement at paragraph #27 and for ease of reference the particular page is extracted at **Tab H**.
44. Contrary to what the Claimants suggest, the works were not completed on the Property and the values stated are not accurate or reflective of the true value of the Property.
45. To salvage the harm done by Brent to the projects and to stave off the unending litigation that would have been brought by the BIF jilted investors, I made the decision in good faith to settle the irrefutable claims that the investors had against Brent. In my view, it was in the best interest of PED to do so instead of allowing PED to face down a horde of claims from the investors.
46. As a result, I entered into a non-binding Memorandum between PED and Dyke Rogers, who represented the investors group, to settle all claims by transfer of the remaining portion of the Property to a vehicle to be designated by the investors group. It is false that I am retaining an interest in the Property along with the investors group. The Memorandum was non-binding and I also did not enter the subscription agreement referred to at paragraph 72 of Brent's Second Affidavit and found at Tab **BB 2-27**. I do not have any legal interest in any of the companies that the investors group maintain.

47. The investors group, Brent's victims, worked with me and released PED and me from possible suit as they were all fully aware that they had never dealt with me. The investors solely dealt with Brent. In addition, the investors sent funds to Brent and his companies and not to me or any of the Project Entities.
48. It is quite simple and proper that the general outline of the Memorandum was effected. The investors group, instead of bringing thirty-nine (39) separate claims against the project entities and myself, accepted the remaining Property in partial settlement.
49. Had it not been for Brent's scam and fraudulent dealings, there would have been no need for this action. The value assigned to the conveyance was done in compliance with the actual values of agricultural lands as accepted by the Government of Belize Lands Department on the understanding that even though this was a settlement and not a sale, GOB was to be paid their proper and fair stamp duty thereon. To ensure that the transaction was conducted in accordance with and within the boundaries of the current regulations, I personally sat down with Mr. Herman Castillo, who is the Government of Belize Chief Valuator at the Lands Valuation Department. I disclosed the issues and settlement being pursued, requesting the Government's assistance on legally and properly valuing the transfer. Based on the Government of Belize's valuation, the stamp duty was duly paid by the investor group, to complete the conveyance.
50. At all times as appears herein, Copper Leaf, Brent and Alana were aware of the intended actions. Copper Leaf was offered a place in the settlement but chose not to participate as evidenced in **Tab J**.
51. I will reiterate that the transfer of the remaining portion of the Property to the investors group via Panther Properties, LP was always honest and in keeping with the fiduciary duties of the Managers. The Managers did not need to receive the concurrence of the members of PED and, at any rate, the members of PED acquiesced in the action having had notice of it. The investor group released Marco and PED as they were all fully aware that the Claimants had never taken any proper steps to object to the settlement before popping up with this bogus claim.
52. There was and is no such liquidation of the assets of PED as alleged by Borland. PED remains in full possession of the remaining lots within the 391 lot subdivision, in addition

to being a joint holder on title for the majority of the titles for the lots transferred in the OSC settlement to individuals affected by Borland's actions in Canada. NONE of these individual titles have been altered and still are held jointly by PED to this day. Many of the subdivided lots were transferred from PED to PED and the investors jointly. This arrangement was done to ensure that Canadian investors could resell the parcels at their convenience and direction.

53. Returning to Claim No. 623, Rogers and Panther Properties did not act dishonestly and merely were assisting the investor group in coming to terms with the substantial loss caused by Brent.

54. In the premises, the Defendants entirely reject the assertions made by the Claimants describing the corrective measures as wrongful.

Claim No. 141 of 2019 – Copper Leaf LLC v Belize Infrastructure Fund I, LLC

55. Additionally, I aver that the Claimants failed to properly disclose by way of necessary details that Copper Leaf LLC has brought suit in Belize. That suit is Claim No. 141 of 2019, Copperleaf LLC v Belize Infrastructure Fund I, LLC, Brent Borland and Marco Caruso. The Claim seeks to enforce a default judgment (**NY Judgment**) obtained from the Southern District Court of New York in Belize.

56. The NY Judgment is based on the same series of documents, referred to as The Loan Agreement, Promissory Note, Modification Agreement and Guarantee (**Copperleaf Documents**) referred to in paragraph 19 and 20 of Brent's Affidavit.

57. The Claimants have not fairly represented the basis upon which I am defending myself in Claim No. 141.

58. In breach of their duties, the Claimants fail to raise with this Court that my defence in that claim is that the Copper Leaf Documents are fraudulent and that the NY Judgment (obtained by Copperleaf against Belize Infrastructure Fund I, Brent Borland and Marco Caruso, by way of default) was obtained by fraud; that Copper Leaf and Brent colluded to use fraudulent documents to procure the judgment against me. In any event, I maintain that the Copper Leaf Documents did not comply with the foreign exchange rules in

Belize with the result that it would be against public policy to enforce a judgment based on it. A copy of that Defence can be found at **Tab I**.

59. Further, Claim No. 141 of 2019 was filed on March 5th, 2019, and I acknowledged service on March 23rd, 2019. Yet Copper Leaf LLC has to date sought no injunctive relief against me in those proceedings.
60. There is no explanation from Brent and Copper Leaf as to why that is. The actions that are alleged to have been committed by me are now titularly referred to as urgent but have long been known by both Brent and Copper Leaf; in the case of Brent, from around September 2018; in the case of Copper Leaf, also from around September of 2018, as they are making allegations about certain actions they claim I took during that time.
61. Nothing explains that delay.
62. This is even more glaring when one considers that in early 2019 Copper Leaf and Brent knew that I was, since September 2018, settling certain claims with all the other Borland/BIF 1 investors and seeking their assistance to help continue the Placencia Developments after they stagnated. I was doing this through Dyke Rogers and a thread of emails dated May 14th, 2019, between Brent, Copper Leaf LLC, and Brent's attorney-at-law, Robert Baum attests to this and can be found at **Tab J**. This document was forwarded to me by my US counsel at that time, Robert Josefberg.
63. In that very same email thread, it is telling that Brent says "that if [Marco] Caruso does not perform, Copper Leaf and I will do what we have to do to make Copper Leaf whole."

Brent's Guilty Plea – Real Basis of Brent's Conviction

64. The Claimants have not represented Brent's true status as a confessed felon. Brent merely attaches some documents without a full and thorough explanation.
65. The Claimants show utter disdain for fair dealing by failing to disclose the actual indictment and Brent's perilous legal position. The Claimants also fail to disclose and account for Brent's inconsistent position on the matters leading up to his arrest. A copy of a transcript of Brent's criminal proceedings dated August 5, 2020 can be found at **Tab K**.
66. The Claimants greatly downplay the severity of Brent's situation.

67. Brent has pleaded guilty to serious charges for the second time.
68. Brent has not disclosed that he is up for sentencing in February 2021. A copy of an agreed Memorandum between the United States of America, that prosecuted Brent, and Brent Borland can be found at **Tab L**.
69. It is important to review the terms of the Memorandum as it sets out relevant information that contradicts many of the assertions made in Brent's First Affidavit. It is also important to note that the agreed sentencing guidelines call for a period of incarceration between 121 to 151 months' imprisonment. Put more graphically, no less than a decade.
70. The Memorandum also provides, with Brent's consent, that:
- a. "In truth and in fact, however, BORLAND misappropriated millions of dollars of investors' funds and used those funds for his own personal benefit. BORLAND diverted at least 30 percent of the more than \$25 million invested by victims to pay himself to pay for a variety of personal expenses, including his mortgage payments, credit card bills, and luxury automobiles. In contrast to BORLAND's representations that investors would receive high rates of return within a specified time frame, all known investors in the scheme lost money. Moreover, while BORLAND represented that the investments would be secured by real property, the property purportedly serving as collateral was improperly pledged to multiple investors and, in some cases, did not even exist in the manner identified and described in investors' notes."
71. Thus, Brent pleaded guilty in the United States of America to being solely responsible for his alleged fraud and confirmed that the "collateral" he attempted to pledge was improperly given.
72. Yet in his affidavit now he purports to say that I, Marco Caruso, participated with him in giving collateral to Copper Leaf LLC. Certainly, Brent is caught by his own bell.

Failure to Disclose Case 1:18-cv-04352-PKC United States Securities Exchange Commission v Brent Borland, Borland Capital Group, LLC, Belize Infrastructure Fund, LLC, Canyon Acquisitions, LLC and Alana LaTorra Borland in the United States District Court Southern District of New York

73. A cursory Google search undertaken by me revealed that Brent and Alana were involved in civil proceedings in the United States of America in which the Securities Exchange Commission sought various orders against Brent, Alana, Borland Capital Group, LLC, Belize Infrastructure Fund, LLC and Canyon Acquisitions, LLC. Principally, the SEC sought to recoup nearly Six Million United States Dollars from the Borlands. A copy of the complaint and the press release issued by the SEC can be found at **Tab M**.

Brent's and Copper Leaf's Conduct

74. The Claimants have also failed to disclose that there is an existing judgment against Brent in Belize to the tune of over One Million Fifty-Eight Thousand Nine Hundred and Fifty-Two United States Dollars (USD \$1,058,952.00) since 2019. A copy of that judgment can be found at **Tab N**.

75. The Claimants have also failed to disclose that there is an additional existing judgment against Brent in Belize to the tune of Six-Hundred Sixty-Seven Thousand Seven Hundred Ten Belize Dollars (BZD\$ 667,710.00) plus interest at the statutory rate as issued in May 2016. A copy of that judgment can be found at **Tab O**.

76. I am informed by my attorneys-at-laws, Barrow & Williams LLP, and verily believe that no Memorandum of Satisfaction has been filed in either of these matters.

77. This non-disclosure forms part of their deception and demonstrates the high-handed way in which the Claimants are conducting litigation. The Claimants are seeking to dupe the Court.

78. The Claimants have put forward one affidavit with a series of matters that are not germane to Claim No. 623 to confuse and bury the Defendants with a deluge of claims and spurious material.

79. The Claimants have purposely taken a series of claims that can be conveniently tried together and have separated them to "cover the field": to bury the Defendants with a multiplicity of claims and injunctions. The Claimants want to force the Defendants to give in and settle.

80. This is more pronounced when my illness and Madeleine's cancer treatment is recalled.

81. There is deep enmity that motivates the Claimants.

82. The Claimants maintain six separate proceedings against me and other persons related to me, which the Claimants failed to disclose and properly account for.

83. The proceedings are as follows:

- a. Claim No. 141 of 2019 Copper Leaf LLC v Belize Infrastructure Fund I, LLC;
- b. Claim No. 626 of 2020 Bella Group LLC, Borland et. al. v Caruso et. al.;
- c. Claim No. 624 of 2020; Bella Group LLC, Borland et. al. v Caruso et. al.;
- d. Claim No. 625 of 2020 Bella Group LLC, Borland et. al. v Caruso et. al.;
- e. Case 1:19-CV-211152 – XXXX in the United States District Court Southern District of Florida Copper Leaf, LLC v Mayan Lagoon Estates; and
- f. State of Florida #115808072 Copper Leaf LLC v Salvatore Caruso, Michela Bardini, Romeo Caruso and Madeleine Lomont.

Copper Leaf's Claims in Florida Inconsistent with Claims in Belize

84. Copper Leaf LLC has instituted multiple claims and is the sole driving force behind the litigation to harass and hound myself and the Project Entities into submission. Copper Leaf LLC and its principals will say and do anything to maintain claims.

85. In Copper Leaf LLC v Mayan Lagoon Estates Ltd, Copper Leaf LLC alleges that some of the Copper Leaf Documents are false and fraudulent. A copy of the complaint can be found at **Tab P**.

86. The Complaint is dated March 25th, 2019 and it is telling that the Claimants have neglected to fully disclose these proceedings. Indeed, Copperleaf maintains a diametrically opposed position now in Claim No. 626 by seeking to rely on some of the same documents that it alleges to be fraudulent in the Florida claim.

87. To boot, Copper Leaf LLC recently commenced proceedings on October 23rd, 2020, to further harass and oppress my family including my children and Madeleine. A copy of that complaint can be found at **Tab Q**.

88. These proceedings were filed after the commencement of this claim but before the hearing of the freezing injunction in this matter.

PED's Tribulations

89. The Claimants' failure to disclose to the Court that PED is an ongoing concern is willful.
90. The Claimants are aware that PED is in the business of developing and selling properties. Yet they make no mention of this. Borland and Marco had even subdivided some of the Property to settle with investors in Canada.
91. The Claimants are aware that if the freezing injunction is continued it is likely to result in the complete collapse of PED. This is their goal.
92. It would further appear that the various injunctions are being spread out so as to put pressure and oppress the Defendants to settle.
93. Since the service of the freezing order made in this claim, the Belize Bank Limited has also called ALL the personal loans to which Marco and Michela are a party. A copy of those letters can be found at **Tab R**.
94. Thus, even the managing directors/members of PED have experienced severe individual hardship as making the payments due was already difficult in light of the ongoing pandemic.
95. Moreover, the individually titled lots at PED are actively being marketed and are available for sale. As a consequence of the freeze, PED will be unable to complete those transactions with the effect that these Canadian investors that settled with PED property might sue PED. Copies of a sampling of those Conveyances can be found at **Tab S**.
96. In addition, this current freeze of PED's assets and Panthers properties LLP could jeopardize the settlement with the 39 investors defrauded by Borland, potentially resulting in additional legal issues detrimental to PED and all its members.
97. This injunction, in addition to effectively blocking the settlors' ability to liquidate their holdings, jeopardizes and is in complete contradiction of the OSC settlement.

The Undertaking by the Claimants

98. Brent is the only person that puts forward any information relating to the "undertaking" in damages, which is woeful in all the circumstances. As far as the Defendants are aware, Brent does not have any assets in Belize. Further, Brent Borland is a confessed felon on the brink of

being incarcerated and with substantial judgments entered against him. The Defendants are not aware that any of the Claimants have any assets within the jurisdiction.

Real Risk of Dissipation

99. No risk of dissipation has been made out other than the Claimants announcing in a broad, delphic, and sweeping way that there is a “pattern of trying to evade a claim”.

100. The Claimants can show no pattern that can be said to be an unjustifiable dissipation of assets. All the assets are in Belize and subject to the jurisdiction of the Court.

101. The 1st and 2nd Defendants are established businesspersons within the jurisdiction and have been the stewards of PED since its inception.

Conclusion


102. In the premises, I ask that the freezing order be discharged immediately and that an inquiry into the damages caused by the grant of the freezing order be granted.

SWORN at 84 Albert Street, Belize)
City, Belize District, Belize this)
18th day of January, 2021)



MARCO CARUSO

BEFORE ME,



COMMISSIONER OF THE SUPREME COURT
Frank A. Symns
Commissioner of the Supreme Court Belize

This Affidavit was filed by Barrow & Williams LLP, Attorneys-at-Law for the Defendants; Telephone numbers 227-5280, 227-5579 whose address for service is Equity House, # 84 Albert Street, Belize City, Belize District, Belize.



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In The Matter Of

Copper Leaf, LLC, a Washington State Limited Liability Company,

Plaintiff

v

**Belize Infrastructure Fund I, LLC, a Florida Limited Liability Company, Brent
Borland and Marco Caruso,**

Defendants

CASE

1:18-cv-06377-JFK

Date

4-11-2022

Witness

Richard Dyke Rogers

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<p>1 UNITED STATES DISTRICT COURT 2 SOUTHERN DISTRICT OF NEW YORK</p> <p>3 CASE NO. 1:18-cv-06377-JFK</p> <p>4 COPPER LEAF, LLC, a 5 Washington State Limited 6 Liability Company, 7 Plaintiff, 8 vs. 9 BELIZE INFRASTRUCTURE FUND 10 I, LLC, a Florida Limited 11 Liability Company, BRENT 12 BORLAND and MARCO CARUSO, 13 Defendants.</p> <p>14 ----- 15 ORAL AND VIDEOTAPED DEPOSITION BY VIDEOCONFERENCE OF 16 RICHARD DYKE ROGERS 17 APRIL 11, 2022 18 (Reported Remotely) 19 -----</p> <p>20 ORAL AND VIDEOTAPED DEPOSITION BY 21 VIDEOCONFERENCE OF RICHARD DYKE ROGERS, produced as a 22 witness at the instance of the attorneys for the 23 PLAINTIFF, was taken in the above-styled and numbered 24 cause on APRIL 11, 2022 from 9:07 a.m. to 3:32 p.m. 25 before SHARON D. LIVINGSTON, CSR-RPR, in and for the State of Texas, reported by machine shorthand, witness being duly sworn remotely via Zoom Video Communications, Inc., in accordance with the Supreme Court of Texas' most current Emergency Order regarding the COVID-19 State of Disaster, and pursuant to the Federal Rules of Civil Procedure.</p>	<p>1 INDEX</p> <p>2 PAGE</p> <p>3 Appearances ----- 2</p> <p>4 Index ----- 3</p> <p>5 RICHARD DYKE ROGERS</p> <p>6 Examination by Mr. Quaranta ----- 5</p> <p>7 Changes and Signature ----- 200</p> <p>8 Reporter's Certification ----- 202</p> <p>9 INDEX OF EXHIBITS</p> <p>10 NUMBER DESCRIPTION PAGE</p> <p>11 Exhibit 1 Subpoena to Testify at a Videotape 12 Deposition in a Civil Action ----- 10</p> <p>13 Exhibit 2 Memorandum of Understanding ----- 26</p> <p>14 Exhibit 3 Affidavit of Richard Dyke Rogers ----- 33</p> <p>15 Exhibit 7 Belize Companies and Corporate Affairs 16 Registry ----- 61</p> <p>17 Exhibit 11 E-mail Communications ----- 188</p>
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<p>1 A P P E A R A N C E S</p> <p>2 FOR THE PLAINTIFF:</p> <p>3 Mr. John M. Quaranta (By Videoconference) 4 Ms. Natasha L. Biela (By Videoconference) 5 QUARANTA P.A. 6 1600 Ponce de Leon Boulevard, 10th Floor 7 Coral Gables, Florida 33134 8 (305) 930-6077 9 john.quaranta@quaranta.law 10 natasha.biela@quaranta.law</p> <p>11 FOR THE DEFENDANT BRENT BORLAND:</p> <p>12 Mr. Jeffrey C. Pepin (By Videoconference) 13 REID BURMAN LEBEDEKER XENICK PEPIN 14 One Clearlake Centre 15 250 South Australian Avenue, Suite 602 16 West Palm Beach, Florida 33401 17 (561) 659-7700 18 jcp@reidburmanlaw.com</p> <p>19 FOR THE DEFENDANT MARCO CARUSO:</p> <p>20 Mr. Raul Gastesi (By Videoconference) 21 Mr. Diego E. Traibel (By Videoconference) 22 GASTESI LOPEZ & MESTRE, PLLC 23 8105 Northwest 155th Street 24 Miami Lakes, Florida 33016 25 (305) 818-9993 gastesi@gimlegal.com traibel@gimlegal.com</p> <p>FOR THE WITNESS:</p> <p>Mr. Thomas C. Riney (By Videoconference) RINEY & MAYFIELD, LLP 320 South Polk Street, Suite 600 Amarillo, Texas 79101-1419 (806) 468-3200 triney@rineymayfield.com</p> <p>ALSO PRESENT BY VIDEOCONFERENCE:</p> <p>Ms. Madeleine Lomont Mr. Brent Borland Mr. Marco Caruso</p> <p>(Videotaping services provided by NATIONAL COURT REPORTERS INC.)</p>	<p>1 (The witness presented Texas Driver's</p> <p>2 (License No. 04681468 as proof of</p> <p>3 (identification and was then duly</p> <p>4 (sworn remotely via Zoom Video</p> <p>5 (Communications, Inc.)</p> <p>6 THE REPORTER: We're going on the record</p> <p>7 at 9:07 Central Time.</p> <p>8 Would counsel state appearances for the</p> <p>9 record, please?</p> <p>10 MR. QUARANTA: Good morning. My name is</p> <p>11 John Quaranta. I represent the Plaintiff Copper Leaf in</p> <p>12 the Southern District of New York matter pending before</p> <p>13 Judge Keenan, and I'm here today with my associate,</p> <p>14 Natasha Biela, who's -- who is with me.</p> <p>15 Good morning, everyone.</p> <p>16 MR. GASTESI: Morning. This is Raul</p> <p>17 Gastesi, and I represent Marco Caruso in the Southern</p> <p>18 District of New York litigation, and with me here today</p> <p>19 is my associate, Diego Traibel.</p> <p>20 MR. PEPIN: Jeffrey Pepin --</p> <p>21 (Crosstalk.)</p> <p>22 MR. QUARANTA: I'm sorry, Mr. Pepin.</p> <p>23 I -- I -- Raul, I see -- I see a screen saying Marco.</p> <p>24 Is that Mr. Caruso who's also attending today?</p> <p>25 MR. GASTESI: I believe so. I hope so.</p>

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<p style="text-align: right;">Page 105</p> <p>1 but it is -- the triangle on the right is sort of -- it 2 isn't exactly that shape, but it's there, and then 3 the -- most of the colored territory is part of this. I 4 think all of those lots on the left-hand top side, 5 they're -- they're -- they're kind of out of proportion 6 for the sizes there, but I think that represents the 7 lots that PED still owns and that was not transferred. 8 Q Okay. Let's call this -- let's call this a 9 rectangle, and let's call this the top of the rectangle. 10 Do you see my cursor moving? 11 A Yes, sir, I do. 12 Q And then let's call this the bottom of the 13 rectangle, and we'll call this the right side of the 14 rectangle and the left side of the rectangle. 15 A Okay. 16 Q This triangle, in about the middle of the 17 right-hand side of the rectangle that I'm highlighting, 18 is this -- is this part of -- of what was purchased by 19 PED? 20 A I believe it is. I think that is what has 21 been referred to in the past as 43 acres. 22 Q 43 acres? Okay. 23 A I think it's -- 24 Q And then -- 25 A I think it's disproportionate to size, but I</p>	<p style="text-align: right;">Page 107</p> <p>1 A And just -- 2 Q And what's -- 3 A Stop back just a little bit. 4 Q Okay. Start here maybe? 5 A Stop at the road there. 6 Q Okay. And I'm drawing a line backwards. And 7 then -- 8 A You come down that road and just go around 9 those other lots. And like I say, this is -- this 10 normally is not all that good to proportion, but this 11 is exactly -- 12 Q Right. 13 A -- what you're looking at. No, the other 14 road, the -- the one that goes right in front of the 15 lots. 16 Q This here? 17 A No. Come back. There. That road. I think 18 that's the -- 19 Q This road. 20 A -- that's the property line there. And I 21 don't -- I don't know if it comes on down or it goes 22 around the lots. I would say it goes around those lots. 23 There's a lot more property in than out. 24 Q So would you say from the border of -- of the 25 highlighted portion on the left-hand side from the --</p>
<p style="text-align: right;">Page 106</p> <p>1 think that's it. 2 Q And we're talking about the land that was 3 transferred vis-a-vis the Panther purchase from PED for 4 the exchange of the releases against Marco, right? 5 So this triangle is part of it, correct? 6 A Yes, sir, I believe so. 7 Q And I've highlighted it. 8 Do you see it highlighted? 9 A Yes. 10 Q Okay. And then now, to the left of that, 11 touching the top border of the rectangle, there's -- 12 there's a roundish shape. 13 Is that part of it? 14 A I believe so. There's a space between those 15 two properties, and that looks like it could be about 16 right. 17 Q Okay. 18 A They're not in proportion, they're not that 19 large, but they're there. 20 Q Okay. And then as I go left on the top, what 21 is in, and what is out? 22 A I think you just go across to -- the top until 23 you get to what looks like those lots over there on the 24 left-hand side. 25 Q So I'm running my cursor, and now I stop.</p>	<p style="text-align: right;">Page 108</p> <p>1 from -- going to the right of the triangle from the 2 border, which is the road I drew on, that this all here 3 is -- is the 1,200 acres? 4 A So you're not really drawing that correctly, 5 but the part that still looks like -- I would go around 6 where the water is, or the -- the -- the -- the blue 7 right there, and loop that around. 8 Q On this? 9 A Yes. And just all the way down to however far 10 you go to the -- to match the other piece. That's 11 probably it, about there. 12 Q And then, more or less, everything inside? 13 A Uh-huh. Yes. Like I say, it is not to 14 proportion, but that's the drift of it. 15 Q Understood. Okay. And -- okay. 16 The highlighted portion is a rough 17 estimate of the land that was transferred, in late 2018, 18 early 2019, from PED to Panther Properties, correct? 19 A That's correct. 20 Q And approximately 1,200 acres? 21 A Plus or minus, yes. 22 Q And in your Affidavit, you state that Borland 23 owns -- or you thought, at the time you wrote in the 24 Affidavit, that Borland owned a portion of PED? 25 A That's correct.</p>

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<p>Page 109</p> <p>1 Q And so you were saying that hey, Borland still 2 owns some lots over here. And by "here," I mean the -- 3 the top left-hand side of the rectangle, the border that 4 is not highlighted, and going down on the left-hand side 5 of -- of the rectangle?</p> <p>6 A That's correct.</p> <p>7 Q It's not --</p> <p>8 A I think that's not to proportion, but yes, 9 that -- that's the idea.</p> <p>10 Q And he owns some lots in here by virtue of his 11 ownership in PED?</p> <p>12 A That would be correct. PED -- PED owns those 13 lots, however that is, whoever owns it.</p> <p>14 Q Okay. And that -- that's because those lots 15 are in the title name of PED?</p> <p>16 A That's correct.</p> <p>17 Q So what is your understanding of why he owns 18 those lots by virtue of his ownership in PED, and he 19 doesn't own the lots that were transferred by virtue of 20 his ownership in PED?</p> <p>21 A My understanding is that Marco had the 22 authority to transfer and sell and settle out whatever 23 claims there might be on any or all of the property, 24 including those lots, but those lots are set aside 25 because of the -- the fraud that happened in the</p>	<p>Page 111</p> <p>1 Q All right. Let's go back to your -- to your 2 Affidavit.</p> <p>3 It says here, in the transfer of the 4 property, acquiring land entity shall be equally owned 5 by Caruso and the Investor Group on a 50/50 basis.</p> <p>6 Did that -- does Mr. Caruso own 50 7 percent of Panther and -- I'm sorry. Withdraw that 8 question. I'm sorry. Apologize.</p> <p>9 Does Mr. Caruso own 50 percent of the 10 Panther Properties land?</p> <p>11 A Mr. Caruso owns none of the Panther Property 12 land.</p> <p>13 Q Let's call it the 1,200 acres that were 14 transferred from -- from PED to Panther Properties.</p> <p>15 Does he own any interest in those 1,200 16 acres today?</p> <p>17 A No.</p> <p>18 Q Why did he give up his 50 percent right to 19 that land?</p> <p>20 A Well, I -- I mean I only know what -- what I 21 think.</p> <p>22 Q What did he tell you?</p> <p>23 A I -- I mean I think -- I don't know if he said 24 it in so many words. I think the assumption was that 25 this was land that -- that he could do to settle his</p>
<p>Page 110</p> <p>1 Dominican Republic, and that was offered to some 2 Canadian investors, who may or may not have assumed the 3 title to each of the lots, but -- but there are other 4 people that have a claim on those lots.</p> <p>5 And so Marco did not want to -- well, 6 I -- I say he did -- he didn't do something that was 7 going to hurt that claim. So those lots are still PED 8 until they're transferred to whoever it belongs to.</p> <p>9 Q To your understanding, is there any difference 10 in Mr. Borland's ownership in the 1,200 acres versus the 11 lots you just referred to by virtue of his ownership in 12 PED?</p> <p>13 A Well, today he doesn't own anything in this 14 property because it's been deeded to Panther Properties. 15 Prior to the deeding, I don't think there was any 16 difference in the two.</p> <p>17 Q Do you know if he received -- "he" being 18 Mr. Borland -- received any consideration for the 19 transfer of the lots -- I'm sorry -- for the transfer -- 20 I'm going to start that question over.</p> <p>21 Mr. Rogers, do you know if Mr. Borland 22 received any consideration, in connection with his 23 ownership of PED, for PED's transfer of the lots to 24 Panther in exchange for the releases?</p> <p>25 A I don't know. I'm not aware of any.</p>	<p>Page 112</p> <p>1 situation and eliminate his liability for potential 2 lawsuits that he didn't want to defend, and it would 3 leave him the ability to capitalize on his other assets 4 that wouldn't have any liens on them.</p> <p>5 Q I don't understand your answer.</p> <p>6 Are you -- this agreement contemplates -- 7 this MOU contemplates that he's going to get the 8 releases some day in exchange for giving up 50 percent 9 of his ownership in the 1,200 acres, correct?</p> <p>10 A That was the original premise, yes.</p> <p>11 Q Understood. And that didn't turn out to be 12 the way the deal finally occurred, correct?</p> <p>13 A That's correct.</p> <p>14 Q And then Mr. Caruso, from the time of agreeing 15 to the negotiated MOU to the time of the deal -- the 16 ultimate deal being effectuated, gave up 50 percent of 17 his ownership rights in 1,200 acres of land?</p> <p>18 A Gave up all of his ownership rights in the 19 1,200 acres of land.</p> <p>20 Q Which was 50 percent of the -- of the 21 ownership of the land?</p> <p>22 A That's your -- that's your testimony, not 23 mine.</p> <p>24 Q And what consideration did he receive in 25 exchange for giving up that 50 percent?</p>

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<p>Page 113</p> <p>1 A He didn't give up 50 percent. He gave up 100</p> <p>2 percent --</p> <p>3 Q 100 percent.</p> <p>4 A -- in consideration.</p> <p>5 Q Yeah. Right. 100 percent of his -- yes.</p> <p>6 Understood.</p> <p>7 A And that was --</p> <p>8 Q How much did he give -- what did he get in</p> <p>9 exchange, sir?</p> <p>10 A He got a release of any potential liability</p> <p>11 that he might have based on a guarantee that he might or</p> <p>12 might not have been responsible for.</p> <p>13 Q But that's what he was going to get anyway in</p> <p>14 the original MOU, correct?</p> <p>15 A Yes.</p> <p>16 Q What did he get above and beyond the releases</p> <p>17 in the final effectuated deal?</p> <p>18 A He got nothing extra.</p> <p>19 Q And did he do that in order to protect his</p> <p>20 assets from a domesticated judgment?</p> <p>21 A No. He did that in order to get this deal</p> <p>22 done.</p> <p>23 Q Why wouldn't it get done unless he did that?</p> <p>24 A Because we weren't going to make the deal</p> <p>25 unless he did that.</p>	<p>Page 115</p> <p>1 this deal because Caruso was going to be involved in it,</p> <p>2 and so he had to move out in order to get this deal</p> <p>3 done.</p> <p>4 Q Why didn't they want to do the deal because</p> <p>5 Caruso was in it?</p> <p>6 A Well, we had some people who felt equally</p> <p>7 chagrined by Caruso's supposed guarantee as they were at</p> <p>8 Borland, and they just --</p> <p>9 Q And who --</p> <p>10 A -- didn't want to be associated.</p> <p>11 Q Who -- who were those people from your</p> <p>12 Investor Group?</p> <p>13 A I can't tell you offhand. I mean I've had</p> <p>14 lots of conversations with lots of people. I can't tell</p> <p>15 you which ones for sure.</p> <p>16 Q Can you name me one?</p> <p>17 A Mike Klein.</p> <p>18 Q And what did Mr. Klein tell you about -- about</p> <p>19 Mr. Caruso and the guarantee and his thoughts about it?</p> <p>20 A I -- I can't tell you exactly because I don't</p> <p>21 remember each and every conversation, but basically, it</p> <p>22 was not wanting to be associated with Mr. Caruso.</p> <p>23 Mr. DeGeer --</p> <p>24 Q Did he tell you --</p> <p>25 A Mr. DeGeer was a person who did not want to be</p>
<p>Page 114</p> <p>1 Q So you changed the terms from -- from him</p> <p>2 owning 50 percent of the land after the MOU was</p> <p>3 effectuated, if it had been ultimately effectuated,</p> <p>4 to -- to -- to zero percent?</p> <p>5 A We did not follow the terms of this agreement.</p> <p>6 Q I understand that. And I'm trying to</p> <p>7 understand what benefit did he -- did he receive by --</p> <p>8 Well, you agree with me that 50 percent</p> <p>9 ownership, as structured here in the MOU, is a valuable</p> <p>10 right?</p> <p>11 A Yes.</p> <p>12 Q What did he get in exchange for giving up that</p> <p>13 valuable right?</p> <p>14 A He got the deal done.</p> <p>15 Q And you're saying the deal was not going to</p> <p>16 get done as structured in the MOU?</p> <p>17 A It was not going to get done as structured in</p> <p>18 the MOU.</p> <p>19 Q Okay. Why?</p> <p>20 A Because there was -- one of the reasons is</p> <p>21 because it appeared there was going to be more problem</p> <p>22 in this than what there was going to be originally, in</p> <p>23 getting all this done, trying to get all of the people</p> <p>24 on-board in this process. And then at that point, we</p> <p>25 still had some parties who were not going to get into</p>	<p>Page 116</p> <p>1 associated with Mr. Caruso.</p> <p>2 Q Why not?</p> <p>3 A He had really hard feelings about Caruso. He</p> <p>4 thought that Marco was culpable just like Borland was.</p> <p>5 I didn't feel that way, but he did.</p> <p>6 Q What facts did he tell you that he based his</p> <p>7 culpability on?</p> <p>8 A I -- I don't know.</p> <p>9 Q Did Mr. DeGeer meet Mr. Caruso?</p> <p>10 A I believe that he did, yes. I don't know that</p> <p>11 for certain, but I believe he did.</p> <p>12 Q Was that one of the reasons why?</p> <p>13 A I -- I don't know.</p> <p>14 Q And Mr. Klein, did he meet Mr. Caruso?</p> <p>15 A I don't believe so.</p> <p>16 Q Did -- did these investor -- were there other</p> <p>17 investors other than these two?</p> <p>18 A I -- I don't recall any of the other investors</p> <p>19 having said that they had met Caruso. I can't tell you</p> <p>20 that they didn't, but I can tell you that I don't recall</p> <p>21 any of them saying they had met Caruso.</p> <p>22 Q Did any of them ever discuss with you -- any</p> <p>23 of your investors ever discuss with you Borland and</p> <p>24 Caruso's prior business dealings?</p> <p>25 A I don't think so. I don't think any of them</p>

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<p style="text-align: right;">Page 117</p> <p>1 were aware of any prior business dealings between the</p> <p>2 two of them. If they were, it wasn't part of my</p> <p>3 discussion.</p> <p>4 Q What about DeGeer and Klein?</p> <p>5 A I don't think -- I -- I don't know that either</p> <p>6 one of them knew about any previous involvement between</p> <p>7 the two. DeGeer might have. Klein, I'm pretty certain,</p> <p>8 didn't.</p> <p>9 Q Okay. Let's go to the transfer of the</p> <p>10 airport, Paragraph 3. First sentence in Paragraph 3 --</p> <p>11 this is Exhibit 3, page 82 to your deposition.</p> <p>12 Paragraph 3 is the third paragraph of the MOU.</p> <p>13 It says the parties hereto shall form an</p> <p>14 entity for the purpose of acquiring the ownership of the</p> <p>15 airport located in Placencia (the Placencia Airport),</p> <p>16 including all property and buildings thereon, by either</p> <p>17 an asset sale or stock sale, whichever transaction</p> <p>18 accomplishes the transfer of the entity of the Placencia</p> <p>19 Airport.</p> <p>20 Did that occur?</p> <p>21 A The transfer did occur, yes.</p> <p>22 Q And the -- the ownership of the airport was</p> <p>23 transferred to RIA, correct?</p> <p>24 A That is correct.</p> <p>25 Q And did you form RIA?</p>	<p style="text-align: right;">Page 119</p> <p>1 had paid off that loan to the Bank of Belize, and was</p> <p>2 just waiting to have the deeds transferred.</p> <p>3 Q Didn't -- didn't Greengold Farm make a mistake</p> <p>4 actually in the deed that was originally mortgaged by</p> <p>5 the bank, and it was the wrong descrip -- the wrong</p> <p>6 description? It wasn't -- it was a banana farm, and it</p> <p>7 wasn't the -- the Airport Property?</p> <p>8 A I -- I've heard that story. I don't have any</p> <p>9 verification of it.</p> <p>10 Q Well, isn't that the reason why Greengold Farm</p> <p>11 was willing to transfer its rights by deed in the -- in</p> <p>12 the property?</p> <p>13 A My indication was that they transferred it</p> <p>14 because it had been paid off.</p> <p>15 Q Okay. But -- but it was -- it was owned -- it</p> <p>16 may have been in the name of Greengold Farms, the deed,</p> <p>17 but the deed -- the -- the airport was owned by MEL?</p> <p>18 A Well, I -- I mean I -- I don't know how you do</p> <p>19 legal where you are or there, but if you have a deed,</p> <p>20 you own it. If you don't have a deed, you don't. And</p> <p>21 the deed was in Greengold Farms.</p> <p>22 Q Right. Okay.</p> <p>23 So then, now you tell me what</p> <p>24 consideration Marco made -- and that includes any of his</p> <p>25 entities -- in exchange for Greengold Farm giving all</p>
<p style="text-align: right;">Page 118</p> <p>1 A Yes, I did.</p> <p>2 Q You're the incorporator?</p> <p>3 A Yeah. I'm the one that -- that did the</p> <p>4 subscription documents and had it formed, yes. You have</p> <p>5 those documents.</p> <p>6 Q Right. Who did RIA Partners purchase the</p> <p>7 airport land from?</p> <p>8 A I believe it's called Greengold Farms.</p> <p>9 Q We'll get to that.</p> <p>10 And what was the consideration for the</p> <p>11 purchase from Greengold Farms?</p> <p>12 A The consideration was not from me, was not to</p> <p>13 Greengold Farms. It was the release of Marco Caruso</p> <p>14 from any impending litigation by us.</p> <p>15 Q All right. Let me -- let me wind that back.</p> <p>16 Did Marco Caruso have an ownership</p> <p>17 interest in Greengold Farms?</p> <p>18 A I -- I don't know if he had a legal ownership</p> <p>19 interest. He purported to me that he had the ability to</p> <p>20 get that deed transferred, that it was in the name of</p> <p>21 Greengold Farms.</p> <p>22 Q And do you know -- did he tell you why he had</p> <p>23 the ability to get it transferred?</p> <p>24 A Because he had originally bought the property</p> <p>25 with a bank loan from the Bank of Belize, and then he</p>	<p style="text-align: right;">Page 120</p> <p>1 fee simple interest to -- to RIA.</p> <p>2 A My understanding was a payment of somewhere</p> <p>3 between \$3 and \$4 million.</p> <p>4 Q When was that payment made?</p> <p>5 A I don't know.</p> <p>6 Q Was that payment made in 2009?</p> <p>7 A I have no idea. I don't know. You're --</p> <p>8 you're asking me stuff I don't really know.</p> <p>9 Q So who -- who -- who made the payment? Do you</p> <p>10 know?</p> <p>11 A According to Marco, Marco did.</p> <p>12 Q In his personal name or via MEL?</p> <p>13 A I don't know.</p> <p>14 Q What was the mortgage in the name of from the</p> <p>15 bank? Was that in the name of Marco or MEL?</p> <p>16 A I -- I don't know. There was a mortgage at</p> <p>17 Belize Bank. I don't know who -- who held it. I know</p> <p>18 who Marco said paid it off.</p> <p>19 Q Did Brent Borland contribute any money for the</p> <p>20 payoff of that loan?</p> <p>21 A Not that I'm aware of.</p> <p>22 Q Did Marco say that Brent had nothing to do</p> <p>23 with -- with the airport?</p> <p>24 A I don't think I would phrase what he said that</p> <p>25 way. He said that Brent --</p>

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1 (Zoom audio interruption.)

2 **A And that -- that he said.**

3 Q (BY MR. QUARANTA) He said that Brent what?

4 THE REPORTER: Pardon me.

5 **A Did not own --**

6 THE REPORTER: He said what? Pardon me.

7 I didn't hear you, Mr. Rogers. He said what?

8 **A He said that Brent did not own the airport.**

9 Q (BY MR. QUARANTA) Did he say that MEL owned

10 the airport?

11 **A I don't know. I know MEL was involved. I**

12 **originally thought MEL and Greengold were the same**

13 **people. Turned out they weren't.**

14 Q What was your understanding of MEL's

15 involvement with the airport?

16 **A My understanding was that they originally**

17 **formed their group in order to build the airport.**

18 Q And who was part of that group?

19 **A Initially, I believe that it was Marco,**

20 **Eugene, and Louis, as -- as MEL, Marco, Eugene, Louis.**

21 Q And did that ever change where Eugene and

22 Louis came out, and Bella Group and the Borlands came in

23 to be owners and directors?

24 **A Well, according to the documents you showed me**

25 **awhile ago, it looks that. I don't have any knowledge**

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1 **of that personally.**

2 Q Okay. We'll move on.

3 Does -- does RIA -- well, let me ask you

4 this way.

5 What -- what is -- what does it mean to

6 own the airport?

7 **A I -- I think if you own the land, you own the**

8 **airport.**

9 Q Okay. So how many acres comprise the

10 airport -- the Placencia Airport land?

11 **A 410, I believe.**

12 Q 410. And that was in a deed that was owned

13 by -- or that was in the name of Greengold Farm that was

14 transferred, in late 2018, early 2019, into the name of

15 RIA?

16 **A No. It was transferred via -- it was**

17 **transferred into, I -- I think it's RIA, Ltd. or R --**

18 **Riversdale International Airport, Ltd. I'm not certain**

19 **which.**

20 Q RIA, Ltd.

21 **A It's the Belize Airport.**

22 Q And -- and was that because the -- because

23 it's an airport, it has to be a Belizean owner?

24 **A No. It's because of the land, not -- my**

25 **counsel has told me it had to be a Belizean owner. And**

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1 **so it's -- it is -- there's one share in that -- in that**

2 **property, and it belongs to me.**

3 Q "Me" being RIA?

4 **A "Me" being Dyke Rogers.**

5 Q Okay. So you own 100 percent of the airport?

6 **A That's correct. Mr. Quaranta?**

7 Q Yes, sir.

8 **A Maybe I can add something here to just clear**

9 **this up so there's not as much confusion as I think**

10 **there's about to be based on my last answer.**

11 **There's one share of the airport. It's**

12 **owned by me. It's held in trust for RIA, Ltd., which**

13 **will be the operating entity which will operate the**

14 **airport, which is owned by all of the Investor Group and**

15 **me --**

16 Q Okay. So --

17 **A -- which is a U.S. Texas-based LLC. I -- I --**

18 **I want to volunteer that because I think it's going to**

19 **take awhile for you to get around to it.**

20 Q Yeah. Could -- could you help -- could we do

21 a -- a schematic?

22 So the fee is owned by RIA, L -- Ltd.

23 (Limited), right?

24 **A The -- the airport itself, fee simple, is --**

25 **is RIA, Ltd. or Riversdale International Airport, Ltd.**

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1 **I'm not certain which.**

2 Q Okay. And the sole owner of RIA, Ltd. is --

3 **A Me.**

4 Q -- Dyke Rogers, an individual?

5 **A That's correct.**

6 Q But that -- I guess that ownership right is

7 held in trust?

8 **A It's held in trust for RIA, LLC, for the**

9 **operations.**

10 Q So you've assigned your ownership rights to a

11 trustee, correct? Is there a trust agreement?

12 **A I -- I'm -- I'm not certain how this works --**

13 **the attorneys do this, I didn't do it -- but there is**

14 **a -- there is a -- the -- the -- the LLC will operate**

15 **the airport. The Ltd. won't. It's held for the benefit**

16 **of. I don't know if it's in trust. It's held for the**

17 **benefit of.**

18 Q There's a trust that holds the ownership to

19 the fee. Is that fair?

20 **A I -- I don't know if it's -- the legal entity**

21 **is a trust. It is being held for the benefit of the**

22 **LLC, whether that is --**

23 Q Who's hold --

24 **A -- a trust or whether that is something else.**

25 Q Who's holding it?

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<p>Page 185</p> <p>1 Q Have you given an e-mail update telling them</p> <p>2 that they're -- that the deal that ultimately was struck</p> <p>3 was not what's reflected in your documents?</p> <p>4 A I'm -- I'm sure that there is an e-mail or two</p> <p>5 that does that.</p> <p>6 Q Did --</p> <p>7 A They're -- I -- I -- let me say this. I don't</p> <p>8 have anybody who's invested in this who does not</p> <p>9 understand at least the premise of the deal.</p> <p>10 Q Do they all understand that they don't own the</p> <p>11 land, that they -- that they just own development rights</p> <p>12 or -- or profits from -- from operational rights?</p> <p>13 A They do.</p> <p>14 Q And how did you communicate that? Was it just</p> <p>15 a one-by-one basis in e-mails or conversations on phone</p> <p>16 calls, or did you have any type of -- of written</p> <p>17 disclosure?</p> <p>18 A I don't know. I -- I -- probably a</p> <p>19 combination.</p> <p>20 MR. GASTESI: All right. Hold on one</p> <p>21 second.</p> <p>22 Q (BY MR. QUARANTA) Did you --</p> <p>23 MR. GASTESI: Wait, John. Hold on one</p> <p>24 second, please. I've been extremely lenient. We've</p> <p>25 been here for hours. And I understand the rules of</p>	<p>Page 187</p> <p>1 what? Does that help refresh your recollection?</p> <p>2 A I would think whenever I got the deed to</p> <p>3 the -- to the airport land from -- from Greengold, that</p> <p>4 would have been when we would have done the release. I</p> <p>5 don't have that date. You -- you do, though, I believe.</p> <p>6 Q I do. Okay. All right. Quickly, let's go to</p> <p>7 the Panther investment.</p> <p>8 THE WITNESS: Can we go off for just a</p> <p>9 moment here so that I might ask my attorney something</p> <p>10 while we don't have a question pending?</p> <p>11 MR. QUARANTA: Yes, sir. Of course.</p> <p>12 THE REPORTER: We're going off at 3:14.</p> <p>13 (Discussion off the record.)</p> <p>14 THE REPORTER: We're back on at 3:16.</p> <p>15 Q (BY MR. QUARANTA) Did -- changing fields</p> <p>16 here.</p> <p>17 Did Mr. Caruso ever admit that he</p> <p>18 received money from Copper Leaf? Did he ever admit that</p> <p>19 to you?</p> <p>20 A No. I -- he's -- he has said he has not</p> <p>21 received any money directly from Copper Leaf ever.</p> <p>22 Q Well, directly, but from Borland, Copper Leaf</p> <p>23 money that was sent from Borland?</p> <p>24 A Well, he has said that he's received money</p> <p>25 from Borland, quite a lot of money over time, but</p>
<p>Page 186</p> <p>1 discovery give you broad latitude in inquiring and</p> <p>2 asking questions, but I truly believe this is far afield</p> <p>3 of any of the issues between your client and my client,</p> <p>4 either in the Southern District of Florida, in the State</p> <p>5 Circuit Court case, or in the New York District Court</p> <p>6 case. I really do. So I'm going to object, and I'm</p> <p>7 hoping you'll move off of these topics really quickly.</p> <p>8 MR. QUARANTA: Thank you for the speech,</p> <p>9 Raul.</p> <p>10 MR. GASTESI: That wasn't too bad.</p> <p>11 Q (BY MR. QUARANTA) Mr. Rogers, did you -- did</p> <p>12 you ever have the simultaneous exchange of the transfer</p> <p>13 of title with -- in one hand, and giving away, in the</p> <p>14 other hand, the releases to Mr. Caruso?</p> <p>15 A No, there was no simultaneousness to it. We</p> <p>16 got the deeds, and at some point we gave him a copy of</p> <p>17 the release.</p> <p>18 Q Is it memorialized in a closing document?</p> <p>19 A No, I don't believe so, unless -- unless</p> <p>20 Rodwell has that. I don't know. I don't think so.</p> <p>21 Q Do you know when you got the deeds and when he</p> <p>22 got the releases?</p> <p>23 A I don't have those dates, no, sir.</p> <p>24 Q Was it -- if this document is dated 20 --</p> <p>25 October 2018, was it in 2018 or 2019 or much later or</p>	<p>Page 188</p> <p>1 whether that came from Copper Leaf or not, I don't know.</p> <p>2 Q So he -- he's denied receiving Copper Leaf's</p> <p>3 money. Is that fair?</p> <p>4 MR. GASTESI: Objection to the form of</p> <p>5 the question.</p> <p>6 A I would say he has told me he never received</p> <p>7 any money directly from Copper Leaf that I would</p> <p>8 believe.</p> <p>9 Q You keep using "directly," and I'm just trying</p> <p>10 to say did he -- did he -- did he use the words "I</p> <p>11 didn't receive it directly from Copper Leaf, but I did</p> <p>12 receive Copper Leaf money from Borland"?</p> <p>13 A No, he didn't say that.</p> <p>14 MR. GASTESI: Objection to the form of</p> <p>15 the question.</p> <p>16 A I don't know how you know whether something is</p> <p>17 Copper Leaf's money or Joe Blow's money. Money is</p> <p>18 money, but --</p> <p>19 Q (BY MR. QUARANTA) I'll show you. I'll show</p> <p>20 you.</p> <p>21 A Okay. Deal.</p> <p>22 (Exhibit 11 marked.)</p> <p>23 Q (BY MR. QUARANTA) Okay. So I'm going to put</p> <p>24 on the screen an e-mail thread just to see if you know</p> <p>25 any of these characters. Do you -- this is Exhibit 11</p>

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CASE NO.: 1:18-CV-06377-JFK

COPPER LEAF, LLC, a Washington
State Limited Liability Company,

Plaintiff,

vs.

BELIZE INFRASTRUCTURE FUND I, LLC,
a Florida Limited Liability Company,
BRENT BORLAND and MARCO CARUSO,

Defendants.

VIDEOTAPED DEPOSITION OF
RICHARD "DYKE" ROGERS

Taken on Behalf of the Plaintiff
Pursuant to a Notice of Taking
Continuation Videotaped Deposition

DATE TAKEN: Monday, April 18, 2022
TIME: 1:00 p.m. - 3:07 p.m.
PLACE: Via Zoom Platform

Examination of the witness taken before:

Iliana Lugo, Court Reporter
Maria Isabel Salum, P.A.

<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES</p> <p>2 For the Plaintiff:</p> <p>3 Quaranta, P.A.</p> <p>4 By: John M. Quaranta, Esq.</p> <p>5 Natasha L. Biela, Esq.</p> <p>6 1600 Ponce de Leon Blvd., 10th Floor</p> <p>7 Coral Gables, Florida 33134</p> <p>8</p> <p>9 For Defendant Brent Borland:</p> <p>10 Law Offices of Jeffrey Pepin, P.A.</p> <p>11 By: Jeffrey C. Pepin, ESQ.</p> <p>12 One Clear Lake Center - Suite 602</p> <p>13 250 South Australian Avenue</p> <p>14 West Palm Beach, Florida 33401</p> <p>15 For Defendant Marco Caruso:</p> <p>16 Gastesi Lopez & Mestre, PLLC</p> <p>17 By: Raul Gastesi, Esq.</p> <p>18 Diego E. Traibel, Esq.</p> <p>19 8105 NW 155th Street</p> <p>20 Miami Lakes, Florida 33016</p> <p>21</p> <p>22 For the Witness, Richard "Dyke" Rogers:</p> <p>23 Riney & Mayfield, LLP</p> <p>24 By: Thomas C. Riney, Esq.</p> <p>25 320 S. Polk Street, Suite 600</p> <p>Amarillo, Texas 79101</p>	<p style="text-align: right;">Page 3</p> <p>1 INDEX</p> <p>2 Witness Cont. Direct Cross Redirect Recross</p> <p>3 RICHARD "DYKE" ROGERS</p> <p>4 (By Mr. Quaranta) 5 -- 79 --</p> <p>5 (By Mr. Pepin) -- 38 -- --</p> <p>6 (By Mr. Gastesi) -- 76 -- --</p> <p>7</p> <p>8 EXHIBITS FOR IDENTIFICATION</p> <p>9 Exhibit No. 3 Page 15</p> <p>10 (Previously marked by other Court Reporter)</p> <p>11</p> <p>12 Exhibit No. 8 Page 9</p> <p>13 - Marco Caruso's affidavit in the</p> <p>14 Placencia Estates Development case</p> <p>15</p> <p>16 Exhibit No. 14 Page 32</p> <p>17 - Series of e-mails between Caruso,</p> <p>18 Filler, Brent Borland, Gary Gomez</p> <p>19 from CIFI</p> <p>20 Exhibit No. 15 Page 24</p> <p>21 - Opinion of a trial court in Belize</p> <p>22</p> <p>23 Exhibit No. 17 Page 15</p> <p>24 - M.E.L. Investments audit</p> <p>25 Exhibit No. 18 Page 21</p> <p>- PED Audit</p> <p>Exhibit No. 19 Page 34</p> <p>- Due diligence e-mails</p>
<p style="text-align: right;">Page 4</p> <p>1 ---</p> <p>2 THE COURT REPORTER: We're on the video</p> <p>3 record.</p> <p>4 We're here for the deposition of Richard</p> <p>5 "Dyke" Rogers in the case of Copper Leaf, LLC, a</p> <p>6 Washington State Limited Liability Company, versus</p> <p>7 Belize Infrastructure Fund I, LLC, a Florida</p> <p>8 Limited Liability Company, Brent Borland and Marco</p> <p>9 Caruso, Case No. 1:18-CV-06377-JFK, in the United</p> <p>10 States District Court of -- Southern District of</p> <p>11 New York.</p> <p>12 We're here for the videotaped deposition.</p> <p>13 Today's date is April 18, 2022, Monday, and it is</p> <p>14 1:05 p.m.</p> <p>15 Let me go ahead and have counsel introduce</p> <p>16 themselves for the record, please.</p> <p>17 MR. QUARANTA: Good afternoon. John Quaranta</p> <p>18 and Natasha Biela on behalf of the Plaintiff,</p> <p>19 Copper Leaf.</p> <p>20 MR. PEPIN: Jeffrey Pepin on behalf of Brent</p> <p>21 Borland.</p> <p>22 MR. GASTESI: Raul Gastesi on behalf of Marco</p> <p>23 Caruso.</p> <p>24 MR. RINEY: Tom Riney on behalf of the</p> <p>25 witness.</p>	<p style="text-align: right;">Page 5</p> <p>1 THE COURT REPORTER: Okay. Let me go ahead and</p> <p>2 swear you in, please, sir. Raise your right hand.</p> <p>3 Do you swear the testimony you will give in</p> <p>4 this cause will be the truth, the whole truth, and</p> <p>5 nothing but the truth?</p> <p>6 THE WITNESS: I do.</p> <p>7 THE COURT REPORTER: Thank you very much.</p> <p>8 THEREUPON:</p> <p>9 RICHARD "DYKE" ROGERS</p> <p>10 was called as a witness and, after having been first</p> <p>11 duly sworn and responded "I do," was examined and</p> <p>12 testified as follows:</p> <p>13 CONTINUATION OF DIRECT EXAMINATION</p> <p>14 BY MR. QUARANTA:</p> <p>15 Q. Good afternoon, Mr. Rogers. I have just a few</p> <p>16 more questions to wrap it up.</p> <p>17 One of the things I want to do is to share my</p> <p>18 screen and ask you if -- show you a picture which we got</p> <p>19 from the Internet. I've never met the man, but this</p> <p>20 purports to be a picture of Eamon Courtenay, a lawyer in</p> <p>21 Belize.</p> <p>22 Do you see that on your screen?</p> <p>23 A. Yes, sir, I do.</p> <p>24 Q. Is that the lawyer you met with in Belize that</p> <p>25 you told us about the first time?</p>

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<p style="text-align: right;">Page 6</p> <p>1 A. I sure think so. He sure looks like him.</p> <p>2 Q. He looks like him?</p> <p>3 A. He looks like him. I think --</p> <p>4 Q. And --</p> <p>5 A. I couldn't guarantee or swear to it but it</p> <p>6 looks like that, yes.</p> <p>7 Q. Okay. And this was the lawyer that told you</p> <p>8 that he had a previous client that tried to enforce the</p> <p>9 guaranty against Marco but was unsuccessful; correct?</p> <p>10 A. That's correct.</p> <p>11 Q. And did you meet at his office?</p> <p>12 A. Yes, I did.</p> <p>13 Q. And did you know that his law firm was a</p> <p>14 partnership between him and a Mr. Coye?</p> <p>15 A. I see it on the screen. I don't know that I</p> <p>16 knew that.</p> <p>17 Q. You didn't know that then?</p> <p>18 A. I didn't pay any attention to it, no.</p> <p>19 Q. Okay. I'm going to scroll down. And there's</p> <p>20 a picture that purports to be a picture of Christopher</p> <p>21 Coye, his partner. Do you see that on your screen?</p> <p>22 A. Yes, I do.</p> <p>23 Q. When -- have you ever met this man,</p> <p>24 Christopher Coye?</p> <p>25 A. No, sir. No, I have not.</p>	<p style="text-align: right;">Page 7</p> <p>1 Q. Okay. Did you meet more than once with</p> <p>2 Mr. Courtenay -- Eamon Courtenay?</p> <p>3 A. No, sir. One time.</p> <p>4 Q. And did Mr. Courtenay tell you that</p> <p>5 Christopher Coye, his partner, had done corporate</p> <p>6 governance work for five or six companies for Brent</p> <p>7 Borland and Marco Caruso?</p> <p>8 A. I don't recall that, no, sir.</p> <p>9 Q. Are you leaving -- are you leaving the chance</p> <p>10 that he did tell you and you just don't remember or he</p> <p>11 didn't tell you that at the time?</p> <p>12 A. No, I don't believe he ever mentioned</p> <p>13 Mr. Coye. I think -- I got the impression it was the</p> <p>14 firm that was doing whatever they were doing. So I</p> <p>15 don't -- you know, I didn't know who represented who. I</p> <p>16 got the impression it was their firm and it could have</p> <p>17 been Mr. Courtenay. I never heard of Mr. Coye at the</p> <p>18 time.</p> <p>19 Q. Did Mr. Courtenay state he -- withdraw.</p> <p>20 Which one of the Borland investors did</p> <p>21 Mr. Courtenay represent that he couldn't enforce the</p> <p>22 guaranty against Mr. Caruso?</p> <p>23 A. My understanding it was Willem De Geer and et</p> <p>24 al. There were two or three people in the De Geer</p> <p>25 group.</p>
<p style="text-align: right;">Page 8</p> <p>1 Q. That's what Mr. Courtenay told you?</p> <p>2 A. Yes.</p> <p>3 Q. And did you ever talk to Mr. De Geer about</p> <p>4 enforcing the guaranty in Belize?</p> <p>5 A. Yes, I did.</p> <p>6 Q. And did he confirm that Mr. Courtenay was his</p> <p>7 attorney in Belize?</p> <p>8 A. I don't know that if I -- I don't know that</p> <p>9 asked him that specifically. The dots were there; maybe</p> <p>10 I connected them myself. But he told me that he had</p> <p>11 sued Marco in Belize.</p> <p>12 Q. He told you -- Mr. De Geer told you that he</p> <p>13 had sued Marco in Belize?</p> <p>14 A. Tried to enforce his -- what he thought was</p> <p>15 his personal guaranty or his judgment against Borland</p> <p>16 and Marco in Belize.</p> <p>17 Q. Well, let me dissect that.</p> <p>18 Are you saying that Mr. De Geer told you that</p> <p>19 he had received a judgment in the United States against</p> <p>20 Marco and Borland?</p> <p>21 A. I don't know where the -- I don't think he had</p> <p>22 a judgment against Marco. I think he had a judgment</p> <p>23 against Borland, and I don't know if it was in the U.S.</p> <p>24 or it was in Belize.</p> <p>25 Q. Aside from that litigation, are you aware of</p>	<p style="text-align: right;">Page 9</p> <p>1 any other litigation that Mr. De Geer had against Marco</p> <p>2 or Brent Borland?</p> <p>3 A. No, sir, I'm not.</p> <p>4 Q. I'm going to show you a picture of another</p> <p>5 attorney named Glenn Godfrey, which I have never met the</p> <p>6 man. I've spoken to him. I downloaded this from his</p> <p>7 website and this purports to be him.</p> <p>8 Do you see that on your screen?</p> <p>9 A. Yes, sir, I do.</p> <p>10 Q. Have you ever met the man in the picture under</p> <p>11 the name Glenn Godfrey -- above the name Glenn Godfrey?</p> <p>12 A. No, sir, I've not.</p> <p>13 Q. Have you ever met the man on the next page</p> <p>14 with the picture above the name William Lindo?</p> <p>15 A. No, sir, I've not.</p> <p>16 Q. Okay. We're done with those.</p> <p>17 I'm going to go and put Exhibit 8 on the</p> <p>18 screen. This is Marco Caruso's affidavit in the</p> <p>19 Placencia Estates Development case, which he submitted</p> <p>20 at the same time that you submitted your affidavit.</p> <p>21 (Thereupon, the document referred to was</p> <p>22 marked Exhibit Number 8 for identification.)</p> <p>23 BY MR. QUARANTA:</p> <p>24 Q. My question to you is: Did you -- have you</p> <p>25 ever read this affidavit?</p>

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<p style="text-align: right;">Page 10</p> <p>1 A. I don't see it, and I don't have it, so I</p> <p>2 don't really know.</p> <p>3 Q. I'm sorry. I thought I was sharing my screen.</p> <p>4 This affidavit on the screen -- I'll blow it</p> <p>5 up you -- is the affidavit of Marco Caruso, which he</p> <p>6 filed in his and the Defendant's defense in the case in</p> <p>7 which you're a co-defendant and which is primarily</p> <p>8 related to the Placencia Estates Development. Do you</p> <p>9 see that on your screen?</p> <p>10 A. Yes, I do.</p> <p>11 Q. Okay. Now, you know that you filed an</p> <p>12 affidavit in your defense in that case; correct?</p> <p>13 A. Yes, sir, I did.</p> <p>14 Q. And were you aware that Marco filed an</p> <p>15 affidavit in connection with the defense of that case?</p> <p>16 A. Yes, sir, I am.</p> <p>17 Q. Did you -- withdraw.</p> <p>18 Have you, as you sit there today, ever read</p> <p>19 this affidavit of Marco Caruso which we've marked as</p> <p>20 Exhibit 8?</p> <p>21 A. I'm sure that I have. If it's in Case 623, I</p> <p>22 think I've read everything on that.</p> <p>23 Q. Okay. Now, I'm going to page 18 of the</p> <p>24 document, Exhibit 8, which is Tab B to the Affidavit of</p> <p>25 Marco Caruso, which is the Master Agreement.</p>	<p style="text-align: right;">Page 11</p> <p>1 And my question to you is: Have you ever read</p> <p>2 this document, the Master Agreement?</p> <p>3 A. No, sir, I've not.</p> <p>4 Q. Have you ever been informed of the contents of</p> <p>5 the Master Agreement?</p> <p>6 A. Just the conversations that you had in your</p> <p>7 questioning last week is the first time I've actually</p> <p>8 heard of a Master Agreement.</p> <p>9 Q. When you went to go visit with Mr. Caruso in</p> <p>10 Belize after Mr. Borland got arrested, did Mr. Caruso</p> <p>11 advise you of the Master -- the existence of the Master</p> <p>12 Agreement? Did he advise you of the existence of the</p> <p>13 Master Agreement?</p> <p>14 A. No, sir.</p> <p>15 Q. I am now going to page 28 of 42 of Exhibit 8.</p> <p>16 This is a letter from Christopher Coye, dated August</p> <p>17 30th, 2019, written to Brent Borland's criminal defense</p> <p>18 attorney. And it explains the legal work that Mr. Coye</p> <p>19 did on behalf of Mr. Caruso and Mr. Borland.</p> <p>20 My question to you is: As you sit in your</p> <p>21 chair today have you ever read this document?</p> <p>22 A. No, sir, I've not.</p> <p>23 Q. Was this document -- oh, this document would</p> <p>24 not have been shared with you because it didn't exist.</p> <p>25 Did anybody ever tell you the contents of Tab</p>
<p style="text-align: right;">Page 12</p> <p>1 D to Exhibit 8 on page 28?</p> <p>2 A. No, sir, not that I'm aware of.</p> <p>3 Q. Okay. Now, going to page 40 of 42. This</p> <p>4 document, which is Exhibit E to Mr. Caruso's affidavit,</p> <p>5 which we've marked as Exhibit 8, at page 40 of Exhibit 8</p> <p>6 there is a February 15th Memorandum of Understanding,</p> <p>7 and it is one -- two pages, and it purports to be signed</p> <p>8 by Brent Borland, Marco Caruso, and Wayne Robbins.</p> <p>9 My question to you is: Have you ever seen</p> <p>10 this document before?</p> <p>11 A. No, sir, I've not.</p> <p>12 Q. Has anybody ever told you the contents of this</p> <p>13 document?</p> <p>14 A. No, sir.</p> <p>15 Q. When you went to visit with Mr. Caruso after</p> <p>16 Brent Borland was arrested in, I believe it was, August</p> <p>17 of '18, did Mr. Caruso pull out any files to show you</p> <p>18 anything related to his defense that he was not</p> <p>19 responsible for signing the guaranties?</p> <p>20 A. No, sir, I don't believe so.</p> <p>21 Q. Let's take it past that date. Has Mr. Caruso</p> <p>22 ever pulled out his files to substantiate the documents,</p> <p>23 his defense that he never signed or authorized the</p> <p>24 signature of the guaranty?</p> <p>25 A. I've not seen anything from him, no.</p>	<p style="text-align: right;">Page 13</p> <p>1 Q. Have you seen anything from anyone?</p> <p>2 A. I made that independent judgment based on</p> <p>3 looking at about, I don't know, more than a dozen, maybe</p> <p>4 as many as 20 notes that were supposedly signed or</p> <p>5 guaranteed by Mr. Caruso. That was my independent</p> <p>6 assessment.</p> <p>7 Q. Well, aside from guarantying, you agree that</p> <p>8 he didn't -- you came to the conclusion, correct, that</p> <p>9 he didn't -- Mr. Caruso didn't guaranty these</p> <p>10 obligations; right?</p> <p>11 A. I made the assumption that he didn't sign</p> <p>12 those.</p> <p>13 Q. Okay. So did you make any investigation to</p> <p>14 determine if Mr. Caruso and Mr. Borland had any legal</p> <p>15 relationships in Belize?</p> <p>16 A. Yes, through my attorney in Belize.</p> <p>17 Q. Through your attorneys --</p> <p>18 A. In Belize.</p> <p>19 Q. You're talking about the Barrow Williams firm?</p> <p>20 A. That's correct.</p> <p>21 Q. And I think your testimony was that you</p> <p>22 retained the Williams firm after you signed the initial</p> <p>23 Letter of Intent; is that fair?</p> <p>24 A. No. I actually went to talk with the Williams</p> <p>25 firm while I was in Belize the first time. I think that</p>

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<p style="text-align: right;">Page 14</p> <p>1 was around the 25th, -6th, -7th, -8th, something like 2 that, of July. I didn't sign the letter of intent until 3 August. 4 Q. Okay. And so you hired the Barrow Williams 5 firm in July? 6 A. In July of, I guess, '18. 7 Q. '18, okay. 8 And so you knew you that the Barrel Williams 9 firm in July of '18 had a pre-existing legal 10 relationship with Marco Caruso; correct? 11 A. Yes, sir, I did. 12 Q. And you weren't concerned -- you weren't 13 concerned that they were not going to look out for your 14 best interest? 15 A. I wasn't concerned. There is a limited number 16 of attorneys in Belize, as you well know, and I felt 17 like even though there was a conflict it was a better 18 representation than I was going to get from the other 19 firms for various reasons. 20 Q. Okay. I want to show you what we've marked as 21 Exhibit 17. This was provided -- I don't know when our 22 office was provided it. Maybe last night or maybe this 23 morning. This is an M.E.L. Investments audit, which 24 we've marked as Exhibit 17. 25 (Thereupon, the document referred to was</p>	<p style="text-align: right;">Page 15</p> <p>1 marked Exhibit Number 17 for identification.) 2 BY MR. QUARANTA: 3 Q. Did you have a chance to review this before 4 your depo? 5 A. I just saw it just a few moments ago. 6 THE WITNESS: Excuse me to say, I'm going to 7 move back a little bit so to see if I can stay in 8 the camera. I'm getting a real crick in my neck 9 trying to watch this screen. 10 MR. QUARANTA: Sure. 11 THE WITNESS: Let me see if can I find a more 12 comfortable spot. I don't want to be laying down 13 looking up at you, so -- 14 Okay. This works better. 15 MR. QUARANTA: Is it possible to move the mic 16 closer to you? 17 MR. RINEY: We'll work on that. 18 Is this satisfactory? 19 MR. QUARANTA: Yeah, yeah. We can hear you. 20 MR. RINEY: Okay. 21 BY MR. QUARANTA: 22 Q. All right. To refresh your recollection I'm 23 pulling up Exhibit 3, which is your affidavit. You 24 attached two Promissory Notes to your affidavit, one in 25 May of '16 and one in December of 2015.</p>
<p style="text-align: right;">Page 16</p> <p>1 My question to you is: Do you recall that you 2 entered into a Promissory Note with Belize 3 Infrastructure Fund and lent that entity a million 4 dollars on or about December 31st of 2015? 5 A. Yes, sir. 6 Q. Okay. So let's go to the audit, the M.E.L. 7 Investments Limited audit. Have you ever seen that 8 document before I sent it to you? 9 A. No, sir, I've not. 10 Q. Did Marco ever tell you that M.E.L. 11 Investments had been audited? 12 A. I believe that he didn't. 13 THE COURT REPORTER: I'm sorry, can I have you 14 repeat that? I didn't hear the answer. 15 A. No, sir, he didn't. 16 If I need to move that a little closer, I 17 still think I can. 18 Q. Yes, please. 19 MR. RINEY: Yeah, we're out of chord. Let me 20 see. 21 Can you hear us? 22 THE WITNESS: Can you hear? 23 MR. QUARANTA: Yeah. 24 BY MR. QUARANTA: 25 Q. Have you ever read an audit before?</p>	<p style="text-align: right;">Page 17</p> <p>1 A. Yes, sir. 2 Q. Do you have experience in reading audits? 3 A. I've read several, yes. 4 Q. I'm sorry. I'm having a hard time hearing 5 you. 6 A. Can you hear better now? 7 Q. I heard that. 8 A. Okay. Do I have experience reading audits? 9 Yes, sir, I would say I do. 10 Q. Okay. And I'm going to page 3 of Exhibit 17 11 to your deposition. 12 My first question to you is: Have you ever 13 heard of the Belizean accounting firm of Castillo, 14 Sanchez & Burrell? 15 A. No, sir, I've not. 16 Q. Do you see at the bottom of the page where it 17 says: "Independent Correspondent Firm to Deloitte 18 Touche Tohmatsu?" 19 A. Yes, sir, I do. 20 Q. Do you know what that means? 21 A. I think what it says, it's an Independent 22 Correspondent Firm to Deloitte Touche. They work with 23 them would be my -- the way I would read that. 24 Q. I'm sorry. Did you answer? I didn't hear an 25 answer.</p>

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<p style="text-align: right;">Page 18</p> <p>1 MR. RINEY: Let's move that back up.</p> <p>2 Can you hear okay now?</p> <p>3 THE WITNESS: I'll just live with a crick in</p> <p>4 my neck.</p> <p>5 Go ahead, sir.</p> <p>6 MR. RINEY: Can you hear us okay?</p> <p>7 THE WITNESS: Make sure the camera is on me</p> <p>8 now.</p> <p>9 MR. RINEY: Okay.</p> <p>10 THE WITNESS: Adjust the camera.</p> <p>11 MR. RINEY: Can you hear?</p> <p>12 THE WITNESS: Do you hear us?</p> <p>13 MR. GASTESI: I can hear you fine.</p> <p>14 MR. RINEY: Can you hear us?</p> <p>15 MR. GASTESI: I can hear you fine. This is</p> <p>16 Raul.</p> <p>17 MR. QUARANTA: Are you guys -- Tom, are you</p> <p>18 talking?</p> <p>19 MR. RINEY: Yes. And Raul says --</p> <p>20 MR. QUARANTA: Does anybody else hear him?</p> <p>21 MR. GASTESI: I can hear him just fine.</p> <p>22 MR. PEPIN: I can hear too.</p> <p>23 MR. QUARANTA: Oh, I'm sorry. Then it must be</p> <p>24 me, my microphone. My -- it's my speaker.</p> <p>25 Can you hear me?</p>	<p style="text-align: right;">Page 19</p> <p>1 MR. GASTESI: Yes.</p> <p>2 MR. QUARANTA: Hello? Can anybody hear me?</p> <p>3 MR. GASTESI: Yes, we can hear you.</p> <p>4 MR. QUARANTA: Okay. I'm sorry. Can you -- I</p> <p>5 guess the last question -- let me do the last</p> <p>6 question again, if you can hear me, Mr. Rogers.</p> <p>7 BY MR. QUARANTA:</p> <p>8 Q. Have you ever heard of the term "Independent</p> <p>9 Correspondent Firm?"</p> <p>10 A. I actually have not, not in terms of an audit.</p> <p>11 Q. Okay. I'm going to go down -- do you see the</p> <p>12 date of this audit?</p> <p>13 A. Says: For the year ending December 31st, '13.</p> <p>14 Q. The date the auditors signed it, could you go</p> <p>15 to page 4?</p> <p>16 A. Yes, sir. October 3rd, 2014.</p> <p>17 Q. Now let's go to page 18.</p> <p>18 A. Mr. Quaranta, I can't hear you now.</p> <p>19 Q. Can you hear me now?</p> <p>20 A. Yes, sir, I do.</p> <p>21 Q. Okay. Can you go to page 18, please?</p> <p>22 A. Okay.</p> <p>23 Q. Can you take a moment and read -- well, that's</p> <p>24 Footnote 4 -- but where it says: Shareholders' Loan,</p> <p>25 the text, please?</p>
<p style="text-align: right;">Page 20</p> <p>1 A. Yes, sir.</p> <p>2 Q. Do you see that as of October of 2014</p> <p>3 according to this audit that Brent Borland was a</p> <p>4 shareholder of M.E.L.?</p> <p>5 A. It says: "Loan facility from shareholders,</p> <p>6 Marco Caruso and Brent Borland."</p> <p>7 Q. Did Marco Caruso tell you that Brent Borland</p> <p>8 was a shareholder, at least as of October of 2014?</p> <p>9 A. I really don't recall whether he did or not.</p> <p>10 We talked about their relationship a lot, but I don't</p> <p>11 know whether he said he was of M.E.L. or he wasn't. I</p> <p>12 just don't recall that.</p> <p>13 Q. How about a -- go to the next page, note 6,</p> <p>14 Related Party Transaction. First paragraph says: "The</p> <p>15 Company has a loan outstanding to its Directors, Marco</p> <p>16 Caruso and Brent Borland. See note 5 for details."</p> <p>17 Did Mr. Caruso tell you that Mr. Borland was a</p> <p>18 Director of M.E.L. as of October 2014 at least?</p> <p>19 A. I don't recall if he did or not.</p> <p>20 Just for clarity, the -- I really didn't think</p> <p>21 I was involved with M.E.L., so I wouldn't have had a</p> <p>22 reason to talk about M.E.L. specifically.</p> <p>23 Q. Let's go to Exhibit 18. Do you see that on</p> <p>24 your screen?</p> <p>25 A. Yes, sir, I do.</p>	<p style="text-align: right;">Page 21</p> <p>1 (Thereupon, the document referred to was</p> <p>2 marked Exhibit Number 18 for identification.)</p> <p>3 BY MR. QUARANTA:</p> <p>4 Q. This is the PED audit.</p> <p>5 Do you see Exhibit 18, it says: "Placencia</p> <p>6 Estates Development?"</p> <p>7 A. Yes, sir.</p> <p>8 Q. Have you ever seen this document before?</p> <p>9 A. I don't believe so. I would say no, I have</p> <p>10 not. Let me clarify that.</p> <p>11 Q. How about page 18 of Exhibit 18, can you go</p> <p>12 there, please? And look where it says: "Shareholders'</p> <p>13 Loan."</p> <p>14 A. I don't have a page 18. I've got --</p> <p>15 Q. Of Exhibit 18.</p> <p>16 MR. RINEY: He's talking about the number down</p> <p>17 here, the right-hand corner.</p> <p>18 A. Oh, page 16, okay. Page 16.</p> <p>19 Okay. I'm looking at it now.</p> <p>20 BY MR. QUARANTA:</p> <p>21 Q. Do you see at the bottom note 5:</p> <p>22 "Shareholders' Loan?"</p> <p>23 A. Yes, sir, I do.</p> <p>24 Q. Did Mr. Caruso tell you that Brent Borland was</p> <p>25 a shareholder of Placencia Estates Development?</p>

6 (Pages 18 to 21)

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<p style="text-align: right;">Page 22</p> <p>1 A. Yes, he did.</p> <p>2 Q. When did Mr. Caruso tell you that Mr. Borland</p> <p>3 lost his ownership rights to Placencia Estates</p> <p>4 Development?</p> <p>5 A. Can I ask my attorney something for a second?</p> <p>6 Q. Sure.</p> <p>7 (Thereupon, there was a brief interruption,</p> <p>8 after which the deposition continued as follows:)</p> <p>9 THE WITNESS: Okay. Could you repeat the</p> <p>10 question one time, please?</p> <p>11 MR. QUARANTA: Iliana, can you read it back?</p> <p>12 THE COURT REPORTER: Sure. Give me one</p> <p>13 second.</p> <p>14 MR. QUARANTA: Sure.</p> <p>15 (Thereupon, the following was read by the</p> <p>16 Court Reporter:</p> <p>17 "Question: When did Mr. Caruso tell you that</p> <p>18 Mr. Borland lost his ownership rights to Placencia</p> <p>19 Estates Development?")</p> <p>20 A. Okay. I don't know that he told me that.</p> <p>21 BY MR. QUARANTA:</p> <p>22 Q. Did Mr. Caruso communicate to you that</p> <p>23 Mr. Borland still has ownership rights in Placencia</p> <p>24 Estates Development?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 23</p> <p>1 Q. Do you have an understanding as to whether</p> <p>2 Mr. Borland has an ownership interest in Placencia</p> <p>3 Estates Development as we sit here today?</p> <p>4 A. Yes. My understanding is that he has an</p> <p>5 ownership interest in Placencia Estates Development,</p> <p>6 yes.</p> <p>7 Q. What is that ownership interest in Placencia</p> <p>8 Estates Development according to your understanding?</p> <p>9 A. I believe he owns about -- he own 50 percent,</p> <p>10 he and his wife, of about 391 or -2 lots of the portion</p> <p>11 of those lots that have not been deeded away to you</p> <p>12 individual Canadians in the Dominican Republic scam,</p> <p>13 that there is still some of those lots in the name of</p> <p>14 Placencia Estates Development.</p> <p>15 Q. What documents are you relying upon for making</p> <p>16 that assertion?</p> <p>17 A. The document that -- I have a deed to the</p> <p>18 property, all the other property, except that.</p> <p>19 Q. Well, I'm trying to get an understanding as to</p> <p>20 how Placencia -- how he does not have an ownership</p> <p>21 interest in the land that was deeded to Panther.</p> <p>22 A. Those discussions on how he doesn't were all</p> <p>23 with my attorney, Rodwell Williams, and -- and he did</p> <p>24 all the paperwork for the transfer and stated that they</p> <p>25 had the right do that.</p>
<p style="text-align: right;">Page 24</p> <p>1 Q. I'm going to put on the screen what we've</p> <p>2 marked as Exhibit 15. This is an opinion of a trial</p> <p>3 court in Belize, along with an appeal and a --</p> <p>4 Mr. Atkinson sued Marco Caruso and Panther Estates</p> <p>5 Development in 2014.</p> <p>6 (Thereupon, the document referred to was</p> <p>7 marked Exhibit Number 15 for identification.)</p> <p>8 BY MR. QUARANTA:</p> <p>9 Q. Did you have a chance to read the Judgment,</p> <p>10 Exhibit 15?</p> <p>11 A. I've not seen this particular document.</p> <p>12 Q. Do you know what it says?</p> <p>13 A. No, sir, I don't. I mean, I can read it face</p> <p>14 value here.</p> <p>15 Q. Were you aware that a plaintiff sued</p> <p>16 Mr. Caruso claiming that he breached a contract with</p> <p>17 Mr. Caruso and Mr. Caruso denied that he signed it and</p> <p>18 said that Brent Borland improperly cut and pasted his</p> <p>19 signature on the document?</p> <p>20 A. I'm not aware of this particular deal. I am</p> <p>21 aware that Mr. Caruso has claimed that Mr. Borland</p> <p>22 duplicated in some manner, facsimile or something, his</p> <p>23 signatures, yes.</p> <p>24 Q. Right. And were you aware that in this case</p> <p>25 he made that argument to a Judge, and the Judge said the</p>	<p style="text-align: right;">Page 25</p> <p>1 following, paragraph 6 in Exhibit 15, the Judge says:</p> <p>2 "Marco says Brent Borland was never an authorized agent</p> <p>3 of the company with regard to any arrangements made with</p> <p>4 Chris Atkinson. Furthermore, he, Marco Caruso, did not</p> <p>5 or did not knowingly sign the agreement. In fact, he</p> <p>6 never knew The Agreement before he was served with the</p> <p>7 Claim Form in this matter?"</p> <p>8 Paragraph 11, "He expressed --" he's talking</p> <p>9 about Marco. "He expressed doubt that the signatures</p> <p>10 were his own. Even stating that they were a</p> <p>11 reproduction of his own which may have been placed there</p> <p>12 by cut and paste method. He found issue with the</p> <p>13 positioning of his signature 'three inches' above the</p> <p>14 designated line."</p> <p>15 And then the Judge goes on to find Marco</p> <p>16 Caruso authorized the signature. Exact argument he's</p> <p>17 making or made to you.</p> <p>18 Are you aware -- I guess you're not aware of</p> <p>19 this case?</p> <p>20 MR. GASTESI: Objection to the form of the</p> <p>21 question.</p> <p>22 A. I'm not aware of the case, no.</p> <p>23 BY MR. QUARANTA:</p> <p>24 Q. Did you do -- did you do any Internet searches</p> <p>25 for Marco Caruso?</p>

7 (Pages 22 to 25)

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<p style="text-align: right;">Page 26</p> <p>1 A. I did.</p> <p>2 Q. This didn't come up?</p> <p>3 A. I didn't see it. I have not seen this, no.</p> <p>4 Q. Okay. Do you know who David Filler is?</p> <p>5 A. I've heard of his name in relationship to some</p> <p>6 of the claims by Mr. Borland, yes.</p> <p>7 Q. Well, you're aware that there was an escrow</p> <p>8 agent identified in the loan documents, Filler</p> <p>9 Rodriguez?</p> <p>10 A. There was.</p> <p>11 Q. And how come -- did you ever call Mr. Filler?</p> <p>12 A. No, sir, I've not.</p> <p>13 Q. How come you didn't call Mr. Filler?</p> <p>14 A. Because after I went to Belize and saw that</p> <p>15 my -- what was listed as collateral for me didn't really</p> <p>16 exist, there wasn't really a need to call anybody else.</p> <p>17 Q. Did you ever think of suing Mr. Filler?</p> <p>18 A. No, I didn't.</p> <p>19 Q. Did he provide you with an opinion letter?</p> <p>20 A. No, sir, he did not. I never contacted him.</p> <p>21 Q. So did Mr. Caruso ever tell you about</p> <p>22 Mr. Filler?</p> <p>23 A. He did.</p> <p>24 Q. What did he say?</p> <p>25 A. We had several conversations regarding</p>	<p style="text-align: right;">Page 27</p> <p>1 Mr. Filler. That he was to be an escrow agent in</p> <p>2 Florida and that a Brent had de facto, after the fact,</p> <p>3 asked for certain documents to be sent to him. And that</p> <p>4 he never sent the original documents to Filler. Filler</p> <p>5 never had them.</p> <p>6 Q. Why didn't he send the original documents to</p> <p>7 Filler?</p> <p>8 A. I don't know. That's -- you have to ask</p> <p>9 Mr. Caruso that. I don't know.</p> <p>10 Q. Why did he send Mr. Caruso -- why did</p> <p>11 Mr. Caruso send Mr. Filler any documents?</p> <p>12 A. I don't know that, sir.</p> <p>13 Q. Well, what did he tell you in his discussions</p> <p>14 with you?</p> <p>15 MR. RINEY: Give me a second. It's better if</p> <p>16 you look right there.</p> <p>17 THE WITNESS: Oh, okay.</p> <p>18 MR. RINEY: It's going to be on your neck</p> <p>19 easier.</p> <p>20 THE WITNESS: Okay.</p> <p>21 He's telling me where to look, and I'm having</p> <p>22 a little problem figuring out how not to look at</p> <p>23 you when you're asking me a question. But, go</p> <p>24 ahead.</p> <p>25 BY MR. QUARANTA:</p>
<p style="text-align: right;">Page 28</p> <p>1 Q. What did Mr. Caruso tell you was the reason he</p> <p>2 sent any documents to Mr. Filler in Florida?</p> <p>3 A. I don't recall why he said he sent some copies</p> <p>4 of some titles. That's what he said he sent. And I</p> <p>5 don't know why he did.</p> <p>6 Q. So, copies of what documents?</p> <p>7 A. Copies of some of the lot titles or some of</p> <p>8 the lot -- whatever you use for ownership.</p> <p>9 Q. What's the significance of sending copies?</p> <p>10 A. I don't see any significance. I don't see</p> <p>11 that that is of any value at all.</p> <p>12 Q. So -- but why did you mention copies? Were</p> <p>13 they supposed to be originals and Mr. Caruso only sent</p> <p>14 copies?</p> <p>15 A. I don't know. I just know that Mr. Caruso</p> <p>16 told me he sent copies of some of the lot titles or</p> <p>17 deeds, or whatever you call them, to Mr. Filler.</p> <p>18 Q. And did he tell you why he did that?</p> <p>19 A. He said that they were requested to be sent to</p> <p>20 him and so he sent them.</p> <p>21 Q. And so what relationship did Mr. Caruso have</p> <p>22 with Mr. Borland that would require him to send</p> <p>23 documents to Mr. Filler?</p> <p>24 A. I don't know that.</p> <p>25 Q. Did you ever inquire?</p>	<p style="text-align: right;">Page 29</p> <p>1 A. Not in that -- not in so many words, no.</p> <p>2 Q. Was Mr. -- aside from sending Mr. Filler some</p> <p>3 documents, copies of deeds, what other interactions did</p> <p>4 Mr. Caruso tell you he had with Mr. Filler?</p> <p>5 A. He told me that Mr. Filler was a long-time</p> <p>6 friend of Mr. Borland's and that's the only other thing</p> <p>7 I know about him.</p> <p>8 Q. Did Mr. Caruso tell you that Mr. Filler was</p> <p>9 retained by Mr. Borland and Mr. Caruso to try and put a</p> <p>10 loan together with a Panamanian bank named CIFI?</p> <p>11 A. I've heard of CIFI. Mr. Borland told me that</p> <p>12 they were putting this loan together. I never heard</p> <p>13 those words from Mr. Caruso. Mr. Borland represented it</p> <p>14 though to be a Spanish bank, not a Panamanian bank.</p> <p>15 Q. Well, Mr. Borland represented that CIFI was a</p> <p>16 Spanish bank?</p> <p>17 A. That's what he told me in each of my visits</p> <p>18 with him, yes.</p> <p>19 Q. And do you know what CIFI stands for?</p> <p>20 A. He just said it was an international</p> <p>21 infrastructure fund.</p> <p>22 Q. Do you think --</p> <p>23 A. I would --</p> <p>24 Q. Do you think the confusion might be that they</p> <p>25 spoke Spanish?</p>

8 (Pages 26 to 29)

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SECOND CIRCUIT NO. 21-2761 APPENDIX PAGE A524

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<p style="text-align: right;">Page 30</p> <p>1 A. I have no idea. He just told me it was a</p> <p>2 Spanish bank.</p> <p>3 Q. So you took it to mean from Spain?</p> <p>4 A. Yes, sir, I did.</p> <p>5 Q. Spanish?</p> <p>6 A. Yeah.</p> <p>7 Q. As opposed to saying that it was a Spanish</p> <p>8 bank in that they communicated in the Spanish language?</p> <p>9 A. That's how I took it, that it was in Spain.</p> <p>10 Q. Okay. And so Mr. Caruso, what did he say his</p> <p>11 involvement, if any, in the CIFI matter was?</p> <p>12 A. I've actually never had a discussion with</p> <p>13 Mr. Caruso about CIFI in any way, that I recall.</p> <p>14 Q. Did Mr. Caruso, did he tell you that as of</p> <p>15 2018 he was still working with Mr. Borland?</p> <p>16 A. I don't know what date they would have</p> <p>17 terminated, but I think in early '18 I think they still</p> <p>18 were. I think I had that impression.</p> <p>19 Q. They still were doing what?</p> <p>20 A. I think in '18 Mr. Borland was still supposed</p> <p>21 to be supplying some money, which Mr. Caruso would have</p> <p>22 been deploying if he got it.</p> <p>23 Q. Pursuant to what agreement?</p> <p>24 A. I don't know.</p> <p>25 Q. Pursuant to who telling you that? Why do you</p>	<p style="text-align: right;">Page 31</p> <p>1 believe that they still had a relationship in 2018?</p> <p>2 What's the source of your belief?</p> <p>3 A. I guess the source of my belief is I don't</p> <p>4 know that things ended before Mr. Caruso was indicted or</p> <p>5 arrested. I don't know when their relationship totally</p> <p>6 fell apart. I don't know.</p> <p>7 Q. Well, what is your understanding -- you just</p> <p>8 said "their relationship." What is your understanding</p> <p>9 of their relationship aside from your admitting that</p> <p>10 Borland was a shareholder in PED? What other</p> <p>11 relationship exists between them in 2018 other than</p> <p>12 that?</p> <p>13 MR. GASTESI: Objection to the form of the</p> <p>14 question.</p> <p>15 A. I'd thought all along -- and that has never</p> <p>16 really changed -- that Borland was raising money for</p> <p>17 projects that were going on in Belize or he was supposed</p> <p>18 to be raising money for it and that Caruso was a</p> <p>19 recipient of some of that money to use on the projects</p> <p>20 in Belize. I don't know when the flow of cash stopped.</p> <p>21 Q. You've always believed that?</p> <p>22 A. I believed that -- that's what Mr. Borland</p> <p>23 told me, is that -- is that he was supposed to be</p> <p>24 raising money for these projects.</p> <p>25 Q. Have you always believed that?</p>
<p style="text-align: right;">Page 32</p> <p>1 A. Well, I mean, it became pretty obvious</p> <p>2 eventually that Mr. Borland wasn't putting all the money</p> <p>3 in the projects.</p> <p>4 What he told me when he borrowed the money</p> <p>5 from me is not that that money was going to be sent to</p> <p>6 Belize but that that money was going to be kept as sort</p> <p>7 of a surety fund for the CIFI group. He had to</p> <p>8 demonstrate that he had enough money to finish the</p> <p>9 project and then they were going to make a master loan,</p> <p>10 I think, of like \$54 million dollars if he had his --</p> <p>11 left a million dollars in the bank.</p> <p>12 Q. I'm sorry. I'm reading something on the</p> <p>13 screen. That's why I'm not looking at you. Give me one</p> <p>14 second here.</p> <p>15 Okay. I'm going to share Exhibit 14 with you</p> <p>16 on the screen. Exhibit 14 is a series of e-mails</p> <p>17 between Caruso, Filler, Brent Borland, Gary Gomez from</p> <p>18 CIFI --</p> <p>19 MR. RINEY: I'm sorry, was that Exhibit 14 or</p> <p>20 19?</p> <p>21 MR. QUARANTA: 14.</p> <p>22 A. I don't know that I have that.</p> <p>23 (Thereupon, the document referred to was</p> <p>24 marked Exhibit Number 14 for identification.)</p> <p>25 BY MR. QUARANTA:</p>	<p style="text-align: right;">Page 33</p> <p>1 Q. Well, it's on the screen. I just want --</p> <p>2 A. Okay. Could you blow it up --</p> <p>3 Q. Do you see on the screen that there's -- I've</p> <p>4 highlighted the name Gary Gomez Saravia, Lead Investment</p> <p>5 Officer --</p> <p>6 A. Yes.</p> <p>7 Q. -- at Corporation Interamericana for Financing</p> <p>8 Infrastructure, CIFI, in Panama City, Panama? Do you</p> <p>9 see that?</p> <p>10 A. Yes, sir, I do.</p> <p>11 Q. And your testimony is that Mr. Caruso never</p> <p>12 told you that he was actively working to refinance the</p> <p>13 Belize Infrastructure loans in December and January of</p> <p>14 '17 and '18; correct?</p> <p>15 A. Mr. Caruso didn't tell me that, no.</p> <p>16 Q. Okay.</p> <p>17 A. Mr. Borland did but not Mr. Caruso.</p> <p>18 Q. Okay. So did Mr. Caruso deny it?</p> <p>19 A. I don't think so. I don't -- we never had a</p> <p>20 discussion about CIFI.</p> <p>21 Q. Okay. You never had a discussion.</p> <p>22 All right. So you never talked about it?</p> <p>23 A. No, sir.</p> <p>24 Q. So you weren't aware that Marco Caruso</p> <p>25 provided to CIFI the due diligence requested in the due</p>

1 diligence list; is that fair?

2 MR. GASTESI: Hold on one second before you

3 answer that, sir.

4 I'm -- listen, we're here on a case in New

5 York possibly on the -- and the use of deposition I

6 think we've agreed that the discovery can be used

7 in the Federal District Court case down here as

8 well. This is far afield from this witness'

9 knowledge or how this could possibly be relevant or

10 lead to the discovery of admissible evidence.

11 I'm going to let him answer this question.

12 And you've told us this was going to be for an hour

13 but this is getting far, far afield. I'm just

14 letting you know I'm about to start trying to put

15 an end to this.

16 You can answer, Mr. Rogers.

17 A. I've not ever seen this before, no.

18 BY MR. QUARANTA:

19 Q. All right. I'm going to Exhibit 19.

20 A. Yes, sir.

21 (Thereupon, the document referred to was

22 marked Exhibit Number 19 for identification.)

23 BY MR. QUARANTA:

24 Q. Did Marco tell you that he exchanged these due

25 diligence e-mails with CIFI, as expressed in Exhibit 19?

1 the money. But, I didn't have a reason to believe he

2 wasn't doing what he said he was going to do at that

3 point.

4 MR. QUARANTA: Okay. If you could give me two

5 minutes, I might be done. I just want to talk to

6 my associate and then I'll be right back and then

7 dot it.

8 THE COURT REPORTER: We're going off the video

9 record. The time is 1:58.

10 (Thereupon, at 1:58 p.m. a recess was taken

11 until 2:04 p.m., after which the deposition continued as

12 follows:)

13 THE COURT REPORTER: We're back on the video

14 record. The time is 2:04 p.m.

15 BY MR. QUARANTA:

16 Q. I just have a few more, maybe two or three.

17 I'm putting on the screen the exhibit that --

18 let me try that again. This is the e-mail from Marco

19 Caruso to CIFI's lawyer in Belize in response to the due

20 diligence e-mail you just looked at.

21 And he says: "Hello, Ashanti. It all sounds

22 good with the exception of the MEL property which is

23 approximately 550 acres. Also this property is still in

24 the name of the seller and will be able to provide the

25 signed conveyance at your request."

1 A. I never had a discussion with Marco Caruso

2 about CIFI.

3 Q. Okay. And do you see in Exhibit 19 -- you can

4 start on the e-mail on page 2, which is from -- from

5 Ashanti Arthurs Martin, at Balderamos Arthurs to David

6 Filler, if you can read that e-mail, and then go up and

7 then read Marco's response.

8 Let me know when you're done.

9 MR. GASTESI: Objection to the form of the

10 question.

11 A. I've read it.

12 BY MR. QUARANTA:

13 Q. You've read it? Okay.

14 Did Marco tell you that he was actively trying

15 to use the parcel -- the Airport parcel as collateral

16 for a loan from CIFI as of the date of this e-mail,

17 which is January of 2018?

18 A. No, Marco never had any discussion with me

19 about CIFI at all. Brent told me he was trying to get a

20 loan on the Airport.

21 Q. And you didn't believe him? You didn't

22 believe Brent; is that fair?

23 A. No, at that time I didn't have any reason not

24 to believe Brent, other than the fact that he hadn't

25 come through in over a year -- a little over a year with

1 Okay. My first question is: Did it turn out

2 to be that the Airport Property was more or less 55

3 acres?

4 A. No, sir, it's 410.

5 Q. 410.

6 And do you know where he says that "the

7 property is still in the name of the seller and will be

8 able to provide the signed conveyance at your request,"

9 is that exactly what he did in getting the property --

10 the Airport Property transferred into your company, RIA?

11 A. Could you rephrase that question?

12 Q. When Mr. Caruso changed his mind and decided

13 to give you the property instead of CIFI, did he tell

14 you that the property was still in the name of the

15 seller but that he'd be able to get a signed conveyance

16 to transfer the property into the name of RIA?

17 A. If I could take that in a couple of parts. I

18 think the CIFI deal, I don't think that was an option

19 when I got involved because Mr. Borland had already been

20 arrested. So I think that was off the table, I would

21 suppose. So I don't think it was an "either or." But

22 he did -- the seller did convey the property directly to

23 our group, that is correct.

24 Q. Do you have any understanding as to why there

25 would be a discrepancy between the 400-some-odd acres

1 versus the 550 that is described here in this e-mail?
 2 A. I have absolutely no idea. I've never seen
 3 the 550 number until today.
 4 MR. QUARANTA: Okay. I have nothing further.
 5 Thank you, Mr. Rogers.
 6 THE WITNESS: Yes, sir.
 7 MR. GASTESI: I think Mr. Pepin wanted to go
 8 first.
 9 MR. PEPIN: Yes. Thank you, Raul.
 10 CROSS EXAMINATION
 11 BY MR. PEPIN:
 12 Q. Mr. Rogers, I have some questions and a few
 13 documents to look at. I think almost all of them are
 14 exhibits you've already gone over, so you should have it
 15 in front of you and shouldn't be a big deal. I'll try
 16 to keep this as brief as I can.
 17 Do you recall, Mr. Rogers, attending
 18 Mr. Borland's sentencing hearing on October 5th, 2021?
 19 A. Yes, sir, I do.
 20 Q. Okay. I'll get --
 21 A. By video.
 22 Q. Sorry.
 23 A. By video.
 24 Q. Right. And I'll getting into the actual --
 25 and I'll bring up the actual testimony, but I just

1 wanted to know if you recall that.
 2 And you recall providing testimony during that
 3 sentencing hearing?
 4 A. Yes, sir, I do.
 5 Q. Okay. And just as a -- to your recollection
 6 today, do you have any reason to believe that the
 7 testimony that you gave on that day, October 5th, 2021,
 8 is no longer true and accurate or do you still have the
 9 same opinions?
 10 A. No. It's completely accurate. There is one
 11 word in this deal that I think is a mispronounce of some
 12 kind. I don't know what it means.
 13 Q. Okay. When I bring that up you can point it
 14 out to me if it -- if that has any relevance to the
 15 question.
 16 A. Yep.
 17 Q. Just a little background on you, Mr. Rogers.
 18 I believe last Monday, in the first part of this
 19 deposition, I think you testified that you had invested
 20 in over a hundred companies utilizing offering
 21 memorandums and things of that nature; is that correct?
 22 A. I suspect that's an accurate number.
 23 Q. I'm not holding you to the number a hundred.
 24 Just -- okay.
 25 Would you consider yourself a highly

1 sophisticated investor?
 2 A. I did until we get through this deposition.
 3 Q. At least prior to today did you consider
 4 yourself a successful investor?
 5 A. Pretty much so, yes.
 6 Q. And would that be in both domestic and
 7 international companies in investments?
 8 A. Yes, sir.
 9 Q. Okay. And I believe you're a real estate
 10 broker in Texas; is that correct?
 11 A. Yes, sir.
 12 Q. And you have a license that's current; is that
 13 also true?
 14 A. That's correct.
 15 Q. How long have you had that license?
 16 A. Since the late '70s.
 17 Q. Okay. And that period of time -- and believe
 18 me, I know -- I'm asking for an estimate, but how many
 19 transactions do you think you've overseen as a broker,
 20 just ballpark number of transactions, since the late
 21 '70s 'til now?
 22 A. Several hundreds. Over a billion dollars
 23 worth of sales.
 24 Q. Okay. That's all I was going for.
 25 So you're familiar with appraisals; correct?

1 A. Yes, I am.
 2 Q. And professional valuations of properties?
 3 A. I'm not an appraiser but I see a lot of them.
 4 Q. Okay. Same type of question. Over the last,
 5 gosh, over whatever, 40 years I guess it is, since
 6 you've been a real estate investor, how many appraisals
 7 do you think you've reviewed? In the thousands?
 8 A. In the hundreds anyway.
 9 Q. Okay. And do you or your companies rely on
 10 real estate appraisals sometimes to make investments?
 11 A. Yes.
 12 Q. Just taking some of the -- one of the
 13 companies I noticed on your affidavit, Prana, I believe
 14 that's one of your development companies; correct?
 15 A. That's correct. I'm a partner with them.
 16 Q. Okay. And does that company rely on --
 17 typically rely on appraisals of real estate before they
 18 consider or enter into a transaction?
 19 A. Most all of our partners are professional real
 20 estate people. And so I would say no, we don't.
 21 Q. Okay. But other companies and others, like
 22 you said yourself, they do rely on them from time to
 23 time; is that correct?
 24 A. True, absolutely.
 25 Q. Okay. Are you familiar with the entitlement

1 process when it comes to real estate development?

2 A. The titling process?

3 Q. Entitlement. I apologize. Entitlement

4 process.

5 A. I don't know what that means, no, sir.

6 THE WITNESS: Tom, do you?

7 MR. RINEY: No.

8 BY MR. PEPIN:

9 Q. If you have a piece of raw undeveloped land

10 and it has no entitlements on it, are you aware of any

11 process by which it achieves and gets entitlements and

12 it goes through a permitting process which will increase

13 the value of the land upon completion?

14 A. All right --

15 Q. I think it's entitlements --

16 A. I'm not familiar with entitlements.

17 Q. Okay.

18 A. I don't think we use that in this part of the

19 world.

20 Q. Okay. As a real estate developer are you

21 familiar with a term or -- a term somewhat like

22 "horizontal infrastructure improvement?"

23 A. Yes.

24 Q. Okay. And to you what does that term mean?

25 A. It just finds basically the width you can have

1 percentage of building on a property, that sort of

2 thing.

3 Q. And do horizontal -- in your opinion, sir, do

4 horizontal infrastructure improvements, do they tend to

5 increase the value of permitted land?

6 A. Depends on what they are. It could.

7 Q. Okay. Just as an example, what kind of

8 horizontal improvements -- infrastructure improvements

9 would increase the value of a piece of permitted land?

10 A. Well, if you had improvements that were not

11 going to be -- they're there and they're not really what

12 the intended use or best or highest use of the property

13 is, they might have to be removed in order to build what

14 you really wanted to build there. So in that case it is

15 a detriment.

16 Q. All right. Okay. Have you ever developed

17 golf course developments?

18 A. No, sir, I haven't.

19 Q. In your experience, though -- and maybe you

20 don't have any knowledge of this -- but in your

21 experience and to your knowledge a golf course -- in a

22 golf course type development would a golf course view,

23 access to a golf course, be something that increases the

24 value of a home and a lot?

25 A. I certainly think so, yes.

1 Q. How about on waterfront land? Waterfront land

2 would have more value or access to the water would have

3 more value as well; correct?

4 A. It certainly could.

5 Q. In comparing -- and, again, in your

6 experience, because you've been doing this for a long

7 time, in your experience waterfront land compared to lot

8 land, is there a percentage or typical percentage more

9 of value that you'd place on the waterfront land than a

10 land lot piece of property?

11 A. I don't really think it's more valuable. I

12 don't know if there is a percentage. I think it

13 probably depends on what the waterfront is and what the

14 access to the water is. Is it open water? Is it lagoon

15 water? Is it stale water? Is it fresh water? You

16 know, a lot.

17 Q. Fishing water? Right.

18 A. I mean, it has a lot of options on that.

19 Q. Yeah, okay.

20 You've had some -- you've talked a lot about

21 Mr. Caruso and your relationship with him. And, please,

22 I apologize if you've answered this some time over the

23 last week and this week. I don't think you've answered

24 it today but maybe last Monday and I didn't -- but, did

25 your partner Mr. -- well, did Mr. Caruso provide you

1 with any appraisals for PED at any time?

2 A. I have seen two appraisals on PED.

3 Q. Coming from Mr. Caruso?

4 A. I think so. I don't know that. They -- I

5 don't think they came from Mr. Borland, so I'd say they

6 did come from Mr. Caruso.

7 Q. About what time do you believe you received

8 these? And I know you said two so --

9 A. You know, I don't really know. The

10 appraisals -- Mr. Pepin, these appraisals were so crazy

11 that, I mean, I just sort of threw them over to the

12 side, but I did see them. But I don't know whether I

13 saw them -- I think probably well after we agreed to

14 take the property.

15 Q. You said "so crazy." Do you mean the values

16 were crazy?

17 A. I mean, the values, yeah, they're kind of

18 crazy values.

19 Q. What kind of values -- if you recall, what

20 kind of values do those appraisals give?

21 A. I think one of them was about 60 million

22 dollars. The other was about 80 million dollars.

23 Q. The appraisals themselves, did they look like

24 legitimate appraisals done by an appraisal company?

25 A. I think they looked like what we in this trade

1 called MIA (sic), which is "made as instructed" -- I
2 mean, MAI. And I think they were -- basically they
3 looked like bogus appraisals to me, whoever had them
4 done.

5 Q. When you received them, did you ever provide
6 them to your own appraiser or do any kind of due
7 diligence on whether they were bogus or not?

8 A. No. I bought the property nextdoor for a
9 small percentage of how those appraisals worked. And
10 that was my best -- I mean, actual market seemed to me
11 to be a better appraisal than somebody who appraised it.

12 Q. Property nextdoor, how many acres was that?

13 A. I think there was about -- around 1,200 acres,
14 1,187, something like that.

15 Q. Do you recall the price?

16 A. Yes. It was 3.5 million dollars. There were
17 some fees on that that brought it to about 3.6 million
18 dollars.

19 Q. Same question about appraisal. Have you ever
20 seen the appraisals for the Airport Property?

21 A. No. I have -- I've read that there -- what an
22 appraisal was, but I've not seen one, that I recall.

23 Q. Okay. Mr. Caruso didn't provide you with any
24 appraisals or valuations for the Airport Property?

25 A. No.

1 A. That was through discussions with my attorney,
2 Mr. Williams.

3 Q. I'm not asking you about any discussions you
4 had with your attorney.

5 Did you have any evidence at that time that
6 Mr. Borland owned any percentage of ownership of that
7 land?

8 A. I knew that Mr. Borland had had -- either had
9 or had had ownership on that land.

10 Q. Okay. Your discussions or your due diligence,
11 for lack of a better term, in whether Mr. Caruso had the
12 ability to transfer that land, was that solely based on
13 your discussions with your attorney?

14 A. Yes, it was.

15 Q. Okay. And what was that attorney's name?

16 A. Rodwell Williams.

17 Q. Did you assign during that -- during your
18 discussions when you agreed to Release of Claims and the
19 other terms that are in the MLU and you later closed
20 upon, was there any discussion upon pegging a value of
21 the PED land or the Airport land, any?

22 A. No. Well, the discussion was how much tax we
23 were going to have to pay on it to the government of
24 Belize.

25 Q. Like doc stamp tax?

1 Q. Okay. At some point you -- you agreed to
2 purchase the PED property and I guess the Airport
3 Property from M.E.L.; is that correct?

4 A. Well, I didn't agree to get the Airport
5 Property from M.E.L. and we --

6 Q. Correct me. Yeah, correct me if I'm wrong.

7 A. Okay. We got the property from Green -- I
8 think it's Green Gold Farms.

9 The Panther Property we didn't buy. We agreed
10 to a release of claims against Mr. Caruso in exchange
11 for the Panther Property.

12 Q. And I apologize if you've already answered
13 this. At that -- when was that about?

14 A. I'm thinking October of '18.

15 Q. The date of your MLU; is that correct?

16 A. No, that's when we started the negotiation
17 process. I think we closed some time in October or
18 November.

19 Q. Okay. And, again, I apologize if you've
20 already testified to this, but at the time you entered
21 in those negotiations to take the PED property in
22 exchange for the Release of Claims against Mr. Caruso,
23 did you have any documentation or evidence that
24 Mr. Caruso was -- had the ability to transfer that
25 property?

1 A. The document tax, yeah, transfer tax.

2 Q. But was there any discussion by Mr. -- did
3 Mr. Caruso say: Hey, this stuff is worth 19 million.
4 Look, here, this is worth 20 million, 25.

5 Were there any discussions like that?

6 A. No. I mean, the discussion we had on the
7 Panther Property is that it might be worth 4 million
8 dollars. That was the number that we talked about.

9 The Airport was worth nothing if it doesn't
10 get finished. If it gets finished, it's got significant
11 value.

12 Q. You said discussions were that the Panther
13 Property was about 4 million dollars. Was there any
14 type of documentation to support that number or is that
15 just discussions between the two of you?

16 A. Oh, that number was based on the selling price
17 of the property nextdoor and it was a little optimistic
18 compared to what I thought we could buy the property
19 nextdoor to. But we gave a little credence to the fact
20 that there was waterfrontage on that, even though there
21 was also quite a bit of swamp land on that
22 waterfrontage.

23 Q. Okay. You mentioned two appraisals. Do you
24 have any knowledge of whether Mr. Caruso commissioned
25 many different appraisals on that land prior to your

<p style="text-align: right;">Page 50</p> <p>1 discussions with him in 2018?</p> <p>2 A. No. The only two appraisals I've seen -- I've</p> <p>3 seen two. I don't know if there were other appraisals</p> <p>4 done or not.</p> <p>5 Q. Okay. And he didn't share any other ones with</p> <p>6 you; correct?</p> <p>7 A. No, sir.</p> <p>8 Q. Did you ever ask for any and all appraisals on</p> <p>9 the land from him?</p> <p>10 A. I didn't.</p> <p>11 Q. All right. I'm going to attempt this. It's</p> <p>12 been a little time here since I use this, but I'm going</p> <p>13 to share my screen.</p> <p>14 And do you have it in front of you?</p> <p>15 A. I can see the screen, yes, sir.</p> <p>16 Q. Okay. What I'm showing you is what has</p> <p>17 previously been marked as Exhibit 3. And this is your</p> <p>18 affidavit, sir.</p> <p>19 Do you recall this document?</p> <p>20 A. Which case is that in? Could you scroll down</p> <p>21 some?</p> <p>22 Q. Yes, sure. It's Belize, 623.</p> <p>23 A. I'm familiar with that.</p> <p>24 Q. I'm sorry, did you say you can argue with</p> <p>25 that?</p>	<p style="text-align: right;">Page 51</p> <p>1 A. I am familiar with that.</p> <p>2 Q. Okay. Sir. All right. Let's go to paragraph</p> <p>3 48 in your affidavit. And I'd like you to read that and</p> <p>4 tell me when you're done.</p> <p>5 A. 48. "In effecting the transfer..."</p> <p>6 Yes, I've read it.</p> <p>7 Q. Okay. Now, there is a value stated there of</p> <p>8 1,250,000 Belizean dollars. Does that translate into</p> <p>9 the 625,000 in U.S. dollars number that I've seen in</p> <p>10 other places?</p> <p>11 A. Yes, sir, it does.</p> <p>12 Q. Okay. And does that represent the stamp tax</p> <p>13 you paid for the Panther Property?</p> <p>14 A. I paid on that value, yes.</p> <p>15 Q. Okay. That's what I wanted to distinguish.</p> <p>16 Did you pay \$625,000 as the stamp tax or did</p> <p>17 you pay a stamp tax using that as the value of the</p> <p>18 property?</p> <p>19 A. No, I've used that as the value of the</p> <p>20 property. I think the tax is 8 percent, if I'm not</p> <p>21 mistaken, of that number.</p> <p>22 Q. Okay. So you didn't pay \$625,000 to Belizean</p> <p>23 government for that property?</p> <p>24 A. No, sir.</p> <p>25 Q. Okay. Now, you paid the -- so you paid the 8</p>
<p style="text-align: right;">Page 52</p> <p>1 percent stamp tax, whatever that is.</p> <p>2 Who did you pay that to? Was that the</p> <p>3 government?</p> <p>4 A. To the government of Belize.</p> <p>5 Q. Okay. Does that represent the sole amount of</p> <p>6 money that you paid out to acquire -- your acquisition?</p> <p>7 When I say "you" I don't mean you. Understand that I</p> <p>8 mean whoever actually took ownership of it.</p> <p>9 A. Other than legal fees and the taxes that</p> <p>10 hadn't been paid for a number of years.</p> <p>11 Q. How did you make that payment? Was it wired</p> <p>12 directly or was it handled by someone else?</p> <p>13 A. I do not recall how we did it.</p> <p>14 Q. Okay.</p> <p>15 A. I believe --</p> <p>16 Q. How was this related --</p> <p>17 A. Let me back up. I believe I wired the money</p> <p>18 to Williams/Barrel firm and they would have paid it from</p> <p>19 there.</p> <p>20 MR. GASTESI: Mr. Pepin, once again, I'm going</p> <p>21 to issue the same objection.</p> <p>22 How is this in any way related to what's going</p> <p>23 on in either one of these two cases?</p> <p>24 MR. PEPIN: I believe it's all relevant. All</p> <p>25 of these questions are going to tie into valuations</p>	<p style="text-align: right;">Page 53</p> <p>1 and what the properties were worth at certain</p> <p>2 times.</p> <p>3 I promise you you'll get way more time than</p> <p>4 I'll take to ask any questions you want.</p> <p>5 MR. GASTESI: I'm going to let you for a</p> <p>6 little while. But, you know, let's -- this is</p> <p>7 really -- I'm not buying that. But, you know, I</p> <p>8 know I'm not the arbitrator but I'm really not</p> <p>9 convinced this is in any way going to be in any way</p> <p>10 related to any of the evidence that's going to be</p> <p>11 presented in either one of the two cases.</p> <p>12 Go ahead.</p> <p>13 BY MR. PEPIN:</p> <p>14 Q. Okay. On the closing of this property do you</p> <p>15 remember if there were any commissions paid?</p> <p>16 A. I don't believe there were any commissions</p> <p>17 paid to anybody, no.</p> <p>18 Q. Okay. Was there any money paid to Mr. Caruso?</p> <p>19 A. No.</p> <p>20 Q. All right. And I believe you've already</p> <p>21 answered this, but I just want to state it a different</p> <p>22 way. In the purchase -- purchase -- in the transfer of</p> <p>23 the Panther Property you did the not rely on any</p> <p>24 independent third-party appraisal; correct?</p> <p>25 A. No, sir, we didn't.</p>

14 (Pages 50 to 53)

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SECOND CIRCUIT NO. 21-2761 APPENDIX PAGE A530

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<p style="text-align: right;">Page 54</p> <p>1 Q. Do you recall on the Airport Property, well,</p> <p>2 what value was used to pay the stamp tax to the Belize</p> <p>3 government?</p> <p>4 A. I'm sorry, could you repeat that?</p> <p>5 Q. Yeah. I'm sorry, I kind of leaned back.</p> <p>6 Do you recall what value was used for the</p> <p>7 Airport Property when you paid the stamp tax on that?</p> <p>8 A. I don't. I'm thinking -- I just don't recall</p> <p>9 exactly, no.</p> <p>10 Q. Okay. I think it's later in the documents I'm</p> <p>11 going to show you later. I think we'll address it then.</p> <p>12 Did have you a website involving the Airport</p> <p>13 Property and the development on that property?</p> <p>14 A. Yes, I've developed a website and it is up.</p> <p>15 Q. Do you recall when that went active or live,</p> <p>16 however you're supposed to term?</p> <p>17 A. Somewhere, I think, around November. I</p> <p>18 think -- yeah, it says here November 25th.</p> <p>19 Q. Yeah, that's right. So I'm pointing to</p> <p>20 paragraph 67 of your affidavit.</p> <p>21 And is that website still flyplacencia.com?</p> <p>22 A. Yes, it is. That's one of the URLs.</p> <p>23 Q. Okay. And the group -- by the way, what is</p> <p>24 the group -- what does "the group" refer to in that</p> <p>25 affidavit?</p>	<p style="text-align: right;">Page 55</p> <p>1 A. Could you point out where you're asking?</p> <p>2 Q. I'm sorry. Right here. What group is it</p> <p>3 referring to? That's all.</p> <p>4 A. The group would be myself and all of the other</p> <p>5 investors that are part of that -- part of the</p> <p>6 operation.</p> <p>7 Q. You and the 39 investors; correct?</p> <p>8 A. I think there's 39. It's in that</p> <p>9 neighborhood.</p> <p>10 Q. Okay. Still on your affidavit. See if I've</p> <p>11 got the right -- there you go. Okay.</p> <p>12 This is at the end of your affidavit, sir. Is</p> <p>13 this an accurate representation of the website</p> <p>14 flyplacencia.com?</p> <p>15 A. It looks like it, yes, sir.</p> <p>16 Q. Okay. And what is this website used for by</p> <p>17 you, by the group?</p> <p>18 A. It was intended to be used to be able to</p> <p>19 demonstrate the construction that was going on both for</p> <p>20 our own investors and for possibly potential other</p> <p>21 investors of our developers whom I want to help</p> <p>22 participate with us.</p> <p>23 Q. Okay. If you can read -- I wish I could make</p> <p>24 it bigger. I'm not sure how. But if you could read</p> <p>25 starting here where I've indicated, paragraphs 3 and 4,</p>
<p style="text-align: right;">Page 56</p> <p>1 if you could read that and let me know when you're</p> <p>2 finished? I'll ask you a few questions on that.</p> <p>3 I know it's smaller than it should be.</p> <p>4 A. I'm reading it. Yes.</p> <p>5 Q. Okay. So on your website -- it is stated on</p> <p>6 the website that an additional 12 million capital is all</p> <p>7 that's needed to finish the Airport; is that correct?</p> <p>8 A. 12 plus the part that we thought was going to</p> <p>9 be public at the time. It's about 15 to 16 million</p> <p>10 total U.S. That cost has gone up significantly in the</p> <p>11 last years. But, yes, that was the number at this time.</p> <p>12 Q. So when it refers to a "public investor," the</p> <p>13 public investor is not for the 12 million, it's for</p> <p>14 excess of the 12 million?</p> <p>15 A. Yes, it's excess of the 12 million.</p> <p>16 Q. I guess by your number that's what, another</p> <p>17 three, four million dollars?</p> <p>18 A. About four, maybe even five million dollars.</p> <p>19 Q. Do you see here in the fourth paragraph, of</p> <p>20 that 2,400 acres of land, that includes, what, 2+ miles</p> <p>21 of waterfront property; is that correct?</p> <p>22 A. That's correct.</p> <p>23 Q. And I'm just going to quote this sentence here</p> <p>24 that's on your promotional website about this property.</p> <p>25 "This is some of the most beautiful and</p>	<p style="text-align: right;">Page 57</p> <p>1 sought-after property on the continent and will feature</p> <p>2 resort and private residential development."</p> <p>3 Is that still your opinion of this property?</p> <p>4 A. For two miles of it, yes.</p> <p>5 Q. Okay. Do you have any updates on the</p> <p>6 financing for this Airport, how much has been raised?</p> <p>7 A. You have a freeze order on. We haven't raised</p> <p>8 anything.</p> <p>9 Q. Okay. So the 12 million referred to here has</p> <p>10 not been raised at all; is that correct?</p> <p>11 A. Other than some private money that I've put in</p> <p>12 personally, no.</p> <p>13 Q. Okay. I'm going to switch now to -- this is</p> <p>14 part of, I believe, documents you've produced, and this</p> <p>15 is the Memorandum of Understanding, which has been</p> <p>16 talked about quite a bit.</p> <p>17 I'm going to go down to paragraphs -- if you</p> <p>18 could read 5, 6 and 7, please. Let me know when you're</p> <p>19 done.</p> <p>20 A. Okay.</p> <p>21 Q. Okay. So at least paragraph 5 under the</p> <p>22 heading "Airport Raise," and under this -- and correct</p> <p>23 me if I'm wrong. Would it be fair to say that this</p> <p>24 Memorandum of Understanding purports to state that upon</p> <p>25 closing and the transfer of all the assets occurs, the</p>

15 (Pages 54 to 57)

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1 parties shall commence the process of raising, on a best
2 efforts basis, \$15 million to complete the Airport?

3 Do you see that?

4 A. Yes, I do.

5 Q. Okay. What does "best efforts" mean?

6 A. That means we're going to do the best we can
7 to get that to happen.

8 Q. Okay. But under this Memorandum of
9 Understanding there was no requirement that 15 million
10 be actually raised; is that correct?

11 A. I'm sorry. Could you repeat the question?

12 Q. Sure.

13 The term "best efforts" seems to imply to me,
14 and correct me if I'm wrong, that it was not a
15 requirement under the terms of this agreement, that 15
16 million was to be raised to complete the Airport, just
17 that the parties would do their best to raise that
18 amount. Is that correct?

19 A. That's correct.

20 Q. All right. And, to your knowledge or your
21 understanding of this deal, was there any consequence if
22 the 15 million was not raised? Meaning, did the Airport
23 land or the Panther land go back to, you know, Placencia
24 or whoever owned those properties before this
25 transaction?

1 A. No, there weren't any contingencies.

2 Q. Okay. On Paragraph 6, and I'll state it into
3 the record: "In connection therewith, the Parties shall
4 each dilute their interest in the Placencia Airport
5 equally, so that the entity/persons providing said
6 financing shall receive 30 percent of the Airport
7 Entity."

8 To your understanding, does that mean any
9 combination of any of entities or persons that provide
10 the money to complete the Airport would have received 30
11 percent ownership of the entity that owned that
12 property?

13 A. That was the way that we had anticipated at
14 the time, yes.

15 Q. Okay. Was it your understanding that 15
16 million dollars would equal about 30 percent of the
17 value of that land once it was developed?

18 A. No. It was my understanding that who's going
19 to be willing to give up about 30 percent for 15 million
20 dollars?

21 Q. Okay. But, I mean, did you have -- and I'm
22 just asking what you recall at the time. Did you have a
23 number in your head that the entire Airport once
24 finished would be worth about 15 million dollars and
25 that 30 percent would roughly equal 30 -- 15 million

1 dollars would equal 30 percent that ownership or that
2 value?

3 A. Well, I actually was figuring it would be
4 worth less and that our carry would be bigger. So
5 that -- I don't think we put it as a cap rate that says
6 this is where it's going to be. That just seemed to be
7 the number it would probably take to be able to get this
8 done and in conjunction with everything else if we put
9 it together we could drive the value up eventually to
10 where that might make sense.

11 Q. And have you raised that 15 million or any
12 part of that 15 million from outside investors?

13 A. I'm sorry. I don't understand the question.

14 Q. The raising, has any part of that 15 million
15 raising occurred yet? That's all I am asking.

16 A. Only -- only the portion that I put in, which
17 is something just less than a million dollars.

18 Q. So it is contemplated that if and when it is
19 possible for your group to raise that 15 million that
20 that entity -- that group of entity or people --
21 entities or people would receive 30 percent of the
22 Airport entity?

23 A. I don't know if that number would still stay
24 valid or not. This was -- this was a seat-of-the-pants
25 deal done ten days after our first meeting. This was

1 the first stab at what we might be able to do. I don't
2 know whether it might get more or less. So it does
3 require negotiations. At this point we're not
4 negotiating with anybody because there's a freeze order
5 here. So there's nothing to determine at this point.

6 Q. Okay.

7 A. The market will determine that.

8 Q. I don't know if it's --

9 THE COURT REPORTER: I'm sorry --

10 Q. I don't know if this has been previously
11 marked --

12 THE COURT REPORTER: I'm sorry, Counsel. I
13 can't hear the beginning of your questions. I'm
14 having a difficult time with it.

15 MR. PEPIN: Fine. I'll speak louder and
16 clearer.

17 BY MR. PEPIN:

18 Q. I don't know if this has been marked as an
19 exhibit. What I'm showing is the transcript from the
20 sentencing hearing for United States of America versus
21 Brent Borland, on October 5th, 2021.

22 I'll go back to the page where you start.
23 There we go.

24 Mr. Rogers, can you see that on your screen?
25 I want to make sure it's sharing.

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1 A. Yes, I can.
 2 Q. Okay. And do you see where here it begins on
 3 page 37 of this document -- of this transcript, line 7,
 4 this is where --
 5 Well, actually --
 6 MR. GASTESI: Excuse me. I think it's page
 7 39, not 37.
 8 MR. PEPIN: Sorry. It's just how it shows up
 9 on my Adobe. It shows up as 37. It might be.
 10 Yeah, the page number of the transcript you
 11 printed out would be 39. It just shows 37 on the
 12 top of my mine, so --
 13 BY MR. PEPIN:
 14 Q. All right. I'm going to go to a certain
 15 section of your testimony and ask you to read it to
 16 yourself, please.
 17 Hold on. All right.
 18 All right. Sir, if you -- I'll start with --
 19 can you start reading from just about here. And you can
 20 read any part, if you want. I can scroll up and down,
 21 if you want. I'll ask you to read this page and then
 22 the first 12 lines of the next page.
 23 So, let me know when you need me to scroll
 24 down for you.
 25 A. I've read that today. I'm fine.

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1 Q. Okay. Do you recall when you made these
 2 statements were you trying to state that Mr. Borland had
 3 actually commissioned and provided appraisals to the
 4 court in relation to his sentencing hearing?
 5 A. These two appraisals were provided to the
 6 court in New York, yes.
 7 And I'd like to correct something I said
 8 earlier. That's where I read them from, not from
 9 Mr. Borland, not from Mr. Caruso, but from the
 10 documentation in the court that the prosecutor provided.
 11 Q. Okay. So the two crazy numbers that we spoke
 12 about earlier, that's what you're referring to, and
 13 those are the two appraisals?
 14 A. Yes.
 15 Q. Okay. And so you first -- is that the first
 16 time you saw them in --
 17 A. In that court I think is the first time that I
 18 saw them, yes.
 19 Q. Do you have any recollection of who
 20 commissioned or who purchased those appraisals, who
 21 ordered them?
 22 A. I don't have a way to know that.
 23 Q. Okay. You don't know if they were done by
 24 Mr. Caruso or Mr. Borland or any other person?
 25 A. I don't know.

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1 Q. You've read it?
 2 A. Yes.
 3 Q. Okay. All right.
 4 A. Okay.
 5 MR. PEPIN: No, I did make --
 6 Thank you, Mr. Riney. You're actually correct
 7 in my mistake. I need to go back and actually do
 8 actual page 41 of it.
 9 BY MR. PEPIN:
 10 Q. So make sure -- have you read your entire
 11 testimony?
 12 A. Yes. You sent it and I read it this morning.
 13 Q. Okay. Good. Thank you.
 14 I'll be focusing on this paragraph right here.
 15 You mention here in this paragraph, quote: "I think
 16 those --"
 17 Well, let me start before.
 18 "But I would submit that the value on that is
 19 considerably less than 4 million, not 32, not 80. I
 20 think those appraisals were somewhat fraudulent, which
 21 is one of the ways he was acquiring money. That means
 22 it's worth less than 12-and-a-half percent of his lowest
 23 estimate, the estimate that he is giving the Court."
 24 Obviously "he" refers to Mr. Borland; correct?
 25 A. That's who I was referring to, yes.

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1 Q. Okay. Beginning on line 23 of this page, it
 2 refers to previous testimony or questions that I've
 3 asked you: "The Belizean government agreed to accept a
 4 reduced valuation of 625,000 for taxation purposes on
 5 the land in question."
 6 And, again, that wasn't the value -- that
 7 wasn't the doc stamp you paid? That was the value for
 8 which you calculated the doc stamp access?
 9 A. That's correct.
 10 Q. When you say "the Belizean government agreed,"
 11 who was speaking with the Belizean government regarding
 12 this valuation?
 13 A. I don't know whether it was Mr. Williams or
 14 whether it was Marco Caruso. I don't know who actually
 15 negotiated that with them.
 16 Q. Okay.
 17 A. It was not me.
 18 Q. It was not you? Okay.
 19 A. No.
 20 Q. Let's go back and starting at the middle of
 21 line 20. Actually, let's go above that. I believe you
 22 spoke about earlier the neighboring property that you
 23 purchased for 3.6 million. Is that what you were
 24 referring to earlier?
 25 A. Yes.

17 (Pages 62 to 65)

Maria I. Salum, P.A.

305 746-3079

SECOND CIRCUIT NO. 21-2761 APPENDIX PAGE A533

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1 Q. Okay. Near the end of this particular
2 paragraph it says, quote: This property is just -- I
3 want to say it's just kind of scrub brush and almost
4 jungle and its value is very limited."

5 Okay. What is "this property" referring to?

6 A. I would say it applies really to both of them
7 except for a little bit of waterproof.

8 Q. Okay. Well, and that's what I wanted to ask
9 you, because it appears that in one hand there's
10 testimony here that has little value and it's just scrub
11 brush and almost jungle, but then, you know, you have
12 the website, which I can bring up again, and says it's
13 some of the most beautiful and desired, you know, land
14 in Belize and it's over two-and-a-half miles of
15 waterfront.

16 You know, how do you -- how do you correlate
17 those two?

18 You have one side, well, now that you've got
19 title to the land, you're promoting it's beautiful and
20 it's desired. And then, you know, at a sentencing
21 hearing regarding the value of the land it's pretty much
22 undermined as scrub brush and jungle.

23 If you could speak about that, please.

24 A. No. Actually, not. In order to make the land
25 the most beautiful and desirable land in the continent

1 it's going to require dredging, building beaches,
2 building roads into it, clearing the scrub brush, in
3 some areas refilling the swamp and getting rid of
4 mangroves.

5 So, yes, we intend for it to become exactly
6 what it says on the website, just like we expect the
7 Airport to become an airport, but it's not there now.
8 But we certainly anticipate it can be.

9 Q. Correct. Okay. I understand that.

10 Why wasn't there any mention of that in the
11 sentencing hearing that, all right, the property right
12 now is worth -- of course, it could be, you know, it has
13 waterfront property and it could have all this value
14 down the line if it's allowed to be finished and
15 developed? Did you ever have a thought to bring that
16 kind of testimony into the sentencing hearing?

17 A. What I had said in the sentencing hearing was
18 true. At that point I felt like that property was worth
19 about 4 million dollars.

20 Some of the property that I bought is actually
21 much nicer than some of the some of this property.
22 While there is some waterfront, there also are some old
23 shrimp farm lagoons that are going to take hundreds of
24 thousands of dollars to fill in. So, overall I value
25 that property at somewhere around 4 million dollars.

1 And I would still say that's probably about what it's
2 worth.

3 Now, do I think it's going to in the end be
4 sold for that after it's developed? Certainly not.
5 It's got lots of potential for development.

6 Q. Okay. If you'll read -- we'll go to the next
7 page 42, lines 6 and 7. And I had asked you this
8 question earlier: Does this refresh your recollection
9 about the value that was, the Belizean government at
10 least, attached to the Airport Property?

11 A. Yes.

12 Q. And do you recall what the doc stamp tax was
13 paid on that property?

14 A. That's 325,000 U.S. and the taxes would be 8
15 percent of that.

16 Q. Were those paid at the same time as the
17 Panther property doc stamp taxes?

18 A. Within a few days, if it wasn't, in the same
19 time frame.

20 Q. You didn't provide any testimony about what
21 actual value you thought, you know. You gave a number
22 of 625,000 for the Panther Property in the previous
23 page, but you just stated to me now your opinion was
24 valued around -- you know, somewhere around 4 million
25 dollars what you thought it was worth.

1 Besides this \$325,000 assessment value, did
2 you have an opinion about what the Airport Property was
3 actually worth, market value?

4 A. I felt like and still do feel like that if the
5 Airport is developed and the cash is put into it, it'll
6 have significant value. If there is no cash raised and
7 it's not developed, it's an eyesore and it's going to
8 have no value. And if it doesn't get developed some
9 time in the pretty near future, it's not going to be
10 ever developed.

11 So it may be worthless or it may have
12 significant value.

13 Q. Are you aware of the total loss amount in the
14 Borland criminal matter, what the loss amount was
15 represented as?

16 A. In the neighborhood -- I think it was
17 represented about 28 million dollars, I think.

18 Q. I have a number of 26,184,000 roughly. Is
19 that close?

20 A. That's probably accurate.

21 Q. Okay. Do you have any -- to your
22 recollection, you and your 39 limited partners how much
23 money -- how much of that does your group represent?

24 A. I think about -- about 17 or 18 million
25 dollars of that.

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1 Q. And in exchange for these properties,
2 according to them, your group agreed to release all the
3 claims on those properties against Mr. Caruso?

4 A. Against Mr. Caruso, yes.

5 Q. Okay. In your opinion, does that mean that
6 you've given a value of those properties of roughly your
7 18 -- your group's 18 million dollar losses?

8 A. Absolutely not.

9 Q. Tell me why.

10 A. Well, we calculated in my mind that
11 Mr. Caruso's guaranty was worthless. So we were getting
12 these properties pretty much for nothing, and that's
13 pretty much what we wanted to pay for. It's not much.

14 Q. So your --

15 A. It was for a chance -- this gave Mr. Caruso an
16 opportunity to move forward with his other properties
17 and get his life back and have a living, and it allowed
18 us the opportunity to invest significant millions of
19 dollars more money and an opportunity to make some money
20 on this investment.

21 Q. And that decision was based solely on your
22 opinion that the Caruso guaranty signatures were
23 fraudulent; correct?

24 A. In my mind, yes. And I think in our other
25 investors' minds.

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1 Q. Let me ask you this: I'm asking you to go
2 back on what your thoughts were at the time. But, if
3 you were to determine that the guaranty signatures of
4 Mr. Caruso were valid, would have you still entered into
5 the MLU and released claims against him in exchange for
6 the properties?

7 A. I think that's pretty hypothetical. I don't
8 know. I certainly would have thought about it.

9 MR. GASTESI: Objection to the form of that
10 question. I wasn't able to click my mic to get it
11 on.

12 MR. PEPIN: That's all right.

13 Just a couple more questions. I think we're
14 okay, yeah, with time here. Yeah, just a couple
15 more questions.

16 BY MR. PEPIN:

17 Q. This has actually been used before. It's an
18 attachment to an exhibit. But I've kind of pulled out
19 my own. This one is clear. I just want to ask you a
20 couple of questions about the site plan for that PED
21 property.

22 Have you seen this map before?

23 A. I have.

24 Q. Okay. And I believe you kind of set forth, I
25 believe, starting -- and I don't have Mr. Quaranta's

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1 skills with this to be able to highlight it. But, I
2 believe -- other than -- not including this area up
3 here, this area down here was the 1,200 acres owned by
4 Panther?

5 A. That's correct.

6 Q. Okay. All right. Do you recall -- I thought
7 you did. And during your testimony did you specifically
8 mention or section out a 43-acre portion of this land
9 somewhere north of the hotel property?

10 A. I believe it's the triangle on the far
11 right-hand side of your map.

12 Q. Right here?

13 A. I believe that's it.

14 Q. Not including this property?

15 A. No, it's not really too proportionate, but I
16 believe that's it.

17 Q. Right. It didn't look like it's 43 acres.

18 Okay. This transaction was closed
19 somewhere -- the transaction I'm talking about when your
20 group closed and acquired the title to the PED Property
21 and the Airport Property. Was that somewhere in October
22 of 2018?

23 A. I think that's when we entered the agreements
24 to do that, yes.

25 Q. Okay.

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1 A. To register with the government. But, yes.

2 Q. Does Panther still own that 43-acre parcel
3 that we just talked about?

4 A. It still owns it all.

5 Q. It still owns it all, okay.

6 Who's the controlling general partner of
7 Panther? Would that be you?

8 A. Yes.

9 Q. Okay. Do you have a decision-making ability
10 regarding these properties, whether to sell it, whether
11 to transfer it, whether to do whatever on that land?

12 A. I do.

13 Q. Okay. And Panther has had continuous
14 ownership of that 43 acres?

15 A. Yes.

16 Q. Okay. Are you aware whether those 43 acres
17 have ever been offered as a settlement offer in another
18 case with Mr. Caruso so that the -- in the State of
19 Florida?

20 A. I'm aware that there were discussions about
21 doing something possibly with those 43 acres with
22 Mr. Quaranta and the Copper Leaf Group earlier, three
23 weeks or a month ago. Other than that, no, I'm not
24 aware of any settlement talks.

25 Those belong to me and my group, so Mr. Caruso

19 (Pages 70 to 73)

Maria I. Salum, P.A.

305 746-3079

SECOND CIRCUIT NO. 21-2761 APPENDIX PAGE A535

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<p style="text-align: right;">Page 74</p> <p>1 wouldn't have the authority to --</p> <p>2 Q. That was my next question. If Mr. Caruso</p> <p>3 offered any portion of this property he wouldn't have</p> <p>4 the right to; is that correct?</p> <p>5 A. That's correct.</p> <p>6 Q. Are you aware -- do you recall ever seeing the</p> <p>7 terms of that settlement offer?</p> <p>8 A. I don't even know what settlement offer you're</p> <p>9 talking about.</p> <p>10 Q. Okay. Have you ever seen any terms of any</p> <p>11 settlement offer regarding those 43 acres and a</p> <p>12 valuation that was given to those per acre?</p> <p>13 A. No, sir, I haven't.</p> <p>14 Q. Okay. Are you aware that Mr. Borland has</p> <p>15 brought a counterclaim against Marco Caruso, Michela</p> <p>16 Bardini -- and I apologize if I'm butchering names --</p> <p>17 Madeleine Lomont, Placencia Estates Development, M.E.L.</p> <p>18 Investments, and four other Caruso-Borland entities?</p> <p>19 MR. GASTESI: Objection to the form of the</p> <p>20 question.</p> <p>21 A. If those are the lawsuits that are currently</p> <p>22 pending and are being done in Belize, I am aware of a</p> <p>23 number of those.</p> <p>24 BY MR. PEPIN:</p> <p>25 Q. Are you aware of any of the counterclaims</p>	<p style="text-align: right;">Page 75</p> <p>1 filed in the Florida action involving Copper Leaf and</p> <p>2 Mayan --</p> <p>3 A. I'm --</p> <p>4 Q. Are you aware of all the filing --</p> <p>5 I'm sorry. Go ahead.</p> <p>6 A. I'm not familiar with the Florida action at</p> <p>7 all.</p> <p>8 MR. PEPIN: Okay. I just need to look at my</p> <p>9 notes for five minutes. It seems like it's a good</p> <p>10 time to take a quick break, a bathroom break, and</p> <p>11 I'll check my --</p> <p>12 MR. GASTESI: I had budgeted this 'til three</p> <p>13 o'clock. I've got very few questions. But I've</p> <p>14 got people sitting in my waiting room, so I'm not</p> <p>15 going to go anywhere. When you're ready, let's get</p> <p>16 back on and go.</p> <p>17 MR. PEPIN: Absolutely.</p> <p>18 THE COURT REPORTER: We're going off the video</p> <p>19 record. The time is 2:59 p.m.</p> <p>20 (Thereupon, at 2:59 p.m. a recess was taken</p> <p>21 until 3:01 p.m., after which the deposition continued as</p> <p>22 follows:)</p> <p>23 THE COURT REPORTER: We're back on the video</p> <p>24 record. The time is 3:01 p.m.</p> <p>25 MR. PEPIN: Mr. Rogers, thank you for your</p>
<p style="text-align: right;">Page 76</p> <p>1 time. I don't have any further questions right</p> <p>2 now. Thank you so much.</p> <p>3 MR. GASTESI: All right. I will proceed.</p> <p>4 CROSS EXAMINATION</p> <p>5 BY MR. GASTESI:</p> <p>6 Q. The investment opportunity in Belize, who came</p> <p>7 to you with that idea?</p> <p>8 A. I had a broker who was a friend of mine with</p> <p>9 Paulson Investments, who recommended a loan to Brent</p> <p>10 Borland. It really wasn't an investment in Belize. It</p> <p>11 was a loan to Brent.</p> <p>12 Q. All right. Did you know Marco Caruso at the</p> <p>13 time that you executed the loan documents?</p> <p>14 A. No, sir.</p> <p>15 Q. Okay. Was there a personal guaranty in the</p> <p>16 loan documents from Mr. Caruso?</p> <p>17 A. There was a purported loan document or a</p> <p>18 guaranty from Mr. Borland and Mr. Caruso.</p> <p>19 Q. How did you sign the loan documents?</p> <p>20 A. Individually.</p> <p>21 Q. In other words, you put wet ink on the</p> <p>22 document?</p> <p>23 A. Yes.</p> <p>24 Q. All right. Now, who sent the final loan</p> <p>25 documents to you?</p>	<p style="text-align: right;">Page 77</p> <p>1 A. Somebody from Mr. Borland's office.</p> <p>2 Q. Did Borland or anyone else disclose to you</p> <p>3 that Marco Caruso was not personally signing the</p> <p>4 documents?</p> <p>5 A. No.</p> <p>6 Q. Did anyone disclose to you that Mr. Borland</p> <p>7 was copying and pasting Mr. Caruso's signature to those</p> <p>8 documents?</p> <p>9 A. No.</p> <p>10 Q. If you had been told that Mr. Caruso's</p> <p>11 signature was being copied and pasted, would you have</p> <p>12 engaged in the transaction?</p> <p>13 MR. QUARANTA: Objection to the form.</p> <p>14 A. No.</p> <p>15 BY MR. GASTESI:</p> <p>16 Q. Prior -- if prior to you signing the document</p> <p>17 you were advised --</p> <p>18 Well, let me take a step back.</p> <p>19 Did you believe that Mr. Caruso had signed the</p> <p>20 transaction documents?</p> <p>21 A. I believe that --</p> <p>22 MR. QUARANTA: Form.</p> <p>23 MR. GASTESI: What's wrong with the form?</p> <p>24 MR. QUARANTA: Did you believe that Mr. Caruso</p> <p>25 had signed the documents?</p>

20 (Pages 74 to 77)

Maria I. Salum, P.A.

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