EXHIBIT A

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 15-2812

UNITED STATES OF AMERICA

v.

ADAM LACERDA a/k/a Robert Klein,
Appellant

No. 15-4023

UNITED STATES OF AMERICA

v.

GENEVIEVE MANZONI,
Appellant

No. 16-2220

UNITED STATES OF AMERICA

v.

IAN RESNICK,
Appellant

On Appeal from the United States District Court
for the District of New Jersey
(D.N.J. 1-12-cr-00303-001, 1-12-cr-00303-010, and
1-12-cr-00303-003)
District Judge: Honorable Noel L. Hillman

Submitted Under Third Circuit L.A.R. 34.1(a)
March 11, 2019

Before: McKEE, PORTER, and ROTH, *Circuit Judges*

JUDGMENT

These causes came to be considered on the record from the District Court for the District of New Jersey and were submitted on March 11, 2019. On consideration whereof,

it is hereby ORDERED and ADJUDGED by this Court that the judgments of the District Court entered on June 30, 2015, December 16, 2015, and April 27, 2016, are hereby AFFIRMED. All of the above in accordance with the Opinion of this Court. No costs shall be taxed.

ATTEST:

s/ Patricia S. Dodszuweit
Clerk

Dated: May 5, 2020

UNITED STATES OF AMERICA v. ADAM LACERDA a/k/a Robert Klein, Appellant;UNITED STATES OF AMERICA v. GENEVIEVE MANZONI, Appellant;UNITED STATES OF AMERICA v. IAN RESNICK, Appellant
UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT
2020 U.S. App. LEXIS 14278
No. 15-2812, No. 15-4023, No. 16-2220
March 11, 2019, Submitted Under Third Circuit L.A.R. 34.1(a)
May 5, 2020, Filed

Editorial Information: Prior History

{2020 U.S. App. LEXIS 1}On Appeal from the United States District Court for the District of New Jersey. (D.N.J. Nos. 1-12-cr-00303-001, 1-12-cr-00303-010, and 1-12-cr-00303-003). District Judge: Honorable Noel L. Hillman.United States v. **Lacerda**, 929 F. Supp. 2d 349, 2013 U.S. Dist. LEXIS 31322 (D.N.J., Mar. 7, 2013)

Counsel For Adam **Lacerda**, Appellant: Mark E. Cedrone, Jesse D. Abrams-Morley, Aubrey C. Emrich, CEDRONE & MANCANO, LLC, Philadelphia, PA.

For Genevieve Manzoni, Appellant: Robert L. Tarver, Jr., LAW OFFICES OF ROBERT L. TARVER, JR., 66 South Main Street, Toms River, NJ.

For Ian Resnick, Appellant: Michael E. Riley, LAW OFFICES OF RILEY AND RILEY, Marlton, NJ.

For Appellee: Craig C. Carpenito, Mark E. Coyne, Deborah Prisinzano Mikkelsen, Office of United States Attorney, Newark, NJ.

Judges: Before: McKEE, PORTER, and ROTH, Circuit Judges.

CASE SUMMARY In fraud case, court affirmed the judgments of conviction and sentences. Among noteworthy matters, the court held that overview testimony that opines on ultimate issues of guilt, makes assertions of fact outside of the officer's personal knowledge, or delves into aspects of the investigation in which he did not participate is inadmissible.

OVERVIEW: HOLDINGS: [1]-Overview testimony that opines on ultimate issues of guilt, makes assertions of fact outside of the officer's personal knowledge, or delves into aspects of the investigation in which he did not participate is inadmissible. But an officer who is familiar with an investigation or was personally involved may tell the story of that investigation--how the investigation began, who was involved, and what techniques were used; [2]-The district court weighed defendant L's right to counsel of choice against the attorney's serious actual and potential conflicts of interest and, ultimately, determined those conflicts could neither be waived nor cured by anything short of disqualification. That conclusion was neither arbitrary nor an abuse of discretion; [3]-Among other matters in this fraud case, the court held that L's sentence was procedurally sound and substantively reasonable.

OUTCOME: The court affirmed the judgments of conviction and sentences entered against defendants.

PRECEDENTIAL

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Before: McKEE, PORTER, and ROTH, *Circuit Judges*

(Filed: May 5, 2020)

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OPINION OF THE COURT

PORTER, *Circuit Judge.*

The Vacation Ownership Group ("VOG") billed itself as a sort of advocacy group helping victims of timeshare fraud get out of their timeshare debts. After a lengthy and complex trial, a jury determined that VOG had in fact defrauded its customers, and that Adam Lacerda, Ian Resnick, and Genevieve Manzoni were each knowing participants in that fraud. In this consolidated appeal, they now challenge their judgments of conviction, raising several claims of error. For the reasons discussed below, we will affirm their respective convictions and sentences.

I. Background

A. VOG's Fraudulent Activity

A timeshare is a form of shared property ownership in which multiple people own the rights to use a specific vacation or resort property. These properties are often units in a resort condominium, in which each timeshare owner has an allotted period of time to use the property. When one buys a timeshare, he typically makes a down payment on the property and finances the balance of the purchase price. These loans are commonly referred to as "mortgages" in the timeshare industry. In addition to these upfront costs, timeshare owners are also required to pay annual maintenance fees. It is not unusual for timeshare owners to fall prey to high-pressure sales tactics and commit to spending more money than they can comfortably afford. Later, they may seek to settle these debts or cancel their timeshares.

In 2009, while working for Wyndham Vacation Resorts, Inc. (a timeshare sales company), Adam Lacerda and his wife, Ashley Lacerda, founded VOG. VOG marketed itself as a timeshare consulting company and claimed that it could help customers cancel, purchase, or upgrade their timeshares.

Lacerda was the president and chief executive officer of VOG, and his wife was the chief operating officer. Together, they exclusively controlled VOG's bank accounts and post office box.

Lacerda created phone scripts for VOG's sales representatives to use when speaking with timeshare owners. One of these scripts was VOG's "bank settlement" pitch. This sales pitch was riddled with misrepresentations. Following this script, the VOG representatives used personal information compiled by VOG in "customer lead sheets" to make unsolicited calls to unsuspecting timeshare owners. The representatives said they were calling on behalf of a property owners' association to follow up on the owner's recent complaints. This was not true. The representatives also claimed they were working with the bank that held the loan for the owner's timeshare mortgage. This was also not true. They then promised to review the owner's account—which they could not do because they had no access to that account—and then to call the owner back.

During a follow-up call, VOG representatives offered to settle the timeshare owner's debt at a fraction of the remaining balance, for a negotiated fee. Later, during a closing call, the representatives had the timeshare owner electronically sign VOG's contract and pay its fee. The representatives then promised that the "mortgage would be paid off in full" and the timeshare owner would receive a "deed free and clear." But none of that happened. Instead, VOG just pocketed the money.

Lacerda also trained his VOG employees to use a fraudulent phone script for a timeshare "cancellation" sales pitch. Again, VOG representatives made unsolicited calls to timeshare owners and falsely told them that VOG had received their complaints, that VOG would do all the necessary work to cancel the owners' timeshares, and that cancellation would not damage the customers' credit ratings.

But VOG did not work to cancel the owners' timeshares. Instead, after receiving the timeshare owners' money, VOG sent them an eight-step process for cancelling the timeshares themselves and told them to stop making their loan payments. Eventually the timeshare owners received default

notices from the timeshare developers. When the owners complained to VOG, VOG instructed them to allow the developers to foreclose. Typically, this would lead to a nonjudicial foreclosure proceeding, which is common in the industry. This proceeding, Lacerda knew, would result in the cancellation of the owners' timeshare debt, but at the cost of the timeshare deed, any equity the owners had, and, of course, the owners' credit ratings.

VOG employed additional misrepresentations: Lacerda impersonated bank officials on calls, altering his voice and using a spoofing device to alter his phone number. And VOG's website falsely displayed the Better Business Bureau seal, advertising itself as an A+ rated business, and claimed to be a member of the American Resort Development Association.

Not even the names used at VOG were true. Under Lacerda's direction, VOG representatives used false names while interacting with potential customers. These false names allowed Lacerda and other former Wyndham employees to violate their non-compete agreements and hide their identity from former clients at Wyndham. This was important because VOG's customer lead sheets were comprised almost exclusively of Wyndham timeshare owners.

While employed by Wyndham, Ian Resnick sent customer lead sheets to VOG and received a kickback for every resulting sale. In August 2010, Resnick left Wyndham to join VOG full time. Using the bank settlement and timeshare cancellation scripts, Resnick defrauded several customers. Recognizing Resnick's talents, Lacerda promoted him to Senior Contract Analyst.

Genevieve Manzoni, another Wyndham-alumna, joined VOG in October 2010. As a VOG representative, Manzoni showed great initiative, inventing her own "settlement" numbers on the fly. She, too, assumed a management role, overseeing other VOG sales representatives.

In November 2010, the FBI raided VOG's offices and the Lacerdas' home. Several VOG representatives left the company following the raid, including Resnick. So Lacerda convened an office-wide meeting where his lawyers, including

Marc Neff, assured VOG staff that everything was okay. They told the employees that only Lacerda was under investigation, and that Neff had reviewed the sales scripts and verified that everything was legal. VOG abandoned the bank settlement pitch and revised the timeshare cancellation pitch to remove any references to working with the banks, while leaving many other misrepresentations in place. With these assurances and changes, many of VOG's representatives, including Resnick, returned and VOG resumed and expanded its operations.

Resnick continued receiving promotions, working as VOG's Director of Training, then Director of Training and Compliance, and then Vice President of Sales and Compliance. While receiving compensation at VOG, Resnick and Manzoni also obtained unemployment benefits from New Jersey.

B. Trial of VOG Defendants

In April 2012, Lacerda, Resnick, Manzoni, and several other VOG employees were arrested after being charged with various counts of mail and wire fraud. VOG then changed its name to VO Financial and continued operations, still using the same misrepresentation-riddled sales pitches. Later, a superseding indictment was filed charging Lacerda, Resnick, Manzoni, and fifteen other VOG employees with conspiracy to commit mail and wire fraud. Lacerda was also charged with nine counts of mail fraud and three counts of wire fraud arising from his VOG scheme, and a final count of mail fraud for wrongfully receiving unemployment benefits while he was employed and receiving compensation at VOG.[1] Resnick was charged with two counts of mail fraud and three of wire fraud for his work at VOG, and another count of mail fraud for his unemployment fraud. And Manzoni was charged with one count of wire fraud for her work at VOG and a separate count of wire fraud for, allegedly, wrongfully receiving unemployment benefits. Other VOG employees received similar charges.

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[1] Lacerda, together with his wife, was also charged with conspiracy to commit money laundering and four counts of money laundering, but these were dismissed by order of the District Court as a matter of law.

Most of the VOG defendants negotiated plea agreements with the government. But five defendants—Adam and Ashley Lacerda, Resnick, Manzoni, and Joseph DiVenti—took their cases to trial. Relevant to this appeal, about four and a half months before trial, the District Court disqualified Lacerda's then-attorney, Neff, as a potential witness and denied replacement counsel's requested continuance. It also denied Manzoni's motion to sever her VOG-related fraud charges from her unemployment-related fraud charges.

The government's first witness at trial was FBI Special Agent John Mesisca, an experienced agent in wire and mail fraud investigations and the lead investigator in the case. Mesisca was allowed, over appellants' objections, to provide an extensive overview of his investigation. During trial, again over appellants' objections, the District Court also excluded certain hearsay evidence and allowed other evidence for impeachment purposes.

The jury returned guilty verdicts on all counts related to Lacerda. The District Court sentenced him to 324 months imprisonment with three years of supervised release, and it ordered him to pay restitution of $2,679,656.09. The jury also found Resnick guilty on all counts related to him. The District Court sentenced him to 216 months imprisonment with three years of supervised release and ordered him to pay restitution of $2,735,142.99. While the jury found Manzoni guilty of both the conspiracy charge and wire fraud in relation to her work at VOG, it acquitted her on the charge of unemployment fraud. The District Court entered judgment against Manzoni on the conspiracy and mail fraud charges, sentenced her to 42 months imprisonment with three years of supervised release, and ordered her to pay restitution of $105,422.[2] The District Court also ordered the forfeiture of all of VOG's gross proceeds.

This appeal follows. The District Court had jurisdiction over the several crimes charged in this case under 18 U.S.C. § 3231. We have jurisdiction over appeals from final judgments and orders under 28 U.S.C. § 1291.

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[2] The jury also found Ashley Lacerda guilty on all remaining counts but acquitted Joseph DiVenti.

II. Overview Testimony

A. Proper Overview Testimony Is Admissible

Special Agent Mesisca's testimony, including both cross and redirect examination, would extend into the third day of trial. On appeal, Lacerda, Resnick, and Manzoni each take issue with Mesisca's testimony, arguing that it constituted impermissible overview testimony. We have never addressed the permissible scope and limits of overview testimony in a precedential opinion.

Our sister circuits, however, have reviewed overview testimony. They have analogized it to summary testimony. *See, e.g., United States v. Moore*, 651 F.3d 30, 55–56 (D.C. Cir. 2011). The main difference between summary and overview testimony is that summary testimony comes at the end of trial and overview at the beginning, but both try to connect the dots and convey the big picture to the jury in complex prosecutions. *United States v. Banks*, 884 F.3d 998, 1023 (10th Cir. 2018).

Summary evidence may be safer because the evidence that the officer is connecting has already been heard by the jury. *See Moore*, 651 F.3d at 56 (citing *United States v. Lemire*, 720 F.2d 1327, 1349, n.33 (D.C. Cir. 1983)). Because witnesses can change their stories and objections may be sustained, some of the testimony relied on during the initial overview may never materialize at trial. *United States v. Casas*, 356 F.3d 104, 119–20 (1st Cir. 2004).

Vouching is also a problem with overview testimony. *See Moore*, 651 F.3d at 56–57. Under Federal Rule of Evidence 608(a), a party can only bolster the credibility of a witness after that witness's credibility has been attacked. Because overview testimony is the first testimony offered, no witness's credibility has yet been attacked. Vouching for a witness who has not yet testified would, therefore, be inappropriate.

Another serious problem with overview testimony is that it sometimes relies on anticipated witnesses. Thus, it may violate confrontation rights. Testimonial statements cannot be offered against a defendant without the opportunity for cross examination. *Crawford v. Washington*, 541 U.S. 36 (2004). If overview testimony previews the answers of an anticipated

witness, such a violation is not easily cured if the expected witness later fails to testify.

The D.C. Circuit has explained:

> Because a witness presenting an overview of the government's case-in-chief runs the serious risk of permitting the government to impermissibly "paint a picture of guilt before the evidence has been introduced," and may never be introduced, we join the circuits that have addressed the issue in condemning the practice.

Moore, 651 F.3d at 60 (citations omitted).

The D.C. Circuit concluded that the government could call as its first witness a law enforcement officer, who is either familiar with the investigation or was personally involved, to explain how the investigation began, what law enforcement entities were involved, and what techniques were used. *Id.* at 60–61. However, the overview witness could not opine on the ultimate issues of guilt, anticipate evidence that the government hoped to introduce, or express an opinion about the strength of that evidence or the credibility of any potential witnesses. *Id.* at 61; *see also United States v. Rosado-Perez*, 605 F.3d 48, 55 (1st Cir. 2010) (cautioning, before government has presented supporting evidence, against presenting an overview of criminal investigation in which witness did not participate); *United States v. Brooks*, 736 F.3d 921, 930 (10th Cir. 2013) (allowing overview based on personal knowledge, not on hearsay nor on an opinion of defendant's guilt); *but see United States v. Khan*, 794 F.3d 1288, 1300 (11th Cir. 2015) (overview proper where officer had personal knowledge of evidence due to officer's role as lead investigator and his review of evidence).

We join our sister circuits and now hold that overview testimony that opines on ultimate issues of guilt, makes assertions of fact outside of the officer's personal knowledge, or delves into aspects of the investigation in which he did not participate is inadmissible. But an officer who is familiar with an investigation or was personally involved may tell the story of that investigation—how the investigation began, who was

involved, and what techniques were used. In addition, with proper foundation, he may offer lay opinion testimony and testify about matters within his personal knowledge.

B. Summary of Special Agent Mesisca's Overview Testimony

Having determined the applicable rule, we now return to the appellants' objections to Special Agent Mesisca's overview testimony. Evidentiary objections are generally reviewed for an abuse of discretion. *United States v. Georgiou*, 777 F.3d 125, 143 (3d Cir. 2015). This standard applies to the admission of overview testimony. *See Rosado-Perez*, 605 F.3d at 54 (citing *Hall*, 434 F.3d 42, 56–57 (1st Cir. 2006)). However, although district courts are "ordinarily afforded broad discretion to determine the manner in which evidence will be received," in light of the pervasive risks of unfair prejudice, overview testimony requires closer review. *Moore*, 651 F.3d at 58. Nevertheless, even if we find error in the admission of overview testimony, we can still affirm if the error was harmless. *Rosado-Perez*, 605 F.3d at 54.

Applying our holding here, the District Court did not commit reversible error in admitting Mesisca's testimony. Mesisca testified about his background, experience, and qualifications as the lead investigator in this case. He explained that the FBI had received a complaint about VOG from a timeshare developer, Flagship. Following a meeting with representatives of that company, Mesisca opened an investigation into VOG. He explained how he had subpoenaed VOG's bank records and explained why certain checks were significant to his investigation.

Mesisca interviewed potential victims, including people identified by Flagship and others whose names appeared on the checks. He also interviewed former VOG employees and conducted several undercover phone calls to obtain evidence from VOG. With this evidence, he applied for and obtained search warrants for VOG's headquarters and the Lacerdas' personal residence.

The evidence, collected from Mesisca's search, included purchase agreements, settlement and cancelation

contracts, emails and complaints from concerned victims, customer lead sheets, client information forms, and phone scripts used at VOG. His testimony provided the foundation for admitting this evidence as exhibits, and then, as with the bank records, he explained why the evidence was significant to his investigation.

Mesisca testified that both Lacerda and his wife had control of VOG's account. While the account received many deposits, no money from the account was used to pay off any timeshare debts. Instead, the Lacerdas used the money to buy a dog, a swimming pool, and similar things.

Mesisca learned that some former Wyndham customers may have been victimized by VOG. One victim had received a phone call from "Robert Klein" representing VOG. Mesisca subpoenaed the caller's phone records and discovered that the phone number was used by VOG, after incoming calls were forwarded to a local number in New Jersey. He also learned that "Robert Klein" was an alias for Lacerda.

At the trial, Mesisca discussed the evidence he obtained through execution of the search warrant at VOG's headquarters, laying the foundation for the admission of exhibits and explaining their importance to the investigation. He further explained the sales pitches used by VOG, based on the notes, emails, and phone scripts found at the office during the search, and illustrated many of the misrepresentations VOG representatives had made to victims.

Mesisca obtained press releases issued by VOG and visited its website to collect more information and evidence. His testimony provided the foundation to enter this evidence as exhibits at trial. He also explained that, during his investigation, he met with informants who shared with him a video recording of a VOG employee training session. His testimony provided the foundation for entering this video recording into evidence. He was able to show, from his investigation, that Manzoni was working at and receiving income from VOG in October 2010, and Resnick was receiving income from VOG while collecting unemployment benefits in September and October 2010.

During the execution of the search warrant, Mesisca interviewed Lacerda. Lacerda advised him that he was the president and CEO of VOG and, contrary to the company's sales pitches, that VOG was not associated with any bank, that it had no ability to pay off anyone's mortgage or loan, and that it did not settle anyone's debts. Lacerda acknowledged that his sales force used aliases but claimed that was only to induce outsiders to believe VOG was larger than it really was. Lacerda admitted that he used the VOG business account for personal expenses but claimed that he took only about $30,000. Mesisca's investigation, showed that number was closer to $600,000. Lacerda admitted receiving unemployment benefits but claimed he had repaid those. Finally, Mesisca noted that, at the end of the interview, Lacerda refused to sign a statement that he had been truthful during the interview.

Mesisca also interviewed Resnick who recounted that he worked as VOG's premier closer: when other employees failed to complete a deal with a client, the information was sent to him to close it. A couple of weeks later, Mesisca again met with Resnick. During that second interview, Resnick acknowledged that he, too, had been a former Wyndham employee and that he took internal lead sheets from Wyndham and used them at VOG to call potential clients. Resnick admitted that he had collected unemployment benefits while working at VOG but claimed that he planned to repay the money.

Mesisca interviewed Manzoni on three occasions. She admitted that VOG representatives told potential clients that the representatives worked with banks—it was part of the script they followed. During her August interview, she told Mesisca that, disillusioned with VOG, she had quit.

We have set out Mesisca's direct examination testimony to show that it was proper overview. It was limited to an account of his investigation, his personal observations, and his beliefs of what the evidence showed based on what he saw and heard and did. Also important is the testimony Mesisca did *not* offer. Because he was not directly involved in the execution of the warrant at the Lacerdas' home, Mesisca did not tell the jury about that portion of the investigation. He only provided the foundation to admit evidence found at the Lacerdas' house that

he had personally reviewed, and then related that evidence to bank records he had previously obtained While he noted that each of the defendants had been interviewed when the search warrant was executed at VOG, he did not discuss the statements made that day by Ashley Lacerda, DiVenti, or Manzoni because he did not personally conduct those interviews.

C. Special Agent Mesisca's Overview Testimony Was Admissible

On appeal, Lacerda, Resnick, and Manzoni each highlight the length of Special Agent Mesisca's testimony, as though that alone proves he gave impermissible overview testimony. Not so. This was a complex case in which, as lead investigator, he was directly involved in almost every step of the investigation.

Lacerda and Manzoni each further assert that Mesisca offered conclusory statements of their guilt by referring to persons who the government alleged were defrauded by VOG as "victims." The appellants have cited no authority, and we are aware of none, prohibiting government witnesses from referring to persons as "victims" who are alleged to be victims in the indictment. That there had been victims was not even disputed—it was highlighted by Lacerda and Resnick during their opening statements. Assertions to the contrary notwithstanding, whether there were victims was not at issue in this case. The issue was whether *these defendants* had defrauded the victims, or otherwise knowingly participated in the fraud occurring at VOG. The jury understood this and, finding insufficient evidence of guilt for one of the defendants, acquitted DiVenti.

Lacerda also asserts that Mesisca gave conclusory testimony, without foundation. For example, he testified that "Robert Klein" was Lacerda's alias. This issue was not preserved by any objection, *see* Fed. R. Crim. Pro. 51(b), and, having not attempted to show plain error, Lacerda is not entitled to review of this unpreserved issue on appeal. *See*

United States v. Olano, 507 U.S. 725, 732 (1993).[3] But even had this issue been preserved, there was in fact foundation for Mesisca's testimony: he testified that, during their execution of the search warrant at VOG headquarters, agents had found a list of names with aliases at the receptionist's desk. "Robert Klein" was listed as the alias for Lacerda, and Mesisca did not find evidence that anyone else ever used that alias.

We have reviewed the appellants' other allegations of improper overview, *e.g.*, the reason for having duplicate copies of client information sheets, whether victims were told about non-judicial foreclosure process, whether Lacerda "freaked out" when he saw one of VOG's representatives using the "bank pitch" in an email to a victim. etc. After careful review and consideration of the permissible limits of overview as set out above, we find no abuse of discretion in the admission of Mesisca's testimony.

In sum, the government may call as its first witness an officer who is familiar with, or was personally involved in, the criminal investigation, and that officer may testify about all matters within his personal knowledge from the investigation. Special Agent Mesisca's testimony was largely confined to telling the story of his investigation: how it began, the steps he took, the evidence he uncovered, and the interviews with defendants he conducted. The District Court did not abuse its discretion by allowing this testimony.

III. Objections Raised by Lacerda

Lacerda raises several additional issues on appeal. He asserts that the District Court (1) abused its discretion when it disqualified his counsel, Marc Neff, based on Neff's conflict of interest; (2) abused its discretion when it denied replacement counsel's motion for a continuance; (3) abused its discretion by excluding from evidence an email sent by Lacerda to VOG's former CFO, Jeff Sawyer; (4) abused its sentencing

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[3] Lacerda takes issue with additional portions of Mesisca's testimony unpreserved by timely objection but has not attempted to show plain error entitling him to review of these unpreserved issues. So we decline to address these unpreserved issues in this opinion.

discretion; and (5) erred by ordering the forfeiture of all VOG's gross proceeds. We will address each issue in turn.

A. Attorney Neff Was Properly Disqualified

Lacerda argues that the District Court arbitrarily disqualified his counsel of choice or at least abused its discretion by disqualifying Neff. When a defendant challenges the District Court's decision to disqualify his counsel of choice, we apply a bifurcated standard of review: first, we exercise plenary review when determining whether the District Court's decision was arbitrary, and then, if not arbitrary, we review the decision for an abuse of discretion. *United States v. Stewart*, 185 F.3d 112, 120 (3d Cir. 1999). Here, we find that the District Court's decision was neither arbitrary nor an abuse of discretion, so we will affirm.

The Sixth Amendment to the United States Constitution guarantees the right of counsel to every criminal defendant. That guarantee has generally been understood to encompass a right to the counsel of choice. *Powell v. Alabama*, 287 U.S. 45, 53 (1932). But the right to counsel of choice is not absolute. *Wheat v. United States*, 486 U.S. 153 (1988). "The essential aim of the [Sixth] Amendment is to guarantee an effective advocate for each criminal defendant rather than to ensure that a defendant will inexorably be represented by the lawyer whom he prefers." *Id.* at 159 (internal citations omitted). Before disqualifying a defendant's counsel of choice, the trial court must balance that defendant's right to his counsel of choice against the fair and proper administration of justice. *United States v. Voigt*, 89 F.3d 1050, 1074 (3d Cir. 1996). When "considerations of judicial administration supervene," such as when an attorney has a serious potential conflict of interest, the presumption in favor of counsel of choice is rebutted and the right must give way. *Id.* at 1074–75 (citing *Fuller v. Diesslin*, 868 F.2d 604, 607 n.3 (3d Cir. 1989)).

Here, the District Court weighed Lacerda's right to counsel of choice against Neff's serious actual and potential conflicts of interest and, ultimately, determined those conflicts could neither be waived nor cured by anything short of disqualification. That conclusion was neither arbitrary nor an abuse of discretion.

After the FBI raid on VOG in November 2010, Lacerda retained Neff as his counsel. The following month, Neff met with VOG employees to ease any concerns they had, assuring them that (1) only the Lacerdas were under investigation by the FBI and (2) the post-raid revised phone scripts were lawful. VOG continued operations using the phone scripts whose legality had been vouched for by Neff. Contrary to Neff's representations, 18 VOG employees, including the Lacerdas, were eventually indicted in this criminal case based in part on their use of the phone scripts. In proffers to the government, several of those defendants told of the December meeting with Neff.

In *United States v. Merlino*, 349 F.3d 144, 151 (3d Cir. 2003), we recognized that "[a]n attorney who faces criminal or disciplinary charges for his or her actions in a case will not be able to pursue the client's interests free from concern for his or her own." We also recognized the potential conflicts that arise when counsel realistically could be called as a witness, as "it is often impermissible for an attorney to be both an advocate and a witness." *Id.* at 152. And we noted "that disqualification may also be appropriate where it is based solely on a lawyer's personal knowledge of events likely to be presented at trial, even if the lawyer is unlikely to be called as a witness." *Id.* (citing *United States v. Locascio*, 6 F.3d 924, 933 (2d Cir. 1993)). Each consideration applies here and was central to the District Court's thorough and well-reasoned decision disqualifying Neff.

B. The District Court Did Not Abuse Its Discretion in Managing the Trial Calendar

After Neff was disqualified, Lacerda's new counsel, Mark Cedrone, requested a lengthy continuance to prepare for trial. The District Court denied this request. Lacerda now challenges that denial on appeal. "We review the trial court's refusal to grant a continuance for an abuse of discretion." *United States v. Olfano*, 503 F.3d 240, 245 (3d Cir. 2007). Finding no abuse of the District Court's discretion, we will affirm.

"When presented with a motion for continuance, a court should consider the following factors: the efficient

administration of criminal justice, the accused's rights, and the rights of other defendants whose trials may be delayed as a result of the continuance." *Olfano*, 503 F.3d at 246. The District Court considered these factors and, given the time Cedrone had had to prepare Lacerda's defense, denied the motion based on the government's right to a speedy trial, efforts to streamline the case, the District Court's calendar, and the need to "protect the rights of the parties in other cases." App. 670:23–671:9.

Lacerda now argues that the District Court abused its discretion and prejudiced his defense because, he claims, Cedrone had only four months to prepare for trial. But that is inaccurate. Cedrone entered his appearance on Lacerda's behalf in November 2012—about eight months before jury selection began in July 2013—and Cedrone told the District Court in January 2013 that the scope of his representation was general and not limited to the disqualification motion. The District Court did not abuse its discretion.

C. Lacerda's 2010 Email to Sawyer Was Properly Excluded as Hearsay

In its case-in-chief, the government presented evidence showing that Lacerda sometimes used the alias "Robert Klein" when contacting VOG customers. During the presentation of his defense, Lacerda testified that he was not the only person at VOG using that alias. On direct examination, he testified that he only began using the Robert Klein alias to respond to customer complaints that otherwise weren't being addressed by other employees who would not admit having used the moniker. He further claimed that he did not use the alias before 2010. The government used that assertion to impeach Lacerda, confronting him with a check made out to "Robert Klein" in 2009, which he had deposited into his account. On redirect, Lacerda tried to enter a 2010 email he wrote to VOG's former CFO, Jeff Sawyer, asking Sawyer to investigate who else was using the Robert Klein alias. But the District Court excluded the email as hearsay.

Lacerda now challenges the District Court's ruling on appeal. We review this evidentiary ruling for an abuse of discretion. *United States v. Frazier*, 469 F.3d 85, 87 (3d Cir.

2006). Finding no abuse of the District Court's discretion, we will affirm.

At the time of Lacerda's trial, a witness's prior consistent statement was admissible as non-hearsay only when the witness testified and was subject to cross-examination, and the out-of-court statement was offered to rebut a charge of recent fabrication or recent improper motive. *See* Fed. R. Evid. 801(d)(1)(B) (2011).[4] The Supreme Court had explained that the purpose of the exception was to rebut a charge of recent fabrication. *Tome v. United States*, 513 U.S. 150, 157–58 (1995). "Prior consistent statements [could] not be admitted to counter all forms of impeachment or to bolster the witness merely because she has been discredited." *Id.* at 157.

In this case, the government did not accuse Lacerda of recently fabricating the claim that he began using the Robert Klein alias in 2010. Rather, it employed impeachment by contradiction: of course, Lacerda was using the Robert Klein alias before 2010; he profited from using the alias in 2009. Thus, under the former rules of evidence, Lacerda's email to Sawyer was hearsay, and the District Court properly excluded it.

D. Lacerda's Sentence Was Procedurally Sound and Substantively Reasonable

The District Court sentenced Lacerda to 324 months' imprisonment for his leading role in VOG's fraudulent enterprise. On appeal, Lacerda challenges his sentence as procedurally unsound and substantively unreasonable. Our standard of review on sentencing challenges is bifurcated. We "must first ensure that the district court committed no significant procedural error .... Assuming that the district court's sentencing decision is procedurally sound, the appellate court should then consider the substantive reasonableness of the sentence imposed under an abuse-of-discretion standard."

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[4] Though the Rule was broadly expanded in 2014 to allow for the use of prior consistent statements to rehabilitate the witness against other forms of impeachment, *see* Fed. R. Evid. 801(d)(1)(B)(ii) (2014), the former rule, with its limitation, applied in Lacerda's case.

Gall v. United States, 552 U.S. 38, 51 (2007). Applying these standards, we will affirm the District Court's sentence.

1. The District Court's sentence was procedurally sound

Lacerda argues that the District Court imposed a procedurally unreasonable sentence because, he alleges, it was based on a miscalculation of the number of victims of the VOG scheme and the total financial loss suffered by those victims. The government bears the initial burden of proving loss by a preponderance of the evidence. *United States v. Ali*, 508 F.3d 136, 145 (3d Cir. 2007). The district court must then calculate the amount of loss associated with the crime of conviction and any relevant conduct that was "part of the same course of conduct or common scheme or plan." *United States v. Siddons*, 660 F.3d 699, 704 (3d Cir. 2011) (quotation omitted). While this does not have to be an exact figure, it must be a reasonable estimate. *Ali*, 508 F.3d at 145.

Lacerda first asserts that only those victims who testified during trial or whose victimization underlay a specific count of the indictment should have been counted as victims, claiming that including any other victims in the presentence investigative report ("PSR") was based on "rank hearsay." Appellant Lacerda's Br. 62–64. Of course, a district court may rely on hearsay statements during sentencing, if "they bear some minimal indicium of reliability beyond mere allegation." *United States v. Smith*, 751 F.3d 107, 116 (3d Cir. 2014) (internal quotations and citation omitted). Victim statements are reliable when they "involve[ ] matters within the knowledge of each declarant and were made in the course of interviews by one or more law enforcement officials." *Id.*

In this case, for each victim identified in the PSR, the government submitted the following:

> (1) a declaration of victim losses, completed by the victims, executed under penalty of perjury, and submitted to the Probation Office;
>
> (2) an FD-302 summarizing an officer's interview with the victim; and

(3) a canceled check verifying the amount the victim paid to VOG.

That is more than mere allegation and enough under *Smith* to show reliability. The District Court's calculation of victims was therefore reasonable.

Lacerda next argues that the District Court's calculation of loss was erroneous because it failed to offset the victims' losses with credits for new timeshares and cancellation of prior debts. This argument is unavailing. The supposed cancellation of debt was one of the bases for the fraud charges. Cancellation was not achieved through VOG's efforts, but through the victims' credit-destroying defaults with the timeshare companies after those victims stopped paying their bills—relying on VOG's misrepresentations that their timeshare debts had been paid off. And the VOG victims were trying to get rid of their timeshares, not acquire new timeshares. Neither of these were "services" rendered by VOG; they were part of the fraudulent scheme. Perpetrators of fraudulent schemes are not entitled to credits against loss for payments made to perpetuate their schemes. *See United States v. Hartstein*, 500 F.3d 790, 800 (8th Cir. 2007) ("[W]hen a defendant's only subjective intent regarding repayments relates to this illegal purpose of perpetuating the scheme, a sentencing court may refuse to credit repayments against sums received from the victims."); *United States v. Whatley*, 133 F.3d 601, 606 (8th Cir. 1998) ("[W]e are not inclined to allow the defendants a profit for defrauding people or a credit for money spent perpetuating a fraud."); *United States v. Blitz*, 151 F.3d 1002, 1012 (9th Cir. 1998) (same).

2. The District Court's sentence was substantively reasonable

We will not reverse a sentence as substantively unreasonable "unless no reasonable sentencing court would have imposed the same sentence on that particular defendant for the reasons the district court provided." *United States v. Tomko*, 562 F.3d 558, 568 (3d Cir. 2009) (*en banc*). Lacerda's Guidelines range was calculated between 324 and 405 months. As demonstrated above, Lacerda has shown no error in that calculation. The District Court's sentence of 324 months rests

at the very bottom of the range. When "the sentence is within the Guidelines range, the appellate court may, but is not required to, apply a presumption of reasonableness." *Gall*, 552 U.S. at 51. We will apply the presumption here.

Lacerda presents a table of cases showing a range of sentences for other fraud cases and argues that his sentence, though at the bottom of his Guidelines range, is still "23 times greater than the median sentence for his type of offense." Appellant Lacerda's Br. 67–71. When a defendant seeks to argue disparate sentencing, he bears the "burden of demonstrating similarity by showing that other defendants' circumstances exactly paralleled his, and a court should not consider sentences imposed on defendants in other cases in the absence of such a showing by a party." *United States v. Iglesias*, 535 F.3d 150, 161 n.7 (3d Cir. 2008) (citing *United States v. Vargas*, 477 F.3d 94, 100 (3d Cir. 2007)) (internal brackets and quotations omitted). Lacerda has failed to demonstrate that any of the other defendants' circumstances exactly paralleled his. So, "[a]ccording great deference" to the District Court—as the law requires, *United States v. Lessner*, 498 F.3d 185, 204 (3d Cir. 2007)—we hold that Lacerda has failed to overcome the presumption that his sentence was reasonable.

E. Forfeiture of VOG's Proceeds Was Not Clearly Erroneous

After finding that VOG was a wholly fraudulent scheme, the District Court ordered all its gross proceeds forfeited under 18 U.S.C. §§ 981(a)(1)(C) & 982(a)(8) and 28 U.S.C. § 2461(c). Lacerda raises two challenges to the District Court's forfeiture order on appeal. First, he asserts that he lacked sufficient notice that the government would seek forfeiture upon his conviction because the government cited the wrong criminal forfeiture statutes in its superseding indictment. Second, he asserts that the District Court's finding that all VOG's revenues were either directly or indirectly attributable to VOG's fraud, and so subject to forfeiture, was clearly erroneous. Because forfeiture orders involve mixed questions of law and fact, our standard of review here is bifurcated. We review the District Court's legal conclusions *de novo* and its findings of facts for clear error. *See United States*

v. Gordon, 710 F.3d 1124, 1165 (10th Cir. 2013). Applying this standard, we find no error by the District Court, and we will affirm.

1. Lacerda had notice that, upon conviction, the government would seek forfeiture

In its superseding indictment, the government gave notice that, upon conviction, it would seek forfeiture of "any property constituting or derived from proceeds obtained directly or indirectly as a result of such offenses" under 18 U.S.C. §§ 981(a)(1)(D) & 982(a)(2)(A) and 28 U.S.C. § 2461(c). App. 287. Lacerda notes, and the government concedes, that the cited criminal statutes are not the correct statutes for forfeiture of proceeds from mail and wire fraud involving telemarketing. The correct statute is 18 U.S.C. § 982(a)(8), the statute under which the District Court ordered forfeiture. Lacerda first argues that the forfeiture order cannot be based on the civil forfeiture statute because, under our precedent in *United States v. Vampire Nation*, 451 F.3d 189, 199 (3d Cir. 2006), forfeiture orders can be based on 28 U.S.C. § 2461(c) only when "there is no specific statutory provision that permits criminal forfeiture." Lacerda further argues that, by citing incorrect forfeiture statutes for his crimes, the government failed to provide the notice required by the Federal Rules of Criminal Procedure. Lacerda is mistaken on both grounds.

First, Lacerda's reliance on *Vampire Nation* is misguided. Our *Vampire Nation* decision was based on the language of the prior version of 28 U.S.C. § 2461(c).[5] Giving

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[5] The applicable statute read:

> If a forfeiture of property is authorized in connection with a violation of an Act of Congress, and any person is charged in an indictment or information with such violation *but no specific statutory provision is made for criminal forfeiture upon conviction*, the government may include the forfeiture in the indictment or information in accordance with the Federal Rules of Criminal Procedure, and upon

the words of that statute their plain meaning, we concluded that "criminal forfeiture is not permitted unless (1) a substantive provision exists for civil forfeiture of the criminal proceeds at issue; and (2) there is no specific statutory provision that permits criminal forfeiture of such proceeds." *Vampire Nation*, 451 F.3d at 199. In 2006, Congress amended the statute and eliminated the second requirement.[6] The amendment to 28 U.S.C. § 2461(c) effectively abrogates the portion of *Vampire Nation* upon which Lacerda now relies. Under the current version of the statute, the District Court correctly

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> conviction, the court shall order the forfeiture of the property in accordance with the procedures set forth in section 413 of the Controlled Substances Act (21 U.S.C. 853), other than subsection (d) of that section.

28 U.S.C. § 2461(c) (2000) (emphasis added).

[6] The statute now reads:

> If a person is charged in a criminal case with a violation of an Act of Congress for which the civil or criminal forfeiture of property is authorized, the government may include notice of the forfeiture in the indictment or information pursuant to the Federal Rules of Criminal Procedure. If the defendant is convicted of the offense giving rise to the forfeiture, the court shall order the forfeiture of the property as part of the sentence in the criminal case pursuant to to [sic] the Federal Rules of Criminal Procedure and section 3554 of title 18, United States Code. The procedures in section 413 of the Controlled Substances Act (21 U.S.C. 853) apply to all stages of a criminal forfeiture proceeding, except that subsection (d) of such section applies only in cases in which the defendant is convicted of a violation of such Act.

28 U.S.C. § 2461(c) (2006).

ordered restitution, and Lacerda had notice under the civil statute.

Second, the government provided Lacerda with sufficient notice under the criminal rules. Federal Rule of Criminal Procedure 32.2 sets forth the notice requirement that must be met before forfeiture can be ordered by a district court. It states:

> A court must not enter a judgment of forfeiture in a criminal proceeding unless the indictment or information contains notice to the defendant that the government will seek the forfeiture of property as part of any sentence in accordance with the applicable statute.

Fed. R. Crim. P. 32.2(a). This rule does not require the level of specificity demanded by Lacerda. Rather, as we have held, "[a] conclusory forfeiture allegation in the indictment that recognizably tracks the language of the applicable criminal forfeiture statute" is sufficient under the rule. *United States v. Sarbello*, 985 F.2d 716, 719 (3d Cir. 1993). We recognize that *Sarbello* specifically addressed then-Rule 7(c)(2), which was removed with the 2009 amendments. But that rule was removed only because it had become obsolete: "In 2000 the same language was repeated in subdivision (a) of Rule 32.2, which was intended to consolidate the rules dealing with forfeiture." *See* Fed. R. Crim. P. 7 note (2009 Amendment). We now hold, consistent with *Sarbello*, that general notice of forfeiture is sufficient under Rule 32.2. Thus, Lacerda had sufficient notice that the government would seek forfeiture upon his conviction.

2. *Based on its finding that VOG used its revenues to promote and facilitate its fraud, the District Court correctly ordered those revenues forfeited*

Lacerda next contends that the District Court erred by subjecting all VOG's proceeds to forfeiture rather than limiting the order to the losses directly claimed by VOG's victims. But the relevant statute is not so narrow. Rather, addressing the crimes committed by Lacerda at VOG, 18 U.S.C. § 982 requires the court to

> order that the defendant forfeit to the United States any real or personal property—
>
> (A) used or intended to be used to commit, to facilitate, or to promote the commission of such offense; and
>
> (B) constituting, derived from, or traceable to the gross proceeds that the defendant obtained directly or indirectly as a result of the offense.

18 U.S.C. § 982(a)(8). The District Court found that VOG was a fraudulent enterprise from beginning to end, and that all its gross proceeds were used to further its fraud. Based on those findings, the District Court correctly ordered the forfeiture of all VOG's proceeds.

Lacerda does not appear to challenge the District Court's findings on appeal. Instead, he argues that what it means for property to be "indirectly" derived, traceable, or obtained from an offense is ambiguous, so the rule of lenity should govern our interpretation of the forfeiture statute. We reject this argument. First, it is irrelevant. The District Court's order focused on the fact that VOG had used all its revenues to promote and facilitate its fraud, not on whether those revenues were direct or indirect. Second, "[t]he rule of lenity ... is inapplicable if there is only a mere suggestion of ambiguity because most statutes are ambiguous to some degree." *United States v. Cheeseman*, 600 F.3d 270, 276 (3d Cir. 2010) (internal quotation omitted). Lacerda has failed to show that the forfeiture statute is ambiguous—much less sufficiently ambiguous—to warrant application of the rule of lenity.

Recently, the Supreme Court of the United States explained that the purpose of forfeiture statutes is to separate the criminal from his ill-gotten gains, to return, in full, the property of defrauded victims, and to lessen the economic power of criminal enterprises. *Honeycutt v. United States*, 137 S. Ct. 1626, 1631 (2017) (citing *Caplin & Drysdale, Ctd. v. United States*, 491 U.S. 617, 629–30 (1989)). The District Court's forfeiture order here meets those purposes. The District Court found that VOG was a thoroughly corrupt criminal

conspiracy from beginning to end, and that its revenue was used to promote and facilitate its crimes. That finding is supported by substantial evidence and does not appear to be challenged by Lacerda on appeal. The District Court correctly ordered the forfeiture of all of VOG's revenues.

IV. Objections Raised by Resnick

Like Lacerda, Resnick also raises several additional issues on appeal. He claims that (1) the government suppressed material evidence; (2) the District Court miscalculated the number of his victims and the loss amount for those victims, and so erred at sentencing; (3) his due process rights were violated when his sentencing hearing was delayed; and (4) the District Court's restitution order was procedurally unsound and substantively unreasonable. We will address each argument in turn.

A. The Government Did Not Commit a *Brady* Violation

Resnick asserts that the government violated its obligations under *Brady v. Maryland*, 373 U.S. 83 (1963), by withholding evidence which he might have used to impeach Special Agent Mesisca. Specifically, Resnick claims that the government withheld the documents that were the basis of a victim's, Dorothy Gerlach's, FD-302[7] and withheld Gerlach's later-produced "Declaration of Victim's Losses." Resnick preserved this argument by raising it to the District Court in a motion for a new trial based on newly discovered evidence. The District Court correctly denied that motion.

Under *Brady*, the government has a duty to disclose "evidence that is favorable to the defense and material to the defendant's guilt or punishment." *Smith v. Cain*, 565 U.S. 73, 75 (2012). Thus, there are three prerequisites to a *Brady* violation: (1) the government must have failed to disclose evidence; (2) that evidence must have been favorable to the defendant; and (3) that evidence must have been material.

[7] The FD-302, commonly referred to simply as a "302", is the form commonly used by FBI agents to summarize witnesses' statements and interviews.

Evidence is "material" only if there is a reasonable probability that its disclosure would have led to a different outcome at trial, and so undermines confidence in the verdict. *Turner v. United States*, 137 S. Ct. 1885, 1893 (2017). The evidence Resnick claims was withheld fails to satisfy each of the three prerequisites.

Contrary to Resnick's assertions, the government did not withhold the evidence. The documents underlying Gerlach's 302, labeled as "DG-3", were disclosed before trial. The Declaration of Victim's Losses, "DG-2", was received by the probation office in May 2013, but not forwarded to the prosecutor until late in 2014. The prosecutor disclosed the declaration with other documents in January 2015.

Resnick is correct that the failure to disclose information known only to police investigators can still implicate the prosecution, even when the prosecutor was unaware of the information. *Youngblood v. West Virginia*, 547 U.S. 867, 869–70 (2006). But probation officers in the federal system are not police investigators; they are "the court's eyes and ears and provide information and recommendations to the court." *United States v. Amatel*, 346 F.3d 278, 279 (2d Cir. 2003). We will not impute to the prosecution the Probation Office's failure in 2013 to disclose Gerlach's "Declaration of Losses" to Resnick.

But even if we did impute to the prosecution the Probation Office's failure to disclose, it still would not constitute a *Brady* violation. Far from being material evidence that could have undermined Resnick's conviction, this evidence reinforces the jury's verdict. Resnick admitted that "he pitched a bank settlement deal to Ms. Gerlach." App. 7737:19–21. There were two parts to the bank settlement pitch: VOG promised to help the victims pay off their debt and keep their timeshare property, and then, in a bait and switch, sold them a second timeshare through VOG. Gerlach's declaration, which expresses confusion over not receiving points she was promised, highlights that bait and switch. Thus, the declaration was not exculpatory; it was inculpatory.

We conclude that the government did not violate its obligations under *Brady*.

B. The Timing of Resnick's Sentencing Did Not Violate His Sixth Amendment or Due Process Rights

Resnick next claims that his speedy sentencing rights were violated when his sentence was not imposed for more than two-and-a-half years following his conviction. We once recognized a right to a speedy sentencing hearing under both the Sixth Amendment and the Due Process Clause. *See Burckett v. Cunningham*, 826 F.2d 1208, 1219–21 (3d Cir. 1987). But the Supreme Court of the United States has since clarified that the Sixth Amendment guarantees a defendant the right to a speedy *trial*, not a speedy *sentencing*. *Betterman v. Montana*, 136 S. Ct. 1609, 1613 (2016). "That does not mean, however, that defendants lack any protection against undue delay at [sentencing]." *Id.* at 1617. Federal Rule of Criminal Procedure 32(b)(1) requires courts to "impose sentence without unnecessary delay." *Id.* And, the Supreme Court noted, the convicted defendant maintains his due process rights. *Id.*

Thus, while *Betterman* overruled our speedy sentencing precedent under the Sixth Amendment, our precedent under the Due Process Clause survives. Under that precedent, we apply the same framework adopted by the Supreme Court in *Barker v. Wingo*, considering: (1) the length of the delay; (2) the reasons for the delay; (3) the defendant's assertion of his right; and (4) any prejudice suffered by the defendant. 407 U.S. 514, 530 (1972). Consideration of these factors leads us to the conclusion that Resnick suffered no deprivation of his due process right to a speedy sentencing.

First, the length of the delay between conviction and sentencing—more than two-and-a-half years—was substantial. This factor favors Resnick.

But *second*, as the District Court found, three things contributed to the delay in getting to sentencing. (1) This was a very complex fraud scheme involving 18 separate defendants, and the deliberation necessary to address the scheme and its victims required time. (2) Resnick sought several continuances of his sentencing. The government, on the other hand, never requested a continuance. (3) The District Court delayed sentencing to research Resnick's claims that

some of the purported victims were not really victims. So any unnecessary delays, if there were unnecessary delays, are mainly attributable to Resnick. None are attributable to the government. This factor weighs heavily against Resnick.

Third, Resnick asserted his right to a speedy sentencing in a motion filed on March 3, 2016. Ironically, that motion also sought leave to serve a Rule 17(c) subpoena to obtain additional documents, which would have further delayed sentencing. ***(Id.)*** Resnick's sentencing hearing took place on April 22, 2016, seven weeks after he filed his request. If this factor favors Resnick, it does so with little weight.

Fourth and finally, Resnick asserts that the delays to his sentencing prejudiced him because the government was able to identify additional victims and adduce sufficient evidence to prove their losses by a preponderance of the evidence. We do not think this argument is well taken. Allowing the government time to identify additional victims did not affect his Sentencing Guidelines range. Resnick's victim and loss total—whether calculated in 2014 under the initial PSR at 124 victims with $1.2 million in losses, or the government's initial filing of 192 victims with $2.1 million in losses, or in 2015 under the government's revised filing of 253 victims with $2.7 million in losses—always yields a 16-level enhancement. *Compare* U.S.S.G. § 2B1.1(b)(1) (2014), *with* U.S.S.G. § 2B1.1(b)(1) (2015). Thus, Resnick's Guidelines range was unaffected, and he has failed to show prejudice. This factor also weighs heavily against Resnick.

Taking the four factors together, we conclude that Resnick has failed to show that his due process right to a speedy sentence was violated.

C. The District Court Correctly Applied the Sentencing Guidelines In Fashioning Resnick's Sentence

Resnick next challenges several of the District Court's findings at sentencing. We "review factual findings relevant to the Guidelines for clear error and ... exercise plenary review over a district court's interpretation of the Guidelines." *United States v. Grier*, 475 F.3d 556, 570 (3d Cir. 2007).

First, Resnick claims that by adopting the government's proposed timeline for VOG's operations the District Court allowed the government to inflate its victim and loss figures. He argues that, because the government limited the timeframe for its evidence at trial, any victims found outside of that limited timeframe should not count. Of course, because the VOG-conspirators continued operations *during their trial*—through 2014—some victims arose after the government's limited timeframe. It was appropriate for those victims to be included. And we again note that the government's calculation of victims' losses did not affect Resnick's ultimate Guidelines range.

The Sentencing Guideline that applies to Resnick's fraud is § 2B1.1, covering various forms of theft. Following the 2015 amendment, a six-level enhancement should be applied when the crime "resulted in substantial financial hardship to 25 or more victims." U.S.S.G. § 2B1.1(b)(2)(C). That is the highest-level enhancement for number of victims. The definition of "substantial financial hardship" includes "suffering substantial harm to his or her ability to obtain credit." *See* U.S.S.G. application notes § 4(F)(vi). As the credit ratings of all the victims of VOG were severely damaged by VOG's schemes, Resnick began on the wrong side of that threshold. That the government ultimately identified more than 250 victims was immaterial for the Guidelines calculation. And, as discussed in section IV(B), whether using the initial victim and loss estimates in 2014, or the more comprehensive totals following the 2015 amendment, Resnick's victims' loss total yields the same 16-level enhancement.

Second, Resnick challenges the District Court's finding that VOG was a fraudulent enterprise from beginning to end. Resnick argues that not all VOG's employees knew that they were part of a fraudulent scheme, so there must have been some non-fraudulent work at VOG. This conclusion does not follow from Resnick's premise because those employees' alleged ignorance is not imputed to Resnick and his co-defendants. A conviction for mail or wire fraud requires both objective misrepresentations and the defendant's subjective knowledge of the misrepresentations. *See* 18 U.S.C. §§ 1341, 1343. The jury found that *Resnick* knowingly participated in VOG's

fraud, so the argument based on others' alleged knowledge does not help him.

Resnick also argues that the finding is inconsistent with the District Court's willingness to consider his argument that not all VOG victims were equally victimized. The District Court noted that VOG had engaged in various types of fraud. That the Court recognized that some instances of VOG's fraud were more flagrant than others does not undermine the District Court's overall finding that VOG was a wholly fraudulent enterprise. Rather, having carefully reviewed this case, we conclude that the Court's finding was supported by substantial evidence and will be affirmed.

Third, like Lacerda, Resnick argues that services like debt cancellation and the sale of new timeshares should be credited against the victims' losses. We addressed this argument in section III(D)(1), and our analysis applies equally to Resnick. Cancellation was achieved only because the victims defaulted on their loans, not because of some value-adding intervention from VOG. The defaults impacted the victims' credit ratings in significant and negative ways. The District Court was correct to not credit VOG's alleged "services" against the losses suffered by Resnick's victims. And like Lacerda, Resnick is not entitled to credit against his victim's losses for payments VOG made to perpetuate its fraudulent schemes. *See Hartstein*, 500 F.3d at 800; *Whatley*, 133 F.3d at 606; *Blitz*, 151 F.3d at 1012.

Fourth and finally, Resnick argues that, under U.S.S.G. § 2B1.1, refunded monies by third parties should be credited against his victim's losses. The Guidelines provides that the victim's loss "shall be reduced by ... [t]he money returned ... *by the defendant* or other persons *acting jointly with the defendant*, to the victim *before the offense was detected*." U.S.S.G. § 2B1.1(3)(E)(i) (emphasis added). Resnick argues that he is entitled to credit for refunds to victims made by "escrow compan[ies] utilized to procure third party timeshares" and other "timeshare developers." Appellant Resnick's Br. 71. But there is no evidence that the escrow agents and timeshare developers were "acting jointly" with Resnick, or that the refunds were made "before the offense was

detected." The District Court correctly denied any credits against Resnick's victims' losses.

D. Resnick Forfeited His Objection to the District Court's Restitution Order

Because of the many complexities of this case, restitution was delayed until sometime after sentencing. While Resnick filed a timely notice of appeal from his judgment and sentence, he never appealed from the later-entered order of restitution. Resnick now raises various challenges to the District Court's award of restitution entered against him under 18 U.S.C. § 3663A. But the government contends that we must dismiss Resnick's challenges because of his failure to file a separate notice of appeal from the restitution order. The government is correct.

This issue raises a jurisdictional question, over which we exercise plenary review. *Hamilton v. Bromley*, 862 F.3d 329, 333 (3d Cir. 2017). Resolution of this question is controlled by *Manrique v. United States*, 137 S. Ct. 1266, 1274 (2017), in which the Supreme Court held "that a defendant who wishes to appeal an order imposing restitution in a deferred restitution case must file a notice of appeal from that order." Deferred restitution cases, the Supreme Court explained, involve two appealable judgments, not one. *Id.* at 1273; *see also Dolan v. United States*, 560 U.S. 605, 616–18 (2010). Both the statute and rules governing appeals "contemplate that the defendant will file the notice of appeal *after* the district court has decided the issue sought to be appealed." *Manrique*, 137 S. Ct. at 1271 (emphasis original). So notices of appeal filed before the restitution order cannot be "for review" of the restitution order and are not filed timely from that order. *Id.* The Supreme Court held that filing a timely notice of appeal from an order of restitution was at least a mandatory claim-processing rule, *id.* at 1272 (citing *Greenlaw v. United States*, 554 U.S. 237, 252–53 (2008)), and when the government raises the failure to timely file the notice, our duty to dismiss the appeal is also mandatory, *id.* (citing *Eberhart v. United States*, 546 U.S. 12, 15, 19 (2005)).

Resnick did not file a timely notice of appeal from the order of restitution, and the government has raised this failure

on appeal. Thus, under *Manrique*, Resnick at least violated a mandatory claim-processing rule and we have a mandatory duty to dismiss this issue.

V. Objections Raised by Manzoni

In addition to Manzoni's challenge to Special Agent Mesisca's overview testimony, she also argues that (1) the District Court abused its discretion by allowing the prosecution to impeach a codefendant with an audio recording that implicated her; (2) the District Court erred when it joined the charges arising from her participation in the fraudulent activities at VOG and her charge of alleged unemployment fraud; and (3) there was insufficient evidence presented to the jury to sustain her fraud and conspiracy convictions. We will address each of these issues in turn.

A. The District Court Did Not Abuse Its Discretion in Admitting Evidence of a Phone Call to a Victim

During trial, it came to light that some defendants had engaged in witness tampering. The government sought to enter the recording of a phone call between one of the defense witnesses, Dennis Nadeau, and a victim, David Jasper, showing an attempt at such tampering. Manzoni objected to admission of the recording on two grounds. At first, she argued that it was unduly prejudicial under Federal Rule of Evidence 403 because, though the evidence of tampering was not being offered against her, she was the subject of the victim's complaint. But this was not apparent from the phone call itself; Manzoni was never actually named by the victim. So she also argued that the phone call should be excluded as hearsay. She presents these same arguments on appeal.

1. The District Court did not abuse its discretion under Rule 403

Manzoni asserts that the District Court abused its discretion under Rule 403 by allowing the recording of the phone call into evidence. "We generally review a district court's evidentiary findings for abuse of discretion." *United States v. Bailey*, 840 F.3d 99, 117–18 (3d Cir. 2016). Rule 403 allows relevant evidence to be excluded when its probative

value is substantially outweighed by the potential for unfair prejudice. *Id.* at 117. When a district court conducts an on-the-record weighing of probative value against unfair prejudice, its evidentiary decision is entitled to great deference. *Id.* "In order to justify reversal, a district court's analysis and resulting conclusion must be arbitrary or irrational." *Id.*

In this case, the District Court conducted an on-the-record Rule 403 analysis—both orally and in a later written order. The District Court found that the phone call's "probative value as to the consciousness of guilt" outweighed any prejudice. App. 5015:3–5. But it also recognized that there could be some spillover effect for Manzoni, so it acted to mitigate that unfair prejudice by offering multiple curative instructions—including one drafted by Manzoni. The District Court's analysis and its conclusion were neither arbitrary nor irrational. We therefore find no abuse of the District Court's discretion under Rule 403, and we will uphold the District Court's decision to allow the recording into evidence.

2. Because the phone call was offered for a non-hearsay purpose, it was not hearsay

Manzoni next argues that the phone call was hearsay. "Whether a statement is hearsay is a legal question subject to plenary review." *United States v. Price*, 458 F.3d 202, 205 (3d Cir. 2006). Under Federal Rule of Evidence 801(c), "hearsay" is any statement that a declarant makes outside of court and that is offered to prove the truth of the matter asserted in the statement. Statements offered for non-hearsay purposes are not hearsay. *See Price*, 458 F.3d at 211. As the advisory committee's notes to the rule make clear, statements that are offered merely to show that they happened are not offered for a hearsay purpose. *See* Fed. R. Evid. 801 note (subdiv. (c)) (citing *Emich Motors Corp. v. General Motors Corp.*, 181 F.2d 70 (7th Cir. 1950), *rev'd on other grounds* 340 U.S. 558 (1951)). The recording of the phone call between Nadeau and Jasper was not offered to prove the truth of any of Jasper's assertions, but to show that Nadeau had in fact contacted some of the victims. So the phone call was not hearsay, and Manzoni has failed to show that the District Court abused its discretion by allowing it into evidence.

B. Manzoni Was Not Prejudiced by the Joinder of Her VOG-Fraud and Employment-Fraud Charges

In separate counts, Manzoni was charged with fraud and conspiracy for her participation in the VOG scheme, and with fraud for allegedly collecting unemployment benefits from the State of New Jersey while she was employed at VOG. Manzoni moved to sever the charges under Federal Rule of Criminal Procedure 8. Although the District Court recognized that the propriety of joinder here was a close question, it denied her motion. Manzoni argues that it was error to join her VOG-fraud and unemployment-fraud charges because they lacked a sufficient nexus and were not part of the same transaction. The appeal of a denial of a motion under Rule 8 is a claim of legal error, which we review *de novo*. *United States v. Jimenez*, 513 F.3d 62, 82 (3d Cir. 2008).

Joinder is controlled by Rule 8. Generally, Rule 8(a) addresses joinder of offenses and Rule 8(b) joinder of defendants. But Rule 8(a) only applies to prosecutions involving a single defendant; "in a multi-defendant case such as this, the tests for joinder of counts and defendants is merged in Rule 8(b)." *United States v. Irizarry*, 341 F.3d 273, 287 (3d Cir. 2003) (internal quotations omitted). "Although the standards of Rule 8(a) and Rule 8(b) are similar, in that they both require a transactional nexus between the offenses or defendants to be joined, Rule 8(a) is more permissive than Rule 8(b) because Rule 8(a) allows joinder on an additional ground, i.e., when the offenses are of the same or similar character." *Id.* at 287 n.4 (citations and internal quotations omitted); *see also Jimenez*, 513 F.3d at 82 ("[J]oinder of defendants under Rule 8(b) is a stricter standard than joinder of counts against a single defendant under Rule 8(a)."). For joinder of Manzoni's cases to have been proper under Rule 8(b), they either would have had to originate "in the same act or transaction," or have otherwise been integral to one another. *See United States v. Riley*, 621 F.3d 312, 334 (3d Cir. 2010).

The District Court determined that joinder was proper because Manzoni's employment in the VOG scheme was integral to the unemployment-fraud charge: she was charged with fraudulently collecting unemployment benefits while she

was employed by, and receiving compensation from, VOG. But the opposite is not necessarily true. Rather, Manzoni suggests, allegations that she illicitly collected unemployment benefits would not have been integral to her participation in the VOG scheme, so joinder was improper. But even assuming, *arguendo*, that Manzoni is correct, the District Court still did not commit reversible error.

Under Federal Rule of Criminal Procedure 52(a), we must disregard "[a]ny error, defect, irregularity, or variance that does not affect substantial rights ...." We have explained that "an error involving misjoinder affects substantial rights and requires reversal only if the misjoinder results in actual prejudice because it had substantial and injurious effect or influence in determining the jury's verdict." *Jimenez*, 513 F.3d at 83 (brackets and internal citations omitted). Here, any potential misjoinder would have been harmless because the record shows that the joinder did not influence the jury's verdict against Manzoni; after all, she was acquitted of the allegedly misjoined charge.

Because Manzoni's employment at VOG was integral to the unemployment-fraud charges, unfair prejudice in this case can only flow in one direction. That is, it would have been *proper* for the jury to conclude that, because Manzoni was employed and receiving compensation with the VOG scheme, she was committing fraud by receiving unemployment benefits from the State of New Jersey. It would have been *improper*, however, for the jury to conclude that, because Manzoni committed unemployment fraud, she must also have participated in the VOG fraud. But the jury did not reach that conclusion; rather, it convicted Manzoni of her role in the VOG scheme despite acquitting her of unemployment fraud. So joinder of the fraud counts did not affect the jury's verdict and any error in joining the charges was harmless.

C. Manzoni's Conviction Was Supported by Sufficient Evidence

Finally, Manzoni challenges the sufficiency of the evidence to support her fraud and conspiracy convictions. Our standard of review on a challenge to the sufficiency of the evidence is plenary. *United States v. Boria*, 592 F.3d 476, 480

(3d Cir. 2010). But that plenary review is greatly tempered by giving substantial deference to the jury's finding of guilt. *See Jackson v. Virginia*, 443 U.S. 307, 318–19 (1979). Employing that deference, and applying the applicable legal standards, we find the evidence was sufficient to support the jury's guilty verdict.

The Supreme Court of the United States has explained:

> [T]he critical inquiry on review of the sufficiency of the evidence to support a criminal conviction must be … to determine whether the record evidence could reasonably support a finding of guilt beyond a reasonable doubt. But this inquiry does not require a court to ask itself whether *it* believes that the evidence at the trial established guilt beyond a reasonable doubt. Instead, the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.

Jackson, 443 U.S. at 318–19 (internal quotations and citations omitted). In conducting this review, all reasonable inferences must be drawn in favor of sustaining the verdict. *United States v. Anderskow*, 88 F.3d 245, 251 (3d Cir. 1996). Reversal of a conviction is only appropriate where there is "no evidence, regardless of how it is weighted, from which the jury could find guilt beyond a reasonable doubt." *United States v. Mussare*, 405 F.3d 161, 166 (3d Cir. 2005).

Manzoni was charged with conspiracy to commit wire fraud under 18 U.S.C. § 1349 and wire fraud under 18 U.S.C. § 1343. To prove wire fraud, the government had to show that Manzoni had the intent to commit fraud. *See* 18 U.S.C. § 1343. So the question here is whether Manzoni's participation in the VOG scheme was knowing or intentional.

Manzoni argues that the evidence presented at trial at most showed that she said things as a VOG representative that were not true, not that she was a knowing participant in the fraud. She claims that this case should be controlled by *United*

States v. Pearlstein, 576 F.2d 531, 542–43 (3d Cir. 1978), in which we reversed the fraud convictions of lowly sales representatives who only read from a sales script, without knowing that the script contained false statements. In light of the evidence admitted at trial, we find that *Pearlstein* does not apply.

First, Manzoni was no lowly sales representative—she was one of the managers at VOG. From her position as a manager, and her long experience in the timeshare industry, a jury could reasonably infer that she knew that statements in VOG's phone scripts were false. Second, even before she was a manager, while working as one of VOG's closers, Manzoni did more than just mechanically read false statements from a controlled sales script. She showed initiative by inventing fake payoff amounts for the customers, without approval—much less direction—from her supervisors, and then creating urgency by imposing arbitrary deadlines by which these (fake) offers had to be accepted before they expired. Based on this evidence, as the District Court correctly found, a reasonable jury could conclude beyond a reasonable doubt that Manzoni was "a knowing, even integral part, of [the] fraud scheme." SA 1151.

VI. Conclusion

For all of the reasons discussed above, we will affirm the judgments of conviction and sentences entered against Lacerda, Resnick, and Manzoni.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA	:	
	:	**Crim. No. 12-303 (NLH)**
	:	
V.	:	
	:	
	:	**OPINION**
ADAM LACERDA,	:	
a/k/a "Robert Klein,"	:	
et al.	:	

Hillman, District J.

I. PROCEDURAL HISTORY

This Court presided over a jury trial[1] in which the defendants Ian Resnick and Genevieve Manzoni and two others were convicted of various counts involving a devious telemarketing scheme that scammed over 300 victims of losses approximating $10,000 each. Many of the victims were elderly, unsophisticated financially, or, in the depths of the Great Recession, were in dire financial straits. Now before the court are motions by the named defendants for judgments of acquittal pursuant Fed.R.Crim.P. 29 or, in the alternative, a new trial pursuant to

[1] The full factual background of this case is familiar to all parties, and the Court therefore only discusses the facts relevant to the instant Motion.

Fed.R.Crim.P. 33. For the reasons that follow, those motions will be denied.

II. LEGAL STANDARD

In deciding a Rule 29 motion, the Third Circuit has instructed that "'[i]t is not for [this Court] to weigh the evidence or to determine the credibility of the witnesses.'" *United States v. Dent*, 149 F.3d 180, 187 (3d Cir. 1998) (quoting *United States v. Voight*, 89 F.3d 1050, 1080 (3d Cir. 1996)). Instead, this Court "must view the evidence in the light most favorable to the government" and deny the motion "if any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Id.* (internal quotation marks and citations omitted). Indeed, "[t]he evidence need not be inconsistent with every conclusion save that of guilt, so long as it establishes a case from which a jury could find the defendant guilty beyond a reasonable doubt." *United States v. Carr*, 25 F.3d 1194, 1201 (3d Cir. 1994). Accordingly, a sufficiency of the evidence claim imposes a "very heavy burden" on the defendant. *See Dent*, 149 F.3d at 187; *Carr*, 25 F.3d at 1201.

Defendant Resnick also has moved, in the alternative, for a new trial under Rule 33 because he claims that the verdict was against the weight of evidence and a miscarriage of justice. In

deciding a Rule 33 motion based on the weight of the evidence, the Third Circuit has instructed that "[a] district court can order a new trial on the ground that the jury's verdict is contrary to the weight of the evidence only if it believes that there is a serious danger that a miscarriage of justice has occurred-that is, that an innocent person has been convicted." *United States v. Brennan,* 326 F.3d 176, 189 (3d Cir. 2003) (internal quotation marks and citation omitted). "Thus, 'motions for a new trial based on the weight of the evidence are not favored.'" *Id.* (quoting *Government of Virgin Islands v. Derricks,* 810 F.2d 50, 55 (3d Cir. 1987)). In determining whether "an innocent person has been convicted," the Third Circuit explained that a district court "does not view the evidence favorably to the Government, but instead exercises its own judgment in assessing the Government's case." *Id.*

III. LEGAL ANALYSIS

A. Defendant Jennifer Manzoni

Manzoni offers four main arguments[2] in support of her motion. She first argues that the circumstantial evidence

[2] The Court has considered the other arguments raised by Manzoni and, to the extent should arguments were timely raised and not waived by failure to raise an objection, finds them without merit. The case agent's testimony that an email in evidence concerned the fraudulent bank settlement pitch seems evident from the document itself and questions about who authored it were raised by her own counsel. As for testimony from the case agent that he found no evidence that customers were told about

offered to the jury that she knew of the fraudulent nature of the scheme and knowingly joined it was insufficient to prove her guilt beyond a reasonable doubt. In support of this argument, she contends among other things that she was merely a first line telephonic caller, that she used her real name, she was on the lowest rung in the sales ladder, that she merely read scripts that she did not prepare, that she only worked at the company, the VO Group, for a short period before it was searched by the FBI, and that no documents or other objective evidence supports a finding of guilt.

This argument fails. Although Manzoni was at VO Group for a short period of time before the FBI raid, the evidence showed that her role expanded after the raid as she took on the role of not only pitching deals to potential customers but closing deals. Importantly, even though the scripts changed after the raid, the misrepresentations or outright lies continued. Manzoni did not have "complaints" before her and was not working with Wyndham as she claimed, an important, even critical, misrepresentation that lured and lulled victims into the fraud.

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timeshare foreclosure, the statement is not hearsay and a permissible summary of overwhelming evidence at trial that customers were told before the execution of the search warrant that their debt would be paid off - the very opposite of foreclosure.

Nor did VO Group have the ability to pay off time share debt, the critical element and most lucrative part of the fraud scheme. As a deal closer, Manzoni pitched the payoff price (created by her and others out of thin air) and arranged for the collection of funds from the victim. Yet, she had no contact with a mortgage company, bank, or lien holder to pay off the debt she had promised to expunge, never saw any paperwork related to those debts from financial institutions, nor could she have observed anyone else making those arrangements or payments in this operation because it was all a big lie designed to separate vulnerable and desperate timeshare owners from even more of their money. Two victims testified and that it was Manzoni who told them these numerous lies. With this evidence,[3] even if circumstantial, a reasonable juror could easily conclude beyond a reasonable doubt that Manzoni was a knowing, even integral part, of a fraud scheme as it evolved and unfolded.

Second, Manzoni argues that the lack of proof undermines the factual predicate of the Court's earlier denial of her motion to sever the unemployment fraud counts from the mail and wire fraud scheme counts. She argues that the lack of proof of

[3] The jury also heard evidence that Manzoni admitted to other employees, one a co-conspirator, that she knew VO was a fraudulent enterprise and that she made inconsistent statements to the FBI. Either or both of these may have properly considered by the juror and evidence of consciousness of quilt.

her knowing participation in the underlying fraud scheme proves the absence of a transactional nexus with the unemployment fraud. As the Court previously ruled, there is a sufficient transactional nexus between the alleged unemployment fraud and the underlying telemarking making joinder of those counts permissible. The proof of her involvement in the fraud scheme includes proof of where she worked, when, how she was compensated and by how much. Most if not all of these same facts would have been necessary to assess whether she committed unemployment fraud and when and by how much.

As the Court noted at oral argument, separate trials on these counts would have involved very similar proofs. The manner in which the evidence went in in the tried case did nothing to alter the Court's earlier ruling; it only reinforced it. The more potentially compelling argument that a finding of guilt on the telemarketing fraud would cause the jury to infer guilt on the unemployment fraud without the requisite proof did not play out as the Defendant feared it would. The Jury acquitted on the unemployment fraud counts while convicting her on the telemarketing fraud. Clearly, an attentive and discerning jury weighed the relatively weak and confusing proofs on the unemployment scheme against the substantial evidence of her personal involvement in the time share payoff fraud and convicted on the latter and rejected the government's case as to

the former. This is not prejudicial spillover. It is our jury system at its finest.

Third, she reiterates her earlier argument at trial and the arguments of the other defendants that the government's case agent gave impermissible overview testimony essentially offering inadmissible hearsay. The primary point raised her is the agent's occasional reference to "victims" of the defendant's crimes before those witnesses had testified. Manzoni also questions whether the agent's characterization of certain documents and inferences he derived from them was proper and whether he gave impermissible testimony about defendant Adam Lacerda's state of mind.

First, the opinion elicited from the case agent on redirect about Adam Lacerda's reason for his anger over the contents of an email (that he didn't want evidence of their fraud written down) was in direct response to an attempt by defense counsel to get the case agent to admit that Lacerda's angry outburst was evidence of his innocence (he was angry because he had discovered his employees were lying to customers). This was fair rebuttal and in any event did not relate at all to Manzoni's state of mind and hence was not prejudicial to her.

As for the agent's comments concerning his view that notes on Manzoni's desk reflected commissions this would appear to be

admissible under Fed.R.Evid. 701. The agent's testimony was based on his extensive investigation of how the VO Group operated and paid its employees. To that extent it was based on that investigation his opinion was "rationally based on the witness's perception." This commonly employed compensation method for sales people hardly required the expertise of a forensic accountant. Even if not admissible as such, it was at worst cumulative. That Manzoni was paid by commission was not in dispute and the fact that she kept such records on her desk could hardly be characterized as prejudicial.

As for the issue of the agent's characterization of certain people as "victims", vigorously raised at trial and reasserted here, we view this as more sound and fury than substance. That an FBI agent would begin an investigation, expand it after a preliminary view of the evidence, take various investigative steps including interviewing numerous witnesses, examining documents and other tangible evidence, obtaining confessions and admissions and signing up cooperating witness who would testify to victimizing clients, and then recommending charges to the U.S. Attorney after concluding that citizens had been victims of a financial crime hardly seems a surprising or unusual process even to a lay juror.

What would truly be shocking would be an agent recommending charges after an investigation that concluded there were no victims. We pause to note here that a criminal trial is an adversarial process. The government contends the defendants committed crimes, that real people were victims of financial fraud and would testify as such, that cooperators will admit to their roles in the crime, and the investigation and evidence derived from that investigation proves the guilt of the charged defendants. The defense takes the opposite tact - that there was no fraud or, as in this case, if there was a fraud my client was not involved and the only fraud was that admitted to by the cooperators who have blamed others falsely to save their own hides. That each side would take up its respective banner and fly it high and that its witnesses would support that theme, within the rules of evidence, is the normal process of almost any criminal trial.

This is not to say that the defendants have not expressed a meaningful concern or potential problem. That a federal law enforcement agent may view a citizen as a victim it just that - his or her view. And any assumption of that fact by the jury simply because an agent made that characterization would surely pervert the truth-seeking adversarial process lauded above and intrude on the proper role of the jury. But in the view of this Court that risk is at best speculative and contrary to the

efforts and results at trial. Throughout the trial, the Court reiterated to the jury as early as voir dire and through opening remarks, in curative instructions during the trial, and in its final instructions, that the jury, and only the jury, was the finder of facts, the sole judges of credibility, and that they were free to believe all, or none, or some, of any witness's testimony, law enforcement agents included.

In the process of voir dire each juror acknowledged to their assent to the principle that a law enforcement officer's testimony was to be given the same weight as any other witness. That the jury took these instructions to heart and followed them is evident from their verdict, acquitting one defendant all together and, as noted, acquitting Manzoni of several counts. This was a jury swayed by evidence and not afraid to reject unsupported inferences.

Fourth, she argues that the testimony of the witness David Jasper, conveyed to the jury by way of an audio tape and proffered against another defendant and the defendant's witness as impeachment, devolved into impermissible hearsay testimony about Manzoni derived from her conversations with Jasper's wife, Marie. This argument is without merit. First, Marie Jasper testified and at trial and in emotional testimony described how Manzoni had lied to her to obtain money. Of course, the fact

that an out-of-court declarant later testifies at trial does not make their prior hearsay statements admissible, but it does blunt to a significant degree the alleged prejudicial effect of hearing what David Jasper said his wife had said earlier.

More importantly, the tape was not offered and admitted for the truth of Marie Jasper's out of court statements. The tape itself was a business record, and the second layer of hearsay - Marie Jasper's statements to her husband - were properly offered to show the context and motive for Dennis Nadeau's pre-trial efforts at witness tampering, a plan orchestrated and directed by Manzoni's co-defendants Ashley and Adam Lacerda. That Dennis Nadeau engaged in witness tampering is clear. He has pled guilty to that crime and is awaiting sentencing before this Court. Any potential spill over was negated by this Court's repeated curative instructions that the evidence be considered only to impeach Nadeau and as evidence of the Lacerda's witness tampering and not as substantive evidence against Manzoni.

B. Defendant Ian Resnick

Defendant Resnick adopts and amplifies some of these arguments contending that some of the overview testimony focused on alleged victims that did not testify. Resnick also argues that the overview testimony was so extensive it created a pervasive taint over the trial. Like Manzoni, Resnick also

argues that no rational juror could find him guilty on the evidence. Again, like Manzoni, his arguments lack merit.

Taking the last argument first, there was overwhelming evidence from which a rational juror could conclude that Ian Resnick was not only a knowing participant but a significant manager of this elaborate fraud scheme.

First, the jury heard evidence that Resnick provided the conspirators with a list of Resnick's Wyndham customers, lists that played a key role in the initial fraudulent sales pitch because it reinforced the lie that VO Group was acting on Wyndham's behalf. The jury also heard evidence that Resnick was trained by Adam Lacerda, made the fraudulent bank settlement pitch personally,[4] lied to customers about representing banks, and made up settlement numbers. They also heard evidence that he became Adam Lacerda's close confidant and enforcer, disciplining employees, and become one of the firm's highest paid employees directly benefitting financially from the small army of fraudsters employed by the VO Group boiler room operation.

[4] Ricky Baker testified that Resnick defrauded him using the bank settlement pitch and used the mail and interstate wires in furtherance of the scheme. In addition to Count 1, this evidence was sufficient for rational juror to find Resnick guilty of Counts 18, 32, and 33.

His skills at deception and high pressure sales were so good, one of his two main roles at the end was to close deals lower level employees could not, taking their commission for himself. As the Court noted at trial, it would more than reasonable for a juror to conclude that the "Reaper" would have to know how the fraud worked to be an effective deal closer. His other main role at the end was damage control, attempting to placate customers who had been victimized, lying to them or deceiving them all over again.

The vast evidence that Resnick was one of the leaders of the VO Group fraud demonstrates that the jury could have easily concluded that Dorothy Gerlach was a victim of the conspiracy and convict Resnick on the substantive counts involving her. His Confrontation Clause argument was not timely raised and even if it had it would be without merit. The underlying business records of VO Group showing that Gerlach was a victim of the bank settlement fraud was not testimonial. The records showed what Resnick admitted, that he talked to her about a bank settlement and she dutifully mailed in her $14,500 check as he arranged. Of course, there was no bank settlement because as Resnick knew VO Group did not represent banks as they claimed. As with the other Counts of which he was found guilty, a rational juror could easily conclude all of the elements of the

mail and wire fraud counts (Counts 20 and 34) had been established beyond a reasonable doubt.

Lastly, his argument of taint because the agent viewed certain customers as victims is no more convincing than Manzoni's same argument. That VO Group acted to defraud its customers was not in serious dispute at trial. Rather the issue was whether the fraud was committed solely by the numerous cooperators, the individual defendants on trial arguing that they were well meaning consumer advocates duped by the former employees along with the customers. The jury did not believe it, and not because the agent thought the same - because the evidence convincingly proved they were active and at times vital participants in the conspiracy. In sum, viewing the evidence in the light most favorable to the government the evidence established a case from which a jury could find that both Manzoni and Resnick were guilty of each of the counts of which they were convicted. Their respective Rule 29 motions will be denied.

C. Rule 33

The Court concludes similarly that their respective Rule 33 motions are without merit. There is no serious danger - indeed no danger at all - that a miscarriage of justice occurred and that an innocent person was convicted. On the contrary, the

evidence showed that while neither Resnick nor Manzoni drafted the fraudulent bank settlement pitch that they both made the pitch personally, directed the payment of money to the firm, benefitted from the scheme, had management roles, and had every reason to know the representations that their customer's bank debt would be paid off were false. This description of the evidence merely scratches the surface but is more than enough to conclude their knowing and willful participation in a callous fraud that targeted the vulnerable. There is no injustice in the conviction of those like Resnick and Manzoni who knowingly furthered and profited from the goals of this sinister conspiracy.

IV. CONCLUSION

For the reasons set forth above, the Court will deny the post-trial motions of defendants Manzoni and Resnick.

An appropriate Order follows.

s/ Noel L. Hillman
NOEL L. HILLMAN, U.S.D.J.

At Camden, New Jersey
Dated: June 29, 2015

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Attorney for Defendant Ian Resnick

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA, Plaintiff vs. ADAM LACERDA, et al., Defendants	Criminal No.: 12-303 (NHL) NOTICE OF MOTION FOR NEW TRIAL

TO: Alyson Oswald, Esquire, Assistant U.S. Attorney
R. David Walk, Jr., Esquire, Assistant U.S. Attorney
Camden Federal Building and U.S. Courthouse
401 Market Street, 4th Floor
Camden, New Jersey 08101

PLEASE TAKE NOTICE that on such date as the Court shall direct, Defendant, Ian Resnick, by his undersigned counsel, hereby submits his Motion for a New Trial pursuant to F.R. Crim. P.33. Mr. Resnick also respectfully requests that this Court hold oral argument on the Motion and requests an Evidentiary Hearing for factual determinations related to the application herein.

Respectfully Submitted,

/s/ Michael E. Riley
Michael E. Riley, Esquire
Attorney for Defendant Ian Resnick

Dated: June 24, 2015

EXHIBIT B

Overcrew Testimony

THE COURT: All right. Well, this is an adversarial process. Obviously, it's for the jury, and my instruction should be -- will be clear as to the presumption of innocence and clear as to the burden on the government. But I think we would live in a very strange world if the government was precluded from referring to someone as a victim. And that's clearly the theory of their case. At least some of -- a theory which some defendants have acknowledged and even embraced. I don't -- I know of no rule of law, I don't believe 701, 702 or 704 requires the government to refer to people as customers, which is the theory of the defense. It's *Alice in Wonderland.*

Now, the rules are clear that he cannot give opinions about things that are technical, he can't give opinions as to the ultimate issue of mental intent. But he's entitled to conduct an investigation and express his views as to what he believes, based on his rational perception of what he saw, what he heard, what he did, what happened. And that includes his understanding of how the process worked at the business.

The problem, part of the problem here, Ms. Oswald, is your questioning, how you're asking it. I would not -- I would not preclude a question, "Based on your investigation, do you have an understanding about how the process of this particular paperwork worked?" I think that's fine. But your questioning is making this issue somewhat unnecessarily fuzzy,

Q. You're the case agent. Is that correct, sir?
A. Yes, sir.
Q. And, pretty much, you sort of are the central depository of all documents for -- that were received by the government. Is that correct?
A. I wouldn't call them the central depository, no.
Q. Well, when -- if documents were received by another agent, sir, in relation to the case, would they be given to you?
A. They would be made part of the investigative file and I might get a copy and review them at some point, yes.
Q. All right. Were you -- did you have ultimate responsibility for overseeing the investigative file?
A. Yes, sir.
Q. And it would be your -- part of your responsibility to make sure the investigative file is accurate and complete. Is that correct?
A. Yes.
Q. Now, you didn't personally receive documents from Ms. Gerlach. Is that correct?
A. That's correct.
Q. But someone else did, right?
A. Yes, sir.
Q. And they ultimately made their way to the investigative file. Is that correct?

A. Yes, sir.
Q. Okay. And are you aware of whether or not what I have just handed you as Defense Exhibit 403 are the documents received from Ms. Gerlach?
A. I'm aware that Ms. Gerlach sent documents and I reviewed some of these documents in the past, yes.
Q. And are those documents what you understand Ms. Gerlach sent to you -- sent to the FBI?
A. It appears to be, yes.
Q. Okay. Now, the first several pages of those documents -- actually, would you agree with me, sir, that the first page of the package of documents I just sent to you --

MS. OSWALD: Objection, Your Honor. He's testifying and publishing a document that's not in evidence.

MR. CEDRONE: Well, I'm publishing what's already in evidence, sir, 317.

MS. OSWALD: And getting in the documents that's not in evidence, through the back door in the same manner.

THE COURT: Yeah, this document is not in evidence. Please don't -- ask the witness what he recalls and what he knows.

BY MR. CEDRONE:
Q. Included in the package, sir, that has been -- that's marked as Defendant's Exhibit 403, are there portions of the client manual that's in evidence as Defense Exhibit 317, sir?

Q. What do you recall about Mr. Baker?

MR. WALK: Your Honor, again, this seems to be quite a wide open area.

THE COURT: That's too broad, Mr. Riley. Please rephrase.

MR. RILEY: Sure.

BY MR. RILEY:

Q. Did Mr. Baker testify here?

A. Yes.

Q. All right. He was the gentleman from Georgia?

A. Yes.

Q. Had been in the army?

A. Yes.

Q. Now, do you recall him saying that he spoke to Ian Resnick twice in July of 2010?

A. Yes.

Q. And he also spoke to Ian Resnick in August, prior to his August the 8th operation.

A. Yes.

Q. Now, did he talk to you?

A. Absolutely not.

Q. Why not? How can you say that with such a firm conviction?

A. I wasn't even employed there.

Q. Now, do you have an explanation for that, why a person

would call Mr. Baker and refer to himself as you?

A. No.

Q. Do you recall giving lead sheets to the firm?

A. Yes.

Q. Was Mr. Baker's lead sheet possibly in there?

A. It's possible.

Q. Now, we have also seen a document --

MR. RILEY: If I can -- if I can do this, Judge.

THE COURT: Yes.

MR. RILEY: It would be exhibit number -- if I may, Judge, get permission to publish this exhibit number.

THE COURT: Yes.

MR. RILEY: It's Exhibit 120C(1), I believe, Page 4.

THE COURT: That's in evidence. You may publish.

MR. RILEY: Thank you.

THE COURT: 120C(1).

(The exhibit was published to the jury.)

MR. RILEY: Okay. Can we go backwards? The last page. I think this happened to me before, Judge. This is the last page of Exhibit 120C(1).

BY MR. RILEY:

Q. Do you see that, Mr. Resnick?

A. Yes.

Q. What is that? What's that form called?

A. Owner sheet.

Q. Okay.
A. Deal sheet.
Q. Excuse me?
A. A deal sheet.
Q. Okay. Who fills those out?
A. The person putting the contract -- putting in for a contract.
Q. Okay. And it's made out to Ricky Baker, right?
A. Yes.
Q. It shows he's the client?
A. Yes.
Q. The date on the top is what?
A. 7-10-2010.
Q. Were you employed there at the time?
A. No.
Q. Looking through this deal, can you tell who was the person that spoke to Mr. Baker and put together this deal?
A. It says Vinnie Giordano.
Q. Okay. And Vinnie Giordano was the gentleman that came in here and accused you of using the scripts, right?
A. Yes.
Q. He was the same Vinnie Giordano you threatened to meet him in the parking lot or take a drug test?
A. Yes.
Q. Same guy that came back later that you restricted?

A. What I recall about Dorothy Gerlach is she wanted -- she had points in Hawaii, and we were doing a settlement deal. And she -- I know she liked Hawaii and I remember there being an issue after the fact because I believe I promised her her new points would be Hawaii. And, for whatever reason, the titling company didn't put Hawaii up first. I know we had to go through a process of redoing that. But other than that, I mean, that's all I really remember. That was the only issue I remember with Dorothy Gerlach.

Q. Did you defraud her in any way?

A. Absolutely not.

Q. You realize you've been charged in this court with defrauding Dorothy Gerlach.

A. I know.

Q. And you did not?

A. Absolutely not.

Q. You were also charged with conspiracy, that you conspired to do a variety of certain things, for instance, using these scripts and lying to people. Did you ever use those scripts?

A. Never. Not one time.

Q. There's been allegations about other aspects of the VO Group. For instance, the -- the attempt to sell timeshares, do you recall the testimony regarding the person with the timeshare that wanted to sell it for $500 to VO Group, to market it for them?

A. Yes.
Q. Okay. Did you have any part in that?
A. Absolutely not.
Q. Were there times throughout this trial that you heard things that you never heard before?
A. Many times.
Q. All right. Specifically, tell us the things that you heard here in this courtroom that you never had any knowledge of before.
A. That we were --
MR. WALK: Your Honor, that's kind of a broad, open-ended question, calls for a narrative.
THE COURT: I'll allow it.
BY MR. RILEY:
Q. If you can specifically, sir, the things you heard for the very first time as it relates to the VO Group in this courtroom, what are the things that you heard?
A. That we were a resale company, that -- I guess also the extent of this bank settlement deal.
Q. You had no idea it was that pervasive?
A. No.
Q. Did you ever participate in any of those conversations with clients with this bank settlement deal --
A. Absolutely not.
Q. -- where people came in and told that they were promised

their mortgages were going to be paid off? Did you ever promise anybody to pay off their mortgage?

A. Never.

Q. Now, you've also been charged with violating and receiving unemployment compensation improperly. Do you recall that?

A. Yes.

Q. And you've been charged -- the dates run from October -- I'm sorry -- August 28th, 2011, until sometime I believe the following March, in that time frame.

A. Okay.

Q. Did you receive benefits you weren't entitled to?

A. Yes.

Q. Why didn't you notify unemployment that you had a job on August 28th, if you know?

A. I used to do this through the computer. I'm not -- you know, with the computer, but to be honest, I was afraid to. Because I went through a lot to get unemployment benefits in the first place and I was afraid to say anything that would change that.

Q. Were you working full time August 28th?

A. No.

Q. When did you start working full time?

A. I wouldn't say I was full-time until I guess March, 2011.

Q. Did you ever calculate or did you ever know how much the

partial benefits of unemployment would be for a person who's working part-time?

A. I'm not really sure.

Q. Did you ever lie and tell people that there were committees set up to review some of these deals and to offer guidance on how these deals would go?

A. I never lied about that. There are committees.

Q. And those committees are made up by senior members of the VO Group?

A. Yes.

Q. There was also testimony that said that VO representatives, first-line callers, would call up clients and say, "Hey, we understand you have a complaint," and they would say, "I don't have a complaint, I don't know what you're talking about." Did you ever engage in that type of behavior?

A. No.

Q. Why not?

A. It wasn't my -- I mean, it's not my thing. I would train them not to do that.

Q. You trained them not to do that?

A. Yes.

Q. Why would you train somebody not to do that?

A. If there's a complaint, I want to know about the complaint. But I don't want to force a complaint down their throat. If they're happy, great, they're not a client.

EXHIBIT C

LAW OFFICES OF
RILEY & RILEY

THE WASHINGTON HOUSE
100 High Street, Suite 302
Mount Holly, NJ 08060
Mailing Address

(609) 914-0300
(609) 914-0323 FAX

BY APPOINTMENT
1616 Pacific Avenue, Suite 305
Atlantic City, NJ 08401

Michael E. Riley
Tracy L. Riley
John P. Montemurro, Of Counsel

WORKERS' COMPENSATION
3 Eves Drive
Marlton, NJ 08053

February 19, 2019

Ian Resnick, #55032-004
FCI Coleman Low
846 NE 54th Terrace
Sumterville, FL 33521

RE: ***USA v. Lacerda, et al***

Dear Ian:

On February 15, 2019 I sent a two-part email to you responding to your questions. If you did not receive it, please let me know and I will forward it to you again.

As per my email, I am enclosing a copy of the trial transcript, along with a copy of the Brief in Support of Motion for a New Trial for your review.

Thank you.

Very truly yours,

LAW OFFICES OF RILEY & RILEY

/s/ Michael E. Riley
Michael E. Riley

MER/pg

Enclosures

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA, Plaintiff vs. ADAM LACERDA, et al., Defendants	Criminal No.: 12-303 (NHL)

BRIEF IN SUPPORT OF MOTION FOR A NEW TRIAL PER F.R. CRIM. P.33

1. FACTUAL BACKGROUND

On September 5, 2013, defendant, Ian Resnick was found guilty after a jury trial. The jury determined that he was guilty on Count 1 of the Superseding Indictment, to wit: Conspiracy to Commit Mail Fraud and Wire Fraud, Count 18 (Mail Fraud), Count 20 (Mail Fraud), Count 32 (Wire Fraud), Count 33 (Wire Fraud), Count 34 (Wire Fraud).

At the conclusion of the government's case, the defendant, Ian Resnick moved for dismissal of the charges pursuant to Rule 29 (a).

On October 14, 2013, the defendant, Ian Resnick filed Post-Trial Motions seeking a judgment of acquittal pursuant to F.R. Crim. P.29 and for a new trial pursuant to F.R. Crim. P.33 (Document 345). These motions were argued before the Court on October 2, 2014. After the Court reviewed the briefs and listened to argument, the Court indicated that it would render a written opinion on this matter and, therefore, withheld any formal ruling. It should be noted that as of this date, those motions filed on October 14, 2013 have not yet been resolved.

In those motions argued before the Court on October 2, 2014, the central focus was the lack of evidence that the government had regarding the Ricky Baker and Dorothy Gerlach matters.

The Court will recall that the argument regarding Ricky Baker was that the government presented to the jury an allegation that Ian Resnick contacted Ricky Baker in July 2010. His testimony was quite specific about the individual who contacted him and labeled that individual as Ian Resnick. He further indicated that Ian Resnick contacted him in July and August 2010. During the course of the trial it became clear that when Mr. Baker was first contacted, Ian Resnick was not an employee at VO Group. It also became clear from the testimony that a co-worker of Mr. Resnick by the name of Vinny Giordano was the individual who actually contacted Mr. Baker initially.

The issues raised regarding Dorothy Gerlach were different. The allegations regarding Dorothy Gerlach were not supported by any testimonial evidence. Mrs. Gerlach did not appear and therefore was not present to offer testimony. The government presented three emails that were exchanged between Mrs. Gerlach and Ian Resnick, none of which suggested any criminal activity on behalf of Mr. Resnick, attached as Exhibit A. The government's evidence was presented by Special Agent Mesisca. Agent Mesisca was allowed to testify in what is commonly referred to as "overview testimony." The overview testimony was objected to at the time but the government was allowed to present it and the jury found Mr. Resnick guilty of criminal allegations regarding Dorothy Gerlach and her claims.

A draft presentence report was circulated by the probation department and a copy was provided to Mr. Resnick and counsel. During the review of the draft presentence

report, probation made a number of allegations regarding potential victims. As a result, defendant, Ian Resnick submitted an objection letter. Among other things defendant Resnick objected to were the allegations of individuals being victims when there was no factual support for these claims presented to the jury or to counsel. As a result of those objections, the government forwarded two CDs containing victim's supporting documents. The first CD was created on January 25, 2015. On March 6, 2015, the second CD was provided to counsel containing vital documentation regarding alleged victimization.

In the course of preparing for sentencing, a number of documents were submitted to counsel that had never been seen before.

On January 4, 2011, an FBI employee by the name of Claudia H. Theibault prepared a 302 investigatory report, attached as Exhibit B. In this report, it is alleged that Dorothy Gerlach advised that if Mrs. Gerlach paid $14,000.00 based on Resnick's claim that the VO Group was making arrangements with banks to pay off loans. The 302 indicates that Gerlach stated that she sent the $14,000.00 to VO Group to pay off her timeshare in Bali Hai in Kauai. Clearly, a statement which would indicate that Mr. Resnick was participating in what has become known as the "bank pitch." The substance of the investigative report would suggest that clearly Mr. Resnick was engaging in illegal activities.

At the same time, in early January 2011 there were emails exchanged between Dorothy Gerlach and the FBI employee by the name of Claudia Theibault. These emails appeared in the victim documents contained on the CD presented by the government. These emails were not presented to the jury. The emails are attached herewith as Exhibit C. A brief reading of the emails would suggest that Mrs. Gerlach did not advise Ms. Theibault by email that Ian Resnick made the representations that are claimed and

contained in the FBI 302. Clearly this information would be impeachment and certainly worthy of the jury's attention. These documents were not presented by the government and were not discovered by counsel while reviewing discovery prior to the trial.

On May 3, 2012, Agent Mesisca appeared before the grand jury to present evidence against the defendants. On page 60 through page 62, he referenced the Gerlach allegations, attached as Exhibit D. He presented information to the grand jury which was consistent with the information provided in the FBI 302. It should be noted that there is no record that Agent Mesisca spoke to Mrs. Gerlach. It appears only that the FBI analyst spoke to Mrs. Gerlach. Accordingly, the testimony Agent Mesisca presented to the grand jury was hearsay. Agent Mesisca said quite specifically that Resnick offered to settle the Gerlach debt for $14,500.00. He further indicated that he could make this offer because Wyndham had sold numerous mortgage loans to various banks and the banks wanted to get the loans off their backs.

It was not the only time that Agent Mesisca parodied the contents of the FBI 302, but this time it was before the jury, attached as Exhibit E. He again went on to reiterate that defendant Resnick offered to settle the Gerlach debt for $14,500.00 and that the reason he could do that was because banks were taking reduced amounts in an effort to resolve the timeshare debts. Clearly indicating to the jury that Mr. Resnick was engaged in activity which was illegal. Again, he was testifying in his role as the case agent and permitted to give overview testimony, which included unsubstantiated hearsay and the impressions of others that did not appear for trial. Significantly, for some unknown reason, Dorothy Gerlach did not appear for trial and testify before the jury.

During the course of preparation for sentencing, another document was forwarded to counsel. It appears to be a handwritten document prepared by Dorothy Gerlach in response to requests from the government. Further, it appears to be the first and only representation by the alleged victim, Gerlach as to what her complaints were regarding VO Group. It is attached here as Exhibit F. She indicates in her handwritten document, "We contracted to purchase 350,000 Wyndham points for $14,500.00. We received contracts and purchase agreements for 231,000 points. The outstanding balance of 119,000 points valued at $4,785.00 have not been received."

There is an absolute absence of any reference to Ian Resnick suggesting that $14,500 would be used to pay off her timeshare debt. Further, there is no other reference made by Mrs. Gerlach that defendant Resnick represented to her the information contained in the 302 investigative report, the grand jury testimony and trial testimony of Agent Mesisca.

The evidence contained in Exhibit E are clearly the actual statements of alleged victim Gerlach. By virtue of the manipulation of clearly false information contained in the 302 and the testimony of the FBI Agent before the grand jury and trial jury, the clear inference was that Ian Resnick was engaged in criminal activity. The newly discovered evidence sheds light on the reality of the Gerlach situation and further highlights the completely unacceptable nature of wide ranging "overview testimony."

2. ARGUMENT

The federal rules of criminal procedure provide relief where it appears that newly discovered evidence can cause a probability of a different verdict.

Under the Federal Rules of Criminal Procedure, relief can be found. "The Court may vacate any judgment and grant a new trial if the interests of justice so requires." F.R. Crim. P.33 (a). A motion for a new trial, "grounded on newly discovered evidence" must be filed within three years after the verdict or the finding of guilty... any motion for a new trial grounded on any reason other then newly discovered evidence must be filed within 14 days of the verdict or the finding of guilty, F.R. Crim. P.33 (b).

Ordinarily, five prerequisites must be met to justify the grant of a new trial on the ground of newly discovered evidence:

1. evidence must be newly discovered (i.e. discovered since the trial concluded);
2. defendant must have used due diligence to discovery evidence;
3. newly discovered evidence must be material to issues before the court;
4. newly discovered evidence is not merely cumulative or impeaching;
5. newly discovered evidence is of such a nature that it would probably require a different result at trial.

These requirements must be met when a defendant claims he was convicted by false testimony, see United States v. Woods 301 F.3d 556, 562 (7th Cir. 2002).

It is further alleged that the government had the handwritten document, Exhibit F, in its possession and in light of its content should have provided it pursuant to its Brady obligations. Case law suggests that when the newly discovered evidence is a product of a Brady violation a new trial may be warranted if the withheld evidence is merely "material" and therefore creates "a reasonable probability" that there would have been a different verdict. See United States v. Joslyn 206 F.3d 144 (1st Cir. 2000).

In explaining the Brady "reasonable probability standard" the Supreme Court has stated the question is not whether the defendant would more likely than not have received a different verdict with the evidence, whether in its absence he received a fair trial...resulting in a verdict worthy of confidence." Strickler v. Green 537 U.S. 263 (288) 119 s. ct. 1936 (1952) 1999.

The Third Circuit has considered the issue of newly discovered evidence to determine whether impeachment evidence is enough to warrant a new trial, explicitly stating that the current question for the Court to ask itself is: "was there a strong exculpatory connection between the newly discovered evidence and the facts that were presented at trial or did the newly discovered evidence strongly demonstrate the critical evidence at the time of trial against the defendant was very likely to have been false." United States v. Quiles 618 F. 3rd 383, 392-93 (3rd Cir. 2010). In this case, it appears that the newly discovered evidence strongly demonstrates that the information presented by the government in their overview testimony was very likely false. There is no question that the document discovered as newly discovered evidence is material to the issue of the guilt or innocence of Ian Resnick with regard to the Gerlach matter. The nature of this evidence is such that if made available to the defendant prior to trial or during the course of the trial it would certainly have raised a reasonable probability of acquittal.

If the jury had been given this information, the likely result of the allegations presented to the jury regarding the Gerlach matter would not have been believed and therefore Resnick would have been acquitted. The evidence clearly raises reasonable doubt as to the innocence of Ian Resnick.

3. CONCLUSION

The issues presented in this application must be considered with the issues contained in the earlier motion raised by defendant Resnick pursuant to Rule 29 and Rule 33, see Document 345. Those issues have not yet been resolved and must be resolved prior to sentencing. See United States v. Joseph 996 F.2d 36 (3rd Cir. 1993). The defendant respectfully requests that the issues raised earlier be considered in the light of the application made herein. The defendant respectfully requests oral argument on this issue and an evidentiary hearing to determine the true nature of the source of the information contained in the 302, which so clearly is erroneous. After the Court has had an opportunity to hear oral argument and to preside over an evidentiary hearing, defendant Resnick respectfully requests that the Court provide such relief that is deemed necessary and proper.

Respectfully submitted,

/s/ Michael E. Riley
Michael E. Riley, Esquire
Attorney for Defendant, Ian Resnick

Dated: June 24, 2015

EXHIBIT A

-----Original Message-----
From: Dorothy Gerlach [mailto:dgerlach@us.ibm.com]
Sent: Friday, October 22, 2010 10:19 AM
To: ian.resnick@vogroup.net
Cc: eric.gerlach@fredmeyer.com
Subject: one more question

Ian -
We purchased the Wyndam points for Bali Hai - will our points still be at Bali Hai and will our maintenance fees still remain the same?

Please let us know and then I believe you were going to send us the contract to e-sign - is that correct?

THANKS

Sincerely,

Dorothy Gerlach
IBM Corporation
IT Optimization Client Solutions
503-578-2342 office / fax
503-957-9090 cell
dgerlach@us.ibm.com

Dorothy Gerlach
IBM Corporation
IT Optimization Client Solutions
503-578-2342 office / fax
503-957-9090 cell
dgerlach@us.ibm.com

----- Forwarded by Dorothy Gerlach/Portland/IBM on 10/22/2010 11:14 AM -----

From: ian.resnick@vogroup.net
To: Dorothy Gerlach/Portland/IBM@IBMUS
Date: 10/22/2010 10:45 AM
Subject: Re: one more question

Yes, unless there is a new location you would prefer. Give me a call when you are both available to receive the contract and I will walk you through it.
Thanks,

Ian B. Resnick
Senior Contract Analyst
Vacation Ownership Group

800 381-9469 Ext. 106

Forbes Magazine

BBB Accredited Company

Ill call within the hour. very backed up today

Ian B. Resnick
Senior Contract Analyst
Vacation Ownership Group

800 381-9469 Ext. 106

Forbes Magazine

BBB Accredited Company

-----Original Message-----
From: Dorothy Gerlach [mailto:dgerlach@us.ibm.com]
Sent: Friday, October 22, 2010 02:15 PM
To: ian.resnick@vogroup.net
Subject: Fw: one more question

Hi Ian - thanks - just left you a VM - please call me at 503-292-7476 and I'll get Eric on the line also.

Sincerely,

-----Original Message-----
From: Dorothy Gerlach [mailto:dgerlach@us.ibm.com]
Sent: Wednesday, October 27, 2010 01:17 PM
To: ian.resnick@vogroup.net
Subject: Fw: one more question

Ian -
Just got the check from selling some stock for the $14,500 to complete the purchase of 300K Wyndam points.
Do I send it the PO Box112, Pleasantville, NJ address? Is there anything I need to include? Is there anyone specific I should address the envelope to?

THANKS

Sincerely,

Dorothy Gerlach
IBM Corporation
IT Optimization Client Solutions
503-578-2342 office / fax
503-957-9090 cell
dgerlach@us.ibm.com

----- Forwarded by Dorothy Gerlach/Portland/IBM on 10/27/2010 10:14 AM -----

From:	ian.resnick@vogroup.net
To:	Dorothy Gerlach/Portland/IBM@IBMUS
Date:	10/22/2010 12:26 PM
Subject:	Re: one more question

EXHIBIT B

FD-302 (Rev. 10-6-95)

FEDERAL BUREAU OF INVESTIGATION

Date of transcription 01/07/2011

DOROTHY GERLACH, born [redacted], of [redacted] home telephone number [redacted] cellular telephone number [redacted], was telephonically contacted by Investigative Operations Analyst (IOA) Claudia H. Theibault, Federal Bureau of Investigation (FBI), Northfield, New Jersey. GERLACH provided the following information:

GERLACH advised that in September, 2010, IAN RESNICK from VO GROUP called saying that he was contacting timeshare owners who had complaints against WYNDHAM. He told her that WYNDHAM had lied to owners so his company was helping them pay off their timeshares. Even though GERLACH did not have any issues with WYNDHAM she decide to listen to his offer. RESNICK said that since she owed $28,000.00 on her timeshare his company would get her a free and clear deed for $14,000.00. RESNICK explained the reason for such a good deal was that WYNDHAM sold numerous loans to banks and they wanted to get them off their books. GERLACH said that she sent the $14,000.00 to VO GROUP to pay off her timeshare at Bali Hai in Kauai. When she received the title transfer paperwork it looked like she would be receiving deeds for two different timeshares. When she called VO GROUP regarding the deeds RESNICK said she misunderstood and to let her Bali Hai timeshare go to collections. Currently she has not signed the title transfer paperwork and after speaking with writer plans on trying to get her money back.

On January 4, 2011, GERLACH sent documents relating to her timeshare to IOA Claudia Theibault at the FBI, Northfield, New Jersey. The documents have been placed in the investigative file.

GOVERNMENT EXHIBIT DG-1

Investigation on 01/04/2011 at Northfield, New Jersey (telephonically)

File # 329F-NK-118544-302 - 138 Date dictated N/A

by IOA Claudia H. Theibault/cht

EXHIBIT C

Gerlach - VO Group - Title Transfer

Dorothy Gerlach [dgerlach@us.ibm.com]

Sent: Tuesday, January 04, 2011 1:50 PM

To: Theibault, Claudia H.

Claudia -

Thanks for talking to me this morning. I just left you a VM also.

I will send you the email correspondence between VO Group and us.
Below is a note we got from VO Group yesterday - asking us to verify out title transfer - We have not signed the paperwork for the title transfer - since we were not getting "like for like" - or points at Bali Hai in Kauai where we purchased the orginal points from Wyndam.

Does it make sense for us at this point since we've paid the money to tell VO Group we want our money back since they are not providing what they promised....and see what happens?

THANKS

Sincerely,

Dorothy Gerlach
IBM Corporation
IT Optimization Client Solutions
503-578-2342 office / fax
503-957-9090 cell
dgerlach@us.ibm.com

----- Forwarded by Dorothy Gerlach/Portland/IBM on 01/04/2011 10:44 AM -----

From:	"V O GROUP LLC" <vogroup@vogroup.net>
To:	Dorothy Gerlach/Portland/IBM@IBMUS
Date:	01/03/2011 02:46 PM
Subject:	Title Transfer

GERLACH / VO GROUP correspondence (between V O Group LLC and Dorohy Gerlach) is Signed and Filed!

Dorothy Gerlach [dgerlach@us.ibm.com]

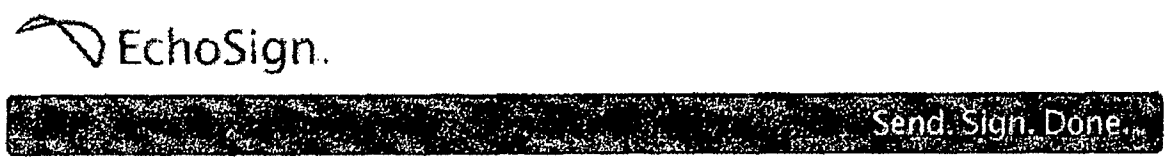
Sent: Thursday, January 06, 2011 12:49 PM
To: Theibault, Claudia H.
Attachments: Dorothy Gerlach - signed.pdf (161 KB)

Claudia - will be sending you several notes regarding correspondence between ourselves and VO Group

Sincerely,

Dorothy Gerlach
IBM Corporation
West IMT STG Cloud Sales Leader
503-578-2342 office / fax
503-957-9090 cell
dgerlach@us.ibm.com

From: Vacation Ownership Group [mailto:echosign@echosign.com]
Sent: Friday, October 22, 2010 2:39 PM
To: Gerlach, Eric D
Subject: The Dorothy Gerlach (between V O Group LLC and Dorohy Gerlach) is Signed and Filed!



GERLACH / VO Group correspondence

Dorothy Gerlach [dgerlach@us.ibm.com]

Sent: Thursday, January 06, 2011 12:50 PM

To: Theibault, Claudia H.

Sincerely,

Dorothy Gerlach
IBM Corporation
West IMT STG Cloud Sales Leader
503-578-2342 office / fax
503-957-9090 cell
dgerlach@us.ibm.com

----- Forwarded by Dorothy Gerlach/Portland/IBM on 01/06/2011 09:50 AM -----

From:	ian.resnick@vogroup.net
To:	Dorothy Gerlach/Portland/IBM@IBMUS
Date:	10/27/2010 02:19 PM
Subject:	Re: one more question

Just put it to my attention. We will set up an escrow account for you when we receive it.

Ian B. Resnick
Senior Contract Analyst
Vacation Ownership Group

800 381-9469 Ext. 106

Forbes Magazine

BBB Accredited Company

GERLACH / VO GROUP correspondence - ESCROW Account Information:

Dorothy Gerlach [dgerlach@us.ibm.com]

Sent: Thursday, January 06, 2011 12:54 PM

To: Theibault, Claudia H.

Attachments: mannual new pdf.pdf (610 KB)

Sincerely,

Dorothy Gerlach
IBM Corporation
West IMT STG Cloud Sales Leader
503-578-2342 office / fax
503-957-9090 cell
dgerlach@us.ibm.com

----- Forwarded by Dorothy Gerlach/Portland/IBM on 01/06/2011 09:54 AM -----

From: "V O GROUP LLC" <vogroup@vogroup.net>

To: <eric.gerlach@fredmeyer.com>, Dorothy Gerlach/Portland/IBM@IBMUS

Date: 11/19/2010 04:18 PM

Subject: ESCROW Account Information:

Dear Dorothy and Eric,

We have currently begun the process of your title transfer which will be in the amount of 332,000 Club Wyndham points annually. You have an activated escrow number which is 99110209019 . We have your pending transfers of $3454.00 into this escrow account for the processing of your title and transfer work and$11,046.00 was sent to our subsidiary Timeshare Protection, LLC to finalize your account. You do not need to do anything at this time because everything is being done for you. In about two weeks you will receive a closing packet from timeshare closing services Inc. which

you'll need to sign and send back to them. You will not need to pay for any shipping because everything comes prepaid to send back to them.

If you have any questions throughout any of the process please contact us at our offices. 800-381-9469

- **Title and transfer company does not know the specific and unique circumstances surrounding each individual clients accounts.**
- It will take 6 - 8 weeks for the resort to accept the title transfer, and for the new purchase to show up as an active ownership in your account. During this time you will receive your closing packet and the assignment of contract.

Please contact us once you get your closing packet so we may go over it with you:

Customer Care
Vacation Ownership Group

Telephone: 1-800-381-9469
Address: **V O Group LLC**
P.O. Box 112
Pleasantville NJ, 08232
E-Mail: customercare@vogroup.net

The Dorothy Gerlach (between V O Group LLC and Dorohy Gerlach) is Signed and Filed!

From: Vacation Ownership Group (V O Group LLC)

To: Dorohy Gerlach (eric.gerlach@fredmeyer.com)

Attached is a signed copy of the **Dorothy Gerlach.**

Copies have been automatically sent to all parties to the agreement. You can view **a copy** in your EchoSign account.

Why use EchoSign:

- Exchange, Sign, and File Any Document. In Seconds!
- Set-up Reminders. Instantly Share Copies with Others.
- See All of Your Documents, Anytime, Anywhere.

To ensure that you continue receiving our emails, please add echosign@echosign.com to your address book or safe list.

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any other person or entity for the purpose of avoiding penalties that may be imposed on any taxpayer.

Uniform Electronic Transactions Act: Despite the Uniform Electronic Transactions Act or the application of any other law of similar substance or effect, in the absence of an express statement to the contrary in this e-mail message, this e-mail message, its contents and any attachments, are not an offer or acceptance to enter into a contract and are not otherwise intended to bind the sender of this e-mail message or any other person.

We have been trying to reach you so we may verify your transfer of title. Please let us know when a good time to contact you would be.

Customer Care
Vacation Ownership Group
V O Group, LLC
Timeshare Protection, LLC

Telephone: 1-800-381-9469
Fax: 1-800-537-2407
Address: **Vacation Ownership Group**
2900 Fire Rd suite 101
Egg Harbor Township, NJ 08234
Mailing:
P.O. Box 112
Pleasantville NJ, 08232
E-Mail: customercare@vogroup.net
www.vogroup.net / www.vacationownershipgroup.com

EXHIBIT D

Q. During execution of a search warrant at the VO Group's office did agents find a VO Group client information form at Reznick's desk which indicated that Reznick was the sales representative responsible for getting that money, $3,000, into the VO Group?

A. Yes.

Q. During an interview on January 4th, 2011, did an individual whose initials are DG inform an FBI agent in substance and in part that Reznick had called DG and said he was contacting timeshare owners that had complaints against Wyndham?

A. Yes.

Q. Did Reznick further say that Wyndham had lied to its customers and the VO Group was helping Wyndham timeshare owners pay off timeshare mortgages?

A. Yes.

Q. Did Reznick say that he could settle DG's $28,000 timeshare mortgage debt for $14,500?

A. Yes.

Q. Did Reznick say that the reason he could make this offer was because Wyndham had sold numerous mortgage loans to various banks and the banks wanted to get the loans off their books?

A. Yes.

Q. On or about October 27th did Reznick email DG and

direct DG where to send DG's $14,500 check to the VO Group?

A. Yes.

Q. All right. So I'm going to show you what I'm marking as Grand Jury Exhibit DG-1.

(Whereupon, Grand Jury Exhibit DG-1 was identified for the record.)

BY MR. STIGALL:

Q. And looking at this exhibit, first do you recognize as the email that Reznick sent?

A. Yes.

Q. All right. And what does that email basically instruct DG to do?

A. To send the money to his attention, that they would put the money in an escrow account when they receive it.

Q. Did DG send $14,500 to the VO Group to pay off the timeshare mortgage?

A. Yes.

Q. And has the investigation revealed that DG's timeshare mortgage debt was never paid off?

A. That's correct.

Q. Did DG get any money back from the VO Group?

A. No.

Q. And during execution of the search warrant at the VO Group's office by the way did agents find a "script for calling" -- that's the title of one the telephone scripts -- at Reznick's desk?

A. Yes.

Q. All right. Let's talk about Ryan Bird, a co-conspirator. During an interview on November 23rd, 2010, did an individual whose initials are EC inform an FBI agent in substance and in part that an individual called by the name of Matthew Brose and said that he had received EC's complaint about EC's Wyndham timeshare?

A. Yes.

Q. Has the investigation revealed that Ryan Bird used that alias Matthew Brose?

A. He did, yes.

Q. All right. Did Brose tell EC he had EC's file in front of him and that he worked directly with the banks and the banks were offering unhappy timeshare owners the ability to settle their timeshare mortgage for a discounted price?

A. Yes.

Q. Did EC owe approximately $71,000 on the mortgage?

A. Yes.

Q. Did Brose explain that the banks were afraid of

EXHIBIT E

MR. O'MALLEY: No, Your Honor.

THE COURT: Mr. Riley?

MR. RILEY: No, Judge.

THE COURT: Mr. Jacobs?

MR. JACOBS: No objection.

THE COURT: All right. 1280 in evidence. You may proceed.

(GOVERNMENT EXHIBIT G-1280 WAS RECEIVED IN EVIDENCE.)

MS. OSWALD: Permission to publish 1280, Your Honor.

THE COURT: You may publish.

(The exhibit was published to the jury.)

MS. OSWALD: If we could have Bates Label 52, please.

BY MS. OSWALD:

Q. Special Agent Mesisca, do you have the hard copy of 1280 before you?

A. I do.

Q. What does Ian Resnick say to Dorothy Gerlach about the contract?

A. On October 22nd, 2010?

Q. Yes. Which I believe should be on Bates Label 52 before you.

A. I have it.

It says, "Yes, unless there is a new location you prefer. Give me a call when you're able" -- "when you are both able to receive the contract. I will walk you through it. Thanks,

Ian B. Resnick, Senior Contract Analyst, Vacation Ownership Group."

Q. Thank you.

MS. OSWALD: Your Honor, to remind the jury what type of deal this was, could I have permission to publish 120G(16) in evidence?

THE COURT: You may. 120G(16) in evidence.

(The exhibit was published to the jury.)

MS. OSWALD: And if we could highlight the top half, please, to include Paragraph 3. Thank you.

BY MS. OSWALD:

Q. What does Ms. Gerlach ask Ian Resnick in her October 22nd -- I'm sorry -- October 27th e-mail which is on Page 50 of Government Exhibit 1280?

A. Her question was --

MR. O'MALLEY: Could we give -- it's not on the right screen.

MS. OSWALD: I'm sorry, counsel.

MR. O'MALLEY: I don't think it's on the right screen.

THE COURT: Could you direct Ms. Frederick to the particular page that you're directing the witness to?

MS. OSWALD: Certainly, Your Honor.

MR. O'MALLEY: Thank you.

(Pause.)

THE COURT: Or take it down if you wish to publish. It just -- it should be consistent.

(Pause.)

MS. OSWALD: We are on Page 2 of the revised 1280, Your Honor.

(The exhibit was published to the jury.)

THE COURT: All right.

MS. OSWALD: Which is now before the Court and counsel.

THE COURT: Thank you, Ms. Oswald.

BY MS. OSWALD:

Q. Special Agent Mesisca, essentially what is Ms. Gerlach asking Ian Resnick in her October 27th, 2010, e-mail?

A. The question was posed to him, "Do I send it to the PO Box 112, Pleasantville, New Jersey, address?"

Q. And did Ian Resnick e-mail her back?

A. Yes.

Q. And what did he say?

A. "Just put it to my attention. We will set up an escrow account for you when we receive it."

MS. OSWALD: And sorry, Ms. Frederick, if we could flip back to 120G(16).

BY MS. OSWALD:

Q. Special Agent Mesisca, where did the Gerlachs live on October 27th, 2010?

A. In Oregon.
Q. What, if anything, does that tell you about whether the e-mails exchanged between Ian Resnick and Dorothy Gerlach involved interstate wire communications?
A. It did, yes.
THE COURT: Ms. Oswald, for planning purposes, 4:27. I would like to conclude at 4:30.
MS. OSWALD: Could we go to sidebar with counsel for a moment, Your Honor?
THE COURT: If it's going to go more than three minutes, I'm going to let the jury go home for the day.
MS. OSWALD: No, it won't be.
THE COURT: All right.
(The following occurred at sidebar.)
THE COURT: Let's see if we can do it in less than three minutes.
MS. OSWALD: Okay. Basically, essentially, Your Honor, my question is that, as the Court and counsel can tell, we had some additional exhibits, some of which were redacted down, some of which were modified, and I just wanted to put the question to counsel to see, if I could, if there would be any objection to entering those exhibits, particularly the bank records, because they will affect whether the financial schedules, about which Jennifer Atkinson will testify tomorrow, need to be modified. And, as counsel is aware,

EXHIBIT F

PROB 72
(7/96)

UNITED STATES DISTRICT COURT FOR THE

_____ DISTRICT OF _____

Declaration of Victim Losses

United States
V.
Eric Reilly et al.

DG-32

13-00067-001
(Case Number)

I, Dorothy Gerlach, residing at [redacted], in the city (or county) of Portland, in the state of OR 97225-3020 am a victim in the above referenced case and I believe that I am entitled to restitution in the total amount of $4,785.

My specific losses as a result of this offense are summarized as follows:

We contracted to purchase 350K Wyndham points for $14.5K - we received contracts and purchase agreements for 231K points. Outstanding balance of 119K points valued at $4,785 have not been received

____ I have been compensated by insurance or another source with respect to all or a portion of my losses in the amount of $__0__. The name and address of my insurance company and the claim number for this loss are as follows:

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

Dorothy Gerlach
(Signature)

Executed on
27 Day of April, 2013

(Additional Pages May be Attached)

GERLACH / VO GROUP correspondence - Emailing: ASSIGNMENT OF CONTRACT - gerlach.docx

Dorothy Gerlach [dgerlach@us.ibm.com]

Sent: Thursday, January 06, 2011 1:00 PM

To: Theibault, Claudia H.

Attachments: ASSIGNMENT OF CONTRACT - g~1.pdf (121 KB)

Claudia -
We have not signed this - the document identifies points at Wyndam Pagosa and Wyndam Smokies -
Our original points were at Bali Hai on Kauai. VO Group committed earlier to the same number of points we purchased at the same location.I

Sincerely,

Dorothy Gerlach
IBM Corporation
West IMT STG Cloud Sales Leader
503-578-2342 office / fax
503-957-9090 cell
dgerlach@us.ibm.com

----- Forwarded by Dorothy Gerlach/Portland/IBM on 01/06/2011 09:56 AM -----

From: "V O GROUP LLC" <vogroup@vogroup.net>

To: Dorothy Gerlach/Portland/IBM@IBMUS

Cc: <eric.gerlach@fredmeyer.com>

Date: 12/01/2010 01:09 PM

Subject: Emailing: ASSIGNMENT OF CONTRACT - gerlach.docx

Please Sign and Return to complete transfer of Deed..

Disclaimer

The V O Group™ client's manual is meant to serve our clients and help them understand the process and procedures when utilizing any of our services. The V O Group reserves the right to change our programs at any time without any prior notice. The V O Group client manual is not a legally binding agreement and we cannot be held liable to any changes in our processes or procedures. Our company accepts no liability for the content of this Manual, or for the consequences of any actions taken on the basis of the information provided, unless that information is subsequently confirmed in writing. If you are not the intended recipient you are notified that disclosing, copying, distributing or taking any action in reliance on the contents of this information is strictly prohibited.

- The Vacation Ownership Group, LLC
- Vacation Ownership Protection Program
- MY 500 REFERRAL PROGRAM
- TAKE MY PLACE RENTAL DIVISION
- V O Group Club Membership
- V O Group, LLC

Are Trademarked names owned by the Vacation Ownership Group, LLC.

You have not been truthful with much of our communication and we do not want to continue with this transaction.
Please let us know how soon we can expect our refund.

Thank you.

Sincerely,

Dorothy Gerlach
IBM Corporation
IT Optimization Client Solutions
503-578-2342 office / fax
503-957-9090 cell
dgerlach@us.ibm.com

----- Forwarded by Dorothy Gerlach/Portland/IBM on 01/04/2011 11:01 AM -----

From:	"V O GROUP LLC" <vogroup@vogroup.net>
To:	Dorothy Gerlach/Portland/IBM@IBMUS
Date:	01/03/2011 02:46 PM
Subject:	Title Transfer

We have been trying to reach you so we may verify your transfer of title. Please let us know when a good time to contact you would be.

Customer Care
Vacation Ownership Group
V O Group, LLC
Timeshare Protection, LLC

Gerlach - VO Group - Title Transfer

Dorothy Gerlach [dgerlach@us.ibm.com]

Sent: Tuesday, January 04, 2011 1:50 PM

To: Theibault, Claudia H.

Claudia -

Thanks for talking to me this morning. I just left you a VM also.

I will send you the email correspondence between VO Group and us.
Below is a note we got from VO Group yesterday - asking us to verify out title transfer - We have not signed the paperwork for the title transfer - since we were not getting "like for like" - or points at Bali Hai in Kauai where we purchased the orginal points from Wyndam.

Does it make sense for us at this point since we've paid the money to tell VO Group we want our money back since they are not providing what they promised....and see what happens?

THANKS

Sincerely,

Dorothy Gerlach
IBM Corporation
IT Optimization Client Solutions
503-578-2342 office / fax
503-957-9090 cell
dgerlach@us.ibm.com

----- Forwarded by Dorothy Gerlach/Portland/IBM on 01/04/2011 10:44 AM -----

From:	"V O GROUP LLC" <vogroup@vogroup.net>
To:	Dorothy Gerlach/Portland/IBM@IBMUS
Date:	01/03/2011 02:46 PM
Subject:	Title Transfer

Telephone: 1-800-381-9469
Fax: 1-800-537-2407
Address: **Vacation Ownership Group**
2900 Fire Rd suite 101
Egg Harbor Township, NJ 08234
Mailing:
P.O. Box 112
Pleasantville NJ, 08232
E-Mail: customercare@vogroup.net
www.vogroup.net / www.vacationownershipgroup.com

EXHIBIT D