APPENDIX

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APPENDIX A

NOT RECOMMENDED FOR PUBLICATION

File Name: 23a0050n.06

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Case No. 22-1240

[Filed January 24, 2023]

UNITED STATES OF AMERICA, Plaintiff-Appellee,	)
v.	)
JOSHUA LOUIS RUPP, Defendant-Appellant.	)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MICHIGAN

OPINION

Before: STRANCH, MURPHY, and DAVIS, Circuit Judges.

MURPHY, Circuit Judge. Pretending to be a licensed securities broker, Joshua Rupp defrauded his in-laws and friends of a total of $2.7 million. Among other tricks, Rupp downloaded an app onto his victims'

phones so that they could monitor "dummy" accounts showing excellent (but fictitious) gains. Rupp pleaded guilty to securities fraud. During plea negotiations, the government estimated that his guidelines range would be about 10 to 12 years' imprisonment. Yet the district court calculated his range to be significantly higher and sentenced him to 16 years.

Rupp argues that he entered an unknowing and involuntary plea because his decision to plead guilty turned on the government's mistaken estimate of his guidelines range. Rupp next argues that the district court should not have increased his guidelines range with an enhancement that covers those who use "sophisticated means" to commit fraud. He lastly argues that the court imposed a substantively unreasonable sentence. But his plea agreement and plea colloquy both show that Rupp knew that he could not void his plea simply because the district court chose a higher-than-expected guidelines range. Rupp also used plenty of "sophisticated" means, including the creation of the dummy accounts. And his plea agreement waived his right to bring a substantive-reasonableness challenge to his sentence. We affirm.

I

Rupp grew up in a loving home in western Michigan. By 2011, he appeared to be on a relatively successful path both personally and professionally. He had married his wife and had two kids. He had also obtained a builder's license and started a home-building company in Texas. In that year, Rupp and his family returned to Michigan. While back in his home state, he began working as an RV salesperson.

Things changed significantly in 2015 when Rupp turned to securities fraud. He swindled family and friends alike of millions of dollars over the next four years. Rupp targeted his wife's parents as his first victims. His in-laws initially gave him a small sum after he led them to believe that he had connections with a fictitious broker at an established financial-services firm. Rupp's father-in-law later allowed Rupp to manage the substantially more money in his IRA (about $465,000). Rupp's in-laws also helped to convince his wife's grandmother to invest with him. Rupp almost took $1.2 million from her, but the bank suspected Rupp of elder fraud and placed a hold on the check that she had written. When his in-laws went to the bank to discuss the situation, they learned that Rupp had withdrawn all of the funds from his father-in-law's IRA. Rupp wasted all of these funds, causing his wife's parents to suffer significant tax consequences in the process. His marriage did not survive his fraud.

That fraud soon expanded outside his family. He would promote his (fake) qualifications to people that he met at places like his family's church. Once these friends agreed to make investments with him, he would install a trading app on their phones to allow them to track their investments. The app showed extraordinary gains from week to week, which led his victims to spread the word about Rupp's investment prowess. Like Rupp's father-in-law, some of these investors gave Rupp access to their retirement accounts, including accounts worth over $400,000.

Apart from the app that he downloaded onto his victims' phones to monitor the "dummy accounts" that

he had created, Rupp engaged in many other fraudulent acts to persuade them to invest with him. Plea Agreement, R.6, PageID 15–17. He claimed to be a licensed broker. (He was not.) He claimed to work for established financial-service firms. (He did not.) He claimed that the victims could not lose the principal that they entrusted to him because of the nature of his investments. (They lost nearly all of it.) And he showed his victims many authentic-looking documents, including a broker's license and account statements with letterhead and logos from the established financial-service firms. (He had forged these documents.)

Ultimately, Rupp's mounting investment losses and growing addiction to cough syrup took a toll on his mental health. His fraud scheme unraveled when he suffered a mental breakdown one day in late July 2019. After overconsuming cough syrup, a naked Rupp trespassed into the homes of strangers, assaulted the residents, and engaged in other bizarre behavior. He fled in his car from one of the homes, swerved into an approaching vehicle, and hit its trailer. The police had to use a taser to subdue him. While in custody, Rupp admitted to his fraud.

All told, Rupp took more than $2.7 million from 19 people. He spent at least $500,000 of this money on vacations, groceries, and other personal expenses. He frittered away the rest on bad stock trades.

The government charged Rupp with securities fraud in violation of 18 U.S.C. § 1348(1). He pleaded guilty. As part of his plea agreement, Rupp acknowledged that the parties had not reached a consensus on how to

calculate his guidelines range. He also recognized that neither the government nor his counsel nor even the court could make a "binding prediction or promise" concerning the length of the court's sentence and that he could not withdraw his plea even if the court imposed the statutory maximum. Plea Agreement, R.6, PageID 22. And he agreed to waive his right to appeal except on a few specified grounds, including that his plea was unknowing and involuntary and that the district court had miscalculated his guidelines range.

At Rupp's plea hearing, a magistrate judge found that he had entered a knowing and voluntary guilty plea. Before doing so, the judge confirmed that Rupp understood the nature of the charges and the potential punishment. Rupp recognized that only the district court could determine his guidelines range. He also conceded that nobody had promised him what sentence the court would choose. And he agreed that he could not withdraw his plea if it turned out that the court chose a sentence longer than he anticipated.

Rupp's presentence report recommended that the court impose four enhancements to his base offense level. It recommended a two-level enhancement because Rupp had used "sophisticated means" to commit the fraud. U.S.S.G. § 2B1.1(b)(10)(C). It recommended an 18-level enhancement because of the amount of the loss. *Id.* § 2B1.1(b)(1)(J). It recommended a four-level enhancement because Rupp's crime had caused "substantial financial hardship" to at least five victims. *Id.* § 2B1.1(b)(2)(B). And it recommended a four-level enhancement because Rupp's crime had

involved "securities law" and he qualified as an "investment adviser." *Id.* § 2B1.1(b)(20)(A)(iii).

At sentencing, Rupp's counsel argued against the sophisticated-means enhancement on the ground that its application, when combined with the other enhancements, would result in improper "double counting" by punishing him twice for the same conduct. Sentencing Hr'g Tr., R.45, PageID 213. He reasoned that violation of the securities laws is always sophisticated. The court disagreed. It found that Rupp had used sophisticated means by creating "false documents" to defraud his victims. *Id.*, PageID 222. It further noted that this enhancement did not overlap with his enhancement for violating the securities laws because not all such frauds are sophisticated. *Id.*

Adopting the presentence report's calculations, the court concluded that Rupp's guidelines range was 168 to 210 months' imprisonment. When speaking to the court, Rupp suggested that the report's recommended range had caught him "off guard" because the government in plea negotiations had predicted that his range would be 10 to 12 years. *Id.*, PageID 237. The court nevertheless chose a sentence of 192 months' imprisonment. This choice led Rupp to interrupt: "I just don't agree with your sentence." *Id.*, PageID 247. He opined that "child sex molesters and rapists" serve shorter sentences and that his victims had asked him to invest their money. *Id.* Describing the sentence as "ridiculous," Rupp added: "I wouldn't have taken this plea agreement if I knew you were going to give me more than 12 years. I took the plea agreement based on [the prosecutor] sending over the thing that said it was

10 to 12 years, those are my guidelines, so I'm here today because of that." *Id.*, PageID 248. When the court told him he would have the opportunity to appeal, he responded: "Oh, I will." *Id.*

II

Rupp raises three arguments on appeal. He argues that his guilty plea was not knowing and voluntary. He argues that the district court should not have used the sophisticated-means enhancement. And he argues that the court imposed a substantively unreasonable sentence.

1. *Knowing and Voluntary Plea.* Rupp first claims that he entered an unknowing and involuntary plea. Specifically, he says that his decision to plead guilty rested on the government's prediction during their plea negotiations that his guidelines range would fall between 10 and 12 years—well below the range that the district court determined (14 to 17.5 years).

We start with two procedural issues. The first: our standard of review. Generally, we review de novo a district court's conclusion that a defendant knowingly pleaded guilty, and we review for clear error any factual findings underlying this conclusion. *See United States v. Catchings*, 708 F.3d 710, 716 (6th Cir. 2013); *United States v. Walker*, 160 F.3d 1078, 1095–96 (6th Cir. 1998). Here, however, the government argues that Rupp never asserted in the district court that his plea had been unknowing, and it points out that we review unpreserved arguments of this type under the deferential plain-error test. *See United States v. Hobbs*, 953 F.3d 853, 857 (6th Cir. 2020); *United States v.*

Swinney, 728 F. App'x 485, 487 (6th Cir. 2018). Rupp counters that he preserved the argument with his comment that he would not have pleaded guilty if he had known his sentence would exceed the 12 years that the government had estimated. We need not decide whether Rupp adequately raised this claim because our standard of review does not matter to the outcome. We will assume that the normal standard applies.

The second: the record on appeal. Rupp's argument rests on discussions from the parties' plea negotiations that he did not introduce into evidence. At most, he made a passing (unsworn) statement that the prosecutor had sent him a letter identifying the government's estimate of his guidelines range as 10 to 12 years' imprisonment. Sentencing Hr'g Tr., R.45, PageID 237. We typically limit ourselves to the record on appeal and save for collateral review arguments that require outside-the-record evidence. *See* Fed. R. App. P. 10(a); *United States v. Ferguson*, 669 F.3d 756, 762–63 (6th Cir. 2012); *United States v. Wagner*, 382 F.3d 598, 615 n.4 (6th Cir. 2004). Yet the government concedes that, during plea negotiations, it estimated that Rupp's offense level would be 30 and his criminal history category would be III—estimates that would produce a guidelines range of 121 to 151 months. Appellee's Br. 21–22; U.S.S.G. Ch. 5 Pt. A. But Rupp's offense level turned out to be 32 and his criminal history category turned out to be IV. Because the parties do not dispute the basic facts, we need not decide how this lack of evidence should affect things.

With these issues to the side, we turn to the merits. When defendants plead guilty, they waive many

constitutional rights, including the right to a jury trial and the right to confront accusers. *See Parke v. Raley*, 506 U.S. 20, 29 (1992). So the Constitution and the Federal Rules of Criminal Procedure place limits on a district court's ability to accept a plea. The Due Process Clause prohibits defendants from waiving these rights unless they do so in a "knowing" and "voluntary" manner. *Id.* at 28–29; *see Brady v. United States*, 397 U.S. 742, 748 (1970). And Rule 11 requires a court to ask a series of questions to defendants at a plea hearing to ensure their knowledge of several items. *See United States v. Day*, 2022 WL 17547518, at *2 (6th Cir. Dec. 9, 2022); *United States v. Webb*, 403 F.3d 373, 378–79 (6th Cir. 2005). Courts must ensure, among other things, that they know of their potential punishments. *See* Fed. R. Crim. P. 11(b)(1).

When defendants receive a sentence higher than the one that they anticipate, they often argue that they did not enter a knowing and voluntary plea because their decision to plead guilty rested on their mistaken sentencing prediction. We have regularly rejected this type of challenge. *See United States v. Davis*, 796 F. App'x 886, 890 (6th Cir. 2019); *United States v. Contreras-Armendariz*, 207 F. App'x 594, 596–97 (6th Cir. 2006); *United States v. Hernandez*, 1999 WL 486620, at *3–5 (6th Cir. July 1, 1999) (per curiam); *Gessa v. United States*, 1993 WL 72487, at *1 (6th Cir. Mar. 15, 1993) (order); *see also United States v. Lewis*, 800 F. App'x 353, 358–59 (6th Cir. 2020); *United States v. Stephens*, 906 F.2d 251, 253 (6th Cir. 1990). When the plea agreement or plea colloquy explains to a defendant that any earlier sentencing estimate represented only a nonbinding prediction, the

defendant does not enter an unknowing and involuntary plea merely because the "prediction" does not come true. *Davis*, 796 F. App'x at 890 (quoting *Stout v. United States*, 508 F.2d 951, 953 (6th Cir. 1975)); *see also, e.g.*, *United States v. Patterson*, 576 F.3d 431, 438 (7th Cir. 2009); *United States v. Bond*, 135 F.3d 1247, 1248 (8th Cir. 1998) (per curiam); *United States v. Garcia*, 909 F.2d 1346, 1348 (9th Cir. 1990).

This rule dooms Rupp's claim. His plea agreement and plea colloquy both show that he knew that any earlier sentencing estimate would not bind the court and that he could not void his plea if the estimate turned out to be wrong. First consider his plea agreement. It informed Rupp that the parties had "no agreement as to the applicable Guidelines factors or the appropriate Guidelines range." Plea Agreement, R.6, PageID 19. It added that the government could "seek any sentence within the statutory maximum" and "argue for any criminal history category and score, offense level, specific offense characteristics, adjustments, and departures." *Id.* The agreement also informed Rupp that the district court had the final say over the guidelines range. *Id.* And it told him that his "disagreement" with the court's chosen "range or sentence shall not constitute a basis for withdrawal of the plea." *Id.* Lastly, a "merger" clause explained that he could not rely on outside-the-text "promises." *Id.* PageID 23. When signing his name, Rupp declared that he had read the agreement, that he understood its "terms," that he "voluntarily" agreed to them, and that the government had made no other "promises or inducements" to get him to plead guilty. *Id.*, PageID 24.

As we recognized in another case that included a similar signed declaration in a plea agreement, Rupp's signature "acknowledg[ing]" that he had read the agreement and that he was "voluntarily" agreeing to its terms supports the finding that he entered a knowing and voluntary plea. *United States v. Taylor*, 281 F. App'x 467, 469 (6th Cir. 2008).

Next consider the colloquy with the magistrate judge at the plea hearing. Rupp understood that the district court could impose a sentence up to 25 years' imprisonment for his offense. Tr., R.26, PageID 63. He acknowledged that "only" the district court could "determine" his guidelines range and that the court could vary upward from this range when imposing a sentence. *Id.*, PageID 64, 66. He agreed that the government had not made "any promises" about what sentence the court would choose, *id.*, PageID 66, an agreement that bars him from now "relying on an alleged oral promise by the government" about the sentence, *Ewing v. United States*, 651 F. App'x 405, 409–10 (6th Cir. 2016). Rupp further answered "[y]es" when asked if he recognized that he would not "be able to withdraw" his plea simply because his "sentence is more severe than [he thought] it might be" while at the plea hearing. Tr., R.26, PageID 66. As we have explained in other cases rejecting claims that a guilty plea was not voluntary because of the defendant's allegedly mistaken belief about the likely sentence, Rupp remains bound by his sworn statements that he understood that the district court would determine his guidelines range and that he could not void his plea if it chose a higher-than-anticipated sentence. *See United States v. Presley*, 18 F.4th 899, 905 (6th Cir. 2021); *see*

also Lewis, 800 F. App'x at 359; *Contreras-Armendariz*, 207 F. App'x at 596–97.

In response, Rupp does not cite a single Sixth Circuit decision to support his argument that the government's estimate rendered his guilty plea unknowing. He instead turns to the Second Circuit. But the cases on which he relies concerned a different issue—whether the government had breached a plea agreement when it advocated for a higher guidelines range than the one referred to in the agreement. *See United States v. Wilson*, 920 F.3d 155, 163–65 (2d Cir. 2019); *United States v. Palladino*, 347 F.3d 29, 34 (2d Cir. 2003). Because the agreements in these cases noted that their estimates incorporated the information that the government knew at that time, the court read them to allow the government to seek other enhancements based only on new information. *See Palladino*, 347 F.3d at 33–34. No similar breach occurred here. Rupp's plea agreement indicated that the government could argue for any sort of enhancement without limit. Plea Agreement, R.6, PageID 19; *cf. United States v. Sweeney*, 878 F.2d 68, 70 (2d Cir. 1989) (per curiam). Because Rupp has shown only a mistaken estimate and because his plea agreement and plea colloquy made clear that the estimate would not bind the district court, he knowingly and voluntarily pleaded guilty.

2. *Sophisticated-Means Enhancement*. Rupp next challenges the district court's decision to apply the sophisticated-means enhancement in U.S.S.G. § 2B1.1(b)(10)(C). This two-level enhancement applies to a fraud offense that "involved sophisticated means"

if "the defendant intentionally engaged in or caused the conduct constituting sophisticated means[.]" *Id.* In other words, the defendant must have undertaken a "highly complex, refined, or developed" fraud. *Webster's New World College Dictionary* 1386 (5th ed. 2020); *see also* 16 *Oxford English Dictionary* 10 (2d ed. 1989). This "especially complex" fraud includes tactics like using "fictitious entities" or "corporate shells" to hide "assets or transactions[.]" U.S.S.G. § 2B1.1 cmt. 9(B).

Before turning to Rupp's arguments, we flag a conflict in our caselaw over the standard of review. There is no dispute that we review a district court's findings about the historical facts (such as a finding about what a defendant did to conceal the fraud) for clear error, and we review the court's conclusions about abstract legal questions (such as a conclusion about the meaning of the word "sophisticated") de novo. *See United States v. Bertam*, 900 F.3d 743, 752–53 (6th Cir. 2018); *see also United States v. Thomas*, 933 F.3d 605, 608 (6th Cir. 2019). But what standard applies to the mixed question of whether the historical facts satisfy the legal definition of "sophisticated means"? Sometimes, we have reviewed this question de novo. *See, e.g.*, *United States v. Daulton*, 266 F. App'x 381, 388 (6th Cir. 2008). Other times, we have reviewed it for clear error. *See, e.g.*, *United States v. Thomas*, 841 F. App'x 934, 938 (6th Cir. 2021). Because Rupp's challenge fails even under de novo review, we need not resolve this issue today. *See Thomas*, 933 F.3d at 610.

In fact, Rupp does not dispute that this enhancement presumptively would apply to his misconduct. Our cases have upheld its use for a

defendant who created "false insurance certificates" in an insurance-fraud scheme. *United States v. Crosgrove*, 637 F.3d 646, 667 (6th Cir. 2011). They have upheld its use for a defendant who used "fictitious identification numbers" and a "dormant account" to conceal theft from a credit union. *United States v. Simmerman*, 850 F.3d 829, 833 (6th Cir. 2017). And they have upheld its use for defendants who ran a Ponzi scheme by using "fraudulent bank documents" and "fictitious website information[.]" *United States v. Phelps*, 2021 WL 4315947, at *6 (6th Cir. Sept. 23, 2021). Rupp's actions fit this mold. He executed and concealed his fraud using a false broker's license, fictitious account documents, and fake online accounts.

Even so, Rupp responds that the enhancement cannot apply because it impermissibly duplicated his three other offense-level enhancements. Our caselaw has interpreted the Sentencing Guidelines to bar district courts from engaging in "double counting" by relying on identical conduct to impose two separate enhancements. *See United States v. Duke*, 870 F.3d 397, 404 (6th Cir. 2017); *United States v. Farrow*, 198 F.3d 179, 188–95 (6th Cir. 1999). This caselaw requires us to ask two questions: Did "double counting" occur? If so, does the relevant guideline otherwise authorize the double counting? *See Duke*, 870 F.3d at 404.

In Rupp's case, we need not proceed past the first question. No problematic double counting arises when "distinct aspects" of a defendant's conduct trigger distinct enhancements. *See United States v. Battaglia*, 624 F.3d 348, 351 (6th Cir. 2010). And courts have held that the sophisticated-means enhancement targets a

distinct aspect of a fraud scheme that typically does not overlap with other enhancements. For example, we and other courts have held that a sophisticated-means enhancement in the tax context does not impermissibly overlap with another enhancement for those who run tax-preparation businesses. *See Daulton*, 266 F. App'x at 389 (collecting cases). Courts have also held that the sophisticated-means enhancement does not overlap with an enhancement for those who lead extensive criminal activity. *See United States v. Sethi*, 702 F.3d 1076, 1080 (8th Cir. 2013); *United States v. Jackson*, 346 F.3d 22, 25–26 (2d Cir. 2003). They have held that it does not overlap with an enhancement for those who use a "special skill" that members of the general public lack. *See United States v. Minneman*, 143 F.3d 274, 283 (7th Cir. 1998); *United States v. Rice*, 52 F.3d 843, 850–51 (10th Cir. 1995). And they have held that it does not overlap with enhancements tied to the number of victims or the amount of the loss. *See United States v. Hatala*, 552 F. App'x 28, 30–31 (2d Cir. 2014) (order); *United States v. Dancer*, 509 F. App'x 915, 918 (11th Cir. 2013) (per curiam); *United States v. Small*, 210 F. App'x 776, 783 (10th Cir. 2006) (order).

The same logic applies here. Rupp's sophisticated-means enhancement did not duplicate the three others that the district court applied. Rupp primarily complains about this enhancement's use in combination with the enhancement for an investment adviser's violation of the securities laws. Yet that separate provision applies only to those who meet the definition of "investment adviser." U.S.S.G. § 2B1.1(b)(20)(A)(iii), cmt. 16(A). And an investment adviser can commit securities fraud merely by lying

(triggering only the investment-adviser provision), whereas a noninvestment adviser can use complex means to execute a fraud (triggering only the sophisticated-means provision). *Cf. Daulton*, 266 F. App'x at 389. The two provisions thus apply to distinct aspects of Rupp's fraud. *See Battaglia*, 624 F.3d at 351. Likewise, Rupp's other two enhancements arose because of the magnitude of the loss and the hardship that he caused at least five of his victims. *See* U.S.S.G. § 2B1.1(b)(1)(J), (2)(B). These provisions also target different aspects of Rupp's fraud. After all, a complex fraud can target a single victim, and a simple fraud can cause a large loss. Since these provisions account for "harms" "different" from the sophisticated-means enhancement, the district court did not engage in double counting by applying all of them. *Hatala*, 552 F. App'x at 30 (citation omitted); *see Dancer*, 509 F. App'x at 918.

Analogizing to the child-pornography context, Rupp counters that the sophisticated-means enhancement applies in nearly every fraud case and so fails to treat more culpable defendants more severely. Appellant's Br. 17. But Rupp's own data shows that the enhancement applies in only about 35% of securities-fraud cases. *See* U.S. Sentencing Commission, *What Does Federal Economic Crime Really Look Like?*, at 19 (Jan. 30, 2019). Besides, the reality that an enhancement applies frequently says nothing about whether its use in combination with other enhancements amounts to impermissible "double counting." As we have said in the child-pornography context on which Rupp relies, an enhancement that targets a distinct harm is perfectly legitimate no

matter how often it arises. *See United States v. Lynde*, 926 F.3d 275, 280 (6th Cir. 2019). And one could reasonably conclude that the use of sophisticated means to engage in fraud causes greater harm by, for example, making it more difficult to detect. *Cf. Daulton*, 266 F. App'x at 389.

3. *Substantive Reasonableness*. Rupp lastly challenges his sentence as substantively unreasonable. But the appeal waiver in his plea agreement bars this argument. Defendants may waive the constitutional right to appeal a sentence as long as they waive that right knowingly and voluntarily. *See United States v. Riccardi*, 989 F.3d 476, 489 (6th Cir. 2021); *United States v. Moon*, 808 F.3d 1085, 1088–90 (6th Cir. 2015); *cf. United States v. Mosley*, 53 F.4th 947, 967 (6th Cir. 2022). Here, Rupp signed a plea agreement that unambiguously "waive[d] all rights to appeal" his "sentence" except on a few specified grounds. Plea Agreement, R.6, PageID 20–21. As one of the few exceptions, the agreement allows him to assert a substantive-reasonableness challenge *only* if the district court chose a sentence that was "above the Guidelines range as determined by the court at sentencing[.]" *Id.*, PageID 21. Because Rupp's 192-month sentence falls comfortably within his range, this narrow exception does not apply. Rupp thus may not challenge his sentence as substantively unreasonable under the appeal waiver that he agreed to.

Rupp attempts to avoid this unambiguous waiver by alleging that he did not knowingly and voluntarily enter the plea agreement. But he makes no arguments unique to the appeal waiver. The record leaves no

doubt that he knowingly agreed to that specific provision. During his plea hearing, the magistrate judge explained to Rupp that he was agreeing to "give up" his right to appeal his sentence unless the district court chose an above-guidelines prison term. Tr., R.26, PageID 76–77; *see* Fed R. Crim. P. 11(b)(1)(N); *United States v. Johnson*, 530 F. App'x 406, 409–10 (6th Cir. 2013). Rupp instead merely reincorporates the general argument that his entire plea was unknowing and involuntary because of the government's mistaken sentencing estimate. That argument fails for the reasons that we have already explained.

We affirm.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 22-1240

[Filed January 24, 2023]

UNITED STATES OF AMERICA, Plaintiff - Appellee,	)
v.	)
JOSHUA LOUIS RUPP, Defendant - Appellant.	)

Before: STRANCH, MURPHY, and DAVIS, Circuit Judges.

JUDGMENT

On Appeal from the United States District Court for the Western District of Michigan at Grand Rapids.

THIS CAUSE was heard on the record from the district court and was submitted on the briefs without oral argument.

IN CONSIDERATION THEREOF, it is ORDERED that the judgment of the district court is AFFIRMED.

ENTERED BY ORDER OF THE COURT
/s/ Deborah S. Hunt
Deborah S. Hunt, Clerk

APPENDIX C

AO 245B (MIWD Rev. 12/16)- Judgment in a Criminal Case

UNITED STATES DISTRICT COURT
Western District of Michigan

Case Number: 1:21-cr-185

[Filed March 25, 2022]

UNITED STATES OF AMERICA	)
	)
-vs-	)
	)
JOSHUA LOUIS RUPP	)
	)

JUDGMENT IN A CRIMINAL CASE

USM Number: 70362-509
Lucas Xavier Dillon Sr.
Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to the Felony Information.
☐ pleaded nolo contendere to Count(s) _____ , which was accepted by the court.
☐ was found guilty on Count(s) _____ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Offense Ended	Count
18 U.S.C. § 1348 Securities Fraud	July 31, 2019	One

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

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

Date of Imposition of Sentence: March 23, 2022

/s/ Hala Y. Jarbou
HALA Y. JARBOU
UNITED STATES DISTRICT JUDGE

Dated: March 25, 2022

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of **one hundred ninety-two (192) months**.

☒ The court makes the following recommendations to the Bureau of Prisons:

That the defendant receives a substance abuse evaluation and given the opportunity to participate in substance abuse programming.

That the defendant be screened for 500-hour Residential Drug Abuse Program and participate in the program if deemed qualified.

That the defendant receives a mental health evaluation and given the opportunity to participate in mental health programs as needed.

That the defendant receives educational and vocational programming, with emphasis on obtaining and maintaining employment skills.

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

☐ The defendant shall surrender to the United States Marshal for this district:
☐ at _____ on _____
☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:
☐ before 2:00 P.M. on _____
☐ as notified by the United States Marshal.
☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

_____

_____

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

_____
United States Marshal

By: _____
Deputy United States Marshal

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of **five (5) years**.

MANDATORY CONDITIONS

1. You must not commit another federal, state, or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

   ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*

4. ☒ You must cooperate in the collection of DNA as directed by the probation officer.

5. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq*.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*

6. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

7. ☒ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*

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

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer

instructs you to report to a different probation office or within a different time frame.

2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.

3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the Court or the probation officer.

4. You must answer truthfully the questions asked by your probation officer.

5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.

6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.

7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.

8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.

9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.

10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).

11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.

12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.

13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at www.uscourts.gov.

Defendant's Signature _____ Date _____

SPECIAL CONDITIONS OF SUPERVISION

1. You must participate in a program of testing and treatment for substance abuse, as directed by the probation officer, and follow the rules and regulations of that program until such time as you are released from the program by the

probation officer and must pay at least a portion of the cost according to your ability, as determined by the probation officer.

2. You must not use or possess any controlled substances without a valid prescription. If you do have a valid prescription, you must follow the instructions on the prescription. You must not possess, use, or sell marijuana or any marijuana derivative (including any product containing cannabidiol (CBD) or THC) in any form (including edibles) or for any purpose (including medical purposes). You are also prohibited from entering any marijuana dispensary or grow facility.

3. You must not use/possess any alcoholic beverages and must not frequent any establishments whose primary purpose is the sale/serving of alcohol.

4. You must participate in a program of mental health treatment, as directed by the probation officer, and follow the rules and regulations of that program, until such time as you are released from the program by the probation officer and must pay at least a portion of the cost according to your ability, as determined by the probation officer.

5. You must provide the probation officer with access to any requested financial information and authorize the release of any financial information. The probation office will share

financial information with the U.S. Attorney's Office.

6. You must not apply for, nor enter into, any loan or other credit transaction without the approval of the probation officer.

7. You must not create/form any new business entities during this period of supervision.

8. You must not open any new personal or business accounts without the approval of the probation officer.

9. You must not be employed in any position which entails fiduciary responsibility or any employment that involves the acquisition of merchandise, funds, or services without the approval of the probation officer.

10. You must submit your person, property, house, residence, vehicle, papers, computers (as defined in 18 U.S.C. § 1030(e)(1)), other electronic communications or data storage devices or media, or office, to a search conducted by a United States probation officer. Failure to submit to a search may be grounds for revocation of release. You must warn any other occupants that the premises may be subject to searches pursuant to this condition.

    The probation officer may conduct a search under this condition only when reasonable suspicion exists that you have violated a condition of supervision and that the areas to be searched contain evidence of this violation. Any

search must be conducted at a reasonable time and in a reasonable manner.

11. A minimum of 40 hours per week must be dedicated to lawful employment, community service work, or educational programming, or some combination of the three, as directed by the probation officer.

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the Schedule of Payments on the following pages.

Assessment	**Fine**	**Restitution**	**AVAA Assessment***	**JVTA Assessment****
$100.00	**-0-**	**$2,730,319.54**	**-0-**	**-0-**

☐ The determination of restitution is deferred until _____. An Amended Judgment in a Criminal Case (AO 245C) will be entered after such a determination.

☒ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment,

---

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(I), all nonfederal victims must be paid before the United States is paid.

Name of Payee	**Total Loss**[***]	**Restitution Ordered**	**Priority or Percentage**
Loraine Beerthuis 6112 Pebble Dr Allendale, MI 49401	$68,000.00	$68,000.00	
Douglas Bergakker 10640 Stump St, Apt 1 Grand Haven, MI 49417	$473,817.00	$473,817.00	
Thomas Bublitz 99 Dunton Ave Holland, MI 49424	$616,390.91	$616,390.91	

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

Greg Carpenter 2627 Judson Rd Spring Lake, MI 49456	$171,274.00	$171,274.00
Mark Ebel 4162 Pontaluna Rd Fruitport, MI 49415	$19,405.00	$19,405.00
Mark Ebel (on behalf of Allix Ebel) 4162 Pontaluna Rd Fruitport, MI 49415	$1,000.00	$1,000.00
Laura French 1668 Northglen Cir Middleburg, FL 32068	$5,000.00	$5,000.00
Jonnette Gelenczei 17062 State Hwy 215 S Winnsboro, SC 29180	$75,000.00	$75,000.00

CRIMINAL MONETARY PENALTIES, CONT'D

Name of Payee	**Total Loss**[***]	**Restitution Ordered**	**Priority or Percentage**
Barbara Goff 1217 Colfax Ave Grand Haven, MI 49417	$103,150.00	$103,150.00	
James Helmka 5623 S Hilton Park Rd Fruitport, MI 49415	$461,429.60	$461,429.60	
Fred Ignatoski 1153 Nixon Ave NW Grand Rapids, MI 49534	$24,000.00	$24,000.00	
Richard Larson-Smith Address Unknown	$59,554.01	$59,554.01	

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

Lori Kraai 11357 River Rd Allendale, MI 49401	$35,000.00	$35,000.00
Cory Stickney 8897 Buchanan St Allendale, MI 49401	$239,084.15	$239,084.15
Karlene Walkley 99 Dunton Ave Holland, MI 49424	$20,000.00	$20,000.00
Jamie Weenum 1991 Lakeview Dr Zeeland, MI 49464	$52,344.15	$52,344.15
Lillian Weenum 1991 Lakeview Dr Zeeland, MI 49464	$270,834.06	$270,834.06
Andrew Terbeek 11936 108th Ave Grand Haven, MI 49417	$35,036.66	$35,036.66
TOTALS	$2,730,319. 54	$2,730,319.5 4

☐ Restitution amount ordered pursuant to plea agreement.

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☒ The court determined that the defendant does not have the ability to pay interest and it is ordered that:
- ☐ the interest requirement is waived for the fine.
- ☒ the interest requirement is waived for the restitution.
- ☐ the interest requirement for the fine is modified as follows: _____
- ☐ the interest requirement for the restitution is modified as follows: _____

SCHEDULE OF PAYMENTS

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

A ☒ Lump sum payment of **$100.00** due immediately, balance due
- ☐ not later than _____, or
- ☒ in accordance with ☐ C, ☐ D, ☐ E, or ☒ F below; or

B ☐ Payment to begin immediately (may be combined with C, D, or F below); or

C ☐ Payment in equal _____ installments of $_____ over a period of _____, to commence _____ after the date of this judgment; or

D ☐ Payment in equal _____ installments of $_____ over a period of _____, to commence _____ after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☒ Special instructions regarding the payment of criminal monetary penalties:
The restitution and/or fine is to be paid in minimum quarterly installments of $25.00 based on IFRP participation, or minimum monthly installments of $20.00 based on UNICOR earnings, during the period of incarceration, to commence 60 days after the date of this judgment. Any balance due upon commencement of supervision shall be paid, during the term of supervision, in minimum monthly installments of $200.00 to commence 60 days after release from imprisonment. The defendant shall apply all monies received from income tax refunds, lottery winnings, judgments, and/or any other anticipated or unexpected financial gains to any outstanding court-ordered financial obligations.

Unless the court has expressly ordered otherwise in the special instructions above, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the Clerk of the Court, 399 Federal Building, 110 Michigan N.W., Grand Rapids, MI 49503, unless otherwise directed by the court, the probation officer, or the United States Attorney.

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

□ Joint and Several

Case Number Defendant and Co-Defendant Names *(including defendant number)*	Total Amount	Joint and Several Amount	Corresponding Payee, if appropriate

□ The defendant shall pay the cost of prosecution.

□ The defendant shall pay the following court cost(s):

□ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

APPENDIX D

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Case No. 1:21-cr-185

[Filed April 14, 2022]

UNITED STATES OF AMERICA,
Plaintiff,

vs.

JOSHUA LOUIS RUPP,
Defendant.

SENTENCING HEARING

BEFORE THE HONORABLE HALA JARBOU
United States District Judge

Lansing, Michigan, Wednesday, March 23, 2022

APPEARANCES:
For the Plaintiff:

MR. JUSTIN MATTHEW PRESANT
330 Ionia Avenue, NW
P.O. Box 208
Grand Rapids, MI 49501-0208

For the Defendant:

Mr. LUCAS XAVIER DILLON, SR.
Dillon & Samuel, PLLC
1350 East Lake Lansing Road
Suite D
East Lansing, MI 48823

ALSO PRESENT:

Jordan Jackson, Probation Agent

REPORTED BY:

GENEVIEVE A HAMLIN, CSR-3218, RMR, CRR
Federal Official Court Reporter
128 Federal Bldg
Lansing MI 48933

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Lansing, MI
March 23, 2022
9:03 a.m.

PROCEEDINGS

THE CLERK: All rise. The United States District Court for the Western District of Michigan is now in session. The Honorable Hala Jarbou presiding.

Thank you. You may be seated. Now calling the United States versus Rupp --

THE COURT: Yes, this is Joshua Rupp.

THE CLERK: Case number 21:18 --

THE COURT: 21-cr-185. Can I have appearances, please?

MR. PRESANT: Good morning, Your Honor. Justin Presant on behalf of the United States.

MR. DILLON: Good morning, Your Honor. Lucas Dillon on behalf of my client, Joshua Rupp, who is present seated to my right.

THE COURT: Good morning everyone. Good morning, Mr. Rupp.

THE DEFENDANT: Good morning.

THE COURT: This is the date and time set for sentencing. The defendant pled via an information before the magistrate judge back on November 12, 2021. I adopted the report and recommendation on November 30, 2021, and accepted

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the plea and adjudicated the defendant guilty.

The defendant pled pursuant to a plea agreement, which the Court will accept. First, as it relates to -- and, for the record, I've read the pre-sentence investigation report. I've read impact victim statements that were submitted by the government, the defendant's sentencing memorandum, and letters on behalf of the defendant that were submitted separately from the sentencing memorandum, I believe.

First, let's talk about objections. The pre-sentence investigation report indicates that there aren't any, although when I read -- or when I read defendant's

sentencing memorandum, the first page indicates objection to the pre-sentence investigation report. Are there objections or are you --

MR. DILLON: There were -- good morning, Your Honor. First of all, the request for variance, I know this Court's policy about having a filing of a separate motion. You told me that last time I was in front of you. On page -- I believe it's the second to last page of my sentencing memorandum we're going to strike that so the Court doesn't have to address whether it's a separate filing or not. I don't need that request for a separate variance.

There was --

THE COURT: Okay. Hold on. My question to you first

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is are there objections to the pre-sentence investigation report?

MR. DILLON: Yes. The portion of the guidelines that involve sophisticated means, we were asking the Court not enhance that two level enhancement.

THE COURT: Did you make that objection?

MR. DILLON: In the -- in my sentencing memorandum I did.

THE COURT: And I understand the sentencing memorandum. Objections are to be made to the probation department at a certain time, and that indicates that there weren't objections made or that

they were resolved, so was that objection, was that timely made?

MR. DILLON: I don't -- I can't really address that, Your Honor. We've been going back and forth.

THE COURT: Well, there's a time -- a deadline for filing objections. Was that made?

MR. DILLON: I'd have to go back and look at my emails. I don't think we had an objection hearing on this case.

THE COURT: Okay. Well, I'm looking at the pre-sentence investigation report that indicates that on February 15th there was one objection that was filed by defense counsel but the objection had been resolved to the satisfaction of both parties. Was that the same objection

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that we're talking about?

MR. DILLON: I'm not sure if that's the exact one, Your Honor.

THE COURT: Okay.

MR. DILLON: But it's been no secret that this has been the one that we were objecting to almost the entire time.

THE COURT: Well, here's the thing, it's not about whether it's a secret or not. You file objections timely so that the government can respond, so that the Court can prepare. When I'm looking at a pre-sentence investigation report that doesn't say there are any

objections but then I'm reading a sentencing memorandum close to sentencing that indicates there is one, it doesn't give everybody the opportunity to do what they need to do, so make your objection, let's go through it.

MR. DILLON: Thank you, Your Honor. The presentence investigation report calls for an enhancement in the guideline range. If the Court looks at page 20 of the PSI, paragraph 64, because the offense involves sophisticated means and the defendant intentionally engaged and caused conduct consisting of sophisticated means, two levels are added. If the Court were to strike that provision, the guideline range would shift down to 135 to 168. As it is currently scored it's at 168 to 210.

The reason we were asking for that, Your Honor, and I

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know that counsel for the government has case law as well on this, it's called a Larson departure, that in some circumstances, and I know we briefed this and the Court said you've read it, an accumulation of somewhat overlapping enhancements, even if not -- even if it doesn't amount to double counting can justify a downward departure. This was the Jackson case, and it illustrates that type of case that's eligible for this type of enhancement.

What we're saying is this was contemplated when the seven points on the original base level offense -- there's not going to be a sophisticated SCC fraud scheme without all of the rest of these, so when you have paragraph 63, 64, 65, they all are kind of

overlapping, and what we're saying is that's boosting a sentence so much so that the Court can look at that and say these guidelines are getting extremely high, even though the government -- counsel for the government is going to say, well, they each apply separately. We know they each apply separately, but they're overlapping so much and it's boosting his sentence so much, and this is not a new or novel issue. This is something that courts all over the U.S. have said when they overlap on these fraud schemes so much the Court can look at that and say, okay, we're just -- we're double counting. Even though each separately applies, it's boosting the guidelines too high, so I know I wanted to make a record of that, and the Court's already advised that it does

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not believe it's timely, but I still wanted to lodge that objection. Thank you.

THE COURT: All right. Thank you. From the government, any response?

MR. PRESANT: Thank you, Your Honor. So I also was not clear if it was a formal objection or not because I read that Jackson case and I'm not sure there really is a disagreement, because what Jackson acknowledges is that the Court can consider under the 3553(a) factors the extent to which separate enhancements overlap, but it also acknowledges that each enhancement applies by its own terms, so doing a little research in our circuit, Jackson being out of circuit, I came across this case, United States versus Daulton, 266 Federal Appendix 381, and I provided a copy to defense counsel

and I also have a copy for the Court if the Court wants to review it, but the defendant there made a similar argument that -- it was a tax case -- that the sophisticated means enhancement overlapped with another enhancement that was applicable given the nature of the scheme, and the Sixth Circuit rejected that argument writing, Daulton also argues that the district court erred in using enhancements for both being in the business of tax preparation and using sophisticated means because doing so amounts to double counting. There is no legal support for this argument because the two categories are not mutually exclusive, and then it

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goes on to cite a case from the DC Circuit and the Tenth Circuit that had similar findings, so I think the Court can consider Mr. Dillon's argument under the 3553(a) factors, but there isn't a legal basis to sustain the objection and change the scoring under the pre-sentence report.

THE COURT: All right. I'm sorry, so that case talks about the sophisticated means enhancement and what other enhancement?

MR. PRESANT: It was an enhancement that the Court described as being in the business of tax preparation.

THE COURT: Okay. And those two did not overlap?

MR. PRESANT: Right. Because the Court reasoned they're not mutually exclusive, and I think the same applies here. Each enhancement in the pre-sentence

report applies by its own terms. There are some enhancements in the guidelines and other cases where the guidelines say if you're applying this enhancement, you can't also apply this enhancement, but that's not what we have here. All the enhancements can be applied separately. They all reflect separate aspects of the scheme so, for example, in that Daulton case one of the cases cites -- it quotes is this Hunt case from the DC Circuit where that Court apparently wrote, no reason why these two enhancements cannot exist in the same case. It is possible for a tax preparer to conduct a simple scheme and a non-preparer to conduct a complex one.

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The same is true here. I think Mr. Dillon's point is well taken that in many security frauds schemes they will involve the sophisticated means enhancement, but it's at least possible that someone could commit security frauds in a non-sophisticated manner, and that's why the scoring in the pre-sentence report is appropriate.

THE COURT: So, Mr. Dillon, are those -- are there two specific enhancements that you think overlap or are you saying all the enhancements overlap that have been scored?

MR. DILLON: So just 64, Your Honor, the sophisticated means, and if I could just address --

THE COURT: Yeah. And tell me what it overlaps with.

MR. DILLON: So when you have an SCC case that has -- that's -- the base level is seven and you add on the sophisticated means with 65, a violation of securities fraud, you will -- a tax preparation and a tax fraud scheme can be done in a simple way. You could add a dependent to someone's tax form. That's tax fraud. You could do -- you could hide income, that's very simple, but an SCC securities fraud case, there is nothing out there that says that -- unless the Court knows some independent knowledge of a way to do a securities fraud case trading on the open mark or day trading that doesn't involve sophisticated means. I don't see a way that you get there. It's already counted for in your -- in number 65, the violation of security law. To double up and say,

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well, that's going to be sophisticated means -- because in a tax case you could have simple fraud and sophisticated fraud. There is no fraud that you can do in the SCC or the open market that wouldn't involve security -- that wouldn't involve sophisticated means, so I think it's very much different than that case that's cited by Mr. Presant, so we believe that the Court -- whether the Court wants to include it and say these guidelines become lower or whether the Court says, fine, I hear what you're saying and I'm going to consider them in the 3553, but it does result in double counting, and in SCC cases and fraud cases this is a very common objection and I think it's very clear here. Thank you.

THE COURT: Well, I'm looking at the application notes. 2B1.1b(10)(C) is the sophisticated -- yes, b(10)(C)

is the offense involves sophisticated means, which the application notes describe sophisticated means as especially complex or especially intricate defense conduct pertaining to the execution for concealment of an offense. Conduct such as hiding assets or transactions or both through the use of fictitious entities, corporate shells, or offshore financial accounts also ordinarily indicate sophisticated means.

Certainly in this case I think everyone can agree there was fictitious entities or corporate shells that were created to follow through with this scheme. 2B1.1(b)(2)(A)(iii), I think -- is it (A)(ii), Ms. Jordan?

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AGENT JACKSON: I'm double checking right now, Your Honor. I apologize.

THE COURT: So B -- 2B1.1(b)(2)(a), I see a little I and double little I but not a triple little I.

AGENT JACKSON: Triple I is identified as investment advisor in my guidelines manual.

THE COURT: Okay. Again, on -- yes, I'm sorry. It was the application that didn't have the little I. An investment advisor or person associated with an investment advisor. All right. So those two specifics, right, tell me how those -- each enhancement is not independently met or is independently met. The government.

MR. PRESANT: Yes, Your Honor. So for, first, the sophisticated means, it's independently met given the nature of the offense conduct described in the pre-

sentence report, so, for example, the defendant created multiple entities in order to make it look as if he were a registered broker and created letterhead with the logo of some of those entities. Some of those are real entities where he appropriated their logos to make it look like he was working for those companies.

He used an app or an application on the Smart phones of his customers or his clients to make it look like their investments were growing when, in fact, they were not. He also issued fictitious statements, financial statements, again, showing that his investors' accounts were growing when,

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in fact, they were not.

He created false documents. He took a builder's license issued by the State of Michigan and doctored it to make it look like it was a securities license that he showed to at least some of his investors. At one point he -- you know, part of his story to investors was that he was working under the tutelage of these more experienced traders, one of whom was his uncle, and at one point someone asked to meet his uncle, who does not exist, but he introduced that person to another person purporting to be his uncle.

I think if you look at all those facts and add them altogether they do show sophisticated means in order to perpetuate the scheme.

With respect to the (b)(20) enhancement that the defendant was an investment advisor, he meets the definition under the law as someone who's advising

other people on investments even though he did not have any official or legal qualifications in order to be doing so. He pretended he had those qualifications, but even as someone who is pretending to do so, that qualifies under the (b)(20)(A)(iii) enhancement.

And regarding what I pointed out to the Court before that there are some enhancements under the guidelines that say -- that avoid double counting by saying if you apply this enhancement then don't apply that enhancement, I think (b)(20)(A) is a perfect example of that, so if you look at

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application note 16 to the guideline, specifically 16C, it says, non-applicability of Section 3B1.3, abuse of position of trust or use of the special skill, and it says, if subsection (b)(20) applies do not apply Section 3B1.3. Of course, Mr. Rupp has not been scored by the probation officer for 3B1.3, so that's an example of where the sentencing commission has specifically said this is the type of double counting that we don't want to occur and that kind of analysis does not apply to the argument that the defendant is making here, and that's why the government thinks that the probation office has scored it correctly.

THE COURT: Mr. Dillon, how do they either each independently -- how are they not substantiated? How is it they overlap?

MR. DILLON: So, Your Honor, what the government is saying with the sophisticated means and being an investment advisor, the violation of the securities law, we're not saying those don't apply.

Those facts are there. What Mr. Presant just went through, all those things about what he used, the tools of how he did this fraud, they're there. They're in the pre-sentence report. What we're saying, though, Your Honor is when you have that violation of securities law, all those things are already -- you're going to have an investment advisor. There's not going to be a securities fraud on the open market where you can do anything unless you hold yourself

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out as an investment advisor. Nobody is going to give you money unless you say I'm going to invest it. That's already counted for in that four level enhancement.

THE COURT: So why wouldn't, then, the sentencing commission or why wouldn't the statute and/or the sentencing commission say, okay, then that's not applicable? This enhancement is not applicable because it's already there? I mean, the couldn't -- the last point the government made is there are instances in the guidelines where they say, don't count this because we count it somewhere else.

MR. DILLON: And I understand what the Court's saying, that this is a clearcut double count situation. SCC fraud cases are not clearcut. Each one is different. Like the case we cited in Jackson and the government case such as a tax case, each case is different. It gives you the ability in the Larson departure to say with these facts opposed from other facts, I see how this could be -- that the four level enhancement would include all those and that does overlap. Just because the Sentencing Commission doesn't specifically

enumerate and say this is double counting -- each case is different.

THE COURT: I understand that.

MR. DILLON: So this is why the case law has given the Court the discretion to say, when you have a securities fraud case, you're going to have an investment advisor.

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You're going to have sophisticated means, so that's why we have that four level enhancement. So then tack on two more and say, well, this was sophisticated. Of course it was. That's why we did four points on the original enhancement, so I don't think that the government's case of a simple tax fraud versus a complex one would apply in this case because all SCC fraud cases involving multiple millions of dollars are going to be complex and sophisticated means. You're going to have all those things, so we're saying that it's already counted for with the four level enhancement. You don't need to tack on an additional two levels to say it's sophisticated.

THE COURT: All right. Well, in looking at all of the facts of the case and the scoring, certainly this case involved sophisticated means in the sense that Mr. Rupp created entities, created fake statements, false documents, put himself out there as this broker but then -- so it did involve, pursuant to 2B1.1(b)(20)(A)(iii), a violation of securities law and, yes, I think you can violate securities law and not have sophisticated -- or have the offense not involve sophisticated means. In this case I think it did. Both

apply and both don't overlap. They are independently -- there's an independent basis for them in the facts of this case so that each, I believe, is appropriately scored, so if there are objections as to the two point enhancement for the sophisticated means and the four point enhancement that

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involved a violation of securities law, that objection is overruled.

With that, let's go over the guidelines specifically. The defendant was scored at a base offense level seven. 18 levels were added due to the total loss that amounted to close to $4 million; more than 3.5, less than 9.5 million, so 18 levels were added.

There were substantial financial hardships to five or more victims, four points were added -- or four levels were added for that. As we've just discussed, two points were added for sophisticated means. Four levels were added for violation of securities law, which led to an adjusted offense level of 35. There were three points deducted for acceptance of responsibility, which the government, I assume, doesn't object to that third level, correct?

MR. PRESANT: Yes, Your Honor. The government so moves for the third level.

THE COURT: All right. That is granted. For a total offense level of 32, criminal history score was a six, but because the defendant committed the instant offense while under sentence for another offense, two points were added pursuant to 4A1.1(d) for -- 4A1.1(d) leading

to a criminal history score of eight and a criminal history category of four. That resulted in a guideline range of 168 months to 210 months. Everyone in agreement, subject to those

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objections or those arguments, that that is the guideline range?

MR. PRESANT: Yes, Your Honor.

MR. DILLON: If I can just place one thing on the record, Your Honor? I met with Mr. Rupp yesterday in the jail and one of the things that he objected to was what the Court just described on page -- on page 25, paragraph 84, that committed the offense while under the criminal justice sentence for, and then it describes the crime, and that adds two points. Mr. Rupp's contention was that he wasn't under a criminal justice sentence, that he was on a deferred adjudication. I went back to my office yesterday and did the research on what it means to have a deferred adjudication. That still counts as a probationary offense, and specifically it says that it includes -- a criminal justice sentence includes probation. I just wanted to make that a record because I know Mr. Rupp wanted me to object to that, but it does apply to even deferred sentences, HYTA, 7411, all those things, so if you're on that deferred sentence in any state it's still -- you can still have those tagged two points, so for the record I wanted to place that, but we do agree with those advisory guidelines.

THE COURT: All right. Mr. Dillon, did you have an opportunity to review the entire pre-sentence investigation report with Mr. Rupp?

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MR. DILLON: I did.

THE COURT: And, Mr. Rupp, did you have an opportunity to read the entire pre-sentence investigation report?

THE DEFENDANT: I have, yes.

THE COURT: All right. And did you discuss that with your attorney?

THE DEFENDANT: Yes.

THE COURT: And are you satisfied with his representation of you on this case?

THE DEFENDANT: I am.

THE COURT: Okay. Now, Mr. Dillon, I guess my next question is your sentencing memo also talks about a downward variance, and so I guess let's just make the record clear, you indicated a few minutes ago -- tell me what your position is on what you're asking for.

MR. DILLON: The Court's told me prior, and I talked to Mr. Presant about this yesterday, that if we want that variance we have to file a separate motion. He agreed with the Court's policy. I agree with the Court's policy. We didn't need that. The big fight today was the sophisticated means, so I'm asking that the Court strike that, and in the future if we do actually need it, we'll file it separately as the Court's directed previously.

THE COURT: Okay. All right. So I'll indicate that

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that's withdrawn.

All right. First, as to the government, are there any victims -- I've read the victim impact statements that were submitted, but are there any victims that wish to speak?

MR. PRESANT: There are not, Your Honor.

THE COURT: Okay. We'll start with the government for any allocution.

MR. PRESANT: Thank you, Your Honor. Because -- you know, I've spoken with several of the victims, and obviously our office sent out the usual notification, but I still had occasion to speak directly with some of the victims, and one of the things we asked them is what the Court just asked me, which is, do you want to address the Court, and at least for those victims with whom I spoke they indicated that they did not want to because it was either too painful or they were trying to move past it, move past what happened to them and how their trust was violated, and they thought coming to court wouldn't be a helpful way to do that, and I know Your Honor has already indicated that the Court has reviewed the victim impact statements and so I'm certainly not going to go through all of them in any detail, but I do, I think, under the 3553(a) factors just want to highlight in some of the victims' own words, since it was too painful for them to come here to say it personally, how serious this offense is and why there's a need for just punishment.

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I mean, the defendant stole from his friends and his family and people who he met through church, and he stole from them by lying to them about what he could do for them and they, in turn, turned over substantial sums of money. For some of them it was close to their life savings.

So, one victim wrote that in his view he thinks Mr. Rupp conned him, and he will do something like this again and again if he's released from prison.

Another victim said that in her view Mr. Rupp had made a mockery of God, that he acted like a Christian, and that's so sad to be the way that he was. That the money that he took from her was her inheritance from her mother and that was money that her daughter had received from an accident and now everything is gone because she trusted Mr. Rupp.

That same victim later wrote that if -- the money that was taken from her was for me and my husband, that they worked hard for. It was her inheritance from her parents. That -- money that she was keeping for her handicapped daughter, and Mr. Rupp took it all.

That same victim also later wrote -- she wrote a lengthy statement -- that she hopes that they throw the book at you, and I hope that you never see the outdoors again. You are a disgrace, and I'll never forgive you.

Another victim said that he didn't want to discuss this further in part with others because he was too

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embarrassed, and I think that came through in a number of the victim statements, that there was embarrassment and shame with -- so it's not just the loss of money, it's the emotional harm that comes from this kind of trust being violated.

That same victim wrote that there isn't a day I don't think about this. Sometimes it's all I think about. How do I recover? What are my next steps? How do I cope with my decision? Why did this happen to me? I invited Josh into my life, my home. My friends, my sister-in-law invested with Josh, and wife invested with Josh because I introduced them. I have to live with the fact that they lost more money because I introduced them.

Another victim wrote that her husband and her were starting over in 2009 after they lost money in the 2008 recession. That Josh posed himself as someone who cared about his future -- their future and wanted to help them succeed.

And another victim wrote that, our life since has been reduced to living like nomads in a camper; our past lost, our plans for the future stolen. Josh Rupp meticulously and all too convincingly lied about and manipulated the lives and future of all those who trusted him. I can't imagine how the punishment can possibly fit the crime.

And I just had a couple more, Your Honor, I wanted to highlight. Another victim wrote, lies. All of it was fraud, identity theft, and a scam. Apparently many other people were

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targeted also. All of us people he knows well; family, church members, close friends. So sad, so wrong.

Another victim wrote that with her investment she dreamed of an easier life. I dreamed of the people I could help with my earnings. I dreamed of investing in people once my diligence paid off, and I dreamed about having a nice legacy to leave my children and grandchildren. Dreams dashed and faith in people damaged. I press on with far more skepticism of people.

Another victim wrote the defendant was a big part of our ministry which makes it very hard because we trusted him.

Another victim wrote that because of the fraud he was not able to pay for his children's college expenses. He also noted he is now disabled so he is unable to work to replace the money that was lost, and he specifically wrote, Josh knew I was disabled and used my faith and my disability to take more and more of my money. He had an elaborate con set up.

And lastly, Your Honor, one victim noted that 20 years of his retirement savings was gone, and so I think those victim impact statements are important for the Court to consider, and I know the Court will consider them under the need for just punishment and evaluating the seriousness of the conduct, and what really came through to me is one of the things that the defendant notes in his sentencing presentation -- sentencing memorandum and the letters that he

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submitted is how he's close with his family and how religion is an important part of his life. That's, of course, true for many defendants who come before Your Honor, but I think that goes both ways, right, because those were the aspects that the defendant used to perpetrate this crime. He didn't steal from strangers. He didn't steal from people who were arm's length business partners. They probably wouldn't have trusted him, right, because he wasn't really an investment advisor or broker or trader, so he played off of the religious and family and community connections that he had in order to perpetrate this fraud.

The next factor I want to talk a bit about is specific deterrence and incapacitation, and I think there's a real need for it here. One argument the defense makes in the sentencing memorandum is that Mr. Rupp would never do anything like this again. He's learned his lesson. I don't think the record shows that for the Court. I think the Court first has to look at Mr. Rupp's criminal history. This isn't the first time he's been involved in the criminal justice system. It isn't the first time that he's committed some sort of fraud, and those previous encounters were insufficient to deter him from committing this crime.

Another argument he makes is that this was -- I think he wrote -- counsel wrote, a momentary lapse in judgment, but I think the record also contradicts that claim. This scheme

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went on for more than four years and involved more than a dozen victims. I think the nature of some of the factors I highlighted when arguing sophisticated means show that this was premeditated, it was carefully planned, it was deliberate, and that's how the defendant executed this scheme.

One factual correction -- or response, rather, that I want to make to an argument in the defense memorandum where it says Mr. Rupp wants to repay his victims, and I hope he will satisfy the Court's restitution order, but one of the things that he says is that he's already paid back $1.2 million of the approximately 3.9 million that were counted as fraud loss, but that's not exactly right, because the repayments documented in the pre-sentence report are repayments that were made during the scheme, and they weren't always made by Mr. Rupp, so the vast majority of that 1.2 million that he's saying was repaid was actually -- I think it was about 1.1 million was actually a check that was frozen by Fifth Third Bank because of suspected elder fraud, so he got the victim in that case to write the particular check, the bank puts the hold on it, and then is able to return most of that money to the victim. The fraud loss is still properly counted because he attempted to obtain that 1.2 million, but this wasn't Mr. Rupp trying to right the wrong that he had imposed on the victim. This was the banking system getting in his way, and the same is true for the other payments as well.

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Another of the payments was a cashier's check that a bank had frozen -- actually, it was tied into that initial $1.2 million check where he gets the check and he is immediately trying to pay back another investor who's already mad at him. That investor was made whole by the banking system, not by Mr. Rupp.

And the other payments are relatively -- are mostly relatively small payments that were paid back to investors, and those actually were made by Mr. Rupp, but they were made during the course of the scheme. They're almost Ponzi-like payments where in order to avoid an investor getting upset or digging deeper or asking questions or coming forward to authorities, he's paying them in order to keep it going, so I think that's something the Court has to consider, too, under the 3553(a) factors in evaluating the need for specific deterrence and protection of the public from further crimes of Mr. Rupp.

I want to say one last thing is that I think acceptance of responsibility is properly and accurately scored here, and that's why the government supported it, because Mr. Rupp did come in pre-indictment and plead guilty to an information. I think that is a substantial showing of good faith on his part and a first step to acknowledging the serious harm that he did to his victims in this case and so I think the Court should also consider that under the 3553(a)

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factors.

When the government adds that all up, I think the guidelines properly reflect all of those 3553(a) factors and the government asks the Court to impose a sentence within the guidelines range. Thank you.

THE COURT: Thank you. All right. Mr. Dillon, anything on behalf of your client?

MR. DILLON: Thank you, Your Honor. Mr. Rupp did lean over while Mr. Presant was talking about the repaying of the amounts and we agree and concede with Mr. Presant's formulating of that argument, that it was the banks and not Mr. Rupp's good faith, so just to start off as an officer of the court, we wanted to retract that.

That being said, when this case came to me it came pre-indictment, and Mr. Presant and I have been working back and forth on how to resolve this case, and it was a very, very quick turnaround time, and it will -- we'll see what this -- this Court's sentence is, if that's worth it or not in the future for defendants to say I don't want to elongate this any more. I don't want to cause any more pain to the victims and have them come testify. I don't want to use government resources for court-appointed counsel or have Mr. Presant put on what would have been maybe a five, six-day trial; time, effort, money. He just said, stop it, I'm guilty, let's get this over with, and it's going to be interesting to see if

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that's worth it or not because --

THE COURT: Okay, Mr. Dillon.

MR. DILLON: -- this looks like --

THE COURT: Mr. Dillon, the acceptance of responsibility is given, and that's taken into account, and you have a guideline range that takes that into account, so saying whether something is worth it depending on what the sentence is, I mean, certainly that's a factor that I look at, but it almost makes it seem like you're arguing, well, let's see if this is worth it -- I mean, I don't know that that's -- I don't know. I guess I don't know that I would phrase it that way.

MR. DILLON: What I'm saying, Your Honor, is this is more than someone pleading guilty after a year, going through the normal process to say, yeah, I did this and you get your three levels. This is far and above beyond that. We don't get -- we don't get discovery. We don't get anything and for him to just say -- to trust that versus I have other clients that say -- that have fraud cases that are going to drag this out and do two-week trial, we're going to bill $60,000 towards the federal government to fight a case that we know is really, really bad and it should just stop, and I'm saying that the Court should really consider that, that he just says, I'm sick of people wasting money on me and I want this to stop, and that's why I really wanted to stress that.

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When he was arrested in Ottawa County he turned over everything, his flash drives, computers, gave a statement, said this is it for me. I think that the Court when you look at his criminal history and you read these home invasions, which he's serving four years for

-- three years and nine months, they're bizarre. They're really, really bizarre. I think he had a mental breakdown at the end of this and I think that was all building.

I do agree with Mr. Presant that those witness statements, they're bad, and I feel -- I feel for the victims, and I know that Mr. Rupp does, and there's no dispute about the taking advantage of or the victimizing of these people.

That being said, I don't know and I can never relate to defendants when they say I was, you know, drinking a bottle of over-the-counter cough syrup a day. I don't know how that affects people and I don't know what drug fed rage you get into when you casually take 400 grand from someone, but when you break into someone's house naked and start yelling at the dog, I cannot imagine that throughout the process of defrauding these investors he was all there. I'm not saying he wasn't competent. I'm not saying he wasn't criminally responsibile. I'm saying if you're drinking a bottle of Codeine a day and then day trading with it, I don't think you're all there. I don't think you know what's going on, but even with that being said, he wants the Court to consider that

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when you talk about, like, the RDAP program. He wants to get help with that situation.

He is being punished from all angles. From his wife leaving him to not having contact with his kids to getting, which I've never seen before, four years for a home invasion under the influence and no one was

hurt, so he got that, and that was a direct result from this fraud, too, so he's being punished from all angles.

I know that he wants to pay this back, and unlike almost every fraud person I've represented, he's never once tried to manipulate me or the facts of this case. He's just come forward and said he's ready.

When we talked pre-indictment when Mr. Rupp and I met, you know, he had in mind 120 months for this, 10 years for this type of crime, and I agree with that. I think that -- I understand people lost money, but to serve 10 years plus four, so 14 years of your life for a 37-year old man, I think it's adequate. I think that, considering all these factors, if the Court says 20 years, I just don't see that -- I don't see that adding up considering -- even with the passionate statements that Mr. Presant gave, and I know that Mr. Rupp had prepared a statement and I think he wants to read it to the Court, if you don't have any questions.

THE COURT: Well, Mr. Dillon, my last question was the plus four, you're talking about the state?

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MR. DILLON: Yes.

THE COURT: Okay. The state sentence?

MR. DILLON: Yes.

THE COURT: Okay.

MR. DILLON: Three years and nine months.

THE COURT: All right. Thank you. Mr. Rupp, anything you wish to say on your own behalf?

THE DEFENDANT: Yes, Your Honor. Thank you for letting me speak today. Just kind of going back on what Mr. Dillon said, when I first was given the plea agreement from the prosecutor, they also sent over a guidelines -- they sent over my guidelines, which were 10 to 12 years, and they even put it on the letterhead and wrote it on there so I kind of had that under my mindset that my guidelines would be that, so when they came back higher, it did kind of catch me off guard, so that's just addressing what Mr. Dillon just said about that, about the 120 months.

I want to start off by apologizing to everyone involved in this. It is my intention to pay back everyone for their losses. The sooner I'm out, the quicker I can work to pay back these losses. I never foresaw the losses in the options contract compounding so quickly the way they did.

THE COURT: You've got to slow down.

THE REPORTER: I'm sorry. Could you start from, The quicker I can work to pay back these losses.

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THE DEFENDANT: Yep. I never foresaw the losses in the option contracts compounding so quickly the way they did. I never started this with the intention of the losses happening, but unfortunately they did, so for this, again, I apologize.

I also beg for mercy for the sake of my two kids, Clara age 14 and Levi age 12. They are my life and my world. Missing out on their most important developmental years is like torture to me.

THE COURT: Slow down. From this point on just keep it slow.

THE DEFENDANT: They are my life and my world. Missing out on their most important developmental years is like torture to me, so I ask again for mercy in my sentencing. Thank you.

THE COURT: Thank you, Mr. Rupp. Sentencings are always difficult and this type of sentencing is quite difficult considering the number of victims and the amount of loss.

In fashioning a sentence, the Court has a duty to impose a sentence that is sufficient but not greater than necessary to comply with the purposes of sentencing set forth in 18 USC 3553(a). The guidelines are advisory to the Court. It's an initial benchmark and one of the array of factors that the Court considers.

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The Court recognizes its discretion in determining an appropriate sentence as recognized by U.S. Supreme Court precedent, and pursuant to Tapia the Court recognizes that imprisonment is not suitable for the purposes of promoting correction and rehabilitation.

The Court has also considered all non-frivolous arguments in support of defendant's request for a lower sentence or a lower end sentence.

In looking at all the factors, the 3553(a) factors, the Court looks at the nature and circumstances of the offense, the history and characteristics of the defendant, the need for the sentence imposed to reflect

the seriousness of the offense, to promote respect for the law, to provide just punishment for the offense, to afford adequate deterrence to the criminal conduct, to protect the public from further crimes of the defendant.

The Court also considers and has to considered certainly the need to provide restitution to any victims, which is considerable in this case.

The Court also looks to provide the defendant with needed programming needs as well as overall in looking at the kinds of sentences available and trying to avoid sentencing disparity among similarly situated defendants.

It is -- it's hard for -- I think for anyone to realize, as Mr. Dillon indicated, that someone could

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defraud -- certainly fraud happens and scams happen every day, but when that fraud or that scam is perpetrated on your own family, on your friends, your church members, your -- people that know you and that trust you, it is the ultimate betrayal, betrayal obviously of their trust. Two of the people that you defrauded are your mother-in-law and your father-in-law and by your actions you've not only devastated their financial stability, their future financial stability, but all of these victims, and as a result of that your wife -- not only do your mother and father-in-law now -- have they lost a substantial amount of money, but now your wife -- I don't know if she's your ex-wife, but your wife and your kids now have to depend on her parents, the ones you defrauded, for their livelihood to keep going.

THE DEFENDANT: They don't.

THE COURT: No?

THE DEFENDANT: They don't. She doesn't depend on her parents. She works herself.

THE COURT: Okay.

THE DEFENDANT: She has her own job.

THE COURT: I read in one of the letters that they were now back with -- or she was now back with them. Is that not true?

THE DEFENDANT: Yeah, she is back with them.

THE COURT: Okay.

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THE DEFENDANT: But she's paying rent and working and everything.

THE COURT: Okay. Well, that doesn't make it any better.

THE DEFENDANT: No, I know. I'm the one -- she divorced me so I know.

THE COURT: Mr. Rupp, you have ruined peoples lives. You have ruined their futures. People worked hard to save up, to save for retirement, and you took that away from them. You took away their ability to pay for their future. You took away their ability to pay for their kids' future, to send them to college, to do all the things that they worked hard to do and planned, and, like I said, the fact that you did it to people that

you knew is even -- makes it even worse. It makes your -- I guess it shows the Court your character or lack of it to a certain extent.

As everyone has pointed out, in the course of roughly four years, from what I've read there are at least 19 victims. You lied to everyone. You created fictitious entities, fictitious documents. You -- and not only did you lose obviously a ton of money in these trades, but you also misappropriated a substantial amount of money for your personal use, roughly 500,000 for that.

And from what I can tell in your background, you had a stable upbringing. You -- in terms of your education, you

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certainly graduated high school. You had started -- you had some college, but you were capable of having consistent employment. You owned a licensing -- you were a licensed builder or, you know, had a business, so you were certainly capable of doing things and had done things the right way.

I do note that there is a mental health history and certainly the facts as pointed out as it relates to your two home invasions I think might have been a combination of mental health as well as substance abuse, and there's a substance abuse history as well, specifically marijuana, alcohol, and cough medicine since 2014, and you have at least two prior arrests, although you deny cocaine use, that involved cocaine. And your criminal history, aside from those two home invasions, also includes a misappropriation of trust

funds that happened back in 2011 that kind of is similar, I suppose, to the behavior exhibited in this offense.

You were during this time under the supervision at some point or in some manner to another court. That certainly didn't deter you from doing what you did. There's no doubt that the offense is quite serious. There's no doubt that your conduct has had a very serious affect on all your victims, and the consequences for them will be lifelong for most of them, so there's certainly a reason for this sentence to reflect the seriousness of the offense and to also provide adequate deterrence to you.

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When you get out, and you will get out, you will still be in your -- you will still be a very young man. You'll be in your early 50s or around that age so you will have plenty of time to build your life. The hope is that these victims can build their lives back as well.

You certainly have a lot of time also to try to make it right; to provide and pay back this restitution. I certainly do not give you credit for the bank stopping a check and other money that these victims got back, not as a result of your actions but as a result of others in protecting them.

And so based on your history and based on the offense, it also has to reflect adequate deterrence, and the Court has to protect the public from further crimes. I hope that this will deter you and I hope that this is the last of it, but I don't know that I know that for sure.

I will recommend that you undergo mental health evaluation and treatment and that you also participate in a substance abuse evaluation and treatment. If you are eligible, you can participate in the RDAP program. It does provide a time cut, which really, quite honestly, you don't deserve, but if you put in the work for that program, you will get that time cut, and so if you put in that work, you'll have earned it in that sense.

I don't know that you need any educational or vocational training, but certainly any programming as it

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relates to that or any other programming that might help you when you get out, the Court will encourage, and obviously restitution is a factor.

Mr. Rupp, it's -- in trying to fashion a sentence, in looking at all these factors, there is a part of me that agrees with one of the victims that I don't know what sentence I could give you that would really reflect or be appropriate given the offense conduct and all the other factors and your history, and I don't know that there is anything, obviously, that will make up for this other than you repaying the money and that's not going to happen any time soon, so I don't know that those victims will be made whole, certainly not any time soon, but if ever, but before you ever try to do something like this again, I want you to remember your actions in this case and remember the impact it had, and hopefully this sentence will act as a deterrent to that.

Pursuant to the Sentencing Reform Act of 1984, it is the judgment of the Court that the Defendant, Joshua Louis Rupp, is hereby committed to the custody of the Bureau of Prisons to be imprisoned for a term -- and I do note, I do give you credit for just the -- the guidelines give you credit for that, too, but I do give you credit for pleading, pleading early, not having the victims continue the impact -- or have further consequences as a result. It is the sentence of the Court that you are committed to the custody of the Bureau of

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Prisons for a term of 192 months.

Upon release from imprisonment the Defendant shall be placed on supervised release for a term of five years.

Within 72 hours of release from the custody of the Bureau of Prisons, you'll report in person to the probation office in the district to which you are released.

While on supervised release, the Defendant shall comply with mandatory and standard conditions of supervision, including DNA collection and drug testing.

Additionally, you'll comply with the following special conditions of supervision:

You must participate in a program of testing and treatment for substance abuse as directed by the probation officer and follow the rules and regulations of that program until such time as you are released from the program by the probation officer, and you

must pay at least a portion of the cost according to your ability as determined by the probation officer.

You must not use or possess any controlled substances without a valid prescription. If you have a valid prescription, you must follow the instructions on the prescription. You must not possess, use, or sell marijuana or any marijuana derivative, including CBD or THC in any form, including edibles, or for any purpose, including medical purposes. You are also prohibited from entering any marijuana

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dispensary or grow facility.

You must not use or possess any alcoholic beverages and must not frequent any establishments whose primary purpose is the sale or serving of alcohol.

You must participate in a program of mental health treatment as directed by the probation officer and follow the rules and regulations of that program until such time as you are released from the program by the probation officer and must pay at least a portion of the cost according to your ability as determined by the probation officer.

You must provide the probation officer with access to any requested financial information and authorize the release of any financial information. The probation officer will share that with the U.S. Attorney's office.

You must not apply for nor enter into any loan or other credit transaction without the approval of the probation officer.

You must note create or form any new business entities during the period of supervision.

You must not open any new personal or business accounts without the approval of the probation officer.

You must not be employed in any position which entails fiduciary responsibility or any employment that involves the acquisition of merchandise, funds, or services without the approval of the probation officer.

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THE DEFENDANT: I have to work at a fast food place and pay back two million?

THE COURT: Excuse me?

THE DEFENDANT: I said basically I have to work at a fast food place to pay back.

THE COURT: There are plenty of jobs.

THE DEFENDANT: Factories don't pay that kind of money.

THE COURT: Mr. Rupp, that's a problem you have to deal with when you get out.

THE DEFENDANT: I know. I don't --

THE COURT: Excuse me. Go ahead. What do you want to say?

THE DEFENDANT: I just don't agree with your sentence.

THE COURT: You don't have to.

THE DEFENDANT: You get CSC people, child sex molesters and rapists get less time than me. Every one of these clients came to me with their money. I never, never convinced them to trade with me. Every single one of them came to me and said, hey, can you help me out and trade my money? I did not buy any real estate. I did not misappropriate $500,000. They can't find that in my bank statements as proof. I did not misappropriate that. I lost money for them. It's money. It can come back.

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THE COURT: Really.

THE DEFENDANT: I think 15 years is ridiculous. I wouldn't have taken this plea agreement if I knew you were going to give me more than 12 years. I took the plea agreement based on Justin sending over the thing that said it was 10 to 12 years, those are my guidelines, so I'm here today because of that.

THE COURT: Okay.

THE DEFENDANT: And then all of a sudden they get changed a week before. I didn't even see my PSI until a week before I was sentenced and I see under there 20 years. I'm supposed to be okay with that? This is my life. I can't pay back this money if I'm sitting in prison for 15 years. It's just not going to happen.

THE COURT: Anything else you want to stay?

THE DEFENDANT: No.

THE COURT: You'll have whatever opportunity you want to say whatever you want to the Sixth Circuit if

you think any part of your plea or sentence is not justified.

THE DEFENDANT: Oh, I will.

THE COURT: Excuse me?

THE DEFENDANT: I'm going to.

THE COURT: Mr. Dillon will help you do that.

You must submit your person, property, house, residence, vehicle, papers, computers, or other electronic

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communications or data storage devices or media or office to a search conducted by a United States probation officer. Failure to submit to a search may be grounds for revocation of release.

You must warn any other occupants that the premises may be subject to searches pursuant to this condition.

The probation officer may conduct a search under this condition only when reasonable suspicion exists that you have violated a condition of supervision and that the areas to be searched contain evidence of this violation. Any search must be conducted at a reasonable time and in a reasonable manner.

When you are released you will have a condition that you work 40 hours -- a minimum of 40 hours a week, and if you're not working, you're going to be doing community service or in school full-time; full-time employment or community service work.

You will pay to the United States a special assessment of $100. The Court finds you don't have the ability to pay the fine. The Court will waive the fine in this case.

It is ordered that you must make restitution in the amount of $2,730,319.54. Restitution payments must be made to the U.S. District Court Clerk in the Grand Rapids federal courthouse.

You will make -- a distribution in terms of

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restitution will be made for the following victims for the following amounts:

For Loraine Beerthuis, $68,000. Douglas Bergakker, $473,817. Thomas Bublitz, $616,390.91. Greg Carpenter, $171,274. Mark Ebel, $20,405. Laura French, $5,000. Jonette Gelenczei, $75,000. Barbara Goff, $103,150. James Helmka, $461,429.60. Fred Ignatoski, $24,000. Richard Larson-Smith, $59,554.01. Lori Kraai, 35,000. Cory Stickney, $239,084.15. Karlene Walkley, $20,000. Jamie Weenum, $52,344.15. Lillian Weenum, $270,834.06. Andrew Terbeek, $35,036.66. Again, for a total of $2,730,319.54.

You'll start paying minimum quarterly installments while you're incarcerated of at least 20 or $25 during the period of incarceration to commence 60 days after the date of the judgment. Any balance due upon commencement of supervision must be paid during the term of supervision in minimum monthly installments of at least $200 to commence 60 days after release of imprisonment.

Additionally, you must apply all monies received from income tax refunds, lottery winnings, judgements, and/or any other anticipated or unexpected financial gains to any outstanding court-ordered financial obligations, and the Court will waive the interest in this case.

Pursuant to Bostic, are counsel satisfied that I've addressed all -- on the record all non-frivolous arguments

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that have been asserted?

MR. PRESANT: The government is, Your Honor.

THE COURT: Mr. Dillon?

MR. DILLON: The defense is, Your Honor.

THE COURT: Any legal objections to the sentence that's been imposed?

MR. PRESANT: No, Your Honor.

MR. DILLON: No, Your Honor.

THE COURT: All right. Mr. Rupp, I'm going to advise you of your appellate rights.

You can appeal your conviction if you believe your guilty plea was somehow unlawful or involuntary or if there is some other fundamental defect in the proceeding not waived by your guilty plea. You also have a statutory right to appeal your sentence under certain circumstances, particularly if you think the sentence is contrary to law.

However, a defendant may waive those rights as part of a plea agreement, and you have entered into a plea agreement which waives some or all of your rights to appeal the sentence itself. Such waivers are generally enforceable, but if you believe the waiver is unenforceable, you can present that argument to the appellate court.

You have the right to apply for leave to appeal in forma pauperis. If you wish to do so, with a few exceptions, you need to file appropriate documents within 14 days of the

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entry of judgment, and your attorney will prepare and file a notice of appeal upon your request.

Do you acknowledge that I've advised you of your appellate rights? Mr. Rupp?

THE DEFENDANT: Yes.

THE COURT: All right. Mr. Dillon, you understand that you are obligated to speak to him as it relates to his appellate rights and if he wishes to appeal, which he's indicated that he does, that you need to file that paperwork with the Sixth Circuit?

MR. DILLON: Based on the conversation on the record today I will be filing it, Your Honor.

THE COURT: Thank you.

MR. DILLON: Thank you.

THE COURT: Anything else?

MR. DILLON: Nothing from me.

MR. PRESANT: No. Thank you, Your Honor.

THE COURT: All right. Thank you.

THE CLERK: All rise. Court is in recess.

(Whereupon, hearing concluded at 10:10 a.m.)

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REPORTER'S CERTIFICATE

I, Genevieve A. Hamlin, Official Court Reporter for the United States District Court for the Western District of Michigan, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a full, true and correct transcript of the proceedings had in the within entitled and numbered cause on the date hereinbefore set forth; and I do further certify that the foregoing transcript has been prepared by me or under my direction.

/s/ Genevieve A. Hamlin
Genevieve A. Hamlin.
CSR-3218, RMR, CRR
U.S. District Court Reporter
128 Federal Bldg.
315 W Allegan St
Lansing MI 48933
(517) 881-9582

APPENDIX E

UNITED STATES DISTRICT COURT - WESTERN DISTRICT OF MICHIGAN CRIMINAL MINUTE SHEET

[Filed March 23, 2022]

USA V. JOSHUA LOUIS RUPP	**DISTRICT JUDGE:** Hala Y. Jarbou

CASE NUMBER	**DATE**	**TIME (begin/ end)**	**PLACE**	**INTERPRETER**
1:21-cr-185	3/23/2022	9:03 AM - 10:10 AM	Lansing	N/A

APPEARANCES:

Government: Justin Matthew Presant	Defendant: Lucas Xavier Dillon, Sr.	Counsel Designation: CJA Appointment

TYPE OF HEARING	DOCUMENTS	CHANGE OF PLEA
□ Arraignment: __ mute __ nolo contendre __ not guilty __ guilty □ Final Pretrial Conference □ Detention (waived __) □ Motion Hearing □ Revocation/ SRV/PV □ Bond Violation □ Change of Plea ☒ Sentencing □ Trial □ Other: _____	□ Defendant's Rights □ Waiver of Indictment □ Other: _____ _____ Court to Issue: □ Order of Detention □ Notice of Sentencing □ Order Appointing Counsel □ Other: _____	Charging Document: □ Read □ Reading Waived Guilty Plea to Count(s) _____ of the _____ Count(s) to be dismissed at sentencing: _____ □ Presentence Report Ordered □ Presentence Report Waived □ Plea Accepted by the Court □Plea Taken under Advisement □ No Written Plea Agreement

SENTENCING	
Imprisonment: 192 months Probation: N/A Supervised Release: 5 years Fine: $ N/A Restitution: $ $2,730,319.54 Special Assessment: $ 100.00	Plea Agreement Accepted: ☒ Yes ☐ No Defendant informed of right to appeal: ☒ Yes ☐ No Counsel informed of obligation to file appeal: ☒ Yes ☐ No Conviction Information: Date: 11/12/2021 By: Plea As to Count (s): 1 of the Felony Information
ADDITIONAL INFORMATION: Defendant's request for variance withdrawn on the record; Defendant's motion for downward departure, as requested in Defendant's sentencing memorandum (ECF No. 32), denied; order to issue.	

CUSTODY/RELEASE STATUS	BOND AMOUNT AND TYPE
Remanded to USM	$
CASE TO BE:	**TYPE OF HEARING:**
Reporter/Recorder: Genevieve Hamlin	**Deputy Clerk:** A. Mertens

APPENDIX F

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MICHIGAN SOUTHERN DIVISION

No: 1:21cr185

[Filed December 14, 2021]

UNITED STATES OF AMERICA,
Plaintiff,

vs.

JOSHUA LOUIS RUPP,
Defendant.

Before:

THE HONORABLE SALLY J. BERENS
U.S. Magistrate Judge
Grand Rapids, Michigan
Friday, November 12, 2021
Initial Appearance, Arraignment
and Plea Proceedings

APPEARANCES:

MR. ANDREW BIRGE, U.S. ATTORNEY
By: MR. JUSTIN MATTHEW PRESANT
330 Ionia Avenue, NW
P.O. Box 208

Grand Rapids, MI 49501-0208
(616) 808-2184

On behalf of the Plaintiff;

MR. LUCAS XAVIER DILLON, SR.
Dillon & Samuel, PLLC
1350 East Lake Lansing Road, Suite D
East Lansing, MI 48823
(419) 481-3028

On behalf of the Defendant.

Also Present: Rebecca Wyles, FBI

TRANSCRIBED BY: MR. PAUL G. BRANDELL, CSR-4552, RPR, CRR

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11/12/2021
3:13 p.m.

THE CLERK: The Court calls case No. 21cr185, United States versus Joshua Louis Rupp.

THE COURT: All right. This is the date and time set for a change of plea hearing in this matter. Let's start with appearance and introductions.

MR. PRESANT: Good afternoon, Your Honor. Justin Presant for the United States. With me at counsel table today is FBI Special Agent Rebecca Wyles.

THE COURT: Good afternoon.

MR. DILLON: Good afternoon, Your Honor. Luke Dillon on behalf of my client, Joshua Rupp, who is present and seated to my left.

THE COURT: Good afternoon to both of you. All right. Mr. Dillon, does your client still wish to proceed?

MR. DILLON: We do, Your Honor.

THE COURT: Mr. Rupp, you have the right -- we are going to do basically three hearings together today. You would normally get an initial appearance and an arraignment and then a change of plea hearing. It's my understanding you'd like to do all of those in one fell swoop, is that right?

THE DEFENDANT: Yes.

THE COURT: All right. You have the right to have a District Court Judge conduct the plea hearing, the change of

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plea. I am a United States Magistrate Judge. The difference is that a District Court Judge is appointed by the president for life. I am appointed by the District Court Judges for a term of years. So I can't adjudicate you guilty today, but what I can do is ask you all of the same questions that Judge Jarbou would ask and then make a recommendation regarding your plea. Do you understand the difference?

THE DEFENDANT: Yes.

THE COURT: All right. And do you consent to my conducting this hearing today?

THE DEFENDANT: Yes.

THE COURT: Has anyone threatened you with anything or promised you anything to get you to give up your right to have Judge Jarbou conduct the plea hearing today?

THE DEFENDANT: No.

THE COURT: And are you making that decision of your own free will?

THE DEFENDANT: Yes.

THE COURT: Incidentally, Counsel, did someone inquire of Judge Jarbou's chambers to determine if she wanted to take this plea herself?

MR. PRESANT: Yes, Your Honor, we did, and Judge Jarbou gave us permission to have the plea before Your Honor.

THE COURT: Great. Thank you.

Mr. Rupp, has anyone threatened you with anything or

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promised you anything to get you to give up your right to have a District Court Judge conduct this hearing?

THE DEFENDANT: No.

THE COURT: So this is a decision you're making of your own free will?

THE DEFENDANT: Yes.

THE COURT: All right. And I have in front of me the Court's consent form, which basically just explains the same things that I just did about having a Magistrate Judge instead of a District Court Judge conduct the hearing. Is that your signature on the form?

THE DEFENDANT: Yes, it is.

THE COURT: And did you read and understand that form before you signed it?

THE DEFENDANT: Yes.

THE COURT: I must also ask if counsel consents, Mr. Dillon?

MR. DILLON: I do.

THE COURT: And Mr. Presant?

MR. PRESANT: Yes, Your Honor.

THE COURT: I'd also note that this is the first hearing at which both counsel are present, so we will issue a written Rule 5(f) order and incorporate that as an oral order of the Court as well.

Mr. Rupp, how old are you?

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THE DEFENDANT: I am 37.

THE COURT: How far did you get in school?

THE DEFENDANT: Some college.

THE COURT: All right. So able to read, write and understand English just fine?

THE DEFENDANT: Yes.

THE COURT: Anything bothering you today physically or mentally that would make it difficult for you to understand what's happening in court?

THE DEFENDANT: No.

THE COURT: Have you taken any medications, other drugs or alcohol in the last 24 hours?

THE DEFENDANT: No.

THE COURT: Mr. Dillon, do you have any reason to believe he is not competent to proceed today?

MR. DILLON: I have no reason.

THE COURT: All right. He also appears to me to be understanding what I'm saying and responding normally to that, and he appears to be competent to proceed today.

Mr. Rupp, you have the right to counsel at every stage of the proceedings against you. Have you been satisfied with Mr. Dillon's representation of you?

THE DEFENDANT: Yes. I have.

THE COURT: And Mr. Dillon, are you appointed on this case?

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MR. DILLON: I am.

THE COURT: All right. So Mr. Rupp, you understand that not being able to pay for a lawyer does not mean that you would not be entitled to counsel at trial? In other words, not having funds to pay for a lawyer isn't a reason not to go to trial. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: All right. You also have the right to remain silent, but anything you do say could be used against you at your trial in this matter. If you decide to plead guilty, though, you will be giving up that right because I will be asking you questions about what you did that makes you guilty of this crime. Do you understand that?

THE DEFENDANT: Yes. I do.

THE COURT: And are you willing to give up that right today?

THE DEFENDANT: Yes.

THE COURT: All right. I am going to have my courtroom deputy administer an oath to tell the truth.

JOSHUA LOUIS RUPP, DEFENDANT, WAS DULY SWORN

THE COURT: Now, you were just sworn to tell the truth, and that means that if you were to make a false statement the government would have the right to use that false statement that you gave under oath against you in a prosecution for perjury or making a false statement. Do you understand

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that?

THE DEFENDANT: Yes.

THE COURT: Have you had an opportunity to review the felony information with your lawyer?

THE DEFENDANT: Yes. I have.

THE COURT: Do you have it in front of you there? Do you have it in front of you?

THE DEFENDANT: Yes. I do. Sorry.

THE COURT: That's all right. You are charged with one count of securities fraud, and what is charged here is that between May of 2015 and July of 2019, in Kent and Ottawa Counties, which are in this judicial district and elsewhere, it's charged that you knowingly and intentionally executed a scheme and artifice to defraud persons in connection with securities of issuers for the class of securities that are registered under § 12 of the Securities Exchange Act of 1934 or that are required to file reports under § 15(d) of the Securities Exchange Act of 1934.

Specifically what's alleged is that you executed a scheme by recruiting investors using materially false and fraudulent pretenses, representations and promises basically by recruiting people who believed that you were making significant returns on your investments for them and that you were a very talented trader. And it's alleged that you defrauded all of these investors, including a number of people who are listed in

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the indictment by their initials.

The indictment lists a number of materially false and fraudulent pretenses, representations and promises to investors including that you were a licensed broker or trader when you were not and knew you were not. That you worked for a firm with the initial U. or a firm with the initials B.T. when you did not and you knew you did not.

That you worked with certain individuals who did not exist and that the principal of the investments could not be lost because of your choice of investments, trading strategy, insurance, special operations or some combination of those when you knew that the principal could be lost.

It's also alleged that you made material false and fraudulent pretenses and representations to conceal the scheme after receiving investments including by providing investors false statements, showing increases in value to their investments and helping them set up an application on their cell phones that purported to track their investments when in fact the returns displayed on the app were fictitious and based on dummy accounts set up for the investors that you had set up for the investors, and that you provided market updates to the investors and describes esoteric trading strategies so as to appear to be a licensed trader.

It is further alleged that you produced fraudulent documents in the course of executing the scheme. There are at

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least four listed in the indictment, including a Securities Prop 55 license purportedly issued by the State of Michigan. That was created from a residential builder's license that the state had in fact issued to you; fraudulent statements purporting to show returns on investments that did not accurately reflect the state of the invested accounts; forged and modified checks that an investor had given to you which you created by changing the intended payee or amount of the checks; and then business documents related to investors' accounts, including some that contained the logos of the brokerage firms that with B.T. or U. as their initials that suggested that you were registered with the State of Michigan even though you had never been a registered broker or dealer with the securities and exchange commission or FINRA, and were not associated with a registered broker-dealer.

Finally, it's alleged that you obtained more than 2.7 million dollars from investors and that you lost most of the money trading securities and also misappropriated more than $500,000 of investor's money on personal expenses including but not limited to vacations, electronics and groceries. If true that would be a violation of 18 USC 1348(1).

I don't want you to say anything about the charge at this point. Do you understand what you have been charged with?

THE DEFENDANT: Yes.

THE COURT: There are a number of elements that the

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government would have to prove if it were required to prove its case at trial beyond a reasonable doubt. First it would have to prove that you executed a scheme or artifice to defraud any person. Second, it would to prove that the scheme to defraud was in connection with any security of an issuer of the class of securities registered under § 12 of the Securities Exchange Act of 1934, 15 USC 78(l), or that is required to file reports under § 15(d) of the Securities Exchange Act of 1934, which is 15 USC 780(d). And then third it would have to prove that you did so knowingly and with the intent to defraud.

Do you understand what the elements are that the government would have to prove?

THE DEFENDANT: Yes.

THE COURT: There are certain statutory penalties that are associated with this offense. If you are convicted, which you would be if you plead guilty, you could be sentenced to a period of imprisonment of up to 25 years and/or a fine of up to $250,000 or the greater of twice the gross gain or gross loss from the offense, not more than five years of supervised release, a special assessment of $100, and mandatory restitution. Do you understand what the statutory penalties are in your case?

THE DEFENDANT: Yes.

THE COURT: Supervised release is a period of time following incarceration during which a Defendant is under the

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supervision of the Court. During that time if the Defendant were to violate a term of his supervised release he could be sent back to prison. In some circumstances that could result in someone spending more time in custody than is called for by the statutory maximum for the offense. Do you understand the concept of supervised release?

THE DEFENDANT: Yes.

THE COURT: Has your lawyer talked to you about the sentencing guidelines?

THE DEFENDANT: Yes.

THE COURT: Now, the guidelines are advisory but the Court has to calculate them and consider them in determining your sentence. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: Now, Judge Jarbou and only Judge Jarbou can determine your sentencing guidelines, but if you plead guilty what will happen is that a probation officer will gather information both from you, through your lawyer, and from the government, and draft a presentence report. That presentence report will contain an initial calculation of your initial advisory guideline range. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: Both you and the government will have an opportunity to review and object to the

presentence report including that calculation of the advisory guidelines range.

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Do you understand that, too?

THE DEFENDANT: Yes.

THE COURT: Do you understand that Judge Jarbou won't be able to determine the ultimate advisory guideline sentence range for your case until after that presentence report has been prepared and after both you and the government have had an opportunity to challenge the report?

THE DEFENDANT: Yes.

THE COURT: Do you also understand that the Court must consider any possible departures under the sentencing guidelines?

THE DEFENDANT: Yes.

THE COURT: Have you had an opportunity to talk about all those types of factors with your lawyer?

THE DEFENDANT: Yes.

THE COURT: In addition, after it has calculated the guidelines, the Court will then also consider the applicable sentencing factors that are set out in the statute, 18 USC 3553(a). Those include, among other things, the nature and circumstances of the offense, your history and characteristics, the need for the sentence imposed, the types of sentences available, including the need for restitution, other factors like that. Have you and your lawyer had an opportunity to

talk about all those factors that the Court has to consider?

THE DEFENDANT: Yes.

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THE COURT: Now, Judge Jarbou has the authority to impose a sentence that is more or less severe than is called for by the guidelines. Do you understand that, too?

THE DEFENDANT: Yes.

THE COURT: Has anyone made you any promises about what your sentence will be?

THE DEFENDANT: No.

THE COURT: That's good because sitting here today Judge Jarbou couldn't possibly know what your sentence will be, and if your sentence is more severe than you think it might be sitting here today you'll still be bound by your plea and you won't be able to withdraw it on that basis. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: Parole in the federal system has been abolished. So if you are sentenced to prison you won't be released early on parole. Do you understand that, too?

THE DEFENDANT: Yes.

THE COURT: And if you are convicted of a felony, you may be deprived of certain civil rights to the extent you still hold them, including the rights to vote, to hold

office, to serve on a jury, and to possess firearms. Do you understand all of that?

THE DEFENDANT: Yes.

THE COURT: Mr. Dillon, is he a United States citizen?

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MR. DILLON: He is.

THE COURT: And is he on probation or parole?

MR. DILLON: He is not.

THE COURT: All right.

MR. DILLON: He is serving a state sentence but that's it.

THE COURT: And I don't know to what extent the fact that you are serving a state sentence may -- whether this conviction may affect when you come up for parole in the state -- on your state sentence. Do you understand that it might have some effect on how -- when you are released under the state sentence?

THE DEFENDANT: Yes.

THE COURT: All right. Do you understand all of the penalties that we have just discussed?

THE DEFENDANT: Yes.

THE COURT: Do you also understand that both you and the government under some circumstances will have the right to appeal your sentence?

THE DEFENDANT: Yes.

THE COURT: And we'll go over that a little bit more in connection with the plea agreement, but at this point I am going to switch gears and talk to you a little bit about your rights.

First off, you are indicating that you want to plead

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guilty to the felony information, and you have the right to be indicted. So you have -- and what you have been charged with is a felony information, and that's a document where the U.S. Attorney's Office has written the charge and signed the charge in order to charge you with this crime. If you wanted to, you could require that a grand jury review the charge. A grand jury is a group of between 16 and 23 people who review charges under consideration. The majority of them have to agree that there is probable cause to support the indictment. That would be a different group of people than would be ultimately a jury at trial. Do you understand the concept of indictment?

THE DEFENDANT: Yes.

THE COURT: And you understand you have the right to indictment, to have the grand jury review this charge against you?

THE DEFENDANT: Yes.

THE COURT: And is it your intension to give up your right to be indicted at this time?

THE DEFENDANT: Yes.

THE COURT: Has anyone threatened you or coerced you or promised you anything in order to get you to give up your right to be indicted?

THE DEFENDANT: No.

THE COURT: I have in front of me a waiver of indictment form, which basically explains what I just explained

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about the difference between a felony information and an indictment. Is that your signature on the form?

THE DEFENDANT: Yeah.

THE COURT: And did you read and understand that form before you signed it?

THE DEFENDANT: Yes.

THE COURT: All right. I do find that that is a knowing and voluntary waiver of indictment.

You also have the right to plead not guilty and to persist in that plea. That could be a plea of not guilty or a to stand mute, in which case a not guilty plea would be entered on your behalf, or if Judge Jarbou would consent, and the United States Attorney's Office were to consent, then you could plead no contest, or you could plead guilty. But you have the right to enter a plea of -- a not guilty plea and persist in that plea and take this case to trial. Do you understand all of that?

THE DEFENDANT: Yes.

THE COURT: You have the right to a trial by jury with the assistance of your lawyer, and as we have noted, the fact that you can't afford a lawyer is no reason not to go to trial because you would still have assistance of counsel who was appointed to represent you. Do you understand that, too?

THE DEFENDANT: Yes.

THE COURT: You have the right to at least 30 days to

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prepare for that trial and the right to confront and cross examine the witnesses against you as well as the right to call witnesses on your own behalf and to compel their attendance with a subpoena. Do you understand that, too?

THE DEFENDANT: Yes.

THE COURT: You have the right not to be compelled to incriminate yourself as we've discussed and the right not to testify, and if you decided not to testify, then Judge Jarbou would instruct the jury that they could not hold that against you. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: At the same time, you have the right to testify and to present evidence on your own behalf, although you are under no obligation to do that because you are presumed innocent of this charge and the government and only the government has the burden

of proving guilt on each element of the charge beyond a reasonable doubt. Do you understand all of that?

THE DEFENDANT: Yes.

THE COURT: If you plead guilty, though, there will be no trial of any kind, and you will be waiving your right to a trial. In fact, you will be giving up all the rights that I just explained except the right, of course, to have counsel with you throughout these proceedings. Do you understand all of your rights as I have explained them to you?

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THE DEFENDANT: Yes.

THE COURT: Any questions about any of that?

THE DEFENDANT: No.

THE COURT: All right. To sum up where we are then, do you understand the nature of the charge, the penalties that are provided by law, and your rights as I have explained them to you?

THE DEFENDANT: Yes.

THE COURT: Do you feel like you've had enough time to talk with your lawyer such that you are ready to make what is a very important decision for your life today?

THE DEFENDANT: Yes.

THE COURT: In that case, how do you plead to securities fraud as set out in the felony information?

THE DEFENDANT: Guilty.

THE COURT: Has anyone threatened you to get you to plead guilty?

THE DEFENDANT: No.

THE COURT: Anyone forcing you to plead guilty.

THE DEFENDANT: No.

THE COURT: Anyone made you any promises apart from what's in the plea agreement?

THE DEFENDANT: No.

THE COURT: Is your choice purely voluntary and an act of free will?

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THE DEFENDANT: Yes.

THE COURT: And again, do you feel like you've had adequate time to think about it and talk about it with your lawyer?

THE DEFENDANT: Yes.

THE COURT: All right. I understand that there is a plea agreement which was filed at ECF No. 6. Do you have that in front of you, Mr. Rupp?

THE DEFENDANT: Yes. I do.

THE COURT: All right. I am going to have you turn first to the last page, which is page 12. I see at the top Mr. Presant's signature and at the bottom Mr. Dillon's signature. Is that signature in the middle yours?

THE DEFENDANT: Yes.

THE COURT: And did you sign this agreement on approximately October 11 of this year?

THE DEFENDANT: Yes.

THE COURT: Did you read and understand this whole agreement before you signed it?

THE DEFENDANT: Yes.

THE COURT: And did you feel like you had enough time to talk about it with your lawyer before you signed it?

THE DEFENDANT: Yes.

THE COURT: Did you agree with everything in the plea agreement before you signed it?

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THE DEFENDANT: Yes.

THE COURT: All right. I am going to read you the paragraph that's above your name. It says, I have read this agreement and carefully discussed every part of it with my attorney. I understand the terms of this agreement and I voluntarily agree to those terms. My attorney has advised me of my rights, of possible defenses, of the sentencing provisions and the consequences of entering into this agreement. No promises or inducements have been made to me other than those contained in this agreement. No one has threatened or forced me in any way to enter into this agreement. Finally, I am satisfied with the

representation of my attorney in this matter. Was all of that true when you signed this agreement?

THE DEFENDANT: Yes.

THE COURT: And is it true today?

THE DEFENDANT: Yes.

THE COURT: All right. At this point I am going to ask Mr. Presant to place on the record the portions of the plea agreement that I haven't covered that he believes we should discuss on the record, skipping over the factual basis of guilt for now.

MR. PRESANT: Thank you, Your Honor.

I believe Your Honor has covered both paragraphs 1, 2 and 3 of the agreement.

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Paragraph 4 of the agreement indicates that Defendant understands that he will be required to pay full restitution, and has some details, including the approximate amount of restitution that the parties currently believe applies, but also recognizing that that amount could change based on facts that come to the attention of the parties prior to sentencing.

The Court has covered paragraph 5. We are skipping over paragraph 6 for now.

Paragraph 7 sets forth the government's agreements to Mr. Rupp. Subparagraph A indicates the government's promises regarding credit for acceptance of responsibility and subparagraph B contains a non-

prosecution agreement. The Court has covered paragraph 8 regarding the sentencing guidelines.

Paragraph 9 sets out the fact that the parties have no agreement about the guidelines range or the applicable guidelines range, and both parties are free to make any arguments they want regarding the guidelines.

Paragraph 10 the Court has covered. That's the waiver of constitutional rights Mr. Rupp is giving up by pleading guilty.

Paragraph 11 contains the waiver of other rights. Subparagraph A is the waiver of his right to appeal or collaterally attack his sentence, and he is essentially giving up all those rights except those that are specifically enumerated in little paragraph -- or paragraph ii, which are

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those six exceptions listed there, which are the only ones that he can use as the basis to appeal or collaterally attack his sentence. And then subparagraph B is a waiver of the right to any FOIA requests.

Paragraph 12 indicates that the Court isn't a party to this agreement. Paragraph 13 indicates that the agreement is limited to the parties, and so the main point in that paragraph is I only have authority to bind the one small component of the United States Government. That's the United States Attorney's Office for the Western District of Michigan. I don't have any authority to represent any other body of the United

States Government, let alone any other state or local prosecuting authority.

Paragraph 14 sets forth certain consequences of breach.

Paragraph 15 indicates that this is the complete agreement. That is, there aren't any side deals or anything like that, and any other agreements need to be reduced to writing.

Thank you, Your Honor.

THE COURT: Thank you.

All right. Mr. Dillon, do you have anything to add to that recitation of the contents of the plea agreement?

MR. DILLON: I do not.

THE COURT: All right. Thank you.

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Mr. Rupp, did you understand everything Mr. Presant said?

THE DEFENDANT: Yes.

THE COURT: And do you agree with everything Mr. Presant said?

THE DEFENDANT: Yes.

THE COURT: All right. I want to just direct your attention to a couple of things. On page 2, the mandatory restitution paragraph, I would just note that the applicable amount of restitution set out here

is 2.7 million, but you understand that number could change before the time of sentencing?

THE DEFENDANT: Yes.

THE COURT: All right. And then on page 9, the appellate waiver. Basically you agree that you are going to give up all of your rights to appeal or collaterally attack your sentence. An appeal is a direct appeal from the district court's judgment to the Sixth Circuit Court of Appeals. A collateral attack is a separate lawsuit, civil lawsuit essentially, that can be brought to attack the process that was used to -- that resulted in your conviction and sentence. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: So basically you are giving up all of your rights except for a number of constitutional rights that can't

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be waived, as well as in paragraphs C and D of subparagraph 2, you can appeal based on an argument that the district court incorrectly determined the guideline sentencing range if you objected at sentencing on that basis. So I want to make sure you understand that you have to actually object at the time of your sentencing if you want to appeal your guidelines determination. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: And then you also can appeal if your sentence is above the guidelines range as is calculated

by the Court and you believe it to be unreasonable. Do you understand that, too?

THE DEFENDANT: Yes.

THE COURT: All right. Do you think you have been promised anything that is not in the plea agreement?

THE DEFENDANT: No.

THE COURT: Counsel, are you aware of any other promises, Mr. Dillon?

MR. DILLON: There are none.

THE COURT: Mr. Presant?

MR. PRESANT: No, Your Honor.

THE COURT: Thank you.

Mr. Rupp, one last time on the same topic. Do you understand the terms of the plea agreement?

THE DEFENDANT: Yes. I do.

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THE COURT: And again, do you feel like you have had adequate time to review it and talk about it with your lawyer before agreeing to it?

THE DEFENDANT: Yes.

THE COURT: Now, only Judge Jarbou can decide whether to accept or reject the plea agreement, and she will do that at the time of sentencing. Do you understand that, too?

THE DEFENDANT: Yes.

THE COURT: At this point, then, what remains is for us to determine that there is a sufficient factual basis of guilt, which means that you agree that there are facts that would support the conviction. Otherwise, you agree that you did what the -- the crime you are being charged with here. So at this stage to start with that, I'll ask Mr. Presant to just place on the record the facts that the government would rely on in proving its case at trial. And if you want to just go through the factual basis in the plea agreement that's certainly fine. If you want to elaborate on that, that's fine, too.

MR. PRESANT: Thank you, Your Honor. Yes. I'll work off the factual basis and maybe also elaborate as we're going through it by way of a proffer.

So paragraph 6A summarizes the scheme here, which parallels the felony information that Your Honor went over at the beginning of the proceeding. That the scheme occurred

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between May 2015 and July 2019. In the scheme the Defendant held himself out to be a licensed broker and securities trader.

First, the Defendant claimed he worked for a certain company with the initial U., and then later that he worked for a company with the initials B.T. During this time period, as said on the information, he conducted business in both Kent and Ottawa Counties here in the Western District of Michigan, Southern Division, and he defrauded at least 19 victims in Michigan and elsewhere, including Florida, by convincing them to give them money to invest in trade

and securities. These facts, as well as some of the facts that I will go onto describe, would be proven using investor, including victim investor testimony.

The Defendant pooled some of the investors' funds in brokerage firms accounts and he also had access to their individual accounts, and we would prove that using both the testimony alluded to and also the financial records of the funds that were actually transferred into the accounts, the trades that the Defendant made inside of those accounts, and other business records.

Moving onto subparagraph B. Using testimony and other records of communications we would show that the Defendant claimed that he was a license broker or trader when he was not and knew he was not. That he worked for one of the two firms mentioned when he, in fact, did not. That he worked under the

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tutelage of these nonexistent people that are identified, and he also represented that the principle of the investments could not be lost for a variety of reasons when in fact he knew they could be lost.

The subparagraph C describes that the Defendant also made a number of false statements -- material false statements in order to conceal the scheme and keep it going, including by providing investors with false statements showing that their investments were appreciating in value when those statements did not accurately reflect the value. There was also an app that he helped some of the investors install on their cell phones which purported to show the returns, and those

returns on the app were also fictitious and based on dummy accounts that he had set up for them. The Defendant also provided market updates to his investors so as to appear to be the licensed trader that he claimed to be when in fact he was not.

Subparagraph D he produced a number of documents in the course of executing the scheme which if tried the government would introduce at trial, including that false and fraudulent Securities Prop 55 license that was a modified residential builders license.

We'd introduce the fraudulent statements which I had previously referenced. There were a couple of forged or modified checks that we would introduce, and then a number of business documents the Defendant provided to investors that

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made a number of materially false and fraudulent claims, including that he was associated with these two firms. That he had completed some special training or qualification examinations in order to be a trader. That he was, in fact, a stockbroker or broker, and those are terms of art in this particular industry or that he had registered with the State of Michigan when he had in fact not registered with the State of Michigan or the SEC or FINRA.

We would also prove using financial records and testimony from the investors that he obtained more than 2.7 million from those investors. The Defendant lost the majority of that money trading securities, including securities that are registered under § 12 of the Securities Exchange Act or that are required to file

reports under § 15(d) of that same act, and those were stocks that are listed on national stock exchanges.

The Defendant also misappropriated more than half a million dollars in investors' money on personal expenses, and the Defendant agrees that the loss amount was more than 3.5 million and the discrepancy between that 2.7 figure on the 3.5 figure goes to intended loss and with attempts to take approximately a million dollars from one particular investor that a bank actually froze.

And then there are other admissions in subparagraph D that the Defendant acknowledges that he acted knowingly and

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with intent to defraud the victims, and he intended to deceive them using these false and fraudulent pretenses and representations to obtain the money for the purchase of securities, and he intended to defraud them of at least some of the principle of their investment.

He acted voluntarily not because of mistake or some other reason, and he in fact devised and executed a deliberate plan in order to execute this particular fraud.

And so in sum the government will rely on testimony, business records or documents provided to the victim investors, financial records from the institutions that had custody of the money while the Defendant was executing this scheme to defraud, and then the Defendant also made certain admissions in

late July or early August of 2019, that the government would likely introduce some of those as well. Thank you, Your Honor.

THE COURT: Thank you. All right.

Mr. Rupp, did you hear everything that Mr. Presant said?

THE DEFENDANT: Yes. I did.

THE COURT: And did you agree with everything that Mr. Presant said?

THE DEFENDANT: Yes.

THE COURT: All right. Why don't you tell me in your own words briefly what you did that makes you guilty of this offense.

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THE DEFENDANT: I gathered together investor funds. I pooled them together, and I basically traded high risk stocks and high risk option strategies that I thought were going to make money but they didn't, and I misrepresented that to the -- to my clients and I lost their money.

THE COURT: All right. And did that happen between May of 2015 and July of 2019?

THE DEFENDANT: Correct.

THE COURT: And were you in Western Michigan at that time?

THE DEFENDANT: Yes.

THE COURT: You maintained offices in Grand Rapids and in Grand Haven?

THE DEFENDANT: Yes.

THE COURT: And did you make statements to those investors to get them to give you money that weren't true?

THE DEFENDANT: Yes.

THE COURT: Did you also make false statements to conceal the scheme after receiving those investments including, for instance, creating this app?

THE DEFENDANT: Yes.

THE COURT: Did you also hold yourself out to be licensed in a way that you were not to sell securities?

THE DEFENDANT: Yes.

THE COURT: And did you tell investors that you were

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associated with a firm with the initials B.T. and one that had the initial U. in order to secure more investments?

THE DEFENDANT: Yes.

THE COURT: Do you agree that you were -- you have never been a registered broker or dealer with the SEC or FINRA?

THE DEFENDANT: Yes.

THE COURT: Did you obtain more than 2.7 million dollars from investors for this scheme?

THE DEFENDANT: I actually did not receive 2.7 million from them. It was less than that. I built their accounts up to that in trading values or built up to that amount but I didn't actually physically receive 2.7 million dollars. It was quite a bit less.

THE COURT: Do you know how much less it was?

THE DEFENDANT: It would be closer to 1.5 probably on that.

THE COURT: All right. And did you use the money that you did receive to trade in the stocks that were either registered under securities 12 of the Securities and Exchange Act of 1934 or that were required in order to trade them in stocks to file reports under § 15(d) of the '34 act?

THE DEFENDANT: Yes.

THE COURT: Those were stocks that were listed on national stock exchanges?

THE DEFENDANT: Correct.

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THE COURT: Did you misappropriate more than $500,000 of investor money that was spent on personal expenses?

THE DEFENDANT: That exact amount I am not sure of but I did use some -- some of that for personal expenses, yes.

THE COURT: All right. Do you disagree with the $500,000 number or are you just not quite sure of it?

THE DEFENDANT: I am just not quite sure.

THE COURT: And do you agree that the intended loss in this case, meaning the amount you intended to get from other people exceeded 3.5 million?

THE DEFENDANT: Yes.

THE COURT: Now, when you did this, did you do this knowingly and with the intent to defraud the investors?

THE DEFENDANT: Yes. I did it knowingly.

THE COURT: All right. And you intended to take the money from them by false pretenses?

THE DEFENDANT: Yeah.

THE COURT: I mean, I suspect that you would also say that you wanted to make the money back for them?

THE DEFENDANT: Yeah. I definitely wanted to make -- I didn't ever take the money being considered that I was going to lose it for them. No. My intensions were to make the money but I did end up losing the money and I relayed it in a way that wasn't the right way and tell everybody that I'd get back to them, and now I am here.

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THE COURT: So fair to say that you know that you made statements to them that were false to get them to give you money to invest?

THE DEFENDANT: Yes, correct.

THE COURT: All right. And you did that voluntarily, not by -- because of a mistake or some other reason?

THE DEFENDANT: Correct. Yes.

THE COURT: And this was a -- this is kind of the same question a bunch of different ways, but that was a deliberate plan of action that you devised in order to be able to invest money to try to make more money?

THE DEFENDANT: Yes, correct.

THE COURT: All right. There was a discrepancy, Mr. Presant, with the 2.7 million. Is that an issue that you want to address or is it sufficient as he stated it?

MR. PRESANT: Your Honor, for the purposes of the factual basis, the government is satisfied with it and we don't think we have to resolve that discrepancy for the purpose of the Court making a report and recommendation regarding acceptance of the plea. I think that's something that we'll go back and take another look at in connection with sentencing. I am comfortable with our number of 2.7 million, but perhaps there is an argument that we haven't considered, and I'm, you know, willing to discuss the matter further with Mr. Dillon.

THE COURT: All right. I take it, then, Mr. Presant,

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that you are satisfied that there is a factual basis for the plea at this point?

MR. PRESANT: Yes, Your Honor.

THE COURT: All right. One more question actually I should have asked you, Mr. Rupp, before I asked Mr. Presant that, but other than that difference between your number of 1.5 million and the 2.7 that is set out in this paragraph, other than that, do you agree with everything in paragraph 6 of the plea agreement?

THE DEFENDANT: Yes.

THE COURT: And did you read that carefully with your lawyer before you signed the plea agreement?

THE DEFENDANT: Yes.

THE COURT: All right. Mr. Dillon, are you also satisfied that there is a factual basis for the plea?

MR. DILLON: Yes. I agree with Mr. Presant that this is -- that is a sentencing issue whether or not that loss is going to be attributed to him or not, but as for the factual basis of the actual fraud the Defense is satisfied.

THE COURT: All right. Well, I will agree and I'll make the following findings. I find that the Defendant understands the nature of the charge and the penalties provided by law. I find that he has made knowingly and with full understanding of each of the rights that I have explained. I find that the plea is voluntary and free of any force, threats

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or promises apart from what is set out in the plea agreement. I also find that the plea has that sufficient factual basis as I said.

I will defer acceptance of the plea agreement to Judge Jarbou, which decision will be made after she has had an opportunity to review the presentence report. I will recommend that Judge Jarbou accept the plea and adjudicate you guilty. The parties will have 14 days from the service of my report and recommendation to make any objections.

So Mr. Rupp, the next thing that will happen is that Judge Jarbou's case manager will schedule a sentencing hearing. Those usually run three to four months out. In the meantime, your lawyer will need your help to talk with the probation officer to provide the information that is necessary to draft that presentence report.

Mr. Rupp, did you understand everything that happened in Court today?

THE DEFENDANT: Yes.

THE COURT: Counsel, anything else we need to take up?

MR. PRESANT: No thank you, Your Honor.

THE COURT: Mr. Dillon?

MR. DILLON: Before the hearing I had a chance to speak to the government in regards to where Mr. Rupp would be held. He has asked to return to the Central

Michigan Correctional Facility. Mr. Presant advised me that there would

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have to be a waiver executed, which he and I can handle. We just want the Court's consent that there will be no objection to him returning to the prison versus staying in Newaygo.

THE COURT: Mr. Presant, do you have a point of view on that?

MR. PRESANT: Yes, Your Honor. I explained to Mr. Dillon that in situations like this where a Defendant is brought here on a writ and requests to go back to MDOC, in theory the government doesn't have an objection, but we do need an anti-shuttling waiver executed before we would be willing to release the writ, and I also don't know what resources the marshal or the MDOC has in order to do the transport, but because the next and probably last hearing in this matter will be sentencing, in theory we have no problem filing another writ to bring him back for sentencing, but before we release the existing writ we need that anti-shuttling waiver and we probably need to confirm that there are resources either from the state or the marshals to do the transport.

THE COURT: All right. Well, I'll let the parties work on that and bring it to the Court's attention again if it is an issue.

I think because this is an initial appearance and arraignment as well, I think I am technically required to ask about the parties' position on detention.

Something of a moot point given the circumstances, but I assume the government is

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requesting detention and that the Defendant is waiving any right to a bond hearing at this point?

MR. DILLON: That's correct, Your Honor.

THE COURT: All right. Mr. Rupp, you understand that you are entitled to a bond hearing in this case?

THE DEFENDANT: Yes.

THE COURT: And that would be a hearing at which the government would have to prove either that you are a risk of nonappearance or a danger to the community. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: All right. And is it your intention to waive or give up your right to that hearing today?

THE DEFENDANT: Yes.

THE COURT: All right. No one threatened you with anything or promised you anything to get you to give up your right to that hearing?

THE DEFENDANT: No.

THE COURT: All right. I do find that that is a knowingly voluntary waiver, particularly under the circumstances.

Anything else anyone can think of we need take up today?

MR. DILLON: No.

MR. PRESANT: No.

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THE COURT: All right. We will be adjourned.

THE CLERK: Court is adjourned.

(Proceeding concluded, 3:54 p.m.)

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C E R T I F I C A T E

I certify that the foregoing is a transcript from the Liberty Court Recording System digital recording of the proceedings in the above-entitled matter to the best of my ability.

/s/_____
Paul G. Brandell, CSR-4552, RPR, CRR
U.S. District Court Reporter
399 Federal Building
Grand Rapids, MI 49503

APPENDIX G

UNITED STATES DISTRICT COURT - WESTERN DISTRICT OF MICHIGAN CRIMINAL MINUTE SHEET

[Filed November 12, 2021]

USA v. Joshua Louis Rupp	**Mag. Judge:** Sally J. Berens

CASE NUMBER	DATE	TIME (begin/ end)	PLACE	INTERPRETER
1:21-cr-00185-HYJ	11/12/2021	3:13 PM - 3:54 PM	Grand Rapids	

APPEARANCES:

Government: Justin Matthew Presant	Defendant: Lucas Xavier Dillon, Sr.	Counsel Designation: CJA Appointment

OFFENSE LEVEL	CHARGING DOCUMENT/ COUNTS	CHARGING DOCUMENT
Felony	Information	Read __ Reading Waived __

TYPE OF HEARING	DOCUMENTS	CHANGE OF PLEA
✔ First Appearance ✔ Arraignment: __ mute __ nolo contendre __ not guilty ✔ guilty __ Initial Pretrial Conference __ Detention (waived __) __ Preliminary (waived __) __ Rule 5 Proceeding __ Revocation/ SRV/PV __ Bond Violation ✔ Change of Plea __ Sentencing __ Other: _____	✔ Defendant's Rights ✔ Waiver of Indictment ✔ Consent to Mag. Judge for Plea __ Other: _____ _____ Court to Issue: ✔ Report & Recommendation ✔ Order of Detention __ Order to file IPTC Statements __ Bindover Order __ Order Appointing Counsel ✔ Other: Rule 5(f) Order	Guilty Plea to Count(s) 1 of the Information Count(s) to be dismissed at sentencing: _____ Presentence Report: ✔ Ordered __ Waived __ Plea Accepted by the Court __ No Written Plea Agreement **EXPEDITED RESOLUTION** __Case appears appropriate for expedited resolution

ADDITIONAL INFORMATION	SENTENCING
	Imprisonment: _____ Probation: _____ Supervised Release: _____ Fine: $ _____ Restitution: $ _____ Special Assessment: $ _____ Plea Agreement Accepted: __ Yes __ No Defendant informed of right to appeal: __ Yes __ No Counsel informed of obligation to file appeal: __ Yes __ No

CUSTODY/RELEASE STATUS	BOND AMOUNT AND TYPE
Detained	$ _____
CASE TO BE: Referred to District Judge	**TYPE OF HEARING:** Further Proceedings
Reporter/Recorder: Digitally Recorded	**Courtroom Deputy: J. Wright**