

APPENDIX

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JUN 23 2022

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JONNY SHINEFLEW,

Defendant-Appellant.

No. 21-30173

D.C. Nos.

2:19-cr-00215-TOR-2

2:19-cr-00215-TOR

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of Washington
Thomas O. Rice, District Judge, Presiding

Submitted June 7, 2022**
Seattle, Washington

Before: GILMAN,** IKUTA, and MILLER, Circuit Judges.

Jonny Shineflew challenges his 70-month sentence imposed after his guilty-plea conviction for conspiring to commit bank fraud, in violation of 18 U.S.C.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

*** The Honorable Ronald Lee Gilman, United States Circuit Judge for the U.S. Court of Appeals for the Sixth Circuit, sitting by designation.

§§ 1349, 1344; committing mail theft, in violation of 18 U.S.C. § 1708; and committing aggravated identify theft, in violation of 18 U.S.C. § 1028A. We have jurisdiction under 28 U.S.C. § 1291. For the following reasons, we affirm the judgment of the district court.

Shineflew first contends that the government breached the Plea Agreement by advocating for the inclusion in Shineflew’s Presentence Report of a three-level manager/supervisor role enhancement based on United States Sentencing Guidelines § 3B.1.1(b). We review *de novo* whether that advocacy violated the terms of the Plea Agreement. *United States v. Schuman*, 127 F.3d 815, 817 (9th Cir. 1997) (*per curiam*).

Because Section 7(d) of the Plea Agreement gave both parties the freedom to support or oppose any Guidelines calculation that was outside of those expressly set forth in the Agreement, and because the Agreement did not expressly restrict either party from arguing for other appropriate adjustments, the government did not violate the Agreement when it sought the role enhancement. *See United States v. Ellis*, 641 F.3d 411, 417 (9th Cir. 2011) (holding that the government breaches a plea agreement if it attempts “to influence the district court to impose a harsher sentence than one to which the government agreed in the plea agreement to recommend” (internal quotation marks omitted) (quoting *United States v. Allen*, 434 F.3d 1166, 1175 (9th Cir. 2006))).

The Plea Agreement also included an integration clause, whereby both parties acknowledged that “this document constitute[d] the entire Plea Agreement between the United States and Defendant, and no other promises, agreements, or conditions exist between the United States and Defendant.” In the face of a fully integrated plea agreement, we cannot consider the prior negotiations or oral agreements that Shineflew now attempts to introduce. *See United States v. Floyd*, 1 F.3d 867, 870 (9th Cir. 1993) (treating a plea agreement as fully integrated where the agreement contained an integration clause).

Shineflew next argues that the district court erred in actually applying the three-level role enhancement. We review the court’s application of the role enhancement under the abuse-of-discretion standard. *United States v. Harris*, 999 F.3d 1233, 1235 (9th Cir. 2021). The record supports the inference that Shineflew orchestrated key components of the bank-fraud conspiracy by directing his codefendants to act, thereby exercising control over at least some of those who were participating in the scheme. *See United States v. Riley*, 335 F.3d 919, 929 (9th Cir. 2003); *see also United States v. Camper*, 66 F.3d 229, 232 (9th Cir. 1995). Shineflew directed at least one codefendant to negotiate fraudulent checks at Home Depot, Walmart, and Lowe’s. To effectuate this criminal activity, he created a false identification for the codefendant and then drove the codefendant to the Home Depot. Shineflew also created a false identification for at least one other

codefendant to further assist in the cashing or negotiating of fraudulent checks. And he directed that codefendant to open a Numerica Credit Union account under a false name. The record supports the inference that Shineflew orchestrated and incentivized these acts by storing scheme-related equipment in his residence, sharing the ill-gotten cash, and paying in advance to open an account. Based on these facts, the district court did not abuse its discretion when it applied the role enhancement.

Shineflew responds by relying on *Harris* to argue that he was, at most, only facilitating his codefendants' participation in the conspiracy, as opposed to managing or directing them. *See* 999 F.3d at 1236. In *Harris*, this court held that participating in making "lists of deviant sexual acts and partners" was "at most analogous to making a suggestion" or "facilitation," which was "not enough for application of the enhancement." *Id.* But the facts of *Harris* are not comparable to those presented in the case before us because, unlike the defendant in *Harris*, the degree of control that Shineflew exercised over other codefendants exceeded mere suggestion or facilitation.

AFFIRMED.

FILED

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

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2:19-cr-00215-TOR

Eastern District of Washington,
Spokane

ORDER

Before: GILMAN,* IKUTA, and MILLER, Circuit Judges.

The panel has unanimously voted to deny appellant's petition for rehearing. Judge Ikuta and Judge Miller voted to deny the petition for rehearing en banc and Judge Gilman so recommended. The petition for rehearing en banc was circulated to the judges of the court, and no judge requested a vote for en banc consideration.

The petition for rehearing and the petition for rehearing en banc are
DENIED.

* The Honorable Ronald Lee Gilman, United States Circuit Judge for the U.S. Court of Appeals for the Sixth Circuit, sitting by designation.

UNITED STATES DISTRICT COURT
Eastern District of Washington

Jul 28, 2021

SEAN F. MCAVOY, CLERK

UNITED STATES OF AMERICA

v.

JONNY SHINEFLEW

JUDGMENT IN A CRIMINAL CASE

Case Number: 2:19-CR-00215-TOR-2

USM Number: 49956-086

Peter Steven Schweda

Defendant's Attorney

THE DEFENDANT:

- ☒ pleaded guilty to count(s) 1, 38 and 41 of the Indictment
- ☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.
- ☐ was found guilty on count(s) after a _____
plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. § 1349 - CONSPIRACY TO COMMIT BANK FRAUD		07/31/2018	1
18 U.S.C. § 1708 - MAIL THEFT		07/31/2018	38
18 U.S.C. § 1028A - AGGRAVATED IDENTITY THEFT		07/31/2018	41

The defendant is sentenced as provided in pages 2 through 8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- ☐ The defendant has been found not guilty on count(s) _____
- ☒ Count(s) 5, 7-8, 17-21, 25, 27, 36, 39-40, 42-43 ☐ is ☒ are dismissed on the motion of the United States

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

7/28/2021

Date of Imposition of Judgment

Signature of Judge

The Honorable Thomas O. Rice

Judge, U.S. District Court

Name and Title of Judge

7/28/2021

Date

DEFENDANT: JONNY SHINEFLEW
Case Number: 2:19-CR-00215-TOR-2

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: 46 months as to Count 1; 46 months as to Count 38- Terms to run concurrent; 2 years as to Count 41- Term to run consecutive to Counts 1 and 38.

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

Defendant be housed at FCI Sheridan and receive credit for the time served in federal custody prior to sentencing in this matter.
Defendant participate in the Residential Drug Abuse Program (RDAP) and the BOP Inmate Financial Responsibility Program.

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

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____
☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____
☐ as notified by the United States Marshal.
☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: JONNY SHINEFLEW
Case Number: 2:19-CR-00215-TOR-2

SUPERVISED RELEASE

Upon release from imprisonment, you shall be on supervised release for a term of: 5 years as to Count 1; 3 years as to Count 38, concurrently; 1 year as to Count 41, concurrently.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance, including marijuana, which remains illegal under federal law.
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. *(check if applicable)*
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 which 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)*

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 be truthful when responding to 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 this judgment imposes restitution, a fine, or special assessment, it is a condition of supervised release that you pay in accordance with the Schedule of Payments sheet of this judgment. You shall notify the probation officer of any material change in your economic circumstances that might affect your ability to pay any unpaid amount of restitution, fine, or special assessments.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

DEFENDANT: JONNY SHINEFLEW
Case Number: 2:19-CR-00215-TOR-2

SPECIAL CONDITIONS OF SUPERVISION

1. You must not open, possess, use, or otherwise have access to any checking account, ATM card, or credit card, without the advance approval of the supervising officer.
2. You must provide the supervising officer with access to any requested financial information and authorize the release of any financial information. The probation office may share financial information with the U.S. Attorney's Office. You must disclose all assets and liabilities to the supervising officer. You must not transfer, sell, give away, or otherwise convey any asset, without the advance approval of the supervising officer.
3. You must not incur any new debt, open additional lines of credit, or enter into any financial contracts, without the advance approval of the supervising officer.
4. You must take medications for the treatment of attention deficit hyperactive disorder as prescribed by the licensed mental health treatment provider. You shall complete a mental health evaluation and follow any treatment recommendations of the evaluating professional which do not require forced or psychotropic medication and/or inpatient confinement, absent further order of the Court. You shall allow reciprocal release of information between the supervising officer and treatment provider. You shall contribute to the cost of treatment according to his ability to pay.
5. You must submit your person, residence, office, vehicle and belongings to a search, conducted by a probation officer, at a sensible time and manner, based upon reasonable suspicion of contraband or evidence of violation of a condition of supervision. Failure to submit to search is grounds for revocation. You must warn persons with whom you share a residence that the premises may be subject to search.
6. You must undergo substance abuse evaluations and, if indicated by a licensed/certified treatment provider, enter into and successfully complete approved substance abuse treatment programs, which could include inpatient treatment and aftercare upon further order of the court. You must contribute to the cost of treatment according to your ability to pay. You must allow full reciprocal disclosure between the supervising officer and treatment provider.
7. You must abstain from the use of illegal controlled substances, and must submit to urinalysis and sweat patch testing, as directed by the supervising officer, but no more than 6 tests per month, in order to confirm continued abstinence from these substances.

U.S. Probation Office Use Only

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

Defendant's Signature _____

Date _____

DEFENDANT: JONNY SHINEFLEW
Case Number: 2:19-CR-00215-TOR-2

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
TOTALS	\$300.00	\$35,810.00	\$.00	\$.00	\$.00

- ☐ The determination of restitution is deferred until _____. An Amended Judgment in a Criminal Case (AO245C) will be entered after such determination.
- ☒ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss***</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
Alphacard	\$3,778.62	\$3,778.62	8th in full
Bank of America	\$2,850.00	\$2,850.00	7th in full
Heritage Bank	\$3,845.49	\$3,845.49	6th in full
Home Depot	\$1,053.18	\$1,053.18	5th in full
Key Bank	\$4,550.00	\$4,550.00	4th in full
Numerica Credit Union	\$4,000.00	\$4,000.00	3rd in full
Umpqua Bank	\$1,115.86	\$1,115.86	2nd in full
Washington Trust Bank	\$8,260.00	\$8,260.00	1st in full
Spokane Teachers Credit Union	\$1,360.72	\$1,360.72	9th in full
Numerica Credit Union	\$4,996.13	\$4,996.13	10th in full
TOTALS	\$35,810.00	\$35,810.00	

- ☒ Restitution amount ordered pursuant to plea agreement \$ all
- ☐ 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:
- | | | |
|--|-------------------------------|--|
| <input checked="" type="checkbox"/> the interest requirement is waived for the | <input type="checkbox"/> fine | <input checked="" type="checkbox"/> restitution |
| <input type="checkbox"/> the interest requirement for the | <input type="checkbox"/> fine | <input type="checkbox"/> restitution is modified as follows: |

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

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

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

DEFENDANT: JONNY SHINEFLEW
Case Number: 2:19-CR-00215-TOR-2

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 payments of \$ _____ due immediately, balance due
☐ not later than _____, or
☐ in accordance with ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☒ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☒ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☒ Special instructions regarding the payment of criminal monetary penalties:

Defendant shall participate in the BOP Inmate Financial Responsibility Program. During the time of incarceration, monetary penalties are payable on a quarterly basis of not less than \$50.00 per quarter.

While on supervised release, monetary penalties are payable on a monthly basis of not less than \$200.00 per month or 10% of the defendant's net household income, whichever is larger, commencing 30 days after the defendant is released from imprisonment.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the following address until monetary penalties are paid in full: Clerk, U.S. District Court, Attention: Finance, P.O. Box 1493, Spokane, WA 99210-1493.

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

☒ Joint and Several

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

See attached Joint and Several Restitution Report at Pages 7 and 8.

☐ 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:

\$8,831.80 in the form of a money judgment in favor of 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

		J & S	Victim
Angus A Johnston 2:19-CR-00215-TOR-1	\$3,778.62	\$3,778.62	Alphacard
Anthony E Wright 2:19-CR-00215-TOR-6	\$3,778.62	\$384.90	Alphacard
Britney R McDaniel 2:19-CR-00215-TOR-7	\$3,778.62	\$641.50	Alphacard
Jordan L Yates 2:19-CR-00215-TOR-9	\$3,778.62	\$641.50	Alphacard
Tyler A Bordelon 2:19-CR-00215-TOR-10	\$3,778.62	\$256.60	Alphacard
Adrianna N McCrea 2:19-CR-00215-TOR-8	\$2,850.00	\$2,850.00	Bank of America
Angus A Johnston 2:19-CR-00215-TOR-1	\$2,850.00	\$2,850.00	Bank of America
Anthony E Wright 2:19-CR-00215-TOR-6	\$2,850.00	\$290.40	Bank of America
Britney R McDaniel 2:19-CR-00215-TOR-7	\$2,850.00	\$484.00	Bank of America
Jordan L Yates 2:19-CR-00215-TOR-9	\$2,850.00	\$484.00	Bank of America
Tyler A Bordelon 2:19-CR-00215-TOR-10	\$2,850.00	\$193.60	Bank of America
Angus A Johnston 2:19-CR-00215-TOR-1	\$3,845.49	\$3,845.49	Heritage Bank
Anthony E Wright 2:19-CR-00215-TOR-6	\$3,845.49	\$391.80	Heritage Bank
Britney R McDaniel 2:19-CR-00215-TOR-7	\$3,845.49	\$653.00	Heritage Bank
Jordan L Yates 2:19-CR-00215-TOR-9	\$3,845.49	\$653.00	Heritage Bank
Tyler A Bordelon 2:19-CR-00215-TOR-10	\$3,845.49	\$261.20	Heritage Bank
Angus A Johnston 2:19-CR-00215-TOR-1	\$1,053.18	\$1,053.18	Home Depot
Anthony E Wright 2:19-CR-00215-TOR-6	\$1,053.18	\$107.10	Home Depot
Britney R McDaniel 2:19-CR-00215-TOR-7	\$1,053.18	\$178.50	Home Depot
Jared S Pilon 2:19-CR-00215-TOR-4	\$1,053.18	\$1,053.18	Home Depot
Jordan L Yates 2:19-CR-00215-TOR-9	\$1,053.18	\$178.50	Home Depot
Tyler A Bordelon 2:19-CR-00215-TOR-10	\$1,053.18	\$71.40	Home Depot
Adrianna N McCrea 2:19-CR-00215-TOR-8	\$4,550.00	\$4,550.00	Key Bank
Angus A Johnston 2:19-CR-00215-TOR-1	\$4,550.00	\$4,550.00	Key Bank
Anthony E Wright 2:19-CR-00215-TOR-6	\$4,550.00	\$463.50	Key Bank
Britney R McDaniel 2:19-CR-00215-TOR-7	\$4,550.00	\$772.50	Key Bank
Jordan L Yates 2:19-CR-00215-TOR-9	\$4,550.00	\$772.50	Key Bank
Tyler A Bordelon 2:19-CR-00215-TOR-10	\$4,550.00	\$309.00	Key Bank
Angus A Johnston 2:19-CR-00215-TOR-1	\$4,000.00	\$4,000.00	Numerica Credit Union
Anthony E Wright 2:19-CR-00215-TOR-6	\$4,000.00	\$407.40	Numerica Credit Union
Britney R McDaniel 2:19-CR-00215-TOR-7	\$4,000.00	\$679.00	Numerica Credit Union
Jordan L Yates 2:19-CR-00215-TOR-9	\$4,000.00	\$679.00	Numerica Credit Union
Tabitha R Shineflew 2:19-CR-00215-TOR-3	\$4,000.00	\$2,000.00	Numerica Credit Union

Tyler A Bordelon 2:19-CR-00215-TOR-10	\$4,000.00	\$271.60	Numerica Credit Union
Angus A Johnston 2:19-CR-00215-TOR-1	\$1,115.86	\$1,115.86	Umpqua Bank
Anthony E Wright 2:19-CR-00215-TOR-6	\$1,115.86	\$113.70	Umpqua Bank
Britney R McDaniel 2:19-CR-00215-TOR-7	\$1,115.86	\$189.50	Umpqua Bank
Jordan L Yates 2:19-CR-00215-TOR-9	\$1,115.86	\$189.50	Umpqua Bank
Tyler A Bordelon 2:19-CR-00215-TOR-10	\$1,115.86	\$75.80	Umpqua Bank
Adrianna N McCrea 2:19-CR-00215-TOR-8	\$8,260.00	\$2,850.00	Washington Trust Bank
Angus A Johnston 2:19-CR-00215-TOR-1	\$8,260.00	\$8,260.00	Washington Trust Bank
Anthony E Wright 2:19-CR-00215-TOR-6	\$8,260.00	\$841.20	Washington Trust Bank
Britney R McDaniel 2:19-CR-00215-TOR-7	\$8,260.00	\$1,402.00	Washington Trust Bank
Jordan L Yates 2:19-CR-00215-TOR-9	\$8,260.00	\$1,402.00	Washington Trust Bank
Michael John Slater 2:19-CR-00215-TOR-5	\$8,260.00	\$2,555.00	Washington Trust Bank
Tyler A Bordelon 2:19-CR-00215-TOR-10	\$8,260.00	\$560.80	Washington Trust Bank

1 Joseph H. Harrington
2 Acting United States Attorney
3 Eastern District of Washington
4 Ann T. Wick
5 Assistant United States Attorney
6 Post Office Box 1494
7 Spokane, WA 99210-1494
8 Telephone: (509) 353-2767

9 UNITED STATES DISTRICT COURT
10 FOR THE EASTERN DISTRICT OF WASHINGTON

11 UNITED STATES OF AMERICA,

12 Plaintiff,

2:19-CR-00215-2-TOR

13 v.

PLEA AGREEMENT

14 JONNY SHINEFLEW,

15 Defendant.

16 Plaintiff, United States of America, by and through Joseph H. Harrington, Acting
17 United States Attorney for the Eastern District of Washington, and Ann T. Wick,
18 Assistant United States Attorney for the Eastern District of Washington; Defendant
19 Jonny Shineflew; and Defendant's counsel, Pete Schweda, agree to the following Plea
20 Agreement:

21 1) Guilty Plea and Maximum Statutory Penalties:

22 Defendant agrees to plead guilty to Counts 1, 38, and 41 of the Indictment, filed
23 on December 18, 2019, which charges Defendant with Conspiracy to Commit Bank
24 Fraud, in violation of 18 U.S.C. §§ 1349, 1344; Mail Theft, in violation of 18 U.S.C. §
25 1708; and Aggravated Identity Theft, in violation of 18 U.S.C. § 1028A.

26 Defendant understands that the charge of Conspiracy to Commit Bank Fraud is a
27 Class B felony and that the maximum statutory penalty is: not more than a 30-year term
28 of imprisonment; a fine not to exceed \$1,000,000, or double the gross proceeds of the

1 criminal activity; a term of supervised release of not more than five (5) years; a \$100
2 special penalty assessment; and the payment of restitution.

3 Defendant understands that the charge of Mail Theft is a Class D felony and that
4 the maximum statutory penalty is: not more than a 5-year term of imprisonment; a fine
5 not to exceed \$250,000; a term of supervised release of not more than five (5) years; and
6 a \$100 special penalty assessment.

7 Defendant understands that the charge of Aggravated Identity Theft is a Class E
8 felony and that the required statutory penalty is two (2) years of imprisonment
9 consecutive to any other sentence. Defendant further understands that the maximum
10 statutory penalty also includes a fine not to exceed \$250,000; a term of supervised
11 release of not more than one (1) year; and a \$100 special penalty assessment.

12 Lastly, Defendant understands that a violation of a condition of supervised release
13 carries an additional penalty of re-imprisonment for all or part of the term of supervised
14 release, pursuant to 18 U.S.C. § 3583(e)(3), without credit for time previously served on
15 post-release supervision.

16 2) The Court is Not a Party to the Agreement:

17 The Court is not a party to this Plea Agreement and may accept or reject this Plea
18 Agreement. Sentencing is a matter that is solely within the discretion of the Court.
19 Defendant understands that the Court is under no obligation to accept any
20 recommendations made by the United States and/or by Defendant; that the Court will
21 obtain an independent report and sentencing recommendation from the U.S. Probation
22 Office; and that the Court may, in its discretion, impose any sentence it deems
23 appropriate up to the statutory maximums stated in this Plea Agreement.

24 Defendant acknowledges that no promises of any type have been made to
25 Defendant with respect to the sentence the Court will impose in this matter. Defendant
26 understands that the Court is required to consider the applicable sentencing guideline
27 range, but may depart upward or downward under the appropriate circumstances.
28

1 3) Waiver of Constitutional Rights:

2 Defendant understands that by entering this plea of guilty, Defendant is knowingly
3 and voluntarily waiving certain constitutional rights, including:

- 4 a) The right to a jury trial;
5 b) The right to see, hear and question the witnesses;
6 c) The right to remain silent at trial;
7 d) The right to testify at trial; and
8 e) The right to compel witnesses to testify.

9 While Defendant is waiving certain constitutional rights, Defendant understands
10 that Defendant retains the right to be assisted through the sentencing and any direct
11 appeal of the conviction and sentence by an attorney, who will be appointed at no cost if
12 Defendant cannot afford to hire an attorney. Defendant also acknowledges that any
13 pretrial motions currently pending before the Court are waived.

14 4) Elements of the Offense:

15 The United States and Defendant agree that in order to convict Defendant of
16 Conspiracy to Commit Bank Fraud, in violation of 18 U.S.C. §§ 1349 and 1344, as
17 charged in Count 1 of the Indictment, the United States would have to prove beyond a
18 reasonable doubt the following elements:

- 19 a) Between on or about March 15, 2018, and on or about July 31, 2018, in
20 the Eastern District of Washington, there was an agreement between
21 Defendant and others to commit bank fraud, in violation of 18 U.S.C.
22 §1344, as charged in Count 1 of the Indictment; and
23 b) Defendant became a member of the conspiracy, knowing its object and
24 intending to help accomplish it.

25 The United States and Defendant agree that in order to convict Defendant
26 of Mail Theft, in violation of 18 U.S.C. § 1708, as charged in Count 38 of the
27 Indictment, the United States would have to prove beyond a reasonable doubt the
28 following elements:

- 1 a) Check number 9550, issued on the account of K.S. and intended
2 for the Internal Revenue Service, was stolen from a private mail
3 box, letter box, mail receptacle, or other authorized depository for
4 mail;
5 b) Defendant possessed the check on or about May 30, 2018, in the
6 Eastern District of Washington; and
7 c) At the time Defendant possessed the check, he knew the check
8 was stolen.

9 The United States and Defendant agree that in order to convict Defendant
10 of Aggravated Identity Theft, in violation of 18 U.S.C. § 1028A, as charged in
11 Count 41 of the Indictment, the United States would have to prove beyond a
12 reasonable doubt the following:

13 On or about May 30, 2018, Defendant did, during and in relation to
14 the crime of conspiracy to commit bank fraud, knowingly possess or use,
15 without lawful authority, a means of identification of another person, to-
16 wit: L.S.

17 5) Factual Basis and Statement of Facts:

18 The United States and Defendant stipulate and agree that the United States could
19 prove the following facts beyond a reasonable doubt at trial and that these facts
20 constitute an adequate factual basis for Defendant's guilty plea. This statement of facts
21 does not preclude either party from presenting and arguing, for sentencing purposes,
22 additional facts that are relevant to the guideline computation or sentencing, unless
23 otherwise prohibited in this Plea Agreement.

24 Between March 15 and July 31, 2018, Defendant entered into an agreement with
25 co-defendants and others to commit bank fraud, in violation of 18 U.S.C. §§ 1349 and
26 1344. Defendant and his co-defendants unlawfully obtained checks, altered the stolen
27 checks, and presented the altered checks for payment at financial institutions for the use
28 and benefit of the members of the conspiracy. Defendant and his co-conspirators

1 utilized computer equipment and printers to create false identifications to be used in
2 connection with presenting the fraudulent checks for payment, at times using the
3 identities of real people without their knowledge or consent.

4 Defendant repeatedly executed the scheme and artifice of the bank fraud
5 conspiracy, as described in the Indictment. On the dates alleged in the Indictment,
6 Defendant, either alone or with a co-defendant, passed stolen, fraudulently altered, and
7 counterfeit checks, numbered 1385, 4276, 1248, 9825, and 52820, at Numerica Credit
8 Union, and Wal-Mart, located in the Eastern District of Washington, and a business
9 named Alphacard in Portland, Oregon. The amounts for which the checks were written
10 when passed total \$8,831.80. Likewise, either alone or with a co-defendant, on the dates
11 alleged in the Indictment, Defendant attempted to pass stolen, fraudulently altered, and
12 counterfeit checks, numbered 9826 (twice) and 19532, at Wal-Mart and Washington
13 Trust Bank, again located within the Eastern District of Washington. The amounts for
14 which these checks were written when presented by Defendant and co-defendants total
15 \$3,910.57. More than once, Defendant was captured passing some of the
16 aforementioned checks on surveillance video recording.

17 When co-defendant Pilon presented fraudulent check number 9825, written for
18 \$1,053.18, on May 30, 2018, at Home Depot in Spokane Valley, Washington, he did so
19 with a false Washington State Driver's license bearing Pilon's picture and the name of
20 L.S., the deceased account holder of check #9825. The bank account was held with
21 Bank of America, and the check had the address and bank account information
22 belonging to L.S. and his wife, S.S. The false identification was made by Defendant
23 Shineflew in the apartment Defendant shared with his wife/co-defendant, and co-
24 defendant Johnston. Defendant drove Pilon to Home Depot, where the check was used
25 to purchase items subsequently returned for cash; Defendant and Pilon split the cash
26 proceeds. Defendant knew that the counterfeit identification he made for Pilon was a
27 means of identification of another person, and knowingly used that identification during
28 and in relation to the felony of Conspiracy to Commit Bank Fraud.

1 On May 30, 2018, pursuant to a search warrant, law enforcement agents searched
2 Defendant's apartment, which he shared with his wife/co-defendant and co-defendant
3 Johnston, in Airway Heights, Washington. Authorities located several items consistent
4 with the making and forging of checks and identification cards, including but not limited
5 to computers, printers, blank identification cards, stolen checks, notes/lists with personal
6 identifying information for individuals other than Defendant and the Shineflews, and
7 empty envelopes with return address of Landmark Turf and Native Seed. A Landmark
8 Turf employee later confirmed that several checks stolen from the mail on May 26,
9 2018, totaled approximately \$458,498. In a blue suitcase in Defendant's bedroom, law
10 enforcement agents found identification producing materials and stolen check number
11 9550, written by K.S. and mailed to the Internal Revenue Service. That check, and eight
12 others (numbered 6281, 11237, 6279, 4063, 1282, 1200, 6341, 38991) recovered from
13 Defendant's apartment, totaled \$9,225.37. In Johnston's wallet, authorities found
14 identifications for Johnston in several names; Johnston stated that the false
15 identifications in his wallet were made by co-defendants Slater and Jonny Shineflew.

16 At Defendant's request, law enforcement agents met with Defendant on January
17 16, 2019. After being advised of his rights, Defendant admitted to making counterfeit
18 identifications and selling them for \$100 each. Defendant confirmed that he knew co-
19 defendant Johnston, that Johnston stole mail and altered the payee on stolen checks, that
20 Defendant joined Johnston in passing stolen and altered checks, and that they were once
21 successful in passing a stolen and altered check in the amount of \$4,000, which proceeds
22 they split. Defendant also admitted to stealing checks from a seed company with
23 Johnston and described he and Johnston keeping the larger checks while putting the
24 smaller amount checks back in the mail stream. Defendant stated that some of the
25 checks were valued at \$70,000 and admitted to calling one of the seed companies and
26 pretending to be a Money Tree employee attempting to verify funds. It was after the
27 call, Defendant said, that he knew the account had been "burned," so he threw away the
28 checks.

1 At the time of Defendant's conduct, the Washington Trust Bank was a financial
2 institution whose accounts were insured by the Federal Deposit Insurance Corporation
3 ("FDIC") and Numerica Credit Union was a financial institution whose accounts were
4 insured by the National Credit Union Administration. The loss attributable to the bank
5 fraud conspiracy and relevant conduct totaled at least \$29,453.15.

6 6) The United States Agrees:

7 The United States Attorney's Office for the Eastern District of Washington agrees
8 to dismiss, as to Defendant, Counts 5, 7-8, 17-21 (Bank Fraud, in violation of 18 U.S.C.
9 § 1344(1)); Counts 25, 27, 36 (Mail Theft, in violation of 18 U.S.C. § 1708); and Counts
10 39-40 and 42-43 (Aggravated Identity Theft, in violation of 18 U.S.C. § 1028A) at
11 sentencing, and further agrees to not bring additional charges based upon information in
12 its possession at the time of Defendant's guilty plea pursuant to this Plea Agreement,
13 unless Defendant breaches this Plea Agreement any time before or after sentencing.

14 7) United States Sentencing Guideline Calculations:

15 Defendant understands and acknowledges that the United States Sentencing
16 Guidelines (hereinafter "USSG") are applicable to this case and that the Court will
17 determine Defendant's applicable sentencing guideline range at the time of sentencing.

18 a) Base Offense Level:

19 The United States and Defendant agree that the base offense level for Conspiracy
20 to Commit Bank Fraud, in violation of 18 U.S.C. §§ 1349 and 1344, is seven. See USSG
21 §2B1.1(a)(1).

22 The United States and Defendant agree that the base offense level for Mail Theft,
23 in violation of 18 U.S.C. § 1708, is six. See USSG §2B1.1(a)(2).

24 There is no base offense level for Aggravated Identity Theft, in violation of 18
25 U.S.C. § 1028A. See USSG §2B1.6.

1 b) Specific Offense Characteristics:

2 The United States and Defendant agree that Defendant's total offense level will be
3 increased according to loss, as determined by USSG §2B1.1(b). The parties agree that
4 the loss attributable to Defendant's conduct is at least \$8,831.80.

5 The United States reserves the right to argue a greater loss amount applies. For
6 example, the United States may argue that the applicable loss amount should include the
7 value of several stolen checks referenced in Discovery, as well as the value of checks
8 that were unsuccessfully passed by Defendant and/or co-conspirators. Defendant does
9 not contest the foundation, amounts, or values of the checks referenced in Discovery;
10 rather, he reserves the right to argue that they should not be included in the loss used to
11 calculate Defendant's advisory guideline range.

12 The United States and Defendant agree that Defendant's offense level is further
13 increased pursuant to USSG §2B1.1(b)(11), due to Defendant's offense involving: the
14 possession or use of any device-making equipment or authentication feature; the
15 production or trafficking of any unauthorized access device, counterfeit access device, or
16 authentication feature; and the unauthorized transfer or use of any means of
17 identification unlawfully to produce or obtain any other means of identification.

18 c) Acceptance of Responsibility:

19 If Defendant pleads guilty and demonstrates a recognition and an affirmative
20 acceptance of personal responsibility for the criminal conduct; provides complete and
21 accurate information during the sentencing process; does not commit any obstructive
22 conduct; accepts this Plea Agreement in writing no later than March 10, 2021; and
23 timely enters a plea of guilty, the United States will recommend that Defendant receive a
24 two (2)-level downward adjustment in the offense level for Defendant's timely
25 acceptance of responsibility, pursuant to USSG §3E1.1(a), and an additional (1)-level
26 downward adjustment if the offense is level 16 or greater, pursuant to USSG §3E1.1(b).

27 Defendant and the United States agree that the United States may at its option and
28 upon written notice to Defendant, not recommend a downward reduction for acceptance

1 of responsibility if, prior to the imposition of sentence, Defendant is charged with or
2 convicted of any criminal offense whatsoever or if Defendant tests positive for any
3 controlled substance.

4 d) Guideline Adjustments:

5 Other than what is stated in this Agreement, the United States and Defendant have
6 no further agreements concerning the application or calculation of the applicable
7 advisory Guidelines range. The parties are free to support or oppose any Guideline
8 calculations contained in the Presentence Investigative Report, other than as governed by
9 this Agreement.

10 e) Criminal History:

11 The United States and Defendant understand that Defendant's criminal history
12 computation is tentative and that ultimately Defendant's criminal history category will
13 be determined by the Court after review of the Presentence Investigative Report. The
14 United States and Defendant have made no agreement and make no representations as to
15 the criminal history category, which shall be determined after the Presentence
16 Investigative Report is completed.

17 8) Departures and Variances:

18 If Defendant intends to request a downward departure, Defendant must notify the
19 United States of the request and the basis thereof in writing, not later than fourteen (14)
20 days before sentencing.

21 9) Incarceration:

22 The United States and Defendant are each free to recommend any legal sentence
23 they deem appropriate.

24 10) Criminal Fine:

25 The United States and Defendant are each free to make whatever recommendation
26 concerning the imposition of a criminal fine that they believe is appropriate.

27 11) Supervised Release:
28

1 The United States and Defendant agree to recommend that the Court impose a five
2 (5)-year term of supervised release to include the following special conditions, in
3 addition to the standard conditions of supervised release:

- 4 a) The Defendant's person, residence, office, vehicle, and belongings
5 are subject to search at the direction of U.S. Probation;
- 6 b) The Defendant shall provide financial information and copies of
7 federal income tax returns, and allow credit checks, at the direction of
8 U.S. probation;
- 9 c) Defendant shall disclose all assets and liabilities to the Probation
10 Officer and shall not transfer, sell, give away, or otherwise convey or
11 secret any asset, without the advance approval of U.S. Probation;
- 12 d) Defendant shall participate and complete financial counseling and
13 life skills programs at the direction of U.S. Probation;
- 14 e) Defendant shall allow U.S. Probation or designee to conduct random
15 inspections, including retrieval and copying of data from any
16 computer, and any personal computing device that the Defendant
17 possesses or has access to, including any internal or external
18 peripherals. This may require temporary removal of the equipment
19 for a more thorough inspection. The Defendant shall not possess or
20 use any data encryption technique or program. The Defendant shall
21 purchase and use such hardware and software systems that monitor
22 the Defendant's computer usage, if directed by U.S. Probation;
- 23 f) Defendant shall be prohibited from incurring any new debt, opening
24 new lines of credit, or enter any financial contracts or obligations
25 without the prior approval of U.S. Probation;
- 26 g) Defendant shall participate and complete such drug testing and drug
27 treatment programs as U.S. Probation directs; and
28

h) Defendant shall complete mental health evaluations and treatment if the treatment provider determines that treatment is necessary, including taking medications prescribed by the treatment provider. Defendant shall allow reciprocal release of information between the Probation Officer and the treatment provider. Defendant shall contribute to the cost of treatment according to Defendant's ability;

12) Judicial Forfeiture:

The parties agree forfeiture applies. *See* 18 U.S.C. § 982(a)(2)(A). With respect to forfeiture, the parties agree to the following:

(a) Forfeitable Property

The United States shall seek a forfeiture money judgment in this matter and will not seek to forfeit specific property, except as set forth in this Plea Agreement or authorized by law. The United States will not seek to forfeit proceeds in an amount exceeding what Defendant actually obtained as a result of the crime. *See Honeycutt v. U.S.*, 137 S. Ct. 1626 (2017).

(b) Money Judgment

Defendant agrees to forfeit to the United States all right, title, and interest in the following property: an \$8,831.80 money judgment, which represents the amount of proceeds Defendant obtained as a result of his illegal conduct charged in Count 1.

(c) Substitute Property

Defendant understands the United States may seek for Defendant to forfeit substitute property in satisfaction of the money judgment if the United States can establish the following regarding the above-described property (i.e., the money judgment): a) it cannot be located upon the exercise of due diligence; b) it has been transferred or sold to, or deposited with, a third party; c) it has been placed beyond the Court's jurisdiction; d) it has substantially diminished in value; e) it has been commingled with other property and cannot be divided without difficulty. *See* 21 U.S.C. § 853(p).

1 (d) Cooperation on Forfeited Assets

2 Defendant agrees to cooperate with the United States in passing clear title on all
3 forfeited assets. Defendant also agrees to assist the United States in locating any assets
4 that 1) are the proceeds of illegal conduct (as outlined in this Plea Agreement) and
5 2) have not been dissipated. If such assets are located, then Defendant will stipulate to
6 their forfeiture.

7 (e) Waiver

8 Defendant agrees to waive oral pronouncement of forfeiture at the time of
9 sentencing. *See* Fed. R. Crim. P. 32.2(b)(4)(B).

10 13) Restitution:

11 The parties agree restitution is required. *See* 18 U.S.C. §§ 3663, 3663A, and 3664.
12 Further, pursuant to 18 U.S.C. § 3663(a)(3), the Defendant voluntarily agrees to pay the
13 agreed upon restitution amount, in exchange for the United States not bringing
14 additional potential charges, regardless of whether counts of the Indictment dealing with
15 such losses will be dismissed as part of this Plea Agreement.

16 (a) Restitution Amount and Interest

17 Defendant hereby stipulates and agrees to an order of restitution in the amount of
18 \$29,453.15. The parties agree interest on this restitution amount should be waived.

19 (b) Payments

20 Defendant will pay the foregoing restitution amount jointly and severally with all
21 other co-conspirators. *See* 18 U.S.C. § 3664(h). The parties agree the Court will set a
22 restitution payment schedule based on Defendant's financial circumstances. *See* 18
23 U.S.C. § 3664(f)(2), (3)(A). That being said, Defendant agrees to pay not less than 10%
24 of his net monthly income towards his restitution obligation.

25 (c) Treasury Offset Program and Collection

26 Defendant understands the Treasury Offset Program (TOP) collects delinquent
27 debts owed to federal agencies. If applicable, the TOP may take part or all of
28 Defendant's federal tax refund, federal retirement benefits, or other federal benefits and

1 apply these monies to Defendant's restitution obligations. *See* 26 U.S.C. § 6402(d); 31
2 U.S.C. § 3720A; 31 U.S.C. § 3716.

3 Defendant also understands the United States may, notwithstanding the Court-
4 imposed payment schedule, pursue other avenues to ensure the restitution obligation is
5 satisfied, including, but not limited to, garnishment of available funds, wages, or assets.
6 *See* 18 U.S.C. §§ 3572, 3613, and 3664(m). Nothing in this acknowledgment shall be
7 construed to limit Defendant's ability to assert any specifically identified exemptions as
8 provided by law, except as set forth in this Plea Agreement.

9 (d) Notifications

10 Defendant agrees to notify the Court and the United States of any material change
11 in his economic circumstances (e.g., inheritances, monetary gifts, changed employment,
12 or income increases) that might affect his ability to pay restitution. *See* 18 U.S.C.
13 § 3664(k). This obligation ceases when the restitution is paid-in-full.

14 The Defendant agrees to notify the United States of any address change within 30
15 days of that change. *See* 18 U.S.C. § 3612(b)(1)(F). This obligation ceases when the
16 restitution is paid-in-full.

17 14) Mandatory Special Penalty Assessment:

18 Defendant agrees to pay the \$100 mandatory special penalty assessment for each
19 count of conviction to the Clerk of Court for the Eastern District of Washington, at or
20 before sentencing, pursuant to 18 U.S.C. § 3013 and shall provide a receipt from the
21 Clerk to the United States before sentencing as proof of this payment.

22 15) Payments While Incarcerated:

23 If the Court imposes a custodial sentence and Defendant lacks the financial
24 resources to pay the monetary obligations imposed by the Court, Defendant agrees to
25 earn the money to pay toward these obligations by participating in the Bureau of
26 Prisons' Inmate Financial Responsibility Program.
27
28

1 16) Additional Violations of Law Can Void Plea Agreement:

2 Defendant and the United States agree that the United States may at its option and
3 upon written notice to Defendant, withdraw from this Plea Agreement or modify its
4 recommendation for sentence if, prior to the imposition of sentence, Defendant is
5 charged with or convicted of any criminal offense, or if Defendant tests positive for any
6 controlled substance.

7 17) Appeal Rights:

8 Defendant understands that he has a limited right to appeal or challenge the
9 conviction and sentence imposed by the Court. Defendant waives his right to appeal his
10 conviction, any restitution order, and any forfeiture order, but reserves the right to appeal
11 his sentence. Defendant further expressly waives his right to file any post-conviction
12 motion attacking his conviction and sentence, including a motion pursuant to 28 U.S.C.
13 § 2255, except one based upon ineffective assistance of counsel based on information
14 not now known by Defendant and which, in the exercise of due diligence, could not be
15 known by Defendant by the time the Court imposes the sentence.

16 Should the Defendant successfully move to withdraw from this Plea Agreement or
17 should the Defendant's convictions be dismissed, set aside, vacated, or reversed, this
18 Plea Agreement shall become null and void; the United States may prosecute the
19 Defendant on all available charges. Nothing in this Plea Agreement shall preclude the
20 United States from opposing any post-conviction motion for a reduction of sentence or
21 other attack of the conviction or sentence, including, but not limited to, proceedings
22 pursuant to 28 U.S.C. § 2255 (writ of habeas corpus). If Defendant believes the United
23 States has not fulfilled its obligations under this Agreement, Defendant will object at the
24 time of sentencing; further objections are waived.

25 18) Integration Clause:

26 The United States and Defendant acknowledge this document constitutes the
27 entire Plea Agreement between the United States and Defendant, and no other promises,
28 agreements, or conditions exist between the United States and Defendant concerning the

1 resolution of the case. This Plea Agreement is binding only upon the United States
 2 Attorney's Office for the Eastern District of Washington, and cannot bind other federal,
 3 state or local authorities. The United States and Defendant agree that this Plea
 4 Agreement cannot be modified except in a writing that is signed by the United States
 5 and Defendant.

6 Approvals and Signatures

7 Agreed and submitted on behalf of the United States Attorney's Office for the
 8 Eastern District of Washington.

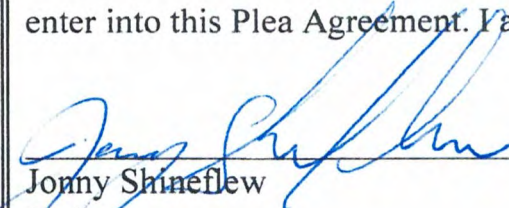
9
 10 Joseph H. Harrington
 11 Acting United States Attorney

12 
 13 Ann T. Wick
 14 Assistant U.S. Attorney

03/11/2021

Date

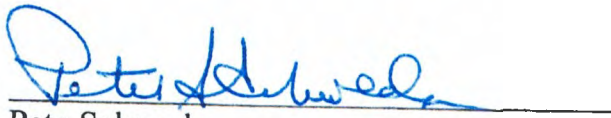
15 I have read this Plea Agreement and have carefully reviewed and discussed every
 16 part of the Plea Agreement with my attorney. I understand and voluntarily enter into this
 17 Plea Agreement. Furthermore, I have consulted with my attorney about my rights, I
 18 understand those rights, and I am satisfied with the representation of my attorney in this
 19 case. No other promises or inducements have been made to me, other than those
 20 contained in this Plea Agreement and no one has threatened or forced me in any way to
 21 enter into this Plea Agreement. I am agreeing to plead guilty because I am guilty.

22
 23 
 24 Jonny Shineflew
 25 Defendant

26 
 27 Date

28 I have read the Plea Agreement and have discussed the contents of the Plea
 Agreement with my client. The Plea Agreement accurately and completely sets forth the
 entirety of the agreement between the parties. I concur in my client's decision to plead

1 guilty as set forth in the Plea Agreement. There is no legal reason why the Court should
2 not accept Defendant's plea of guilty.

3 
4

5 Pete Schweda
6 Attorney for Defendant

3/10/21
Date

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

DEC 18 2019

SEAN F. McAVOY, CLERK
DEPUTY
SPOKANE, WASHINGTON

William D. Hyslop
United States Attorney
Eastern District of Washington
Ann T. Wick
Assistant United States Attorney
Post Office Box 1494
Spokane, WA 99210-1494
Telephone: (509) 353-2767

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

ANGUS A. JOHNSTON,
JONNY SHINEFLEW,
TABITHA R. SHINEFLEW,
JARED S. PILON,
MICHAEL D. SLATER,
ANTHONY E. WRIGHT,
BRITTNEY R. McDANIEL,
ADRIANNA N. McCREA,
JORDAN L. YATES,
TYLER A. BORDELON,

Defendants.

2:19-CR-215-TOR

INDICTMENT

Vio: 18 U.S.C. § 1349

Conspiracy to Commit Bank
Fraud (Count 1)

18 U.S.C. § 1344(1)

Bank Fraud (Counts 2-21)

18 U.S.C. § 1708

Mail Theft (Counts 22-38)

18 U.S.C. § 1028A

Aggravated Identity Theft
(Counts 39-43)

18 U.S.C. § 981, 18 U.S.C. §
982, 28 U.S.C. § 2461(c)
Forfeiture Allegations

The Grand Jury charges:

GENERAL ALLEGATIONS

At all times relevant to this Indictment:

1. The term "financial institutions" refers collectively to the entities set

1 forth below. "FDIC" denotes Federal Deposit Insurance Corporation; "NCUA"
 2 denotes National Credit Union Administration. Where account numbers are
 3 referenced within this Indictment, only the last four digits are provided.

NAME OF FINANCIAL INSTITUTION	LOCATION OF SERVICE	FEDERAL INSURANCE
Heritage Bank	Eastern Washington	FDIC
U.S. Bank	Eastern Washington	FDIC
Washington Trust Bank	Eastern Washington	FDIC
Bank of America	Eastern Washington	FDIC
Umpqua Bank	Eastern Washington	FDIC
Key Bank	Eastern Washington	FDIC
Numerica Credit Union	Eastern Washington	NCUA

14
 15 2. The term "real person victims" refers collectively to individuals,
 16 including those identified below by initials and residence, whose means of
 17 identification and personal identifying information was possessed, transferred,
 18 and/or utilized without lawful authority.

INITIALS OF REAL PERSON	RESIDENCE
E.W.	Eastern Washington
R.R.	Eastern Washington
L.S.	Eastern Washington

24 Overview of the Conspiracy

25 3. Beginning on or about March 15, 2018, and continuing until about
 26 July 31, 2018, in the Eastern District of Washington, the Defendants, ANGUS A.
 27 JOHNSTON, JONNY SHINEFLEW, TABITHA R. SHINEFLEW, JARED S.
 28 PILON, MICHAEL D. SLATER, ANTHONY E. WRIGHT, BRITTNEY R.

1 McDANIEL, ADRIANNA N. McCREA, JORDAN L. YATES, AND TYLER A.
 2 BORDELON, did conspire to knowingly execute a scheme or artifice to defraud
 3 various financial institutions or to obtain any of the moneys, funds, credits, assets,
 4 securities, or other property owned by, or under the custody or control of financial
 5 institutions, by means of false or fraudulent pretenses, representations, or promises.

6 4. Defendants' fraudulent scheme included stealing checks from
 7 multiple sources; creating and/or altering checks; creating and/or altering
 8 identification documents; using falsified/altere checks and/or identification
 9 documents to obtain money from financial ~~instruments~~ ^{institutions.} *PK*

10 5. In this manner, and as described further herein, Defendants obtained
 11 checks/securities for an amount of at least 489,983.83 dollars; fraudulently sought
 12 at least 51,713.53 dollars; and fraudulently obtained at least 29,453.15 dollars,
 13 before Defendants' fraudulent scheme was uncovered.
 14

15 COUNT 1
 16 CONSPIRACY TO COMMIT BANK FRAUD
 17 (18 U.S.C. § 1349)

18 6. The Grand Jury re-alleges and incorporates by reference paragraphs 1
 19 through 5 of the Indictment as if fully set forth herein. Further, the allegation in all
 20 other counts in the Indictment are re-alleged and incorporated into this count as if
 21 fully set forth herein.

22 7. Beginning on or about March 15, 2018, and continuing until about
 23 July 31, 2018 in the Eastern District of Washington, the Defendants, ANGUS A.
 24 JOHNSTON, JONNY SHINEFLEW, TABITHA R. SHINEFLEW, JARED S.
 25 PILON, MICHAEL D. SLATER, ANTHONY E. WRIGHT, BRITTNEY R.
 26 McDANIEL, ADRIANNA N. McCREA, JORDAN L. YATES, AND TYLER A.
 27 BORDELON and other persons both known and unknown to the Grand Jury, did
 28 willfully, with intent to further the objects of the conspiracy, and knowingly

1 combine, conspire, confederate and agree together and with others known and
2 unknown to the Grand Jury to knowingly and with intent to defraud, execute and
3 cause the execution of a scheme and artifice to defraud one or more financial
4 institutions, as defined by 18 U.S.C. § 20, which scheme and artifice would
5 employ material falsehoods, and to knowingly and with intent to defraud, execute,
6 and cause the execution of a scheme and artifice to obtain moneys, funds, credits,
7 assets, or other property owned by, or under the custody and control of, one or
8 more financial institutions, by means of false and fraudulent pretenses,
9 representations, or promises relating to a material fact, in violation of 18 U.S.C. §§
10 1344(1), (2), 2.
11

12 PURPOSE OF THE CONSPIRACY

13 8. It was the purpose of the conspiracy for Defendants to unlawfully
14 enrich themselves and their co-conspirators by, among other things: (a) unlawfully
15 obtaining financial institution account data, including checks, credit cards and
16 credit card accounts, and identifying information of a real person, including forms
17 of identification that had been issued to real person victims; (b) creating counterfeit
18 and false driver's licenses and identification cards to use as personal identification
19 when negotiating actual, forged, and counterfeit checks; (c) creating forged,
20 altered, and counterfeit checks; (d) recruiting and using check runners to negotiate
21 forged, altered, and counterfeit checks at various locations; (e) causing forged,
22 altered, and counterfeit checks to be presented for payment by financial institutions
23 based on material misrepresentations; (f) unlawfully using forged, altered, and
24 counterfeit checks for payment for goods based on material misrepresentations;
25 and (g) unlawfully using means of identification of real person victims and others,
26 in order to conceal Defendants' and their co-conspirators' involvement in the fraud
27 scheme.
28

1 WAYS, MANNERS, AND MEANS OF THE CONSPIRACY

2 9. The manner and means by which Defendants sought to accomplish the
3 objects and purpose of the conspiracy included, among others, the following:

4 Obtaining Bona Fide Victim Information

5 10. Beginning on a date unknown to the Grand Jury, but at least by March
6 15, 2018, and continuing through on or about July 31, 2018, Defendants
7 unlawfully obtained financial and personal identifying information, including
8 names, addresses, social security numbers, and banking and account information of
9 real person victims. Defendants obtained that information from various sources,
10 but primarily through the theft of mail.

11 Forging, Altering, and Counterfeiting Checks

12 11. Defendants falsely and fraudulently altered stolen checks to make them
13 payable to themselves and/or their co-conspirators and created, and caused to be
14 created, forged and counterfeit checks, and negotiated and attempted to negotiate
15 such checks for their own use and benefit and in furtherance of the conspiracy.

16 Use of Bank Accounts

17 12. Defendants also used and attempted to use fraudulently-opened
18 consumer accounts at financial institutions in the name of real person victims, for
19 Defendants' use and benefit and in furtherance of the conspiracy.

20 13. Defendants executed the scheme and artifice through acts including the
21 substantive allegations contained in Counts 2-43, all in violation of 18 U.S.C. §
22 1349.
23

24 COUNTS 2-21
25 BANK FRAUD

26 14. The Grand Jury re-alleges and incorporates by reference paragraphs 1
27 through 13 of the Indictment as if fully set forth herein. Further, the allegations in
28 all other counts in the Indictment are re-alleged and incorporated into these counts

as if fully set forth herein.

15. Beginning on or about March 15, 2018, and continuing until about July 31, 2018, in the Eastern District of Washington, the Defendants, ANGUS A. JOHNSTON, JONNY SHINEFLEW, TABITHA R. SHINEFLEW, JARED S. PILON, MICHAEL D. SLATER, ANTHONY E. WRIGHT, BRITTNEY R. McDANIEL, ADRIANNA N. McCREA, JORDAN L. YATES, AND TYLER A. BORDELON, did knowingly execute a scheme and artifice to defraud various financial institutions, as defined by 18 U.S.C. § 20, which scheme and artifice employed a material falsehood, and did knowingly, and with intent to defraud, execute, and attempt to execute, and cause the execution of, a scheme and artifice to obtain moneys, funds, credits, assets, or other property owned by, and under the custody and control of one or more said financial institution by means of false and fraudulent pretenses, representations, and promises, relating to a material fact, in violation of 18 U.S.C. §§ 1344(1), (2), 2.

Execution of the Scheme and Artifice

16. On or about the dates specified as to each count below, in the Eastern District of Washington, the Defendants specified as to each count below did execute and attempt to execute the aforesaid scheme and artifice to defraud a financial institution and to obtain any moneys, funds, credit, assets, and other property owned by, and under the custody and control of, said financial institution, as more particularly described below:

Count	Date	Description of Fraudulent Act	Defendant(s)
2	March 22, 2018	Negotiated stolen and fraudulently altered check (#40347) in the amount of \$3,845.49 at Heritage Bank, located at 2205 S. 1st Street, Yakima, Washington	ANGUS JOHNSTON

3	April 26, 2018	Attempted to negotiate stolen and fraudulently altered check (#38993) in the amount of \$4,446.20 at U.S. Bank, located at 102 W. Indiana, Spokane, Washington	ANGUS JOHNSTON, JORDAN YATES, BRITTANY McDANIEL
4	April 27, 2018	Attempted to negotiate stolen and fraudulently altered check (#38996) in the amount of \$2,749.50 at U.S. Bank, located at 6520 N. Nevada St., Spokane, Washington	ANGUS JOHNSTON, ANTHONY WRIGHT
5	April 27, 2018	Negotiated stolen and fraudulently altered check (#1385) in the amount of \$1,300.00 at Numerica Credit Union, located at 1916 West Francis Avenue, Spokane, Washington	JONNY SHINEFLEW, TABITHA SHINEFLEW
6	April 28, 2018	Negotiated stolen and fraudulently altered check (#1258) in the amount of \$1,200.00 at Numerica Credit Union, located at 1916 West Francis Avenue, Spokane, Washington	TABITHA SHINEFLEW
7	April 29, 2018	Negotiated stolen and fraudulently altered check (#4276) in the amount of \$1,300.00 at Numerica Credit Union, located at 11210 South Hayford, Airway Heights, Washington	JONNY SHINEFLEW
8	April 30, 2018	Negotiated stolen and fraudulently altered check (#1248) in the amount of \$1,400 at Numerica Credit Union, located at 722 North Sullivan Road, Spokane Valley, WA	JONNY SHINEFLEW

9	April 30, 2018	Negotiated stolen and fraudulently altered check (#25576) in the amount of \$2,850.00 at Washington Trust Bank, located at 10609 State Route 2, Spokane, Washington	ADRIANNA McCREA, ANGUS JOHNSTON
10	May 7, 2018	Negotiated stolen and fraudulently altered check (#9401) in the amount of \$4,550.00 at Key Bank, 4 W. Division St., Wilbur, Washington	ADRIANNA McCREA, ANGUS JOHNSTON
11	May 8, 2018	Negotiated stolen and fraudulently altered check (#8620) in the amount of \$2,850.00 at Bank of America, 601 W. Riverside, Spokane, Washington	ADRIANNA McCREA, ANGUS JOHNSTON
12	May 9, 2018	Attempted to negotiate stolen and fraudulently altered check (#9432789) in the amount of \$3,250.00 at Wells Fargo, located at 601 W. 1st Avenue, Spokane, Washington	ADRIANNA McCREA, ANGUS JOHNSTON
13	May 11, 2018	Negotiated stolen and fraudulently altered check (#29609) in the amount of \$1,115.86 at Umpqua Bank, located at 10406 North Division Street, Spokane, Washington	ANGUS JOHNSTON
14	May 17, 2018	Negotiated stolen and fraudulently altered check (#7807) in the amount of \$2,855.00 at Washington Trust Bank, located at 407 W. Sullivan Rd., Spokane Valley, Washington	ANGUS JOHNSTON

15	May 29, 2018	Attempted to negotiate counterfeit check (#6282) in the amount of \$2,704.11 at Washington Trust Bank, located at 438 E. Hastings Road, Spokane, Washington	ANGUS JOHNSTON
16	May 29, 2018	Negotiated stolen and fraudulently altered check (#6284) in the amount of \$2,555.00 at Washington Trust Bank, located at 3103 S. Grand Boulevard, Spokane, Washington	ANGUS JOHNSTON
17	May 30, 2018	Negotiated counterfeit check (#9825) in the amount of \$1,053.18 at Home Depot, located at 5617 E. Sprague Avenue, Spokane Valley, Washington	JONNY SHINEFLEW, JARED PILON
18	June 3, 2018	Attempted to negotiate counterfeit check (#9826) in the amount of \$941.92 at Wal-Mart, located at 15727 E. Broadway Avenue, Spokane Valley, Washington	JONNY SHINEFLEW, JARED PILON
19	June 3, 2018	Attempted to negotiate counterfeit check (#9826) in the amount of \$868.65 at Wal-Mart, located at 15727 E. Broadway Avenue, Spokane Valley, Washington	JONNY SHINEFLEW, JARED PILON
20	July 2, 2018	Attempted to negotiate stolen and fraudulently altered check (#19532) in the amount of \$2,100 at Washington Trust Bank, located at 27 East Indiana Street, Spokane, Washington	TYLER BORDELON, JONNY SHINEFLEW

21	July 23, 2018	Negotiated counterfeit check (#52820) in the amount of \$3,778.62, written to Alpha Card, a company located in Portland, Oregon	JONNY SHINEFLEW
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COUNTS 22-38
MAIL THEFT

17. On or about each of the dates set forth below, in the Eastern District of Washington, the Defendants, ANGUS A. JOHNSTON, JONNY SHINEFLEW, TABITHA R. SHINEFLEW, JARED S. PILON, MICHAEL D. SLATER, ANTHONY E. WRIGHT, BRITTNEY R. McDANIEL, ADRIANNA N. McCREA, JORDAN L. YATES, AND TYLER A. BORDELON did steal, take, and abstract from and out of any mail, post office, and station thereof, letter box, mail receptacle, and any mail route, any letter, postal card, package, bag, and mail; and did abstract and remove from any such letter, package, bag and mail, any article and thing contained therein; and did buy, receive, conceal, and unlawfully possess, any letter, postal card, package, bag, and mail, and any article and thing contained therein, which had been so stolen, taken, embezzled, and abstracted as described below, and each act constituting a separate charge, in violation of 18 U.S.C. § 1708:

Count	Date	Description	Defendant(s)
22	March 22, 2018	Negotiated stolen and fraudulently altered check (#40347) in the amount of \$3,845.49 at Heritage Bank located at 2205 S. 1st Street, Yakima, Washington	ANGUS JOHNSTON
23	April 26, 2018	Attempted to negotiate stolen and fraudulently altered check (#38993) in the amount of	ANGUS JOHNSTON, JORDAN YATES, BRITTANY McDANIEL

		\$4,446.20 at U.S. Bank, located at 102 W. Indiana, Spokane, Washington	
24	April 27, 2018	Attempted to negotiate stolen and fraudulently altered check (#38996) in the amount of \$2,749.50 at U.S. Bank, located at 6520 N. Nevada St., Spokane, Washington	ANGUS JOHNSTON, ANTHONY WRIGHT
25	April 27, 2018	Negotiated stolen and fraudulently altered check (#1385) in the amount of \$1,300.00 at Numerica Credit Union, located at 1916 West Francis Avenue, Spokane, Washington	JONNY SHINEFLEW, TABITHA SHINEFLEW
26	April 28, 2018	Negotiated stolen and fraudulently altered check (#1258) in the amount of \$1,200.00 at Numerica Credit Union, located at 1916 West Francis Avenue, Spokane, Washington	TABITHA SHINEFLEW
27	April 30, 2018	Negotiated stolen and fraudulently altered check (#1248) in the amount of \$1,400 at Numerica Credit Union, located at 722 North Sullivan Road, Spokane Valley, Washington	JONNY SHINEFLEW
28	April 30, 2018	Negotiated stolen and fraudulently altered check (#25576) in the amount of \$2,850.00 at Washington Trust Bank, located at 10609 State Route 2, Spokane, Washington	ADRIANNA McCREA, ANGUS JOHNSTON
29	May 7, 2018	Negotiated stolen and fraudulently altered check (#9401) in the amount of \$4,550.00 at Key Bank, 4 W.	ADRIANNA McCREA, ANGUS JOHNSTON

		Division St., Wilbur, Washington	
30	May 8, 2018	Negotiated stolen and fraudulently altered check (#8620) in the amount of \$2,850.00 at Bank of America, 601 W. Riverside, Spokane, Washington	ADRIANNA McCREA, ANGUS JOHNSTON
31	May 9, 2018	Attempted to negotiate stolen and fraudulently altered check (#9432789) in the amount of \$3,250.00 at Wells Fargo, located at 601 W. 1st Avenue, Spokane, Washington	ADRIANNA McCREA, ANGUS JOHNSTON
32	May 11, 2018	Negotiated stolen and fraudulently altered check (#29609) in the amount of \$1,115.86 at Umpqua Bank, located at 10406 North Division Street, Spokane, Washington	ANGUS JOHNSTON
33	May 17, 2018	Negotiated stolen and fraudulently altered check (#7807) in the amount of \$2,855.00 at Washington Trust Bank, located at 438 E. Hastings Road, Spokane, Washington	ANGUS JOHNSTON
34	May 20, 2018	Jared Pilon arrested with stolen check #312003 in his possession, which he obtained from Angus Johnston	JARED PILON, ANGUS JOHNSTON
35	May 29, 2018	Negotiated stolen and fraudulently altered check (#6284) in the amount of \$2,555.00 at Washington Trust Bank, 3103 S. Grand Boulevard, Spokane, Washington	ANGUS JOHNSTON
36	July 2, 2018	Attempted to negotiate stolen and fraudulently altered check (#19532) in the amount of	TYLER BORDELON, JONNY SHINEFLEW

		\$2,100 at Washington Trust Bank, located at 27 East Indiana Street, Spokane, Washington	
37	May 26, 2018	Angus Johnston broke into the company mailbox of Landmark Turf and Seed at 4908 South Hayford Road, Spokane, Washington, stealing 95 checks for a total of \$458,498.08	ANGUS JOHNSTON
38	May 30, 2018	Defendants possessed 9 stolen checks at the Turning Leaf Apartments totaling \$9,225.37.	ANGUS JOHNSTON, JONNY SHINEFLEW, TABITHA SHINEFLEW

COUNTS 39-43
AGGRAVATED IDENTITY THEFT

18. On or about each of the dates set forth below, in the Eastern District of Washington, the Defendants, Angus A. Johnston, Jonny Shineflew, Jared S. Pilon, and Michael D. Slater, did knowingly transfer, possess, and use, without lawful authority, a means of identification of another person during and in relation to a felony violation of Chapter 63 of Section 18 of the United States Code (Mail Fraud and Other Fraud Offenses) as described below, and each act constituting a separate charge, in violation of 18 U.S.C. § 1028A:

Count	Date	Description	Defendant(s)
39	May 29, 2018	Attempted to negotiate counterfeit check (#6282) in the amount of \$2,704.11 at Washington Trust Bank, located at 438 E. Hastings Road, Spokane, Washington, using a counterfeit identification in the name of E.W.	ANGUS JOHNSTON, JONNY SHINEFLEW MICHAEL SLATER
40	May 29, 2018	Negotiated stolen and fraudulently altered check (#6284) in the amount of \$2,555.00 at Washington Trust	ANGUS JOHNSTON, JONNY SHINEFLEW MICHAEL SLATER

		Bank, located at 3103 S. Grand Boulevard, Spokane, Washington, using a counterfeit driver's license in the name of R.R.	
41	May 30, 2018	Negotiated counterfeit check (#9825) in the amount of \$1,053.18 at Home Depot located at 5617 E. Sprague Avenue, Spokane Valley, Washington, using the information of L.S.	JONNY SHINEFLEW, JARED PILON,
42	June 3, 2018	Attempted to negotiate counterfeit check (#9826) in the amount of \$941.92 at Wal-Mart, located at 15727 E. Broadway Avenue, Spokane Valley, Washington, using the information of L.S.	JONNY SHINEFLEW, JARED PILON,
43	June 3, 2018	Attempted to negotiate counterfeit check (#9826) in the amount of \$868.65 at Wal-Mart, located at 15727 E. Broadway Avenue, Spokane Valley, Washington, using the information of L.S.	JONNY SHINEFLEW, JARED PILON,

NOTICE OF CRIMINAL FORFEITURE ALLEGATIONS

The allegations contained in this Indictment are hereby realleged and incorporated by reference for the purpose of alleging forfeitures.

Bank Fraud (Counts 1 – 21)

Pursuant to 18 U.S.C. § 982(a)(2)(A), upon conviction of the offense in violation of 18 U.S.C. §§ 1344, 1349, Conspiracy to Commit Bank Fraud and Bank Fraud, as set forth in Counts 1 - 21 of this Indictment, the Defendants, ANGUS A. JOHNSTON, JONNY SHINEFLEW, TABITHA R. SHINEFLEW, JARED S. PILON, MICHAEL D. SLATER, ANTHONY E. WRIGHT, BRITTNEY R. McDANIEL, ADRIANNA N. McCREA, JORDAN L. YATES,

1 and TYLER A. BORDELON, shall forfeit to the United States of America, any
 2 property constituting, or derived from, proceeds obtained, directly or indirectly, as
 3 a result of such violation(s). The property to be forfeited includes, but is not
 4 limited to, the following:

5 MONEY JUDGMENT

6 A sum of money in United States currency representing the amount
 7 of proceeds obtained as a result of the bank fraud offense(s).

8 If any of the property described above, as a result of any act or omission of
 9 the defendant[s]:

- 11 a. cannot be located upon the exercise of due diligence;
- 12 b. has been transferred or sold to, or deposited with, a third party;
- 13 c. has been placed beyond the jurisdiction of the court;
- 14 d. has been substantially diminished in value; or
- 15 e. has been commingled with other property which cannot be divided
- 16 without difficulty,

17 the United States of America shall be entitled to forfeiture of substitute property
 18 pursuant to 21 U.S.C. § 853(p), as incorporated by 18 U.S.C. § 982(b)(1) and 28
 19 U.S.C. § 2461(c). All pursuant to 18 U.S.C. § 982(a)(2)(A) and 28 U.S.C. §
 20 2461(c).
 21

22 Mail Theft (Counts 22 – 38)

23 Pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c), upon
 24 conviction of an offense(s), Mail Theft, in violation of 18 U.S.C. § 1708, as alleged
 25 in Counts 22 – 38, of this Indictment, the Defendants, ANGUS A. JOHNSTON,
 26 JONNY SHINEFLEW, TABITHA R. SHINEFLEW, JARED S. PILON,
 27 MICHAEL D. SLATER, ANTHONY E. WRIGHT, BRITTNEY R. McDANIEL,
 28 ADRIANNA N. McCREA, JORDAN L. YATES, and TYLER A. BORDELON,

1 shall forfeit to the United States of America any property, real or personal, which
 2 constitutes or is derived from proceeds traceable to the offense(s), all pursuant to
 3 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c).

4 MONEY JUDGMENT

5 A sum of money in United States currency representing the amount
 6 of proceeds obtained as a result of the mail theft offense(s).

7
 8 If any of the property described above, as the result of any act or omission of
 9 Defendant:

- 10 (a) cannot be located upon the exercise of due diligence;
 11 (b) has been transferred or sold to, or deposited with, a third party;
 12 (c) has been placed beyond the jurisdiction of the court;
 13 (d) has been substantially diminished in value; or
 14 (e) has been commingled with other property which cannot be divided
 15 without difficulty,

16 the United States shall be entitled to forfeiture of substitute property pursuant to 21
 17 U.S.C. § 853(p), as incorporated by 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. §
 18 2461(c).

19 Aggravated Identity Theft (Counts 39 -43)

20 Pursuant to 18 U.S.C. § 982(a)(2)(B) and/or 18 U.S.C. § 1028(b), upon
 21 conviction of the offense(s) in violation of 18 U.S.C. § 1028A(a)(1), as set forth in
 22 Counts 39 - 43 of this Indictment, the Defendants, ANGUS A. JOHNSTON,
 23 JONNY SHINEFLEW, JARED S. PILON, and MICHAEL D. SLATER, shall
 24 forfeit to the United States of America, any property constituting, or derived from,
 25 proceeds obtained, directly or indirectly, as a result of such violation(s); and/or any
 26 personal property used or intended to be used to commit the offense(s). The
 27 property to be forfeited includes, but is not limited to, the following:
 28

1 MONEY JUDGMENT

2 A sum of money in United States currency representing the amount
3 of proceeds obtained as a result of the aggravated identity theft
4 offense(s).

5 If any of the property described above, as a result of any act or omission of
6 the Defendant(s):

- 7 a. cannot be located upon the exercise of due diligence;
8 b. has been transferred or sold to, or deposited with, a third party;
9 c. has been placed beyond the jurisdiction of the court;
10 d. has been substantially diminished in value; or
11 e. has been commingled with other property which cannot be divided
12 without difficulty,
13

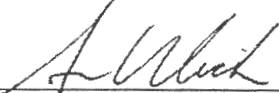
14 the United States of America shall be entitled to forfeiture of substitute property
15 pursuant to 21 U.S.C. § 853(p), as incorporated by 18 U.S.C. §§ 982(b)(1) and
16 1028(g) and 28 U.S.C. § 2461(c). All pursuant to 18 U.S.C. §§ 982(b)(1) and
17 1028(g) and 28 U.S.C. § 2461(c).

18 DATED this 17 day of December, 2019.

20
21 A TRUE BILL

22
23  Foreperson

24 William D. Hyslop
25 United States Attorney

26
27 
28 Ann T. Wick
Assistant U.S. Attorney

1 Joseph H. Harrington
2 Acting United States Attorney
3 Eastern District of Washington
4 Ann T. Wick
5 Assistant United States Attorney
6 Post Office Box 1494
7 Spokane, WA 99210-1494
8 Telephone: (509) 353-2767

9
10 UNITED STATES DISTRICT COURT
11 FOR THE EASTERN DISTRICT OF WASHINGTON

12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 v.

15 JONNY SHINEFLEW,

16 Defendant.

Case No. 2:19-CR-00215-2-TOR

GOVERNMENT'S OBJECTION TO
THE PRESENTENCE REPORT

17 The United States of America, by and through Joseph H. Harrington, Acting
18 United States Attorney, and Ann T. Wick, the undersigned Assistant United States
19 Attorney for the Eastern District of Washington, hereby offers the following
20 objection to the initial Presentence Investigation Report (PSR), ECF No. 515.

21 Objection No. 1: The Government objects to paragraph 51 of the PSR, which
22 reflects a loss calculation of \$20,201.48. Because the loss amount directly affects
23 the total offense level calculation (PSR ¶ 60), the Government also objects to
24 portions of the PSR that are based on the offense level presently reflected in the PSR.
25 The Government submits that the defendant's total offense calculation should
26 include a 12- level enhancement, based on an intended loss calculation of
27 \$489,983.83, pursuant to United States Sentencing Guideline §2B1.1.
28

GOVERNMENT'S OBJECTION TO THE PRESENTENCE REPORT – 1

1 Objection No. 2: The Government objects to paragraph 55 of the PSR, which
 2 reflects no adjustment for Defendant's leadership role in the offense. The
 3 Government submits that three levels should be added, pursuant to USSG §3B1.1(b).
 4 Because the role adjustment affects the total offense level calculation (PSR ¶ 60),
 5 the Government also objects to portions of the PSR that are based on the offense
 6 level presently reflected in the PSR.

7 **I. The loss amount in the PSR was incorrectly calculated and should be**
 8 **much higher.**

9 For purposes of Guidelines calculations, "loss is the greater of actual loss or
 10 intended loss." USSG §2B1.1 n.3(A). Actual loss is the "reasonably foreseeable
 11 pecuniary harm that resulted from the offense." §2B1.1 n.3(A)(i). "[R]easonably
 12 foreseeable pecuniary harm" is "pecuniary harm that the defendant knew or, under
 13 the circumstances, reasonably should have known, was a potential result of the
 14 offense." §2B1.1 n.3(A)(iv).

15 Intended loss includes the "pecuniary harm that the defendant purposely
 16 sought to inflict" and "intended pecuniary harm that would have been impossible or
 17 unlikely to occur (e.g. as in a government sting operation, or an insurance fraud in
 18 which the claim exceeded the insured value)." §2B1.1 n.3(A)(ii); *United States v.*
 19 *Tulaner*, 512 F.3d 576, (9th Cir. 2008). Pecuniary harm is "harm that is monetary
 20 or that otherwise is readily measurable in money." §2B1.1 n.3(A)(iii). The value of
 21 intended loss "does not have to be 'realistic,' nor must the 'defendant be capable of
 22 inflicting the loss he intends.' *Tulaner*, at 578 (quoting *United States v. Robinson*,
 23 94 F.3d 1325, 1328 (9th Cir.1996)).

24 A sentencing court "need only make a reasonable estimate of the loss."
 25 §2B1.1 n.3(C); *United States v. Adejumo*, 772 F.3d 513, 526 (8th Cir. 2014). "The
 26 full scope of the defendant's fraudulent conduct is taken into account when
 27 calculating the intended loss." *Tulaner*, at 578. Moreover, the court may based its
 28

1 estimate on only a preponderance of the evidence. *Adejumo*, at 526. In cases
 2 involving fraudulent or forged checks, loss may be determined by the face value of
 3 the checks. *United States v. Santos*, 527 F.3d 1003, 1008 (9th Cir. 2008) (agreeing
 4 with the Third and the Eleventh Circuits that the face value of the stolen checks is
 5 “probative” of the defendant’s intended loss); *United States v. Grant*, 431 F.3d 760,
 6 762 (11th Cir. 2005) (“The other circuits to address this issue have held a district
 7 court does not clearly err when it uses the full face value of check to calculate
 8 intended loss.”); *cf. United States v. Chappell*, 6 F.3d 1095, 1101 (5th Cir. 1993)
 9 (district court did not err in calculating loss by assigning each seized counterfeit
 10 blank check the average value of checks actually forged and cashed). The face
 11 amount of the instruments is thus *prima facie* evidence of the defendant’s intent. *Id.*¹
 12 If a defendant does not offer “persuasive evidence” in rebuttal, courts are “free to
 13 accept the loss figure” taken from the face value of the instruments. *United States*
 14 *v. Khorozian*, 333 F.3d 498, 509 (3d Cir. 2003) (quoting *United States v. Geevers*,
 15 226 F.3d 186, 194 (3d Cir. 2000)).²

17 It is not enough for a defendant to claim – or even establish – that cashing the
 18 stolen check for its face amount is impossible. *See e.g. Tulaner*, 512 F.3d 576
 19 (basing intended loss on the value of property the defendant intended to receive,
 20 although his scheme was discovered before he could receive the subject property);
 21 *United States v. Koenig*, 952 F.2d 267, 271–72 (9th Cir.1991) (fact that defendants
 22 may not have been able to use all of the false ATM cards they had did not change
 23 their intent); *Adejumo*, 772 F.3d at 527 (basing intended loss on face value of stolen
 24

26 ¹ See also United States Sentencing Commission, *Loss Calculations Under*
 27 *§2B1.1(b)(1)*, pp. 9-10, www.ussc.gov/,
 28 https://www.ussc.gov/sites/default/files/pdf/training/primers/2020_Primer_Loss.pdf
 f (last visited May 24, 2021) (hereinafter “Loss Calculations Primer”).

² See also Loss Calculations Primer at 9-10.

1 checks, even though many were photocopies that could not be negotiated); USSG
2 §2B1.1 n.3(A)(ii).

3 In Defendant Shineflew's case, the total actual loss caused as a result of the
4 bank fraud conspiracy to which Defendant pleaded guilty is \$29,453.15. ECF No.
5 476 at 7. The total intended loss as a result of the conspiracy (not including the
6 \$1,000 check referenced in PSR ¶¶ 144,146) is \$489,983.83. Given Defendant's
7 central role in the conspiracy – a role which included participation in the theft of
8 checks altered and passed, participation in the altering of the stolen checks, passing
9 of stolen and altered checks, manufacture of false identifications to use when passing
10 the fraudulent checks, and payment of proceeds to co-conspirators, the \$29,453.15
11 was absolutely pecuniary harm Defendant "knew or, under the circumstances,
12 reasonably should have known, was a potential result of the offense." §2B1.1
13 n.3(A)(iv). Also given Defendant's all-encompassing role, the \$489,983.83 was
14 pecuniary harm Defendant "purposely sought to inflict" even if Defendant ultimately
15 was unable to accomplish the full intended loss. §2B1.1 n.3(A)(ii).

17 The checks upon which actual and intended loss calculations should be based
18 can be broken into six categories: 1) checks passed by the defendant; 2) checks
19 passed by others with Defendant's assistance; 3) checks attempted to be passed by
20 the defendant and co-conspirators; 4) checks stolen and possessed with the intent of
21 passing and/or forging; 5) checks otherwise passed or attempted to be passed during
22 the course of the conspiracy; and 6) checks passed in other criminal cases where
23 Defendant's conduct is deemed relevant conduct in the present case. *See* PSR ¶ 42,
24 51, 146.

25
26 **A. Checks passed by the defendant.**

27 Defendant successfully passed check nos. 4276, 1248, and 52820, in the
28 amounts of \$1,300, \$1,400, and \$3,778.62, respectively. ECF No. 476; PSR ¶¶ 19-
20, 34. After depositing check nos. 4276 and 1248 in account under the name

1 Angela Bailey, Defendant withdrew \$1,000 both times. *Id.* These checks resulted
2 in \$5,778.62 of actual loss, pursuant to USSG §2B1.1 n.3(A)(i).

3 **B. Checks passed with Defendant's assistance.**

4 With Defendant's assistance, Co-Defendant Tabitha Shineflew deposited
5 check nos. 1385 and 1258, written for the amounts of \$1,300 and \$1,200
6 respectively, into an account under the name Angela Bailey. PSR ¶¶ 18, 39. Tabitha
7 Shineflew withdrew \$1,000 each time. *Id.*

8 With Defendant's assistance, Co-Defendant Pilon passed check no. 9825, in
9 the amount of \$1,053.18, at a Home Depot. PSR ¶¶ 21, 30; ECF No. 476. Defendant
10 provided the false identification, which he manufactured in the apartment he shared
11 with his wife and co-Defendant Johnston, used to negotiate the check and drove
12 Pilon to the Home Depot. *Id.*

13 With Defendant's assistance, Co-Defendant Johnston passed Golden Hills
14 Brewery check no. 6284, in the amount of \$2,555.0. PSR ¶ 40. The false
15 identification Johnston used was manufactured by Defendant and Co-Defendant
16 Slater. *Id.*

17 These checks amount to \$5,608.18 in actual loss, pursuant to USSG §2B1.1
18 n.3(A)(i).

19 **C. Checks attempted to be passed by Defendant and co-conspirators.**

20 With Defendant's assistance, Co-Defendant Pilon attempted to pass check no.
21 9826 twice: the first was at Wal-Mart, in the amount of \$941.92; the second was also
22 at Wal-Mart, in the amount of \$868.65. PSR ¶¶ 28, 30. As before, with check no.
23 9825, Defendant manufactured and provided the false identification used to
24 negotiate the check and drove Pilon to the Home Depot. *Id.*

25 With Defendant's assistance, Co-Defendant Bordelon attempted to pass check
26 no. 19532, in the amount of \$2,100. PSR ¶¶ 31-32. Defendant took Bordelon's
27

1 picture to manufacture the false identification Bordelon presented with the
2 counterfeit check. *Id.*

3 With Defendant's assistance, Co-Defendant Johnston attempted to pass
4 Golden Hills Brewery check no.6282, in the amount of \$2,704.11. PSR ¶ 40. This
5 occurred on the same day Johnston successfully passed Golden Hills Brewery check
6 no. 6284. *Id.* Johnston again used a counterfeit identification. *Id.*

7 These checks amount to \$6,614.68 in intended loss, pursuant to USSG §2B1.1
8 n.3(A)(ii).

9
10 **D. Checks stolen and possessed with the intent of passing and/or**
11 **forging.**

12 Several stolen or counterfeit checks were recovered from the apartment shared
13 by the Shineflews and Johnston. Defendant pleaded guilty to possessing nine of
14 these checks, referenced in Count 38 of the Indictment and Defendant's plea
15 agreement, ECF No. 476. Those nine checks are:

16 Check nos. 1200 (\$180.75), 4063 (\$30.00), and 1282 (\$47.51) were recovered
17 from a printer in Johnston's bedroom. PSR ¶ 22; ECF No. 476 at 6; ECF No. 1 (Count
18 38).

19 Check nos. 11237 (\$443.22), 6281 (\$215.79), and 6279 (\$587.40) were found
20 in a black and brown bag under Defendant's bed. PSR ¶ 22; ECF No. 476 at 6; ECF
21 No. 1 (Count 38).

22 Check nos. 6341 (\$81.45), 9550 (\$1,954.00), and 38991 (\$5,685.25) were
23 recovered from a blue suitcase in Defendant's bedroom closet. PSR ¶ 22; ECF No.
24 476 at 6; ECF No. 1 (Count 38).

25 On May 24, 2018, Defendant and Co-Defendant Johnston stole 95 checks
26 from the business mailbox of Landmark Turf and Native Seed. Landmark Turf
27 handles accounting for other seed companies; several of the checks Defendant stole
28 were payments being made by these other seed companies, in addition to Landmark

1 Turf checks. Both Defendant and Johnston admitted to stealing the checks and
 2 intending to fraudulently use the checks. PSR ¶¶ 26, 35. The breakdown is as
 3 follows:

4 36 Landmark Turf and Native Seed checks, totaling: \$306,430.09;
 5 21 Fusion Seed Company checks, totalling: \$47,736.60;
 6 19 Chesapeake Valley Seed Company checks, totalling: \$59,066.14; and
 7 19 Arkansas Valley Seed Company checks, totalling: \$45,265.25.

8 Several empty envelopes marked with the return address of Landmark Turf
 9 and Native Seed were recovered from Defendant's residence. Defendant claims to
 10 have thrown the seed company checks away, after trying to verify funds and
 11 discovering the account had been "burned." PSR ¶ 35; ECF No. 476 at 6.

12 The aforementioned checks total \$467,723.45 in intended loss, pursuant to
 13 USSG §2B1.1 n.3(A)(ii). The seed company checks alone total \$458,498.08 in
 14 intended loss.
 15

16 **E. Checks passed or attempted to be passed during course of**
 17 **conspiracy.**

18 Check nos. 40347 (\$3,845.49), 7807 (\$2,855), 29609 (\$1,115.86), 9401
 19 (\$4,550), 25576 (\$2,850), and 8620 (\$2,850) were all business checks passed by co-
 20 conspirators during the course of the conspiracy, between March 7, 2018, and May
 21 17, 2018. Johnston cashed check nos. 40347, 7807, 29609. With Johnston's
 22 assistance, McCrea cashed check nos. 9401, 25576, and 8620.

23 Co-Defendants McCrea, Johnston, McDaniel, Yates, and Wright attempted to
 24 pass check nos. 9432789 (\$3,250), 38993 (\$4,446.20), and 38996 (\$2,749.50)
 25 between April 26 and May 9, 2018.

26 The total actual loss from these checks is \$18,066.35. USSG §2B1.1
 27 n.3(A)(i). The total intended loss is \$10,445.70. USSG §2B1.1 n.3(A)(ii).
 28

F. Loss attributable to Defendant's other criminal conduct.

Defendant and co-defendant Tyler Bordelon passed a stolen check in the amount of \$1,000 in Spokane County Case No. 18-1-04662-0. PSR ¶¶ 144, 146. This is an actual loss of \$1,000, pursuant to USSG §2B1.1 n.3(A)(i).

The total actual loss from all six categories of checks is \$30,453.15. The total intended loss is \$489,983.83. Thus, the intended loss should be used to calculate Defendant's offense level. USSG §2B1.1 n.3(A). An intended loss of \$489,983.83 results in a 12-level increase under USSG §2B1.1(b)(1)(F).

The United States expects Defendant to take exception to these calculations, with particular opposition to being held accountable for the stolen seed company checks, as they represent a significant amount of loss, based on their total face value of \$458,498. ECF No. 476 at 6. Nevertheless, it is appropriate to include the stolen checks in the loss calculations, as Defendant stole those checks with the intention of using them in furtherance of his fraud scheme with Co-Defendant Johnston. They represent "pecuniary harm that the defendant purposely sought to inflict." USSG §2B1.1 n.3(A)(ii).

By the time the seed company checks were stolen, on May 26, 2018 (ECF No. 262 at 6), Defendant had already established a long history of stealing checks, often from the mail, altering stolen checks, and passing stolen and fraudulent checks. PSR ¶¶ 98-111, 115-131. This includes similar conduct with co-defendants in this case, leading up to the theft of the seed company checks. PSR ¶¶ 18-20. Defendant stole the seed company checks from a commercial mail box, located directly in front of the business of Landmark Turf and Native Seed, and they were in approximately 95 individual envelopes. Defendant opened the stolen mail and observed that some of the checks were issued for \$70,000. ECF No. 476 at 6. Defendant then called one of the seed companies and pretended to be a Money Tree employee attempting to verify funds. *Id.* It was only after the call that Defendant abandoned the original

1 plans for the checks, because Defendant then knew the account had been “burned.”
2 *Id.* As a result, he threw away the checks. *Id.* Several empty envelopes marked
3 with the return address of Landmark Turf and Native Seed were recovered from
4 Defendant’s residence on May 30, 2018.

5 With the seed company checks, Defendant was upping the ante on his fraud
6 crimes. This was no longer theft of checks innocent victims had mailed to pay their
7 cable or water bills. *See e.g.* PSR ¶ 136. This was bigger even than his purchase of
8 a \$30,000 utility terrain vehicle using a fraudulent check. PSR ¶ 128-131.
9 Defendant did not accidentally stumble on the 95 seed company checks when
10 stealing from a residential mail box. Rather, Defendant very much intended to score
11 big by stealing mail from the seed company instead of a residential target. And he
12 did; he “hit a jackpot,” in the words of his co-defendant, Angus Johnston. PSR ¶ 26.
13 In order to see just how much he could get away with, Defendant boldly called the
14 seed company and claimed to be from Money Tree. This was an affirmative step to
15 follow through on the pecuniary harm Defendant intended. Had Defendant not
16 learned the account was “burned,” there is no question he would have attempted to
17 pass the stolen seed company checks. Thus, Defendant’s intended loss includes the
18 face value of the stolen checks: \$458,498. *See United States v. Blitz*, 151 F.3d 1002,
19 1010 (9th Cir. 1998) (“We have not ... hesitated to hold defendants responsible for
20 the full reach of their intent, even when that intent was thwarted.”).
21

22 **II. The PSR should include a role adjustment.**

23 Defendant’s role in the offenses to which he pleaded guilty warrant a three-
24 level increase pursuant to USSG §3B1.1(b). A three-level increase is warranted
25 where a defendant is a manager or supervisor and the criminal activity involved five
26 or more participants or was otherwise extensive. *Id.* As noted above, Defendant’s
27 role in the crimes was both central and essential. There were 10 co-defendants
28 involved, the criminal activity was extensive, from mail theft to procure checks and

1 personal identifying information to manufacture of false identifications and checks
2 and presentment of these fraudulent checks and IDs. Moreover, there were
3 agreements to split the proceeds amongst the co-conspirators depending on their
4 participation in the scheme, and various aspects of the conspiracy were directly
5 supervised by Defendant, such as with Co-Defendant Pilon and Co-Defendant
6 Tabitha Shineflew. Co-Defendant Johnston was given three points for his role in the
7 same crimes Defendant Shineflew committed. Defendant Shineflew's role was no
8 less involved or supervisory than Johnston's. There is some argument to be made
9 that Shineflew taught Johnston criminal skills Johnston did not previous have, such
10 as Shineflew's skill with creating false identifications. The role adjustment should
11 be applied in this case.
12

13 CONCLUSION

14 For the foregoing reasons, the government respectfully objects to the PSR
15 and seeks its amendment.
16

17 Respectfully submitted this 26th of May, 2021.
18

19 Joseph H. Harrington
20 Acting United States Attorney
21 By:

22 /s/ Ann T. Wick
23 Ann T. Wick
24 Assistant United States Attorney
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CERTIFICATE OF SERVICE

I hereby certify that on May 26, 2021, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system. Counsel of record will be sent a copy of this filing by e-mail.

s/ Ann T. Wick

Ann T. Wick

Assistant United States Attorney

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,) Case No. 2:19-cr-00215-TOR-2
)
Plaintiff,) July 28, 2021
) Spokane, Washington
vs.)
) Sentencing Hearing
JONNY SHINEFLEW,)
) Pages 1 - 50
Defendant.)

BEFORE THE HONORABLE THOMAS O. RICE
UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

For the Plaintiff: ANN WICK
U.S. Attorney's Office
920 W. Riverside Ave., Ste. 300
P.O. Box 1494
Spokane, Washington 99210

For the Defendant: PETER S. SCHWEDA
Attorney at Law
2206 N. Pines Rd.
Spokane, Washington 99206

Official Court Reporter: Allison R. Anderson, RMR, CRR, CCR
United States District Courthouse
P.O. Box 700
Spokane, Washington 99210
(509) 458-3465

Proceedings reported by mechanical stenography; transcript
produced by computer-aided transcription.

1 (Court convened on July 28, 2021, at 2:00 p.m.)

2 THE COURTROOM DEPUTY: The matter before the Court is
3 *United States of America versus Jonny Shineflew*, Case No.
4 2:19-cr-0215-TOR-2; time set for sentencing.

5 Counsel, please state your presence for the Court and
6 record, beginning with the government.

7 MS. WICK: Good afternoon, Your Honor. Ann Wick for
8 the United States.

9 THE COURT: Good afternoon.

10 MR. SCHWEDA: Your Honor, good afternoon. Pete
11 Schweda with Mr. Shineflew.

12 THE COURT: And good afternoon to both of you.

13 We'll start with the government first. I've read all the
14 pleadings and documents, including the reference letter.

15 Ms. Wick, let's go through the government's objections and
16 recommendation.

17 MS. WICK: Yes, Your Honor. I came prepared and have
18 Shannon Saylor here to testify, to the extent needed, on the
19 topic of loss and the objection that the government filed on the
20 topic of loss. I have also prepared and intend to offer to the
21 Court a paper exhibit that is an Excel sheet that is essentially
22 a master list of all the checks referenced in this case with
23 sub-exhibits that are a breakdown; for example, the Seed Company
24 checks, checks that were passed by Mr. Shineflew directly versus
25 checks passed with -- they match, essentially, what I filed with

1 the Court in the government's objection and other sentencing
2 materials. So I prepared that, and I'm prepared to offer it. A
3 copy has been offered to Mr. Schweda. And then I'm prepared to
4 make recommendations, but I anticipated having to at least put
5 on some kind of evidence, Your Honor.

6 THE COURT: All right. Well, let's talk about the
7 legal issue first.

8 MS. WICK: Certainly.

9 THE COURT: Does your evidence go to the issue that
10 the defense raised, which is under the guidelines in order for
11 it to be a loss, it has to be purposely sought to inflict that
12 damage. Now, it's admitted -- or agreed, I believe, that
13 Mr. Shineflew and Mr. Johnston stole approximately 95 checks out
14 of the U.S. mail receptacle, and those were to be paid off to
15 suppliers or whatnot, but he didn't cash any one of those
16 checks.

17 MS. WICK: Correct.

18 THE COURT: And not a single one of those checks is
19 counterfeit.

20 MS. WICK: Referring to the stolen checks, correct.

21 THE COURT: They're just stolen checks.

22 MS. WICK: Correct.

23 THE COURT: So -- and I'm making a hypothetical here.
24 Say there's a check in there for \$5,000 to IBM. There's no way
25 Mr. Shineflew could cash an IBM check for \$5,000 without somehow

1 altering it, counterfeiting it, changing whatever.

2 MS. WICK: Correct.

3 THE COURT: So does your evidence that you intend to
4 offer go to the issue of Mr. Shineflew's intent? Because the
5 guidelines talk about loss and intended loss, and an intended
6 loss is purposely sought to inflict. My reading of the evidence
7 is that they stole all this. They -- you know, "Yippee, we're
8 all happy. We got all these checks." They started opening them
9 up. They're made out to legitimate businesses. So it would
10 require some sort of forgery. He can't walk in and say, "I'm
11 Xerox" or "I'm IBM" or whoever the suppliers were for the Seed
12 Company. He doesn't have ID. He doesn't have an account in
13 that name. So he'd have to forge them in some manner in order
14 to pass them.

15 MS. WICK: In order to pass them or attempt to pass
16 them, certainly some of those things would've had to have been
17 done, either a forgery or a fake ID or both or taking the
18 account and manufacturing a check based on the account --

19 THE COURT: Right.

20 MS. WICK: -- which certainly there was equipment for
21 that. So yes, there would be -- have to be additional steps.

22 THE COURT: Okay. So do we have any manufactured
23 checks from that account?

24 MS. WICK: No.

25 THE COURT: And do we have any IDs or anything else

1 that shows that he was attempting to pass any of those checks?

2 MS. WICK: From the government's perspective, we have
3 facts that establish an intent to use those checks.

4 THE COURT: How?

5 MS. WICK: In the manner we're talking about in, the
6 manner consistent with the conspiracy, altering the checks
7 and/or making the fake IDs and presenting them as the other
8 checks in the conspiracy were presented. And the heart of that
9 evidence comes from Mr. Shineflew's own statements where he
10 vetted the account.

11 From the government's perspective, that's pretty persuasive
12 that he didn't abandon the plan with regard to using the stolen
13 checks in furtherance of this bank fraud conspiracy until he
14 called the Seed Company and he says, "I'm from Money Tree and
15 I'm trying to clear this check," essentially, and he learns in
16 the course of that phone conversation that that check has been
17 burned -- or the account has been burned, excuse me; that's his
18 word, "burned". And then he claims as a result, he threw away
19 all the rest of the checks.

20 He also claimed to have returned some of the smaller checks
21 to the mail stream, and I would -- we would proffer to the Court
22 that the evidence is that none of those checks that were stolen
23 and that we're talking about, if -- first of all, that would've
24 required putting the check back in the mail; back in a separate
25 envelope, not the one that was opened, to screen the check,

1 supposedly. Postage would've had to have been put on it and put
2 in the mail stream. There's been no record that those checks
3 have been received. So if that claim is true, none of those
4 smaller amount checks that Mr. Shineflew claims were put back in
5 the mail were ever received.

6 And then the second component of what I'm talking to the
7 Court about is what he says he tried to do, and it wasn't until
8 he vetted that account and realized he can't use that account in
9 any of the ways that we're talking about that then he abandons
10 the intent to use those checks fraudulently. So the
11 government's -- the facts are there. It's never been very clear
12 to me with Mr. Schweda which facts for sure, you know, are
13 really contested. That's why I came prepared to offer evidence.

14 THE COURT: Well, how do I come to an amount? If he
15 calls -- you say he called the Seed Company, and maybe that's
16 what he did, or he called the bank to see if there's funds in
17 the account. He can't cash the checks themselves because of the
18 names on them.

19 MS. WICK: Without altering them, yes.

20 THE COURT: So how do I come up with a dollar figure?
21 Because I don't have a single counterfeit check or a forged
22 check or anything else. And what we know from his past
23 experience is that he would alter the amounts to an amount that
24 he thought he could pass at a store, a bank, or whatnot, and it
25 couldn't be a lot. He certainly would never be able to pass a

1 \$70,000 check to a business when he's not a business. So why
2 are we using the face value of the stolen checks when we know he
3 doesn't use the face value of the stolen checks?

4 MS. WICK: It's one of those -- it's a tough question.
5 The Court's obligation and what we all are doing when we
6 establish a loss amount is to apply a standard of reasonableness
7 to it, and I think there's a variety of ways to get there. If
8 we don't have -- if the checks themselves haven't been presented
9 for payment where you can say, "Here's the physical check that
10 was presented and either successfully passed or rejected," where
11 you have a clear face value on the check, that's obviously an
12 easy way to calculate loss. The circumstances we're talking are
13 harder because the checks hadn't been altered yet. They hadn't
14 been presented yet.

15 From a knowledge standpoint, we know that Mr. Shineflew and
16 Mr. Johnston -- for example, we knew -- they knew, excuse me,
17 that the checks ranged in values. Some were these -- there was
18 -- he referenced more than one \$70,000 check, which represents a
19 large account that could be successful in passing manufactured
20 checks on the large account in a smaller amount and probably not
21 get detected right away because of it being a business account.
22 Then we have the smaller value checks that were allegedly put
23 back in the mail stream but never recovered. So I don't have
24 probably the best answer for the Court on that because there
25 isn't a best answer.

1 THE COURT: Well --

2 MS. WICK: I can't pull the figure out of thin air so
3 the best answer is some combination of the face value and the
4 amounts that were viable.

5 THE COURT: I don't -- I don't argue with you or
6 quibble with you about Mr. Shineflew's intent. We know he was
7 trying to seek money. He was counterfeiting checks and doing
8 that. But we don't -- but I can't punish and the guidelines
9 don't punish based on thought. It's got to have action.

10 If he's a burglar and he walks over to that door to see if
11 the door's locked or not so he can go in and steal something,
12 yeah, he may have a bad thought and he rattles the door, but
13 it's locked and he walks away. That's what he did with this
14 bank account. He rattled the door, it was closed down, and he
15 threw everything away. So how do I punish him for intending to
16 commit bank fraud over \$400,000 when he rattled the door and
17 walked away?

18 MS. WICK: I would take the Court's hypothetical and I
19 would change it because I don't think that's quite what we have.
20 We have someone who didn't just wiggle the door. We had someone
21 who went in, stole something of value, took it home and then
22 decided not to take it to the pawn shop. So what we have is the
23 equivalent of, like, the pawn shop value that we don't know what
24 it would be, but we have the value of the item stolen.

25 THE COURT: The value of the item stolen is \$0.02.

1 It's a check. It's a piece of paper. And as soon as you put a
2 stop on the bank account, you don't lose anything. And not a
3 single one of those checks was manufactured in dollar amount or
4 in payee so that he could pass them. There was none in his
5 house from that account, either real or manufactured/forged.

6 MS. WICK: The envelopes were but not the checks
7 themselves; you're right.

8 THE COURT: We know he took the -- we know he took the
9 checks.

10 MS. WICK: Right.

11 THE COURT: But none of the checks are there, and no
12 forged checks are there. So how am I supposed to come to a
13 dollar value when we have nothing in front of us?

14 MS. WICK: That's why the government's offered the
15 face value of them or some compromise position based on his
16 knowledge of specific amounts because he went through the checks
17 themselves.

18 THE COURT: All right. I'm assuming you gave the
19 Excel spreadsheet to Mr. Schweda?

20 MS. WICK: I did.

21 THE COURT: I don't know that it will be helpful to
22 the Court. I'm looking at intent because the statute -- or the
23 guidelines say "purposely sought to inflict" so I've got to get
24 past that hurdle. Just because he has bad thoughts doesn't mean
25 that I attribute over \$400,000 as the intended loss here because

1 he didn't really take -- other than stealing checks, which are
2 -- themselves aren't negotiable, he didn't take any more steps
3 forward. He threw everything away, and he threw everything away
4 before the police or anybody arrested him. So I'll hear
5 whatever evidence you have if it goes to intent.

6 MS. WICK: The evidence that I'm arguing intent from,
7 unless it's contradicted, it's -- it's in the record, and so
8 that's -- you know, we're talking about his statements. We're
9 talking about the stealing of them from the location they were
10 stolen from and so forth so --

11 THE COURT: Well, we know all of that, but the --

12 MS. WICK: Right.

13 THE COURT: -- intent has to be --

14 MS. WICK: Right.

15 THE COURT: -- that -- you know, if you'd had a stack
16 of counterfeit checks written on the Seed Company's bank account
17 and they were ready to be passed, you might have an argument.
18 But the police went in and searched, and they didn't find
19 anything except empty envelopes and his statement that, "Yeah,
20 we stole the checks but threw them away because we knew we
21 couldn't pass them."

22 MS. WICK: Well, I would argue and I continue to argue
23 that the phone call he made is an affirmative step in
24 furtherance of that intent that we've been talking about, and
25 it's not until the results of that phone call tell him that his

1 plans are no longer possible that he then abandons the intent
2 that we've been talking about. And so I understand what the
3 Court --

4 THE COURT: But at that point, how do I -- how do I
5 quantify the loss, the intended loss?

6 MS. WICK: I would submit --

7 THE COURT: He makes the phone call and it says zero,
8 bank account closed.

9 MS. WICK: And until that point in time, quite
10 frankly, it's the capacity of the bank account, which I'm not
11 arguing the Court use. I'm limiting it to the values on the
12 face of the check as a reasonable measure. But until he finds
13 out the account is closed, Mr. Shineflew's capable of using that
14 account in whatever fashion in terms of counterfeit checks and
15 fake IDs or making -- making the checks until that's discovered.
16 And in a business setting, that could take a whole month's worth
17 of checks being passed at whatever dollars amount that don't get
18 flagged until some corporate accountant is, you know,
19 reconciling the records. Again, I'm not suggesting the full
20 value of the account nor have I -- I haven't submitted it even
21 in paperwork and I'm not arguing that, the full value. But in
22 terms of a way to calculate, that could be a starting point.

23 THE COURT: Okay. I understand your argument. You
24 can complete the record however you see fit.

25 MS. WICK: I appreciate that. I'm reluctant to waste

1 the Court's time with testimony unless there's actual
2 disagreement with the facts that we've been talking about.

3 THE COURT: Is there any disagreement, Mr. Schweda?

4 MR. SCHWEDA: Your Honor, this is a place that defense
5 counsel usually find themselves in when the Court -- a court
6 rules that, "Well, this isn't going to make a difference in the
7 guideline calculations so I'm just not going to get into it,"
8 and that's exactly what's happening here. We'll agree that the
9 value of the checks should be a plus-4, which is what the -- the
10 enhancement is under the presentence report; and if you take out
11 the Seed Company checks, we're still at a plus-4. So the whole
12 difference here is going to be the Seed Company checks, and
13 that's totally a legal issue, and I don't think that any
14 testimony will aid the government in pursuing that at this
15 point.

16 THE COURT: As you've seen by my questioning, my
17 ruling is going to be that there's not enough evidence as to
18 that dollar value for the Seed Company checks, and therefore
19 they're not included in the intended loss. But -- but if the
20 government wants to make a complete record and appeal my ruling,
21 they can.

22 MS. WICK: Then what I'd like to offer is just perhaps
23 the paper exhibit because it's the record of all the checks.
24 And if I could approach with the Court's copy?

25 THE COURT: Yes, please.

1 MS. WICK: And then for the record, I would proffer to
2 the Court in terms of what that exhibit is. Exhibit 1 -- there
3 is a table of contents on the exhibit. Exhibit 1 is what I call
4 the master list of checks, and that master list was created by
5 Shannon Saylor during the course of her investigation; and it
6 contains all of the checks, the dates of them, whether they were
7 passed, attempted to pass, the value, any cash back, and so
8 forth. And this was provided early on in discovery. This
9 wasn't something that was purely a sentencing matter. It was
10 something early on pre -- pre-plea stage.

11 And then what the -- Exhibits 1A, B, C, D and so forth, as
12 reflected in the table of contents, are just a breakdown of
13 those amounts into more of an easier-to-view format. For
14 example, the Seed Company checks, one can just go to the Seed
15 Company checks and see them specifically; or the other
16 categories that match the government's objection at ECF 517
17 where the government has listed specific checks and what their
18 values are and whether they were passed by the defendant or
19 somebody else, and so there's references in the table of
20 contents that cross-reference that for everybody's benefit. And
21 if I had to, I would just call Shannon Saylor to authenticate
22 that in -- basically consistent with my proffer, Your Honor.

23 THE COURT: Mr. Schweda, any objection to the
24 admission of the government's exhibit, which appears to me is
25 Exhibit 1 and then 1A through I? Any objection?

1 MR. SCHWEDA: Well, Your Honor, in the plea agreement,
2 we stipulated that we would agree to the checks as exhibits, but
3 here we don't -- what they're -- we would object to the Seed
4 Company checks because they are -- they've never been recovered
5 and...

6 THE COURT: Well, presumably the Seed Company told
7 them -- showed them their check register as to what they wrote.

8 MR. SCHWEDA: Correct.

9 THE COURT: I'm ruling that the Seed Company checks
10 aren't part of the loss. That's my ruling. So any objection to
11 me admitting that?

12 MR. SCHWEDA: Just what I've stated, Your Honor.

13 THE COURT: All right. It's admitted.

14 (Exhibit No. 1 admitted into evidence.)

15 THE COURT: Please proceed.

16 MS. WICK: Thank you, Your Honor. I don't have
17 evidence to present on the other objections other than argument
18 from what's in the PSR and what was submitted in the
19 government's written objection, again, No. 517. So would you
20 like argument on the role adjustment?

21 THE COURT: Well, I don't need to hear argument from
22 you. I think Mr. Schweda wants to argue it, but I'm inclined to
23 adopt the PSIR, which gave a 3-point enhancement for role
24 adjustment.

25 MS. WICK: Would you like me to turn to the

1 government's recommendations or --

2 THE COURT: Yes.

3 MS. WICK: -- wait? Okay. Thank you, Your Honor.

4 So the government's recommendations, as set forth in ECF
5 No. 526, is a total 144-month sentence, which includes the
6 24 months on Count 41 that are required to be consecutive. The
7 way the government articulated it is 120 months for Counts 1 and
8 38 followed by the 24 on Count 41. The government's also
9 recommending that the sentence imposed be followed by a five-
10 year term of supervised release.

11 And I'm going to have to just proceed kind of on an idea of
12 what the Court's going to find, but knowing that the Court's
13 going to make a different ruling on the loss, the government's
14 recommendations are based on a couple things; one, that -- the
15 calculations of the guidelines, and then the reserved motion for
16 upward departure that the government made; and the government
17 made it in two regards, one with regard to the criminal history
18 and recommended a one-level-up movement for the criminal history
19 being underrepresented.

20 The other motion that the government reserved, not knowing
21 what the ruling at the time was going to be on intended loss,
22 had to do with an upward departure to somehow account for that
23 loss and that significant intent we've been talking about, even
24 if the Court can't put a dollar sign specifically next to it,
25 because certainly there was significant conduct included within

1 the discussion of intended loss that effectively amounts to
2 nothing if it doesn't get calculated in as a loss value.

3 So from the government's perspective, those are the two
4 things that raise the calculations up to one level above the
5 calculations at that point in time. In order to give the Court
6 a different number, I'd have to go back and recalculate with
7 Court's rulings in mind. So the Court, I think, is aware of
8 what I'm trying to articulate. What I'd like to do is just
9 support the government's recommendations, and then the Court can
10 take them as whatever weight they go to in the ultimate
11 sentence.

12 I would note for the Court that the conduct is fairly
13 involved, fairly sophisticated. As referenced, there's -- there
14 was recovery of equipment that allows not just for the scraping
15 of checks but also the printing of the checks. We've referenced
16 and we've had the other defendants in before the Court where
17 we've all talked about the false identification being created,
18 and there wasn't just one of those or two of those. There was
19 significant false identification things going on.

20 There were the screens, the silk screens that were provided
21 by Mr. Slater, if I'm not mistaken, to Mr. Shineflew. There
22 were -- there was a card reader that was involved. There's
23 actually two card readers involved. One of them is one that
24 Mr. Shineflew wrote a false check for, ordered on the -- his own
25 employer's account, had it delivered, and it's never been

1 recovered, Your Honor, and that was actually after a significant
2 number of the checks had been dealt with. It was after
3 Mr. Johnston's arrest on May 30th. And I know the Court's
4 familiar because this is the last defendant to be sentenced so I
5 don't want to belabor the facts, but it was fairly involved for
6 this kind of case.

7 And then that dovetails onto Mr. Shineflew's criminal
8 history. There's no question that he's essentially made a
9 living out of being a criminal with a heavy emphasis on
10 fraudulent activity. His criminal history isn't just fraud.
11 There are crimes of violence reflected. But he's just in and
12 out of the system. He's in and out of jail, in and out of
13 custody, and what he does to get by is to defraud people, to
14 victimize people. And there's overlap between this case and his
15 county charges.

16 And then what I continue to go back to, in terms of looking
17 at what kind of sentence is appropriate but not excessive, is
18 what did Mr. Shineflew do when he had the best opportunity in
19 front of him and the highest amount of incentive to turn all of
20 this activity around at his age and make himself better, stop
21 the life of crime? He was admitted to a drug court program,
22 despite his lengthy criminal history, perhaps because he
23 probably embodies the targeted audience or the targeted
24 candidate as a high-risk, high-need people. Those are the
25 people that often benefit the best from an intensive drug court

1 program.

2 So Spokane County has him in their program, he has a baby
3 on the way, and he walks away and leaves all of that opportunity
4 behind and then I'm sure, as he sits here today, is going to
5 articulate some sort of intent to turn his life around now, that
6 now something has changed, but I would submit to the Court the
7 only thing that's changed is he's now spent some more time in
8 jail, and he's done that. He's probably done it on his head
9 many times over the years with the criminal history we're
10 talking about.

11 So his criminal history is particularly aggravating, and I
12 found when looking at it -- I can't think of a time that I've
13 made a motion for upward departure based on an insufficient
14 criminal history, but this was one of those times where I
15 thought if I don't do it here, how often do you really have a
16 factual record and a history to do that with? And so that's why
17 I felt compelled to make it here, Your Honor, because the points
18 are somewhere around double the minimum required to put him up a
19 category, and there's still plenty that aren't accounted for.
20 And I set forth all of that in my briefing so I don't want to
21 recount it line for line for the Court.

22 But we also have the goals of deterrence and public safety;
23 and again, the victimization is financial in this circumstance.
24 His victimization in the past isn't limited to that. But the
25 time that he's in custody for whatever sentence is imposed is

1 time that the community's protected from Mr. Shineflew's
2 fraudulent activities and his other criminal activities.

3 And also considering that fraud often has a lesser sentence
4 attached, there's a significant deterrent effect that comes
5 along with a significant prison sentence to remind Mr. Shineflew
6 and others that you can do significant prison time when you
7 defraud people, that it is still taken seriously; so there's
8 that benefit also attached to looking at a longer or more
9 significant incarceration period.

10 There are restitution amounts set forth in the government's
11 sentencing memorandum, joint and several. Those have been
12 spelled out for the Court in the manner that I've done with
13 other codefendants. There is an additional amount of
14 restitution that the defense is asking be included as kind of a
15 plea agreement situation with the county. I don't have an
16 objection to it. That's really between the two of them, and it
17 can be included in our order if the Court sees fit.

18 THE COURT: It's not between the two of them. 18
19 United States Code Section 3663A subparagraphs (a) (3) provide
20 that I cannot include victims that aren't victims of the offense
21 unless the government and the defendant stipulate in a plea
22 agreement as to that restitution. So is the government
23 stipulating to that restitution in this case?

24 MS. WICK: I can't go back and stipulate to it in the
25 plea agreement, but I -- I don't object, and so that's kind of

1 akin to stipulating. It can be added, and I don't see -- I
2 don't have an objection to that being added.

3 THE COURT: Well, the plea agreement says -- I think
4 it's got standard language in it that says the plea agreement
5 can't be amended unless in a writing signed by the parties. Are
6 you saying the government's agreeing with it or not? Because I
7 don't have jurisdiction to enter restitution for a victim not a
8 victim of the offense of conviction unless the government
9 stipulates to it.

10 MS. WICK: I can stipulate to it. I don't have it
11 written in a plea agreement.

12 THE COURT: All right.

13 MS. WICK: With that, Your Honor, unless there's
14 questions, I'd submit.

15 THE COURT: Well, do you have any response to the
16 defendant's objections that you want to raise now or do you want
17 time after they speak?

18 MS. WICK: With the Court's permission, I would just
19 wait to see if a response is warranted.

20 THE COURT: All right.

21 All right. Mr. Schweda, let me hear from you. And other
22 than the objections you've already filed, did you go over the
23 presentence investigation report with Mr. Shineflew?

24 MR. SCHWEDA: Yes, Your Honor.

25 THE COURT: And other than the ones in the record, are

1 there any other objections?

2 MR. SCHWEDA: No, Your Honor.

3 THE COURT: All right. And some of these, it seems to
4 me, got corrected or not corrected; so I'll hear from you as to
5 each of the objections.

6 MR. SCHWEDA: Certainly, Your Honor. And I'll just
7 address myself to disputed items and not to the ones that we
8 agree to.

9 First of all, let me start off with the last issue.
10 Mr. Shineflew and I do stipulate that the motion that we filed
11 that the Court granted and add that restitution; and in fact,
12 one of the questions that came from the probation -- Shane
13 Moore, from the probation officer, was whether the -- this might
14 be relevant conduct. And I -- and in representing
15 Mr. Shineflew, I had gone and pulled basically all the court
16 files. And the Numerica restitution for the 4,996 and some
17 cents all occurred -- those all occurred during the time period
18 of the charged conspiracy, and so I would assume that they would
19 be -- that those would be relevant conduct on the basis of that.
20 They all occurred during late March of 2018 and early April of
21 2018. The STCU item occurred during November of 2018, but we --
22 but again, we would stipulate to that.

23 THE COURT: All right. I have no questions.

24 MR. SCHWEDA: Okay. Thank you, Your Honor. Your
25 Honor, first of all, just basically on the ten or more victims,

1 as the guidelines point out, a victim has to suffer actual loss
2 or the actual individual whose means of identification was
3 actually used, and here we have -- there's been no effort to
4 identify who these victims are to get to the number ten and --

5 THE COURT: Well, let me go through them with you.
6 First of all, there's eight victims that are going to get orders
7 of restitution.

8 MR. SCHWEDA: Correct.

9 THE COURT: Besides the stipulation. But there's
10 eight there. Then there's the aggravated identity theft, and
11 the victim's initials are L. S.

12 MR. SCHWEDA: Correct.

13 THE COURT: So there's nine. And we know that he was
14 mailboxing. He and his co-conspirators were mailboxing, and
15 they were stealing checks that way. And if you look at the
16 guidelines, Application Note (4) (C) (i), it says undelivered
17 mail, whether or not it's a value or a loss or anything else,
18 each addressee or the recipient of that mail is a victim,
19 period. So we've got approximately 95 checks from the Seed
20 Company that the mail was stolen. So we've got we got 9 plus
21 95; so we're over 10.

22 MR. SCHWEDA: Well, I understand the Court's
23 reasoning. We just -- for the record, we make the objection.

24 THE COURT: All right. Because the conspiracy is laid
25 out in the plea agreement; the method of operation was to steal

1 people's mail, get ahold of checks, ID, whatnot, to find bank
2 account numbers and everything else. I'm going to use
3 Application Note (4) (C) (i) and come to the conclusion that
4 there's more than ten victims. So I overrule your objection
5 there.

6 MR. SCHWEDA: Your Honor, then moving on to the
7 leader/organizer three-level enhancement under 3B1.1, the
8 government moved to add this -- or objected to the presentence
9 report because this wasn't in there, was not included in the
10 original draft of the presentence report. The -- it requires --
11 this enhancement, pursuant to the *Mares-Molina* case, which we
12 cited in our materials, it requires exercise and control over
13 others that are committing the offense, like being the boss,
14 organizing others to commit the offense where the others are
15 your underlings or subordinates, and I would submit that there
16 is no evidence here that Mr. Shineflew was the leader or the
17 organizer.

18 Certainly he was into it up to his eyeballs committing
19 these acts, and he assisted and perhaps enabled others to pass
20 bad checks or use fake IDs, but there is no evidence that he
21 recruited the people, that he organized them in any way, or that
22 he directed them in any way. He knew Johnston for only 10 to
23 14 days, but he never supervised him. Michael Slater was
24 Mr. Shineflew's tutor. He wasn't organizing Mr. Slater or his
25 boss. Mr. Shineflew didn't know four of the people that were

1 associated strictly with Mr. Johnston; that's Wright, McDaniel,
2 McCrea, and Yates. Mr. Shineflew met Mr. Pilon through
3 Johnston; and he knew Mr. Bordelon through Zachary Peterson, who
4 was Bordelon's associate.

5 The only thing -- the only thing that -- other than making
6 IDs, the only thing that he did was on a few occasions, he drove
7 Johnston and Pilon to either a bank or a store, and he did that
8 because he was the only one that had a car. He wasn't -- so
9 that wasn't an act of being the boss or organizing them. The
10 closest we get to that would be Tabitha Shineflew, who, by the
11 way, is present in court, Your Honor, but they're married.

12 The more troubling aspect of this, to me, is that -- based
13 upon the government making this upward motion to enhance in view
14 of the way the plea agreement is structured in this case. The
15 plea agreement was prepared by the government. It doesn't
16 mention anything about the leader/organizer enhancement nor is
17 there anything in the presentence draft about a leader/
18 organizer, and I think this is significant.

19 The enhancement was discussed during plea negotiations, and
20 when -- Mr. Shineflew's plea resulted, in a significant degree,
21 on the reliance on the plea agreement, which addressed only two
22 enhancements. Two specific offense characteristics were
23 discussed in the plea agreement. The first enhancement was the
24 issue on the loss, which the parties agreed to disagree on and
25 have the Court decide. The other one was a two-level

1 enhancement for an ID device-making equipment.

2 Mr. Shineflew relied on these representations in the plea
3 agreement. The government should not be permitted, under the
4 circumstances, to move for an upward departure on the basis of
5 the leader/organizer. It truly is, I would submit, unfair to
6 bring this on as a motion to enhance a sentence later.

7 As far as the -- I want to address the government's motion
8 to -- for an upward departure in regards to the loss. So the
9 government basically says that if the Court doesn't count the
10 Seed Company checks, it's going to move -- and it has moved --
11 for an upward departure to 144 months. The plea agreement
12 recognizes the parties' disagreement on the loss and asks this
13 Court to decide. If the government doesn't prevail and didn't
14 prevail on this issue, then it reserved the right to recommend a
15 sentence consistent with the motion. We would submit, Your
16 Honor, that this is improper.

17 As far as the upward departure as it relates to the
18 criminal history category, all defendants with a criminal
19 history of 13 to infinity belong in Category VI by definition,
20 and they include the most intractable offenders. The Ninth
21 Circuit cases teach us that a departure is reserved for
22 defendants whose records are extreme by comparison. And we
23 would submit here, Your Honor, that Mr. Shineflew's record is
24 not extreme.

25 It's not -- we're not dealing with multiple violent

1 offenses. We're not dealing with large-scale frauds. These are
2 more -- I mean, they're large from, you know, my way of
3 thinking, but they're not large from the standpoint that this
4 isn't a million dollar fraud that's going on. The -- do you
5 want me to go into the recommendation, Your Honor?

6 THE COURT: Just a second. Let me rule on these, and
7 then I'll hear your recommendation.

8 We started out with the role in the offense. My ruling is
9 -- and I accept the presentence investigation report as written
10 with a three-level enhancement, and the reason for that is the
11 center of the activity. First of all, it involved nine other
12 defendants, at least nine other defendants, including
13 Mr. Shineflew. But the center of the activity is where you can
14 manufacture documents and alter documents and forge documents,
15 and that equipment was in his possession; and he, along with
16 another individual, perfected that.

17 Now, these other nine codefendants had to get forged and
18 counterfeit documents, and they had to come from that equipment,
19 but that's the center of the organization. You don't have bank
20 fraud, you don't have counterfeit checks and all of that, unless
21 you have the manufacturing ability to do that. So the other
22 codefendants were relying on the services of Mr. Shineflew. So
23 to that extent, he exercised control over those other
24 individuals because they can't just go out and scribble on a
25 check and try to pass it because it wouldn't get passed but for

1 his professional ability to manufacture counterfeit documents.

2 The other critical fact is that there was an agreement as
3 to how they split the money, and he would get paid for those
4 services, and those were vital services in order to commit the
5 bank fraud conspiracy. He did directly have contact with Pilon,
6 Bordelon, his wife, and Mr. Johnston and other defendants, but
7 he was manufacturing false ID as well as the counterfeit checks,
8 and therefore he was -- and for lack of a better term, you've
9 got a look at the -- at the whole guideline here, 3B1.1,
10 aggravated role. While he wasn't entitled to a four-level
11 increase -- he's not the organizer and leader; he didn't run
12 around and boss everybody around, but he certainly was a manager
13 or supervisor that was vital to the success of the bank fraud
14 conspiracy, and therefore I find that the three levels is
15 appropriate.

16 I also want to overrule your objection to the government's
17 arguing for the role adjustment. I've read the plea agreement
18 and reread the plea agreement, and it leaves open the fact that
19 the government can argue for any lawful sentence, which would
20 include calculation of the guidelines, even if the parties
21 didn't come to an agreement as to the calculation of the
22 guidelines.

23 So I overrule your objection that they somehow breached the
24 plea agreement or violated the plea agreement as to role or loss
25 or criminal history. The way the plea agreement's written, it's

1 open-ended. Each party can argue for any lawful sentence as a
2 result of the plea agreement. And earlier, I heard you say you
3 were agreeing with the four-point for loss.

4 MR. SCHWEDA: Correct, Your Honor.

5 THE COURT: That it's more than 15,000 up --

6 MR. SCHWEDA: Right.

7 THE COURT: -- to 40.

8 MR. SCHWEDA: We don't necessarily agree with all the
9 analysis, but -- that the presentence report makes, but as far
10 as the -- he's agreed to \$29,000 in restitution, which is the
11 full -- everything that was lost in this conspiracy; so that's
12 -- that's not an issue. And there's enough -- by agreeing that,
13 for example, the Numerica be treated as restitution and is
14 conduct that would be counted here, you know, we're getting --
15 we're getting over into the four-point level, anyway. So we --
16 we agree with the four-point level.

17 THE COURT: Okay. I accept the presentence
18 investigation report that the loss is more than 15,000 but less
19 than 40,000.

20 MR. SCHWEDA: Correct.

21 THE COURT: So there is a four-point enhancement. Any
22 other objection -- unresolved objections that we haven't gone
23 through?

24 MR. SCHWEDA: I don't believe there is, Your Honor.

25 THE COURT: I think you made some objections, but

1 they're just observations. There was that none of the Seed
2 Company checks were actually recovered, just the envelopes, and
3 I accept that statement. You also indicated that --

4 MR. SCHWEDA: And the presentence report was corrected
5 in that way -- in that way, too, Your --

6 THE COURT: Oh, okay. All right.

7 MR. SCHWEDA: -- Honor. So the original draft didn't
8 say that.

9 THE COURT: All right. And then your final issue is
10 you're seeking a downward departure under...

11 MR. SCHWEDA: 5K2.23?

12 THE COURT: Yes, for the five months that he served in
13 that Spokane County Superior Court case.

14 MR. SCHWEDA: Because it was -- because it's relevant
15 conduct here, Your Honor.

16 THE COURT: Yeah. All right. Other than that, I'd
17 hear your sentencing recommendations or anything else you have
18 to say.

19 MR. SCHWEDA: Oh, okay. Right now, Your Honor?

20 THE COURT: Yes.

21 MR. SCHWEDA: Okay. Your Honor, Mr. Shineflew has
22 serious criminal history, but we would -- but it's the product
23 of being addicted to meth, and he's addicted to meth as a result
24 of ADHD -- ADHD, I would submit to the Court. And this is, I
25 think, borne out by when he was placed on supervision with the

1 state Department of Corrections, he was allowed to be diagnosed
2 with ADHD and was given a prescription for Adderall; and during
3 that period of time, that was the most productive period of time
4 in his whole life, and that's verified by the letter from
5 Mr. Montano that has been submitted to the Court, his
6 supervisor, who said glorious things about Mr. -- that he was a
7 standout employee, that he could trust him.

8 And if -- and Mr. Shineflew wholeheartedly welcomes the
9 special conditions that are laid out in the presentence report
10 for being medicated and going through testing and treatment.
11 He's all for that. The -- he is -- since I've started
12 representing him, he has -- there's been one constant theme;
13 that he is 47. He's had a son late in life, a very young son, a
14 little over a year old.

15 THE COURT: He just turned 48, but go ahead.

16 MR. SCHWEDA: Okay. And the -- they visit every day.
17 They're allowed to do that by a Zoom call down in the Whitman
18 County jail where he's been housed. He visits with his wife and
19 child personally one time a week. He wants very much to be a
20 father to that child, but the problem has been -- has always
21 been his ADHD because -- and he's not receiving any medication
22 at this time -- because it makes his thoughts race. He's easily
23 distracted. He's inattentive. He has difficulty organizing
24 things.

25 But he had -- he's one of the people -- people with ADHD,

1 if they take meth, they become calm; and if they take Adderall,
2 they become calm, and that's why he turned to the meth. He
3 wants to lead a productive life, and he wants to -- he wants to
4 take Adderall and not get put in jail, and he wants to be a good
5 father and a husband.

6 Your Honor, the -- he wanted me to mention that the ID
7 printer was turned over to the Spokane Detectives Office when he
8 got into -- when he got into drug court. With the -- without
9 the leader/organizer, I come up with a level 13 because he only
10 gets 2 off for acceptance of responsibility. Category VI is 27
11 to 33 months. If you add the 24 consecutive months, you get
12 51 months; and minus 5 for the 2K2.23, if you grant it, would
13 get him to a 46-month low-end sentence. If you add back in the
14 leader/organizer, you end up with a level 15, Category VI. The
15 range I come up with is 41 to 51 months off the chart. So if
16 you go low end, it's 41 plus 24; so 65 months. If you give him
17 the five months credit, you get -- you get down to 60 months.

18 And, Your Honor, I -- if there's something to be said about
19 consistency of sentencing, I think when you -- you sentenced
20 Mr. Johnston to 61 -- or 60 months. You sentenced Mr. Slater to
21 21 months. There was one other defendant that got seven months,
22 and then all the rest of them got time served. I think it would
23 be -- under the circumstances of this case, if the Court were to
24 come in somewhere around 46 or towards 60, that would be a fair
25 sentence.

1 THE COURT: Let me just correct the record. Angus
2 Johnston got 60 months, but I credited him the 21 months he
3 served in state court; so he got an 81-month sentence.

4 MR. SCHWEDA: Correct, Your Honor. I understand that.
5 But he also stipulated to the Seed Company checks, and that's
6 what got him up to that -- up to that range. If they would've
7 made the same objection that Mr. Shineflew has made, I'm sure
8 the Court would have ruled in the same manner.

9 THE COURT: All right. Anything else you'd like to
10 cover? I don't have any other questions.

11 MR. SCHWEDA: Not that I can think of, Your Honor.

12 THE COURT: All right. Ms. Wick, any reply or
13 rebuttal to anything so far?

14 MS. WICK: Just briefly, Your Honor. Just with
15 regard -- the record needs to be clear about this second card
16 reader because there was efforts made to recover this through
17 Joe Kuhlman, who was an attorney working with the prosecutors
18 and with Shannon Saylor and so forth, who was communicating with
19 Tabitha Shineflew, who indicated that they -- it was no longer
20 available. It was sold to bond, or at least to attempt to bond,
21 Mr. Shineflew out of custody.

22 So I don't know why Mr. Shineflew thinks that it was
23 provided as part of his drug court process. Maybe that was the
24 intention. In fact, it probably was the intention and that his
25 attorney was working that out, but it couldn't be completed

1 because the extra stolen card reader is gone. And other than
2 that, I don't have rebuttal, Your Honor.

3 THE COURT: All right. Thank you.

4 Mr. Shineflew, this is your opportunity to tell me anything
5 you want me to know in mitigation or explanation before I
6 pronounce sentence; so I'll hear from you.

7 THE DEFENDANT: Just to -- real quick just to touch on
8 that, so when -- when they gave me the drug court in Spokane,
9 part of my -- part of my -- I told my lawyer if they will give
10 me drug court -- you know, I still had the card printer -- and
11 told him when I get drug court, I want to turn it in. You know,
12 they're not requiring me to, but I want to turn it in so that I
13 don't get temptations with it. And when they gave me drug
14 court, my wife personally took the printer in question to
15 Mr. Joe Kuhlman's office and turned it in to him. So it has
16 been recovered, and --

17 THE COURT: All right.

18 THE DEFENDANT: -- I just -- and we did that on our
19 own free will because we didn't want to have the temptation. So
20 it was -- my wife personally turned it in to my attorney; so it
21 was recovered.

22 THE COURT: All right.

23 THE DEFENDANT: Okay. And so, Your Honor, my brain --
24 my brain works a lot different than most people; so my thoughts
25 are always racing, going hundred miles an hour at a time because

1 of my ADHD. I'd like to look a person in the eyes when I'm
2 talking with them, but I spent the last two weeks preparing this
3 letter so that I wouldn't take too much of the Court's time
4 repeating myself over and over and forgetting half the things I
5 want to say; so I need to read from this letter I prepared.

6 I'd first like to bring to the Court's attention my
7 understanding of the plea agreement I signed. I'm not a lawyer
8 nor do I pretend to be one. Because of my ADHD, my mind
9 processes information a lot different when I'm off my
10 medication. I haven't had my meds in a very long time because
11 the jails refuse to give me the meds or even treat my mental
12 illness. The medication slows my mind down so that I can think
13 and process information normal. I'm bringing this to your
14 attention, Your Honor, in the hopes that it will help you
15 understand my thoughts and understanding of the plea agreement.

16 The U.S. Attorney's Office first offered me a plea
17 agreement that said I would agree to a 12-point enhancement for
18 the checks that were thrown away in the trash plus a 2-point
19 enhancement for 10-plus victims plus a 2-point enhancement for
20 the printer. They informed us they were not seeking a 3-point
21 enhancement for the manager/organizer, and they informed us that
22 they had my criminal history at a level 5.

23 Judge Rice, I stand before you and I truly humble myself
24 before you. I take full responsibility for my actions. I'm not
25 trying to waste the Court's time or anyone -- or anyone else's,

1 but I would not sign the original plea agreement because I never
2 got \$450,000, and I never tried to get the \$450,000. Nobody on
3 the indictment tried to cash any of those checks.

4 The U.S. Attorney's Office and U.S. Probation Office didn't
5 request a 12-point enhancement for anybody on this indictment;
6 so my lawyer went back and talked to the U.S. Attorney's Office,
7 and they agreed to take the 12-point enhancement out of the plea
8 agreement on the grounds that we both agree that my loss was
9 \$8,800, that the base level would start at 7, and that my total
10 offense level -- my total offense level would be determined by
11 the U.S. Probation Department's calculation of the loss, and
12 that either party has the right to argue a lower or greater loss
13 at sentencing, plus I agreed to a 2-point enhancement for the
14 printer.

15 We had asked the U.S. Attorney's Office to send us all the
16 info. they had where they were coming up with the 2-point
17 enhancement for 10-plus victims, but instead of sending us the
18 info., they said they would just take it out of the plea
19 agreement. So they typed up a new plea agreement which said my
20 total loss was \$8,800, that my base level would start at 7, plus
21 a 2-point enhancement for the printer, and that my total offense
22 level would be raised on the amount of loss that the U.S.
23 Probation Department came up with, and that both parties were
24 free to argue a lower or higher loss at sentencing.

25 I took that deal and pled guilty fully believing and

1 understanding that was the deal. Now that I pled guilty, the
2 U.S. Attorney's Office is adding back the stuff they took out of
3 the original plea agreement which made me believe it wasn't
4 going to be used against me, plus added another enhancement for
5 a manager that wasn't in the original plea, and now says that if
6 the Court won't agree with her for the 12-point enhancement to
7 give me another 12-point enhancement for my criminal history.

8 I thought, believed, and understood in my mind that by
9 taking the deal and the reason for the deal was to avoid all
10 these enhancements and the costly trial. I'm bringing this to
11 your attention, Your Honor, only in case that this case ends up
12 in the appeal court. I don't want the appeal court to say,
13 "Sorry, Mr. Shineflew. Because you didn't bring this up and
14 give Judge Rice the opportunity to first deal, we're not going
15 to hear it, either." And that's the only reason I'm giving you
16 my understanding of the plea agreement, why I pled guilty.

17 Now that that's over, I'd like to take a few minutes to
18 address the Court and the victims. I believe that my bad
19 choices have made victims out of many people, but none more than
20 my family. From the bottom of my heart, I want to apologize to
21 my wife and son for the things they had to suffer and continue
22 to suffer because of my bad choices.

23 Next I want to apologize to all the victims in this case
24 who suffered any type of loss, for suffering any type of loss
25 because of my bad choices. I take full responsibility for my

1 actions. I can stand here and make up a bunch of excuses for my
2 behavior; I was high on meth, wasn't taking my meds, et cetera,
3 et cetera, but the truth of the matter is I can't change the
4 past. I wish -- I wish there was a do-over button I could push,
5 but there isn't; so I would like to tell you my goals for the
6 future.

7 Upon my release, I will be going into a one-year Christian
8 men's home to get myself firmly rooted and grounded into the
9 word of God in the community. I'm going to enroll myself in the
10 STEP drug program, which I believe is a year program, and get
11 back on my meds. While I'm in the men's home, I won't be able
12 to work. My first year out will be spent getting my life right
13 with God, learning how to deal with my substance abuse and the
14 STEP program and my mental health.

15 Once these programs are complete, I'll be moving back in
16 with my wife and getting a job to set up a payment program to
17 pay the victims back, and I plan to continue going to NA
18 meetings to maintain my sobriety, staying on my meds, and, of
19 course, God will always be number one in my life.

20 Judge Rice, I'm almost 50 years, and God has blessed me
21 with the most beautiful son in the world. My boy is 16 months
22 old now, and God is so good that He has allowed me the last
23 13 months that I've been in jail to visit him every day. The
24 love that has developed inside my heart for my boy is impossible
25 to describe. You would have to be a parent to understand the

1 love.

2 You know, I don't want to be a loser anymore, you know?
3 Your Honor, I want more than anything in life for -- for my son
4 to be proud of me, you know? This part I didn't write down. I
5 tried to picture -- I mean, you're a good-looking guy. You've
6 probably got a beautiful wife and kids. I can picture your kids
7 at school. "What does your dad do for a living?" "My dad's a
8 federal judge." And it's got to make you proud, you know? Your
9 kids come home; they got to be proud of you, you know? See the
10 kids -- see the kids on the playground. "Don't mess with him.
11 Their dad's a judge. He'll put your butt in jail." I mean,
12 it's got to make you proud.

13 That's what I want more than anything. I just want my son
14 to be proud of me, you know? And he -- he'll never be proud of
15 me if I continue this lifestyle. I just want him to be proud of
16 me. I've got to get back to this or I'll get sidetracked.

17 The thought of being away from him one more day than I
18 already have kills me inside. I used to be a selfish person.
19 Now all I care about is my boy. I don't think about myself
20 anymore. I just think about my family. I pray you don't judge
21 me by what you see on paper. I'm not an evil person. I hated
22 every time I've broken the law.

23 When I'm clean, Your Honor, I work my butt off. I take
24 care of my family. Thoughts of breaking the law never even
25 enter my mind. I enjoy working, and I always have a job. Only

1 when I'm high on meth I lose everything I've worked so hard for,
2 and that's when stupid things happen.

3 You have the power and authority to say, "Off you go,
4 Mr. Shineflew. I'm going to give you plus years to go sit
5 inside a concrete box," where the truth of the matter is I won't
6 get any help. I can't pay the victims back from in jail. And
7 you would be just in doing that. But you also have the power
8 and authority to say, "You're fixable, Mr. Shineflew. And
9 instead of sending you to a concrete box, I'm going to take a
10 chance and get you the help you need so that we can fix you."

11 I got out of prison in March of 2016, got on mental health
12 meds, and went to work and for two years lived a normal life. I
13 was on DOC for 16 months. I never had one dirty urine test. I
14 never even had a warning. Thoughts of using and doing crime
15 never entered my thoughts. I went to work, took all my classes
16 and -- that I was supposed to, and me and my wife went to church
17 every Sunday. We had a good life. When I relapsed, my life
18 fell apart.

19 What I'm trying to say, Your Honor, is I want the normal
20 life. I don't enjoy breaking the law. Now that I have a son, I
21 never will again. God is number one in my life; and as long as
22 I never take my eyes off Him again, I'm going to be all right.
23 Thank you for giving me this opportunity to speak.

24 THE COURT: Two outstanding questions, Mr. Schweda.
25 One is RDAP. Are you seeking RDAP?

1 MR. SCHWEDA: Yes. And I forgot to mention that he's
2 asking the Court to --

3 THE COURT: Recommend it.

4 MR. SCHWEDA: -- recommend RDAP to the BOP.

5 THE COURT: And then placement. I can't -- I don't
6 decide where placement is, but I can make a recommendation. Do
7 you have a recommendation?

8 MR. SCHWEDA: Yeah. Sheridan, Your Honor, please.

9 THE COURT: All right. I'm going to make some
10 findings, and then I'll impose the sentence.

11 I adopt the presentence investigation report without
12 change. I find the total offense level is 15, criminal history
13 Category VI. The advisory guideline range is 41 to 51 months,
14 fine range 7,500 to one million.

15 I deny the government's motion for upward departure. In
16 part, I grant the defendant's motion for a downward adjustment
17 based on the five months he served for related criminal conduct
18 that is essentially part of the conspiracy to commit bank fraud;
19 and I grant ECF 555, the motion to add restitution to Numerica
20 Credit Union and the STCU. I've previously made my findings on
21 the objections.

22 Mr. Shineflew, based on your plea of guilty to Counts 1,
23 38, and 41, it is the decision of the Court to sentence you to a
24 term of imprisonment of 46 months as to Count 1, 46 months as to
25 Count 38; those terms are to run concurrent; two years as to

1 Count 41, that term is to run consecutive to Counts 1 and 38.

2 The Court is recommending to the Bureau of Prisons that you
3 be housed at Sheridan FCI and that you receive credit for time
4 served in federal custody prior to sentencing. I'm recommending
5 that you participate in the Residential Drug Abuse Program and
6 the BOP Inmate Financial Responsibility Program.

7 I'm placing you under a five-year term of supervised
8 release as to Count 1, a three-year term as to Count 38, and
9 one-year term as to Count 41, all to run concurrently. The
10 mandatory conditions of supervised release apply. You must not
11 commit another federal, state, or local crime. You must not
12 unlawfully possess a controlled substance, including marijuana,
13 which remains illegal under federal law. You must cooperate in
14 the collection of a DNA sample as directed by your probation
15 officer.

16 I'm imposing the 13 standard conditions of supervision.
17 Those were attached to your presentence investigation report.
18 Did you read those with your attorney?

19 THE DEFENDANT: Yeah, we went over all of them.

20 THE COURT: Do you waive the reading of those in open
21 court?

22 THE DEFENDANT: Yes.

23 THE COURT: All right. I'm imposing the 13 standard
24 conditions, and then I'm imposing special conditions.

25 No. 1, you must not open, possess, use, or otherwise have

1 access to any checking account, ATM card, credit card, without
2 the advanced approval of your supervising officer.

3 No. 2, you must provide your supervising officer with
4 access to any requested financial information and authorize the
5 release of any financial information. The Probation Office may
6 share the financial information with the U.S. Attorney's Office.
7 You must disclose all assets and liabilities to your supervising
8 officer. You must not transfer, sell, give away, or otherwise
9 convey any asset without advanced approval of your supervising
10 officer.

11 No. 3, you must not incur any debt, open additional lines
12 of credit, or enter into any financial contracts without the
13 advanced approval of your supervising officer.

14 No. 4, you must take medications for the treatment of
15 attention deficit hyperactivity disorder as prescribed by a
16 licensed mental health treatment provider. You shall complete a
17 mental health evaluation and follow any treatment
18 recommendations of the evaluating professional which do not
19 require forced or psychotropic medication or inpatient
20 confinement absent further order of the court. You shall allow
21 reciprocal release of information between your supervising
22 officer and your treatment provider, and you shall contribute to
23 the cost of treatment according to your ability to pay.

24 No. 5, you must submit your person, residence, office,
25 vehicle, and belongings to a search conducted by a probation

1 officer at a sensible time and manner based upon reasonable
2 suspicion of contraband or evidence of a violation of a
3 condition of supervision. Failure to submit to search is
4 grounds for revocation. You must warn persons with whom you
5 share a residence that the premises may be subject to search.

6 No. 6, you must undergo a substance abuse -- you must
7 undergo substance abuse evaluations and, if indicated by a
8 licensed/certified treatment provider, enter into and
9 successfully complete approved substance abuse treatment
10 programs, which could include inpatient treatment and aftercare
11 upon further order of the court. You must contribute to the
12 cost of treatment according to your ability. You must allow
13 full reciprocal disclosure between your supervising officer and
14 treatment provider.

15 No. 7, you must abstain from the use of illegal controlled
16 substances and must submit to urinalysis and sweat patch
17 testing, as directed by your supervising officer, but no more
18 than six tests per month in order to confirm continued
19 abstinence from these substances.

20 I'm imposing a \$300 special penalty assessment. That's
21 mandatory. I'm waiving imposition of a fine based on your
22 inability to pay.

23 And the priority of restitution: I'm imposing restitution
24 in the amount of \$8,260 to Washington Trust Bank, first priority
25 in full; to Umpqua Bank, \$1,115.86, second priority in full;

1 Numerica Credit Union, \$4,000, third priority in full; Key Bank,
2 \$4,550, fourth priority in full; Home Depot, \$1,053.18, fifth
3 priority in full; Heritage Bank, \$3,845.49, sixth priority in
4 full; Bank of America, \$2,850, seventh priority in full;
5 Alphacard, \$3,778.62, eighth priority in full; based on the
6 motion to add restitution, Spokane Teachers Credit Union,
7 \$1,360.72, ninth priority in full; Numerica Credit Union,
8 \$4,996.13, tenth priority in full.

9 I'm waiving the interest requirement on the restitution
10 based on your inability to pay. Payment is due immediately. If
11 you don't pay it immediately, you shall pay not less than \$50
12 per quarter of a year while you're incarcerated and pay not less
13 than \$200 per month or 10 percent of your household income,
14 whichever is larger, commencing 30 days after your release from
15 imprisonment.

16 THE DEFENDANT: What does priority mean? Does that
17 mean I've got to pay this one first and then -- okay.

18 THE COURT: Yeah, because we have ten payees. You
19 know, you pay \$100; I'm not going to -- the Clerk's Office
20 doesn't pay \$10 to each one of them.

21 THE DEFENDANT: Yeah, yeah. Now, I just wanted to
22 make sure I understand the --

23 THE COURT: We finish off in order.

24 THE DEFENDANT: Yeah, first, second.

25 THE COURT: Now, to your benefit, I'm making this

1 joint and several with a list of your codefendants and the
2 amounts that they're responsible for as well. Do you waive the
3 reading of the joint-and-several liability?

4 THE DEFENDANT: Yeah.

5 THE COURT: I also am entering an order of forfeiture
6 in the amount of \$8,831.80 in the form of a money judgment in
7 favor of the United States.

8 I had one further explanation. Your sentencing guideline
9 range is 41 to 51 months. I would have sentenced you to
10 51 months, and that's based on your criminal history and your
11 life of crime. Your criminal history points are, what,
12 25 points or something? It's almost double the minimum
13 necessary to get in level 6. So I would've sentenced you at the
14 high end of the guidelines, 51 months. I took five months off
15 of that, made it 46. That's why you're serving 46 months plus
16 the 24 mandatory consecutive to that.

17 Ms. Wick, may I dismiss the remaining counts?

18 MS. WICK: So moved.

19 THE COURT: And those are dismissed.

20 Mr. Shineflew, you also have a right to appeal, according
21 to your plea agreement, and I want to briefly address your plea
22 agreement understanding. Everything you said doesn't obviate
23 the findings I've made or the sentence I've imposed as to what
24 your plea agreement was. For instance, you stipulated to the
25 loss in the plea agreement of 8,000, but if you look at the

1 wording, it says at least 8,000 X dollars. It also -- and you
2 recited it when you read your letter to me. You recited that
3 you, as well as the government, could make any argument they
4 deem necessary within the statute at sentencing, and they did
5 that.

6 THE DEFENDANT: I thought that meant for the amount of
7 money; that they could argue a higher or lower loss, the amount
8 of money.

9 THE COURT: Well, they did.

10 THE DEFENDANT: Yeah.

11 THE COURT: And I rejected it.

12 THE DEFENDANT: Yeah.

13 THE COURT: So -- and according to your plea
14 agreement, you have a right to appeal this sentence. You have a
15 right to an attorney at no expense to you. You have a right to
16 a transcript of this hearing at no expense to you. But if you
17 appeal this sentence, you must file the notice of appeal within
18 14 days of today.

19 I listened intently at what you said when you were reading
20 your letter, and you said, you know, when you get out of prison,
21 you're going to go to a home and not work because you wanted to
22 get away from drugs and get stabilized on your medication. The
23 time to do that is while you're in prison, is to attend the
24 RDAP, ask for assistance, ask for treatment, and get stabilized
25 while you're in prison as much as you possibly can because you

1 don't want to be wasting time on supervised release when you get
2 out. You want to get out, get a job, and get back with your
3 family right away. You don't want additional time. So I
4 encourage you to ask for help, ask for medication, treatment,
5 evaluations while you're in prison, and better yourself there so
6 that it's not wasted time when you get out.

7 THE DEFENDANT: Yeah, I understand. I don't mean,
8 like, by not trying to work. I mean when my eyes are on God,
9 everything's perfect. I don't have problems. And so if I get
10 out of prison and I just go straight back home and I get on
11 medication and I've got some help, yeah, I might be successful.

12 But my problem has been in the past is, you know, me and my
13 wife, we go to church, and pretty soon thoughts start entering
14 my brain, "You know what? I need to start working overtime
15 because we got a baby coming," when in all actuality, I'm
16 bringing home \$4,000 a month. Why do I need to work overtime?
17 But my mind starts telling me I need to work overtime. And then
18 what happens is now I'm not going to church. Now I'm not going
19 to Bible study. And the more my eyes get off God, the more this
20 crap starts filling back in my thing so...

21 THE COURT: I understand what you're saying. I
22 understand. I'm just saying try to get your mind in the right
23 place when you walk out of the prison doors so that you're not
24 drug down that wrong path.

25 THE DEFENDANT: Yeah. No, I fully understand what

1 you're saying.

2 THE COURT: All right. Mr. Schweda, anything further?

3 MR. SCHWEDA: No, Your Honor.

4 THE COURT: Ms. Wick, anything further?

5 MS. WICK: No, Your Honor.

6 THE COURT: All right. We'll be in recess.

7 (Court adjourned on July 28, 2021, at 3:18 p.m.)

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GENERAL INDEX

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EXHIBIT INDEX

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ADMITTED</u>
1	Excel spreadsheet master list of checks with Sub-Exhibits A - I of specific check categories	14

C E R T I F I C A T E

I, ALLISON R. ANDERSON, do hereby certify:

That I am an Official Court Reporter for the United States District Court for the Eastern District of Washington in Spokane, Washington;

That the foregoing proceedings were taken on the date and place as shown on the first page hereto; and

That the foregoing proceedings are a full, true, and accurate transcription of the requested proceedings, duly transcribed by me or under my direction.

I do further certify that I am not a relative of, employee of, or counsel for any of said parties, or otherwise interested in the event of said proceedings;

DATED this 31st day of August, 2021.



ALLISON R. ANDERSON, RMR, CRR
Washington CCR No. 2006
Official Court Reporter
Spokane, Washington

1 Joseph H. Harrington
2 Acting United States Attorney
3 Eastern District of Washington
4 Ann T. Wick
5 Assistant United States Attorney
6 Post Office Box 1494
7 Spokane, WA 99210-1494
8 Telephone: (509) 353-2767

9 UNITED STATES DISTRICT
10 FOR THE EASTERN DISTRICT OF WASHINGTON

11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 vs.

14 JONNY SHINEFLEW,

15 Defendant.

Case No.: 2:19-CR-00215-TOR-2

**GOVERNMENT'S
SENTENCING MEMORANDUM**

16 Plaintiff, United States of America, by and through Joseph H. Harrington,
17 Acting United States Attorney for the Eastern District of Washington, and Ann T.
18 Wick, Assistant United States Attorney for the Eastern District of Washington,
19 submits the following memorandum setting forth the government's position at
20 sentencing. The government recommends that the Court sentence the defendant to 24
21 months on Count 41, consecutive to a term of imprisonment of 120 months for Counts
22 1 and 38, all followed by a five-year term of supervised release.
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28 **GOVERNMENT'S SENTENCING MEMORANDUM - 1**

BACKGROUND

Defendant Jonny Shineflew is being sentenced for his role in a 10-defendant bank fraud conspiracy. Defendant pleaded guilty to Conspiracy to Commit Bank Fraud (Count 1), Mail Theft (Count 38), and Aggravated Identity Theft (Count 41), pursuant to a written plea agreement, wherein the government and Defendant agreed to recommend a five-year term of supervised release, and Defendant agreed to pay restitution in the amount of \$29,453.15 and a money judgment in the amount of \$8,831.80. ECF No. 476. The parties are free to recommend any legal term of imprisonment and fine. *Id.*

Both parties objected to the Presentence Investigation Report (PSR). The government objected to the PSR's loss calculation and lack of role adjustment. ECF No. 517. Defendant objected to a two-level enhancement applied for the offense involving over 10 victims and to the PSR not identifying U.S.S.G. § 5K2.23 as a potential basis for a downward departure. ECF No. 516. Defendant also objected to a factual representation regarding the circumstances of his reported ADHD diagnosis. *Id.* Subsequent to the government's objection regarding loss, Defendant filed a belated objection to the PSR's loss calculations, as well as to a factual representation regarding the seed company checks discussed in greater detail below and in the government's Objection. ECF No. 518.

1 The government submits that its objections should be sustained. The
2 government further submits that Defendant's objections as to loss amount and victim
3 count should be overruled.

4 LEGAL ANALYSIS

5
6 The Ninth Circuit has set forth a basic framework which the district courts
7 should follow in compliance with the Supreme Court's ruling in *United States v.*
8 *Booker*, 543 U.S. 220 (2005):
9

- 10 (1) Courts are to begin all sentencing proceedings by correctly determining
11 the applicable sentencing guidelines range, precisely as they would have
12 before *Booker*.
- 13 (2) Courts should then consider the § 3553(a) factors to decide if they
14 support the sentence suggested by the parties. Courts may not presume
15 that the guidelines range is reasonable. Nor should the guidelines factors
16 be given more or less weight than any other. They are simply to be
17 treated as one factor among the § 3553(a) factors that are to be taken into
18 account in arriving at an appropriate sentence.
- 19 (3) If a court decides that a sentence outside the guidelines is warranted, then
20 it must consider the extent of the deviation and ensure that the
21 justification is sufficiently compelling to support the degree of the
22 variance.
- 23 (4) Courts must explain the selected sentence sufficiently to permit
24 meaningful appellate review.

25 *United States v. Carty*, 520 F.3d 984, 991-92 (9th Cir. 2008).

SENTENCING CALCULATION

I. Statutory Maximum and Minimum Sentence

For the defendant's conviction for conspiracy to commit bank fraud, the Court may impose a term of imprisonment of up to 30 years, a fine of up to \$1,000,000 or double gross proceeds, a term of supervised release of up to five years, and a special assessment of \$100. PSR ¶ 247.

For the defendant's conviction for mail theft, the Court may impose a term of imprisonment of up to five years, a fine of up to \$250,000, a term of supervised release of up to three years, and a \$100 special assessment. PSR ¶ 247.

For the defendant's conviction for aggravated identity theft, the Court must impose a minimum term of imprisonment of two years, consecutive to any other sentence, and may impose a fine of up to \$250,000, a term of supervised release of up to one year, and a \$100 special assessment. PSR ¶ 247.

II. United States Sentencing Guidelines Calculation

"As a matter of administration and to secure nationwide consistency, the Guidelines should be the starting point and the initial benchmark." *Gall v. United States*, 552 U.S. 38, 49 (2007).

A. Offense Level Calculation

The PSR incorrectly calculated the defendant's total offense level as 13. PSR ¶ 60. This calculation is based on a loss amount of \$20,201.48, between \$15,000 and

\$40,000 (PSR ¶ 51) and does not include an enhancement for Defendant's supervisory role in the offense pursuant to U.S.S.G. §3B1.1(b). The government objected on these grounds. ECF No. 517. Defendant also objected to loss (ECF No. 518), as well as to a two-level enhancement for Defendant's offense involving 10 or more victims under U.S.S.G. §2B1.1(b)(2)(A). ECF No. 516.

1. 12 levels should be added due to Defendant's intended loss of \$489,983.83.

The government submits that the loss amount in this case should be based on Defendant's intended loss of \$489,983.83, pursuant to U.S.S.G. §2B1.1. ECF No. 517. This is because the Guidelines Commentary directs that the greater of intended loss or actual loss is to be used to calculate the offense level. §2B1.1 n.3(A). *See United States v. Cingari*, 952 F.3d 1301, 1308 (11th Cir.), cert. denied, 141 S. Ct. 835, 208 L. Ed. 2d 409 (2020) ("To properly interpret the Sentencing Guidelines, we begin with the language of the Guidelines, considering both the Guidelines and the commentary.") (internal citation omitted). "T]he guideline and the commentary must be read together, because the commentary may interpret the guideline or explain how it is to be applied." *Id.* (internal citation and quotation omitted).

Defendant counters that this Commentary should be ignored, because the term "loss" in §2B1.1 is unambiguous. ECF No. 519. However, Defendant's objection ignores, *inter alia*, U.S.S.G. §1B1.7: "The Commentary that accompanies the guideline sections may serve a number of purposes. First, it may interpret the

1 guideline or explain how it is to be applied. Failure to follow such commentary could
2 constitute an incorrect application of the guidelines, subjecting the sentence to
3 possible reversal on appeal.” U.S.S.G. §1B1.7 (citing 18 U.S.C. § 3742).

4 “[C]ommentary explains the guidelines and provides concrete guidance as to how
5 even unambiguous guidelines are to be applied in practice.” *Stinson v. U.S.*, 508 U.S.
6 36, 44 (1993). Commentary is binding on courts unless it violates the Constitution or
7 a federal statute, or is plainly erroneous or inconsistent with the Guideline at issue.
8
9 *Stinson*, at 45-47.

11 The government’s reply to Defendant’s position is set forth in greater detail in
12 ECF No. 525, and is incorporated herein. The bottom line is that Guidelines
13 Commentary, including that which defines actual and intended loss, is authoritative
14 and binding on this Court. *Kisor v. Wilkie*, 139 S.Ct. 2400 (2019) did not change this
15 rule. Moreover, if the Supreme Court had meant for *Kisor* to change this rule, it could
16 have granted certiorari in *Cingari*; it did not. 141 S.Ct. 835 (Mem), 208 L.Ed.2d 409
17 (2020). Thus, this Court is to look to the definition of loss in the Commentary to
18 determine Defendant’s offense level and apply the greater of actual or intended loss.
19
20 §2B1.1 n.3(A).

21 The government submits that the correct enhancement for loss in this case is 12
22 levels, pursuant to §2B1.1(b)(1)(G), based on an intended loss between \$250,000 and
23 \$550,000.
24
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2. Three levels should be added as a role adjustment.

Pursuant to U.S.S.G. §3B1.1(b), three levels should be added for Defendant's supervisory role in his crimes of conviction. A three-level increase is warranted where a defendant is a manager or supervisor and the criminal activity involved five or more participants or was otherwise extensive. *Id.* To summarize the government's argument set forth in more detail at ECF No. 517 and incorporated herein: there were 10 co-defendants involved, the criminal activity was extensive, there were agreements to split the proceeds amongst the co-conspirators depending on their participation in the scheme, and various aspects of the conspiracy were directly supervised by Defendant, such as with Co-Defendant Pilon and Co-Defendant Tabitha Shineflew. Defendant also exercised control over Co-Defendants Bordelon and Johnston.

3. The PSR correctly added two levels for the number of victims.

U.S.S.G. §2B1.1(b)(2)(A) provides that two levels should be added where "the offense" "involved 10 or more victims." A "victim" includes, *inter alia*, any person, corporation, and company who "sustained any part of the actual loss determined under [§2B1.1](b)(1)." §2B1.1 n.1. Further:

In a case in which undelivered United States mail was taken, or the taking of such item was an object of the offense, or in a case in which the stolen property received, transported, transferred, transmitted, or possessed was undelivered United States mail, 'victim' means (I) any victim as defined in Application Note 1; or (II) any person who was the intended recipient, or addressee, of the undelivered United States mail.

§2B1.1 n.4(C)(i).

1 The actual loss attributable to Defendant's offense is \$30,453.15. ECF No. 8. That
2 total is derived from conduct causing actual loss to at least 10 victims, including
3 Numerica Credit Union, Alphacard, Home Depot, Golden Hills Brewery, Leo
4 Gassling and Son, TRM Services, Jake's Café, Pepmove, Royal Business Systems,¹
5 and the victim from Spokane County Case No. 18-1-04662-0. PSR ¶¶ 144, 146. The
6 addressees of the checks Defendant stole from the mail are additional victims. §2B1.1
7 n.4(C)(i).
8
9

10 If the Court sustains the government's objections, the adjusted offense level is
11 26, after adding 12 levels based on loss amount, 2 levels based on number of victims,
12 and 3 levels for a role adjustment. After a 3-level reduction for acceptance of
13 responsibility, the total offense level is 23.
14

15 B. Criminal History Calculation
16

17 The PSR correctly calculated the defendant's criminal history category as
18 category VI, based on a total of 25 points. PSR ¶ 149.
19

20 C. Advisory Guideline Range
21

22 Based on a total offense level of 23, the advisory range in this case is 92-115
23 months.
24

25 **IMPOSITION OF SENTENCE**
26

27 ¹ Based on check nos. 4276, 1248, 52820, 1385, 1258, 9825, 6284, 40347,
28 7807, 29609, 9401, and 25576.

1 **I. Imposition of a Sentence under 18 U.S.C. § 3553**

2 A. 18 U.S.C. § 3553(a) factors

3 1. The nature and circumstances of the offense

4 The Court is well-informed as to the nature and circumstances of Defendant's
5 present crimes, as Defendant is the last of the 10 defendants to be sentenced.

6 Defendant stole checks, altered checks, presented stolen and fraudulent checks for
7 payment, manufactured and provided to others counterfeit identifications, to include
8 identification of another person, to pass and attempt to pass the fraudulent checks.

9 The batch of checks stolen from the Landmark Turf and Native Seed mailbox, totaled
10 approximately \$458,498. Through the course of the conspiracy, fraudulent checks
11 were successfully passed by Defendant and co-conspirators for a total of \$29,453.15,
12 not including amounts based on checks not charged in the Indictment but charged in
13 state court cases and included as relevant conduct in Defendant's PSR, and
14 codefendants' PSRs. Defendant personally realized proceeds in the amount of
15 \$8,831.80, again not including proceeds gained from fraudulent check activity
16 charged in other court cases. The nature and circumstances of the defendant's offense
17 support a significant prison sentence of the kind recommended by the government.

18 2. The history and characteristics of the defendant

19 The defendant's history and characteristics support an above-guideline
20 sentence. Defendant is no stranger to the criminal justice system. At the age of 20,
21
22

1 Defendant committed, in three separately filed cases, three counts of forgery and one
2 count of grand theft. PSR ¶¶ 66-71. He was convicted of the first forgery in
3 September 1993, the second forgery and grand theft in April 1994, and the third
4 forgery in May 1994. *Id.* At the age of 21, Defendant committed burglary, while
5 released on another felony case. PSR ¶ 73-75. After a 32-month prison sentence,
6 Defendant next evaded police, apparently while driving under the influence. PSR
7 ¶¶ 76-77. After several parole violations in that case, Defendant committed First
8 Degree Burglary in 2002, now 28 years old. PSR ¶¶ 77-78. Defendant broke into the
9 victim's home, assaulted her in her bedroom, hog-tied her with flex-ties, and held a
10 knife to her throat. PSR ¶¶ 80-81. Shortly after he served the three-year sentence
11 imposed for that crime, Defendant again burglarized a dwelling, this time using a
12 firearm to restrain his victims. PSR ¶¶ 85-97. Before being sentenced for the crime,
13 Defendant committed two more theft crimes. PSR ¶ 98, 108. Defendant was paroled
14 in January 2013. PSR ¶ 102. By July 2013 he had returned to crime and committed
15 several instances of identity theft before the end of the year. PSR ¶¶ 112-117. After
16 another period of incarceration, Defendant was committed First Degree Trafficking in
17 Stolen Property, more identity theft, possession of a \$30,000 stolen vehicle, more
18 forgery, and residential burglary, all in 2018, partially overlapping the bank fraud
19 conspiracy of the present federal case. PSR ¶¶ 118-148. He was sentenced in relation
20 to several of those crimes in 2019 and entered a state drug court program in November
21
22
23
24
25
26
27

1 2019. PSR ¶ 156. Defendant absconded from Drug Court by January 2020. PSR
2 ¶ 153.

3 Defendant's history and repetition of the kinds of crimes captured in the PSR
4 support a sentence of 120 months, plus the consecutive 24-month sentence required
5 for Count 41.
6

- 7 3. The need for the sentence imposed to reflect the seriousness
8 of the offense, to promote respect for the law, and to provide
9 just punishment.

10 Although not a violent crime, fraud is not a victimless crime. A sentence of the
11 kind recommended by the government provides just punishment in this instance.
12

- 13 4. The need for the sentence imposed to afford adequate
14 deterrence and to protect the public.

15 As noted above, this is not Defendant's first time being sentenced for fraud
16 crimes. Indeed, Defendant's extensive criminal history—extending over thirty years
17 and broken only by periods of incarceration—demonstrates that Defendant has
18 continually and willfully victimized members of the community, notwithstanding the
19 various lengths of jail and increasing prison sentences of his past. Neither the prison
20 sentences, nor the opportunities of probation or parole, were sufficient to deter
21 Defendant from the present offenses. Nor did previous opportunities for substance
22 abuse treatment prevent Defendant from his life of crime. Defendant was most
23 recently given an opportunity to participate in the Spokane County Drug Court
24
25
26
27

1 program, which he entered in November 2019. PSR ¶ 156. Defendant absconded
2 within two months, despite his wife expecting a child, and despite knowing that a
3 federal investigation of Defendant's crimes was pending. ECF Nos. 315 at 7, 476 at
4
5 6.

6 With the record before this Court, the Court has an opportunity to impose a
7 sentence that not only deters Defendant from returning to crime, but also other like-
8 minded individuals. A substantial prison sentence of the kind recommended by the
9 government adequately serves the goals of deterrence and protection of the public.
10

11 5. The kinds of sentences available
12

13 The Court must sentence Defendant to prison and may also impose a fine and
14 include a term of supervised release. Probation is precluded by statute. PSR ¶ 227.
15

16 6. The established sentencing range
17

18 The established sentencing range depends on the Court's rulings regarding the
19 parties' objections. The government submits that the correct advisory range is 92-115
20 months, based on a total offense level of 23.

21 7. The need to avoid unwarranted sentence disparities
22

23 A sentence proposed by the government would avoid unwarranted sentence
24 disparities.
25
26
27

8. The need to provide restitution to any victims of the offense

Defendant stipulated in his plea agreement to pay restitution in the amount of \$29,453.15. ECF No. 476 at 12. The amount payable to each victim is as follows:

\$3,778.62 to AlphaCard
\$2,850 to Bank of America
\$3,845.49 to Heritage Bank
\$1,053.18 to Home Depot
\$4,550 to Key Bank
\$4,000 to Numerica
\$1,115.86 to Umpqua Bank
\$8,260 to Washington Trust Bank

The government requests that this restitution be joint and several with the following co-defendants, as follows:

Angus Johnston, in the full amounts set forth above.

Tabitha Shineflew, in the amount of \$2,000 to Numerica.

Jared Pilon, in the amount of \$1,053.18 to Home Depot.

Michael Slater, in the amount of \$2,555 to Washington Trust Bank.

Anthony Wright, in the amounts of:

\$384.90 to AlphaCard
\$290.40 to Bank of America
\$391.80 to Heritage Bank
\$107.10 to Home Depot
\$463.50 to Key Bank
\$407.40 to Numerica
\$113.70 to Umpqua Bank
\$841.20 to Washington Trust Bank

1 Britney McDaniel, in the amounts of:

2 \$641.50 to AlphaCard
3 \$484 to Bank of America
4 \$653 to Heritage Bank
5 \$178.50 to Home Depot
6 \$772.50 to Key Bank
7 \$679 to Numerica
8 \$189.50 to Umpqua Bank
9 \$1,402 to Washington Trust Bank

10 Adrianna McCrea, in the amounts of:

11 \$2,850 to Bank of America
12 \$4,550 to Key Bank
13 \$2,850 to Washington Trust Bank

14 Jordan Yates, in the amounts of:

15 \$641.50 to AlphaCard
16 \$484 to Bank of America
17 \$653 to Heritage Bank
18 \$178.50 to Home Depot
19 \$772.50 to Key Bank
20 \$679 to Numerica
21 \$189.50 to Umpqua Bank
22 \$1,402 to Washington Trust Bank

23 Tyler Bordelon, in the amounts of:

24 \$256.60 to AlphaCard
25 \$193.60 to Bank of America
26 \$261.20 to Heritage Bank
27 \$71.40 to Home Depot
28 \$309 to Key Bank
\$271.60 to Numerica
\$75.80 to Umpqua Bank
\$560.80 to Washington Trust Bank

B. Application of the Guidelines in Imposing a Sentence under 18 U.S.C. § 3553(b)

The Guidelines, formerly mandatory, now serve as one factor among several that courts must consider in determining an appropriate sentence. *Kimbrough v. United States*, 552 U.S. 85, 90 (2007). It remains, however, that “the Commission fills an important institutional role: It has the capacity courts lack to base its determinations on empirical data and national experience, guided by a professional staff with appropriate expertise.” *Id.* at 108-09 (internal quotation marks omitted). Thus, “the Commission’s recommendation of a sentencing range will ‘reflect a rough approximation of sentences that might achieve § 3553(a)’s objectives.” *Id.* (quoting *Rita v. United States*, 551 U.S. 338, 350 (2007)).

The Guidelines are the sole means available for assuring some measure of uniformity in sentencing, thereby fulfilling a key congressional goal in adopting the Sentencing Reform Act of 1984. Reference to the Guidelines, while carefully considering the 3553(a) factors, is the only available means of preventing the disfavored result of basing sentences on the luck of the draw in judicial assignments. Therefore, “district courts must begin their analysis with the Guidelines and remain cognizant of them throughout the sentencing process.” *Gall*, 552 U.S. at 50 n.6.

The government is asking the Court in this case to follow the Guidelines as outlined in this Memorandum, then depart upward under the guidance of the

Guidelines, as outlined in the Government's Motion for Upward Departure, filed contemporaneously. A district court must consider the guidelines range, *see* § 3553(a)(4), and is usually well-advised to follow the Sentencing Commission's advice in order to assure fair, proportionate, and uniform sentencing of criminal offenders. There are no 3553(a) factors in this case which warrant imposition of a sentence below the advisory range; to the contrary, the 3553(a) factors on balance support the imposition of the recommended above-guidelines sentence. Accordingly, the government recommends a sentence of 120 months on Counts 1 and 38, followed by 24 months on Count 41.

CONCLUSION

Application of 18 U.S.C. § 3553 supports a total sentence of 144 months in this case. The government submits that such a sentence is sufficient, but not greater than necessary, to accomplish the goals of sentencing, and that a lesser sentence is not supported by application of the 18 U.S.C. § 3553(a) factors.

Dated: June 9, 2021.

Joseph H. Harrington
Acting United States Attorney

s/ Ann T. Wick
Ann T. Wick
Assistant United States Attorney

CERTIFICATE OF SERVICE

I hereby certify that on June 9, 2021, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system. Counsel of record will be sent a copy of this filing by e-mail.

s/ Ann T. Wick

Ann T. Wick

Assistant United States Attorney