

Exhibits

TIMELINE - SCENARIO OF EVENTS

Since the late summer of 2017, Mr. Spalding wrote numerous letters to the Office of the Court Clerks requesting copies for specific Pacer docket items related to this Motion. Mr. Spalding clearly explained to the Court Clerks that the Law Library of FCI - Seagoville, TX, where Mr. Spalding is currently incarcerated, does not have any type of PACER access. The request and reasoning for copies of documents filed in the Fifth Circuit Court of Appeals was to identify the Court date stamp on the document filed in the Fifth Circuit Court of Appeals Case # 16 - 10289. The request to the Court Clerks were DENIED.

TIMELINE –

1. March 15, 2016 Sentencing Hearing.
2. March 15, 2016 Notice of Appeal Filed by David Spalding.
3. April 5, 2016 Notice of Request to Precede Pro Se and Not Appoint Appellate Counsel - Not Docketed.
4. August 28, 2016 Motion to replace Appellant Counsel, Brian Newman, and proceed Pro Se; Date stamped on August 28, 2016.
5. September 6, 2016 Document Received - Motion to Supplement Record.
6. October 17, 2016 Memo in Support of Pro Se Motion.

7. November 22, 2016 Clerks ORDER - Deferring any action to relieve Counsel.
8. November 28, 2016 Letter filed by Mr. Spalding in response to Clerk's ORDER.
9. January 17, 2017 Additional Memo in Support of Mr. Spalding.
10. March 9, 2017 Clerk ORDER deferring action on Motion to Proceed.
11. March 20, 2017 Letter filed by Mr. Spalding questioning legal or statutory aspects of Clerk's ORDER.
12. May 30, 2017 Motion filed by Mr. Spalding for Enlargement of Time.
13. June 30, 2017 Fifth Circuit Court ORDER denying Motion for Enlargement of Time.
14. July 17, 2017 Document received by Mr. Spalding – No action taken.
15. August 14, 2017 Motion to Stay any further proceedings – no action taken.
16. August 22, 2017 Clerks ORDER denying Motion to Relieve Counsel.
17. October 30, 2017 Document received from Mr. Spalding – no action taken.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 16-10289
USDC No. 3:13-CR-422-1

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

DAVID LYMAN SPALDING,

Defendant-Appellant

Appeal from the United States District Court for the
Northern District of Texas, Dallas

ORDER:

David Lyman Spalding has filed a pro se motion to relieve Brian J. Newman, the attorney who was appointed to represent him in this direct criminal appeal. Spalding also moves for leave to proceed pro se and for the appointment of standby counsel to assist him in prosecuting his appeal. Spalding's motion was mailed prior to the filing of counsel's merits brief, and the motion is thus timely.

The determination whether to forgo counsel and to represent oneself must be made knowingly and intelligently. *See Faretta v. California*, 422 U.S. 806, 835 (1975). A waiver of a right to counsel must be unequivocal, and it should not be inferred by the court in the absence of a clear and knowing election. *Brown v. Wainwright*, 665 F.2d 607, 610 (5th Cir. 1982) (en banc).

Spalding's request to proceed pro se is not clear and unequivocal given his request for the appointment of standby counsel.

Spalding's motions will be held in abeyance. It is ordered that within 30 days, Spalding will notify this court whether he will proceed pro se or will proceed with counsel. Any request to proceed pro se must be clear and unequivocal. There is no "constitutional right to hybrid representation on appeal." *United States v. Ogbonna*, 184 F.3d 447, 449 n.1 (5th Cir. 1999) (internal quotation marks, alteration, and citation omitted); see 5TH CIR. R. 28.6. Accordingly, Spalding is cautioned that if he elects to proceed pro se, no brief from counsel will be filed and the court will rely solely on his pro se brief. Should Spalding fail to comply with this order, the merits brief filed by Newman will serve as Spalding's appellate brief, and the Clerk of Court shall resume the briefing schedule.

FOR THE COURT:


MICHAEL E. SCHNEIDER
DEPUTY CLERK

EXHIBIT A

Case 3:13-cr-00422-M Document 282 Filed 04/12/16 Page 1 of 8 PageID 2789
ORIGINAL
04/12/16

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS DALLAS DIVISION

U.S. DISTRICT COURT
NORTHERN DISTRICT OF TEXAS

FILED

APR 12 2016

CLERK, U.S. DISTRICT COURT

By Deputy

UNITED STATES OF AMERICA

DAVID LYMAN SPALDING

§ JUDGMENT IN A CRIMINAL CASE
§
§
§ Case Number: 3:13-CR-00422-M(1)
§ USM Number: 47371-177
§ F. Clinton Broden (sentencing)
§ Defendant's Attorney

THE DEFENDANT:

☐	pleaded guilty to count(s)	
☐	pleaded guilty to count(s) before a U.S. Magistrate Judge, which was accepted by the court.	
☐	pleaded nolo contendere to count(s) which was accepted by the court	
☒	was found guilty on count(s) after a plea of not guilty	Counts 1, 2, 3, 4, 5, and 6, of the second superseding Indictment, filed October 8, 2014

The defendant is adjudicated guilty of these offenses:

Title & Section / Nature of Offense

18 U.S.C. § 1343 / Wire Fraud
18 U.S.C. § 1341 / Mail Fraud
18 U.S.C. § 1343 / Wire Fraud
18 U.S.C. § 152(2) / False Testimony Under Oath
18 U.S.C. § 152(2) / False Testimony Under Oath
18 U.S.C. § 152(3) / Bankruptcy Fraud – False Statement

Offense Ended

03/10/2009
12/09/2008
12/28/2010
03/09/2010
03/09/2010
03/23/2010

Count

1ss
2ss
3ss
4ss
5ss
6ss

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)
- ☒ Counts of the original Indictment, filed November 6, 2013, the superseding Indictment, filed September 4, 2014, and Count 7, of the second superseding Indictment, filed October 8, 2014, 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.

March 15, 2016

Date of Imposition of Judgment

Signature of Judge

BARBARA M. G. LYNN

UNITED STATES DISTRICT JUDGE

Name and Title of Judge

April 12, 2016

Date

DEFENDANT: DAVID LYMAN SPALDING
CASE NUMBER: 3:13-CR-00422-M(1)

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: **ONE-HUNDRED AND EIGHTY (180) MONTHS**. This sentence consists of one-hundred and eighty (180) months on Counts 1, 2, and 3, and sixty (60) months on Counts 4, 5, and 6, with all counts running concurrently. The defendant shall receive credit for time already served since July 28, 2015.

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

☒ 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: DAVID LYMAN SPALDING
CASE NUMBER: 3:13-CR-00422-M(1)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of: **THREE (3) YEARS**. This consists of three (3) years supervised release on each of Counts 1, 2, 3, 4, 5, and 6, to run concurrently with each other, for a total supervised release term of three (3) years.

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall 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 the defendant poses a low risk of future substance abuse. *(Check, if applicable.)*
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. *(Check, if applicable.)*
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. *(Check, if applicable.)*
- ☐ The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense. *(Check, if applicable.)*
- ☐ The defendant shall participate in an approved program for domestic violence. *(Check, if applicable.)*

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

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

STANDARD CONDITIONS OF SUPERVISION

1. the defendant shall not leave the judicial district without the permission of the court or probation officer;
2. the defendant shall report to the probation officer in a manner and frequency directed by the court or probation officer;
3. the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4. the defendant shall support his or her dependents and meet other family responsibilities;
5. the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6. the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
7. the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8. the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9. the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
10. the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11. the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12. the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
13. as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: DAVID LYMAN SPALDING
CASE NUMBER: 3:13-CR-00422-M(1)

SPECIAL CONDITIONS OF SUPERVISION

Pursuant to the Mandatory Victims Restitution Act of 1996, the defendant is ordered to pay restitution in the amount of \$3,391,146.80, payable to the U.S. District Clerk, 1100 Commerce Street, Room 1452, Dallas, Texas 75242. Restitution shall be payable immediately and any unpaid balance shall be payable during incarceration. Restitution shall be disbursed to:

See list of payees on Pages 5, 6, and 7, in the Restitution section of this Judgment.

If upon commencement of the term of supervised release any part of the restitution remains unpaid, the defendant shall make payments on such unpaid balance in monthly installments of not less than 10 percent of the defendant's gross monthly income, or at a rate of not less than \$500 per month, whichever is greater. Payment shall begin no later than 60 days after the defendant's release from confinement and shall continue each month thereafter until the balance is paid in full. In addition, at least 50 percent of the receipts received from gifts, tax returns, inheritances, bonuses, lawsuit awards, and any other receipt of money shall be paid toward the unpaid balance within 15 days of receipt. This payment plan shall not affect the ability of the United States to immediately collect payment in full through garnishment, the Treasury Offset Program, the Inmate Financial Responsibility Program, the Federal Debt Collection Procedures Act of 1990 or any other means available under federal or state law. Furthermore, it is ordered that interest on the unpaid balance is waived pursuant to 18 U.S.C. § 3612(f)(3).

The defendant shall cooperate in the collection of DNA as directed by the U.S. Probation Officer, as authorized by the Justice for All Act of 2004.

The defendant shall provide to the U.S. Probation Officer complete access to all business and personal financial information.

The defendant shall not enter into any self-employment while under supervision without prior approval of the U.S. Probation Officer.

The defendant shall not be employed by, affiliated with, own or control, or otherwise participate, directly or indirectly, in the business of selling securities without the U.S. Probation Officer's approval.

The defendant shall pay any remaining balance of restitution in the amount of \$3,391,146.80, as set out in this Judgment.

DEFENDANT: DAVID LYMAN SPALDING
CASE NUMBER: 3:13-CR-00422-M(1)

CRIMINAL MONETARY PENALTIES

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

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$600.00	\$0.00	\$3,391,146.80

- ☐ The determination of restitution is deferred until after such determination. *An Amended Judgment in a Criminal Case (AO245C) will be entered*
- ☒ 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. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Restitution of \$3,391,146.80 to:

Albert D. Killeri \$150,000.00	Amin T. and Suzi G. Bishara \$50,000.00
Amy Congress Wendt \$30,000.00	Amy L. Hoffman \$25,000.00
Artemio Salinas and Dana Goldbert \$10,000.00	Brandon Kershaw \$14,955.42
Brandon Warren Ivie \$19,582.22	Branee Partners, Ltd. \$15,000.00
Brian and Ruth McMullan \$14,984.00	Britton L. Brown \$9,200.00
Bugaloo Design \$10,000.00	Carl Rueffert \$5,000.00
Ceresa and Alex Maki \$12,000.00	Chad and Sunny Schramek \$10,000.00
Charles D. and Robert L. Lockhart \$15,000.00	Christopher A. Boyd \$15,000.00
Christopher S. and Deborah J. Wood \$30,000.00	Christy and Travis Terral \$50,000.00
D.H. Delaney \$203,000.00	Dale Mann \$20,362.50
Daniel B. Frick \$40,000.00	Daniel L. and Carol L. Luetkehans \$50,000.00
David A. Berry, Jr. \$20,000.00	David and Natalie Woods \$50,000.00
David J. and Linda K. Winthers \$50,000.00	David L. and Kirstin M. Fuess \$10,000.00

DEFENDANT: DAVID LYMAN SPALDING
CASE NUMBER: 3:13-CR-00422-M(1)

David McGhee
\$10,000.00

Diablo Technology Partners LLC.
\$10,000.00

Dorothy Hilburn
\$5,000.00

Ernest L. and Lauren C. Stockton
\$10,000.00

Gary B. Oliver
\$50,080.00

Gibran W. and Julie Mahmud
\$20,000.00

Heidi Mayer
\$10,000.00

Jack D. and Laura L. Hughes
\$10,000.00

Jesse Troy and Pamela A. Marshall
\$50,000.00

John H. Lockhart
\$125,000.00

John Litrenta
\$10,000.00

Judith A. Lemke
\$10,000.00

Julie A. Matthews
\$10,000.00

Kathy L. and Robert K. Young
\$10,000.00

Kevin and Ashley Carlson
\$10,000.00

Marian Egge
\$100,000.00

Mark J. Henry
\$25,000.00

McDonald and Company Securities
\$50,000.00

David S. and Sharon A. Hanken
\$10,000.00

Dobin Sales Limited
\$49,982.00

Edward Snook
\$39,355.00

Eva S. and Bradley A. Price
\$10,000.00

Genell F. Boothe
\$35,000.00

Glenn L. Hunt
\$2,492.00

Hennessey Engineering, Inc.
\$50,000.00

Jeffrey M. and Linda T. Hoffmann
\$10,000.00

John G. and Linda J. Hodges
\$100,000.00

John J. and Jodi A. Galgay
\$10,000.00

Jordan C. Waldrep
\$15,000.00

Judith Malkin and J.A. Maki
\$54,990.00

Katherine Smethie
\$100,000.00

Kelly M. and David A. La Faire
\$10,000.00

Lyden Investments, Inc.
\$20,000.00

Mark and Carolyn Murray
\$15,000.00

Marvin M. Maddax, Jr.
\$15,000.00

Michael and Stacia O'Connell
\$10,000.00

DEFENDANT: DAVID LYMAN SPALDING
CASE NUMBER: 3:13-CR-00422-M(1)

Michael D. and Aimee L. Peay
\$10,000.00

Ou Mme B. Leroy
\$313,813.00

Ovation Group, Inc.
\$19,712.50

Paul A. Lang
\$10,00.00

Paul and Jaynee Ann Buss
\$16,000.00

Philip and Danielle Kyle
\$10,000.00

Phillip R. Harris
\$25,000.00

R. Mark and Maureen Trittschuh
\$28,000.00

Rhonda L. Schueller
\$10,000.00

Richard J. and Amy W. Price
\$5,000.00

Robert B. and Sandy L. Gordon
\$78,230.00

Robert G. and Carrie A. Gibson
\$40,000.00

Robert W. and Joan H. Peters
\$50,000.00

Roger B. and Rebecca L. Mcomber
\$250,000.00

Rozalyn Anne St. Pe
\$100,000.00

Ryan and Connie S. Shulz
\$10,000.00

Ryan C. Hoffman
\$25,000.00

Sheila M. Luetkehans
\$25,000.00

Stanferd L. and Linda C. Kusch
\$6,388.16

Stephen B. Crane
\$60,000.00

Structure
\$79,020.00

TD Waterhouse Investor Services
\$40,000.00

Timothy W. Puckett
\$10,000.00

Todd A. Fisher
\$10,000.00

Todd B. and Peggy Cameron
\$65,000.00

Tracey S. and Tammy F. Spivey
\$24,000.00

Ulti-Solutions, Inc.
\$50,000.00

William F. and Peggy W. Rauscher
\$10,000.00

- ☐ Restitution amount ordered pursuant to plea agreement \$
- ☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- ☒ The court determined that the defendant does not have the ability to pay interest and it is ordered that:
- | | | |
|--|-------------------------------|--|
| ☒ the interest requirement is waived for the | ☐ fine | ☒ restitution |
| ☐ the interest requirement for the | ☐ fine | ☐ restitution is modified as follows: |

* 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: DAVID LYMAN SPALDING
CASE NUMBER: 3:13-CR-00422-M(1)

SCHEDULE OF PAYMENTS

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

- A ☐ Lump sum payments of \$ _____ due immediately, balance due
☐ not later than _____, or
☐ in accordance ☐ 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 monthly (e.g., weekly, monthly, quarterly) installments of \$ 500.00 over a period of xxxxxxxx (e.g., months or years), to commence 60 days (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:
It is ordered that the Defendant shall pay to the United States a special assessment of \$600.00, for Counts 1ss, 2ss, 3ss, 4ss, 5ss, and 6ss, which shall be paid immediately. Said special assessment shall be paid to the Clerk, U.S. District Court.

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 clerk of the court.

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

- ☐ Joint and Several
See above for Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.
- ☐ Defendant shall receive credit on his restitution obligation for recovery from other defendants who contributed to the same loss that gave rise to defendant's restitution obligation.
- ☐ 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: The real property located at 3993 Spring Garden Drive, Colleyville, Tarrant County, Texas, including all buildings, appurtenances, and improvements thereon, more specifically described as Lot 11, Block D of Spring Garden, an addition to the City of Colleyville, Tarrant County, Texas according to the amended plat thereof recorded in Volume A, page 4985, Plat Records, Tarrant County, Texas
- ☒ **The defendant shall forfeit the defendant's interest in the following property to the United States: The real property located at 3993 Spring Garden Drive, Colleyville, Tarrant County, Texas, including all buildings, appurtenances, and improvements thereon, more specifically described as Lot 11, Block D of Spring Garden, an addition to the City of Colleyville, Tarrant County, Texas according to the amended plat thereof recorded in Volume A, page 4985, Plat Records, Tarrant County, Texas**

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