

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

PRUCO SECURITIES, LLC ,)
)
 Plaintiff,)
)
 v.)
)
 U.S. DEPARTMENT OF JUSTICE,)
)
 Defendant.)
)
)
)

CIVIL ACTION NO.

EXHIBIT C

THE BIRMINGHAM 0700 0700



LIGHTFOOT FRANKLIN WHITE LLC
TRIAL & APPELLATE COUNSEL

E. GLENN WALDROP, JR.

Writer's Direct Dial: 205-581-0713
Writer's Direct Fax: 205-380-9113
gwaldrop@lightfootlaw.com

November 21, 2017

Director, Office of Information Policy (OIP)
United States Department of Justice, Suite 11050
1425 New York Avenue, NW
Washington, DC 20530-00001

**Re: Freedom of Information Act Appeal
FOIA Request Number: FOIA-2017-003253**

Dear Sirs:

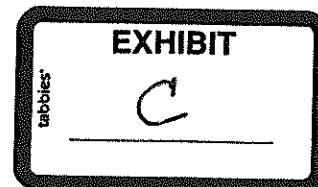
This is an appeal from a letter dated November 17, 2017 from the U.S. Department of Justice. Attached as Exhibit "A" is the original FOIA request, and as Exhibit "B" the denial. The denial states that no responsive records can be located. However, as shown below, there are clearly responsive documents that should easily be located.

The FOIA request relates to and asks for specific documents from an underlying criminal case, *United States of America v. Bryan W. Anderson*, Case No. 2-14-CR-421-VEH-TMP, United States District Court for the Northern District of Alabama (the "*Anderson* case"). The specific documents requested from the *Anderson* case are described below.

1. We have requested a letter from Paul Brown that was provided to the Court in the *Anderson* case. This document exists and is described in Document 26 from the *Anderson* case, Defendant's Supplements to Sentencing Memorandum in Support of a Reasonable Sentence, attached as Exhibit "C". This letter should be easily located and should be produced.

2. We have also asked for the Victim Declaration Form provided by Paul and Linda Brown in the *Anderson* case. This document also exists. On page 6 of Document 16 from the *Anderson* case, the Government's Response to Defendant's Objections to Presentence Investigation Report and Sentencing Memorandum, attached as Exhibit "D", it states:

"The United States submits that "P and L.B." should be considered victims of the defendant's fraud scheme even though L.B. completed a Victim Declaration Form in which she stated that she did not wish to be considered for an order of restitution for her loss. . . ."



Director, Office of Information Policy (OIP)
November 21, 2017
Page 2

This confirms there is a Victim Declaration form in this case from Paul and Linda Brown. The document should be easily found and should be produced.

3. We have also asked for the "302s" or other memoranda of interviews of Paul and Linda Brown from the *Anderson* case. It is normal and customary practice to interview victims and there undoubtedly are records of interviews with Paul and Linda Brown, two of Anderson's alleged victims. These documents should be easily located and should be produced.

We have provided the executed authorizations, See Exhibit "A" from Linda Kay Brown and Paul Ralph Brown authorizing the release of this information. We are appealing your response of "no records" and ask that you provide us with the requested records. If you wish to discuss this matter, please feel free to contact me at (205) 581-0713.

Very truly yours,



E. Glenn Waldrop, Jr.

EGWjr/tkb
Enclosures

cc: Office of Government Services (via electronic mail – ogis@nara.gov)



LIGHTFOOT FRANKLIN WHITE LLC
TRIAL & APPELLATE COUNSEL

E. GLENN WALDROP, JR.

Writer's Direct Dial: 205-581-0713
Writer's Direct Fax: 205-380-9113
gwaldrop@lightfootlaw.com

September 25, 2017

Freedom of Information Act/Privacy Act Unit
Executive Office for United States Attorneys
600 E. Street, N.W., Room 7300
Washington, D.C. 20530

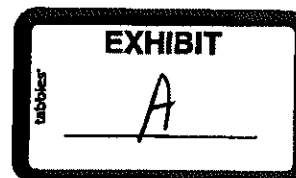
Re: Freedom of Information Act Request

Dear Sir or Madam:

Please accept this letter as a renewed and updated request for specific documents pursuant to the Freedom of Information Act (FOIA) (5 U.S.C. § 552 et seq.) and the implementing regulations promulgated for handling such requests.

According to your letter dated January 31, 2017, copy attached, we needed to provide executed authorizations before the records would be released. Enclosed are signed Certification of Identity forms completed by Linda Kay Brown and Paul Ralph Brown authorizing the release of this information. We request the Office of the United States Attorney provide us with the specifically requested documents, now that we have been able to obtain the executed authorizations. Specifically, we request the following:

1. According to Document 26 from the case United States v. Bryan Wayne Anderson, Case No. 2-14-cr-00421-MHH-TMP, Mr. Paul R. Brown provided a letter that was submitted on behalf of Mr. Anderson in connection with his sentencing. We respectfully request a copy of said letter.
2. According to page 6 of 16 of Document 18 from the case, "L.B." (who we believe to be Linda Brown) completed a Victim Declaration Form in which she stated she did not wish to be considered for an order of restitution. We respectfully request a copy of the Victim Declaration Form of "L.B." as well as any Victim Declaration Forms of Paul Brown or Linda Brown.

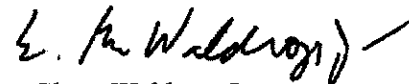


Freedom of Information Act
September 25, 2017
Page 2

3. We also respectfully request copies of any statements or notes of interviews (including Forms 302) of either Mr. Paul Brown or Ms. Linda Brown from the Anderson investigation and prosecution.

Thank you for your attention to this matter. If you have any questions regarding this request, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink that reads "E. Glenn Waldrop, Jr." with a long horizontal flourish extending to the right.

E. Glenn Waldrop, Jr.

EGWjr/tkb
Enclosures



U.S. Department of Justice

Executive Office for United States Attorneys

Freedom of Information and Privacy Staff

Suite 7300, Bicentennial Building
600 E Street, NW
Washington, DC 20530

(202) 252-6030
FAX (202) 252-6047

January 31, 2017

E. Glenn Waldrop, Jr.
Lightfoot, Franklin & White, LLC
The Clark Building
400 20th St., North
Birmingham, Alabama 35203

Re: Request Number: FOIA-2017-01040
Date of Receipt: December 21, 2016
Subject of Request: third party

Dear Requester:

The Executive Office for United States Attorneys has received your Freedom of Information Act request and assigned the above number to the request.

You have requested records concerning a third party (or third parties). Records pertaining to a third party generally cannot be released absent express authorization and consent of the third party, proof that the subject of your request is deceased, or a clear demonstration that the public interest in disclosure outweighs the personal privacy interest and that significant public benefit would result from the disclosure of the requested records. Since you have not furnished a release, death certificate, or public justification for release, the release of records concerning a third party would result in an unwarranted invasion of personal privacy and would be in violation of the Privacy Act, 5 U.S.C. § 552a. These records are also generally exempt from disclosure pursuant to sections (b)(6) and (b)(7)(C) of the Freedom of Information Act, 5 U.S.C. § 552.

We will release, if requested, any public records maintained in our files, such as court records and news clippings, without the express authorization of the third party, a death certificate, or public justification for release. If you desire to obtain public records, if public records exist in our files, please reply with a letter asking for the public documents. Please send your letter to the address above.

Should you obtain the written authorization and consent of the third party for release of the records to you, please submit a new request for the documents accompanied by the written

authorization. A form is enclosed to assist you in providing us the authorization and consent of the subject of your request. Your name should appear in the section titled "Optional." The authorization must be notarized or signed under penalty of perjury pursuant to 18 U.S.C. § 1001. Please send your new request to the address above.

[] Please note that your original letter was split into separate files ("requests"), for processing purposes, based on the nature of what of what you sought. Each file will have a separate Request Number (listed below), for which you will receive a separate response;

This is a final action on this above-numbered request. If you are not satisfied with my response to this request, you may administratively appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, DC 20530-0001, or you may submit an appeal through OIP's FOIAonline portal by creating an account on the following website: <https://foiaonline.regulations.gov/foia/action/public/home>. Your appeal must be postmarked or electronically transmitted within ninety (90) days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

You may contact our FOIA Public Liaison at the telephone number listed above for any further assistance and to discuss any aspect of your request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001; e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Sincerely,



Kevin Krebs
Assistant Director

Enclosure

U.S. Department of Justice

Certification of Identity



FORM APPROVED BY THE FEDERAL BUREAU OF INVESTIGATION

Privacy Act Statement. In accordance with 28 CFR Section 16.41(d) personal due diligence to identify the individuals submitting requests by mail under the Privacy Act of 1974, 5 U.S.C. Section 552a, is required. The purpose of this solicitation is to ensure that the records of individuals who are the subject of U.S. Department of Justice systems of records are not wrongfully disclosed by the Department. Requests will not be processed if this information is not furnished. False information on this form may subject the requestor to criminal penalties under 18 U.S.C. Section 1001 under 5 U.S.C. Section 552a(i)(3).

Public reporting burden for this collection of information is estimated to average 0.50 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Suggestions for reducing this burden may be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Public Use Reports Project (4103-0016), Washington, DC 20503.

Full Name of Requestor Linda Kay Brown

Citizenship Status² U.S. Social Security Number³

Current Address¹

Date of Birth:

Place of Birth X

OPTIONAL: Authorization to Release Information to Another Person

This form is also to be completed by a requestor who is authorizing information relating to himself or herself to be released to another person.

Further, pursuant to 5 U.S.C. Section 552a(h), I authorize the U.S. Department of Justice to release any and all information relating to me to:

Glenn Waldrop, 400 20th Street North, Birmingham, AL 35203
Print or Type Name

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that I am the person named above, and I understand that any falsification of this statement is punishable under the provisions of 18 U.S.C. Section 1001 by a fine of not more than \$10,000 or by imprisonment of not more than five years or both, and that requesting or obtaining any records under this process is punishable under the provisions of 5 U.S.C. 552a(i)(3) by a fine of not more than \$5,000.

Signature⁴ Linda Kay Brown Date: 9-24-17

¹ Name of individual who is the subject of the record(s) sought.
² Individual submitting a request under the Privacy Act of 1974 must be either "a citizen of the United States or an alien lawfully admitted for permanent residence," pursuant to 5 U.S.C. Section 552a(a)(3). Requests will be processed as Freedom of Information Act requests pursuant to 5 U.S.C. Section 552, rather than Privacy Act requests, for individuals who are not United States citizens or aliens lawfully admitted for permanent residence.
³ Providing your social security number is voluntary. You are asked to provide your social security number only to facilitate the identification of records relating to you. Without your social security number, the Department may be unable to locate any or all records pertaining to you.
⁴ Signature of individual who is the subject of the record sought.

U.S. Department of Justice

Certification of Identity



NOTICE APPROVED CASE NO 140-204
REVISED 08/07/11

Privacy Act Statement. In accordance with 35 CFR Section 16.41(d) personal data sufficient to identify the individuals submitting requests by mail under the Privacy Act of 1974, 5 U.S.C. Section 552a, is required. The purpose of this certification is to assure that the records of individuals who are the subject of U.S. Department of Justice systems of records are not wrongfully disclosed by the Department. Requests will not be processed if this information is not furnished. False information on this form may subject the requester to criminal penalties under 18 U.S.C. Section 1001 and/or 5 U.S.C. Section 552a(m)(3).

Public reporting burden for this collection of information is estimated to average 0.50 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Suggestions for reducing this burden may be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Public Law Reports Project (104-0176), Washington, DC 20503.

Full Name of Requester Paul Ray Brown

Citizenship Status U.S. Social Security Number XXXX-XX-XXXX

Current Address

Date of Birth

Place of Birth X

OPTIONAL: Authorization to Release Information to Another Person

This form is also to be completed by a requester who is authorizing information relating to himself or herself to be released to another person.

Pursuant to 5 U.S.C. Section 552a(m), I authorize the U.S. Department of Justice to release any and all information relating to me to:

Glenn Waldrop, 400 20th Street North, Birmingham, AL 35203
Print or Type Name

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that I am the person named above, and I understand that any falsification of this statement is punishable under the provisions of 18 U.S.C. Section 1001 by a fine of not more than \$10,000 or by imprisonment of not more than five years or both, and that requesting or obtaining any record(s) under false pretenses is punishable under the provisions of 5 U.S.C. 552a(m)(3) by a fine of not more than \$1,000.

Signature [Signature] Date X Sept 24 2017

¹ Name of individual who is the subject of the record(s) sought.
² Individual submitting a request under the Privacy Act of 1974 must be either "a citizen of the United States or an alien lawfully admitted for permanent residence," pursuant to 5 U.S.C. Section 552a(a)(2). Requests will be processed as Freedom of Information Act requests pursuant to 5 U.S.C. Section 552, rather than Privacy Act requests, for individuals who are not United States citizens or aliens lawfully admitted for permanent residence.
³ Providing your social security number is voluntary. You are asked to provide your social security number only to facilitate the identification of records relating to you. Without your social security number, the Department may be unable to locate any or all records pertaining to you.
⁴ Signature of individual who is the subject of the record sought.



U.S. Department of Justice

Executive Office for United States Attorneys

Freedom of Information and Privacy Staff

Suite 7300, Bicentennial Building
600 E Street, NW
Washington, DC 20530

(202) 252-6020
FAX (202) 252-6047

November 17, 2017

Kay T. Brinkley
n/a

EMAIL

Re: Request Number: FOIA-2017-003253 Date of Receipt: September 25, 2017
Subject of Request: Brown/Specific Records – USAO Northern Alabama

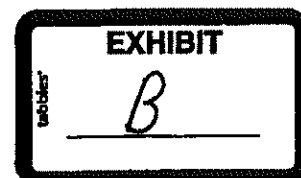
Dear Ms. Brinkley:

In response to your Freedom of Information Act and/or Privacy Act request, the paragraph(s) checked below apply:

- 1. [] A search for records located in EOUSA-__ has revealed no responsive records regarding the above subject.
- 2. [x] A search for records located in the United States Attorney’s Office(s) for the Northern District of Alabama has revealed no responsive records regarding the above subject.
- 3. [] After an extensive search, the records which you have requested cannot be located.
- 4. [] Your records have been destroyed pursuant to Department of Justice guidelines.
- 5. [] Please note that your original letter was split into separate files (“requests”), for processing purposes, based on the nature of what you sought. Each file was given a separate Request Number, for which you will receive, or have received, a separate response.

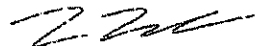
This is the final action on this above-numbered request. If you are not satisfied with my response to this request, you may administratively appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, DC 20530-0001, or you may submit an appeal through OIP’s FOIAonline portal by creating an account on the following web site: <https://foiaonline.regulations.gov/foia/action/public/home>. Your appeal must be postmarked or electronically transmitted within ninety (90) days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked “Freedom of Information Act Appeal.”

You may contact our FOIA Public Liaison at the telephone number listed above for any further assistance and to discuss any aspect of your request. Additionally, you may contact the



Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001; e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Sincerely,



Kevin Krebs
Assistant Director

FILED
2015 Aug-10 AM 11:38
U.S. DISTRICT COURT
N.D. OF ALABAMA

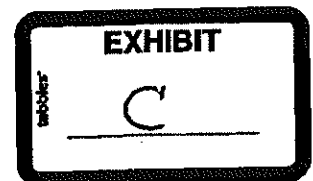
IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

UNITED STATES OF AMERICA,)
)
VS.) CASE NO: 2:14-CR-00421-VEH-TMP
)
)
BRYAN W. ANDERSON.)

DEFENDANT'S SUPPLEMENTS TO
SENTENCING MEMORANDUM IN SUPPORT OF
A REASONABLE SENTENCE

COMES NOW the Defendant Bryan W. Anderson by and through his attorney of record, John A. Lentine, in the above-styled cause, and hereby supplements his Sentencing Memorandum as follows. After the filing of the Sentencing Memorandum in this cause, the defense received letters in support of Mr. Anderson. Those letters are as follows:

1. Stephen M. Anderson, Bryan Anderson's oldest son.
2. Christine Anderson, Bryan Anderson's wife.
3. Paul R. Brown, Ed.D., Executive Director, SE Ohio High Tech Corridor.
4. Derek Weaver, Godparent to Bryan Anderson's son.
5. Allison Anderson, Bryan Anderson's daughter.
6. Avery Anderson, Bryan Anderson's son.
7. Aleece Shadon, Bryan Anderson's sister.
8. Barbara Anderson, Bryan Anderson's mother.
9. Kyle Anderson, Bryan Anderson's brother.



10. Pam Weaver, Godparent to Bryan Anderson's son.

These letters have not been filed with the Clerk of the Court, but have been submitted directly to the Court. The Government has also been served with a copy of the letters.

Respectfully submitted,

Digitally signed by John A. Lentine
DN: CN = John A. Lentine, C = US, O = Suite 323, 205 20th Street No, Birmingham AL
35203, OU = Sheffield and Lentine, P.C.
Reason: I am the author of this document
Date: 2015.08.10 10:55:54 -0500

CERTIFICATE OF SERVICE

I, John A. Lentine, do hereby certify that I have served a copy of the above and foregoing motion upon the Honorable J. Patton Meadows, Assistant United States Attorney, on August 10, 2015, by electronically filing the same with the Clerk of the Court using the CM/ECF system.

Digitally signed by John A. Lentine
DN: CN = John A. Lentine, C = US, O = Suite 323, 205 20th Street
No, Birmingham AL 35203, OU = Sheffield and Lentine, P.C.
Date: 2015.08.10 10:55:24 -0500

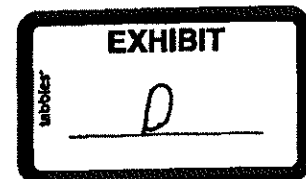
**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

UNITED STATES OF AMERICA)
)
v.) CASE NO.: 2:14-CR-421-VEH-TMP
)
BRYAN W. ANDERSON)

**GOVERNMENT’S RESPONSE TO DEFENDANT’S OBJECTIONS
TO PRESENTENCE INVESTIGATION REPORT
AND SENTENCING MEMORANDUM**

Comes now the United States of America by and through its counsel, Joyce White Vance, United States Attorney for the Northern District of Alabama, and J. Patton Meadows, Assistant United States Attorney, and responds to the Defendant’s objections to the Presentence Investigation Report (PSR) and Sentencing Memorandum as follows: The United States submits that the Offense Conduct, loss amounts to victims, advisory Sentencing Guideline calculations, and other information contained in the PSR are correct and that the defendant’s objections to the PSR are without merit.

It should be noted initially that the Offense Conduct contained in the PSR closely tracks the Factual Basis set out in the Amended Plea Agreement that was filed in this case on February 9, 2015. (Doc. 11). To the extent the defendant now seeks to challenge or otherwise disagree with certain of these facts as set out in the



PSR, he should not be heard to complain. This is so because the defendant stipulated to the facts set out in the Amended Plea Agreement, which were listed to prove his criminal conduct for the offenses charged. At the conclusion of the Factual Basis the defendant affixed his signature to a paragraph that reads: **“The defendant hereby stipulates that the facts stated above are substantially correct and that the Court can use these facts in calculating the defendant’s sentence. The defendant further acknowledges that these facts do not constitute all of the evidence of each and every act that the defendant and/or any co-conspirators may have committed.”** (p.9) (Bold in the original).

In addition to the defendant signing the factual stipulation in the Amended Plea Agreement, he also stipulated in open court at the time he entered his guilty plea on March 10, 2015, that the facts contained in the Factual Basis, and which are now listed in the PSR, were substantially correct. Further, on page 19 of the Amended Plea Agreement the defendant again signed the agreement stating in part that he had read, understood, and approved “all of the provisions of this Agreement, both individually and as a total binding agreement.”

All of that being said, while it is true as stated in the PSR that the defendant was not a registered broker with FINRA on May 29, 2014, when the FBI ran a FINRA Broker Check Report to determine Anderson’s status as of that date, further inquiry with the Alabama Securities Commission (ASC) has revealed that

Anderson's license to sell and exchange securities in Alabama was "termed" on October 4, 2012. According to a legal representative with the ASC, "termed" is defined to mean the person had no license but had the ability to reapply for license. The date Anderson's brokerage license was termed will not affect the advisory Guideline calculations in this case. More will be said about this later in this response.

ADVISORY OFFENSE LEVEL CALCULATIONS

¶ 34 of the PSR correctly calculates the Base Offense Level and Specific Offense Characteristics which together total 31. There is no merit to the defendant's argument that the 18 level enhancement under § 2B1.1(b)(1)(J) is "irrational and unreasonable" because Anderson didn't intend "that a specific amount be defrauded from those who invested with him." (p.2, Defendant's Objections). The Court is not required to speculate as to the specific amount of fraud the defendant may have intended toward his victims. What is known as a true fact is that the defendant did defraud the victims of \$3,063, 614.40 and he acted intentionally in doing so. An 18 level enhancement under the Guidelines is the appropriate enhancement based on this loss.

Nor can the defendant posit to the Court that the loss amounts to victims were "more a kind of accident" because of the unpredictability of the financial market. (p.3, Defendant's Objections). The losses in this case were no accident.

Had the defendant not acted fraudulently with victims' monies, no losses based on criminal conduct would have occurred. No, the loss amounts that resulted in this case were caused by the defendant's fraud scheme and his successful efforts to obtain money from victims by making materially false and fraudulent pretenses, representations, and promises to them as spelled out in the Information to which he pled guilty.

*FINRA Arbitration Doesn't Change Loss Amount
Restitution Credits Will Likely Be Applicable*

Contrary to the defendant's allegation that the loss amounts may change prior to sentencing because of ongoing FINRA arbitration, the United States submits that the total loss amount of \$3,063,614.40 for purposes of advisory Guideline specific offense characteristic found at § 2B1.1(b)(1)(J) will not change. It remains to be seen how the results of the ongoing FINRA arbitration may affect the amount of credit towards the restitution the defendant is ultimately ordered to pay. More will be known on this prior to Sentencing. To date the defendant has not paid restitution to any victim.

Restitution to the victims of this crime is mandatory under 18 U.S.C. 3663A. While "restitution resembles a judgment for the benefit of a victim, it is penal, rather than compensatory." *United States v. Johnson*, 983 F. 2d 216, 220 (11th Cir. 1993). "[D]efendants' victims may not veto the obligation of the District Court to impose orders of restitution." *Id.* at 245. Moreover, "[r]estitution is not a civil

matter, it is a criminal penalty meant to have a strong deterrent and rehabilitative effect.” U.S. v. Maestrelli, 156 Fed. Appx. 144, 146 (11th Cir. 2005); citing United States v. Hairston, 888 F. 2d 1349, 1355 (11th Cir. 1989). “[P]rior civil settlements should be considered by the district court in formulating its restitution order.” Id.

Due to the mandatory nature of the MVRA restitution at sentencing and pursuant to the MVRA, the Court shall order the full amount of restitution due to each victim. “[O]ther compensation to a victim cannot be offset against a defendant’s restitution amount. Other compensation may be treated as a credit against the defendant’s restitution obligation; however, it cannot be treated as a reduction in the amount of that obligation in the first instance.” U.S. v. Miell, 744 F. Supp. 2d 961, 967 (N.D. Iowa Oct. 4, 2010). The amount the victim has received prior to sentencing shall be treated solely as a credit and denominated as such at sentencing. At the time of sentencing there will be victims who have not received full compensation for the loss, but that will receive full compensation shortly thereafter. Pursuant to the usual practice in this district, those victims will be instructed to inform the United States of full payment of the restitution and further notify this honorable Court by Motion of the full satisfaction of the restitution judgments.

Closer to the sentencing date, the United States intends to provide the Court, the U.S. Probation Office, and opposing counsel with additional and up to date

information concerning the status of all restitution credit amounts as more becomes known from the ongoing FINRA arbitration. The defendant also has access to this same information so there should be no disagreement on the final numbers to be presented to the Court.

Number of Victims Sufficient for 2 Level Increase

The United States submits that “P. and L. B.” should still be considered victims of the defendant’s fraud scheme even though L.B. completed a Victim Declaration Form in which she stated that she did not wish to be considered for an order of restitution for her loss. Records show that “P. and L.B.” lost \$265,435.00 by investing in Anderson’s fraud schemes. “P. and L.B.” are the defendant’s in-laws.

Even if “P. and L.B.” are not counted as victims, eleven investors groups comprised of approximately seventeen individuals remain identified as victims in the PSR and the Amended Plea Agreement. This number is more than enough to satisfy the 2 level increase required for the specific offense characteristic described at § 2B1.1(b)(2)(A)(i) which should be added when 10 or more victims are involved.

4 Level Increase Appropriate

During the period of the fraud schemes, which began in or about 2009 and continued through through May 30, 2014, Anderson solicited victims to invest in

various trading strategies and stock options which were not registered securities. Anderson was employed as a licensed and registered financial broker from the beginning of the fraud scheme until October 4, 2012, when his license to sell and exchange securities was “termed.” Anderson orchestrated dozens of transactions with his victims throughout the entire period of his fraud scheme. Each of these transactions involved a violation of securities law.

While Count One of the Information sets out a wire communication that occurred in 2014 as being “one such occasion” when Anderson caused his scheme and artifice to be executed, as stated in the Information, the charged offense covered the complete period from the time the scheme was initiated until it was concluded. Anderson worked his scheme to defraud victims on a regular basis during that time. Thus, Anderson was a registered broker “at the time of the offense” and the 4 level enhancement under § 2B1.1(b)(19)(A)(ii) is appropriate.

Total Offense Level is 32

The PSR correctly calculates the defendant’s total offense level to be a level 32. The defendant’s suggestion that it should instead be set somewhere “in the low 20s” (p.4, Defendant’s Objections) is not supported by the facts or legal authority.

Other References to PSR by Defendant

The defendant makes reference and adds commentary to selected paragraphs of the PSR over the next few pages of his Objections before setting out his

suggestions as to how the Title 18, United States Code, Section 3553(a) factors should have application in his sentencing. The United States strongly disagrees with the defendant's contention that a probationary term would be appropriate in his case for any of the reasons he mentions or for any other reason. (p.7, Defendant's Objections). Anderson's fraud and deceit had a devastating effect financially and emotionally on numerous victims. His actions drastically disrupted their lives and severely altered their sense of security and peace of mind. To the Government's knowledge, the defendant first acknowledged his wrongdoing on October 1, 2014, when he was interviewed by the FBI by way of proffer, after the scheme had collapsed. The Government is unaware of efforts by the defendant to repay victims after May 30, 2014, when the scheme collapsed and was made more fully known to Investors. Anderson had made some payments to Investors prior to that date while the criminal investigation was in progress. What is certain is that Anderson personally has not paid any victim restitution to date and, given his present circumstances, will likely be unable to pay significant restitution in the future.

Losses Were Not an Accident

The Government is uncertain what exactly the defendant is pointing out on page 9 of his Objections under paragraph (a) Nature and Circumstances of the Offense. It is correct that Anderson used Investor money "to pay his personal bills

and to pay back other investors”. Anderson admitted he operated a classic Ponzi scheme with Investor money. He stipulated on page 7 of the Amended Plea Agreement that during his scheme he “often transferred Investor money from one account he and his wife maintained and controlled to another without making any of the investments he had represented and promised to Investors he would make. Only a relatively small percentage of Investor funds were utilized for options trading, box trading, or any other investor strategy/opportunity Anderson had represented and promised, but were used instead to pay other Investors and for Anderson’s personal expenses.”

To the extent the defendant attempts to now suggest that the losses were caused primarily by vagaries within the financial markets, over which he had no control (p.14, Defendant’s Objections), this is plainly not so and represents an effort to shift and deflect blame from himself. Clearly, from the admitted facts, Anderson for the most part never made the investments he told the victims he was making and instead used their money to pay personal expenses and to pay other Investors to keep his scheme going. To maintain, as the defendant does here, that the specific loss amounts in this case “are more a kind of accident because it ultimately depended on variable and factors outside Mr. Anderson’s control that being the financial market” is not well founded.

What Anderson claims here, that the specific losses were “more a kind of accident”, conflicts with the facts he stipulated to before the Court at the time he pled guilty. For Anderson to continue to receive the benefit of the Government’s recommendation that he receive credit for acceptance of responsibility, as set out in the Amended Plea Agreement, it was agreed that he not give “conflicting statements about [his] involvement in the offense.” See provision III(A)(c) found on page 10 of the Amended Plea Agreement. The offenses here occurred solely because of the defendant’s criminal conduct and for no other reason.

The defendant admitted that he invested “only a relatively small percentage” of the funds Investors gave him to invest. On these relatively few occasions, the defendant chose risky investments hoping those investments would deliver a large payoff. Obviously, that did not happen. The fact that the defendant may have had bad luck with his long shot investments does not make the victims’ specific losses accidental. Had Anderson handled the Investors’ money honestly he would not have been in the position of having to make high risk investments trying to pull off the near impossible. The defendant assured Investors their funds would be handled with complete safety. He betrayed their trust. This is not just a case of bad luck with the market. The defendant acted intentionally to fraudulently cause the victims’ specific losses in every sense.

Anderson's Conduct Not an Aberration

The defendant claims that his conduct in the fraud scheme is an aberration when viewed in the context of his life history. (p.16, Defendant's Objections). The United States submits that this contention does not appear to be well supported. The defendant is 40 years old. According to the PSR, Anderson's employment record as a financial advisor and/or licensed and registered broker spanned from 1998, approximately a year after he had been to college, through September 13, 2012, when he was terminated from Pruco Securities, Inc. He was also self-employed in an unprofitable company from January 2012 and was also employed beginning in November 2014 with another company that pays him a modest income.

Of the 16 years he has been employed following college, he was engaged in a Ponzi scheme with millions of dollars of Investors' money for approximately 4 ½ of those years, 2009 through May 2014. So, for over 25% of his work career Anderson engaged in a pattern of almost continuous, serious criminal conduct in which numerous victims lost substantial amounts, including their lifesavings in many cases. For at least 4 ½ years of his adult employment his criminal conduct was assuredly not an aberration, but instead, practically a way of life. There is no merit to the defendant's argument on this point.

Anderson Used Sophisticated Means

Neither is there any merit to Anderson's next claim that he didn't use sophisticated means in committing his crimes. (p.16, Defendant's Objections). The relative ease with how some crimes are detected and arrested has little to do with how sophisticated the means was with which the crimes were carried out. The fact that experienced and professional law enforcement agents had the ability to use legal processes to obtain records, interview witnesses, prepare spreadsheets, and otherwise prepare a solid criminal case for prosecution in this case, does not equate to the defendant not using sophisticated means to accomplish his fraud against the victims.

The defendant used his position as a licensed and registered broker with large and respected financial institutions to gain victims' trust. He presented an air of confidence and winning personality as he explained complex investment strategies few people clearly understand. He looked successful. He gave every appearance of living as a financially successful man lives. He not only talked the success game, he lived in a nice home, had an expensive lake home, and owned a timeshare at a resort in Las Vegas. He was in a classic sense a "Confidence Man" in presentation.

Further, Anderson never told the victims the promissory notes he gave them were worthless. They looked official enough. He never showed the victims how he

moved their money from one of his accounts to another or where the money they had invested actually went. He never told the victims that the payments they received, when they received a payment, actually came from money invested by other victims. The victims didn't have access to information that is available to law enforcement agencies to examine for themselves what was actually going on. The victims are intelligent, hard working men and women. They placed complete confidence and trust in Anderson. As far as the victims were concerned, Anderson used sophisticated means to fraudulently gain their trust, obtain their money, and keep them at bay for years with excuses and more false promises and hopes.

The Defendant's Wealth

On page 17 of his Objections and Sentencing Memorandum, the defendant contends that he did not acquire personal wealth because of his crimes and that in the end he suffered tremendous personal financial loss as did many of his victims. The United States submits that whether the defendant may also have experienced financial losses, this has no bearing on the calculation of the Sentencing Guidelines and should not otherwise be given any special consideration in deciding what proper sentence to impose in this case. The defendant should not be permitted to suggest that his financial losses should be compared to the losses of the persons he defrauded. Any financial setbacks he may have incurred were not the result of anything any victim did to him. In fact, after he was terminated from his

employment from Pruco Securities, Inc. on September 13, 2012, his primary source of income was what he was able to continue to take from Investor funds. The Investors, of course, had been told by Anderson that their funds were being invested by him and were safe. Unlike Anderson's situation, the victims' losses were caused almost entirely by Anderson's illegal conduct.

Also, on the question of wealth, some might consider living in a \$660,000.00 personal residence and also having a \$529,220.00 lake home to be living an extravagant lifestyle. Compared to many persons' circumstances, these kinds of assets denote wealth and even extravagant living. In this case, it appears that at least a portion of Anderson's ability to have these things was achieved through the Investors' funds that made their way into his hands.

Victim Impact

The Investor victims are persons who worked hard all their lives and sacrificed to provide for their families. He induced many of these victims to cash out all of their savings, which had taken years to accumulate, and to invest with him. Anderson's Investors ended up being devastated financially, emotionally, and in some cases were made physically ill because of the defendant's conduct. The financial losses totaling over \$3 million is a significant amount, but this amount alone doesn't tell the full story in terms of the human toll and emotional suffering the defendant's actions caused the victims.

With leave of Court to do so, the United States intends to file under seal a supplement to this Response and Sentencing Memorandum which will include victim impact letters and other information provided by the Investors so they can tell the Court in their own words what the defendant's conduct has done to their lives and to their loved ones.

Conclusion

The PSR is detailed, thorough, and correct. The Government has no objections to the information contained in the PSR. The advisory Sentencing Guidelines are correctly calculated to a total adjusted offense level of 29 with acceptance of responsibility. Given a criminal history category of I, the advisory Guideline imprisonment range is 87 months to 108 months. The Government believes a Guideline range sentence would achieve the purposes of sentencing set forth in Section 3553(a). Pursuant to the Plea Agreement the Government recommends that the low end of the applicable Guidelines range be imposed.

Respectfully submitted this the 15th day of June, 2015.

JOYCE WHITE VANCE
United States Attorney

/s/
J. PATTON MEADOWS
Assistant United States Attorney

CERTIFICATE OF SERVICE

This is to certify that on June 15, 2015, a copy of the foregoing has been filed electronically with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all parties and entities having an interest, including the Defendant through his counsel of record.

/s/

J. Patton Meadows
Assistant United States Attorney