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ATTORNEY FOR PLAINTIFF
UNITED STATES OF AMERICA

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

UNITED STATES OF AMERICA, **Plaintiff,** **vs.** **JOSEPH BRENT LOFTIS** **Defendant.**	**CR 15-11-BU-DLC** **UNITED STATES' SENTENCING MEMORANDUM**

From 2008 through 2014, Defendant Joseph Brent Loftis devised a scheme to defraud through several companies, including Prism Corporation and Great Northern Energy, by misrepresenting his ownership of oil and gas producing properties in Montana, Texas, and Oklahoma. As part of his scheme, Loftis would enter into purchase agreements with the individuals who owned interests in oil and gas before defaulting on the agreement. Although Loftis knew that he did not own the interests, he proceeded to represent to investors that he did own the interests and solicited funds purportedly to help finance the costs of developing producing wells on the properties. In the end, Loftis defrauded more than thirty victims of over $7.8 million.

The United States Attorney charged Loftis with five counts of wire fraud in violation of 18 U.S.C. § 1343 and two counts of money laundering in violation of 18 U.S.C. § 1957. After an eight-day trial and testimony from 37 witnesses, a jury convicted Loftis of all counts, and the parties stipulated to a forfeiture judgment of $1,662,749.10.

The Presentence Investigation Report (PSR) calculates an offense level of 35 and a criminal history category II resulting in an advisory guideline range of 188 to 235 months. The United States agrees with the PSR's guideline calculation with the exception of its failure to apply a two-point enhancement for Loftis's victimization of an individual he knew or should have known to be a vulnerable

victim under USSG § 3A1.1(b)(1). With the additional two-point enhancement Loftis's advisory guideline range is 235 to 293 months imprisonment. The United States recommends a sentence of 235 months and requests a restitution judgment of $7,837,225.71.

FACTS[1]

In 1973, Loftis attended one semester at the University of Oklahoma and one semester at Murray State College. In 1983, he attended one semester at Tarrant County College before discontinuing his studies. According to Loftis's own report, beginning in 1974 he was employed in the construction and oil and gas industries. He has a substantial criminal history including convictions for theft, bail jumping, and 1995 convictions for bank fraud and false statements to a financial institution for which he was sentenced by the United States District Court for the District of Oklahoma to 18 months imprisonment.

I. Prism Corporation

In 2008, Loftis began doing business as Big Bear and later Prism Corporation in Bozeman, Montana. At that time he began dealings with Bob Miller and his partner John Harper, who did business as Roland Oil and Gas in Cut

[1] The following facts are adapted from the PSR, the Court's June 27, 2018, Order denying Loftis's motion for judgment of acquittal and new trial (Doc. 231), evidence presented at trial, and the United States' anticipated evidence at Loftis's sentencing.

Bank, Montana. Prior to Bob Miller's death in April 2009, Roland received funds from a group of Utah investors doing business as Riverside Energy. After Miller died, Riverside Energy investors began speaking with Loftis in an attempt to recoup some of their investment based upon Loftis's false representation that he owned leases previously held by Roland. Riverside Energy eventually invested over $400,000 with Prism. After receiving the funds, Loftis returned approximately $900 and ceased all communication with the investors.

From 2009 to 2010, Loftis continued to solicit money from investors, primarily for three wells on the Blackfeet Indian Reservation known as the Cox 14-8 well, Tracer 10-6 well, and the Tracer 11-5 well.[2] Loftis was aware of the interests he needed to acquire before extracting oil from the Blackfeet Indian Reservation but did not do so. Loftis nevertheless represented to investors that he did own the interests and solicited funds purportedly to help finance the costs of developing producing wells when in fact he was using a large amount of investor money for his own use.

Loftis would also falsely claim that existing wells on the properties were producing large quantities of oil when the wells were actually producing very little in the way of marketable oil and gas. Loftis further misrepresented that he obtained a degree in petroleum engineering from the University of Oklahoma, and

[2] The Tracer wells were also known as the Nelly Ashley or Nelly Ashford well.

the accounting firm Junkermeier, Clark, Campanella, Stevens (JCCS) would be auditing Prism and providing investors with investment returns when in fact Loftis never consummated an auditing or accounting relationship with JCCS.

After receiving investor money, Loftis typically provided investors with a few small checks before stopping payments altogether. Once investors complained, Loftis provided various excuses regarding disputes about mineral rights ownership or issues with drilling. In some instances, Loftis offered to return the investors' money and entered a rescission agreement for the investment. Loftis, however, failed to return the investors' money or else issued a check backed by insufficient funds or cancelled through a stop payment. Eventually, Loftis would stop communicating with investors completely.

II. Texas Leases

In 2010, Loftis began communicating with owners of oil and gas interests in other states, including Ace Park, the President of Gulfstream Oil. Loftis told Park he had a large producing oil field in Montana and was looking to get involved in the Texas oil business. Loftis inquired whether Park would be willing to sell some of Gulfstream's leases in Texas. Park agreed and entered an agreement in which Prism would pay $150,000 for access to 16 oil and gas leases and hired Park to act as a consultant to secure vendor services. Loftis, however, paid Park only slightly more than half of the purchase price.

About the same time, Loftis also began communicating with David Villone, a prospective investor living in Arizona. Loftis visited Villone in Arizona, and Villone later traveled to Montana to visit the site of the purported investment. Loftis claimed he received a degree from the University of Oklahoma and was a successful oil businessman. Loftis's attorney Chad Basset also took Villone to view a drilling operation in Montana, but Villone initially decided against the investment. Loftis, however, ultimately persuaded Villone to invest.

Within a month Loftis again contacted Villone about another investment this time about oil leases in Texas that Loftis claimed to own. In fact, the leases were the same property for which Loftis defaulted in his agreement with Gulfstream Oil. Based upon Loftis's assurances that he would put Villone's name on ownership records with the Texas Railroad Commission, which regulates oil and gas well in Texas, Villone agreed to invest and provided Loftis with approximately $195,000 pooled from himself and other investors doing business as Goodland Holdings.

Not long after the investment, Villone received a call from Ace Park, who confronted Villone regarding Texas Railroad Commission records indicating a transfer of the Gulfstream Oil leases to Goodland Holdings. Park informed Villone that Loftis had previously defaulted on the purchase agreement for the oil leases. Villone then contacted Loftis, who continued to claim that he was the owner of the leases. Loftis suggested to Villone that Goodland should get out of the deal until

issues between Prism and Gulfstream Oil cleared up and provided Villone with a rescission agreement. Loftis, however, failed to return any of Villone's $195,000 investment and would not respond to Villone's attempts to contact him.

III. BuRay Energy

Also in 2010, Loftis began negotiations with representatives of BuRay Energy, including John Schofield and John Buthod, to purchase gas wells on BuRay's Talihina project located outside of LeFlore, Oklahoma. Loftis met with Schofield in Texas in late 2010 and claimed he was involved in an oil project in Cut Bank, Montana that was producing a large volume of oil.

By February 11, 2011, Loftis had signed a purchase and sale agreement for the wells and leases comprising the Talihina project, which was initially set to close March 30, 2011, with Loftis making a $5 million cash payment up front and a future promise to pay an additional $25 million payable out of production. While the parties did not close the deal on March 30, 2011, a partial closing occurred on May 20, 2011, in which BuRay delivered lease assignment for the Talihina project to Loftis. On July 5, 2011, Loftis signed an escrow agreement in which he promised to pay $4.61 million into escrow by 4:00 p.m. on July 13, 2011. The agreement provided that BuRay would deliver the documents necessary for Loftis to have the right to take over operations on the Talihina project, which would make the May 20, 2011, lease assignment viable.

After Loftis failed to pay the funds on July 13, 2011, he claimed he would pay BuRay $1.45 million on July 25, 2011. Again, however, Loftis failed to make any payment. When BuRay informed Loftis that he was in default of their agreement and threatened to sue to enforce the August 5, 2011 agreement, BuRay made several unsuccessful attempts to enter into a forbearance agreement while Loftis continued to give assurances that he was willing and able to proceed with the deal.

After BuRay repeatedly sought proof of funds and a signed forbearance agreement, Loftis sent a fax to BuRay on August 17, 2011, showing funds exceeding $1.2 million in Prism's Wells Fargo bank account. The fax also contained a handwritten note signed by Loftis saying that he would "deposit $500,000 today and $1 million on Monday, August 23, 2011—these are [capital expenditure] funds from Prism equity agreements." Nonetheless, BuRay never received any payment from Loftis for the Talihina project and never delivered the documents necessary for Loftis to begin operations on the property.

IV. $2 Million Bridge Loan and Aborted Reverse Merger

In 2011, while in discussion with BuRay, Loftis also took steps to complete a transaction known as reverse merger in which Prism would become a subsidiary of a publically traded company. On a Friday in July 2011, Loftis was introduced to Tydus Richards, who owned Lotus Asset Management, a company that secured

money from third-party investors to fund oil and gas projects. Loftis told Richards that he was in closing with BuRay to purchase the Talihina project and that he needed $2 million by Monday to close the deal.

Loftis falsely claimed that he was earning $300,000 a month, after expenses, from wells in Montana. Loftis provided Richards with a PowerPoint presentation that listed Montana wells, which Prism did not in fact own, as being high-producing wells owned by Prism. Understanding that the $2 million dollar investment would be used to purchase and frack wells in the Talihina project, Richards introduced the proposal to a man named John Derby, who in turn introduced it to Adam Gottbetter of Gottbetter & Partners and Mark Tompkins.

In the meantime, Gottbetter & Partners contacted Noah Levinson, who owned the failed business Max Cash Media, which had taken initial steps to become a public company. Levinson agreed to the reverse merger arrangement and also agreed to make the $2 million bridge loan through Max Cash Media funded by the investors found by Gottbetter & Partners, who would serve as the escrow agent for the bridge loan. Prism's ostensible Montana wells and leases would serve as collateral for the loan.

Loftis signed a bridge loan and security agreement on August 5, 2011—the same day BuRay threatened to enforce the agreement for the Talihina project. The security agreement provided a security interest in all of Prism's assets in Montana

and Oklahoma and warranted that Loftis had good and marketable title to all collateral. The same day, Loftis's attorney, Chad Bassett, emailed Gottbetter & Partners pressuring them to wire the funds by 1:00 p.m.

On August 9, 2011, Loftis signed a bridge loan promissory note, which was subject to the August 5, 2011 bridge loan agreement, obligating him to repay $1 million no later than November 9, 2011. The bridge loan promissory note was also secured by the August 5, 2011, security agreement, which was believed to provide a security interest in Loftis's alleged ownership of Montana wells and leases. On August 9, 2011, after receipt of the signed bridge loan promissory note, Gottbetter & Partners wired $997,475.00 to Prism's Wells Fargo account. Thereafter, Loftis signed three more promissory notes: one for $500,000 on August 18, 2011, one for $250,000 on August 31, 2011, and another for $250,000 on September 9, 2011. Upon receipt of each of these promissory notes, Gottbetter & Partners wired the funds to Prism's Wells Fargo bank account.

After the funds had been transferred, Gottbetter & Partners attempted to complete the process for the reverse merger that was essential to Loftis's commitment to make a public offering. Loftis, however, failed to complete a required audit and similarly failed to provide the documentation necessary to prove Prism's value and assets as required to complete the due diligence process. Despite repeated requests from Gottbetter & Partners for documentation

substantiating ownership of each asset acting as security in the transaction, Loftis failed to substantiate his purported well and lease ownerships, which, by October 25, 2011, included the Talihina project. Eventually, Loftis defaulted and made promises to repay the $2 million bridge loan but never followed through.

V. Great Northern Energy

In or about October 2011, Loftis moved from Montana to Irving, Texas and began doing business as Great Northern Energy. He again solicited funds from investors, misrepresented his education, and denied having a criminal record despite his felony convictions. After receiving money from investors, Loftis would again typically provide a few small payments before ceasing communication altogether. Great Northern Energy also received substantial income from oil and gas purchasers while failing to pay investors.

Similar to his actions in Montana, Great Northern Energy agreed to purchase leases from oil companies in Texas and then defaulted on the purchase price. For instance, in 2012 Loftis agreed to pay $900,000 for leases from Kevin Stephens and Bill Briscoe's company Circle Ridge Production. Loftis made a down payment of approximately $200,000, made a few monthly payments, and then defaulted on the agreement. Nevertheless, Loftis continued to represent that he was the owner of the leases.

Finally, in or about November 2013, Loftis approached Lucy McGuffin and her husband Joe McGuffin and expressed a desire to purchase an interest in the Joe McGuffin Company, which owned oil and gas leases in Texas. The McGuffins agreed to sell an 80 percent interest in the company to Great Northern Energy. Again, Loftis defaulted on the purchase price, extracted oil from the Joe McGuffin company's leases without paying revenue due to the McGuffins, and resold the leases to third parties.

ARGUMENT

I. The Court should impose an 18-level offense level enhancement for a loss amount exceeding $3.5 million.

United States Sentencing Guideline section § 2B1.(b)(1) sets forth sentencing enhancements for loss amounts in excess of specified thresholds. In particular, USSG § 2B1.1(b)(1)(J) provides an 18-level increase for a loss that is more than $3.5 million. Application note 3 to subsection USSG § 2B1.1(b)(1) states that "loss is the greater of actual loss or intended loss."

"Actual loss" is defined as "the reasonably foreseeable pecuniary harm that resulted from the offense." USSG § 2B1.1, cmt. n.3(A)(i). "Reasonably foreseeable pecuniary harm" is further defined as "pecuniary harm that the defendant knew or, under the circumstances, reasonably should have known, was a potential result of the offense." USSG § 2B1.1, cmt. n.3(A)(iv). In fraud cases, to determine whether a defendant knew or reasonably should have known a certain

fact, courts generally rely on the introduction of circumstantial evidence.[3] "[I]n the case of a jointly undertaken criminal activity . . . all reasonably foreseeable acts and omissions of others in furtherance of the jointly undertaken criminal activity" are factored in when calculating a defendant's offense level. U.S.S.G. § 1B1.3(a)(1)(B).

In this case, the United States proved that Prism's Wells Fargo bank account received $1,442,999.10 from victims of Loftis's scheme in wire transactions specifically identified in Counts I through V of the Third Superseding Information. (Doc. 98 at 4.) Testimony and exhibits admitted at trial further proved the following losses due to Loftis's scheme:

Name	**Amount**	**Exhibits**
Shelly Arbuckle	$50,074.38	37, 40, 57, 60, 61
Ray Baker	$32,946.61	201-205
Sameer Dalal	$281,848.75	228-223
David Villone	$250.00	126-128
Gottbetter & Partners	$750,000.00	162-163
Robert Gross	$25,004.40	24
Gillian Hunter	$160,000.00	236, 249 (page 20)
Jean Warner	$42,750.00	66, 69, 72, 77, 79
Total:	**$1,342,874.14**	

[3] *See In re Slatkin*, 525 F.3d 805, 812 (9th Cir. 2008) ("In fact, it is precisely because such direct proof of fraudulent intent is rarely available that courts allow a finding of fraudulent intent based on circumstantial evidence.").

The total loss proved at trial therefore totals $2,785,873.24.[4] The United States intends to prove additional loss to exceed the $3.5 million loss threshold through additional investors and other government witnesses at sentencing.

II. Loftis caused substantial financial hardship to five or more victims under USSG § 2B1.1(b)(2)(B).

United States Sentencing Guideline section § 2B1.1(b)(2)(B) imposes a four-point enhancement "[i]f the offense . . . resulted in substantial financial hardship to five or more victims . . . ." Note 4(F) provides the following guidance for applying the enhancement:

> In determining whether the offense resulted in substantial financial hardship to a victim, the court shall consider, among other factors, whether the offense resulted in the victim—
>
> (i) becoming insolvent;
>
> (ii) filing for bankruptcy under the Bankruptcy Code (title 11, United States Code);
>
> (iii) suffering substantial loss of a retirement, education, or other savings or investment fund;
>
> (iv) making substantial changes to his or her employment, such as postponing his or her retirement plans;
>
> (v) making substantial changes to his or her living arrangements, such as relocating to a less expensive home; and

[4] $1,442,999.10 (specifically identified in Counts I through V as wires in furtherance of the scheme) + $1,342,874.14 (additional loss due to the scheme proven at trial) = $2,785,873.24.

> (vi) suffering substantial harm to his or her ability to obtain credit.

The enhancement does not require that a victim's substantial financial hardship be reasonably foreseeable to a defendant. *United States v. Stewart*, 728 Fed. App'x 651, 654 (9th Cir. 2018).

Here, Aris Arefi, Scott Henning, Dennis Link, Gillian Hunter, Joe and Lucy McGuffin, Kirk Paulson, Marc and Deborah Kravit, and Sudhakar Peddi each report losses amounting to a substantial financial hardship. Arefi, Link, Hunter, and Lucy McGuffin will be present at sentencing to testify as to their losses and financial hardship. Due to Peddi's death in 2017, Sameer Dalal—Peddi's friend who introduced Peddi to Loftis—will testify regarding the impact Loftis's fraud had upon Peddi.

III. The complexity of the means and concealment Loftis employed in his scheme warrants a two-point enhancement for sophisticated means under USSG § 2B1.1(b)(10)(C).

The PSR correctly includes a two-point enhancement for sophisticated means under USSG § 2B1.1(b)(10)(C). The subsection provides for two-point offense level enhancement if "the offense otherwise involved sophisticated means and the defendant intentionally engaged in or caused the conduct constituting sophisticated means . . . ." Application note 9(B) further explains, "'[S]ophisticated means' means especially complex or especially intricate offense conduct pertaining to the execution or concealment of an offense. . . . Conduct

such as hiding assets or transactions, or both, through the use of fictitious entities, corporate shells, or offshore financial accounts also ordinarily indicates sophisticated means." Coordinated and repetitive steps using falsified documents constitute sophisticated means. *United States v. Thomsen*, 80 F.3d 1049, 1073 (9th Cir. 2016).[5]

Loftis's scheme was unusually complex in both its subject matter and the means he used to employ it. By holding himself out as an expert in oil and gas drilling, Loftis was able to deceive investors into providing his companies with millions of dollars for purported well expenses when in fact Loftis never had the right to drill on the properties. When Loftis received large amounts of investor money, he used the purported cash flow to persuade even wealthier investors into providing capital until he could take Prism through the process of becoming a public company. After Loftis came under increasing scrutiny through investor complaints and legal action, he relocated to Texas where he employed similar means while concealing his identity on financial accounts as an individual personally benefitting from investor funds. Loftis's actions constitute an especially

[5] *Thomsen* applied a version of United States Sentencing Guidelines prior to a November 1, 2015, revision of the sophisticated means enhancement. The current version of the guideline clarifies that a defendant must "intentionally engage[] in or cause[] the conduct constituting sophisticated means . . . ." USSG § 2B1.1(b)(10)(C).

complex or intricate offense conduct pertaining to the execution or concealment of his offense. *See* USSG § 2B1.1(b)(10)(C) cmt. n.9(B).

IV. Loftis qualifies as an organizer, leader, manager, or supervisor of an offense participant, Chad Bassett, under USSG § 3B1.1(c).

United States Sentencing Guideline section 3B1.1 imposes a two-point offense level enhancement "[i]f the defendant was an organizer, leader, manager, or supervisor in any criminal activity . . . ." Application note 2 provides,

> To qualify for an adjustment under this section, the defendant must have been the organizer, leader, manager, or supervisor of one or more other participants. An upward departure may be warranted, however, in the case of a defendant who did not organize, lead, manage, or supervise another participant, but who nevertheless exercised management responsibility over the property, assets, or activities of a criminal organization.

"A 'participant' is a person who is criminally responsible for the commission of the offense, but need not have been convicted." USSG § 3B1.1 cmt. n.1.

Abundant evidence admitted at trial demonstrates Loftis's role as an organizer, leader, manager, or supervisor. Wells Fargo Bank records identify him as the owner of Prism. Trial Ex. 248, Doc. 206-172 at 3. Prism's organizational plan identifies Loftis as the President and Chief Operating Officer of Prism. Trial Ex. 110, Doc. 206-92 at 8. He is sole signatory of the account into which investor wires identified in Counts I through V were deposited. Trial Ex. 248, Doc. 206-172 at 1. Loftis also personally benefitted from the investor money. *See* Trial Ex. 249, Doc. 206-173.

Loftis also exercised managerial control over one or more participants in the scheme, in particular, Chad Bassett. Loftis is first in Prism's organization plan, and Bassett appears as its in-house counsel. Trial Ex. 110, Doc. 206-92 at 8-9. At trial, Bassett testified that left he Arizona to work full time for Prism after Loftis offered to pay him. Prism's Wells Fargo Bank account confirms Loftis paid Bassett over $100,000. *See* Trial Ex. 249, Doc. 206-173.

As to his role in the offense, as described by Robert Gross and David Villone, Bassett was actively involved in soliciting investor funds. He also wrote investors an October 4, 2010, letter in which he falsely stated that the Blackfeet Nation, BLM, and BIA held the position that "that Prism owns the Nellie Ashley lease outright" and "is the operator of the Nellie Ashley 10-6 . . . ." Trial Ex. 80, Doc. 206-69 at 3. In fact, Bassett previously attended a meeting with BIA, BLM, and tribal representatives in which the exact opposite conclusion was stated. Later Bassett attempted to distance himself from his role as Prism and Loftis's attorney by falsely claiming that he had never represented Prism as corporate counsel. *See* July 27, 2011, email from Bassett to Warner, Trial Ex. 274, Doc. 206-183. He also admitted to Tydus Richards that $300,000 a month in Prism's purported cash flow was actually coming from investors. In sum, evidence at trial showed Loftis exercised managerial control over Bassett, who participated in the scheme to defraud.

V. The Court should impose a two-point enhancement for a victim Loftis knew or should have known was vulnerable under U.S.S.G. § 3A1.1(b).

The vulnerable victim enhancement applies if the defendant "knew or should have known" of the victim's special vulnerability due to their age, physical or mental condition, or that the victim was "otherwise particularly susceptible to the criminal conduct." USSG § 3A1.1(b) & cmt. n.2. When a defendant deals with each victim personally, he is deemed to have known of their special vulnerability. *United States v. O'Brien*, 50 F.3d 751, 756 (9th Cir. 1995).

Determining whether a victim was "otherwise particularly susceptible to the criminal conduct" requires courts to consider factors beyond the age, physical or mental condition of the victim, including characteristics of the chosen victim, the victim's reaction to the conduct, and circumstances surrounding the scheme. *United States v. Peters*, 962 F.2d 1410, 1417 (9th Cir. 1992). It is not sufficient that the chosen victim was merely more susceptible to the criminal conduct than the general population; the chosen victim instead must be "less able to defend [him or herself] than a typical victim." *United States v. Castellanos*, 81 F.3d 108, 110 (9th Cir. 1996); *United States v. Wetchie*, 207 F.3d 632, 634 (9th Cir. 2000). The Court must identify a specific factor that renders the victim uniquely vulnerable to the offense, separate from characteristics shared by typical victims of the offense. *United States v. Nielsen*, 694 F.3d 1032, 1037 (9th Cir. 2012).

Here, Gillian Hunter and Shelly Arbuckle each qualify as vulnerable victims of Loftis's offenses. When Loftis met Hunter on match.com he falsely claimed to have a master's degree in petroleum engineering. He began dating her in 2009 and promised she would be paid $96,000 for investor relations services. Loftis and Hunter married on December 31, 2009, and on January 19, 2010, she directed $150,000 of her own funds to Prism based upon Loftis's false promise that the money would be used for leases and equipment and not overhead. On June 20, 2011, Hunter directed another $10,000 to Prism to increase its account balance prior to a meeting with Tydus Richards. As Loftis's spouse, Hunter was particularly vulnerable to his scheme to defraud based upon the pretense he was carrying on a lucrative business when in reality he was embezzling investor funds.

Shelly Arbuckle also qualifies as a vulnerable victim under USSG § 3A1.1(b). In 2009, Arbuckle had recently become a widow when Loftis solicited her for a purported investment in oil wells. While in a relationship with Hunter, Loftis dined with Arbuckle at her home on two occasions while giving the impression that he was single. Loftis claimed to make $500,000 a year in salary and stood to make money in an oil project in Cut Bank. Loftis then solicited over $50,000 from Arbuckle while sending her a series of romantically charged letters and emails. *See, e.g.*, July 7, 2009, letter, Trial Ex. 36, Doc. 205-25; July 24, 2009, email, Trial Ex. 38, Doc. 206-27.

VI. Loftis should not be given credit for acceptance of responsibility under USSG § 3E1.1.

United States Sentencing Guideline section 3E1.1(a) provides a two-level decrease in an offense level "[i]f the defendant clearly demonstrates acceptance of responsibility for his offense . . . ." Application note 2 states the following:

> This adjustment is not intended to apply to a defendant who puts the government to its burden of proof at trial by denying the essential factual elements of guilt, is convicted, and only then admits guilt and expresses remorse. Conviction by trial, however, does not automatically preclude a defendant from consideration for such a reduction. In rare situations a defendant may clearly demonstrate an acceptance of responsibility for his criminal conduct even though he exercises his constitutional right to a trial. This may occur, for example, where a defendant goes to trial to assert and preserve issues that do not relate to factual guilt (e.g., to make a constitutional challenge to a statute or a challenge to the applicability of a statute to his conduct). In each such instance, however, a determination that a defendant has accepted responsibility will be based primarily upon pre-trial statements and conduct.

Nevertheless, application note 2 is not intended to exhaustive, and in appropriate circumstances the reduction is available in cases in which the defendant "manifests genuine contrition for his acts but nonetheless contests his factual guilt at trial." *United States v. Cantrell*, 433 F.3d 1269, 1285 (9th Cir. 2006) (*quoting United States v. McKinney*, 15 F.3d 849, 852 (9th Cir. 1994)).

The present case is not the "rare situation[]" in which a defendant clearly accepts responsibility even though he exercises his constitutional right to a trial. In his April 29, 2018, letter to the Court, Loftis continued to tout Prism in 2008 as a

"substantial, viable and long term operator" and "the core of the public offering to come." (PSR Addendum C at 4.) He also describes his then "hope . . . to build a group of private companies and people who could help develop the assets we acquired to be the base in oil and gas reserves that would give each of us solid and realistic returns." *Id.* According to Loftis, "In all cases, we were well on our way there by 2010." *Id.* In truth, by 2010 Loftis had already defrauded several victims including Shelly Arbuckle, Robert Gross, David Villone, Riverside Energy, and Jean Warner. His description of Prism as "[v]ery, very credible, well connected and wealthy in assets" is disconnected from reality.

Loftis continues his letter by blaming law enforcement for causing the losses to investors:

> Had I understood the power of the federal government to involve themselves directly into the business dealings of private and public corporations, I would have taken far different actions. But I, as most citizens of the USA feel to this day, that there are very clear, black and white lines which our law enforcement will not cross. That is obviously a very wrong impression of the reality. The issue is that I led a group of good people down a path based upon that standard being in force, and found over 5 times, that it is indeed not the case. I ask the court to look at where all of the Prism and Loftis related people would have been had those civil actions and related efforts not been tainted and directed to the outcomes that we saw.

Id. at 4-5. Loftis was tried and convicted for making materially false statements to investors causing them to lose retirement money and savings accrued over years of hard work. His present attempt to deflect the blame to law enforcement for

investigating him does not "clearly demonstrate[] acceptance of responsibility for his offense . . . ." USSG § 3E1.1(a).

VII. The Court should impose a sentence of 235 months imprisonment to reflect the seriousness of the Loftis's crime, provide just punishment, afford adequate deterrence, and protect the public.

The district court's sentencing duty is to "'impose a sentence sufficient, but not greater than necessary' to reflect the seriousness of the offense, promote respect for the law, and provide just punishment; to afford adequate deterrence; to protect the public; and to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment." *United States v. Carty*, 520 F.3d 984, 991 (9th Cir. 2008) (en banc) (quoting 18 U.S.C. § 3553(a)).

A. Need for the Sentence to Reflect the Seriousness of the Offense, Promote Respect for the Law, and Provide Just Punishment for the Offense

Loftis's scheme to defraud was extended, concerted, and devastating to his victims. His false statements to investors concerned not only the assets and activities of Prism and Great Northern Energy but also the very nature of his identity as a convicted felon who had never earned a degree in the field he purported to be an expert. 235 months imprisonment will provide some just punishment for the devastating impact Loftis's deception had on investors who put their trust in an individual who practiced a whole disregard for the truth and the consequences of that deception.

B. Adequate Deterrence to Criminal Conduct

Loftis is not unacquainted with the federal criminal justice system. A sentence of 18 months imprisonment was not adequate to deter him from further criminal activity, and indeed, history has shown that his fraudulent activity only increased over time. Should Loftis ever have an opportunity to commit another offense, the Court's sentence should serve to provide deterrence. A sentence of 235 months will also deter others tempted to use their knowledge—purported or real—to take advantage of investors.

C. Protect the Public from Further Crimes of the Defendant

Loftis has been engaged in criminal activity since his early thirties, and unfortunately, his experience in the criminal justice system did not adequately protect his later victims of fraud. Instead, Loftis's criminal behavior grew in severity and duration leading to the current convictions after trial. Instead of recognizing the impact his deception had on victims of his scheme, Loftis's letter to the Court questions what would have occurred had he not been investigated by law enforcement and even suggests future prospects for making money. (PSR Addendum C at 9-10.) During pretrial release in the present case, Loftis continued to engage in criminal activity involving fraud. PSR ¶¶ 9-10, 15. Incarceration is necessary to protect the public from future crimes.

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CONCLUSION

The scheme to defraud perpetrated by Loftis is a testament to the devastation an individual can wreak on his victims through a wholesale disregard for the truth and ability to create trust in others. The sanctity of the truth and the trust that holds all human relationships together was violated over and over again by the defendant. The United States respectfully requests the Court impose a sentence of 235 months imprisonment to provide justice for Loftis's crime and its devastating impact upon the victims of his scheme.

DATED this 1st day of August, 2018.

KURT G. ALME
United States Attorney

/s/ Chad C. Spraker
Assistant U.S. Attorney
Attorney for Plaintiff

CERTIFICATE OF COMPLIANCE

Pursuant to D. Mont. LR 7.1(d)(2) and CR 12.1(e), the attached United States' Sentencing Memorandum is proportionately spaced, has a typeface of 14 points or more, and has a body containing 5590 words.

/s/ Chad C. Spraker
Assistant U.S. Attorney
Attorney for Plaintiff