

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA**

**Richmond Division**

<b>UNITED STATES OF AMERICA</b>	)	
	)	
v.	)	<b>Criminal No. 3:10cr248</b>
	)	
<b>CHRISTIAN M. ALLMENDINGER,</b>	)	
	)	
<b>Defendant.</b>	)	

**GOVERNMENT’S REPLY BRIEF TO  
DEFENDANT ALLMENDINGER’S SENTENCING MEMORANDUM (DOC. NO. 288)**

The defendant’s blatant mis-characterizations of the criminal conduct in which he engaged—both before and after his indictment—would be almost comical but for the wide trail of human misery that he has left in his wake. For example, he claims credit for depositing A&O investor funds that he previously had hidden into restrained accounts and states that he “did not dissipate A&O investor funds in violation of the restraining order.” (Def.’s Sent. Mem. at 29.) In truth, Allmendinger: (1) planned to flee the entire time he was awaiting trial; (2) stole money from his own wife and child to fund his plan to flee; (3) blatantly and repeatedly violated this Court’s restraining order; (4) actually did flee but returned based on his fortuitously mistaken belief that, even if convicted, he could flee while on release pending sentencing; (5) made numerous misrepresentations to this Court through his attorney regarding his supposed lack of assets to flee; (6) dissipated at least \$40,000 of hidden A&O investor money by using it to pay

his AMEX card; and (7) most likely, only agreed that the A&O investor money that he had hidden be transferred to restrained accounts when forced to do so by his attorney.

### **I. Relevant Background**

Throughout his sentencing memorandum, defense counsel parses the Government's allegations regarding the defendant's violations of the restraining order and attempts to "spin" the defendant's actions as motivated by the defendant's desire to "ensure[] that the funds at issue were either deposited into accounts that he knew to be subject to the restraining order in this case and/or fully disclose[] the existence of these funds." (Def.'s Sent. Mem. at 1, 10-13.) Anyone reading the defendant's sentencing memorandum comes away with the impression that the defendant is a veritable Robin Hood who wanted nothing more than to be fully forthright with the Court and to ensure that the A&O victims receive as much money as possible. Nothing could be further from the truth.

#### **A. Allmendinger prepares to flee before trial.**

The defendant began preparing to flee soon after his arrest, while on pre-trial supervision. In fact, within weeks of his arrest, the defendant secretly began creating a cash horde to fund his escape. After the restraining order, the defendant's wife, Karin Allmendinger, gave the defendant her ATM card and PIN number for her unrestrained account at Encore Bank (#9021). (Jul. 27, 2011 Karin Allmendinger FBI-302 (*hereinafter* "K. Allmendinger 302") at 3 [attached as Exhibit 1<sup>1</sup>].) Account #9021 was held in Karin Allmendinger's name and her daughter (Jade

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<sup>1</sup> Mrs. Allmendinger agreed to meet with the Government because the defendant's actions had exposed her to potential criminal charges. Given Mrs. Allmendinger's participation in the violation of this Court's restraining order, communications between the defendant and his wife are arguably not privileged. *See United States v. Parker*, 834 F.2d 408, 411 (4th Cir. 1987) ("This Circuit has held, however, that 'where marital communications have to do with the

Allmendinger) was the beneficiary. *Id.* Mrs. Allmendinger gave the defendant the ATM card and PIN number so that he would have money for miscellaneous expenses, *e.g.*, “if he needed to buy a hamburger.” *Id.* Beginning in early October of 2010, the defendant began secretly looting his wife’s account by making frequent cash withdrawals of \$500. (*See* Encore Bank Account Statements for Acct. # 9021 [attached as Exhibit 2].) All told, the defendant took \$500 cash withdrawals 46 times from October 11, 2010 through March 9, 2011. *Id.* The defendant took his wife’s money without her knowledge and she “did not give him the [ATM] card so that he could ‘plunder the account.’” (K. Allmendinger 302 at 3.)

As his trial date approached, the defendant took increasingly brazen steps in his escape plan. As detailed in the Government’s original sentencing memorandum, the defendant received three checks written on his father’s UBS Financial Services Account (#7681) totaling \$125,000. (Gov.’t Sent. Mem. at 10.) This account was originally funded with misappropriated A&O investor funds. *Id.* at 6-8. At the time of its original sentencing memorandum, the Government was only aware of the disposition of one of these UBS checks. Specifically, that on February 28, 2011, the defendant used the \$25,000 UBS check to secretly open a checking account (#0847) at the Bank of Houston. *Id.* at 11. The Government’s continuing investigation has revealed that the defendant also opened two other secret bank accounts—in blatant violation of this Court’s restraining order—on February 28, 2011 with the other two UBS checks. He opened one account at Green Bank by depositing a \$50,000 check written on his father’s UBS account (#7681), and two other checks totaling \$11,000. (Copies of Deposited Checks from UBS Acct. #7681

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commission of a crime in which both spouses are participants, the conversation does not fall within the marital privilege....”). Out of an abundance of caution, however, the Government has redacted these communications in the FBI-302 provided to the Court.

[attached as Exhibit 3].) The defendant then deposited the other \$50,000 check written on UBS account #7681 at yet another secret bank account at the Bank of Texas that he opened on February 28, 2011. *Id.*

Apparently not satisfied that these hidden bank accounts would sufficiently fund his escape, the defendant purchased luxury goods that would be readily transportable. Specifically, on March 7, 2011, the defendant used his AMEX card to purchase \$55,239.98 of luxury watches from Neiman Marcus. (Selected Excerpt of Def.'s AMEX Stmt. Ending Mar. 22, 2011 [attached as Exhibit 4].) The next day, he also used his AMEX card to purchase additional watches at Zadok Jewelers for \$15,958.22 and \$29,552.25 respectively. *Id.* All told, he purchased more than \$100,000 worth of easily transferable jewelry just days before his trial began. Significantly, the defendant used a \$40,000 check from his father's UBS account (#7681)—which contained A&O victim money—to partially pay the balance on the AMEX card that he used to make these purchases. (Copy of \$40,000 Check Pmt. to AMEX from UBS Acct. #7681 [attached as Exhibit 5].)

**B. Allmendinger actually flees - temporarily.**

On March 11, 2011, the defendant temporarily fled. That morning, the defendant's wife returned from the gym and discovered that half of the defendant's clothes were gone from his closet, that he had spaced the remaining clothes evenly to conceal the missing clothes, and that he had taken his toiletry bag. (K. Allmendinger 302 at 5.) Mrs. Allmendinger then went into the defendant's office and found that the defendant had left her a note. *Id.* She contacted Encore Bank and froze her personal account to which she provided the defendant access. *Id.* To her dismay, she learned that the defendant had been secretly looting the account. *Id.*

Upon learning that her husband had fled, Mrs. Allmendinger contacted his attorney, Barry Pollack, and told him that “Chris had run, his clothes were gone and that Chris had left a note.” (K. Allmendinger 302 at 5.) Mr. Pollack told Mrs. Allmendinger that she had to get the defendant to return and that Mr. Pollack had left messages for the defendant. *Id.* at 5-6. The defendant was “radio silent.” *Id.* at 5. As recited in the Government’s original sentencing pleading, on March 11, 2011, the defendant withdrew \$20,000 in cash and a \$20,000 cashier’s check from his secret Bank of Houston account. (Gov.’t Sent. Mem. at 11.) When he attempted to negotiate the \$20,000 cashier’s check at a different Bank of Houston branch, he refused to give his cellular phone number and the bank refused to negotiate the check. *Id.* at 11-12. Late in the evening on March 11, 2011, the defendant returned in his Range Rover to his wife. Mrs. Allmendinger noticed that the Range Rover was “stuffed full with clothes,” and had bags from Neiman Marcus and Zadok Jewelry. *Id.* at 6. Further demonstrating his intent to permanently flee, the defendant had even taken all of the family’s photos. *Id.* Mrs. Allmendinger contacted Mr. Pollack and told him that the defendant had returned. *Id.* After a discussion between the defendant and Mrs. Allmendinger, the defendant went to the Range Rover, came back with a manilla envelope containing \$21,000, and handed it to Mrs. Allmendinger. *Id.* The defendant left Houston the next day, March 12, 2011, to attend his trial in Richmond, Virginia. *Id.* Significantly, the defendant assumed that even if he was found guilty, he would remain out on bond before he was sentenced. *Id.*

**C. Allmendinger is convicted at trial and requests continued release.**

The defendant's trial began on March 14, 2011 and he was convicted by a jury on all counts on March 24, 2011.<sup>2</sup> Immediately after trial, Mr. Pollack argued strenuously for the defendant's release pending sentencing. (3/24/11 Tr. [attached as Gov. Ex. 9 to Gov.'t Sent. Mem.].) As the defendant sat at counsel table and watched, his attorney represented to the Court:

- “There is absolutely no evidence, zero evidence, that Mr. Allmendinger has access to significant assets at this point. . . . His assets are frozen.” (3/24/11 Tr. at 11.)
- Allmendinger has “a perfect track record in terms of court supervision.” (3/24/11 Tr. at 13.)
- “But in any event, I think that the answer is that all of the assets are accounted for and they are all subject to [the] restraining order.” (3/24/11 Tr. at 15.)
- “And you could only order him detained if there were no combination of conditions that would satisfy you that he is not likely to flee. And the fact is they don't have access to significant assets. The assets they do have access to Mr. Dry knows about.” (3/24/11 Tr. at 28.)

Obviously, no mention was made of the defendant's secret bank accounts at Bank of Houston, Green Bank, and Bank of Texas. These accounts contained approximately \$128,000 at

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<sup>2</sup>The defendant's lavish lifestyle continued unabated during trial as evidenced by the fact that his AMEX charges include more than \$10,000 of charges for his stay at the Jefferson Hotel at this time. (Selected Excerpt of Def.'s AMEX Stmt. Ending Apr. 21, 2011 [attached as Exhibit 6].) The last payment made to the defendant's AMEX card was the \$40,000 payment made on March 8, 2011 from the previously hidden A&O victim money held at Tim Allmendinger's UBS account.

the time that defense counsel represented that the defendant had no assets. Nor was the \$20,000 in cash or the \$20,000 cashier's check that the defendant received from Bank of Houston less than two weeks before revealed. No mention was made of the \$100,000 in luxury watches that the defendant had recently purchased.<sup>3</sup> Fortunately, the Court rejected the defendant's request for release pending sentencing, but offered to revisit the issue should the defendant and his wife provide a more comprehensive accounting of their assets. (3/23/11 Tr. 29-31.)

**D. Mrs. Allmendinger tries to resolve the "squirrely stuff."**

On March 31, 2011, Mr. Pollack had a conference call with Karin Allmendinger and her attorney, Heather Peterson. (K. Allmendinger 302 at 7.) During that call, Mr. Pollack told Mrs. Allmendinger that "Chris did some squirrely stuff" in that he opened bank accounts right before trial. *Id.* Ms. Peterson's handwritten notes of the call state: "Chris tx'ed [transferred] \$ right before trial – don't want new accts showing up OR give inaccurate info. Tx [transfer] balance of these accts into frozen accts." (3/31/11 Heather Peterson, Esq. Notes of Conference Call [attached as Exhibit 7].) Mr. Pollack told Mrs. Allmendinger that he was sending her a power of attorney and that he wanted her to go to Green Bank, Bank of Houston, Bank of Texas, and Patriot bank and transfer the funds in those accounts to a frozen account. (K. Allmendinger 302 at 7.) Mr. Pollack further instructed Mrs. Allmendinger to locate the \$20,000 cashier's check in the console of the defendant's Range Rover and deposit that into a frozen account as well. *Id.* Mr. Pollack did not mention the \$20,000 in cash that the defendant received from Bank of

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<sup>3</sup> Karin Allmendinger returned the watches to Neiman Marcus and Zadok Jewelers on March 26, 2011 upon her return from Houston after trial and the defendant's AMEX card was credited for the purchase prices. (K. Allmendinger 302 at 6.)

Houston. Mrs. Allmendinger told federal investigators that she was unaware of the cash and, despite searching their home, she has not found it. *Id.* at 7-8.

On April 1, 2011, Mrs. Allmendinger received the power of attorney from Mr. Pollack via Federal Express. *Id.* at 8. This Court's September 8, 2010 restraining order stated:

That the defendants, . . . , attorneys, family members and those persons in active concert or participation with them and anyone holding property, both real or personal, for them, is hereby ENJOINED AND RESTRAINED from transferring, or . . . *remov[ing] from any checking or savings account of all or part of the defendants' interest*, in any property, real or personal, up to the sum of not less than **\$103 million** *without prior approval of the court* upon notice to the United States and an opportunity for the United States to be heard, except as specified in this Order.

(Sept. 8, 2010 Restraining Order, Crim. No. 3:10cr248, at 2.) (emphasis in italics added). On April 1, 2011, despite the explicit language of the restraining order, Mrs. Allmendinger followed Mr. Pollack's instructions and, without prior approval of the Court, attempted to transfer the defendant's interest in his secret bank accounts to the restrained accounts. (K. Allmendinger 302 at 8.). When Mrs. Allmendinger attempted to deposit the \$20,000 cashier's check into the restrained Wells Fargo account provided by Mr. Pollack, however, she learned that the account had been closed due to inactivity. *Id.* When Mrs. Allmendinger contacted Mr. Pollack and explained the situation, he instructed her to deposit the check into a restrained Chase Bank account. *Id.*

Mrs. Allmendinger attempted to transfer all of the funds from the defendant's secret bank accounts into the restrained Chase Bank account, but ultimately was unable to transfer and close the account at Green Bank. *Id.* at 8-9. During her conversations with Mr. Pollack about her difficulties in transferring the funds, Mr. Pollack informed her "that it would look better in the

eyes of the Court if these things, the accounts, were not in there, referring to the financial statements.” *Id.* at 9.

On April 11, 2011, the defendant provided the Probation Office and the Government with a Statement of Net Worth. The defendant accurately included the increased balance in the restrained Chase account (#8368) due to his wife’s transfers from his secret bank accounts. Because Mrs. Allmendinger was unable to close the Green Bank account (#9167), the defendant was forced to disclose its existence on the affidavit. But, in an apparent attempt to make things “look better in the eyes of the Court,” the secret bank accounts that Mrs. Allmendinger closed just days before at Bank of Houston, Bank of Texas, and Patriot Bank were omitted entirely. While Mrs. Allmendinger did disclose on her affidavit that she had the \$21,000 in cash given to her by her husband—which she believes he obtained by plundering her personal Encore Bank account with her ATM card—there is no mention anywhere on the defendant’s affidavit of the \$20,000 in cash he received from Bank of Houston and its whereabouts remain unknown.

## **II. Defendant’s Objections to Presentence Report**

### **A. Objections to enhancements for fraud under U.S.S.G. § 2B1.1.**

#### **1. Amount of loss.**

“The court need only make a reasonable estimate of the loss.” U.S.S.G. § 2B1.1 cmt. 3(C). “The sentencing judge is in a unique position to assess the evidence and estimate the loss based upon the evidence. For this reason, the court’s loss determination is entitled to appropriate deference.” *Id.* Pursuant to § 2B1.1, “loss is the greater of actual loss or intended loss,” and actual loss is defined as “the reasonably foreseeable pecuniary harm that resulted from the offense.” U.S.S.G. § 2B1.1 cmt. 3(A)(i). Most significantly, “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.” *Id.* at cmt. 3(A)(iv) (emphasis added).

The PSR holds the defendant accountable for \$95,761,608.53 of victim losses, with a resulting 24-level enhancement to the defendant’s offense level pursuant to U.S.S.G. § 2B1.1(b)(1)(M). (*See* PSR, Worksheet A.) As proven at trial, from November of 2004 through January of 2008, A&O accepted \$104,048,660.18 from 825 investors and no material investment returns were made to these investors . (Gov. Trial Ex. 285 [attached as Exhibit 8].) Based on information from the A&O Bankruptcy Trustee, the Probation Officer reduced this figure to reflect the \$8,287,051.65 estimated *gross* value of the bankruptcy estate’s assets, which includes: \$2,675,000 received from PCI; approximately \$4.4 million of anticipated proceeds from the sale of insurance policies; \$590,151.65 in settlement proceeds from an insurance carrier; and a \$621,900 settlement payment from the W Financial bankruptcy estate. (*See* Jul. 1, 2011 Ltr. of Bankruptcy Trustee Counsel Jeremy T. Stillings, at 2 [attached as Exhibit 9]). There are no other life insurance policies or other assets to liquidate for the benefit of the A&O victims. (*See* Jul. 29, 2011 Ltr. of Bankruptcy Trustee Counsel Jeremy T. Stillings, at 2 [attached as Exhibit 10]). Consequently, the PSR’s estimate of \$95,761,608.93 is a conservative estimate given that the Bankruptcy Trustee anticipates ultimately distributing less than \$5 million to the A& O investors. *Id.*

The defendant objects to the PSR’s loss amount based on his claims that: (1) the Government has failed to establish that the defendant was responsible for each investors’ decision to invest while he was an owner of A&O; (2) the defendant is not responsible for

investor losses after he sold his interest in A&O; and (3) PCI's independent fraud was an intervening cause of the investor losses for which the defendant cannot be held accountable. (Def.'s Sent. Mem. at 14-17.) Each of the defendant's arguments are meritless.

***a. Allmendinger is responsible for all of the losses of victims who invested while he was an A&O owner.***

In defendant's first objection to the loss calculation, he claims—without a single legal citation in support—that in order to establish the aggregate losses for sentencing purposes, the Government is required to prove that he was responsible for each and every investors' investment decision. Of course, no such requirement actually exists. *United States v. Masferrer*, 514 F.3d 1158, 1164 (11th Cir. 2008) (holding that loss calculation based on all victim investors who had purchased stock after defendant made fraudulent misrepresentations was a reasonable estimate). The defendant does not appear to suggest that the A&O victim investors did not lose money. Instead, he argues that he was not responsible for their losses because the premiums for the underlying life insurance policies were paid while he was an A&O owner. (Def.'s Sent. Mem. at 14.) The question, however, is not whether A&O investors had lost money while the defendant was an owner of A&O. Instead, the question is whether the defendant “knew or, under the circumstances, reasonably should have known” that the victims' losses were “a potential result of the offense.” U.S.S.G. § 2B1.1 cmt. 3(A)(iv).

The potential for victims' losses in this case were, or at a bare minimum should have been, readily apparent to the defendant. From the outset, Allmendinger (the “A” in “A&O”) was a full partner in the misrepresentations to investors regarding A&O and the safekeeping of A&O investor money to ensure that premiums for the underlying insurance policies were paid. (PSR

¶ 34; Jan. 26, 2010 Christian Allmendinger FBI-302 at 5, 8-9). Throughout trial, the Court heard evidence from numerous investors and sales agents that the conspirators, including Allmendinger, consistently represented that there was no risk of the policies lapsing for non-payment of premium. Had Allmendinger and his conspirators actually did what they said they would by pre-paying the premiums or safeguarding investor money to pay premiums, then the underlying life insurance policies would not have lapsed. The fact that Allmendinger and his conspirators were commingling all investor monies and only paying premiums as they came due is sufficient, in and of itself, for this Court to find that Allmendinger knew, or should have known, that the investor losses were a *potential* result of his offenses.

During the sentencing for Eric Kurz, this Court rejected the same argument that Allmendinger makes here, *i.e.*, that the investor losses were not reasonably foreseeable. Despite the fact that the premiums had been paid during Kurz's participation in the conspiracy and that—unlike Allmendinger—Kurz had no knowledge regarding the misrepresentations about the payment of premiums, the Court held that the investor losses were reasonably foreseeable to Kurz based on his participation in misrepresentations regarding A&O's size, number of employees, and prior investment success. If investor losses were reasonably foreseeable to Kurz, then simply no logical argument exists that they were unforeseeable to Allmendinger.

**i. Wet "STOLI" policies and fake LRP life expectancies.**

Allmendinger's use of wet "STOLI" policies with fake life expectancy reports during the A&O scheme provides yet more evidence that Allmendinger knew, or should have known, that the victims' losses in this case were a potential result of his criminal conduct. The defendant does not appear to dispute the use of wet "STOLI" policies. (Def.'s Sent. Mem. at 7.) Instead,

he claims that the Government has failed to quantify the number of such policies. *Id.* As reflected in the attached spreadsheet, the Government has identified eight A&O life insurance policies that had fake LRP life expectancy reports. (Spreadsheet of Insurance Policies with LRP Life Expectancies [attached as Exhibit 11].) The total face value of these policies is \$12.2 million. *Id.* With the exception of one \$200,000 policy, all of these were wet “STOLP” policies. *Id.*

The defendant also claims that there is no allegation that contestable policies were sold during Allmendinger’s tenure. (Def.’s Sent. Mem. at 7.) Allmendinger’s personal knowledge that A&O was selling wet policies to A&O’s investors is evident, however, from an email he sent to Mackert on August 13, 2007 in which Allmendinger gave Mackert a “breakdown [of] what [A&O] sold in each month,” and listed the Carter and Veasaw policies for the A&O hedge fund maturing on July 1, 2014, and the Coursey, Steadman, Wright, Sharkey, and David policies for the A&O hedge fund maturing on July 1, 2013. (8/13/07 Email from C. Allmendinger to R. Mackert [attached as Exhibit 12].) The July 1, 2013 date listed in Allmendinger’s email corresponds to the maturity date for the A&O Life Fund, LLC and the A&O Bonded Life Assets, LLC hedge funds. (Gov. Trial Ex. 60 [attached as Exhibit 13]; Gov. Trial Ex. 68 [attached as Exhibit 14].) With the exception of Sharkey, each of these were wet policies—both procured by fraud with the specific intent to sell the policies, as well as sold within the contestability period—for which fraudulent LRP life expectancy reports had been created. Although these policies did not represent the bulk of A&O’s underlying life insurance policies, they infected A&O hedge funds as a whole. As explicitly stated in the executive summaries of A&O’s hedge funds, the investment objective of Capital Appreciation Bonds was to “attempt to diversify risk

through the diversification of investments” by buying insurance policies with life expectancies “between two (2) and ten (10) years.” (Exhibit 13 at 2.) By placing more than \$12 million of wet “STOLI” policies with fake life expectancies into A&O’s hedge funds, Allmendinger and the conspirators negated any notion of diversification and actually increased the risk of loss for A&O’s hedge funds as a whole.

In fact, Allmendinger does not even address his involvement with the fake LRP life expectancy reports. LRP life expectancies were utilized by Acclivity, Consolidated Wealth Holdings (“CWH”), and Granite Funding, which were life settlement companies that Allmendinger procured life insurance policies for after his involvement with A&O. (*Id.*; PSR, ¶ 116; Christian Allmendinger FBI-302 at 20.). As reflected in the spreadsheet, these three companies used fake LRP life expectancies on 26 of their policies that had a total face amount of \$94,562,500. (Exhibit 11 at 1-3.) To be clear, the likely losses to the investors in Acclivity, CWH, and Granite Funding’s life settlement investors as a result of the defendant’s fraud is separate and distinct from the losses to A&O investors before the Court. But, Oncale and Abdulwahab were not involved in these companies, and Allmendinger’s continued use of fake LRP life expectancy reports demonstrates his utter disregard for the safety of any investors and that investor losses were readily apparent to him.

**ii. The sham sales transaction.**

Allmendinger also argues that the losses were not foreseeable to him because he did not know about the sham sales transaction and could not have known what would happen after he sold his interest in A&O. (Def.’s Sent. Mem. at 2-5.) While the Government concedes that Allmendinger did not know who was buying A&O, Allmendinger did absolutely no due

diligence or anything to safeguard investor funds, and he should have known that the investor losses were a potential result. In the A&O investment contracts, Allmendinger personally promised A&O's investors that A&O would not "merge or consolidate with any person, or convert to a different entity without notifying [the investors] in advance . . . ." (Gov. Trial Ex. 18 at 4 [attached as Exhibit 15].) Despite this promise, Allmendinger never informed any of the investors or sales agents of the sale, much less provided advance notice. (PSR, ¶ 61; Christian Allmendinger FBI-302 at 17.) Allmendinger did not even know the name of the person or entity that was purchasing his company, but did know that whoever was purchasing A&O did not even bother to audit it. (Christian Allmendinger FBI-302 at 16.) Against this backdrop, the defendant now claims that it would be unfair to find that he should have known that the A&O investor losses were a potential result. The Court should reject defendant's argument because, otherwise, fraudsters can avoid responsibility for their victims' losses merely by walking away before the inevitable investor losses occur.

**iii. A&O had insufficient funds to pay premiums through the PCI maturity dates.**

While the offense conduct recited above proves that Allmendinger knew, or should have known, that the investor losses were a potential result of his offenses, the simple fact of the matter is that at the time that Allmendinger sold his interest in A&O, the company had insufficient funds to pay premiums through the PCI maturity dates. The attached spreadsheet lists all of the policies purchased by A&O on or before August 31, 2007. (Spreadsheet of Premiums Due for A&O Policies Purchased Before Aug. 31, 2007 [attached as Exhibit 16].) The Government sent letters to each of the insurance companies that issued the policies asking them to confirm who owned the policy as of August 31, 2007 and to provide the "*minimum amount of*

premiums needed to keep the policies in effect, taking into account any cash value in the policies” from the date of August 31, 2007 through the date listed, which represented the PCI maturity date. (*See e.g.* May 4, 2011 Ltr. from FBI to ING [attached as Exhibit 17].) The Government then compiled the data provided by the insurance companies and listed the minimum premium required for each policy in the “Premium Amount Due From August 31, 2007 until End Bond Date” column. The total amount is \$6,384,576.33. But, the total amount of money in all of the A&O bank accounts as of August 31, 2007 was only \$2,947,261.30. (*See* Spreadsheet of A&O Bank Balances as of Aug. 31, 2007 [attached as Exhibit 18].)

***b. Allmendinger is responsible for the losses of victims who invested even after he sold his ownership interest in A&O.***

Allmendinger objects to the PSR’s loss calculation that held him accountable for losses after he sold his interest in A&O on August 31, 2007. (Def.’s Sent. Mem. at 14.) While Allmendinger was an owner of A&O, approximately 600 victims invested \$79,994,282.78 in A&O’s fraudulent life settlement investments. (Exhibit 8.) Decreasing the invested amount by the \$8,287,051.65 estimated *gross* value of the bankruptcy estate’s assets would still result in a loss amount of \$71,707,231.13. Consequently, as a practical matter, Allmendinger’s argument that the loss amount should be limited to his tenure as an A&O owner is immaterial for Guidelines purposes as \$95,761,608.93 (the losses attributable to the entire A&O conspiracy) and \$71,707,231.13 (the losses attributable only during Allmendinger’s ownership of A&O) both result in a 24-level enhancement for amount of loss pursuant to U.S.S.G. § 2B1.1(b)(1)(M).

As a legal matter, however, Allmendinger should be held accountable for all of the victim losses because those losses were within the scope of the defendant’s agreement and reasonably foreseeable to the defendant. *United States v. Gilliam*, 987 F.2d 1009, 1012-13 (4th Cir. 1993).

The defendant's argument to the contrary is based on the faulty premise that Allmendinger did not know that his co-conspirators would continue without him. (Def.'s Sent. Mem. at 14.) Section 8.3 of the Purchase and Sale Agreement, which was signed by Allmendinger, explicitly stated, however, that Abdulwahab would continue as a consultant with A&O for six months after the sale. (Gov. Trial Ex. 134 [attached as Exhibit 19].) The same agreement provided that Allmendinger would continue to receive compensation from the continued operations of A&O. *Id.* at § 2.3.1. It was not only foreseeable that A&O would continue its fraudulent investment scheme, but Allmendinger had a personal financial interest that it do so.

Pursuant to the Fourth Circuit's interpretation of U.S.S.G. § 1B1.3, in order to hold Allmendinger accountable for the victims' losses after he sold his interest in A&O, the sentencing court must make particularized findings with respect to both the scope of the defendant's agreement and the foreseeability of his co-conspirators' conduct . . . ." *United States v. Bolden*, 325 F.3d 471, 499 (4th Cir. 2003). Here, the scope of the defendant's agreement included making misrepresentations to potential A&O investors regarding A&O, the safety of A&O's investments, and the use of investor funds to pay premiums in order to misappropriate the investor funds for the conspirators' own use. (3/15/11 Tr. at 22-23, 30, 36-40, 43-44, 48, 55, 74-75, 77; PSR ¶¶ 36-38). Allmendinger's co-conspirators' continued misrepresentations were the same misrepresentations in which the defendant participated while an A&O owner and, in fact, originally orchestrated. As discussed above, his co-conspirators' continued fraud was readily foreseeable.

*c. The PCI fraud was not an intervening cause for A&O's investor losses.*

“It is not appropriate to reduce the amount of the loss as computed under the Guidelines, in order to reflect other causes of the loss which were beyond the defendant’s control.” *United States v. Jiminez*, 513 F.3d 62, 87-88 (3d Cir. 2008). Nonetheless, Allmendinger argues that the criminal conduct of PCI is an intervening cause that breaks the causal connection such that PCI is responsible for the A&O victim losses and he is not. (Def.’s Sent. Mem. at 14.) In support, the defendant claims that had PCI paid on its bonds, it would have negated the A&O losses in their entirety. *Id.* at 6. Defendant’s entire argument misses the point, however, because PCI was not legally obligated to pay for life insurance policies that had lapsed for non-payment of premiums. When A&O declared bankruptcy on September 21, 2009, more than \$46,000,000 of its insurance policies had already lapsed. (*See* Trustee’s Initial Status Report, at 3 [attached as Ex. F to Def.’s Sent. Mem.]). For the vast majority of the remaining A&O life insurance policies, PCI’s obligations to pay did not even become effective until well after the defendant’s indictment in this case. (*See* Trustee’s Fourth Status Report, at 8 [attached as Ex. G to Def.’s Sent. Mem.]). Simply put, even if PCI had been a legitimate company and been able to pay on its guarantee bonds, the defendant’s fraud resulted in PCI not being obligated to pay on the majority of those bonds because the underlying life insurance policies lapsed before the PCI bonds matured. As such, the PCI fraud is not an intervening cause and Allmendinger is responsible for the A&O victim losses.

**2. Number of victims.**

The probation officer properly applied a six-level enhancement pursuant to U.S.S.G. § 2B1.1(b)(2)(C) because Allmendinger's offense conduct involved 250 or more victims. The defendant broadly claims that this enhancement "is not warranted" because the Government bears the burden of producing evidence to prove the number of victims. (Def.'s Sent. Mem. at 18.) He does not, however, dispute the number of investors in the A&O scheme.

Section 2B1.1 defines a victim as ". . . any person who sustained any part of the actual loss determined under subsection (b)(1) . . . 'Person' includes individuals, corporations, companies, associations, firms, partnerships, societies, and joint stock companies." U.S.S.G. § 2B1.1 cmt. 1. Thus, any A&O investor who sustained any "actual loss," or "reasonably foreseeable pecuniary harm that resulted in the offense," U.S.S.G. § 2B1.1 cmt. 3(A)(i), is properly considered a "victim."

The number of A&O investors should not be in dispute. Special Agent John Norton testified during Allmendinger's trial that from November 2004 to August 31, 2007—during Allmendinger's time as vice president of A&O—601 investor contracts were signed involving 580 investors. (3/18/11 Tr. at 63.) These investors invested \$79,994,282.78 in A&O life settlement products. *Id.* From September 1, 2007, until the end of the A&O scheme, another 242 investor contracts were signed. In total, A&O procured 843 investor contracts involving 825 investors. The United States has presented ample evidence that these investors sustained actual losses. None of these investors received any money back and these losses were reasonably foreseeable to Allmendinger. *See supra* § II(A)(1) (amount of loss).

Allmendinger's reliance on the Ninth Circuit's decision in *Showalter* is unavailing. (Def.'s Sent. Mem. at 18) (*citing United States v. Showalter*, 569 F.3d 1150 (9th Cir. 2009).) Showalter challenged the application of a four-level enhancement for 50 or more victims. 569 F.3d at 1160. The PSR indicated that the probation officer contacted the related bankruptcy trustee by phone and obtained a list of victims. *Id.* The PSR did not, however, provide any details of the probation officer's conversation with the bankruptcy trustee or explain how the trustee calculated the list. *Id.* at 1162. The Ninth Circuit implicitly suggested that such evidence—any evidence—would have provided support for the victim enhancement. *Id.* Here, in contrast, the Government has provided substantial evidence of the number of victims. Special Agent Norton explained that he reviewed investor files. (3/18/11 Tr. at 19.) He testified that he examined copies of checks appended to the investor contracts, and traced into which bank accounts those investor checks were deposited. (3/18/11 Tr. at 22.) For investor contracts lacking appended checks, Special Agent Norton reviewed bank deposit items to find investor checks deposited into A&O bank accounts. (3/18/11 Tr. at 23.) In sum, Special Agent Norton testified under oath that he reviewed a contract and a monetary deposit for each of the 825 individual victims. This more than satisfies the Government's burden at this stage.

### **3. The "leader/organizer" enhancement.**

Allmendinger's assertion that his conduct does not merit a four-level enhancement under U.S.S.G. § 3B1.1(a) strains credulity in light of the overwhelming evidence of the nature of his involvement in and leadership of the A&O fraud.

In order for the enhancement to apply, Allmendinger must have been "an organizer or leader of a criminal activity," and that criminal activity must have "involved five or more

participants” or have been “otherwise extensive.” U.S.S.G. § 3B1.1(a). A “participant” is someone “criminally responsible for the commission of the offense,” whether convicted of a crime or not. U.S.S.G. § 3B1.1 cmt. 1.

***a. The A&O fraud was “otherwise extensive.”***

The A&O fraud clearly was “otherwise extensive.” As the Sentencing Guidelines explain, “[i]n assessing whether an organization is ‘otherwise extensive,’ all persons involved during the course of the entire offense are to be considered. Thus, a fraud that involved only three participants but used the unknowing services of many outsiders could be considered extensive.” U.S.S.G. § 3B1.1 cmt. 3. The Court heard testimony from numerous willing participants in the mail fraud conspiracy, such as Oncale, Abdulwahab, and Kurz. But the Court also heard from unwitting participants in Allmendinger’s extensive scheme. For example, Debbie Kelly mailed all of the investor documents and received investor checks, plus she wrote premium checks to insurance companies. (3/16/11 Tr. at 202, 205.) Steve Khoury recruited insurance agents, broker-dealers, and financial advisors to sell A&O products. (3/16/11 Tr. at 10.) Sales agents like Tomme Bromseth sold A&O investments to over 800 people across the United States. The evidence of hundreds of victims across the country, who were sold A&O investments by numerous sales agents, speaks for itself and makes plain that the A&O fraud was indeed “otherwise extensive.”

***b. Allmendinger was an organizer and leader.***

Having satisfied this question regarding the size and scope of the criminal activity of which Allmendinger was a part, the only remaining inquiry for the Court is whether Allmendinger was an organizer or leader of that criminal activity. And Allmendinger’s assertion

that he “plainly was not at the top of the pyramid” is belied by the testimony of those best positioned to know exactly how that “pyramid” was structured, such as Oncale, Kurz, and Khoury.

For example, as Oncale explained at trial, Allmendinger (the “A” in “A&O”) was a founder and co-owner of A&O from the beginning (3/15/11 Tr. at 10, 41.) Even after Abdulwahab joined A&O as a principal, Allmendinger remained an equal owner. (3/15/11 Tr. at 57.) At a minimum, Allmendinger sold A&O products directly to investors (3/15/11 Tr. at 16, 21, 24), recruited agents and taught them how to sell the products (3/15/11 Tr. at 21), created marketing materials riddled with misrepresentations (3/15/11 Tr. at 30, 36–40, 77), designed the A&O website and its misrepresentations (3/15/11 Tr. at 43–44, 48, 55) moved investors’ money between accounts (3/15/11 Tr. at 26), consulted on behalf of the company with attorneys prior to the change to the hedge fund product (3/15/11 Tr. at 61), explained to the sales force how to sell the new product (3/15/11 Tr. at 65, 71–72), told the other principles when they could take money out of A&O (3/15/11 Tr. at 74–75, 86–87), signed checks for A&O (3/15/11 Tr. at 85), and paid and tracked commissions to the sales force (3/15/11 Tr. at 19–20, 85). The activities and responsibilities are not those of someone who is anything other than a leader and organizer of A&O’s criminal activity, and the four-level enhancement is plainly warranted.

**4. Abuse of trust.**

Section 3B1.3 of the United States Sentencing Guidelines provides that a defendant’s offense level should be increased by two levels “[i]f the defendant abused a position of public or private trust, or used a special skill, in a manner that significantly facilitated the commission or

concealment of the offense.” Two requirements must be met in order to apply the abuse-of-trust enhancement. First, the defendant must occupy and “abuse[ ] a position of public or private trust.” U.S.S.G. § 3B1.3. Second, the defendant’s abuse of trust must “significantly facilitate[] the commission or concealment of the offense.” *Id.*; see also *United States v. Abdelshafi*, 592 F.3d 602, 610-11 (4th Cir. 2010).

As to the first element, Allmendinger plainly occupied and abused a position of private trust. Three primary factors guide the inquiry as to whether the defendant held a position of trust: (1) whether the defendant had special duties or access to information not available to other employees, (2) the extent of the defendant’s discretion, and (3) whether the defendant's acts indicate she is more culpable than similarly situated criminal actors. See *United States v. Akinkoye*, 185 F.3d 192, 203 (4th Cir. 1999). Allmendinger, the “A” in A&O, was at the apex of the corporate structure. He had access to more information about the A&O investments than almost any other employee or participant, and he exercised his discretion over each of these functions. Allmendinger and Oncale bought the life insurance policies (3/15/11 Tr. at 21), Allmendinger paid the policy premiums (3/16/11 Tr. at 205), Allmendinger and Oncale transferred investor money from the escrow company back to A&O’s bank accounts (3/15/11 Tr. at 26), Allmendinger calculated when and how much the principals could take in distributions (3/15/11 Tr. at 74), and Allmendinger authorized and tracked commissions paid to sales agents. (3/15/11 Tr. at 20.) He also signed the investment contracts on behalf of A&O. Allmendinger’s acts render him equally culpable to Brent Oncale, who also received Abuse of Trust enhancements for both of his mail fraud and money laundering convictions.

Allmendinger argues that his relationships with A&O investors were arms-length, commercial transactions lacking the hallmarks of a fiduciary relationship and discretion. (Def.'s Sent. Mem. at 23.) Allmendinger ignores evidence that he, too, personally made sales pitches to clients from 2004-07. (3/15/11 Tr. at 16, 20-21, 24-25.) In those presentations and throughout the A&O marketing material, Allmendinger represented himself as the vice-president of a highly successful life settlement company with a vastly accomplished staff, including "CPAs, insurance and securities attorneys, financial advisors, investment bankers and economists." (3/15/11 Tr. at 45-46.) Allmendinger presented to investors and agents that he was a legitimate businessman, someone who could be trusted to ensure that premium payments were paid from an escrow or up-front. Investors trusted that Allmendinger would use his discretion to evaluate and decide which life insurance policies to buy and pay the premiums in the same manner that he promised. (Jan. 26, 2010 Christian Allmendinger FBI-302 at 6). While acting as vice-president, Allmendinger signed most of the investment contracts. The investors placed a "special confidence" in Allmendinger, who was in "good conscience bound to act in good faith and with due regard for the[ir] interests." This creates a fiduciary relationship.<sup>4</sup> *Diaz Vicente v. Obenauer*, 736 F. Supp. 679, 695 (E.D. Va. 1990) (Ellis, J.) (internal quotations and citations omitted). Whether a defendant held a position of trust must be assessed from the perspective of the victim. *See United States v. Bollin*, 264 F.3d 391, 415 (4th Cir. 2001). Victims would not have invested their life savings had they not trusted the defendant's representations.

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<sup>4</sup> Contrary to Allmendinger's argument, section 3B1.1 does not *require* a fiduciary relationship. Rather, the attributes of a fiduciary relationship are helpful, but not dispositive, in applying the abuse of trust enhancement.

As to the second element, the defendant's abuse of trust must "significantly facilitate[ ] the commission or concealment of the offense." U.S.S.G. § 3B1.3. In other words, the "position of public or private trust must . . . contribute[ ] in some significant way to facilitating the commission or concealment of the" defendant's underlying crime. *Id.* § 3B1.3 cmt. 1. The defendant used his position of trust to exercise discretion over the timing and source of premium payments to insurance companies. The defendant's primary control over the A&O bank accounts, from which premiums were paid as they came due (instead of from an escrow account or up-front, as promise to investors), significantly facilitated the commission of the offense.

The defendant's reliance on *Caplinger* and discounting of *Bollin* is unpersuasive. (Def.'s Sent. Mem. at 24-26 (*citing United States v. Caplinger*, 339 F.3d 226 (4th Cir. 2003) and *United States v. Bollin*, 264 F.3d 391 (4th Cir. 2001)).) In many ways, *Caplinger* and *Bollin* seem wholly inconsistent. In truth, though, the fact-intensive nature of the 3B1.1 inquiry renders each case unique and somewhat limited in precedential value. The United States Court of Appeals for the Fourth Circuit has cautioned that abuse of trust "is a term of art. . . ." *Caplinger*, 339 F.3d at 237.

Courts consistently note that an abuse of trust enhancement should not be imposed simply because the defendant violated a legal obligation to be truthful and a victim's reliance on a misrepresentation. "Every fraud involves these elements." *United States v. Hirsch*, 239 F.3d 221, 227 (2d Cir. 2001). A court instead must "determine the extent to which the [defendant's] position provides the freedom to commit a difficult-to-detect wrong." *Id.* (internal quotations and citations omitted). Here, Allmendinger used his sophisticated position and discretion to commit a crime that was, ultimately, quite difficult to detect.

**5. The enhancements identified in the PSR do not double-count or warrant a downward departure.**

Allmendinger objects to application of the sentencing enhancements for loss amount, sophisticated means, more than 250 victims, and his role in the offense, asserting that applying all of them will impermissibly “double-count” the same conduct. This argument finds no support in the Sentencing Guidelines or in Fourth Circuit case law.

***a. Cumulative application of these enhancements is not prohibited.***

Impermissible double counting “occurs when a provision of the Guidelines is applied to increase punishment on the basis of a consideration that has been accounted for by application of another Guideline provision or by application of a statute.” *United States v. Reevey*, 364 F.3d 151, 158 (4th Cir. 2004) (internal citations omitted). However, “[t]he Sentencing Guidelines are explicit when double counting is forbidden.” *United States v. Curtis*, 934 F.2d 553, 556 (4th Cir. 1991). As the Guidelines themselves note, “[t]he offense level adjustments from more than one specific offense characteristic within an offense guideline are applied cumulatively (added together) *unless the guideline specifies that only the greater (or greatest) is to be used.*” U.S.S.G. § 1B1.1 cmt. 4(A) (emphasis added). Likewise, “[a]bsent an instruction to the contrary, enhancements under Chapter Two, adjustments under Chapter Three, and determinations under Chapter Four are to be applied cumulatively. In some cases, such enhancements, adjustments, and determinations may be triggered by the same conduct.” U.S.S.G. § 1B1.1 cmt. 4(B) (emphasis added).

Therefore, “[a]n adjustment that clearly applies to the conduct of an offense must be imposed unless the Guidelines expressly exclude its applicability.” *United States v. Williams*, 954 F.2d 204, 207 (4th Cir. 1992) (internal citations omitted); *see also United States v.*

*Crawford*, 18 F.3d 1173, 1179 (4th Cir. 1994) (“We have repeatedly emphasized that the guidelines should be applied ‘as written’. . . . ‘double counting’ is permissible under the guidelines except where it is expressly prohibited.”) (internal citations omitted).<sup>5</sup>

Here, the Guidelines plainly do not prohibit cumulative application of the enhancements to which Allmendinger objects. Section 2B1.1, in which the loss amount, number of victims, and sophisticated means enhancements are found, is silent on cumulative application of them. Likewise, Section 3B1.1, in which the role enhancement is found, does not prohibit it from being applied cumulatively with the others. Accordingly, the cumulative application of the enhancements to which Allmendinger objects is entirely appropriate.

***b. No downward departure is warranted.***

Seemingly conceding the frailty of his impermissible-double-counting argument, Allmendinger quickly pivots away from it and instead requests a downward departure “in recognition of the fact that multiple enhancements have been employed that measure the same aspect of the offense conduct.” (Def.’s Sent. Mem. at 27.) In doing so, he relies on a line of cases from the Second Circuit which no other Circuits appear to have endorsed, including the Fourth Circuit.

Allmendinger asserts that as the Second Circuit held in *United States v. Jackson*, 346 F.3d 22 (2d Cir. 2003) and *United States v. Lauersen*, 343 F.3d 604 (2d Cir. 2003), the enhancements described above “combine to have a cumulative effect that is present ‘to a degree’

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<sup>5</sup> This principle is reflected in one of the cases to which Allmendinger mistakenly looks for support. Therein, the court determined that the text of the Guidelines *explicitly prohibited* application of a “threat-of-death” enhancement to a defendant, and therefore held it could not properly be applied. *Reeve*, 364 F.3d at 158.

not adequately considered by the Commission . . . and therefore make available, in the discretion of the District Court, a downward departure” of the type contemplated by Section 5K2.0.

*Jackson*, 346 F.3d at 26 (internal citations omitted). This rationale does not appear to have been endorsed outside of the Second Circuit, and when the Fourth Circuit has had occasion to pass explicitly on the *Lauerson* line of cases, it declined to adopt their reasoning. In *United States v. Allen*, where a defendant argued for a downward departure under *Lauerson* in light of “the cumulation of upward enhancements for more than minimal planning, sophisticated means, and masterminding the scheme in question,” the Fourth Circuit held that applying each of the enhancements was appropriate given that “those enhancements were based on the Guidelines and supported by the evidence.” 491 F.3d 178, 195 (4th Cir. 2007). In response to the defendant’s invocation of *Lauersen*, the court made clear that “[p]utting aside the issue of whether *Lauersen* is viable in the Second Circuit following its vacatur by the Supreme Court, it was never the law of this Circuit.” *Id.*

Here the cumulative application of the enhancements identified in the PSR is exactly what is contemplated by the plain text of the Guidelines. There is no basis for a determination that the Sentencing Commission did not adequately take into consideration their cumulative application, as prohibitions on cumulative application appear throughout the Guidelines, and no downward departure would be appropriate.

**6. Obstruction of Justice.**

Remarkably, the defendant claims that the Government has failed to demonstrate that he intentionally violated the Court’s restraining order. (Def.’s Sent. Mem. at 29.) He further argues that even if he did violate the restraining order, it was not material because it did not significantly

impede law enforcement and the obstruction enhancement should therefore not apply. *Id.* (citing U.S.S.G. § 3C1.1 n.4(g)). As an initial matter, the most readily applicable application note is U.S.S.G. § 3C1.1 n.4(j).<sup>6</sup> That note provides for application of the obstruction enhancement for “failing to comply with a restraining order,” and there is no requirement that the failure be material.

In any event, the defendant’s violation of this Court’s restraining order was very material and resulted in the dissipation of A&O victim funds. As detailed above and in the Government’s opening sentencing memorandum, the defendant: (1) hid A&O investor money that he previously had misappropriated in accounts held in his father’s name; (2) used that money to continue his lavish lifestyle both before and after entry of this Court’s restraining order; (3) opened multiple secret bank accounts with the hidden A&O investor monies to fund his flight; (4) dissipated \$40,000 of the hidden victims’ funds by using it to pay his AMEX account; (5) failed to account for the \$20,000 in cash that he received from Bank of Houston; and (6) most likely, only placed the remaining A&O investor money into restrained accounts when forced to by his attorney. Any

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<sup>6</sup>U.S.S.G. § 3C1.1 n.4(g) also applies because Allmendinger has provided material false statements to law enforcement that significantly obstructed justice. For example, on September 13, 2010, the defendant signed his financial affidavit under penalty of perjury and provided it to federal investigators. In response to the question asking him to list “[a]ll transfers of property including cash (by loan, gift, sale, etc.) that you have made within the last three years (items of \$300 or over),” the defendant wrote “none.” Although the defendant attempts to obfuscate the fact in footnotes and argue that the transfers to his father occurred more than three years before the affidavit (*see* Def.’s Sent. Memo. at 8 n.7-8.), the defendant lied in his financial affidavit because on February 17, 2010, he transferred all of the securities and cash from a joint UBS Financial Services account (#6847) held in his and his father’s names to a new UBS Financial Services account (#7681) held solely in his father’s name. This transfer occurred within weeks of Chris Allmendinger being informed by federal investigators that he would be charged for his role in A&O. As a result of Allmendinger’s continued criminal conduct, significant federal investigative resources have been expended interviewing numerous witnesses and performing additional forensic accounting.

one of these actions alone would justify the obstruction enhancement. Taken as a whole, they reflect the most brazen violation of a Court's restraining order ever witnessed by the undersigned. As such, this Court should reject defendant's baseless argument that he did not obstruct justice.

**B. Objections to Enhancements for Money Laundering Under U.S.S.G. § 2S1.1.**

**1. Sophisticated laundering.**

The probation officer properly applied a two-level enhancement for sophisticated money laundering under U.S.S.G. § 2S1.1(b)(3), which provides for a two level enhancement if the defendant is convicted of violating 18 U.S.C. § 1956 and "the offense involved sophisticated money laundering." "Sophisticated laundering" is defined as "complex or intricate offense conduct pertaining to the execution or concealment of the [laundering] offense." U.S.S.G. § 2S1.1 cmt. 5. The comment also provides examples of possible sophisticated laundering which do not apply here, such as "fictitious entities," "shell corporations," or "offshore financial accounts." *Id.*

Allmendinger was convicted of two counts of promotion money laundering, in violation of 18 U.S.C. § 1956(a)(1)(A)(i), for two commission payments to Tomme Bromseth. Neither payment came directly from A&O. Rather, each payment came through Houston Investment Center. Oncale testified that Abdulwahab would send invoices to A&O for HIC's work, which caused Allmendinger to write Abdulwahab or HIC a check for the commissions. (3/15/11 Tr. at 20.) A&O used a different operating account for each of the two payments to HIC charged in the Superseding Indictment. When HIC sent the commission checks to Bromseth, no notation about A&O was included on the check. (Gov. Exs. 38 and 99.) That is, the HIC commission checks

do not bear any reference to A&O. Bromseth testified that he thought he was working for A&O and was surprised the check came from HIC. (3/17/10 Tr. at 208.)

Although this scenario does not fit the typical sophisticated conduct outlined in U.S.S.G. § 2S1.1 cmt. 5, it nevertheless constitutes complex and intricate offense conduct. Allmendinger did not directly pay sales agents their commissions. Rather, Allmendinger used different bank accounts to pay HIC, and HIC paid A&O sales agents without referencing A&O on the checks. Bromseth did not even know who HIC was, even though he received commission payments from the entity. The two-level enhancement for sophisticated money laundering under U.S.S.G. § 2S1.1(b)(3) is properly applied here.

**2. The “leader/organizer” enhancement.**

The probation officer properly applied the four-level “leader/organizer” enhancement under U.S.S.G. § 3B1.1(a). In order for the enhancement to apply, Allmendinger must have been “an organizer or leader of a criminal activity [money laundering],” and that criminal activity must have “involved five or more participants” or have been “otherwise extensive.” U.S.S.G. § 3B1.1(a). As discussed *supra* § II(A)(3) (leader/organizer enhancement for fraud), an “otherwise extensive” scheme considers all persons involved during the course of the entire offense. U.S.S.G. § 3B1.1 cmt. 3. Even unwitting participants are included in the evaluation of an “otherwise extensive” scheme. The Court must also consider all relevant conduct as defined by U.S.S.G. § 1B1.3. *United States v. Fells*, 920 F.2d 1179, 1183-84 (4th Cir. 1990).

Allmendinger’s money laundering conspiracy was “otherwise extensive.” In determining whether criminal activity is “otherwise extensive,” the Fourth Circuit noted that courts have considered the “totality of the circumstances, including not only the number of participants but

also the width, breadth, scope, complexity, and duration of the scheme.” *United States v. Beverly*, 284 Fed. Appx. 36, 41 (2008) (quoting *United States v. Dietz*, 950 F.2d 50, 53 (1st Cir. 1991)). Like his mail fraud conspiracy, the defendant knowingly participated in money laundering with at least three others: Oncale, Abdulwahab, and Kurz. But also like his mail fraud conspiracy, Allmendinger had numerous unsuspecting participants in the money laundering conspiracy. For example, Bromseth and hundreds of other sales agents received the fruits of the promotion money laundering in their commission checks. These agents sold over \$100,000,000 of A&O life settlement products. Oncale testified that A&O generally paid 10% commissions (3/15/11 Tr. at 18-19), so the sales agents earned approximately \$10,000,000 in commissions. A \$10 million money laundering scheme is not insignificant, especially given its relative short duration of approximately four years.

In addition, Allmendinger was an organizer or leader in the money laundering conspiracy. *See* U.S.S.G. § 3B1.1, cmt. 2 (to qualify for an adjustment under § 3B1.1(a), the defendant must, at a minimum, have been the “organizer or leader” of “one or more other participants”). Allmendinger organized the structure of the money laundering conspiracy. He helped recruit Abdulwahab and encouraged him to amass a sales fleet to sell A&O products. (3/15/11 Tr. at 17.) Allmendinger also was a leader in the money laundering conspiracy. When Abdulwahab sent invoices to A&O for HIC’s work, Allmendinger then wrote Abdulwahab or HIC a check for the commissions. (3/15/11 Tr. at 20.) Like the mail fraud conspiracy, these activities and responsibilities are not those of someone who is anything other than a leader and organizer of A&O’s criminal activity, and the four-level enhancement is plainly warranted.

**3. Abuse of trust.**

The probation officer properly applied a two-level enhancement for Allmendinger's abuse of trust in relation to his money laundering conspiracy. Section 3B1.3 provides that a defendant's 3B1.3 offense level should be increased by two levels "[i]f the defendant abused a position of public or private trust, or used a special skill, in a manner that significantly facilitated the commission or concealment of the offense." As discussed *supra* § II(A)(4) (abuse of trust for fraud), Allmendinger occupied a position of private trust with the A&O investors. His abuse of this trust "significantly facilitated the commission or concealment of the offense," U.S.S.G. § 3B1.3, as he authorized and tracked commissions paid to sales agents (3/15/11 Tr. at 20). Thus, the two-level enhancement is appropriate.

**III. Sentencing Factors**

**A. The § 3553(a) factors amply support a guideline sentence.**

Having already addressed the relevant § 3553(a) factors in its opening brief, the United States will not rehash its arguments here. However, Allmendinger's assertion that a sentence greater than 121 to 151 months would create unwarranted sentencing disparities calls for a response, in that it incorrectly suggests Allmendinger's sentence should be benchmarked to those of defendants who plead guilty and cooperated with the United States, and ignores the fact that many of the sentences to which he looks for support were effective life sentences, or close thereto.

**B. Sentences of cooperating defendants are irrelevant to the sentence Allmendinger should receive.**

Allmendinger's invocation of the sentences of Brent Oncale or any other cooperating defendant as a reference point for his own borders on the absurd. The Fourth Circuit has made clear that

comparing the sentences of defendants who helped the Government to those of defendants who did not – regardless of why some were in a position to help and others were not – is comparing apples and oranges. For this reason, Congress could not have intended that disparities resulting from the exercise of prosecutorial discretion could be determined to be “unwarranted.”

*United States v. Perez-Pena*, 453 F.3d 236, 243 (4th Cir. 2006). And in an opinion upon which the Fourth Circuit has subsequently relied, the Eleventh Circuit held that

defendants who cooperate with the government and enter a written plea agreement are not similarly situated to a defendant who provides no assistance to the government and proceeds to trial . . . . There is no unwarranted disparity even when the sentence the cooperating defendant receives is substantially shorter . . . . On a practical level, it would seem patently unreasonable to endorse a regime in which a defendant could steadfastly withhold cooperation from the authorities and then cry foul when a coconspirator benefits from rendering substantial assistance to the government.

*United States v. Docampo*, 573 F.3d 1091, 1101 (11th Cir. 2009) (internal citations and quotation marks omitted); *see also United States v. Jeffery*, 631 F.3d 669, 679 (4th Cir. 2011) (citing the aforementioned section of *Docampo* in rejecting an argument that sentence differences between co-conspirators based on whether or not they cooperated was improper).

Far from being similarly situated to Allmendinger, Oncale almost immediately accepted responsibility for his role in the A&O scheme, pleaded guilty, and has continued to provide significant assistance to the United States in its enforcement of federal criminal law through, among other things, truthful testimony at the trials of Allmendinger and Abdulwahab. Even so,

this Court observed when sentencing Oncale to the maximum time in prison allowable under his plea agreement that, in consideration of the § 3553(a) factors, the harm Oncale, Allmendinger, and others visited upon the A&O victims would have supported a life sentence for Oncale in the absence of the plea agreement.

Like Oncale, Paul Allen and Marc Dreier (two of the other individuals cited by Allmendinger) also plead guilty and accepted responsibility for their crimes, and their sentences therefore cannot be considered reference points for Allmendinger's. Allmendinger makes no mention of that critical distinction between those individuals and himself, nor does he mention that Allen's sentence was calculated following a 5K motion from the United States in recognition of his cooperation. In contrast to these people, Allmendinger has not only never accepted responsibility for the devastation he and his conspirators wrought across the United States, but he has continued to brazenly defied this Court's orders in an effort to further dissipate the monies available to victims. He is not at all similarly situated to Oncale or any other cooperating defendant, and his sentence should not be calculated with reference to those of such defendants.

**C. As was true for the defendants he cites, a life sentence is appropriate for Allmendinger.**

Properly understood, many of the sentences to which Allmendinger looks for support were effective life sentences, or nearly so. For example, Lee Farkas was given a 30-year sentence, but as the court made clear at his sentencing, that sentence was intended to be an effective life sentence (as it may well be for a man of approximately 60 years of age). Likewise, Bernie Ebbers will serve a sentence into his 80s, Jeffrey Skilling's sentence (as imposed) takes him to his 70s, and even Marc Dreier, who plead guilty, was given a sentence that will keep him in prison well into his 70s. Thus, while Allmendinger makes much of the number of years

certain defendants have received, this Court should not ignore the goal those sentences were intended to achieve and, given Allmendinger's youth relative to those defendants, the magnitude of sentence it would need to impose merely to achieve a result consistent with those imposed in the cases to which Allmendinger looks for support. Such a sentence would not only satisfy the need for specific deterrence, keeping the community safe from a clearly unrepentant fraudster, but it would also send a powerful and unequivocal message that destroying people's lives through fraud will have serious consequences.

Christian Allmendinger masterminded a fraud scheme in excess of \$100 million and gutted the retirement accounts of countless people across the United States. As this Court has noted, many of those people will never recover financially, emotionally, or psychologically. Yet even at this late date, Allmendinger is absolutely devoid of any concern, compassion, or remorse for his actions, as demonstrated by his profligate spending—both before and after his indictment—of money that otherwise would be available to his victims. While his victims scrambled to figure out how to survive from day to day without the funds Allmendinger stole from them, Allmendinger planned his escape, maintained his lavish lifestyle, and continued using previously hidden A&O investor money. Quite simply, the notion that anything less than a life sentence is appropriate for this man is completely untenable.



