IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

UNITED STATES OF AMERICA	)	
	)	
v.	)	
	)	**DOCKET NO. 3:16-cr-221-MOC**
MICHAEL ALLEN DUKE (7),	)	
Defendant.	)	

GOVERNMENT'S SENTENCING MEMORANDUM

The government, through its undersigned counsel, hereby submits its position with respect to defendant Michael Allen Duke's sentencing. For the reasons that follow, the government respectfully requests that this Court sentence the defendant to a Guidelines sentence of 168 months in prison; together with restitution to his victims in the amount of $2,745,239, to be paid jointly and severally with his co-conspirators; forfeiture in the amount of $529,417.50; three years of supervised release; and a special assessment in the amount of $600. This sentence would appropriately account for the magnitude of the defendant's criminal activity, provide just punishment for the offense, protect the public from his further wrongdoing, and reflect a powerful deterrent to anyone contemplating similar conduct.

I. THE PSR CORRECTLY CALCULATES THE DEFENDANT'S GUIDELINES RANGE AS 135 TO 168 MONTHS IN PRISON

A. The PSR Properly Applies a 16-Level Enhancement for the Defendant's Loss

The PSR properly applies a 16-level enhancement for the defendant's loss of more than $1.5 million. (Dkt. # 380, PSR ¶ 36). In the case of a conspiracy, loss is attributable to a defendant "if it results from the conduct of others so long as the conduct was in furtherance of, and reasonably foreseeable in connection with, the criminal activity." *United States v. Otuya*,

720 F.3d 183, 191 (4th Cir. 2013) (internal quotation marks omitted); *see also* U.S.S.G. § 1B1.3(a)(1)(B), cmt. n.3. The Application Notes of the Sentencing Guidelines explain that, when a defendant participates in a scheme to sell fraudulent stocks by telephone, he should be held accountable for the losses caused by his co-conspirators:

> Defendants F and G, working together, design and execute a scheme to sell fraudulent stocks by telephone. Defendant F fraudulently obtains $20,000. Defendant G fraudulently obtains $35,000. Each is convicted of mail fraud. Defendants F and G each are accountable for the entire amount ($55,000). Each defendant is accountable for the amount he personally obtained under subsection (a)(1)(A). Each defendant is accountable for the amount obtained by his accomplice under subsection (a)(1)(B) because the conduct of each was within the scope of the jointly undertaken criminal activity (the scheme to sell fraudulent stocks), was in furtherance of that criminal activity, and was reasonably foreseeable in connection with that criminal activity.

U.S.S.G. § 1B1.3, cmt. n.4(C)(ii).

According to the evidence introduced at trial, Duke and his co-defendant Robert Leslie Stencil worked together to design and execute the scheme to sell fraudulent Niyato stock by telephone and email. Duke and his associate were the first to partner with Stencil. Duke proposed to Stencil that, whenever Duke made a sale of Niyato stock to a victim, Duke should receive as a commission approximately 50 percent of the victim's funds, and Stencil agreed. (Duke Ex. 48 (recording of February 8, 2012 telephone call between Stencil, Duke and Duke's associate).)

Duke should no doubt be held accountable for the entire amount of loss caused by his co-conspirators. According to the evidence introduced at trial, Duke recruited co-defendant, Daniel Thomas Broyles, Sr., to join the conspiracy and share in the spoils. (Testimony of Duke on January 28, 2019 A.M.) Broyles had previously recruited Duke to participate in numerous investment fraud schemes, including Intertech Solutions, Green Automotive, and New Global Energy. (Gov't Exs. 49-59, 62, 63.) Duke returned the favor by inviting Broyles to participate in the Niyato scheme. (Testimony of Duke on January 28, 2019 A.M.; Gov't Exs. 28, 64, 65.) Broyles, in turn,

recruited co-defendants Scott Dearborn, Nicholas Fleming, Martin Delaine Lewis, Paula Saccomanno, and Dennis Swerdlen to join the conspiracy and sell Niyato stock. (Testimony of Duke on January 28, 2019 A.M.)

Moreover, the evidence at trial showed that Duke worked together with Stencil to prepare false and misleading promotional materials used by them and their co-conspirators in furtherance of the scheme to sell Niyato stock. The government submitted evidence showing Duke reviewed and revised the private placement memorandum ("PPM") that affirmatively misrepresented how the defendants were using victims' money, including the amount of commission Duke and his co-conspirators received. (*See* Gov't Ex. 24 (a markup of the PPM showing that Duke made substantive revisions to the PPM, including to the "Use of Proceeds" section).)

The evidence at trial also showed Duke worked with Stencil (and Broyles) to prepare false and misleading email pitches in furtherance of the scheme. (*See* Gov't Exs. 31, 35, and 70 and Duke Exs. 32d and 32f (examples of email pitches that Duke prepared along with Stencil and Broyles, and subsequently used to pitch victims).) For example, the government submitted evidence that, in 2016, Duke prepared an email pitch falsely claiming that Niyato had entered into a $200 million contract with General American LNG and falsely stating that General American LNG was one of the leading LNG liquefaction companies in the United States. (Gov't Exs. 31, 35.) Duke knew, but did not disclose, that Stencil owned and controlled both companies and that, in reality, Stencil had entered into a sham contract with himself. (Gov't Exs. 29, 30.)

The evidence at trial also established Duke repeatedly asked and urged Stencil to create additional press releases for Duke and his co-conspirators to use to contact victims, and even suggested topics that should be covered in the press releases and specific language that should be used:

- Duke Exhibit 62 (October 14, 2013 email in which Duke asks Stencil to send him another press release); Duke Exhibit 63 (January 14, 2014 email in which Duke asks Stencil to send another press release); Duke Exhibit 64 (January 31, 2014 email in which Duke sent comments to Stencil on one of Stencil's investor updates); Duke Exhibit 65 (February 26, 2014 in which Duke asks Stencil to mail an update to victim JT); Duke Exhibit 66 (March 25, 2014 email where Duke follows up on his earlier request that Stencil mail an update to victim JT); Duke Exhibit 68 (January 14, 2015 email in which Duke asks Stencil to send an update to the Niyato business plan);

- Duke Exhibits 71 and 71a, which is a recording and transcript of a February 11, 2015 telephone call between Duke and Stencil in which Duke pushed Stencil to send out press releases – even if they are repetitive – because every press release helps him to sell Niyato stock, and proposing that the press release discuss the fact that Niyato submitted bids for a project, even though those bids had not yet been awarded; and

- Government Exhibits 25, 26, 27 and 28, showing Duke revising and proposing language for Stencil's use in 2015 and 2016 press releases about the timing for when Niyato would go public.

At trial, Duke's co-defendants explained to the jury how these types of press releases were in furtherance of the scheme to sell Niyato stock. For example, Swerdlen and Lewis both testified that the press releases were important because they provided an excuse for them to reach out to victims who already bought Niyato stock and pitch them to buy more stock. (*See* Testimony of Dennis Swerdlen on January 16, 2019 P.M.; Testimony of Martin Delaine Lewis on January 17, 2019 P.M.)

The Court is required to make only a "reasonable estimate of the loss." U.S.S.G. § 2B1.1, cmt. n.3(C). The financial report of Christopher Green (hereinafter, the "Green Report"), which analyzed the source of funds deposited into the Niyato bank account, set forth loss in the amount of $2,745,239. (Gov't Ex. 67, at 3, Sch. 2.) Duke, knowing the nature and scope of the conspiracy, initiated the fraudulent scheme and participated in the conspiracy together with his co-defendants for a common gain and over a lengthy period of time—over four years.

Accordingly, he should be held accountable for the entire amount of loss caused by the conspiracy.

B. The PSR Properly applied a 2-Level Enhancement for 10 or More Victims

The Green Report identified over 140 victims who made, and lost, their investments in Niyato. (Gov't Ex. 67, Sch. 1). Nearly half of these victims purchased Niyato stock directly from Duke.[1]

C. The PSR Properly Applied a 2-Level Enhancement for Sophisticated Means

The PSR correctly recognizes that an additional two point enhancement should be applied pursuant to U.S.S.G. § 2B1.1(b)(10)(C) for Duke's use of sophisticated means in furtherance of the fraudulent scheme. The Application Notes of the Sentencing Guidelines explain that in telemarketing schemes, conduct such as hiding assets or transactions through the use of fictitious entities, corporate shells, or offshore financial accounts ordinarily indicates sophisticated means. U.S.S.G. § 2B1.1 cmt. n.9(B).

During the scheme, Duke's use of an alias was designed to conceal Duke's identity from investors as well as prevent investors from learning of Dukes prior felony conviction for securities fraud. In order to conceal his identity and background, Duke used an alias – "Mike West" – when selling Niyato stock. Duke also used email addresses that concealed his identity, including niyatoinfo@gmail.com and mikewest2003@gmail.com. Duke further concealed his identity from authorities by directing Stencil to wire Duke's commission payments to an account held in the name of a corporation – NWM LLC – rather than Duke's personal name. Duke solely owned and

[1] This number includes the victims to whom Duke sold for the approximately one-year ~~time~~ period when he was working with Walter Van Name and paid through Absolute Rarities LLC, Van Name's corporate shell.

controlled NWM LLC, which was used to receive commissions paid for selling stock like Niyato. These attempts to conceal his identity represent sophisticated means and warrant the enhancement.

D. The PSR Properly Applied a 4-Level Enhancement for Defendant's Role in the Offense

The Sentencing Guidelines mandate a four-level enhancement "[i]f the defendant was an organizer or leader of a criminal activity that involved five or more participants or was otherwise extensive." U.S.S.G. § 3B1.1(a). Factors the court should consider include, among others, "the nature of participation in the commission of the offense, the recruitment of accomplices, the claimed right to a larger share of the fruits of the crime, the degree of participation in planning or organizing the offense, and the nature and scope of the illegal activity." U.S.S.G. § 3B1.1(a) cmt. n.4. According to the Sentencing Guidelines, "[t]here can, of course, be more than one person who qualifies as a leader or organizer of a criminal association or conspiracy." *Id.*

At trial, the government introduced evidence establishing that, along with Stencil, Duke was a leader of a fraudulent scheme involving more than five participants. As explained above, Duke was the first to join Stencil to sell Niyato stock. Duke negotiated the 50 percent commission at the start of the conspiracy and, together with Stencil, prepared a PPM that affirmatively misrepresented to victims the amount that he (and his co-conspirators) received. Duke directly or indirectly recruited nearly all of the participants (or co-conspirators) in the scheme, including Broyles, Dearborn, Fleming, Lewis, Saccomanno, and Swerdlen. Together with Stencil, Duke developed and disseminated false and misleading promotional materials for him and his co-conspirators to use when pitching Niyato stock, including email pitches and press releases. The evidence clearly shows Duke was a leader of the scheme and his offense level should be adjusted accordingly to reflect his role.

E. The PSR Properly Applied the Vulnerable-Victim Enhancement

The Sentencing Guidelines mandate a two-level enhancement "[i]f the defendant knew or should have known that a victim of the offense was a vulnerable victim." U.S.S.G. § 3A1.1(b)(1). A vulnerable victim is a person "(A) who is a victim of the offense of conviction and any conduct for which the defendant is accountable ... and (B) who is unusually vulnerable due to age, physical or mental condition, or who is otherwise particularly susceptible to the criminal conduct." U.S.S.G. § 3A1.1 cmt. n.2.

Duke's victims were vulnerable for two independent reasons. First, most were vulnerable because they were elderly (*i.e.*, 55 or older). This was not happenstance. Duke targeted these victims because of their age. The government was able to determine the date of birth for 48 of Duke's 67 victims. 42 of those 48 victims (or 87.5 percent) were over the age of 55 at the time that they made their first purchase of Niyato stock from Duke. (*See* Gov't Exhibit A attached hereto.) For this reason alone, the vulnerable victim enhancement is appropriate. *See, e.g.*, *United States v. Beasley*, 481 Fed.Appx. 142, 144 (5th Cir. 2012) (affirming application of vulnerable victim enhancement in telemarketing fraud case where 60 of the 90 victims were 55 or older and the defendant had admitted that, in a previous telemarketing fraud, he had targeted the elderly because he had more chance of being successful in defrauding them).

Here, Duke and his co-conspirators also selected victims because they had been victimized in the past. In telemarketing frauds, defendants often target people who have already fallen victim to the scheme at least once, if not repeatedly. This practice is commonly referred to as "reloading." In *United States v. Shephard*, the Fourth Circuit found that in telemarketing frauds, the practice of

"reloading" alone is sufficient to support a finding that the victims were unusually vulnerable and that the defendants targeted them because of their vulnerability. 892 F.3d 666, 671 (4th Cir. 2018). *See also United States v. Allen*, 533 Fed.Appx. 406, 412-13 (5th Cir. 2013) (affirming application of vulnerable victim enhancement in telemarketing fraud case where court found that defendant was involved in a large number of transactions where he or his co-conspirators took money from the same victims up to three times in a short period of time).

At trial, Duke and the government introduced evidence showing that Duke repeatedly requested that Stencil send Duke press releases to use to sell Niyato stock, and, in some instances, even suggested what Stencil should write in the press releases. (*See* Gov't Exs. 25, 26, 27 and 28; Duke Exs. 62, 63, 64, 65, 66, 68, 71, and 71a.)

As explained above, at trial, Duke's co-conspirators explained to the jury the significance of press releases in the context of a high-yield investment fraud and how they provided an excuse for them to reach out to victims who already bought Niyato stock and reload them. (*See* Testimony of Dennis Swerdlen on January 16, 2019 P.M.; Testimony of Martin Delaine Lewis on January 17, 2019 P.M.)

At trial, the government also introduced extensive evidence showing that Duke sent press releases to victims as part of an effort to reload them. For example, Duke regularly sent press releases to Marshall Gunder, the first Niyato victim. (*See, e.g.*, Gov't Exhibits 7b (May 23, 2012 press release), 7d (February 7, 2013 press release), 7e (June 6, 2013 press release); Testimony of Marshal Gunder on January 17, 2019 P.M.) Between 2012 and 2014, Duke sold Niyato stock to Gunder on 17 separate occasions, for a total of $225,000. (*See, e.g.*, Gov't Exhibit 67, Sch. 5.)

Another Duke victim, William Grasfeder, also testified that Duke initially sold him Niyato stock and then subsequently sold him additional Niyato stock (*i.e.*, reloaded him). Grasfeder

purchased Niyato stock from Duke on multiple occasions for a total of $25,000. (*See* Testimony of William Grasfeder on January 14, 2019 A.M.)

In addition, as set forth in the Green Report submitted at trial, Duke reloaded at least 18 victims in addition to Mr. Gunder and Mr. Grasfeder. (Gov't Ex. 67, Schedule 5.)

The repeated targeting of a victim in connection with a telemarketing scheme is sufficient to support a finding that the victims were unusually vulnerable and targeted for their vulnerability. Therefore, this reloading conduct supports the two point enhancement under U.S.S.G § 3B1.1(b)(1) for targeting vulnerable victims applied in the PSR.

II. THE FACTORS IN 3553(a) WARRANT A SENTENCE WITHIN THE APPLICABLE GUIDELINES RANGE OF 135 TO 168 MONTHS IN PRISON

As this Court is aware, the United States Sentencing Guidelines are advisory only, but they remain "the starting point and the initial benchmark" in sentencing. *Gall v. United States*, 552 U.S. 38, 49-50 (2007). The Guidelines must be properly calculated and considered, but the Court ultimately must craft a sentence that adequately accounts for the sentencing factors and objectives outlined in 18 U.S.C. § 3553(a). *Id.* "[I]n many cases the district court's individualized sentencing determination and the Guidelines recommendation will overlap." *United States v. Haigler*, 329 Fed. App'x 791, 793 (10th Cir. 2009) (internal quotation marks omitted).

In formulating its sentence, the Court must consider the nature and circumstances of the offense of conviction and defendant's history and characteristics. 18 U.S.C. § 3553(a)(1). The sentence imposed must sufficiently reflect the seriousness of defendant's crime, promote respect for the law, and provide just punishment. 18 U.S.C. § 3553(a)(2)(A). The sentence also should deter criminal conduct, protect the public from further crimes of defendant, and provide any necessary education, training, or treatment, in the most effective manner. 18 U.S.C. §

3553(a)(2)(B)-(D). In its analysis, the Court should consider the types of sentences available, the applicable Guidelines range, and any pertinent policy statement issued by the Sentencing Commission. 18 U.S.C. § 3553(a)(5). The Court also should consider the need to avoid unwarranted sentencing disparities among similarly situated defendants. 18 U.S.C. § 3553(a)(6). Finally, the Court must consider the need to provide restitution to any victims of the offense. 18 U.S.C. § 3553(a)(7). After determining the appropriate sentence based upon these factors, the Court should adequately explain its rationale to "allow for meaningful appellate review and to promote the perception of fair sentencing." *Gall*, 552 U.S. at 50.

Because each crime is unique, the facts and circumstances of a particular case will control the Court's determination of a just sentence. Here, the government submits that a Guidelines sentence of 168 months in prison is appropriate in this case. But the government does not request a mere mechanical application of the Guidelines in that recommendation. Rather, as demonstrated below, a Guidelines sentence is appropriate in light of Duke's conduct in this scheme based upon an application of the individualized sentencing factors in § 3553(a).

A. Nature and Circumstances of the Offense

Duke's convictions of the conspiracy, mail-fraud, wire-fraud, and money-laundering statutes in this case permit maximum terms of incarceration of 20 years per count for the fraud and conspiracy counts and up to 10 years for money laundering count. *See* 18 U.S.C. §§ 1341, 1343, 1349 and 1957. In addition, in connection with the conspiracy to commit wire fraud, and the substantive mail-fraud and wire-fraud counts, because defendant victimized 10 or more persons over age 55, a statutory enhancement of 10 years applies in addition to any term of imprisonment imposed. *See* 18 U.S.C. § 2326(2). These statutorily allowable penalties reflect the serious nature of the defendant's offenses.

Overwhelming evidence at trial established Duke's reprehensible conduct in this case, demonstrating that he, together with his co-conspirators, perpetrated an extensive fraud scheme in which they repeated the same lies to steal money from vulnerable victims over the course of several years. The evidence at trial showed that Duke actively engaged in—and often times led—fraudulent activities that included: promoting Niyato as a highly profitable and commercially viable investment on the verge of going public when it was a sham; falsely claiming to victims that Niyato was awarded a contract for $200 million by a worthless entity, namely American General LNG (which he failed to disclose that Stencil owned and controlled); repeatedly urging Stencil to create new press releases so that he had an excuse to reach out to people who have already fallen victim to the scheme at least once, if not repeatedly; and lying to his "clients" about how he and Stencil would use their money.

Moreover, Duke's conduct was above and beyond the other stock promoters who participated in the scheme. Duke was the top salesperson, selling the most amount of Niyato stock ($1,635,485) to the most victims (67); Duke was responsible for all of the sales made to the largest victim in the case (Mr. Gunder, who lost $225,000); and Duke was involved from the start of the conspiracy until the end.[2] (Gov't Ex. 67, Sch. 5.)

These factors weigh heavily in favor of a lengthy prison sentence here. The law punishes offenses like the ones committed by Duke because they are serious. Duke, during the course of this scheme, repeatedly made a conscious decision to cheat, lie, and steal. The government submits that all of these are important facts for the Court to consider in evaluating the nature and

[2] This figure includes $589,250 in sales that Duke made with Van Name during the one-year ~~time~~ period when they were working together as partners. After he stopped working with Van Name, Duke made an additional $1,046,235 in sales. (Gov't Ex. 67, Schedule 5.)

circumstances of the defendant's offense. Duke's crime had real consequences, and he should be held accountable.

B. History and Characteristics of Defendant, Including his Lack of Respect for the Law and the Need to Deter His Criminal Conduct

Duke knew he was committing fraud. Duke initiated the scheme along with Stencil and continued making false representations about the future success of the investment while he knew the majority of the victim funds were being diverted for the personal benefit of him and his co-conspirators, making Niyato's success an impossibility. Duke also repeatedly told victims that Niyato was on the verge of an initial public offering, promising a high rate of return, when he knew the company would never go public. These facts weigh heavily in favor of a lengthy sentence, because they demonstrate that the defendant lacks respect for the law and requires meaningful deterrence.

The legislative history of § 3553 reflects that Congress "viewed deterrence as particularly important in the area of white collar crime." *United States v. Livesay*, 587 F.3d 1274, 1279 (11th Cir. 2009). Indeed, because "economic and fraud-based crimes are more rational, cool, and calculated than sudden crimes of passion or opportunity, these crimes are prime candidates for general deterrence. Defendants in white collar crimes often calculate the financial gain and risk of loss, and white collar crime therefore can be affected and reduced with serious punishment." *United States v. Martin*, 455 F.3d 1227, 1240 (11th Cir. 2006); *see also United States v. Edwards*, 595 F.3d 1004, 1021 (9th Cir. 2010) (Bea, J., concurring in part and dissenting in part) ("White collar crime, especially bank fraud, usually requires a well-schooled, intelligent criminal, capable of gauging the upside of how others will be gulled by his well-honed fables. This ability to foresee extends also to the possible downside of his fraud: apprehension, conviction, and punishment."). As one district court noted, "Persons who commit white-collar

crimes like defendant's are capable of calculating the costs and benefits of their illegal activities relative to the severity of the punishments that may be imposed. A serious sentence is required to discourage such crimes." *United States v. Stein*, No. 09-CR-377, 2010 WL 678122, at *3 (E.D.N.Y. Feb. 25, 2010), *corrected*, No. CR. 09-CR-0377 (JBW), 2010 WL 3023527 (E.D.N.Y. July 27, 2010).

The government respectfully submits that a substantial term of incarceration at the top end of the applicable Guidelines range would send a strong message to others that conduct like this is unacceptable and will be met with serious punishment. General deterrence is especially necessary in telemarketing and email marketing cases like this one because the barrier to entry is extremely low, requiring only access to a telephone or an email account; the manner and means of the crime allow criminal activities to be conducted from a distance and under the shroud of anonymity; and the potential proceeds can be significant, ranging from tens of thousands of dollars to millions of dollars. In these circumstances, any sentence other than a lengthy one simply would incentivize others to commit financial crimes.

In addition to general deterrence, § 3553(a)(2)(C) also requires the Court to consider the need to protect the public from further crimes of the defendant—that is, specific deterrence. The evidence at trial showed that Duke had a lengthy history of participating in investment fraud schemes, like Niyato, including Intertech Solutions, Green Automotive, and New Global Energy. (Gov't Exs. 49-59, 62, 63.) With no identifiable, legitimate means to care for himself, the defendant is a risk to offend in the future and poses a serious risk of economic danger to the community.

C. Need for the Sentence to Reflect the Seriousness of the Offense, Provide Just Punishment, and Protect the Public

While Duke's crimes were not violent in nature, they were nonetheless damaging and destructive to the victims whom he defrauded, many of whom were vulnerable. Numerous victims testified at trial as to the substantial financial loss they suffered as a result of their Niyato investments. One of Duke's victims lost $225,000. Financial-Impact Statements filed in this case also offer proof of the significant harm that Duke caused. The significant impact of Duke's crimes warrants a Guidelines sentence here.

D. The Kinds of Sentences Available

The maximum statutory penalty for each of the charged offenses is 20 years of imprisonment for all offenses other than money laundering which is 10 years of imprisonment; 3 years of supervised release; a special assessment of $100 on each count; and a variety of fines, as detailed in the PSR.

E. Sentencing Guidelines Range

The PSR correctly calculates the defendant's offense level as 33 and his Criminal History as Category I, yielding a Guidelines range of 135 to 168 months in prison. (PSR ¶ 75.) Notably, the Probation Officer determined that there appears to be no circumstance or combination of circumstances that warrant a departure from the prescribed sentencing guidelines. (*Id.* ¶ 91.)

F. Any Pertinent Policy Statement Issued by the Sentencing Commission

The government is not aware of any pertinent policy statements issued by the Commission.

G. The Need to Avoid Unwarranted Sentencing Disparities Among Defendants With Similar Records

A sentence of 168 months is consistent with sentences imposed for leaders of criminal fraud schemes spanning multiple years and causing millions of dollars in losses, particularly for defendants, like Duke, who show any lack of remorse.

H. The Need to Provide Restitution to Victims of Defendant's Offense

Finally, restitution must be ordered in this case in accordance with 18 U.S.C. § 3663A and U.S.S.G. § 5E1.1. The government disagrees with the PSR's calculation of restitution in the amount of $1,635,753.75. The government's position is that the defendant is jointly liable for the entire victim loss of $2,745,239 as traced by Financial Analysist Christopher Green. (See Gov't Ex. 67, Sch. 1.) The government established the losses for these victims, some of whom testified at trial, through summary exhibits offered through its financial analyst documenting the victim deposits into the Niyato bank account. (*Id.*) The Victim-Impact Statements previously submitted to the Court also partially corroborate the loss and validate Mr. Green's loss analysis.

The government also seeks forfeiture in the amount of $529,417.50, which represents the sum of the proceeds the defendant received through the commission of the crimes for which he was found guilty. (Gov't Ex. 67, Sch. 5.)

CONCLUSION

For the reasons set forth above, the government respectfully requests that this Court sentence Duke to 168 months in prison, together with restitution to his victims in the amount of $2,745,239, to be paid jointly and severally with his co-conspirators; forfeiture in the amount of $529,417.50; three years of supervised release; and a special assessment in the amount of $600.

Dated: January 16, 2020

Respectfully submitted,

R. ANDREW MURRAY
United States Attorney
Western District of North Carolina

ROBERT ZINK
Chief
Fraud Section, Criminal Division
United States Department of Justice

By:_____ /s/_____
CHRISTOPHER FENTON
Fraud Section, Criminal Division
Department of Justice
1400 New York Avenue, N.W.
Washington, D.C. 20530
(202) 320-0539
christopher.fenton@usdoj.gov

CERTIFICATE OF SERVICE

The undersigned certifies that on January 16, 2020, the foregoing was electronically filed with the Clerk of Court using the CM/ECF system, which will send notification to all counsel of record.

By: _____/s/_____

CHRISTOPHER FENTON
Fraud Section, Criminal Division
United States Department of Justice
1400 New York Avenue, N.W.
Washington, D.C. 20530
(202) 320-0539
christopher.fenton@usdoj.gov