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 10 (incorrectly captioned ALAIN JEFFERY IFRAH)

11
 12 **UNITED STATES DISTRICT COURT**
 13 **DISTRICT OF NEVADA**

14 CHAD ELIE,

15 Plaintiff,

16 vs.

17 IFRAH PLLC, a Professional Limited Liability
 18 Company, ALAIN JEFFERY IFRAH a/k/a JEFF
 19 IFRAH, individually, DOE individuals I through
 20 XX, and ROE CORPORATIONS I through XX,

21 Defendants.

CASE NO. 2:13-cv-00888-JCM-VCF

REPLY IN SUPPORT OF
DEFENDANTS' MOTION FOR
ATTORNEY FEES AND COSTS

22 **MEMORANDUM OF POINTS AND AUTHORITIES**

23 Plaintiff's opposition to Defendants' motion focuses almost exclusively on repeated
 24 assertion of the claimed truth of the allegations in the now-dismissed amended complaint.
 25 In doing so, Plaintiff offers no meaningful rebuttal to Defendants' assertion that Plaintiff's
 26



1 claims were utterly groundless, and that Defendants are therefore entitled under Nevada law
2 to an award of attorneys' fees.

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4 In granting Defendants' motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6), the
5 Court found that certain of these allegations were refuted by Plaintiff's own sworn
6 allocution before the judge who sentenced him, and otherwise assumed for purposes of the
7 motion that Plaintiff's allegations were true. Even making those assumptions, the Court
8 found as to each and every claim that Plaintiff had failed to state a claim upon which relief
9 could be granted as a matter of law. Thus, while Defendants firmly reassert that Plaintiff's
10 factual allegations are false, for the most part, whether they were false or not largely does
11 not matter for purposes of resolving Defendants' motion here—and for those allegations
12 that this Court has already found were contradicted by Plaintiff's own prior statements
13 under oath (*see* Order, #18), Plaintiffs' rejection of those findings is utterly unfounded.

14
15 Plaintiff's case was based upon allegations that Plaintiff knew were false (based on
16 his own prior sworn statements) and claims that he knew were legally groundless even
17 assuming the truth of the remaining allegations in the amended complaint. Because
18 Plaintiff offers nothing in his opposition to rebut this conclusion, the Court should find
19 that Defendants are entitled to recover their attorneys' fees and non-taxable costs under
20 NEV. REV. STAT. § 18.01(2)(b), Fed. R. Civ. P. 54(d), and Local Rule 54-16.

21
22 Additionally, Plaintiff offers no arguments disputing Defendants' calculation of its
23 attorney fees and non-taxable costs. Under LR 54-16(e), a party must "set forth the specific
24 charges that are disputed and state with reasonable particularity the basis for such
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1 opposition.” Plaintiff has not done so. Nor could he—Defendants’ attorney fees and costs
2 are exceedingly reasonable as set forth in Defendants’ motion and supporting affidavits. As
3 such, if this Court finds Plaintiff’s lawsuit was brought without reasonable grounds (which
4 it should), Defendants are entitled to an award of \$41,780.50 to recover its attorney fees
5 and \$424.70 to recover its non-taxable costs.
6

7 **A. Plaintiff reinforces the groundlessness of his causes of action by continuing**
8 **to misrepresent the scope of his guilty plea.**

9 Plaintiff responds to Defendants’ motion by doubling down on his already-defeated
10 argument that had he not followed Defendants’ alleged legal advice, he would have gotten
11 away with bank fraud he committed before meeting Defendants. (*See* Opp. (#23) at 5:11–
12 22). This argument only serves to reinforce the groundlessness of Plaintiff’s now-dismissed
13 causes of action. Even when faced with his guilty plea hearing transcript and this Court’s
14 order (#18), Plaintiff continues to misrepresent the scope of his guilty plea. Worse still, the
15 attitude reflected in his opposition shows a callous disregard for federal law—Plaintiff
16 continues to manifest his belief that he somehow was entitled get away with defrauding a
17 bank.
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21 The claims in Plaintiff’s opposition relating to poker processing are directly
22 contradicted by the record. Plaintiff claims that his “allocation was done in reference to
23 Fifth Third Bank only.” (Opp. (#23) at 5:11–12). The record shows this is not so. Plaintiff
24 admitted to both conspiring to commit bank fraud and to operate an illegal gambling
25 business. Plaintiff testified under oath that “for all or some part of the period from in or
26 about May 2008 to and including April 14, 2011” he served “as a payment processor for, at
27
28



1 various times, each of the three entities identified in the original indictment in this case as
2 the poker companies.” (*See* Plea Hearing Transcript, p. 16:4–9, attached as Exhibit “A”).
3
4 Plaintiff fails to disclose that in addition to admitting to defrauding Fifth Third Bank (*id.* at
5 16:18–24), he also admitted that “beginning in and around the fall of 2009 and continuing
6 into 2011 [he offered] to invest millions of dollars in three failing banks, including Sunfirst
7 Bank, all of which have since been ordered closed by bank regulators in return for
8 processing Internet poker transactions[.]” (*Id.* at 16:25–17:5 (emphasis added)).
9

10 Plaintiff admitted to Judge Kaplan that he not only knowingly and willfully conspired
11 to defraud a bank (*id.* at 16:18–24), but also that (1) he knowingly and willfully conspired to
12 operate an illegal gambling business during a period between Fall, 2009 to April, 2011 (*id.* at
13 16:4–9, 16:25–17:22); (2) he knew poker was gambling (*id.* at 20:7–11); (3) he knew the
14 government had taken the position internet poker was illegal gambling under federal statute
15 (*id.*); and (4) his act of operating an illegal gambling business was independent of reliance on
16 advice of counsel. (*id.* at 21:8–23:10). His claim that his guilty plea was limited to defrauding
17 Fifth Third Bank is flat-out wrong.
18

19
20 In fact, this Court has already recognized that Plaintiff’s guilty plea encompassed
21 more than just defrauding Fifth Third Bank:
22

23 In his plea allocution, plaintiff admitted under oath that he conspired
24 to operate an illegal gambling business in violation of federal law
25 Furthermore, plaintiff admitted he knew online poker constituted
26 illegal gambling. . . . Plaintiff also admitted to a specific overt act on
27 July 27, 2009, in furtherance of a conspiracy to willfully and knowingly
28 operate an illegal gambling business with knowledge the government
had taken the position internet poker was illegal gambling
Plaintiff’s guilty plea, therefore, acknowledged plaintiff knew poker



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processing activities were viewed as illegal by the government, whether transparent or not, before he retained defendants.

(Order (#18) at 5:19–26). Despite the hearing transcript and this Court’s own order, Plaintiff continues to argue otherwise.

Nothing in Plaintiff’s argument negates Defendants’ entitlement to recover their attorney fees and costs. Beyond merely denying what the transcript actually shows, Plaintiff offers no explanation as to why the seven causes of actions arising out of his criminal indictment and sentencing were based upon any reasonable legal grounds whatsoever.

Plaintiff offers no explanation why his lawsuit possessed any valid legal grounds in light of the fact that Plaintiff’s key allegations directly contradict what he told a federal court judge under oath only a little more than a year prior to the initiation of his lawsuit against Defendants. Plaintiff admitted he knew during all relevant times that his processing activities were considered illegal by the federal government (regardless of whether his activities were transparent or not). He admitted to the court his activities were willful, knowing, and not the product of advice of counsel. Yet Plaintiff then filed a lawsuit against Defendants asserting exactly the opposite. Plaintiff knew or should have known that he cannot tell one court one thing and then tell another court exactly the opposite a year later.

NEV. REV. STAT. § 18.010(2)(b) mandates that courts “liberally construe” its provisions “in favor of awarding attorney’s fees in all appropriate situations.” The Nevada legislature’s express intent in doing so is “to punish . . . and deter frivolous or vexatious claims . . . because such claims . . . overburden limited judicial resources, hinder the timely

1 resolution of meritorious claims and increase the costs of engaging in business and
2 providing professional services to the public.” § 18.010(2)(b).

3
4 If ever there were a case where attorney fees should be awarded, this is it. Plaintiff
5 has been caught red-handed asserting allegations to this Court when he testified the
6 opposite to another federal court in 2012. His seven poker processing claims were each
7 legally frivolous because he had already made statements under oath that were fatal to each
8 of his claims. The justice system relies upon parties taking seriously their oaths to tell the
9 truth. It would be contrary to public policy to allow parties to change their testimony under
10 oath whenever such a change in testimony would be convenient for them—as Plaintiff has
11 done here. Such attempts must be deterred. Where Defendants has had to invest \$41,780.50
12 in attorney fees and \$424.70 in non-taxable costs to defend against Plaintiff’s contradicted
13 allegations, the least this Court can do in deterring such deceptive conduct is to compel the
14 offending parties to cover the defending parties’ fees and costs. Plaintiff’s internet poker
15 processing claims were not warranted by existing law, were legally unreasonable, were not
16 well grounded in fact, and were utterly lacking in legal merit. As such Defendants are
17 entitled to their fees and costs.

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22 **B. Plaintiff’s *Partner Weekly* cause of action was groundless because he knew it**
23 **was unripe as a matter of law.**

24 Likewise, Plaintiff erroneously argues that because he may one day in the future have
25 a ripe legal malpractice claim against Defendants, it was reasonable for him to file a patently
26 unripe claim in contravention to well-establish Nevada law. Just because a claim may have
27 merit later does not mean it has any merit now. Defendants’ basis for attorney fees is not
28



1 based upon the alleged merits of Plaintiff's *Partner Weekly* malpractice claim (though
 2 Defendants assert the claim is meritless), but rather because Plaintiff knowingly filed a
 3 blatantly unripe lawsuit.¹ Where Plaintiff and his counsel are still litigating the *Partner*
 4 *Weekly v. Viable* case on Plaintiff's behalf, he knew or should have known that his claim was
 5 clearly premature under Nevada law.
 6

7 Nevada law is perfectly clear on the issue: if parties are still litigating the underlying
 8 case, a legal malpractice case is unripe. "An action for professional malpractice does not
 9 accrue until the plaintiffs know, or should know, all facts material to the elements of the
 10 cause of action and damage has been sustained." *Jewett v. Patt*, 95 Nev. 246, 247, 591 P.2d
 11 1151, 1152 (1979). In *Jewett*, the Nevada Supreme Court affirmed the district court's
 12 dismissal of an attorney malpractice action "on the grounds that it was premature." *Id.* at
 13 248, 591 P.2d at 1152. "[W]here damage has not been sustained or where it is too early to
 14 know whether damage has been sustained, a legal malpractice action is premature and
 15 should be dismissed." *Semenza v. Nevada Medical Liab. Ins. Co.*, 104 Nev. 666, 668, 765 P.2d
 16 184, 186 (1988) (citing *Jewett*, 95 Nev. at 247–248, 591 P.2d at 1152; *see also Boulder City v.*
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21 ¹ Because Defendants prevailed on their motion to dismiss, this Court never needed to
 22 consider the truthfulness of Plaintiff's *Partner Weekly* malpractice allegations. Under Fed. R.
 23 Civ. P. 12(b)(6), this Court appropriately assumed the truth of Plaintiff's allegations in
 24 deciding Defendants' motion to dismiss. Nonetheless, none of Plaintiff's *Partner Weekly*
 25 allegations are true. As just one example, Plaintiff claims Defendants failed to litigate a
 26 counterclaim for breach of exclusivity agreement. Plaintiff fails to disclose to this Court that
 27 he had previously terminated the exclusivity agreement he claims Defendants did not litigate.
 28 (Opp. at 3:18–19). During the *Partner Weekly* case, he also failed to disclose this termination
 to Defendants (his attorneys at the time). It was only through Defendants' litigation of the
 claim that Defendants discovered Plaintiff had terminated the very agreement he sought to
 enforce. Although Defendants repeatedly asked Plaintiff for a response or explanation
 regarding this termination, he never provided one.



1 *Miles*, 85 Nev. 46, 49, 449 P.2d 1003, 1005 (1969) (holding “no one has a claim against
2 another without having incurred damages”).

3
4 “[I]t follows that a legal malpractice action does not accrue until the plaintiff’s
5 damages are certain and not contingent upon the outcome of an appeal.” *Semenza*, 104 Nev.
6 at 668, 765 P.2d at 186 (citing *Amfac Distribution Corp. v. Miller*, 138 Ariz. 155, 156–157, 673
7 P.2d 795, 796 (Ariz. App. 1983)). “Specifically, “[w]here there has been no final adjudication
8 of the client’s case in which the malpractice allegedly occurred, the element of injury or
9 damage remains speculative and remote, thereby making premature the cause of action for
10 professional negligence.” *Id.* (quoting *Amfac*, 138 Ariz. at 156, 673 P.2d at 796). “Therefore,
11 it is only after the underlying case has been affirmed on appeal that it is appropriate to assert
12 injury and maintain a legal malpractice cause of action for damages.” *Semenza*, 104 Nev. at
13 668, 765 P.2d at 186. In *Semenza*, the Nevada Supreme Court reversed a jury verdict against
14 an attorney sued for malpractice, holding that where the underlying case was still pending,
15 the legal malpractice claim was premature. *Id.* at 668–669, 765 P.2d at 186.

16
17 Thus, under Nevada law, if there is an allegation legal malpractice has been
18 “committed in the representation of a party to a lawsuit, damages do not begin to accrue
19 until the underlying legal action has been resolved.” *Hewitt v. Allen*, 118 Nev. 216, 221, 43
20 P.3d 345, 348 (2002).

21
22 Under Fed. R. Civ. P. 11(b)(2), each party certifies to the court by filing a pleading
23 that “the claims . . . and other legal contentions are warranted by existing law”
24 Furthermore, this certification must be made after “an inquiry reasonable under the
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1 circumstances[.]” *Id.* In this case, a very basic review of Nevada legal malpractice case law
2 would have put Plaintiff on notice that his claim was unripe. He should have known it was
3 unripe and thus not warranted by existing law. Plaintiff filed the patently unripe cause of
4 action anyways. For this reason, Defendants are entitled to their fees and costs.

6 **C. Plaintiff has not objected to Defendants’ calculation of the attorney**
7 **fees and non-taxable costs to which Defendants are Entitled.**

8 Additionally, Plaintiff offers no arguments disputing Defendants’ calculation of its
9 attorney fees and non-taxable costs. Under LR 54-16(e), a party must “set forth the specific
10 charges that are disputed and state with reasonable particularity the basis for such
11 opposition.” Plaintiff has not done so. Nor could he—Defendants’ attorney fees and costs
12 are exceedingly reasonable as set forth in Defendants’ motion and supporting affidavits.
13 Plaintiff has waived its right to contest that Defendants are entitled to an award of
14 \$41,780.50 in attorney fees and \$424.70 in non-taxable costs if this Court finds Plaintiff’s
15 claims were groundless.
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18 The \$41,780.50 in attorney fees sought by Defendants in this case is reasonable and
19 commensurate with the work performed under both Nevada and federal standards. The
20 same is true for the \$424.70 in non-taxable costs Defendants seek. Because Plaintiff’s claims
21 were each brought without reasonable grounds, Defendants are entitled to recover these
22 fees and non-taxable costs.
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CONCLUSION

For the reasons discussed, Defendants IFRAH PLLC and ALAIN JEFF IFRAH a/k/a JEFF IFRAH (incorrectly named ALAIN JEFFERY IFRAH in the complaint) are entitled to an award of \$41,780.50 to compensate them for the attorney fees incurred in defending against Plaintiff CHAD ELIE's groundless lawsuit and \$424.70 in non-taxable costs for a total award of **\$42,205.20**.

DATED this 14th day of March, 2014

THORNDAL, ARMSTRONG, DELK,
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IFRAH (incorrectly captioned ALAIN
JEFFERY IFRAH)

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CERTIFICATE OF SERVICE

Pursuant to Fed. R. Civ. P. 5, I hereby certify that I am an employee of the law firm of THORNDAL, ARMSTRONG, DELK, BALKENBUSH & EISINGER, a Professional Corporation, and that on this 14th day of March, 2014, I electronically filed the foregoing REPLY IN SUPPORT OF DEFENDANTS' MOTION FOR ATTORNEY FEES AND COSTS by using the CM/ECF system. I certify that the following parties or their counsel of record are registered as ECF Filers and that they will be served by the CM/ECF system:

NAME	TEL, FAX, AND EMAIL	PARTY REPRESENTING
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REPLY IN SUPPORT OF DEFENDANTS' MOTION FOR ATTORNEY FEES AND COSTS

CASE NO. 2:13-cv-00888-JCM-VCF

Page 11 of 11



LAW OFFICES
**THORNDAL ARMSTRONG
DELK BALKENBUSH & EISINGER**
A PROFESSIONAL CORPORATION
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EXHIBIT A

C3Q4ELIP
1 UNITED STATES DISTRICT COURT
1 SOUTHERN DISTRICT OF NEW YORK
2 -----x

2
3 UNITED STATES OF AMERICA

4 v. (S6) 10CR336 (LAK)

4
5 CHAD ELIE,
5
6 Defendant.

6
7 -----x

8 New York, NY
8 March 26, 2012
9 3:50 p.m.
9

10 Before:

10
11 HON. LEWIS A. KAPLAN

11
12 District Judge

12
13 APPEARANCES

13
14 PREET BHARARA
14 United States Attorney for the
15 Southern District of New York
15 ANDREW D. GOLDSTEIN
16 ARLO DEVLIN-BROWN
16 Assistant United States Attorneys

17
17 KRAMER LEVIN NAFTALIS & FRANKEL
18 Attorneys for Defendant
18 BARRY H. BERKE
19 DANI R. JAMES

19
20 ALSO PRESENT:
20 Roy Pollitt, FBI
21 Jonathan Ball, FBI
21

C3Q4ELIP

1 (Case called)
2 THE COURT: Good afternoon.
3 I am not sure I would recognize Mr. Elie. Have we not
4 now accounted for everybody at counsel table without his
5 presence; is he here?
6 MR. BERKE: This is Mr. Elie right here.
7 THE COURT: OK. You don't look exactly like your
8 photos on the Internet.
9 I understand we have a plea; is that right, Mr. Berke?
10 MR. BERKE: That is true, your Honor. We have an
11 application to withdraw Mr. Elie's plea of not guilty to the
12 superseding indictment and to enter a plea of guilty to the
13 one-count superseding information.
14 (Defendant sworn)
15 THE COURT: Mr. Elie, I understand you want to enter a
16 plea of guilty to the superseding information, is that right?
17 THE DEFENDANT: Yes, sir.
18 THE COURT: Before I accept your plea, I am going to
19 ask you some questions in order to satisfy myself that you are
20 pleading guilty because you want to plead guilty and not for
21 some other reason. If you don't understand any of my questions
22 or you wish to consult with your lawyer at any point, please
23 let me know and we will deal with it. All right.
24 THE DEFENDANT: Yes, sir.
25 THE COURT: Do you understand that you are now under
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1 oath and that if you answer any of my questions falsely, your
2 answers later may be used against you in another prosecution
3 for perjury or making false statements?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: How old are you?

6 THE DEFENDANT: 32.

7 THE COURT: How far did you get in school?

8 THE DEFENDANT: High school and one year of college.

9 THE COURT: Are you under the care of a doctor or
10 psychiatrist or another mental health professional?

11 THE DEFENDANT: No, sir.

12 THE COURT: Have you been under the care of any of
13 those types of people in the last 30 days?

14 THE DEFENDANT: No, sir.

15 THE COURT: Have you had any medicine, pills,
16 narcotics or alcohol in the last 24 hours?

17 THE DEFENDANT: No.

18 THE COURT: Is your mind clear this afternoon?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Does either counsel have any doubt as to
21 the defendant's competence to plead?

22 Mr. Goldstein.

23 MR. GOLDSTEIN: No, your Honor.

24 THE COURT: Mr. Berke.

25 MR. BERKE: No, your Honor.

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1 THE COURT: I find on the basis of his responses and
2 my assessment of the his demeanor that Mr. Elie is fully
3 competent to enter an informed plea at this time.

4 Mr. Elie, have you had an adequate opportunity to
5 discuss your case with your attorney?

6 THE DEFENDANT: I have, sir.

7 THE COURT: Are you satisfied with your attorney and
8 his representation of you?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Mr. Berke, in light of last week's events
11 in the Supreme Court, I suppose I should ask you whether any
12 plea offers other than the one that is being accepted this
13 afternoon by your client have been made to the defendant.

14 MR. BERKE: No plea offers, your Honor, that were
15 better than the plea offer that ultimately was accepted by
16 Mr. Elie.

17 THE COURT: Have any and all plea offers that have
18 been communicated to you by the government been communicated to
19 your client?

20 MR. BERKE: They have, your Honor.

21 THE COURT: Have you given him your is best judgment
22 as to those that were communicated.

23 MR. BERKE: I have indeed, your Honor.

24 THE COURT: Mr. Elie, without getting into the
25 substance, have you had full and satisfactory discussions with

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1 your attorney about any plea offers that he communicated to you
2 apart from the one that we are going to talk about with you
3 this afternoon?

4 THE DEFENDANT: Yes.

5 THE COURT: Mr. Goldstein, anything else you think
6 recent events suggest that I ought to ask.

7 MR. GOLDSTEIN: I think that's sufficient, your Honor.

8 THE COURT: Mr. Elie, I am going to describe your
9 rights under our Constitution and laws. Please listen
10 carefully. At the end I am going to ask whether you have
11 understood what I have said.

12 You are entitled to a speedy and a public trial by a
13 jury on the charges contained in the information against you.
14 If there were a trial, you would be presumed innocent and the
15 government would be required to prove you guilty by competent
16 evidence and beyond a reasonable doubt before you could be
17 found guilty. You would not have to prove that you are
18 innocent. You would be entitled to be represented by a lawyer
19 at every stage of your case. If you couldn't afford a lawyer,
20 a lawyer would be provided for you at government expense.

21 The government would have to bring its witnesses into
22 court. They had would have to testify in your presence. Your
23 attorney could cross-examine the government's witness and
24 object to evidence offered by the government. He could also
25 offer evidence on your behalf. You would have the right to the

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1 issuance of subpoenas which would require anyone whom you
2 wished to have come and give evidence in this case and who was
3 within the court's power to come here and do that.

4 You would have the right to testify if you chose to do
5 so. You would also have the right not to testify. In the
6 event you elected not to testify, no inference of guilt could
7 be drawn from that fact.

8 You have the right to continue in your previous plea
9 of not guilty even now, but if I accept your plea and that is
10 to say if you plead guilty and I accept that plea, there will
11 be no trial of any kind, you will waive your right to a trial
12 and to the other rights I just mentioned. I will enter a
13 judgment of guilty and sentence you on the basis of your guilty
14 plea after considering the presentence report. You will have
15 also have to waive your right not to incriminate yourself
16 because I will ask you questions about what you did in order to
17 satisfy myself that you in fact are guilty as charged.

18 Do you understand everything I have said so far?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Have you received a copy of the
21 superseding information number (S6)10CR336?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Have you discussed fully with Mr. Berke
24 the charges in that information to which you intend to plead
25 guilty?

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1 THE DEFENDANT: Yes, sir.
2 THE COURT: I believe you have before you as Court
3 Exhibit A, the original of a document waiving your right to be
4 indicted and prosecuted on the basis of an indictment returned
5 by a grand jury. Do you have Court Exhibit A there?
6 THE DEFENDANT: Yes, sir.
7 THE COURT: Does it bear your signature?
8 THE DEFENDANT: Yes, sir.
9 THE COURT: Did you read it before you signed it?
10 THE DEFENDANT: I did, sir.
11 THE COURT: Did you consult fully with your
12 attorney --
13 THE DEFENDANT: Yes, sir.
14 THE COURT: -- with respect to the execution of this
15 document and the significance for you?
16 THE DEFENDANT: Yes, sir.
17 THE COURT: Do you understand that you are charged in
18 Count 1 of the superseding information with conspiracy under
19 Title 18 U.S.C. Section 371?
20 THE DEFENDANT: Yes, sir.
21 THE COURT: The charge is that you conspired to commit
22 an offense against or to defraud the United States by the
23 commission of bank fraud in violation of 18 U.S.C. Section 1344
24 and by the operation of an illegal gambling business in
25 violation of Title 18 U.S.C. Section 1955.

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1 Do you understand that's the charge?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Mr. Goldstein, please state the elements.

4 MR. GOLDSTEIN: Yes, your Honor. The defendant is
5 charged in a conspiracy, which requires the government to show
6 that the defendant agreed with at least one other person to
7 violate the United States law. The object of the conspiracy as
8 alleged in the indictment is twofold. The first object is to
9 commit bank fraud. The second object is to operate an illegal
10 gambling business or to aid and abet in the same.

11 The elements of bank fraud are that the defendant
12 knowingly executed a scheme or artifice to defraud a financial
13 institution or to obtain money, funds or other property owned
14 by or under the control of a financial institution by means of
15 false or fraudulent pretenses, representations or promises,
16 second, that the defendant did so with the intent to defraud,
17 and third, that the financial institution at the time was
18 insured by the Federal Deposit Insurance Corporation.

19 The elements of Section 1955, operation of an illegal
20 gambling business, are: first, that the gambling business as
21 referred to the information violated at least the laws of at
22 least one state, here, they violated the laws of New York and
23 other states; second, that the gambling business was in
24 substantially continuous operation for at least 30 days or had
25 gross revenues of more than \$2,000 on a single day and that at

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1 least five people conducted, financed, managed, supervised or
2 directed the operation; and third, that the defendant knowingly
3 conducted, financed, managed, supervised or directed the
4 gambling business or aided and abetted same.

5 As part of the conspiracy the defendant also had to
6 commit at least one overt act in furtherance of the conspiracy.

7 THE COURT: Mr. Goldstein, I think it's appropriate
8 for me to restate a little bit because, especially on the last
9 point, I am not in agreement with you.

10 As I understand the elements of the offense with which
11 you are charged, there are three. The first is that you
12 conspired, combined or agreed with at least one other person,
13 Mr. Elie. The second element is that it was an object of that
14 conspiracy that in furtherance of the conspiracy, one or more
15 of the conspirators would commit bank fraud, the elements of
16 which Mr. Goldstein recited, or that one or more of the
17 conspirators would conduct, finance, manage, supervise, and so
18 forth businesses engaged in and facilitating online poker in
19 violation of the New York Penal Law, which has other elements
20 that Mr. Goldstein alluded to.

21 The third element that would be necessary to convict
22 on this count is that you or others acting in furtherance of
23 the conspiracy would have committed an overt act or did commit
24 an overt act in furtherance of the conspiracy.

25 So three elements: an agreement, one or both of the

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(212) 805-0300

C3Q4ELIP

1 objects charged in the conspiracy, and an overt act in
2 furtherance of the conspiracy. Do you understand?
3 THE DEFENDANT: Yes, your Honor.
4 THE COURT: Do you agree, Mr. Goldstein?
5 MR. GOLDSTEIN: I do, your Honor.
6 THE COURT: Any dispute, Mr. Berke?
7 MR. BERKE: No dispute, your Honor.
8 THE COURT: Do you understand, Mr. Elie, that in order
9 to convict you of that single count of conspiracy, the
10 government would have to prove all three of the elements that I
11 juries articulated beyond a reasonable doubt?
12 THE DEFENDANT: I do, your Honor.
13 THE COURT: Do you understand that the maximum
14 possible sentence that could be imposed upon you would be 5
15 years in jail?
16 THE DEFENDANT: Yes, sir.
17 THE COURT: Do you understand that the superseding
18 information also contains a forfeiture allegation?
19 THE DEFENDANT: Yes, sir.
20 THE COURT: In the event of conviction on this
21 superseding information, you would be required or could be
22 required to forfeit to the United States the sum of \$500,000 in
23 United States currency. Do you understand that?
24 THE DEFENDANT: Yes, sir.
25 THE COURT: Mr. Goldstein, what is the status of the

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(212) 805-0300

C3Q4ELIP

1 other forfeiture allegations under the agreement; the plea
2 agreement has other kinds of property.

3 MR. GOLDSTEIN: The defendant as part of the plea
4 agreement has agreed to forfeit \$500,000 within 60 days and
5 then also to waive his rights or any claim that he has to a
6 series of other accounts to which he made a claim in a related
7 civil forfeiture proceeding.

8 THE COURT: Thank you.

9 Do you understand that under the terms of the plea
10 agreement which we will discuss in more detail in a moment or
11 two, you also would be required to waive your claims in the
12 civil forfeiture proceedings to which Mr. Goldstein has
13 alluded?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: Are you a United States citizen?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: I am now going to describe the sentencing
18 process. I am sure Mr. Berke has done this but it's my job to
19 do it as well. The law requires that the sentence in this case
20 be imposed in accordance with the Sentencing Reform Act. The
21 court will take into account the United States sentencing
22 guidelines. Under the sentencing guidelines, which the court
23 is obliged to consider, the court will consider the actual
24 conduct in which you engaged which may be more extensive than
25 what is charged in the information, to consider the victim or

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

C3Q4ELIP

1 victims of your offense if there were any, the role that you
2 played, whether you engaged in any obstruction of justice,
3 whether you accepted responsibility for your acts and your
4 criminal history if you have one.

5 The sentencing guidelines provide for a range of a
6 minimum and a maximum number of months of imprisonment. You
7 may but you need not be sentenced within this guidelines range.
8 The court must consider the guidelines range and other factors
9 enumerated in the Sentencing Reform Act but is not bound by the
10 sentencing guidelines. The one thing you can be sure of is
11 that the court cannot sentence you to a term of imprisonment
12 longer than the statutory maximum that I have described.

13 Do you understand that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: The probation office will prepare a
16 written report setting forth the result of an investigation it
17 will conduct into your background and the offense to which you
18 are pleading guilty. It is only after it does that
19 investigation that the probation office will advise the court
20 of its view of the applicable guidelines range.

21 I understand you have entered into a plea agreement,
22 and we are going to talk about that as I indicated in a moment.
23 Even though the plea agreement apparently contains stipulations
24 regarding the application of the sentencing guidelines to your
25 case, you must understand that those stipulations are not

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

C3Q4ELIP

1 binding on the court or on the probation office or in certain
2 circumstances even on the government. The court can accept or
3 reject those stipulations. The court alone will determine your
4 sentence.

5 Do you understand all that?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: For the reasons I have just stated, it's
8 not possible to say definitively right now what your guidelines
9 range would will be. If anyone has tried to predict to you
10 what your guidelines range will be, that prediction could be
11 wrong. Whoever made it may have not have had all the
12 information that the court will have at the time you are
13 sentenced. In any case, the guidelines range as I said before,
14 whatever it turns out to be, is not binding on the court. To
15 reiterate, the only thing you can be sure of about your
16 sentence is that you can't get more than 5 years in jail.

17 Do you understand?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: It's important that you understand that
20 you will not be able to withdraw your guilty plea on the
21 grounds that any prediction as to the guidelines range that you
22 may have heard turns out to be incorrect or if the court
23 rejects the sentencing stipulations or if the court imposes a
24 sentence higher than the guidelines range.

25 Do you understand?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

C3Q4ELIP

1 THE DEFENDANT: Yes, sir.
2 THE COURT: Has anyone offered you any inducements or
3 threatened you or anyone else or forced you in any way to plead
4 guilty?
5 THE DEFENDANT: No, sir.
6 THE COURT: I believe you will have before you the
7 original of the document marked Court Exhibit B which I
8 understand to be the plea agreement in this case, dated March
9 23, 2012. Do you have it there?
10 THE DEFENDANT: Yes, sir.
11 THE COURT: Does it bear your subject on the last
12 page?
13 THE DEFENDANT: It does.
14 THE COURT: Did you read it before you signed it?
15 THE DEFENDANT: I did.
16 THE COURT: Did you consult fully with your counsel
17 before you signed it?
18 THE DEFENDANT: Yes, your Honor.
19 THE COURT: Do you have any unanswered questions about
20 the plea agreement or any of the matters that it discusses?
21 THE DEFENDANT: I do not.
22 THE COURT: Do you understand that if the court does
23 not accept the plea agreement, you are still going to be bound
24 by your plea of guilty and you will have no right to withdraw
25 it?

SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

C3Q4ELIP

1 THE DEFENDANT: I do.
2 THE COURT: Has anyone made any promises other than
3 whatever is set forth in the plea agreement that induced you to
4 plead guilty?
5 THE DEFENDANT: No, your Honor.
6 THE COURT: Has anyone made any promises or assurances
7 to you as to what your sentence will be?
8 THE DEFENDANT: No, your Honor.
9 THE COURT: I want to draw your attention particularly
10 to the last paragraph commencing on page 5 of the agreement,
11 which in word or substance says that you give up any right to
12 appeal or otherwise challenge any sentence of 12 months
13 imprisonment or less. Do you understand that?
14 THE DEFENDANT: I do, your Honor.
15 THE COURT: Do you understand also with reference to
16 subsection C on page 4 that you have agreed not to seek a
17 sentence outside the stipulated guidelines range 6 to 12
18 months; do you understand that?
19 THE DEFENDANT: Yes, sir.
20 THE COURT: Do you understand also that under the
21 terms of the plea agreement you have waived any right to appeal
22 any fine of \$20,000 or less?
23 THE DEFENDANT: Yes, your Honor.
24 THE COURT: Do you understand that you have agreed not
25 to file a claim or petition for remission of the funds that you

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

C3Q4ELIP

1 have agreed to forfeit as a result of committing the offense
2 alleged in the superseding information?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: Did you for all or some part of the period
5 from in or about May 2008 to and including April 14, 2011 serve
6 as a payment processor for, at various times, each of the three
7 entities identified in the original indictment in this case as
8 the poker companies?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: Did you as charged in the information in
11 2008 assist Australian poker processor Intabill in disguising
12 poker payment transactions for the poker companies including by
13 establishing a bank account that you represented would be used
14 to process payments for so-called payday loans but that you in
15 truth and in fact was used to process transactions for
16 Pokerstars?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: Did you in or about the summer of 2009
19 establish a bank account at Fifth Third Bank that you claimed
20 would be used to process payments for various Internet
21 membership clubs but that in truth and in fact you used to
22 process millions of dollars in payments for the poker
23 companies?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Did you beginning in and around the fall
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(212) 805-0300

C3Q4ELIP

1 of 2009 and continuing into 2011 offer to invest millions of
2 dollars in three failing banks, including Sunfirst Bank, all of
3 which have since been ordered closed by bank regulators in
4 return for processing Internet poker transactions?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Did you from in or about May 2008 to and
7 including April 14, 2011, or at least some part of that period,
8 in the Southern District of New York and elsewhere, combine
9 conspire, confederate, and agree with at least one other person
10 to commit bank fraud, in violation of the laws of the United
11 States?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Did you during the same period combine,
14 conspire, confederate, and agree with at least one other person
15 to violate Title 18 Section 1955 of the United States Code?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: In each case did you do that willfully and
18 knowingly?

19 MR. BERKE: May we have a moment.

20 THE COURT: Of course.

21 (Pause)

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: Was it a part and an object of the
24 conspiracy that you and others willfully and knowingly would
25 and did execute and attempt to execute a scheme and artifice to

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

C3Q4ELIP

1 defraud to a financial institution, the deposits of which were
2 insured by the Federal Deposit Insurance Corporation?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: Was it further a part and an object of
5 that conspiracy that you and co-conspirators would obtain
6 money, funds, credits, assets, securities, and other property
7 owned by and under the custody and control of that financial
8 institution by means of false and fraudulent pretenses,
9 representations and promises, all in violation of 18 U.S.C.
10 Section 1344?

11 THE DEFENDANT: Could I have one second, your Honor.

12 (Pause)

13 MR. BERKE: Your Honor, if I could just clarify one
14 instance. I think the allegations are that based on the
15 misrepresentations, the banks made decisions to process certain
16 transactions they would not otherwise as opposed to money was
17 actually taken from the bank other than funds that were under
18 their control as part of the processing.

19 I think Mr. Elie can certainly state that he
20 understood that based on various statements, the banks agreed
21 to process transactions that they understood were not, that
22 they would have not have otherwise processed if they had
23 understood that it had related to poker.

24 THE COURT: Mr. Elie, do you agree with counsel's
25 statement?

SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

C3Q4ELIP

1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Mr. Goldstein, does that do it for the
3 government?

4 MR. GOLDSTEIN: Just to proffer that in so doing --

5 THE COURT: Before we get to the proffer, is that
6 satisfactory to the government?

7 MR. GOLDSTEIN: It is, your Honor.

8 THE COURT: If you want to make a proffer now I will
9 hear it.

10 MR. GOLDSTEIN: The proffer is that in so doing, it
11 exposed the bank to financial risk and loss by virtue of
12 processing those transactions.

13 THE COURT: Was it a further part and an object of the
14 conspiracy, Mr. Elie, that you and others would and did
15 conduct, finance, manage, supervise, direct, and own all and
16 part of illegal gambling businesses, namely businesses that
17 engaged in and facilitated online poker, in violation of New
18 York Penal Law Sections 225.00 and 225.05 and the laws of other
19 states and which businesses involved five and more persons who
20 conducted, financed, managed, supervised, directed, and owned
21 all and part of such businesses and which businesses have been
22 and have remained in substantially continuous operation for a
23 period in excess of 30 days and had gross revenues of \$2,000 in
24 a single day, all in violation of 18 U.S.C. Section 1955?

25 MR. BERKE: Your Honor, in connection with this

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

C3Q4ELIP

1 separate object of the conspiracy, I think what Mr. Elie can
2 certainly state is that he understood that they were processing
3 transactions for poker companies that had five or more
4 employees, were in continuous operation for more than 30 days,
5 and had gross revenue of more than \$2,000 per day. He
6 certainly knew that poker was gambling. He certainly knew that
7 the government had taken the position that Internet poker was
8 illegal gambling under the statute.

9 THE COURT: Do you adopt your attorney's statement,
10 Mr. Elie?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Is that satisfactory to the government?

13 MR. GOLDSTEIN: Yes, your Honor.

14 THE COURT: Did you, Mr. Elie, in furtherance of the
15 conspiracy and to effect its illegal objects commit at least
16 the following overt act in the Southern District of New York,
17 which includes among other places Manhattan and Bronx; that is,
18 on or about July 27, 2009, you processed an electronic check
19 for Full Tilt Poker from the bank account of a customer in New
20 York, New York through a payment processing account you had
21 established at Fifth Third Bank?

22 Did you do that, sir, and for that purpose?

23 MR. BERKE: Your Honor, again, Mr. Elie can certainly
24 say that he understood that the companies for which he was
25 processing transactions had customers in New York, and while he

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

C3Q4ELIP

1 doesn't know about this specific transaction, he doesn't
2 dispute it and agrees that there were customers in New York for
3 whom he processed transactions.

4 THE COURT: Do you adopt that statement, Mr. Elie?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Mr. Goldstein.

7 MR. GOLDSTEIN: That's fine, your Honor.

8 THE COURT: In a super abundance of caution, it occurs
9 to me to say to you, Mr. Elie, do you understand that by
10 entering this plea you are surrendering any claim that you did
11 not act with criminal intent because you relied on the advice
12 of counsel? Do you understand that?

13 THE DEFENDANT: Could I have one second.

14 THE COURT: Yes.

15 (Pause)

16 MR. BERKE: Your Honor, just to clarify as necessary,
17 obviously the conspiracy requires that Mr. Elie be guilty of
18 one of the two objects and certainly Mr. Elie has, we think,
19 allocuted to the bank fraud and agrees that there is no object,
20 no issue rather with regard to reliance on counsel as to the
21 bank fraud counts which are obviously separate and that are
22 involved in the case.

23 Mr. Elie agrees that in pleading guilty to a
24 conspiracy charge with two objects, one to commit bank fraud,
25 one to conspire to run an illegal gambling business, that he

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

C3Q4ELIP

1 will no longer have a reliance-on-counsel defense in any way
2 with regard to the second object of the conspiracy.

3 THE COURT: I don't know if I want to take a plea
4 under those circumstances. There is no advice-of-counsel
5 defense. This man is admitting that he is guilty of the felony
6 of conspiracy.

7 MR. BERKE: Absolutely, your Honor.

8 THE COURT: In order to do that, he has to satisfy me
9 that he is admitting that he had the requisite criminal intent,
10 and reliance on counsel in some circumstances is not consistent
11 with that event. I want a flat-out statement from him to be
12 perfectly frank that he is here admitting that he acted with
13 criminal intent in committing this conspiracy.

14 MR. BERKE: Absolutely, your Honor. I didn't mean my
15 statements in any way to mean anything other than that. What I
16 was referring to, let me explain and then Mr. Elie will be able
17 to do that. Mr. Elie is obviously admitting to bank fraud and
18 the conspiracy that charges bank fraud as well as a separate
19 object, operating an illegal gambling business. The only point
20 I was make something, there was, he certainly understood that
21 he was involved in transacting in a business for poker. He is
22 not relying on any reliance-on-counsel defense in connection
23 with this case or otherwise, and he is prepared to say that,
24 your Honor.

25 THE COURT: Let's hear it from you, Mr. Elie.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

C3Q4ELIP

1 THE DEFENDANT: Your Honor, in 2009, I worked with
2 others to establish an account at Fifth Third --

3 MR. BERKE: One moment.

4 THE COURT: We are not there yet, Mr. Elie.

5 (Pause)

6 THE DEFENDANT: Yes, your Honor. I am not relying on
7 advice of counsel and I am pleading guilty to the conspiracy.

8 THE COURT: You are acknowledging that in committing
9 this conspiracy you acted with criminal intent. Is that right?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: OK. Satisfactory to the government?

12 MR. GOLDSTEIN: That is, your Honor.

13 THE COURT: OK.

14 MR. BERKE: Thank you, your Honor. I apologize;
15 attempting to clarify did anything but. Thank you for
16 clarifying, your Honor.

17 THE COURT: OK. Now it's your turn, Mr. Elie. Tell
18 me in your own words what it is you did that in your mind makes
19 you guilty of Count 1.

20 THE DEFENDANT: In 2009, I worked with others to
21 establish an account at Fifth Third Bank to process
22 transactions for certain online poker companies. When I opened
23 the account, I did not tell the bank that the account would be
24 used for poker transactions. Instead, I told the bank the
25 account would be used for my unrelated existing e-commerce

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

C3Q4ELIP

1 business. Later, when the bank became suspicious about the
2 transactions, I denied that the account was being used for
3 gaming transactions.

4 I made these statements to the bank in order to get
5 the bank to process poker transactions which I believed the
6 bank would not otherwise agree to process.

7 I knew that my conduct was wrong.

8 I understood that the poker companies for which I
9 processed transactions had customers located in New York.

10 THE COURT: Did you understand that the poker
11 companies were involved in violating New York law.

12 THE DEFENDANT: The poker companies had more than five
13 employees who were in continuous operation for more than 30
14 days and had gross revenues of more than \$2,000 per day.

15 THE COURT: And were violating New York law?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Satisfactory?

18 MR. GOLDSTEIN: That is, your Honor. The only other
19 thing I would proffer again that I believe was covered in your
20 original allocution is that the banks at issue were insured by
21 the FDIC and as Mr. Elie said that the gambling businesses at
22 issue were in operation continuously for 30 days or more and
23 had gross revenues of more than \$2,000 in a single day.

24 THE COURT: Thank you.

25 Mr. Elie, how do you now plead to the charge in Count
SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

C3Q4ELIP

1 1 of the superseding information, guilty or not guilty?

2 THE DEFENDANT: Guilty, your Honor.

3 THE COURT: Are you pleading guilty because you are in
4 fact guilty as charged?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: I accept the plea. I will enter a
7 judgment of guilty because the defendant acknowledges that he
8 is guilty as charged in the information, he knows that he has a
9 right to a trial, he knows what the maximum possible sentence
10 is, he understands that the court will take into account the
11 sentencing guidelines. I find that the plea is voluntary and
12 supported by an independent basis in fact containing each of
13 the essential elements of the offense.

14 Mr. Elie, as I indicated to you, the probation
15 department will be preparing a presentence report to assist in
16 sentencing you. You will be interviewed by the probation
17 officer who does that. It's important that the information you
18 give to the probation officer be truthful and accurate. The
19 report can have an important bearing on the decision as to what
20 your sentence will be. You and your attorney will have the
21 right to read and to comment on the report and to speak on your
22 behalf before sentence is imposed.

23 Any written submissions on behalf of the defendant,
24 must be in my chambers no later than two weeks before
25 sentencing. Sentencing date.

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

C3Q4ELIP

1 THE DEPUTY CLERK: Wednesday, October 3, at 4:00.

2 THE COURT: Does that work for everybody?

3 MR. GOLDSTEIN: It's fine with the government.

4 MR. BERKE: It's fine with the defense as well.

5 THE COURT: Sentencing October 3 at 4:00 p.m.

6 Mr. Goldstein, the prosecution case summary is due to
7 the probation officer within two weeks. The defendant is to
8 make himself available to probation for an interview within two
9 weeks. Does the government have any objection to the present
10 bond being continued pending sentence?

11 MR. GOLDSTEIN: No, your Honor. I believe that
12 defense counsel has one minor modification that the government
13 does not object to.

14 THE COURT: Mr. Berke.

15 MR. BERKE: Thank you, your Honor. Our application is
16 simply to extend the travel restrictions to allow Mr. Elie to
17 travel to Massachusetts to visit his grandmother and
18 Connecticut to visit his father. He is now permitted to visit
19 a variety of states but not those two.

20 THE COURT: Granted.

21 Mr. Elie, do you understand that you must be in my
22 courtroom for sentencing at 4:00 on October 3, 2012 and that if
23 you don't show up, you may be guilty of a violation of the Bail
24 Reform Act and subject to a fine of up to a quarter million
25 dollars and/or an additional prison term?

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

C3Q4ELIP

1 THE DEFENDANT: Yes, sir.
2 THE COURT: Do you understand that all the conditions
3 on which you have been released up to now continue to apply and
4 that any violations thereof could result in the imposition of
5 serious penalties.
6 THE DEFENDANT: Yes, your Honor.
7 THE COURT: OK.
8 Mr. Devlin-Brown, is this still going on April 9?
9 MR. DEVLIN-BROWN: Your Honor, this took us somewhat
10 unexpectedly on Friday. We have had a conversation with
11 counsel for Mr. Campos. I think all I can really say at this
12 point is I think by Wednesday we will know if it's going or we
13 will be in a similar situation as today.
14 THE COURT: If it is going, how long a trial do you
15 anticipate?
16 MR. DEVLIN-BROWN: I think it's a 2-week trial; I
17 think that's the longest it would be.
18 THE COURT: OK. All right.
19 Thank you all. I assume there is nothing else.
20 MR. BERKE: Nothing else. Thank you, your Honor.
21 MR. GOLDSTEIN: Thank you, your Honor.
22 THE COURT: Thank you.
23 - - -
24
25