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STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

S.C. SUPREME COURT

APPEAL FROM PICKENS COUNTY

The Honorable J. Cordell Maddox, Jr., Circuit Court Judge

Appellate Case No. 2015-000210

THE STATE, ... PETITIONER,

v.

ARTHUR M. FIELD, ... RESPONDENT.

APPENDIX

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STATE GRAND JURY OF SOUTH CAROLINA

STATE OF SOUTH CAROLINA

Case No. 2012GS 47 08

v.

INDICTMENT FOR CONSPIRACY,
SECURITIES FRAUD, AND FORGERYARTHUR M. FIELD and FREDRICK
SCOTT PFEIFFER,

Defendants.

FILED

JUN 13 2012

JAMES R. PARKS
CLERK, STATE GRAND JURY

At a session of the State Grand Jury of South Carolina, convened in Columbia, South Carolina, on June 13, 2012, the State Grand Jurors present upon their oath and charge as follows:

BACKGROUND

At times material to this indictment:

1. ARTHUR M. FIELD ("FIELD") is an attorney who first was licensed by New Jersey in 1977 and by Connecticut in 1978. He managed a commodities fund at one time, and engaged in a legal practice that included real estate and business law. In the 80s, FIELD passed the examinations to receive from the Financial Industry Regulatory Authority (FINRA) a Securities Series 3 license, a Securities Series 7 license, and a Securities Series 63 license. Indeed, FIELD has referred to himself as a securities law expert. FIELD moved to South Carolina in the late 90s, and received a Ph.D in management science from Clemson. He has never been a licensed attorney in this State. Kathryn Taillon is FIELD's wife. Davyd Field is FIELD's son.

2. FREDRICK SCOTT PFEIFFER ("PFEIFFER") is an attorney in South

Carolina who was first licensed in 1993. His first job with a law firm was with Nelson, Mullins, Riley, and Scarborough, LLP, where he engaged in a sophisticated corporate practice. In 1999, he left Nelson, Mullins, Riley, and Scarborough, LLP and formed his own firm, to engage in a "general corporate-law firm for entrepreneurially owned businesses".

FORMATION OF LRI AND CIF

3. Elliot Salzman was a mortgage broker in the northeast United States who was in the business of buying and selling foreclosed properties. He befriended ARTHUR FIELD, who handled closings and other legal work for Salzman's transactions.

4. At some point in time in the late 1990s, FIELD and Elliot Salzman found a commercial property for sale in Ridgefield Park, New Jersey. FIELD and Salzman put together a group of shareholders to form a company named Wiltshire to purchase and develop this property. The group they approached included Robert L'Abbate, a real estate broker Elliot Salzman had met during Salzman's real estate transactions; Dr. Stuart Katz, an oral surgeon who had been loaning money to Salzman for use in Salzman's real estate ventures; Martin Ender, an accountant in the firm of Want and Ender who did accounting for Elliot Salzman, and Dr. Jim Caserta, a dentist for whom FIELD had done legal work.

5. At some point in the late 1990s, FIELD became aware of Homegold Financial, which was the parent company of a South Carolina entity named Carolina Investors, Inc., which raised money for its parent by selling securities to South Carolina investors.

6. FIELD and Elliot Salzman arranged a meeting in New Jersey with the Wiltshire group to pitch to them the idea of forming a similar business plan as Homegold and Carolina Investors, whereby money would be raised from South Carolina investors and

then sent to the parent company in New Jersey for relending and real estate development. FIELD had prepared a prospectus for the proposed South Carolina entity which he based on the prospectus issued by Carolina Investors.

7. The other members of LRI agreed. Accordingly, Lancaster Resources, Incorporated ("LRI") was a New Jersey corporation that was formed on November 19th, 1998, by filing with the New Jersey State Treasurer. The director and registered agent was listed as Elliot Salzman.

8. LRI held its organizational meeting of the first Board of Directors on February 24th, 1999. The shareholders and directors of LRI were the following: Elliot S. Salzman, Dr. James Caserta, Martin Ender, Stuart Katz, Matthew A. Glassman, Dyanna Darrigan, and Defendant FIELD. FIELD was elected Chairman of the Board and Salzman was elected President and Chief Executive Officer of LRI.

9. The minutes of this February 24th, 1999 meeting reflect that LRI was to "engage in the business of operating a mortgage bank, lending funds it has borrowed or raised, acquiring, developing, managing and selling properties, and any other legal acts which a corporation may pursue within or without the State of New Jersey."

10. The minutes of this February 24th, 1999 meeting also reflect that LRI was to "acquire controlling interests of one or more other businesses to be used to further the business interests of the Corporation, from time to time", and that LRI also was to "enter into a relationship with Capital Investment Funding, LLC, a South Carolina limited liability company, and shall own 90% thereto, and shall borrow funds from such company and enter into repayment agreements, as the officers of the two companies deem prudent."

11. The South Carolina entity formed pursuant to this business plan developed

by FIELD and Salzman was ultimately named Capital Investment Funding, LLC ("CIF"). It was a South Carolina limited liability company with its main office located in the town of Easley, in Pickens County, South Carolina. CIF had branch offices in Greenville County, Charleston County, and Horry County.

12. CIF was formed by a filing with the South Carolina Secretary of State on January 13th, 1999, under the name "Carolina Investment Funding, LLC". Defendant FIELD and Elliot S. Salzman signed the form as organizers of CIF. FIELD was listed as the agent for service.

13. The minutes reflect the initial incorporators meeting for CIF took place on February 25, 1999. The interim directors were Stuart Katz, Martin Ender, Robert L'Abbate, FIELD, FIELD's wife Kathryn Taillon, and Elliot S. Salzman. LRI owned more than 90% of the CIF membership interest, with relatively small amounts of membership interest going to Kathryn Taillon, Brad Kelly, and each of the directors LRI individually.

14. Again, FIELD told individuals he got the idea for CIF from a different company, Carolina Investors, Inc., which raised money from South Carolina investors for its parent HomeGold. Indeed, Homegold and Carolina Investors, Inc., objected to the CIF's use of the name "Carolina Investment Funding" as being too similar, which resulted in CIF changing its name to "Capital Investment Funding".

15. On February 26, 1999, FIELD signed Form U-1, Uniform Application to Register Securities, which was submitted to the South Carolina Securities Division ("Securities Division") in connection with its application to register securities of up to \$4,000,000. (1477)

16. CIF issued a prospectus dated April 1, 1999 for the distribution to residents

of South Carolina for securities in the form of promissory notes ("99 Prospectus"). These included an offering of \$1,000,000 in "Series A, 6% Subordinated One Year Debentures", and \$3,000,000 in "Series 99 Floating Rate Notes". This prospectus, and its subsequent amendment, were filed with the Securities Division, and the issuance was subject to the provisions of the Uniform Securities Act of South Carolina. The Securities Division registered the offering on March 19, 1999.

17. CIF then began selling promissory notes to investors in South Carolina. The sale of these notes and all subsequent CIF notes and renewals constitutes the sale of securities under the statutory law of the State of South Carolina.

18. During this period of time, FIELD, who now lived in South Carolina, primarily controlled as co-manager of CIF the business activities of CIF in South Carolina. Elliot Salzman as President and CEO of LRI primarily controlled the relending and other business activities of LRI, including its use of the money FIELD with CIF lent LRI.

19. On March 13th, 2000, an Operating Agreement was executed by the members of CIF. Elliot S. Salzman signed the agreement for LRI, which owned 90% of the membership interest in CIF. FIELD, his wife Kathryn Taillon, T. Brad Kelley, T. Bart Kelley, Calvin L. Williams, and Lonnie Saxon also had membership interests and signed the agreement.

20. The Operating Agreement named FIELD and Elliot S. Salzman as co-Managers of CIF. The agreement provided that "the primary purpose of [CIF] shall be to raise funding to be loaned to Lancaster Resources, Inc., for the purposes set forth in its Articles of Incorporation, By-Laws, Operating Agreements, etc., including the making of loans to purchase, develop, operate, lease, manage, and sell, alone or with others,

commercial real property in the New York tri-state area, but this statement shall not confine or limit the Company's legitimate business activities."

21. On March 8, 2000, FIELD signed Form U-1, Uniform Application to Register Securities, which was submitted to the Securities Division in connection with CIF's application to register securities of up to \$8,000,000.

22. CIF issued the 2000 prospectus dated on April 1, 2000, for an offering of \$8,000,000 "Series 2000 Floating Rate Notes". This prospectus was filed with the South Carolina Securities Division, and the issuance was subject to the provisions of the Uniform Securities Act in the statutory law of South Carolina. The Securities Division registered the offering on March 17, 2000.

23. Attached to this 2000 prospectus was a letter purporting to be from an independent auditors report from Want & Ender, CPAs. In reality, this audit never occurred and the firm issued no such letter.

24. Copies of CIF's balance sheet, included with the 2000 Prospectus, reflect \$1,531,787.86 in Notes owed to investors as of December 31, 1999; as well as \$3,303,139.34 in Notes owed to investors of March 8, 2000.

25. At some point, FIELD met and befriended PFEIFFER, as both were interested in playing boardgames with military, historical, or fantasy themes. These games are strategy games in which the players often attempt to outwit each other to consolidate their power on the game board. As will be seen, many of the business entities formed by FIELD and PFEIFFER took their names from these historical or fantasy themes.

26. Having become friends with this similar interest in these strategy games, FIELD and PFEIFFER began to intertwine their business affairs to take advantage of

FIELD's source of funding from the investors in CIF. On February 8, 2001, PFEIFFER issued an opinion letter, for purposes of registration with the South Carolina Securities Division, that the CIF prospectus and the proposed notes complied with state law and were enforceable.

27. On March 18, 2001, FIELD signed Form U-1, Uniform Application to Register Securities, which was submitted to the Securities Division in connection with CIF's application to register securities of up to \$20,000,000.

28. On April 1, 2001, CIF issued the 2001 Prospectus for an offering of \$20,000,000 "Series 2001 Floating Rate Notes". This prospectus was filed with the South Carolina Securities Division, and the issuance was subject to the provisions of the Uniform Securities Act in the statutory law of South Carolina. The Securities Division registered the offering on April 5, 2001.

29. Copies of CIF's balance sheet, included with the 2000 Independent Auditor's Report, which accompanied the 2001 Prospectus, reflect \$10,195,911 in Notes due investors as of December 31, 2000.

30. On March 12, 2001, PFEIFFER issued an opinion letter to FIELD, in which he stated that the South Carolina Securities Division may view CIF as a "sham entity" with LRI as the actual issuer, and that CIF should do three things: (1) carefully document all transfers of funds, (2) use arms length transactions between LRI and CIF, and (3) use portions of CIF funds for third party lending outside of loaning money to LRI in New Jersey.

FIELD'S HIDDEN INTEREST IN BOLINGBROKE

31. On September 27, 2001, an entity was registered with the Wyoming

Secretary of State named Bolingbroke United (England) Ltd ("Bolingbroke"). The incorporator was listed as Geneva Sellers of the Nevada Processing Center, Inc., a Nevada corporation. Geneva Sellers is an associate of Jack Campitelli, who also uses the name "A.J. Camp". Jack Campitelli is an associate of PFEIFFER. Eventually, the registered agent listed with the Wyoming Secretary of State's Office was "Henry Rex", the supposed president of Bolingbroke. The address was a P.O. Box in Eugene, Oregon, which was opened by Geneva Sellers and on which A.J. Camp was listed as a recipient of mail. Additionally, a South Carolina Bank of America business investment account was opened on October 18, 2001 with the signatory listed as "H Rex". The Bolingbroke bank account used the PFEIFFER law firm address. For some reason, the bank did not certify the signature. Ultimately, a number of checks would be issued on this account purportedly signed by "Henry Rex".

32. "Henry Rex" is a fictitious person and does not exist. Bolingbroke and "Henry Rex" were created by PFEIFFER and FIELD to hide FIELD's true interest in Bolingbroke and the entities with which Bolingbroke would do business. FIELD and PFEIFFER did this to hide FIELD's true interest in various entities from investors, FIELD's partners in LRI, the South Carolina Securities Division, and others.

33. As noted before, FIELD and PFEIFFER enjoyed strategy board games with historical themes. In history, Bolingbroke is the name of a castle in England. Henry Bolingbroke (because he was born at Bolingbroke castle) eventually became King Henry IV. Once he became king, Henry of Bolingbroke would have signed his name "Henry Rex" in the custom of English royalty. "Rex" means "king" in Latin.

34. The first use of Bolingbroke was to loan money to Credo Land Holdings, LP

("Credo"). Credo was made of entities in which PFEIFFER and Tommy Moore had ownership interests, and on September 10, 2001, FIELD purchased a 10% interest in Credo and a 10% interest in Saxon Holdings, LLC, a limited partner of Credo's controlled by PFEIFFER. On October 16, 2001, Credo agreed to purchase property owned by the Baby Superstore, Inc. for \$400,000. This transaction was completed on October 30, 2001. Credo that day gave a \$340,000 note and mortgage to Bolingbroke and a \$40,000 note and mortgage to Kathryn Taillon, Field's wife. These documents were prepared and signed by PFEIFFER.

35. Ultimately, this property was condemned by the South Carolina Department of Transportation, which March of 2003 paid \$1,150,000 in a check made out to Credo, Bolingbroke, Kathryn Taillon, and CIF. This was endorsed by PFEIFFER for Credo, FIELD for CIF, Field's wife Kathryn Taillon, and "Henry Rex" for Bolingbroke. Of these funds, PFEIFFER wrote checks from Credo to Bolingbroke for \$342,963.03, and from Credo to Taillon and Arthur Field as well. On January 31, 2003, "H Rex" also signed a release of Bolingbroke's mortgage on the property, which was supposedly witnessed by Paula Haney and Jane Passioux, two of PFEIFFER's employees.

ELLIOT SALZMAN'S IMPROPER USE OF LRI MONEY

36. On September 1, 2001, LRI executed a Revolving Loan Note for up to \$30,000,000 in favor of CIF at 12.75% per annum. Elliot S. Salzman and Richard Malagiere signed the note on behalf of LRI.

37. As noted before, Elliot Salzman as President and CEO of LRI primarily controlled and directed LRI's business activities and its use of the money from South Carolina investors that CIF lent LRI, while FIELD primarily controlled the business activities

of CIF. At some point around this time, some LRI board members became aware of Elliot Salzman's improper and unauthorized use of LRI money. These board members also became concerned about FIELD's actions as manager of CIF due to FIELD's involvement with these transactions and his close relationship with Elliot Salzman. They sought explanations about and oversight over CIF's actions.

38. However, FIELD did not wish to give up control and sought help from his friend PFEIFFER. On December 18, 2001, PFEIFFER issued an opinion letter to FIELD as manager of CIF, in which PFEIFFER opined that moving the accounting function of CIF to New Jersey would "threaten the South Carolina nature of the company", since most of the funds were invested outside of South Carolina. Thus, he concluded that in order to meet the federal "intrastate exemption" from registration of CIF's securities with the Securities and Exchange Commission ("SEC"), at least the management of CIF's funds needed to remain in South Carolina. PFEIFFER noted that this is why he advised FIELD a year ago to begin investing in local projects, and that in relying on the intrastate exemption FIELD was "holding out to your investors that you are a South Carolina company". PFEIFFER also advised FIELD that since he was the manager of CIF and CIF was a manager-managed LLC, the other members of LRI could not force him to relocate the accounting function. PFEIFFER advised FIELD to resign from the board of LRI to avoid any conflicts of interest.

39. FIELD, however, continued to participate as an active member in the LRI Board meetings. The next day, on December 19, 2001, a meeting of the LRI Board was held in which FIELD acted in his position as Chairman of the Board. At the meeting, FIELD moved to dismiss the corporate counsel and secretary, Richard Malagiere, which passed.

The other members of the board were told that this was done because Malagiere was spending too much money on outside counsel. In fact, Malagiere was spending this money in an attempt to adequately document loans Salzman had made with the money LRI had received from CIF.

40. Additionally, FIELD put on the record a motion that was passed unanimously for "disciplinary action" against LRI President and CEO Elliot Salzman for a transaction involving "457 Westview". In this transaction Salzman had improperly retained the funds at a loan closing that were supposed to be used to pay off a first mortgage on a property LRI was purchasing. Salzman then began servicing the first mortgage to prevent this from being discovered, thus impairing LRI's title to the property it purchased.

41. Additional information had come to light regarding Elliot Salzman's improprieties with LRI funds during his time as president of the entity, and the 457 Westview transaction was the "last straw" for many of the other members. On January 3, 2002, a meeting of the LRI Board of Directors was held in which FIELD participated as a member. At the meeting, it was decided that because of the \$5.6 million debt Salzman had incurred to LRI as a result of his improper and unauthorized use of LRI money, which had come from CIF loans, the Board would remove Elliot Salzman from LRI membership, remove Elliot Salzman as president and CEO of LRI, remove Elliot Salzman as managing member of all the many related entities, remove Elliot Salzman from board of LRI, remove Elliot Salzman from the LLCs management committee, and that there would be no distributions to members until all Elliot Salzman's shortfalls were remedied. At the meeting, Robert L'Abbate noted the concern was to prevent the members from being able to bleed LRI dry without paying the money back to CIF.

42. Once Elliot Salzman was removed from day-to-day control of LRI, it was realized that many of the loans and transactions were improperly or insufficiently documented.

FIELD AND PFEIFFER'S CONTROL OF THE SOUTH CAROLINA RELENDERS

43. Meanwhile, with the assistance of PFEIFFER, FIELD continued in his efforts to solidify his control of CIF's lending activities. On January 15, 2002, FIELD caused CIF to issue a check for \$657,752.00 to PFEIFFER's firm trust account for a direct loan from CIF to the South Carolina entity Tiger Transport Service, Inc, in which Tommy Moore (also of Credo) had a controlling interest.

44. The next day, January 16, 2002, PFEIFFER sent FIELD as manager of CIF an opinion letter in which he: (1) noted that he had now been asked to look at CIF's qualification for the Intrastate Offering Exemption from federal registration; (2) expressed concern because "nearly 100% of all proceeds are sent to New Jersey for use their [sic]"; (3) recommended "to mitigate this problem" that "CIF needs to diversify its lending to lend to non-LRI entities"; (4) recommended that LRI "open a South Carolina subsidiary to be the direct borrower from CIF", which would then lend to LRI, and which should also consider placing South Carolina loans; and (4) warned that "even with these actions I cannot guarantee that you will meet the [Intrastate Offering Exemption] test".

45. Two days later, PFEIFFER drew up the paperwork and acted as the closing attorney for the \$657,752.00 CIF direct loan to Tiger Transport Service, Inc., which was guaranteed by Credo, in which PFEIFFER and FIELD had ownership interests.

46. Additionally, PFEIFFER and FIELD executed their plan to attempt to get around the Intrastate Offering Exemption by creating a South Carolina entity to act as an

intermediary in the lending from CIF to LRI in New Jersey. On January 28, 2002, Lancaster Resources (South Carolina), Inc., was formed with the filing of Articles of Incorporation with the South Carolina Secretary of State. FIELD was listed as the incorporator and F. SCOTT PFEIFFER signed for the attorney certification of compliance. On February 11, 2002, Articles of Amendment were filed changing the name of this entity to Monmouth Financial Group, Ltd ("Monmouth"). FIELD signed this amendment as the incorporator. PFEIFFER had ownership and management interests in Monmouth.

47. In keeping with FIELD and PFEIFFER's interest in historical themes, according to history Henry V was born at Monmouth Castle, and was known as Henry of Monmouth. Henry V later followed his father Bolingbroke, or Henry IV, on the throne. Henry Bolingbroke would, as noted before, sign his name "Henry Rex" upon taking the throne.

48. Additionally, FIELD and PFEIFFER also executed their plan to start lending to South Carolina entities with the formation of Cosimo, LLC ("Cosimo"). On January 31, 2002, PFEIFFER filed with the South Carolina Secretary of State the Articles of Organization for Cosimo. PFEIFFER was listed as the organizer. 50% of Cosimo was owned by Red Lion Trading House, LLC, an entity controlled by PFEIFFER. The other 50% was owned by Bolingbroke, which, as noted before, was controlled by FIELD and created for the purpose of hiding FIELD's ownership interest in this relender of CIF.

49. Cosimo took its name from Cosimo D'Medici, a historic figure from Italy during the Renaissance known for consolidating political and financial power. On at least two occasions, FIELD and PFEIFFER sent business letters from Cosimo which were purportedly signed by a "Larry Medici".

50. Around the time PFEIFFER caused Cosimo's formation documents to be filed with the South Carolina Secretary of State, PFEIFFER and FIELD began relending through Cosimo. FIELD transferred funds from CIF to Cosimo, which then lent \$595,000 to Guglielmi, LLC. This transaction was facilitated through Elliot Salzman at Lancaster Mortgage Bankers ("LMB"). PFEIFFER drew up the loan documents and functioned as the closing attorney. He addressed the cover letter – as if the transaction was arm's length – to Alysia Hazleton as Assistant Manager of Red Lion Trading House, LLC, in which PFEIFFER had ownership. In fact, Alysia Hazleton was an employee of PFEIFFER's law firm. This sort of documentation was intended to create the illusion of an arm's length transaction, and was typical of many of the Cosimo loans which PFEIFFER executed.

51. Meanwhile, on February 27, 2002, FIELD signed Form U-1, Uniform Application to Register Securities, which was submitted to the Securities Division in connection with CIF's application to register securities of up to \$33,000,000.

52. On March 6, 2002, CIF issued the 2002 prospectus for an offering of \$33,000,000 "Series 2002 Floating Rate Notes". This prospectus was filed with the South Carolina Securities Division, and the issuance was subject to the provisions of the Uniform Securities Act in the statutory law of South Carolina. The Securities Division registered the offering on March 7, 2002.

53. Copies of CIF's balance sheet, included with the 2001 Independent Auditor's Report, which accompanied the 2002 Prospectus, reflect \$24,116,479.46 in Notes Due Investors of December 31, 2001.

54. FIELD and PFEIFFER also provided to the members of LRI PFEIFFER's opinion that CIF could comply with the Intrastate Offering Exemption by merely loaning to

a South Carolina intermediary such as Monmouth, before the money was loaned to LRI in New Jersey. At some point Dr. Stuart Katz as Acting President of LRI issued a letter authorizing PFEIFFER to form Monmouth and to be a shareholder, officer, or director of Monmouth. The first Monmouth loan occurred on or about February 10, 2002, when FIELD caused \$800,000 to be loaned from CIF to Monmouth, and PFEIFFER then caused those funds to be loaned to LRI.

55. However, the other members of LRI again became concerned with these relending activities of FIELD and PFEIFFER. On March 21, 2002, Dr. Stuart Katz sent FIELD a letter in which he noted FIELD had been directed by the Board of LRI not to do any business with Elliot Salzman, but FIELD had caused Cosimo to loan CIF money to Guglielmi, LLC, which involved Salzman. Katz complained that LRI had not been informed about the creation of Cosimo and asked whether it "violated any securities laws". Katz concluded: "Arthur, I trusted and respected your judgment, but cannot sit idly by while you unilaterally take CIF in a business direction without any input from the LRI board".

56. On March 25, 2002, FIELD responded to Katz's concerns by email. In the email, FIELD stated that the LRI board could "have nothing whatsoever to say" in FIELD's relending decisions for CIF. FIELD stated that he was a passive member of LRI with no knowledge of whether LRI has any financial difficulties. This statement is not true as the LRI Board minutes reflect FIELD actively participating through at least December 2002.

57. FIELD also stated that Monmouth and Cosimo were created to address PFEIFFER's opinion letter that a "pass-through relending" through a South Carolina Company was necessary to comply with the Intrastate Offering Exemption. FIELD stated that "neither CIF nor Arthur Field nor any other member of CIF board has anything

whatsoever to do with the ownership or management of [Cosimo and Monmouth]". This statement represents a material misrepresentation of fact, i.e., a lie, as FIELD did in fact have such an interest through Bolingbroke.

58. FIELD stated that with regard to the Guglielmi loan, Cosimo was created to "shield LRI from any connection with" Elliot Salzman.

59. FIELD stated that he and PFEIFFER were underwriting the Cosimo and Monmouth loans.

60. FIELD stated Monmouth and Cosimo would take small markups, "to make sure they appear to be more than just sham passthroughs". FIELD stated that local loans are "what the people of SC believe their money is going for. So, at least some of it had better be".

61. FIELD stated he did the renewal paperwork and all the accounting for CIF.

62. FIELD stated in the email: "If we are going to try to build a firewall between CIF and LRI to comply with the state and federal securities laws, then we have to form and maintain companies such as MFG and Cosimo to do it and we have to live with the 'independence' of those entities. . . . Only trouble was you guys are in NJ and I have the money in SC and lending it to you directly may violate some big ass federal laws".

63. FIELD stated in the email that he is the one trying to "keep Elliot under control", and complained that the agreement FIELD wrote to terminate Elliot's relationship with LRI had not been signed by LRI officers.

64. On March 29, 2002, Dr. Stuart Katz responded with a letter to the LRI board members. In it, he stated: "I cannot sign an agreement that clears Elliot Salzman of what he did! Elliot Salzman stole 5+ million dollars and left us holding the bag." Additionally;

"I believe that by our white washing what Elliot did, we are placing ourselves at greater risk for criminal charges by assisting in his theft".

65. In the letter, Katz further stated: "Scott Pfeifer is the lawyer who initially gave us the opinion letter that the Blue Sky laws would not affect CIF loaning money to LRI. Out of the clear blue, Arthur felt it necessary for Scott Pfeifer to reassess his initial opinion. This came at a convenient time, just as we began to realize that there was going to be trouble with Elliot. I am not sure what new information came to Scott Pfeifer, but low and behold his opinion changed. His opinion is now that CIF must lend to a South Carolina company".

66. In the letter, Katz further stated: "Remember that Arthur was not sending us [LRI] money until recently, and now only enough to meet the interest payments." Further: "[Arthur] has control of CIF, any and all companies formed in South Carolina, and the ability to withhold money to LRI. Arthur withholding money will push us into bankruptcy." Katz also stated that LRI should separate from FIELD and CIF.

67. Meanwhile, on or about March 26, 2002, FIELD caused Bolingbroke to loan \$56,000 to Monmouth for the purchase of a condominium at the River Bend development in Greenville. Monmouth executed a mortgage in favor of Bolingbroke which was signed by PFEIFFER as President of Monmouth. This condominium was used by PFEIFFER and FIELD and some of their friends as a place where they could play their historical and fantasy strategy boardgames. FIELD and PFEIFFER also used this property as an address for Bolingbroke and Monmouth and to store records related to these entities as well as Cosimo.

68. Despite his claims that he was a passive member of LRI, FIELD continued

to actively participate in LRI board meetings. He was the one who sent the agenda out for the April 2002 board meeting, which included ratification of the settlement agreement with Elliot Salzman based on the misconduct and the acceptance of Salzman's resignation from LRI. The meeting was held on April 17, 2002, and FIELD was present by telephone. FIELD seconded five motions during the Board meeting and voted on these and several other motions during the Board Meeting. FIELD gave the CIF update, and was present for the LRI update.

69. On June 5, 2002, LRI executed a Revolving Credit Promissory Note for up to \$21,000,000 and an accompanying Loan Agreement in favor of CIF. The documents were signed by Martin Ender as President of LRI and FIELD as manager of CIF, and prepared by F. SCOTT PFEIFFER.

70. As collateral for the June 5, 2002 loan agreement, LRI pledged to CIF its membership interest in nineteen LLCs and mortgages in its favor on thirteen third party loans.

71. The June 5, 2002 loan agreement also included the following payment schedule for LRI to retire its principal obligation to CIF:

<u>Dates</u>	<u>Maximum Credit Limit</u>
July 1, 2002 - December 31, 2002	\$21,000,000
January 1, 2003 - June 30, 2003	\$19,000,000
July 1, 2003 - December 31, 2003	\$16,000,000
January 1, 2004 - June 30, 2004	\$13,000,000
July 1, 2004 - December 31, 2004	\$10,000,000
January 1, 2005 - June 30, 2005	\$5,000,000
July 1, 2005 - December 31, 2005	\$1,000,000
January 1, 2006	End of Term

LRI would be unable to meet this drawdown schedule.

72. FIELD and PFEIFFER also attended the LRI board meeting on August 18, 2002. FIELD made or seconded a number of motions. He gave the CIF business update, and was present for the LRI update.

73. In November of 2002, a secretary at LRI was reconciling a Federal Express bill and discovered a number of transactions reflecting packages being sent from Lancaster Mortgage Bankers, or "LMB", to Bradford Financial Group, or "BFG" at the CIF address. They also discovered LMB packages being sent to FIELD's home address and one to PFEIFFER for Cosimo. LMB involves Elliot Salzman, and the possibility that FIELD was still dealing with Salzman caused great concern to the other members of LRI.

74. FIELD attended the December 22, 2002 LRI board meeting, where he made or seconded a number of motions. FIELD gave the CIF update and was present for the LRI business update. The minutes reflect there were "[l]engthy discussions regarding CIF and the other pass through companies it utilizes. Who owns them and what information does LRI/CIF have about them? BFG was the most in question with Credo following". FIELD at this time knew full well the ownership of these entities; BFG refers to Bradford Financial Group, which was formed in April 2002 with FIELD's wife Kathryn Taillon as the organizer, and as stated before FIELD had an ownership interest in Credo.

75. The minutes from the December 22, 2002 meeting also reflect "a lengthy discussion regarding the 'HIT' taken as a result of Salzman and the need to mandate that no related company or person, whether involved with LRI, CIF, LG, LD, Wiltshire or any other company, have any dealings with Salzman or LMB now or in the future". The minutes reflect that "not all present were in agreement".

76. On January 9, 2003, PFEIFFER provided an opinion letter to FIELD as

manager of CIF in which PFEIFFER opined that the proposed 2003 prospectus complied with state law.

77. In a January 11, 2003 email to the LRI partners, on which PFEIFFER was copied, FIELD again stated that "LRI cannot control CIF", that PFEIFFER "knocks himself out to get loans and service them", and that PFEIFFER "devotes 25% of his time to helping us".

78. In a January 13, 2003 email to his partners in LRI, FIELD stated: "As to MFG and Cosimo, I own not a single share in either of them. To my knowledge I have never received a penny from either." These statement(s) were material misrepresentations of fact, i.e., lies, given FIELD's effective ownership of Bolingbroke.

79. In February 2003, FIELD tried to get Martin Ender as president of LRI to sign a ratification he and PFEIFFER prepared, which purported to ratify all actions taken by CIF management in 2002, to waive any conflicts given PFEIFFER's indirect ownership in Monmouth and Cosimo, and to indemnify PFEIFFER. Robert L'Abbate responded by email that LRI could not execute such a document, as "LRI ... does not control or have any management input on the operations of CIF" and has "no knowledge of [CIF]'s accountant's activities, attorney's dealings or business practices as a whole".

80. On February 27, 2003, FIELD signed Form U-1, Uniform Application to Register Securities, which was submitted to the Securities Division in connection with CIF's application to register securities of up to \$50,000,000.

81. On March 17, 2003, CIF issued the 2003 Prospectus for an offering of \$50,000,000 "Series 2003 Floating Rate Notes". This prospectus, and its subsequent amendments, were filed with the South Carolina Securities Division, and the issuance was

subject to the provisions of the Uniform Securities Act in the statutory law of South Carolina. The Securities Division registered the offering on March 17, 2003.

82. Copies of CIF's balance sheet, included with the 2002 Independent Auditor's Report, which accompanied the 2003 Prospectus, reflect \$37,370,679.95 in Notes Due Investors as of December 31, 2002.

83. On March 17, 2003, FIELD sent a letter to noteholders generally describing to them CIF's financial position. Underlined in the letter was the following: "The only debt CIF has is to its investors." On or around August 14, 2002, FIELD caused CIF to loan \$2,275,000.00 to Cosimo for the Tiger related entities. A portion of this money went to Credo, again in which both FIELD and PFEIFFER had an ownership interest. On or about October 15, 2002, Credo loaned \$550,000.00 to CIF from funds Credo had received through Cosimo from CIF. CIF paid this money back to Credo on or about October 21, 2002.

84. Indeed, in a letter to LRI's auditors, Smolin & Lupin in approximately April of 2003, and which was copied to PFEIFFER, FIELD claimed that Credo had actually borrowed \$500,000 on a short term note on October 15, 2002. This statement represents a material misrepresentation of fact, i.e., a lie, as it was actually CIF that borrowed from Credo according to FIELD's own accounting.

85. Late in March of 2003, Carolina Investors, Inc., folded, causing a loss to many noteholders in that company. In response to the unease created by this event, FIELD sent a letter dated March 28, 2003 to noteholders to reassure them about CIF's financial standing. In the letter, FIELD noted he offered to serve on a regulatory commission and had offered his "expert legal services in the drafting of legislation".

86. FIELD's letter of March 28, 2003 promised that CIF would undergo voluntary semi-annual audits. This did not occur. FIELD's letter also promised that two investors would be added to the management committee as observers. While this did initially occur with Sharon Finch and George Grant being so added, this did not persist after 2004.

KNOWLEDGE OF A POTENTIAL VIOLATION OF THE BLUE SKY LAWS

87. The failure of Carolina Investors caused further concern for the remaining directors of LRI as to the actions being taken by FIELD and PFEIFFER with regard to CIF, Cosimo, Monmouth, and the other entities. On March 30, 2003, a special meeting of the LRI board was held. FIELD was not present. According to the minutes, the purpose of the meeting was "to discuss the current situation of CIF and LRI and the issue of 'Blue Sky Laws.'" "Blue Sky Laws" refer to the laws enacted by the various states governing the sale of securities. Robert L'Abbate discussed that LRI would need competent legal counsel to address the issues of securities laws, regulations, and rules. It was noted that the LRI auditors were going to need a "complete audit of CIF and its related companies such as BFG, Cosimo, MFG and whatever others may exist". There was a discussion of separating LRI from FIELD and CIF. Finally, the minutes reflect that the Board of LRI agreed that LRI "WILL NOT ACCEPT any actions taken by" Field, CIF, or any employees or members of companies affiliated with CIF, including capital calls, unless the LRI Board was involved in the decision-making process.

88. On April 7, 2003, Mr. Chris Devito at Smolin Lupin & Co, PA, the auditors of LRI, sent a letter to Robert L'Abbate at LRI in which he noted his firm could not complete their audit of LRI without information on CIF's other lending activities and the ownership to those entities, including Credo, Saxon Holdings, Tiger Transport, Cosimo, Monmouth,

and Bradford Financial Group. These concerns were relayed to FIELD at CIF.

89. FIELD responded to the concerns of the auditor by letter on around some time in April of 2003. PFEIFFER was copied with this letter. In justifying his lending activities outside of LRI, FIELD stated the following: "Fortunately, after review, our securities lawyers and our accounting firm recommended immediate diversification in a much belated attempt to gain the Safe Harbor provisions of the 1933 Act. We are a long way off, but are working very hard to achieve this." And: "It is only through swift and substantial diversification of loans inside of South Carolina that we can hope to survive federal regulatory scrutiny." CIF investors were never told that CIF had been operating outside the Intrastate Offering Exemption of the Federal Securities laws, that CIF was "a long way off" from complying, or that, at the time, the statement was made, that CIF was concerned about its ability to "survive regulatory scrutiny."

90. FIELD also had PFEIFFER send FIELD another opinion letter, dated April 15, 2003. In it, PFEIFFER discussed again the Intrastate Offering Exemption, and noted that CIF had made "great progress" in moving towards compliance with the exemption by its cessation of direct lending to LRI and its new lending in South Carolina. However, it continued: "Several goals need to be accomplished yet. In order to clearly qualify for the SEC Safe Harbor, 80% of all collateral should be located in South Carolina. Qualification for the safe harbor is not required, but the closer you get the more likely to succeed you will be."

91. Further, in an email to his LRI partners dated April 14, 2003, FIELD wrote that he had employed his wife Kathryn Taillon to assist him as the two of them handled the distributions and other financial transactions of CIF.

92. FIELD's responses to the LRI members and the LRI auditor caused them to hire investigator Michael O'Shea to look into FIELD and PFEIFFER's conduct in South Carolina. On behalf of LRI, Robert L'Abbate also engaged Kymric Mahnke, Esquire, of the respected and longstanding law firm of Nelson, Mullins, Riley, and Scarborough, LLP, to review the propriety of FIELD and PFEIFFER's conduct. Mahnke has extensive business law experience, and indeed PFEIFFER had been employed at Nelson, Mullins Riley, and Scarborough, LLP. Mahnke also involved Neil Grayson, Esquire, of Nelson, Mullins, Riley, and Scarborough, LLP. Grayson has decades of securities law experience.

93. On April 21, 2003, Michael O'Shea and Chris DeVito from Smolin Lupin went to CIF's auditor, Porter and Highley, to retrieve the audit work papers. They were taken to Legal Eagle, a copying service, to be duplicated and provided to Kymric Mahnke. The next day, FIELD, KATHRYN TAILLON, and a third individual who refused to identify himself, arrived at Legal Eagle demanding return of the documents. FIELD presented a business card with his Greenville, SC address identifying him as an "Attorney-at-law", even though he was not and never has been licensed in South Carolina. The documents were copied and returned to Porter and Highley.

94. Faced with these new developments, another special meeting of the LRI board took place on April 27, 2003 in the absence of FIELD. The Board discussed CIF and Field after L'Abbate raised concerns about FIELD being manager of CIF. L'Abbate's main concern was that the LRI Board and management did not know what FIELD was doing in South Carolina and with whom FIELD was conducting business. The Board discussed splitting LRI and CIF, firing FIELD as manager of CIF, or putting another manager in place at CIF along with FIELD. Ultimately, it was decided that legal counsel needed to look at

the situation, and the ultimate goal was to protect the investors in South Carolina.

95. Meanwhile, Kymric Mahnke and Neil Grayson had reviewed CIF's actions and became concerned as to the sufficiency of the disclosures in the CIF prospectuses as well as the legality of CIF's operations under the federal Intrastate Offering Exemption. At some point in May of 2003, Mahnke had a meeting with PFEIFFER in which he discussed some of these concerns with PFEIFFER. Mahnke also expressed concern with the ethical and legal implications of PFEIFFER functioning as the attorney while having an ownership in the various entities. PFEIFFER did not try to defend his actions and listened to Mahnke with a blank stare.

96. PFEIFFER responded to Mahnke's concerns with an unsigned letter to Mahnke dated May 7, 2003. PFEIFFER proposed two solutions to Mahnke's concerns: (1) the companies are split with FIELD getting CIF and LRI getting FIELD's interest in the Lancaster-related entities, following the creation of a trust in which the assets were placed and an effort was made to collect the roughly 1.8 million dollars still owed to LRI by Elliot Salzman for his misconduct, or (2) LRI could register a public offering to raise money to pay off the CIF notes. PFEIFFER concluded: "With the South Carolina notes repaid, the entire issue of South Carolina and the intra-state offerings disappears, and CIF is no longer needed and can be simply dissolved."

97. Following these discussions with PFEIFFER, on May 8, 2003 Kymric Mahnke recommended to L'Abbate that LRI get the following information from PFEIFFER "as soon as possible": the maturity date of all investor notes, accountant confirmation of all money owed to investors, an accounting of all the loans to and from Cosimo, loan documentation as to the end borrower of all the Cosimo loans, and all correspondence to the Attorney

General. Neil Grayson concurred and offer further suggestions, further asking if Mahnke had "a summary of the structure or issues or background or description of this mess".

98. In any event, Kymric Mahnke and Neil Grayson, who again both have extensive experience with business law and are members of the respected firm of Nelson, Mullins, Riley and Scarborough, LLP, concluded that CIF clearly did not fall within the Intrastate Offering Exemption and that CIF's activities were in violation of federal law. They concluded that PFEIFFER's assertion that CIF could be in compliance by diversifying its lending and merely lending to a South Carolina intermediary like Monmouth before sending the money out of state was "ridiculous", and that no reasonable lawyer could think such a plan was legal.

99. Accordingly, on May 9, 2003, Mahnke sent a letter to L'Abbate in which he stated: "CIF must be instructed to stop selling securities immediately. Now that LRI has advice that the securities laws exemption is not available, it cannot permit CIF to continue selling securities at all. To do so would result in a knowing violation of the securities laws, and subject LRI and its principals to increased civil, and perhaps even criminal liability".

100. Mahnke's May 9, 2003 letter continued that FIELD also needed to be instructed to stop selling securities for any other entity, and that someone representing LRI should be posted at CIF offices to preserve records and ensure no further sales of securities occurred.

101. Mahnke's May 9, 2003 letter stated that the CIF records needed to be subjected to a forensic accounting to determine the actual amount of investor liability, and that sufficient funds should be put in place to cover redemptions.

102. Finally, Mahnke's May 9, 2003 letter suggested mechanisms by which LRI

could "negotiate a separation from FIELD as quickly as possible".

103. On May 12, 2003, Mahnke followed up with a letter to PFEIFFER in which noted their "discussions this past week" and asked for the information from CIF that he and Neil Grayson identified in their email of May 8, 2003. Mahnke concluded: "Scott, it is imperative this information be provided [to] LRI as soon as practicable".

104. Robert L'Abbate raised Mahnke and Grayson's concerns to FIELD. FIELD refused to stop selling securities and responded that LRI legally could not dictate anything to FIELD as to how he ran CIF.

105. On May 20, 2003, L'Abbate wrote Mahnke an email in which he stated, among other things: "I am working on getting something done to deal with Field. ... He is working hard at getting us to buy his interests out of [LRI] and fund the next company for him. That isn't an option but we will accomplish the goal of shutting down CIF quickly".

106. On June 9, 2003, Mahnke wrote L'Abbate an email in which he complained that he had just attended a concert and CIF was still advertising there. L'Abbate responded with an email to Mahnke in which he stated that FIELD had been working with PFEIFFER on agreements and to meet with the state Securities Commissioner. L'Abbate wrote that "I do understand your position on the sales of securities and Mr. Field is on notice as to take in any new securities". Among other things, L'Abbate also states that "the hardest thing will be to get an agreement that allows us to move forward and not have Arthur interfere in either NJ or CIF".

107. The Nelson Mullins file for LRI reflects Mahnke and Grayson discussing a response to L'Abbate on June 10, 2003, in which Mahnke noted that "[w]hile the South Carolina Securities Laws may be an issue, the overriding issue concerns the Federal

Securities laws for which CIF does not have an exemption for the sale of its securities." He stated that nothing worked out by the South Carolina authorities could address the federal problem. Additionally, he noted that "the problem with Field's continuing presence needs to be addressed immediately. Even though [Field] has been directed to stop selling securities, the ads continue to run suggesting he may not be obeying that order."

108. After having heard nothing from LRI, Mahnke sent on June 20, 2003, a letter in which he terminated his representation of LRI. Mahnke wrote: "It is our opinion, however, that the risks of this engagement under the present circumstances are too great for this firm to continue to work for Lancaster. Another advertisement for CIF investments ran right in the middle of the Greenville News' stock quotations this morning. No reasonable person could conclude, at this point, that your command to Mr. Field to stop selling CIF securities has been obeyed."

109. However, L'Abbate was unable to come to an agreement with FIELD to stop CIF's selling of securities, or to remove FIELD from control of CIF. Faced with ARTHUR FIELD's refusals, L'Abbate and LRI began to try to negotiate a split of LRI and CIF and FIELD. In an August 11, 2003 letter to the South Carolina Securities Division to address various concerns as to whether CIF's advertising was misleading, PFEIFFER wrote that "negotiations are currently underway with the New Jersey member to redeem its interest, which will make the company totally locally owned and operated".

110. On October 4, 2003, FIELD sent a letter to LRI in which he requested verification of the condition of title to any property LRI had, and also demanded "the \$3 Million payment on the credit line remitted to CIF on or before December 31, 2003, in accord with the terms of the Agreement filed with the Securities Division of the Attorney

General of South Carolina".

111. On October 9, 2003, FIELD held a meeting for investors, at which he made the following representations. At the meeting, he told the investors that loans are to be secured by a first mortgage, and that the appraised value had to exceed the loan by 20%. He also stated that the company would never loan money to its managers. Of course, CIF was already lending to Cosimo, in which FIELD had a hidden interest through Bolingbroke.

112. On October 10, 2003, FIELD issued a letter to noteholders "as part of our commitment to keep you fully informed" regarding the status of CIF's business. Despite such a laudable promise, at no point in the letter did FIELD advise noteholders that experienced business attorneys at one of the State's most respected firms had advised that CIF's business model was flatly illegal and subjected the company to the prospect of significant civil and criminal liability. Nor did FIELD advise that he had an interest in Cosimo and was hiding his involvement with use of Bolingbroke and a fake name. These failures to disclose represent omissions to state material facts to investors.

113. On November 14, 2003, Gary Kraft as Controller of LRI sent a letter to PFEIFFER for Monmouth in which he offered to substitute Lancaster's membership interest in Point Pleasant Towers, LLC, in an attempt to "over-collateralize" the Monmouth loans. In return, he requested that Monmouth extend the term of the loans.

114. Given that CIF and FIELD were going to be separating from LRI, CIF acquired 100% of the Monmouth membership interest and PFEIFFER resigned as manager at some point in November 2003.

115. Meanwhile, a meeting took place at PFEIFFER's office between Robert L'Abbate and Gary Kraft of LRI, and ARTHUR FIELD, PFEIFFER, and attorney Jim

Bannister, Esquire, representing FIELD and CIF. On November 19, 2003, Jim Bannister wrote a letter to L'Abbate regarding this meeting, in which he discussed, among other things, LRI's need to provide sufficient proof of security by mortgage or UCC lien for those properties on which it was possible, discussed the pending payment of \$3,000,000 due by LRI on December 31, 2003, noted that the LRI revolving loan would be recast with a lowering of the interest rate, and stated that in return for FIELD transferring his interest in the Lancaster-related entities to LRI, LRI would transfer its 91% ownership interest in CIF to FIELD.

116. On November 24, 2003, a special meeting of the LRI board occurred to discuss these issues. FIELD was not present. The members agreed to transfer LRI's interest in CIF to FIELD in return for FIELD's interest in all the Lancaster-related entities. Further, there was a discussion how to "cover the shortfall, if applicable, in the collateral that may be needed to guarantee the outstanding debt to South Carolina". The members agreed to pledge their interests in the Wiltshire project to cover any shortfall in LRI's collateral to CIF.

117. At some point on or around November of 2003, FIELD and Martin Ender as president of LRI executed a "Stock and Membership Transfer Agreement" which memorialized the split of LRI from FIELD and CIF.

118. On November 24, 2003, Gary Kraft as Controller of LRI sent a letter to FIELD advising that LRI would payoff a number of loans prior to their maturity date at the end of the year, but requesting an extension of the maturity date of other loans to September 30, 2004.

119. On November 25, 2003, FIELD responded to Kraft's letter, in which he

agreed to accept only \$50,000 of LRI's pending \$3,000,000 payment, and extend the note term. FIELD also agreed to change the note from a fixed rate to a floating rate which had the effect of lowering LRI's interest rate at that time. In return, FIELD requested that LRI agree to pay \$2,890,750 on Monmouth loans by December 15, 2003; and for its members to assign Wilshire interests as collateral. FIELD also stated LRI was to provide a complete listing of collateral and to secure such collateral with UCC liens or mortgages if it could.

120. LRI executed resolutions memorializing the split from CIF and FIELD on December 8, 2003.

121. On or about December 12, 2003, FIELD sent a letter to investors to inform them of his split from LRI and his acquisition of LRI's 91% interest in CIF. In the letter, touting "significant developments at Capital Investment Funding", FIELD stated: "Although we had an excellent and profitable relationship with that firm [LRI] since our creation in January 1999, our attorneys advised us it would be preferable to disconnect the ownership of the entities. Since LRI owned 91% of CIF, and was also its principal debtor, our advisors felt this could present a conflict of interest some time in the future".

122. These statements were materially misleading in a reference to an "excellent relationship" and a mere possible conflict of interest. Among other things, FIELD did not inform the investors that experienced business attorneys at one of the State's most respected firms had advised LRI that CIF's business model was plainly illegal, and that the breakup was precipitated by FIELD's insistence on continuing CIF's sale of securities despite this legal opinion and LRI's order to stop selling securities. FIELD did not advise investors about the removal of Elliot Salzman from LRI for improper use of money CIF lent to LRI, and the disagreements the other members had with FIELD's continued dealings

with Salzman despite this improper conduct. FIELD did not disclose the concern of the LRI Board as to FIELD's dealings and involvement with PFEIFFER, Monmouth, Cosimo, Credo, Bradford, and other South Carolina entities.

123. In the December 12, 2003, letter to investors, FIELD also stated that "all lending activities will be totally independent". This statement was materially misleading, as FIELD did not disclose his then-existing hidden ownership interest in Cosimo.

124. In a document dated December 2003, LRI and CIF entered into yet another Amendment to Revolving Credit Promissory Note. This document was signed by Martin Ender as President of LRI and FIELD as manager of CIF.

125. This December 2003 Amendment stated it was for the purpose of converting the interest rate from a fixed to a floating rate, and "amending the payment schedule on the note". The agreement required LRI to submit by February of each year sufficient proof of collateral, by way of "mortgage or UCC lien, or similar lien sufficient to secure debt as set forth in the Uniform Commercial Code". Struck out by hand from the agreement was a provision that failure to submit sufficient proof of collateral in a timely manner would constitute a breach.

126. This December 2003 Amendment further stated that no further advances would be made to LRI until the balance was reduced below \$6,000,000, and "[t]hereafter, advances shall be limited to a maximum of 20% of CIF's total assets or such other amount as shall keep CIF within the Safe Harbor provisions of the Securities and Exchange Act, but not more than \$9 million".

127. The December 2003 loan agreement also included the following payment schedule for LRI to retire its principal obligation to CIF:

<u>Dates</u>	<u>Maximum Credit Limit</u>
January 1, 2004 - June 30, 2004	\$18,950,000
July 1, 2004 - December 31, 2004	\$16,000,000
January 1, 2005 - June 30, 2005	\$13,500,000
July 1, 2005 - December 31, 2005	\$10,000,000
January 1, 2006 - July 1, 2006	\$5,000,000
July 1, 2006 - December 30, 2006	\$1,000,000
December 31, 2006	End of Term.

LRI would prove to be unable to live up to this paydown schedule either.

128. On January 22, 2004, FIELD sent a letter to Gary Kraft, on which CIF's auditor was copied, in which FIELD asked if the amendment to the revolving note had been executed yet by LRI.

129. On March 9, 2004, FIELD signed Form U-1, Uniform Application to Register Securities, which was submitted to the Securities Division in connection with CIF's application to register securities of up to \$50,000,000.

130. On March 19, 2004, CIF issued the 2004 prospectus for an offering of \$50,000,000 "Series 2004 Floating Rate Notes". This prospectus was filed with the South Carolina Securities Division, and the issuance was subject to the provisions of the Uniform Securities Act in the statutory law of South Carolina. The Securities Division registered the offering on March 19, 2004.

131. Copies of CIF's balance sheet, included with the 2003 Independent Auditor's Report, which accompanied the 2004 Prospectus, reflect \$39,330,342.37 in Notes Due Investors as of December 31, 2003.

132. On January 22, 2005, FIELD signed Form U-1, Uniform Application to Register Securities, which was submitted to the Securities Division in connection with CIF's application to register securities of up to \$50,000,000.

133. On March 19, 2005, CIF issued the 2005 prospectus for an offering of \$50,000,000 "Series 2005 Floating Rate Notes". This prospectus was filed with the South Carolina Securities Division, and the issuance was subject to the provisions of the Uniform Securities Act in the statutory law of South Carolina. The Securities Division registered the offering on March 21, 2005.

134. Copies of CIF's balance sheet, included with the 2004 Independent Auditor's Report, which accompanied the 2005 Prospectus, reflect \$38,048,629.31 in Notes Due Investors as of December 31, 2004.

135. On March 14, 2006, FIELD signed Form U-1, Uniform Application to Register Securities, which was submitted to the Securities Division in connection with CIF's application to register securities of up to \$50,000,000.

136. On March 22, 2006, CIF issued the 2006 prospectus for an offering of \$50,000,000 "Series 2006 Floating Rate Notes". This prospectus was filed with the South Carolina Securities Division, and the issuance was subject to the provisions of the Uniform Securities Act in the statutory law of South Carolina. The Securities Division registered the offering on March 29, 2006.

137. Copies of CIF's balance sheet, included with the 2005 Independent Auditor's Report, which accompanied the 2006 Prospectus, reflect \$38,994,739.83 in Notes Due Investors as of December 31, 2005.

FIELD'S KNOWLEDGE OF LRI'S DETERIORATION

138. LRI's financial position continued to deteriorate and it was unable to live up to the principal paydown schedule put in place with the December 2003 amendment. According to FIELD's own books, LRI last made a principal payment on the LRI direct

loans on May 12, 2005. As time passed, LRI fell further and further behind on the drawdown schedule put in place by the December 2003 Amendment to the revolving note. The inability of CIF's largest creditor to pay its debts timely meant that CIF's largest creditor was insolvent, with the consequence that CIF's solvency was placed at risk.

139. In January of 2006, FIELD sold 5% of his ownership interest in CIF to Sharon and Glen Finch for \$136,500. FIELD helped them set up a South Carolina entity named Log Cabin Financial, LLC to own this interest. In selling this 5% to the Finches, FIELD told them CIF's business was very healthy.

140. On November 7, 2006, FIELD sent an email to Robert L'Abbate as president of the Lancaster Group. In the email, FIELD stated that he had to cancel an \$8 million loan commitment because LRI and the related Lancaster Group had not paid CIF and "were in default in their payment of principal to CIF". FIELD continued:

"(1) We still need whatever money you can send ASAP. I have other commitments still waiting. Plus, we would like to clean up the default. The Atty General is waiting on the revised prospectus and I don't want to let anyone know your firm has not made a principal payment in over 1 year, despite the promissory note on file with the Atty General showing payments due of roughly \$4 Million annually;"

"(2) We have a new auditor who is supposed to start on 11/9. I will delay that for 10 days but I doubt I can wait beyond 12/1. I doubt the auditor will be as liberal as our prior auditor and will object greatly to the non-payment of principal. Most assuredly this will cause a problem for CIF."

"(3) I have gone \$200K in the hole. Between redemptions and small loan commitments I had to honor, I am overdrawn on available cash to lend. I can maintain this for a very short period, but not more than 10 days without fear of incident."

FIELD added: "I must insist upon an immediate payment of at least \$1.5 million to help you cure the current default".

457 CARLTON: FIELD SENDS MONEY TO LRI SO IT CAN PAY CIF

141. LRI was unable to make such a payment to cure its default and was in dire straits. In order to provide funds to LRI so that LRI could continue to make interest and principal payments to CIF and Monmouth, so that FIELD could avoid disclosure to CIF noteholders and regulatory authorities of LRI's and thus CIF's true situation, FIELD engaged in a scheme to send new CIF money to LRI through another company he owned named Trazom, LLC ("Trazom").

142. Trazom, LLC was first registered with the South Carolina Secretary of State on June 9, 2006. FIELD was listed as the agent and organizer.

143. Trazom takes its name from the fact that the famous composer and conductor Mozart occasionally signed his name Gnagflow Trazom, or Wolfgang Mozart backwards. As another hobby or avocation in addition to his fantasy boardgaming, FIELD conducts classical music.

144. LRI through L'Abbate issued a check to Monmouth for \$500,000 with the memo line "principal payoff", dated December 29, 2006 – right before end of the year 2006. The same day, LRI also issued a check to Monmouth for \$14,186.50, with the memo notation "11/01 - 11/30". LRI also issued that day a check to CIF for interest on its direct debt, in the amount of \$153,938.22. At the time LRI issued these checks (the "LRI checks") for a total of \$668,124.72, it had only \$373.77 in the bank.

145. FIELD then caused Monmouth to issue a check (the "Monmouth check"), dated December 31, 2006, to CIF for the amount of \$514,186.50, as a supposed payment of principal and interest.

146. At the time FIELD caused the Monmouth check to be issued, Monmouth had

only \$11,631.10 in the bank.

147. On January 2, 2007, FIELD caused CIF to "loan" \$725,000 to Trazom. The same day, Trazom paid \$750,000 to LRI, with a check (the "Trazom check") signed by FIELD, which had the memo line "Acquisition Wyckoff \$250K balance".

148. FIELD did not physically deposit the LRI checks totalling \$668,124.72 until January 4, 2007. They were physically deposited at a branch, and this was the day after FIELD's Trazom check to LRI cleared, on January 3, 2007.

149. FIELD did not physically deposit the Monmouth check he wrote to CIF, dated December 31, 2006, to the CIF account until January 8, 2007.

150. FIELD structured the transaction like this so he could later claim that LRI repaid CIF \$500,000 of principal in 2006, and was current on all its payments of interest in 2006. These circular checking account transactions were artifices to create a false appearance about LRI, and served to postpone the inevitable day of reckoning from the reality that CIF's lead debtor was insolvent.

151. Of course, the January payments from LRI inevitably came due and LRI still did not have any money. Thus, in furtherance of the same scheme, FIELD caused CIF to "loan" an additional \$250,000 to Trazom by check dated January 29, 2007. With a check dated the next day, January 30, 2007, Trazom paid \$250,000 to LRI, with a check signed by FIELD, that had the memo line merely stating "Bal note purchase".

152. On January 31, 2007, LRI wrote two interest payment checks dated January 31, 2007: one check for \$153,938.22 to CIF, and the other for \$14,186.05 to Monmouth. At the time it wrote these checks, it had just over \$200 in the bank. FIELD booked the checks as paid on January 31, 2007.

153. FIELD's Trazom check for \$250,000 cleared in LRI's account on February 1, 2007.

154. FIELD did not physically deposit LRI's check into the Monmouth account until February 5, 2007. He then wrote a check for \$14,180.00 from Monmouth to CIF that was dated January 31, 2009, at a time when Monmouth only had \$11,671.94 in the bank. FIELD did not deposit this check from Monmouth to CIF until February 7, 2007.

155. These cumulative payments of \$1,000,000 from CIF through Trazom to LRI were supposedly for the purchase of a \$600,000 note and mortgage from SRG 457, LLC to LRI, secured by a property at 457 Carlton Road in Wyckoff, New Jersey. Previously, in March of 2002 CIF had loaned \$600,750 to Monmouth for relending to LRI for SRG 457, LLC. In December 2002, CIF gave Monmouth an additional \$100,000 with the memo "SRG increase". On August 29, 2006, LRI had already filed foreclosure against SRG 457, LLC for failure to pay its obligation to LRI.

156. On July 16, 2007, FIELD then caused CIF to pay Trazom, LLC \$25,000, and forgave Trazom's outstanding loan balance by the full \$1,000,000 by booking the transaction as the purchase of real property (when in fact CIF had supposedly only purchased a note and mortgage already in foreclosure, and for which it did not even have any assignment yet). FIELD's Quickbooks memorialized this transaction as: "SRG 457 Purchase real property NJ foreclosure; satisfy outstanding mortgage [of Trazom]; CIF to collect interest from 7/1/07; Trazom to acquire and assign SRG 457 to CIF immediately; foreclosure to continue in LRI and CIF name". Thus, FIELD caused CIF to pay \$1,000,000 to LRI through Trazom, for a \$600,000 note and mortgage that was already in foreclosure proceedings, on a property for which CIF had already lent LRI over \$700,000 – solely so

LRI could send substantially all of the \$1,000,000 back to Monmouth and CIF as "payment" of interest and principal. The purpose of these transactions was to enable CIF to hide the reality that its leading debtor was insolvent, meaning that CIF itself faced insolvency.

157. Moreover, FIELD did not even bother to immediately secure for CIF the asset he had supposedly caused CIF to purchase for \$1,000,000. It was not until June 6, 2008 – over a year later – that Robert L'Abbate executed an Assignment on behalf of LRI II, LRI's successor in interest. It was not until July 28, 2008 when FIELD caused CIF to file a motion to intervene in an imminent foreclosure sale of the underlying property at 457 Carlton.

158. On or about August 27, 2008, FIELD caused CIF to enter into a contract to sell the 457 Carlton property to 457 Carlton Road, LLC, for \$394,000. The contract with CIF was signed for 457 Carlton Road, LLC by its Managing Member Elliot Salzman – who was, as noted before, the long-time friend of FIELD's who been kicked out of LRI for financial improprieties with LRI money lent to it by CIF.

159. The deed to CIF from the court ordered sheriff's sale from the foreclosure was issued on September 15, 2008. On September 22, 2008, FIELD prepared a deed conveying the 457 Carlton Road property to 457 Carlton Road LLC. On October 21, 2008, Elliot Salzman wrote a letter to FIELD in which was enclosed a check for CIF's net proceeds from the sale of \$305,998.63. FIELD never cashed the check on behalf of CIF. He ultimately delivered it to Jerry Saad, the receiver of CIF, on or about some time in December 2011 when Saad inquired about this transaction. FIELD stated to Saad that he did not cash the check as he knew it would be no good.

160. Thus, FIELD caused CIF to spend \$1,000,000 for a \$600,000 note and

mortgage that was already in foreclosure on a property for which CIF had already lent LRI over \$700,000, then sell the property to an entity involving his friend Elliot Salzman (who had already been kicked out of LRI for financial improprieties) for a mere \$394,000, for which CIF only received a check for the net of \$305,778.63, which FIELD did not even bother to cash or collect. These transactions caused a large loss to CIF and were only for the purpose of assisting FIELD's efforts to cover-up the fact of LRI's difficult financial position and the consequences such a position presented for CIF.

161. Further, on June 19, 2009, long after these transactions had taken place, FIELD filed with the South Carolina Secretary of State a "Statement of Dissociation" from Trazom, in which he put he had left the membership of Trazom on July 1, 2007 — nearly two years earlier, and immediately before FIELD had caused CIF to buy the note from Trazom for the full \$1,000,000, and also wrote a \$25,000 check to Trazom.

REGULATORY ISSUES WITH THE SECURITIES DIVISION

162. Around the same time FIELD was sending money to LRI to conceal the dire nature of LRI and thus CIF's position, CIF developed severe regulatory problems.

163. CIF and FIELD's registration to sell its Series 2006 Senior Notes expired on or about March 29, 2007.

164. On or about March 9, 2007, the Securities Division of the South Carolina Attorney General's Office ("Securities Division") received from FIELD CIF's 2007 application for registration for a \$50,000,000 offering of Senior Notes.

165. On March 9, 2007, David L. Thomas gave the opinion letter for the proposed 2007 prospectus. He expressly did not offer any opinion on "any state securities or blue sky laws".

166. On March 13, 2007, FIELD met with members of the Securities Division.

167. On or about March 22, 2007, the Securities Division received the opinion of a Certified Public Accountant ("CPA") that CIF's 2006 financial statements did not comply with Generally Accepted Accounting Principals ("GAAP").

168. On or about May 11, 2007, the Securities Division issued a "Notice of Intent to Seek the Issuance of a Stop Order Denying Effectiveness to a Registration Statement and to Seek the Issuance of an Order Revoking Available Exemptions".

169. This document alleged CIF's registration was incomplete in a number of material respects and could tend to work a fraud upon purchasers. One ground alleged was that CIF did not qualify for the Intrastate Offering Exemption from federal registration.

170. On May 14, 2007, FIELD signed an affidavit in which he claimed his March 13, 2007 unsworn interview had been taken out of context. In it, he claimed that CIF has acted since 2003 with the "firm belief it is not committing any federal securities violations and is doing all reasonable efforts to come within the exemptions provided"; that in 2006 LRI paid \$500,000 of its debt; that LRI had paid \$100,000 of its direct debt and \$50,000 of its MFG debt in 2007; that LRI has made all payments due prior to May 1, 2007; that "at no time did [he] intend to indicate that either risk [a default or anticipatory breach by LRI] was imminent"; and that "[i]t was not my intent to imply any such default (or 'anticipatory breach') existed and any such implication on my part was a misstatement other than to advise the Division it is always possible any borrower could default, which could adversely affect the company".

171. On May 16, 2007, FIELD wrote a letter to the Securities Division, in which he contended, among other things, that "as of December 31, 2006, LRI was not in default

under the terms of the loan agreement in place at that time", and contended LRI had repaid \$500,000 during 2006, which was applied to the MFG debt by agreement of the parties.

172. On May 21, 2007, FIELD filed with the Securities Division an amended registration for CIF's 2007 Senior Notes, which the Securities Division returned. On May 23, 2007, FIELD advised that he was having PFEIFFER explore "the federal law and various exemptions".

173. On May 30, 2007, PFEIFFER wrote the Securities Division that they had "formulated a plan for going forward that we believes [sic] not only complies with all applicable federal and state securities laws, and addresses the concerns of your department".

174. The plan formulated by FIELD and PFIEFFER to address CIF's lack of compliance with the Intrastate Offering Exemption was to create a new entity by the name of Capital Intrastate Funding, LLC ("CIF2"). On June 11, 2007, an application for registration for \$30,000,000 of notes was filed by FIELD's son Davyd Field on behalf of CIF2. The membership of this company was to be Ashley Morey, a long-time employee of CIF; Davyd Field; Gary Malvern, a friend of FIELD's; Davyd Field for Tikal trust; and PFIEFFER for Brittainia Trust.

175. Accompanying it was a letter from FIELD, in which he explained that as notes mature, accredited investors could renew with CIF under the Rule 506 exemption from federal registration, and non-accredited investors could only buy notes in CIF2, which would solely do intrastate transactions within South Carolina.

176. On June 15, 2007, CIF sent the Securities Division a copy of the Rule 506

filing with the federal Securities and Exchange Commission.

177. On October 9, 2007, the Securities Division filed a "Notice of Intent to Seek the Issuance of a Stop Order Denying Effectiveness to a Registration Statement", regarding CIF2's filing. The document alleged that the registration was incomplete and would tend to work as a fraud on purchasers.

178. This regulatory trouble severely impeded FIELD's efforts to bring in new money to try to meet CIF's obligations.

CONTINUED LRI DETERIORATION AND THE FORMATION OF LRI II

179. Meanwhile, LRI's financial position continued to falter, and FIELD continued to send money to Lancaster-related entities so that they could send it back as payments on the LRI debt, and FIELD could continue to conceal the dire straits of LRI and thus CIF.

March 2007

180. On March 29, 2007, FIELD caused CIF to send \$290,000 by wire to Lancaster Developers, a Lancaster related entity, supposedly to "purchase units".

181. On April 2, 2007, \$9,290.12 was wired from Lancaster Developers back to Monmouth.

182. That day, FIELD then wrote a check for \$9,290.00 from Monmouth to CIF to represent LRI's interest payment.

183. On April 2, 2007 as well, money was also wired back from Lancaster Developers to CIF for LRI's interest payment of \$155,217.49 on the direct debt, which FIELD booked as occurring on March 30, 2007.

April 2007

184. On April 18, 2007, some of the remaining shareholders of LRI executed a Written Consent, in which it was noted that LRI was in default in its loan to CIF, and had "no liquid assets to make any payment to CIF or its subsidiary, and no credit". The document also noted that LRI had interests in real property, but that it was subject to mortgages and LRI had no ability to make mortgage payments. They approved a series of transactions whereby a new entity would be formed in which Robert L'Abbate would have sole ownership.

185. Of course, while FIELD's scheme took care of the March payments, inevitably the April payments to CIF and Monmouth had to occur, and LRI could not make them.

186. Lancaster Developers started the month of April 2007 with about \$63 in the bank. Thus, on April 24, 2007, FIELD caused CIF to send another \$290,000 by wire to Lancaster Developers. This time FIELD's Quickbooks entry reflects it was for "condo purchase acquisition".

187. Once Lancaster Developers had the money from CIF, it on April 30, 2007 wired CIF \$155,217.49 for LRI's direct debt interest, and \$9,290.12 to Monmouth for LRI's Monmouth interest payment.

188. That day, FIELD then wrote a check for \$9,290.00 from Monmouth to CIF to represent LRI's interest payment.

May 2007

189. LRI then used some of the remaining funds FIELD caused CIF to send to Lancaster Developers to make a supposed "principal payment" to Monmouth on May 2, 2007. Lancaster Developers actually wired Monmouth \$50,492.39 on May 1, 2007. On

May 2, 2007, FIELD wrote a Monmouth check to CIF for \$50,000.

190. As with the \$1,000,000 Trazom transaction to prop up LRI described previously, FIELD did not even bother at the time to get any documentation – much less sufficient documentation – that CIF owned the two condo units he was supposedly purchasing with \$580,000 of CIF and thus investor money.

191. It was a year later in May of 2008 before FIELD sent an email to LRI, on which he copied PFEIFFER, in which he stated: "I have asked twice more now about the condo units. I have a buyer wanting both of CIF's units. I have not heard anything from you nor received the necessary paperwork. I don't want to lose the sale".

192. On May 23, 2008, Gary Kraft responded on behalf of LRI with an email in which he attached among other things a contract memorializing the sale of Unit 401 only.

193. On May 27, 2008, FIELD sent an email to LRI, on which he copied PFEIFFER, in which he enclosed "title affidavits and deeds to units 401 and 109", and asked that they be executed.

194. On July 21, 2008, FIELD sent an email to LRI in which he stated, among other things: "This firm's primary goal is to recoup its \$580,000 or as much as can be gotten swiftly. (We still don't understand why a deed with clear title wasn't recorded in 2007 as agreed for each unit, but will overlook that for the time being if this matter is resolved correctly before August 15)." Later: "I might expect it might be difficult for whomever received the funds to explain where the \$580,000 went last year in that event. Let us hope that doesn't become an issue."

195. There was no resolution as to whether CIF even owned these properties to which it had sent LD a total of \$580,000 a year earlier. Thus, CIF had to file suit in New

Jersey on July 25, 2008, to try to obtain an ownership interest in the properties which CIF had supposedly purchased a year earlier. In the lawsuit, CIF was not even sure what it was supposed to have received when FIELD caused CIF to send the total of \$580,000 to LRI for the two properties. CIF alleged it sent the money based solely on representations that title would be transferred to CIF, "or that CIF would be granted some other security interest in Unit 401".

196. Indeed, FIELD signed a Certification, dated November 3, 2008, that was filed in the lawsuit, in which he noted that as of May 15, 2008 – a year after he sent the money to LD – he had "not heard anything nor received the necessary documentation reflecting ownership of Units 401 and 109".

197. Ultimately, LRI did provide title to CIF for Unit 401. FIELD then caused CIF to sell that condo to an entity that involved Robert Sypher and Elliot Salzman (who had, as noted before, been kicked out as President and CEO of LRI for financial improprieties). The net CIF received after all of this was a net of only \$184,423.10.

June 2007

198. LRI's financial position had gotten so bad that in June of 2007 Robert L'Abbate approached FIELD for a loan in order to make LRI payroll. In order to continue his scheme and avoid having to advise investors and regulatory authorities of the true dire financial status of LRI and thus CIF, FIELD caused CIF to loan L'Abbate personally \$75,000 on June 10, 2007, which L'Abbate paid back on June 26, 2007 by getting a home equity loan.

Capital distributions

199. Despite knowing full well the true dire status of LRI and thus CIF, and having engaged in the above described schemes to prop up LRI so he would not have to disclose the true financial condition to investors and the Securities Division, FIELD made sure to get as much as he could out of CIF before the inevitable demise that he was keeping a secret. Aside from his salary, on May 25, 2007, FIELD wrote a check to himself for \$180,000 from a CIF bank account, as a "partial distribution capital account".

200. FIELD also wrote a check to himself an additional \$90,000 on August 31, 2007, as "capital distribution".

October 2007 Agreement

201. On October 1, 2007, LRI II (as successor in interest to LRI) entered with CIF into an "Agreement to Repay Indebtedness owed by Lancaster Resources, Inc., to Capital Investment Funding, LLC". This document was signed by Robert L'Abbate as Manager of LRI, II and FIELD as manager of CIF and Monmouth Financial Group, Ltd ("MFG").

202. The October 1, 2007 agreement stated that since LRI was merging into LRI II, it was for the purpose of LRI II assuming the debt LRI owed to CIF and CIF's wholly owned subsidiary MFG. The outstanding amounts LRI owed were listed as \$17,424,980.89 owed to CIF and \$922,251.60 owed to MFG.

203. The October 1, 2007 agreement further waived all defaults under the prior agreements, providing: "The date of maturity of the amounts payable under the Note and the Promissory Note will be extended as provided below; all defaults are hereby waived; and no prior default shall be deemed to exist with respect thereto."

204. The October 1, 2007 agreement set forth yet another payment schedule, as follows:

<u>Dates</u>	<u>Principal Payment Due</u>
October 31, 2007	\$500,000
December 31, 2007	\$1,000,000
June 30, 2008	\$2,500,000
December 31, 2008	\$4,500,000
June 30, 2009	\$4,000,000
December 31, 2009	\$7,847,232.49 (or the balance of the total indebtedness)

Again, LRI would be unable to live up to this latest drawdown schedule.

205. The October 1, 2007 agreement also included a Release of Collateral in which CIF and MFG released LRI and LRI II of "any and all security interests they may have in collateral under the [previously existing] Loan Documents and Promissory Note". The provision stated that LRI was to provide in February of each year proof of sufficient collateral, including: "valuations in form commonly accepted in the industry" such as independent commercial appraisals.

206. Finally, the October 1, 2007 agreement had a confidentiality provision which precluded disclosure to anyone but the professional advisors of CIF, LRI II, and L'Abbate.

207. LRI was unable to make the principal payments as required by this latest agreement, and made its last interest payment to Monmouth in January 2008 (which FIELD booked as occurring in December 2007).

THE WINDING UP

208. Accordingly, FIELD and PFIEFFER decided to wind up CIF and called a CIF board meeting on January 15, 2008. FIELD called Sharon Finch and asked her to attend the meeting. He did not tell her at that time that the company was in difficult financial position or that he wanted to wind the company up. At the meeting, ARTHUR FIELD presented to Finch and others that CIF's position was still very positive, and it was related

that all the investors would be paid back. FIELD then asked Sharon Finch if anyone had a motion, and looked at her. She then made the motion to wind up the business, feeling as if FIELD expected her to make the motion.

209. The minutes from this meeting reflect a very detailed winding up motion being made by Finch, and that FIELD abstained from the first vote on the motion. However, the details of this motion came from FIELD, and the motion was his proposal that he was advocating to Finch and the other members.

210. On January 20, 2008, FIELD sent a letter to noteholders that CIF would be winding up. He characterized the company's financial position as solvent and "in good financial condition", and stated he "strongly believed" all noteholders could be substantially repaid.

211. Civil lawsuits were filed against CIF, from which Jerry Saad, CPA, was appointed as the Reciever for CIF.

212. On April 17, 2008, L'Abbate, as the sole member of LRI II, executed a Written Consent in which he noted that the October 1, 2007 agreement required LRI to set forth a schedule of collateral to pledge for the indebtedness to CIF. LRI was only able to pledge the Partial Settlement Agreement owed by Elliot Salzman for \$1,747,728 (which had resulted from his misconduct towards LRI and CIF), a promissory note between LD II and LRI II, as well as shares in a company named Skymark Holdings.

213. Approximately \$38,000,000 in principal borrowed by CIF and FIELD from citizens of South Carolina is outstanding and has not been paid back.

214. For example, on or about some time in July 2002, Hisanao Marushima invested over \$200,000 with CIF. He continually invested money and reinvested principal

as it matured. When CIF declared its winding up in January of 2008, Marushima was owed over \$200,000 in principal.

215. For example, on or about some time in January of 2003, George Grant Jr. invested over \$200,000 with CIF. He continually invested money and reinvested principal as it matured. When CIF declared its winding up in January of 2008, Grant was owed over \$200,000 in principal.

216. For example, Larry Sons invested over \$20,000 in May of 2006. He continually invested money and reinvested principal as it matured. When CIF declared its winding up in January of 2008, Sons was owed over \$20,000 in principal.

217. For example, on or about some time in August of 2003, James Medina invested over \$100,000 with CIF. He continually invested money and reinvested principal as it matured. When CIF declared its winding up in January of 2008, Medina was owed over \$50,000 in principal.

218. For example, on or about some time in April of 2005, Charles Watson invested over \$50,000 with CIF. He continually invested money and reinvested principal as it matured. When CIF declared its winding up in January of 2008, Watson was owed over \$50,000 in principal.

219. For example, on or about some time in February of 2000, Benjamin Brooks invested over \$100,000 with CIF. He continually invested money and reinvested principal as it matured. When CIF declared its winding up in January of 2008, Brooks was owed over \$100,000 in principal.

220. For example, on or about some time in May of 2000, Bob Wynn invested over \$20,000 with CIF. He continually invested money and reinvested principal as it

matured. When CIF declared its winding up in January of 2008, Wynn was owed over \$60,000 in principal.

221. The Receiver Jerry Saad states that at best that the assets of the company will generate approximately five cents on the dollar for the South Carolina citizens who invested in CIF.

WHEREAS, THE GRAND JURY CHARGES:

COUNT ONE
CRIMINAL CONSPIRACY
(S.C. Code Ann. § 16-17-410)

222. The allegations of paragraphs 1 through 221 of this Indictment, and all the allegations after this paragraph, are realleged and incorporated by reference as if fully set forth herein.

223. ARTHUR M. FIELD, FREDRICK SCOTT PFEIFFER, and/or other persons both known and unknown to the Grand Jury, in Pickens County, from on or about some time in March 2001 to on or about December 8, 2003, did wilfully, unlawfully, and feloniously combine unite, combine, conspire, confederate, agree and have a tacit understanding or agreement between two or more persons, for the purpose of accomplishing an unlawful object or lawful object by unlawful means, including but not limited to securities fraud, forgery, and other crimes involving the business activities and actions of Capital Investment Funding, Cosimo, Monmouth, Bolingbroke, and other entities related to FIELD and PFEIFFER, prior to CIF and FIELD's separation from the LRI and the Lancaster entities.

224. All in violation of Section 16-17-410, *THE CODE OF LAWS OF SOUTH*

CAROLINA, (1976), as amended, and such conduct involving a violation of Chapter 1, Title 35 of the Uniform Securities Act, or a crime related to securities fraud or a violation of the securities laws, and such conduct having not been authorized by law.

225. Against the peace and dignity of this State and contrary to the law in such case made and provided.

WHEREAS, THE GRAND JURY CHARGES:

COUNT TWO
CRIMINAL CONSPIRACY
(S.C. Code Ann. § 16-17-410)

226. The allegations of paragraphs 1 through 225 of this Indictment, and all the allegations after this paragraph, are realleged and incorporated by reference as if fully set forth herein.

227. ARTHUR M. FIELD, FREDRICK SCOTT PFEIFFER, and/or other persons both known and unknown to the Grand Jury, in Pickens County, from on or about December 9, 2003 to on or about some time in August 2009, did wilfully, unlawfully, and feloniously combine unite, combine, conspire, confederate, agree and have a tacit understanding or agreement between two or more persons, for the purpose of accomplishing an unlawful object or lawful object by unlawful means, including but not limited to securities fraud, forgery, and other crimes involving the business activities and actions of Capital Investment Funding, Cosimo, Monmouth, Bolingbroke, and other entities related to FIELD and PFEIFFER, after CIF and FIELD's separation from the LRI and the Lancaster entities.

228. All in violation of Section 16-17-410, *THE CODE OF LAWS OF SOUTH*

CAROLINA, (1976), as amended, and such conduct involving a violation of Chapter 1, Title 35 of the Uniform Securities Act, or a crime related to securities fraud or a violation of the securities laws, and such conduct having not been authorized by law.

229. Against the peace and dignity of this State and contrary to the law in such case made and provided.

2002 PROSPECTUS AND ELLIOT SALZMAN

230. As previously alleged and incorporated here, Elliot Salzman was an initial organizer, shareholder, and President and CEO of LRI, and was an initial organizer and director of CIF.

231. The 1999 CIF Prospectus identified Elliot Salzman as Director and Treasurer of CIF, and also a Board member of LRI.

232. The 2000 CIF Prospectus identified Elliot Salzman as Director and Treasurer of CIF, and also a Board member of LRI.

233. The CIF operating agreement signed by FIELD, Elliot Salzman, and others on March 13, 2000, identified FIELD and Elliot Salzman as co-Managers of CIF.

234. The 2001 CIF Prospectus identified Elliot Salzman as Director and Treasurer of CIF, and also a Board member of LRI.

235. However, the 2002 Prospectus removes any mention of Elliot Salzman as a Director of CIF or Board member of CIF's parent LRI. The 2002 Prospectus instead provides: "The Board of Directors of [LRI] has waived the right to vote on the Management Committee of [CIF] in order to maintain a firewall between the two companies. The

Company is under no duty whatsoever to lend to LRI and no manager of LRI shall be involved in running the daily operations of CIF, although such a situation existed prior hereto."

236. As more fully alleged previously and incorporated here, Elliot Salzman had been disciplined in December 2001 and excised from LRI and CIF in early 2002 because of his improper financial transactions as President and CEO of LRI with LRI's money, which in large measure came from the loans to LRI from CIF. At these times Elliot Salzman was President and CEO of LRI, CIF's parent company, and a director of CIF.

237. As more fully alleged previously and incorporated here, ARTHUR FIELD was in management for both LRI and CIF and was aware of and present during the LRI Board meetings which resulted in first the discipline and second the removal of Elliot Salzman from the companies for his financial improprieties, and which resulted in Salzman owing substantial sums to LRI.

238. As more fully alleged previously and incorporated here, in January, February, and March 2002, ARTHUR FIELD and FREDRICK SCOTT PFEIFFER caused CIF to loan money to Cosimo which was relent to Guglielmi, LLC – a transaction that involved Elliot Salzman with Lancaster Mortgage Bankers.

239. As more fully alleged previously and incorporated here, ARTHUR FIELD as manager of CIF authored the 2002 prospectus and was responsible for its registration, filing, and issuance, and FREDRICK SCOTT PFEIFFER reviewed the 2002 prospectus for legal efficacy with an intimate knowledge of the details of LRI and CIF's business, due not only to his representation of FIELD and CIF, but also his partnership and scheme with FIELD with regard to entities that directly and indirectly were doing and would do business

with CIF, including Credo, Cosimo, Monmouth, Bolingbroke, and others.

WHEREAS, THE GRAND JURY CHARGES:

COUNT THREE
SECURITIES FRAUD
(S.C. Code Ann. § 35-1-501 & § 35-1-508)

240. The allegations of paragraphs 1 through 239 of this Indictment are realleged and incorporated by reference as if fully set forth herein.

241. ARTHUR M. FIELD, and FREDRICK SCOTT PFEIFFER as an aider or abettor, in Pickens County, from on or about March 6, 2002 until on or about March 16, 2003, in connection with the offer, sale, or purchase of securities in Capital Investment Funding, directly or indirectly, did knowingly and willfully employ a device, scheme, and artifice to defraud; and did make an untrue statement of a material fact or omit stating a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and did engage in an act, practice, or course of business which operated and would operate as a fraud and deceit upon any person; resulting in a loss to investors of twenty thousand dollars (\$20,000) or more, to wit:

242. The 2002 Prospectus did not disclose to South Carolina investors that Elliot Salzman, the President and CEO of CIF's parent company LRI, and also a Director and co-Manager of CIF, had been removed from those entities for improper financial transactions with LRI's money that came primarily from CIF, that as a result of Salzman's misconduct sizeable sums of LRI's money had been lost; and that CIF through its relender Cosimo was continuing to do business with entities involving Elliot Salzman. These facts about the conduct of management of the parent of CIF and CIF itself are material.

243. All in violation of Sections 35-1-501 and 35-1-508(a)(1), *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended, and such conduct involving a violation of Chapter 1, Title 35 of the Uniform Securities Act, or a crime related to securities fraud or a violation of the securities laws, and such conduct having not been authorized by law.

244. Against the peace and dignity of this State and contrary to the law in such case made and provided.

THE 2004 PROSPECTUS AND ELLIOT SALZMAN

245. As previously alleged and incorporated here, Elliot Salzman was an initial organizer, shareholder, and President and CEO of LRI, and was an initial organizer and director of CIF.

246. The 1999 CIF Prospectus identified Elliot Salzman as Director and Treasurer of CIF, and also a Board member of LRI.

247. The 2000 CIF Prospectus identified Elliot Salzman as Director and Treasurer of CIF, and also a Board member of LRI.

248. The CIF operating agreement signed by FIELD, Elliot Salzman, and others on March 13, 2000, identified FIELD and Elliot Salzman as co-Managers of CIF.

249. The 2001 CIF Prospectus identified Elliot Salzman as Director and Treasurer of CIF, and also a Board member of LRI.

250. However, the 2002 Prospectus removes any mention of Elliot Salzman as a Director of CIF or Board member of CIF's parent LRI. The 2002 Prospectus provides:

"The Board of Directors of [LRI] has waived the right to vote on the Management Committee of [CIF] in order to maintain a firewall between the two companies. The Company is under no duty whatsoever to lend to LRI and no manager of LRI shall be involved in running the daily operations of CIF, although such a situation existed prior hereto."

251. As more fully alleged previously and incorporated here, Elliot Salzman had been disciplined in December 2001 and excised from LRI and CIF in early 2002 because of his improper financial transactions as President and CEO of LRI with LRI's money, which in large measure came from the loans to LRI from CIF. At these times Elliot Salzman was President and CEO of LRI, CIF's parent company, and a director of CIF.

252. As more fully alleged previously and incorporated here, ARTHUR FIELD was in management for both LRI and CIF and was aware of and participated in the removal of Elliot Salzman from the companies for his financial improprieties, which resulted in Salzman owing substantial sums to LRI.

253. The various 2003 Prospectuses are similar to the 2002 Prospectus in that they have no reference to Elliot Salzman as a Director of CIF or Board member of CIF's parent LRI.

254. The 2004 Prospectus is similar to the 2002 Prospectus in that it has no reference to Elliot Salzman as a Director of CIF or Board member of CIF's parent LRI. It notes that in November 2003 LRI transferred its 91% ownership of CIF to FIELD in return for FIELD's interest in the Lancaster companies. The 2004 prospectus also references CIF dealings with Lancaster Mortgage Bankers, LLC ("LMB"). The prospectus states that LMB became an independent entity in 2002.

255. As more fully alleged previously and incorporated here, in January, February, and March 2002, ARTHUR FIELD and FREDRICK SCOTT PFEIFFER caused CIF to loan money to Cosimo which was related to Guglielmi, LLC – a transaction that involved Elliot Salzman with Lancaster Mortgage Bankers. Additional loans were made with CIF funds through Cosimo for loans in which Salzman was involved through as late as April 2004.

256. As more fully alleged previously and incorporated here, LRI separated from CIF and FIELD in November and December of 2003. Part of the difficulties and concern the other LRI Board members had with FIELD was that ARTHUR FIELD continued to do business directly and indirectly with entities involving Elliot Salzman.

257. As more fully alleged previously and incorporated here, ARTHUR FIELD as manager of CIF authored the 2004 prospectus and was responsible for its registration, filing, and issuance, and FREDRICK SCOTT PFEIFFER reviewed the 2004 prospectus for legal efficacy with an intimate knowledge of the details of LRI and CIF's business, due not only to his representation of FIELD and CIF, but also his partnership and scheme with FIELD with regard to entities that directly and indirectly were doing and would do business with CIF, including Credo, Cosimo, Monmouth, Bolingbroke, and others.

WHEREAS, THE GRAND JURY CHARGES:

COUNT FOUR
SECURITIES FRAUD
(S.C. Code Ann. § 35-1-501 & § 35-1-508)

258. The allegations of paragraphs 1 through 257 of this Indictment are realleged and incorporated by reference as if fully set forth herein.

259. Therefore, ARTHUR M. FIELD, and FREDRICK SCOTT PFEIFFER as an aider or abettor, in Pickens County, from on or about March 18, 2004 until on or about March 19, 2005, in connection with the offer, sale, or purchase of securities in Capital Investment Funding, directly or indirectly, did knowingly and willfully employ a device, scheme, and artifice to defraud; and did make an untrue statement of a material fact or omit stating a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and did engage in an act, practice, or course of business which operated and would operate as a fraud and deceit upon any person; resulting in a loss to investors of twenty thousand dollars (\$20,000) or more, to wit:

260. The 2004 Prospectus did not disclose to South Carolina investors that Elliot Salzman, the former President and CEO of CIF's parent company LRI, and also the former Director and co-Manager of CIF, had been removed from those entities for improper financial transactions with LRI's money that came primarily from CIF, that as a result of Salzman's misconduct sizeable sums of LRI's money had been lost; and that CIF through its relender Cosimo was continuing to do business with entities involving Elliot Salzman. These facts about the conduct of management of the parent of CIF and CIF itself are material.

261. All in violation of Sections 35-1-501 and 35-1-508(a)(1), *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended, and such conduct involving a violation of Chapter 1, Title 35 of the Uniform Securities Act, or a crime related to securities fraud or a violation of the securities laws, and such conduct having not been authorized by law.

262. Against the peace and dignity of this State and contrary to the law in such case made and provided.

THE 2006 PROSPECTUS AND ELLIOT SALZMAN

263. As previously alleged and incorporated here, Elliot Salzman was an initial organizer, shareholder, and President and CEO of LRI, and was an initial organizer and director of CIF.

264. The 1999 CIF Prospectus identified Elliot Salzman as Director and Treasurer of CIF, and also a Board member of LRI.

265. The 2000 CIF Prospectus identified Elliot Salzman as Director and Treasurer of CIF, and also a Board member of LRI.

266. The CIF operating agreement signed by FIELD, Elliot Salzman, and others on March 13, 2000, identified FIELD and Elliot Salzman as co-Managers of CIF.

267. The 2001 CIF Prospectus identified Elliot Salzman as Director and Treasurer of CIF, and also a Board member of LRI.

268. However, the 2002 Prospectus removes any mention of Elliot Salzman as a Director of CIF or Board member of CIF's parent LRI. The 2002 Prospectus provides: "The Board of Directors of [LRI] has waived the right to vote on the Management Committee of [CIF] in order to maintain a firewall between the two companies. The Company is under no duty whatsoever to lend to LRI and no manager of LRI shall be involved in running the daily operations of CIF, although such a situation existed prior hereto."

269. As more fully alleged previously and incorporated here, Elliot Salzman had

been disciplined in December 2001 and excised from LRI and CIF in early 2002 because of his improper financial transactions as President and CEO of LRI with LRI's money, which in large measure came from the loans to LRI from CIF. At these times Elliot Salzman was President and CEO of LRI, CIF's parent company, and a director of CIF.

270. As more fully alleged previously and incorporated here, ARTHUR FIELD was in management for both LRI and CIF and was aware of and participated in the removal of Elliot Salzman from the companies for his financial improprieties, which resulted in Salzman owing substantial sums to LRI.

271. The various 2003 Prospectuses are similar to the 2002 Prospectus in that they have no reference to Elliot Salzman as a Director of CIF or Board member of CIF's parent LRI.

272. As more fully alleged previously and incorporated here, in January, February, and March 2002, ARTHUR FIELD and FREDRICK SCOTT PFEIFFER caused CIF to loan money to Cosimo which was relent to Guglielmi, LLC – a transaction that involved Elliot Salzman with Lancaster Mortgage Bankers. Additional loans were made with CIF funds through Cosimo for loans in which Salzman was involved through as late as April 2004.

273. As more fully alleged previously and incorporated here, LRI separated from CIF and FIELD in November and December of 2003. Part of the difficulties and concern the other LRI Board members had with FIELD was that ARTHUR FIELD continued to do business directly and indirectly with entities involving Elliot Salzman.

274. The 2004 Prospectus is similar to the 2002 Prospectus in that it has no reference to Elliot Salzman as a Director of CIF or Board member of CIF's parent LRI. It

notes that in November 2003 LRI transferred its 91% ownership of CIF to FIELD in return for FIELD's interest in the Lancaster companies. The 2004 prospectus also references CIF dealings with Lancaster Mortgage Bankers, LLC ("LMB"). The prospectus states that LMB became an independent entity in 2002.

275. The 2005 Prospectus also makes no reference to Elliot Salzman as a Director of CIF or Board member of CIF's parent LRI, and described the November 2003 split between FIELD and CIF, and LRI. The 2005 prospectus also references CIF dealings with Lancaster Mortgage Bankers, LLC ("LMB"), and prospectus states that LMB became an independent entity in 2002. It also mentions Lion Financial, LLC ("LF"), receiving a \$3,000,000 revolving credit line from CIF in 2004, and states Lion Financial works closely with LMB. As to Lion Financial, the prospectus discloses that "Field renders services from time to time to LF, but has no ownership interest therein".

276. The 2006 Prospectus also makes no reference to Elliot Salzman as a Director of CIF or Board member of CIF's parent LRI, and described the November 2003 split between FIELD and CIF, and LRI. The 2006 prospectus also references CIF dealings with Lancaster Mortgage Bankers, LLC ("LMB"), and prospectus states that LMB became an independent entity in 2002. It also mentions Lion Financial, LLC ("LF"), receiving a \$3,000,000 revolving credit line from CIF in 2004, and states Lion Financial works closely with LMB. As to Lion Financial, the prospectus discloses that "Field renders services from time to time to LF, but has no ownership interest therein". The prospectus says that "Lion Financial is managed by Elliot Salzman of New Jersey and Lori Holweg [sic] of Pennsylvania". *Laurie Hollweg* Salzman is Elliot Salzman's wife.

277. In 2004 and 2005, FIELD caused CIF to loan millions to Lion Financial, LLC.

278. As more fully alleged previously and incorporated here, ARTHUR FIELD as manager of CIF authored the 2006 prospectus and was responsible for its registration, filing, and issuance, and FREDRICK SCOTT PFEIFFER reviewed the 2006 prospectus for legal efficacy with an intimate knowledge of the details of LRI and CIF's business, due not only to his representation of FIELD and CIF, but also his partnership and scheme with FIELD with regard to entities that directly and indirectly were doing and would do business with CIF, including Credo, Cosimo, Monmouth, Bolingbroke, and others.

WHEREAS, THE GRAND JURY CHARGES:

COUNT FIVE
SECURITIES FRAUD
(S.C. Code Ann. § 35-1-501 & § 35-1-508)

279. The allegations of paragraphs 1 through 278 of this Indictment are realleged and incorporated by reference as if fully set forth herein.

280. Therefore, ARTHUR M. FIELD, and FREDRICK SCOTT PFEIFFER as an aider or abettor, in Pickens County, from on or about March 26, 2006 until on or about January 15, 2008, in connection with the offer, sale, or purchase of securities in Capital Investment Funding, directly or indirectly, did knowingly and willfully employ a device, scheme, and artifice to defraud; and did make an untrue statement of a material fact or omit stating a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and did engage in an act, practice, or course of business which operated and would operate as a fraud and deceit upon any person, resulting in a loss to investors of twenty thousand dollars (\$20,000) or more, to wit:

281. The 2006 Prospectus did not disclose to South Carolina investors that Elliot Salzman, the former President and CEO of CIF's parent company LRI, and also the former Director and co-Manager of CIF, had been removed from those entities for improper financial transactions with LRI's money that came primarily from CIF, that as a result of Salzman's misconduct sizeable sums of LRI's money had been lost; and that CIF was continuing to do business with entities involving Elliot Salzman. These facts about the conduct of management of the parent of CIF and CIF itself are material.

282. All in violation of Sections 35-1-501 and 35-1-508(a)(1), *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended, and such conduct involving a violation of Chapter 1, Title 35 of the Uniform Securities Act; or a crime related to securities fraud or a violation of the securities laws, and such conduct having not been authorized by law.

283. Against the peace and dignity of this State and contrary to the law in such case made and provided.

THE 2003 PROSPECTUS AND OWNERSHIP IN COSIMO

284. As more fully alleged previously and incorporated here, on September 27, 2001, Bolingbroke was registered with the Wyoming Secretary of State. This entity was used to hide FIELD's true interest vis a vis various entities, such as Credo, Cosimo, and others. FIELD used the fictitious name "Henry Rex" to conduct business for Bolingbroke, to further conceal FIELD's true ownership interest in Bolingbroke, and thus his interest in Cosimo.

285. As more fully alleged previously and incorporated here, FIELD and PFEIFFER started Cosimo by its filing with the Secretary of State on January 31, 2002. Half of Cosimo was owned by Red Lion, an entity controlled by PFEIFFER, and the other half was owned by Bolingbroke, which was an entity controlled by FIELD, and a fact which PFEIFFER knew. PFEIFFER assisted in the formation of this scheme and of Bolingbroke, and was aware of the use of the false name "Henry Rex".

286. As more fully alleged previously and incorporated here, Cosimo began relending CIF money provided by FIELD in January 2002.

287. The 2002 CIF Prospectus, dated March 6, 2002, had a general related party provision that directors of CIF "may serve together on others Board of Directors for related or non-related entities from time to time or hold financial interests in such companies. . . ."

288. In the March 2003 Prospectus, the April 2003 Amended Prospectus, and the August 4, 2003 Amended Prospectus, Cosimo is discussed under the "other entities referred to" section of the prospectus. At that point, there is no discussion of the specific ownership or management of Cosimo. In the paragraphs that follow, there is a general provision that "[m]embers in the company may have direct or indirect membership interests in one or more of the above". Six pages later in the prospectus is the general related party provision, which tracks the language in the 2002 prospectus set forth in the preceding paragraph.

289. The notes to the Independent Auditor's Report on CIF attached to the March, April, and August 2003 prospectuses flatly state: "No person or entity having an ownership interest in CIF holds any interest in either Monmouth or Cosimo." This statement represents a material misrepresentation of fact, i.e., a lie.

290. The November 2003 Amended Prospectus added items. It adds a discussion to the section on Cosimo that "Attorney Pfeiffer may act, directly or indirectly, as the manager of Cosimo and such relationship is fully disclosed and the Company does not feel this presents a significant conflict and does generate corresponding benefits". This provision does not expressly disclose FIELD and PFEIFFER's then-existing ownership interests in Cosimo.

291. Seven pages later, the general related party provision has been expanded greatly. Buried in the second paragraph is the following sentence: "In addition, legal counsel for the Company may act as counsel for re-lenders and/or borrowers from time to time, or have other forms of direct or indirect conflict and attorney Pfeiffer and Field held an interest in one or more relenders, and auditors may audit one or more entities named herein or a re-lender or debtor."

292. The notes to the Independent Auditor's Report on CIF attached to the November 2003 prospectus still state: "No person or entity having an ownership interest in CIF holds any interest in either Monmouth or Cosimo."

293. As more fully alleged previously and incorporated here, ARTHUR FIELD as manager of CIF authored the 2003 prospectuses and was responsible for their registration, filing, and issuance, and FREDRICK SCOTT PFEIFFER reviewed the 2003 prospectus for legal efficacy with an intimate knowledge of the details of LRI and CIF's business, due not only to his representation of FIELD and CIF, but also his partnership and scheme with FIELD with regard to entities that directly and indirectly were doing and would do business with CIF, including Credo, Cosimo, Monmouth, Bolingbroke, and others.

WHEREAS, THE GRAND JURY CHARGES:

COUNT SIX
SECURITIES FRAUD
(S.C. Code Ann. § 35-1-501 & § 35-1-508)

294. The allegations of paragraphs 1 through 293 of this Indictment are realleged and incorporated by reference as if fully set forth herein.

295. Therefore, ARTHUR M. FIELD, and FREDRICK SCOTT PFEIFFER as an aider or abettor, in Pickens County, from on or about March 17, 2003 until on or about March 18, 2004, in connection with the offer, sale, or purchase of securities in Capital Investment Funding, directly or indirectly, did knowingly and willfully employ a device, scheme, and artifice to defraud; and did make an untrue statement of a material fact or omit stating a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and did engage in an act, practice, or course of business which operated and would operate as a fraud and deceit upon any person; resulting in a loss to investors of twenty thousand dollars (\$20,000) or more; to wit:

296. The 2003 prospectuses fail to adequately disclose the true nature of the ownership of Cosimo; that FIELD and PFIEFFER clearly owned Cosimo and that FIELD's ownership in Cosimo was through the use of Bolingbroke and fictitious names such as "Henry Rex". These facts are material.

297. All in violation of Sections 35-1-501 and 35-1-508(a)(1), *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended, and such conduct involving a violation of Chapter 1, Title 35 of the Uniform Securities Act, or a crime related to securities fraud or a violation of the securities laws, and such conduct having not been authorized by

law.

298. Against the peace and dignity of this State and contrary to the law in such case made and provided.

THE 2004 PROSPECTUS AND OWNERSHIP IN COSIMO

299. In the middle of the general related party section, the following is written: "From time to time, one or more of the members of the Company *may* be holders of Series 2004 notes (although none exist at this time), or *may* have transactions with any directly or indirectly related party and *may* profit therefrom or hold an interest therein (including, as noted, LRI, Cosimo, BFG, Credo, and MFG)" (emphasis added). Later in the same paragraph, "In addition, legal counsel for the Company may act as counsel for re-lenders and/or borrowers from time to time, or have other forms of direct or indirect conflict and both Field and attorney Pfeiffer (or entities directly or indirectly related to them) *held in the past or may hold in the future* an interest in one or more relenders (including but not limited to Lancaster, BFG, MFG or Cosimo or related companies, as the case may be), and auditors may audit one or more entities named herein or a re-lender or debtor" (emphasis added). However, it also says "Field may hold an interest in the future" in Cosimo.

300. The notes to the Financial Statements attached state: "Members of the Company may have a direct or indirect interest in one or more re-lender or borrower, which could be a potential conflict."

301. However, the 2004 Prospectus in the "Other Entities Referred to" section disclosed that PFEIFFER acted as manager of Cosimo; however, it did not discuss

ownership. Indeed, it specifically stated the following: "However, the Company (and/or Field) *may* elect to acquire part or all of Cosimo *in the future* or operate its own lending department" (emphasis added). Of course, FIELD already had an ownership interest in Cosimo since 2002 through use of the entity Bolingbroke and fictitious names such as "Henry Rex".

302. In the Management section of the prospectus, pages later, the statement is made in the middle of a biography that "Field *may* also serve or hold an interest in one or more re-lenders, as noted elsewhere (He acts as manager of BFG, and as President of MFG and *may* acquire an interest in Cosimo and formerly was a member of the Lancaster entities)" (emphasis added). Later in the same section, the point is repeated: "Field or CIF *may* purchase, directly or indirectly, an interest in Cosimo or other relender, but shall not own an interest in LRI or any Lancaster related entity" (emphasis added). Again, FIELD already had an ownership interest in Cosimo since 2002, and he had that interest through use of Bolingbroke and fictitious names such as "Henry Rex".

303. As more fully alleged previously and incorporated here, ARTHUR FIELD as manager of CIF authored the 2004 prospectus and was responsible for its registration, filing, and issuance, and FREDRICK SCOTT PFEIFFER reviewed the 2004 prospectus for legal efficacy with an intimate knowledge of the details of LRI and CIF's business, due not only to his representation of FIELD and CIF, but also his partnership and scheme with FIELD with regard to entities that directly and indirectly were doing and would do business with CIF, including Credo, Cosimo, Monmouth, Bolingbroke, and others.

WHEREAS, THE GRAND JURY CHARGES:

COUNT SEVEN
SECURITIES FRAUD
(S.C. Code Ann. § 35-1-501 & § 35-1-508)

304. The allegations of paragraphs 1 through 303 of this Indictment are realleged and incorporated by reference as if fully set forth herein.

305. Therefore, ARTHUR M. FIELD, and FREDRICK SCOTT PFEIFFER as an aider or abettor, in Pickens County, from on or about March 19, 2004 until on or about March 18, 2005, in connection with the offer, sale, or purchase of securities in Capital Investment Funding, directly or indirectly, did knowingly and willfully employ a device, scheme, and artifice to defraud; and did make an untrue statement of a material fact or omit stating a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and did engage in an act, practice, or course of business which operated and would operate as a fraud and deceit upon any person; resulting in a loss to investors of twenty thousand dollars (\$20,000) or more, to wit:

306. The 2004 prospectus states that FIELD may acquire an ownership interest in Cosimo in the future when in fact FIELD already had an ownership interest in Cosimo since 2002, and FIELD held that interest through the use of Bolingbroke and fictitious names. These facts were material.

307. All in violation of Sections 35-1-501 and 35-1-508(a)(1), *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended, and such conduct involving a violation of Chapter 1, Title 35 of the Uniform Securities Act, or a crime related to securities fraud or a violation of the securities laws, and such conduct having not been authorized by

law.

308. Against the peace and dignity of this State and contrary to the law in such case made and provided.

THE 2005 PROSPECTUS AND OWNERSHIP IN COSIMO

309. The 2005 Prospectus states: "Cosimo, LLC, wherein PFEIFFER acts as manager and holds an indirect interest and Field holds an indirect interest as of 2004 (as members of Red Lion, LLC and Krondor Trading Co, LLC)."

310. As more fully alleged previously and incorporated here, ARTHUR FIELD as manager of CIF authored the 2005 prospectus and was responsible for its registration, filing, and issuance, and FREDRICK SCOTT PFEIFFER reviewed the 2005 prospectus for legal efficacy with an intimate knowledge of the details of LRI and CIF's business, due not only to his representation of FIELD and CIF, but also his partnership and scheme with FIELD with regard to entities that directly and indirectly were doing and would do business with CIF, including Credo, Cosimo, Monmouth, Bolingbroke, and others.

WHEREAS, THE GRAND JURY CHARGES:

COUNT EIGHT
SECURITIES FRAUD
(S.C. Code Ann. § 35-1-501 & § 35-1-508)

311. The allegations of paragraphs 1 through 310 of this Indictment are realleged and incorporated by reference as if fully set forth herein.

312. Therefore, ARTHUR M. FIELD, and FREDRICK SCOTT PFEIFFER as an aider or abettor, in Pickens County, from on or about March 19, 2005 until on or about March 21, 2006, in connection with the offer, sale, or purchase of securities in Capital

Investment Funding, directly or indirectly, did knowingly and willfully employ a device, scheme, and artifice to defraud; and did make an untrue statement of a material fact or omit stating a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and did engage in an act, practice, or course of business which operated and would operate as a fraud and deceit upon any person; resulting in a loss to investors of twenty thousand dollars (\$20,000) or more, to wit:

313. The 2005 prospectus states that FIELD held an indirect interest in Cosimo since 2004 when in fact FIELD already had an ownership interest in Cosimo since its formation in 2002, and FIELD held that interest through the use of Bolingbroke and fictitious names. These facts were material.

314. All in violation of Sections 35-1-501 and 35-1-508(a)(1), *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended, and such conduct involving a violation of Chapter 1, Title 35 of the Uniform Securities Act, or a crime related to securities fraud or a violation of the securities laws, and such conduct having not been authorized by law.

315. Against the peace and dignity of this State and contrary to the law in such case made and provided.

"HENRY REX" FORGERY

316. As more fully alleged previously and incorporated here, on September 27, 2001, Bolingbroke was registered with the Wyoming Secretary of State. This entity was

used by FIELD to hide from investors, his partners in LRI, the South Carolina Securities Division, and others with whom he did business his true interest vis a vis various entities, such as Gredo, Cosimo, and others. FIELD used the fictitious name "Henry Rex" to conduct business for Bolingbroke, to further conceal FIELD's true ownership interest in Bolingbroke, and thus his interest in Cosimo.

317. As more fully alleged previously and incorporated here, the 2004 Prospectus, which was registered by the Securities Division on March 17, 2003, stated "Field or CIF *may* purchase, directly or indirectly, an interest in Cosimo or other relender, but shall not own an interest in LRI or any Lancaster related entity" (emphasis added).

318. Shortly after registration of this new offering and the 2004 Prospectus, FIELD paid Bolingbroke, an entity which he controlled, \$20,000 through a check which he signed on behalf of Krondor Trading Co., a company which FIELD admits he owns in the 2005 and 2006 prospectuses. The memo line states "purchase Cosimo 15K due".

319. On April 13, 2004, FIELD paid Bolingbroke, an entity which he controlled, \$15,244 through a check which he signed on behalf of Krondor Trading Co., a company which FIELD admits he owns in the 2005 and 2006 prospectuses. The memo line states "Cosimo".

320. On or about February 15, 2005, FIELD caused Bolingbroke to write a check with the memo line "Loan 25 years 1%" for \$415,000, to Krondor Trading Co., a company which FIELD admits he owns in the 2005 and 2006 prospectuses. FIELD signed the check "Henry Rex".

321. The \$415,000 Bolingbroke sent to Krondor primarily came from monthly Simpsonville Cotton Mill interest checks signed by PFEIFFER and made out to

Bolingbroke, and the check FIELD wrote on August 2nd, 2004 which caused CIF to pay Bolingbroke \$350,000, with the memo line "note purchase". FIELD's CIF Quickbooks list the check as being made out to Cosimo, when in fact it was made out to Bolingbroke — although the Quickbooks memo says "purchase note from Bolingbroke".

322. As more fully alleged previously and incorporated here, the 2005 Prospectus stated: "Cosimo, LLC, wherein PFEIFFER acts as manager and holds an indirect interest and Field holds an indirect interest as of 2004 (as members of Red Lion, LLC and Krondor Trading Co, LLC)." This of course is not true, as FIELD through Bolingbroke had a half ownership interest in Cosimo since its formation in 2002. The point of the use of "Henry Rex" on the check between Bolingbroke and Krondor was to create the illusion that FIELD had no ownership interest in Bolingbroke and only had an ownership interest in Cosimo through Krondor in 2004.

WHEREAS, THE GRAND JURY CHARGES:

COUNT NINE
FORGERY
(S.C. Code Ann. § 16-13-10)

323. The allegations of paragraphs 1 through 322 of this Indictment are realleged and incorporated by reference as if fully set forth herein.

324. Therefore, ARTHUR M. FIELD, in Pickens County, on or about February 15, 2005, did wilfully, unlawfully, and feloniously, falsely make, forge, or counterfeit any writing and instrument of writing; and did cause and procure to be falsely made, forged, or counterfeited any writing or instrument of writing; and did wilfully act and assist in the false making, forging, or counterfeiting of any writing or instrument of writing; and did utter or

publish as true any false, forged, or counterfeited writing or instrument of writing; and did willingly act or assist in any of the above, with an intention to defraud any person; to wit:

325. On or about February 15, 2005, FIELD caused Bolingbroke to write a check with the memo line "Loan 25 years 1%" for \$415,000, to Krondor Trading Co., which was signed by the fictitious person "Henry Rex".

326. All in violation of Section 16-13-10, *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended; and such conduct involving a violation of Chapter 1, Title 35 of the Uniform Securities Act, or a crime related to securities fraud or a violation of the securities laws, and such conduct having not been authorized by law.

327. Against the peace and dignity of this State and contrary to the law in such case made and provided.

2004 PROSPECTUS AND THE INTRASTATE OFFERING EXEMPTION

328. As more fully alleged previously and incorporated here, FIELD is an attorney licensed in New Jersey and Connecticut since the 70s, who at one time held various securities licenses from FINRA, and who has held himself out as a securities law expert. PFEIFFER is a South Carolina attorney licensed since the early 90s with experience in a sophisticated corporate practice.

329. As more fully alleged previously and incorporated here, FIELD and PFEIFFER were aware as early as PFEIFFER's opinion letter to FIELD in December of 2001 that CIF had a substantial legal problem with its entire business model, inasmuch as its qualification to sell securities without registration with the federal Securities and

Exchange Commission under the Intrastate Offering Exemption was doubtful, given that all of CIF's money had been lent out of state to LRI in the Northeast.

330. As more fully alleged previously and incorporated here, on or about some time in May of 2003 Kymric Mahnke, Esquire, of one of the largest and most respected law firms in South Carolina, who had also consulted with a fellow firm member Neil Grayson, Esquire who has extensive experience in securities law, advised members of LRI that CIF flatly did not qualify for the Intrastate Offering Exemption, and CIF had to stop selling securities immediately as it faced civil and criminal liability.

331. As more fully alleged previously and incorporated here, FIELD and PFEIFFER, who both had already recognized this problem, were advised of Mahnke's unambiguous direction that CIF was violating the law and needed to stop selling securities immediately.

332. As more fully alleged previously and incorporated here, FIELD and PFEIFFER, rejected this directive and CIF continued to advertise and sell securities to the citizens of South Carolina.

333. As more fully alleged previously and incorporated here, this issue with the inapplicability of the Intrastate Offering Exemption was a significant reason that precipitated the split between FIELD and CIF, on one hand, and the other members of LRI, on the other.

334. The 2004 prospectus recounts the deal in which FIELD ended up with majority ownership in CIF in return for giving up his interest in the Lancaster-related entities. It does not mention the concern over inapplicability of the Intrastate Offering Exemption as one of the reasons for the split.

335. The 2004 prospectus states that "[t]here is no guarantee that the regulatory requirements affecting the operations of the Company will not significantly change in the future." It makes no specific reference to the then-existing concern about the Intrastate Offering Exemption.

336. The Financial Statements attached to the 2004 Prospectus do not identify the possibility of significant civil and criminal liability for violation of the federal Intrastate Offering Exemption as a contingent liability of CIF.

337. As more fully alleged previously and incorporated here, ARTHUR FIELD as manager of CIF authored the 2004 prospectus and was responsible for its registration, filing, and issuance, and PFEIFFER reviewed the 2004 prospectus for legal efficacy with an intimate knowledge of the details of LRI and CIF's business, due not only to his representation of FIELD and CIF, but also his partnership and scheme with FIELD with regard to entities that directly and indirectly were doing and would do business with CIF, including Credo, Cosimo, Monmouth, Bolingbroke, and others.

WHEREAS, THE GRAND JURY CHARGES:

COUNT TEN
SECURITIES FRAUD
(S.C. Code Ann. § 35-1-501 & § 35-1-508)

338. The allegations of paragraphs 1 through 338 of this Indictment are realleged and incorporated by reference as if fully set forth herein.

339. Therefore, ARTHUR M. FIELD, and FREDRICK SCOTT PFEIFFER as an aider or abettor, in Pickens County, from on or about March 19, 2004 until on or about March 18, 2005, in connection with the offer, sale, or purchase of securities in Capital

Investment Funding, directly or indirectly, did knowingly and willfully employ a device, scheme, and artifice to defraud; and did make an untrue statement of a material fact or omit stating a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and did engage in an act, practice, or course of business which operated and would operate as a fraud and deceit upon any person; resulting in a loss to investors of twenty thousand dollars (\$20,000) or more, to wit:

340. The 2004 prospectus fails to adequately disclose the issue, as expressed by FIELD and PFEIFFER as well as opinion of counsel to the parent of CIF, that CIF potentially had significant civil and criminal liability for lack of compliance with the Intrastate Offering Exemption of the Federal securities laws. These facts were material.

341. All in violation of Sections 35-1-501 and 35-1-508(a)(1), *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended, and such conduct involving a violation of Chapter 1, Title 35 of the Uniform Securities Act, or a crime related to securities fraud or a violation of the securities laws, and such conduct having not been authorized by law.

2005 PROSPECTUS AND THE INTRASTATE OFFERING EXEMPTION

342. The 2005 prospectus recounts the deal in which FIELD ended up with majority ownership in CIF in return for giving up his interest in the Lancaster-related entities. It does not mention the concern over inapplicability of the Intrastate Offering Exemption as one of the reasons for the split.

343. The 2005 prospectus states that "[t]here is no guarantee that the regulatory requirements affecting the operations of the Company will not significantly change in the future." It makes no specific reference to the then-existing concern about the Intrastate Offering Exemption.

344. As more fully alleged previously and incorporated here, ARTHUR FIELD as manager of CIF authored the 2005 prospectus and was responsible for its registration, filing, and issuance, and FREDRICK SCOTT PFEIFFER reviewed the 2005 prospectus for legal efficacy with an intimate knowledge of the details of LRI and CIF's business, due not only to his representation of FIELD and CIF, but also his partnership and scheme with FIELD with regard to entities that directly and indirectly were doing and would do business with CIF, including Credo, Cosimo, Monmouth, Bolingbroke, and others.

WHEREAS, THE GRAND JURY CHARGES:

COUNT ELEVEN
SECURITIES FRAUD
(S.C. Code Ann. § 35-1-501 & § 35-1-508)

345. The allegations of paragraphs 1 through 344 of this Indictment are realleged and incorporated by reference as if fully set forth herein.

346. Therefore, ARTHUR M. FIELD, and FREDRICK SCOTT PFEIFFER as an aider or abettor, in Pickens County, from on or about March 19, 2005 until on or about March 21, 2006, in connection with the offer, sale, or purchase of securities in Capital Investment Funding, directly or indirectly, did knowingly and willfully employ a device, scheme, and artifice to defraud; and did make an untrue statement of a material fact or omit stating a material fact necessary in order to make the statements made, in light of the

circumstances under which they were made, not misleading; and did engage in an act, practice, or course of business which operated and would operate as a fraud and deceit upon any person; resulting in a loss to investors of twenty thousand dollars (\$20,000) or more, to wit:

347. The 2005 prospectus fails to adequately disclose the issue, as expressed by FIELD and PFEIFFER as well as opinion of counsel to the parent and former parent of CIF, that CIF potentially had significant civil and criminal liability for lack of compliance with the Intrastate Offering Exemption of the Federal securities laws. These facts were material.

348. All in violation of Sections 35-1-501 and 35-1-508(a)(1), *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended, and such conduct involving a violation of Chapter 1, Title 35 of the Uniform Securities Act, or a crime related to securities fraud or a violation of the securities laws, and such conduct having not been authorized by law.

2006 PROSPECTUS AND THE INTRASTATE OFFERING EXEMPTION

349. The 2006 prospectus recounts the deal in which FIELD ended up with majority ownership in CIF in return for giving up his interest in the Lancaster-related entities. It does not mention the concern over inapplicability of the Intrastate Offering Exemption as one of the reasons for the split.

350. The 2006 prospectus states that "[t]here is no guarantee that the regulatory requirements affecting the operations of the Company will not significantly change in the future." It makes no specific reference to the then-existing concern about the Intrastate

Offering Exemption.

351. As more fully alleged previously and incorporated here, ARTHUR FIELD as manager of CIF authored the 2006 prospectus and was responsible for its registration, filing, and issuance, and FREDRICK SCOTT PFEIFFER reviewed the 2006 prospectus for legal efficacy with an intimate knowledge of the details of LRI and CIF's business, due not only to his representation of FIELD and CIF, but also his partnership and scheme with FIELD with regard to entities that directly and indirectly were doing and would do business with CIF, including Credo, Cosimo, Monmouth, Bolingbroke, and others.

WHEREAS, THE GRAND JURY CHARGES:

COUNT TWELVE
SECURITIES FRAUD
(S.C. Code Ann. § 35-1-501 & § 35-1-508)

352. The allegations of paragraphs 1 through 351 of this Indictment are realleged and incorporated by reference as if fully set forth herein.

353. Therefore, ARTHUR M. FIELD, and FREDRICK SCOTT PFEIFFER as an aider or abettor, in Pickens County, from on or about March 21, 2006 until on or about some time in January 2008, in connection with the offer, sale, or purchase of securities in Capital Investment Funding, directly or indirectly, did knowingly and willfully employ a device, scheme, and artifice to defraud; and did make an untrue statement of a material fact or omit stating a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and did engage in an act, practice, or course of business which operated and would operate as a fraud and deceit upon any person; resulting in a loss to investors of twenty thousand dollars

(\$20,000) or more, to wit:

354. The 2006 prospectus fails to adequately disclose the issue, as expressed by FIELD and PFEIFFER as well as opinion of counsel to the parent and former parent of CIF, that CIF potentially had significant civil and criminal liability for lack of compliance with the Intrastate Offering Exemption of the Federal securities laws. These facts were material.

355. All in violation of Sections 35-1-501 and 35-1-508(a)(1), *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended, and such conduct involving a violation of Chapter 1, Title 35 of the Uniform Securities Act, or a crime related to securities fraud or a violation of the securities laws, and such conduct having not been authorized by law.

HIDING LRI'S TRUE CONDITION: 2006 PROSPECTUS

356. As more fully alleged previously and incorporated here, in November 2006 FIELD sent an email to Robert L'Abbate, the president of LRI, advising him that LRI was in default, that FIELD did not want to let the Attorney General's office know LRI had not made a principal payment in over a year, and that CIF's new auditors would object greatly to the non-payment by LRI.

357. As more fully alleged previously and incorporated here, at this time LRI had not made a principal payment since May of 2005.

358. As more fully alleged previously and incorporated here, LRI was unable to make the payments to cure the default to which FIELD referred in his email to L'Abbate.

359. The 2006 Prospectus, which was dated March 22, 2006 and tied to the

series 2006 Notes which were registered by the South Carolina Securities Division on March 29, 2006, states: "Were LRI and/or LG to suffer a partial or total loss relating to any such investment, its ability to repay the Company might be substantially impaired, which would be detrimental to the financial position of the Company".

360. The 2006 Prospectus states: "Neither LRI nor any relender with whom the Company deals has ever defaulted on its payments to the Company" (underlining in original).

361. Instead of advising the investors and the Securities Division of LRI's default and inability to continue to pay CIF, and the negative consequences to CIF as a result, FIELD manufactured a scheme to send further CIF money to LRI, so that LRI could then return it in the form of principal and interest payments to CIF.

362. As more fully alleged previously and incorporated here, this scheme involved sending \$1,000,000 to LRI through Trazom in January of 2007, so that LRI could then send much of the money back for payment to CIF.

363. As more fully alleged previously and incorporated here, transfer of money was supposedly for the purchase of a note for the 457 Carlton property. However, FIELD caused CIF through Trazom to pay \$1,000,000 for a \$600,000 note that was already in foreclosure, for a property for which CIF had already loaned LRI money to relend.

364. The 2006 Prospectus states: "No new funds will be lent to LRI after 2003, directly or indirectly".

365. FIELD continued to sell notes to CIF investors on the 2006 Prospectus from November 6, 2006 through March 21, 2007.

WHEREAS, THE GRAND JURY CHARGES:

COUNT THIRTEEN
SECURITIES FRAUD
(S.C. Code Ann. § 35-1-501 & § 35-1-508)

366. The allegations of paragraphs 1 through 365 of this Indictment are realleged and incorporated by reference as if fully set forth herein.

367. Therefore, ARTHUR M. FIELD, in Pickens County, from on or about November 6, 2006 until on or about March 21, 2007, in connection with the offer, sale, or purchase of securities in Capital Investment Funding, directly or indirectly, did knowingly and willfully employ a device, scheme, and artifice to defraud; and did make an untrue statement of a material fact or omit stating a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and did engage in an act, practice, or course of business which operated and would operate as a fraud and deceit upon any person; resulting in a loss to investors of twenty thousand dollars (\$20,000) or more, to wit:

368. FIELD concealed from investors LRI's dire financial situation and inability to pay CIF by sending CIF funds to LRI through Trazom so that LRI could make its principal and interest payments to CIF. These facts were material.

369. All in violation of Sections 35-1-501 and 35-1-508(a)(1), *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended, and such conduct involving a violation of Chapter 1, Title 35 of the Uniform Securities Act, or a crime related to securities fraud or a violation of the securities laws, and such conduct having not been authorized by law.

HIDING LRI'S TRUE CONDITION: 2007

370. As more fully alleged previously and incorporated here, in November 2006 FIELD sent an email to Robert L'Abbate, the president of LRI, advising him that LRI was in default, that FIELD did not want to let the Attorney General's office know LRI had not made a principal payment in over a year, and that CIF's new auditors would object greatly to the non-payment by LRI.

371. As more fully alleged previously and incorporated here, at the this time LRI had not made a principal payment since May of 2005.

372. As more fully alleged previously and incorporated here, LRI was unable to make the payments to cure the default to which FIELD referred in his email to L'Abbate.

373. The 2006 Prospectus, which was dated March 22, 2006 and tied to the series 2006 Notes which were registered by the South Carolina Securities Division on March 29, 2006, states: "Were LRI and/or LG to suffer a partial or total loss relating to any such investment, its ability to repay the Company might be substantially impaired, which would be detrimental to the financial position of the Company".

374. The 2006 Prospectus states: "Neither LRI nor any relender with whom the Company deals has ever defaulted on it payments to the Company" (underlining in original).

375. Instead of advising the investors and the Securities Division of LRI's default and inability to continue to pay CIF, and the negative consequences to CIF as a result, FIELD manufactured a scheme to send further CIF money to LRI, so that LRI could then return it in the form of principal and interest payments to CIF.

376. As more fully alleged previously and incorporated here, this scheme

involved sending \$1,000,000 to LRI through Trazom in January of 2007, so that LRI could then send much of the money back for payment to CIF.

377. As more fully alleged previously and incorporated here, transfer of money was supposedly for the purchase of a note for the 457 Carlton property. However, FIELD caused CIF through Trazom to pay \$1,000,000 for a \$600,000 note that was already in foreclosure, for a property for which CIF had already loaned LRI money to relend.

378. The 2006 Prospectus states: "No new funds will be lent to LRI after 2003, directly or indirectly".

379. As more fully alleged previously and incorporated here, FIELD continued to hide LRI's true condition by causing CIF to send money to LRI so that LRI could then send it back to CIF for principal and interest payments – this time by sending \$290,000 to Lancaster Developers on March 29, 2007, and a further \$290,000 to LRI on April 25, 2007 – ostensibly for the purchase of condominium units.

380. As more fully alleged previously and incorporated here, FIELD continued to hide LRI's true condition by causing CIF to send money to LRI so that LRI could continue to operate, by causing CIF to lend \$75,000 to Robert L'Abbate on June 10, 2007.

381. As more fully alleged previously and incorporated here, the Securities Division declined to approve FIELD and CIF's March 2007 registration, and in May of 2007 filed "Notice of Intent to Seek the Issuance of a Stop Order Denying Effectiveness to a Registration Statement and to Seek the Issuance of an Order Revoking Available Exemptions". This document alleged CIF's registration was incomplete in a number of material respects and could tend to work a fraud upon purchasers.

382. Despite CIF's financial condition and its regulatory troubles, FIELD

continued to cause CIF to sell securities to investors by three different mechanisms after expiration in March of 2007 of the registration for the 2006 offering.

383. First, in July of 2007, FIELD caused CIF to sell securities to approximately eleven investors for a total of over \$450,000 based on the Rule 506 exemption from federal registration.

384. The prospectus distributed with the securities sold pursuant to the Rule 506 exemption made no mention of CIF's regulatory troubles and the pending Notice of Intent. Indeed, the prospectus expressly stated that CIF had "no legal actions pending" and that "no legal actions are contemplated against the Company".

385. The prospectus distributed with the securities sold pursuant to the Rule 506 exemption claimed that "the debt from LRI was being repaid pursuant to a schedule put in place by LRI during 2002, amended periodically". It also claimed that LRI paid \$500,000 in principal on the MFG debt in 2006. The prospectus did not disclose CIF and LRI's dire straits and FIELD's scheme to prop up LRI by sending it CIF money for the payments to CIF – which was the source of funds for the supposed \$500,000 payment.

386. Second, FIELD simply sold some new notes to existing investors who were re-investing their money. For example, on July 27, 2007 FIELD sold a CIF note to George Grant for over \$29,000. For example, on March 29, 2007 FIELD sold a CIF note to Hisanao Marushima for over \$350,000.

387. On August 22, 2007, George Grant received the letter from FIELD regarding the impending maturity of one of his notes and asking whether Grant wished to reinvest or redeem. In the letter, FIELD wrote, "We believe the various safeguards implemented over the last few years greatly enhance the stability of our firm and security of your investment."

Grant faxed a request to redeem, but the note was reinvested anyway. Despite FIELD's knowledge of CIF's true financial and regulatory situation, in the cover letter FIELD sent Grant with his new note, he wrote that "business in 2007 has been excellent". These positive statements led Grant not to challenge the reinvestment.

388. Third, FIELD sold some CIF notes as "amendments" to the existing note, where on the face it claimed it was not a new securities transaction. For example, on July 8, 2007 FIELD caused CIF to sell John Carpenter a note for \$10,000. Despite FIELD's knowledge of CIF's true financial and regulatory situation, in the cover letter FIELD sent Carpenter with his new note, he wrote that "business in 2007 has been excellent".

389. Since he was unable to get approval from the Securities Division to register his 2007 offering, and was facing regulatory issues, FIELD began to send periodic quarterly reports to noteholders. However, these reports were misleading.

390. On July 14, 2007 FIELD sent the CIF Mid-Year Report to noteholders. In it, he wrote that CIF was "excited" about the changes, and that issuance of securities under Rule 506 was "considered an excellent step forward for CIF". The document states the "Securities Division also preserved its review rights by filing a private Notice of Intent, still pending". It did not disclose to the noteholders that in the report that the Securities Division's Notice of Intent alleged CIF's offering would operate as a fraud on purchasers.

391. In the 2007 Mid-Year Update, FIELD and CIF told CIF's existing note holders that it had not received any notice "of any alleged S.E.C. violation" from the SEC or "any federal authority"; however, FIELD and CIF omitted to state the material fact that it received notice from the Securities Division on or about May 11, 2007, that CIF did not qualify for the federal Intrastate Offering Exemption that FIELD and CIF had been claiming

since 1999.

392. In the 2007 Mid-Year Update, FIELD and CIF told CIF's existing note holders that "\$500,000 was repaid by LRI in 2006", that "regular payments to MFG by LRI continued in the first half of 2007", that "LRI debt service is kept current", and that CIF acquired "contractual rights" to two properties. It did not disclose that LRI was only able to make these payments with money FIELD sent it from CIF.

393. FIELD caused CIF to send a Third Quarter Report on October 10, 2007, and a Fourth Quarter Report on January 6, 2008. While these described to some extent the worsening situation of some of CIF's lenders, they did not disclose FIELD's scheme to cause CIF to send CIF money to LRI so it could make its payments, and did not disclose that the Securities Division's Notice of Intent alleged CIF's offering would operate as a fraud on purchasers, and that CIF did not qualify for the Intrastate Offering Exemption.

WHEREAS, THE GRAND JURY CHARGES:

COUNT FOURTEEN
SECURITIES FRAUD
(S.C. Code Ann. § 35-1-501 & § 35-1-508)

394. The allegations of paragraphs 1 through 393 of this Indictment are realleged and incorporated by reference as if fully set forth herein.

395. Therefore, ARTHUR M. FIELD, in Pickens County, from on or about March 22, 2007 until on or about January 15, 2008, in connection with the offer, sale, or purchase of securities in Capital Investment Funding, directly or indirectly, did knowingly and willfully employ a device, scheme, and artifice to defraud; and did make an untrue statement of a material fact or omit stating a material fact necessary in order to make the statements

made, in light of the circumstances under which they were made, not misleading; and did engage in an act, practice, or course of business which operated and would operate as a fraud and deceit upon any person; resulting in a loss to investors of twenty thousand dollars (\$20,000) or more, to wit:

396. FIELD concealed from investors CIF's true position with regard to its regulatory problems and LRI's default by sending CIF funds to LRI and its president so that LRI could make its principal and interest payments.

397. All in violation of Sections 35-1-501 and 35-1-508(a)(1), *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended, and such conduct involving a violation of Chapter 1, Title 35 of the Uniform Securities Act, or a crime related to securities fraud or a violation of the securities laws, and such conduct having not been authorized by law.

All against the peace and dignity of the State, and contrary to the statute in such case made and provided.

A True Bill

[REDACTED]

FOREMAN

Alan Wilson

ALAN WILSON (scw)
ATTORNEY GENERAL

State of South Carolina

Court of General Sessions

County of Richland

2012-GS-47-0008

The State of South Carolina

:

-VS-

:

TRANSCRIPT OF RECORD

:

Arthur M. Field

:

June 21, 2012

Columbia, South Carolina

B E F O R E:

The Honorable G. Thomas Cooper, Jr., Judge.

A P P E A R A N C E S:

S. Creighton Waters, Esquire

Brian Petrano, Esquire

Attorneys for the State

William Hodge, Esquire

Attorney for the Defendant

Daphne D. Helms

Circuit Court Reporter

June 21, 2012, hearing

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1 **The Court:** All right. Be seated. Thank you.

2 **Mr. Waters:** Good morning, Your Honor.

3 **The Court:** Good morning, gentlemen.

4 **The Clerk:** Mr. Field, if you would please raise your
5 right hand to be sworn in.

6 Arthur M. Field, after being duly sworn, testified
7 as follows:

8 **The Clerk:** Please state your full name.

9 **The Witness:** Arthur Matthew Field.

10 **The Clerk:** Thank you, sir.

11 **Mr. Field:** You're welcome.

12 **The Court:** All right. Mr. Attorney General.

13 **Mr. Waters:** Thank you, Your Honor. We're here today on
14 a defense motion for a bond in this case of State versus
15 Arthur Matthew Field. It's a State Grand Jury case, 2012-GS-
16 47-08. Mr. Field has been indicted for 11 counts of
17 securities fraud, two counts of conspiracy, and one count of
18 forgery. He does not have a prior record, Your Honor.

19 The allegations in the indictment, just very briefly,
20 involve his running of an entity by the name of Capital
21 Investment Funding. He was the manager of that particular
22 entity, and Scott Pfeiffer, who is the co-defendant, was
23 Field and C.I.F.'s attorney and was also a principal in many
24 of the re-lenders and other entities with which C.I.F. did
25 business.

June 21, 2012, hearing

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1 When it folded, there was approximately \$38 million
2 outstanding to the investors of South Carolina. It's still
3 outstanding. This is a very complicated case. There were
4 multiple layers of business entities with layers of bank
5 accounts. I believe it was meant to make it hard to follow,
6 and it was hard to figure out.

7 The allegations in the indictment which, as Your Honor
8 is aware, is very lengthy, centered in four main areas. The
9 first is hiding from investors, that the president of
10 C.I.F.'s parent company and one of Arthur Field's partners
11 had engaged in financial improprieties with C.I.F. money
12 resulting in a loss of millions of dollars, and then Field
13 continued to do business with this individual.

14 The second main area is hiding from investors, that he
15 was re-lending to himself and he was actually using a Wyoming
16 entity and a fake name that -- to hide that, and that also
17 supports the forgery count as well.

18 The third main area is hiding from investors the fact
19 that they had significant contingent criminal and civil
20 liabilities because C.I.F. was in violation of federal law
21 and did not qualify for an exemption from registration with
22 the S.E.C.

23 **The Court:** What's the violation? What was the
24 violation?

25 **Mr. Waters:** Your Honor, there's an exemption from

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1 registration with the federal government which requires --
2 it's called the Intrastate Offering Exemption which requires
3 that 80 percent of the business remain within the state. In
4 fact, the vast majority of the money initially in the
5 operation of C.I.F. had gone straight from C.I.F. to the
6 parent company in New Jersey and, in fact, as the allegation
7 in the indictment alleges, in 2003 they were flatly advised
8 by attorneys at Nelson Mullins that they had to stop and
9 unwind this thing right now because they could face
10 significant civil and criminal liability. They not only
11 continued, but they never---

12 **The Court:** There was no federal penalty or finding of a
13 violation of the statute.

14 **Mr. Waters:** No, sir. The allegation -- well,
15 ultimately in 2007 the state securities division did issue a
16 notice of intent to seek estoppel or that was one of the
17 reasons for that, but ultimately it's a state law issue here
18 in failing to disclose to investors the significant potential
19 of criminal and civil liability based on that particular
20 issue.

21 And then finally, Your Honor, in 2006 the parent
22 company, L.R.I., ultimately they split from Field after he
23 refused to stop selling securities. And so they went from
24 being the parent company to the biggest debtor of C.I.F. And
25 they were in default in 2006, and to avoid letting the

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1 investors and the securities division know that, Mr. Field
2 engaged in a number of transactions to send millions -- over
3 a million dollars of C.I.F. money up to L.R.I. so that they
4 could just send it back down to C.I.F. and then he could
5 continue to claim to the investors that L.R.I. was current
6 and that C.I.F. was not in a precarious financial position,
7 and that's the last main category. Of course, when he was
8 doing that, he was also extracting hundreds of thousands of
9 capital distributions to himself while he was full aware that
10 C.I.F. was sucking wind at that particular point.

11 Your Honor, we're requesting a substantial bond and no
12 10 percent. There's a few reasons for that. First of all,
13 we have witness statements and testimony that Mr. Field has
14 stated that Arthur Field will not go to jail. Secondly, we
15 have information that Mr. Field told those who were involved
16 in the civil action that he sent a million dollars down to
17 the Bahamas in an attempt for him and his wife to get
18 residency there, and that did not pan out and so the money
19 came out, but I think that's an important fact.

20 But I think most importantly his conduct in recent
21 months proves the point. He was sent a target letter on
22 April 6th, 2012. Shortly after that, he went and got Florida
23 driver's licenses, and as Your Honor remembers from a prior
24 proceeding that we were in, he claimed that his residence was
25 at a house in Florida and, Your Honor, I provided this to

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1 defense counsel, but I'll hand it up to you.

2 That property is owned by Mr. Field, but it is, in fact,
3 a rental property that -- for which he has a contract with a
4 management company. That property is booked solid with other
5 people through September. It is not homesteaded. It is
6 purely a rental property, and the contact information from
7 the management company is back at his residence in Greenville
8 at Thornblade.

9 So at that prior proceeding, he told you that was his
10 residence. He can't go there for the next few months even if
11 he wanted to, and he's got a contract with a rental company
12 that requires him to block out time for any overtime there if
13 he wants. So I think that that was misleading at best with
14 what he told Your Honor.

15 Additionally, the records reflect that Mr. Field in, I
16 believe, September of 2011 purchased that property which is a
17 3800 square foot second-row beach house in Florida for about
18 \$745,000, and it appears that that came straight cash, no
19 financing needed, which I believe shows the resources that
20 Mr. Field has. So I think that again that was misleading,
21 and, again, at that prior proceeding Mr. Field contests
22 service, contests jurisdiction of the Court, and claimed that
23 he lived at this property which again is a rental property
24 that he couldn't go to even if he wanted to today.

25 Additionally, after the arrest warrant was issued in

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1 this case last week - and that was on Thursday morning - we
2 know Mr. Field was in Greenville Wednesday afternoon because
3 he filed and was seen filing a civil pleading in the civil
4 matter that day. Thursday morning a deputy went to his
5 house, knocked on the door. There was no answer. Within a
6 short period of time, I was getting phone calls from his
7 attorney inquiring as to what that was about.

8 After that, there was a long back-and-forth about
9 turning himself in and turning himself in at the sheriff's
10 office in Greenville, and then ultimately a deadline was
11 given and he went south and did not comply with that. Then
12 it was not 'til late Friday afternoon that we got an e-mail
13 that supposedly he had been out of town all that time which
14 was inconsistent with the way the conversations had been
15 going all day Thursday.

16 He then -- I advised him at that time that that was
17 not -- that he needed to turn himself in right away and, of
18 course, he did not. He did turn himself in obviously Monday,
19 as Your Honor is aware, but I think that he was aware of that
20 arrest warrant and did not comply and evaded arrest during
21 that period of time. Given the amount of money at issue
22 here, Your Honor, the deception---

23 **The Court:** Tell me about that.

24 **Mr. Waters:** Yes, sir.

25 **The Court:** You say there's \$38 million either missing

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1 or failing to be accounted for with the investors.

2 **Mr. Waters:** There's \$38 million that is outstanding
3 when C.I.F. folded.

4 **The Court:** Owed to the investors.

5 **Mr. Waters:** Owed to the investors. Now, the
6 allegations---

7 **The Court:** You're not saying he's sitting on
8 \$38 million.

9 **Mr. Waters:** No, sir. No, sir.

10 **The Court:** As far as you know.

11 **Mr. Waters:** As far as we know, no, sir. The
12 allegations more deal with keeping the gravy train rolling so
13 that he could continue to take his salaries, and then, of
14 course, he was involved in the re-lenders and the re-lenders
15 to the re-lenders and continuing to take management fees and
16 everything like that and hiding the true condition and the
17 true nature of this business from investors so that he could
18 keep the money, keep the business rolling, and keep
19 extracting out his salary and his fees and all the rest of
20 it.

21 So, no, the allegation is not that he's sitting on
22 38 million somewhere, although he is sitting on, we believe,
23 sizable funds that he extracted---

24 **The Court:** But you have no firsthand knowledge of the
25 location of... In other words, there's no trustee, no

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1 receiver, no -- no way to account for those funds at this
2 time.

3 **Mr. Waters:** Well, there is a civil action that's
4 pending, Your Honor. A Jerry Saad is the receiver of that
5 action. It's assigned to Judge Miller up in Greenville, and
6 they are in the process of attempting to gather assets and
7 trying to figure this out as well is my understanding. I
8 attended a meeting of the class not too long ago. I guess
9 that was probably in the Fall. But they're in the process
10 of, I think, trying to determine what assets are remaining
11 and that's---

12 **The Court:** Based on---

13 **Mr. Waters:** ---Jerry Saad---

14 **The Court:** Based on these -- these or similar
15 allegations?

16 **Mr. Waters:** Yeah. They've been operating independently
17 of us. We have -- we have -- Jerry Saad has been a witness
18 for us, but they -- they have -- they're doing their own
19 thing. Obviously in the criminal context we're concerned
20 with the history of what happened. In the receiver context,
21 they're only concerned about chasing something that might
22 actually have a benefit to the class at the end.

23 So they're not quite the same thing, but that -- that
24 action is pending. As to whether or not -- what assets they
25 have identified and that sort of thing, I would have -- I

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1 would have to defer to Mr. Saad on that. But he has stated,
2 as alleged in the indictment, that as things stand, at best
3 he expects pennies on the dollar, five cents maybe recovery,
4 based on the assets that C.I.F. had at its winding up.

5 **The Court:** Are they also looking into Mr. Field's
6 personal assets?

7 **Mr. Waters:** Your Honor, I couldn't speak to that. I
8 would have to defer to them.

9 **The Court:** All right.

10 **Mr. Waters:** You know, and along those lines again, Your
11 Honor, again we have the statement of Mr. Field to them that
12 he sent a million dollars down to the Bahamas. So obviously
13 he has a million that he can just park down there for awhile.
14 And, again, he was able to purchase the house in Saint
15 Augustine with cash essentially, and additionally, he was
16 taking out large capital -- hundreds of thousands of dollars
17 of capital distributions from C.I.F. at the same time that he
18 knew it was sucking wind because he was also sending investor
19 money up to the largest debtor so that they could just send
20 it back as payments. So that evidence already exists as to
21 substantial resources. He also---

22 **The Court:** You or the civil suit haven't tracked those
23 funds.

24 **Mr. Waters:** Not at this time, Your Honor, no. Now, the
25 grand jury investigation has done some of that, but as to --

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1 to put a particular figure, I could not do that at this time.
2 But, Your Honor, given the amount of money that's at issue,
3 the deception that's alleged in these indictments, the
4 resources that we are aware of that I've just detailed for
5 Your Honor, the statements that he'd never go to jail,
6 sending a million dollars to the Bahamas, his lack of candor
7 I believe to Your Honor in the prior proceeding as to his
8 supposed residence, I think that his conduct after the
9 warrant confirms these issues. I think there needs to be a
10 substantial bond, if there's a bond at all.

11 I think he needs to surrender his passport. I think all
12 the standard State Grand Jury conditions need to be in place,
13 no wasting assets. I think there needs to be a G.P.S. on Mr.
14 Field or some other weekly verification, and obviously the
15 standard condition that he cannot leave the state.

16 **The Court:** All right. Yes, sir, Mr. Hodge.

17 **Mr. Hodge:** Good morning, Your Honor. May it please the
18 Court? I do represent Arthur Field. Arthur is a 59-year-old
19 man with no prior record, as you heard previously. He is a
20 licensed lawyer in Connecticut and New Jersey, has been for
21 34, almost 35 years. He is not a licensed lawyer down here,
22 Judge, but he did come down here to Clemson University and
23 receive a triple Ph.D., as he puts it, but a Ph.D. from
24 Clemson University in Management Science. He was an
25 associate professor at Clemson University for five years

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1 while he was getting his -- or a visiting professor while he
2 was getting his Ph.D.

3 He has been thoroughly involved in the orchestra and
4 symphony in Greenville. He conducted the Greenville
5 symphony. He contributed a lot of money to the symphony in
6 Greenville over the years that he's been there.

7 Judge, he has been involved in other charities as well.
8 He did the Pops Orchestra. He actually helped get the Pops
9 Orchestra started in Greenville. And all this is just over
10 -- since he moved here in the nineties, Judge.

11 I met with Arthur about a month ago and -- maybe a month
12 and a half ago when this investigation was underway, and from
13 the beginning Arthur has denied each and every one of these
14 allegations in this indictment. He has contested everything
15 that has been served on him, done to him. He has fought from
16 day one.

17 Judge, I think that shows the kind of person that Arthur
18 Field will be throughout this proceeding. The A.G.'s office
19 will have you believe that he's going to tuck tail and run
20 now that he's been indicted, now that he's officially facing
21 these charges. This investigation has been going on for
22 quite some time. He's known about this investigation for
23 quite some time. He received a target letter in December.
24 He didn't run then.

25 As a matter of fact, he started sending more and more

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1 correspondence to Your Honor, to other courts, filing
2 documents here and there. He has made it no private matter
3 that he is willing to fight for what he believes are his
4 constitutional rights that are being violated.

5 Judge, I have witnessed myself threats from the A.G.'s
6 office regarding his family. He has dealt with harassment.
7 He has dealt with the threat of being arrested for six
8 months. He has dealt with numerous phone calls, numerous
9 knocks at the door at all hours, serving papers, trying to
10 serve papers, home or not. Judge, it's been a -- it has been
11 a very interesting position for him to be in.

12 Thursday he found out from a neighbor or from someone --
13 received a phone call saying that there were four people at
14 his door. Mr. Field tells me he was not home. He was
15 actually on his way at that time to Tennessee. He had no
16 idea what these four people were doing at his door. As I
17 said, he's been served with numerous papers before. He was
18 under the impression that they may have been there to serve
19 another rule to show cause on him from the civil matter in
20 Greenville.

21 He calls me immediately. He didn't just hide. He
22 didn't run. He didn't go anywhere. He called me immediately
23 to find out what was going on. Well, I actually was not able
24 to get to my phone, and so he left me a message saying, "Call
25 me. I need to talk to you. Somebody is at my door."

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1 About an hour and a half later, I'm finally able to make
2 contact with Creighton Waters. I still have not been able to
3 get Mr. Field. I get Mr. Waters. I say, "What's going on?
4 Tell me what's going on." And he informed me at that time
5 that the indictment has been handed down.

6 I speak with Arthur. He said, "Well, how do we go about
7 turning myself in? How can I arrange it so that I can come
8 in and have a bond setting and turn myself in?" The A.G.'s
9 office refused to allow me that privilege. Scott Pfeiffer,
10 who was indicted today under the exact same charges, is
11 turning himself in today, Judge.

12 My client has been sitting in Alvin S. Glenn since
13 Monday. He showed up on his own free will Monday morning
14 after I told Mr. Waters that, A., he wanted to turn himself
15 in from the minute I spoke to him. I didn't know where he
16 was. I didn't ask where he was. I would have told him he
17 needed to turn himself in and he needed to get back here. He
18 said, "How do we arrange it? Arrange it."

19 I tried, to no avail, Judge. My client was scared. He
20 was scared walking into the courthouse Monday morning. He
21 was afraid that they were after him. He was afraid that they
22 were going to tackle him, as he put it. He's never been in
23 trouble. He doesn't know how these things work, Judge, and
24 he was -- he was terrified.

25 So when we arranged a good time for him to come in, be

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1 outside of your courtroom Monday morning and turn himself in,
2 immediately I told Creighton Waters. Now, of course, they
3 came Monday and booked him and took him to Alvin S. where he
4 has been sitting for three days, Judge.

5 He's not going anywhere. He's not a flight risk. His
6 family is here. He has a house that he lives in in
7 Greenville that his daughter owns. He doesn't have a
8 residence anywhere else. He said that he was trying to
9 become a resident of Florida and actually had a driver's
10 license down there. I don't recall the exact words that he
11 may have used during his oral presentation to Your Honor, but
12 he has never told me that he lives in Florida. Every time
13 I've met with him it was in Greenville. Every time they've
14 gone and knocked on his door it was in Greenville.

15 Judge, he's not going. He's going to be here to fight
16 these charges, just as he has from day one. He wants to
17 fight these charges. Judge, he -- he is not a flight risk.
18 He's clearly not a threat to this community. Those are the
19 only two things that I would ask Your Honor to consider when
20 doing this.

21 As far as financial concern, they can't put a number on
22 it because they don't have a... I don't know. I have never
23 seen his bank records. I've never seen his financials. I
24 know that the \$38 million that he's speaking of was actually
25 stipulated to -- according to Mr. Field, stipulated to in the

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1 civil settlement, that it was there at some point, that it
2 was in property value.

3 Now, that property value has diminished. There's no
4 question about it, and that \$38 million has diminished in
5 value on the assets. But, Judge, it's not in his bank
6 account. It's not in his pocket. If he wanted to leave this
7 country or do anything, he's had four years -- knowing that
8 an investigation was underway, four years to make that
9 decision and hasn't done it.

10 They bring up a million dollars that he sent to the
11 Bahamas. I actually had a conversation with him where back
12 in the eighties he was trying to become a citizen of the
13 Bahamas, long before any of this ever came about, long before
14 C.I.F. ever came about, and they actually -- that is,
15 according to him, how you become a citizen. You have to
16 invest money there. You have to put money there.

17 Judge, that million dollars is nowhere around. Your
18 Honor, I would simply ask that in light of all this, in light
19 of Mr. Field's vehemently contesting everything that has been
20 done to him and his willingness to do so as evidenced by even
21 the letter you received last week, along with the fact that
22 he is an officer of the Court, maybe not in this state but in
23 other states and has been for 34 years, along with the fact
24 that he's 59 years old and has never been in trouble before,
25 Judge, I would just ask that you consider a P.R. bond. If

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1 you're not willing to give him a P.R. bond, Judge, we would
2 ask for a 10 percent option on any bond that you do see fit.

3 **The Court:** Tell me about his family. You said -- you
4 said he has his family here?

5 **Mr. Waters:** Yes, sir, Judge. His wife is actually
6 sitting over here. They live together in the Greer home.
7 His daughter is also in town.

8 **Mr. Field:** She lives in Charleston -- in North
9 Charleston or Charleston, and my son lives in Greer, Your
10 Honor. I had them all move to this state. My son moved from
11 California to here. They own property. I've been here,
12 Judge. And trust me: I'm never not going to fight these
13 charges.

14 **The Court:** Is that it?

15 **Mr. Hodge:** That's it.

16 **The Court:** Do you have any victims---

17 **Mr. Waters:** Yes, sir.

18 **The Court:** ---that want to speak?

19 **Mr. Waters:** We, over the past few days, have attempted
20 and done our Herculean best to notify all the victims with
21 letters, with e-mails for those who have e-mails. Of course,
22 many of them are elderly and do not use computers. Made
23 phone calls as well. There is a number of victims that you
24 can see. They're sitting out in the gallery. I've also
25 received a letter from at least one victim who, you know,

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1 expressed concern about Mr. Field with the resources that he
2 has leaving the company from -- and I could pass that letter
3 up to Your Honor if you would like.

4 **The Court:** That's not necessary.

5 **Mr. Waters:** Yes, sir. But that's essentially what he
6 expressed, and also we, of course, have advised the receiver
7 and the class counsel involved in the civil side of this
8 proceeding today as well, and there may be a representative
9 from that present. I do not see one as of yet.

10 **The Court:** Why don't you have the victims stand up?

11 **Mr. Waters:** Any of the Capital Investment Funding
12 victims, if y'all could stand up now, please. (They comply.)

13 **The Court:** All right. Thank you very much.

14 **Mr. Waters:** Thank y'all.

15 **The Court:** Anything further?

16 **Mr. Waters:** Yes, sir, just a couple of things very
17 quickly. The target letter again went out April 6th, 2012,
18 not in December. As far as any threats from the A.G.'s
19 office, I'm not sure what he's referring to. We have
20 attempted to engage in investigation because Mr. Field's
21 wife, Katherine Tallon (phonetic), and his son, David Field,
22 are involved as principals in many of the various layers of
23 entities that ultimately did business with C.I.F. investor
24 money. And so obviously that's the reason why we've followed
25 those leads as well, not -- not for any reason for -- it

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1 wasn't our decision to make them principals. That was Mr.
2 Field and his family's decision to make them principals of
3 these entities and go down the line, each time a cut being
4 taken.

5 So -- and as far as the difference between Mr. Field and
6 Mr. Pfeiffer, again, I've detailed the information that we
7 had about Mr. Field that caused us concern and caused us
8 to -- to, you know, not think that just a walk-in would be
9 appropriate in that regard, and I've detailed to Your Honor
10 the information we had that caused us concern that he might
11 be a flight risk.

12 **The Court:** All right. Anything further?

13 **Mr. Waters:** No, sir, Your Honor.

14 **The Court:** From Mr. Field?

15 **Mr. Hodge:** Judge, I just wanted to point out: I wasn't
16 trying to compare him to the co-defendant. I was simply
17 using that as an example.

18 **The Court:** No, but I understand that. I'm not worried
19 about -- that's not what's in front of me today.

20 **Mr. Hodge:** I understand.

21 **The Court:** The State could ask -- I mean, has suggested
22 that bond be denied. I'm not inclined to do that. I mean,
23 constitutionally he's entitled to a bond, but the -- you
24 know, the magnitude of these claims in the indictment gives
25 me concern that -- and I'm -- because I don't know -- because

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1 I don't know that there may be assets hidden elsewhere that
2 the State's not aware of that could offer Mr. Field a reason
3 to not comply with the bond.

4 His passport will be taken. All bonds set by this Court
5 require him to stay in the state of South Carolina. And let
6 me just say this. I say this a lot: Bonds aren't always set
7 based on what people could afford. If they were, there would
8 be nobody in jail.

9 So it's not a -- it's not a matter of setting a bond
10 based on what I believe he can afford, what you believe he
11 can afford or what the State believes he can afford. That's
12 not the issue. The issue is his appearance at court
13 hearings, and based on the size of this indictment, I
14 anticipate there will be a significant number of court
15 hearings. Where is this case venued?

16 **Mr. Waters:** Pickens County, Your Honor.

17 **The Court:** Well...

18 **Mr. Waters:** That was where the home office of Capital
19 Investment Funding was.

20 **The Court:** If he continues to reside in Greenville,
21 that might be too much of a burden on him to go to Pickens
22 County. Has it been assigned?

23 **Mr. Waters:** Not as of yet, not that I've been made
24 aware of.

25 **The Court:** This case will be assigned to another judge.

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1 I'm merely acting as the chief of the State Grand Jury at
2 this time, and this bond -- I won't get into that. He would
3 have to return here for any modification of the bond.

4 **Mr. Waters:** Your Honor, I believe once a judge is
5 assigned that that judge would also have jurisdiction. I
6 would have to look at the order. I could be mistaken off the
7 top of my head about that. I know that the administrative
8 order generally for the State Grand Jury obviously gives you,
9 as the presiding judge of the grand jury, the issues of bond.

10 **The Court:** To initially set the bond; right?

11 **Mr. Waters:** Yes, sir.

12 **The Court:** I thought there was some discussion over the
13 past year whether or not any bond modifications need to come
14 back to the chief administrative judge or whether they could
15 be modified by the assigned judge. Well, that's another
16 matter for another day. All right. Bond is set at
17 \$2 million surety.

18 **Mr. Waters:** Thank you, Judge.

19 (Whereupon, the proceedings were concluded. There were
20 no exhibits introduced.)

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I, the undersigned Daphne D. Helms, official court reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the circuit court for Richland County, South Carolina, on the 21st of June, 2012.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

January 29, 2013

Daphne D. Helms, court reporter

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF RICHLAND) COURT OF GENERAL SESSIONS
3) 2012-GS-47-08

4 State of South Carolina,)
5 Plaintiff,)
6 vs.) TRANSCRIPT OF RECORD
7 Arthur M. Field,)
8 Defendant.)

9 July 19, 2012
10 Columbia, South Carolina

11
12
13 B E F O R E:

14 THE HONORABLE DEANDREA G. BENJAMIN, JUDGE.
15

16
17 A P P E A R A N C E S:

18 S. CREIGHTON WATERS, ASSISTANT ATTORNEY GENERAL
19 Attorney for the Plaintiff

20 J. TODD RUTHERFORD, ESQ.
21 Attorney for the Defendant

22
23
24
25 DEBORAH M. McCURDY, RPR
Official Court Reporter

I N D E X O F W I T N E S S E S

(WHEREUPON, no witnesses were called
during these proceedings.)

E X H I B I T S

(WHEREUPON, no exhibits were introduced
during these proceedings.)

1 JULY 19, 2012

2 MR. WATERS: Good morning, Your Honor. The
3 first case this morning is The State v. Arthur
4 Matthew Field. This is a Grand Jury matter. The
5 Number is 2012-GS-47-08.

6 We are here on the Defense's motion for
7 reconsideration of bond that was set by Judge
8 Cooper at a \$2 million surety back on June 21st.

9 Your Honor, before we get started, I believe
10 there is a conflict issue that we probably ought to
11 address on the record as Mr. Rutherford represents
12 our office in a civil matter. The State is
13 certainly willing to waive any conflict. I think
14 that Mr. Field would need to do so on the record as
15 well before we proceed.

16 THE COURT: All right, let me get you to, Mr.
17 Parks -- I will ask the clerk to swear Mr. Field.

18 THE CLERK: Yes, ma'am.

19 Mr. Field, if you would raise your right hand
20 to be sworn in.

21 (Mr. Field complies.)

22 THE CLERK: Do you solemnly swear to tell the
23 truth, the whole truth, and nothing but the truth,
24 so help you God?

25 MR. FIELD: Yes, Mr. Parks, I do.

1 Good morning, Your Honor.

2 THE CLERK: Please state your full name.

3 MR. FIELD: Dr. Arthur Matthew Field.

4 THE CLERK: Thank you, sir.

5 MR. RUTHERFORD: Your Honor, the State is
6 correct, I do represent the Attorney General's
7 Office in a case called South Carolina versus
8 Cephalon. And my client waives any conflict of
9 that matter.

10 MR. FIELD: That is correct, Your Honor.

11 MR. WATERS: Thank you, Judge. Judge, if I
12 could, because obviously Judge Cooper heard the
13 prior motion, I'd like to quickly just give you an
14 overview of the allegations in this particular
15 case, and then obviously let the Defense make their
16 motion.

17 We do have a number of victims here. I would
18 ask the victims in the Capital Investment Funding
19 case if they could stand.

20 (Victims comply.)

21 MR. WATERS: And I do believe that two of them
22 would like to speak to Your Honor at the
23 appropriate time.

24 THE COURT: I will be glad to hear from them.

25 MR. WATERS: Okay. Thank you, Judge.

1 Judge, Mr. Field was indicted by the State
2 Grand Jury for 11 counts of securities fraud, two
3 counts of conspiracy, and one count of forgery in a
4 91-page indictment. And, Your Honor, if you don't
5 have a copy I'll hand one up to you right now.

6 Essentially, the allegations in the case deal
7 with Mr. Field's running of a company called
8 Capital Investment Funding that was in business
9 from '99 to 2008.

10 When that company declared a winding up,
11 ultimately there was some \$38 million outstanding
12 to the investors of South Carolina.

13 And the receiver stated that in a best case
14 scenario there are only going to be pennies on the
15 dollar with regards to what assets it has.

16 The allegations of securities fraud
17 essentially boil around four main areas. And all
18 of them really boil around not disclosing the true
19 nature of the business to investors so that he
20 could continue this company rolling and continue to
21 take salaries and fees, and things like that, at
22 multiple layers.

23 The first group of allegations deal with the
24 fact that the president of the New Jersey parent
25 corporation of CIF, of which Mr. Field was a

1 member, apparently engaged in some financial
2 improprieties that resulted in the loss of a
3 million dollars of investor money, and that was not
4 disclosed to the investors.

5 The second main group deals with Mr. Field
6 using a fake name and committing forgery to hide
7 his interest in a re-lender from which CIF money
8 was then being re-leant to this particular company.
9 And that relates not only to securities fraud, but
10 also to the forgery count.

11 The third main grouping of allegations deal
12 with the failure of Mr. Field to disclose that the
13 whole business arrangements face the possibility of
14 significant liability, civil and criminal, for
15 violation of the intrastate exemption from
16 registration with the Federal Securities and
17 Exchange Commission.

18 And then the final grouping of allegations
19 deal with the fact that the parent corporation
20 ultimately became CIF's biggest debtor and began
21 being unable to pay.

22 And Mr. Field not only did not disclose that
23 to investors, because the death of that company
24 essentially meant the death of CIF, he indeed then
25 engaged in transactions where he sent CIF money up

1 to LRI, so then they could just make the payments
2 back and he could claim to investors and to the
3 State Securities Commission that LRI was in fact
4 current when it was not.

5 And during that period of time, which was
6 primarily through 2007, when CIF was obviously
7 sucking wind, he didn't disclose that, but not only
8 that, he started taking out hundreds of thousands
9 of dollars of capital distributions to himself
10 during that period of time.

11 So that is, again, just an overview of the
12 allegations in that 91-page indictment. And I will
13 turn it over to the Defense now to make their
14 motion.

15 THE COURT: All right. There is a
16 Co-Defendant also, right?

17 MR. WATERS: That's correct, Your Honor. That
18 is Scott Pfeiffer, who is an attorney in
19 Greenville, who was also indicted.

20 THE COURT: What was his part?

21 MR. WATERS: I'm sorry?

22 THE COURT: What was his part?

23 MR. WATERS: He was the attorney for Mr. Field
24 and for Capital Investment Funding, but he also had
25 an ownership interest in Cosmo, which was one of

1 the major re-lenders of CIF money. And that is
2 also the entity that, at least in its formation,
3 early formation, Mr. Field was hiding his interest
4 through the use of that fake name.

5 Mr. Pfeiffer also was involved in the approval
6 and preparation of these prospectuses, and because
7 of his involvement as a principal, and the
8 re-lenders had an intimate knowledge of CIF
9 business and therefore obviously knew about the
10 misrepresentations in the prospectuses that were
11 being made that I detailed before.

12 He is ultimately indicted in I believe it is
13 nine counts of securities fraud, and then both
14 counts of conspiracy. He is not indicted for
15 forgery. But that is the Co-Defendant.

16 THE COURT: All right. Thank you.

17 Yes, sir, Mr. Rutherford?

18 MR. RUTHERFORD: Thank you, Your Honor. May
19 it please the Court?

20 The problem here is that we're starting with a
21 \$2 million bond, which I believe is beyond
22 excessive as it relates to the constitution of not
23 only this state, but the United States.

24 And I believe that we're going to ask -- I
25 believe that -- Your Honor, we're going to ask you

1 to start where the constitution and the statutes
2 require you to start, which is as to whether Mr.
3 Field deserves anything other than a PR bond.

4 Mr. Field's Co-Defendant, as Your Honor was
5 able to get out of the Attorney General's Office,
6 received a PR bond.

7 Mr. Field, as the Attorney General stated, has
8 known about this investigation for at least the
9 past four years. Mr. Field was told on June 14,
10 2012, the fact that an indictment was issued in
11 this case and that he needed to turn himself in.

12 Mr. Field brought himself to Richland County
13 and turned himself in in this courthouse on
14 June 18th.

15 There are two issues here, whether he is a
16 danger to the community -- and I think no one
17 alleges that he is -- and whether he is a flight
18 risk.

19 So the only issue that we're dealing with
20 today is whether he is a flight risk.

21 Your Honor, we would argue, and I think the
22 facts state clearly for themselves, that anyone who
23 was told of an investigation for the past four
24 years, anyone who was told that four days later
25 they would have to turn themselves in and have a

1 bond hearing, anyone that then turns himself in and
2 has a bond hearing and is held in violation of the
3 South Carolina code for five days without a bond
4 hearing deserves a PR bond.

5 Your Honor, although we believe that the
6 constitution and statutes require him to get a PR
7 bond, we understand the nature and circumstances
8 surrounding this case. Mr. Field is a man with a
9 means to post some degree of bond.

10 What we would ask Your Honor for is to place
11 Mr. Field, if the Court, the Attorney General's
12 Office feels like Mr. Field is any kind of flight
13 risk, that the Court place him on electronic
14 monitoring and GPS, that the Court impose a curfew
15 on him, that the Court can put in place those
16 conditions which will reasonably assure that Mr.
17 Field will show back up in court, as he did the
18 first time having known about this for the past
19 four years.

20 Mr. Field has two kids. They live in South
21 Carolina. Mr. Field has a wife. She lives in
22 South Carolina. They have a home located in
23 Greenville.

24 Your Honor, there are multiple allegations
25 here, but none of them amount to whether he is a

1 flight risk.

2 It was presented to Judge Cooper, I'm sure
3 that it will be presented to Your Honor, that he
4 filed an affidavit with Judge Cooper saying that he
5 was a resident of Florida. He got a job at Flagler
6 University in Florida. Flagler told him that they
7 wanted him to live in Florida, so he was going to
8 change his driver's license and move to Florida.

9 Florida does not make him a flight risk. This
10 is a man with a passport. He has already turned
11 that passport over. He cannot leave the country.
12 On GPS monitoring he wouldn't be able to go
13 anywhere without the permission of whatever bail
14 bond would be in place to make sure he shows up.
15 Everything is in place to make sure that Mr. Field
16 shows up in court when he is required to do so.
17 And that is the only standard that we are dealing
18 with.

19 I have heard all kinds of things about, you
20 know, allegations of securities fraud and where
21 money went, but that is not what we are here for.
22 We are only here to assure that Mr. Field shows
23 back up in court when he is requested to do so.

24 His past immediate actions on June 18th
25 already indicate that he will. The actions prior

1 to that for the past four years clearly indicate
2 his desire to vindicate himself and his family of
3 all of these charges.

4 THE COURT: Yes, sir?

5 MR. WATERS: Your Honor, the State's first
6 point in response to that would be, this is all
7 stuff that Judge Cooper already heard. And we are
8 obviously here on a reconsideration motion. And
9 typically the rule is, is that there is no granting
10 of a reconsideration motion unless there has been a
11 material change in circumstances, which has not
12 been alleged or shown. All these arguments were
13 raised to Judge Cooper, and he made his decision at
14 that particular time.

15 But with regards to what was presented to
16 Judge Cooper, the State was concerned that Mr.
17 Field is a flight risk. And as I expressed to
18 Judge Cooper at the prior hearing, there is a few
19 reasons for that.

20 We have a witness statement that he has stated
21 that Arthur Field will not go to jail. That is
22 Rule Number One.

23 Number Two, we have the information that was
24 provided to us by the receiver, Jerry Saad, who is
25 a CPA in a civil action up in Greenville, and

1 Robert Cole, who was an attorney working on that
2 civil action, that Mr. Field said to them that he
3 sent a million dollars down to the Bahamas in an
4 attempt to get residency there, and that ultimately
5 didn't pan out, and so they got the money back.

6 But I think the main thing is that we were at
7 a prior proceeding before Judge Cooper back in May.
8 And, again, Mr. Field was challenging service and
9 challenging jurisdiction and flatly told Judge
10 Cooper and also signed an affidavit in court during
11 that in which he says, I'm a resident of Florida.
12 I live at this address in Florida. Here is my
13 driver's license that shows I live in Florida.

14 We were able to demonstrate to Judge Cooper at
15 the bond hearing that that was in fact not true,
16 that that property he was claiming to be a resident
17 at is actually a rental property through which he
18 has got a rental contract. Couldn't go there till
19 September if he wanted to. If he wants to book
20 owner time there, he has to go through the rental
21 company that they have hired.

22 Of course now he is saying, well, I'm a
23 resident of South Carolina back at the house where
24 he, you know, back in May was saying I don't live
25 at, I live in Florida.

1 And when you are talking about those sorts of
2 shenanigans -- and he is an attorney, you know, he
3 knows what the rules are. And he flatly told Judge
4 Cooper something that is not true about a basic
5 issue of where does he even live.

6 And so when you combine that material
7 misrepresentation with the other information that
8 we have -- additionally, he says he turned himself
9 in. And he actually did turn himself in, but that
10 was after four days of being advised of the
11 indictment and told he needed to report now, and he
12 did not do that.

13 He did ultimately turn himself in, but that
14 was four days later after he was told, we need you
15 to submit to custody right now. And he did not do
16 that.

17 So all that information was presented to Judge
18 Cooper. Judge Cooper made his determination.
19 There has been no material change of circumstance
20 whatsoever that would justify a reconsideration.
21 And I think that that alone is sufficient to deny
22 the reconsideration motion.

23 Your Honor, I have some communications from
24 various victims in this particular case, of which
25 there is a sizeable number -- and some, as you have

1 seen, are present in the courtroom -- that I would
2 like to hand up that they wanted Your Honor to
3 consider.

4 And, again, as I said before, I believe we
5 have two victims who would like to address the
6 Court before a decision is made.

7 THE COURT: I will be glad to hear from them.

8 MR. WATERS: Okay. The first one is
9 Ms. Dobson.

10 MR. RUTHERFORD: And, Your Honor, while he is
11 calling her up to testify, we would obviously
12 object to any testimony that is unrelated to
13 whether Mr. Field will show up. That is the only
14 issue we are here for today. We are not here to
15 try this case.

16 As Your Honor knows and has set bond in
17 multiple violent crimes, the issue in a violent
18 crime is whether the victim is afraid of the
19 Defendant, whether they live in close proximity,
20 whether he has any access to that victim, whether
21 they are living in fear, whether their family lives
22 in fear.

23 Unless someone is testifying as to whether
24 Mr. Field is a flight risk, because they don't
25 allege he is a danger, we would object to their

1 testimony and believe it is not relevant for
2 today's hearing.

3 Certainly if that is the testimony they intend
4 to present, we don't object, but just as a forward
5 warning to the Attorney General, if they intend on
6 testifying as to the facts of the case, we would
7 certainly object to that.

8 MR. WATERS: Your Honor, this is just, as you
9 are well aware, that the Victims' Rights Act gives
10 victims a chance to address the Court in bond, and
11 I had this morning to express a desire to do that.

12 Obviously I would agree with Mr. Rutherford
13 that the issue before the Court is not the ultimate
14 guilt or innocence of Mr. Field, but whether or not
15 he is a flight risk. So I don't dispute that. But
16 this is just, you know, complying with the Victims'
17 Rights Act and the right if somebody wants to
18 address the Court he can do so.

19 THE COURT: I understand.

20 MR. WATERS: Thank you, Judge. If you
21 would --

22 THE COURT: I will be glad to hear from them.

23 Mr. Rutherford, can I get you to have your
24 client step aside so I can see the victim.

25 (Complies.)

1 MS. DOBSON: May it please the Court? My name
2 is Jennifer Dobson. I'm an attorney here in
3 Columbia. But I'm here on behalf of my
4 grandfather, Leland Dobson, who is a resident of
5 Anderson County. He is unable to be here today.
6 He is 84 years old. He is a World War II veteran
7 and a widower.

8 He has suffered financially in this case from
9 this Defendant. My grandfather, we spoke at length
10 on Sunday. And when your grandfather asks you to
11 do something, you do it. I'm his only grandchild,
12 and so I am here just asking the Court, he very
13 much opposes any reduction in bond. He believes
14 the Defendant to be a flight risk.

15 And so the Dobson family very much opposes any
16 reduction in bond. And we very much ask that the
17 Court do not reduce his bond in any way, shape,
18 form, or fashion.

19 Thank you, Your Honor.

20 THE COURT: All right, thank you.

21 MR. WATERS: And, Your Honor, the next person
22 would be Mr. Gerald Son. And, again, Mr. Son, if
23 you will address Your Honor as to Mr. Field's
24 flight risk.

25 MR. SON: Okay. My name is Gerald Son. My

1 wife and I both are in part of this. And based on
2 the way that I had to work with his staff that he
3 put together, there is no doubt in my mind that he
4 is a very smart and intelligent person. And I
5 oppose what he is asking for. I hope they leave it
6 where it is at for him.

7 I know it is an inconvenience for him, but it
8 is nothing like what he has put these people
9 through that was with the company.

10 I personally have known two of them, and they
11 have since passed away. And it was a real drag.
12 It has put a hardship on my wife and I. And I just
13 hope you don't fall victim to him and change it.

14 Thank you.

15 MR. WATERS: Thank you, Mr. Son.

16 That would be the State's presentation, Your
17 Honor.

18 THE COURT: Thank you.

19 Does he have a prior criminal record?

20 MR. WATERS: No. No, ma'am.

21 THE COURT: All right. And, of course, I was
22 not a part of the previous hearing, but I'm
23 curious, I'm just curious as to the -- it is my
24 understanding the Co-Defendant received a PR bond
25 is what you are telling me?

1 MR. WATERS: That is correct. Your Honor,
2 again, we didn't have any information with regards
3 to -- that caused us concern about him being a
4 flight risk, so we left that in the discretion of
5 Judge Cooper.

6 We, as I expressed, we had concern about
7 Mr. Field and put that to Judge Cooper and he made
8 his decision.

9 And, again, I -- you know, the State asserts
10 there has been no change of circumstances that
11 would justify a reconsideration at this point.

12 MR. RUTHERFORD: And, Your Honor, again, in
13 the State's presentation I heard no evidence of
14 flight risk.

15 And in South Carolina we deal with this issue
16 all the time as to residency. And in South
17 Carolina the law is clear, case law and otherwise,
18 that you live where you say you live.

19 If Mr. Field is declaring today that he
20 lives -- he is a South Carolina resident and
21 tomorrow that he is a Florida resident, it is
22 inconsequential as it relates to flight.

23 Mr. Field did not declare himself a resident
24 of Bimini. He did not go to Colombia or a
25 non-extradition country and say that he was a

1 resident of that country. He simply said that back
2 then he was trying to get a job and he was a
3 resident of Florida. He was trying to change his
4 driver's license. If you change your driver's
5 license and have an address in Florida, there is no
6 way that that is evidence of flight.

7 THE COURT: So has his license been changed?

8 MR. RUTHERFORD: He lives in South Carolina,
9 Your Honor. He is a resident of South Carolina.
10 This was in an attempt to find a job in Florida.
11 And so he did all that. No different than the new
12 president of Orangeburg-Calhoun Tech having to move
13 from Columbia to Orangeburg. But his residence for
14 his purposes, his residence for his job purposes
15 changes when he says that it does.

16 But, Your Honor, that is why we would ask that
17 Your Honor place him on home confinement in his
18 home in Greenville County. He cannot leave. He
19 will be on GPS monitoring. He will be told what
20 his curfew is and when he could leave and when he
21 could not.

22 That would satisfy any conditions that the
23 Court sees fit or that the Attorney General sees
24 fit to make sure that, again, he shows up.

25 This is not about punishment. This is not

1 about what he may or may not have done. It is
2 simply about whether he is willing to show up in
3 court when he is requested to do so.

4 Your Honor, in our motion we requested a
5 \$50,000 bond. Mr. Hodge requested a \$50,000 bond.
6 We understand that the State and Your Honor may see
7 fit to impose a bond higher than that, but we do
8 believe that any bond higher than \$250,000 is
9 excessive in this case.

10 Someone with no prior record who stands in
11 front of this Court having not done anything but
12 turn themselves in when they were requested to do
13 so and then be held five days against the laws of
14 this state should, Your Honor, be entitled to a
15 reasonable bond. And we would submit that \$250,000
16 is a reasonable bond.

17 MR. WATERS: Your Honor, if I could just
18 address that. Within a few weeks of receiving a
19 target letter, Mr. Field did change his license to
20 a Florida address. And, again, that is a rental
21 property.

22 And he told Judge Cooper when he was
23 challenging service and challenging jurisdiction
24 over him, that he lives in Florida at that address.

25 And at the bond hearing we were able to show

1 to Judge Cooper that is just flat not true. I
2 think it is relevant to flight when somebody is
3 making material misrepresentations about where they
4 live.

5 THE COURT: All right. What I'm going to do
6 is, I am going to -- I am not going to give him a
7 PR bond or a \$50,000 surety bond. I am going to
8 set the bond at half a million dollars. He is
9 going to be on home confinement. He is not to have
10 any contact with the victims. That home
11 confinement of course is GPS tracking.

12 And he is to -- any violations of that home
13 confinement, he is to be taken into custody
14 immediately.

15 And, sir, when I say no contact with the
16 victims, that means -- you understand you can't
17 have any direct contact, any indirect contact,
18 e-mails. He is going to be in -- is it Greenville
19 County?

20 MR. WATERS: Yes. Yes, ma'am.

21 MR. RUTHERFORD: Yes.

22 THE COURT: I think the case will be -- and
23 I'm not sure -- Mr. Parks, have you received an
24 order as to who the case is going to be transferred
25 to?

1 THE CLERK: Your Honor, the case has been
2 venued to Pickens County. And he is a resident --
3 he has supposed residence in Greenville County.

4 THE COURT: The Clerk's Office will, through
5 the monitoring company -- he can't be released
6 until he is hooked up on the monitoring.

7 THE CLERK: Yes, ma'am.

8 MR. RUTHERFORD: Yes, ma'am.

9 THE COURT: And, Mr. Parks, he will need to --
10 and all of that will have to go through Mr. Parks
11 once the bond is set if he makes the half a million
12 dollars.

13 THE CLERK: Yes, ma'am.

14 THE COURT: And then you will need to verify
15 the address where he will be living. He will be on
16 home confinement.

17 MR. RUTHERFORD: Your Honor, can we ask that
18 that home confinement, that it be a dusk to dawn
19 home confinement scenario?

20 Mr. Parks obviously has to -- he is meeting
21 with lawyers as we speak. He is entertaining his
22 job prospectus and trying to do all that. If we
23 could ask, Your Honor, the home confinement be dusk
24 to dawn. The GPS monitor would be in place at all
25 times to make sure that this location is where he

1 is supposed to be, that he does not leave South
2 Carolina without permission, but that it be a dusk
3 to dawn home confinement.

4 THE COURT: I'm not sure about -- well, he can
5 of course meet with his lawyer -- lawyers, medical
6 appointments, legal appointments, medical
7 appointments, but he needs to be on other than
8 that.

9 MR. RUTHERFORD: Right. And he would be on
10 the GPS, so everybody would always know where he
11 was, but that he had to be in the house at dark and
12 could leave the house at dawn and go and seek
13 employment and do other things.

14 The problem is that you get into a whether it
15 is valid to ask for permission to do this or
16 whether it is valid to ask for permission to do
17 that.

18 So if he is in his house by say 9:00 o'clock
19 at night, whether that is sufficient to make sure
20 that he does everything he is supposed to do.

21 THE COURT: I would prefer if he ask
22 permission through the tracking company.

23 MR. RUTHERFORD: Okay. That's fine. Thank
24 you, Your Honor.

25 THE COURT: I am not just going to make it

1 vague.

2 MR. RUTHERFORD: Yes.

3 THE COURT: He needs to be able to --
4 somebody -- if he is going to a lawyer's office, he
5 needs -- the tracking company needs to know exactly
6 where he is going and how long he is going to be
7 there.

8 MR. RUTHERFORD: Yes. Thank you, Your Honor.

9 MR. WATERS: Thank you, Judge.

10 THE COURT: All right, thank you. Thank you
11 all for being here.

12 MR. FIELD: Thank you, Your Honor.

13 THE COURT: And he has to render his passport.

14 MR. RUTHERFORD: Yes. Thank you, Your Honor.

15 (WHEREUPON, the proceedings were concluded.)

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(END OF TRANSCRIPT)

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

I, Deborah M. McCurdy, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Richland County, South Carolina, on the 19th day of July, 2012.

I do further certify that I am neither of kin,
counsel nor interest to any party hereto.

January 29, 2013

Deborah M. McCurdy, RPR
Fifth Circuit Court Reporter

The State of South Carolina,)
)
 Plaintiff,)
)
 vs.) Transcript of Record
)
 Arthur Field,)
)
 Defendant.)
)
)

December 13, 2012
Columbia, South Carolina

B E F O R E:

The Honorable DeAndrea G. Benjamin, Judge

A P P E A R A N C E S:

S. Creighton Waters, Esquire, Assistant Attorney General
Brian T. Petrano, Esquire, Assistant Attorney General
Attorneys for the State

J. Todd Rutherford, Esquire
Attorney for the Defendant

Elizabeth B. Harris, CVR-M
Circuit Court Reporter

I N D E X

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E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>I.D.</u>	<u>Ev.</u>

No Exhibits Introduced.

1 THE COURT: All right, we're ready, and I believe this
2 is Mr. Rutherford's motion.

3 MR. RUTHERFORD: Yes, Your Honor.

4 (WHEREUPON, THE DEFENDANT IS DULY SWORN.)

5 THE COURT: All right, this is the *State of South*
6 *Carolina vs. Arthur Field*, 2012-GS-47-08, and this is Mr.
7 Rutherford's motion. So, I'll hear from him, and then I'll
8 come back to you, Mr. Waters.

9 MR. WATERS: Thank you, Your Honor.

10 MR. RUTHERFORD: Thank you, Your Honor. May it please
11 the court? As Your Honor knows, Your Honor allowed that
12 Mr. Field's bond be reduced from the original bond that
13 Judge Cooper set. In doing so, Your Honor placed him on
14 house arrest with electronic monitoring with the ability to
15 go to work as long as he notified his bondsman of his
16 location in advance where he was going to be, and notify
17 them, I believe, when he gets back. He has been on house
18 arrest with GPS electronic monitoring since, I believe, mid
19 July after serving thirty days in jail.

20 Mr. Fields has no prior record and has indicated his
21 desire to be present and make sure that he does everything
22 that the court and the government requires of him, or the
23 state requires of him, while he is out on bond.

24 We would ask at this point that Your Honor take him
25 off of the electronic monitor and take him off of house

1 arrest. There's been nothing since he's been out on bond
2 to indicate any reason that he remain on GPS with
3 electronic monitoring and house arrest, and we would simply
4 ask that Your Honor remove him from that burden.

5 MR. WATERS: Your Honor, may it please the court?
6 Obviously the typical convention is there is no need for a
7 modification of bond unless there's been some change of
8 circumstances or compelling circumstances. Your Honor is
9 of course aware, you heard the original reconsideration
10 motion in July, and Judge Cooper set the original bond in
11 June. And there was some information provided to him then
12 that led him to believe that Mr. Field was a flight risk,
13 and I don't believe there's been any change to that.

14 We have notified obviously the victims, of which
15 there's about 630, and received a stack of email responses
16 from victims objecting to the modification. I hand those
17 up to Your Honor. But obviously they generally express
18 what you would expect: objection to any modification.

19 I marked one in particular that I think is, you know,
20 representative of what you see in the majority of those,
21 those emails. I've also spoken with the receiver in the
22 civil action, who of course represents the company now, and
23 in that vein also represents the note holders to some
24 extent.

25 He also expressed an objection to any change and

1 provided me with an affidavit from the process server in
2 which the processor server noted multiple days in which she
3 went to Mr. Field's home to attempt to effect service of
4 some civil document and saw no activity and no presence in
5 the house.

6 We did -- we have, in fairness to Mr. Field, we have
7 independently asked him to verify his location in
8 Greenville on some of the days that were listed in there,
9 and he was -- he did do that to our satisfaction. So, in
10 fairness to that, at least fifteen times we have checked on
11 his location, and he has been available and where he says
12 he is. So, that, I would point that out to the court.
13 However, Your Honor, on some of the dates listed in the
14 affidavit from the process server on Sunday and one time at
15 night, that would not have been times when we had attempted
16 to verify his location.

17 As far as the GPS, we don't have access to that
18 particular -- that data. We have no information that there
19 has been any violation, but we don't have those reports,
20 but I -- we would suggest perhaps there should be a look at
21 that if there was to be any modification in that regard.

22 And again, the bondsman has received notice. From
23 what we understand, the bondsman emailed the clerk, Mr.
24 Parks, and told him about -- he had no objection to if
25 there was a removal of the house arrest or the GPS.

1 However, Your Honor, we have a concern under the
2 Statute of Frauds that any modification in that regard, if
3 it were to take place, would need to have the bondsman's
4 signature in writing to avoid a Statute of Frauds problem.
5 There's a recent case, Mario Hinojos, that addresses that
6 very issue. So, with that, that would be the state's
7 presentation, Your Honor.

8 THE COURT: All right, anything else from you, Mr.
9 Rutherford?

10 MR. RUTHERFORD: Your Honor, just in regards to the
11 service of process just because it's been brought up. I
12 don't know why the process server would continuously go
13 out, I think they say fifteen times, to Mr. Field's house
14 and Mr. Field has a lawyer of record. All he had to do was
15 call me. Secondarily, Mr. Field says that that's not true.
16 That he is always home, and the government knows where he
17 is when he's not, and so does his bail bondsman. He did
18 want to refute that issue.

19 MR. WATERS: But just, just to correct. What I said
20 was that we had verified his location ---

21 THE COURT: Fifteen times, yes.

22 MR. WATERS: --- fifteen times.

23 MR. RUTHERFORD: Right.

24 MR. WATERS: And he has satisfactorily complied with
25 that when we've have done that. What I was provided --

1 because I have to notify the receiver just as any other
2 victim whenever there is a proceeding in this matter. He
3 provided me the affidavit of his process server who said
4 that at least, I believe, on four occasions, he, you know,
5 attempted to effect service. Again, though, on some of
6 those occasions, we had verified Mr. Field's location, and
7 so those, I don't think, count.

8 THE COURT: Yeah, but you said it was two. He's
9 saying that was the two, one on Sunday and one on -- in an
10 evening.

11 MR. WATERS: That's correct, Your Honor.

12 THE COURT: And I don't -- I've given him an
13 opportunity to work, so I don't know -- but you, you can't
14 say he wasn't at work.

15 MR. WATERS: I -- because we don't have the GPS.

16 THE COURT: Okay.

17 MR. WATERS: I don't know if he was at work or at some
18 other permissible place.

19 THE COURT: Okay.

20 MR. RUTHERFORD: Right. No, mine was not to Mr.
21 Creighton's information. It was more to the information
22 that a process server would continuously go out to the
23 residence of somebody that had a lawyer. That there seems
24 to be something more insidious, and these are the same
25 people that Arthur is about to sue or is suing under a

1 civil RICO statute. So, they have animus already, and what
2 he's saying doesn't even make sense for somebody that
3 already has a lawyer. And so again we would just reiterate
4 our request.

5 THE COURT: And do you have the -- you said the GPS?

6 MR. RUTHERFORD: Your Honor, Mr. Fowler is here, who
7 has been keeping track of his whereabouts, and tells me,
8 tells me that he has had no problems with Mr. Field, and
9 whatever Your Honor orders is fine with the bonding
10 company.

11 THE COURT: Is that correct?

12 Mr. FOWLER: That is correct, yes, Your Honor.

13 RULING OF THE COURT:

14 THE COURT: All right. Well, what I'll do is at this
15 point, I'll take, I'll take the house arrest off so he can
16 go, but I'll leave the, I'm going to leave the bracelet on
17 and give Mr. Rutherford leave to come back in ninety days.
18 Or, or if something else changes before then, within ninety
19 days regarding the bracelets. But we'll, we'll take the
20 house arrest off and the restrictions regarding the house
21 arrest.

22 MR. RUTHERFORD: Thank you, Your Honor.

23 THE COURT: Thank you.

24 MR. WATERS: And, Your Honor, just to, just to
25 clarify. Before that condition actually takes place, can

1 we get a written consent from the bondsman to avoid any
2 issues in that regard?

3 MR. RUTHERFORD: Your Honor, I think the bondsman
4 would only have to be -- would only have to consent if --
5 and this is again my position. But if the bracelet was
6 going to be taken off, but all you're doing is saying that
7 he can -- you're modifying what he can do with the bracelet
8 on. I don't believe the bondsman has to sign off on that.

9 And again if we need to fix that later on, we will,
10 but Your Honor does that every Monday in change in
11 conditions, and bondsmen don't have to come and sign,
12 saying that he can now do anything because he still has the
13 bracelet on his leg. Plus; Mr. Fowler is here, and he is
14 the one that monitors the bracelet.

15 Mr. FOWLER: I'm also the bondsman.

16 THE COURT: All right. Well, can he sign off on it?

17 MR. WATERS: If that's the bondsman, then ---

18 THE COURT: Okay. Well, he's ---

19 MR. WATERS: I don't know if ---

20 THE COURT: --- a representative of the, of the
21 company?

22 Mr. FOWLER: Yes.

23 MR. RUTHERFORD: Well, Your Honor, the email is from
24 who?

25 Mr. FOWLER: The email would be from Joseph Lowell.

1 MR. RUTHERFORD: Joseph Lowell.

2 Mr. FOWLER: But I'm the agent of record or ---

3 MR. RUTHERFORD: That's correct.

4 THE COURT: Okay. Well, he can sign. He can sign off
5 on it.

6 MR. WATERS: That works, Your Honor. Thank you.

7 THE COURT: That takes care that.

8 MR. WATERS: Yes, ma'am.

9 THE COURT: All right. Thank you.

10 MR. RUTHERFORD: Thank you, Judge.

11 --- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED
VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH
JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO
HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE
AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE
PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING
OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE
CIRCUIT COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON
THE 13TH DAY OF DECEMBER, 2012.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

ELIZABETH B. HARRIS, CVR-M

COLUMBIA, SOUTH CAROLINA

FEBRUARY 3RD, 2013

STATE GRAND JURY OF SOUTH CAROLINA
IN THE COURT OF GENERAL SESSIONS
FIFTH JUDICIAL CIRCUIT

FILED

JUN 21 2012

JAMES R. PARKS
CLERK, STATE GRAND JURY

STATE OF SOUTH CAROLINA)
)
) Plaintiff,)
) V.)
)
) ARTHUR M. FIELD,)
)
) Defendant.)

CASE NO: 2012-GS-47-08

ORDER SETTING BOND

This matter came before the Court on June 18, 2012, for the purpose of setting bond. The defendant was present. An attorney appeared/did not appear for the Defendant. The State was represented by Creighton Waters of the Attorney General's Office.

The defendant is charged with the following offense(s):

SECURITIES FRAUD (11 Counts)
CRIMINAL CONSPIRACY (2 Counts)
FORGERY (1 Count)

After hearing from the defendant and the State, the Court finds it appropriate, and it is therefore Ordered, that:

_____ Bond is denied at this time with leave for defense counsel to file a written motion for bond.

_____ A Personal Recognizance Bond in the amount of \$_____ is set at this time.

_____ A Surety Bond in the amount of \$_____ is set at this time; and, the defendant is allowed to post 10%.

cy
_____ A Surety Bond in the amount of \$ ~~200,000~~ 500,000 N/B is set at this time; and, the defendant is not allowed to post 10%. 7-19-12

_____ Bond is reduced from _____ to _____ and does/does not include other pending charges.

_____ Bond is concurrent/consecutive with existing bond in the amount of \$_____

It is hereby ordered that Bond is set with the following conditions (Defendant to initial by each paragraph below):

1. The Defendant is not to leave the State of South Carolina.
2. The Defendant, at the request of the State, and at his/her own expense shall be subject to drug tests. Upon notification of a test, the Defendant shall appear at a facility designated by the State for drug testing.
3. The Defendant shall have no contact with any co-defendant, either directly or indirectly, without the prior permission of the Court.
4. I do/~~do not~~ have a passport.
5. The Defendant shall not sell or encumber any property, personal or real, during the term of his/her bond, without the prior written permission of the South Carolina Law Enforcement Division.
6. The Defendant shall, within ten days of the date of this Order, advise the Clerk of Court, State Grand Jury in writing whether he/she intends to represent himself/herself, to retain counsel, or whether he/she desires to have counsel appointed, assuming that he/she meets the indigency requirements. If the Defendant meets the indigency requirements, and desires to have counsel appointed, he/she should appear before the Clerk of Court and fill out appropriate forms to apply for court-appointed counsel. The Clerk of Court will then forward the necessary papers to the appropriate judge, who shall decide whether to appoint an attorney to represent the Defendant.
7. The Defendant shall appear at all scheduled hearings and at the trials of the above criminal charges and/or indictments.
8. The Defendant shall keep the Clerk of Court advised of his/her home address and telephone number so that notices of court hearings and trials may be sent to the appropriate location.
9. The Defendant understands that any future violation of any Federal, State, County, or Municipal Law will be considered a violation of the conditions of this bond and grounds for revoking bond.
10. The Defendant understands that he/she has the right to be present at the trial of his/her case that it is his/her responsibility to maintain contact with his/her attorney and the Clerk of Court in order to know the date that the trial of his/her case is scheduled for. The Defendant further understands that this Order acts as a notice of his/her right to be present at trial, and that the trial will proceed in his/her absence upon a failure to attend the Court.

11. The bond is set in the amount of 500,000 ^{NO 10th} 1-19-12 ^{500,000} ^{NO 10th} ¹⁻¹⁹⁻¹² Which shall be secured by sufficient surety in the form and matter prescribed and approved by the Clerk of Court. The underwriting insurance company, if any, shall list the collateral for the bond with the Clerk of Court in addition to providing an appropriate power of attorney between the bondsmen and the insurance company.

12. No direct or indirect contact with any victims.
G.P.S. monitoring; home confinement except to meet
with attorney, doctor visit, religious service.

13. Any violations of conditions of bond will result in
defendant's immediate arrest.
 IT IS SO ORDERED.

14. Defendant allowed to work outside the home as a
S.G. as verified by G.P.S. company.

June 28, 2011
 Columbia, South Carolina

PRESIDING JUDGE
 FIFTH JUDICIAL CIRCUIT

I have read and understand the terms and conditions of my release under this Order.

6/21/12
 (Date) 7/19/12

[Signature]
 Defendant

I have read and understand the terms and conditions of this Order.

C. Patrick Fowler
 State Capital Bail Bonding

7/20/2012
 (Date)

J. C. Patrick Fowler, agree to Surety stay on the modified
bond (Condition # 14) regarding defendant's employment

C. Patrick Fowler

8/08/2012
 (Date)

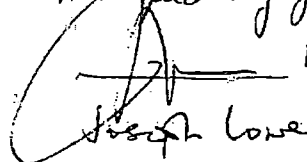
I, Arthur M. Field, do agree to the bond modification outlined below.
12/13/12 Arthur M. Field

I, C. Patrick Fowler, Comply with Bond Modifications Listed
 Below. [Signature]

*If you have questions about your bond, please call the Clerk of Court's Office for the State Grand Jury at
 803-734-0497.

Motion to Amend Bond as to House Arrest
is granted, as to G.P.S. tracking it is
denied. WB 12-13-12

On December 18, 2012, in York, S.C., I Joseph Lowe,
representing LEXON Insurance, agree to stay the bond
as modified by Judge Benjamin on 12/13/12.

 12/18/12
Joseph Lowe

witnessed: J. R. Parks
Clerk, State Grand Jury

(CASE NO.: 12-GS-47-00008)

THE COURT: Okay, this is *State of South Carolina versus Arthur Field*; is that right?

MR. WATERS: Yes, sir, Your Honor.

THE COURT: And this is a negotiated plea, is that right?

MR. WATERS: Uh -- it's pursuant to a written plea agreement, Your Honor. I'll be glad to explain the -- the terms now or -- or later, depending on the circumstances.

THE COURT: Yeah, just go ahead and give me an overview now.

MR. WATERS: Yes, sir. Uh -- we've got the, uh, plea agreement right here; it's been executed by myself, uh -- uh, Doctor Field, and his attorney, uh, Todd Rutherford.

Uh -- just to summarize, Your Honor, the, uh -- the main points of this particular plea agreement, uh, Mr., uh -- Doctor Field was indicted for, uh, fourteen charges -- eleven counts of securities fraud, two counts of conspiracy, and one count of forgery no dollar amount.

Uh -- the negotiated term of this particular, uh, agreement is that the securities fraud counts will be concurrent and they will be in your discretion ultimately in

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1 sentencing whether or not, uh, to make the two conspiracies
2 and the forgery consecutive or concurrent, thereby limiting
3 the exposure. That is the negotiated term, uh, to this
4 agreement.

5 Uh -- also in this agreement, sentencing to be de- --
6 deferred until after the, uh -- uh, the trial of any present,
7 uh, or future codefendant.

8 Uh -- third, there will be a restitution hearing around
9 the time of that sentencing, uh, in order to, uh, determine
10 what if any amounts are due in restitution.

11 Uh -- forth, uh, it obligates cooperation on the part of
12 Doctor Field with the, uh -- with The State.

13 Uh -- fifth, uh, as to sentencing, it is a -- it's a
14 term of this agreement that, uh, The State will not, uh, ask
15 for a specific sentence but it can, of course, uh,
16 characterize the nature of the extent and the effect of the
17 crime as it sees fit in good faith as well as to characterize
18 the nature, extent, and value of any cooperation from Doctor
19 Field, uh, for Your Honor. And then, of course, ask Your
20 Honor to, uh, fashion an appropriate sentence given the, uh,
21 the -- that -- uh, those factors.

22 Uh -- finally---

23 THE COURT: So there's no agreement as to time to be
24 served or anything like that?

25 MR. WATERS: No, sir; the only thing I state in terms is

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1 to run these---

2 THE COURT: Concurrent.

3 MR. WATERS: ---concurrent, thereby limiting the
4 exposure.

5 THE COURT: And -- and what is his exposure?

6 MR. WATERS: Uh -- the exposure would be ten years, uh,
7 on the securities fraud counts that would run together.
8 Uh -- five years apiece on the -- excuse me -- the
9 conspiracies, and then three years for -- for the, uh,
10 forgery.

11 THE COURT: And the agreement that The State and Defense
12 have entered into basically -- his sentence couldn't exceed
13 ten years, right?

14 MR. WATERS: That's correct.

15 THE COURT: Okay; so ten years would be the maximum
16 exposure he'd have under the agreement?

17 MR. WATERS: No, sir; the, uh, maximum exposure would be
18 -- if Your Honor were in sentencing to make the conspiracies
19 and the forgeries, uh, consecutive, then it could be up to --
20 it could be zero to twenty-three.

21 So, ten years for the, uh, securities fraud, five years
22 apiece for the conspiracy and then three years for the
23 forgery. So essentially that's zero to twenty-three. And
24 that would be only if Your Honor were to make the, uh -- the,
25 uh, non-securities fraud charges consecutive.

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1 THE COURT: Okay; so the only real agreement is ten
2 years concurrent on all the securities fraud charges?

3 MR. WATERS: That's correct.

4 THE COURT: And then it'll be up to me to run an
5 additional ten and three?

6 MR. WATERS: That's correct; in your discretion.

7 THE COURT: Mr. Rutherford, is that what you agreed to?

8 MR. RUTHERFORD: Yes, sir, Your Honor.

9 THE COURT: Okay.

10 MR. RUTHERFORD: In terms of what was published, it is.

11 THE COURT: Okay.

12 MR. WATERS: Uh -- Your Honor, one final term with
13 regards to this agreement is there is a waiver provision of
14 all direct appeals, uh, P-C-R, and Federal Habeas. Uh --
15 pursuant to the Supreme Court's, uh, case law, we would,
16 uh -- uh, request a -- a colloquy about that, uh, with Doctor
17 Field at the appropriate time, uh, so that, uh, we can en- --
18 ensure that -- that that waiver is knowingly and voluntarily
19 done on the record.

20 Uh -- additionally, this case is, uh, venued in -- in,
21 uh, Pickens County. Uh -- obviously, the order assigning
22 this State Grand Jury matter to Your Honor, uh, provides that
23 you have statewide jurisdiction. However, just so the record
24 is clean, it's probably wise to do a -- a family waiver,
25 uh -- uh, to Anderson so we can handle this proceeding here

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1 today.

2 THE COURT: Okay. Do you have -- is there a Bible
3 Jennifer?

4 THE CLERK: Yes, sir; I'll get it to him.

5 THE BAILIFF: I have it right here.

6 THE COURT: All right; can you just put it in front of
7 Mr. Fields (sic)? Thank you, Louis.

8 Mr. Field, if you would, place your left hand on the
9 Bible and raise your right hand.

10 (WHEREUPON, ARTHUR M. FIELD WAS DULY SWORN AND TESTIFIED
11 AS FOLLOWS:)

12 THE COURT: All right, I need to ask you some questions,
13 uh, to determine whether or not you understand what's going
14 on here today.

15 ARTHUR M. FIELD, EXAMINATION BY THE COURT:

16 Q My understanding is that I'm -- and I hope it's yours --
17 that I'm only gonna accept your plea today; do you understand
18 that?

19 A Yes, Your Honor.

20 Q And that, once I accept your plea, you cannot withdraw
21 it; do you understand that?

22 A Indeed.

23 Q And do you understand that at a later date, um, you'll
24 be brought back in front of me? I won't go through these
25 questions again, but I will sentence you; do you understand

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1 that?

2 A Yes, Your Honor.

3 Q Do you have any questions of me now?

4 A No, Your Honor.

5 Q Okay. Have you had any kind of drug or alcohol in the
6 last twenty-four hours?

7 A No; I don't do either, Your Honor.

8 Q Are you taking any kind of prescription or medication
9 that might prevent you from knowing what's going on here
10 today?

11 A No; just my prescriptions.

12 Q What -- what do you take? I need to know that.

13 A Things for blood pressure, Your Honor.

14 Q Okay; no -- no type of nerve or, um, medicine?
15 Diazepam, anything like that?

16 A Nothing.

17 Q Okay. Has anybody promised you anything or threatened
18 you in any way to get you to plead guilty today other than
19 the, um, terms and provisions of this plea agreement?

20 A No, Your Honor.

21 Q Okay. Do you understand that if you want to plead
22 guilty, you have to waive your constitutional rights?

23 A Yes, Your Honor.

24 Q Are you waiving your right, specifically, to a jury
25 trial?

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1 A Yes.

2 Q Are you waiving your right to remain silent?

3 A Yes.

4 Q Are you waiving your right to confront the witnesses
5 that The State would be required to bring in to testify
6 against you; which is your right of confrontation?

7 A Yes, Your Honor.

8 Q And are you waiving your right to remain silent?

9 A Yes.

10 Q Have you had plenty of time to speak with your lawyer?

11 A Ample; thank you.

12 Q Okay; do you have any questions of him now?

13 A No.

14 Q Has he done everything you've asked him to do?

15 A Extremely well.

16 Q Have you asked him to do anything that he has refused to
17 do?

18 A Absolutely not.

19 Q So you have no objections to his representation
20 whatsoever?

21 A No; it's been excellent.

22 Q Okay. And you understand that the agreement is that the
23 ten-year security fraud, uh, charges would be run concurrent;
24 do you understand that?

25 A Yes, Your Honor.

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1 Q And that I'll have to make a decision later on whether
2 or not to run the two, uh, other charges that have exposure
3 of five years apiece for ten years, and the three-year charge
4 consecutive; do you understand that?

5 A Yes, Your Honor.

6 Q So, the maximum exposure you would receive -- or, you
7 have now today, is twenty-three years of prison; do you
8 understand that?

9 A Yes, Your Honor.

10 Q How old are you?

11 A I am sixty as of two weeks ago.

12 Q All right; are you married?

13 A Yes, Your Honor.

14 Q Do you have any children?

15 A Two.

16 Q How old are they?

17 A Thirty and twenty-three.

18 Q And where do they live?

19 A South Carolina.

20 Q All right. And you currently live where?

21 A Greer.

22 Q Greer? Now, you have a right to have this guilty plea
23 heard in Pickens County; do you understand that?

24 A Yes, of course, Your Honor.

25 Q And are you waiving any jurisdiction or venue objection

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1 that you might have?

2 A I have no objection, Your Honor, to a transfer.

3 Q Okay. Do you have any questions of me of your rights
4 that you're waiving?

5 A No.

6 Q If you do, I -- you can ask him or me, it doesn't
7 matter.

8 A No.

9 THE COURT: Mr. Rutherford, have you had plenty of time
10 to speak with your client?

11 MR. RUTHERFORD: I have, Your Honor.

12 THE COURT: And do you think he understands the elements
13 of all these charges?

14 MR. RUTHERFORD: I do, Your Honor.

15 THE COURT: Do you also think he understands the
16 provisions of the plea agreement?

17 MR. RUTHERFORD: I do, Your Honor.

18 THE COURT: Do you think that he also understands that
19 he's voluntarily waiving his constitutional rights?

20 MR. RUTHERFORD: I do, Your Honor.

21 THE COURT: All right.

22 Q All right, Mr. Field, do you want to plead guilty to all
23 of these charges that you're indicted for?

24 A Yes, Your Honor.

25 Q The two security charges and the other charges?

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1 A Yes, sir.

2 Q And are you guilty of those charges?

3 A Yes, sir.

4 Q All right.

5 THE COURT: Yes, sir?

6 MR. WATERS: Uh -- Your Honor, if -- if I could request
7 a colloquy on the waiver of, uh -- of, uh -- Doctor Field's,
8 uh, post-conviction relief and collateral affect?

9 THE COURT: Okay; okay, and that's in this agreement,
10 right?

11 MR. WATERS: Yes, sir; it's -- it's -- I believe it's
12 last---

13 THE COURT: Okay.

14 MR. WATERS: ---of those, Your Honor.

15 Q All right, Mr. Field, do you understand that you're
16 agreeing that you're gonna waive any entitlement that you
17 have to a direct appeal, post-conviction relief, or appeals
18 from this sentence? Do you understand that?

19 A Yes, Your Honor.

20 Q You're also, uh, waiving any State Habeas Corpus
21 petition or Federal Habeas Corpus petition?

22 A Yes, Your Honor.

23 Q (After pause.) Do you have any questions about the
24 waiver of your right to appeal?

25 A No (after pause) sir.

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1 THE COURT: All right; anything else?

2 MR. WATERS: No, sir, Your Honor; thank you.

3 Q All right, uh, Mr. Field, you want to plead guilty to
4 all these charges?

5 A Yes, sir.

6 Q And are you guilty of each and every charge raised by
7 The State?

8 A Yes, sir.

9 THE COURT: Mr. Rutherford, anything you want to say at
10 this time?

11 MR. RUTHERFORD: Nothing, Your Honor; we'd ask that you
12 reserve mitigation for the sentencing.

13 THE COURT: All right, yeah, I expect that we'll need
14 to, uh -- do you have any idea when you're gonna do
15 sentencing so we can schedule more than---

16 MR. RUTHERFORD: I think we're gonna do it based off of
17 the codefendants -- any future and present codefendants and
18 their trials.

19 MR. WATERS: It -- it is sort of an infinite thing as
20 the agreement requires Doctor Field to cooperate and also to
21 testify if requested in the trial of any, uh, existing or
22 possible future codefendant. And, uh -- it is sort of open
23 end at this time for that, uh, that process to complete
24 itself before we would, uh -- uh, arrange a sentencing, uh,
25 date.

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1 THE COURT: And there is nothing in the agreement that
2 sets a time? Just---

3 MR. WATERS: No, sir; it ultimately, uh -- uh, it allows
4 The State, uh, to, uh -- once we've reached, uh, that point,
5 to, uh, to then approach Your Honor and the Defense to
6 schedule a convenient time for sentencing.

7 THE COURT: All right; well, I'm gonna accept
8 Mr. Field's plea and find them freely and voluntarily made,
9 based upon the advice of counsel.

10 I find that he's waived all of his constitutional rights
11 and he's done so knowingly and voluntarily, based upon the
12 advice of counsel, and his counsel has done everything that
13 he's asked him to do and has represented him in a competent
14 manner.

15 And, I will reserve sentencing to a later date.

16 MR. WATERS: Thank you, Your Honor; would you like to
17 hear a factual basis for the plea, Your Honor?

18 THE COURT: Pardon?

19 MR. WATERS: A factual basis for -- for the plea?

20 THE COURT: Yeah, I would. I -- yeah, I -- I've --
21 listen to this very carefully. That's what I was waiting on,
22 and -- and I'm gonna ask you whether or not you agree with
23 what he tells me.

24 MR. FIELD: Yes, sir.

25 MR. WATERS: Okay. And, Your Honor, uh, I would like to

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1 hand up -- you already have a copy, but this is just a copy
2 of the, uh, true-billed statement entry and indictment.
3 Uh -- that indictment is ninety-one pages long and, uh, sets
4 forth in great detail the allegations, uh, that Mr. Field is,
5 uh, pleading guilty to here today.

6 Uh -- so I think that's obviously the best, uh,
7 representation of the factual basis.

8 THE COURT: And I've read this.

9 MR. WATERS: I'm not going to sit here and read it to
10 you so I'll just very quickly summarize, uh, the categories
11 of -- of, uh, conduct that -- that is set forth in that
12 indictment.

13 All right, to begin with though, I would like to, uh,
14 point out of course, we have, uh, notified, uh, the victims
15 of which we are aware and, uh -- and -- and they are, of
16 course, uh -- the ones that wanted to attend are present.

17 Uh -- the allegations in this particular indictment
18 involve the running of a firm known as Capital Investment
19 Funding or C-I-F. Uh -- and essentially that, uh -- that
20 company had its life from, uh, 1999, uh, until, uh, a lining
21 up was declared in 2000, uh, of eight.

22 Uh -- and during that time, uh, the -- the, uh, company,
23 uh, got millions of -- of dollars from investors in The State
24 of South Carolina.

25 And, uh, Doctor Field was the, uh, manager and then

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1 ultimately the primary, uh, owner of C-I-F, uh, during, uh,
2 it's -- it's, uh -- it's, uh, lifespan.

3 Uh -- Scott Pfeiffer, uh, an attorney in Greenville, uh,
4 was a -- ultimately, uh, Doctor Field's partner in, um -- in
5 these, uh -- uh, you know, re-lendering Cosimo, uh, as well
6 as, uh, other re-lenders that got money from, uh, C-I-F.

7 Uh -- ultimately, this was a -- a very complicated, uh,
8 entity with, uh, layers upon layers of business entities.
9 Uh -- and with layers of bank accounts. Um -- and when it
10 folded, uh, there was still about thirty-eight million
11 dollars outstanding to the investors of South Carolina.

12 Uh -- ultimately, when you look at the allegations
13 within this particular indictment, as often explained by
14 securities fraud people, uh, it's essentially that if you
15 tell somebody that you're selling rotten eggs and you
16 describe very plainly and clearly that you're selling rotten
17 eggs, there's not a thing that -- that I can do about that.

18 But, if you tell people that you've got farm-fresh eggs
19 and that business is great and you've got plenty of customers
20 and reality is you've got rotten eggs, then, uh, that is
21 where securities fraud, uh, results.

22 Uh -- ultimately, uh, the counts that are set forth in
23 this indictment come down to four main areas of material; uh,
24 falsehoods, uh, or, uh, misrepresentations, uh that -- that,
25 uh, were alleged in the -- in the, uh -- in the sale of

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1 these, uh -- uh, securities.

2 Uh -- the first, uh, category of those, uh, deals with
3 the parent company. Initially, uh, Doctor Field, who is from
4 the northeast, uh, got together with some friends and formed
5 a company called Lancaster Resources, Incorporated. L-R-I
6 was the parent company of C-I-F, and essentially it
7 functioned in some respect as did the, uh, Carolina Investors
8 Funding where money was raised by the sale of securities in
9 South Carolina by C-I-F, and that money was sent to L-R-I,
10 uh, for, uh, re-lending and for development, um, uh in New
11 Jersey.

12 Uh -- ultimately, a few years into this particular, uh,
13 operation, uh, around 2001, uh, it came to the attention of
14 some of the other, uh, principles in this organization, the
15 L-R-I up in New Jersey, uh, that, uh -- that the president of
16 the company had, uh -- had essentially, uh, misused company
17 funds to the tune of over five million dollars. And, he was,
18 uh -- uh -- he was, um, removed from that company. Uh --
19 and -- and, because of this, uh -- this issue.

20 And, uh, ultimately there may be some conflict- --
21 conflicting views as to the extent or the nature of this
22 money, uh, and the reason why it was improperly used, but it
23 doesn't change the fact that it was a sizeable amount of
24 money and it lead to the, uh -- uh, the President of the
25 company being deposed. And that was not disclosed to the

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1 investors, uh -- uh, which we believe is a material fact when
2 a -- when the top management of the company, uh, has to be
3 removed because of lost millions of dollars of investor
4 money, because that money ultimately did come from C-I-F.

5 Uh -- that's counts three, four, and five, uh,
6 representing 2002, 2004, and 2006 in the prospectuses that
7 were issued on those, uh -- in those respective years and
8 made representations or failed to, uh, explain, uh -- uh, the
9 reality of that, um -- uh, that situation.

10 Uh -- the second main category, Your Honor, is, uh --
11 is -- deals with a, uh, company, uh, by the name of
12 Bolingbroke, uh, United, uh, and, uh -- excuse me.
13 Bolingbroke, uh, England. Uh -- it -- this was a company --
14 it was a Wyoming company, uh, and it was formed in September
15 of 2001.

16 Uh -- ultimately it got a bank account and it wrote
17 checks. And the name signed on those checks was the -- an
18 individual by the name of Henry Rex.

19 Uh -- as we started to look into this particular, uh --
20 uh, company, uh, it became interesting that it was called
21 Bolingbroke England. And, uh, doing a little, uh, history
22 research, we realized that, uh, there was Henry of
23 Bolingbroke -- Henry the Fourth, once he assumed the
24 throne -- and in the custom of English Kings, he would have,
25 uh, signed his name Henry Rex.

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1 In any event, uh, the -- this entity, uh, was --
2 occurred in a period of time where the people in New Jersey
3 were starting to, uh -- to be concerned about the activities
4 of, uh, Arthur, uh -- uh, Field down here.

5 Uh -- Arthur Field then, uh, partnered with, uh, Scott
6 Pfeiffer to form this company, Cosimo. However, they used
7 this fictional person by the name of Henry Rex to, uh, allow,
8 uh, Doctor Field to hold a half-ownership interest in Cosimo,
9 uh, and -- and use that fictitious entity to cover up that
10 ownership interest.

11 Uh -- the reason was, was of course, uh, it is
12 obviously -- it's a problem for accountants; it's a problem
13 for bookkeepers and it's a problem, uh, just in general when
14 people are lending to themselves because of a -- the
15 conflicts of interest that can result.

16 And so, this was around the time that, uh, Home Gold was
17 turning into the disaster that it turned into and, uh, indeed
18 during this time, uh, Doctor Field had a meeting, uh, with
19 the investors in which he assured them that he was
20 essentially the watchdog, that he was, uh, paying attention,
21 uh, to these investments, that he was not lending to himself.
22 The reality was he was using, uh, this fictitious person and
23 these, uh -- uh, to -- to -- to, in fact lend to himself.

24 Uh -- ultimately those -- that's counts six, seven, and
25 eight, uh, representing the years 2003, 2004, 2005. And, uh,

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1 the forgery count is in February 15th 2005.

2 Uh -- ultimately, uh, when Doctor Field was over -- able
3 to run through sufficient pros- -- prospectuses the fact that
4 he might have ultimately purchased Cosimo, he then had Henry
5 Rex, uh -- or, he then paid Henry Rex for, uh -- uh -- uh --
6 for the ownership interest in Cosimo and then there was a --
7 a -- of, uh, four hundred fifteen thousand dollars that was
8 in the Bolingbroke account and he had Henry Rex, uh, sign a
9 check, uh, essentially paying that to Krondor, a company that
10 he, uh -- that he controlled.

11 But ultimately this -- these were material facts in that
12 they, uh -- um, were contrary to the representations that
13 were made in the prospectus, contrary to the representations
14 that were made to the investors that Doctor Field was not
15 lending to himself and was the watchdog. And, obviously,
16 just the fact that he was using a fictitious person to hide
17 his ownership interest, uh, would be a material fact that the
18 investors would have liked to know before they were making
19 any -- any decision.

20 Uh, the third category of, uh -- of claims in this
21 particular indictment deal with, uh, what's known as the
22 Intrastate Offering Exemption; or, sometimes known as the
23 80-20 rule. And essentially it is an exception in a safe
24 harbor provision, uh, that does not require a registration
25 with the Federal S-E-C -- Securities and Exchange

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1 Commission -- uh, if, uh, eighty percent of the business
2 that's being conducted is purely intrastate.

3 And the allegations here, uh, are not that --
4 necessarily that they violated the Intrastate, uh, Offering
5 Exemption, the only allegation is is that they had, uh,
6 sufficient reason to know that's probably the case and they
7 failed to disclose that very significant criminal -- uh,
8 civil but potentially criminal liability to the investors.

9 And we see this early on, uh, with, uh -- uh, opinion
10 letters from, uh -- uh, from Mr. Pfeiffer, uh, from emails
11 from, uh, Doctor Field in which they discuss the fact that
12 they have sent all this money up to New Jersey to L-R-I and
13 then realized, well we couldn't -- we shouldn't have done
14 that.

15 And so, ultimately they were trying to come into
16 compliance but -- with this rule by ultimately lending to,
17 uh, Cosimo in South Carolina loans here. Uh -- Cosimo,
18 again, was half Doctor Field and half, uh, Scott Pfeiffer for
19 the majority of its, uh -- of its, uh, existence.

20 Um -- ultimately, though, they, uh -- the people in, uh,
21 New Jersey -- L-R-I -- got very concerned about this. Uh --
22 they went and hired, um, Nelson Mullins attorneys to review
23 this and said, you've got to stop this right now; this isn't
24 legal. Stop selling securities. Uh -- the L-R-I---

25 THE COURT: That was after Pfeiffer left Nelson Mullins,

STATE OF SOUTH CAROLINA v. ARTHUR M. FIELD
PLEA HEARING

1 right?

2 MR. WATERS: Uh -- that was correct; yes, sir.

3 THE COURT: All right.

4 MR. WATERS: Uh -- yes, he had gone into private
5 practice. And again, he, uh, and -- and Doctor Field became
6 partners. Uh -- uh -- um, Scott Pfeiffer served as the
7 attorney for -- for C-I-F but he also fundamentally was, uh,
8 the half owner, uh, in -- in this Cosimo which became a major
9 re-lender and ultimately was -- was a huge sunken chest when
10 they're a company that -- that left nothing behind. Uh --
11 uh, hardly any value.

12 Uh -- so anyway, uh, so -- but to maintained that access
13 to the money, to tell the L-R-I people who were getting
14 concerned about what was going on that you have no basis, uh,
15 to -- to get involved in what's going on down here, they used
16 that Intrastate Offering Exemption as a sort of a sword to
17 say, hey, you know, you can't control what we're doing down
18 here; we have to be a separate entity, and, uh -- and we're
19 gonna do what we want to do.

20 Well, ultimately, Nelson Mullins -- the attorneys
21 there -- told, uh, Scott Pfeifer, this is -- you've got to
22 stop this. And Scott Pfeifer did not. They told the people
23 at L-R-I, you've got to stop this; this is criminal.

24 Uh -- but they did not get, uh, them to stop because
25 they said no, we think that we can loan to this local entity

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1 called Monmouth and then we -- and then send it up to L-R-I
2 and that will do it if we can just send it to a local entity
3 first and then have it go straight up.

4 Uh -- additionally, we're also gonna, uh, lend to
5 Cosimo.

6 Ultimately, the L-R guys -- the L-R-I guys who were in
7 debt to C-I-F to substantial sums, uh, decided, uh, that --
8 and they agreed to this jointly -- that the best thing to do
9 would be to, uh -- to split and ask Doctor Field give up his
10 ownership interest in L-R-I and L-R-I give up its ownership
11 interest in C-I-F. So, the two companies were separated.
12 Doctor Field had C-I-F and L-R-I was, uh -- was now free and
13 clear.

14 The problem is is that L-R-I then went from being the
15 parent company to C-I-F's biggest debtor and owing, uh, you
16 know, tens of millions of dollars -- it would be seventeen at
17 this point.

18 Uh -- and that leads us into the last cata- -- uh --
19 uh -- uh -- uh, category of crimes that we have. And that is
20 is that, uh, L-R-I, uh, whose ability to make the payments to
21 C-I-F, uh, in its own solvency -- if L-R-I failed, then C-I-F
22 was a dead duck -- it was over. And L-R-I last made its,
23 uh -- its, uh, principal payment -- uh, real principal
24 payment in May of 2005.

25 And ultimately in November of 2006, uh, Arthur Field

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1 sends an email from, uh -- to the principal of L-R-I saying,
2 hey, man, look -- and I'm paraphrasing obviously -- uh, we,
3 uh -- you know, I don't want to let the A-G's Office know
4 that you haven't made a principal payment in over a year. I
5 don't think -- we've got new auditors coming in and they're
6 not gonna like this that you haven't made any principal
7 payments and I've got new pros- -- prospectuses coming out
8 and I don't want anybody to know that you haven't been --
9 that you're essentially in default and you haven't been
10 making these payments.

11 THE COURT: Well, let me ask you---

12 MR. WATERS: Okay.

13 THE COURT: ---is that the email that he sent and said
14 the past auditors have been very slack but---

15 MR. WATERS: That's---

16 THE COURT: ---the new one's not gonna be?

17 MR. WATERS: ---that -- this is correct, Your Honor;
18 yes, sir.

19 THE COURT: Okay.

20 MR. WATERS: And, uh, ultimately though, what we see is
21 is -- that email's in November of 2006. And what we see --
22 what happens is is that, uh, there's really a -- a need, uh,
23 to -- by the end of the year to get L-R-I current; to get
24 some payments in.

25 So what they essentially do is, uh, is Doctor Field

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1 takes seven hundred and fifty thousand dollars of investor
2 money and sends it to a company he called -- he controlled by
3 the name of Trazom and then sends it up to L-R-I. And
4 meanwhile he's booking L-R-I making payments when they only
5 have three hundred and seventy-three dollars in the bank and
6 they just cut six hundred and eighty-six thousand dollars'
7 worth of checks.

8 And so essentially what happens is is that -- that --
9 that money goes up and then returns in a round robin so that
10 then he gets to say in the prospectus L-R-I's current;
11 they -- in fact, they even paid five hundred thousand dollars
12 in principal, uh -- uh, and are viable for the end of the
13 year. The reality is that was completely financed by, uh --
14 uh, C-I-F money through this sort of round robin scheme.

15 And what Doctor Field supposedly got in return for that
16 was a property that was already in foreclosure, that was
17 already, uh, a property that money from, uh, C-I-F had been
18 loaned to L-R-I on to begin with. Uh -- and, uh,
19 additionally when -- ultimately, when it was sold -- I mean,
20 and -- and of course, this money went up there but they
21 didn't -- they didn't have a closing, they didn't get
22 anything; it was just sort of, uh, you know, done because
23 everybody needed this to happen really quick. There was no
24 actual transfer of title at that time.

25 Ultimately, though, they did get title and Doctor Field

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1 then sold the property to someone else and, uh -- to
2 Elliot Salzmänn as a matter of fact -- and, um, nobody even
3 cashed the check, uh, from that.

4 So, ultimately there was seven hundred and fifty
5 thousand dollars that went up to get 'em current before the
6 end of the year. Another two hundred and fifty thousand
7 dollars went up in January to make that payment. So, it was
8 a million dollars that went up and ultimately C-I-F got a big
9 fat goose egg out of that.

10 Uh -- then, of course, though, it was, what are we gonna
11 do now? Then we get into, uh -- uh, March and February (sic)
12 and still need to make some payments. So, essentially we
13 start the round robin again. And this time it's supposedly
14 for the purchases of condos. But again, you know, there's no
15 closing, there's no title that changes hands; money just goes
16 up -- two hundred and, uh, ninety thousand dollars comes
17 right back as payments and then they did the same thing again
18 the next month.

19 Then we get into May and things are so bad at L-R-I that
20 C-I-F sends them seventy-five thousand dollars to cover
21 payroll. Uh -- and -- and so that -- that's how bad it was.

22 Throughout this whole period of time, with full
23 knowledge that if L-R-I fails it's all over for C-I-F, uh,
24 Doctor Field is, uh -- is not disclosing this; he's actually,
25 uh -- writes in mid-year reports to the note holders, uh,

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1 that L-R-I paid the five hundred thousand in -- in, uh -- at
2 the end of the year, that L-R-I's debt service have been kept
3 current. Uh -- and meanwhile during that whole period of
4 time, uh -- and this is also a time where he starts to
5 develop regulatory issues with the civil, uh, side of the
6 office -- the Civil Securities, uh, Commission.

7 Uh -- during this period of time, uh, he is, uh -- uh,
8 issuing reports to note holders making these, uh -- these
9 assertions that everything's fine. He's also continuing to
10 renew notes, to sell, uh -- uh, new notes. So during this
11 whole period of time we have new investors making
12 investments, uh, without the -- the facts about the
13 insolvency of the major debtor of C-I-F, uh, without which
14 C-I-F would fail.

15 So those, uh -- those are essentially the counts
16 thirteen and fourteen that deal with '06 -- the '06
17 prospectus -- and then the reports that were issued to the
18 note holders in '0 -- '07, and, uh, ultimately, uh, result in
19 false representations about the finances.

20 Uh -- finally we've got the two conspiracies that are
21 broken out. The first one is, uh -- addresses the
22 conspiratorial behavior prior to, uh, the separation from
23 L-R-I. And the, uh, second conspiracy is, uh, for, uh, the
24 actions taken after the, uh -- uh, the separation from L-R-I.

25 So, anyway, that's the -- that's probably a rather long

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1 summary, but a summary of the allegations that I've made and
2 the factual basis for The State as well.

3 THE COURT: Is there any money left?

4 MR. WATERS: Well, I would -- I would defer that to the
5 receiver. Um -- the -- there was a, uh -- at present there
6 was a -- there is a -- a number of civil actions that they
7 are engaged in. Uh -- there is a -- a class action from
8 which the receiver, Jerry Saad, was appointed. Uh -- they
9 even had filed a malpractice action of -- and a RICO action.
10 I believe there was a settlement of that in the last week,
11 uh, that resulted in---

12 THE COURT: Yeah, I did that.

13 MR. WATERS: ---a malpractice. Uh -- and I believe
14 you're familiar with that, Your Honor.

15 THE COURT: Yeah.

16 MR. WATERS: Uh -- and, uh, so there -- there are
17 efforts being made to gather some assets. Un- --
18 unfortunately -- and again, I think I would defer this to the
19 receiver -- but, the reality is is that there's very little,
20 uh, property that is, uh, sufficiently -- sufficiently been
21 titled, uh, that ultimately can -- can bring much to, uh --
22 to benefit the class of investors.

23 THE COURT: Okay. All right, Mr. Field, do you agree
24 with all those facts?

25 MR. RUTHERFORD: No, Your Honor, we don't agree with all

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1 of them, but it's materially and as a whole, yes. But, I
2 mean, in -- in that entire recitation are things that we
3 disagree with probably. But, in terms of the material
4 representations made by the Attorney General's Office as they
5 relate to this plea, yes.

6 THE COURT: And you as -- you -- your client does agree
7 with the allegations that give rise to these charges?

8 MR. RUTHERFORD: Right; that's correct, Your Honor.

9 THE COURT: But there may be some details that he
10 disagrees with?

11 MR. RUTHERFORD: That's correct, Your Honor.

12 THE COURT: And I assume later on I'll hear about all
13 that?

14 MR. RUTHERFORD: Absolutely, Your Honor.

15 THE COURT: Okay. All right, well as I've said, I'm
16 accepting the plea. I find it feely and voluntarily made
17 based upon the advice of counsel, and he's waived his
18 constitutional rights.

19 What are you-all gonna do about the bond?

20 MR. WATERS: Well, yes, Your Honor; and, I mean,
21 obviously, uh -- I believe the bondsmen are present. And my
22 understanding is they -- they are willing to continue on the
23 bond pending, uh, the sentencing. But, obviously, we would
24 need to have some paperwork or need to get some paperwork to
25 do that.

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1 THE COURT: Yeah; and in fact, I've got it right here if
2 you want to sign it now. You-all look through that.

3 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
4 CONFERENCE, OFF THE RECORD.)

5 (WHEREUPON, PROCEEDINGS CONTINUED.)

6 THE COURT: And you don't have any idea when the
7 Pfeiffer trial is -- is it gonna be a trial?

8 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
9 CONFERENCE, OFF THE RECORD.)

10 (WHEREUPON, PROCEEDINGS CONTINUED.)

11 THE COURT: All right, just for the record, I'm signing
12 each one of these sentencing sheets. I have, uh, fourteen of
13 'em. I'm signing my name, but I'm also putting the plea is
14 accepted on 5/6/13. The inference there is pretty clear that
15 the sentencing will be at a later date, but I want the record
16 to reflect that. Is that -- you-all in agreement with that?

17 MR. WATERS: Yes, sir, Your Honor.

18 THE COURT: Mr. Rutherford, do you agree that I'm gonna
19 write down here plea accepted today but sentence at a later
20 date?

21 MR. RUTHERFORD: I do, Your Honor.

22 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
23 CONFERENCE, OFF THE RECORD.)

24 (WHEREUPON, PROCEEDINGS CONTINUED.)

25 THE COURT: Okay; anything else before we adjourn for

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1 the day?

2 MR. WATERS: No, sir, not from The State, Your Honor.

3 THE COURT: Anything?

4 MR. RUTHERFORD: Nothing, Your Honor.

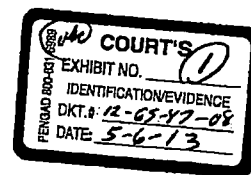
5 THE COURT: Okay; all right, let me know when you want
6 to do it; I've accepted all the pleas and the bond remains
7 the same.

8 MR. WATERS: Thank you.

9 MR. RUTHERFORD: Thank you, Judge.

10 (WHEREUPON, HEARING ENDED AT 3:30 P.M.)

11 *****END OF REQUESTED TRANSCRIPT*****
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PLEA AGREEMENT

(1) **Plea:** Arthur Field agrees to plead guilty to, and the State agrees to accept a plea of guilty to, the charges set forth in Indictment 2012-GS-47-08. It is agreed as a negotiated term of this plea that any sentence given on the securities fraud counts of the indictment, Counts Three through Eight and Ten through Fourteen, shall be concurrent. As to the two conspiracy counts of the indictment, Counts One and Two, and the forgery count, Count Nine, it will be in the discretion of the sentencing judge whether any sentence given on these counts is consecutive or concurrent.

This plea, if consummated through sentencing and restitution, will resolve Mr. Field's criminal liability for South Carolina securities fraud crimes and state crimes related to securities fraud that Field committed through the offer or sale of securities while a manager or member of Capital Investment Funding, LLC. It does not resolve any state or federal tax liability nor any criminal liability in jurisdictions other than the State of South Carolina. This Agreement in no way limits or affects Mr. Field's potential exposure to further prosecution by the South Carolina Attorney General's Office, any Solicitor's Office in the State of South Carolina, or the United States Attorney for conduct which is not a basis for his indictment and prosecution by the State Grand Jury of South Carolina.

(2) **Time:** It is the intent of the parties that time is of the essence, and the actual plea of guilty in this matter must be accomplished by June 7, 2013. Unless the parties agree in writing to extend this time limit, failure to consummate a plea of guilty by this time shall render this agreement null and void, and the proffer agreement in this matter dated September 14, 2012, and signed by Arthur Field and his attorney Todd Rutherford, Esquire, on September 24, 2012, shall be in effect. Once the plea of guilty is entered by Mr. Field, it may not be withdrawn for any reason.

(3) **Sentencing:** Sentencing, however, is to be deferred at the option of the State until after the trial or other disposition of charges against any existing or future codefendant or any other defendant charged with crimes related to Capital Investment Funding, Capital Intrastate Funding, Monmouth, LRI and all related entities, Cosimo and all related entities, Bolingbroke, Krondor, as well as any other entity, company or person who directly or indirectly had business dealings or any other involvement with these entities. The parties expressly agree that it shall be the State's sole option to determine that the sentencing proceeding needs to go ahead and be held, and the State shall not be limited in making this determination even though charges against others may still be unresolved or have not yet been brought.

(4) **Restitution:** Additionally, at or within a reasonable time of the sentencing proceeding, a restitution hearing must be held to determine the amount of any restitution Arthur Field owes to the victims in this matter. Nothing in this provision prevents the parties from agreeing as to the restitution amount prior to or at any such hearing.

FILED

MAY 06 2013

JAMES R. PARKS
CLERK, STATE GRAND JURY

(5) **Cooperation:** By signing this plea agreement, Mr. Field agrees to be fully truthful and forthright with the Attorney General's office for the State of South Carolina and its law enforcement investigators in their investigation of all unlawful activities, to include, but not limited to, truthful and complete debriefings, with no misstatements, misleading statements, half-truths, or material omissions of fact, of his knowledge concerning all unlawful activities. Mr. Field further understands that he must fully disclose and provide truthful information to the State including any books, papers, documents, or any other items of evidentiary value to the investigation. Mr. Field agrees he must **fully** and **truthfully** answer **all** questions put to him by the State. He must also testify fully and truthfully before any grand juries and at any trials or other proceedings if called upon to do so by the State from time to time, and can be subject to prosecution for perjury for not testifying truthfully. Mr. Field further agrees to submit to polygraph examination(s) by a qualified polygraph examiner selected by the State should such a request be made by the State.

Mr. Field agrees that all statements made by him or information provided by him pursuant to the proffer agreement in this matter dated September 14, 2012, and signed by Arthur Field and his attorney Todd Rutherford, Esquire, on September 24, 2012, or pursuant to this agreement, may be used by the State for any purpose whatsoever in the prosecution of him or any others on any charges, **including use of any statements or evidence obtained pursuant to this proffer in the prosecution's case-in-chief at any trial or plea of Mr. Field. Mr. Field hereby expressly waives any claim of inadmissibility of his statements pursuant to Rule 410, SCRE.**

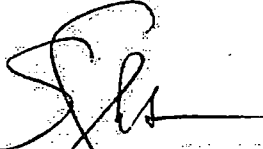
(6) **Presentations at Proceedings:** The Attorneys for the State reserve the right to present and/or to summarize all evidence, statements, and information it deems appropriate in establishing a factual basis for the plea, including statements of Mr. Field or information provided by Mr. Field either pursuant to this agreement or the proffer agreement in this matter dated September 14, 2012, and signed by Arthur Field and his attorney Todd Rutherford, Esquire, on September 24, 2012.

The parties agree that the State is free to characterize the nature and extent of Mr. Field's culpability and the nature, extent, and effect of his criminal activity in any manner it in good faith sees fit. The State also agrees to advise the Court in good faith its own assessment of the extent, value, and truthfulness – **or the lack thereof** – of Mr. Field's cooperation in this matter. The State agrees, though, that it will not ask for any specific sentence and that any sentence will be in the discretion of the sentencing court. The State is permitted at the end of its presentation to ask the sentencing court to fashion an appropriate sentence in its discretion given the State's position as to the nature, extent, and effect of Mr. Field's crimes and any other relevant factors. Mr. Field understands that the victims in this matter have a right to speak at sentencing and this agreement in no way limits any presentation a victim wishes to make as to the effect of the crimes or the appropriate sentence.

(7) **Waiver of direct appeals and collateral attacks:** Mr. Field hereby waives any entitlement to and agrees never to pursue any and all direct appeals, post-conviction relief applications and appeals therefrom, state habeas corpus petitions and appeals therefrom, federal habeas corpus petitions and appeals therefrom, or any and all other methods of direct or collateral review of these convictions and sentences. Mr. Field hereby acknowledges that he fully understands the nature and extent of the direct and collateral review he is waiving and is making the waiver in this provision freely, intelligently, and voluntarily.

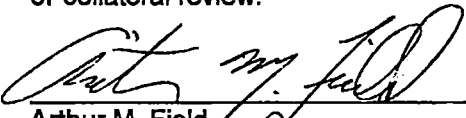
It is the intent of the parties that this agreement and the resulting pleas and sentences finally conclude any and all existing or possible legal proceedings related to indictment 12-GS-47-0008 whether direct or collateral, and that all that remains is for Field to serve any sentence given by the Court in the manner provided for by state law.

ALAN WILSON
Attorney General

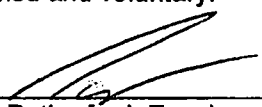
By: 
S. Creighton Waters
Assistant Deputy Attorney General

Date: 5/6/13

I have read this plea agreement carefully and reviewed each part of it with my attorney. I understand the terms of the plea and voluntarily agree to it, including the waiver of direct or collateral review.


Arthur M. Field
Date: 5/6/13

I represent Mr. Field as legal counsel. I have carefully reviewed every part of this plea agreement with Mr. Field. To my knowledge, the decision to make this plea agreement is informed and voluntary.



J. Todd Rutherford, Esquire

Date: 5/6/13

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF ANDERSON	)	
State of South Carolina,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 13-GS-47-00009
	)	
Fredrick Scott Pfeiffer,	)	
	)	
Defendant	)	

TRANSCRIPT OF HEARING

The within Hearing in the above-captioned matter was held on September 18, 2013, before The Honorable J. Cordell Mattox in the Court of General Sessions, Anderson, South Carolina; attended by counsel as follows:

APPEARANCES:

Brian T. Petrano, Esq.
 S. Creighton Waters, Esq.
 U.S. ATTORNEY GENERAL
 Appearing for State of South Carolina

Bradley Bennett, Esq.
 -and-
 William G. Yarborough, Esq.
 Appearing for Defendant

TRANSCRIBED FROM AUDIO NOTES OF VIVIAN CROSS

Deborah Garrison
Circuit Court Reporter – 9th Judicial Circuit
 P O Box 901
 Johns Island, South Carolina 29457
dgarrison@sccourts.org

1 THE COURT: First, let me apologize to
2 everyone for making you wait. I appreciate
3 your patience. You've waited longer than you
4 may have wanted to. I am in the middle of
5 another trial, just for those people who are
6 not used to be in the courtroom, and I had to
7 deal with some issues there. My law clerk,
8 who is very good, this morning-- after she
9 got here, suffered a pretty severe migraine,
10 so we had to deal with that. Anyway, I do
11 apologize.

12 All right. Yes, sir, you can call
13 the case.

14 MR. WATERS: Yes, Your Honor. The
15 State calls Frederick Scott Pfeiffer. It's
16 a State Grand Jury matter, 2013-GS-47-09.
17 Uh, pursuant to a written plea agreement,
18 Mr. Pfeiffer is here today pleading to three
19 counts within that particular indictment.
20 There will be two counts of securities fraud,
21 one count of conspiracy. Those two
22 securities fraud counts are ten years apiece,
23 the conspiracy is obviously five; however, it
24 is a negotiated term that the five-year
25 conspiracy will run concurrent with any

1 sentence Your Honor decides to give, in your
2 discretion, on the two securities fraud
3 counts.

4 Along with that, once the plea is
5 accepted, the State will *not* *pross* all
6 remaining counts in the 2012 indictments as
7 well as in the 2013-10 indictments, the other
8 State Grand Jury indictments that were
9 issued.

10 Your Honor, along with this plea
11 agreement we would request a colloquy on
12 this. Mr. Pfeiffer has signed a waiver of
13 any direct appeal, PCR, federal habeas
14 collateral actions and things of that sort;
15 with one exception, that Mr. Pfeiffer can
16 appeal any restitution amount that is
17 Ordered, at his option.

18 And, finally, we are agreeing that
19 this -- this indictment is from Pickens
20 County. Obviously, Your Honor has statewide
21 jurisdiction, because it is a statewide
22 matter, but we are -- the defense is
23 agreeable to waiving venue and having that
24 plea accepted here today in Anderson. But
25 there probably needs to be colloquy on that.

1 Your Honor, at this time we have
2 marked as Court's 1 the plea agreement, which
3 I will hand up to Your Honor, (tendering).

4 THE COURT: All right. Before you go
5 on, I just wanted to say this, and this just
6 -- is just a matter of housekeeping. No
7 phones or computers are allowed in the
8 courtroom. Some members of the press,
9 because of their, uh, because of their system
10 have to use phones, that's just the platform
11 that they use. If you see somebody using a
12 phone, they are a member of the press.
13 Please don't pull out a phone and -- we have
14 had people blogging from the courtroom, which
15 is a huge problem.

16 Before we start, also I just want
17 to put on the record that last evening and
18 yesterday afternoon, I went through and read
19 all of the documents that I have, including
20 the sentencing memorandum, the indictments,
21 and the plea agreement for Mr. Field. I read
22 every victim's impact statement and, in fact,
23 as you can see -- just so that you will know
24 that I really did, uh, I have tabbed many of
25 them because there were pertinent issues in

1 those that I wanted to deal with. I also
2 read Mr. Pfeiffer's letter to me yesterday --
3 that I assume everyone got?

4 CREIGHTON WATERS: Yes, sir, Your Honor.

5 THE COURT: So I am well aware. Again,
6 I took the Field plea sometime in the very
7 recent past -- a month or so ago.

8 CREIGHTON WATERS: May 5th.

9 THE COURT: May 5th? Time flies. I
10 took his plea but deferred sentencing, just
11 so that we are all on the same page.

12 MR. YARBOROUGH: Your Honor, if it may
13 please the Court. I am Bill Yarborough, I am
14 here on behalf of Mr. Pfeiffer. May we
15 approach?

16 THE COURT: Yes.

17 (OFF RECORD BENCH CONFERENCE)

18 THE COURT: Do y'all have a sentencing
19 sheet?

20 CREIGHTON WATERS: Yes, sir, we are all
21 signed up.

22 (WHEREUPON DEFENDANT SWORN)

23 THE COURT: All right. Mr. Pfeiffer,
24 I need to ask you some questions -- but let
25 me sign this first. I am not trying to delay

1 it or create tension by making you stand
2 there.

3 The way that I intend to proceed, as
4 I told the parties in the back, I am going to
5 accept Mr. Pfeiffer's -- go through my
6 colloquy and accept his plea. Uh, then what
7 I would like to do is hear from Mr. Pfeiffer
8 and his attorneys. At that point, which is
9 a little bit abnormal, I would then like to
10 hear from the victims if anyone wants to
11 speak.

12 Now, I will also tell people in the
13 courtroom that the acoustics in here are not
14 good. Can everybody hear? No? That's what
15 I was afraid of. When this courthouse was
16 built, someone didn't think about the
17 acoustics. I don't have a problem if you
18 want to spread out and sit closer. I've got
19 my mic ---

20 BAILIFF: If you want, I can put
21 this on.

22 THE COURT: Can you hear me now?
23 I have a cold, so you're going to have to
24 hear me sniff too.

25 All right, Mr. Pfeiffer, how old are you?

1 DEFENDANT: Forty-seven (47), Your
2 Honor.

3 THE COURT: All right. And tell me a
4 little bit about your educational background.
5 I have read the sheet, but for the record, if
6 you would.

7 DEFENDANT: I graduated from Furman --
8 I went to Spring Valley High School in
9 Columbia, South Carolina. Then I went to
10 Furman, graduated from Furman in 1988 with a
11 degree in History. Then went to law school
12 at the University of South Carolina,
13 graduated in 1993.

14 THE COURT: I understand from reading
15 through your memorandum that you at one point
16 had a top secret clearance?

17 DEFENDANT: Yes, sir. I was in the
18 Army for ten years as a military intelligence
19 officer. I had a top secret SCI clearance.

20 THE COURT: All right. And when did
21 you matriculate out of the Army?

22 DEFENDANT: 1998.

23 THE COURT: At that point did you begin
24 practicing law in Greenville?

25 DEFENDANT: Well, after law school and

1 until 1998, I was in the South Carolina Army
2 National Guard, and practiced law.

3 THE COURT: All right. Have you had
4 any drugs or alcohol in the last twenty-four
5 hours?

6 DEFENDANT: I had a beer last night.
7 That's all.

8 THE COURT: Just one?

9 DEFENDANT: Yes, sir.

10 THE COURT: All right. Are you taking
11 any kind of medication or prescription that
12 might prevent you from knowing what is going
13 on here today?

14 DEFENDANT: I am not.

15 THE COURT: All right. Do you under-
16 stand that in South Carolina anyone pleading
17 waives their Constitutional rights?

18 DEFENDANT: I do understand that.

19 THE COURT: In particular, you have to
20 waive your right to a jury trial. Are you
21 waiving that right?

22 DEFENDANT: I am.

23 THE COURT: Are you also waiving your
24 right to remain silent?

25 DEFENDANT: I am waiving my right.

1 THE COURT: Are you waiving your right
2 to put up a defense to these charges?

3 DEFENDANT: I am waiving that right.

4 THE COURT: You also have a right under
5 the Constitution of the State and the
6 national Constitution to confront witnesses
7 who come in and testify against you, that the
8 prosecutor would bring in to testify from the
9 stand, that you would have the right of
10 confronting them. That is your right of
11 confrontation. Are you waiving that right?

12 DEFENDANT: I am waiving that right.

13 THE COURT: And are you married?

14 DEFENDANT: I am married.

15 THE COURT: And do you have any
16 children?

17 DEFENDANT: I have five.

18 THE COURT: All right. How old are
19 they?

20 DEFENDANT: They are twenty (20),
21 eighteen (18), seventeen (17), sixteen (16)
22 and fifteen (15).

23 THE COURT: All right. Have you had
24 plenty of time to speak with your lawyers?

25 DEFENDANT: I have.

1 THE COURT: And are you satisfied with
2 this service?

3 DEFENDANT: I am satisfied with their
4 services.

5 THE COURT: Have they done everything
6 that you have asked them to do?

7 DEFENDANT: Yes, sir.

8 THE COURT: Is there anything that you
9 have asked them to do that they have refused
10 to do?

11 DEFENDANT: No, sir.

12 THE COURT: All right. Do you under-
13 stand -- you heard the Attorney General set
14 forth the agreement, uh, -- it's a negotiated
15 settlement, correct? Or is it a regular ---

16 CREIGHTON WATERS: It is negotiated
17 that any term on the conspiracy count will be
18 concurrent to whatever Your Honor decides to
19 give on the two securities fraud counts.
20 Other than that, there is no negotiation or
21 recommendation.

22 THE COURT: Do you understand that
23 based upon that, and I believe that I am
24 correct but correct me if I am wrong, that
25 you are facing today up to twenty years in

1 prison?

2 DEFENDANT: I do understand that.

3 THE COURT: And do you understand that
4 a recommendation is just that on those
5 charges? That it is a recommendation, and
6 that I don't have to accept it; but that I
7 could sentence you to the maximum allowed by
8 law?

9 DEFENDANT: I understand.

10 THE COURT: And do you understand that
11 the negotiation is that the conspiracy charge
12 will run concurrent?

13 DEFENDANT: I understand.

14 THE COURT: But that the other two
15 could run consecutive?

16 DEFENDANT: I understand.

17 THE COURT: I think that's how we get
18 to the twenty years.

19 DEFENDANT: Yes, sir.

20 THE COURT: Okay. Have you had plenty
21 of time to review all the documents in this
22 case?

23 DEFENDANT: Yes, sir.

24 THE COURT: And you have read -- have
25 you had a chance to read any of the victims'

1 statements?

2 DEFENDANT: I have.

3 THE COURT: Have you read all of them?

4 DEFENDANT: Yes, sir.

5 THE COURT: Okay. Do you understand
6 that this case actually is a Pickens County
7 case and that technically while you are
8 waiving the venue in Pickens -- just so that
9 the record is clear, are you waiving venue
10 and jurisdiction in the Pickens County
11 Courthouse -- or courtroom?

12 DEFENDANT: Yes, sir.

13 THE COURT: All right. And these are
14 direct indictments?

15 CREIGHTON WATERS: Yes, sir.

16 THE COURT: All right. Do you under-
17 stand that you have a right to have each one
18 of these cases sent to the grand jury, a
19 determination made there by the grand jury?

20 CREIGHTON WATERS: Well, Your Honor,
21 the State grand jury did pass on all of
22 these. There was just no prior warrant.
23 My apologies.

24 THE COURT: That's okay. Do you have
25 any questions about the grand jury process?

1 DEFENDANT: No, sir, I don't.

2 THE COURT: Do you have any questions
3 of me now?

4 DEFENDANT: No, sir.

5 THE COURT: All right. And have you
6 two had plenty of time to speak with your
7 client? Do you feel like he understands the
8 elements of these charges and his waiver of
9 his Constitutional rights?

10 MR. YARBOROUGH: Yes, we do, Your
11 Honor.

12 THE COURT: And do you feel like he
13 understands the various documents and agree-
14 ment in this case?

15 MR. YARBOROUGH: He does, Your Honor.

16 THE COURT: All right. Mr. Pfeiffer,
17 do you want to plead guilty to these three
18 charges?

19 DEFENDANT: Yes, sir, I do.

20 THE COURT: Are you guilty of these
21 three charges?

22 DEFENDANT: Yes, sir, I am.

23 THE COURT: All right. Yes, sir?

24 CREIGHTON WATERS: Thank you, Your Honor.
25 Also at the appropriate time, I would request

1 a colloquy on the waiver of appeal and
2 collateral attack rights as well?

3 THE COURT: All right. Sir, do you
4 understand that as a part of this plea today
5 that you are waiving any right to a direct
6 appeal, any right to pursue a habeas corpus
7 in any court in this country? Do you
8 understand that?

9 DEFENDANT: Yes, Your Honor, I do.

10 THE COURT: All right. And I
11 understand that you are preserving the right
12 to contest at some point, uh, the restitution
13 amount?

14 DEFENDANT: That is in the agreement;
15 yes, sir.

16 THE COURT: And basically that would be
17 the only avenue of appeal for further action
18 that you would have once we complete today?

19 DEFENDANT: Yes, sir.

20 THE COURT: All right. And is that the
21 agreement as you understand it?

22 MR. YARBOROUGH: Yes, sir, Your Honor.

23 THE COURT: All right, so you want to
24 plead guilty here, Mr. Pfeiffer?

25 DEFENDANT: Yes, sir.

1 THE COURT: And you are guilty?

2 DEFENDANT: Yes, sir.

3 THE COURT: All right. Yes, sir?

4 CREIGHTON WATERS: Thank you, Your
5 Honor. This case obviously is arising out
6 of the demise of an entity known as Capital
7 Investment Funding. I know that Your Honor
8 has heard the factual basis during Mr.
9 Field's plea, so I will not go into too much
10 detail as to the background facts, since you
11 are familiar with those.

12 However, this case is more of a subtle
13 case than one might see with securities
14 fraud. This is not a case where someone gets
15 an investment and they take it and just run
16 off to Vegas with it, or something like that.
17 This is a case that primarily boils down to
18 an act, a practice, a course of business that
19 had the effect of defrauding another
20 individual. That is really the main focus of
21 what we have here.

22 Ultimately with regard to the conspiracy
23 charge -- of course, you've heard, of course,
24 the factual basis, his involvement with Mr.
25 Arthur Field, who he was partners with in

1 Cosimo, in which he served as counsel for CIF
2 and -- and as I talk through these facts, you
3 know, these were done in conjunction with Mr.
4 Field as we go through it.

5 Ultimately when CIF ceased opera-
6 tions and folded, there is presently about
7 thirty-nine million (\$39 Million) dollars
8 that is outstanding to the various note-
9 holders. From what the Receiver tells me, it
10 is, at best, less than four million (\$4
11 Million) dollars that may be able to be
12 recovered. So there is a sizeable amount
13 that is outstanding.

14 But the way that this started
15 specifically with Mr. Pfeiffer is that --
16 he was obviously practicing law here in
17 Greenville -- not here but in Greenville.
18 He meet Mr. Field who has CIF, who had CIF,
19 who obviously has access to the investor
20 money that he is collecting from the citizens
21 of South Carolina. That's how the two of
22 them get involved.

23 Initially most of the money was
24 being sent from CIF up to a company called
25 LRI, which I've described at the prior

1 preceding before Your Honor. And, uh, Mr.
2 Pfeiffer and Mr. Field formed a company known
3 as Cosimo here in South Carolina to keep the
4 lending here in South Carolina.

5 They were essentially half partners
6 in that through various entities. Mr. Field
7 had fifty percent of Cosimo and Mr. Pfeiffer
8 had fifty percent of Cosimo.

9 As things went down along the way,
10 ultimately Mr. Pfeiffer's half was shared
11 with members of his firm; but that
12 essentially was the arrangement, Arthur Field
13 fifty percent and fifty Mr. Pfeiffer. So
14 that's how he got involved in this particular
15 entity.

16 With regard to the securities fraud
17 charges, the first charge deals with the use
18 of a fake person by the name of Henry Rex.
19 Mr. Pfeiffer and Mr. Field created this
20 individual, Henry Rex, who was the principal
21 of a company called Bolingbroke, which is how
22 Arthur Field held his half interest of
23 Cosimo.

24 The State's position is that this,
25 of course, was used to hide the identity of

1 the true owners and to cover up the fact that
2 they were related-party transactions and --
3 not only with regards to the investors in CIF
4 but also with regards to the partners who had
5 been involved in LRI from the securities
6 division and all the rest.

7 Ultimately what we see is Mr. Rex's
8 name being used on various documents. Legal
9 and real estate documents that were prepared
10 in Mr. Pfeiffer's offices would have this
11 fictitious Mr. Rex signing that and be
12 notarized and all the -- all the rest of it.

13 Again, the relevance of that, the
14 importance of that, the materiality of that
15 is that not only is it using a fake name to
16 hide true ownership interests but it covers
17 up those related-party transactions. Those
18 related-party transactions are important
19 because, obviously, they are a huge red flag
20 to auditors, to the securities division and
21 ultimately to investors to understand the
22 true nature of what's been going on. At this
23 particular time, Mr. Field of course is
24 telling investors that, 'I am minding the
25 store, I am not lending to myself' and the

1 like.

2 The reason -- one of the reasons
3 why it is important for those related-party
4 transactions to be disclosed, and which was
5 particularly relevant in this case, leads
6 into the next count that Mr. Pfeiffer is
7 pleading to today. That is with the
8 operations of Cosimo, which again was the
9 major re-lender of CIF once they stopped
10 sending all of the money to LRI up in New
11 Jersey.

12 Cosimo's business essentially had no
13 other business than relending CIF money.
14 They had that ready source of funds from the
15 investors of South Carolina. CIF would loan
16 it to Cosimo, Cosimo would, uh, relend it.

17 But that's where we have the rub
18 here. Because of those related-party
19 transactions, ultimately there was an act, a
20 practice, a course of business that operated
21 to create a fraud on the investors in South
22 Carolina.

23 What we see with the operations of
24 Cosimo, which Mr. Pfeiffer was a co-manager,
25 he was a half owner, the records tell a story

1 here and reflect his involvement in the
2 operations of Cosimo throughout it. But what
3 we see with Cosimo is kind of like a movie
4 set. From a distance it looks good. But as
5 you get closer and you start to peel back the
6 layers, ultimately inside it is a rotten --
7 it is a rotten egg.

8 What we see is that throughout the
9 operations of Cosimo that the entity
10 continued to -- there is no better way to put
11 it than to vomit out good money after bad.
12 This would have the effect of sending out
13 money to entities that were already behind on
14 their loans. That money would go out, it
15 would be used to pay off prior loans, to get
16 everything current and then to repay CIF, to
17 give the illusion of paying good loans that
18 were ongoing. As this progressed, it got to
19 the point where there really was no good
20 economic viable reason for this money to
21 continue to be sent out to these defaulting
22 debtors other than to allow them to use that
23 money -- to use that money to pay, to get
24 everything current, to give the illusion that
25 we have valid loans, paying loans.

1 Of course, every time that happened,
2 every time one of these new loans went out,
3 there were fees, there were points, there
4 were manager fees, there were legal fees that
5 were taken. So it was very lucrative that
6 each time the money would go out, it would
7 just circle around, everybody would take a
8 cut and it would come back. As long as you
9 had that ready source of money from CIF that
10 was constantly there, you could keep doing
11 that; you could keep sending that money out,
12 everybody takes a cut, some of it circles
13 back enough to get everything current.

14 But, eventually after a few months,
15 after a year or whatever, you're back in the
16 same boat and you have to do it again.

17 Well, what happened is that in 2007,
18 the South Carolina Securities Division
19 started to take a look at the operations of
20 CIF, and in May of 2007 issued a notice of
21 intent to essentially prevent CIF from
22 gathering any further investor money. So
23 essentially they turned off the spigot.

24 Obviously if that is the course of
25 business as it'd been going, it constantly

1 needed new money to come into the top to
2 circle back around and get everybody current.
3 That is really what brought the whole scheme
4 down, is that once they lost their ability to
5 gather more money.

6 They continued to, in 2007 -- in
7 2007, the records really reflect a scrambling
8 in an attempt to get -- continue to get in
9 money through various means, whether it was
10 by calling note renewals, and that's not the
11 sale of new securities; by going through Reg
12 D, they proposed a new entity; trying to get
13 that spigot on. It was very evident that the
14 minute that that spigot was off that every-
15 thing would come to a -- would come to a, uh,
16 crashing halt.

17 Similarly at the same time they sent
18 out new money after these bad loans to all
19 these related entities to get everybody
20 current, so that ultimately when they
21 declared the winding up, on its face
22 everything looked good, everything looked
23 like it was okay. But once people started
24 to dig, once people started to look into what
25 they had here, it became very clear that this

1 was a rotten egg on the inside and had been
2 for years.

3 Ultimately when everything came to
4 an end, Cosimo is left owing CIF some
5 thirteen million (\$13 Million) dollars.
6 There were little, if any, assets that were
7 left there. Much of that had to do with the
8 failure to perfect collateral, with
9 continuing to loan money to debtors without
10 sufficient collateral, to disburse monies
11 without due diligent and without proper
12 controls and procedures in place to ensure
13 that lender was protected. Again, every time
14 one of those happened, there were fees,
15 points, management fees accepted and that in
16 a nutshell is the course of business, the
17 act, the practice, the scheme to defraud that
18 ultimately defrauded the investors of South
19 Carolina.

20 THE COURT: All right. Do you
21 have any idea how much Mr. Pfeiffer profited
22 from this?

23 CREIGHTON WATERS: Yes, Your Honor.
24 Like I said, this case is subtle inasmuch as
25 this is not a case where Mr. Pfeiffer or Mr.

1 Field made off with thirty-eight million (\$38
2 Million) dollars. That is not what happened
3 here.

4 THE COURT: It was an incremental thing.

5 CREIGHTON WATERS: It was an incremental
6 thing and the monies that they took were, on
7 their face, valid monies to take: they were
8 salaries, they were management fees, they
9 were legal fees and that sort of thing. But
10 it was the lack of controls and the manner
11 in which the business was conducted, the
12 illusion of solvent entities that were
13 created is where the fraud exists.

14 With that being said, Your Honor,
15 we -- in looking at the various books and
16 various, uh, records we were able to deter-
17 mine an amount that went into Mr. Pfeiffer's
18 world, so to speak; whether it was fees to
19 himself, management fees, legal fees, fees to
20 his firm, various other sources of revenue
21 from CIF and Cosimo. The figure that we came
22 up with in that regard is one million nine
23 thousand one hundred eighty-six dollars and
24 thirty-eight cents (\$1,009,186.38).

25 THE COURT: One million, nine

1 thousand, one hundred --- ?

2 CREIGHTON WATERS: One million nine
3 thousand one hundred eighty-six dollars and
4 thirty-eight cents (\$1,009,186.38).

5 And, Your Honor, I don't know if you
6 want to go further into restitution at this
7 time. There is a provision in the plea
8 agreement with regard to a malpractice
9 settlement. I will be glad to do it now or
10 we can ---

11 THE COURT: Now's fine.

12 CREIGHTON WATERS: Okay.

13 THE COURT: I mean, I want to get the
14 status of it.

15 CREIGHTON WATERS: Yes, sir, Your Honor.
16 Obviously as Your Honor is aware, there were
17 a number of civil actions that have been
18 filed with -- from the demise of CIF and all
19 of its related entities. One of those was a
20 malpractice action that was filed against Mr.
21 Pfeiffer and his firm. Ultimately that
22 malpractice action settled for an amount of
23 eight hundred and forty thousand (\$840,000)
24 dollars; which my understanding is has been
25 paid to the class. Obviously attorneys' fees

and all the rest of it have to come out of that. As a negotiated term in the plea agreement, Mr. Pfeiffer is to be given a credit for that particular amount that came. However, if for any reason any of that amount is returned from the class, then he still is on the hook for the entire amount.

That is eight hundred forty thousand (\$840,000) dollars of credit from that malpractice settlement.

Obviously there's a conceptual issue there, but that was a negotiated provision that we went back and forth on and came to that agreement. I obviously also had consultations with members on the civil side. They are present. Mr. Saad, Jerry Saad, is the Receiver. Mr. Stan Case is the class counsel. Mr. Curt Stodghill is the counsel for Mr. Saad. And I would like to make part of the record the Order with regards to this settlement agreement that was entered. I will have those marked as Court's 2 and 3.

THE COURT: All right, that'll be fine.
Any objection to that?

MR. YARBOROUGH: No objection to that,

1 Your Honor.

2 (SO ENTERED AS COURT'S EXHIBIT 2)

3 (SO ENTERED AS COURT'S EXHIBIT 3)

4 MR. YARBOROUGH: Your Honor, are far as
5 the State's rendition of the facts, Mr.
6 Pfeiffer does not agree with everything that
7 was said; but we do believe that there is
8 enough information there to make a basis for
9 a guilty plea.

10 THE COURT: Sure.

11 MR. YARBOROUGH: As far as the way I --
12 it looks to me like that with the
13 negotiations of the monies paid in, assuming
14 all that money stays in, it is a hundred and
15 sixty-nine thousand that is what is really
16 left (\$169,000) on the restitution figure.

17 THE COURT: Okay. All right. Mr.
18 Pfeiffer you just heard the facts as given by
19 the State. Your lawyer just said that there
20 were obviously some details that you might
21 not agree with. But do you agree with the
22 majority of the details as given by the
23 State?

24 DEFENDANT: Yes, Your Honor.

25 THE COURT: And do you believe that you

1 have committed violations of the Uniform
2 Securities Act, in other words securities
3 fraud, and committed other criminal
4 conspiracy acts?

5 DEFENDANT: Yes, sir.

6 THE COURT: Do you admit to those
7 facts?

8 DEFENDANT: I admit to those facts.
9 Yes, sir.

10 THE COURT: All right.

11 CREIGHTON WATERS: Thank you, Judge.

12 THE COURT: All right. And, again,
13 like you said, I am going to do this a little
14 backwards. I will be glad to hear from Mr.
15 Pfeiffer and then I will be glad to hear from
16 any of the witnesses. Yes, sir?

17 MR. YARBOROUGH: Your Honor, do you
18 want to hear from Mr. Pfeiffer first or ---

19 THE COURT: However you want to do it.
20 It is your -- you've got it.

21 MR. YARBOROUGH: Your Honor, I think
22 that I will go and then, uh, Mr. Bennett will
23 go and then Mr. Pfeiffer may have ---

24 THE COURT: That will be fine.

25 MR. YARBOROUGH: Your Honor, just a

1 little background. There are two stories to
2 this thing. There are two sides to this
3 man's life. I mean, you -- you read the
4 brief that we filed.

5 THE COURT: (Affirmative nod).

6 MR. YARBOROUGH: I have been involved
7 in a lot of these cases over the years and
8 usually the lawyers have letters written, you
9 get your cronies from the bar and you all get
10 together and say, you know, -- here, there
11 are people out there that he's made a big
12 difference in his lives. There are people
13 out there that he's made a big difference in
14 their lives.

15 There are two sides to this man's life.
16 It is a shame that this has culminated in his
17 walking in here today. But that's what we
18 are here for. You're in a tough position,
19 having to craft a sentence that is both just
20 to the State and just to the defendant.

21 I just wish that you would look at the
22 fact that his man went to high school in
23 South Carolina, he went to Furman University.
24 The list of awards that he had at Furman go
25 on and on. The list of awards that he had in

1 law school -- moot court. Ten years of
2 military intelligence; you know, working for
3 his country. You know, he -- that's
4 impressive. Those are impressive
5 credentials.

6 As a lawyer, he clerked for Ross
7 Anderson. That's when I first met him. I
8 was with the U.S. Attorney's Office, he was
9 clerking for G. Ross Anderson. You know, he
10 impressed me with his intelligence. He
11 impressed me with his work ethic. My wife at
12 the time also worked at Nelson Mullins where
13 he went, she was -- they were both young
14 lawyers. I will tell you that back in those
15 days, those sweatshops, they worked hard. I
16 knew Scott at that time. I knew my wife knew
17 him and worked with him. He was well thought
18 of. He was well thought of when he started
19 his own firm. That was fifteen, sixteen
20 years ago.

21 You know, at some point something
22 happened. Lawyers sometimes make mistakes.
23 I think a mistake was made when he got into
24 this partnership with Field. You know,
25 whether that was all Field's fault or whether

1 it was Pfeiffer/Field, it doesn't matter.
2 He's pleading guilty today.

3 Since then he's lost his law license.
4 His family has become -- I think destitute
5 would be the wrong word, but they certainly
6 don't live the way that they used to live.
7 They're losing their house.

8 But he's trying to change around. I
9 mean, a lot of times you get people who walk
10 into court and they haven't done anything
11 since the charges came down. This man has
12 started a whole new career. He is building
13 a new life. He's trying to make amends for
14 the mistakes that he made.

15 Is he ever going to be able to tell his
16 victims, "I am making you whole"? That's not
17 going to happen. I'm sorry. I wish that was
18 happening today. I know that you all do. I
19 know that the judge does. I know that every-
20 body does, but it is not. I know that the
21 State wants you to.

22 I can tell you one thing, this man
23 (indicating Mr. Pfeiffer) wants you to be
24 made whole, but it's not happening right now.
25 We're sorry. He will tell you how sorry that

1 he is.

2 Your Honor, I know you're in an awkward
3 position. We will discuss the sentencing
4 issues after the State, I guess, unless you
5 want me to try to go into them now.

6 THE COURT: No, we will do that last.
7 I just wanted to hear what you had to say on
8 his behalf. Then I'd like to hear the
9 victims. Then, quite frankly, I'd like to
10 take a break to deal with the sentence.

11 MR. YARBOROUGH: Yes, sir. Mr.
12 Bennett?

13 MR. BENNETT: May it please the
14 court, Your Honor, Bradley Bennett on behalf
15 of Scott Pfeiffer.

16 Your Honor, before you stands a broken
17 man. He is not the way that I've known this
18 man. He has -- he's lived an exemplary life.
19 He's been an exemplary friend.

20 He was a military brat, grew up all over
21 the world; from Texas to Thailand, from
22 California to the Carolinas where he settled
23 down in 1984 and went to Furman. He
24 graduated, went on to law school, went into
25 the military, came back to Greenville, worked

1 at Nelson Mullins, worked hard, raised a
2 family.

3 He and his wife are seated here today.
4 They have five children. They have had a
5 wonderfully happy and hectic life. He was
6 a active father, he was involved in his
7 children's lives; whether it was his oldest
8 son -- taking Taekwondo with him, -- or his
9 youngest daughter, Clair, playing board
10 strategy games with her. He gave of his time
11 and his talent.

12 He gave to his community. Gave to his
13 friends. He was an active member of his
14 church, taught Sunday school, worked with the
15 Youth. All of these friends that are here
16 today are a demonstration of the kind of man
17 Scott is. He had a strong shoulder to lean
18 on when they had trouble, and a kind heart,
19 the wisdom to counsel friends, to be there
20 for others. That type of life is the life
21 that he worked hard and grew.

22 But all of that has changed now, Your
23 Honor. Over the last fifteen months, since
24 the day that he was arrested, the confident
25 and self-assured lawyer that I'd known for

1 approximately sixteen years stands before you
2 humbled and scared. He is humiliated by the
3 taunts that his children receive at school,
4 his own personal fall from grace. He's
5 scared for the family's financial health, in
6 fact their house has gone into foreclosure,
7 the fact that he has not been able to provide
8 sufficiently and the fact that he's had to
9 rely upon friends and family members for kind
10 support and generosity. He's lost the
11 profession that he fought so long and hard
12 for and worked so diligently at. He's lost
13 all of his investments, he's lost all of his
14 savings. He and his family are now in debt
15 and have credit cards bills that are accruing
16 continuously.

17 In spite of all these problems, and all
18 this difficulty over the past fifteen months,
19 Scott has shown the true character of who he
20 is by not laying down and giving up. But
21 he's tried to make right and do well.

22 He's got basically three jobs, Your
23 Honor, that he does in trying to pull as much
24 money together as he can. He works for a
25 company called Core Communications. He's a

1 billing agent for them. He works writing
2 business proposals and ghost writing for a
3 company out of California, who he was in
4 contact with during his days at Furman. My
5 ex-wife and I have several rental houses and
6 he works for us cleaning those houses, moving
7 tenants out and their belongings out when
8 they're vacated and doing yard work. He is
9 not ashamed of hard work. He is not ashamed
10 of doing work that he hadn't done since he
11 was a young man.

12 He is shamed however by the position that
13 he is in by his own dealings. He's done all
14 of this, trying to make amends and take care
15 of his family with this day looming over his
16 head.

17 These past fifteen months have taken a
18 toll on my friend. He's lost all of his
19 comforts. He's lost all of his career and
20 he's lost all of his credibility with the
21 public that he served. He's humiliated and
22 humbled before both friends and family. Also
23 Shakespearian-like in tragedy, last Friday,
24 this past Friday, he lost his father who had
25 a heart attack, unexpectantly. It was a

1 sudden loss. It has left Scott the patriarch
2 of the family, a family that is in disarray.

3 Your Honor, we're here today asking this
4 court to consider home incarceration for Mr.
5 Pfeiffer. We ask that respectfully and we
6 ask that with full knowledge and appreciation
7 to the victims. We are sorry for their loss,
8 but we feel as though home incarceration will
9 allow Mr. Pfeiffer to continue on with the
10 good work that he has done in trying to
11 rebuild his life, trying to make amends,
12 trying to provide for himself and others.

13 THE COURT: Would home incarceration
14 allow him to continue to pay restitution?

15 MR. BENNETT: Yes, sir, Your Honor.
16 Yes, sir. And taxes. And the ability to
17 take care of a family that otherwise may not
18 have anybody to take care of them. This man
19 is now the head of the Pfeiffer family. His
20 father was sixty-nine years old, who was in
21 excellent health. His sudden death last
22 Friday has left a void within the family.

23 No punishment is necessary for the
24 deterrence of Mr. Pfeiffer. No more
25 punishment benefits society, Your Honor.

1 Arguably, more punishment would only cost
2 society. Respectfully, Your Honor, we
3 believe that no more punishment would be
4 just.

5 Before you stands a broken man, Your
6 Honor. Please have mercy upon him and his
7 family. Thank you.

8 THE COURT: Thank you. Mr. Pfeiffer,
9 anything else that you want to tell me?

10 DEFENDANT: Yes, sir.

11 THE COURT: Then I will hear from --
12 if any victims want to speak to me, I'll be
13 happy to hear anything that you want to tell
14 me.

15 DEFENDANT: Your Honor, I am humbled
16 and embarrassed to be standing here in front
17 of you today. I've stood here many times
18 counseling my clients through this difficult
19 situation. I never dreamed that I would
20 stand in this position before you.

21 My actions in representing Capital
22 Investment Funding did not live up to the
23 high standards that are expected of me by
24 society, by the Bar or by myself. I
25 dedicated my entire professional life to the

1 practice of law. I tried to be a good
2 lawyer, do good for my clients. But because
3 of my actions, and after this plea, certainly
4 I will no longer have the honor of practicing
5 law. Not now, not for years to come -- if
6 ever again.

7 But in the year and a half since I've
8 lost my license, I've begun to try to rebuild
9 my life, a simpler, humbler life of teaching
10 and service.

11 I stand here today to tell you, Your
12 Honor, that I am wrong. To tell you and to
13 tell all of you that I am deeply sorry for
14 the actions of mine that contributed to the
15 losses suffered by these investors.

16 I've made the restitution that I am
17 financially able to make. I directed the
18 settlement of the civil lawsuit as I could so
19 that I could pay as much money, the policy
20 limits, that were left to try to make amends.

21 I stand here today and ask you for mercy.
22 Please consider a sentence that allows me to
23 stay home, take care of my family, take care
24 of my friends and continue to rebuild my
25 life. Thank you, Your Honor.

1 THE COURT: Thank you. Yes, sir? I'll
2 be happy to hear from any of the victims.

3 I am not sure if I said this but I find
4 that this plea is freely, knowingly,
5 intelligently and voluntarily made. Based on
6 the advice of counsel, I find that this court
7 has jurisdiction. I further find that the
8 defendant has waived his Constitutional
9 rights in making this plea knowingly and
10 voluntarily based on the advice of very
11 competent counsel.

12 Yes, sir?

13 CREIGHTON WATERS: Thank you, Your
14 Honor. As Your Honor is, of course, aware,
15 because of the large amount of victims in
16 this particular case, some six hundred
17 eighty-eight (688), we asked the victims if
18 they would submit written statements to Your
19 Honor; which of course you've been provided
20 and noted on the record that you have
21 reviewed.

22 A number of the victims, in fact
23 most of them, are in their senior years.
24 Many of them, I know that you saw from the
25 letters that you received, were either too

1 Okay. All right. I've accepted the plea
2 on Mr. Pfeiffer for obvious reasons.

3 I've been on the bench for twelve years
4 and I have no idea how many pleas that I have
5 taken, hundreds probably if not a thousand or
6 maybe more. I've come to realize that there
7 are two types of defendants in this world.
8 There are those that are bad people, and my
9 job is to put them somewhere where they can't
10 continue to hurt people. Then there are the
11 vast majority of defendants who are good
12 people who, like all human being, made
13 mistakes. Quite frankly, Mr. Pfeiffer, I
14 think you're in the latter group.

15 I don't criticize you at all for your
16 life's endeavors, your career. I think that
17 you probably at some point can recover that.

18 And I understand that because of the
19 circumstances there, in many ways your life
20 has been ruined, devastated. The fact that
21 your father passed away, to me, is just very
22 sad. I know that whatever I do it will not
23 lightened that load, but I want you to know
24 that I give you my greatest sympathy. I am
25 very close to my father, who of course is

1 still here.

2 What I kept thinking about as I was
3 listening to all of this was the Bible verse
4 of Luke 12:48, which is "to whom much is
5 given, much is expected." A very interesting
6 thing about that verse -- and I'm not going
7 to give you a Sunday school lesson but the
8 first part of it talks about punishing people
9 who don't know what's going on as a crime, it
10 says that to those people that aren't given
11 much, you should give them mercy, treat them
12 a little better. Quite frankly, you're one
13 of those people to whom much has been given
14 -- and much is expected.

15 Lawyers in this country are unfairly
16 criticized. It makes me angry when I hear
17 that. Their function is essential and trust
18 in those lawyers is key. Quite frankly, you
19 breached that trust.

20 I have an immense amount of sympathy for
21 your family, for your children, for your wife
22 and for all your friends. But on the other
23 side there are people whose lives have been
24 ruined. As I said, it is very much like
25 dropping a pebble into a lake and watching

1 that wave ruin generations. There are people
2 out there who have worked all their lives to
3 leave something for their family, for their
4 children, for their grandchildren. That's
5 gone. We all know, in this courtroom, that
6 some of it may come back but that most of it
7 is not.

8 What I have been pondering back there is
9 what is appropriate. As I said, and I'm not
10 asking for any sympathy but it's very
11 difficult to sentence you today.

12 But I accepted your plea and the sentence
13 on Indictment 13-GS-47-0009, which is a six-
14 count indictment, the sentence is ten (10)
15 years, provided on the service of six (6)
16 years the balance is suspended with probation
17 for five (5) years. I am running that
18 consecutive with Indictment 13-GS-47-0009
19 (sic), which is a three-count indictment.
20 That's a ten-year (10 year) sentence
21 suspended to five (5) years probation.

22 Then on the conspiracy, which carries a
23 maximum of five years, it is five (5) years
24 to run concurrent.

25 This is a sixty-five (65) percent

1 sentence, right?

2 CREIGHTON WATERS: Yes, sir, Your Honor.

3 THE COURT: I'm sure that there are
4 going to be people who will think that
5 sentence is way too harsh. I am also
6 completely certain that there will be more
7 people that think that it is not anywhere
8 near enough. It is the sentence after a lot
9 of consideration, prayer and thought and
10 review of this record that I came up with
11 that sentence. Any questions about it?

12 MR. YARBOROUGH: No, sir, Your Honor.
13 We would ask if a part of that six-year
14 sentence confinement, if part of that
15 sentence, say three years, could be home
16 confinement.

17 THE COURT: I don't have a problem with
18 modifying it so that there are two years of
19 home incarceration, which is run through
20 Probation, HIP. So he would do four and the
21 remainder at home.

22 Home incarceration, to the victims, I
23 know that sounds like home -- that home
24 incarceration is something that is easy.
25 Under our new HIP program, he wears a

1 monitor, he can't leave his house, he is
2 under constant surveillance with a GPS
3 monitor. So I will do that.

4 I will say that as attorneys that you all
5 have done a great job. I would also say that
6 the State -- that it's a complicated mess and
7 I think that everybody has done a good job.
8 Part of the problem is that punishment -- as
9 you said in your memorandum, which I thought
10 was very good, that there is a huge deterrent
11 to punishment like this. When I read your
12 letter, Mr. Pfeiffer, I realized that I could
13 see myself in that position, working, making
14 money and somebody comes along -- now, what
15 I've got to do with Mr. Field, that is a
16 whole different matter. Suddenly having the
17 opportunity to make a whole lot of money.
18 Unfortunately that's -- I'd hope everybody
19 would be able to resist that.

20 Now, it's ten years amended to six and on
21 the service of four years, the end of that --
22 so can I just leave it at six and put down at
23 the bottom he'll be monitored by HIP. For
24 purposes of this, I will leave six years down
25 as the sentence but then I will write down on

1 this form that the remaining two years of the
2 active sentence may be served by home
3 incarceration. I will do that for you.

4 MR. YARBOROUGH: Thank you, Your Honor.

5 THE COURT: All right. So it is ten
6 (10) years suspended on service of six (6)
7 years imprisonment with five (5) years
8 probation, the remaining two (2) years of
9 active service to be served on home
10 incarceration.

11 The other sentence will remain the same:
12 ten (10) years suspended on five (5) years
13 probation and run that consecutive. So when
14 he comes out, he's got fourteen years hanging
15 over his head.

16 Then on the conspiracy, instead of five
17 years -- ordinarily when I do this -- I'm
18 just going to sentence him to three(3) years,
19 concurrent. I think that solves everybody's
20 problem.

21 MR. YARBOROUGH: Your Honor, if I may,
22 may Mr. Pfeiffer be allowed to self-report?

23 THE COURT: Any objection to that?
24 You got his passport?

25 CREIGHTON WATERS: We do. I'd like to

1 know the details.

2 MR. YARBOROUGH: Sure. Your Honor, as
3 I said, Mr. Pfeiffer's father died this past
4 Friday. He's got family in town for the
5 funeral. As you can imagine, since Friday
6 of last week nothing has been done to get
7 preparations made for a day such as today.

8 THE COURT: When is the funeral?

9 MR. YARBOROUGH: It's already taken
10 place but, as I said, nothing else has really
11 gotten done since that day. Could he have
12 thirty days to ---

13 THE COURT: No, that's ---

14 CREIGHTON WATERS: We would object to
15 thirty days.

16 THE COURT: I'll give him until next
17 Friday, that's the most that I can do. Now,
18 Mr. Pfeiffer, you know the law like I do. If
19 you don't report, it's an escape charge and
20 I'm going to bring you back and -- I don't
21 mean to frighten you but it would not be
22 good.

23 DEFENDANT: You don't have to worry
24 about that. Thank you.

25 THE COURT: So report next Friday by --

1 what is the date, next Friday?

2 MR. YARBOROUGH: The 27th, Your Honor.

3 THE COURT: Report by September 27th,
4 2013.

5 CREIGHTON WATERS: Judge, before we
6 conclude, I do have marked as Court's 4 the
7 financial declarations that Mr. Pfeiffer had
8 to submit and affirm under oath pursuant to
9 the plea agreement. I have marked those as
10 Court's 4, which I will hand to the clerk.
11 I just wanted to make sure that got on the
12 record.

13 (SO ENTERED AS COURT'S EXHIBIT 4)

14 CREIGHTON WATERS: And, also, there
15 -- we have since prepared a blank restitution
16 order as well.

17 THE COURT: All right. Do you need for
18 him to affirm that that is his financial ---

19 CREIGHTON WATERS: That is what the plea
20 agreement required him to do, to affirm under
21 oath that these are correct and that he has
22 not hidden or has not disclosed any assets,
23 whether he holds those directly, indirectly,
24 through an entity, whatever.

25 THE COURT: Okay. Mr. Pfeiffer, have

1 you had a chance to look at the financial
2 forms?

3 DEFENDANT: Yes, sir.

4 THE COURT: Are those correct? You're
5 under oath. Are those correct?

6 DEFENDANT: Yes, Your Honor.

7 THE COURT: All right. Is there
8 anything else that you need from him?

9 CREIGHTON WATERS: No, sir, Your Honor.
10 Aside from the restitution Order.

11 THE COURT: Thank you for your patience
12 today.

13 (HEARING CONCLUDED)

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STATE OF SOUTH CAROLINA)
) CERTIFICATE
COUNTY OF CHARLESTON)

I, the undersigned Deborah Garrison, Circuit Court Reporter for the 9th Judicial Circuit, hereby certify that the foregoing is a complete and accurate transcript of the hearing held on September 18, 2013, before The Honorable Cordell Maddox, as prepared from the audio notes of Vivian Cross, Court Reporter;

I further certify that I am neither kin nor counsel to any of the parties and have no interest in the outcome of this action.

Deborah Garrison

Charleston, South Carolina
January 5, 2013

STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
 COUNTY OF ANDERSON)

STATE OF SOUTH CAROLINA)
)
) Plaintiff,
)
) v.
) Case No. 13-CP-47-08
)
 Arthur Field and)
 Frederick Scott Pfeiffer,)
)
)
) Defendants.)

TRANSCRIPT OF SENTENCING HEARING

The within Hearing in the above-captioned matter was held on October 8, 2013, before The Honorable Cordell Maddox in the Court of General Session, Anderson, South Carolina; attended by counsel as follows:

APPEARANCES:

Brian T. Petrano, Esq.
 S. Creighton Waters, Esq.
 U.S. ATTORNEY GENERAL
 Appearing for State of South Carolina

J. Todd Rutherford, Esq.
 Appearing for Arthur Field

Bradley Bennett, Esq.
 William G. Yarborough, Esq.
 Appearing for Defendant Pfeiffer

TRANSCRIBED FROM AUDIO NOTES OF VIVIAN CROSS

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1 THE COURT: All right. Just for the
2 record, on May 6th of this year, Mr. Field
3 appeared before me in this courthouse and
4 pled guilty to fourteen separate charges.
5 Is that correct?

6 MR. WATERS: That's correct, Your Honor.

7 THE COURT: All right. At that time
8 also introduced and made Exhibit 1, Court's
9 Exhibit 1, was the plea agreement between the
10 State of South Carolina and Arthur Field; is
11 that correct?

12 MR. RUTHERFORD: That's right.

13 THE COURT: All right. So we all agree
14 that we are here today to carry out the final
15 step, which would be the sentencing under
16 these fourteen separate charges; is that
17 correct?

18 MR. WATERS: Yes, sir.

19 MR. RUTHERFORD: Yes, sir.

20 THE COURT: All right. Before we
21 start, Mr. Field, if you would stand up, I
22 need to ask you a couple of questions. Then
23 I will let you both present your sides.

24 Mr. Field, on May 6th of this year you
25 pled guilty. Do you remember that?

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1 DEFENDANT FIELD: Yes, Your Honor.

2 THE COURT: And at that time I went
3 through the colloquy and asked you the
4 questions that I am required to ask you about
5 your Constitutional rights and also your
6 understanding of these charges. Do you
7 remember that?

8 DEFENDANT FIELD: Yes, Your Honor.

9 THE COURT: Do you have any questions
10 that you want to ask me about your plea on
11 May 6th of 2013?

12 DEFENDANT FIELD: I have none.

13 THE COURT: All right. And do you
14 still stand by your testimony of that date,
15 wherein you waived your Constitutional
16 rights, including your right to a jury trial,
17 your right to remain silent, your right to
18 confront the witnesses that would come and
19 testify against you, and your right to put up
20 a defense to these charges?

21 DEFENDANT FIELD: Yes.

22 THE COURT: And you are waiving all of
23 those rights again today, is that correct?

24 DEFENDANT FIELD: That's correct, Your
25 Honor.

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1 THE COURT: And you've had plenty of
2 time to speak with your lawyer, is that
3 correct?

4 DEFENDANT FIELD: Yes, I have had plenty
5 of time, Your Honor.

6 THE COURT: And you are satisfied with
7 his services?

8 DEFENDANT FIELD: Yes, Your Honor.

9 THE COURT: All right. Well, I am
10 going to reaffirm what I said on the 6th, on
11 the 6th of May, which is I am going to accept
12 his plea. That I find it freely,
13 voluntarily, knowingly and intelligently made
14 based on the advice of counsel. Okay, you
15 can have a seat.

16 Yes, sir?

17 MR. WATERS: Thank you, Judge. Your
18 Honor, this is 12-GS-47-08, a State Grand
19 Jury indictment of Mr. Field for fourteen
20 counts. Mr. Fields, as you have just
21 indicated, has already pled guilty pursuant
22 to a written plea agreement. The sentencing
23 basis of that plea agreement is that it was a
24 negotiated term that the eleven security
25 fraud counts would be concurrent and that it

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1 would be up to Your Honor whether or not the
2 two conspiracies and the forgery are
3 concurrent or consecutive. That results in a
4 net exposure to Mr. Field of zero to twenty-
5 three years. Of course, Your Honor has to
6 decide that today.

7 Your Honor, I would be happy to recount
8 the facts of the case; however, I know that
9 Your Honor is familiar with the facts of the
10 case. If you would like for me to go through
11 it again or ---

12 THE COURT: No, no, it's not
13 necessary. Tell me which ones are run
14 consecutive, again.

15 MR. WATERS: Your Honor, the eleven
16 securities fraud counts are all going to be
17 concurrent. That would be Counts 3 through 8
18 and 10 through 14. That would leave Counts 1
19 and 2, which are the conspiracy counts, and
20 Count 9, which is the forgery count to Your
21 Honor's discretion as to whether or not the
22 sentence on those should be concurrent or
23 consecutive.

24 THE COURT: Okay.

25 MR. WATERS: So you've got ten

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1 years on all the securities fraud counts and
2 you've got five apiece on the conspiracies
3 and three on the forgery, for a total of
4 twenty-three.

5 And, Your Honor, to move to sentencing,
6 this was obviously an extremely difficult
7 case to put together. This is the third
8 hearing that we have had on the case. It was
9 an extremely difficult case to figure out.
10 The reason for that was because on its face,
11 at least as far as the books were concerned,
12 at least as far as the transactions were
13 concerned, everything on its face looked to
14 be appropriate. It was kind of like a movie
15 set. It looks good from far away but as you
16 get closer, start to dig a little bit, you
17 realize that it's as thin as a piece of
18 paper. That's what we had here. That's why
19 it took so long to figure out this particular
20 case.

21 I will say this, Mr. Field, Dr. Field,
22 after he was indicted approached our office
23 and, pursuant to a proffer, agreed to
24 cooperate and provide us information. Mr.
25 Field set down with our investigators,

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1 Investigator Bob Caffey (phonetic) and
2 Investigator Joe Jordan, who were the two
3 investigators who worked so diligently on
4 this particular case. He sat down with
5 those individuals on multiple occasions for
6 hours and hours, in which he provided
7 information about the activities of CIF,
8 the activities of Cosimo, to our
9 investigators, for our benefit in attempting
10 to figure out this particular case.
11 Ultimately some of that was of value in
12 assisting making the case and resulted in Mr.
13 Pfeiffer ultimately pleading guilty a couple
14 of weeks ago. So he did cooperate in that
15 regard.

16 That being said, obviously there is
17 a lot of loss that took place here. Your
18 Honor has already heard some of the effects
19 that these particular crimes had on the
20 various six hundred eighty-eight victims of
21 CIF. We have provided to Your Honor, and of
22 course have provided to the defense, copies
23 of the various written statements that the
24 victims provided to our office to relay to
25 Your Honor.

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1 And we asked for them to submit
2 written statements because, obviously, there
3 are so many. We gave those to Your Honor in
4 advance so that you'd have a chance to review
5 those and to reflect on those at a particular
6 time.

7 I just wanted to -- before I get to a few
8 of the victims who would like to personally
9 address Your Honor -- detail some of the
10 things. Of course, you heard some of the
11 ones that came at Mr. Pfeiffer's plea. Many
12 of those letters were written -- in fact,
13 most of them were written as to both of them.
14 So those sort of kind of get incorporated, so
15 I won't reiterate those. But there are some
16 things that are in the latest batch that are
17 worth pointing out.

18 In some of those you see victims talking
19 about getting a divorce because of these
20 things, how the fact of what happened to them
21 makes them "sick to their stomach." One fact
22 that you see over and over again is that this
23 was college money for children, for grand-
24 children, for great-grandchildren and that is
25 no longer there to educate those children.

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1 People say, "I wish I had never met them."
2 Another common thing that we see is that
3 individuals who had a comfortable retirement,
4 who had worked and provided a nest egg for
5 themselves have gone from that comfortable
6 retirement to solely being able to live on
7 Social Security and not being able to fix
8 their home, not being able to fix their car,
9 not being able to pay for medical bills and
10 things like that. We see references to
11 feelings of guilt because their children have
12 been cheated out of their inheritance and
13 they've been cheated out of a lifetime of
14 work. Those are some of the common things
15 that we see here as to how this has had a
16 change on people's lives. One person said,
17 "This has totally changed my life. How do I
18 start over in my older years? I can't do
19 that. I've lost all hope."

20 So the effect of these crimes has been
21 very, very great on these particular
22 individuals. It is the kind of crime that
23 spans generations, that has lasting effects
24 -- not just on the six hundred and eighty-
25 eight people of CIF but their children, their

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1 grandchildren, their great-grandchildren.

2 At this time, I would like to bring up
3 some of the individuals who wish to address
4 Your Honor. First I'd call upon Mr. Gene
5 Brooks, who I believe that you heard from
6 last time. Mr. Brooks?

7 THE COURT: Mr. Brooks. Sir, if you
8 would, like we did last time, and I know that
9 you hate to do it with the mic on, but if you
10 could, give us full name and spell your last.

11 You don't have to be sworn.

12 Give us your full name and spell your
13 last.

14 GENE BROOKS: I didn't understand
15 you, Your Honor.

16 THE COURT: Give us your full name and
17 spell your last name.

18 GENE BROOKS: Benjamin Gene Brooks,
19 B-r-o-o-k-s.

20 THE COURT: Yes, sir.

21 GENE BROOKS: I spoke the last
22 time, when Mr. Pfeiffer was on trial, and I'd
23 say about the same thing.

24 There are six hundred and eighty-
25 some noteholders. They are the people

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1 MR. WATERS: Your Honor, that would be
2 it for the victims or their representatives.
3 You've heard the facts already, you've heard
4 the effects of the particular crime, you've
5 heard the effects that it has across
6 generations of people and the lifetimes of
7 work, things that just can't be replaced.
8 You've also heard about Mr. Field's
9 cooperation and the value that it had in Mr.
10 Pfeiffer's case.

11 Given those factors, on behalf of the
12 State of South Carolina we would ask you to
13 fashion an appropriate sentence taking into
14 those factors in your discretion.

15 THE COURT: Let me ask you this, how
16 much help was he?

17 MR. WATERS: Pardon?

18 THE COURT: How much help was he? I
19 mean, -- in other words, did he help you a
20 lot or a little bit or was it a waste of
21 time. Because I heard off the record that
22 y'all had a hundred and fifty hours together.
23 Is that right?

24 MR. WATERS: It was a lot. There
25 were some items that were confirmatory things

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1 about Mr. Pfeiffer's dealings that were --
2 there was a lot of time spent. I wouldn't
3 say that it was all valuable to us. I would
4 say that to some extent I got a little spin
5 but -- i.e., he spent hours and hours with us
6 and there was value.

7 THE COURT: Is it the State's position
8 that Mr. Field was the, for lack of a better
9 word, the ringleader? In other words, he
10 started this, right?

11 MR. WATERS: Let me just back up. This
12 started in the northeast with ---

13 THE COURT: Right.

14 MR. WATERS: Mr. Field was down here
15 with CIF. And what happened was that CIF
16 started borrowing money and put that money up
17 -- as time developed, ultimately Mr. Fields
18 allowed CIF and LRI -- around that same
19 period of time, Mr. Field got involved with
20 Mr. Pfeiffer and they formed Cosimo, which as
21 you heard was a rotten egg from the
22 beginning. So I think that Mr. Field started
23 this whole thing. I think that there were
24 clearly some issues developing already and
25 that once Mr. Field got involved with Mr.

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1 Pfeiffer that when things really went off the
2 rails. So I think that they both were ----

3 THE COURT: So for the purposes of the
4 sentencing, and that is all that I am really
5 worried about today, -- I mean, I understand
6 that everybody has got to touch their bases
7 and dot their I's, but the question is
8 whether or not Mr. Pfeiffer would be sitting
9 over there in a South Carolina corrections
10 uniform if it hadn't been for Mr. Field;
11 assuming that there wasn't a propensity to
12 commit some crime.

13 MR. WATERS: Well, are you asking
14 whether or not he ---

15 THE COURT: What is the State's
16 position on that? In other words, Mr.
17 Pfeiffer didn't come up with this structure
18 that led to these pleas.

19 MR. WATERS: I do not think that Mr.
20 Pfeiffer was led down the road by Mr. Field.
21 I think that they worked together. Like I
22 said, it really went off the rails when the
23 two of them got together.

24 THE COURT: All right, before y'all
25 start, let's take five minutes. I need to

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1 take a personal break. Take ten. We will
2 start back at fifteen after, just to be safe.

3 (BRIEF RECESS)

4 (DEFENDANTS PRESENT)

5 THE COURT: Have a seat. I apologize.
6 I got on the phone with my child. There is
7 nothing worse than an eighteen-year-old that
8 is trying to hint around about needing money.
9 'Just say it, Honey, you need money.'
10 Okay. Yes, sir?

11 MR. RUTHERFORD: In doing so, he relied
12 on all these documents. He created his own
13 documents and spreadsheets, and everything
14 else that he could to make it as easy for Joe
15 Jordan and Pete Caffey (phonetic) as he
16 could. They would drive from Greenville to
17 meet with him, sometimes three and four days
18 out of the week, almost months in a row, just
19 to get as much information as they could. A
20 lot of that relates to his conduct and,
21 again, streamlining his conduct -- stream-
22 lining his legal conduct so that they could
23 very easily identify what it was, and his
24 relationship with Scott Pfeiffer. Because of
25 his relationship with Scott Pfeiffer, he was

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1 able to help the Attorney General's Office
2 refine their indictment. Helped to refine
3 their indictment, making sure that all the
4 wording was correct so that very soon after
5 Pfeiffer was indicted, he pled guilty.
6 Again, in the Federal system, something that
7 people get credit for when their proffer
8 leads to a guilty plea by another party.

9 As Your Honor is familiar, in the Federal
10 system, one of the things that they look at
11 in terms of enhancing someone's sentence is
12 whether or not they are a ringleader. Your
13 Honor has spent time with that, as it relates
14 to the Attorney General, in asking direct
15 questions. "Do you consider Mr. Fields a
16 ringleader in this case?" The Attorney's
17 General response was no, that he thought both
18 of them worked hand-in-hand, that it was a
19 symbiotic relationship rather than a ring-
20 leader sort of relationship. That is
21 important to the relationship in this case,
22 Your Honor, because Mr. Field, at the very
23 beginning of this case was arrested and taken
24 to the Richland County Detention Center.
25 When he was, he received -- he was placed

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1 into solitary confinement because there was
2 no status for him. He had not received his
3 bond yet. He was simply on hold for the
4 Attorney's General Office. That's where he
5 remained for the next five days. After that,
6 he received a bond of two million dollars.
7 We waited to get a bond reduction, which took
8 about thirty days. All of that time he spent
9 in the Richland County Detention Center. So
10 he spent approximately thirty-three days, I
11 believe, ---

12 THE COURT: And he gets credit for
13 every day.

14 MR. RUTHERFORD: --- in custody, in the
15 Richland County Detention Center. But, Your
16 Honor, immediately upon his release we
17 started processing the dialogue with the
18 Attorney General's Office. Immediately.
19 Because of that, Your Honor, Mr. Field, in
20 the past fifteen months, remained on house
21 arrest. He has paid for essentially his home
22 incarceration with a private contractor, who
23 is seated out in the audience, who can
24 provide documentation to the court that Mr.
25 Field did everything that was expected of him

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1 while he was ordered to home detention.

2 THE COURT: Did he have a monitor?

3 MR. RUTHERFORD: He does. He still
4 wears a leg monitor to this day. That leg
5 monitor costs him about three hundred dollars
6 (\$300) per month. He has paid that out of
7 the money that he has made while he has been
8 working on home confinement. We did have a
9 hearing in December of 2011 and a request was
10 made to take him off of the home incarceration
11 tion and the judge disagreed, left him on
12 home incarceration with GPS monitoring, which
13 he has been on until this day.

14 Your Honor, let me talk about for a
15 minute who Mr. Field was before all this
16 happened. Mr. Field had an interest in
17 music, which surprised some, especially me,
18 which led him to -- (phone ringing in
19 courtroom) -- which led him to create the
20 Greenville POPS. It was an orchestra in
21 Greenville. He brought in twenty-five kids
22 from Furman University. He paid them out of
23 his personal -- well, he paid them about ten
24 thousand dollars (\$10,000) per concert
25 because he paid them as professionals. He

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1 created a system for them whereby they could
2 exhibit their own prowess in music in an open
3 setting. He did that, again, on his own and
4 not -- not because anyone made him, he was
5 not court-ordered to do so. He did it
6 because this is what he wanted to do.

7 He also taught at Furman and he also
8 taught at another school. This was volunteer
9 work. He didn't do this because anyone
10 ordered him to do it. He volunteered to do
11 this thing. So this is someone who has given
12 his life, prior to this point, a small
13 portion of it to giving back to the
14 community. He donated. He was one of the
15 largest givers to the Peace Center. Now, I
16 understand that the allegations in this case
17 are about missing money, but he was somebody
18 that did not take all of this and put it in
19 his pocket. This is money that he donated,
20 again giving back to his community.

21 One of the -- of all of the letters that
22 we have sent Your Honor-- another that I have
23 but did not turn over, simply because it got
24 too numerous and I didn't want you to have to
25 read them, but there is one that I did e-mail

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1 the Attorney General and e-mailed to Your
2 Honor. It came from Bethlehem Baptist
3 Church. It was written by Tony Griffith,
4 who is the minister of music. Bethlehem
5 Baptist Church is not a synagogue, it is not
6 an all-white Catholic church, it is an
7 African American -- not predominately but an
8 all African American church. If you read his
9 letter, and I am sure that you have because I
10 know that you have read all of the stuff that
11 we've have given you, but it talks about how
12 he helped them, how he helped individuals in
13 that church, about how he helped them develop
14 their skills with music. It goes on about
15 his caring about diversity.

16 These are not things that anyone has
17 mandated. These are not things that a judge
18 can order someone to do. These are things
19 that Mr. Field does by himself, on his own,
20 as a way of giving back. He's continued to
21 do those things.

22 Your Honor, we've got three people, just
23 three, that I would like Your Honor to hear
24 from. If this is the appropriate time, I'd
25 like to call them.

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1 impact on her has been huge. She drinks a
2 lot more than she should -- her words, not
3 mine. So dealing with all this, getting him
4 out of jail, dealing with him being on house
5 arrest. He is a sixty-year-old Jewish man
6 who is currently working as a DJ. But he
7 does have -- again, he loves music and this
8 is his way of trying to provide.

9 Your Honor, I show you a book of all the
10 listings of the bookings that he has going
11 out for the next year and a half. I will
12 show you some reviews online, that people
13 have posted, about DJ Arthur.

14 THE COURT: This is Epic Entertainment,
15 is that what it is called?

16 MR. RUTHERFORD: That's correct, Your
17 Honor. About how good he is. But even as
18 he does that, Your Honor, he has done charity
19 works. He does -- breast cancer, he did that
20 for free. The Children's Miracle Network, he
21 did that for free. As well as the Leukemia
22 Foundation, again at no cost to them.

23 So he is -- even after this started, he
24 has continued to try to give back to his
25 community in the way that he can. Your

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1 Honor, if he -- it puts us in a precarious
2 position to stand here and talk about someone
3 who has given so much of his life, we
4 believe, to building something. Then, as the
5 Attorney General put it, it went off the
6 rails.

7 His initial refusal to cooperate with the
8 Attorney General's office pre-indictment,
9 when the civil stuff was going on, but
10 immediately upon indictment sat down with
11 them and did what was required.

12 Because of what he did, Your Honor,
13 because of the steps that he has taken after
14 that, because of his acceptance of respons-
15 ability, direct admission of guilt, his
16 assistance to the government, I have put
17 together what I believe -- and we would
18 request of Your Honor -- to be a fair
19 sentence. What I would ask Your Honor to
20 do is give Mr. Field an active sentence
21 somewhere in the neighborhood of four to five
22 years, give him credit for the fifteen months
23 that he's served on house arrest and the
24 thirty days that he served in the Richland
25 County Detention Center, and allow him to

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1 serve the rest of that active sentence on
2 house arrest, to continue what he has been
3 doing, paying his part -- his share of his
4 own incarceration and so that he can continue
5 to work as a DJ, to give back to the
6 community, and to do the job that these
7 people suggest that he is certainly capable
8 of.

9 Although a five-year sentence would put
10 him, in terms of an active sentence, above
11 where the codefendant Mr. Pfeiffer is, as
12 Your Honor knows, while you can get credit
13 for house arrest but you can't get good time
14 for it. So it would be a full five-year
15 sentence, he would be fully on a GPS monitor
16 or leg monitor, which he is currently on, for
17 the next five years if that is what Your
18 Honor saw fit to do; which would max out one
19 of the conspiracy charges, if that is where
20 Your Honor choose to put it.

21 If Your Honor could then suspend a ten-
22 year -- sentence ten years on five years
23 probation, so that as he moves forward with
24 the civil case with Mr. Saad that whatever
25 comes out of that, whatever money goes back

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1 to the noteholders, that would go as a credit
2 to whatever restitution that Your Honor sees
3 fit to order.

4 I can tell you that currently in terms of
5 income, because of the three hundred dollars
6 (\$300) that goes to the house arrest company,
7 he has about seven hundred dollars (\$700) in
8 other income that he could provide.

9 I don't want to go too much further into
10 assets because those are the subject of civil
11 litigation by Mr. Saad in the case with Judge
12 Miller, except to say that I talked to the
13 Attorney General's Office and they believe
14 that the amount in question for restitution
15 is about two-point-eight million (\$2.8)
16 dollars. Again, for purposes of sentencing,
17 at this point we would stipulate that if that
18 is correct we would ask that the payments be
19 no greater than \$700 a month to Probation,
20 who will tack on twenty percent (20%) on top
21 of the restitution amount, so as to allow him
22 to continue to pay the three hundred dollars
23 to the house arrest company that he is
24 currently paying; allowing him to remain on
25 house arrest.

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1 I was noting when Mr. Buchanan spoke,
2 talking about his Christian values, what he
3 thought that, it prevailed upon me to talk to
4 Your Honor about the very same thing. Mr.
5 Field could not, when this indictment came
6 down, do any more than he did. My offense
7 with Mr. Saad was that if there was something
8 else that could have been done, he would have
9 done it -- I would have made sure that he
10 did, because that was the relationship that
11 we had. He'd called me weekly. We were
12 meeting with the Attorney General's Office.
13 *'Am I doing the right thing?'* "Yes, you are.
14 Keep on doing it."

15 *'Am I doing the right thing? I can't*
16 *work, I can't make a living.'*

17 "Yes, you are. This is what you must
18 do."

19 *'I've spent hours going over all these*
20 *documents, this paperwork, getting it all*
21 *together to turn over. Am I doing the right*
22 *thing?'*

23 "Yes, you are. Keep on going."

24 So had any requests been made of me to
25 get Arthur to do anything in the civil

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1 matter, I would have done it. Because that's
2 where Arthur wanted to be in life. He wanted
3 to make sure that he could do well for the
4 noteholders.

5 Because of the civil litigation, the
6 civil matters going on with the Receiver, any
7 money that is turned over at this point, it
8 is not clear as to whether it goes to the
9 Receiver in terms of fees or whether it goes
10 to the victims by way of restitution. I
11 don't know the answer to that.

12 I can tell Your Honor and request of Your
13 Honor to give him that active sentence, to
14 allow him to serve it on house arrest because
15 we believe that what he has done and what he
16 will continue to do will be beneficial to the
17 community, that it is respectful of the
18 position in which he is now, and recognizes
19 the blame that he accepts in this matter.

20 I beg the court's indulgence.

21 Your Honor, again, I want to go back to
22 why do I think it is appropriate to continue
23 him on house arrest. Beyond the fact that he
24 has had no violations while he's been on
25 house arrest, that he has complied strictly

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1 with his house arrest. He must e-mail the
2 monitoring company prior to him leaving his
3 house, prior to him accepting any jobs. That
4 allows him to continue to try to take care of
5 his kids. His daughter does not speak to him
6 after he went to jail, who is easily
7 embarrassed. But he acknowledges that
8 because of his, whatever minor assistance,
9 the hundred hours that he gave related to his
10 codefendant in this case, and the other
11 forty-seven hours that are related -- the
12 other three hundred hours that are related to
13 the total building of the case are above and
14 beyond those where he was meeting with the
15 Attorney General's Office. It takes
16 recognition of that and suggests to other
17 people out there, that find themselves in the
18 same situation that Mr. Field does, because
19 part of this also is about sending a message.
20 The message that it sends is that the
21 punishment that Mr. Field receives is
22 different from that of Mr. Pfeiffer because
23 of his cooperation with the Attorney
24 General's Office. Because the Attorney
25 General had no evidence in this case, as

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1 indicative of the fact that they spent,
2 combined, sitting-down time with Arthur of
3 over a hundred and forty-seven hours. If
4 they had to do that without his cooperation,
5 the cost to the State would have been
6 tremendous. What this message sends to
7 anyone out there, that gets caught in the
8 same scenario, is that 'you need to come to
9 Jesus' -- and, yeah, I know he's Jewish. 'But
10 come to Jesus.'

11 THE COURT: You mean that generically?

12 MR. RUTHERFORD: Yes. The reference to
13 Jesus is just ---

14 THE COURT: I know what you mean.

15 MR. RUTHERFORD: So that is how we come
16 to that conclusion, Your Honor. That is how
17 we get to that request. Again, we remain --
18 and I will sit down, but I remain here to
19 answer any questions that Your Honor may
20 have.

21 THE COURT: Well, let me ask you this.
22 Mr. Field, when did you start this company
23 that you are DJ'ing?

24 DEFENDANT FIELD: Sir, Your Honor?

25 THE COURT: What year did you start the

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1 very difficult for one party to go away for
2 four years and then have two years of house
3 arrest and then, because of cooperation, in
4 any system, to completely do away with some
5 active sentence. That would be inconsistent
6 -- that is almost unthinkable under any
7 system.

8 As your lawyer argued -- but even under
9 the Federal system if you split, if you were
10 given credit for time served, it would be
11 more than you're probably going to get from
12 me. Okay?

13 Anything else?

14 MR. RUTHERFORD: Your Honor, we would
15 reiterate again our request for house arrest.
16 I've spoken with my client and his wife and
17 the duress that it would put the family under
18 without any single source of income,
19 recognizing what all of this did to all of
20 the victims out there but, again, the time
21 that Mr. Field cooperated, the time that he
22 has put into this, and what it has done to
23 his family, we again reiterate the request
24 for house arrest.

25 THE COURT: Okay. Anything else from

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1 the State?

2 CREIGHTON WATERS: No, sir, Your Honor.

3 THE COURT: All right. Mr. Field, come
4 up here with your lawyer so that we can get
5 this on the record.

6 Mr. Field, I asked you earlier -- I know
7 this has taken a long time, because I wanted
8 to get certain things on the record. I also
9 wanted to allow you and your lawyer to argue
10 this Motion this morning.

11 I asked earlier, on May 6th, 2013, --
12 well, before I go any further, is there
13 anything that you want to ask me now about
14 that before I sentence you?

15 DEFENDANT FIELD: No, Your Honor. I
16 would just ask you to be extremely merciful,
17 given my situation.

18 THE COURT: I am. It strikes me as odd
19 that this is -- in regard to all the
20 securities fraud cases, and they are, uh, in
21 counts nine, eight, thirteen, twelve, eleven,
22 ten, seven, six, five, and four, the sentence
23 on that is ten (10) years provided on the
24 service of twenty-six (26) months -- and the
25 reason why -- I told your attorney thirty but

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1 I've actually checked twenty-six months with
2 probation for five years. I have given you
3 credit for the thirty-three days and the
4 fifteen months. I am ordering that restitu-
5 tion be made pursuant to the testimony, that
6 it may be PTUP'ed, with random drug and
7 alcohol testing.

8 All of those run consecutive (sic) to the
9 conspiracy charge, which is three years
10 provided on the service of twenty-six months,
11 same five years probation, same credit for
12 time served.

13 Conspiracy, Count 2, is three years,
14 twenty-six months, five years probation.

15 The forgery charge is three years,
16 twenty-six months, five years probation.

17 Count four is ten years suspended on
18 twenty-six months to five years probation.
19 That is the securities fraud.

20 I will tell you that, to me, is un-
21 believably lenient. I will take any
22 criticism that I get on that. Any questions?

23 MR. RUTHERFORD: Yes, Your Honor, just
24 for clarification, so -- we are not going
25 down the same road as Mr. Pfeiffer?

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1 THE COURT: We are not.

2 MR. RUTHERFORD: The sentence that you
3 gave was suspended on twenty-six months, but
4 then you said consecutive -- "and all those
5 will run consecutive."

6 THE COURT: I didn't mean consecutive.
7 I'm sorry. They are concurrent. That's my
8 fault. The main thing that I want here --
9 and I know that it is never going to happen,
10 but there is a shred of hope that at some
11 point some of these victims might get their
12 money back. I've been doing this for twelve
13 years, and I realize that the changes of that
14 are pretty small. I always hold out some
15 hope. I am hoping that this will, the five
16 years, allow them to continue to investigate
17 where the money is, and then there's ten
18 years hanging over your head.

19 Anything else?

20 CREIGHTON WATERS: No, sir, Your Honor.
21 Just a couple of housekeeping matters. We
22 marked as State's 1 and as Court's 1 and 2
23 financial documents that were handed up to
24 you. Just so that the court is aware. And,
25 additionally, I have prepared a restitution

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1 Order. I don't know if Your Honor wants it
2 now.

3 THE COURT: Okay. Any reference to
4 restitution is, as I said, "as ordered."

5 MR. RUTHERFORD: Your Honor, given the
6 sentence that you have just handed out, we
7 would ask, respectfully, if Mr. Field could
8 self-report on Friday so that he will have
9 time to get his affairs in order?

10 THE COURT: I don't have any problem
11 with that.

12 MR. RUTHERFORD: Thank you, Your Honor.

13 THE COURT: He's got to report by 5:00
14 p.m. on October 11th.

15 MR. RUTHERFORD: Thank you, Your Honor.

16 CREIGHTON WATERS: Your Honor, just so
17 that we are clear, is he going to remain on
18 the monitor?

19 THE COURT: Yeah. Well, -- check with
20 the monitoring company.

21 MR. RUTHERFORD: He's right there.

22 THE COURT: Okay. Report on 10/11 at
23 5:00 p.m. Sir, what is your name, for the
24 record?

25 PATRICK FOLWER: My name is Patrick

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1 Fowler. I own the electronic monitoring
2 company called State Capital Electronic
3 Monitoring.

4 THE COURT: Okay. And do you have any
5 problem with continuing his monitoring until
6 5:00 p.m. on October 11th?

7 PATRICK FOWLER: No, sir.

8 THE COURT: All right. You will
9 continue to monitor him under the same
10 conditions that he had before.

11 PATRICK FOWLER: Yes, sir.

12 THE COURT: By the way, he is not
13 leaving during the day, unless there is some
14 -- so he's basically under house arrest, real
15 house arrest?

16 PATRICK FOWLER: That's correct.

17 THE COURT: I don't have a problem with
18 that.

19 MR. RUTHERFORD: Thank you, Your Honor.

20 THE COURT: Mr. Field, I will just say
21 that I don't see how you can be angry at your
22 attorneys. There's a lot of people that I
23 wouldn't have allowed to go into all the
24 things that they ---

25 DEFENDNAT FIELD: Your Honor, I am not

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1 angry. I would prefer to be home, as Your
2 Honor can imagine.

3 THE COURT: I understand.

4 MR. FIELD: Thank you, Your Honor. May
5 I ask, do I get credit for the thirty-three
6 days that ---

7 THE COURT: Yes. Good luck to you.

8 MR. RUTHERFORD: One other thing about
9 the restitution -- and we talked about this
10 in chambers but maybe not on the record. If
11 we could make the request of probation that
12 they simply make the payments something that
13 he can make, rather than taking the money and
14 dividing it by ---

15 CREIGHTON WATERS: Your Honor, I think
16 that I would have to disagree with that,
17 respectfully. And if Your Honor would like
18 to hear, we have evidence of various assets
19 of Mr. Field. I think that the restitution
20 needs to be ---

21 THE COURT: Well, let me say this. I
22 trust Probation. I mean, they are going to
23 figure out what he can pay. Do you set an
24 arbitrary amount? No? The answer is no.

25 I don't believe that I can tell them how

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1 much to set, but I -- I think as a practical
2 matter that I will leave it up to them. If
3 you are concerned about that, I will retain
4 jurisdiction.

5 MR. RUTHERFORD: If you could, Your
6 Honor. Only because he's got a civil hearing
7 still out there and the Receiver is still out
8 there, whose job it is to identify any assets
9 and go after them. So it's not like in most
10 cases where there is no civil case and it
11 comes down to whatever Your Honor orders.

12 THE COURT: All right, I will retain
13 jurisdiction for that matter to the extent
14 that I can; to the extent that you want me
15 to.

16 In regard to the amount of restitution,
17 I am going to find that the State's figure --
18 I believe that they are correct, uh, two
19 million eight hundred seventy-seven thousand
20 seven hundred eleven and seventy-three cents
21 (\$2,877,711.73). That is the amount that I
22 am ordering as restitution. Thank you all.

23 I will let the other matters -- I think
24 that Mr. Saad has done a great job with this,
25 but I think that those are going to be taken

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1 care of.

2 MR. WATERS: Thank you, Your Honor.

3 THE COURT: All right. Thank y'all.

4 (HEARING CONCLUDED)

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I further certify that I am neither kin nor
counsel to any of the parties and have no interest
in the outcome of this action.

Charleston, South Carolina
January 5, 2014

FILED

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF PICKENS

OCT 08 2013

STATE

vs.

JAMES R. PARKS
CLERK, STATE GRAND JURY

INDICTMENT/CASE#: 2011-GS-47-08 (Count I)

Arthur M. Field

AW#: Direct Presentment

AKA:

Date of Offense: 03/01 - 12/8/03

Race: W

Sex: M

Age: 60

S.C. Code §: S.C. Code § 16-17-410

CDR Code #: 0049

SENTENCE SHEET*CDL Yes ☐ No ☒ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☐ CONVICTED OF or ☒ PLEADS

TO: Criminal Conspiracy

In violation of § S.C. Code § 16-17-410 of the S.C. Code of Laws, bearing CDR Code # 0049

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ \$17-25-45The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Attorney General 12155 SC Bar # Defendant 26 months 12097
 WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections ☐ County Detention Center,
 for a determinate term of 3 days/months/years or ☐ under the Youthful Offender Act not to exceed 3 years
 and/or to pay a fine of \$ provided that upon the service of 3 days/months/years and or payment
 of \$; plus costs and assessments as applicable; the balance is suspended with probation for 3
 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are
 incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:☒ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ plus 20% fee: \$ days/hours Public Service Employment

Payment Terms:

Obtain GED ☐☐ Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp. _____

Recipient:

May serve W/E beginning

Substance Abuse Counseling ☐

*Fine:

\$14-1-206 (Assessments 107.5%)	\$	
\$14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ 100.00
\$14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
\$56-5-2995 (DUI Assessment)	\$12	\$
\$56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
\$14-1-212 (Law Enforcement Funding)	\$25	\$ 25.00
\$14-1-213 (Drug Court Surcharge)	\$150	\$
\$50-21-114 (BUI Breath Test Fee)	\$50	\$
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 3.90
TOTAL		\$ 133.90

Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ Beginning

\$ Paid to Public Defender Fund

Other: - Def. accepted

☐ Appointed PD or appointed other counsel.
 \$47.12 requires \$500 be paid to Clerk during probation.
Clerk of Court/Deputy Clerk **JAMES R. PARKS**Court Reporter: **Vivian Cross**Presiding Judge **Maddox, J. Cordell**

Judge Code: 2131

Sentence Date **May 6, 2013**

FILED

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF PICKENS

OCT 08 2013

STATE

VS.

JAMES R. PARKS

INDICTMENT/CASE#: 2011-GS-47-08 (Count II)

Arthur M. Field

CLERK, STATE GRAND JURY

AKA:

AWW#: Direct Presentment

Race: W Sex: M Age: 60

Date of Offense: 12/09/03-08/09

S.C. Code §: S.C. Code § 16-17-410

CDR Code #: 0049

SENTENCE SHEET*CDL Yes ☐ No ☒ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☐ CONVICTED OF or ☒ PLEADS

TO: Criminal Conspiracy

In violation of § S.C. Code § 16-17-410 of the S.C. Code of Laws, bearing CDR Code # 0049

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ \$17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Attorney General

12155
SC Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE the Defendant is committed to the ☐ State Department of Corrections ☐ County Detention Center, for a determinate term of 3 days/months/years or ☐ under the Youthful Offender Act not to exceed 3 years and/or to pay a fine of \$ 33,000; provided that upon the service of 33 days/months/years and or payment of \$ 33,000; plus costs and assessments as applicable; the balance is suspended with probation for 3 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. 33 days 15 months☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:☒ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedPTUP ☒

Total: \$ plus 20% fee: \$

days/hours Public Service Employment

Payment Terms:

Obtain GED ☐☐ Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp. _____

Recipient:

May serve W/E beginning

Substance Abuse Counseling ☐

*Fine:

\$14-1-206 (Assessments 107.5%)	\$	
\$14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ 100.00
\$14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
\$56-5-2995 (DUI Assessment)	\$12	\$
\$56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
\$14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
\$14-1-213 (Drug Court Surcharge)	\$150	\$
\$50-21-114 (BUI Breath Test Fee)	\$50	\$
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 390
TOTAL		\$ 13390

Random Drug/Alcohol Testing ☒

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ Beginning

\$ Paid to Public Defender Fund

Other: - 3/6/13

Plea Accepted
- 10/6/13 5:00pm

☐ Appointed PD or appointed other counsel, \$47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/Deputy Clerk **JAMES R. PARKS**

Court Reporter: Vivian Cross

Presiding Judge Maddox, J. Cordell

Judge Code: 2/31

Sentence Date May 6, 2013

FILED

STATE OF SOUTH CAROLINA

OCT 08 2013

IN THE COURT OF GENERAL SESSIONS

COUNTY OF PICKENS

JAMES R. PARKS

STATE

CLERK, STATE GRAND JURY

VS.

INDICTMENT/CASE#: 2011-GS-47-08 (Count III)

Arthur M. Field

A/W#: Direct Presentment

AKA:

Date of Offense: 03/06/02-03/16/03

Race: W Sex: M Age: 60

S.C. Code §: S.C. Code § 35-1-501 & § 35-1-508(a)(1)

CDR Code #: 2615

SENTENCE SHEETCDL Yes ☐ No ☒ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS

TO: Securities / Violations of Uniform Securities Act resulting in loss of \$20,000 or more

In violation of § S.C. Code § 35-1-501 & § 35-1-508(a)(1) of the S.C. Code of Laws, bearing CDR Code # 2615

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☒ Mandatory GPS ☐ \$17-25-45The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Attorney General

12155
SC Bar #

Defendant

Attorney for Defendant

12097
SC Bar #WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections ☐ County Detention Center,for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment

of \$; plus costs and assessments as applicable; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☒ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. 33 days + 15 months Now Free☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:☒ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ plus 20% fee: \$ days/hours Public Service Employment

Payment Terms:

Obtain GED ☐

Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☒

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ Beginning

\$ Paid to Public Defender Fund

Other: 5/6/13

Pls accept

- Report 10/11/13 5:00pm

ACDC

☐ Appointed PD or appointed other counsel, \$47.12 requires \$500 be paid to Clerk

during probation

J. M. Cordell

Presiding Judge

Judge Code: 2181

Sentence Date May 6, 2013

*Fine:	\$	
\$14-1-206 (Assessments 107.5%)	\$	
\$14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ 100.00
\$14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
\$56-5-2995 (DUI Assessment)	\$12	\$
\$56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
\$14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
\$14-1-213 (Drug Court Surcharge)	\$150	\$
\$50-21-114 (BUI Breath Test Fee)	\$50	\$
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 3.90
TOTAL		\$ 133.90

Clerk of Court/Deputy Clerk JAMES R. PARKS

Court Reporter: Vivian Cross

FILED

STATE OF SOUTH CAROLINA

OCT 08 2013

IN THE COURT OF GENERAL SESSIONS

COUNTY OF PICKENS

JAMES R. PARKS

STATE

vs.

CLERK, STATE GRAND JURY

INDICTMENT/CASE#: 2011-GS- 47 -08 (Count IV)

Arthur M. Field

A/W#: Direct Presentment

AKA:

Date of Offense: 03/18/04-03/19/05

Race: W

Sex: M

Age: 60

S.C. Code §: S.C. Code § 35-1-501 & § 35-1-508(a)(1)

CDR Code #: 2615

SENTENCE SHEET*CDL Yes ☐ No ☒ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS

TO: Securities / Violations of Uniform Securities Act resulting in loss of \$20,000 or more

In violation of § S.C. Code § 35-1-501 & § 35-1-508(a)(1) of the S.C. Code of Laws, bearing CDR Code # 2615

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ \$17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Attorney General SC Bar # 12155 Defendant Attorney for Defendant SC Bar # 12097

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections ☐ County Detention Center, for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and or payment of \$; plus costs and assessments as applicable; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. 33 days + 15 months house arrest☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:☒ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedPTUP ☒

Total: \$ plus 20% fee: \$

days/hours Public Service Employment

Payment Terms:

Obtain GED ☐☐ Set by SCDPPPSAttend Voc. Rehab. Or Job Corp. ☐

Recipient:

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☒

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ Beginning

\$ Paid to Public Defender Fund

Other:

- 5/6/13
Plea Accepted
- Depart 10/14/13 at 5:00pm
☐ Appointed PD or appointed other counsel, \$47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge Maddox, J. Cordell

Judge Code: 2131

Sentence Date May 6, 2013

*Fine:

\$14-1-206 (Assessments 107.5%)	\$	
\$14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ 100.00
\$14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
\$56-5-2995 (DUI Assessment)	\$12	\$
\$56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
\$14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
\$14-1-213 (Drug Court Surcharge)	\$150	\$
\$50-21-114 (BUI Breath Test Fee)	\$50	\$
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 3.50
TOTAL		\$ 133.90

Clerk of Court/Deputy Clerk JAMES R. PARKS

Court Reporter: Vivian Cross

FILED

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

OCT 08 2013

IN THE COURT OF GENERAL SESSIONS

STATE

vs.

JAMES R. PARKS
CLERK, STATE GRAND JURY

INDICTMENT/CASE#: 2011-GS-47-08 (Count V)

Arthur M. Field

A/W#: Direct Presentment

AKA:

Date of Offense: 03/26/06-01/15/08

Race: W

Sex: M

Age: 60

S.C. Code §: S.C. Code § 35-1-501 & § 35-1-508(a)(1)

CDR Code #: 2615

SENTENCE SHEETCDL Yes ☐ No ☒ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS

TO: Securities / Violations of Uniform Securities Act resulting in loss of \$20,000 or more

In violation of S.C. Code § 35-1-501 & § 35-1-508(a)(1) of the S.C. Code of Laws, bearing CDR Code # 2615

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ \$17-25-45
(CSC w/minor 1st or Lewd Act)The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Attorney General SC Bar # 12155 Defendant Attorney for Defendant SC Bar # 12097

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections ☐ County Detention Center, for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed 5 years and/or to pay a fine of \$ 2500; provided that upon the service of 26 months days/months/years and or payment of \$ 2500 plus costs and assessments as applicable; the balance is suspended with probation for 5 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.☒ CONCURRENT or ☒ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. 23 days + 15 months honor award☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:☒ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedPTUP ☒

Total: \$ plus 20% fee: \$

days/hours Public Service Employment

Payment Terms:

Obtain GED ☐☐ Set by SCDPPPSAttend Voc. Rehab. Or Job Corp. ☐

Recipient:

May serve W/E beginning

Substance Abuse Counseling ☐

*Fine:

\$14-1-206 (Assessments 107.5%)	\$	
\$14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ 100.00
\$14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
\$56-5-2995 (DUI Assessment)	\$12	\$
\$56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
\$14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
\$14-1-213 (Drug Court Surcharge)	\$150	\$
\$50-21-114 (BUI Breath Test Fee)	\$50	\$
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$
TOTAL		\$ 3.90
		\$ 133.90

Random Drug/Alcohol Testing ☒

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ Beginning

\$ Paid to Public Defender Fund

Other: 5/6/13

Phoe Acgt
- Report 10/11/13 at 5:00 PM

☐ Appointed PD or appointed other counsel, \$47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge: Magdoff, J. Cordell

Judge Code: 2131

Sentence Date: May 6, 2013

FILED

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF PICKENS

OCT 08 2013

STATE

JAMES R. PARKS

INDICTMENT/CASE#: 2011-GS-47-08 (Count VI)

VS.

CLERK, STATE GRAND JURY

Arthur M. Field

A/W#: Direct Presentment

AKA:

Date of Offense: 03/17/03-03/18/04

Race: W

Sex: M

Age: 60

S.C. Code §: S.C. Code § 35-1-501 & § 35-1-508(a)(1)

CDR Code #: 2615

SENTENCE SHEETCDL Yes ☐ No ☒ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☐ CONVICTED OF or ☒ PLEADS

TO: Securities / Violations of Uniform Securities Act resulting in loss of \$20,000 or more

In violation of § S.C. Code § 35-1-501 & § 35-1-508(a)(1) of the S.C. Code of Laws, bearing CDR Code # 2615

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ \$17-25-45The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Attorney General

12155
SC Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections ☐ County Detention Center, for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed 28 years and/or to pay a fine of \$ 20; provided that upon the service of 28 days/months/years and/or payment of \$ 20; plus costs and assessments as applicable; the balance is suspended with probation for 3 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. 33 days + 15 months max. arrest☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:☒ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____

May serve W/E beginning

Substance Abuse Counseling ☐

*Fine:

\$14-1-206 (Assessments 107.5%)	\$	
\$14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ 100.00
\$14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
\$56-5-2995 (DUI Assessment)	\$12	\$
\$56-1-286 (DUI Breath Test)	\$25	\$ 25.00
Proviso 47.9 (Public Def/Prob)	\$500	\$
\$14-1-212 (Law Enforce. Funding)	\$25	\$
\$14-1-213 (Drug Court Surcharge)	\$150	\$
\$50-21-114 (BUI Breath Test Fee)	\$50	\$
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 390
TOTAL		\$ 133.90

Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning

\$ _____ Paid to Public Defender Fund

Other: - 5/6/13

Pha Agent
- Report 10/11/13 at 5:00pm
☐ Appointed PD or appointed other counsel, \$47.12 requires \$500 be paid to Clerk during probation. AWD

Presiding Judge Maddox, J. CordellJudge Code: 2181Sentence Date May 6, 2013

FILED

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

OCT 08 2013

IN THE COURT OF GENERAL SESSIONS

STATE

VS.

JAMES R. PARKS
CLERK, STATE GRAND JURY

Arthur M. Field

AKA:

Race: W

Sex: M

Age: 60

SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: Greer, SC 29550

DL# [REDACTED]

SID# [REDACTED]

*CDL Yes ☐ No ☒ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

INDICTMENT/CASE#: 2011-GS- 47 -08 (Count VII)

AW#: Direct Presentment

Date of Offense: 03/19/04-03/18/05

S.C. Code §: S.C. Code § 35-1-501 & § 35-1-508(a)(1)

CDR Code #: 2615

SENTENCE SHEETIn disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS

TO: Securities / Violations of Uniform Securities Act resulting in loss of \$20,000 or more

In violation of § S.C. Code § 35-1-501 & § 35-1-508(a)(1) of the S.C. Code of Laws, bearing CDR Code # 2615

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ \$17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, (def.'s initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Attorney General

12155

SC Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections ☐ County Detention Center, for a determinate term of 10 days/months/years or ☒ under the Youthful Offender Act not to exceed 26 years and/or to pay a fine of \$ 33 days + 15 months have a must; provided that upon the service of 26 days/months/years and or payment of \$ 33 days + 15 months have a must; plus costs and assessments as applicable; the balance is suspended with probation for 3 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☒ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:☒ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☒ Ordered

PTUP

Total: \$ _____ plus 20% fee: _____ \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____

May serve W/E beginning

Substance Abuse Counseling ☐

*Fine:

\$14-1-206 (Assessments 107.5%)	\$	
\$14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ 100.00
\$14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
\$56-5-2995 (DUI Assessment)	\$12	\$
\$56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
\$14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
\$14-1-213 (Drug Court Surcharge)	\$150	\$
\$50-21-114 (BUI Breath Test Fee)	\$50	\$
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$ 3.90
TOTAL	\$	\$ 133.90

Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning

\$ _____ Paid to Public Defender Fund

Other: 5/6/13
☐ Appointed PD or appointed other counsel, \$47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge Maddox, J. Cordell

Judge Code: 2131

Sentence Date May 6, 2013

FILED

STATE OF SOUTH CAROLINA

OCT 08 2013

IN THE COURT OF GENERAL SESSIONS

COUNTY OF PICKENS

JAMES R. PARKS

STATE

CLERK, STATE GRAND JURY

INDICTMENT/CASE#: 2011-GS- 47 -08 (Count VIII)

VS.

Arthur M. Field

A/W#: Direct Presentment

AKA:

Date of Offense: 03/19/05-03/21/06

Race: W

Sex: M

Age: 60

S.C. Code §: S.C. Code § 35-1-501 & § 35-1-508(a)(1)

CDR Code #: 2615

City, State, Zip: Greer SC 29550

SENTENCE SHEET

*SID#

*CDL Yes ☐ No ☒ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS

TO: Securities / Violations of Uniform Securities Act resulting in loss of \$20,000 or more

In violation of § S.C. Code § 35-1-501 & § 35-1-508(a)(1) of the S.C. Code of Laws, bearing CDR Code # 2615

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ \$17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☒ As indicted, ☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury.

(def.'s initials)

The plea is: ☒ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

Attorney General

SC Bar # 12155

Defendant

Attorney for Defendant

SC Bar # 12097

WHEREFORE the Defendant is committed to the ☐ State Department of Corrections ☐ County Detention Center,for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed 20 years

and/or to pay a fine of \$ 0; provided that upon the service of 20 days/months/years and/or payment of \$ 0; plus costs and assessments as applicable; the balance is suspended with probation for 3 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. 33 days + 15 mos. have credit of 15 months☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:☒ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ plus 20% fee: \$

days/hours Public Service Employment

Payment Terms:

Obtain GED ☐☐ Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp.

Recipient:

May serve W/E beginning

Substance Abuse Counseling ☐

*Fine:

\$14-1-206 (Assessments 107.5%)	\$	
\$14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ 100.00
\$14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
\$56-5-2995 (DUI Assessment)	\$12	\$
\$56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
\$14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
\$14-1-213 (Drug Court Surcharge)	\$150	\$
\$50-21-114 (BUI Breath Test Fee)	\$50	\$
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 3.90
TOTAL		\$ 133.90

Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ Beginning

\$ Paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, \$47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge Madrox, J. Cordell

Judge Code: 2131

Sentence Date May 6, 2013

FILED

OCT 08 2013

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF PICKENS

JAMES R. PARKS
CLERK, STATE GRAND JURY

STATE

VS.

Arthur M. Field

AKA:

Race: WSex: MAge: 60INDICTMENT/CASE#: 2011-GS-47-08 (Count IX)A/W#: Direct PresentmentDate of Offense: 02/15/05S.C. Code §: 16-13-0010(A) & § 16-13-0010 (B) *SW*CDR Code #: 3437 0488 SW**SENTENCE SHEET***CDL Yes ☐ No ☒ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☐ CONVICTED OF or ☒ PLEADSTO: Forgery / Reason value \$10,000 moreIn violation of §16-13-0010(A) & 16-13-0010 (B)(1) of the S.C. Code of Laws, bearing CDR Code # 3437 0488 SW☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ \$17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Mediated Sentence, ☐ Recommendation by the State.

ATTEST:

Attorney General 12155 SC Bar # 12097 Defendant 26 Attorney for Defendant 26 SC Bar # 12097WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections ☐ County Detention Center, for a determinate term of 3 days/months/years or ☐ under the Youthful Offender Act not to exceed 3 years and/or to pay a fine of \$ 0; provided that upon the service of 0 days/months/years and or payment of \$ 0; plus costs and assessments as applicable; the balance is suspended with probation for 3 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.☒ CONCURRENT or ☒ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. 33 days + 15 months House Arrest☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:☒ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedPTUP ☒Total: \$ 0 plus 20% fee: \$ 00 days/hours Public Service EmploymentPayment Terms: 0Obtain GED ☐☐ Set by SCDPPPSAttend Voc. Rehab. Or Job Corp. 0Recipient: 0

May serve W/E beginning

Substance Abuse Counseling ☐

*Fine:

\$14-1-206 (Assessments 107.5%)	\$	
\$14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ <u>100.00</u>
\$14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
\$56-5-2995 (DUI Assessment)	\$12	\$
\$56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
\$14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
\$14-1-213 (Drug Court Surcharge)	\$150	\$
\$50-21-114 (BUI Breath Test Fee)	\$50	\$
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)	\$	\$ <u>3.90</u>
TOTAL	\$	\$ <u>133.90</u>

Random Drug/Alcohol Testing ☒

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ 0 Beginning\$ 0 Paid to Public Defender FundOther: - 5/6/12☐ Appointed PD or appointed other counsel, \$47.12 requires \$500 be paid to Clerk during probation.Presiding Judge Maddox, J. CordellJudge Code: 2131Sentence Date May 6, 2013

FILED

STATE OF SOUTH CAROLINA

OCT 08 2013

IN THE COURT OF GENERAL SESSIONS

COUNTY OF PICKENS

JAMES R. PARKS

STATE

vs.

CLERK, STATE GRAND JURY

INDICTMENT/CASE#: 2011-GS-47-08 (Count X)

Arthur M. Field

AKA:

Race: W

Sex: M

Age: 60

A/W#: Direct Presentment

Date of Offense: 03/19/04-03/18/05

S.C. Code §: S.C. Code § 35-1-501 & § 35-1-508(a)(1)

CDR Code #: 2615

SENTENCE SHEET*CDL Yes ☐ No ☒ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS

TO: Securities / Violations of Uniform Securities Act resulting in loss of \$20,000 or more

In violation of § S.C. Code § 35-1-501 & § 35-1-508(a)(1) of the S.C. Code of Laws, bearing CDR Code # 2615

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ \$17-25-45The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Attorney General

SC Bar # 12155

Defendant

Attorney for Defendant

SC Bar # 12097

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections ☐ County Detention Center, for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed 20 years and/or to pay a fine of \$ 2000 ; provided that upon the service of 20 days/months/years and or payment of \$ 2000 ; plus costs and assessments as applicable*; the balance is suspended with probation for 3 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☒ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. 33 days + 15 months - home arrest + 15 months☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:☒ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ plus 20% fee: \$

days/hours Public Service Employment

Payment Terms:

Obtain GED ☐☐ Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____

May serve W/E beginning Substance Abuse Counseling ☐***Fine:**

\$14-1-206 (Assessments 107.5%)	\$	\$
\$14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ 100.00
\$14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
\$56-5-2995 (DUI Assessment)	\$12	\$
\$56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
\$14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
\$14-1-213 (Drug Court Surcharge)	\$150	\$
\$50-21-114 (BUI Breath Test Fee)	\$50	\$
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$ 3.90
TOTAL	\$	\$ 133.90

Random Drug/Alcohol Testing ☐
 Fine may be pd. in equal consecutive weekly/monthly
 pmts. of \$ Beginning
 \$ Paid to Public Defender Fund

Other: *Plan accepted*
5/6/13
- Report at 10/11/13 5:00pm
☐ Appointed PD or appointed other counsel,
 \$47.12 requires \$500 be paid to Clerk
 during probation

Clerk of Court/Deputy Clerk JAMES R. PARKS

Court Reporter: Vivian Cross

Presiding Judge: Magdox, J. Cordell

Judge Code: 2171

Sentence Date: May 6, 2013

FILED

STATE OF SOUTH CAROLINA

OCT 06 2013

IN THE COURT OF GENERAL SESSIONS

COUNTY OF PICKENS

JAMES R. PARKS

STATE

CLERK, STATE GRAND JURY

INDICTMENT/CASE#: 2011-GS-47-08 (Count XI)

VS.

Arthur M. Field

AW#: Direct Presentment

AKA:

Date of Offense: 03/19/05-03/21/06

Race: W

Sex: M

Age: 60

S.C. Code §: S.C. Code § 35-1-501 & § 35-1-508(a)(1)

CDR Code #: 2615

SENTENCE SHEET*CDL Yes ☐ No ☒ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS

TO: Securities / Violations of Uniform Securities Act resulting in loss of \$20,000 or more

In violation of § S.C. Code § 35-1-501 & § 35-1-508(a)(1) of the S.C. Code of Laws, bearing CDR Code # 2615

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ \$17-25-45The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Attorney General

12155

SC Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections ☐ County Detention Center,for a determinate term of 10 days/months/years or ☒ under the Youthful Offender Act not to exceed 25 years

and/or to pay a fine of \$; provided that upon the service of 25 days/months/years and/or payment of \$; plus costs and assessments as applicable; the balance is suspended with probation for 3 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☒ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. 33 days + 15 mos have been served on this matter☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:☒ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ plus 20% fee: \$ days/hours Public Service Employment

Payment Terms:

Obtain GED ☐☐ Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp. _____

Recipient:

May serve W/E beginning

Substance Abuse Counseling ☐

*Fine:

\$14-1-206 (Assessments 107.5%)	\$	
\$14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ 100.00
\$14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
\$56-5-2995 (DUI Assessment)	\$12	\$
\$56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
\$14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
\$14-1-213 (Drug Court Surcharge)	\$150	\$
\$50-21-114 (BUI Breath Test Fee)	\$50	\$
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$ 3.90
TOTAL	\$	\$ 133.90

Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ Beginning

\$ Paid to Public Defender Fund

Other: May Accept

5/6/13

- 10/11/13

5:00 pm

☐ Appointed PD or appointed other counsel, \$47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge Madrox, J. Cordell

Judge Code: 2131

Sentence Date May 6, 2013

FILED

STATE OF SOUTH CAROLINA

OCT 08 2013

IN THE COURT OF GENERAL SESSIONS

COUNTY OF PICKENS

JAMES R. PARKS

STATE

CLERK, STATE GRAND JURY

VS.

INDICTMENT/CASE#: 2011-GS-47-08 (Count XII)

Arthur M. Field

AW#: Direct Presentment

AKA:

Date of Offense: 03/21/06-01/08

Race: W

Sex: M

Age: 60

S.C. Code §: S.C. Code § 35-1-501 & § 35-1-508(a)(1)

CDR Code #: 2615

SENTENCE SHEET*CDL Yes ☐ No ☒ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS

TO: Securities / Violations of Uniform Securities Act resulting in loss of \$20,000 or more

In violation of § S.C. Code § 35-1-501 & § 35-1-508(a)(1) of the S.C. Code of Laws, bearing CDR Code # 2615

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ \$17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Attorney General

SC Bar # 12155

Defendant

Attorney for Defendant

SC Bar # 12097

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections ☐ County Detention Center, for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed 26 years and/or to pay a fine of \$ 26; provided that upon the service of 3 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:☒ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ plus 20% fee: \$

days/hours Public Service Employment

Payment Terms:

Obtain GED ☐☐ Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp. _____

Recipient:

May serve WE beginning

Substance Abuse Counseling ☐

*Fine:

\$14-1-206 (Assessments 107.5%)	\$	
\$14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ 100.00
\$14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
\$56-5-2995 (DUI Assessment)	\$12	\$
\$56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
\$14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
\$14-1-213 (Drug Court Surcharge)	\$150	\$
\$50-21-114 (BUI Breath Test Fee)	\$50	\$
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$ 3.90
TOTAL	\$	\$ 1339.00

Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ Beginning

\$ Paid to Public Defender Fund

Other:

Presiding Judge: Madhox, J. Cordell
 Judge Code: 2131
 Sentence Date: May 6, 2013

FILED

STATE OF SOUTH CAROLINA

OCT 08 2013

IN THE COURT OF GENERAL SESSIONS

COUNTY OF PICKENS

JAMES R. PARKS

STATE

VS.

CLERK, STATE GRAND JURY

INDICTMENT/CASE#: 2011-GS-47-08 (Count XIII)

Arthur M. Field

AKA:

Race: W Sex: M Age: 60

AW#: Direct Presentment

Date of Offense: 11/06/06-03/21/07

S.C. Code §: S.C. Code § 35-1-501 & § 35-1-508(a)(1)

CDR Code #: 2615

SENTENCE SHEET*CDL Yes ☐ No ☒ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS

TO: Securities / Violations of Uniform Securities Act resulting in loss of \$20,000 or more

In violation of § S.C. Code § 35-1-501 & § 35-1-508(a)(1) of the S.C. Code of Laws, bearing CDR Code # 2615

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ \$17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Attorney General SC Bar # 12155 Defendant Attorney for Defendant SC Bar # 12097

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections ☐ County Detention Center, for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed 20 years and/or to pay a fine of \$ 100.00; provided that upon the service of 20 days/months/years and or payment of \$ 100.00; plus costs and assessments as applicable*; the balance is suspended with probation for 5 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☒ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. 33 days + 15 mos. house arrest☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:☒ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: _____ \$ _____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____

May serve W/E beginning

Substance Abuse Counseling ☐

*Fine:

\$14-1-206 (Assessments 107.5%)	\$	
\$14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ 100.00
\$14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
\$56-5-2995 (DUI Assessment)	\$12	\$
\$56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
\$14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
\$14-1-213 (Drug Court Surcharge)	\$150	\$
\$50-21-114 (BUI Breath Test Fee)	\$50	\$
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$ 3.98
TOTAL	\$	\$ 133.98

Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning

\$ _____ Paid to Public Defender Fund

Other: - P/ea accepted

5/6/13
- 10/11/13 at 5:00 pm
☐ Appointed PD or appointed other counsel ACD
 \$47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge Madrox, J. CordellJudge Code: 2131Sentence Date May 6, 2013

FILED

STATE OF SOUTH CAROLINA

OCT 08 2013

IN THE COURT OF GENERAL SESSIONS

COUNTY OF PICKENS

JAMES R. PARKS

STATE

CLERK, STATE GRAND JURY

INDICTMENT/CASE#: 2011-GS-47-08 (Count XIV)

VS.

Arthur M. Field

AKA:

Race: W Sex: M Age: 60

A/W#: Direct Presentment

Date of Offense: 03/22/07-01/15/08

S.C. Code §: S.C. Code § 35-1-501 & § 35-1-508(a)(1)

CDR Code #: 2615

SENTENCE SHEET*CDL Yes ☐ No ☒ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS

TO: Securities / Violations of Uniform Securities Act resulting in loss of \$20,000 or more

In violation of § S.C. Code § 35-1-501 & § 35-1-508(a)(1) of the S.C. Code of Laws, bearing CDR Code # 2615

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ \$17-25-45The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Attorney General

12155

SC Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections ☐ County Detention Center, for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed 26 years and/or to pay a fine of \$ 100.00; provided that upon the service of 26 days/months/years and or payment of \$ 100.00; plus costs and assessments as applicable; the balance is suspended with probation for 3 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. 33 days + 5 mths. max arrest☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:☒ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered ☒ PTUP

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

*Fine:

\$14-1-206 (Assessments 107.5%)	\$	
\$14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ 100.00
\$14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
\$56-5-2995 (DUI Assessment)	\$12	\$
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\$56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 3.90
TOTAL		\$ 133.90

Random Drug/Alcohol Testing ☒

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: - Phen acute

5/6/13
- Permit 10/11/13 5:00pm
10708

☐ Appointed PD or appointed other counsel, \$47.12 requires \$500 be paid to Clerk during probation
Clerk of Court/Deputy Clerk JAMES R. PARKSCourt Reporter: Vivian CrossPresiding Judge Maddox, J. GordellJudge Code: 2131Sentence Date May 6, 2013

FILED

STATE GRAND JURY OF SOUTH CAROLINA

OCT 16 2013

JAMES R. PARKS

Case No. 2012-GS-47-08 LERK, STATE GRAND JURY

STATE OF SOUTH CAROLINA

v.

ARTHUR M. FIELD

Defendants.

MOTION TO RECONSIDER SENTENCE

The State of South Carolina hereby respectfully moves this Court to reconsider the sentence imposed on Arthur Matthew Field ("Field") as set forth below.

On October 8th, 2013, this Court sentenced Field for eleven securities fraud charges, two conspiracy charges, and one forgery charge. Field received an active sentence of 10 years, provided that upon the service of 26 months, the balance would be suspended with probation for five years. Field was given credit for 33 days which he served in Richland County Detention Center, and he was also given credit for 15 months in pretrial home confinement.

Of course, prior to June 7, 2013, giving credit to Field for time spent on home confinement prior to plea would amount to an error of law. In State v. Higgins, 357 S.C. 382, 593 S.E.2d 180 (2004), the court interpreted the statute which addresses credit in sentencing for time served, S.C. Code § 24-13-40, and held that "time served" did not include pretrial home confinement because that was a condition of *release* from custody, not time *in* custody. However, in June of 2013, this statute was amended to provide that credit "*may be given for any time spent under monitored house arrest*". 2013 South Carolina Laws Act 34 (H.B. 3193) (emphasis added).

Here, when Field was first indicted, Judge Cooper gave him a \$2 million surety bond on June 21, 2012. Field served 33 days in pre-trial detention, during which he hired his current counsel and moved for reconsideration of bond. On July 19, 2013, Judge Benjamin granted the motion to reconsider and reduced the bond to a \$500,000 surety, but ordered home confinement and electronic monitoring as a condition of any release. On August 2, 2012, Judge Benjamin amended the bond at the request of Field to allow him to leave the home to go to parties for his DJ business. Finally, December 13, 2012, Judge Benjamin again amended the bond to allow him to travel out of state to go to parties or events where he was the DJ. Thus, the time on house arrest was a benefit to Field.

At the sentencing proceeding there was at least some discussion to the effect that Field would not get good time credit for the time served on home confinement prior to sentencing. However, it appears that Field will in fact get good time for the pre-trial home confinement. Of course, pursuant to the plea agreement any sentence is in the discretion of the Court, so the State has simply filed this motion to reconsider to preserve jurisdiction in case the sentencing result is inconsistent with this Court's intent.

Respectfully submitted,

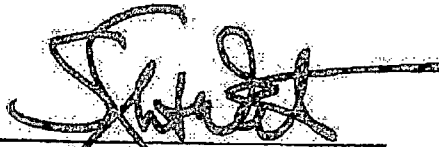
ALAN WILSON
Attorney General

S. CREIGHTON WATERS
Assistant Deputy Attorney General

BRIAN PETRANO
Assistant Attorney General

Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3693

ATTORNEYS FOR RESPONDENT


S. CREIGHTON WATERS

October 16, 2013.

STATE GRAND JURY OF SOUTH CAROLINA

STATE OF SOUTH CAROLINA

Case No. 2012-GS-47-08

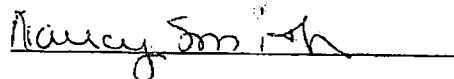
v.

CERTIFICATE OF SERVICE

ARTHUR M. FIELD,

Defendants.

I, Nancy Smith, hereby certify that I have served the **Motion to Reconsider of Sentence** on Defendant Arthur M. Field by depositing a copy in the United States Mail, postage prepaid, and addressed to his attorney of record, Todd Rutherford, Esquire, at PO Box 1452, Columbia, SC 29202-1452, on this 16th day of October, 2013.



Nancy Smith

OCT 22 2013

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

State of South Carolina,

v.

Arthur M. Field

Defendant.

) IN THE COURT OF GENERAL SESSIONS
)
) FOR THE 13TH JUDICIAL CIRCUIT

JAMES R. PARKS
CLERK, STATE GRAND JURY

Order of Restitution

2011 -GS- 47 - 08 (Counts I - IV) -GS-
-GS-
-GS-
-GS-

Upon motion of the Attorney General's Office, it appears SC Code §17-25-322(A) provides "in addition to any other sentence which it may impose, the court shall order the defendant make restitution or compensate the victim..." unless the Court finds a substantial and compelling reason not to order restitution.

Therefore, this Court finds:

- () Restitution should not be ordered for the following reasons:

- () Restitution should be paid by the Defendant to the State Office of Victim Assistance, provided payment is made by SOVA on behalf of the listed victim(s) in any subrogated amounts paid.
() Restitution hearing is waived by Defendant, restitution agreed to as shown below.
() Restitution should be paid by the Defendant as a condition of his/her sentence to the designated victims in the Court-ordered amounts:

1. VICTIM: C/O Jerry Saad, CPA (Receiver)
Address: 1249 S. Pleasantburg, Dr.
Greenville, SC 29605
Phone: 864-422-9816
Restitution: \$

3. VICTIM:
Address:
Phone:
Restitution: \$

2. VICTIM:
Address:
Phone:
Restitution: \$

4. VICTIM:
Address:
Phone:
Restitution: \$

TOTAL AMOUNT OF RESTITUTION ORDERED: \$ 2,877,711.73

- () Restitution is joint and several with the following co-defendant(s):

AND IT IS SO ORDERED this 11 day of Oct, 2013, Anderson, South Carolina

J. Parker
Presiding Judge

I SO MOVE:

Assistant Attorney General

I HAVE RECEIVED A COPY:

Defendant/ Attorney for Defendant

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF ANDERSON	)	
State of South Carolina,	)	
	)	
Plaintiff,	)	
v.	)	Case No.
	)	2013-GS-47-00009
Frederick Scott Pfeiffer,	)	
	)	
Defendant	)	
State of South Carolina,	)	
	)	
Plaintiff,	)	
v.	)	Case No.
	)	2013-GS-74-00008
Arthur M. Field,	)	
	)	
Defendant.	)	

ORIGINAL TRANSCRIPT OF HEARING

The within Hearing in the above-captioned matter was held on July 9, 2014, before The Honorable J. Cordell Maddox, Anderson County Courthouse, 100 South Main Street, Anderson, SC 29622; attended by counsel as follows:

APPEARANCES:

S. Creighton Waters, Esq.,
Brian T. Petrano, Esq.,
Appearing for The State.

William G. Yarborough, III, Esq.,
Joseph Bradley Bennett, Esq.,
Appearing for Defendant Pfeiffer.

James Todd Rutherford, Esq.,
Appearing for Defendant Field.

Vivian H. Cross
Circuit Court Reporter – 10th Judicial Circuit
P O Box 704
Belton, South Carolina 29627
vcross@sccourts.org

I-N-D-E-X

STATE OF SOUTH CAROLINA v. FREDERICK SCOTT PFEIFFER
CASE NO. 2013-GS-47-00009

STATE OF SOUTH CAROLINA v. ARTHUR M. FIELD
CASE NO. 2013-GS-47-00008
JULY 9, 2014

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SETTING RESTITUTION PAYMENT AS TO MR. FIELD	51
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E-X-H-I-B-I-T-S

IDENTIFICATION ENTERED

*****NO EXHIBITS OFFERED*****

P R O C E E D I N G S

(11:12 A.AM)

THE COURT: Okay; we're on the record, uh -- we have dual hearings here. First, let me say this -- Louis, can you get somebody -- can you buzz Richard to come turn this mic up a little?

Can you-all hear -- everybody hear me?

MR. RUTHERFORD: Yes, sir.

THE COURT: We've got a little bit of a problem here because when the air conditioning turns on, you can't hear. And we've spent a lot of money to have speakers put in but for some reason they're not on. So, I'll talk as loud as I can. If you can't hear me, if you get to a point where you can't, if you raise your hand I'll yell if I have to. It probably won't be the only time I yell today.

Um, we're here for the, uh, joint matter of The State versus Pfeiffer and Field; is that correct?

MR. WATERS: Yes, sir; Your Honor.

THE COURT: All right, we've got numerous Motions. Let me just say this from the beginning, because I'm not sure exactly why, but this case has bothered me from the beginning. It is not

1 because of any actions taken by the parties or
2 their lawyers, but obviously what I'm trying to do
3 here is -- is two things. I'm trying to be fair
4 to the Defendants and the victims and The State;
5 and I'm also trying to work out a situation in
6 which the victims can get as much money back
7 during the probation period as, uh -- the most we
8 can. I mean, there's obviously a limit to it.

9 And what happened here, just so everybody
10 understands -- we got to get on the same page --
11 is that when Mr. Pfeiffer was sentenced I gave him
12 a substantial period of time followed by house
13 arrest. Subsequent to that, I sentenced
14 Mr. Fields (sic) to what, uh -- what I would
15 assume The State thought was too little and the
16 Defense thought was too much; that's just the way
17 it goes.

18 And -- and the operation of the Statute
19 regarding house arrest created a situation in
20 which Mr. Field served basically thirty-three days
21 in jail. And that struck me, quite frankly, as
22 unfair.

23 It's not anything that anybody in here did;
24 The State has done a great job presenting this,
25 you-all have done a great job defending your

1 clients. But, it seems to me that that relative
2 sentence of those two parties operated to be
3 somewhat unfair to Mr. Pfeiffer. That bothered
4 me. It didn't bother me from a legal perspective;
5 what I did was exactly within the realm of, um,
6 sentencing guidelines, such as they are. It
7 bothered because when I got up in the morning and
8 shaved I thought it was unfair. That's all it --
9 the only thing that started this is that I created
10 a situation in which I believed that it was
11 relatively unfair to one of the parties.

12 So, with that said, that's what we're doing
13 here today. And I had agonized over how to fix
14 this because the victims are entitled both to a
15 sentence that they feel punishes these parties
16 because they plead guilty; they're also -- the
17 victims are also entitled to a return of as much
18 money as possible during probation.

19 Hold on just a second, I don't want to --
20 this thing will scream when we turn it on.

21 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR
22 MICROPHONE ADJUSTMENT.)

23 (WHEREUPON, PROCEEDINGS CONTINUED.)

24 **THE COURT:** There you go. All right, can you
25 hear me better?

1 (ATTORNEYS AND GALLERY IN UNISON) Yes -- yes.

2 **THE COURT:** Okay; do I have to start over?
3 Let me just tell you, the problem is I thought
4 this was unfair. I have to look at myself in the
5 mirror. I mean, I've done this job for thirteen
6 year and I have spent less time sentencing people
7 to thirty-five years in prison because it was a
8 cut and dry situation, um, than I have on this
9 case. This is amorphous moving target. And when
10 you have two Defendants like this, you've got one
11 Defendant who is less culpable in my mind --
12 and that's Mr. Pfeiffer -- and you've got
13 one Defendant who is more culpable -- that's
14 Mr. Fields (sic), but the more culpable person who
15 cooperates with The State and spends a good bit of
16 time helping them, therefore his sentence is less,
17 that seemed to me to operate in an unfair way for
18 Mr. Pfeiffer.

19 That's what happened. You know, people can
20 say other things happened; that's what happened.
21 I'm concerned about the fairness.

22 So, with that said, I want to take up, um,
23 Mr. Fields (sic) sentencing first. And let me
24 again make sure that I understand what happened,
25 because The State has filed a Motion asking me to

1 reconsider the sentence and I believe -- and you
2 can tell me if I'm wrong. We have had sort of a
3 spirited discussion off record, but I believe that
4 the basis for that Motion, when you get past all
5 the legal mumbo/jumbo, was that the operation of
6 the House Arrest Statute operated in such a manner
7 that Mr. Fields (sic), even though he was
8 sentenced to more time in prison, only served
9 thirty-three days. Is that right?

10 MR. WATERS: Yes, sir; it would be, actually,
11 um, thirty-eight days.

12 THE COURT: Thirty-eight.

13 MR. WATERS: And as Your Honor recalls --
14 I've actually got the transcript of the sentencing
15 proceeding here -- and on page seventy-one, um --
16 and this was part of the discussion that we had --
17 uh, Mr. Rutherford says, as Your Honor knows, uh,
18 you can't -- while you can get credit for house
19 arrest, you can't get good time for it.

20 Um, so ultimately once the, uh, sentence was
21 issued I think everybody thought, uh, that -- that
22 Your Honor had, um, you know, at least some active
23 time for Mr. Field.

24 Uh, but once S-C-D-C calculated it otherwise,
25 um, I, uh -- I, of course, contacted all the

1 parties and, um -- and -- and after that filed a
2 Motion in which I recognized, of course, as I do
3 today, that -- that sentencing is completely in
4 the discretion of Your Honor. But because that
5 seemed to operate in a manner that was
6 inconsistent with what we had discussed at the
7 plea, I wanted to file a Motion to preserve
8 jurisdiction so Your Honor could -- or not,
9 whatever Your Honor decides -- correct that, um,
10 matter if Your Honor desires. And that's
11 precisely what my Motion says today.

12 Additionally, as we, uh -- um, look at the
13 House Arrest Statute---

14 **MR. RUTHERFORD:** Your Honor, again, I'm sorry
15 but at this point I have to object because it
16 would be our contention that the government --
17 State, through Mr. Waters -- has had their say.
18 They did so at the initial hearing. Rule 59 is
19 not a way to be a back door getting stuff in that
20 they didn't say at the three-hour plea that we had
21 earlier. This is not a way that The State now
22 gets to derogate its responsibility as stated
23 in the plea agreement to remain silent on
24 sentencing -- period.

25 **MR. WATERS:** Your Honor---

1 **THE COURT:** Well, let me -- let -- look,
2 we -- this is a rehash. And I -- I don't --
3 here's the deal. I wish you-all weren't good
4 lawyers, because you properly filed the right
5 things. I could -- this is before me; I
6 understand your position.

7 But basically, on October 8th 2003 (sic), I
8 sentenced him to ten years suspended to twenty-six
9 months then probation so that he would get credit
10 for the time that, uh, he served and have to pay
11 this money back. Unfortunately, the law had just
12 changed and it looks like he got credit for more
13 than I intended. That's where we are.

14 **MR. RUTHERFORD:** Right.

15 **THE COURT:** I'm not sure how to fix it.
16 Would -- would you-all agree that's where we are?

17 **MR. WATERS:** Yes, sir; and -- and I -- and
18 again, I -- I'm -- Mr. Rutherford is a classmate
19 and friend of mine, but I would like the
20 opportunity to address it and then he can make
21 whatever points that -- that he -- he would like.

22 Uh, I understand his position legally that --
23 that again there's nothing wrong. And I -- I
24 think I was very deferential in the -- in the plea
25 agreement I filed and in my comments so far. I do

1 not believe that anything precludes me from
2 commenting on the facts.

3 And the other aspect that we -- that we have
4 here is that in looking, uh, at the prior records
5 in the particular case, uh, we discovered that
6 based on Mr. Rutherford's Motion in December of
7 2012 asks that the house arrest be taken off and
8 Judge---

9 MR. RUTHERFORD: Your Honor---

10 MR. WATERS: ---Benjamin ordered that---

11 MR. RUTHERFORD: ---again, we -- the
12 interesting point---

13 THE COURT: Wait a minute, whoa. Hey, I
14 understand and I'm gonna let you...

15 But look, I want to hear the facts 'cause
16 I -- 'cause that happened outside of my purview.

17 MR. RUTHERFORD: Right, but those are the
18 facts as they relate to the sentencing not facts
19 as they relate to the case. And if you recall --
20 and I'm sure we -- we talked about this before --
21 Rule 59, you can't just make this another
22 sentencing; you can't.

23 MR. WATERS: Your Honor---

24 MR. RUTHERFORD: You have to say this is
25 stuff that was said -- that was not said -- during

1 the initial sentencing and needs to be said now.
2 Not that it -- I didn't say it because I forgot
3 during the three-hour plea.

4 We had a three-hour plea; Your Honor
5 sentenced him. And as Your Honor knows, if I did
6 not like the good-time credit given to Mr. Field
7 when he got to D-O-C, there's nothing I could have
8 done about it. I don't get to come back in now
9 and say I don't like his sentence.

10 Your Honor gives sentences all the time; Your
11 Honor does not calculate good time, does not run
12 D-O-C, neither do I. The statute went into place;
13 the statute was in effect at the time and in
14 effect at Mr. Field's sentencing. That's it.
15 They don't get now to come by way of Motion and
16 oh, just by way of education to The Court,
17 derogate their responsibility to the plea
18 agreement.

19 MR. WATERS: And -- and Your Honor---

20 MR. RUTHERFORD: Mr. Field has got to get the
21 benefit of his bargain; and that benefit is, The
22 State remains silent on sentencing -- period.

23 MR. WATERS: And Your Honor---

24 THE COURT: Okay. And I -- and you're --
25 you're protected for the record, but I just wanted

1 the facts. And that's---

2 MR. WATERS: And that's all I'm offering,
3 Your Honor---

4 THE COURT: Yeah.

5 MR. WATERS: ---and I -- and again, I hear
6 what---

7 THE COURT: But you're protected.

8 MR. WATERS: ---Mr. Rutherford is saying and
9 I understand his position. Again, all I'm
10 doing -- it -- it's wrote on the sentencing sheet,
11 credit for fifteen months served. Since then we
12 discovered it was only a-hundred-and-forty-five
13 days, or four-point-eight-three months because
14 Judge, uh, Benjamin took him off the house arrest.
15 It's in the transcript; it's on the bond form.

16 And I -- I think I'm strained to point out
17 those facts to Your Honor. I hear what
18 Mr. Rutherford's saying, but this is simply a
19 matter of what is the accurate amount of time that
20 he served.

21 THE COURT: All right, tell me under --
22 under -- an interpretation of what he served that
23 best suits your position. What do you think he
24 should get credit for subsequent to my sentencing;
25 just factually.

1 MR. WATERS: He gets thirty-eight days;
2 that's thirty-three he served after he was
3 initially arrested upon indictment. He did five
4 days in S-C-D-C after Your Honor sentenced him,
5 and he did a-hundred-and-forty-five days, um,
6 when, uh, when he was on house arrest. So
7 that's -- oh, and I apologize; give me one second.

8 THE COURT: That's okay.

9 MR. WATERS: That's a-hundred-and-eighty-
10 three days, Your Honor.

11 THE COURT: So that's what he got credit for;
12 what do you think he should get credit for?

13 MR. WATERS: Well no, one -- one-eighty-three
14 is the actual time that he served including the
15 house arrest, which I'm not disputing. I'm not
16 disputing, I'm not arguing against that, I'm just
17 saying that's the accurate number.

18 THE COURT: Okay.

19 MR. WATERS: He got fifteen months plus the
20 thirty-two days. The total should be one-eighty-
21 three. So he got the sixteen months, it should be
22 the -- the one-eighty-three.

23 THE COURT: So we're arguing about a month
24 basically? I mean, assuming that everybody's
25 correct, we're arguing about the difference

1 between fifteen and sixteen months.

2 MR. WATERS: No, we -- we're arguing about
3 the difference between, uh, six and sixteen.

4 THE COURT: Okay.

5 MR. WATERS: 'Cause a-hundred-and-eighty-
6 three days, uh, is -- is roughly, uh, three---

7 THE COURT: Would be the six; okay, I got
8 you.

9 MR. WATERS: ---six months. He got fifteen
10 plus, uh -- months plus thirty-three days; that's
11 roughly sixteen months.

12 THE COURT: Okay. All right---

13 MR. WATERS: So that's the accurate
14 calculation.

15 THE COURT: All right. Well, assuming
16 that -- that everybody's correct -- and again, I
17 know that Mr. Rutherford has got a position and
18 I'll let you state it, but -- so basically,
19 you-all think that the sentence should be amended
20 to take into account the fact that he received
21 more credit than he should have?

22 MR. WATERS: The only thing I'm -- I'm --
23 I'm -- I want to be careful about how I say this.

24 THE COURT: I understand.

25 MR. WATERS: Number one, because of the

1 calculation of good time and the things we
2 discussed at the hearing -- and I think
3 accurately, because Your Honor's expressed as
4 much -- it was ultimately calculated in a manner
5 inconsistent with what Your Honor intended. So, I
6 just filed a Motion to preserve jurisdiction in
7 case---

8 **THE COURT:** Yeah; and I appreciate your doing
9 it, yeah.

10 **MR. WATERS:** ---Your Honor, in your decision,
11 wanted to do that. Because, otherwise, we would
12 lose jurisdiction.

13 Secondly, as a matter of fact, we were
14 pointing out that the actual time that he served
15 was not what was written on the sentencing sheet
16 but was, in fact, the hundred-and-eighty-three
17 days. What Your Honor wants to do with that---

18 **THE COURT:** Yeah.

19 **MR. WATERS:** ---uh, is -- is obviously --
20 because sentencing's within your discretion -- but
21 that is the -- that is the accurate facts as to
22 what this particular Defendant, uh, served prior
23 to his, uh, his sentencing.

24 **THE COURT:** All right. And again, what I'm
25 trying to do, I want to finish this hearing today

1 with the sentencing resolved and I want an Order
2 requiring, um, some proper probationary basis.

3 So -- and I -- I really want to try to put
4 this to bed. These victims don't need -- they
5 need to get their money and they need to quit
6 worrying.

7 What I really tried to do with Mr. Field was
8 hang a lot of time over his head, sentence him to
9 twenty-six months in prison, and then put him on
10 probation with the understanding that if he didn't
11 pay his probation he was going to prison for ten
12 years. I mean, that's what you try to do.

13 Unfortunately, not as a result of anything
14 anybody did -- including me -- the operation of
15 law is just a little different.

16 All right, Mr. Rutherford, do you want to put
17 anything -- I mean, I think your---

18 MR. RUTHERFORD: I -- I do, Your Honor.

19 THE COURT: Yeah.

20 MR. RUTHERFORD: The Court, initially in
21 *Higgins*, decided that house arrest would not
22 apply for pre-incarceration house arrest or pre-
23 sentencing. Monitoring---

24 THE COURT: That was in *Higgins*---

25 MR. RUTHERFORD: ---would not apply. That

1 was in *Higgins*.

2 THE COURT: *State v. Higgins*; okay.

3 MR. RUTHERFORD: And in *Higgins*, The Court
4 referenced a Pennsylvania case, and it was
5 *Commonwealth v. Chiappini*, I guess is how you
6 spell (sic) that, and it was 782 A.2nd 490. And
7 *Chiappini* talked about the fact that participants
8 were considered inmates who were required to wear
9 electronic devices and submit to constant
10 monitoring.

11 That is exactly what Fields (sic) did; that
12 follows the statute. He got credit for exactly
13 what the statute intended. And Your Honor knows,
14 had Your Honor give -- sentenced under that
15 Court -- the sentence that Your Honor gave and he
16 went down to the D-O-C and they said, we're not
17 giving you good-time credit, I would not have then
18 been allowed to come in here and file a Motion and
19 say Judge, it just isn't fair.

20 And I'm not under a plea agreement that says
21 that I have to remain silent at sentencing; The
22 State is.

23 Mr. Fields (sic) is entitled to the benefit
24 of his bargain; he is entitled to the time that he
25 did pre-sentencing. Because, Your Honor, not only

1 was he on house arrest, not only was he being
2 monitored the entire time -- he had a leg monitor
3 on that was recording where he was, he still had
4 to report to his bondsman -- not only was he doing
5 all that, he was cooperating for four hundred and
6 fifty-four hours. On a forty-hour work week, that
7 means he was doing eleven weeks -- two-and-a-half
8 months' worth of work with the Attorney General's
9 Office. So, it was his job with the Attorney
10 General -- General's Office to sit down with the
11 investigators for eleven weeks' worth of time.
12 That's why Mr. Fields (sic) got the sentence that
13 he did.

14 I understand that Your Honor---

15 **MR. WATERS:** Your Honor, and I'd have to
16 object. He did not spend eleven weeks with our
17 investigators; that's not---

18 **MR. RUTHERFORD:** Four hundred and fifty-four
19 hours.

20 **THE COURT:** Well I---

21 **MR. WATERS:** ---that's not---

22 **THE COURT:** ---we're -- we're back -- look,
23 here's the deal. I sentenced him; I've got to
24 live with that sentence. He got more credit than
25 I thought he would get but he got the credit that

1 he was entitled to under the law, under the
2 statute. We may disagree with the statute but---

3 **MR. WATERS:** Right.

4 **THE COURT:** ---everybody agrees with that,
5 right Mr.---

6 **MR. WATERS:** Well, now, let me say this, Your
7 Honor. The statute says you can -- you may give
8 credit for time spent under monitored house
9 arrest. And what Mr., uh, Rutherford's Motion
10 asked, to be taken off the monitoring and the
11 house arrest. And Judge Benjamin clearly said,
12 and I have the transcript here if Your Honor would
13 like to see it -- and I -- I, of course, emailed
14 it to, uh...

15 In there she---

16 **THE COURT:** Yeah.

17 **MR. WATERS:** ---she said, I'm gonna take you
18 off the house arrest but I'm gonna leave you on
19 the monitoring. The statute clearly says
20 monitored house arrest. So he's only got half of
21 it; it doesn't apply. The accurate calculation
22 would be the hundred-and-forty-five days as I
23 stated earlier.

24 **MR. RUTHERFORD:** It sounds like he's making
25 an argument, not providing facts, but I'll---

1 **THE COURT:** Well, here's the deal. I mean,
2 this -- this -- the problem is that this occurred
3 out -- again, at -- in a different Court. And
4 that's what I'm trying to get down.

5 So in other words, he was not under house
6 arrest for a period of approximately, what, nine
7 months? But he was under a monitor?

8 **MR. RUTHERFORD:** Right; that's correct, Your
9 Honor.

10 **THE COURT:** Is that right?

11 **MR. WATERS:** Correct, Your Honor.

12 **THE COURT:** The problem I've had -- and this
13 is a problem -- you know we do a hundred pleas a
14 week. And again, I -- I hate to just disgorge
15 all the problems with me and with this system, but
16 the problem is that I'm always real clear with
17 people that I'm not telling them -- I can't give
18 them any advice on how much time they'll actually
19 serve. And the reason for that is that the
20 Department of Corrections calculates that and I --
21 Judges have gotten in -- into hot water in the
22 past because they indicated how long somebody was
23 gonna serve.

24 So -- and -- and -- and I'm glad you filed
25 the Motion. I mean, this needs to be knocked out;

1 this is -- this case straddles the old law and the
2 new law and that's really the problem. It's not
3 anything you-all did; it's just that it straddles.
4 The indictment is pre-credit and the sentence was
5 post-credit. That's the problem.

6 Okay. All right, so we need to deal with
7 Mr. Field's sentence. And, quite frankly, I mean,
8 I -- as I said, I'm very glad that in the State of
9 South Carolina, I mean I'm glad you -- Mr. Waters,
10 I'm glad you filed this because it does allow us
11 to end it. I'm not gonna change his sentence; I
12 don't think I can. I mean, I -- I -- again, the
13 operation of law is what it is and -- and, you
14 know, when, uh -- when I was contacted -- my
15 office was contacted about this issue, my Law
16 Clerk came to me and said, this is -- this is what
17 happened, and I said, that isn't fair. That's
18 what started all this. If I had shut my mouth,
19 you know -- I put everybody in a position of
20 having to argue and maybe I shouldn't have.

21 But, I don't think I can change his sentence;
22 the Department of Corrections is gonna give him
23 what he's gonna get. So, I'm gonna leave that
24 sentence together -- or, the same. And again, um,
25 I don't think this is a win/lose thing for either

1 party, it's just the way I've got to do it.

2 Now on Mr. Pfeiffer---

3 MR. WATERS: Your Honor---

4 THE COURT: ---he got -- yeah?

5 MR. WATERS: ---yeah, could I just make my --
6 I understand, again, that you can't---

7 THE COURT: Yeah.

8 MR. WATERS: ---don't feel constrained to
9 change the sentence because of the calculation
10 of good time. That's different from an actual --
11 the -- the error in the actual amount of credit
12 that he got. And that---

13 THE COURT: Well, I think he -- I think I
14 need to do an Order with the exact amount of
15 credit. I don't know how that Department of
16 Corrections calculates it; that's the problem I've
17 got.

18 MR. WATERS: Right. But you -- what I'm --
19 what I'm saying is---

20 MR. RUTHERFORD: And again, we would argue---

21 MR. WATERS: ---is you give him -- you give
22 him sixteen months when in fact he only did six
23 under the statute. And that -- that -- that is a
24 difference from well, they calculated good time a
25 different way. This is actually an error in the

1 amount of credit that he got.

2 **THE COURT:** So I put sixteen months then?

3 **MR. RUTHERFORD:** Your Honor, at what -- at
4 what point is he making an argument? At what
5 point does Mr. Fields (sic) get the benefit of his
6 plea agreement? For three hours they agreed -- in
7 chambers and out here -- that that was exactly the
8 amount of time that he had spent on house arrest.

9 **THE COURT:** I think what he's saying is that
10 there was a mistake in the amount.

11 **MR. RUTHERFORD:** But we would argue that
12 there was not a mistake based on---

13 **THE COURT:** Well---

14 **MR. RUTHERFORD:** ---what the Court did
15 earlier.

16 **THE COURT:** ---who -- who makes that
17 decision? That's the question.

18 **MR. WATERS:** Well, and that was what -- when
19 he said, well is he making an argument -- again,
20 I'm just trying to correct a factual thing and the
21 statute says, monitored house arrest. He clearly,
22 after December, I believe it was twelve or
23 December 13, 2012 -- was no longer under house
24 arrest. He was monitored, but not house arrest.
25 So that's purely a factual matter and that's the

1 plain language of the statute. All I'm doing is
2 saying these are the facts and there was an error
3 in the amount of credit that he was given.

4 I am not arguing that he shouldn't get the
5 credit for what he did; I'm not saying change
6 the sentence. What I am saying is, is that it
7 should accurately affect (sic) -- uh, reflect the
8 actual---

9 THE COURT: Okay.

10 MR. WATERS: ---time that he did.

11 THE COURT: All right, here's what I'm gonna
12 do; I'm gonna do an Order -- I need you-all to
13 prepare it -- asking the Department of Corrections
14 to calculate the sentence and to notify me of what
15 they believe is the proper credit. That -- I
16 mean, we're all arguing something that we can't
17 decide, that's the problem. You're right; if
18 there's a mistake -- a factual mistake -- then the
19 Department of Corrections, who made the decision,
20 has got to calculate it.

21 MR. WATERS: Right; but what they're going to
22 do is base it on what the -- the sentencing sheet
23 says, which says, fifteen months plus thirty-three
24 days, uh, when the reality is the -- the accurate
25 amount and -- and -- is the hundred-and-forty-five

1 plus thirty-three plus five.

2 **MR. RUTHERFORD:** Your Honor, the problem is,
3 *Higgins* anticipated, and what Courts have done
4 before -- and I'm -- I don't know whether Your
5 Honor's done it or not -- those people that are
6 placed on house arrest with no monitoring...

7 But as Your Honor knows, if you put somebody
8 on G-P-S they are on house arrest. You don't put
9 'em on G-P-S and tell 'em to go run the
10 countryside. That is, in effect, exactly what the
11 statute and what *Higgins* anticipated. It was
12 those people that a Judge said, have a curfew,
13 don't leave your house, but we're not going to
14 monitor you. That's what *Higgins* and the statute
15 talk about; that's why it's monitored house
16 arrest. No one is put on G-P-S monitoring that is
17 not confined to their home. They have to be
18 there; that's where the monitor is linked to. So
19 that's the issue.

20 **THE COURT:** But didn't Judge Benjamin take
21 him off house arrest?

22 **MR. RUTHERFORD:** She took him off and she
23 made him -- I mean, she made him stay on the
24 monitor and tell the bondsman where he was
25 going---

1 **THE COURT:** Well---

2 **MR. RUTHERFORD:** ---period.

3 **MR. WATERS:** And, Your Honor, I'll read the
4 language. Well, what I'll do it -- is at this
5 point is I'll take the house arrest off so he can
6 go, but I'll leave -- I'm going to leave the
7 bracelet on and give Mr. Rutherford leave to come
8 back in ninety days. Or, if something else
9 changes before then, then within ninety days
10 regarding the bracelets (sic). But we'll -- we'll
11 take the house arrest off and restrictions
12 regarding the house arrest.

13 Additionally, it's memorialized, uh, to that
14 effect on the bond form as well. Motion to amend
15 bond as to house is granted; as to G-P-S tracking
16 it is denied. And signed by Judge Benjamin.

17 **THE COURT:** See, this is -- this is
18 ultimately the problem. I don't know --
19 personally I don't think he should get credit for
20 time that he wasn't under house arrest, but I
21 don't know how the Department of Corrections
22 calculates it. This is the frustration we have
23 with every sentence; we get Orders sent back to us
24 from the Department of Corrections that have
25 calculations we don't know. And what happened

1 here is that I sentenced him to something I
2 thought was fair. Quite frankly, the twenty-six
3 months in prison is what I thought he was gonna do
4 minus some period of time. And I don't know how
5 the Department of Corrections calculates when
6 you're on monitor but not house arrest. That
7 seems to me to be a problem with the statute and I
8 don't know---

9 MR. WATERS: I -- I think I can answer that,
10 Your Honor.

11 THE COURT: Yeah.

12 MR. WATERS: In fact, I think there's two
13 things. Number one, and I -- this is from
14 talking with the Department of Corrections---

15 THE COURT: Sure.

16 MR. WATERS: ---I remember we had a
17 subsequent hearing where we did amendment to some
18 sheets for Mr. Pfeiffer?

19 THE COURT: Right; yeah, we've been working
20 on this for two years.

21 MR. WATERS: And I -- I got on the phone with
22 'em. And essentially what they told me is, we're
23 going to do what the sentencing sheets say -- what
24 we think the sentencing sheets say and -- and only
25 what they say. And they say he gets fifteen

1 months plus thirty-three. And they---

2 **THE COURT:** That's what the Department of
3 Corrections said?

4 **MR. WATERS:** Right, and -- exactly. So
5 they're just gonna come back and say fifteen plus
6 thirty-three.

7 The second issue is, is that whether or not
8 monitoring or not counts. What I'm saying is, is
9 under the statute -- the statute clearly says --
10 uh, that the -- he may be given credit for time
11 served on monitored house arrest. That's what the
12 statute says. And he had the monitoring; the
13 house arrest was clearly taken off. He could go
14 wherever he wanted---

15 **THE COURT:** Right.

16 **MR. WATERS:** ---whenever he wanted, he just
17 had that bracelet---

18 **THE COURT:** Basically, the -- the wrist
19 monitor -- or ankle monitor loc- -- located him---

20 **MR. WATERS:** That's right---

21 **THE COURT:** ---via G-P-S.

22 **MR. WATERS:** ---and if he took off or -- or
23 cut it then we would know.

24 **THE COURT:** But it wasn't house arrest.

25 **MR. WATERS:** But he got to go wherever he

1 wanted, whenever he wanted.

2 THE COURT: He was D-J-ing?

3 MR. RUTHERFORD: He was D-J-ing. He was
4 working, but he had to communicate where he went
5 with his bail bondsman, and under the case that
6 *Higgins* references, it is monitored and that you
7 are sending out your signals to where you are to
8 the government, you are not free. And he was not.

9 THE COURT: Well, here's the deal. I think
10 you-all are right in -- in the way it should be
11 calculated. I think the statute needs to be
12 refined to make it clear, because this is gonna
13 come up every time somebody's on a monitor.

14 To my mind, being on a monitor is not house
15 arrest. But, the statute basically says house
16 arrest and monitoring right?

17 MR. RUTHERFORD: It says house arrest
18 monitoring.

19 THE COURT: So monitored---

20 MR. WATERS: It says monitored house arrest.

21 THE COURT: ---monitored house arrest.

22 MR. RUTHERFORD: It's not clear, but it
23 wasn't -- yes.

24 THE COURT: I mean look, we just got a --
25 we've got a glitch that needs to be done.

1 Unfortunately that doesn't help us here.

2 **MR. WATERS:** I -- but I think the statute's
3 clear; it says, monitored house arrest. If
4 there's no house arrest---

5 **THE COURT:** Well, he was monitored but he
6 wasn't on the house arrest. I mean, if he was
7 house arrest but not monitored---

8 **MR. WATERS:** Right, but it says---

9 **THE COURT:** ---I mean, you know.

10 **MR. WATERS:** ---it says time may be given
11 for---

12 **MR. RUTHERFORD:** Your Honor, at what point
13 are they---

14 **MR. WATERS:** ---time served on monitored
15 house arrest.

16 **THE COURT:** Well here's the deal. We're all
17 dancing on the head of a pin. I mean, we're all
18 trying to, you know, do lawyer law school stuff
19 about -- and I'm doing the same thing -- trying to
20 figure out what the statute means.

21 But ultimately what I want to come out of
22 here with is an Order that is clear and requires
23 Mr. Fields (sic) to pay money or he's going to
24 prison.

25 **MR. WATERS:** Right.

1 **THE COURT:** That's where I was back in
2 October of 2013; I wanted him to pay money. Quite
3 frankly, the part of sentencing which is built to
4 punish somebody, I wanted him to be punished.
5 What -- what he did was awful. The problem is
6 that the statute is unclear and I don't think I
7 can correct it.

8 So here is the deal. I'm going to leave this
9 with you again, and I want to be clear because I
10 don't want anybody except me to come out of this
11 hearing being criticized. Because, quite frankly,
12 you-all have done exactly what you could do. My
13 problem as a judge is, you-all are too good of
14 lawyers 'cause you-all figured which head to dance
15 on. I mean, you know -- you know, you-all are all
16 angels dancing up here and -- and I'm trying to
17 figure out what to do.

18 I'm gonna leave the sentence the way it is,
19 because I really think there's an ambiguous
20 statute that needs to be altered and I quite
21 frankly agree with you-all. But, I think that I
22 would be setting everybody up for another hearing
23 somewhere down the line, um, if I change it. And,
24 quite frankly, I think if it was appealed, I would
25 lose. I mean, I think that my -- my position is

1 probably contrary to the way the statute is
2 written, but it does need to be, uh -- greater
3 detail needs to be set forth.

4 But -- so, I'm back in the situation where I
5 look at myself and shave and know you're right but
6 I basically can't do anything because of the way
7 the statute -- the ambiguity -- ambiguity of the
8 statute.

9 All right, so I'm gonna leave that the way it
10 is -- I don't like it -- and then we're gonna deal
11 with Mr. Field's probation last, because that,
12 quite frankly, is what I'm trying to get to here.

13 All right, let me go to Mr. Pfeiffer. Here's
14 the problem with Mr. Pfeiffer. Mr. Pfeiffer got a
15 sentence that was fairly harsh and -- and again,
16 the problem I have is the operation of the way
17 this worked is that I had to look at Mr. Pfeiffer
18 sitting there basically with his life ruined and
19 in shambles, and his family in shambles, and then
20 sentence Mr. Fields (sic) -- basically here's the
21 problem. I'm trying to -- I'm trying to make --
22 I'm trying to shorten this 'cause I don't think
23 everybody wants to stay through it.

24 Mr. Fields (sic) got less time than I
25 intended. The operation of the relative fairness

1 of this is that Mr. Pfeiffer probably got more
2 time than he should. I mean, I'm sure that there
3 are certain victims that would like me to take him
4 out on I-85 and drag him behind a car; I can't do
5 that. But, you know, again, I've got to be true
6 to myself, and that's -- and the law, and that's
7 what I'm trying to do.

8 Now, tell me exactly what Mr. Pfeiffer's
9 sentence was, 'cause you-all have the records, I
10 don't. They're spread over four counties.

11 **MR. WATERS:** Your Honor, he got, uh -- he
12 got, uh, on count six, which was a securities
13 fraud, he got ten years, uh, upon the service of
14 six years, he would have five years' probation.
15 And Your Honor, uh, had -- um, also allowed that
16 the last two years of that six years could be---

17 **THE COURT:** House arrest.

18 **MR. WATERS:** ---house. Uh, he got a, uh, on
19 count three, which is a securities fraud charge,
20 he got ten years, uh, suspended on the service of
21 five years' probation; that was consecutive.

22 All right, and then he got a concurrent three
23 years on count one, which is a conspiracy. The
24 way that, uh, that S-C-D-C is calculating that is
25 they essentially have the actu- -- the active four

1 STATE OF SOUTH CAROLINA)

2) CERTIFICATE OF REPORTER

3 COUNTY OF ANDERSON)

4
5 I, THE UNDERSIGNED VIVIAN H. CROSS, OFFICIAL COURT
6 REPORTER FOR THE TENTH JUDICIAL CIRCUIT OF THE STATE OF
7 SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS
8 A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF THOSE
9 PROCEEDINGS REQUESTED AND EVIDENCE INTRODUCED IN THE
10 TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE
11 COURT OF GENERAL SESSIONS FOR ANDERSON COUNTY, SOUTH
12 CAROLINA, ON THE 9th DAY OF JULY 2014.

13 I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
14 COUNSEL NOR INTEREST TO ANY PARTY HERETO.

15
16
17
18
19
20
21
22 _____
23 VIVIAN H. CROSS, COURT REPORTER

24 TENTH CIRCUIT AT LARGE

25 AUGUST 10, 2015

(RESENT: FEBRUARY 1, 2016)

FILED

JAN 23 2015

STATE GRAND JURY OF SOUTH CAROLINA

JAMES R. PARKS

CLERK, STATE GRAND JURY

THE STATE OF SOUTH
CAROLINA,

Case No.: 2012-GS-47-08

v.

ORDER DENYING STATE'S
MOTION TO RECONSIDER

ARTHUR M. FIELD,

DEFENDANT.

This Order follows a hearing before this Court in Anderson County on July 9, 2014 pursuant to the State's timely motion to reconsider sentence.

On June 13, 2012, the State Grand Jury of South Carolina (the "State Grand Jury") returned a true billed indictment (the "Indictment") charging Arthur M. Field ("DEFENDANT") and Scott Pfeiffer ("CO-DEFENDANT") with securities fraud and conspiracy. The indictment alleged that DEFENDANT and CODEFENDANT conspired to perpetrate a fraud upon South Carolina investors by concealing and misstating material information in connection with the offer and sale of notes by the now defunct Capital Investment Funding, LLC ("CIF").

Ultimately, DEFENDANT pled guilty before this Court in May of 2013 to all fourteen (14) counts, under a plea agreement wherein it was within this Court's discretion to sentence DEFENDANT from 0-23 years in prison. Sentencing was deferred until October 8, 2013, during which DEFENDANT was sentenced to a lead active sentence of twenty-six (26) months, with credit given for 83 days served pre-trial in county jail, and 15 months on house arrest pursuant to an amendment to SC Code § 24-13-40 allowing such credit. Subsequently, SCDC gave not only credit but

good time credit for the time on house arrest, and DEFENDANT was released after only five days of incarceration by SCDC.

The State timely filed a motion to reconsider sentence to preserve jurisdiction, believing correctly that SCDC's calculation and quick turnaround was inconsistent with this Court's intent as to active sentence. The State also pointed out that based on DEFENDANT's motion the Presiding Judge of State Grand Jury on December 13, 2012 had removed house arrest as a condition of bond; thus, at best DEFENDANT should have only been given credit for 146 days (June 20, 2012 to December 13, 2012), rather than the fifteen (15) months -- or 450 days -- he was given.

While this Court does not dispute the State's contentions, it has elected to instead reduce the codefendant's sentence by a companion order to achieve more equality of sentence. The State's motion for reconsideration is denied.

AND IT IS SO ORDERED.

This 13th day of January, 2014.

Amur, South Carolina

J. Cordell Maddox, Jr.
The Honorable J. Cordell Maddox, Jr.
Circuit Court Judge

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

February 23, 2017

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330
ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM PICKENS COUNTY

The Honorable J. Cordell Maddox, Jr. Circuit Court Judge

Appellate Case No. 2015-000210

THE STATE, ... APPELLANT,

v.

ARTHUR M. FIELD, ... RESPONDENT.

FINAL BRIEF OF APPELLANT

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STATEMENT OF THE ISSUE ON APPEAL

DID THE TRIAL COURT ERR IN FAILING TO GRANT THE STATE'S MOTION FOR RECONSIDERATION, WHERE RESPONDENT IMPROPERLY RECEIVED CREDIT FOR PRE-TRIAL TIME WHEN HE WAS MERELY ON GPS MONITORING BUT NOT ON HOUSE ARREST, AND THE STATUTE CLEARLY PROVIDES THAT CREDIT CAN ONLY BE GIVEN FOR "MONITORED HOUSE ARREST"?

STATEMENT OF THE CASE

This is a State's appeal arising from the denial of the State's motion to reconsider sentence.

On June 13, 2012, the State Grand Jury of South Carolina (the "State Grand Jury") returned a true billed indictment (the "Indictment") charging Respondent Arthur M. Field and his co-defendant Scott Pfeiffer with fourteen counts including securities fraud, forgery and conspiracy. **(R. pp. 1 – 91)**. Judge J. Cordell Maddox, Jr. was assigned continuing jurisdiction in the case.

Ultimately, Respondent pled guilty before the trial court on May 6, 2013 to all fourteen counts, under a plea agreement where the Court had discretion to sentence Respondent from zero to twenty-three years in prison. **(R. p. 157, p. 184)**. Sentencing was deferred pursuant to the agreement until after disposition of codefendant F. Scott Pfeiffer's case. Pfeiffer pled guilty on September 18, 2013. On October 8, 2013, Respondent was sentenced to a lead active sentence of twenty-six (26) months, with credit given for 33 days served pre-trial in county jail, and 15 months on house arrest pursuant to an amendment to SC Code § 24-13-40 allowing such credit. Respondent was ordered to pay restitution of \$2,877,711.73 to the victims of the CIF case. **(R. pp. 265 – 266, p. 271, p. 292)**.

The State filed and served a timely Motion for Reconsideration of Sentence on October 16, 2013. **(R. pp. 288 – 289)**. Meanwhile, Pfeiffer filed motions for reconsideration on September 20, 2013 and October 17, 2013. A hearing was held on the State's and Pfeiffer's motions on July 9, 2014. **(R. pp. 293 – 326)**. Judge Maddox

subsequently issued orders on January 23, 2015, in which he denied the State's motion to reconsider which is the subject of the instant appeal. (R. pp. 327 – 328).

A timely Notice of Appeal was filed with this Court. This State's appeal follows.

STATEMENT OF FACTS

As noted before, Respondent was indicted by the South Carolina State Grand Jury for two counts of conspiracy, eleven counts of securities fraud, and one count of forgery. The indictment generally alleged that Respondent and his codefendant defrauded South Carolina investors by concealing and misstating material information in connection with the offer and sale of notes by the now defunct Capital Investment Funding, LLC ("CIF"). (R. pp. 1 – 91). Ultimately, CIF lost tens of millions of dollars of the money of some 688 victims. (R. p. 203, p. 243).

When Respondent was first indicted, his bond was set on June 21, 2012 by Judge G. Thomas Cooper, Jr. at a \$2,000,000 surety. (R. p. 112, pp. 151 – 154). Ultimately, Respondent moved to reconsider the bond, and on July 19, 2012 Judge DeAndrea Benjamin lowered the bond to a \$500,000 surety, along with home confinement including GPS tracking. (R. p. 135, pp. 151 – 154). Respondent made a subsequent motion to reconsider bond, which was heard before Judge Benjamin on December 13, 2012. At the hearing, Respondent's counsel expressly asked that he be taken off of the house arrest and the GPS monitoring. (R. pp. 142 – 143). The trial court ruled as follows:

Well, what I'll do is at this point, I'll take, I'll take the house arrest off so he can go, but I'll leave the, I'm going to leave the bracelet on and give [Respondent's counsel] leave to come back in ninety days. Or, or if something else changes before then, within ninety days regarding the bracelets. But we'll, we'll take the house arrest off and the restrictions regarding the house arrest.

(R. p. 147, 14-21). The Bond Order signed by Judge Benjamin similarly held that “[t]he Motion to Amend Bond as to House Arrest is granted; as to GPS tracking it is denied”. (R. pp. 151 – 154).

As noted before, Respondent pled guilty in May 2013 and sentencing was deferred pending resolution of the codefendant’s case. Judge Maddox specifically noted that all bond conditions would remain the same pending Respondent’s sentencing. (R. pp. 182 – 183).

Following the codefendant’s plea and sentencing, Respondent was sentenced on October 8, 2013. Respondent’s counsel misspoke in arguing that Judge Benjamin had declined to take him off of home confinement, and that Respondent had been on home confinement since he got out on bond. (R. p. 253, lines 3 - 13). Later, Respondent argued that he should receive fifteen months for time he claimed he served on house arrest from bond in July of 2012 to sentencing in October of 2013. (R. pp. 257 – 258). Respondent also argued to the judge that while under the statute one could get credit for pre-trial time on house arrest, one could not get good time for it. (R. p. 258, lines 12-14). Ultimately, the trial court sentenced Respondent to a lead active sentence of twenty-six (26) months, with credit given for 33 days served pre-trial in county jail, and 15 months on house arrest. (R. pp. 265 – 266).

SCDC processed Respondent through and out in five days based on its calculation of the credit given, and the State then filed a timely Motion for Reconsideration of Sentence, giving a procedural history, discussing the good time issue, and stating “pursuant to the plea agreement any sentence is in the discretion of the Court, so the

State has simply filed this motion to reconsider to preserve jurisdiction in case the sentencing result is inconsistent with this Court's intent." (R. pp. 288 – 289).

A hearing on Respondent and Pfeiffer's motion for reconsideration was held on July 9, 2014. The State's first point was that it appeared SCDC had given good time credit for the house arrest time, which had led to a result which seemed inconsistent with the judge's intent at the plea, and that it had simply filed the motion to reconsider to preserve jurisdiction in case the court wished to correct it. (R. pp. 299 – 300).

Respondent argued that the judge could not resentence on reconsideration simply because the judge did not like how good time was calculated, and that the State had agreed to stay silent on sentencing. (R. pp. 302 – 303). The judge stated he "appreciated" and was "glad" the State filing the motion to preserve jurisdiction. (R. p. 307, lines 8 - 9, p. 312, lines 24 - 25).

Second, the State argued that there was a factual error in the calculation of the time on house arrest Respondent actually served, as he only served 4.83 months because Judge Benjamin removed the house arrest in December of 2012. He did not serve the fifteen months that for which the judge had given him credit. (R. pp. 303 – 307). Respondent argued that the State could not make this argument because it had agreed to stay silent on sentencing, and that he should receive credit because he was still on monitoring and cooperating with the State at the time. (R. pp. 309 – 312, p. 317). The State was clear that it was not arguing whether or not Respondent should get any credit for house arrest time – but only that any credit he was given be limited to the accurate amount of what he actually served. (R. p. 307, lines 13 – 23, p. 316 lines 1 – 10).

The trial court stated agreed the State was correct about the court's intent, stating "quite frankly, the twenty-six months in prison is what I thought he was going to do minus some period of time". (R. p. 319, lines 2 – 4). The parties disagreed on whether monitoring alone was sufficient for house arrest, with the State pointing out the statute said "monitored house arrest". (R. p. 321).

The court ultimately thought the statute was ambiguous, stating that while he "frankly agree[d] with you-all [the State], and if it was appealed, [the court] would lose", he was going to leave the sentence the way it was. The court ultimately signed an order denying the State's motion, stating that while it did not dispute the State's contentions as to the proper amount of credit, it was electing instead to lower the codefendant's sentence. R. pp. 327 – 328).

It is from this decision the State appeals.

ARGUMENT

THE TRIAL COURT ERRED IN FAILING TO GRANT THE STATE'S MOTION FOR RECONSIDERATION, WHERE RESPONDENT IMPROPERLY RECEIVED CREDIT FOR PRE-TRIAL TIME WHILE HE WAS MERELY BEING MONITORED BUT NOT ON HOUSE ARREST, AND THE STATUTE CLEARLY PROVIDES THAT CREDIT CAN ONLY BE GIVEN FOR "MONITORED HOUSE ARREST".

While the factual recitation to get here is a bit involved, the legal analysis is not. Here, Respondent was given credit for pre-trial time where he was on GPS monitoring but not on house arrest, and he was not entitled to such time under the clear language of the statute.

The issue concerns application of the 2013 amendment to S.C. Code § 24-13-40, which addressed computation and credit for time served by prisoners. In State v. Higgins, 357 S.C. 382, 593 S.E.2d 180 (2004), the court interpreted the statute which addresses credit in sentencing for time served, S.C. Code § 24-13-40, and held that "time served" did not include pretrial home confinement because that was a condition of *release* from custody, not time *in* custody. However, in June of 2013, this statute was amended to provide that credit "*may* be given for any time spent under monitored house arrest". 2013 South Carolina Laws Act 34 (H.B. 3193) (emphasis added).

At the reconsideration hearing, Respondent argued that he was still entitled to credit under the statute after December 13, 2012, because while he was not under house arrest, he still was subject to GPS monitoring. However, the cardinal rule of statutory construction is that the intent of the legislature must be given effect if it can be reasonably discovered in the language used, and that language must be considered in its plain and ordinary meaning. See generally State v. Higgins, 357 S.C. 382, 593 S.E.2d 180 (Ct.

App. 2004) (citing various cases and finding the plain and ordinary meaning of “time served by a prisoner” precluded a finding that house arrest qualified). See also Hayes v. State, 413 S.C. 553, 717 S.E.2d 6 (Ct. App. 2015) (reversing PCR court for not giving credit for time served to probationer who received split sentence and then had his probation revoked, as plain language of statute does not make a distinction for split sentences).

Here the statutory language is clear and unambiguous – it says “monitored house arrest”. “Monitored” is but an adjective for “house arrest”. Monitoring is alone not enough and neither is unmonitored house arrest. The statute does NOT say “monitoring and/or house arrest”, or even just “house arrest”. As such, since both monitoring and house arrest must be present, and Respondent did not have house arrest after December 13, 2012 despite the fact that he was monitored, then by the plain and unambiguous language of the statute he was not legally entitled to credit beyond that date.¹

Unquestionably, the State may file a motion for reconsideration of sentencing, and the appellate courts have upheld such motions where they corrected factual or legal errors at sentencing. See generally State v. Hicks, 377 S.C. 322, 659 S.E.2d 499 (2008) (upholding decision to change sentence on State’s motion for reconsideration where State presented additional information from victim not present at sentencing and corrected alleged factual misstatements made by the defense during the hearing).

¹ It should be noted that the original bill had only the words “house arrest”, and it was subsequently only referred out of the House Committee on Judiciary when the bill was amended to make the word “monitored” a necessary modifier of “house arrest”.
See http://www.scstatehouse.gov/sess120_2013-2014/bills/3193.htm

The appellate courts also have corrected situations where sentences were calculated based on an erroneous view of fact or law. See, e.g. Crooks v. State, 326 S.C. 171, 485 S.E.2d 374 (1997) (PCR court was incorrect in awarding credit for time served prior to warrant for offense being served); State v. Smith, 276 S.C. 494, 280 S.E.2d 200 (1981) (remanding because trial court erred as a matter of law in believing it had no jurisdiction to modify sentence despite timely motion); Hayes v. State, 413 S.C. 553, 717 S.E.2d 6 (Ct. App. 2015) (reversing PCR court for not giving credit for time served to probationer who received split sentence and then had his probation revoked).

Accordingly, Respondent received credit for fifteen months on house arrest, when in fact he should have only received time when he was on “monitored” house arrest -- from July 21, 2012 until December 13, 2012, or 145 days. The trial court erred in not so ruling on the State’s motion for reconsideration.

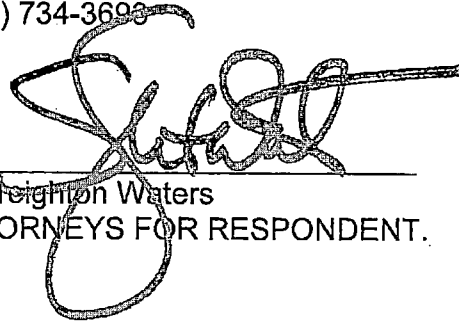
CONCLUSION

For the foregoing reasons, it is respectfully submitted the order of the trial court denying the State's motion for reconsideration should be reversed.

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A handwritten signature in dark ink, appearing to read "S. Creighton Waters", is written over a horizontal line. The signature is stylized with a large, looping initial "S" and a long horizontal stroke extending to the right.

S. Creighton Waters
ATTORNEYS FOR RESPONDENT.

February 24, 2017.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE CIRCUIT COURT

Judge J. Cordell Maddox, Jr.

Case No. 2015-000210

Arthur Field, Respondent,

v.

The State, Appellant.

FINAL BRIEF OF RESPONDENT

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Arthur Field, by and through his undersigned counsel, hereby objects to the State's appeal from the denial of the State's Motion to Reconsider the original sentence imposed by The Honorable J. Cordell Maddox and requests dismissal of the appeal on jurisdictional, equitable, statutory and/or procedural grounds, or denial of the appeal on substantive and/or equitable grounds, as set forth herein.

FACTUAL AND PROCEDURAL BACKGROUND

Field was indicted on June 12, 2012. Field voluntarily surrendered to the State Grand Jury Investigators in Columbia, South Carolina. He was incarcerated in Alvin S. Glenn Detention Center and held without bail for 5 days in solitary confinement. A bond hearing was thereafter conducted, and the court set bond at \$2 Million, a sum so high as to be opprobrious under the circumstances of a non-violent offender with absolutely no criminal record.

Field was subsequently incarcerated for 33 days. A hearing to reconsider the bond was convened before The Honorable DeAndrea Benjamin; she reduced the bail to \$500,000 and placed Field on house arrest with GPS Monitoring. Field spent 15 months on GPS Monitoring, confined to his home. In December 2012, Judge Benjamin relaxed the house arrest restrictions to permit Field to visit the doctor, to meet with his attorneys, to attend religious services, and/or to work with State Investigators in Columbia or Greenville. Judge Benjamin left Field on the GPS monitor and made it clear that the house arrest was only 'relaxed.' The State objected, but did not request reconsideration of Judge Benjamin's decision. Even after restrictions were relaxed, Field spent roughly 14 hours per day in his residence in order to maintain the charge on the GPS monitoring device. The bail bondsman visited Field in Greer on numerous occasions to verify Field's presence and the effectiveness of the device.

Shortly after his release from the detention center, Field immediately entered into a proffer agreement with the State and cooperated over a 7-month period resulting in the re-indictment and subsequent conviction of co-defendant Fredrick Pfeiffer.

The State also knowingly induced Field to enter into a binding, contractual Plea Agreement on April 12, 2013, re-executed by all parties on May 6, 2013. Field substantially performed in direct and detrimental reliance on the State's representations therein. Field appeared before The Honorable J. Cordell Maddox and entered a guilty plea on May 6, 2013. Sentencing was deferred by request of the State until October 2013.

It is undisputed and was fully known to Judge Maddox, when he imposed sentence on October 8, 2013 and also when he denied the State's Motion for Reconsideration on July 9, 2014, that Defendant Field substantially performed under the Agreement.¹

In consideration for such performance by Field, the State expressly agreed to be bound according to the language of the Plea Agreement, to wit:

- To "advise the Court in good faith its own assessment of the extent, value and truthfulness...of Mr. Field's cooperation in this matter"
- To "ask the Court to fashion an appropriate sentence in its discretion given the State's position as to the nature, extent, and effect of Mr. Field's crimes and any other relevant factors."
- To abstain from asking "for any specific sentence and that any sentence will be in the discretion of the sentencing court."
- To waive "the right to contest the sentence or any portion thereof or to appeal."

The Plea Agreement confirms it is final and complete: "It is the intent of the parties that this agreement and the resulting pleas and sentences finally conclude any and all *existing* or

¹ Field provided countless hours of cooperation to the Attorney General and its Investigators and attended a number of meetings; provided books, papers and documents to the State; provided hours of testimony and research related to activities of co-defendant Pfeiffer; pled guilty to all Counts of his indictment; stipulated to the total restitution requested by the State; waived significant state and federal Constitutional rights including appeal, collateral attack, habeas corpus, post-conviction relief and appeal and those rights guaranteed under the Fourth and Fifth Amendments to the U.S. Constitution and those guaranteed in the South Carolina Constitution and state and federal statutes.

possible legal proceedings related to indictment 12-GS-47-008 whether direct or collateral, and that all that remains is for Field to serve any sentence given by the Court in the manner provided by state law.” (Emphasis added).

The State and the Court confirmed Field’s substantial cooperation and its beneficial effect on all proceedings, both at sentencing and at the hearing on the motion to reconsider.² In fact, as a direct result of Field’s substantial cooperation, Pfeiffer was re-indicted on June 18, 2013. Asst. Attorney General Petrano immediately emailed Field to inform him of the re-indictment and to essentially ‘thank’ Field for his assistance in obtaining such a new, expanded indictment.

Pfeiffer thereafter entered a guilty plea on September 18, 2013, thereby saving the State considerable time and money. Hence, the State easily obtained two voluntary pleas in an extremely complex, time-consuming, financial white-collar matter. A trial of either Field or Pfeiffer would have put the State and the judicial system to great expense of time, resources and money. All were avoided because Field’s extensive cooperation.

On October 8, 2013, the Court sentenced Field to 10 years, suspended after 26 months with all sentences running concurrent. Judge Maddox noted that he was taking Field’s substantial cooperation and his voluntarily entry of a guilty plea into account in determining the sentence, its reduction and the credits. The Court found Field had successfully completed 33 days of incarceration in Richland County Detention Center and 15 months of GPS monitored house arrest and awarded credit for all such restrictions pursuant to the intent of S.C. Code § 24-13-40, as amended. The Court then held as a matter of fact and law Field was credited a total of 16 months, 3 days credit for the equivalent of ‘time served’ or ‘any time spent.’ The Court appeared to

² Co-defendant Pfeiffer indicated he would demand trial in 2014. Moreover, Pfeiffer filed a Motion to Recuse the Attorney General, and was likely to appeal any adverse verdict.

carefully calculate the suspension period and the credits and factored in the likely effect of those credits in order to roughly equate the two time periods.³

The State did not object to these findings, the Plea Agreement, or the sentence as a matter of fact or law. In fact, the State publicly announced it was very pleased with the sentence, the Court's decision, and the credits awarded by Judge Maddox. The *Greenville News* reported the fact that Creighton Waters, an Assistant Attorney General who assisted in the prosecution effort, was pleased with Field's sentence. Waters also said, "These cases are difficult. They're different from the norm. People who don't have to sit in the judge's chair could state that they wish there was more time given. But the judge considered all the factors, including the fact that Mr. Field did come in, plead guilty, cooperate and was helpful." Judge Maddox also determined restitution and imposed a 5-year term of probation for Field. The lack of objection at sentencing waived any issue related thereto.

Field reported to the Anderson County Detention Center on October 11, 2013, as ordered. He was confined there and then transferred to Kirkland. On October 16, 2013, the Director of the Department of Corrections ("D.O.C.") determined Field's credits and good behavior were sufficient to merit release as mandated by S.C. Code §§ 24-13-210 and 220. Such determination is solely within the mandate of the Director(s) of the D.O.C. and the Department of Probation, Pardon and Parole ("D.P.P.P.S.").

Upon release, Field reported to the D.P.P.P.S. Office in Greenville. Field reported to the D.P.P.P.S. regularly and made monthly payments to satisfy court fines, supervision and restitution.

Asst. Dep. Attorney General Waters moved to Reconsider the Sentence, only after he learned of Field's release. The State was dissatisfied with the determination made by the Director

³ Judge Maddox originally set the suspension period at 29 months and then altered it to 26 months.

of the D.O.C., not with the original sentence. The Motion to Reconsider focused upon the improper application of credits by the D.O.C. All other issues were waived.

One week prior to the Motion hearing scheduled for July 2014, the Attorney General prompted D.P.P.P.S. to issue Field a citation of violation for non-payment of the restitution Order of October 8, 2013, allegedly based upon Field's failure to pay \$74,500 per month, as determined by the D.P.P.P.S., which had erroneously amortized the total restitution over 48 months.

Between October 8, 2013 and July 9, 2014, Judge Maddox had ample time to review the State's papers, the facts of the case, the allocution, the sentence, the testimony, the case law, all relevant State and federal precedents, the evolution of relevant laws and his prior determinations. The Motion to Reconsider and the Probation Violation matter were heard by the court on July 9, 2014. Judge Maddox confirmed, on the record,⁴ he had spent many days during the 9-month interval reflecting upon all evidence, the facts, the law and his decisions as to both Field and Pfeiffer, and believed his sentences were correct as to Field, and possibly too harsh as to Pfeiffer.

Asst. Deputy Attorney General Waters again argued both motions, supported by Asst. Attorney General Petrano, and State Investigators Cathey and Jordan. Field's counsel strenuously objected to the State's lengthy argument; namely, the undersigned argued the facts, the law and the sanctity of the Plea Agreement as a complete bar to the Motion to Reconsider.⁵

The Court heard from the author of the Legislative Act concerning the meaning and intent of the Legislature when it amended S.C. Code §24-13-40 to expand pre-sentencing 'time served' computations. The court, once again, evaluated the evidence and the law, and Judge Maddox

⁴ To date, the State has failed to provide a copy of the Record on Appeal and/or a Transcript of the proceedings.

⁵ Members of the public, the CIF Receiver and his attorneys, and CIF victims were also heard at both the original sentencing and in the reconsideration hearing. Field was also given an opportunity to speak; the court considered his sincerity and acceptance of responsibility expressed at the allocution, the sentencing and the reconsideration hearing.

denied the Motion for Reconsideration, indicating he had no desire to change Field's sentence even in light of the effect of the credits applied by the D.O.C. The Court stated it understood the argument of the State, but found that Field had been effectively confined, had been on significant GPS monitoring, had fulfilled the legislative intent of the amended statute, and no purpose would be served by re-incarcerating Field. There was no ambiguity about the court's announced decision.

During the interval between the reconsideration denial and the 'probation violation' hearing, Judge Maddox heard and reconsidered Pfeiffer's Motion to Amend his sentence. After receiving evidence and hearing argument from the Attorney General and from Pfeiffer's counsel—and examining Pfeiffer, the court pronounced a reduction in Pfeiffer's sentence in order to bring it more closely in line with that of Field—which the court, again, acknowledged would remain the same.

The court then took up the matter of Field's alleged probation violation for non-payment. During the hearing, the D.P.P.S. acknowledged Field had already paid all court fines and fees and pre-paid all supervision fees for the 5 years of probation. The Investigators provided testimony to the court, as did officers and attorneys from the D.P.P.S. and the Attorney General again.

Judge Maddox once more assessed the overall situation based on all the facts and evidence adduced, and re-set restitution at \$3,200 per month. The Judge declined to change the sentence or find any probation violation since he purposely wanted Field to continue on probation to pay the remaining restitution. The court had three separate opportunities to visit the issue of the sentence, the reduction, the facts, the evidence, the law and the credits. Two of those were made with the actual knowledge Field had been released after 5 additional days of incarceration and had already completed 9 months of probation in reliance upon the court's original decision.

The Court clearly and unequivocally denied the Motion to Reconsider on the record and determined Field's restitution monthly payment, finding no willful probation violation. These holdings and Orders were recorded by the State Grand Jury Clerk in the presence of the Attorney General, the D.P.P.P.S. attorneys and officers, and Field's counsel and the public.⁶

Field resumed his probationary sentence. Approximately 30 days later, D.P.P.P.S. received the revised signed Order from the State Grand Jury Clerk and confirmed Field was to pay \$3,200 per month. Field has paid in a timely manner and is current in accord with the Court's directive. Field has completed more than 40 months of probation, almost 67% of the assigned term in reliance of the denial of reconsideration by Judge Maddox on July 9, 2014.⁷ Nothing prevented the State from filing this appeal on or before July 19, 2014. Hence, this appeal was not timely served upon Field or his counsel.

No notice of any hearing was given to Field or his counsel of any action in this matter following the July 9, 2014 denial of reconsideration. At some point in February 2015, however, Pfeiffer's attorneys may have sought a revised Order from Judge Maddox to secure Pfeiffer's early release. The undersigned believes it is from such revised Order, which may have peripherally referenced Field, that the State sought to appeal.

Notice of Intent to Appeal was not filed by the State until February 2015—more than 7 months after the denial of reconsideration was pronounced on the record by Judge Maddox in front of the State and its many representatives, Field and his counsel, the Clerk of Court, the State Grand Jury Clerk, the public and the media. This appeal followed.

⁶ The media reported all of the details immediately following the hearing.

⁷ It is reasonable to assume the Order denying reconsideration was or could have been issued at the same time as the Order revising restitution.

LEGAL ARGUMENT

I. THIS APPEAL IS UNTIMELY AND SHOULD, THEREFORE, BE DISMISSED.

Rule 203(b)(2) requires the State serve a notice of appeal "within ten (10) days of ... entry of the order or judgment." Rule 203(b)(2), SCACR. "After a plea...resulting in conviction...a notice of appeal shall be served on all respondents within ten (10) days after the sentence is imposed...." Moreover, pursuant to Rule 29 of the South Carolina Rules of Civil Procedure, post-trial motions must be timely made and toll the 10-day period only until the reconsideration is decided. Rule 29, SCRCP. Failure to timely file notice of appeal deprives this court of jurisdiction, as this court has repeatedly stated. *Sadisco of Greenville, Inc. v. Greenville County Board of Zoning Appeals*, 340 S.C. 57, 59, 530 S.E.2d 383 (2000); *State v. Scott*, 351 S.C.584, 571 S.E.2d 700 (2002). Although written notice is generally required, the gravamen of Rule 203 is to ensure the parties have sufficient notice of the Court's Order.⁸

Accordingly, the State failed to timely appeal Field's sentencing, or the denial of its Motion to Reconsider; therefore, this appeal must be dismissed. Field was sentenced on October 8, 2013. No appeal was filed. The Motion to Reconsider was timely filed, but only subsequent to Field's release, after a determination by the D.O.C. that release was appropriate⁹ The State's Motion to Reconsider was heard—and clearly denied—on July 9, 2014. During the hearing, the Asst. Deputy Attorney General witnessed the denial after several hours of argument on such motion (and on an

⁸ "We find Warren's motion to reconsider her sentence, like the motion to withdraw a guilty plea, is subject to the ten day time period prescribed in Rule 29; thus, because the motion was filed more than three years after imposition of the sentence, Warren's motion is not timely." *State v. Ivory Warren*, No. 4804 (S.C. App. 2011). See *Hill v. S.C. Dep't of Health & Envtl. Control*, 389 S.C.1, 21, 698 S.E.2d 612, 623 (2010); *State v. Brown*, 358 S.C. 382,387, 596 S.E.2d 39, 41 (2004).

⁹ Had Field been incarcerated only 3 days longer or reported to Anderson County on October 14, 2013, the Motion to Reconsider would have been untimely. The same 10 days should be applied to the July 9, 2014 Motion to Reconsider, even if such Motion were not barred by the *Plea Agreement* (as discussed below).

alleged probation violation). There can be no question the State had full actual, express, implied, legal and/or inquiry notice as to the court's Orders on the Record on July 9, 2014 as to all motions pertaining to Field and Pfeiffer.¹⁰ The State did not appeal by July 19, 2014—which would have been 10 days after its Motion for Reconsideration was denied in open court despite ample actual, express, legal and implied notice of Judge Maddox's decision. No appeal was filed until February 2015.

Nevertheless, the law imposes a very strict 10-day time clock to force a party to appeal immediately following sentencing or denial of reconsideration of such sentence—assuming the State even had a right to appeal. In the instant action, the State failed to appeal within the 10-day timeframe prescribed. The State did not act in a timely manner, and Field has been severely prejudiced thereby. As such, law and equity dictate that this appeal should be dismissed or denied.

Should the State argue that a subsequent Order issued regarding Pfeiffer constitutes a final decision regarding Field, this contention has a variety of weaknesses. *Bordeaux v. State*, 410 S.C.495, 765 S.E.2d 143 (2014), establishes that oral pronouncement controls if the Court's decision aligns with a Plea Agreement.¹¹ To the extent any written Order was delayed or ambiguous in the instant action, the oral pronouncement of the sentence and the denial of reconsideration must control. Hence, the ruling on July 9, 2014 should stand. Moreover, even if the Court's articulation of its decision on the record does not control, Field should not be penalized

¹⁰ The Clerk issued a revised Order to D.P.P.S. within 30 days of the July 9, 2014 hearing.

¹¹ An unambiguous sentence pronouncement will control, whether oral or written, if the sentence is in consonance with the Plea Agreement. See, e.g., *Boan v. State*, 388 S.C. 272, 277, 695 S.E.2d 850, 852 (2010)(declining to give effect to an unambiguous sentencing sheet over an unambiguous plea colloquy because to do so would result in deprivation of the defendant's rights to due process).

for any failure of the State or the State Grand Jury Clerk¹² to act in a timely manner, thus delaying the issuance or publication of any further written Order of the Court. Furthermore, the state should not be permitted to misuse any subsequent Order regarding Pfeiffer's release against Field to 're-start' the 10-day time clock. The State should not be allowed to use any subsequent Order entered regarding a co-defendant to 're-start' the 10-day clock.

Field could reasonably have expected the reconsideration denial would be treated the same as the restitution revision Order. The State has not demonstrated any justifiable grounds for the delay, if any existed, in the issuance or execution of such reconsideration Order by the State Grand Jury Clerk, under its control, or Judge Maddox. It is unjust and unfair to penalize Field for such delay, when Field justifiably relied upon the State's inaction and has conducted his life accordingly. Since the sentencing on October 8, 2013, Field has served roughly 67% of his assigned probation, and paid over 39 months of restitution, all court fines and all supervision fees. It is unfair to any defendant to be left 'in limbo' for more than 7 months following a reconsideration hearing, or to permit the 10-day time clock to start ticking again based upon the revision of a co-defendant's Order.

II. THIS APPEAL IS NOT PERMITTED AT LAW BECAUSE OF THE RECIPROCAL WAIVER OF APPEAL CONTAINED IN THE PLEA AGREEMENT.

"Regarding plea bargains in general and the law applicable to them, this State and its courts have generally followed federal Fourth Circuit precedent." *State v. Thrift*, 312 S.C. 282,292, 440 S.E.2d 341, 347 (1994) discussing *Santobello v. N.Y.*, 404 U.S.257 (1971) and *U.S. v. Ringling*, 988 F.2d 504 (4th Cir. 1993). This case must be held to the same standard.

¹² State Grand Jury Clerk of Court, James Parks, has been claimed as an employee, agent of, or under the direction and control of the Attorney General's Office by Attorney General Alan Wilson. See *Pascoe v. James R. Parks, Clerk of Court for the State Grand Jury*, 2016-000671 (S.C. 7/13/2016).

In *United States v. Guevera*, 941 F.2d 1299 (4th Cir. 1991)(rehearing *en banc* denied by 8 to 4 vote, 90-5840 11/14/91) *cert. den.* 503 U.S.977 (1992)), the Fourth Circuit held that “a plea agreement provision that bars the defendant from appealing, but is silent as to the government’s right to appeal, *must* be construed as imposing a reciprocal limitation on the Government’s right to challenge a judgment or sentence imposed by the...court.” *Id.* at 1299. The Fourth Circuit quoted *Guevera, supra*, with approval in *U.S. v. Blick*, 408 F.3d 162, n.5 (4th Cir. 2005)(“when a defendant waives the right to appeal in a plea agreement, ‘such a provision against appeals must also be enforced against the government’.”)

The Fourth Circuit has made it abundantly clear if the Government causes a defendant to waive appellate rights, but wishes to reserve appellate rights to itself, it must *explicitly* do so in the Plea Agreement. *Id.*¹³ Failure to make such an explicit reservation by the State causes a waiver. *Guevera* rests on the view that a guilty-plea agreement that includes a defendant’s appeal waiver but not one by the state is far too “one-sided” if it were to be construed to allow the government to appeal. *Id.* at 1299. *Guevera* is good law in this Circuit and is a sound result. It was the law of this Circuit in effect at the time the State drafted the Plea Agreement in this matter and the State had actual, legal and/or constructive notice thereof.

This Appeal contravenes that constitutional holding. Field was induced by the Plea Agreement to waive his state and federal constitutional rights to appeal or to seek habeas corpus—

¹³ The U.S. Attorney acknowledges that failure to explicitly reserve the right to appeal to the government waives such right, but that such waiver is often needed in order to obtain a Plea Agreement. “In the interest of striking a bargain, [the government] may decide that it is necessary for the government to waive its appeal rights... This may be especially appropriate when a negotiated plea reflects the parties’ agreement in connection with a particular sentence, sentencing range, or guideline application.” *U.S. v. Guevera, supra*. The Attorney General often tries to enforce plea agreements appellate waivers by defendants in South Carolina and the same restriction should be applied to the State herein based upon *Guevera*.

both are significant rights. Field waived the right to appeal by signing the Plea Agreement; such waiver is automatically reciprocal. As such, the appeal should be dismissed as a direct violation of the Plea Agreement and of Field's Constitutional rights. Pursuant to the Plea Agreement, Field specifically and irrevocably waived his state and federal rights to appeal or collaterally attack his sentence—and the State agreed such sentencing was intended to be final and complete. Paragraph 7 of the agreement provides as follows:

(7) Waiver of direct appeals and collateral attacks: Mr. Field hereby waives any entitlement to and agrees never to pursue any and all direct appeals, post-conviction relief applications and appeals therefrom, state habeas corpus petitions and appeals therefrom, federal habeas corpus petitions and appeals therefrom, or any and all other methods of direct or collateral review of these convictions and sentences. Mr. Field hereby acknowledges that he fully understands the nature and extent of the direct and collateral review he is waiving and is making the waiver in this provision freely, intelligently, and voluntarily. *It is the intent of the parties that this agreement and the resulting pleas and sentences finally conclude any and all existing or possible legal proceedings related to indictment 12-GS-47-008 whether direct or collateral, and that all that remains is for Field to serve any sentence given by the Court in the manner provided by state law.* (Emphasis added)

There is no contention that Field breached such Plea Agreement at any time. On the contrary, the State was extremely satisfied with Field's performance and confirmed such to Judge Maddox at sentencing and to the media immediately following such sentencing. Field's counsel raised objection to the State's Motion to Reconsideration based upon the Plea Agreement covenants in the hearing before Judge Maddox on July 9, 2014, thereby preserving all issues for this court.

The Plea Agreement did not permit any objection at any time during or following sentencing and is binding on the State. Even the Motion to Reconsider violated the Plea Agreement, and the right to bring such Motion was not preserved. *The State did not explicitly preserve to itself any appellate right whatsoever in the Plea Agreement.* Indeed, the Plea Agreement indicates it expressly "is the intent of the parties that this agreement and the resulting

pleas and sentences finally conclude *any and all existing or possible legal proceedings* relating to the indictment 12-GS-47-008 whether direct or collateral...” That would certainly appear to include the State in such provision barring both reconsideration and this appeal.¹⁴

The Attorney General drafted the Plea Agreement and had full benefit of Field’s cooperation. It is immensely unfair to permit the State to renege on such binding Agreement. This must not be permitted, as a waiver by the State is a waiver for all time and on all issues.

As such, the State has waived all its appellate rights, both as a matter of contract and of law applicable in this Circuit and State. Hence, this appeal must be dismissed immediately in the interests of equity and justice.

III. THE STATE’S MOTION TO RECONSIDER THE SENTENCE AND THIS APPEAL ARE MATERIAL BREACHES OF THE PLEA AGREEMENT OF WHICH FIELD IS ENTITLED TO SPECIFIC PERFORMANCE.

“The plea agreement process is an essential aspect of the administration of criminal justice ...As a result, the courts have a vital interest in assuring such agreements are adhered to and handled properly.” *U.S. v. Harvey*, 791 F.2d 294, 300 (4th Cir. 1986). A Defendant is entitled to the full benefit of the bargain of the contractual Plea Agreement. *State v. Thrift*, 312 S.C. 282, 292, 440 S.E.2d 341, 347 (1994). “When a plea rests in any significant degree on a promise...of the prosecutor so that it can be said to be part of the inducement or consideration, such promise must be fulfilled.” *Santobello v. U.S.*, 404 U.S.257,262, 92 S. Ct. 495, 30 L.Ed.2d 427 (1971). A Plea Agreement rests on contractual principles and each party is entitled to receive the benefit of its bargain even if the result is a considerably reduced sentence by the court. See, *U.S. v. Dawson*,

¹⁴ And, if that is not the case, then Field did not enter into this Plea Agreement knowingly and voluntarily or it was obtained by the State through false inducements and under false pretenses.

587 F.3d 640,645 (4th Cir. 2009); *U. S. v. Ringling*, 988 F.2d 504 (4th Cir. 1993); *U.S. v. Dews*, 551 F.3d 204 (4th Cir. 2008)(sentence reduced). Plea Agreement analysis must be more stringent than a commercial contract, because the rights involved are fundamental and constitutionally based. The State has to be held to a higher degree or responsibility than the defendant for imprecisions or ambiguities. *Id.*; *Thrift, supra*.

The State may not withdraw from the plea arrangement or do any act in derogation of the contract. *Custodio v. State*, 373 S.C. 4, 644 S.E.2d 36 (S.C. 2007)(specific enforcement mandated); *U. S. v. White*, 366 F.3d 291 (4th Cir. 2004) (Government's refusal to abide by ... promise would clearly constitute evidence of "government overreaching" or "fraud in the inducement"). Prosecutors are legally obligated to fulfill the promises they make to defendants who are induced to plead guilty. *State v. Miller*, 375 S.C. 370, 652 S.E.2d 444 (Ct.App. 2007). And defendants have an absolute right to the enforcement of the plea agreement after its acceptance by defendant, performance and approval by the court. The prosecution is not permitted to renege. *Jordan v. State*, 297 S.C. 152, 374 S.E.2d 683 (1988); *Santobello v. N.Y.*, 404 U.S. at 262 (1971).

Moreover, "A defendant entering into a plea agreement with the government undertakes to waive certain fundamental constitutional rights; because of that waiver, the government is required to meet the most meticulous standards of both promise and performance." *U.S. v. Gonczy*, 357 F.3d 50, 53 (1st Cir. 2004). The analysis of whether the defendant is receiving every advantage and benefit of the bargain is conducted with great scrutiny in his favor since the defendant has waived so many fundamental rights. *U.S. v. McQueen*, 108 F.3d 64, 66 (4th Cir. 1996). "As a result, the government is held to a greater degree of responsibility than the defendant (or possibly than would either of the parties to a commercial contract) for imprecisions or ambiguities in plea agreements." *U.S. v. Wood*, 378 F.3d 342,348 (4th Cir. 2004). On appeal, this court must enforce

the Plea Agreement against the State according to its terms, regardless of the State's wisdom or folly in not protecting its rights to object to the sentence, move to reconsider or appeal. *State v. Compton*, 366 S.C. 671, 678, 623 S.E.2d 661, 665 (Ct.App. 2005).

"The breach of a promise made to induce a defendant to enter into a guilty plea-and thereby waive important constitutional rights-harms not only the defendant, but...involves the honor of the government, public confidence in the fair administration of justice, and the effective administration of justice..." *McQueen, supra*, 108 F.3d at 66. "Because a government that lives up to its commitments is the essence of liberty under law, the harm generated by allowing the government to forego its plea bargain obligations is one which cannot be tolerated." *U.S. v. Peglera*, 33 F.3d 412, 414 (4th Cir. 1994).

The Motion to Reconsider in the instant action was a material breach of the contractual Plea Agreement, as is the instant appeal. Such breaches caused direct, substantial damage to Field. Field was induced to enter into the Plea Agreement and cooperate by the State's covenant not to challenge any portion of the sentencing-- as represented to Field by the State and its officers during the proffer and as set forth in Paragraphs 6 and 7 of the Plea Agreement. The State and its representatives informally and formally represented to Field and his undersigned counsel that it would not challenge the court's sentence at any time in any manner. It expressly promised in the Plea Agreement not to seek any specific sentence nor oppose any sentence pronounced nor enter into any further existing or possible legal proceedings based upon the indictment. The Agreement clearly states it concludes all actions and bars any further 'existing or possible' legal proceedings by either party. The Motion to Reconsider and this appeal certainly fall within that prohibition.

The State drafted the Plea Agreement and Field is entitled to a liberal interpretation in his favor. The court has no basis to 're-write' it for what the government now wants it to mean to permit the challenge to the sentence.

Upholding a Plea Agreement in a defendant's favor, is even more important when a defendant, such as Field, provides substantial cooperation in furtherance of the public interest of obtaining resolution of criminal cases without the necessity of trial, as Judge Maddox determined Field had done in regards to Pfeiffer. See *State v. Mathis*, 287 S.C. 589, 592, 340 S.E.2d 538, 540 (1986). The appropriate remedy is the specific performance of the Plea Agreement and construction of all its terms in Field's favor. *State v. Sprouse*, 355 S.C. 335, 585 S.E.2d 278 (2003). Here, the Attorney General has willfully violated the Plea Agreement and this appeal must be denied, or the Plea was improperly extracted from Field or is vague and must be construed against its authors, the State.

Credits for 'time served' is a portion of the sentence and appears on every sentencing sheet signed by Judge Maddox on October 8, 2013. The sentence, the reduction, and the credits were based upon Field's cooperation, his entry of a plea, his acceptance of responsibility, and the time spent in incarceration and then confined to his home while under strict GPS monitoring. All components made up the sentence pronounced.

The undersigned, as Field's counsel, argued at the July 9, 2014 reconsideration hearing that the State sought to effectively increase Field's period of actual incarceration without presenting any new facts or previously unavailable argument of law to justify its request. The State could only achieve such goal by objecting to the actual sentence and seeking a specific sentence of its own. Objecting to any sentence imposed and time credits awarded by Judge Maddox on October 8, 2013, was a direct breach of the letter and spirit of the Plea Agreement. Field's counsel

vehemently objected to the State's attempt to 'back door' the prior sentencing. Field upheld his side of the bargain and was legally entitled to specific performance, and such agreement must be construed in Field's favor. Any other result violates public policy and deprives Field of due process and substantial rights. The court determined that Field was entitled to the benefit of such bargain and that the primary intent of the Plea Agreement and sentencing had been fulfilled in its denial of the State's Motion to Reconsider.¹⁵

Similarly, this appeal is an attempt to increase the period of incarceration and is a contractually forbidden attack on the original sentence. This appeal must be dismissed as an improper violation of such Plea Agreement and/or the appeal should be denied and the sentence upheld. Failure to do so will violate public policy, which favors Plea Agreements as inducement to obtain guilty pleas without the necessity of a trial. It would also send a message to all defendants not to enter into such an Agreement with the State for fear of being reneged upon.

IV. THE LOWER COURT'S SENTENCE SHOULD BE AFIRMED, AS JUDGE MADDOX PROPERLY USED HIS DISCRETION IN IMPOSING FIELD'S SENTENCE.

This court will give the trial court's finding great deference on appeal and review the trial court's ruling with a clearly erroneous standard. The trial court will not be reversed unless the appellant has shown a gross abuse of that discretion. *State v. Allen*, 370 S.C. 88, 94, 634 S.E.2d 653, 655 (2006). Where there is any evidence to support the court's factual findings, there is no abuse of discretion. *Id.* Such tenet is almost always applied against a defendant to uphold sentencing. It should be similarly applied to uphold the outcome herein. It is the responsibility of the trial judge to determine the priority and relationship of sentencing *objectives* in any particular

¹⁵ See *State v. Blackmon*, 304 S.C. 270, 273, 403 S.E.2d 660, 662 (1991); *State v. Dingle*, 376 S.C. 643, 649, 659 S.E.2d 101, 105 (2008)(State estopped from asserting ineligibility for parole after Plea Agreement).

case. 24 C.J.S. *Criminal Law* § 1460. Judge Maddox's Order indicates the *objective* of his sentence was fully met by the result herein.

As held in *State v. Brouwer*, 346 S.C. 375, 550 S.E.2d 915 (Ct.App. 2001) (sentence reduction affirmed):

A trial judge is allowed broad discretion in sentencing...*Brooks v. State*, 325 S.C. 269, 481 S.E.2d 712 (1997); *Garrett v. State*, 320 S.C. 353, 465 S.E.2d 349 (1995). See also *State v. Franklin*, 267 S.C. 240, 226 S.E.2d 896 (1976)(trial judge is given wide discretion in determining what sentence should be imposed).... The role of appellate courts in reviewing sentences is to determine: (1) whether the exercise of discretion by the sentencing court was based upon findings of fact grounded in competent, reasonably credible evidence; (2) whether the sentencing court applied the correct legal principles in exercising its discretion; and (3) whether the application of the facts to the law was such a clear error of judgment that it shocks the conscience. *State v. Megargel*, 673 A.2d 259 (N.J. 1996). There is a strong public policy against interference with a trial court's sentencing discretion. See *State v. Echols*, 499 N.W.2d 631 (Wis. 1993). The trial court has broad discretionary powers in imposing a sentence because it is generally in a better position than the reviewing court to determine the appropriate sentence by weighing such factors as the defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age. *People v. Hernandez*, 745 N.E.2d 673 (Ill. App. Ct. 2001).

In criminal cases, the appellate court reviews only harmful errors of law and is bound by the factual findings of the trial court unless the findings are clearly erroneous. *State v. Bryant*, 372 S.C. 305, 312, 642 S.E.2d 582, 586 (2007). There is a strong public policy in favor of upholding any reasonable sentence that does not amount to a gross abuse of discretion, especially after the trial court has had an opportunity to reconsider its original decision and expressed its intent in the sentencing. See, *Gall v. U.S.*, 552 U.S.38, 128 S.Ct.586, 591 (2007)(sentencing reviewed under deferential standard).¹⁶ The authority to change a sentence rests solely and exclusively within the discretion of the sentencing judge. *State v. Smith*, 276 S.C. 494, 498, 280 S.E.2d 200, 202 (1981).

¹⁶ "[A] sentence of imprisonment may work to promote not respect, but derision, of the law if the law is viewed merely as a means to dispense harsh punishment without taking into account the real conduct and circumstances in sentencing." *Id.*

Field voluntarily entered a guilty plea in May, 2013, based on an Agreement with the State resulting from Field's proffer Agreement. The Plea Agreement allowed the State to defer sentencing and to choose when the sentencing hearing would occur. The State had more than 5 months to prepare for the sentencing hearing, which it scheduled for October 8, 2013. On that date, the State presented evidence and legal argument, never objecting to the sentence imposed, the period of incarceration, or the award of 16 months and 3 days of 'time served' credit in return for Field's cooperation and voluntary plea.

Nevertheless, Judge Maddox, a highly experienced jurist, had from October 18, 2013 through July 9, 2014 to reflect upon his ruling. The Court entertained legal and factual argument and listened to witnesses, including victims, CIF counsel, and state investigators, at the Motion to Reconsider hearing. The Court also heard from the statute's Legislative sponsor as to the overall intent of the statute and the parameters of GPS monitoring in general as well as Field's experience being monitored.

The Court took the State's concerns, legal argument and evidence into account prior to confirming the original sentence and credits based upon the facts before it. The Court held even if the State's legal argument had some merit, the actual outcome of the sentence, the credits and the subsequent release of Field fulfilled the court's intent in its original sentence under all the circumstances before Judge Maddox. The court confirmed such intent by similarly denying any attempt to revoke Field's probation. Judge Maddox determined the State's goal in obtaining such restitution was paramount and outbalanced any other goal under the circumstances, particularly retribution for a non-violent offender who pled guilty after providing substantial assistance to the State. This court should not undermine such determination or a lower court's discretion in sentencing.

The court's sentence and denial of reconsideration is entitled to great deference and should be affirmed. *Dorchester County Dep't of Soc. Servs. v. Miller*, 324 S.C. 445, 452, 477 S.E.2d 476, 477 (Ct.App. 1996). Judge Maddox made factual findings which should not be disturbed absent a gross abuse of discretion.¹⁷ The sentence should be affirmed as determined by Judge Maddox in October 2013, and then as confirmed by the court's denial of the State's Motion to Reconsider in July 2014. Field has served 40 months of probation and has an exemplary record and timely pays all restitution as ordered. Substantial justice has been accomplished and the appellate court should support trial court judges in their sentencing determinations.

V. THE MOTION TO RECONSIDER IS NOT PROPERLY BEFORE THE COURT BASED ON THE LACK OF NEW EVIDENCE TO CONSIDER.

Motions regarding Rule 59(e) of the *South Carolina Rules of Civil Procedure* are not a vehicle through which a party can inject new issues for the court to pass on, and they similarly are not a way to get new arguments of fact or law in through the back door. *Hickman v. Hickman*, 301 S.C. 455, 456, 392 S.E.2d 481, 482 (Ct.App. 1990). See also, *Spreeuw v. Barker*, 385 S.C. 45, 682 S.E.2d 843 (Ct.App. 2009); *Kiawah Prop. Owners Group v. Pub. Serv. Comm'n of S.C.*, 359 S.C. 105, 113, 597 S.E.2d 145, 149 (2004); *State v. Sullivan*, 310 S.C. 311, 314, 426 S.E.2d 766, 768 (1993). In the absence of new information, a Motion to Reconsider under either Rule 59(e) or Rule 29 is not appropriate. *Mayfield v. Natl. Ass'n for Stock*, 674 F.3d 369 (4th Cir. 2012)(denial

¹⁷ See *State v. Parker*, 671 S.E.2d 619, 381 S.C. 68 (Ct.App. 2008)(denial of motion to reconsider affirmed where no new information presented at motion to reconsider that could not have been presented at original hearing). ... "On appeal, the trial court's ruling will not be disturbed absent a prejudicial abuse of discretion..." *State v. Sheldon*, 344 S.C. 340, 342, 543 S.E.2d 585, 585-86 (Ct. App. 2001). The court's ruling was not so clearly erroneous as to offend substantial justice. *State v. Quattlebaum*, 338 S.C. 441, 527 S.E.2d 105 (2000); *State v. Amerson*, 311 S.C. 316, 428 S.E.2d 871 (1993); *State v. Landis*, 362 S.C. 97, 606 S.E.2d 503 (Ct. App. 2004).

of reconsideration affirmed based on lack of any evidence or argument that could have been raised at initial hearing).

To constitute ‘new evidence’ such information must have been discovered since the original hearing and must not have been discoverable before the hearing through the exercise of reasonable diligence. See, e.g., *Lanier v. Lanier*, 364 S.C. 211, 217, 612 S.E.2d 456, 459 (Ct.App. 2005). Similarly, in *Wright v. Town of Glennarden*, 89 F.3d 831 (4th Cir. 1996), the court held that there was no abuse of discretion in refusing to consider allegedly ‘new’ evidence in denial of reconsideration when such could have been presented at original hearing.

Hence, if the State does not raise any issue at sentencing, it is barred from doing so thereafter. The State is not allowed to ‘do over what it thought it had already done correctly’ *Colten v. Kentucky*, 407 U.S.104, 117, 92 S.Ct. 1953, 1960 (1972).” *State v. Higgenbottom*, 344 S.C. 11, 542 S.E.2d 718 (S.C. 2001)(harsher sentence vacated); *Patterson v. Reid*, 318 S.C. 183, 185, 456 S.E.2d 436, 437 (Ct.App. 1995).

At Field’s sentencing hearing on October 8, 2013, the State had every opportunity to present its arguments before Judge Maddox. The court allowed statements from the victims, CIF’s Receiver and attorneys, and other members of the public. Deputy Attorney General Waters, having been present at all hearings before Judges Cooper, Benjamin and Maddox, had actual or constructive notice of all relevant statutes and case law applicable within this State and the Fourth Circuit.

The court pronounced sentence, determined 29 months should be served, then reduced such term to 26 months after hearing from Field. Judge Maddox then discussed the credits to be applied for what he determined was ‘time served’ based upon the arguments of counsel and the evidence

before him. After considering the facts, the evidence and the law, the court decided to award 16 months and 3 days of credit against the sentence.

The State raised its objection only *after* the D.O.C. calculated the effect of all the credits against the sentence and properly released Field. The State had every opportunity to make the same calculation prior to the pronouncement of the sentence on October 8, 2013 but failed to do so. Consequently, the court properly denied the motion to reconsider, even though Judge Maddox again afforded the State opportunity to make argument in violation of the State's covenant not to do so in the Plea Agreement.

Judge Maddox correctly determined the remedy of reconsideration is extraordinary and should be applied sparingly and only in exceptional circumstances.¹⁸ There were no new facts for Judge Maddox to consider, which had existed prior to the original sentencing. It was only the events which took place after the sentencing that caused the Motion to Reconsider to be raised, and, as such, those events were not proper grounds for reconsideration.

Accordingly, all factual and/or legal matters pertaining to Field were fully known to the State at the time of sentencing and failure to raise them constituted waiver. See *Jean v. Gonzalez*, 435 F.3d 475 (4th Cir. 2006)(denial of reconsideration affirmed; court will only review for gross abuse of discretion).

The calculation of the D.O.C. and the release of Field did not constitute 'new evidence.' Nor was an argument of law previously raised by the State at the sentencing. The Motion to Reconsider was properly denied and such denial should be affirmed or every aggrieved party will raise post-sentencing matters in Motions to Reconsider and then on appeal.

¹⁸ See *EEOC v. Lockheed Martin Corp.*, 116 F.3d 110, 112 (4th Cir. 1997); *Ackermann v. U.S.*, 340 U.S.193, 202(1950).

VI. THERE WAS NO GROSS ERROR OF LAW, AS THE COURT ADHERED TO SOUTH CAROLINA STATUTES AND INTERPRETED SUCH STATUTE LIBERALLY TO EFFECTUATE THE INTENT OF THE COURT'S SENTENCE AND THE IMPLICIT INTENT OF THE LEGISLATURE.

"[P]enal statutes are to be construed strictly against the State and in favor of the defendant. *Williams v. State*, 306 S.C. 89, 91, 410 S.E.2d 563, 564 (1991)". See also, *Hair v. State*, 305 S.C. 77, 79, 406 S.E.2d 332, 334 (1991)(Construing time frames for eligibility in favor of defendant and against State); *State v. Graves*, 269 S.C. 356, 360, 237 S.E.2d 584, 586 (1977) (Because statute is penal in nature "we must... resolve any uncertainty or ambiguity against the State and in favor of the respondent."¹⁹

Bill H3193, entitled "A Bill to Amend Section 24-13-40, as Amended..." was introduced on December 18, 2012. The Bill passed the House on March 6, 2013, by a vote of 94 to 17. The Senate passed the bill on May 15, 2013 with amendments by a vote of 39 to 2. The House concurred by unanimous vote and the ratified Bill was signed by the Governor on June 7, 2013.²⁰ S.C. Code § 24-13-40. The Act states the credits are to be determined at the time of sentencing, which took place October 8, 2013 in the instant action.

¹⁹ The cardinal rule of statutory interpretation is to determine legislative intent. *Bass v. Isochem*, 365 S.C. 454, 617 S.E.2d 369 (Ct.App. 2005). Legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute." *State v. Brannon*, 666 S.E.2d 272, 379 S.C. 487 (Ct.App. 2008). The purpose of the statute is to award credits against the sentence and in favor of the prisoner and the Legislature recognized the actual 'severity' of GPS monitoring.

²⁰ The Bill was available on the South Carolina Legislative website from December 18, 2012, and the final text was updated on May 8, 2013. The State had actual or constructive knowledge of H3193's introduction, passage, ratification and approval as Act #34 at all times relevant hereto. The undersigned House Minority Leader certifies it was the Legislature's intent to override *Higgins* and to provide full credit for time served on all GPS monitoring.

The Legislature also delineated between “time served” and the more encompassing term ‘any time spent’ employed in relation to GPS monitoring.²¹ And, it clearly applies to all time on bail release. Otherwise there would be no time ‘prior to trial’. The Legislature obviously intended to greatly liberalize the original Section 24-13-40.

This was known to the Court, the State and the Defendant on October 8, 2013 and on July 9, 2014. The Court carefully considered the extensive cooperation of Field, his guilty plea, his remorse, his incarceration, his GPS monitored confinement from July 2012 through October 8, 2013, and awarded Field 16 months and 3 days of ‘time served.’ Namely, the Court held Field successfully completed 33 days of incarceration in a Detention Center and an additional 15 months of GPS monitored ‘house arrest’ and confirmed such determination in its subsequent denial of reconsideration. These holdings were within the letter and spirit of S.C. Code § 24-13-40, as amended, and as intended by the Legislature, as attested to by the undersigned, the sponsor of the Amendment. The statute provides for credit for ‘any’ time served on a GPS monitor prior to sentencing. Such must refer to time on court ordered bail release, since there could be no other interpretation. Field was sentenced after the effective date so the law applies and the Court properly awarded the credits. It is fundamental that the court construes the statute to give effect to the obvious Legislative intent to provide for such credits. Judge Maddox was correct and should be affirmed.

²¹ The language must be read to harmonize with its subject matter and accord with its general purpose. *Mun. Ass'n of S.C. v. AT & T Commc'ns of S. States, Inc.*, 361 S.C. 576, 580, 606 S.E.2d 468 (2004). In construing a statute, the court looks to the language as a whole in light of its manifest purpose. *State v. Dawkins*, 352 S.C. 162, 573 S.E.2d 783 (2002). The State also enacted S.C. Code Sec. 24-13-1520 providing for ‘home detention’. These statutes are to mitigate incarceration and to benefit offenders and to provide an alternative for the State for the expense of incarceration.

VII. THE APPLICATION OF GOOD BEHAVIOR CREDITS BY THE DEPARTMENT OF CORRECTIONS WAS PROPER.

The Motion to Reconsider was filed in direct response to the action of the Director of the D.O.C. in releasing Field in less time than the State anticipated. Credits for good behavior are statutorily mandated by S.C. Code § 24-13-210(A), *et seq.* It is within the sole purview of the Director to determine credits applicable to a sentence, S.C. Code § 24-13-80(5), § 24-13-220, and to reduce a sentence, S.C. Code § 24-13-230. Only the Director of the D.O.C. may reduce or forfeit credits for good cause. S.C. Code § 24-13-210. The Director may promulgate rules and regulations, S.C. Code § 24-1-90, and is vested with the exclusive management and control of the prison system, and is responsible for the proper care, treatment and management of the prisoners. S.C. Code § 24-1-130. The Director may designate as a place of confinement any available facility, whether maintained by the D.O.C., or by some other entity. S.C. Code §§ 24-3-20 and 30. Any objections the State may have should have been timely directed to the D.O.C. or the Legislature. They were not relevant on a motion to reconsider or on an appeal of a sentence.²²

The State's argument is with the D.O.C. and should have been raised in a timely administrative hearing. Such argument was waived.

²² See *Major v. South Carolina Dep't of Probation, Parole and Pardon Services*, No. 26672 (S.C. 06/15/2009), where the Supreme Court, per Beatty, J., stated:

Confined by these legislative enactments, and the doctrine of separation of powers, a sentencing court is not authorized to determine parole eligibility. Instead, a court's final judgment in a criminal case is the pronouncement of the sentence which includes the ability to designate whether sentences run concurrent or consecutive, subject to statutory restrictions. *State v. McKay*, 300 S.C. 113, 115, 386 S.E.2d 623, 623 (1989); see *De La Cruz*, 302 S.C. at 15, 393 S.E.2d at 186 ("Judicial discretion in sentencing, in suspending sentences, and in designating that sentences run concurrent or consecutive"). In effectuating a sentencing court's order, the Department has the sole authority to look to the statutes to determine whether a defendant is eligible for parole separate and apart from the court's authority to sentence a defendant. See *Dingle*, 376 S.C. at 649, 659 S.E.2d at 104-05 (noting that the Department has the sole authority to determine [credits or parole] eligibility separate and apart from the court's ability to sentence); *Cooper v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 377 S.C. 489, 496, 661 S.E.2d 106, 110 (2008).

Field has successfully completed over 40 months of his 5-year probation. He has a perfect probation record. Field has timely paid \$3,200 in monthly restitution without fail. He is the model probationer, and the purpose of the South Carolina criminal justice system has been amply served. It would be unjust and inequitable to vacate Judge Maddox's evaluation of the needs of the State, the aims and goals of the criminal justice system, or the exemplary hard work of Field, both before and after sentencing.

CONCLUSION

The Motion to Reconsider was properly denied by the lower court. Any objection the State may have had to the calculation of credits awarded should have been raised at the initial sentencing or to the Department of Corrections at the time of Field's release, is now untimely, and is not a proper subject for a motion to reconsider or this appeal. Accordingly, the sentence of the lower Court should be affirmed. It was within the court's discretion, any error is harmless, and the State expressly waived all right to contest such sentence in the Plea Agreement. Thus, depriving Field of the right to appeal effectively bars this untimely appeal.

For the foregoing reasons, the appeal should be dismissed or denied and the decision of the court below should be affirmed in all respects.

Respectfully Submitted,

By: _____



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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE CIRCUIT COURT

Judge J. Cordell Maddox, Jr.

Case No. 2015-000210

Arthur Field, Respondent,

v.

The State, Appellant.

Proof of Service

RECEIVED
APR 17 2017
SC Court of Appeals

I certify that I have served the *Final Brief of Respondent* by depositing three copies in the United States Mail, postage prepaid, on April 17, 2017, addressed to each of the State's attorneys of record:

Samuel Creighton Waters, Esq.
Brian T. Petrano, Esq.
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April 17, 2017



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Attorney for Respondent

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Appellant,

v.

Arthur M. Field, Respondent.

Appellate Case No. 2015-000210

Appeal From State Grand Jury
J. Cordell Maddox, Jr., Circuit Court Judge

Unpublished Opinion No. 2017-UP-455
Submitted October 1, 2017 – Filed December 6, 2017

AFFIRMED

Attorney General Alan McCrory Wilson, Assistant
Deputy Attorney General Samuel Creighton Waters, and
Assistant Attorney General Brian T. Petrano, all of
Columbia, for Appellant.

James Todd Rutherford, of The Rutherford Law Firm,
LLC, of Columbia, for Respondent.

PER CURIAM: The State appeals an order denying its motion to reconsider
Arthur M. Field's sentencing. The State contends Field improperly received credit

for pre-trial time during which he was on GPS monitoring but not on home confinement. We affirm.

Field was placed on home confinement and GPS monitoring when he was released on bond. After Field moved to have both restrictions removed, the presiding circuit court judge ruled from the bench she would "take the house arrest off so he can go" but would "leave the bracelet on." The written order issued after the hearing, however, specified "home confinement except to meet with attorney, doctor visit, religious service." Notwithstanding the circuit court judge's verbal comments, the written order controls. *See First Union Nat'l Bank of S.C. v. Hitman, Inc.*, 308 S.C. 421, 422, 418 S.E.2d 545, 545 (1992) ("[A] judge is not bound by [a] prior oral ruling and may issue a written order which is in conflict with the oral ruling."). Therefore, we hold the credit Field received was for "time spent under monitored house arrest" pursuant to section 24-13-40 of the South Carolina Code (Supp. 2016).

AFFIRMED.¹

SHORT, KONDUROS, and GEATHERS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM PICKENS COUNTY

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The Honorable J. Cordell Maddox, Jr., Circuit Court Judge DEC 20 2017

SC Court of Appeals

Case No. 2015-000210

THE STATE, ... APPELLANT,

v.

ARTHUR M. FIELD, ... RESPONDENT.

Unpublished Opinion 2017-UP-455, filed December 6, 2017

Petition for Rehearing

On December 6, 2017, this Court issued an opinion in which it affirmed the decision of the sentencing Court's order granting Respondent credit for pre-trial time during which he was on GPS monitoring but not on home confinement. State v. Field, Unpub. Op. No. 2017-UP-455 (S.C. Ct. App. filed December 6, 2017). Appellant respectfully petitions for rehearing per Rule 221, SCACR.

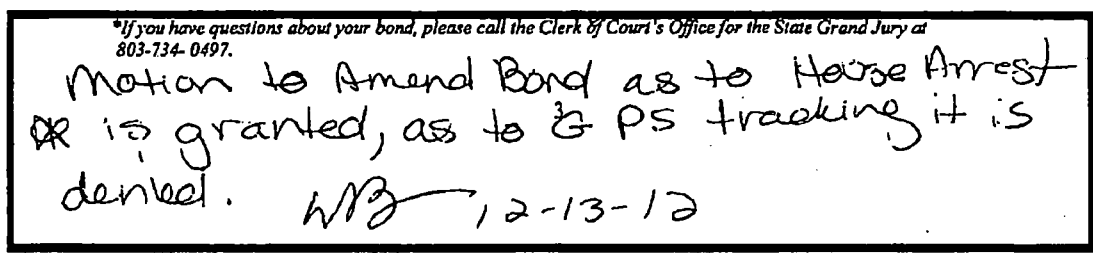
Appellant absolutely agrees with this Court's legal analysis. Appellant does however respectfully submit that this Court's legal conclusion is

predicated on a factual error. This Court's decision states the following:

Field was placed on home confinement and GPS monitoring when he was released on bond. After Field moved to have both restrictions removed, the presiding circuit court judge ruled from the bench she would “take the house arrest off so he can go” but would “leave the bracelet on.” The written order issued after the hearing, however, specified “home confinement except to meet with attorney, doctor visit, religious service.” Notwithstanding the circuit court judge's verbal comments, the written order controls. (“[A] judge is not bound by [a] prior oral ruling and may issue a written order which is in conflict with the oral ruling.”). Therefore, we hold the credit Field received was for “time spent under monitored house arrest” pursuant to section 24-13-40 of the South Carolina Code (Supp. 2016).

State v. Field, Unpub. Op. No. 2017-UP-455 (S.C. Ct. App. filed December 6, 2017) (internal citations removed).

Appellant submits that there is nothing inconsistent with the written and verbal orders amending the bond conditions – the amendment is written on the bottom of the page of the order. (R. p. 153). The written Bond Order signed by Judge Benjamin amended on December 13, 2012 – the day of the hearing expressly removed the House Arrest component, “[t]he Motion to Amend Bond as to House Arrest is granted; as to GPS tracking it is denied”. (R. pp. 151 – 154). This amendment was done so – verbally and in writing:



(R. p. 153). The Court must have overlooked this handwritten amendment.

As explained in the Final Brief of Appellant, it was Respondent who made the motion to reconsider bond, which was heard before Judge Benjamin

on December 13, 2012. Respondent's counsel expressly asked that Respondent be taken off of the house arrest *and* the GPS monitoring. (R. pp. 142 - 143). Judge Benjamin - as requested by Respondent - removed the house arrest component, and did so in writing. (App. Br. pp. 4 - 5). Both monitoring and house arrest must be present, and Respondent simply did not have house arrest after December 13, 2012 despite the fact that he was monitored, then by the plain and unambiguous language of S.C. Code § 24-13-40 he was not legally entitled to credit beyond that date.

WHEREFORE, because the Order removing House Arrest was done so in writing, Appellant requests this Court grant the Petition for Rehearing and rehear the case.

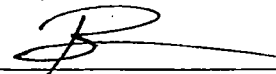
Respectfully submitted,

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Attorney General

S. CREIGHTON WATERS
Senior Assistant Deputy Attorney General

BRIAN T. PETRANO
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By: 

ATTORNEYS FOR THE APPELLANT

Columbia, South Carolina
December 18, 2017.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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DEC 20 2017

Appeal from Pickens County
The Honorable J. Cordell Maddox, Jr., Circuit Court Judge

SC Court of Appeals

Appellate Case No. 2015-000210

THE STATE,

Appellant,

vs.

ARTHUR M. FIELD,

Respondent.

PROOF OF SERVICE

I certify that I have served the *Petition for Rehearing* by depositing a copy in the United States Mail; postage prepaid, on December 18, 2017, addressed to his attorney of record:

Mr. James Todd Rutherford
The Rutherford Law Firm, LLC
PO Box 1452
Columbia, SC 29202-1452

December 18, 2017.

ALAN WILSON
Attorney General

BRIAN T. PETRANO
Assistant Attorney General



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ATTORNEYS FOR THE
STATE OF SOUTH CAROLINA



ALAN WILSON
ATTORNEY GENERAL

December 18, 2017

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RECEIVED

DEC 20 2017

SC Court of Appeals

RE: State v. ARTHUR M. FIELD,
Appellate Case No. 2015-000210

Dear Ms. Kitchings:

Enclosed for filing in the above matter are the following:

- (1) Original plus six (6) copies of the *Petition for Rehearing*.
- (2) Proof of Service of the above items to Respondent's attorney of record.

Sincerely,

BRIAN T. PETRANO
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BPETRANO@SCAG.GOV

cc: Mr. James Todd Rutherford
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ATTORNEY FOR RESPONDENT

ATTORNEYS FOR THE APPELLANT

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM PICKENS COUNTY

The Honorable J. Cordell Maddox, Jr., Circuit Court Judge

Appellate Case No. 2015-000210

RECEIVED
FEB 05 2018
SC Court of Appeals

THE STATE, ...APPELLANT,

v.

ARTHUR M. FIELD, ...RESPONDENT.

Unpublished Opinion 2017-UP-455, filed December 6, 2017

RETURN TO MOTION ON PETITION FOR REHEARING

Respondent Arthur M. Field, by any through his attorney J. Todd Rutherford, objects to Appellant State of South Carolina's petition for rehearing of the unanimous opinion of this Court in. State v. Field, Unpub. Op. No. 2017-UP-455 (S.C. Ct. App. filed December 6, 2017). Respondent respectfully requests Appellant's Petition be denied for the reasons set forth in this Court's legal analysis and legal conclusion.

In the case at bar, Petitioner argues this Court overlooked facts previously presented should be re-examined despite a thorough, well-reasoned, and unanimous decision. Surely Petitioners are not suggesting this *entire* Court overlooked material facts. As the court held in Heritage

Communities, “[The] Court can find no material fact or principle of law that has been either overlooked or disregarded, and therefore, the petition filed by ...Appellants is denied.” Harleysville Group Ins. v. Heritage Communities, Inc., 2013-001281, (#27698), (S.Ct. 7/26/17) (rehearing denied).

The Order signed restricted Field’s egress from “home confinement except” to meet with attorney, doctor visit religious service”. These are constitutional rights afforded any prisoner. No evidence of any other egress from GPS monitored home confinement was presented by the State despite numerous opportunities to do so. The record clearly reflects Respondent’s bail bondsman verified Field’s continued compliance with the GPS home confinement at all times. The trial court heard Petitioner’s argument as to their overly and overtly delayed Motion to Reconsider and rejected such argument.

Judge Maddox stated that the object of his sentencing and the goals of sentencing had been fully achieved, even after considering the effects of the credits awarded by him. Judge Maddox repeated his statement at the hearing held November 1, 2017 at which Petitioner was present and fully aware.

To the extent necessary, all other issues raised by Respondent are preserved, including, but not limited to this petition for rehearing as the underlying Appeal violates and breaches the express and implied terms of the contractual Plea Agreement which precludes any appeal by the State for any reason in this matter. *U.S. v. Guevera*, 941 F.2d 1299, 1299 (4th Cir. 1991), recently affirmed in *U.S. v. Zuk*, 16-4727(4th Cir. 10/24/2017).

WHEREFORE, it is respectfully requested the Petition for Rehearing be denied and this Court’s decision be Affirmed.

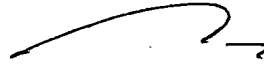
Respectfully submitted,

S. CREIGHTON WATERS
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ATTORNEY FOR RESPONDENT

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM PICKENS COUNTY
The Honorable J. Cordell Maddox, Jr., Circuit Court Judge

Appellate Case No. 2015-000210

RECEIVED

FEB 05 2018

SC Court of Appeals

THE STATE, ...APPELLANT,

v.

ARTHUR M. FIELD, ...RESPONDENT.

PROOF OF SERVICE

I certify that I have served the *Return to Motion on Petition for Rehearing* by depositing a copy in the United States Mail, postage prepaid, on February 5, 2018, addressed to Appellant's address on record.

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Assistant Deputy Attorney General

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February 5, 2018

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: State v. ARTHUR M. FILED,
Appellate Case No. 2015-000210

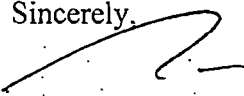
RECEIVED
FEB 05 2018
SC Court of Appeals

Dear Ms. Kitchings:

Enclosed for filing in the above matter are the following:

- (1) Original plus six (6) copies of the *Return to Motion on Petition for Rehearing*.
- (2) Proof of Service of the above items to Petitioners.

Sincerely,


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ATTORNEY FOR THE RESPONDENT

Columbia, South Carolina
February 5, 2018

The South Carolina Court of Appeals

The State, Appellant;

v.

Arthur M. Field, Respondent.

Appellate Case No. 2015-000210

ORDER

The State filed a petition for rehearing requesting reconsideration of this court's opinion affirming the circuit court's decision in this matter. We deny the petition for rehearing, withdraw the former opinion, and substitute the attached opinion.

Paul E. Short, Jr.

J.

U. Ke

J.

Jon D. Best

J.

Columbia, South Carolina

cc:

Samuel Creighton Waters, Esquire
Brian T. Petrano, Esquire
Alan McCrory Wilson, Esquire
James Todd Rutherford, Esquire

FILED

April 4, 2018

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Appellant,

v.

Arthur M. Field, Respondent.

Appellate Case No. 2015-000210

Appeal From State Grand Jury
J. Cordell Maddox, Jr., Circuit Court Judge

Unpublished Opinion No. 2017-UP-455
Submitted October 1, 2017 – Filed December 6, 2017
Withdrawn, Substituted and Refiled April 4, 2018

AFFIRMED

Attorney General Alan McCrory Wilson, Assistant
Deputy Attorney General Samuel Creighton Waters, and
Assistant Attorney General Brian T. Petrano, all of
Columbia, for Appellant.

James Todd Rutherford, of The Rutherford Law Firm,
LLC, of Columbia, for Respondent.

PER CURIAM: The State appeals the denial of its motion to reconsider Arthur M. Field's sentence, arguing Field improperly received credit for pretrial time during which he was neither incarcerated nor on home confinement. We affirm.

In its order denying the State's motion to reconsider Field's sentence, the circuit court stated it agreed with the State's contentions that Field should have received credit for only one hundred forty-six days rather than the fifteen months that the South Carolina Department of Corrections (SCDC) determined should be credited against his active sentence. The circuit court further observed the State "correctly believ[ed] that SCDC's calculation and quick turnaround was inconsistent with this [c]ourt's intent as to active sentence." The circuit court "elected to reduce the . . . sentence [imposed on Field's codefendant] by a companion order to achieve more equality of sentence." We hold the circuit court, in adjusting the sentence it imposed on Field's codefendant so that the active sentences for both defendants were similar, acted within its discretion. See *State v. Smith*, 276 S.C. 494, 498, 280 S.E.2d 200, 202 (1981) ("We hold the authority to change a sentence rests solely and exclusively in the hands of the sentencing judge within the exercise of his discretion."); *State v. Hicks*, 377 S.C. 322, 325, 659 S.E.2d 499, 500 (Ct. App. 2008) ("A judge or other sentencing authority is to be accorded very wide discretion in determining an appropriate sentence, and must be permitted to consider any and all information that reasonably might bear on the proper sentence for the particular defendant, given the crime committed.").

AFFIRMED.¹

SHORT, KONDUROS, and GEATHERS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

391

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

APR 19 2018

SC Court of Appeals

APPEAL FROM PICKENS COUNTY

The Honorable J. Cordell Maddox, Jr., Circuit Court Judge

Case No. 2015-000210

THE STATE,..... APPELLANT,

v.

ARTHUR M. FIELD,.....RESPONDENT.

Unpublished Opinion 2017-UP-455, filed December 6, 2017
Withdrawn, Substituted and Refiled April 4, 2018

Petition for Rehearing #2

On April 4, 2018, this Court issued an opinion in which it affirmed the decision of the circuit court who “agreed with the State’s contentions” that Respondent’s sentence was contrary to law – and sought to remedy such by instead adjusting the sentence of a co-defendant.¹ State v. Field, Unpub. Op. No. 2017-UP-455 (S.C. Ct. App. filed December 6, 2017). Appellant respectfully petitions for rehearing per Rule 221, SCACR because the circuit

¹ Appellant notes that the validity of the modification of co-defendant’s sentence is also pending before this Court in a separate matter State v. Pfeiffer, Unpub. Op. No. 2018-UP-130 (S.C. Ct. App. filed March 28, 2018) *petition for reh’g filed*.

court cannot adjust the sentence of a co-defendant in an effort to remedy Respondent's sentence that otherwise affords him credit that he is not legally entitled to receive.

As a threshold matter, as this Court affirmed, the circuit court agreed that Respondent improperly received credit for fifteen months on house arrest, when in fact he should have only received time when he was on "monitored" house arrest -- from July 21, 2012 until December 13, 2012, or 145 days. Both monitoring and house arrest must be present, and Respondent simply did not have house arrest after December 13, 2012, despite the fact that he was monitored, then by the plain and unambiguous language of S.C. Code § 24-13-40 he was not legally entitled to credit beyond that date.² Accordingly, Respondent's sentence is contrary to the law. A circuit court lacks discretion to fashion a sentence that is contrary to the law -- for it to hold otherwise is an error of law.

² As explained in the Final Brief of Appellant, it was Respondent who made the motion to reconsider bond, which was heard before Judge Benjamin on December 13, 2012. Respondent's counsel expressly asked that Respondent be taken off of the house arrest *and* the GPS monitoring. (R. pp. 142 – 143). Judge Benjamin – as requested by Respondent – removed the house arrest component, and did so in writing. (App. Br. pp. 4 – 5).

WHEREFORE, because the Order removing House Arrest was done so in writing, Appellant requests this Court grant the Petition for Rehearing and rehear the case.

Respectfully submitted,

ALAN WILSON
Attorney General

S. CREIGHTON WATERS
Senior Assistant Deputy Attorney General

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By: 
ATTORNEYS FOR THE APPELLANT

Columbia, South Carolina

April 19, 2018.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

APR 19 2018

Appeal from Pickens County
The Honorable J. Cordell Maddox, Jr., Circuit Court Judge Court of Appeals

Appellate Case No. 2015-000210

THE STATE,

Appellant,

vs.

ARTHUR M. FIELD,

Respondent.

PROOF OF SERVICE

I certify that I have served the *Petition for Rehearing #2* by depositing a copy in the United States Mail; postage prepaid, on April 19, 2018, addressed to his attorney of record:

Mr. James Todd Rutherford
The Rutherford Law Firm, LLC
PO Box 1452
Columbia, SC 29202-1452

April 19, 2018.

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395

ALAN WILSON
ATTORNEY GENERAL

April 19, 2018

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APR 19 2018
SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: State v. ARTHUR M. FIELD,
Appellate Case No. 2015-000210

Dear Ms. Kitchings:

Enclosed for filing in the above matter are the following:

- (1) Original plus six (6) copies of the *Petition for Rehearing* #2.
- (2) Proof of Service of the above items to Respondent's attorney of record.

Sincerely,

BRIAN T. PETRANO
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cc: Mr. James Todd Rutherford
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ATTORNEY FOR RESPONDENT

ATTORNEYS FOR THE APPELLANT

The South Carolina Court of Appeals

The State, Appellant,

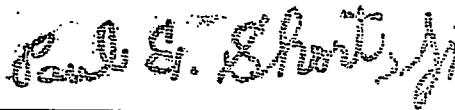
v.

Arthur M. Field, Respondent.

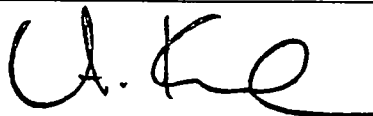
Appellate Case No. 2015-000210

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



J.



J.



J.

Columbia, South Carolina

cc:

Samuel Creighton Waters, Esquire

Brian T. Petrano, Esquire

Alan McCrory Wilson, Esquire

James Todd Rutherford, Esquire

FILED

May 7, 2018