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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

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BEFORE THE HONORABLE KIMBERLY J. MUELLER, JUDGE

UNITED STATES OF AMERICA,

Plaintiff,

Vs.

CASE NO. CR. 12-123 KJM

KINDE DURKEE,

Defendant.

_____ /

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REPORTER'S TRANSCRIPT

WEDNESDAY, NOVEMBER 28TH, 2012

RE: JUDGMENT AND SENTENCING

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Reported by:

CATHERINE E.F. BODENE,
CSR. No. 6926

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APPEARANCES

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For the Government:

UNITED STATES ATTORNEYS OFFICE
501 I Street, 10th Floor
Sacramento, California 95814

BY: JOHN K. VINCENT,
Assistant U.S. Attorney

For the Defendant:

BRYNE & NIXON LLP
888 West Sixth Street, Suite 1100
Los Angeles, California 90017

BY: DANIEL V. NIXON,
Attorney At Law

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1 SACRAMENTO, CALIFORNIA

2 WEDNESDAY, NOVEMBER 28TH, 2012

3 ---o0o---

4 (On the record at 11:35 a.m.)

5 THE CLERK: Please, remain seated.

6 Come to order. Court is again in session.

7 Calling Criminal Case 12-123, United States versus
8 Kinde Durkee. This is on for judgment and sentencing.

9 MR. VINCENT: Good morning, Your Honor. John Vincent
10 on behalf of the United States.

11 THE COURT: Good morning, Mr. Vincent.

12 MR. NIXON: Good morning, Your Honor. Daniel Nixon
13 on behalf of the defendant who is present in court.

14 THE COURT: Good morning, Mr. Nixon. Good morning,
15 Miss Durkee.

16 Mr. Nixon, Miss Durkee is prepaid for sentencing this
17 morning?

18 MR. NIXON: She is, Your Honor.

19 THE COURT: She's had a chance to fully review the
20 Presentence Investigation Report prepared by the probation
21 officer?

22 MR. NIXON: She has, Your Honor.

23 THE COURT: The court has also reviewed that report.
24 I reviewed the sentencing memoranda filed by the parties. I
25 have received a revised restitution addendum dated November

1 27th. And I understand there is additional information so
2 we'll go into restitution at some point.

3 The court has a few questions about the guidelines,
4 about the narrative discussion, and then several questions
5 about restitution.

6 Is there anything else the parties wish to discuss
7 that is not teed up for the court, Mr. Vincent?

8 MR. VINCENT: No, Your Honor.

9 THE COURT: Mr. Nixon?

10 MR. NIXON: No, Your Honor.

11 THE COURT: Just a couple of questions about the
12 guidelines.

13 Mr. Nixon, Miss Durkee agrees that there were more
14 than 50 victims as described in paragraph 39?

15 MR. NIXON: Yes, Your Honor.

16 THE COURT: And looking at paragraph 41, this is
17 whether or not there should be an adjustment for role in the
18 offense under Sentence Guideline 3B1.1.

19 Mr. Vincent, the government is not at this point
20 seeking an adjustment?

21 MR. VINCENT: That's correct, Your Honor.

22 THE COURT: All right. So the government's position
23 is it accepts that Miss Durkee acted alone?

24 MR. VINCENT: That is the government's position, Your
25 Honor, at this time. Yes.

1 THE COURT: To that point, some victims have
2 suggested that the court consider requiring that Miss Durkee
3 provide further assistance to maximize recovery. Just
4 thinking ahead to the terms of any sentence, is that a
5 possibility in the government's mind? And if so, what would
6 a condition look like?

7 MR. VINCENT: Your Honor, I'm not sure how the court
8 would -- how the court would fashion that. Miss Durkee's
9 position is she acted alone. And I anticipate that is what
10 she would tell anybody else who questions her. I'm not sure
11 how the court would fashion anything in that regard.

12 THE COURT: The court also cannot think of any
13 condition, but I ask you because it might have occurred to
14 you what else I might do.

15 MR. VINCENT: No, Your Honor.

16 THE COURT: But I wanted to acknowledge that victims
17 have requested that kind of condition.

18 MR. VINCENT: I understand that, Your Honor. And I
19 know that the victims have expressed that concern to us as
20 well.

21 THE COURT: If others were later found culpable, if
22 there were future prosecutions, there is the possibility then
23 of joint and several liability?

24 MR. VINCENT: There would be the possibility at that
25 time, yes, Your Honor.

1 THE COURT: And just to make certain I understand the
2 Factual Basis of everything that's occurred here, there's
3 some reference, I believe it is in the Presentence
4 Investigation Report, to Ms. Durkee's firm having passed
5 multiple audits, that there were audits of documents, but
6 they always looked -- the documents prepared by Miss Durkee,
7 not going behind those to bank account statements. Is that a
8 fair statement of what happened here and what led to the
9 delay in identifying the problem?

10 MR. VINCENT: Oh, Your Honor, are you referring to,
11 for example, FPCC investigations and things like that?

12 My understand is the FPCC would look at certain bank
13 accounts, but they cannot look beyond a certain level. And
14 so they could gather a certain amount of documents, certain
15 records, and on the basis of that they found there were
16 deficiencies or inaccuracies or what turned out to be lies on
17 those reports.

18 And in fact, that's why the FBI was solicited to come
19 in, was because the FPCC could only take it to a certain
20 point. Then they -- that's when they notified the FBI and
21 asked the FBI to get involved. And then we could go father
22 and get records. It was on the basis of that investigation
23 we were able to determine that the money was being
24 misappropriated and moved around from client accounts into a
25 Durkee Associates account and so forth.

1 THE COURT: All right.

2 Thank you for that clarification.

3 Before we discuss restitution in some detail, is
4 there anything else either counsel would like to say about
5 the guidelines or the narrative in the Presentence Report
6 that's not in the sentencing memoranda?

7 MR. VINCENT: No, Your Honor.

8 MR. NIXON: No, Your Honor.

9 THE COURT: With respect to restitution, it's not
10 disputed that the information before the court shows
11 Ms. Durkee has a negative net worth. And there are already
12 efforts to forfeit real property to generate whatever could
13 be generated from that property to go to restitution?

14 MR. VINCENT: That's correct, Your Honor. The
15 defendant has stipulated and signed over property where her
16 business was located.

17 She's also, my understanding from my conversation
18 with her attorney this morning, she has liquidated here 401K.
19 And that money is sitting in an account, and I understand
20 from her counsel that will be transferred to the Clerk of the
21 Court within seven days.

22 THE COURT: At this point does the government have
23 estimates of the total amount that will be available to go
24 towards restitution?

25 MR. VINCENT: Your Honor, my understanding of the

1 401K is it's about \$93,000. As far as what the property will
2 bring in, I don't know the answer to that.

3 MR. NIXON: Your Honor, just to speak to the 401K, I
4 believe it is in the neighborhood of 90 or 91,000 roughly.
5 And the confusion simply is because when it was liquidated,
6 the money was held in a series of investments, and so there
7 are a number of checks. We just don't have a hard number for
8 the court, but we would be prepared to transmit that money to
9 the court as Mr. Vincent said, within seven days.

10 THE COURT: Do you, yourself, have an estimate what
11 of that property will generate?

12 MR. NIXON: I do not, Your Honor. I mean, it's being
13 auctioned Friday. And we will have a better understanding
14 obviously once that occurs.

15 There is equity in the property, and as we pointed
16 out in our papers, Miss Durkee advised the government, the
17 forfeiture unit, after they believed that there was a
18 negative balance in it and it wasn't worthy of forfeiture,
19 her belief is that there is equity in it and we encouraged
20 them to pursue the forfeiture, which they've done. We should
21 know Friday what the property will yield.

22 THE COURT: There will, in any event, be a
23 significant gap given the total amount of restitution?

24 MR. NIXON: I think that's fair.

25 THE COURT: Just so I'm clear, the latest restitution

1 addendum that I have been provided is dated yesterday. The
2 total amount showing on that addendum is \$10,505,405.76.
3 There are some victim organizations identified with no dollar
4 amount.

5 So the court has one question. Is there a further
6 update to the total restitution amount, and can that be
7 determined today?

8 If the court cannot make a final determination today,
9 it can continue a hearing on restitution.

10 Then there are specific questions raised with respect
11 to one victim, Mrs. Rogers -- the amount that should show for
12 Rogers.

13 MR. VINCENT: Yes, Your Honor. The only change I
14 wish to bring to the court's attention is for the Latino
15 Diabetes Association there is no figure listed. However, in
16 a letter from Justin Burger dated November 26, 2012, he said
17 that they had been unable to identify the full amount, but
18 that he estimated it was tens of thousands of dollars.

19 So it seems that there should be some amount set
20 there. And, I mean -- so I would ask the court to set
21 something there. If it is tens of thousands, at least
22 \$20,000 for that.

23 THE COURT: Have you been able to communicate with
24 that association and see if they would agree to that amount?

25 MR. VINCENT: No, Your Honor. All I know is what

1 Mr. Burger represented in his letter, and that is that the
2 loss was in the tens of thousands.

3 THE COURT: Do you have anything to say about that,
4 Mr. Nixon?

5 MR. NIXON: Just that it seems purely speculative on
6 part of counsel as to what the dollar figure is.

7 I can't know what value tens of thousands of dollars
8 really brings to determining with finality what this number
9 is.

10 THE COURT: What's the authority for the court making
11 a final decision on that today, Mr. Vincent, given that I can
12 continue the hearing on restitution.

13 MR. VINCENT: Well, Your Honor, yes, you can continue
14 the hearing on restitution if you choose to. I'm not sure
15 that we'll have any more definite information in 60 or 90
16 days.

17 THE COURT: Is the burden on the victim, that is the
18 association here, to have provided a specific number?

19 MR. VINCENT: Well, Your Honor, we rely on the
20 victims. I'm not sure I say it is their burden. We rely on
21 victims to tell us what their loss is. We're really not in a
22 position to -- the government is not in a position to assess
23 that at times. And we did not have a figure for Latino
24 Diabetes Association based on our review of the records.

25 THE COURT: All right.

1 Just so I'm clear, Probation Officer Alger, on the
2 record before the court, could I set a number at 10,000 or
3 \$20,000 --

4 PROBATION OFFICER ALGER: I'm not sure.

5 THE COURT: -- and satisfy the purposes of
6 restitution?

7 PROBATION OFFICER ALGER: I think you have to make --
8 I haven't reviewed that section of the statute. If the
9 court -- I know for loss purposes the court can make a
10 finding of reasonable estimate, but I'm not sure on
11 restitution if you can make that finding without more
12 concrete information.

13 THE COURT: All right. Let me think that.

14 Anything else on the list, Mr. Vincent, you wish to
15 bring to the court's attention?

16 MR. VINCENT: No, Your Honor. With respect to Lee
17 Rogers, the estimate that we had from our review, I guess,
18 was \$6,790. His claim is \$11,300.

19 We have relied on statements from victims to assess
20 the loss figure in other instances as set forth on the list.

21 THE COURT: So you would recommend that number be
22 adjusted?

23 MR. VINCENT: Yes, Your Honor.

24 THE COURT: Mr. Nixon, you've had a chance to review
25 the Rogers statement?

1 MR. NIXON: I've just seen it this morning, Your
2 Honor. I really don't have any information that I could
3 provide to the court that would clarify the discrepancy.

4 I would note that in this addendum listing -- the
5 revised restitution addendum, the loss amounts are what the
6 victims are representing they're out.

7 I don't know if that is including -- for instance, in
8 some instances there were a few thousand dollars that may
9 have been misappropriated from the account, but copying,
10 investigative costs, attorneys fees and all of that has been
11 added to arrive at a number, which is included in the loss
12 amount, which may not technically be loss, but may be
13 restitution in the sense these are costs that have been
14 incurred by victims in trying to recover their money.

15 So I just note when it says "Loss Amount" in the
16 revised addendum, there is loss and restitution. I think for
17 purposes of loss we've agreed it is more than 7,000,000 per
18 the guidelines, but as far as the accuracy of all of these
19 numbers, it's really just been what the victims have
20 represented to the government.

21 THE COURT: But in the Rogers case, for example,
22 actually the net loss is identified, given some recovery from
23 some other source.

24 MR. NIXON: I'm assuming so. As I said, I was just
25 handed that this morning so...

1 THE COURT: That is an affidavit signed under penalty
2 of perjury. The court has reviewed all of the other
3 information provided by victims.

4 MR. NIXON: I understand. I'm not minimizing their
5 plight. I'm just pointing that out for the record, Your
6 Honor.

7 THE COURT: All right.

8 I am prepared adjust the Rogers number to \$11,300.

9 And while I'm still thinking about the Diabetes
10 Association, my question then is looking at 18 U.S.C. 3664,
11 the restitution statute, there is a subsection (i) that
12 suggests the court can provide for a different payment
13 schedule taking account of economic circumstances of the
14 victims.

15 Do the parties have anything to say about whether or
16 not the court should do that here?

17 The victims range -- there is a long list. They
18 range from someone who is out \$499 to an organization that's
19 out to a committee that is out more than \$4,000,000.

20 Many of the organizations are political. The
21 monies -- the availability of monies could have been time
22 sensitive. At least two of the organizations do appear to be
23 nonpolitical nonprofit organizations.

24 The court's question is, should I prioritize
25 repayment for those two nonprofit nonpolitical organizations,

1 one of them being the Diabetes Association?

2 MR. VINCENT: Your Honor, the government's position
3 is that the court should, in issuing its restitution order,
4 require a pro rata share so victims are paid on a pro rata
5 basis.

6 If the court is talking about -- I'm not sure when
7 the court says that it will select some to be paid earlier
8 than others, if that means you want them to be paid in full.

9 If court is inclined along those lines, the
10 United States does not think that would be the way to go
11 because I think if court were to do that, it would probably
12 require a hearing to inquire into the circumstances of each
13 victim's loss.

14 And there was a case that we found this morning,
15 United States versus Dreier, D-r-e-i-e-r. It is out of the
16 Southern District of New York so it is certainly not binding
17 on the court, but it is a District Court opinion. And it's a
18 ponzi scheme or fraud case.

19 In there some of the plaintiffs were asking to get
20 priority in being paid, and the court refused to do that and
21 basically said that to do that would just basically pit one
22 victim against another.

23 And for that reason the government thinks it would be
24 best if the court issued an order that they be paid on a
25 pro rata basis.

1 THE COURT: The court is not aware of any victim
2 organization requesting prioritization. Just given the range
3 of amounts involved and the status of certain of the victims,
4 the court felt the need to ask.

5 Anything to say about that point, Mr. Nixon?

6 MR. NIXON: No, Your Honor.

7 THE COURT: Then on the question of another option
8 identified by the restitution statute, given the gap between
9 the total amount of restitution and the funds that will be
10 generated by the 401K and the sell of property, there appears
11 to be an option of in-kind payment in Section 3664(f)(4).

12 Mr. Vincent, do you know, are the victims given the
13 option of weighing in on whether or not they wish to take
14 advantage of that option?

15 The statute does say, "if the victim agrees, services
16 rendered."

17 MR. VINCENT: Your Honor, I'm not sure what services
18 the court anticipates the defendant would render.

19 THE COURT: Well, not accounting services certainly.
20 I'm just curious if victims have been given the option.
21 Given the statutory basis, Congress must have contemplated
22 the possibility of insufficient funds and so identified
23 in-kind payment.

24 I just wanted to know if I should be thinking about
25 that given the large gap that undoubtedly will remain for

1 perhaps in perpetuity.

2 MR. VINCENT: Yes, Your Honor. To my knowledge no
3 victim has asked for any kind of service to be render by the
4 defendant to them. I think their main concern is to try and
5 recover their money.

6 THE COURT: All right.

7 Mr. Nixon, anything to say on that point?

8 MR. NIXON: No, Your Honor.

9 THE COURT: I mean, restitution will follow
10 Miss Durkee until it is paid.

11 MR. NIXON: Understood.

12 THE COURT: So back to the issue of the Diabetes
13 Association, is there statutory language, Mr. Vincent, that
14 you're relying on in suggesting I can apply a \$20,000 figure?

15 MR. VINCENT: No, Your Honor, other than the fact
16 that the defendant -- or the victim has said that that's what
17 they sustained, they sustained a loss of tens of thousands of
18 dollars.

19 I don't know what that means, whether that is 30, 50,
20 20. And so the only reason why I suggested 20,000 was
21 because as a practical matter, under the situation here, the
22 Latino Association will not get any money beyond -- certainly
23 I don't think it will be close to \$20,000.

24 THE COURT: I acknowledge receipt of a letter from an
25 attorney on behalf of that association. Was there also an

1 affidavit filed?

2 MR. VINCENT: No, Your Honor, not that I'm aware of.
3 I've not seen one.

4 MR. NIXON: Your Honor, if it assists the court, I
5 think we would be willing to stipulate to the figure proposed
6 by Mr. Vincent as a way of resolving the issue and moving the
7 restitution issue forward to some level of finality.

8 THE COURT: All right. The attorney is proceeding
9 under Rule 11. So I am prepared to assign \$20,000 to the
10 Latino Diabetes Association as a loss amount.

11 Mr. Vincent, you indicated two victims requested
12 their correspondence be read into the record. I would allow
13 you to do that at this time.

14 MR. VINCENT: All right. Thank you, Your Honor.
15 The first is a letter from Susan Davis for Congress.

16 (Reading:)

17 Dear Judge Mueller: As a member of Congress and a
18 candidate for re-election, I'm honored to have the
19 financial support of thousands of people who chose to
20 exercise their political voice by donating to my
21 campaign. I am always mindful that my donors entrust
22 me with their funds and I feel a great responsibility
23 to safeguard their contributions and to make sure
24 they are used carefully and as intended. When
25 Miss Durkee stole from my campaign account to use

1 other funds for her personal pursuits, she stole not
2 from me, but from thousands of supporters who trusted
3 that there money would be spent to do what they
4 thought was best for the country. What troubles me
5 the most is that her actions have shaken so many
6 people's trust in our democracy.

7 Before being elected to Congress, I served for six
8 years in the California State Assembly. For my
9 Assembly campaigns and early Congressional
10 campaigns, I had a trusted treasurer who was a
11 Certified Public Accountant who was highly ethical
12 and dotted every "i" crossed every "t." When she
13 became ill, I had to look for another treasurer and
14 because of my positive experience with this first
15 treasurer, I had great confidence that campaign
16 treasurers were trusted people. When I began my
17 search, the name that was widely recommended was
18 Kinde Durkee. She was known as an expert on Federal
19 Election Commission rules and had been known and
20 trusted for many years by many other candidates I
21 highly respect. When I hired her, she signed a
22 contract pledging to obey all relevant laws.
23 When I heard of Miss Durkee's embezzlement of
24 \$159,995 in funds from my campaign, I was shocked and
25 felt personally betrayed. These funds had been

1 accumulated over several years from concerned
2 citizens wanting to participate in our democracy.
3 The magnitude of her crime and its effect on such a
4 wide number of California candidates and Members of
5 the Congress have caused damage far beyond my own
6 independent campaign, harming the reputation of our
7 State and its political infrastructure.
8 I hope that the extent of her crime is not simply
9 measured in terms of dollars, but also in terms of
10 the responsibilities she held as a fiduciary and
11 grave damage she caused by her betrayal of the trust
12 placed in her by so many candidates and committees.
13 I do not believe Miss Durkee expended all of the
14 estimated \$8 million she stole from so many clients.
15 It is hard to believe she spent so much on just her
16 basic needs. I trust that through the investigative
17 process we will find out who benefited from this
18 betrayal and that any remaining funds will be
19 returned.
20 Sincerely, Susan A. Davis, Member of Congress.
21 (Reading concluded.)
22 The second Victim Impact Statement is from the
23 Democrats of Hemet-San Jacinto.
24 It reads -- it is signed by a Francis Carol Cripps, I
25 believe.

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(Reading:)

My specific losses as a result of this offense are summarized as follows:

The loss of \$2089.05 directly affected our office operations and scholarship funding for local high school students. Our office, located in Hemet is a vital part of the Democratic Party's presence in the western portion of Riverside County. This loss had a potential of causing us to close down this office and discontinue our annual scholarship program in the Hemet - San Jacinto area. All of the missing funds were generated by individual donations from members and friends.

Our club has worked very hard to make sure that our scholarship fund was fully funded. The \$1,000 scholarship offered by Democrats of Hemet-San Jacinto was often the difference between one of our local students being able to further their education or not. Miss Durkee harmed not only our Club, but in effect helped deprive a deserving student of the chance to attend college.

(Reading concluded.)

Those are the two letter, Your Honor.

THE COURT: All right. Let me ask just. To be clear, is there anyone else present who wishes to address the

1 court as a victim of the crime that is subject to sentencing
2 today?

3 I see no one coming forward.

4 Then my final question is with regard to the sentence
5 proposed by probation, and that the parties are jointly
6 recommending 97 months. That was not a sentence contemplated
7 specifically about the plea agreement. In fact, there was
8 potential for a higher sentence under the plea agreement.

9 Do I have that right?

10 MR. VINCENT: Yes, Your Honor. It was contemplated.
11 It was a sentence that was a possibility under the plea
12 agreement. The 97 months was a sentence that was a
13 possibility under the plea agreement.

14 THE COURT: In any event, you do agree that is the
15 appropriate sentence, which is the low end of the guideline
16 range?

17 MR. VINCENT: That's correct, Your Honor.

18 THE COURT: And Mr. Nixon you are joining in
19 requesting that sentence?

20 MR. NIXON: Yes, Your Honor. We submit on the
21 Presentence Report.

22 THE COURT: There has been a full waiver, regardless
23 of the sentence imposed, of appeal and collateral attack.

24 MR. NIXON: Up to a 168 months was the appellate
25 waiver, Your Honor.

1 THE COURT: All right.

2 Anything further either counsel would like to say?

3 MR. VINCENT: No, Your Honor.

4 THE COURT: You're submitting, Mr. Nixon?

5 MR. NIXON: Yes, Your Honor.

6 THE COURT: I want to make certain I have the correct
7 restitution amount. Have you calculated that for the court,
8 Officer Alger?

9 PROBATION OFFICER ALGER: Yes, ma'am. It is
10 \$10,529,915.76.

11 THE COURT: \$10,529,915.76?

12 PROBATION OFFICER ALGER: Yes.

13 Just to make the record clear because we were hoping
14 to use the addendum for the judgment, so I can correct the
15 addendum. The corrections will include \$20,000 to the Latino
16 Diabetes Association, \$11,300 to Mr. Rogers, which is a
17 difference of \$4,510 that was previously recommended.

18 THE COURT: Those are the modifications to the most
19 recent addendum.

20 PROBATION OFFICER ALGER: I'll make the modifications
21 and provide them to the clerk to be attached to the
22 judgment.

23 THE COURT: All right.

24 Ms. Durkee, before I impose sentence, you do have the
25 right to address me. You can say anything you would like at

1 this time.

2 THE DEFENDANT: Your Honor, I want to take this
3 opportunity to apologize for my actions.

4 To those who trusted me, and betrayed, to those who
5 counted on me, and I let down, to those who depended on me,
6 and I disappointed, I take full and complete responsibility
7 for what I have done.

8 I am truly sorry for the hurt I have caused my former
9 clients, my former employees, my friends and my family.

10 THE COURT: All right. Having heard from counsel,
11 having heard from Miss Durkee, it is my duty to impose a fair
12 sentence under the Sentencing Reform Act of 1984.

13 As always I begin with a guidelines calculation.
14 Even though the sentencing guidelines are advisory, I must
15 consult them. And in this case, so it is clear, Mr. Vincent,
16 you are moving for the additional point off under 3E1.1.

17 MR. VINCENT: For three levels, Your Honor, yes.

18 THE COURT: All right. So granting that motion from
19 the government, and giving Miss Durkee full acceptance for
20 responsibility, the total offense level is as set forth in
21 the Presentence Investigation Report, it is 30, Miss Durkee's
22 criminal history category is I reflecting no prior criminal
23 convictions of any kind whatsoever. That means that the
24 guideline range, again advisory, is 97 to 121 months per
25 count. And the number of counts here is five. Counts One

1 through Five.

2 The recommendation is for a concurrent sentence with
3 three years of supervised release per count also concurrent.

4 Having considered the guidelines, the court then
5 considers the sentencing factors set forth by Congress. They
6 guide the court's consideration of what is a substantially
7 reasonable sentence.

8 I am adopting the narrative set forth in the
9 Presentence Investigation Report. To clarify the most
10 important factors, I do consider the nature and circumstances
11 of the offense here a significant and egregious offense.

12 The Presentence Report references the deep violation
13 of public trust. Not only was Miss Durkee in a position of
14 responsibility in her company, but the nature of her business
15 was such that what she did had an impact on the political and
16 electoral processes on which our democracy is -- are founded,
17 the processes that we value so deeply and effect political
18 outcomes.

19 And I think the violation of trust, which she admits
20 here today, and admitted promptly upon apprehension can't be
21 understated.

22 There is the potential as a result of what she did
23 that certain elections were affected. Certain victims
24 described in some detail the effect on their political
25 viability.

1 Money, as has been observed, is the mother's milk of
2 politics. Politicians need to be able to accept money and
3 vote against those who give it to them, but there is no
4 question but that the currency and viability in the political
5 system is tied to monetary resources.

6 And at least one victim stated, in fairly stark
7 terms, that victim's conclusion that his viability had been
8 affected. And it would have been for the voters to determine
9 ultimately in the long run whether or not they wished to
10 reward his participation in the process.

11 But I don't think the violation of public trust, the
12 egregious nature of the offense can be understated here.

13 On the positive side of the ledger, Miss Durkee does
14 seem to acknowledge that and understand it.

15 This appears to be a case of Miss Durkee essentially
16 inheriting a business that she should not have accepted from
17 her predecessor, of not having the skills to carry that
18 business forward in a way to maintain the respectability that
19 business had garnered through its prior service.

20 It was a case of her not taking care of herself such
21 that she could take care of everyone else, as she appears to
22 have wished to do.

23 Nothing before the court suggests that Miss Durkee
24 personally benefited from the bulk of the money that is
25 identified as a loss amount here today.

1 It would appear that while she had some modest
2 benefit, it is not money that she squirreled away, spent on
3 significant expenses that benefited her.

4 It was her inability to acknowledge her limits in the
5 business that she carried on for so many years that led to
6 her ultimate downfall and what has brought her here today.

7 There is no question that a serious sentence is
8 required to reflect the seriousness of the offense.

9 Miss Durkee, having had no prior involvement with the
10 criminal justice system, can be understood to be seriously
11 impacted by a sentence of any length whatsoever.

12 The 97 months is a significant sentence, and while
13 the court has considered going above that 97 months given the
14 impact of Miss Durkee's actions on the political system and
15 the electoral process, having heard from the parties, having
16 noted Miss Durkee's cooperation in identifying resources to
17 the extent they remain available, I am prepared to follow the
18 parties' sentence of 97 months. That is a very serious
19 sentence.

20 It should afford deterrence to other people in
21 Miss Durkee's shoes to the extent they are considering any
22 kind of equivalent fraud and misrepresentation.

23 There is also the case, I am persuaded based on
24 information before me, that Miss Durkee also requires certain
25 correctional treatment. And the sentencing factors require

1 that I consider that.

2 I will be recommending that she be housed in a
3 federal facility that will be able to provide her with the
4 mental health treatment she requires as she works to make
5 certain that upon her release she does not return to any kind
6 of behavior patterns that led her to her current
7 circumstances.

8 MR. NIXON: I'm sorry, Your Honor. May I be heard on
9 that issue at some point in the proceedings?

10 THE COURT: In terms of a specific location?

11 MR. NIXON: In terms of that designation.

12 THE COURT: All right. You may. Let me just finish
13 to make clear that I'm also considering the other sentencing
14 factors, including avoiding unwarranted sentence disparities.
15 The court has not had a similar case of this kind. I'm
16 assuming the government has considered.

17 Has the government seen a case of this sort for the
18 court to consider in terms of disparity?

19 MR. VINCENT: No, Your Honor. This is an unusual
20 case.

21 THE COURT: This does appear to be a very unusual
22 case, not only in terms of the total amount, but the
23 underlying reasons for the offense.

24 I am, of course, as should be clear, considering the
25 need for restitution. I will enter a restitution order, and

1 through that order I will be doing what I can to ensure that
2 the victims' recovery is maximized.

3 So before I do impose sentence, Mr. Nixon, you wanted
4 to be heard on the location or type of facility?

5 MR. NIXON: It was our hope that the court would
6 impose a sentence that would afford Miss Durkee the
7 opportunity to serve her time in a camp setting. And my
8 understanding, from research and such, is that a sentence of
9 this dimension will qualify her.

10 I think the court is basing some of its remarks here
11 today on some of the documents and a report that we submitted
12 to the court as part of our sentencing papers. And while I
13 think that that report was very instructive, not only to
14 Miss Alger, but to the court, and perhaps the government, to
15 give an understanding as to what the motivation was and how
16 this all could have occurred, how a intrinsically good person
17 could do some really bad things, going forward, as the court
18 has noted, Miss Durkee has no history of being incarcerated
19 in any setting. My concern is the type of facility that the
20 court has identified here today could be a place that could
21 be more problematic than beneficial.

22 The reason I say that, and I know that there was
23 reference made to, you know, future counseling being of
24 benefit to Miss Durkee potentially, it is my estimation,
25 having known her for these -- during the pendency of this

1 case that she's a person who can help others.

2 And I know people may think that's crazy because all
3 this money was stolen, but if you read the letters that were
4 submitted on her behalf, people remark about the counsel
5 she's been able to give them, how she's been able to help
6 them through really tough times. And I envision her at some
7 point during this lengthy prison stay that she is about to
8 undertake being in a position to work with other inmates and
9 to be a person -- she has a strong spiritual background, her
10 father was a minister and I foresee that she may be in a
11 position at some point to take on that kind of a role within
12 the confines of a prison setting.

13 I don't know that I mental health hospital type
14 setting is the type of location that will afford her the
15 greatest ability to perform the time that she has to -- to
16 serve the time she has to serve in the best way.

17 And I realize this is somewhat abstract, and I wasn't
18 anticipating the court would make that recommendation today
19 so I apologize if this is somewhat rambling. But my goal
20 would be, having looked into this a little bit, that a camp
21 setting, I think, will allow her the greatest opportunity.

22 And I wasn't going to make a recommendation regarding
23 a specific local or specific place in California, Southern
24 California or anywhere, because I would just like her to get
25 to the place where she'll be best able to serve what is going

1 to be an eight year sentence.

2 So I recognize and appreciate that the court has
3 shown such sensitivity to the fact that there are
4 psychological issues that are the underpinnings of this theft
5 that is so outside of her character, but by the same token,
6 as practical matter, I don't know the setting that the Bureau
7 of Prisons has in place for mental-health type counseling is
8 what's required here.

9 This is not a sociopath. This is not a
10 schizophrenic. This is not someone who has a deep
11 psychiatric problem.

12 She is someone who has had a lot of things that
13 happened in her life and it led her on a path to do something
14 she otherwise wouldn't have done.

15 I think if she can get to a camp, go there, serve her
16 time, it will be the best for all concerned.

17 THE COURT: Officer Alger, just so the court,
18 understands typically the court can only make recommendations
19 that accord with security classification and space
20 availability and it is up to Bureau of Prisons, based on the
21 entirety of the file, so the court had contemplated
22 recommending incarceration at an institution -- is it in
23 California would be the request?

24 MR. NIXON: Well, not necessarily. Because my
25 understanding is that there's not a lot of room these days.

1 So that is a consideration. We didn't want to limit the
2 opportunity for her to serve. She's a non-violent
3 offender.

4 THE COURT: There is no question about that. The
5 only question is, is there more I need to say besides an
6 institution that can accommodate Miss Durkee's need for
7 mental health counseling?

8 Can I say more than that?

9 I have never sentenced someone to a camp.

10 MR. NIXON: I'm not suggesting that you should. I'm
11 just saying as a practical matter, given her profile, the
12 likelihood of her being sent to a camp, I think, is a fair
13 one.

14 THE COURT: Ultimately I think it is BOP's call.

15 MR. NIXON: It absolutely is. But if the court has
16 language in its order basically saying, you know, prioritize
17 or recommend that she go to a treatment -- to a facility that
18 focuses or has a mental health component, that may take her
19 out of the running of a camp. So that's why that language
20 concerns me.

21 I understand and agree with the court that it is up
22 to BOP. But the fact is what the court says now may have a
23 big impact.

24 THE COURT: All right. Having made one argument,
25 that was persuasive, you may have to live with the result of

1 that very persuasive argument.

2 Officer Alger?

3 PROBATION OFFICER ALGER: You can make a
4 recommendation she be housed in a camp, if, again, she meets
5 the criteria, and if such a designation is appropriate.

6 THE COURT: And a "camp" is a generic that the Bureau
7 of Prisons will understand?

8 PROBATION OFFICER ALGER: Yes. It's a term that they
9 use.

10 THE COURT: But a camp also does not have mental
11 health facilities?

12 PROBATION OFFICER ALGER: I don't know, Your Honor.
13 Honestly, I don't know.

14 THE COURT: All right. I understand the request.
15 Anything to say about that, Mr. Vincent?

16 MR. VINCENT: No, Your Honor. If she is sent to a
17 camp -- I don't know exactly, but I believe when someone goes
18 into the Bureau of Prisons they're assessed. If she is sent
19 to a camp, the Bureau of Prisons would make the
20 determination. If they felt she could stay at the camp,
21 they'll keep her at the camp. If not, they will assign her
22 somewhere else. But I'm speculating to a degree on that,
23 Your Honor.

24 THE COURT: All right. I am considering what defense
25 has argued. I would also note that part, as I alluded to,

1 part of what appears to have gone on here is yes, Miss Durkee
2 has a strong impulse to assist others, but isn't able to keep
3 that in perspective in terms of all of her other obligations,
4 including under the applicable laws.

5 All of that said, it is the judgment of this court
6 that Kinde Durkee you are hereby committed to the custody of
7 the Bureau of the Prisons to be imprisoned for a term of 97
8 months on each of Counts One through Five, all to be served
9 concurrently for a total term of 97 months.

10 You shall pay a special assessment of \$500, that's
11 the mandatory statutory assessment, with that payment due
12 immediately. I do find that you do not have the ability to
13 pay a fine given the status of your assets. Imposition of a
14 fine is waived.

15 The court further orders that you shall pay
16 restitution in the amount of \$10,529,915.76. Payment due
17 immediately. Restitution shall be spent to the clerk of the
18 this court who shall forward it to the victims described in
19 the Victim Impact Addendum that is going to be attached to
20 the judgment and commitment to be filed.

21 While you are incarcerated, payment of restitution is
22 due during imprisonment at the rate of no less than \$25 per
23 quarter with payment made through the Bureau of Prisons
24 Inmate Financial Responsibility Program.

25 Upon release from imprisonment, you shall be placed

1 on supervised release for a term of 36 months on each of
2 Counts One through Five, all to be served concurrently for a
3 total term of 36 months.

4 Within 72 hours of release from the custody of the
5 Bureau of Prisons, you shall report in person to the
6 probation office in the district to which you are released,
7 wherever that may be.

8 While on supervised release, you shall not commit
9 another federal, state or local crime, you shall not possess
10 a firearm as defined in Title 18 U.S. Code Section 921, you
11 shall not illegally possess controlled substances, you shall,
12 as required by law, cooperate in the collection of DNA as
13 directed by the probation officer, and you shall comply with
14 the standard conditions recommend the United States
15 Sentencing Commission.

16 I am adopting those. Those are conditions 1 through
17 13 attached to the report. They are standard conditions.
18 They are imposed as written.

19 I am suspending the mandatory drug testing condition
20 based on my determination that you pose a low risk of future
21 substance abuse. That is not an issue here.

22 I'm also imposing the special conditions recommended
23 by the probation officer. Those are conditions 1 through 8
24 on pages 29 and 30 of the Presentence Report. Again, with
25 the understanding, Miss Durkee, that you have read them all,

1 I am going to impose them as written without reading them in
2 full.

3 They do include, however, a condition of
4 participation in a program of outpatient mental health
5 treatment and limits on access to computers among other
6 conditions.

7 Is the government supporting voluntary surrender?

8 MR. VINCENT: Yes, Your Honor.

9 THE COURT: January 2nd is the correct date, Officer
10 Alger?

11 PROBATION OFFICER ALGER: Yes, ma'am.

12 THE COURT: All right. I assume that is your
13 request?

14 MR. NIXON: It is, Your Honor.

15 And one other point. I note there is some time that
16 BOP does take to evaluate. We had hoped to be able to have a
17 designation in place so Miss Durkee could surrender directly
18 to the facility where she is going to be placed.

19 When the report was written, the sentencing was set
20 for November 7th. Today is November 28th. I was wondering
21 if the court would possibly consider giving us a little bit
22 more time just for BOP to be able to digest this thing
23 because I my understanding is that she lives in Los Angeles,
24 she would surrender to the Metropolitan Detention Center in
25 Los Angeles, and that is a very crowded facility, and people

1 tend to sit there for long periods of time before they get
2 placed.

3 THE COURT: In light of the change in the sentencing
4 date, Officer Alger, again, this is why I asked, just so I'm
5 clear, is January 2nd still the appropriate date?

6 PROBATION OFFICER ALGER: It takes about six weeks to
7 designate. That's six weeks. But if the court wants to
8 suggest a couple weeks later that is appropriate as well.

9 THE COURT: Here's what typically happens. I'll set
10 the January 2nd date. On occasion parties will stipulate to
11 a slight extension. That's not out of the question here, but
12 I'm going to confirm the January 2nd date.

13 So Miss Durkee, you are hereby ordered, having been
14 sentenced to the custody of Bureau of Prisons, to surrender
15 to the institution designated by the Bureau of Prisons or if
16 no such institution has been designated, to the United States
17 Marshal in Los Angeles before 2:00 p.m. January 2nd, 2013.

18 You are advised that it is a criminal offense
19 punishable by a consecutive term of imprisonment to fail to
20 surrender for service of sentence as I have just ordered.

21 All your conditions of pretrial release which are in
22 effect now will remain in effect until you surrender. The
23 court's understanding is Miss Durkee is in full compliance
24 with pretrial release conditions.

25 MR. VINCENT: Yes, Your Honor.

1 THE COURT: I'm also recommending that Miss Durkee be
2 incarcerated at an institution that can provide her with the
3 mental health counseling needs exhibited by the record before
4 the court. That recommendation accords -- goes so far as it
5 accords with the BOP's security classification and space
6 availability calculations.

7 Charges to dismiss?

8 MR. VINCENT: No, Your Honor.

9 THE COURT: All right. Anything further today?

10 MR. VINCENT: Your Honor, the only thing is Mr. Nixon
11 indicated they would be getting the check over. I would just
12 ask the court order the 401K check be sent to the clerk's
13 office in seven days -- by seven days.

14 THE COURT: All right.

15 Any objection to that additional condition?

16 MR. NIXON: No.

17 THE COURT: Miss Durkee, you also are ordered to send
18 the proceeds from the 401K account to the office of the clerk
19 of this court within seven days of today's date.

20 MR. NIXON: That would be due next Wednesday?

21 THE COURT: I'm giving you the days. You can do the
22 calculation.

23 MR. NIXON: I don't want -- We'll get it out right
24 away.

25 THE COURT: All right. Anything further?

1 MR. VINCENT: No, Your Honor. Thank you.

2 THE COURT: All right. Thank you very much.

3 We're in recess.

4 MR. NIXON: Thank you, Your Honor.

5 (Off the record at 12:25 p.m.)

6 (Back on the record at 12:26 p.m.)

7 THE CLERK: Please, remain seated.

8 Come to order. Court is again in session.

9 THE COURT: All right. Back on the record in the
10 Durkee case.

11 I understand there is just one matter that needs
12 clarifying, that is Miss Durkee is waiving -- I'm not
13 imposing any interest on restitution.

14 PROBATION OFFICER ALGER: Interest is waived on the
15 restitution.

16 THE COURT: Yes. Interest is waived.

17 PROBATION OFFICER ALGER: Thank you, Your Honor. I
18 apologize.

19 THE COURT: Agreed, Mr. Vincent, Mr. Nixon?

20 MR. VINCENT: Yes.

21 MR. NIXON: Yes.

22 One other thing, the special assessment, the \$500
23 special assessment the court imposed, in the plea agreement
24 it was contemplated that if she didn't have money it would be
25 done through the Inmate Responsibility Program.

1 We're going to need to avail ourselves of that. And
2 I don't know how that gets reflected in the record, but she
3 doesn't have the ability to pay a fine.

4 THE COURT: I think that is automatic. There is no
5 need to clarify. I cannot not impose that. And there's a
6 system for dealing with that.

7 MR. NIXON: She asked me to raise that.

8 Thank you.

9 THE COURT: We're in recess.

10 (Off the record at 12:30 p.m.)

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REPORTER'S CERTIFICATE

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STATE OF CALIFORNIA)
COUNTY OF SACRAMENTO)

I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled matter.

IN WITNESS WHEREOF, I subscribe this
certificate at Sacramento, California.

/S/ Catherine E.F. Bodene
CATHERINE E.F. BODENE, CSR NO. 6926
Official United States District Court Reporter