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12  
 13 UNITED STATES DISTRICT COURT  
 14 FOR THE CENTRAL DISTRICT OF CALIFORNIA

15 UNITED STATES OF AMERICA,	)	CR No. 08-1433-RGK
	)	
16 Plaintiff,	)	<u>GOVERNMENT'S SENTENCING POSITION</u>
	)	
17 v.	)	Hearing Date: April 26, 2010
	)	Hearing Time: 10:00 a.m.
18 MILTON RETANA,	)	
	)	
19 Defendant.	)	
	)	
20	)	
	)	
21	)	
	)	
22	)	

23  
 24  
 25 Plaintiff United States of America, by and through its  
 26 counsel of record, Assistant United States Attorneys James A.  
 27 Bowman and Eric D. Vandavelde, hereby files its sentencing  
 28 position with respect to defendant Milton Retana. This

1 sentencing position is supported by the attached memorandum of  
2 points and authorities, the Declaration of James A. Bowman an  
3 attached exhibits, statements from victims in the case (filed  
4 separately with the Court under seal), and such further evidence  
5 and argument as the Court may permit at the sentencing hearing,  
6 currently set for April 26, 2010 at 10:00 a.m.

7 Dated: April 14, 2010

8 Respectfully submitted,

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13 Chief, Criminal Division

14 /S/ James A. Bowman  
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 Defendant Milton Retana awaits sentencing after a jury  
4 convicted him at trial of six counts of mail fraud and one count  
5 of making a false statement to government agents who were  
6 investigating his investment fraud scheme.

7 Defendant perpetrated a massive Ponzi scheme through his  
8 company, Best Diamond Funding, that defrauded thousands of  
9 families across Los Angeles County. While he initially began  
10 with only a single office in Huntington Park, he later expanded  
11 his scheme to branch offices in Palmdale, North Hollywood, San  
12 Fernando and Cathedral City. Defendant was the undisputed leader  
13 of this conspiracy and participated in nearly every aspect of the  
14 fraud; he met with victims to convince them to invest with Best  
15 Diamond Funding, he spoke at investment seminars where he lied  
16 about how investors' money would be used, and he put out  
17 advertisements which touted rates of return he knew were  
18 impossible. All the while, defendant knew that Best Diamond was  
19 a lie - there were no profits, and defendant was simply using  
20 money from new investors to pay previous investors.

21 The profits defendant reaped from this scheme came at the  
22 expense of his victims. Defendant personally met with hundreds  
23 of victims and encouraged them to use money from their retirement  
24 savings to invest with Best Diamond. And at the investment  
25 seminars, defendant told the families in attendance that they  
26 would be foolish to use their money for retirement, insurance, or  
27 paying down their mortgage, rather than investing with Best  
28 Diamond.

1 Defendant actively tried to block government attempts to  
2 investigate his investment business. First, defendant thwarted  
3 an investigation by the California Department of Real Estate by  
4 secretly moving all of his investment files to offices at the  
5 back of his wife's bookstore. Then, after federal agents  
6 executed search warrants on his business, defendant met with  
7 agents and lied to them. And after the government's search  
8 effectively shut down Best Diamond Funding, defendant secretly  
9 continued to solicit new investments right up to the time of his  
10 arrest.

11 This sentencing position includes excerpts from a dozen  
12 victims, taken from statements that were submitted by more than  
13 850 victims of defendant and Best Diamond Funding. (The  
14 government is separately filing, under seal, these victim  
15 statements.) Although the excerpts presented herein represent  
16 only a small fraction of the 2,300 investors, they nevertheless  
17 provide wrenching evidence about the impact that defendant's  
18 fraud has had on these victims. In many cases, the victims'  
19 lives were irrevocably damaged because they had the misfortune of  
20 meeting defendant or reading one of his advertisements. Many  
21 families have had to declare bankruptcy and have either lost  
22 their homes or are facing foreclosure. Several victims also  
23 reported that the financial strain has resulted in divorce or  
24 separation from their spouse.

25 To date, defendant has not shown remorse for what he did.  
26 Rather than accept responsibility, he proceeded to trial, where  
27 he took the position that he had met "kept his end of the  
28 bargain" with the investors.

1 \* \* \* \* \*

2 The government agrees with the PSR's calculation of  
3 defendant's total offense level. The PSR calculates defendant's  
4 total offense level as 47 and his criminal history category as  
5 II, with a resulting advisory guideline range of life in prison.

6 The PSR states that it was not aware of any factors that  
7 would warrant a recommendation for a departure below the advisory  
8 guideline range of life in prison. While the government believes  
9 that a substantial sentence is warranted based on the harm that  
10 defendant caused to the victims, it nevertheless believes that a  
11 life sentence would be unduly harsh under the circumstances of  
12 this case. Defendant also agreed, at the government's request,  
13 to stipulate to forfeiture of the funds that had been seized by  
14 the government. For those reasons, the government requests that  
15 the Court grant a six-level downward departure under United  
16 States v. Booker, 543 U.S. 220 (2005), and find that defendant's  
17 criminal history category is overstated. If granted, defendant's  
18 total offense level would be reduced to level 41, with an  
19 advisory guideline range of 324 months to 405 months in prison.

20 Taking this reduction into account, the government believes  
21 that a sentence of 324 months in prison would be sufficient, but  
22 not greater than necessary, to reflect the seriousness of the  
23 offense and serve as a powerful deterrent to others in the  
24 community who continue to operate predatory investment fraud  
25 schemes like Best Diamond Funding.

1 **II. GUIDELINES CALCULATION**

2 The government concurs with the factual findings in the  
3 presentence report. The probation office concludes that  
4 defendant has a total offense level of 47, based on:

- 5 • A base offense level of 7;
- 6 • An increase of 22 levels for causing more than \$20 million  
7 in losses;
- 8 • An increase of 6 levels for harming more than 250 victims;
- 9 • An increase of 2 levels for using sophisticated means;
- 10 • An increase of 4 levels based on his leadership role in the  
11 offense;
- 12 • An increase of 4 levels for defrauding a large number of  
13 vulnerable victims; and
- An increase of 2 levels for obstructing justice by lying to  
federal agents about his fraud scheme.

14 PSR at ¶¶ 48-68. The probation office also concludes that  
15 defendant has a criminal history category of II based on his 2007  
16 conviction for driving on a suspended license and because he was  
17 on probation for this offense while he committed the crimes in  
18 this case. PSR at ¶¶ 75-81. Defendant's total offense level and  
19 criminal history result in a guideline range of life in prison.

20 **A. Loss Amount and Number of Victims**

21 The government believes that a 22-level increase for loss is  
22 appropriate because defendant caused more than \$20 million in  
23 actual losses to the victims. At trial, Best Diamond's  
24 bookkeeper, Alfredo Espino, testified that he maintained detailed  
25 spreadsheets reflecting all of the money that was received from  
26 investors and how much was paid to them by the company.  
27 According to his records, approximately 2,300 victims paid  
28 approximately \$61 million to Best Diamond. Espino testified that



1 after the government searched Best Diamond, defendant asked him  
2 to determine how much was owed to the investors on their  
3 principal - *i.e.*, the difference between what had been received  
4 from each investor and how much had been paid to each of them in  
5 monthly interest payments. Based on his analysis, Espino  
6 calculated that the victims who lost money ended up losing  
7 approximately \$33,974,779. See Declaration of James A. Bowman,  
8 at ¶ 2, Exh. 1 (Govt. Trial Exh. 154).

9 Espino's analysis is corroborated by the testimony of USAO  
10 Financial Analyst, Stephen Loveman. Although Loveman did not  
11 calculate the total loss to the victims, he determined that  
12 investors paid Best Diamond approximately \$60.01 million. He  
13 also calculated from Best Diamond's bank records that the company  
14 paid a total of \$39.51 million back to investors (a number that  
15 is higher than Espino's calculation because it includes other  
16 payments, such as referral bonuses and other payments, in  
17 addition to simply the monthly interest payments). Bowman Decl.,  
18 at ¶ 3, Exh. 2 (Govt. Trial Exh. 171.) Thus, even without  
19 deducting the payments to investors who overall profited from the  
20 scheme, the losses still exceed \$20 million.<sup>1</sup>

21 The loss amount should not be reduced by the \$12 million  
22 that the government seized from defendant's bank accounts and

---

23  
24 <sup>1</sup> The Ninth Circuit has affirmed loss calculations in Ponzi  
25 scheme cases based on the total amount raised, without  
26 subtracting "Ponzi payments" defendant made to his victims to  
27 keep the scheme going. United States v. Munoz, 233 F.3d 1117,  
28 1125-26 (9th Cir. 2000); see also United States v. Showalter, 569  
F.3d 1150, 1161 (9th Cir. 2009). Because defendant's offense  
level would remain capped at 43 regardless of whether the loss  
was \$60 million or \$20 million (or even significantly less), the  
government takes the more conservative approach to calculating  
loss for the purposes of determining defendant's sentence.

1 cash hidden in his offices. Specifically, Application Note 3(E)  
2 to U.S.S.G. § 2B1.1 provides that funds to be returned to victims  
3 should not be credited against loss unless they were returned  
4 before the fraud was detected. Here, the funds will be returned  
5 to the victims only because the government froze defendant's bank  
6 accounts and seized cash in his office after it discovered the  
7 fraud. Defendant should therefore not receive a credit against  
8 the loss calculation for these funds. See also United States v.  
9 Saunders, 129 F.3d 925, 931 (7th Cir. 1997) ("[W]hen the fraud is  
10 equivalent to simple theft, actual loss is measured at the time  
11 the fraud is detected"); United States v. Mummert, 34 F.3d 201,  
12 204 (3d Cir. 1994) ("A defendant in a fraud case should not be  
13 able to reduce the amount of loss for sentencing purposes by  
14 offering to make restitution after being caught").

15 Additionally, because the number of victims (over 2,000) is  
16 well over 250, a 6-level increase in defendant's total offense  
17 level should also be applied. U.S.S.G. §2B.1.1(b)(2)(C).

18 **B. Sophisticated means**

19 The government believes that a two-level enhancement is  
20 appropriate based on defendant's use of sophisticated means to  
21 commit the offenses in this case. An enhancement for using  
22 sophisticated means is typically applied where the defendant used  
23 especially complex or especially intricate offense conduct  
24 pertaining to the execution or concealment of the offense. See  
25 Application Note 8(B) to U.S.S.G. § 2B1.1(b)(9). Offense conduct  
26 is sophisticated if it displays "a greater level of planning or  
27 concealment" than a typical fraud scheme. See United States v.  
28 Wayland, 549 F.3d 526, 527 (7th Cir. 2008) (quoting United States

1 v. Robinson, 538 F.3d 605, 607 (7th Cir. 2008). In considering  
2 the application of this section, the defendant's actions must be  
3 viewed in their totality -- even where individual actions might  
4 be characterized as unsophisticated, the enhancement is still  
5 appropriate where the total scheme or conduct was sophisticated  
6 in the way the steps were tied together. Wayland, 549 F.3d at  
7 529.

8 Defendant's fraud scheme involved a high degree of  
9 sophistication and went far beyond a typical fraud scheme.  
10 Instead, defendant's fraud involved several companies, including  
11 Best Diamond Funding, Best Diamond Lending, Best Diamond Realty,  
12 and Best Alliance Construction, and dozens of employees. For  
13 nearly two years, defendant was able to maintain the illusion  
14 that Best Diamond Funding was a successful real estate investment  
15 company, without actually making any real estate profits at all.  
16 To maintain this illusion, defendant created a fake construction  
17 company, Best Alliance Construction, and even registered that  
18 company with the State of California. Defendant also published  
19 his own magazine, Despertar Financiero, to further make it appear  
20 that Best Diamond was a successful investing company. And he  
21 held elaborate investment seminars each week, where he and his  
22 agents gave PowerPoint presentations (displayed on large plasma  
23 screen television mounted on the walls of the seminar  
24 room) explaining how the company was able to make such a large  
25 profit in a declining real estate market. As the fraud met with  
26 initial success, defendant expanded the scheme to reach victims  
27 in other communities, opening branch offices in North Hollywood,  
28 San Fernando, and Palmdale.

1 As a result of his elaborate fraud, defendant was able to  
2 convince thousands of people to invest their savings with him -  
3 reaping more than \$60 million in less than two years.  
4 Nevertheless, he kept complete control over all of the money  
5 received - employees (including Espino and Henriquez) testified  
6 that all of the investor money went to defendant and that he  
7 alone had access to the company's bank accounts. Defendant  
8 transferred these funds between fourteen different accounts,  
9 moving money each month to make sure that there was enough in  
10 each account to pay the investors. Espino testified that given  
11 the huge number of investors, defendant was writing nearly 90 to  
12 100 payment checks each day.

13 Under such circumstances - which go far beyond a simple  
14 fraud case - a two-level enhancement for sophisticated means is  
15 appropriate. See, e.g., Wayland, 549 at 529 (sophisticated means  
16 enhancement applied in government benefit fraud case where  
17 defendant created false documents and registered PO Box to  
18 further fraudulent claim that individual was caring for his ill  
19 mother); Robinson, 538 F.3d at 607 (sophisticated means  
20 enhancement applied in check counterfeiting case where the  
21 defendant printed checks with bona fide routing information and  
22 ensured that bank inquiries would be routed to his phone; scheme  
23 was more complex than run-of-the-mill counterfeit cases); United  
24 States v. Evano, 553 F.3d 109, 113 (1st Cir. 2009) (sophisticated  
25 means enhancement applied where defendant convicted of scheme to  
26 ingest glass at restaurants to defraud insurance companies;  
27 defendant's use of fake identifications and aliases made  
28 detection of fraud scheme more difficult).

1           C.    Vulnerable victims

2           An enhancement of two levels is appropriate where "the  
3 defendant knew or should have known that a victim of the offense  
4 was a vulnerable victim," and four levels if the scheme involved  
5 a large number of such victims. U.S.S.G. § 3A1.1(b)(1), (2).  
6 The Ninth Circuit has upheld the application of this enhancement  
7 in cases where victims reinvested after having been victimized  
8 previously - that is, after they have demonstrated their  
9 susceptibility to the scheme. United States v. Randall, 162 F.3d  
10 557, 560 (9th Cir. 1998) (citing United States v. Jackson, 95  
11 F.3d 500, 506-08 (7th Cir. 1996)). It is not required that "the  
12 defendant ... 'target' an unusually vulnerable victim before [the  
13 enhancement] may be applied." Randall, 162 F.3d 557 n.2 (citing  
14 United States v. O'Brien, 50 F.3d 751, 755 & n.3 (9th Cir.  
15 1995)). "All that is required is that the defendant knew or  
16 should have known that the victim was unusually vulnerable." Id.

17           Several victims who testified at trial made multiple  
18 investments with Best Diamond Funding - typically after receiving  
19 their first monthly interest payment from the company. For  
20 example, Jose Orellana (the long haul truck driver) testified  
21 that he initially invested \$5,000 after attending one of the  
22 investment seminars. When he received his first monthly payment,  
23 invest the rest of his savings - another \$69,000. Francisco  
24 Hernandez, who worked in construction, initially invested \$5,000.  
25 After he received his first payment check, however, he invested  
26 another \$5,000 from his family's "emergency savings account."  
27 And Espino's spreadsheet summarizing the investor contracts  
28

1 reflects that several hundred victims invested more than once  
2 with Best Diamond.

3       Additionally, the vast majority of the victims in this case  
4 were vulnerable to the scheme because they were not financially  
5 sophisticated and were easily duped by defendant's lies about his  
6 business. Several victims who testified at trial said that they  
7 had no financial experience whatsoever and had never invested  
8 before. And each victim who testified at trial said that they  
9 mistakenly believed that having their contract notarized meant  
10 that they could not lose their investment, explaining that in  
11 Mexico and Latin America, a notary is typically a lawyer or court  
12 official, and a notarized document is like a document from the  
13 court. Defendant exploited this belief, emphasizing in  
14 advertisements that investments were protected because they were  
15 "backed by documents notarized under the laws of California."

16       **D. Aggravating role**

17       Under § 3B1.1(a), a four-level upward adjustment is  
18 appropriate where, as here, a defendant is the leader or  
19 organizer of a criminal activity that involved five or more  
20 participants or was otherwise extensive. In determining whether  
21 a criminal activity is "otherwise extensive," Application Note 3  
22 to § 3B1.1 provides that all of the persons involved during the  
23 entire offense should be considered. Thus, a fraud that involves  
24 the "unknowing services of many outsiders" can be considered  
25 extensive.

26       Defendant was the undisputed leader of the company and  
27 supervised dozens of employees. Defendant admitted during his  
28 unimmunized interview with the government that he made "90

1 percent" of the decisions at the company. All of the money and  
2 investor contracts went to him directly, and contracts could not  
3 be finalized without his personal approval. Defendant controlled  
4 all of the bank accounts, approved all of the advertisements, and  
5 was the "closer" for major investors. And each employee who  
6 testified, including Gabriel Lopez and Rabbi Mendoza, said that  
7 defendant was the only one who knew what properties were actually  
8 being purchased with the victims' money. After the government  
9 shut down the company, defendant enlisted his previous investor  
10 representatives and continued to bring in investments from  
11 unsuspecting victims.

12 All of these facts demonstrate defendant's "exercise of  
13 decision making authority, the nature of [his] participation in  
14 the commission of the offense, the recruitment of accomplices,  
15 ... the degree of planning [and] organizing the offense, the  
16 nature and scope of the illegal activity, and the degree of  
17 control and authority [he] exercised over others." Application  
18 Note 4 to U.S.S.G. § 3B1.1. As a result, defendant was the  
19 "organizer and leader" of the Best Diamond Funding fraud scheme  
20 and a four-level enhancement should be applied for his leadership  
21 role in the offense.

22 The government also concurs with the PSR's factual finding  
23 regarding the number of individuals who participated in carrying  
24 out the fraud scheme in this case. The government notes that  
25 many of the individuals involved, including J.A., I.M., M.Q., and  
26 J.R., all continued to solicit investments for Best Diamond  
27 Lending, well after they knew that the government was  
28 investigating Best Diamond Funding for fraud. Additionally, even



1 if these individuals could not be considered criminally culpable,  
2 a four-level enhancement would nevertheless be appropriate  
3 because defendant's scheme was "otherwise extensive" under this  
4 guideline. See Application Note 3 to U.S.S.G. § 3B1.1.

5 **E. Obstruction of justice**

6 A two-level enhancement for obstruction of justice is  
7 appropriate where a "defendant willfully obstructed or impeded,  
8 or attempted to obstruct or impede, the administration of justice  
9 with respect to the investigation ... of the instant offense of  
10 conviction, and ... the obstructive conduct related to ... the  
11 defendant's offense of conviction and any relevant conduct ..."  
12 U.S.S.G. § 3C1.1.

13 Defendant obstructed two separate investigations into his  
14 fraud scheme. First, when he learned that the California  
15 Department of Real Estate was coming to audit Best Diamond,  
16 defendant ordered Andres Ramirez to move all of the investor  
17 files and accounting records out of Best Diamond's offices to  
18 offices at the back of his wife's religious bookstore. The  
19 auditor from the DRE, Gina Chou, testified that when she  
20 conducted the audit, there were only a few loan files at the  
21 company and it looked like a relatively small mortgage business.  
22 As a result, defendant was able to continue operating his scheme  
23 for two more months before the federal government shut down the  
24 company, and brought in several million dollars from investors  
25 during that time period.

26 Separately, defendant directly obstructed the federal  
27 government's investigation into his Ponzi scheme. During his  
28 interview with federal agents at the United States Attorney's



1 Office, defendant insisted that no crime had been committed  
2 because he had enough assets to pay all of the investors what  
3 they were owed. He told the government that he had properties  
4 that were worth approximately \$10 million. When asked how much  
5 he had received from investors, defendant repeatedly insisted  
6 that he had received approximately \$10 million from investors  
7 (and thus, had enough money to pay them all back). In reality,  
8 defendant had received approximately \$60 million from the  
9 investors and did not have enough assets or money to repay the  
10 investors. As a result, the jury convicted defendant of making  
11 a false statement in violation of 18 U.S.C. § 1001.

12  
13 **F. A Six-Level Downward Departure is Necessary to Avoid a  
Life Sentence**

14 While the government believes that defendant deserves a  
15 substantial sentence based on the harm that he caused the victims  
16 in this case, it nevertheless believes that a life sentence would  
17 be unduly harsh under the circumstances of this case.

18 Additionally, after the government arrested defendant, and seized  
19 approximately \$12 million from his office and bank accounts,  
20 defendant agreed to stipulate to the forfeiture of the seized  
21 funds, thereby avoiding additional litigation over the funds.

22 For those reasons, the government requests that the Court  
23 grant a six-level downward departure under United States v.  
24 Booker, 543 U.S. 220 (2005). The government also believes that  
25 defendant's criminal history category of II, which was based on  
26 his previous conviction for driving on a suspended license and  
27 the fact that he was on probation for that offense at the time of  
28 the crime in this case, is somewhat overstated.

1 If this departure were granted, defendant's total offense  
2 level would be reduced to level 41, with a criminal history of I,  
3 and a resulting advisory guideline range of 324 months to 405  
4 months in prison.

5  
6 **III. A SENTENCE OF 324 MONTHS (27 YEARS) IN PRISON IS APPROPRIATE**  
7 **UNDER THE 18 U.S.C. 3553(A) FACTORS**

8 **A. Nature and Circumstances of the Offense**

9 **1. Defendant's Conduct**

10 "*[He] is no different than a thief breaking into your*  
11 *house. Actually, [he is] worse because he robs you*  
12 *face to face."* (Excerpt from statement of victim M.O.)

13 Defendant preyed on working class families in his own  
14 community. He used his common ties with these victims (as well  
15 as overtly religious appeals) to encourage them to invest money  
16 that they could not afford to lose. Defendant's message was very  
17 effective - hundreds of victims attended his seminars each week,  
18 and people used whatever savings they had available to them to  
19 invest with Best Diamond. Recordings from the investment  
20 seminars shows that many of the victims brought their young  
21 children to the seminars, and defendant was thus well aware that  
22 the losses he caused to each victim would impact an entire  
23 family.

24 Given the harm caused by his fraud, it would be a serious  
25 crime even if only one victim or family had been affected. But  
26 defendant operated his scheme on a massive scale, defrauding more  
27 than 2,000 victims - a scheme so large, it is nearly ten times  
28 the highest number contemplated under the Guidelines for a victim  
enhancement.

1                   2.    Impact on Victims

2                   *"I was in the hospital and could not pay my bills. My*  
3                   *credit cards went all up in debt. I had never been*  
4                   *depending on handouts but I was forced to apply for*  
5                   *food stamps to feed my family." (Excerpt from*  
6                   *statement of victim S.F.R.)*

7                   Defendant's fraud had a devastating impact on the families  
8                   who invested with Best Diamond Funding. The victim investors  
9                   were mostly working class families from East Los Angeles, and  
10                  nearly all of them invested money that they could not afford to  
11                  lose. Defendant encouraged them to invest as much as possible.  
12                  In recorded seminars, he mocked people who questioned the safety  
13                  of investing with Best Diamond Funding and advised people against  
14                  putting their money in banks or retirement funds.

15                  The government sent notices regarding defendant's sentencing  
16                  to more than 2,000 victims and invited them to provide their  
17                  information to the Court. To date, the government has received  
18                  more than 850 responses. The government has reviewed these  
19                  statements and provides excerpts from some of them below,  
20                  describing in their own words what has happened to them since the  
21                  fraud was uncovered. Although they represent only a small  
22                  fraction of the thousands of victims who lost money, their  
23                  stories provide a vivid picture of the consequences of  
24                  defendants' crimes:

- 25                  •    Victim E.P lost \$52,000 out of the \$90,000 that he  
26                  invested from the equity in his home. As a result of  
27                  losing this money, he reports that his wife has left  
28                  him and that he is in the process of losing his home.
- Victim O.Y. lost \$14,300 from her \$15,000 investment.  
                  She explained that defendant *"used the Lord's name to*  
                  *get me to trust him."* She said that *"he held a Bible*  
                  *in one hand and with the other held me. He said a*  
                  *prayer before and after his lectures on how we should*  
                  *invest."*

- 1 • Victim P.S. is 81 years old and invested \$30,000 from  
2 her life's savings. She explained that she invested  
3 because she wanted to leave money for her son and  
4 grandchildren when she passed away. She lost \$21,600  
5 from her investment and writes that instead of leaving  
6 money for her family, *"I am leaving them with a debt to  
7 remember me by."*
- 8 • Victim A.R. lost all of her \$7,000 investment. She  
9 explains that losing this money was particularly  
10 difficult because she is *"a single mom of two girls  
11 [and] my dream is to buy my home and have my girls go  
12 to college . . ."* Because she lost money to defendant,  
13 she now *"live[s] paycheck to paycheck and with credit  
14 cards."*
- 15 • Victim B.M. lost all of his \$65,000 investment - money  
16 that he obtained from mortgaging his home and from new  
17 credit cards. He can no longer afford payments for his  
18 home or for medical bills. As a result, he has had to  
19 forego medical treatment.
- 20 • Victim R.A. lost \$11,000. He writes that *"I was  
21 counting on the monthly return to pay for my daughter's  
22 school tuition, when I lost it all, I still had to  
23 borrow additional money to make ends meet. I am still  
24 struggling now."* He explains that *"Mr. Retana preached  
25 about how we should follow God and learn to make the  
26 right decisions (by investing with him). I pray that  
27 God forgives him for altering and destroying so many  
28 people's lives and dreams."*
- Victim D.A. is 76 years old and invested all of his  
retirement savings - \$50,000. He lost \$43,000 of his  
investment. He writes *"I thought I could with the  
investment [make] a payment in a house so I could take  
my mother from a convalescent place."* He says that  
defendant *"diminished my faith in church and fellow  
man."*
- Victim K.H.L. reports that he invested \$200,000 from a  
line of credit. He lost \$186,000 from that investment.  
This crime caused him to lose his privacy because he  
now has to share his house with another family to be  
able to make the monthly mortgage payments.
- Victim S.F.R. lost \$15,000. She writes that after she  
lost her investment, she had to apply for food stamps  
to feed her family and was unable to pay medical bills.  
She says that *"As a Christian, I forgive Mr. Retana.  
As a citizen, I hope the Court would do justice by  
applying the letter of the law and dictate the maximum  
sentence or penalty for Mr. Retana."*

- 1 • Victim R.B. lost \$24,100. He writes *"Since I was laid*  
2 *off, and this monthly income from BDF was all I was*  
3 *making, I almost lost my home, defaulted on credit card*  
4 *payments ... and I am still struggling to survive*  
*because I am behind in payments and in so much debt."*  
Because of the fraud *"I am on the verge of filing for*  
*bankruptcy."*
- 5 • Victim L.B. lost \$22,000. She says that the fraud  
6 *"destroyed my life, my husband and I separated and now*  
7 *I have not house [sic] to live!"* She explains that  
8 after she lost her investment, *"we got behind with*  
9 *house payments, line of credit, credit cards, and now*  
10 *our relationship ends due to all these problems."*
- 11 • Victim M.N. writes that she lost \$20,000. She explains  
12 that after losing this money, *"My husband passed away*  
13 *and we couldn't afford the services. Due to the loss*  
14 *of money we lost our house and now I am struggling to*  
15 *find a place to live.*
- 16 • Victim M.C. lost \$18,600. She explains that she  
17 invested because *"my husband was laid off from his work*  
18 *after working 19 years for [his] company."* She says  
19 *"it has been really hard for us in the financial*  
20 *situation. We also need the money for my [son's]*  
21 *college. I am in default on my mortgage since then*  
22 *...."*
- 23 • Victim R.R.A. lost \$11,000, which was *"the product of*  
24 *all the years I have worked in this country."* He said  
25 that as a result, *"to cope with the debt, I had to*  
26 *start collecting aluminum cans and sell them."*

27 In summary, the victim statements make clear that  
28 defendant's crime caused:

- 1) Financial devastation;
- 2) Delayed retirement, as many victims have had to  
continue to work beyond their targeted retirement to  
make up for the losses they suffered;
- 3) Inability to pay for expenses, including care for  
elderly parents, mortgages, and college tuition for  
their children;
- 4) Forced bankruptcy;
- 5) Obligations to continue to pay interest to banks and  
credit card companies for money they borrowed to invest  
with Best Diamond;

- 1           6) Terrible emotional consequences, including loss of  
2           trust and increased strain on family relationships,  
3           including several divorces and separations; and  
4           7) Lost time and money, including legal fees and costs,  
5           attempting to recover the money they lost to defendant.

6           The victims' statements also make clear that most of the  
7           victims are not wealthy or sophisticated investors. Like the  
8           victims who testified at trial, many of the victims of  
9           defendant's fraud worked in construction, as stone masons and  
10          roofers, as hospice nurses and teachers. Each of them worked  
11          very hard, for a long time, to earn the money that defendant  
12          stole from them.

13           **B. Defendant's History and Characteristics**

14           *"He has no pity on others. We worked hard to save this*  
15           *money, and he just took it."* (Excerpt from statement  
16           of victim U.D.)

17           Defendant did not commit the crimes in this case out of  
18           necessity. There was no evidence presented at trial, nor is  
19           there any provided in the PSR, that defendant's actions were the  
20           product of financial distress or other hardships in his life.  
21           Instead, the facts provided in the PSR reflect that defendant has  
22           the intellectual ability and educational background to have led a  
23           productive life without resorting to the fraud he carried out  
24           through Best Diamond Funding. The PSR states that defendant  
25           received a college degree in El Salvador before he came to the  
26           United States. PSR at ¶ 90. He obtained work within three  
27           months after coming to the United States. *Id.* at ¶ 92. He has  
28           been married twice and has a close relationship with his children  
            and with his current wife. *Id.* at ¶¶ 93-94.



1 The government is thus unaware of any other unusual  
2 circumstances in defendant's history and characteristics that  
3 might warrant a lower sentence, other than the fact that this was  
4 his first fraud conviction -- a factor that has already been  
5 accounted for in his guideline calculation.

6 At the same time, defendant has not shown any remorse for  
7 his actions or the harm that he caused to the victims.

8  
9 **C. A Substantial Prison Sentence Is Necessary To Deter**  
**Defendant, Promote Respect for the Law, and Protect the**  
**Community**

10  
11 *"[Defendant] is a predator who has fed his accounts*  
*with the trust and the money of hardworking people.*  
12 *Given the opportunity, he would do it again." (Excerpt*  
*from statement of victim S.F.R.)*

13 The government's recommended sentence is also necessary to  
14 protect the community and to deter defendant from committing  
15 similar crimes in the future.

16 As described above, defendant has demonstrated that he has  
17 no respect for the law. Defendant told investors their  
18 investments were safe, because they were backed by "legal  
19 documents notarized under the laws of the State of California,"  
20 when in reality defendant had blank, pre-signed notary forms  
21 ready to be filled in with simply the date. Defendant told  
22 investors that Best Diamond was a member of the Better Business  
23 Bureau, despite his having received a letter saying that its  
24 membership had been suspended. Defendant thwarted an audit by  
25 state regulators (the California Department of Real Estate) by  
26 relocating his recruiters and investors files to another  
27 location. When interviewed by government agents, defendant  
28 minimized the scope of his scheme by lying about the number of

1 victims and the amount of money raised. After that interview,  
2 defendant continued soliciting investments under a new company  
3 name.

4 At every turn, defendant has demonstrated his disdain for  
5 the law, taking affirmative steps to prolong the scheme, hinder  
6 any investigation, and ultimately avoid being held responsible  
7 for his actions. Furthermore, the fact that defendant operated  
8 the scheme over a period of several years, while on probation,  
9 demonstrates that he poses a high risk of recidivism and that  
10 there is a need to protect the community from him in the future.

11 A substantial sentence is also needed to promote respect for  
12 the law and deter others from engaging in similar fraud schemes.  
13 As the Court is no doubt aware, large investment fraud schemes  
14 (including Ponzi schemes) have become more and more prevalent in  
15 the past few years - particularly affinity fraud schemes, such as  
16 this one, that have targeted communities in East Los Angeles.  
17 Like defendant's scheme, many of these schemes are large and harm  
18 a large number of victims with a staggering cost to the  
19 community. The sentence imposed in this case should not only be  
20 sufficient to deter defendant, but should also be sufficient to  
21 deter others from engaging in similarly predatory schemes.

22  
23 **D. Policy Statements and Need to Avoid Sentencing**  
**Disparities**

24 *"I want the judge to send a message to all the*  
25 *companies that are still the same way as BDF was ..."*  
(Excerpt from statement of victim A.C.)

26 The guideline range represents the Sentencing Commission's  
27 determination that a defendant who causes more than \$20 million  
28 in losses to more than 250 victims in the community, who is an



1 active leader in the conspiracy and who uses sophisticated means,  
2 who preys on vulnerable victims, and who lies to state regulators  
3 and federal investigators, can expect to serve life in prison.  
4 Following a guidelines sentence is normally a means to avoiding  
5 disparity between similarly-situated defendants.

6 Here, because defendant had a relatively minor criminal  
7 history before committing this crime, the government's  
8 recommendation is well below the sentence that would otherwise be  
9 called for under the guidelines. To depart further from this  
10 sentence would result in a sentence below those received by  
11 defendants who committed comparably large fraud schemes. For  
12 example, in a recent case from this District, United States v.  
13 Harkless, No. ED CR 07-18-VAP, the defendant Richard Harkless was  
14 sentenced in September 2009 to 100 years in prison for running a  
15 Ponzi scheme with far fewer victims (approximately 600) and a  
16 comparable loss amount (approximately \$39 million). In another  
17 case from this District, United States v. Nathanson, No. CR 05-  
18 301-CJC, defendant Colin Nathanson pled guilty and was sentenced  
19 in August 2009 to 27 years in prison. In yet another, United  
20 States v. Samoza, No. CR 06-479-AHM, defendant Curtis Samoza was  
21 sentenced in November 2009 to 25 years in prison after defrauding  
22 fewer than 100 victims.

23 Thus, the government believes that its recommended sentence  
24 of 324 months (27 years) in prison is not only supported by the  
25 Sentencing Commission's policy statements, but is also needed in  
26 order to avoid sentencing disparity among fraud defendants who  
27 have committed similarly large Ponzi schemes.

28

1 **IV. RESTITUTION AND FINE**

2 Given the large number of victims, as well as the complex  
3 nature of the fraud, restitution is not presently ascertainable.

4 In a related civil forfeiture matter (United States v.  
5 \$6,874,561.25 in Funds from Six Wells Fargo Bank Accounts, et  
6 al., CV 09-2398 RGK (Rzx)) this Court appointed Robb Evans as a  
7 Special Master for the purposes of collecting information from  
8 the government and third parties sufficient to establish for each  
9 individual victim the amount of money they paid to BDF as an  
10 investment, and the amount of money BDF paid back to the victim.  
11 The Special Master's determinations regarding these victims would  
12 assist the Court in determining the amount of restitution to be  
13 awarded to each victim in this criminal case. The government has  
14 delivered a substantial amount of documentation to the Special  
15 Master's team, including a full set of questionnaires received  
16 from the victims at the inception of the case, as well as BDF's  
17 own internal investor records and the government's trial exhibits  
18 in the matter relating to the financial analysis. Based on the  
19 volume of victims and records to be reviewed, the Special  
20 Master's representative informed the government's forfeiture  
21 attorney in early March 2010 that he estimated that the analysis  
22 will be complete by July 31, 2010.

23 The government therefore believes that the victims' losses  
24 are not presently ascertainable, and pursuant to 18 U.S.C.  
25 § 3664(d)(5), requests that the Court extend time for final  
26 determination of the victims' losses by 90 days, to July 26,  
27 2010. If the Special Master's analysis is complete by that date,  
28 it will provide a blueprint for the restitution order in this

1 case. Even if the analysis is not complete, however, the  
2 government anticipates that it may be able to use a draft version  
3 of the analysis from the Special Master to propose an appropriate  
4 restitution order to the Court.

5 **V. CONCLUSION**

6 For the foregoing reasons, the government respectfully  
7 requests that the Court impose a sentence of 324 months (27  
8 years) in custody, five years of supervised release, no fine, and  
9 a special assessment of \$700, and set a further hearing for  
10 restitution on July 26, 2010.

11 Dated: April 13, 2010

12 Respectfully submitted,

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