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3/20/15

U.S. Department of Justice

United States Attorney
District of Maryland

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March 20, 2015

Deborah Boardman, Esq.
Assistant Federal Public Defender
Office of the Federal Public Defender
100 South Charles Street, Tower II, 9th Floor
Baltimore, MD 21201

Re: United States v. Wilfred T. Azar, III, Case No. WDQ-14-0515

Dear Ms. Boardman:

This letter confirms the plea agreement which has been offered to the Defendant, Wilfred T. Azar, III, by the United States Attorney's Office for the District of Maryland ("this Office"). If the Defendant accepts this offer, please have him execute it in the spaces provided below. If this offer has not been accepted by close of business on April 3, 2015, it will be deemed withdrawn. The terms of the agreement are as follows:

Offenses of Conviction

1. The Defendant agrees to waive indictment and plead guilty to Counts One and Two of the Superseding Criminal Information that will be filed against him. Count One will charge him with securities fraud in violation of 15 U.S.C. §§ 78j(b) and 78ff(a) and 17 C.F.R. § 240.10b-5. Count Two will charge him with filing a false individual income tax in violation of 26 U.S.C. § 7206(1). The Defendant admits that he is, in fact, guilty of these offenses and will so advise the Court.

Elements of the Offenses

2. The elements of 15 U.S.C. §§ 78j(b) and 78ff(a) and 17 C.F.R. § 240.10b-5, to which the Defendant has agreed to plead guilty, and which this Office would prove if the case went to trial, are as follows:

> First, the Defendant either knowingly used a device or scheme to defraud someone, or knowingly made an untrue statement of a material fact, or knowingly failed to disclose a material fact that resulted in making the Defendant's statement misleading, or knowingly engaged in any act, practice, or course of business that operated or would operate as a fraud or deceit upon any person.

Second, the Defendant's acts or failures to disclose were in connection with the purchase or sale of a security.

Third, the Defendant directly or indirectly used or caused to be used any means or instruments of transportation or communication in interstate commerce or the mails in connection with these acts or failures to disclose.

Fourth, the Defendant acted willfully and with the intent to defraud.

3. The elements of 26 U.S.C. § 7206(1), to which the Defendant has agreed to plead guilty, and which this Office would prove if the case went to trial, are as follows:

First, the Defendant made or caused to be made a tax return.

Second, the tax return contained a written declaration that it was made under the penalty of perjury.

Third, when the Defendant made or caused to be made the tax return he knew it contained false information.

Fourth, when the Defendant did so, he intended to do something that he knew violated the law.

Fifth, the false matter in the tax return was material.

Penalties

4. The maximum sentences provided by statutes for the offenses to which the Defendant is pleading guilty are as follows. For securities fraud in violation of 15 U.S.C. §§ 78j(b) and 78ff(a) and 17 C.F.R. § 240.10b-5, 20 years of imprisonment, a fine of not more than $5 million or both, and 3 years of supervised release. For filing a false tax return in violation of 26 U.S.C. § 7206(1), 3 years of imprisonment, a fine of not more than $250,000 or both, and 1 year of supervised release. In addition, the Defendant must pay $200 as a special assessment pursuant to 18 U.S.C. § 3013, which will be due and should be paid at or before the time of sentencing. This Court may also order him to make restitution pursuant to 18 U.S.C. § § 3663, 3663A, and 3664.[1] If a fine or restitution is imposed, it shall be payable immediately, unless, pursuant to 18 U.S.C. § 3572(d), the Court orders otherwise. The Defendant understands that if he serves a term of imprisonment, is released on supervised release, and he violates the conditions of his supervised release, his supervised release could be revoked -- even on the last day of the term -- and the Defendant could be returned to custody to serve another period of incarceration and a new term of supervised release. The Defendant understands that the Bureau of Prisons has sole discretion in designating the institution at which the Defendant will serve any term of imprisonment imposed.

[1] Pursuant to 18 U.S.C. § 3612, if the Court imposes a fine in excess of $2,500 that remains unpaid 15 days after it is imposed, the Defendant shall be charged interest in that fine, unless the Court modifies the interest payment in accordance with 18 U.S.C § 3612(f)(3).

Waiver of Rights

5. The Defendant understands that by entering into this agreement, he surrenders certain rights as outlined below:

a. If the Defendant had pled not guilty, he would have had the right to a speedy jury trial with the close assistance of competent counsel. The trial could be conducted by a judge, without a jury, if the Defendant, this Office and the Court all agreed.

b. If the Defendant elected a jury trial, the jury would be composed of twelve individuals selected from the community. Counsel and the Defendant would have the opportunity to challenge prospective jurors who demonstrated bias or who were otherwise unqualified, and would have the opportunity to strike a certain number of jurors peremptorily. All twelve jurors would have to agree unanimously before the Defendant could be found guilty of any count. The jury would be instructed that the Defendant was presumed to be innocent, and that presumption could be overcome only by proof beyond a reasonable doubt.

c. If the Defendant went to trial, the government would have the burden of proving the Defendant guilty beyond a reasonable doubt. The Defendant would have the right to confront and cross-examine the government's witnesses. The Defendant would not have to present any defense witnesses or evidence whatsoever. If the Defendant wanted to call witnesses in his defense, however, he would have the subpoena power of the Court to compel the witnesses to attend.

d. The Defendant would have the right to testify in his own defense if he so chose, and he would have the right to refuse to testify. If he chose not to testify, the Court could instruct the jury that they could not draw any adverse inference from her decision not to testify.

e. If the Defendant were found guilty after a trial, he would have the right to appeal the verdict and the Court's pretrial and trial decisions on the admissibility of evidence to see if any errors were committed which would require a new trial or dismissal of the charges against him. By pleading guilty, the Defendant knowingly gives up the right to appeal the verdict and the Court's decisions.

f. By pleading guilty, the Defendant will be giving up all of these rights, except the right, under the limited circumstances set forth in the "Waiver of Appeal" paragraph below, to appeal the sentence. By pleading guilty, the Defendant understands that he may have to answer the Court's questions both about the rights he is giving up and about the facts of his case. Any statements the Defendant makes during such a hearing would not be admissible against him during a trial except in a criminal proceeding for perjury or false statement.

g. If the Court accepts the Defendant's plea of guilty, there will be no further trial or proceeding of any kind, and the Court will find him guilty.

h. By pleading guilty, the Defendant will also be giving up certain valuable civil rights and may be subject to deportation or other loss of immigration status. The Defendant recognizes that if he is not a citizen of the United States, pleading guilty may have consequences with respect to his immigration status. Under federal law, conviction for a broad range of crimes can lead to adverse immigration consequences, including automatic removal from the United States. Removal and other immigration consequences are the subject of a separate proceeding, however, and the Defendant understands that no one, including his attorney or the Court, can predict with certainty the effect of a conviction on immigration status. The Defendant nevertheless affirms that he wants to plead guilty regardless of any potential immigration consequences.

Advisory Sentencing Guidelines Apply

4. The Defendant understands that the Court will determine a sentencing guidelines range for this case (henceforth the "advisory guidelines range") pursuant to the Sentencing Reform Act of 1984 at 18 U.S.C. §§ 3551-3742 (excepting 18 U.S.C. §§ 3553(b)(1) and 3742(e)) and 28 U.S.C. §§ 991 through 998. The Defendant further understands that the Court will impose a sentence pursuant to the Sentencing Reform Act, as excised, and must take into account the advisory guidelines range in establishing a reasonable sentence.

Factual and Advisory Guidelines Stipulation

5. This Office and the Defendant understand, agree and stipulate to the Statement of Facts set forth in Attachment A hereto which this Office would prove beyond a reasonable doubt, and to the following applicable sentencing guideline factors:

a. The guidelines level for the securities fraud is calculated as follows. Pursuant to U.S.S.G. § 2X1.1(a) and U.S.S.G. § 2B1.1(a)(2), the base offense level for the offense of securities fraud is 7. The offense level is increased by 20 levels because loss is more than $7,000,000 but less than $20,000,000 pursuant to U.S.S.G. § 2B1.1(b)(1)(K). Under U.S.S.G. § 2B1.1(b)(2)(B), the offense level is increased by 4 levels for more than 50 victims. Accordingly, the guidelines level for the securities fraud is 31.

b. The guidelines level for filing a false tax return is calculated as follows. Pursuant to U.S.S.G §§ 2T1.1(a)(1) and 2T4.1(H), the offense level is 20 since the tax loss is more than $400,000 but less than $1,000,000. Under U.S.S.G § 2T1.1(b)(1), another 2 levels are added because the Defendant failed to report more than $10,000 from illegal activity. As a result, the guidelines level for the tax fraud is 22.

c. Pursuant to U.S.S.G §§ 3D1.4(a), 0 levels are added because the group with the highest level: securities fraud is a level 31, and the other group, tax fraud is a level 22. Therefore, because one offense is 9 levels less serious than the other, then there are 0 units, which requires a 0 level increase in the offense level pursuant to the U.S.S.G § 3D1.4(a) grouping rule. Accordingly, the combined guidelines level is 31.

d. This Office does not oppose a two-level reduction in the Defendant's adjusted offense level, based upon the Defendant's apparent prompt recognition and affirmative acceptance of personal responsibility for his criminal conduct. This Office agrees to make a motion pursuant to U.S.S.G. § 3E1.1(b) for an additional one-level decrease in recognition of the Defendant's timely notification of his intention to plead guilty. This Office may oppose any adjustment for acceptance of responsibility if the Defendant (a) fails to admit each and every item in the factual stipulation; (b) denies involvement in the offense; (c) gives conflicting statements about his involvement in the offense; (d) is untruthful with the Court, this Office, or the United States Probation Office; (e) obstructs or attempts to obstruct justice prior to sentencing; (f) engages in any criminal conduct between the date of this agreement and the date of sentencing; or (g) attempts to withdraw his plea of guilty. Therefore, assuming the Defendant qualifies for acceptance of responsibility, the final adjusted advisory guideline level after the adjustment for acceptance of responsibility is 28.

6. The Defendant understands that there is no agreement as to his criminal history or criminal history category, and that his criminal history could alter his offense level if he is a career offender or if the instant offense was a part of a pattern of criminal conduct from which he derived a substantial portion of his income.

7. This Office and the Defendant agree that with respect to the calculation of the advisory guidelines range, no other offense characteristics, sentencing guidelines factors, potential departures or adjustments set forth in the United States Sentencing Guidelines will be raised or are in dispute. If the Defendant wishes to argue for any factor that could take the sentence outside of the advisory guidelines range, he will notify the Court, the United States Probation Officer and government counsel at least 14 days in advance of sentencing of the facts or issues he intends to raise.

Obligations of the United States Attorney's Office

8. At the time of sentencing, this Office will recommend a sentence within the final advisory guidelines range, restitution in the total amount of $7,219,362 for securities fraud and $469,936 for tax fraud. After the imposition of sentence, this Office will move to dismiss any outstanding counts.

9. The parties reserve the right to bring to the Court's attention at the time of sentencing, and the Court will be entitled to consider, all relevant information concerning the Defendant's background, character and conduct, including the conduct that is the subject of the counts of the Indictment that this Office has agreed to dismiss at sentencing.

Restitution

10. The Defendant agrees to the entry of a Restitution Order in the amount of $7,219,362 for securities fraud and $469,936 for tax fraud. The Defendant agrees that, pursuant to 18 U.S.C. §§ 3663, 3663A(a)(3), 3563(b)(2), and 3583(d), the Court will order restitution of the full amount of the actual, total loss caused by the offense conduct. The Defendant further agrees that he will fully disclose to the probation officer and to the Court, subject to the penalty

of perjury, all information, including but not limited to copies of all relevant bank and financial records, regarding the current location and prior disposition of all funds obtained as a result of the criminal conduct set forth in the factual stipulation. The Defendant further agrees to take all reasonable steps to retrieve or repatriate any such funds and to make them available for restitution. If the Defendant does not fulfill this provision, it will be considered a material breach of this plea agreement, and this Office may seek to be relieved of its obligations under this agreement.

Waiver of Appeal

11. In exchange for the concessions made by this Office and the Defendant in this plea agreement, this Office and the Defendant waive their rights to appeal as follows:

a. The Defendant knowingly waives all right, pursuant to 28 U.S.C. § 1291 or otherwise, to appeal the defendant's conviction;

b. The Defendant and this Office knowingly and expressly waive all rights conferred by 18 U.S.C. § 3742 to appeal the judgment and whatever sentence is imposed, including any fine, term of supervised release, order of restitution, or order of forfeiture and any issues that relate to the establishment of the advisory guidelines range, as follows: the Defendant waives any right to appeal from any sentence within or below the final advisory guidelines range, and this Office waives any right to appeal from any sentence within or above the final advisory guidelines range. Nothing in this agreement shall be construed to prevent either the Defendant or this Office from invoking the provisions of Federal Rule of Criminal Procedure 35(a), and appealing from any decision thereunder, should a sentence be imposed that is illegal or that exceeds the statutory maximum allowed under the law or that is less than any applicable statutory mandatory minimum provision.

c. Nothing in this agreement shall be construed to prevent either the Defendant or this Office from invoking the provisions of Federal Rule of Criminal Procedure 35(a), or appealing from any decision thereunder, should a sentence be imposed that resulted from arithmetical, technical or other clear error.

d. The Defendant waives any and all rights under the Freedom of Information Act relating to the investigation and prosecution of the above-captioned matter and agrees not to file any request for documents from this Office or any investigating agency.

Forfeiture

14. The Defendant understands that the Court will, upon acceptance of his guilty plea, enter an order of forfeiture as part of his sentence, and that the order of forfeiture may include assets directly traceable to his offense, substitute assets and/or a money judgment equal to the value of the property derived from, or otherwise involved in, the offense. Specifically, the Court will order the forfeiture of "any property used to commit or to facilitate the commission of the offense" or "all property involved in the offense."

15. The Defendant agrees to consent to the entry of orders of forfeiture for such property and waives the requirements of Federal Rules of Criminal Procedure 11(b)(1)(J), 32.2 and 43(a) regarding notice of the forfeiture in the charging instrument, advice regarding the forfeiture at the change-of-plea hearing, announcement of the forfeiture at sentencing, and incorporation of the forfeiture in the judgment.

Assisting the Government with Regard to the Forfeiture

16. The Defendant agrees to assist fully in the forfeiture of the foregoing assets. The Defendant agrees to disclose all of his assets and sources of income to the United States, and to take all steps necessary to pass clear title to the forfeited assets to the United States, including but not limited to executing any and all documents necessary to transfer such title, assisting in bringing any assets located outside of the United States within the jurisdiction of the United States, and taking whatever steps are necessary to ensure that assets subject to forfeiture are not sold, disbursed, wasted, hidden or otherwise made unavailable for forfeiture. The Defendant further agrees that he will not assist any third party in asserting a claim to the forfeited assets in an ancillary proceeding and that he will testify truthfully in any such proceeding.

Waiver of Further Review of Forfeiture

17. The Defendant further agrees to waive all constitutional, legal and equitable challenges (including direct appeal, habeas corpus, or any other means) to any forfeiture carried out in accordance with this plea agreement on any grounds, including that the forfeiture constitutes an excessive fine or punishment. The Defendant also agrees not to challenge or seek review of any civil or administrative forfeiture of any property subject to forfeiture under this agreement, and will not assist any third party with regard to such challenge or review or with regard to the filing of a petition for remission of forfeiture.

Obstruction or Other Violations of Law

18. The Defendant agrees that he will not commit any offense in violation of federal, state or local law between the date of this agreement and his sentencing in this case. In the event that the Defendant (i) engages in conduct after the date of this agreement which would justify a finding of obstruction of justice under U.S.S.G. § 3C1.1, or (ii) fails to accept personal responsibility for his conduct by failing to acknowledge his guilt to the probation officer who prepares the Presentence Report, (iii) moves to withdraw his guilty plea, or (iv) commits any offense in violation of federal, state or local law, then this Office will be relieved of its obligations to the Defendant as reflected in this agreement. Specifically, this Office will be free to argue sentencing guidelines factors other than those stipulated in this agreement, and it will also be free to make sentencing recommendations other than those set out in this agreement. As with any alleged breach of this agreement, this Office will bear the burden of convincing the Court of the Defendant's obstructive or unlawful behavior and/or failure to acknowledge personal responsibility by a preponderance of the evidence. The Defendant acknowledges that he may not withdraw his guilty plea because this Office is relieved of its obligations under the

agreement pursuant to this paragraph.

Court Not a Party

19. The Defendant expressly understands that the Court is not a party to this agreement. In the federal system, the sentence to be imposed is within the sole discretion of the Court. In particular, the Defendant understands that neither the United States Probation Office nor the Court is bound by the stipulation set forth above, and that the Court will, with the aid of the Presentence Report, determine the facts relevant to sentencing. The Defendant understands that the Court cannot rely exclusively upon the stipulation in ascertaining the factors relevant to the determination of sentence. Rather, in determining the factual basis for the sentence, the Court will consider the stipulation, together with the results of the presentence investigation, and any other relevant information. The Defendant understands that the Court is under no obligation to accept this Office's recommendations, and the Court has the power to impose a sentence up to and including the statutory maximum stated above. The Defendant understands that if the Court ascertains factors different from those contained in the stipulation set forth above, or if the Court should impose any sentence up to the maximum established by statute, the Defendant cannot, for that reason alone, withdraw his guilty plea, and will remain bound to fulfill all of his obligations under this agreement. The Defendant understands that neither the prosecutor, his counsel, nor the Court can make a binding prediction, promise, or representation as to what guidelines range or sentence the Defendant will receive. The Defendant agrees that no one has made such a binding prediction or promise.

Entire Agreement

20. This letter supersedes any prior understandings, promises, or conditions between this Office and the Defendant and, together with the Sealed Supplement, constitutes the complete plea agreement in this case. The Defendant acknowledges that there are no other agreements, promises, undertakings or understandings between the Defendant and this Office other than those set forth in this letter and the Sealed Supplement and none will be entered into unless in writing and signed by all parties. If the Defendant fully accepts each and every term and condition of this agreement, please sign and have the Defendant sign the original and return it to me promptly.

Very truly yours,

Rod J. Rosenstein
United States Attorney

By: _____
Gregory R. Bockin
Assistant United States Attorney

I have read this agreement, including the Sealed Supplement, and carefully reviewed every part of it with my attorney Deborah Boardman, Esq. I understand it, and I voluntarily agree to it. Specifically, I have reviewed the Factual and Advisory Guidelines Stipulation with my attorney, and I do not wish to change any part of it. I am completely satisfied with the representation of my attorney.

4/21/15
Date

Wilfred T. Azar, III

I am Deborah Boardman, Esq., attorney for Wilfred T. Azar, III. I have carefully reviewed every part of this agreement, including the Sealed Supplement, with him. He advises me that he understands and accepts its terms. To my knowledge, his decision to enter into this agreement is an informed and voluntary one.

4/22/15
Date

Deborah Boardman, Esq.
Attorney for Wilfred T. Azar III

ATTACHMENT A: STATEMENT OF FACTS – WILFRED T. AZAR, III

If the case had proceeded to trial, the Government would have proven the following facts beyond a reasonable doubt. This statement of facts does not constitute all of the facts provable by the Government.

A. Background

Empire Corporation, a Maryland corporation, was the sole owner of Empire Towers Corporation. The company owned and operated a 250,000 square foot, ten-story office building located in Glen Burnie, Maryland known as Empire Towers.

WILFRED T. AZAR, III, (hereinafter "**AZAR**") a resident of Queenstown, Maryland, was the president and majority owner of Empire Corporation. He was also a co-owner of other real estate ventures and a yacht brokerage business. **AZAR** became President, Chairman and Chief Executive Officer of Empire Corporation when he acquired the company from his grandfather in 1999. **AZAR** exercised complete control over the operations of Empire. Rental income generated from Empire Towers was the company's primary source of revenue. **AZAR** also controlled and partially owned several other commercial real estate ventures known as "Airport North," "Quarterfield," and "Azar Brothers" during the time of the fraud along with his yacht brokerage business, AGYG. As discussed further below, **AZAR** freely moved money among these entities, effectively treating them all as part of a larger conglomerate and ignoring corporate formalities.

By 2006, Empire Corporation's financial condition had deteriorated to the point that the company was no longer able to pay its expenses and was effectively insolvent. By 2007, Empire Towers had exhausted its lines of credit from lending institutions. As time passed, the company's financial condition continued to spiral downward and was further exacerbated by the significant reduction in occupancy rates, which caused a drag on rental income, following the financial crisis in 2008. For example, by the beginning of 2006, Empire had revenues of only $2,568,832, negative free cash flow, and outstanding debt of $22,149,801. By 2009, the company's revenues dipped to $2,132,934, free cash flow continued to be negative, and its debt ballooned to $36,648,250.

With limited revenues to offset its mounting expenses and debt service, **AZAR** had already maximized Empire's various lines of credit by 2007. As **AZAR's** need for cash continually increased during this period of 2006 through 2010, **AZAR**, directly and through registered securities representatives J.G. and M.D., raised more than $7 million from at least 50 investors by selling Empire bonds that promised a 10 percent annual rate of return, compounded daily. **AZAR**, J.G. and M.D. made materially false and misleading representations and omissions in connection with the offering concerning, among other things, Empire's use of proceeds, Empire's financial condition, and its ability to generate the promised returns. At the time of the bond sales, Empire was unable to generate sufficient free cash flow to pay the company's business expenses and principal and interest payments to its creditors, including bond holders, without incurring further debt and driving the company further into insolvency. Nevertheless, **AZAR** continued selling the bonds and used the majority of the proceeds to personally enrich himself, fund his various struggling and unprofitable business ventures, and to make lulling interest and principal payments to bond holders.

B. AZAR's Sale of Empire Bonds

Under the leadership of **AZAR**'s grandfather, Empire began selling bonds as a means of securing secondary funding for the company's operations as early as 1972. **AZAR** continued this practice after he acquired the company in 1999. However, **AZAR**'s reliance on the bond sales to fund Empire's operations, along with his other privately held start-up companies and his lifestyle, among other things, drastically increased in approximately 2006. This conduct coincided with Empire entering into the stage where its revenue and other sources of financing were insufficient to satisfy the company's business expenses or debt obligations.

From in or about January 2006 through in or about April 2010, **AZAR** caused Empire Corporation to sell bonds to more than fifty individual investors for a fraud loss of approximately $7,219,362. Empire bonds were sold initially by **AZAR**, and later, by J.G. and M.D. without any prospectus or other offering documents. The sole documentation investors received in connection with their investment consisted of a one page certificate that reflected the terms of the investment. Depending on the template that **AZAR** used, and at the suggestion of J.G., the certificate was titled either "REGISTERED DEBENTURE" or "SENIOR SUBORDINATED DEBENTURE BOND." The certificate also identified the terms of the investment (typically promised to be five years in duration with 10% interest compounded daily). **AZAR** and his assistant signed each bond certificate on behalf of Empire Corporation. **AZAR** occasionally reduced the duration of the bond in negotiations with investors if necessary to complete the sale of the bond. The majority of bonds accrued interest for payment at the end of the term while others promised to pay interest on a monthly or quarterly basis.

Although a significant number of the certificates stated that the debentures were "registered," in fact, the offering was neither registered with the Securities and Exchange Commission, nor with the State of Maryland, despite what Empire had apparently told investors since the beginning of the bond program dating back to the early 1970s. In addition, most of the bond certificates stated that the bond was part of an issue limited to $2 million in aggregate, while others stated it was part of an issue no greater than $20 million in aggregate. However, Empire had issued an aggregate amount of debentures considerably greater than $2,000,000.

The **AZAR** family was well-known and respected throughout Anne Arundel County. **AZAR** used his family's connections to seek out investors for the bond program. During the relevant period of the fraud, **AZAR** solicited investors directly to invest in Empire bonds. He did so through oral presentations; he did not provide investors with any offering materials or other documentation. At some point, **AZAR** told potential investors that the bonds were only available to friends and family, when in reality they were available to anyone who would purchase them.

C. AZAR's and Empire's False and Misleading Statements and Omissions in Connection with the Sale of Empire Bonds

AZAR's and Empire's misrepresentations took multiple forms. First, the certificates presented to investors (including those signed by **AZAR** personally) were themselves false and misleading. For example, many certificates falsely stated that the bonds were "registered" when

they were not. In addition, certificates that claimed the bonds were part of an "issue" that was capped at an "aggregate" amount were also false and misleading. The bonds issued were greatly in excess of $2 million (as certain certificates falsely stated was the purported aggregate limit) and **AZAR** had no formal aggregate in any event—he was trying to sell as many bonds as he could with no intention to limit them within any cap. Finally, that Empire, through **AZAR**, issued bonds purporting to guarantee a 10% annual interest rate compounded daily was itself false and misleading. As described above, at the time Empire issued these bonds, it had no ability to pay interest, much less 10% compounded daily.

Second, **AZAR** made false statements and omissions to investors in connection with the sale of bonds by (1) making positive statements about Empire's financial condition and (2) failing to disclose the material and substantial risks associated with the investment. **AZAR** falsely told investors that Empire Corporation was in good financial health despite the fact that the company was having difficulty paying its expenses. He also failed to inform the investors that he had used much of the money raised from previous bond sales for his other companies and his own personal purposes. **AZAR** touted his family's longstanding association with Empire and reputation in the community to create the misleading impression that the investment carried minimal risk. He also falsely told investors that Empire was a successful and profitable company that generated enough revenue to pay the 10 percent annual rate of return. Specific oral misstatements **AZAR** made to investors concerning Empire's financial condition and the risks associated with the bonds include:

- **AZAR** told one investor that excess cash flow earned on Empire's lease arrangements relative to mortgage obligations and other expenses enabled Empire Corporation to pay the high rate of return; this was false, however, because **AZAR** was relying on payments from new investors to make payments to existing investors.

- While discussing the company's debt, **AZAR** told one investor that Empire prohibited a debt ratio in excess of 65 percent and that the company was currently leveraged at only 56 percent. This was false because Empire had no such policy and, at the time he made the statement, the ratio was well in excess of both 56% and 65%.

- **AZAR** further claimed to one investor that he received special reduced financing from "Wall Street" that contributed to the company's ability to pay the 10 percent rate of return because the blended finance rate from "Wall Street" and the bond program was less than Empire's profit margin. This was false because Empire was unprofitable and insolvent by this point.

Third, **AZAR** lied to investors about the use of bond sale proceeds. Azar usually told investors that the proceeds would be used for a specific renovation project or other capital improvement at Empire. However, **AZAR** rarely used the proceeds as promised. Instead, he used the proceeds for his own personal benefit to fund his lifestyle, to make principal and interest payments to earlier investors, and to make a series of "loans" to his other unrelated businesses. These other entities, which are described above, were also unprofitable and deeply in debt with insufficient revenues to pay expenses and debt obligations. Numerous investors indicated that **AZAR** represented or implied that these companies were either owned by, and/or part of, the same

corporate structure as Empire, and Empire's own website referred to "Airport North," "Quarterfield," and "Azar Brothers" as "our properties". However, other than **AZAR's** personal affiliation, the companies were separate, and unrelated to Empire.

From in or about January 2006 through in or about April 2010, **AZAR** caused Empire Corporation to sell bonds to more than fifty individual investors for approximately $7,219,362. While many of the bonds were titled "registered", the bonds were not registered with the U.S. Securities and Exchange Commission or with the State of Maryland.

For example, on or about October 22, 2009, **AZAR** sold a $150,000 bond to NB and SB, a retired couple who lived in Baltimore, Maryland. **AZAR** falsely told NB and SB that he intended to use their $150,000 investment to fund a dental laboratory that would occupy an entire floor in the Empire Towers building. Instead, **AZAR** embezzled much of the money that NB and SB invested and used it for his other businesses and his own personal purposes.

D. Sale of Empire Bonds Through Registered Representatives

AZAR sold a significant amount of bonds through registered representatives J.G. and M.D. Neither J.G. nor M.D. had the same visibility as **AZAR** into Empire's rapidly deteriorating financial condition, nor did they have knowledge of Azar's misappropriation of Empire funds for his own personal benefit. However, both possessed sufficient information to have acted, at a minimum, severely recklessly in selling Empire bonds. Beyond the information they did have (such as **AZAR's** desperate need for cash and his desire to use Empire bonds to get it), they also each failed to conduct any reasonable investigation or due diligence to understand the risks of the investment or otherwise verify that Empire's business plan was viable and could support a high rate of return. Finally, neither disclosed to investors that they had not done any due diligence and both made affirmative misrepresentations to investors about the safety of the bonds, with no basis in fact to do so, and while recklessly ignoring multiple red flags concerning Empire's financial condition.

E. Misuse of Proceeds

During the period of the fraud, **AZAR** misappropriated approximately $7,219,362 in investor proceeds raised through the sale of at least 100 Empire bonds. **AZAR** did not use the proceeds in the manner he represented to investors. To the contrary, **AZAR** used virtually all of the proceeds to fund his lifestyle, finance his unprofitable and failing businesses unrelated to Empire, meet the day-day expenses of Empire that it was otherwise unable to meet, make lulling interest and redemption payments to existing bondholders, and to compensate M.D. and J.G.

AZAR freely accessed the company's funds during this time period, taking approximately $4.14 million from Empire for personal use. **AZAR** described many of these payments to himself as loans on the company's books, yet these "loans" contained no collateral, did not require any interest, had no defined terms, and did not require payment by any particular date. Instead, the money went directly to **AZAR** in the form of cash or to a personal bank account. **AZAR** also used Empire bonds to obtain direct personal benefits, including a $100,000 Aston Martin luxury automobile, $3,000 monthly mortgage payment for his primary residence, $51,000 to an Azar trust, $17,298 for Baltimore Ravens season tickets and $25,389 in country club dues.

AZAR also made regular personal use of an American Express card paid directly by Empire Management Services. During the relevant period, **AZAR** charged over $420,000 to that card to pay for everything from daily living expenses to extravagant dining and travel costs and other various personal expenses. For example, **AZAR** used the American Express card to spend more than $34,000 on lavish vacations and meals for his family and $14,369 in tuition payment for a private university for his son.

Another significant destination for investor proceeds was **AZAR's** other, unrelated businesses. Many of the entities that received investor proceeds were likewise struggling and unprofitable start-up ventures that were owned in whole in part by **AZAR**. **AZAR** routinely moved money freely between Empire and these entities under the guise of "loans". Between 2006 and 2010, **AZAR**, on net basis, "loaned" these entities more than $1.07 million in Empire funds, which were never repaid. **AZAR** knew that these businesses were insolvent and/or lacked the ability to repay the funds, but nonetheless looted Empire to fund these entities without any concern for obtaining collateral, following any corporate or legal formalities, or conventional business practices. The transfer of investor money to **AZAR's** other businesses is particularly significant because the bonds make clear that they are an obligation of Empire Corporation only and that "no recourse shall be had" for payment of principal or interest against any member, officer, or director of the company. Therefore, when the money left Empire, so did the investors' recourse to their funds.

Empire also made approximately $3.31 million in interest and redemption payments during the time period 2006 through 2010. Although not all of those payments can be directly associated with new investor money coming in, because of Empire's functional insolvency no investors could have received payments without new investor money replenishing Empire's coffers.

Also, as discussed above, **AZAR** compensated M.D. over $272,000 and J.G. $69,300 for their role in bringing new investors to Empire.

Although the bonds were issued by Empire Corporation, **AZAR** diverted millions of dollars of the proceeds to himself. During 2009, **AZAR** embezzled approximately $1,959,250 of corporate funds by transferring money to himself and other companies that he owned and by using corporate funds to pay his personal expenses. **AZAR** failed to report the embezzled income on his 2009 Form 1040, U.S. Individual Income Tax Return, which resulted in a tax loss to the government of approximately $469,936. From in or about January 2006 through in or about April 2010, **AZAR** caused Empire Corporation to sell bonds to more than fifty individual investors for a fraud loss of approximately $7,219,362.

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I have read this statement of facts, and carefully reviewed it with my attorney. I acknowledge that it is true and correct.

4/21/15
Date

Wilfred T. Azar, III

I am Wilfred T. Azar III's attorney. I have carefully reviewed that statement of facts with him.

4/22/15
Date

Deborah Boardman, Esq.