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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION

HONORABLE VIRGINIA A. PHILLIPS, U.S. DISTRICT JUDGE

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.) Case No. CR 21-170 VAP
)
WESTERN DISTRIBUTION, LLC, and)
CARL BRADLEY JOHANSSON,)
)
Defendants.)
_____)
)
UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.) Case No. CR 18-114 VAP
)
NATIONAL DISTRIBUTION SERVICES, INC.,)
WHOLESALE DISTRIBUTION, INC., and)
CARL BRADLEY JOHANSSON,)
)
Defendants.)
_____)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
SENTENCING HEARING
TUESDAY, NOVEMBER 29, 2022
10:06 A.M.
LOS ANGELES, CALIFORNIA

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1 TUESDAY, NOVEMBER 29, 2022; 10:06 A.M.

2 LOS ANGELES, CALIFORNIA

3 -oOo-

4 THE COURTROOM DEPUTY: Calling Eastern Division

10:06AM

5 Criminal 21-170 and Criminal 18-114(B), United States of
6 America versus Carl Bradley Johansson, Western Distribution,
7 LLC, National Distribution Services, Inc., and Wholesale
8 Distribution, Inc.

9 Counsel, please state your appearances.

10:06AM

10 MR. O'BRIEN: Good morning, Your Honor.
11 Matthew O'Brien on behalf of the United States. And with me at
12 counsel table is Special Agent Ashley Strickland of the
13 United States Department of Transportation.

14 THE COURT: Thank you. Good morning.

10:07AM

15 MR. ROBINSON: Good morning, Your Honor.
16 Edward Robinson on behalf of Mr. Johansson. He is present in
17 court. He's in custody. Also appearing, with your permission,
18 which we'll have to address immediately, I assume, on behalf of
19 Western, National, and Wholesale. Good morning.

10:07AM

20 THE COURT: Good morning.

21 MR. EXUM: Good morning, Your Honor. Darryl Exum.
22 The record shows I am counsel of record on National
23 Distribution, which was my understanding.

24 THE COURT: All right.

10:07AM

25 MR. GRECH: Good morning, Your Honor. Paul Grech,

1 counsel of record for Wholesale.

2 THE COURT: Thank you.

3 MR. LURYA: Good morning, Your Honor. Alan Lurya,
4 also counsel for Wholesale.

10:07AM 5 THE COURT: Thank you.

6 Well, I am -- you may be seated. I am perplexed
7 about who represents National because there hasn't been a
8 substitution of attorney filed in the docket.

9 MR. ROBINSON: There hasn't, but I'm on the record
10 on the ECF as the counsel of record. And that prompted some
11 e-mail communication with respect to filing certain position
12 papers.

13 I think the simplest way, if I may, Your Honor, to
14 clear this up is, assuming that Mr. Johansson agrees with this,
10:08AM 15 is that for the purpose of today's proceedings, to be followed
16 up, if necessary, by substitutions of attorneys, that I speak
17 for Mr. Johansson and the organizational defendants because
18 what I have to address on his behalf is inextricably
19 intertwined, to use that phrase, with the position that we're
10:08AM 20 asking the Court to rule on with respect to the organizational
21 defendants.

22 And I -- I think it would just simplify things. I
23 know that at the change of plea, you took a conflict waiver for
24 Mr. Johansson's speaking on behalf of the organizational
10:09AM 25 defendants. So I don't believe that there's any issue with

1 that.

2 THE COURT: Well, it's been an awfully long time.

3 MR. ROBINSON: It has.

4 THE COURT: So I'm not sure -- I remember that. But

10:09AM

5 I thought that at the change of plea for National, Mr. Exum
6 represented National.

7 MR. ROBINSON: He did. I did not come in until long
8 after the change of plea.

9 THE COURT: So Mr. Werksman was present when I

10:09AM

10 took -- and represented Mr. Johansson when I took
11 Mr. Johansson's individual plea.

12 MR. ROBINSON: That's correct.

13 THE COURT: Mr. Exum represented National for
14 purposes of the change of plea as to National. Is that your
15 recollection?

10:09AM

16 MR. EXUM: That's my recollection, Your Honor.

17 THE COURT: And then my -- but the motion that
18 was -- the motion to withdraw the guilty pleas was filed by
19 your office on behalf of both.

10:10AM

20 MR. ROBINSON: That's correct. And the reason that
21 we did that -- and just to fill out the record, -- the notice
22 of intent to withdraw with respect to Mr. Johansson on the tax
23 count and the loan -- tax counts and loan counts was also
24 noticed on behalf of Western simply because --

10:10AM

25 THE COURT: Right. Western, right. Wait, National,

1 I thought.

2 MR. ROBINSON: Western is the -- the loan -- the 170
3 case, the loan case. We've been receiving, understandably --

10:10AM

4 THE COURT: Wait a minute. I'm sorry. I'm getting
5 confused.

6 MR. ROBINSON: Can I --

7 THE COURT: Mr. Exum represents National, not
8 Western.

9 MR. ROBINSON: That's correct. Mr. --

10:10AM

10 THE COURT: Mr. Grech represents Western.

11 MR. GRECH: Wholesale, Your Honor.

12 THE COURT: Okay. Mr. Lurya?

13 MR. LURYA: Wholesale.

14 THE COURT: Wholesale. So you both represent

10:11AM

15 Wholesale.

16 MR. LURYA: Correct.

17 MR. ROBINSON: Western -- forgive me for not knowing
18 this off the top of my head, but Western must have been
19 represented by Werksman.

10:11AM

20 Is that correct?

21 THE COURT: Oh, maybe that's why I took the waiver.

22 MR. ROBINSON: That might be.

23 THE COURT: All right. Mr. --

24 MR. O'BRIEN: Yes, Your Honor.

10:11AM

25 THE COURT: -- O'Brien, do you want to --

1 MR. O'BRIEN: My recollection is that you took a
2 conflict waiver with Mr. Werksman because he was representing
3 both Mr. Johansson and Western in the PPP case.

4 THE COURT: All right. Thank you.

10:11AM 5 MR. ROBINSON: And so, not to be presumptuous,
6 Your Honor, but I think to clear up any issues with respect to
7 representation -- and I know that both Mr. Exum and Mr. Grech
8 do not oppose this and I don't believe that Mr. Johansson does.
9 The Court would obviously have to inquire.

10:11AM 10 I should represent Mr. Johansson and the
11 organizational entities because, at the change of plea,
12 Mr. Johansson was the authorized party to enter the plea. The
13 organizational defendants swore to the same factual basis,
14 entered the pleas to the same counts. And it would streamline
10:12AM 15 my making of a record this morning. And I believe that --

16 THE COURT: Well, why don't -- excuse me for
17 interrupting you, but why don't we do this. The motion -- as
18 to the motion, which I will entertain very brief argument
19 about, I will -- I will let you argue because the arguments as
10:12AM 20 to the corporate defendant are not different than the arguments
21 as to the individual. So it doesn't really matter. If any of
22 the -- or if Mr. Exum wishes to add anything as to the
23 corporate defendant, I will let him do that.

24 Should we proceed in that fashion?

10:13AM 25 MR. ROBINSON: That's -- that's fine with me,

1 Your Honor. I don't imagine that --

2 THE COURT: Mr. Exum, do you have any --

3 MR. EXUM: Well, I guess the problem is this,

4 Your Honor. It looks as though that Mr. Johansson didn't -- at

10:13AM 5 some point did not want me to be his counsel. And no record

6 was filed with the Court of that. And I wasn't apparently made

7 aware. So I filed documents for sentencing, I did those

8 things, but it's my understanding that those are not things

9 that Mr. Johansson wants. And I understand it happened, it's

10:13AM 10 water under the bridge.

11 Mr. Robinson is going to represent Mr. Johansson and

12 he wants to represent Mr. Johansson because he's been under the

13 impression for some time that he represents National.

14 THE COURT: Right. So let me just ask

10:13AM 15 Mr. Johansson.

16 And, Mr. Johansson, do you have any objection to

17 going forward this morning on the arguments as I proposed a

18 moment ago, that is, Mr. Robinson will be arguing on your

19 behalf and on behalf of Western? Because technically Mr. Exum

10:14AM 20 is still in the case, if he's any -- if he has anything to add

21 on behalf of National, then I would allow him to do that. Is

22 that agreeable with you?

23 THE DEFENDANT: Well, just as a way of

24 clarification, National Distribution ceased operating at the

10:14AM 25 end of 2014.

1 THE COURT: Oh, I understand that.

2 THE DEFENDANT: So at that time, there were no
3 officers, employees, and so on.

4 THE COURT: No. That's not my question. I
10:14AM 5 understand what you're telling me. But the only question I'm
6 asking you right now is: Do you have any objection to Mr. --
7 first of all, to Mr. Robinson arguing on your behalf and on
8 behalf of National on the motion and as to sentencing?

9 THE DEFENDANT: My -- my point of clarification is
10:14AM 10 that, when I signed the plea agreement over a year ago, I had
11 no standing with National to sign anything on behalf of the
12 company. I was asked by Mr. Exum to do that. I was told that
13 if I didn't sign all the plea --

14 THE COURT: Again, that's not my question. My
10:15AM 15 question is really limited to who represents you this morning
16 and who represents National. You're the only person --

17 THE DEFENDANT: There is no one here to speak for
18 National. I -- I don't believe I have and haven't had since I
19 resigned as the director two or three years ago the authority
10:15AM 20 to do anything on behalf of National.

21 THE COURT: All right. Do you have -- let me ask
22 you the question this way. Do you have any objection to
23 proceeding the way I suggested we would?

24 THE DEFENDANT: No, Your Honor.

10:15AM 25 THE COURT: All right. Thank you.

1 All right. Then, that's -- you may not have
2 anything to add, Mr. Exum, but if you do, you'll have the
3 opportunity to do so.

10:15AM

4 MR. EXUM: Can I just make a quick record,
5 Your Honor?

6 THE COURT: Sure, certainly.

10:16AM

7 MR. EXUM: The problem, of course, is I was not
8 privy to this motion. I don't have anything to add because I
9 did not have anything to do with this motion. So I think, what
10 I would request of the Court is, if the Court is going to allow
11 Mr. Robinson to argue for National Distribution, that at that
12 time, I not be his counsel because --

13 THE COURT: You mean, its counsel.

10:16AM

14 MR. EXUM: Sorry. Its counsel, I'm sorry,
15 Your Honor. Because it's not appropriate for him to make those
16 arguments on a motion that I was not privy to, if I'm still the
17 counsel of record.

10:16AM

18 THE COURT: Well, I mean, you're counsel of record
19 because there isn't -- there's nothing in the record to say
20 that you've been substituted out or relieved. But I understand
21 your point, and it -- I am going to let Mr. Robinson argue. I
22 don't think anything else needs to be added.

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

10:16AM

25 THE COURT: Thank you.

1 Now, I wasn't under the impression that the other
2 two corporate defendant -- well, excuse me, that Western or
3 Wholesale was going to be sentenced today. But are the parties
4 ready to proceed with that sentencing?

10:17AM

5 MR. O'BRIEN: The Government is ready for everyone
6 to be -- for the three corporations and Mr. Johansson to be
7 sentenced --

8 THE COURT: All right.

9 MR. O'BRIEN: -- today.

10:17AM

10 THE COURT: Are you ready, Mr. Grech?

11 MR. GRECH: I am ready, Your Honor.

12 THE COURT: All right. Then, that's fine. First
13 we'll take up the motion.

14 MR. ROBINSON: And just --

10:17AM

15 THE COURT: Oh, I'm sorry. Before we do that, I
16 noticed that last Wednesday, the last day before a long
17 weekend, there was a Notice of Intent to Withdraw the Plea as
18 to the tax counts, which is Counts 3, 4, 6, 8, and 9 in
19 Case 18-114 and the bank fraud counts in Case 21-170, but no
20 motion has been filed.

10:17AM

21 So I've decided, after researching this to the best
22 that we could, we couldn't really find anything on this, but
23 I'm going to construe this as a supplement to the motion, that
24 is, that the motion that was filed to withdraw the plea to the
25 other counts should now include the counts that I just

10:18AM

1 described on the record.

2 I would not grant a continuance of the sentencing
3 because -- well, for several reasons. First, because this
4 Notice of Intent to Withdraw is simply that, a notice. It's
10:18AM 5 untimely. There is no motion to withdraw the counts. And as
6 far as I can tell, there are no new grounds, that is, the
7 request to withdraw the guilty plea as to the counts that it
8 covers would also -- there's no new -- anything additional that
9 could be raised to justify withdrawal of the guilty plea as to
10:18AM 10 the new count.

11 So I just construe that -- that notice that I should
12 now consider the motion to withdraw as to withdraw everything,
13 the guilty plea as to all counts.

14 MR. ROBINSON: Your Honor, I appreciate the Court's
10:19AM 15 position on that. As I set forth in my declaration with
16 respect to that notice of intent, it was Mr. Johansson's intent
17 as of the date of the filing of that notice to withdraw his
18 guilty pleas to the tax counts and the loan fraud counts.

19 Prior to that, as we set forth in our first
10:19AM 20 motion -- well, I'll call it the first motion because now it
21 looks like there's a first motion with a supplement --
22 Mr. Johansson was not seeking to withdraw his pleas with
23 respect to the tax counts or the loan -- the loan fraud counts.

24 I appreciate the Court's position with respect to
10:19AM 25 timeliness. We filed this Notice of Intent the day that

1 Mr. Johansson made it clear --

2 THE COURT: Not counsel's timeliness but -- I
3 understand, you set that forth in your declaration, I'm happy
4 to accept that representation from you as an officer of the
10:20AM 5 Court. But your -- you know, I could spend a long time going
6 through the docket and all of the continuances in this case.
7 The trial continuances, the sentencing continuances, the
8 changes of counsel, it's all in the record and I'm not going to
9 go through that now.

10:20AM 10 But suffice it to say that the record speaks for
11 itself and makes it clear that this is a last-minute attempt --
12 not on counsel's part, you're doing as your client directed
13 you -- but it's a last-minute attempt to yet again continue the
14 sentencing and avoid the resolution of this case. And it's not
10:21AM 15 going to happen today.

16 MR. ROBINSON: So in light of that, what I'd like to
17 do, Your Honor, just to try to perfect the record with respect
18 to the prong concerning the claim of legal or factual
19 innocence, if the Court is going to construe our notice of
10:21AM 20 intent as a supplement to our motion to withdraw, if the Court
21 could agree that the pleadings in the 170 case are incorporated
22 by reference into the supplement as part of a factual basis for
23 the claim of legal innocence so that Mr. Johansson has a record
24 from which he can appeal.

10:21AM 25 THE COURT: That's fine. I mean, that's what I

1 intend when I say I'm construing it as a supplement.

2 MR. ROBINSON: Thank you.

3 And lastly -- and this is something that is unique,
4 it's very unique. And I don't want to jump the gun, but I
10:21AM 5 think it's relevant just to my comments on the motion to
6 dismiss -- to withdraw the plea.

7 Mr. Johansson has made it clear that he denies what
8 he swore to in the factual basis. He has some comments as to
9 what he would testify to with respect to the loan fraud counts
10:22AM 10 were the plea withdrawn and the matter to proceed to trial.

11 I have not had much time with Mr. Johansson
12 concerning that position, as evidenced by the fact that this
13 notice was given on the 22nd of November, seven days ago.

14 Mr. Johansson has some notes that he has drawn up
10:22AM 15 that deal with the -- his position on lack of knowledge, lack
16 of intent to defraud with respect to the loan counts.

17 I'd like an opportunity to review those documents
18 and maybe after today's hearing, within a short period of time,
19 file a supplement to the motion so that the record is perfected
10:23AM 20 to the extent that it can be, recognizing that your ruling with
21 respect to the supplement, the tax count and the loan fraud
22 count, is based upon primarily timeliness as opposed to
23 anything else because there's nothing else in the record.

24 Is that something that the Court would entertain?

10:23AM 25 THE COURT: No, I would not. You know, Mr. -- I'm

1 going to deny the motion for all the reasons set forth in the
2 tentative ruling. Mr. Johansson has -- will have the
3 opportunity to allocute before I impose sentence. And, you
4 know, I rarely impose limits on what a defendant can choose to
10:24AM 5 say during his allocution. So he can address it to the extent
6 he wants when he allocutes.

7 MR. ROBINSON: I appreciate that. And, Your Honor,
8 I do understand very clearly that the right to allocute is a
9 personal right, one over which I have no tactical control,
10:24AM 10 unlike other constitutional rights.

11 Before that happens, if I could have one minute with
12 Mr. Johansson so that it's clear what the purpose of his
13 allocution is and that would be to perfect the record, to the
14 extent it's possible, concerning his claim of factual innocence
10:24AM 15 with respect to the loan fraud counts and the tax counts?

16 THE COURT: You may do so now, if you wish.

17 MR. ROBINSON: Thank you.

18 THE COURT: You may consult. And I'll let you be
19 heard in just a moment.

10:24AM 20 MR. O'BRIEN: Your Honor, just while they're taking
21 a little break, I have the actual victim statement from
22 Mr. Velasquez, which I'm not sure the Court has. I've given
23 copies to defense counsel and I wanted to offer it to the
24 Court.

10:24AM 25 THE COURT: You may do so.

1 MR. O'BRIEN: It's a one-page letter.

2 (Pause in the proceedings.)

3 THE COURT: All right. Then, as to the sentencing
4 as to Mr. Johansson, are both sides ready to proceed?

10:25AM 5 MR. O'BRIEN: The Government is ready. Yes,
6 Your Honor.

7 MR. ROBINSON: Your Honor, we are, subject to our --
8 our motion to withdraw.

9 THE COURT: All right. Which -- which the Court
10:26AM 10 denies the motion to withdraw for the reasons set forth.

11 Mr. Exum.

12 MR. EXUM: Is the Court -- I mean, I filed some
13 documents on behalf of National Distribution.

14 THE COURT: Which I have read.

10:26AM 15 MR. EXUM: Right. Um --

16 THE COURT: But I'm not doing that sentencing at the
17 moment. I'm just doing the individual.

18 MR. EXUM: Oh, sorry, Your Honor. Sorry.

19 THE COURT: All right. Mr. Johansson, you may stand
10:26AM 20 with your counsel at the lectern.

21 All right. Has the Government complied with the
22 Crime Victims' Rights Act as to this proceeding?

23 MR. O'BRIEN: Yes, Your Honor.

24 THE COURT: Are there any victims who wish to
10:26AM 25 address the Court, other than in the form of the written

1 communications?

2 MR. O'BRIEN: No, Your Honor. And just so the
3 record is clear, I just handed the Court -- and I can lodge a
4 copy later today -- of Mr. Velasquez's statement. And the
10:26AM 5 record itself contains the statements of Ms. Spencer and I
6 think one of her boys.

7 THE COURT: Yes.

8 MR. O'BRIEN: Okay. Thank you.

9 THE COURT: All right. Thank you.

10:27AM 10 All right. The presentence report was disclosed
11 originally on April the 4th, 2022, with the addendum on
12 November 22nd. Have you reviewed these with your client?

13 MR. ROBINSON: I have, Your Honor.

14 THE COURT: Mr. Johansson, have you seen the
10:27AM 15 probation office's reports in your case?

16 THE DEFENDANT: I've seen the probation office's
17 report maybe two or three weeks ago. That was the first time
18 I've seen it.

19 THE COURT: All right. You've seen it. Have you
10:27AM 20 discussed it with your lawyer?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: All right. In addition to the
23 presentence reports, I have reviewed the Government's
24 sentencing memorandum and then the attachments to it, the
10:27AM 25 defense's sentencing memorandum and the documents attached to

1 that and, also, to the extent that it's relevant, the documents
2 attached -- or the pleadings and the documents attached in
3 connection with the motion to withdraw the plea.

4 Is this everything the parties have submitted?

10:28AM

5 MR. O'BRIEN: Yes, Your Honor. As far as the
6 Government is concerned.

7 MR. ROBINSON: Yes, Your Honor.

10:28AM

8 THE COURT: All right. Does either side have any
9 objections to the presentence report other than what you set
10 forth in the papers?

11 MR. ROBINSON: No, Your Honor.

12 MR. O'BRIEN: No, Your Honor.

10:28AM

13 THE COURT: All right. The Government filed several
14 objections. Those were addressed in the revised and final
15 presentence report. I would adopt the factual findings and the
16 guideline calculations in the presentence report. Of course,
17 the Court treats the guideline calculation as advisory and does
18 not presume that the guideline sentence is the appropriate
19 sentence.

10:28AM

20 The guideline range here is 87 to 108 months, a two-
21 to five-year period of supervised release, a fine ranging
22 between 25,000 and \$1 million. There's also the issue of
23 restitution, which I understand the parties are requesting that
24 that be taken up at a separate hearing to be set within

10:29AM

25 90 days. Correct?

1 MR. O'BRIEN: Your Honor, I don't think that's
2 necessary. We've tried to get -- I mean, the restitution is, I
3 think, not disputed as far as the banks are concerned.

4 THE COURT: It's the individual victims.

10:29AM

5 MR. O'BRIEN: Right. And in the companion case
6 wherein Enrique Garcia is the defendant and in this case, the
7 Government reached out to the individual victims multiple,
8 multiple times and has not received any sort of documentation
9 to support the one restitution claim. And so I don't think

10:29AM

10 there would be any value in --

11 THE COURT: All right.

12 MR. O'BRIEN: -- postponing --

13 THE COURT: So the Government isn't further seeking
14 restitution as to the individual victims?

10:29AM

15 MR. O'BRIEN: That's correct, Your Honor.

16 THE COURT: All right. Thank you.

17 The offense -- the guideline range that I just
18 stated is based on the offense level of 28. As to Group 1, the
19 conspiracy count, the base offense level for a violation of 18,
20 United States Code, Section 371, is 8. But under Sentencing
21 Guideline 2X1.1, the substantive offense under 49, U.S.C.,
22 Section 5124, is Guideline 201.2 [sic], plus nine levels
23 under -- therefore, under 201.2(b)(2) [sic] because the offense
24 resulted in substantial likelihood of death or serious bodily
25 injury. Plus two levels because the defendant was convicted

10:30AM

1 under 49, U.S.C., Section 5124. So that means that 19 is the
2 adjusted base offense level. Plus four levels for the
3 defendant's role in the offense as an organizer or leader of
4 criminal activity that involved five or more participants. He
10:31AM 5 controlled and operated the co-defendants, National and
6 Wholesale, and employed Garcia and Spicer. Plus two levels for
7 obstruction of justice, resulting in an adjusted offense --
8 total adjusted offense level of 25.

9 The base -- all right. That's as to the conspiracy
10:31AM 10 count.

11 As to Count 4, tax evasion, the base offense level
12 is 18 based on a tax loss of \$298,562. So under Guideline
13 Section 2T. -- 2T4.1(g) and then two levels under 2T1.1(b) (2)
14 for use of sophisticated means, results in a base offense level
10:32AM 15 of 20.

16 The offense was committed while on pretrial release.
17 And the conspiracy -- excuse me. The guideline calculation for
18 the group -- for Group 2, which is the offense committed while
19 on pretrial release and conspiracy to commit tax fraud, the
10:32AM 20 base offense level is 7 under Guideline Section 2X1.1 and
21 2B1.1. And then 14 levels are added under 2B1.1(b) (1) because
22 the loss was more than \$550,000 and less than \$1.5 million.
23 The total loans were \$954,417. Plus two levels for use of
24 sophisticated means under Guideline Section 2B1.1(b) (10),
10:33AM 25 resulting in 23 plus 4 as an adjusted base level. And then

1 four levels because the defendant was the leader or organizer.
2 And three levels because he committed the offense while on
3 pretrial release, resulting in a Level 30.

4 So taking into account the adjustment for multiple
10:33AM 5 counts, the offense level is 31, minus three levels for
6 acceptance of responsibility. Although, in my mind, I think
7 it's very questionable that the defendant has truly accepted
8 responsibility. And I'll get into that when I go through the
9 3553(a) factors.

10:33AM 10 But as to the criminal history category, the
11 defendant's criminal history category is 2. He has the 2000
12 conviction for conspiracy to violate the regulations,
13 et cetera, so he has three criminal history points.

14 Although the argument wasn't made by the Government,
10:34AM 15 I have considered whether a criminal history category of 2
16 substantially understates the defendant's criminal history and
17 the likelihood of recidivism.

18 The defendant's sentencing request is a sentence of
19 57 months. The Government's sentencing request is a sentence
10:34AM 20 of 120 months.

21 So turning to the 3553(a) factors, the Court makes
22 the following individualized determination.

23 Starting with the nature and circumstances of the
24 offense. And I have -- I have prepared some fairly lengthy
10:35AM 25 notes on that. But they're not intended to be exclusive, that

1 is, there are many more facts regarding the nature and
2 circumstances of the offenses here than I think needs to be
3 stated specifically on the record.

4 But in summary, as to the 18-114 case, the defendant
10:35AM 5 controlled and operated National Distribution Services from '09
6 to 2015 and Wholesale Distribution from 2015 to the present.
7 In 2015, National was transformed into a new entity, Wholesale.

8 Welding on cargo tanks that haul hazardous
9 materials, including crude oil is dangerous, highly dangerous
10:36AM 10 because of the danger of explosions and so forth. And so
11 companies doing this work are required to get an R stamp after
12 going through rigorous compliance procedures.

13 Neither the individual defendant nor the
14 co-defendants -- no one, corporate or individual, held the R
10:36AM 15 stamp.

16 The defendant was well aware of the regulations
17 because he was previously convicted in April of 2000, after a
18 1993 cargo tank explosion when one of his welders conducted
19 repairs on a cargo tank, in violation of the regulations.

10:36AM 20 When he was released from prison, he received a
21 lenient sentence in that case. And after serving his prison
22 term, he was released and he returned to operating another
23 company doing the same type of work, Systems Logistics. That
24 was based at the same location. And in 2009 he assumed control
10:37AM 25 of National, which, again, didn't have an R stamp.

1 The owner and manager of National was listed under
2 the name of someone, Mr. Scott, who the defendant met in prison
3 who was simply a straw man. And the defendant was on the
4 property when the explosion occurred in September 2012.

10:37AM

5 At least five additional illegal welding repairs
6 were conducted between September of 2013 and May of 2014. On
7 May 6th, 2014, during a welding job on a cargo tank, an
8 explosion occurred that caused severe injury to one person and
9 death to another victim.

10:37AM

10 The defendant lied to the first responders at the
11 scene, saying he was a customer service rep of a different
12 trucking company. He gave a different name. He said the
13 victims worked for a different company. And among many other
14 fraudulent acts described in the presentence report -- excuse
15 me -- on September 13th, 2014, he signed an affidavit falsely
16 claiming to regulators that co-defendant Garcia worked for a
17 different company and that National had never done cargo tank
18 repairs.

10:38AM

19 On -- I think I have this date right. August 20th,
20 2014, the FMCSA issued an emergency out-of-service order
21 barring National and the defendant from operating 37 specific
22 tankers and the defendant then shut National down and started
23 Wholesale with largely the same employees and management and
24 operated out of the same location. This was allegedly owned by
25 John Corsini, who's another straw man.

10:38AM

1 As to the tax evasion counts, the defendant did not
2 file tax -- income tax returns for the period from 2012 to
3 2017. He used income from National and Wholesale to pay for
4 personal expenses but -- of at least \$1,174,173 in unreported
10:39AM 5 income. He used two corporate accounts to pay about \$200,000
6 in tuition payments for private high schools and a university
7 for his four children, but he directed his office manager to
8 write -- or to describe these expenses as employee training in
9 various records.

10:39AM 10 As I said, that's just a summary. It's not a
11 comprehensive account of all of the criminal conduct.

12 In the 21-170 case, while out on pretrial release,
13 over the Government's objection, the defendant established --
14 that is, he was out on pretrial release over the Government's
10:40AM 15 objection. I remember clearly the argument before me on the
16 appeal from the magistrate judge's order, the Government's
17 arguments that the defendant, if out on bail, will continue to
18 violate the law.

19 He established Western Distribution, AKA Advanced
10:40AM 20 Distribution. And in July of 2021, his son Carl claimed under
21 oath that he was the sole owner of Western and had been so
22 since March of 2019.

23 But going back a bit, around 2003, the defendant's
24 company at the time, Systems Logistics, bought a company called
10:40AM 25 Agri-Comm.

1 Beginning in 2020, the defendant laid off almost all
2 of the employees at Western and then directed John Mello at
3 Agri-Comm to apply for a PPP loan, listing the defendant's
4 85-year-old mother as the company's owner to avoid disclosing
10:41AM 5 his criminal history on the PPP loan application. And he
6 received a loan of \$286,500.

7 And again, at that same time, April 2020, the
8 defendant directed his office manager, Mr. Surprenant, to apply
9 for a PPP loan on behalf of Western, listing his son as the
10:41AM 10 owner, again to avoid disclosing that he had been indicted.

11 The application stated that Western had 31 full-time
12 employees despite the layoffs that I referred to earlier, and
13 he received a loan of \$436,390 and then applied for loan
14 forgiveness, certifying the amount to be forgiven was used to
10:41AM 15 pay eligible costs, payroll costs, which it was not.

16 The history and characteristics of the defendant.
17 He's 63 years old. He has two sisters. He grew up in Southern
18 California. At 7, he claims he was sent to live with an uncle
19 for a short period of time who locked him up for two days and,
10:42AM 20 as a result, he suffers from claustrophobia. When he was
21 growing up, both of his parents worked and he held after-school
22 jobs and worked while he was in college. He married in 1990.
23 He and his wife separated, I believe, in 2003. He has four
24 children. He suffers from asthma, has had skin cancer removed
10:42AM 25 from his face. He has -- and back. He suffers from high blood

1 pressure, high cholesterol, and irregular heartbeat and
2 depression and, as I said earlier, claims claustrophobia.

3 The need for the sentence to reflect the seriousness
4 of the offense, promote respect for the law, and provide just
10:42AM 5 punishment. The defendant's failure to abide by the essential
6 safety regulations for this industry resulted in the serious
7 injury to more than one victim and death of one. And the
8 seriousness -- and this is just as to the -- what the defense
9 has referred to as the regulatory counts is made more serious
10:43AM 10 because of his previous experience and conviction for this type
11 of conduct. And then, of course, that's coupled with his
12 failure to pay taxes on the large income he was earning over
13 the years by operating these businesses in violation of the
14 law.

10:43AM 15 The defendant -- I'm not entirely sure that this
16 comes within the seriousness of the offense and the promote --
17 the need to promote respect for the law. But I think it needs
18 to be mentioned that the defendant has, in his interview with
19 the probation office, repeatedly claimed that he really has no
10:44AM 20 assets and that his faith is such that -- that the accumulation
21 of worldly goods is frowned upon. That's part of a pattern of
22 fraud and untruthfulness that permeates every part of this
23 case.

24 The Government has provided a photograph of the
10:44AM 25 residence where the defendant was previously living, which is

1 obviously a very large estate, and also informed the Court that
2 the defendant went to great efforts to keep the Government --
3 the investigators from locating his residence. And the only
4 reason it was actually finally located was because of the
10:45AM 5 pictures posted on TikTok by his son. So you can chalk that up
6 to one more reason why TikTok is something that's used often
7 and that -- acknowledgment of the effects it can have.

8 But in this case, it helped the Government find the
9 property where the defendant was living. And then after that,
10:45AM 10 I guess, he was -- according to the Government, he was living
11 in a condominium in a gated community that was also worth a
12 great deal of money.

13 But the amounts of money that were realized from the
14 failure to pay income tax are very large. And those types of
10:46AM 15 crimes are very difficult to investigate in the sense paying
16 our taxes is a voluntary act. And when people don't pay their
17 taxes -- he didn't even file tax returns -- that's a very
18 serious offense.

19 The need for the sentence to afford adequate
10:46AM 20 deterrence to criminal conduct. This is a factor, in my view,
21 that's critical for several reasons.

22 First of all, the defendant wasn't deterred by the
23 lenient sentence he received after his 2000 conviction for the
24 same type of conduct. Moreover, he continues to be untruthful.
10:46AM 25 He fails to take responsibility.

1 At his plea colloquy in this case, he admitted to
2 his knowledge of the circumstances, of the explosions, all of
3 the criminal conduct covered by the counts to which he was
4 offering his guilty plea. Admitted, for example, to his
10:47AM 5 ownership and control of the companies.

6 In his latest filing, he swears under oath to the
7 contrary -- or he asserts to the contrary. He claims that
8 he -- again, he claims he has no assets. That's belied by the
9 types of residences that he has and also his efforts to hide
10:47AM 10 this.

11 The need for the sentence to reflect -- or to
12 protect the public from further crimes of the defendant. The
13 defense has argued that, given the defendant's age, he's
14 currently 63, and the fact that he will be in prison for some
10:47AM 15 period of time, that it's unlikely that he will re-offend.
16 That is belied by the record here.

17 His age does not mean that he won't re-offend. I
18 mean, when he committed these crimes, he wasn't a young man.
19 He committed the offense charged in Count 1, knowing -- after
10:48AM 20 his conviction in 2000. But he also committed the tax
21 offenses. And he committed the PPP loan fraud while he was out
22 on pretrial release.

23 These aren't the kinds of crimes that require
24 physical stamina or strength that wanes in old age. He could
10:48AM 25 well commit the same or similar types of fraud, maybe even

1 while he's incarcerated but certainly if he is not incarcerated
2 for a lengthy period of time.

3 The need to avoid sentencing disparity. The defense
4 argues that the conditions of pretrial confinement are grounds
10:48AM 5 for leniency and also argues about his -- his health
6 conditions.

7 But let me take up, first, the argument that the
8 conditions of his pretrial confinement are grounds for
9 leniency. First of all, the claims are exaggerated.

10:49AM 10 During the COVID pandemic, which was one of the
11 gravest crises our country and the world has faced in decades,
12 everyone suffered. And in particular -- I mean, everyone
13 suffered. In particular, those who were incarcerated suffered.
14 And the measures that the B.O.P. took to alleviate the
10:49AM 15 danger -- or to guard against the danger of COVID infection,
16 that's what caused the defendant's hardship while he was
17 incarcerated, because he had committed PPP fraud while he was
18 out.

19 So the quarantine measures were suffered by the --
10:50AM 20 and the hardships involved with the quarantine measures were
21 shared by thousands of other prisoners. And again, I don't
22 think there's a soul in this country that wasn't affected and
23 didn't suffer to some extent, many people losing many family
24 members during COVID.

10:50AM 25 So I'm not moved by the conditions of pretrial

1 confinement as a grounds for leniency.

2 The defendant does suffer from depression,
3 claustrophobia, and so forth. And I've considered that.
4 That's all set forth in the psychological evaluation that was
10:50AM 5 submitted. But again, there's nothing there that, in my view,
6 sets the defendant apart from many, many others.

7 And then, finally, I just have to note that, while
8 the defendant is seeking leniency because of the conditions
9 that he suffered in his pretrial incarceration because of the
10:51AM 10 COVID measures that were taken by the B.O.P., he also took
11 advantage of the efforts that the administration made to
12 provide these forgivable loans to -- so for someone who has
13 engaged in PPP fraud, to complain about what was happening in
14 prison because of COVID, there's a real disconnect there that I
10:51AM 15 feel I just -- I have to point out on the record.

16 So I've considered, you know, the voluminous filings
17 in this case, everything that the parties have filed. I've
18 considered the Government's recommendation, the defendant's
19 arguments for a sentence of 57 months, which is just short of
10:52AM 20 five years. The total exposure that the defendant has in this
21 case, as the Government points out, is either close to or
22 exceeds 100 years.

23 On certain counts alone, the maximum is 30 years.
24 And I seriously -- for all the reasons that I've set forth as
10:52AM 25 to everything in this case, I really seriously considered

1 whether 120 months is a sufficient sentence.

2 But I think, after considering everything in the
3 case, I would sentence the defendant to 120 months. I
4 considered sentencing him to 240 months, given the extent of
10:53AM 5 the fraud, the harm that was caused, and all of the other
6 factors that I've discussed at length.

7 My intended sentence is a sentence of 120 months,
8 five years of supervised release.

9 I'm not -- I'll listen to argument on the amount of
10:53AM 10 the fine because, although the defendant has, I think,
11 succeeded in hiding assets, I'm not persuaded that a fine is
12 not appropriate here, whether collecting it is feasible or not.
13 But then restitution in the amount that I stated earlier, that
14 is, the -- I think it's 968 -- what's the total amount? I'm
10:53AM 15 sorry. \$954,417.

16 And that's a slight upward departure from the top
17 end of the guidelines here. It's one year longer than the
18 guideline range at 87 to 108 months. But as I -- I do conclude
19 that's the guideline range. Although, as I said, I've
10:54AM 20 considered whether Criminal History Category 2 is an
21 understatement and whether the defendant really has accepted
22 responsibility because I -- if he did not receive the three
23 points downward adjustment for acceptance of responsibility,
24 120 months would be near the low end of the range.

10:54AM 25 All right. Mr. Robinson, you may argue.

1 MR. ROBINSON: May I have one moment, please, with
2 Mr. Johansson?

3 THE COURT: You may.

4 (Off-the-record discussion between
5 the defendant and his counsel.)

10:54AM

6 MR. ROBINSON: Your Honor, if I could just indicate
7 to the Court that, as we discussed at the start of this
8 proceeding, Mr. Johansson wants to address the Court with
9 respect to the record for the portion of the motion to withdraw
10 that goes to the loan fraud counts. I've explained to him his
11 right to -- to allocute. I've explained to him how the 3E1.1
12 guideline applies. And I believe he understands the tension
13 between those two positions. And so he would like to address
14 the Court.

10:55AM

15 THE COURT: All right. Before he does, do you wish
16 to make any argument?

10:55AM

17 MR. ROBINSON: Your Honor, I'm going to submit on
18 what we have provided to you with -- with one -- one
19 amplification. I believe that Mr. Johansson's mental state is
20 a little bit more compromised than even what Dr. Lane
21 concluded. I've spent a lot of time with him. I know that he
22 needs significant treatment. The most effective means to
23 provide that treatment, as we all know, is outside of the
24 Bureau of Prisons. We're not asking for a quick release here.
25 But I would ask the Court to consider that and, as a condition

10:56AM

10:56AM

1 of his supervision, order that there be mental health
2 treatment.

3 And in that, I believe the mental health treatment
4 will alleviate some of the Court's concerns with respect to the
10:56AM 5 need to protect the public. We would ask to -- we would ask
6 that ten years be considered greater than necessary and ask for
7 more -- more in line with the guideline sentence, as the Court
8 has indicated.

9 I'll submit it to you on those grounds. And then
10:57AM 10 Mr. Johansson does wish to address the Court.

11 THE COURT: All right. Mr. Johansson.

12 THE DEFENDANT: Thank you, Your Honor.

13 Um, hearing you read the statements that you made
14 over the last few minutes, I'm almost at a loss of where to
10:57AM 15 start.

16 The Court has not heard one positive or exculpatory
17 thing about myself, my employees, my fellow employees, the
18 company, or any behavior conducted by any of those individuals
19 in four-and-a-half years.

10:57AM 20 My previous counsel, when you alluded to earlier
21 this morning about the delays and multiple delays and so on,
22 those were never my decisions. I never wanted to delay. I
23 wanted to go to trial. And my counsel at the time was either
24 not ready, not prepared. That was obvious to me. And there
10:57AM 25 was multiple, um, kicking the can down the road. That was

1 never my decision or intention.

2 With that being said, this is more or less my fourth
3 tribunal regarding this accident from 2014. We were
4 investigated by city, county, state, and then more recently
10:58AM 5 federal regulators. The other three parties investigated found
6 no criminal intent, no criminal charges. Criminal charges were
7 filed by the state, they investigated for a year and a half,
8 and they dropped all the charges. Why did they do that?

9 Because this was a horrible accident where a man by the name of
10:58AM 10 Samuel Enciso lost his life unnecessarily, clearly.

11 He was a good man. And he was -- he was a good
12 person to be around. But there was no intent on anyone's part
13 to jeopardize anyone in the company ever, Mr. Enciso or anyone
14 else, for -- for love or money.

10:58AM 15 Um, so having had to endure this process now for
16 eight-and-a-half years and, as regards to federal charges,
17 spent four years resisting plea offers where my own counsel was
18 more or less badgering me to take a plea as I professed my
19 innocence and as they did no -- no, you know, review of my
10:59AM 20 discovery of -- of anything related to my case.

21 Um, in a weak moment, when I was physically ill and
22 despondent and traumatized, if you will, I sat right here in
23 the corner of this table. And the prosecution threatened to
24 indict my son who had just gotten out of college, had worked
10:59AM 25 for the company for a handful of months, completely innocent of

1 anything in his entire life, save for a traffic ticket, that he
2 was going to be indicted and my sister was going to lose her
3 home if I didn't sign a plea document that, frankly, I couldn't
4 even have read. There was over a hundred pages of plea
11:00AM 5 documents and I had no glasses to do that, if you remember that
6 whole episode.

7 I've cared about everyone I've ever worked with, in
8 or around. I would never ever jeopardize anyone for one penny
9 in any way, shape, or form or for any other motivation. And I
11:00AM 10 never did.

11 I was charged of an incident from 1992, 30 years
12 ago. The Government has -- has convinced you and clarified --
13 or implied to you that that was somehow an employee of our
14 company or whatnot. The truth of the matter is the fellow that
11:00AM 15 died in the accident in 1992 from a welding accident on a tank
16 trailer worked for a third party vendor. He was not our
17 employee. Our company, which was Atlas at the time that I
18 worked for, we did not even do welding. We subbed out
19 everything. Everything we had went to outside shops, including
11:00AM 20 this company, which, over the course of the 12 months prior to
21 the accident, had did, I think, 12 or 13 jobs for maybe \$400
22 each.

23 There was a five-year investigation that went on, a
24 cloud over the company, a cloud over myself, and I stepped up.
11:01AM 25 And according to my -- my attorney at the time suggested I sign

1 a plea to put the whole thing to bed, put it behind everybody.
2 And so I did that. I was told I would get six months
3 probation.

4 As it turned out, I got 15 months. However,
11:01AM 5 Judge Paez, who I very much respect, in going through the
6 sentencing hearing, it dawned on him, as it did with us on the
7 defense side, that I had pled guilty to two things that weren't
8 even federal crimes. They were not federal crimes. In fact,
9 they're not even state crimes.

11:01AM 10 But as I -- as I asked my attorney, hey, isn't this
11 the Perry Mason moment? Aren't you supposed to stand up and
12 object and whatnot? He did nothing. And as a result, I got
13 sentenced to 15 months in federal prison for something,
14 frankly, I had absolutely nothing to do with. And -- and I --
11:01AM 15 I -- I -- at that point in time I chalked it up as the worst
16 mistake of my life, to plead guilty to something I didn't do.
17 However, it did put the case to bed. It put it behind me,
18 which was -- was some benefit.

19 Um, prior to that point, I had never had any trouble
11:02AM 20 with the law in any way, shape, or form, including paying all
21 my taxes.

22 Fast-forward 30 years or 20 -- well, 28 years, we
23 have -- we have a horrible accident at the Corona location. I
24 was not there that day. I did not know any welding was going
11:02AM 25 on. I did not instruct anyone to weld, nor would I if someone

1 had informed me so.

2 Um, the welding job in question, if you want to call
3 it that, was actually, from a financial standpoint, a negative
4 to the company as opposed to what the trailer needed to have
5 done.

11:02AM

6 The intention to change the dome lid out was done on
7 Tuesday morning at the suggestion of Danny Lopez Velasquez. It
8 was his idea to change the dome lid out. No one else. His
9 supervisor, his foreman, Sam Enciso, the fellow that passed
10 away, they both went to Henry and suggested they wanted to
11 change the dome lid out because it had -- the new style had the
12 vent built in as opposed to the old style that was on the
13 trailer.

11:03AM

14 The old style dome lid that was on the trailer
15 didn't even need to be replaced. There was no need for any of
16 this to happen at all, which is -- which is doubly troubling
17 regarding a man who lost his life. It didn't even have to
18 happen. There was no need even for that repair. They decided
19 to upgrade the dome lid on their own.

11:03AM

20 And Henry, who had just come back from a ten-day
21 vacation and wasn't even up to speed on all the projects in the
22 shop, said, "Fine, go ahead, guys. Do what you want to do.
23 That's fine." That was the extent of it. I wasn't even there.
24 I had no idea that these guys were going to do that.

11:03AM

25 The Government contends that I knew all about it and

11:03AM

1 I ordered them. It's impossible. Absolutely impossible.

2 The -- unless I have a crystal ball or some sort of
3 time machine, there's no way I could have known that that was
4 going to happen. And as a manager of the company, if someone
11:04AM 5 said we're going to replace a perfectly good dome lid with
6 another dome lid that's also perfectly good, to no apparent
7 gain other than a convenience for the maintenance fellows, I
8 would not have approved it.

9 Um, there's so much I want to cover based upon what
11:04AM 10 you said over the last five minutes. I'm -- I'm -- I'm,
11 frankly, just scattered regarding it. But as far as the PPP,
12 Agri-Comm's loan for \$286,000. Agri-Comm was a company that
13 was purchased with funds from my father in 2004. That company
14 was in bankruptcy. My father bought it. My father passed
11:04AM 15 away. The shares transferred to my mom. I don't know who else
16 it would go to, I would assume my mom.

17 I have never been an employee of Agri-Comm. I have
18 never been an officer of Agri-Comm. I have never worked at
19 Agri-Comm. I know three or four employees that work there. In
11:05AM 20 20 years of a family relationship to that company, I have
21 stopped by that company in Central California or North Central
22 California a dozen times in 20 years. And that's usually just
23 coming back from some visit from a relative or something who
24 just popped in to say hello.

11:05AM 25 As far as the PPP for Agri-Comm, I never suggested

1 to anyone at Agri-Comm to get a PPP loan. I knew about PPP
2 loans, I heard about the program on the radio and so on.

3 John Mello, who is a 24-year president of Agri-Comm
4 who ran that company from top to bottom, stem to stern, called
11:05AM 5 me one day. And he said, "Hey, we haven't talked about this in
6 a long time. But who owns the stock in the company since your
7 dad passed away?"

8 And I said, "It's my mom."

9 He said, "Okay. I need your mom's address and phone
11:05AM 10 number and Social Security number."

11 And then he also said, which I thought was almost a
12 joke, he said, "Has your mom ever been in trouble?"

13 And I said, "My mom's in her 80s. She's never been
14 in trouble for anything." And I thought he was sort of joking,
11:06AM 15 being flippant about it. I didn't even understand what the
16 question was.

17 So I said, "Fine. I'll get her address and Social
18 Security number. I'll get it to you this afternoon or the next
19 day," which I did. That's the extent of my involvement with
11:06AM 20 the PPP for Agri-Comm.

21 The funds that went to Agri-Comm went to their
22 payroll account. The funds were used entirely per PPP
23 guidelines. And not one penny went to me or my family or
24 anyone else.

11:06AM 25 In fact, Mr. Mello in his statement to the

1 Government has testified that in 20-plus years, I personally
2 nor anyone from my family has ever received one penny in
3 payroll or dividends or funds of any kind from Agri-Comm at
4 all. Zero.

11:06AM

5 So for the Government to quote the -- Mr. O'Brien's
6 comments regarding the presentence -- that I pocketed this
7 money is -- is, frankly, a travesty to the truth. I never -- I
8 never saw one penny of that, nor did I solicit a penny. And I
9 have never solicited a penny from Agri-Comm in

11:07AM

10 20-something-plus years. I never ran that company. I was a
11 non-compensated director. That was it. I had a very minor
12 role in anything to do with Agri-Comm.

11:07AM

13 John Mello ran that company as he saw fit. He --
14 he -- he and his family earned \$450,000 a year running that
15 company. That's the Agri-Comm loan. It was -- funds were sent
16 from the PP -- from their bank, which I had no relation to
17 their bank, don't even know anyone at their bank. The company
18 got that \$286,000, used it exactly per program guidelines with
19 no involvement or benefit to myself.

11:07AM

20 As far as Western Distribution's PPP loan, the
21 company qualified for a \$486,000 PPP loan. The company was
22 awarded a \$486,000 PPP loan.

11:08AM

23 At that time, with Western Distribution being a jet
24 fuel distribution company, our business at that company had
25 dropped 80 percent. We did lay off most everybody. Why?

1 There was nothing to do.

2 The PPP program didn't mandate hire people to stand
3 around and do nothing all day. It was meant for the survival
4 of the company. I had quit taking a paycheck by that point.

11:08AM

5 My son had quit taking a paycheck. He had backpay -- he had
6 four or five paychecks he never even cashed and he was working
7 there. I had four or five paychecks I never even cashed. But
8 taxable payroll, by the way, through Paychex services with
9 taxes taken out.

11:08AM

10 The company put the money in its corporate accounts.
11 And we had 24 or 26 weeks to use the funds according to program
12 guidelines, which they were.

11:08AM

13 The Government says I pocketed this money and spent
14 it on other things for myself. Absolutely untrue. I basically
15 worked -- I worked without pay for over a year to try and make
16 sure that company would survive for the benefit of the
17 employees there that I cared about.

11:09AM

18 The Government has done everything but classified me
19 and categorized me as someone that has horns sticking out of my
20 head and carrying a pitchfork. I'm not the person that's been
21 portrayed to the Court in any way, shape, or form. And I put a
22 lot of it on myself for the last four years with Mr. Werksman
23 doing absolutely nothing to put forth anything exculpatory
24 regarding this case to the Court or pushed back on any of the

11:09AM

25 Government's assertions. None. I should have -- I should have

1 terminated my relationship with him sooner than the beginning
2 of this year.

3 By the way, funds that were paid to Mr. Werksman and
4 his firm were substantial. I -- I didn't notice at the time
11:09AM 5 the retainer was signed in 2018 that it says, if you take a
6 plea, all funds are 100 percent due -- 100 percent earned.

7 Mr. Werksman had been paid to take the company and
8 myself to trial. Obviously that didn't happen. In fact, the
9 last insult from the Werksman firm was a bill for \$10,000,
11:10AM 10 which was paid, to hire an investigator who was never hired and
11 never investigated anything. So I parted ways with
12 Mr. Werksman.

13 The Government contends that I have some sort of
14 vast financial resources to hire all these people that are here
11:10AM 15 to -- to defend myself and the company. Frankly, most of the
16 help that has been done of any substantive nature in preparing
17 the discovery in my case was done by family members, friends,
18 attorneys that are acting pro bono because -- because they're
19 shocked at the situation I'm in.

11:10AM 20 But following that line, you said that you think
21 that it's -- it's unseemly that I contend that I am not someone
22 focused on material possessions. That's absolutely true.

23 Can the Government point to anything other than my
24 mistake of renting a house from a friend, which was a mistake,
11:10AM 25 I admit it. That's the only extravagance I've ever had in my

1 life, Your Honor.

2 I've driven three cars in 30 years -- a GMC, a
3 Volkswagen -- 2004 Volkswagen Golf, a little red car. I put
4 335,000 miles on it before the engine blew. And a minivan
11:11AM 5 that's got 250,000 miles. Three cars. Those are the three
6 cars. There's no sports cars, there's no luxury cars, there's
7 no ski boats, there's no -- nothing in my life.

8 I have never had a home mortgage. I've never owned
9 a home in my life. All of that precedes anything going back to
11:11AM 10 even the 1992 accident.

11 I was raised by my grandmother predominantly in a
12 Swedish family. There is a philosophy that Swedish people --
13 maybe not the current generation but certainly my grandparents
14 and myself, it's *du tar lagom*. It means you don't take more
11:11AM 15 than you need and you don't want for more than you need.

16 And unlike the American colloquialism of keeping up
17 with the Joneses, that's the antithesis of how I was raised.
18 You were meant to help your neighbor, not trying to be better
19 or one up them. That's not me.

11:12AM 20 Your Honor, I made a mistake. I agreed to rent a
21 large home from a friend who was in a bad situation. It was a
22 mistake. And it was -- and it was clearly a luxury indulgence,
23 if you'll have it, for renting that house for those few years.
24 Big mistake. I wish I could go back and -- and undo that.

11:12AM 25 That's -- but, again, the genesis of that was me

1 helping a friend who was about to lose his home because he
2 couldn't afford it. He was having cash flow problems. And it
3 was supposed to be temporary, and it didn't turn out to be very
4 temporary.

11:12AM 5 But the house -- the \$2.1 million home that the
6 Government refers to, that's a condo my parents bought over
7 30 years ago. I don't own it. I've lived there. I've never
8 lived anywhere in my life other than rental properties or with
9 family members.

11:12AM 10 I don't -- I don't -- I don't covet material
11 possessions. I don't have any material possessions. I don't
12 have gold watches. I don't have -- like I said, I've never had
13 sports cars or luxury cars or anything of that nature. That's
14 not me. I like to work. That's what I've always done for the
11:13AM 15 last 40 years. And I've worked not just for myself but the
16 people around me.

17 I was asked by my family, there was going to be --
18 there was going to be 150 people in here -- employees, family
19 members, friends. And I said, no, this isn't the day for it.
11:13AM 20 This isn't the day. You don't need to come and fill up the
21 gallery. I didn't anticipate getting sentenced today, so I
22 told them not to come. Again, a mistake on my part.

23 But how I've been portrayed to the Court has just
24 been -- has been a travesty to the truth, frankly, Your Honor.

11:13AM 25 The Western -- getting back to the Western loan,

1 Western got the 486,000. It went in its business account. We
2 had 24 weeks to put those funds to use according to the program
3 guidelines. And that's exactly what they were used for. I
4 never got one penny of that nor any family member or my son or
11:14AM 5 anyone else. But at the time we got the loan, yes, we were a
6 skeleton crew because there was no work.

7 I was desperately trying to see if we could hold the
8 company together --

9 THE COURT: All right. You've made -- you've
11:14AM 10 already addressed that point.

11 THE DEFENDANT: Okay.

12 MR. ROBINSON: May I just have one moment, please?

13 (Off-the-record discussion between
14 the defendant and his counsel.)

11:14AM 15 THE DEFENDANT: Okay. The -- the Government -- the
16 Government said that the reason for the fraud was somehow for
17 me to pocket the money. Again, never happened.

18 But I did request from John Mello, because it
19 appeared that because we had lost so much payroll, we weren't
11:14AM 20 going to qualify for a workers' compensation program. So I
21 asked him would he be okay with moving a few employees onto our
22 payroll group. He was not happy about it, but he said, yeah,
23 it's not that big of a deal, go ahead and you can do it. So we
24 did.

11:14AM 25 That was to address a workers' compensation issue

1 that we were going to lose our program because we weren't
2 producing enough workers' comp payroll revenue for it, frankly.
3 Had nothing to do with cheating PPP out of anything.

4 Um, I never signed any documents for PPP, I never
11:15AM 5 spoke to any -- anyone at the bank other than the initial call
6 to ask if they would entertain a PPP loan. I didn't provide
7 any or review any documents that were presented to the PPP loan
8 forgiveness.

9 The worst you can say about the PPP for Western was
11:15AM 10 that we had an administrative mistake for -- we were overfunded
11 \$54,000. And when it was apparent, the funds were returned to
12 the SBA.

13 Again, nothing went in my pocket, family's pocket or
14 anything. I worked diligently for the entire time of COVID to
11:15AM 15 try and keep the company going. And -- and, fortunately, I was
16 able to do that. I was running around trying to find work -- I
17 had guys working -- I got them jobs driving forklifts at
18 different companies and vendors we worked for and so on for the
19 benefit of the employees and not for myself. As I said, I
11:16AM 20 wasn't -- I wasn't getting paid at the time.

21 I -- there's so many things in the plea agreement
22 that are just -- just, frankly, so -- so untrue and baseless.

23 The -- the notion that no one in the company cared
24 about safety and these sorts of things is just patently
11:16AM 25 ridiculous.

1 We had a full-time safety director. Mr. Spicer made
2 \$75,000 a year plus benefits. He was a full-time safety
3 director for, compared to some of our competitors, a fairly
4 small company. We paid over 100,000 a year to have someone
11:16AM 5 assist in training for our drivers, eight-hour single classes
6 by specified trainers once a year. No one compelled us to do
7 that. We didn't have to do that. We could have saved \$100,000
8 doing that, but we didn't. I -- I instructed that to be done
9 on a regular basis because I thought it was the prudent and
11:17AM 10 safe thing to do.

11 Our -- our shop facilities -- we had weekly safety
12 meetings in the shop. Mr. Spicer typically conducted those
13 every week, and the company paid for lunch for all the guys.
14 And in the entire time at that facility, we had no workers'
11:17AM 15 comp accidents ever, with the exception of the one accident in
16 2014.

17 In fact, our workers' compensation modification
18 factor was a 63. That's not good; that's exceptional. It's
19 because we ran a safe shop. We had safety bonuses, we had --
11:17AM 20 we had our trucks that were -- were -- had tracking devices on
21 them. We limited the speeds to them so drivers couldn't speed.
22 I mean, we went to great lengths.

23 THE COURT: All right. Is there any -- I'm going to
24 ask you to wrap up. If there's anything else that -- that you
11:17AM 25 want to say --

1 THE DEFENDANT: Your Honor --

2 THE COURT: -- I want you to wrap it up.

3 THE DEFENDANT: Okay. I sat right there and I
4 perjured myself on that plea. I signed that plea for three
11:18AM 5 reasons.

6 Number one, six of the last ten years I did -- I did
7 my taxes. I never mailed them in. I don't necessarily agree
8 with the dollar figure that the -- that the Government has. My
9 figure, I remember, is \$244,000. Why do I remember that?

11:18AM 10 Because I was -- I knew I had to deal with that at some point.

11 I have an explanation for not filing the taxes, but
12 it didn't relieve me of the obligation. Of the taxes, I am --
13 I am guilty of. I should have like -- most Americans and like
14 I was brought up, I should have made sure those got paid. I
11:18AM 15 got behind a couple of years, and I never caught up.

16 However, over the last four or five years I've filed
17 and paid and not had an issue. But the previous six years in
18 question by the Government, no. I didn't file those. It was
19 100 percent my responsibility, and I should have.

11:18AM 20 The DOT charges and the PPP charges are -- are,
21 frankly, a wild distortion of the facts, circumstances, witness
22 statements, and regulations. All of those things that I have
23 just mentioned are exculpatory to myself. It's not my opinion;
24 I believe they're fact and provable.

11:19AM 25 And the third reason I signed was -- or the second

1 reason I signed the plea agreement was because I was threatened
2 that they were going to indict my son who had done nothing
3 wrong. I believe the Government knows he's done nothing wrong.
4 And that was their final push to get me to sign the plea. And
11:19AM 5 then, also, take my sister's house if -- if I didn't sign the
6 plea.

7 How can I be responsible for knowingly and willfully
8 defrauding the Government on a bank fraud loan when I didn't
9 know anything about it and didn't realize that there was
11:19AM 10 anything wrong because I didn't expect there was anything
11 wrong, didn't assume anything was wrong?

12 In fact, the Department of Transportation sent us a
13 subpoena for documents to Western. I called, um,
14 Ms. Strickland here per the subpoena, which said if you have
11:20AM 15 any questions, call, which I did. I called her twice, left
16 messages, it was not returned. Because I had questions. I was
17 confused about what they were asking for.

18 The DOT was asking for certain information,
19 financial -- banking information, I thought it was odd. So
11:20AM 20 like the subpoena --

21 THE COURT: Like I said, you need to wrap up.

22 THE DEFENDANT: Okay. I attempted to contact
23 Ms. Strickland because I -- I was confused by what they were
24 asking for.

11:20AM 25 Of course, the Government portrays it as I'm

1 blatantly, flagrantly creating bank fraud to line my own
2 pockets, when that just absolutely didn't happen at all.

3 And so I signed a plea, really to take
4 responsibility for the taxes, which I did, and protect my son,
11:20AM 5 whom I love, and my sister, whom I love, two people totally
6 innocent and shouldn't have any repercussions for any of this.
7 But I'm genuinely not guilty of the DOT charges, and I don't
8 believe that's my opinion. I think that's provable, easily
9 provable. And the same thing with the PPP stuff.

11:21AM 10 The worst you can say about the PPP is there was an
11 administrative mistake made by some office personnel at Western
12 and the bank. There was a \$54,000 overfunding, and the funds
13 were sent back to the SBA.

14 THE COURT: All right.

11:21AM 15 THE DEFENDANT: And no one -- no one spent any of
16 those funds on anything other than program guidelines
17 required -- requirements.

18 THE COURT: All right. Thank you. You've had time
19 to make your points.

11:21AM 20 I'm going to let the Government respond. Before
21 that, though, I just want to make a few points on the record.

22 Everything that the defendant has said as to his
23 factual innocence is belied by the plea colloquy.

24 And as for the claim that he didn't have glasses --
11:21AM 25 he didn't have his glasses, he couldn't read all the documents,

1 the transcript makes it clear and my memory confirms it that at
2 the plea hearing, we gave a lengthy recess so that the
3 defendant would have the ability to get glasses and have
4 everything read to him.

11:22AM 5 THE DEFENDANT: May I comment, Your Honor?

6 THE COURT: No. No. You've already had your chance
7 to allocute.

8 One thing really struck me listening to the
9 defendant's allocution, which is at one point saying that

11:22AM 10 pleading guilty when he was innocent back in 2000 was the
11 biggest mistake he ever made in his life. But then apparently
12 he chose to do it again.

13 So you knew, according to your own words, that it
14 was a mistake to plead guilty and perjure yourself the first
11:22AM 15 time --

16 THE DEFENDANT: No --

17 THE COURT: -- but you did it again.

18 THE DEFENDANT: No one threatened my family in 1992.

19 THE COURT: Well, on the record I asked you many
11:22AM 20 times. I have to say, I anticipated something like this, a
21 motion to withdraw the plea, because of the way the case had
22 progressed.

23 And I think I'm usually very careful when I take a
24 plea. I never want to take a plea from someone unless they
11:23AM 25 really understand what they're doing and they agree that

1 they've done the things that they are pleading guilty to. And
2 there's many times where I have stopped in the middle of a plea
3 colloquy and said I'm not going to take this plea because I
4 don't think the defendant understands or the defendant is
11:23AM 5 claiming that he is innocent and I won't take his guilty plea.

6 So I was extra careful in this case. And the
7 defendant stated under oath that no one had made any threats to
8 him or anyone in his family. And that's just one of many
9 statements that were made under oath during the plea colloquy
11:23AM 10 that are being contradicted -- or attempted to be contradicted
11 today, and I'm simply not persuaded.

12 On the taxes, there was one thing I neglected to
13 mention earlier and that is -- well, first of all, the
14 defendant's argument is that he filled them out but he didn't
11:24AM 15 mail them. That's, of course, no defense on the tax charges.

16 But as the Government points out, he was required
17 under the plea agreement to -- I believe it was filed back --
18 filed the forms for the years he hadn't done it and he still
19 has not done that.

11:24AM 20 THE DEFENDANT: Mr. Werksman instructed --

21 THE COURT: No. You've had a chance to speak
22 already.

23 All right. Mr. O'Brien, is there anything you want
24 to add?

11:24AM 25 MR. O'BRIEN: Thank you, Your Honor.

1 Your Honor, I just -- I'd like to make a few
2 clarifications just so the record is clear, and then I'll just
3 respond briefly because I don't want to --

4 THE COURT: Go ahead.

11:24AM

5 MR. O'BRIEN: I appreciate the Court's attention to
6 this case, and I don't want to belabor the point.

7 THE COURT: No. Go ahead.

11:24AM

8 MR. O'BRIEN: Your Honor, when you were discussing
9 the guidelines, I just want to make sure a couple of things are
10 correct for the record.

11 You referred -- excuse me. On the welding counts,
12 you referred a few times to 20 in the guidelines. It's 2Q. So
13 you got the guidelines right, but it's --

11:25AM

14 THE COURT: No, but I -- all right. I thought it
15 was 2 zero -- not 2 zero -- the letter O. It's Q?

16 MR. O'BRIEN: Your Honor, I defer to the Court, but
17 in my -- I believe it's 2Q.

18 THE COURT: Well, I have the -- I have the
19 guidelines here, of course.

11:25AM

20 Oh, no, you're right. It is -- it is 2Q. There's
21 underlining, and that's what made me read it as a zero on
22 screen. I apologize. You're right.

11:25AM

23 MR. O'BRIEN: Anyway, Your Honor, it's a minor
24 thing. The PSR gets it correct, and Your Honor's points were
25 correct. I just think --

1 THE COURT: You're right. It is a Q. I was reading
2 it as an O.

3 MR. O'BRIEN: Secondly, Your Honor, I think briefly
4 the Court mentioned the second group, which is the PPP loan
11:25AM 5 fraud, and referred to it as the tax group. But I think maybe
6 the Court just misspoke.

7 THE COURT: You're correct.

8 MR. O'BRIEN: Third, Your Honor, on the restitution,
9 I believe the Court omitted the IRS portion, which should be
11:26AM 10 part of the restitution order.

11 THE COURT: That's right. The number that I stated
12 was simply the number for the -- for the two banks, and it's
13 \$298,562 for the IRS.

14 MR. O'BRIEN: Thank you, Your Honor.

11:26AM 15 THE COURT: All right.

16 MR. O'BRIEN: Um, Your Honor, I agree with
17 everything the Court has said this morning. And so I'm not
18 going to refute point by point the many misstatements in
19 defendant's allocution. I just briefly want to mention a
11:26AM 20 couple and then I'll be done.

21 The State dropped its criminal investigation, the
22 Riverside County District's Office, into the May 2014 explosion
23 because we filed our Indictment. The idea that they somehow
24 exonerated the defendant is absurd.

11:26AM 25 There's never been any threats by the Government.

1 None of defendant's very capable counsel have ever alleged
2 that, to their credit.

3 Defendant was at the facility on May 6th, 2014, both
4 after the explosion and -- I went back and looked at the
11:27AM 5 footage -- he was there that morning. So this -- he said he
6 was there the day before. It's all on his own -- ironically
7 his own security footage. So, again, that's just patently
8 untrue.

9 The idea that, you know, he was somehow tricked,
11:27AM 10 coerced at the change of plea hearing, wasn't paying attention,
11 if -- as the Court, I'm sure, knows, he made careful
12 interlineations on almost all of the factual basis -- factual
13 bases to the four plea agreements on very technical matters.

14 He was there. He was paying attention. The mental
11:27AM 15 health report generated by the defense casts no doubt on his
16 understanding of those proceedings. So the idea that, you
17 know, he wasn't paying attention or capable of paying attention
18 is refuted by those interlineations, which are very careful --
19 carefully made and initialed by defendant.

11:28AM 20 Regarding his statements about the Agri-Comm loans.
21 The Agri-Comm loans weren't charged in the Indictment. So
22 they're relevant and I disagree with almost everything he said
23 about Agri-Comm, but those weren't charged in the Indictment.

24 And these criticisms of his former counsel, as the
11:28AM 25 Court is well aware, there was heavy motion practice before the

1 trial dates years ago in this case. The idea that the defense
2 wasn't actively pursuing a defense on behalf of Johansson and
3 all of his attorneys on behalf of the corporations is belied by
4 the docket in this case, which, as the Court knows, was subject
11:28AM 5 to heavy, heavy motion practice.

6 And finally, Your Honor, just for the record, just
7 so there's no confusion, the Government is recommending a
8 ten-year prison sentence and not a day more.

9 Thank you.

11:28AM 10 THE COURT: All right. Mr. Robinson?

11 MR. ROBINSON: May I have one moment, please?

12 THE COURT: Yes, you may.

13 (Off-the-record discussion between
14 the defendant and his counsel.)

11:29AM 15 MR. ROBINSON: Your Honor, if I may, Mr. Johansson
16 just asked me to clarify that he was at the business in the
17 morning of the -- of the explosion, early morning. He wasn't
18 there when it happened. He came back in response to being
19 called that there was the accident. And that's -- that's what
11:29AM 20 Mr. Johansson meant when he said he wasn't at the location on
21 that day. It should have been more artfully stated by me
22 probably that he wasn't there at the time of the explosion.

23 THE COURT: All right. Then I intend to sentence
24 the defendant to 120 months, a five-year period of supervised
11:30AM 25 release, and order restitution.

1 The Government did not argue about fines, so I'm not
2 going to impose a fine at this time.

3 Any legal cause why sentence should not now be
4 imposed?

11:30AM 5 MR. ROBINSON: Other than with respect to the
6 motions to withdraw, no, Your Honor.

7 THE COURT: All right.

8 MR. ROBINSON: And I say that --

9 THE DEFENDANT: You heard the threat; right?

11:30AM 10 MR. ROBINSON: And I say that just so there's no
11 argument of waiver later. I don't anticipate that, but I
12 just --

13 THE COURT: I understand.

14 All right. The Court has considered the sentencing
11:30AM 15 factors set forth at 18, United States Code, Section 3553(a),
16 as well as the advisory Sentencing Guidelines and hereby impose
17 a sentence as follows:

18 It's ordered that the defendant shall pay to the
19 United States a special assessment of \$500 due immediately.

11:31AM 20 Any unpaid balance shall be due during the period of
21 imprisonment at the rate of not less than \$25 per quarter
22 pursuant to the B.O.P.'s Inmate Financial Responsibility
23 Program.

24 It's ordered that the defendant shall pay
11:31AM 25 restitution in the total amount of \$1,252,979 pursuant to 18,

1 United States Code, Section 3663(a).

2 The amount of restitution ordered shall be paid as
3 follows:

4 To the victim IRS, \$298,562;

11:31AM

5 To BAC Community Bank, \$667,917;

6 Bank of the West, \$286,500.

7 If the defendant makes a partial payment, each payee
8 shall receive approximately proportional payment unless another
9 priority order or percentage payment is specified in the

11:32AM

10 judgment.

11 The Court finds from a consideration of the record
12 that the defendant's economic circumstances allow for
13 restitution payments under the following schedule:

11:32AM

14 Restitution shall be due during the period of
15 imprisonment at the rate of not less than \$25 per quarter
16 pursuant to the B.O.P.'s Inmate Financial Responsibility
17 Program.

11:32AM

18 If any amount of restitution remains unpaid after
19 release from custody, nominal monthly payments of at least
20 10 percent of the defendant's gross monthly income but not less
21 than \$100, whichever is greater, shall be made during the
22 period of supervised release.

23 These payments shall begin 90 days after the
24 commencement of supervision.

11:32AM

25 Nominal restitution payments are ordered, as the

1 Court finds the defendant's economic circumstances do not allow
2 for either immediate or future repayment of the amount ordered.

3 Pursuant to 18, United States Code,
4 Section 3612(f)(3)(A), interest on restitution ordered is
11:33AM 5 waived because the defendant doesn't have the ability to pay
6 interest, but payments may be subject to penalties for default
7 and delinquency under 18, U.S.C., Section 3612(g).

8 With respect to the restitution owed to the victims
9 BAC Community Bank and Bank of the West, the defendant shall be
11:33AM 10 held jointly and severally liable with convicted defendant
11 Western Distribution, LLC, in Case No. 21-170, for the amount
12 of restitution ordered in this judgment.

13 The victims' recovery is limited to the amount of
14 their loss, and the defendant's liability for restitution
11:33AM 15 ceases if and when the victims receive full restitution.

16 The defendant shall comply with Second Amended
17 General Order No. 20-04.

18 The Court waives all fines, as it finds the
19 defendant doesn't have the ability to pay a fine in addition to
11:34AM 20 restitution.

21 The Court has found the property identified in the
22 preliminary order of forfeiture in Case No. 21-170 is subject
23 to forfeiture, and the preliminary order is incorporated by
24 reference into this judgment and is final.

11:34AM 25 The Court recommends that the Bureau of Prisons

1 conduct a mental health evaluation of the defendant and provide
2 all necessary treatment.

3 Pursuant to the Sentencing Reform Act of 1984, it's
4 the judgment of the Court that the defendant, Carl Bradley
11:34AM 5 Johansson, is hereby committed on Counts 1, 2, and 4 of the
6 Second Superseding Indictment filed in Docket
7 No. 0973 5:18-114(B) and Counts 1 and 3 of the Indictment filed
8 in Docket No. 21-170 to the custody of the Bureau of Prisons to
9 be imprisoned for a term of 120 months.

11:35AM 10 This term consists of the following: 60 months on
11 Counts 1 and 4 of the Second Superseding Indictment filed in
12 18-114 and 120 months on Count 2 of the Second Superseding
13 Indictment filed in 18-114(B) and Counts 1 and 3 of the
14 Indictment filed in 21-170 to be served concurrently with each
11:35AM 15 other. Six months of the statutory sentencing enhancement
16 under 18, United States Code, Section 3147, to be served
17 consecutively.

18 No, let me think.

19 Because that six months has to be served
11:35AM 20 consecutively, then, rather than 120 months on Count 2, it
21 should be 114 months.

22 Okay. So the six months under 18, United States
23 Code, Section 3147, is served consecutively to the terms on
24 Counts 1, 2, and 4 of the Second Superseding Indictment filed
11:36AM 25 in the 18-114 case and Counts 1 and 3 of the Indictment in the

1 21-170 case.

2 So that's a total term of 120 months.

3 Upon release from imprisonment, the defendant shall
4 be placed on supervised release for a term of five years. That
11:36AM 5 consists of five years on each of Counts 1, 2, and 4 of the
6 Second Superseding Indictment in the 18-114 case and Counts 1
7 and 3 of the Indictment filed in the 21-170 case, all such
8 terms to run concurrently under the following terms and
9 conditions:

11:37AM 10 The defendant shall comply with the rules and
11 regulations of the U.S. Probation and Pretrial Services Office
12 and Second Amended General Order 20-04.

13 During the period of supervision, he shall pay the
14 special assessment and restitution in accordance with this
11:37AM 15 judgment's orders regarding such payment.

16 The defendant shall cooperate in the collection of a
17 DNA sample from the defendant.

18 He shall apply all monies received from income tax
19 refunds, lottery winnings, inheritance, judgments, and any
11:37AM 20 other financial gains to the court-ordered financial
21 obligation.

22 The defendant shall participate in mental health
23 treatment, which may include evaluation and counseling, until
24 discharged from the treatment by the treatment provider with
11:37AM 25 the approval of the probation officer.

1 As directed by probation, he shall pay all or part
2 of the costs of court-ordered treatment during the period of
3 supervision and provide payment and proof of payment as
4 directed by probation. If the defendant has no ability to pay,
11:38AM 5 no payment shall be required.

6 The defendant shall not engage as whole or partial
7 owner, employee, or otherwise in any business involving the
8 transportation of hazardous materials of any kind without the
9 express approval of the probation officer before engaging in
11:38AM 10 such employment.

11 Further, the defendant shall provide the probation
12 officer with access to any and all business records, client
13 lists, and other records pertaining to the operation of any
14 business owned, in whole or in part, by the defendant as
11:38AM 15 directed by probation.

16 And the defendant -- any employment that the
17 defendant undertakes while on supervision must be approved in
18 advance by the probation office.

19 The defendant shall submit his person, property,
11:38AM 20 residence, vehicle, papers, or other areas under his control to
21 a search conducted by a U.S. probation officer or law
22 enforcement officer. Failure to submit to a search may be
23 grounds for revocation of supervised release.

24 The defendant shall warn any other occupants that
11:39AM 25 the premises may be subject to searches pursuant to this

1 condition. Any search under this condition will be conducted
2 at a reasonable time and in a reasonable manner upon reasonable
3 suspicion that the defendant has violated a condition of his
4 supervision and that the areas to be searched contain evidence
11:39AM 5 of this violation.

6 The Court orders that the drug testing condition
7 mandated by statute is suspended based on this Court's
8 determination that the defendant poses a low risk of future
9 substance abuse.

11:39AM 10 All right. Mr. Johansson, by pleading guilty and
11 under the terms of the plea agreement that you signed in this
12 case, you've given up most of your rights to appeal my decision
13 as to your sentence. I'm still required to inform you about
14 appeal processes.

11:40AM 15 A defendant may appeal by filing a Notice of Appeal.
16 He may ask that he be allowed to file any Notice of Appeal
17 without paying the fee that's usually required. You have
18 14 days to file your Notice of Appeal or you lose the right to
19 appeal.

11:40AM 20 Do you understand?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: All right. I believe there's one count
23 to be dismissed.

24 MR. O'BRIEN: There's more than that, Your Honor.

11:40AM 25 THE COURT: All right. What counts does the

1 Government move for dismissal?

2 MR. O'BRIEN: In the 2018 case, Counts 3, 5, 6, 7,
3 8, and 9.

4 THE COURT: All right. And in the other case?

11:40AM 5 MR. O'BRIEN: In the PPP case, Counts 2 and 4.

6 THE COURT: All right. Ordered dismissed.

7 MR. O'BRIEN: Thank you, Your Honor.

8 Your Honor, there's one clarification. May I make
9 it for the record?

11:40AM 10 THE COURT: Go ahead.

11 MR. O'BRIEN: On the restitution, if I heard the
12 Court correctly, it was ordered joint and several with Western
13 Distribution for both banks. And I think that's a mistake. I
14 think the Bank of the West portion, which is 286,500, should
15 not be jointly and severally. That was the portion of the
16 Agri-Comm loan.

11:41AM

17 THE COURT: All right. Do you have any objection to
18 that clarification?

19 MR. ROBINSON: No, Your Honor.

11:41AM 20 THE COURT: All right. Thank you.

21 All right. We'll take up the --

22 MR. ROBINSON: May I make one request to the Court?

23 THE COURT: Yes.

24 MR. ROBINSON: Could the Court recommend to the

11:41AM 25 Bureau of Prisons that Mr. Johansson be incarcerated in a

1 facility in Southern California?

2 THE COURT: Yes. I will make that recommendation.

3 MR. ROBINSON: Thank you.

4 THE COURT: Thank you.

11:41AM 5 Let's take a 10-minute recess, and then I'll take up
6 the three corporate defendants.

7 (Break taken.)

8 THE COURT: All right. Next I'm taking up -- let's
9 see. I think, first, I should take up the sentencing for
12:02PM 10 National. And there's no opposition from either side as to
11 the -- there's no guideline calculations to be made because
12 this is a corporate defendant.

13 The probation office has recommended a sentence of
14 probation as to all three of the defendants and that no fine be
12:03PM 15 imposed.

16 So there really isn't any disagreement between the
17 parties as to the sentence. The Government in its consolidated
18 opposition made certain objections to statements in the PSR,
19 but they're not necessary. Those statements do not affect the
12:03PM 20 Court's decision as to sentencing, so I don't need to rule on
21 the objections.

22 So who is the -- I do need a corporate
23 representative for each of these companies to impose sentence.
24 Is that not correct?

12:03PM 25 MR. O'BRIEN: That's my understanding, Your Honor.

1 As the Court is aware, Mr. Johansson's been the corporate
2 representative for each of the corporations from day one.

3 THE COURT: All right. So, Mr. Johansson --

4 Is there any reason why we shouldn't proceed with
12:04PM 5 sentencing as to National? Counsel?

6 MR. EXUM: No, Your Honor.

7 MR. ROBINSON: No, Your Honor.

8 THE COURT: All right. You may stand at the
9 lectern, Mr. Johansson.

12:04PM 10 DEFENDANT REPRESENTATIVE: National Distribution,
11 um, has been out of business since the end of 2014. I was a
12 director. I resigned a couple, three years after that. At the
13 time of the plea, I didn't have any standing to sign the plea
14 anyway but I did.

12:04PM 15 Wholesale Distribution --

16 THE COURT: All right. We're just talking about
17 National at the moment.

18 All right. Is there any legal cause why judgment
19 should not now be imposed?

12:04PM 20 MR. ROBINSON: No, Your Honor.

21 MR. EXUM: No, Your Honor.

22 THE COURT: All right. Then the Court imposes a
23 sentence as follows:

24 Having considered the sentencing factors set forth
12:04PM 25 at 18, United States Code, Section 3553(a), it's ordered that

1 the defendant, National Distribution Services, Inc., shall pay
2 to the United States a special assessment of \$800 due
3 immediately.

12:05PM 4 Pursuant to Guideline Sections 8C2.2(b) and
5 8C3.3(b), all fines are waived, as the Court finds that the
6 defendant is unable to pay and is not likely to become able to
7 pay any fine.

8 As to restitution as to National, what's the
9 Government's position as to restitution?

12:05PM 10 MR. O'BRIEN: I -- Your Honor, as with Mr. Johansson
11 on the two individual victims -- well --

12 THE COURT: The Government isn't seeking restitution
13 as to the individual victims?

14 MR. O'BRIEN: That's correct, Your Honor.

12:05PM 15 THE COURT: All right. So there's no restitution
16 order.

17 Pursuant to the Sentencing Reform Act of 1984, it's
18 the judgment of the Court that the defendant organization,
19 National Distribution Services, Inc., is hereby placed on
12:06PM 20 probation on Counts 1 and 2 of the Second Superseding
21 Indictment for a term of one year, consisting of one year on
22 each of Counts 1 and 2, all such terms to run concurrently
23 under the following terms and conditions:

24 During the period of probation, the organization
12:06PM 25 shall pay the special assessment and restitution -- special

1 assessment in accordance with this judgment's orders pertaining
2 to such payment.

3 The organization shall not commit another federal,
4 state, or local crime, shall provide the probation officer
12:06PM 5 access to any requested financial information, and within
6 30 days of the date of this judgment shall designate an
7 official of the organization to act as the organization's
8 representative and to be the primary contact with probation.

9 The organization shall answer truthfully all
12:06PM 10 inquiries by the probation officer and follow the instructions
11 of probation; shall report to probation as directed; and shall
12 submit a truthful and complete written report within the first
13 five days of each month; shall be required to notify the Court
14 or probation immediately upon learning of any material adverse
12:07PM 15 change in its business or financial condition or prospects, the
16 commencement of any bankruptcy proceeding, major civil
17 litigation, criminal prosecution, or administrative proceeding
18 against the organization, or any investigation or formal
19 inquiry by Government authorities regarding the organization.

12:07PM 20 The organization shall notify probation immediately
21 of any intent to sell the organization, change the name of the
22 organization, merge with another business entity, or otherwise
23 dissolve or modify in any form or manner the organizational
24 structure from its present status.

12:07PM 25 All right. And again, by the nature of the plea

1 agreement and the guilty plea, the organization has given up
2 most of its rights to appeal the Court's decision. But a
3 defendant may appeal by filing a Notice of Appeal by asking if
4 the appeal can be filed without paying the fee that's usually
12:08PM 5 required. And there are 14 days to file a Notice of Appeal or
6 the organization would lose the right to appeal.

7 Anything else as to National Distribution?

8 MR. O'BRIEN: No, Your Honor. Thank you.

9 MR. ROBINSON: Nothing. Thank you.

12:08PM 10 MR. EXUM: Nothing. Thank you, Your Honor.

11 THE COURT: All right. Thank you.

12 And as then as to Wholesale.

13 MR. GRECH: Yes. Good morning, Your Honor.

14 Paul Grech on behalf of Wholesale.

12:08PM 15 MR. LURYA: Alan Lurya on behalf of Wholesale.

16 THE COURT: Thank you.

17 And do you also represent -- I'm sorry. Do you also
18 represent Western?

19 MR. GRECH: No, Your Honor.

12:08PM 20 MR. LURYA: No, Your Honor.

21 THE COURT: Who represents Western?

22 MR. ROBINSON: I do, Your Honor. I can stand in
23 right now if you'd like to do them simultaneously.

24 THE COURT: We can do them both together.

12:09PM 25 And again, the Government -- I've read everything

1 that the parties have submitted. The Government filed a
2 consolidated opposition. I've already addressed that. And I
3 would sentence the corporations to one year on probation with
4 no fine.

12:09PM 5 Is there any reason -- and again, Mr. Johansson is
6 the corporate representative.

7 Is there any reason why judgment should not be
8 imposed at this time?

9 MR. GRECH: No, Your Honor.

12:09PM 10 MR. LURYA: No, Your Honor.

11 MR. ROBINSON: No, Your Honor.

12 THE COURT: All right. And that's both as to
13 Wholesale and Western.

14 MR. ROBINSON: Correct.

12:09PM 15 THE COURT: All right. So starting with Western,
16 having considered the sentencing factors set forth at 18,
17 United States Code, Section 3553(a), and the guideline fine
18 range, the Court imposes a sentence as follows:

19 It's ordered that the defendant shall pay to the
12:09PM 20 United States a special assessment of \$800 due immediately.

21 It is ordered that the defendant shall pay
22 restitution in the total amount of \$667,917 under 18, U.S.C.,
23 Section 3663(a), to be paid to BAC Community Bank. Restitution
24 shall be paid in full immediately.

12:10PM 25 With respect to -- with respect to the restitution

1 owed to BAC Community Bank, the defendant shall be held jointly
2 and severally liable with the convicted co-defendant
3 Carl Bradley Johansson for the amount of restitution ordered in
4 this judgment.

12:10PM 5 The victims' recovery is limited to the amount of
6 its loss, and the defendant's liability for restitution ceases
7 if and when the victim receives full restitution.

8 Pursuant to United States -- United States
9 Sentencing Guidelines Sections 8C2.2(b) and 8C3.3(b), all fines
12:10PM 10 are waived. The Court finds the organization is unable to pay
11 a fine.

12 Pursuant to the Sentencing Reform Act of 1984, it's
13 the judgment of the Court that the defendant, Western
14 Distribution, LLC, is hereby placed on probation on Counts 1
12:11PM 15 and 3 of the Indictment for a term of three years, consisting
16 of three years on each of Counts 1 and 3 of the Indictment.
17 All such terms to run concurrently under the following terms
18 and conditions:

19 During the period of probation, the organization
12:11PM 20 shall pay the special assessment and restitution in accordance
21 with this judgment's orders pertaining to such payment.

22 The organization shall not commit another federal,
23 state, or local crime.

24 The organization shall provide probation access to
12:11PM 25 any requested financial information.

1 Within 30 days from the date of this judgment, the
2 organization shall designate an official of the organization to
3 act as the organization's representative and to be the primary
4 contact with probation.

12:11PM

5 And the organization shall answer truthfully all
6 inquiries by probation and follow the instructions of the
7 probation officer.

12:12PM

8 The organization shall report to probation as
9 directed and shall submit a full, complete, and truthful report
10 within the first five days of each month and is required to
11 notify the Court or probation immediately upon learning of any
12 material adverse change in its business or financial condition
13 or prospects, the commencement of any bankruptcy proceeding,
14 major civil litigation, criminal prosecution, or administrative
15 proceeding against the organization, or any investigation or
16 formal inquiry by Government authorities regarding the
17 organization.

12:12PM

18 And the defendant organization shall notify
19 probation immediately of any intent to sell the organization,
20 change its name, merge with another business entity, or
21 otherwise dissolve or modify in any form or manner the
22 organizational structure from its present status.

12:12PM

23 And again, the Court notes that the defendant, by
24 pleading guilty and by signing the plea agreement, has given up
25 most of its rights to appeal. But any appeal must be filed

12:13PM

1 within 14 days. And the entity may seek that it can file its
2 Notice of Appeal without paying the fee that's usually
3 required.

12:13PM 4 All right. And then as to Wholesale. Any legal
5 cause why judgment should not now be imposed?

6 MR. GRECH: No legal cause.

7 THE COURT: All right. The Court has considered the
8 sentencing factors set forth at 18, United States Code,
9 Section 3553(a).

12:13PM 10 It's ordered the defendant shall pay to the
11 United States a special assessment of \$400 due immediately.

12 Pursuant to Guideline Section 8C2.2(b) and 8C3.3(b),
13 all fines are waived. The Court finds that the defendant is
14 unable to pay a fine.

12:14PM 15 Pursuant to the Sentencing Reform Act of 1984, it's
16 the judgment of the Court that the defendant organization,
17 Wholesale Distribution, Inc., is hereby placed on probation on
18 Count 1 of the Second Superseding Indictment for a term of one
19 year under the following terms and conditions:

12:14PM 20 During the period of probation, the defendant shall
21 pay the special assessment in accordance with this judgment's
22 orders regarding such payment.

23 The organization shall not commit another federal,
24 state, or local crime.

12:14PM 25 The organization shall provide the probation office

1 access to any requested financial information.

2 Within 30 days from the date of this judgment, the
3 organization shall designate an official of the organization to
4 act as the organization's representative and to be the primary
12:14PM 5 contact with probation.

6 The organization shall answer truthfully all
7 inquiries by probation and follow the instructions of the
8 probation officer.

9 The organization shall report to probation as
12:15PM 10 directed and shall submit a truthful and complete written
11 report within the first five days of each month.

12 The organization shall be required to notify the
13 Court or probation immediately upon learning of any material
14 adverse change in the business or financial condition or
12:15PM 15 prospects or the commencement of any bankruptcy proceedings,
16 major civil litigation, criminal prosecution, or administrative
17 proceeding against the organization, or any investigation or
18 formal inquiry by Government authorities regarding the
19 organization.

12:15PM 20 The organization shall notify probation immediately
21 of any intent to sell the organization, change its name, merge
22 with another business entity, or otherwise dissolve or modify
23 in any form or manner the organizational structure from its
24 present status.

12:15PM 25 The organization has entered into a guilty plea,

1 signed the plea agreement, pled guilty, and, therefore, given
2 up most of its rights to appeal but may appeal by filing a
3 Notice of Appeal within 14 days from today's date and may seek
4 that it be allowed to file any Notice of Appeal without paying
5 the fee that's usually required.

12:16PM

6 Anything else?

7 MR. GRECH: No, Your Honor.

8 MR. LURYA: No, Your Honor.

9 MR. O'BRIEN: Your Honor, as to Western, the

12:16PM

10 Government moves to dismiss Counts 2 and 4.

11 THE COURT: It is so ordered.

12 MR. O'BRIEN: Thank you, Your Honor.

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

14 (Proceedings concluded at 12:16 p.m.)
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CERTIFICATE OF OFFICIAL REPORTER

COUNTY OF LOS ANGELES)
STATE OF CALIFORNIA)

I, MYRA L. PONCE, FEDERAL OFFICIAL REALTIME COURT REPORTER, IN AND FOR THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA, DO HEREBY CERTIFY THAT PURSUANT TO SECTION 753, TITLE 28, UNITED STATES CODE THAT THE FOREGOING IS A TRUE AND CORRECT TRANSCRIPT OF THE STENOGRAPHICALLY REPORTED PROCEEDINGS HELD IN THE ABOVE-ENTITLED MATTER AND THAT THE TRANSCRIPT PAGE FORMAT IS IN CONFORMANCE WITH THE REGULATIONS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES.

DATED THIS 29TH DAY OF JANUARY, 2023.

/S/ MYRA L. PONCE

MYRA L. PONCE, CSR NO. 11544, CRR, RDR
FEDERAL OFFICIAL COURT REPORTER