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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :

: 19-CR-00197 (MKB)

v. :

: February 11, 2020

ANTON BOGDANOV, : Brooklyn, New York

:

Defendant. :

:

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TRANSCRIPT OF CRIMINAL CAUSE FOR PLEADING
BEFORE THE HONORABLE VERA M. SCANLON
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Government: JONATHAN ALGOR, IV, ESQ.
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Brooklyn, New York 11201

For the Defendant: ANDREW FRISCH, ESQ.
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Russian Interpreter: GALYA KOROVINA

Court Transcriber: MARY GRECO
TypeWrite Word Processing Service
211 N. Milton Road
Saratoga Springs, New York 12866

Proceedings recorded by electronic sound recording,
transcript produced by transcription service

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I N D E X

Defendant Sworn at Page 6

EXHIBITS

Marked Received

1 Plea Agreement

-- 21

1 (Proceedings began at 3:09 p.m.)

2 THE CLERK: Criminal Cause for Change of Plea
3 hearing, case number 19-CR-197 United States v. Anton Bogdanov.
4 Counsel, can you state your name for the record?

5 MR. ALGOR: Good afternoon, Your Honor. Jonathan
6 Algor for the United States.

7 MR. FRISCH: For Mr. Bogdanov, Andrew Frisch,
8 [inaudible].

9 THE CLERK: And Russian interpreter, can you stand
10 and raise your right hand?

11 (AT THIS TIME THE INTERPRETER, GALYA KOROVINA, WAS
12 SWORN.)

13 THE CLERK: Thank you. Can you state your name for
14 the record?

15 THE INTERPRETER: Gayla Korovina.

16 THE CLERK: Thank you. You can have a seat.

17 THE COURT: All right. Good afternoon. So just
18 before we start with the change of plea hearing, I just wanted
19 to raise a question about the time being excluded. So on the
20 docket at the 12/16/19 entry I have time excluded from December
21 15, 2019 through February 2020. So was there any agreement
22 with regard to from the 4th through today which is the 11th of
23 February?

24 MR. ALGOR: There was, Your Honor. I know when we
25 were changing the date, Mr. Frisch had mentioned that they

1 would exclude time. So my assumption was that that order of
2 excludable delay would have been entered when we changed from
3 February 3rd to today.

4 That said, I think for the purposes of today if the
5 change of plea goes forward, dates really don't matter
6 regarding the speedy trial clock. But I'll let Mr. Frisch --

7 MR. FRISCH: I don't think it matters. If it helps
8 the Court move things along to have our consent to it, we
9 consent, but I don't think it matters.

10 THE COURT: Okay. So is there agreement to exclude
11 time from the 4th through today which is the 11th?

12 MR. ALGOR: Yes, Your Honor.

13 THE COURT: Mr. Frisch, you agree?

14 MR. FRISCH: Yes.

15 THE COURT: All right. And your client has been
16 consulted and agrees? Yes?

17 MR. FRISCH: Yes.

18 THE COURT: All right. So in terms of paperwork, let
19 me just make sure we have all the same. I have a copy of the
20 indictment, I have a copy of the elements sheet, of the Plea
21 Agreement which has been updated since we got the first draft.
22 I believe the only change is the date by which the defendant's
23 plea needs to be entered. Is that right?

24 MR. ALGOR: But there is one other change, Your
25 Honor, and it's solely -- there's a cite that's wrong to one of

1 the guidelines. We had it as B, I believe it was B17 for
2 [inaudible]. I can point you to it. The intent of obtaining
3 personal information, we had it as 2B1.1(b)(17) and it's
4 actually (b)(18), so we changed that as well.

5 THE COURT: Okay. All right. Mr. Frisch, you've
6 seen that change?

7 MR. FRISCH: Yes.

8 THE COURT: And the date change as well?

9 MR. FRISCH: Yes, yes. Correct.

10 THE COURT: All right. And I also have the consent
11 to have a plea taken before me, a magistrate judge. So Mr.
12 Frisch, you can move the microphone closer to you and then one
13 for the -- so counsel and the interpreter are the ones who
14 should have the microphones. Okay.

15 All right. So for the Government, are there any
16 victims of this offense or these offenses, and if so, has the
17 Government fulfilled its obligation to notify the victims of
18 today's hearing and of the right to attend and be heard?

19 MR. ALGOR: Yes, we have, Your Honor.

20 THE COURT: And are you expecting anyone to come
21 today?

22 MR. ALGOR: No, we're not.

23 THE COURT: All right. So I'm going to ask my deputy
24 to administer an oath to Mr. Bogdanov.

25 THE CLERK: Sir, can you please stand and raise your

1 right hand?

2 (AT THIS TIME THE DEFENDANT, ANTON BOGDANOV, WAS SWORN.)

3 THE CLERK: Thank you. You can have a seat.

4 THE COURT: So as you may know, this case has been
5 assigned to a district judge, Judge Brodie. So she's the judge
6 who'll make the ultimate decision as to whether to accept your
7 plea, and if she does, to sentence you. You have the absolute
8 right to have the district judge listen to your plea without
9 any prejudice to you. Do you understand that? So do you
10 understand?

11 THE DEFENDANT: Yes.

12 THE COURT: So we're making a recording of today's
13 proceedings. That's why I asked the individuals who are
14 speaking to use the microphone. A transcript of the recording
15 will be prepared by a court reporter. That transcript will be
16 provided to Judge Brodie. So the judge, the other judge who I
17 mentioned, she'll get a copy of today's transcript.

18 THE DEFENDANT: Yes.

19 THE COURT: And she'll review the transcript in
20 connection with deciding whether to accept your plea, and if
21 she does, with your sentence.

22 THE DEFENDANT: Yes.

23 THE COURT: Do you wish to give up your right to have
24 Judge Brodie listen to the plea and instead proceed here before
25 me today?

1 THE DEFENDANT: Yes.

2 THE COURT: In connection with your exercise of that
3 right, I have a paper form that says that you consented to
4 proceed before me, a magistrate judge, with regard to your
5 plea.

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: All right. And this document is written
8 in English. Was it read to you in Russian?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: And do you understand what the form
11 says?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: And did you review it with your attorney?

14 THE DEFENDANT: Yes.

15 THE COURT: And is that your signature here where I'm
16 pointing?

17 THE DEFENDANT: Yes.

18 THE COURT: And below that, Mr. Frisch, is that your
19 signature?

20 MR. FRISCH: Yes.

21 THE COURT: And for the Government, Mr. Algor, is
22 that your signature?

23 MR. ALGOR: Yes, Your Honor.

24 THE COURT: Mr. Bogdanov, do you give your consent
25 voluntarily and of your own free will to proceed here before me

1 today?

2 THE DEFENDANT: Yes.

3 THE COURT: Has anyone made any threats or promises
4 to you to get you to proceed here before me today?

5 THE DEFENDANT: No.

6 THE COURT: All right. So as we go along today,
7 I'm going to have to ask you several questions in order to
8 assure myself and Judge Brodie that your plea is in fact a
9 valid plea. If you don't understand my question, let me know
10 and I'll try to reword it for you.

11 THE DEFENDANT: Yes.

12 THE COURT: Do you understand that you have the right
13 to have an attorney at trial and at every other stage of the
14 criminal proceedings including today's proceeding?

15 THE DEFENDANT: Yes.

16 THE COURT: And do you understand that if you can't
17 afford a lawyer, one will be appointed to represent you?

18 THE DEFENDANT: Yes.

19 THE COURT: Is it correct that Mr. Frisch has been
20 appointed to represent you?

21 THE DEFENDANT: Yes.

22 THE COURT: So if at any time you'd like to speak
23 with him, let me know, and I'll give you the opportunity to do
24 that.

25 THE DEFENDANT: Yes.

1 THE COURT: All right. So a few minutes you were
2 administered an oath to tell the truth. So that means that
3 if you answer any of my questions falsely, those answers may
4 later be used against you in a separate prosecution for the
5 crime of perjury or of making a false statement. Do you
6 understand?

7 THE DEFENDANT: Yes.

8 THE COURT: All right. So we're going to start with
9 some background questions. What's your full name?

10 THE DEFENDANT: Bogdanov, Anton [indiscernible]
11 Russia.

12 THE COURT: All right. And how old are you?

13 THE DEFENDANT: 24 years.

14 THE COURT: And what's the highest level of
15 education?

16 THE DEFENDANT: I could not finish higher education,
17 college.

18 THE COURT: How about did you finish high school?

19 THE DEFENDANT: University. University, Your Honor,
20 not college.

21 THE COURT: Did you graduate from high school?

22 THE DEFENDANT: Yes, 11 grades.

23 THE COURT: Okay. Was that the end of the education
24 or did you finish before the formal end of it?

25 THE DEFENDANT: Yes.

1 THE COURT: Somebody's phone. Okay.

2 THE INTERPRETER: I was sure I switched it off.

3 THE COURT: It's okay. You can turn it off if you'd
4 like. You can go get it.

5 THE INTERPRETER: I'm sorry, Your Honor. I was sure
6 it's --

7 THE COURT: That's okay.

8 THE INTERPRETER: I'm very sorry, Your Honor.

9 THE COURT: It's okay.

10 So the question is you said you finished school in
11 the 11th grade. Was that the end of the school or did you
12 finish the schooling before the formal end? For example, in
13 the United States people graduate high school at 12th grade
14 instead of 11th grade.

15 THE DEFENDANT: No. In Russia, there are two types
16 of high school. It's either nine grades or 11 grades.

17 THE COURT: Okay. All right. So you went --

18 THE DEFENDANT: So I fully completed my high school.

19 THE COURT: Okay. And did you start some university
20 studies?

21 THE DEFENDANT: Yes. And I started at the university
22 for two and a half years.

23 THE COURT: All right. And what subject did you
24 study in university?

25 THE DEFENDANT: Economics, university. Economics.

1 THE COURT: And where did you go to school? What was
2 the name of the university.

3 THE DEFENDANT: [Inaudible] University.

4 THE COURT: Okay. A different kind of question. Are
5 you presently or have you recently been under the care of a
6 doctor?

7 THE DEFENDANT: Yes.

8 THE COURT: And what have you been under the care of
9 a doctor for?

10 THE DEFENDANT: I am taking antibiotics for the
11 problems with my skin.

12 THE COURT: So did you see a dermatologist?

13 THE DEFENDANT: Yes.

14 THE COURT: And how often do you take the
15 antibiotics?

16 THE DEFENDANT: Every day.

17 THE COURT: Okay. And did you take the dose for
18 today?

19 THE DEFENDANT: Not today.

20 THE COURT: Did you take it yesterday?

21 THE DEFENDANT: Yes.

22 THE COURT: Okay. Is there anything about your skin
23 condition or the medication that would make it difficult for
24 you to understand today's proceedings?

25 THE DEFENDANT: No.

1 THE COURT: Have you received recently, or are you
2 currently receiving, any medical treatment for any other
3 condition?

4 THE DEFENDANT: No.

5 THE COURT: Are you presently or have you recently
6 been under the care of any mental health professional such as a
7 psychiatrist, psychologist, or social worker?

8 THE COURT: Have you ever been hospitalized or
9 treated for a mental illness?

10 THE DEFENDANT: No.

11 THE COURT: Have you ever been hospitalized or
12 treated for an addiction to drugs or to alcohol?

13 THE DEFENDANT: No.

14 THE COURT: In the past 24 hours have you consumed
15 any narcotic drugs?

16 THE DEFENDANT: No.

17 THE COURT: In the past 24 hours have you consumed
18 any alcoholic beverages?

19 THE DEFENDANT: No.

20 THE COURT: Besides the antibiotics that you
21 mentioned, in the past 24 hours have you taken medications?

22 THE DEFENDANT: No.

23 THE COURT: Is your mind clear as you sit here today?

24 THE DEFENDANT: Yes.

25 THE COURT: Do you understand these proceedings?

1 THE DEFENDANT: Yes.

2 THE COURT: Mr. Frisch, have you discussed this
3 matter with your client?

4 MR. FRISCH: Yes.

5 THE COURT: Have you used the assistance of an
6 interpreter in your communications with him?

7 MR. FRISCH: Yes.

8 THE COURT: Have you had any difficulty communicating
9 with him?

10 THE DEFENDANT: No.

11 THE COURT: In your opinion, is he capable of
12 understanding the nature of these proceedings?

13 MR. FRISCH: Yes.

14 THE COURT: In your opinion does he understand the
15 rights that he'll be waiving if he proceeds with the guilty
16 plea?

17 MR. FRISCH: Yes.

18 THE COURT: Do you have any -- sorry. Do you have
19 any doubt as to his competence to plead at this time?

20 MR. FRISCH: No.

21 THE COURT: Have you advised him of the operation of
22 the sentencing guidelines?

23 MR. FRISCH: Yes.

24 THE COURT: And have you discussed with him the
25 possible immigration consequences?

1 MR. FRISCH: Yes.

2 THE COURT: And do you believe he understands what
3 you told him about the sentencing guidelines and the possible
4 immigration consequences?

5 MR. FRISCH: Yes.

6 THE COURT: All right. So Mr. Bogdanov, have you had
7 a sufficient opportunity to discuss your case with your
8 attorney, Mr. Frisch?

9 THE DEFENDANT: Yes.

10 THE COURT: And did you do so with the assistance of
11 a Russian language interpreter?

12 THE DEFENDANT: Yes.

13 THE COURT: Did you have any difficulty communicating
14 with your attorney?

15 THE DEFENDANT: No.

16 THE COURT: Are you fully satisfied with the legal
17 representation and advice given to you in your case by your
18 attorney?

19 THE DEFENDANT: Yes.

20 THE COURT: So there's a document in your case called
21 the indictment. Have you received a copy of it? I'm holding
22 up my copy.

23 THE DEFENDANT: Yes.

24 THE COURT: It's written in English. Was it read to
25 you in Russian? Or did you receive a Russian language

1 translation?

2 THE DEFENDANT: Yes.

3 THE COURT: Which one? Was it read to you in Russian
4 or did you receive a Russian language translation?

5 THE DEFENDANT: [Inaudible].

6 THE COURT: Okay. One is someone reading it out loud
7 to you, another is a written copy of it in Russian. So was it
8 read to you in Russian?

9 THE DEFENDANT: Yes.

10 THE COURT: Did you receive a written copy of the
11 indictment in Russian?

12 THE DEFENDANT: [Inaudible].

13 THE COURT: Okay. So both.

14 THE DEFENDANT: Yes, both.

15 THE COURT: Okay. Did you review the indictment with
16 your attorney?

17 THE DEFENDANT: Yes.

18 THE COURT: All right. Mr. Frisch, do you want me to
19 read the indictment aloud?

20 MR. FRISCH: We waive a public reading.

21 THE COURT: Okay. So Mr. Bogdanov, I'm going to
22 explain a few things about the criminal proceeding in the
23 United States and some legal issues that relate to your
24 proposed change of plea.

25 The first and most important thing you should

1 understand is that you don't have to plead guilty even if you
2 are guilty.

3 THE DEFENDANT: Yes.

4 THE COURT: Under the American legal system the
5 Government or the prosecutor has the burden of proving the
6 defendant's guilt beyond a reasonable doubt.

7 THE DEFENDANT: Yes.

8 THE COURT: And at a trial, if the Government cannot
9 or does not meet its burden of proof, the jury has the duty to
10 find the defendant not guilty even if the defendant is guilty.
11 Do you understand?

12 THE DEFENDANT: Yes.

13 THE COURT: So you have a choice. It's up to you to
14 decide what to do in your case. You may withdraw your
15 previously entered plea of not guilty and change the plea to
16 one of guilty as I'm told you wish to do, or you can persist
17 with your plea of not guilty and go to trial.

18 THE DEFENDANT: Yes.

19 THE COURT: All right. So if you'd like to exercise
20 your right to go to trial, you can exercise that right by
21 saying not guilty when I ask you how you plead.

22 THE DEFENDANT: Yes.

23 THE COURT: If you decide to persist with your plea
24 of not guilty, under the constitution and laws of the United
25 States you are entitled to a speedy and public trial by a jury

1 with the assistance of an attorney on the charges contained in
2 the indictment which has been filed with the Court.

3 THE DEFENDANT: Yes.

4 THE COURT: At a trial you would be presumed
5 innocent. You would not have to prove your innocence. It
6 would be the Government's burden to overcome the presumption of
7 innocence and prove you guilty by competent evidence and beyond
8 a reasonable doubt. And if the Government failed in that, the
9 jury would have the duty to find you not guilty.

10 THE DEFENDANT: Yes.

11 THE COURT: If you plead guilty, you're giving up
12 your right to have the Government satisfy its burden of proving
13 you guilty beyond a reasonable doubt. Instead, you will be
14 admitting your guilt.

15 THE DEFENDANT: Yes.

16 THE COURT: In the course of a trial, witnesses for
17 the Government would have to come to court and testify in your
18 presence.

19 THE DEFENDANT: Yes.

20 THE COURT: Your attorney would have the right to
21 cross-examine the witnesses for the Government.

22 THE DEFENDANT: Yes.

23 THE COURT: Your attorney would have the right to
24 object to evidence offered by the Government, and to offer
25 witnesses and other evidence on your behalf.

1 THE DEFENDANT: Yes.

2 THE COURT: Your attorney could subpoena or compel
3 witnesses to come to court and testify.

4 THE DEFENDANT: Yes.

5 THE COURT: By pleading guilty, and if the district
6 judge accepts your plea, you are giving up these rights.
7 You'll be giving up your right to a trial.

8 THE DEFENDANT: Yes.

9 THE COURT: You're giving up your right to confront
10 the witnesses who would testify against you. You're giving up
11 your right to offer evidence on your own behalf.

12 THE DEFENDANT: Yes.

13 THE COURT: You're giving up your right to compel
14 witnesses to come to court and testify, and you're giving up
15 your right to raise any defenses that you may have. Do you
16 understand all this?

17 THE DEFENDANT: Yes.

18 THE COURT: If there's a trial in your case, you
19 would have the right to testify on your own behalf if you
20 wanted to do so.

21 THE DEFENDANT: Yes.

22 THE COURT: You could not be required to testify.
23 Under the constitution of the United States a defendant in a
24 criminal case cannot be forced to take the witness stand at his
25 or her own trial and say anything that could be used against

1 him to show that he is guilty of the crime or crimes with which
2 he is charged.

3 THE DEFENDANT: Yes.

4 THE COURT: And if you decided not to testify, the
5 Court would instruct the jury that jurors could not hold that
6 fact against you.

7 THE DEFENDANT: Yes.

8 THE COURT: This is called your right against self-
9 incrimination. Do you understand it?

10 THE DEFENDANT: I understand.

11 THE COURT: If you go ahead with your guilty plea,
12 you will be admitting your guilt and giving up this right. Do
13 you understand?

14 THE DEFENDANT: Yes.

15 THE COURT: If you plead guilty, I'm going to have to
16 ask you questions about what you did in order to satisfy
17 myself, and in turn Judge Brodie, that you are in fact guilty
18 of the charges to which you are pleading guilty.

19 THE DEFENDANT: Yes.

20 THE COURT: You're going to have to answer my
21 questions truthfully subject to the oath that you took earlier
22 today.

23 THE DEFENDANT: Yes.

24 THE COURT: So it's not going to be enough for you
25 simply to say that you're guilty. You're going to have to tell

1 me what it is that you did such that you are in fact guilty of
2 the charges to which you are pleading guilty.

3 THE DEFENDANT: Yes.

4 THE COURT: If you plead guilty and the district
5 judge accept your plea, you will be giving up your
6 constitutional right to a trial and all the other rights that I
7 just discussed.

8 THE DEFENDANT: Yes.

9 THE COURT: There won't be a trial of any kind in
10 your case.

11 THE DEFENDANT: Yes.

12 THE COURT: If Judge Brodie accepts your plea, she
13 will simply enter a judgment of guilty on the basis of your
14 guilty plea.

15 THE DEFENDANT: Yes.

16 THE COURT: If after you are sentenced you or your
17 attorney thinks the Court has not properly followed the law in
18 sentencing you, you can usually appeal your sentence to a
19 higher court. But by pleading guilty you will not, except
20 under very limited circumstances, be able to challenge the
21 judgment of conviction by appeal or by what we call collateral
22 attack.

23 THE DEFENDANT: I understand.

24 THE COURT: Okay. So we're going to talk about the
25 Plea Agreement in a few minutes but I do want to draw your

1 attention to one part of the Plea Agreement which is a
2 limitation on your right to appeal your sentence. In Paragraph
3 4, the first sentence on Page 5 of the Plea Agreement, it says
4 the defendant -- I'm going to read that sentence. Do you have
5 it there? "The defendant agrees not to file an appeal or
6 otherwise challenge by petition pursuant to 28 USC Section 2255
7 or any other provision the conviction or sentence in the event
8 the Court imposes a term of imprisonment of 121 months or
9 below."

10 THE DEFENDANT: Yes, I understand it.

11 THE COURT: You understand it?

12 THE DEFENDANT: Yes.

13 THE COURT: All right. So Mr. Bogdanov, are you
14 willing to give up your right to a trial and the other rights
15 that I just discussed?

16 THE DEFENDANT: Yes, I agree.

17 THE COURT: Okay. I'm going to go over the Plea
18 Agreement now. So I've marked it as Court Exhibit 1
19 (AT THIS TIME COURT EXHIBIT 1 MARKED)

20 THE COURT: So we're going to turn to Page 11. I
21 have the original up here.

22 THE INTERPRETER: Your Honor, may I pull out the
23 Russian [inaudible]?

24 THE COURT: Sure. Yes.

25 [Pause in proceedings.]

1 THE COURT: Okay. So --

2 THE INTERPRETER: Page 11?

3 THE COURT: I was looking at Page 11. I think to
4 note, unless that's a very recent translation, there might be
5 one or two things that are, two things anyway, that are
6 different from the draft and the final copy. But for the
7 relevant part, I'm reading the middle of Page 11. It says, "I
8 have read the entire agreement and discussed it with my
9 attorney. I understand all of its terms and I'm entering into
10 it knowingly and voluntarily.

11 THE DEFENDANT: Yes.

12 THE COURT: Okay. Is that a correct -- all right.
13 So is that paragraph a correct statement?

14 THE DEFENDANT: Yes.

15 THE COURT: Okay. And just so I can confirm, Mr.
16 Frisch, is it correct that your client has received a Russian
17 language written translation of the Plea Agreement?

18 MR. FRISCH: Yes.

19 THE COURT: And the only two differences is the date
20 and the reference in the sentencing guidelines that was updated
21 I think today.

22 MR. FRISCH: Correct.

23 THE COURT: Okay. So Mr. Frisch, were all formal
24 plea offers by the Government conveyed to the defendant?

25 MR. FRISCH: Yes.

1 THE COURT: All right. So Mr. Bogdanov, I'm going to
2 ask you more questions about the Plea Agreement. I understand
3 you have a Russian language copy. Did you read the entire
4 agreement?

5 THE DEFENDANT: Yes.

6 THE COURT: And do you understand that there were two
7 updates that were incorporated into the copy that I have? One
8 is the date by which you need to enter your plea was updated I
9 believe to today's date, and on Page 4 of the English language
10 copy, under Count 3, there's a reference to the sentencing
11 guidelines.

12 THE DEFENDANT: Yes.

13 THE COURT: And the reference to the sentencing
14 guidelines, it's at the bottom of the calculation, for Count 3,
15 I think your copy says 17 and it's been updated to say 18.

16 THE DEFENDANT: Yes.

17 THE COURT: Okay. So Mr. Bogdanov, did you review
18 the entire Plea Agreement with your attorney?

19 THE DEFENDANT: Yes.

20 THE COURT: And did you have the assistance of an
21 interpreter in your discussions with your attorney?

22 THE DEFENDANT: Yes.

23 THE COURT: And did you have any difficulty in those
24 communications with your attorney?

25 THE DEFENDANT: No.

1 THE COURT: And do you understand all of the terms of
2 the Plea Agreement?

3 THE DEFENDANT: Yes.

4 THE COURT: Does this agreement, which has been
5 marked as Court Exhibit 1, accurately represent the entire
6 understanding or agreement that you have with United States
7 Government?

8 THE DEFENDANT: Yes.

9 THE COURT: Has anyone made any promise or assurance
10 to you that's not included in this agreement to persuade you to
11 accept the plea agreement?

12 THE DEFENDANT: No.

13 THE COURT: Has anyone threatened you in any way to
14 persuade you to accept the Plea Agreement?

15 THE DEFENDANT: No.

16 THE COURT: Mr. Frisch, did you read and review with
17 your client the entire written Plea Agreement that's before the
18 Court?

19 MR. FRISCH: Yes.

20 THE COURT: And did you do so with the assistance of
21 a Russian language interpreter?

22 MR. FRISCH: Yes.

23 THE COURT: And does the Plea Agreement marked as
24 Court Exhibit 1 reflect your understanding of the entire
25 agreement that your client has entered into with United States

1 Government?

2 MR. FRISCH: Yes.

3 THE COURT: All right. Mr. Bogdanov, if you fail to
4 comply with your agreement with the Government, the Government
5 will be released from its obligations but you will not be
6 released from your plea of guilty. Do you understand that?

7 THE DEFENDANT: Yes.

8 THE COURT: And you understand only if the district
9 judge does not accept the plea and Plea Agreement and instead
10 rejects it, only then would you have the opportunity to
11 withdraw your plea and change it to not guilty? Do you
12 understand?

13 THE DEFENDANT: Yes.

14 THE COURT: All right. We're going to go over the
15 sentencing scheme that applies to your case. So this is laid
16 out in Paragraph 1 of the Plea Agreement, which as I said
17 earlier, is marked as Court Exhibit 1. What's proposed here is
18 that you're going to plead guilty to Count 1 and Count 3 of the
19 indictment.

20 THE DEFENDANT: Yes.

21 THE COURT: All right. So those counts, Count 1
22 charges you with conspiracy to commit wire fraud in violation
23 of federal statute.

24 THE DEFENDANT: Yes.

25 THE COURT: And Count 3 charges you with computer

1 intrusion and obtaining information in violation of a federal
2 statute. Do you understand?

3 THE DEFENDANT: Yes.

4 THE COURT: All right. The particular federal
5 statues with which you are charged and violating are 18 United
6 States Code Section 1349 and 18 United States Code Section
7 1030(a)(2)(C). Do you understand?

8 THE DEFENDANT: Yes.

9 THE COURT: All right. So with regard to Count 1,
10 conspiracy to commit wire fraud, the count carries the
11 following statutory penalties. A maximum term of imprisonment
12 of 20 years and a minimum term of imprisonment of zero years; a
13 maximum supervised release term of three years which would
14 follow any term of imprisonment. If a condition of release
15 were violated, you could be sentenced for up to two years
16 without credit for pre-release imprisonment or time previously
17 served on post release supervision. If you're on supervised
18 release, you could be subject to many limitations on your
19 liberty. Those include travel limitations, requirements that
20 you report regularly to a probation officer, prohibition on
21 carrying weapons including guns and other limitations. Do you
22 understand?

23 THE DEFENDANT: Yes.

24 THE COURT: All right. The maximum fine that can be
25 imposed is the greater of \$250,000 or twice the gross gain

1 or -- I'm sorry, let me say it again. The maximum fine that
2 can be imposed is the greater of \$250,000 or twice the gross
3 gain or gross loss, whichever is greater.

4 THE DEFENDANT: Yes.

5 THE COURT: Restitution is mandatory in the full
6 amount of each victim's losses as determined by the Court.

7 THE DEFENDANT: Yes.

8 THE COURT: All right. There are other penalties
9 that can be imposed and they are described in other paragraphs,
10 so we'll go over those. So one penalty that may be imposed his
11 removal from the United States. So under the agreement it
12 states that you recognize that pleading guilty may have
13 consequences for your immigration status if you're not a United
14 States citizen.

15 THE DEFENDANT: Yes.

16 THE COURT: Under federal law, a broad range of
17 crimes are what we call removable offenses including those to
18 which you are pleading guilty.

19 THE DEFENDANT: I understand.

20 THE COURT: Because of the two statutes to which
21 you're pleading guilty -- because you are pleading guilty to
22 those two statutes, removal from the United States is
23 presumptively mandatory.

24 THE DEFENDANT: Yes.

25 THE COURT: Nonetheless, removal from the United

1 States and other immigration consequences would be the subject
2 of a separate proceeding so that no one here in this Court,
3 including your attorney, the Government's attorney, or the
4 District Court, can predict with certainty the effect of your
5 conviction on your immigration status.

6 THE DEFENDANT: Yes.

7 THE COURT: All right. Is it correct that you
8 nonetheless affirm that you want to plead guilty regardless of
9 any immigration consequences that your plea may entail even if
10 the consequences are automatic removal from the United States?

11 THE DEFENDANT: Yes.

12 THE COURT: All right. Did you have a full
13 opportunity to discuss these immigration consequences with your
14 attorney?

15 THE DEFENDANT: Yes.

16 THE COURT: And did you in fact discuss it with your
17 attorney?

18 THE DEFENDANT: Yes.

19 THE COURT: So are you in agreement with what it says
20 in Paragraph 14 of the Plea Agreement?

21 THE DEFENDANT: Yes.

22 THE COURT: All right. Going back to the penalties
23 that can be imposed for the violation or the guilty plea to
24 Count 1, conspiracy to commit wire fraud, they also include
25 criminal forfeiture. That's described in Paragraph 6 through

1 13th of the agreement. So if you could look at those and confirm
2 for me did you read those paragraphs, 6 through 13?

3 THE DEFENDANT: Yes.

4 THE COURT: And do you understand everything in those
5 paragraphs?

6 THE DEFENDANT: Yes.

7 THE COURT: And are you in agreement with what it
8 says in those paragraphs?

9 THE DEFENDANT: Yes.

10 THE COURT: And you went over those with your
11 attorney, is that correct?

12 THE DEFENDANT: Yes.

13 THE COURT: All right. Let's go over the possible
14 statutory penalties for the guilty plea to Count 3 which is the
15 count computer intrusion and obtaining information.

16 THE DEFENDANT: Yes.

17 THE COURT: The maximum term of imprisonment is five
18 years, the minimum term of imprisonment is zero years.

19 THE DEFENDANT: Yes.

20 THE COURT: The maximum supervised release term is
21 three years. It would follow any term of imprisonment. If a
22 condition of release were violated, you could be sentenced up
23 to two years without credit for pre-release imprisonment or
24 time previously served on post release supervision.

25 THE DEFENDANT: Yes.

1 THE COURT: The maximum fine that can be imposed is
2 the greater of \$250,000 or twice the gross gain or twice the
3 loss arising from the offense.

4 THE DEFENDANT: Yes.

5 THE COURT: Let me ask the attorney something. If
6 you compare the fine in Paragraph D for Count 1 and for Count
7 2 -- I'm sorry, Count 3, it says -- it doesn't have gross in
8 front of loss in the Count 3. Should it be there?

9 MR. ALGOR: Yes, Your Honor.

10 THE COURT: Mr. Frisch, you agree?

11 MR. FRISCH: Yes.

12 THE COURT: All right. Krista, do you mind giving
13 it -- I ask the Government if you could fill that in and
14 initial it, and then have counsel and the defendant initial the
15 change.

16 [Pause in proceedings.]

17 THE COURT: All right. So can the defendant initial
18 it? Can you explain to him what the change is?

19 [Pause in proceedings.]

20 THE COURT: All right. So for the Government, Mr.
21 Frisch, and the defendant, each of you initialed the addition
22 of the word gross in Paragraph D for Count 3, is that right?

23 MR. ALGOR: Yes, Your Honor.

24 MR. FRISCH: Yes.

25 THE COURT: For the defendant, he initialed it?

1 MR. ALGOR: Yeah, I saw him do it.

2 THE COURT: All right. So just to go back, the
3 maximum fine that can be imposed for Count 3 is the greater of
4 \$250,000 or twice the gross gain or gross loss arising from the
5 offense.

6 THE DEFENDANT: Yes.

7 THE COURT: Restitution is mandatory in the full
8 amount of each victim's losses as determined by the Court.

9 THE DEFENDANT: Yes.

10 THE COURT: You have to be charged a \$100 special
11 assessment.

12 THE DEFENDANT: Yes.

13 THE COURT: The other penalties include removal from
14 the United States. That's outlined and set forth in Paragraph
15 14 which we went over in connection with Count 1. Do you
16 understand all of --

17 THE DEFENDANT: Yes.

18 THE COURT: All right. So let me have the record be
19 clear. Do you understand everything in Paragraph 14?

20 THE DEFENDANT: Yes.

21 THE COURT: You understand as a result of the
22 conviction on Count 3 it may result in your automatic removal
23 from the United States?

24 THE DEFENDANT: Yes.

25 THE COURT: Another possible penalty is criminal

1 forfeiture which is set forth in Paragraph 6 through 13 which
2 we went over in connection with Count 1. Do you also
3 understand everything in Paragraph 6 through 13?

4 THE DEFENDANT: Yes.

5 THE COURT: All right. So the sentences imposed on
6 Count 1 in Count 3 may run consecutively, meaning one after the
7 other. Do you understand that?

8 THE DEFENDANT: Yes.

9 THE COURT: So do you understand everything included
10 in the Plea Agreement so far in Paragraph 1 which we just went
11 over?

12 THE DEFENDANT: Yes.

13 THE COURT: And you understand that there is no
14 parole in the federal system so that if you're sentenced to a
15 prison term you will not be released on parole and you may then
16 be required, or you will be required to spend the entire period
17 of that term in prison?

18 THE DEFENDANT: Yes.

19 THE COURT: So let's talk about the sentencing
20 process. The sentencing judge does not have complete
21 discretion to impose a sentence outside of the statutory
22 minimum and maximum sentences that are set forth in the
23 statute. We just went over that. For Count 1, it's a maximum
24 of 20 years and a minimum term of zero years. In Count 3, a
25 maximum term of imprisonment of five years and a minimum term

1 of imprisonment of zero years.

2 THE DEFENDANT: Yes.

3 THE COURT: With regard to the process for
4 determining what a sentence will be, first the judge considers
5 advisory sentencing guidelines that have been issued by the
6 United States Sentencing Commission to help the judge decide
7 what's a reasonable sentence in a criminal case.

8 THE DEFENDANT: Yes.

9 THE COURT: As a second step, the judge must consider
10 whether there are any factors present that would allow the
11 judge to depart from those advisory sentencing guidelines. A
12 judge can depart upwardly or downwardly as appropriate.

13 THE DEFENDANT: Yes, I understand.

14 THE COURT: Third, the judge must consider factors
15 set forth in a particular federal statute, 18 United States
16 Code Section 3553(a), against all of the facts and
17 circumstances of your case.

18 THE DEFENDANT: Yes, I understand.

19 THE COURT: So it may be that the judge decides to
20 impose what we call a guidelines sentence or it may be that the
21 judge decides to impose what's called a non-guidelines
22 sentence.

23 THE DEFENDANT: I understand.

24 THE COURT: So the practical thing for you is until
25 the date of sentencing when the judge has read a transcript of

1 today's proceeding, the Plea Agreement, the pre-sentence report
2 about you, and hears from you, your lawyer, and the Government,
3 you cannot know with certainty what the sentencing guidelines
4 will be or whether there will be grounds for the judge to
5 depart from those guidelines either upwardly or downwardly. Do
6 you understand?

7 THE DEFENDANT: I understand.

8 THE COURT: Okay. Despite the uncertainty, I'm going
9 to ask first the Government and then your attorney to let us
10 know what they believe the sentencing guidelines will be in
11 your case. So Mr. Algor, for the Government?

12 MR. ALGOR: Yes, Your Honor.

13 THE DEFENDANT: I understand.

14 MR. ALGOR: The Government calculates a total offense
15 level of 32 and with the acceptance of responsibility, a three
16 level reduction assuming the acceptance of responsibility
17 today, a guidelines range of 87 to 108 months from an adjusted
18 offense level of 29 assuming the defendant is criminal history
19 category 1.

20 THE COURT: Mr. Frisch?

21 MR. FRISCH: I don't have a different view.

22 THE COURT: And so for the defendant, did you review
23 Paragraph 2 of the Plea Agreement? It includes the sentencing
24 guideline calculations.

25 THE DEFENDANT: Yes.

1 THE COURT: And it also says the defendant stipulates
2 to the above guidelines calculation. Is that correct?

3 THE DEFENDANT: Yes.

4 THE COURT: All right. Do you understand that the
5 estimate is not binding on the Government, Probation, or the
6 Court?

7 THE DEFENDANT: Yes.

8 THE COURT: And do you understand if there's an error
9 in the estimate, that will not be the basis for you to withdraw
10 your guilty plea?

11 THE DEFENDANT: Yes, I understand.

12 THE COURT: And do you understand your sentence could
13 turn out to be different from any estimate that your attorney
14 or the Government has given you? Do you understand that?

15 THE DEFENDANT: Yes, I understand.

16 THE COURT: And it could turn out that because of
17 other sentencing factors, Judge Brodie decides to impose a
18 sentence higher than the one called for by the advisory
19 sentencing guidelines. If that turned out to be the case, you
20 wouldn't be permitted to withdraw your guilty plea simply
21 because no one could tell you in advance what your sentence
22 would be. Do you understand that?

23 THE DEFENDANT: Yes.

24 THE COURT: All right. So there are a few other
25 paragraphs in the Plea Agreement that we did not go over.

1 Those include Paragraph 3, 4, and 5 and Paragraph 15 and 16.

2 So have you read those paragraphs?

3 THE DEFENDANT: Yes.

4 THE COURT: Do you understand them?

5 THE DEFENDANT: Yes.

6 THE COURT: And did you go over them with your
7 attorney?

8 THE DEFENDANT: Yes.

9 THE COURT: And did you have a sufficient opportunity
10 to review those paragraphs with your attorney?

11 THE DEFENDANT: Yes, I did.

12 THE COURT: All right. So as to the entire Plea
13 Agreement, do you understand everything in it?

14 THE DEFENDANT: Yes.

15 THE COURT: All right. So what's being proposed here
16 is that you're going to plead guilty to felony offenses, and if
17 your plea is accepted and you're adjudge guilty of those
18 felonies, that adjudication could result in the deprivation of
19 certain rights. To the extent you have those rights depending
20 on your immigration or citizenship status, the conviction could
21 lead to the deprivation of those rights. So those might -- if
22 you were a United States citizen, those could include the right
23 to vote, hold public office, and serve on a jury. Do you
24 understand?

25 THE DEFENDANT: Yes.

1 THE COURT: All right. So I've gone over many of the
2 possible consequences to you if your plea of guilty is
3 accepted. Do you understand these consequences?

4 THE DEFENDANT: Yes.

5 THE COURT: Did you review them with your attorney?

6 THE DEFENDANT: Yes.

7 THE COURT: And did you have a sufficient opportunity
8 to consult with your attorney about them?

9 THE DEFENDANT: Yes.

10 THE COURT: Okay. Let me -- Krista, can I just talk
11 to you for a second?

12 THE CLERK: Sure.

13 [Pause in proceedings.]

14 THE COURT: All right. We're going to slightly
15 switch gears here. So I have some questions for the attorneys.
16 So I received from the Government an element sheet outlining
17 the elements for Count 1 and Count 3 of the indictment. So the
18 Government, is that a correct statement of the elements of
19 those two offenses?

20 MR. ALGOR: Yes, Your Honor.

21 THE COURT: All right. Mr. Frisch, did you receive a
22 copy of the elements sheet?

23 MR. FRISCH: Yes.

24 THE COURT: And do you agree that the elements as set
25 forth in the sheet --

1 MR. FRISCH: Yes.

2 THE COURT: -- for those two offenses is correct?

3 MR. FRISCH: Yes.

4 THE COURT: All right. So for the Government, what
5 evidence would the Government offer at trial to prove the
6 elements of those two counts?

7 MR. ALGOR: Your Honor, the Government would prove at
8 trial we have communications with the defendant and his co-
9 conspirators regarding the fraud scheme which includes records
10 being sent that had personal identifiable information of
11 certain victims as well as records of prepaid debit cards that
12 were used in filing the false tax returns. In addition, we'd
13 have testimony of the victims regarding those false tax returns
14 as well as the tax preparation firms who were victims as well
15 through the defendant's scheme with his co-conspirators to
16 access them through remote desktop protocols. We'd also have
17 experts regarding those computer intrusions as well as experts
18 from the IRS regarding the defendant's access to the IRS
19 transcript scheme, among other evidence.

20 THE COURT: All right. So Mr. Frisch, do you agree
21 the Government would be able to prove the defendant's guilt at
22 trial based on the evidence just described by the Government?

23 MR. FRISCH: I have no way of knowing. We haven't
24 gotten the 3500 material. These disclosures haven't been made
25 because we're pleading guilty. But I have no doubt that the

1 Government can prove its case one way or the other.

2 THE COURT: Okay. Do you know of any reason why the
3 defendant should not plead guilty?

4 MR. FRISCH: No.

5 THE COURT: Are you aware of any viable legal defense
6 to the charges?

7 MR. FRISCH: No.

8 THE COURT: In your professional opinion, is it in
9 your client's best interest to proceed with this guilty plea at
10 this time?

11 MR. FRISCH: It is.

12 THE COURT: All right. Mr. Bogdanov, do you need an
13 opportunity to speak with your attorney before we proceed with
14 the plea?

15 THE DEFENDANT: Yes.

16 THE COURT: Okay. Do you want to talk to your
17 lawyer?

18 MR. FRISCH: Does he have questions for me or is he
19 ready to proceed?

20 THE DEFENDANT: No.

21 THE COURT: Let me ask the question again. Maybe it
22 wasn't clear. Before we go ahead with the guilty plea, would
23 you like some time to speak with your lawyer? For example, do
24 you have any outstanding questions you would like answered
25 before you proceed with the plea?

1 THE DEFENDANT: No.

2 THE COURT: Okay. All right. So Mr. Bogdanov, are
3 you ready to plead at this time?

4 THE DEFENDANT: Yes.

5 THE COURT: All right. So with regard to Count 1 of
6 the indictment which charges you with conspiracy to commit wire
7 fraud in violation of Title 18 United States Code Section 1349,
8 how do you plead; guilty or not guilty?

9 THE DEFENDANT: Yes, I admit that I'm guilty.

10 THE COURT: Okay. And with regard to Count 3 of the
11 indictment which charges you with computer intrusion and
12 obtaining information in violation of 18 United States Code
13 Section 1030(a)(2)(C), how do you plead; guilty or not guilty?

14 THE DEFENDANT: Yes, I admit that I'm guilty.

15 THE COURT: Okay. So as I said earlier when we first
16 started this process of the change of plea hearing, I need to
17 ask you what it is that you did such that you are in fact
18 guilty of these two counts. So if you could please tell me in
19 your own words what you did?

20 THE DEFENDANT: In the period from year 2014 till the
21 year 2016 when I was in Russia I received information about the
22 tax ways in the United States and using this information I
23 filled tax returns to obtain tax refunds. These tax returns
24 did not belong to me.

25 THE COURT: Is there anything you wanted to add?

1 THE DEFENDANT: No.

2 THE COURT: Okay. Did you do this by an agreement
3 with any other person?

4 THE DEFENDANT: Other people also did this with me.

5 THE COURT: And did you knowingly and willfully join
6 that conspiracy or agreement to engage in the conduct that you
7 just described?

8 THE DEFENDANT: Yes.

9 THE COURT: And is it correct that the information
10 you filed on the tax returns, you filed it with the United
11 States Internal Revenue Service?

12 THE DEFENDANT: Yes.

13 THE COURT: And is it correct that the information
14 that you filled in the tax returns was incorrect and was not
15 information about you?

16 THE DEFENDANT: Yes.

17 THE COURT: And did you knowingly and willfully
18 participate in the scheme?

19 THE DEFENDANT: Yes.

20 THE COURT: And did you know that your activities
21 were fraudulent?

22 THE DEFENDANT: Yes.

23 THE COURT: And was your intent to defraud the United
24 States Government and the Internal Revenue Service?

25 THE DEFENDANT: Yes.

1 THE COURT: And I may have missed this, did you use
2 computers from Russia to the United States to conduct your
3 scheme?

4 THE DEFENDANT: Yes, one computer.

5 THE COURT: You used one computer. Did you access
6 other computers with your computer?

7 THE DEFENDANT: Yes.

8 THE COURT: And did you have authorization to access
9 the computers other than your own computer?

10 THE DEFENDANT: No.

11 THE COURT: And did you obtain information from the
12 computers other than your own computer?

13 THE DEFENDANT: Yes.

14 THE COURT: And is it -- okay. I'm sorry. And did
15 you use international or -- let me say you did it from Russia
16 to the United States, is that correct?

17 THE DEFENDANT: Yes.

18 THE COURT: And what was the purpose of accessing the
19 computers, computer or computers in the United States from
20 Russia?

21 THE DEFENDANT: I did this in order to obtain tax
22 refunds.

23 THE COURT: Okay. All right. So Mr. Frisch, would
24 you like your client to add anything else to that allocution?

25 MR. FRISCH: No.

1 THE COURT: And for the Government, is that -- I'm
2 sorry, I forgot one thing. With regard to venue, what's your
3 respective position? What was the connection to the Eastern
4 District?

5 MR. ALGOR: Yes, Your Honor. So there was wires that
6 were cashing out here in the Eastern District of New York
7 regarding the wire fraud conspiracy as well as victims
8 including one of the tax preparation firms that was accessed by
9 the defendant was here in the Eastern District of New York as
10 well.

11 MR. FRISCH: We accept that representation. We're
12 not contesting venue.

13 THE COURT: Okay. All right. So for the Government,
14 is that a satisfactory allocution to Count 1 and Count 3 of the
15 indictment?

16 MR. ALGOR: Yes, Your Honor.

17 THE COURT: All right. A few more questions for you.
18 I mixed up my own papers here. So all right, are you pleading
19 guilty voluntarily and of your own free will?

20 THE DEFENDANT: Yes.

21 THE COURT: Has anyone threatened or forced you to
22 plead guilty?

23 THE DEFENDANT: No.

24 THE COURT: Other than the promises that are
25 contained in the written agreement that you entered into with

1 United States Government, which is the plea agreement that was
2 marked as Court Exhibit 1, has anyone made any other promises
3 to you to induce you to plead guilty?

4 THE DEFENDANT: No.

5 THE COURT: Has anyone made any promise to you as to
6 what your final sentence will be?

7 THE DEFENDANT: No.

8 THE COURT: Do you wish to go ahead with this guilty
9 plea although it may result in serious immigration consequences
10 including possibly your automatic removal from the United
11 States?

12 THE DEFENDANT: Yes.

13 THE COURT: Are you pleading guilty of your own free
14 will because you are in fact guilty of Count 1 and Count 3 of
15 the indictment?

16 THE DEFENDANT: Yes.

17 THE COURT: Based on the information given to me here
18 today by the defendant and by counsel, I believe the defendant
19 is fully competent and capable of entering an informed plea,
20 that he is acting voluntarily, that he's aware of the nature of
21 the charges against him, that he understands his rights, that
22 he understands the consequences of the plea and that there is a
23 factual basis for the plea to each of the two counts, Count 1
24 and Count 3 of the indictment to which he entered a guilty
25 plea. So I therefore respectfully recommend that Judge Brodie

1 accept the plea of guilty to Count 1 and Count 3 of the
2 indictment.

3 So there's a sentencing date of June 24, 2020 at 10
4 a.m. before Judge Brodie. There will be a pre-sentence report
5 prepared about the defendant. Mr. Frisch, would you like to be
6 part of that interview process?

7 MR. FRISCH: Yes.

8 THE COURT: All right. We'll let Probation know.
9 We're going to return to the Government the original of the
10 Plea Agreement. That's the one marked as Court Exhibit 1. And
11 the defendant's in custody. Is there anything that should
12 change in that regard or anything that needs attention?

13 MR. ALGOR: No, Your Honor.

14 MR. FRISCH: No application, Judge.

15 THE COURT: Okay. And no more issues with the
16 dermatologist? Do you want a medical memo?

17 MR. FRISCH: Has anything gone on with the
18 dermatologist?

19 THE INTERPRETER: He's asking whether you're going to
20 check out everything.

21 MR. FRISCH: I will take care of it, but the question
22 is is there any -- is everything okay with the skin condition
23 on the medical treatment at the MDC?

24 THE DEFENDANT: Yes.

25 THE COURT: We're good?

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MR. FRISCH: Yes.

THE COURT: All right. Anything else?

MR. FRISCH: No.

MR. ALGOR: No, Your Honor.

THE COURT: All right. Thank you.

MR. ALGOR: Thank you, Judge.

MR. FRISCH: Thanks.

(Proceedings concluded at 4:22 p.m.)

* * * * *

1 I certify that the foregoing is a court transcript from an
2 electronic sound recording of the proceedings in the above-
3 entitled matter.

4
5 *Mary Greco*

6 _____
7 Mary Greco

8 Dated: March 17, 2020
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