



U.S. Department of Justice

*United States Attorney
Southern District of New York*

*The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007*

January 13, 2024

BY ECF

The Honorable Andrew L. Carter
United States District Court
Southern District of New York
500 Pearl Street
New York, New York 10007

**Re: *United States v. Barend Oberholzer, a/k/a "Barry Oberholzer", 21 Cr. 475*
(ALC)**

Dear Judge Carter:

The Government respectfully submits this letter in advance of the sentencing of Barend Hendrik Oberholzer ("Oberholzer" or the "defendant") on January 16, 2024. From in or around 2017 through 2019, Oberholzer was the mastermind of a long-running scheme to solicit investment and secure financing for his defense technology start-up company, Royal Holdings Technologies, through fraud and deceit. As set forth in the Presentence Investigation Report ("PSR"), and in the plea agreement, the parties agreed that the then-applicable range under the United States Sentencing Guidelines ("U.S.S.G" or "Guidelines") was 33 to 41 months' imprisonment (the "Stipulated Guidelines Range"). Oberholzer now claims that he is eligible for a two-point reduction in offense level pursuant to U.S.S.G. 4C1.1., resulting in a revised Guidelines range of 27 to 31 months' imprisonment (the "Amended Guidelines Range"). The Probation Office recommends a sentence of 24 months' imprisonment, while the defendant requests nine months of home confinement. (*See* ECF No. 152). For the reasons set forth below, the Government respectfully submits that a sentence at the high end of the Stipulated Guidelines range—41 months—would be sufficient, but not greater necessary, to achieve the goals of sentencing.

A. Background

1. The Offense Conduct

a. Background: Royal Holdings Technologies/Sword Device¹

¹ As set forth in the Complaint, the entity that Oberholzer and Pittario solicited investment in was incorporated as Royal Holdings Technology, Inc. Oberholzer later began to refer to the company as "Royal Holdings Technologies," and, ultimately, re-branded the company as "Xlabs."

As set forth in the Complaint and in the PSR, Oberholzer founded Royal Holdings Technologies (“RHT”) in 2018 with co-defendant Jaromy Pittario. (PSR ¶ 11, 14). Oberholzer was RHT’s undisputed leader, ran the day-to-day operations, and engaged with potential investors, creditors, and clients. Oberholzer finalized and approved RHT’s pitch decks, maintained RHT’s capitalization tables, and took the lead soliciting investors and creditors with these materials.² As pitched by Oberholzer and Pittario, RHT had developed a smartphone case (named “Sword”) and an accompanying app, which purportedly permitted its users to detect at a distance weapons or other dangerous items concealed on another person. In its earliest iteration, Sword consisted of a hardware smartphone case with radio wave imaging capabilities that synced and provided data to an app downloaded onto a user’s smartphone. Sword then purportedly provided the smartphone user with a “3-D image” of any approaching individual that was sufficiently detailed to identify any type of weapon (including explosives) that may be concealed on the individual’s body.

b. Oberholzer Solicited Investment by Impersonating a Retired U.S. Army General

Beginning in or around the first quarter of 2018, Oberholzer began soliciting investment from at least two venture capital firms by posing as a retired, four-star General in the United States Army (“Retired General-1”), who is currently employed by a prominent private equity investment firm (“Private Equity Firm-1”). (PSR ¶ 11). In various emails and voicemails, Oberholzer, posing as Retired General-1, endorsed Sword, RHT, and Oberholzer, and even stated that Private Equity Firm-1’s “technology fund” was looking to invest in RHT. (PSR ¶ 17).

For instance, on or about April 18, 2018, Victim-1, the co-Founder and Managing Partner of Venture Capital Firm-1, an email, purporting to be from Retired General-1 (the “Fake Retired General Account”), about “an opportunity” to invest in Start-Up-1, which purportedly had “groundbreaking proprietary mobile technology,” and whose goal “is to raise US\$15 million between several funding partners for 30% equity of Start-Up-1” (the “April 18, 2018 Email”). The April 18, 2018 Email also stated that Private Equity Firm-1—one of the largest investment companies in the world--“[is] also willing to commit to this on a possible co-lead with [Private Equity Firm-1’s] next generation technology fund. (PSR ¶ 17). Put another way, the April 18, 2018 Email suggested to Victim-1 that Retired General-1 not only endorsed RHT but that Private Equity Firm-1 was considering investing in RHT.

Similarly, on or about April 25, 2018, Victim-2, the Founder and Managing Member at Venture Capital Firm-2, received an email from the Fake Retired General Account pitching the opportunity to invest in Start-Up-1 (the “April 25 Email”). The April 25 Email stated that Start-Up-1 “has developed the world’s first mobile device which can x-ray any package or person for weapons/explosives/counter intel devices, from a distance” and claims that their products “will revolutionize the world’s security industry.” That same day, Victim-2 replied and expressed interest in an introduction to RHT regarding the investment opportunity. (PSR ¶ 18).

Both Victim-1 and Victim-2 received emails from the same email account that purported to be that of Retired General-1 (the “Fake Retired General-1 Account”). To execute the deception,

² For facts not set forth in the PSR the Government cites to documents produced in discovery.

Oberholzer created and registered a fake Private Equity Firm-1 domain name designed to imitate the real Private Equity Firm-1 domain name. Oberholzer then created fake email addresses designed to imitate the real email address of Retired General-1 at Private Equity Firm-1 and a fictitious assistant at Private Equity Firm-1. Oberholzer then copied his own email address on the solicitation emails sent from the Fake Retired General-1 Account, and pursued Victim-1 and Victim-2 by follow-up emails and phone calls. Pittario was not copied on these emails from the Fake Retired General-1 Account to Victim-1 and Victim-2 and Pittario does not appear to have used the falsified online accounts. Subscriber information and IP address information reflect that the Fake Retired General-1 Account was registered using Oberholzer's personal email address in August 2017 and deployed at various times from Oberholzer's personal residence in Colorado. (Complaint ¶ 14(b)). Oberholzer personally followed up on the fake Retired General-1 solicitation emails and tried to perpetuate the deception. In a voicemail left for Victim-1, Oberholzer's voice can be heard saying:

Hi [Victim-1], this is Barry from Royal Holdings. We got intro'd by [Retired General-1] a couple of weeks ago. I just wanted to check if you, uh, received my emails, the [pitch] deck, as well as the financials. If you have any questions please just drop me a mail"³

Ultimately, both Victim-1 and Victim-2 discovered the fraud and ceased communications with Oberholzer. They were not, however, the only would-be investors that Oberholzer solicited by impersonating Retired General-1 and falsifying his endorsement. The Government's investigation revealed that Oberholzer approached at least two other prominent investors posing as Retired General-1, though neither ultimately invested, and also solicited media attention based on Retired General-1's purported endorsement.⁴

c. Oberholzer Lied to Creditors about Pittario's Wealth, Investment in RHT, and Forged Financial Records

Oberholzer and Pittario also lied to investors about Pittario's identity and his purported personal wealth. For instance, pitch decks identified Pittario as "Jaromy Jannard-Pittario" (not his legal name) and stated that he was a member of a wealthy and well-known family of entrepreneurs, for instance: "his family, listed on the Forbes 400, founded Oakley Sunglasses & RED."⁵ This was false. Pittario's purported connection to the wealthy founder of Oakley sunglasses and RED Digital Cinema, James Jannard, is through his mother's sister, who was briefly married to Jannard in the 1990s according to open source information. By using the name "Jannard-Pittario" and referring to "his" family, Pittario and Oberholzer clearly sought to give the impression that Pittario had access to Jannard family wealth, which he did not.

³ USAO_0001067.

⁴ USAO_0001845; USAO_0005438; USAO_0005439.

⁵ USAO_0001835.

In addition to the pitch deck, many potential investors received a capitalization table (“cap table”) for Royal Holdings that purported to reflect its committed funding to date. During the relevant period, cap tables routinely reflected that “Jaromy Jannard Pittario” had invested substantial sums in RHT, typically \$2,100,000,⁶ although this amount varied. These claims were also false. Pittario had never invested or committed \$2,100,000 to RHT and did not have the means to do so.

This information regarding Pittario’s pedigree, his purported investments in RHT, and his access to cash was material to investors and creditors who wanted assurance that RHT could repay the substantial loans it was seeking and would otherwise have sufficient cash to support RHT’s development of the Sword prototype. In particular, in or around May 2019 Oberholzer began to solicit financing from Mr. Dov Horowitz, the President and CEO WWTS, an information technology services firm in New York City. Mr. Horowitz met with Oberholzer multiple times in person when Oberholzer came to New York pitch RHT to WWTS. At that time, Mr. Horowitz specifically wanted information regarding RHT’s other investors and their commitments to RHT. Oberholzer showed Mr. Horowitz a capitalization table that reflected that Pittario had invested \$3.5 million into RHT.⁷ This was false; Pittario had not invested millions in RHT and did not have the means to do so.

By in or around June 2019, Mr. Horowitz had agreed to extend financing to RHT and the parties were finalizing the terms. On or about June 19, 2019, Mr. Horowitz emailed Oberholzer and Pittario the following: “Our lawyers worked up the contract today please review and sign the document and send back to me. Jaromy please send me a copy of your bank statements for the personal guarantee, as soon as I get those statements and the documents signed I can issue the wire transfer as early as tomorrow.” (Complaint ¶ 16(b)). On or about June 20, 2019, Pittario emailed Mr. Horowitz two documents: a personal Chase bank statement and a personal brokerage account statement from Charles Schwab. (PSR ¶ 33). Together, the two documents indicated that Pittario held assets totaling approximately \$8.6 million. (PSR ¶¶ 33-34).

In fact, the bank statement and the brokerage account statements were forgeries. Together, the two accounts had a negative balance during the relevant period. (PSR ¶¶ 36-37). After receipt of these falsified records, on June 20, 2019, Mr. Horowitz countersigned the loan agreement and emailed it back to Oberholzer and Pittario. Mr. Horowitz wired \$1,000,000 to a bank account in the name of Royal Holdings that same day. (PSR ¶ 38). Shortly thereafter, approximately \$125,537 was wired to an account controlled solely by Pittario. Approximately \$193,983.43 was wired to an account controlled solely by Oberholzer. (PSR ¶ 39). Royal Holdings defaulted on the loan from WWTS after making a single interest payment.

The misrepresentations and forged documents provided to Mr. Horowitz to secure his loan were not an isolated episode. In solicitations to would-be investors and creditors, Oberholzer consistently lied about Pittario’s pedigree and wealth with full knowledge that these statements were untrue. Oberholzer also took specific steps to make the lies regarding Pittario’s purported wealth more convincing.

⁶ USAO_0001836.

⁷ USAO_0005921.

For instance, in or around June 11, 2019—while Oberholzer was simultaneously negotiating the terms of Mr. Horowitz’s loan—Oberholzer was also soliciting funding from an Atlanta-based investment firm (“Atlanta Firm-1”). Like Mr. Horowitz, Atlanta Firm-1 wanted a copy of Pittario’s “brokerage account” statement and “Real Estate holdings” to ensure that Pittario had sufficient assets to guarantee financing.⁸ Oberholzer sent documents purporting to reflect these assets to Atlanta Firm-1 by email and added “I also copy Jaromy’s wealth advisor.” The email address Oberholzer copied in was “jonathan.weiss@nwassetmanagement.com.”⁹

The Government’s investigation revealed that “Jonathan Weiss” was another fake online account—similar to the Fake Retired General-1 Account—created and deployed by Oberholzer to perpetuate the fraudulent scheme. Using his RHT email address, Oberholzer registered the domain name “nwassetmanagement.com,” which was designed to mimic the real domain name of a real private wealth management firm—Northwest Asset Management—based in Washington state. Oberholzer then created and deployed the email address “jonathan.weiss@nwassetmanagement.com” to answer questions about Pittario’s purported wealth from Atlanta Firm-1 and presumably other potential investors and creditors.

d. Oberholzer Solicited Investment by Lying About RHT’s Capitalization, Finances in Pitch Decks and Cap Tables

Oberholzer’s pervasive lies about Pittario’s personal wealth resulted in pitch decks and cap tables that were uniformly inaccurate. Pitch decks created by Oberholzer reflect that Pittario had invested amounts ranging from \$2.1 million to \$3.5 million, which represented approximately 35% to 50% of RHT’s purported capital commitments at any given time. Oberholzer also misrepresented his own capital contributions. For instance, one cap table reflected that Oberholzer had personally invested \$2.8 million, which he had not, while Pittairo had invested \$2.1 million.¹⁰ Owing to this misrepresentations, RHT investors typically invested on basis of materially inaccurate information regarding RHT’s capitalization.¹¹

2. RHT Rebranded as Xlabs

RHT officially “launched” the Sword device in the first quarter of 2019 at a marketing event it hosted in Los Angeles. Despite purported interest in the product, by April and May of 2019, RHT was running out of operating capital, had not been able to secure additional investment, and was already behind on its interest payments to WWTS.¹² By August 2019, the product development milestones had been missed several times and RHT had no funds. Oberholzer was

⁸ USAO_0002092; USAO_0002136

⁹ USAO_0003674.

¹⁰ USAO_0001836.

¹¹ USAO_0000043.

¹² USAO_0004804.

planning a massive rebranding, as well as continuing to seek new investment.¹³ Pittario exited RHT. In or around early 2020, RHT was rebranded as “Xlabs.” When the Covid-19 pandemic hit, Xlabs re-branded the Sword smartphone case and app as a device as “FEEVR,” a device that could purportedly detect from 20 feet away whether an approaching individual had a fever.¹⁴

3. Civil Suits Against Oberholzer, RHT, and Xlabs

The Government has identified four civil suits against RHT, Xlabs, and/or Oberholzer that pre-date Oberholzer’s indictment.

As noted supra, RHT made one interest payment on the \$1,000,000 loan from WWTS and then defaulted. Attempts to reach a settlement failed after Oberholzer’s repeated promises to repay the debt were never fulfilled. WWTS subsequently filed a civil suit against RHT and Pittario personally pursuant to his personal guarantee. On or about March 30, 2021, a New York Supreme Court entered a civil judgment in WWTS’s favor. Pittario and RHT were held jointly and severally liable for approximately \$1,307,822.86, as well as post-judgment interest.¹⁵ To date, Pittario has paid approximately \$9,761 on the judgment.¹⁶ Neither RHT, Xlabs, nor any successor entity has made any payment toward the civil judgment. The Government has been in contact with counsel for WWTS and WWTS has submitted a victim impact statement.

On or about March 25, 2022, Hamlin Designs LLC, the design engineer hired by RHT to develop a new iteration of Sword (as well as a new product: electronic bullets) filed a civil suit against RHT, Todd Dunphy (as the new CEO of RHT), and Charles Bloomquist (an RHT board member), for failure to pay for services provided in 2020. Hamlin Designs alleges that it submitted invoices for labor and costs to Oberholzer, as CEO of RHT, and that RHT never paid. Hamlin Designs further alleges that Dunphy took over as chief executive of RHT shortly after Oberholzer’s indictment and that Dunphy and Bloomquist (a member of RHT’s board of directors) absconded with the technology developed by Hamlin Designs and have refused to pay the \$125,818.41 owed.¹⁷

On or about September 8, 2023, RHT/Xlabs creditors Dr. Paul Kramer and Dr. Linda Crouse filed a civil suit against Oberholzer, RHT, and Todd Dunphy in California Superior Court, Central District, alleging the breach of loan agreements entered in or around April 2020, November 2020, and February 2021. According to the Amended Complaint, the loan agreements were

¹³ USAO_0003056.

¹⁴ USAO_0028067.0001.

¹⁵ *Worldwide Techservices, LLC v. Royal Holdings Technologies Corporation and Jaromy Jannard-Pittario*, Index No. 650090/2021. (Dkt. No. 35)

¹⁶ Still pending is WWTS’s request for restitution to be amended to include pre- and post-judgment interest. See ECF Nos. 150, 151.

¹⁷ See, *Hamlin Design LLC v. Royal Holdings Technologies Corp, et al.*, Case No. 22st-cv-10702, in California Superior Court, Los Angeles County, attached as Exhibit 1.

backed by personal guarantees from Dunphy and Oberholzer and the Complaint seeks repayment of principal and interest of approximately \$842,323.54.¹⁸

In or around April 2020, IP Video Market Info (“IPVM”), a subscriber-supported technology review website chiefly aimed at industry professionals, published a series of articles that challenged RHT/X.labs claims that the Feevr device could accurately identify elevated human body temperatures as claimed. IPVM pointed out that the manufacturer of the thermal imaging components RHT/Xlabs used in the Feevr device expressly disclaimed the ability of those thermal sensors to accurately detect fever and that the manufacturer did not license the sensors for such use.¹⁹ On or about May 4, 2020, RHT/Xlabs sued IPVM for defamation and, after protracted litigation, IPVM won an anti-SLAPP judgment against RHT/Xlabs in the Central District of California and was awarded a judgment of \$456,467.72.²⁰

4. The Defendant’s Arrest and Initial Charges

On February 23, 2021, Oberholzer was arrested in the Central District of California and charged by Complaint with conspiracy to commit mail and wire fraud, in violation of Title 18, United States Code, Section 1349, and aggravated identity theft, in violation of Title 18, United States Code, Section 1028A. (ECF No. 1; PSR ¶ 42). He was released on bail the same day. On or about July 27, 2021, a grand jury sitting in this District returned an indictment that charged Oberholzer with the same offenses. He has remained on pretrial release.

5. The Defendant’s Attempted Cooperation

While the Complaint was pending, Oberholzer approached the USAO-SDNY seeking to cooperate by providing information about criminal activity unrelated to his business ventures. Via attorney proffer, Oberholzer provided information regarding purported violations of export controls and sanctions directed at Iran, as well as information about a darkweb site that purportedly hosted child pornography. The Government’s investigation revealed that Oberholzer had solicited and purchased this purported “intel” from a third party for approximately \$7,000 in an attempt to obtain leniency from the Government. The Government declined to proffer Oberholzer and declined to extend him a cooperation agreement.

6. Post-Indictment Conduct

Based on information provided by Oberholzer, the PSR states that from February 2021 to December 2021, Oberholzer was “employed” at JET Airline Cargo Inc., located in California, during which time Oberholzer “flew cargo around world.” (PSR ¶ 95). In fact, Oberholzer and his brother, Marcell Oberholzer, co-owned a company called “JETT,” which purported to provide

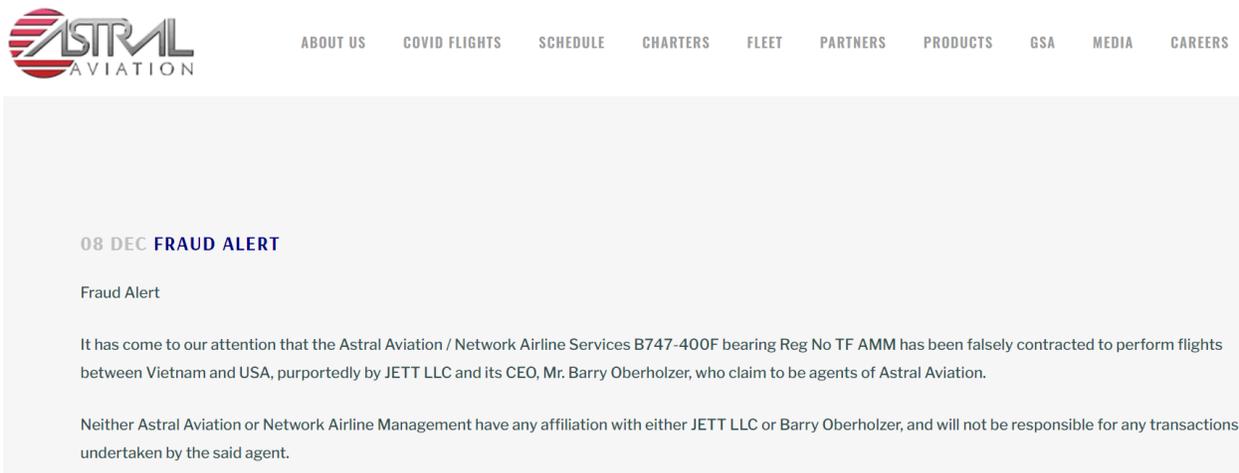
¹⁸ See, *Paul Kramer and Linda Crouse v. Royal Holdings Technologies Corp, et al.*, Case No. 23STCV17779, in California Superior Court, Los Angeles County, attached as Exhibit 2.

¹⁹ See, “Beware of Feevr,” available at <https://ipvm.com/reports/feevr2>.

²⁰ See, *Royal Holdings Technologies Corp., dba X.Labs v. IP Video Market, Inc.*, No. 21-55048, 2022 WL 16832812 (9th Cir. Nov. 9, 2022).

air cargo charter flights.²¹ In or around December 2021, JETT contracted with a Brooklyn-based freight forwarding company, Unique Logistics LLC, to provide two cargo charter flights, on particular dates, using particular aircraft, between Hanoi, Vietnam, and Ontario, California. The carrier that operated the aircraft on those routes was Astral Aviation, a cargo airline based in Kenya. The defendant and his brother represented that they had authority to lease cargo capacity on Astral Aviation's equipment and routes on the dates that Unique Logistics required. Accordingly, Unique Logistics contracted with JETT for these cargo transport services and paid JETT approximately \$1,856,000.

In fact, JETT did not have authority to lease cargo capacity on Astral's equipment and flight routes. JETT failed to ship the cargo on the particular dates and equipment that Unique Logistics required, incurring significant additional costs for Unique Logistics. In or around December 2021, Astral Aviation posted the following on its website:²²



In or around April 2022, Unique Logistics filed suit in the Eastern District of New York against the defendant, his brother, and JETT. The Complaint alleges fraud, fraudulent inducement, and fraudulent misrepresentation, and seeks to recover \$1,856,000 as well as damages.²³ The suit is still pending.

The PSR also states that in or around 2021, Oberholzer started another business, Black Widow Helicopters LLC. The company refurbishes and resells helicopters, purportedly for use in firefighting. (PSR ¶ 94). Black Widow Helicopters does not undertake any of the refurbishment itself. Rather, it contracts with multiple vendors—chiefly aviation engineers, machinists, mechanics, and certified testers—who design, manufacture (as needed), install, test and certify the customizations to the helicopters. The Government has learned that Black Widow Helicopters (which is owned and controlled by Oberholzer) has failed to make multiple payments to its vendors, resulting in financial hardship. At least one such vendor, a sole proprietorship in

²¹ USAO_0030112.

²² See, <https://astral-aviation.com/fraud-alert/>.

²³ USAO_0030112.

Kentucky (the “Kentucky Small Business Owner-1”), has already spent approximately \$500,000 in parts and labor to refurbish at least two helicopters for Black Widow Helicopters since in or around January 2023. Oberholzer has failed to pay Kentucky Small Business Owner-1 the approximately \$500,000 outstanding, even though Oberholzer has already executed contracts for sale for these two helicopters and accepted payment from customers. The Government has also learned that, beginning at least in or around April 2023, Oberholzer spent significant sums on luxury goods and travel for himself and others. For instance, Oberholzer spent approximately \$5100 on designer goods from Christian Louboutin and paid a \$20,000 deposit for elective cosmetic surgery. Oberholzer also spent four days on a luxury vacation in Florida with guests (for whom he paid), which included four days in a suite at a Ritz Carleton in Florida and renting a yacht.

7. Outstanding Pre-Arrest Warrants

The Government has confirmed that South African authorities have an outstanding warrant for Oberholzer’s arrest. The warrant, issued in 2017, alleges that Oberholzer illegally imported cigarettes to South Africa (while falsely declaring them to be ceramic tiles) and thereby evaded import taxes equal to approximately \$1.2 million dollars.

8. The Plea Agreement and the Guidelines Calculation

On March 28, 2023, the defendant pleaded guilty, pursuant to a plea agreement (the “Plea Agreement”), to Count One of the Indictment. The Plea Agreement, dated March 27, 2023, and the PSR set forth the following calculation of the offense level under the November 1, 2021 edition of the United States Sentencing Guidelines:

- (1) A base offense level of 7 pursuant to U.S.S.G. § 2B1.1(a)(1);
- (2) A 14-level increase, pursuant to U.S.S.G. § 2B1.1(b)(1)(H), because the offense involved losses that exceed \$500,000 but did not exceed \$1,500,000;
- (3) A two-level increase, pursuant to U.S.S.G. § 2B1.1(b)(10)(C), because the offense involved sophisticated means and the defendant intentionally engaged in or caused the conduct constituting sophisticated means; and
- (4) A three-level decrease, pursuant to U.S.S.G. § 3E1.1(a) and (b), for acceptance of responsibility.

In accordance with the foregoing, the applicable Guidelines offense level was 20. The parties agreed that Oberholzer has no prior convictions and, therefore, his Criminal History Category is I, yielding a Guidelines range of 33 to 41 months’ imprisonment. (PSR ¶ 6; the “Stipulated Guidelines Range”). The PSR, dated August 21, 2023, contains the same Guidelines calculation as that set forth in the Plea Agreement. (PSR ¶¶ 49-59).

As part of his Plea Agreement, Oberholzer is required to forfeit \$252,862 in U.S. currency, representing proceeds traceable to the fraud that Oberholzer personally obtained as part of the scheme. (ECF. Nos. 102, 103).

9. Post-Plea Amendment to Guidelines

In the intervening time between the plea agreement/the preparation of the PSR and sentencing, amendments to the November 1, 2021 edition of the Guidelines have come into effect. (*See* PSR p. 24). Oberholzer argues in his sentencing submission that, under the November 1, 2023 edition of the Guidelines, he qualifies for a two-level reduction in offense level pursuant to U.S.S.G. § 4C1.1. This amendment would reduce the defendant's offense level to 18 and result in an amended Guidelines range of 27 to 33 months' imprisonment (the "Amended Guidelines Range").

B. Discussion

1. Applicable Law

The Guidelines still provide important guidance to the Court following *United States v. Booker*, 543 U.S. 220 (2005), and *United States v. Crosby*, 397 F.3d 103 (2d Cir. 2005). "[A] district court should begin all sentencing proceedings by correctly calculating the applicable Guidelines range," which "should be the starting point and the initial benchmark." *Gall v. United States*, 552 U.S. 38, 49 (2007). The Guidelines range is thus "the lodestar" that "anchor[s]" the district court's discretion. *Molina-Martinez v. United States*, 136 S. Ct. 1338, 1345-46 (2016) (quoting *Peugh v. United States*, 133 S. Ct. 2072, 2087 (2013)).

After making the initial Guidelines calculation, a sentencing judge must consider the factors outlined in Title 18, United States Code, Section 3553(a): (1) "the nature and circumstances of the offense and the history and characteristics of the defendant," 18 U.S.C. § 3553(a)(1); (2) the four legitimate purposes of sentencing, as set forth below, *see id.* § 3553(a)(2); (3) "the kinds of sentences available," *id.* § 3553(a)(3); (4) the Guidelines range itself, *see id.* § 3553(a)(4); (5) any relevant policy statement by the Sentencing Commission, *see id.* § 3553(a)(5); (6) "the need to avoid unwarranted sentence disparities among defendants," *id.* § 3553(a)(6); and (7) "the need to provide restitution to any victims," *id.* § 3553(a)(7). *See Gall*, 552 U.S. at 50 & n.6.

In determining the appropriate sentence, the statute directs judges to "impose a sentence sufficient, but not greater than necessary, to comply with the purposes" of sentencing, which are:

- (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
- (B) to afford adequate deterrence to criminal conduct;
- (C) to protect the public from further crimes of the defendant;
- and
- (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.

18 U.S.C. § 3553(a)(2). To the extent that a district court imposes a sentence outside the range recommended by the Guidelines, it must "consider the extent of the deviation and ensure that the justification is sufficiently compelling to support the degree of the variance." *United States v.*

Cavera, 550 F.3d 180, 189 (2d Cir. 2008) (en banc) (quoting *Gall*, 552 U.S. at 50) (internal quotation marks omitted).

2. A Sentence at the High End of the Stipulated Guidelines Range Is Appropriate

The Government respectfully submits that a sentence at the high end of the Stipulated Guidelines range of 33 to 41 months' imprisonment would be fair and appropriate. The nature and circumstances of the offense, the need for specific deterrence, and the need to protect the public—as exemplified by the defendant's persistent reliance on fraud and deceit in his business dealings pre- and post-indictment—all strongly support a sentence at the high end of the Stipulated Guidelines range. In addition, the Government is troubled by what appear to be unsupported and possibly false claims in Oberholzer's sentencing submission regarding Oberholzer's purported charitable work with Afghan refugees.

a. The nature and circumstances of the offense

The offense conduct was serious and lasted for more than two years. Oberholzer's fraudulent fundraising tactics began as early as 2017, when he first registered and created the Fake General-1 Account. Thereafter Oberholzer continued to rely on fraud (and aggravated identity theft) to attract attention and funding for his business. Oberholzer serially lied about Pittario's background, assets, and investment in RHT. Cap tables and investor decks routinely stated that Pittario had committed millions to RHT when he had not. Oberholzer personally touted Pittario's ability to guarantee loans and distributed falsified financial statements that purported to attest to Pittario's wealth and willingness to backstop RHT financially. These were lies. As a company with no track record and an unproven product, the misrepresentations about Pittario's assets and pedigree were material to creditors and investors who sought to assess and mitigate the risk of investing in or extending financing to RHT. Oberholzer doubled down on these deceitful tactics and tried to make the lies seem more plausible by creating a fake identity and online account (i.e., "jonathan.weiss@nwassetmanagement.com") to answer questions from lenders skeptical about Pittario's finances. The time and effort that Oberholzer put into deceiving would be creditors—in particular his willingness to falsify financial statements and other records—is troubling and warrants a substantial sentence.

Oberholzer's sentencing submission suggests that his conduct toward Mr. Horowitz and WWTS—lying about Pittario's assets and providing falsified financial statements to support the lies—was a momentary lapse. (ECF No. 152 at 10). It was not; this was Oberholzer's standard operating procedure for years and he deployed it with other would-be creditors and investors (*see, supra*, pp. 4-5). Even when these deceitful tactics were unsuccessful, which they typically were, Oberholzer continued to rely on them to seek financing for his businesses and even to support his own lavish, aspirational lifestyle.²⁴ Oberholzer's reliance on deception, even aggravated identity theft, as a means to raise money for his businesses is troubling and warrants a substantial sentence.

²⁴ For instance, the Government's investigation revealed that in or around August 2019, Oberholzer submitted falsified brokerage statements to a mortgage broker in support of a mortgage application for the multi-million-dollar home in which he currently resides. *See* USAO_0001502;

b. The need for specific and general deterrence

Oberholzer was unquestionably the leader of the fraudulent scheme and therefore the most culpable. Oberholzer initiated and directed virtually all solicitations and contacts with potential investors and creditors, both in person and by email. Oberholzer was responsible for the investor pitch decks and cap tables provided to investors and creditors. Oberholzer, not Pittario, met with Mr. Horowitz of WWTS multiple times in New York. Oberholzer registered and deployed the Fake Retired General-1 email account and the fake wealth advisor email account to support the lies about Pittario's purported wealth. Pittario went along with the scheme largely as a passive (albeit willing) participant and fall guy in Oberholzer's deceptive scheme. Moreover, the lengths that Oberholzer was willing to go to perpetrate the fraud—including aggravated identity theft—suggests that only a significant sentence will deter Oberholzer from re-offending. Specific deterrence requires that Oberholzer receive a much more severe sentence than Pittario.

A sentence at the high end of Stipulated Guidelines Range is also necessary for general deterrence. The legislative history of 18 U.S.C. § 3553 demonstrates that “Congress viewed deterrence as ‘particularly important in the area of white-collar crime.’” *United States v. Martin*, 455 F.3d 1227, 1240 (11th Cir. 2006) (citing S. Rep. No. 98-225, at 76 (1983), reprinted in 1984 U.S.C.C.A.N. 3182, 3259); *see also United States v. Mueffelman*, 470 F.3d 33, 40 (1st Cir. 2006)(deterrence of white-collar crime is “of central concern to Congress”). General deterrence is an important sentencing factor in fraud and white-collar cases because it is seen as effective. *Martin*, 455 F.3d at 1240 (“Because economic and fraud-based crimes are more rational, cool, and calculated than sudden crimes of passion or opportunity, these crimes are prime candidates for general deterrence.”) (quotation marks and citation omitted). A sentence at the high end will signal to others who think that business crimes are victimless and that “faking it until you make it” is a standard business practice that their misconduct will be met with serious punishment.

c. The need to protect the public

A sentence at the high end of the Guidelines range is also necessary to protect the public. As set forth above, Oberholzer's willingness to rely on deceptive business practices to get ahead is ingrained. For instance, there is an outstanding warrant for his arrest in South Africa in connection with a 2015 scheme to import cigarettes illegally by mislabeling the goods to avoid import duties. (*See supra*, p. 9). At Xlabs in 2020, Oberholzer defaulted on loan agreements that he personally guaranteed totaling more than \$800,000 to two creditors, forcing the creditors (individuals) to pursue him civilly. (*See supra*, pp. 6-7). These loans have still not been repaid and yet Oberholzer continues to spend lavishly on luxury goods, expensive vacations, and cosmetic surgery. At JETT in 2021, Oberholzer appears to have falsely claimed that he had the authority to contract chartered cargo flights operated by another carrier, which led the carrier—Astral Aviation—to post a “fraud notice” on its website so that other customers would not be deceived. (*See supra*, pp. 7-8). And in his most recent endeavor, Black Widow Helicopters, Oberholzer has again subsidized his business and his own lavish lifestyle at the expense of others, namely his primary vendor: Small Business Owner-1 in Kentucky responsible for refurbishing two Black

USAO_0001505; USAO_0000046. *See* PSR ¶ 79, noting that Oberholzer resides in a “five bedroom/five-bathroom house ‘extravagantly furnished and well kept’” that is “decorated with ‘high-end furnishings’ and appeared to be recently built/remodeled.”

Widow helicopters whom Oberholzer has failed to pay approximately \$500,000 owed in parts and labor. These pre- and post-indictment business practices show that Oberholzer is willing to deceive customers, creditors, and vendors alike and that he is indifferent to the financial hardship he imposes on others. A sentence at the high end of the Stipulated Guidelines range is therefore necessary to protect the public from Oberholzer's sustained pattern of deceptive business practices.

d. Oberholzer's purported charitable work

The Government is also troubled by certain claims in Oberholzer's sentencing submission regarding his recent charitable work on behalf of Afghan refugees. Oberholzer claims to have provided significant assistance and funding through two charities to former Afghan Air Force pilots who have been re-settled in the United States. Both the letters of support from former Afghan Air Force pilots and the charities through which Oberholzer has purportedly assisted them raise red flags.

Oberholzer claims that he founded a charity called "Upperwood" and "established a ground school in California to teach former Afghan pilots commercial aviation." (ECF No. 152 at 13). Oberholzer also claims that he has worked with a charity named the Afghan American Development Group ("AADG"). Through these two organizations, Oberholzer claims that he has "help[ed] support [Afghan] refugees domestically and abroad" by "coordinat[ing] with a logistics company to help provide food, wood, winter clothing, wood-burning stoves, and other winter essentials to families in Afghanistan without electricity." (ECF No. 152 at 13). Oberholzer has also submitted letters purporting to be from former Afghan Air Force pilots who have been settled in the United States and have gone through Oberholzer's commercial pilot ground school. (ECF No. 152, at Exhibit ("Ex.") 17 - 20).

As an initial matter, Oberholzer was not qualified as commercial pilot in the United States until at least March 2022, nor to the Government's knowledge is he qualified (or employed as) a flight instructor at a certified U.S. flight school. (PSR ¶ 91). It is therefore puzzling how Oberholzer could have "established a ground school" in California to train Afghan Air Force pilots as early as "the winter of 2021," as claimed by the CEO of AADG, Russ Pritchard. (ECF No. 152 at 13, Ex. 15 at 2).

Moreover, the letters purporting to be from former Afghan Air Force pilots raise concerns. (ECF No. 152, Exs. 17-20). First, not one letter contains any email address or telephone number where the writer could be contacted. (*Id.*). Second, the letter purporting to be from Major General Shafi Noori is non-specific and contains no contact information whatsoever, not even a physical address. Of the remaining three letters, two provide fake residential addresses; the Government has determined that these addresses simply do not exist. (ECF No. 152, Exs. 18, 20).

Equally troubling is the lack of public information from any independent source regarding the existence or activities of the AADG or Upperwood. Neither is registered as a non-profit in California, Michigan, New Mexico, or Florida, states in which the defendant's sentencing exhibits suggest that Upperwood and AADG have been active with Afghan refugees. AADG's website is bare bones and identifies just two individuals associated with the organization other than Mr. Pritchard. When the Government attempted to contact the two individuals associated with AADG other than Mr. Pritchard, one claimed to be unable to speak to Oberholzer's role with AADG and

the other never responded. This is puzzling given Oberholzer's purportedly overwhelming support of AADG's mission and activities.

The website for Oberholzer's charitable foundation, Upperwood, appears to be defunct.²⁵ In fact, the only publicly available information about its activities consists of paid public relations press releases on various public relations websites. One such press release identifies "Russ Pritchard" as the "contact" for Upperwood.²⁶ Mr. Pritchard, who is also identified on the AADG's website as its CEO, is a self-employed copywriter whose services include "promotional and informative content on companies, services offered, products, family business storylines, and assist[ance] with placement in trade journals and periodicals."²⁷

In sum, the self-serving source of the information regarding Upperwood and AADG, the lack of any contact information for the Afghan refugees who purportedly wrote on the defendant's behalf, and the unwillingness of anyone—other than a marketing and public relations copywriter—to corroborate any of the information provided by Oberholzer leads the Government to question the veracity of his claims regarding his charitable work with Afghan refugees.

To be sure, the Government would be delighted if Oberholzer's claims were, in fact, true. The Government also submits that a sentence at the high end of the Stipulated Guidelines range would be warranted even if Oberholzer's *had*, in fact, undertaken the efforts he describes on behalf of Afghan refugees. Nevertheless, the defendant's history of deception, document forgery, and identity theft leave the Government troubled by the red flags raised by the defendant's sentencing submission.

C. Conclusion

Oberholzer orchestrated a years-long scheme to raise funds for his defense tech startup through fraud and deceit. This misconduct appears to be of a piece with his deceptive business practices before and after his indictment. For all the foregoing reasons, the Government respectfully submits that the defendant's conduct warrants a sentence at the high end of the Stipulated Guidelines Range of 33 to 41 months' imprisonment.

²⁵ See, e.g., <https://www.prnewswire.com/news-releases/upperwood-foundation-collaborates-on-release-of-the-war-edition-301562839.html>.

²⁶ See, <https://www.prnewswire.com/news-releases/upperwood-foundation-collaborates-on-release-of-the-war-edition-301562839.html>.

²⁷ Compare <https://phoelaz.com/services>, and <https://www.aadg3.org/blank-1>.

Respectfully submitted,

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