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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

UNITED STATES OF AMERICA	**3:19-cr-00237-SI**
v.	
OLAF JANKE,	**GOVERNMENT'S SENTENCING MEMORANDUM**
Defendant.	

The conspiracy charges in this case, like those in *United States v. Robert J. Jesenik, et al.*, No. 3:20-cr-00228-SI, arose from the operation of Aequitas Commercial Finance, LLC ("ACF") and related entities (collectively referred to as "Aequitas") as a Ponzi scheme from not later than June 2014 through Aequitas's catastrophic collapse in March 2016. Defendant Olaf Janke was an executive vice president and the chief financial officer of Aequitas until he stepped down from his executive responsibilities in March 2015. He was also an equity partner in Aequitas

Management, LLC, along with his coconspirators Robert Jesenik, Brian Oliver, and Andrew MacRitchie, holding a 5% stake in the Aequitas enterprise until he sold it back to the firm in January 2015.

Defendant Janke comes before the Court to be sentenced on two counts of criminal conspiracy, which were charged by information. (ECF No. 1.) Count 1 charged him with conspiring with to commit mail and wire fraud in violation of 18 U.S.C. § 1349 (anticipating Count 1 of the Superseding Indictment in the *Jesenik* case), and Count 2 charged him with conspiring to commit transaction money laundering in violation of 18 U.S.C. § 1956(h) (anticipating Count 30 of that Superseding Indictment).

I. JANKE'S ROLE IN THE OFFENSE AND RECOMMENDED SENTENCE

As the Court heard over the six-week trial of the *Jesenik* case, Olaf Janke and his coconspirators used false and misleading marketing materials, offering documents, and sales pitches to solicit investments in promissory notes and other debt instruments issued by Aequitas. While purporting to use the proceeds of such investments—which totaled some $600 million at the company's collapse—to invest in credit strategy receivables and other income-generating assets, the conspirators actually used the vast majority of investments made during the conspiracy period to make Ponzi payments to prior investors and to pay the firm's extravagant operating expenses.

Those operating expenses were a significant driver of Aequitas's descent into a full-blown Ponzi scheme. The firm never made more money than it spent, and so it always relied on new investments to fund the generous returns it guaranteed to its investors. Despite his essential role in running the Ponzi scheme (keeping the "trains running" as he testified) during his final

months at Aequitas, Defendant Janke was a consistent proponent of trimming those expenses. Unfortunately, he did not succeed.

To the contrary, his efforts to rationalize cash management after Aequitas's loss of millions of dollars of monthly recourse payments from Corinthian Colleges in June 2014 resulted in tense conflicts with the firm's CEO, Robert Jesenik. By the end of September 2014—just four months into the charged conspiracy period—Defendant Janke decided he would endure Jesenik's "Louis XIV" management style no longer. He tendered his resignation to Mr. Jesenik the following month.

Mr. Jesenik apparently feared how the sudden departure of his CFO would look to Aequitas's outside auditors, so he convinced Defendant Janke to stay on through the completion of the 2014 audit in the spring of 2015. Defendant Janke, sensing his advantage and feeling ill-used by Jesenik, proceeded to negotiate a hefty golden parachute for himself over the ensuing weeks: a $350,000 bonus for 2014 (none of the other Aequitas executives got a bonus), cancellation of a $1.2 million promissory note he made to Aequitas for his 5% stake in the company, and a $1.3 million premium for that same equity. He negotiated this deal knowing—as Jesenik did—that Aequitas had no cash to pay the contemplated $1.65 million except from new investments solicited under false pretenses. Despite the enduring obligation for which he had agreed to pay so generously, Jesenik did not ultimately require Janke to remain as CFO through the 2014 audit. Instead, Jesenik abruptly named Scott Gillis Aequitas's CFO in March 2015—nearly two months before the audit was completed.

For his role in managing the flow of funds in the Aequitas Ponzi scheme between June 2014 and March 2015 and for conspiring to cash out more than a million dollars of investor funds when he left Aequitas, Defendant Janke agreed to plead guilty to two counts of conspiracy

as charged in the Information filed in this case. (ECF No. 13.) He also agreed, as Brian Oliver already had done, to testify against his coconspirators in the event they went to trial. In exchange for his early guilty plea and his offer of cooperation, the government agreed to recommend a prison sentence substantially below the applicable Guideline range.

In light of his extensive and valuable testimony in the *Jesenik* case and the sentences meted out to his coconspirators following their convictions at trial, the government recommends that Defendant Janke be sentenced to three years' imprisonment, followed by three years of supervised release, and ordered to pay restitution in the amount of $131,132,165.

II. GUIDELINE CALCULATIONS

The government originally stated its view of the applicable Guideline enhancements in the parties' plea agreement, which was filed more than four years ago. (ECF No. 13 at 6-7.) The Court recently announced its disagreement with the government's view in the sentencing hearing for Messrs. Jesenik, MacRitchie, and Rice. The government accedes to the Court's calculations insofar as they apply to Defendant Janke's case.

In addition, the government's position on the loss amount attributable to Defendant Janke has been more fully informed by accounting that FTI Consulting, Inc., performed in August for purposes of assessing the restitution due from Mr. Janke's coconspirators. According to those calculations, the total amount of investments fraudulently raised during the whole indictment period (including both new cash investments and investments that were extended or rolled over into other debt offerings during that period), less amounts recovered from Aequitas's Receiver, amounted to $366,859,308.[1] The amount fraudulently raised from February 6, 2015, through the

[1] The background data were filed under seal in *United States v. Jesenik, et al.*, No. 3:20-cr-00228-SI, ECF No. 744, and discussed more fully in the government's motion for restitution in

end of the conspiracy but not returned by the Receiver (Brian Rice's restitution amount) totaled $235,727,143. Therefore, the amount that was fraudulently raised (but not returned) from June 2014 through February 5, 2015, was $131,132,165. Because this amount is substantially less than that attributable to Brian Rice's (longer) involvement in the conspiracy, the government will adopt the loss amount the Court calculated for Mr. Rice in relation to its Guideline calculation.

With the foregoing adjustments, the Guideline calculation should be as follows.

Base offense level, § 2B1.1(a)(1)	7
Loss > $25MM, § 2B1.1(b)(1)(*l*)	22
More than 10 victims, § 2B1.1(b)(2)(A)(i)	2
Sophisticated Means, § 2B1.1(b)(10)(C)	2
Money Laundering, § 2S1.1(b)(2)(A)	1
Acceptance of Responsibility, § 3E1.1	3
TOTAL	**31**

The Court also gave an additional 2-level downward variance to Messrs. MacRitchie and Rice in anticipation of a Guideline amendment for zero-point offenders. The government recommends the same adjustment for Defendant Janke. That would reduce his effective offense level to 29. For an offender with no criminal history and an offense level of 29, the Sentencing Guidelines prescribe an advisory range of 87 to 108 months' imprisonment. USSG Ch. 5 Pt. A.

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that case (ECF No. 745). The government incorporates its discussion from that motion herein by reference and is filing the back-up data under seal in this matter as Exhibits A and B hereto.

III. FACTORS SUPPORTING A BELOW-GUIDELINE SENTENCE

In fashioning its sentence for Defendant Janke, the Court should consider two major grounds for a departing or varying downward substantially from the advisory Sentencing Guideline range. The first and most significant is his cooperation in the prosecution of his coconspirators. As the Court is well aware, Defendant Janke not only accepted responsibility for his role in this matter quite early, but he kept his life on hold for nearly *four years* while awaiting the trial of his confederates. During that time, Defendant Janke's professional opportunities were greatly circumscribed, his wife and teen-aged children bore the burden of his unwelcome notoriety, and his own future remained tenebrous and uncertain. As the trial finally drew near, his commitment to cooperate with the prosecution called upon him to meet repeatedly with the government and to analyze voluminous financial records in support of the government's case and in preparation for his own testimony. The Court will recall Defendant Janke's creation of Government Exhibit 598, which tracked the accelerating growth of the balance due to ACF on the Holdings Note—month by month and both in principal and interest—from October 2011 through April 2015. This was emblematic of Defendant Janke's singular attention to detail and understanding of Aequitas's complex accounting records.

At the trial itself, Defendant Janke testified over the course of three days. His testimony was particularly useful in corroborating the conclusions of the government's expert witness from an insider's perspective, describing Aequitas's financial results and operations both historically and during the conspiracy, and describing his coconspirators' knowledge and statements. His testimony was credible, comprehensive, and often highly salient (such as in describing Mr. Jesenik's tyrannical control of the organization). That cooperation merits substantial consideration at sentencing, and the government so moves under U.S.S.G. § 5K1.1.

The second reason a sentence well below the Guideline range is warranted is the outcome of the case for the coconspirators who went to trial. Of those three, Mr. Rice's culpability is closest to Defendant Janke's. Both participated in only a portion of the conspiracy, with Mr. Rice's being the longer and more damaging chapter. Mr. Rice actively participated for approximately one year (February 2015 through January 2016), whereas Defendant Janke did so for only for about nine months (June 2014 through February 2015). While Defendant Janke's detailed awareness of the extent of Ponzi-style financing was surely deeper than Mr. Rice's, the latter personally participated in the core of the fraud conduct by soliciting investments under deliberately false pretenses. In addition, the conspirators raised far more money from investors during Mr. Rice's participation than Defendant Janke's. (*See* Exs. A, B.) As this Court sentenced Mr. Rice to only 37 months' imprisonment after he was convicted at trial, Defendant Janke should not suffer a sentence of even that long in light of his early guilty plea, extensive cooperation, and less culpable conduct. A sentence of 36 months, and certainly no more, is called for in this case.[2]

In addition to that prison sentence—which may well be served, at least partially, in harsher conditions than those of his coconspirators[3]—Defendant Janke should be required to serve three years of supervised release and ordered to pay restitution to Aequitas's victim

[2] Were it not for his personally pocketing $1.3 million in phantom equity funded by investors, the government would have recommended an even greater disparity between Defendant Janke's sentence and Mr. Rice's.

[3] This may provide an additional basis for a downward variance, but the government intends to recommend that Defendant Janke serve as much of his sentence as practicable in his native Germany. It is thus difficult to assess how much time he will serve in U.S. custody.

investors, jointly and severally with Messrs. Jesenik, MacRitchie, and Rice, in an amount totaling $131,132,165.[4]

IV. CONCLUSION

For the foregoing reasons, the government recommends imposition of the above-described sentence.

Dated: October 11, 2023

Respectfully submitted,

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/s/ Ryan W. Bounds

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[4] To the extent Defendant Janke challenges this restitution amount, the government recommends combining any hearings on restitution with those currently scheduled in the *Jesenik* case, as the legal and factual issues will be effectively identical.