IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

NO. **13-12385-CC**

United States of America,

Appellee,

- versus -

Albert Takhalov,
Isaac Feldman,
and
Stanislav Pavlenko

Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

BRIEF FOR THE UNITED STATES

Wifredo A. Ferrer
United States Attorney
Attorney for Appellee
99 N.E. 4th Street
Miami, Florida 33132-2111
(305) 961-9130

Kathleen M. Salyer
Chief, Appellate Division

Emily M. Smachetti
Assistant United States Attorney

John Shipley
Assistant United States Attorney

Of Counsel

United States v. Takhalov, et al., Case No. 13-12385-CC

Certificate of Interested Persons

Undersigned counsel for the United States of America hereby certifies that the following is a complete list of persons and entities who have an interest in the outcome of this case who were not included in the Certificate of Interested Persons set forth in Appellants' briefs:

American Express

Blackstone

Citibank

J.P. Morgan Chase

Smachetti, Emily M.

Shipley, John

s/John Shipley
John Shipley
Assistant United States Attorney

Statement Regarding Oral Argument

The United States of America respectfully suggests that the facts and legal arguments are adequately presented in the briefs and record before this Court and that the decisional process would not be significantly aided by oral argument.

Table of Contents

Page:

Table of Contents

(continued)

Page:

Table of Contents

(continued)

Page:

Table of Citations

Cases: **Page:**

Table of Citations (Continued)

Cases: **Page:**

Table of Citations (Continued)

Cases: **Page:**

Table of Citations (Continued)

Cases: **Page:**

Table of Citations (Continued)

Cases: **Page:**

Table of Citations (Continued)

Cases: **Page:**

Table of Citations (Continued)

Cases: **Page:**

Table of Citations (Continued)

Cases: **Page:**

Table of Citations (Continued)

Cases: **Page:**

Table of Citations (Continued)

Cases: **Page:**

Table of Citations (Continued)

Cases: **Page:**

Table of Citations (Continued)

Statutes & Other Authorities: **Page:**

Table of Citations (Continued)

United States Sentencing Guidelines: **Page:**

Statement of Jurisdiction

This is an appeal from final judgments of the United States District Court for the Southern District of Florida in a criminal case. The district court entered its amended judgment against defendant Isaac Feldman on August 27, 2013 (DE1194), defendant Stanislav Pavlenko on August 28, 2013 (DE1195) and defendant Albert Takhalov on September 6, 2013 (DE1203).[1] The district court had jurisdiction to enter the judgments pursuant to 18 U.S.C. §3231. Each defendant filed a timely notice of appeal (DE1201 (Feldman); DE1204 (Takhalov); DE1206 (Pavlenko)). See Fed. R. App. P. 4(b). This Court has jurisdiction over this appeal pursuant to 28 U.S.C. §1291 and authority to examine the defendants' challenges to their sentences pursuant to 18 U.S.C. §3742(a).

[1] The original judgments (DE1094,1096,1112) did not include restitution which was calculated later. Each defendant filed a notice of appeal from his original judgment (DE1098,1111,1118) as well as from his amended judgment.

Statement Regarding Appellants' Adoption of Other Briefs

In preliminary sections of their briefs ((Takhalov Brief ("TBr."):i-iv; Feldman Brief ("FBr."):iv-v); Pavlenko Brief ("PBr."):x)), each Appellant attempts to adopt by reference some of the arguments raised by other Appellants. The government objects in part. Fact-based sufficiency claims are unique to each defendant and cannot be adopted. *United States v. Cooper*, 203 F.3d 1279, 1285 n.4 (11th Cir. 2000); *United States v. Khoury*, 901 F.2d 948, 963 n.13 (11th Cir. 1990). For the same reason, fact-specific rulings affecting an Appellant in a markedly different way than his co-Appellants cannot be adopted by reference. *See id.; United States v. Stouffer*, 986 F.2d 916, 921 n.4 (5th Cir. 1993). That is particularly so here for issues such as alleged multiple conspiracies and individualized sentencing findings such as obstruction-of-justice and restitution. Pavlenko's brief also contains an entire section arguing an issue relating only to Takhalov (the sufficiency of Takhalov's conviction on Count 38) (PBr.:43-45). Takhalov himself does not brief this issue or even expressly seek to adopt it. We have therefore only addressed issues either fairly developed or properly adopted in the briefs. *See also Singh v. U.S. Att'y Gen.*, 561 F.3d 1275, 1278 (11th Cir. 2009) ("[A]n appellant's simply stating that an issue exists, without further argument or discussion, constitutes abandonment of that issue and precludes our considering the issue on appeal.").

Statement of the Issues

I. Whether the indictment properly charged, and the government proved, wire fraud offenses, where the statute reaches "any" scheme to defraud and the defendants' scheme – deceiving patrons and credit card companies at sham Miami Beach "nightclubs" – easily met that definition.

II. Whether the evidence was sufficient.

III. Whether the court abused its discretion in denying proposed defense jury instructions.

IV. Whether the government's proof on Count 1 showed Pavlenko's participation in multiple conspiracies as opposed to the single charged conspiracy.

V. Whether the court clearly abused its discretion in denying defendants' severance requests.

VI. Whether the court clearly abused its discretion by admitting various evidence against defendants during trial.

VII. Whether the court abused its discretion in managing the courtroom during closings and in handling jury notes.

VIII. Whether the court erred at sentencing.

IX. Whether the court clearly erred in deciding restitution.

Statement of the Case

1. Course of Proceedings and Disposition in the Court Below

On April 14, 2011, a Southern District of Florida grand jury indicted defendants Stanislav Pavlenko, Isaac Feldman and Albert Takhalov, along with numerous co-conspirators, for crimes arising out of an international fraud scheme they orchestrated during 2009-2011 at purported nightclubs in Miami Beach, Florida (DE102). Counts 1 through 29 of the superseding indictment (DE396,953) charged Pavlenko, Feldman, Takhalov and others with a series of offenses at three of the purported nightclubs, called Caviar Bar, Stars Lounge and VIP Diamond Club (collectively "Simchuk Clubs") (DE953). These charges included conspiracy to commit wire fraud (18 U.S.C. §1349, Count 1), substantive wire fraud (18 U.S.C. §§1343 and 2, Counts 2-27), and conspiracy to commit money laundering (18 U.S.C. §1956(h), Count 29).

Counts 30-40 charged Takhalov and others – but not Pavlenko or Feldman – with similar violations relating to four different purported nightclubs that Takhalov subsequently operated on his own, called Tangia Club, Club Moreno, Nowhere Bar and Steel Toast (collectively "Takhalov Clubs") (DE953). Takhalov's additional violations included conspiracy to commit wire fraud (Count 30), substantive wire fraud (Counts 31-37), conspiracy to defraud the U.S. Department of Homeland

Security, U.S. Customs and Border Protection ("DHS") (18 US.C. §371, Count 38), conspiracy to commit money laundering (Count 39), and bribery (18 U.S.C. §201, Count 40). Each of the substantive wire fraud counts in the indictment except one related to a specific fraudulent credit card charge made on a customer's account at the clubs.

Pavlenko, Feldman and Takhalov pled not guilty. Almost all of the other charged conspirators who were not fugitives pled guilty, including Alec Simchuk, leader of the first conspiracy involving the Simchuk Clubs and creator of defendants' scheme (DE732,733). Simchuk, despite being in Russia at the time of indictment, returned to the United States and testified against the defendants (DE1125-29).

Trial began on October 9, 2013. The jury started deliberating on December 13, 2012; on December 20, 2012, it returned a verdict convicting the defendants on some counts and acquitting them on others (DE954,956,957).[2] Specifically, the jury convicted Pavlenko of conspiracy to commit wire fraud (Count 1); eight of his substantive wire fraud counts (Counts 6-8, 13, 18-21); and conspiracy to commit money laundering (Count 29). The jury convicted Feldman of conspiracy to

[2] Also going to trial were Kristina Takhalov (Albert's wife) and Siavash Zargari, an accomplice in the Takhalov Clubs. Kristina pled guilty during trial (DE1138:5-16). Zargari was acquitted (DE955).

commit wire fraud (Count 1) and to commit money laundering (Count 29). The jury convicted Takhalov of both of his conspiracies to commit wire fraud (Counts 1 and 30); some of his substantive wire fraud counts (Counts 34, 35, 37); both of his conspiracies to commit money laundering (Counts 29 and 39); and conspiracy to defraud DHS (Count 38).

Each defendant filed post-trial motions for judgment of acquittal and new trial (DE107-09,1069). The government opposed them (DE1022,1080), and the court denied them (DE1047,1086).

The Probation Office prepared Presentence Investigation Reports (PSIs) for each defendant, in response to which the defendants filed objections (DE1054,1075) and the government responded (DE1079). The PSIs set each defendant's base offense level at 7, and enhanced each defendant for loss: 12 levels for Pavlenko and Feldman based upon losses of $200,000-$400,000; and 14 levels for Takhalov based upon loss of $400,000-$1 million. The PSIs also imposed additional enhancements discussed below.

At Pavlenko's sentencing hearing, the court overruled his objections to its choice of Guideline, the amount of loss, his three-level enhancement for being a manager/supervisor in the offense (USSG §3B1.1(b)), and his two-level enhancement for obstruction of justice based upon his perjury when testifying in

trial (USSG §3C1.1) (*id.*:7-33). The court also imposed a two-level enhancement for Pavlenko's violation of 18 U.S.C. §1956 (USSG §2S1.1(b)(2)(B)) (*id.*:36-46). Pavlenko's final range was therefore 63-78 months. After considering the 18 U.S.C. §3553 factors, the court sentenced Pavlenko to 78 months' imprisonment, three years' supervised release, and later, after a separate hearing, $6,491.60 in restitution (*id.*:63; DE1220).

At Feldman's sentencing, the court overruled his objections to the amount of loss and to obstruction, citing his "numerous" instances of perjury testifying at trial (DE1181:22-23). The court applied a two-level increase for the large number of victims (*id.*). The court also imposed two-level enhancements under USSG §2S1.1 for Feldman's violation of §1956 and for sophisticated money laundering (*id.*:23). Feldman's final range was 70-87 months' imprisonment. After addressing §3553, the court varied upward to impose a 100-month sentence (*id.*:35-36). The court also ordered three years' supervised release and restitution of $15,498 (DE1194).

At Takhalov's sentencing, the court overruled his objections to the PSI's enhancements for loss, being a leader/organizer, vulnerable victims, number of victims, obstruction, and sophisticated means (DE1161:14-16). Takhalov's adjusted range was therefore 135-168 months (*id.*). With respect to the obstruction enhancement, the court found that Takhalov's trial testimony was "replete with

perjury" (*id.*:15). After addressing the §3553 factors, the court sentenced Takhalov to 144 months' imprisonment on Counts 1, 29, 30, 34, 35, 37 and 39, and 60 months (the maximum) on Count 38, all running concurrently; it also imposed three years' supervised release and ordered $68,757.57 in restitution (*id.*; DE1203).

Each defendant filed a timely notice of appeal (*supra*:v). They remain incarcerated.

2. Statement of the Facts

A. Overview

The defendants imported and established in the United States a fraud scheme that their co-conspirators originated in Russia and Eastern Europe.[3] This was not "grey area business practice" (TBr.:33) – it was a well-organized scam that harmed victims financially, emotionally, and in some instances, physically.

The conspirators rented space in Miami Beach, Florida and used female employees, posing as tourists, to lure unsuspecting patrons into purported "nightclubs" in order to charge victims fraudulently for alcoholic beverages and other unauthorized services *(infra*:12-20). The female employees were young women that the conspirators brought here illegally from Eastern Europe (where they

[3] (DE1121:140-46; DE1125:139-42; DE1126:23; DE1135:48-49).

had participated in the same plots) to serve as "B-Girls" (*infra:*13*).*[4] The clubs were not open to the public except by accident, and operated solely as a front for this fraud (*e.g.*, DE1122:8,58; DE1134:250-51). There is no shortage of wait staff in Miami Beach; the defendants brought the B-Girls here precisely because they are trained professional fraudsters (DE1125:151; DE1135:48; DE1154:45). But critically, the scam was not merely failing to disclose to potential customers the girls' relationships to the clubs: at these clubs, conspirators would order multiple bottles of champagne without victims' knowledge, mislead victims about the price of alcohol, forge victims' signatures on credit card receipts, and process unauthorized charges on victims' credit cards, reaping the proceeds (*infra*:13-20). The scheme caused hundreds of thousands of dollars in losses and harmed scores of people, most of whom were visitors (*infra*:13,78-80,89).

B. The Defendants

Pavlenko was born in Russia before coming to South Florida and gaining experience in offshore credit card services, making him essential to this scheme (DE1146:108-10). Pavlenko became an investor and partner with Simchuk at one of the first sham clubs, Caviar Bar; Pavlenko found the location and was responsible

[4] Women employed to solicit drinks from customers at a bar are known as "bar girls" or "B-Girls" (DE1134:263-64). Florida Statute §562.131 prohibits employees of a bar from soliciting customers to purchase drinks for them.

for its operations (DE1122:14; DE1125:175). He picked up B-Girls at the airports when they arrived from Eastern Europe (DE1121:162-68); rented the house where the B-Girls stayed (DE1125:39-43; DE1131:202-03; GX139,160); purchased B-Girls' tickets (DE1153:224-25); gave them instructions on who to target and how to lure victims to the clubs (DE1125:160-61); advised them about which credit cards to accept and in what amounts (DE1122:16; DE1131:200); told them what legitimate hotels were good spots to hunt for victims (DE1125:160-61); and wrote checks from which the girls would be paid (DE1126:23; GX102). Pavlenko also dealt with the credit card terminals and the credit card providers investigating apparent fraudulent charges (DE1125:186,225; DE1148:260; *infra*:18-22). Pavlenko knew the entire scheme, knew it was not legitimate, and kept tabs on other clubs that his co-conspirators opened later.[5]

Feldman was an investor, partner, and principal architect of the money laundering operation at two subsequent clubs, Stars Lounge and VIP Diamond Club.[6] In 2009, facing financial difficulties, he approached Simchuk with the idea to open a club like Caviar and make quick money (DE1125:198-202;

---

[5] (DE1121:182; DE1125:15-58,166-67,191,228; DE1126:233; DE1129:100 -01, 106,109; *infra*:51).

[6] (DE1122:41-42; DE1123:178-79; DE1129:93-94; DE138:34,119; DE1135:31; GX461A,464A).

DE1129:24,218; DE1126:40; DE1138:119,187-91). The financial headquarters of Stars and VIP was Feldman's office, All Nations Realty, in nearby Sunny Isles Beach, where binders of complaints from customers and disputes with the credit card companies were kept and the conspirators would meet.[7] To cloud his role, Feldman used his sister as bookkeeper, and put Simchuk's mother, who had no involvement at all, on the clubs' Articles of Incorporation (DE1129:53,198,213;DE1130:23-24).

A Russian speaker, Feldman was Simchuk's "working partner" (DE1129:93-94,109), and knew the details of the scam, having discussed them with Simchuk firsthand and also through close contact with Takhalov.[8] Although less involved in day-to-day activity inside the clubs than his co-defendants, Feldman spent time with the B-Girls around the clubs and at his office.[9] He also hired staff; helped coordinate the B-Girls' travel, housing and recruitment; drove them to bars to meet victims; sent money overseas; and discussed tactics for winning credit card

---

[7] (DE1125:51-90, 223-37; DE1129:53; DE1131:14,24-25,118; DE1134:219; DE1145:212-13; GX4,6,8,10,12,30A,315).

[8] (DE1124:138-40; DE1125:205-09,213,217-18; DE1126:20-35,43; DE1129:701130:128; DE1130:128,162-68; DE1131:13,24-31,68,209; DE1135:54; DE1136:32-33,127-29; GX328,421A,462A-464A,539,581).

[9] (DE1122:48; DE1125:212,238; DE1131:122; DE1132:232).

disputes.[10] Simchuk told the staff at Stars: "Isaac is your mother, is your father, you listen everything what Isaac says" (DE1126:26). It was Feldman's idea to bring on a corrupt off-duty police officer to provide security at these clubs and ensure patrons signed their credit card receipts, forcibly if necessary (DE1126:46-47; DE1128:30; DE1134:245-47).[11] In a September 2010 meeting at Stars with fellow conspirators, Feldman insisted "I am the boss" (GX464A:5).

Takhalov became involved in the Simchuk Clubs as a credit card processor, responding to credit card companies whose customers complained about being defrauded (DE1122:59,185; DE1124:52).[12] Takhalov described himself as an

---

[10] (DE1122:48-51; DE1123:56; DE1125:208,240; DE1126:22; DE1127:212-45; DE1129:86-88; DE1131:14-19,110; DE1150:90-95; GX6,39,60,100,111,453:22,461A-464A).

[11] Feldman wanted an officer who would not be hired through official channels, would be paid under the table, and would not dig closely into the scheme (DE1134:247); so too, in turn, did Takhalov (DE1136:27,39; GX443A-1,444A-2). What they got was Miami Beach Detective Luis King, who starting in August 2010 assisted the investigation in an undercover role especially at Stars and Tangia (DE1134:242-49). In his role, King prevented customers who were not accompanied by B-Girls from entering the clubs and ensured that victims paid their bills by identifying himself as an officer and telling victims that they were required to pay first/complain later under Florida's Innkeeper's statute (DE1134:250-51; DE1135:56). King made audio and video recordings, especially of Takhalov and Feldman, that were admitted as key evidence during his testimony.

[12] The scheme relied upon the conspirators' knowledge of how credit card transactions are processed (DE1142:95-100). When a customer successfully disputes a transaction or claims fraud, funds originally sent to the merchant by the credit card provider as payment for the transaction may be "charged back" and

expert in handling chargebacks (DE1136:15; GX440,444-2) and instructed his co-conspirators on tactics to avoid them, such as limiting the number of times a single card was charged and varying the frequency or amount of the charges.[13] A Russian speaker, Takhalov met with Simchuk, Pavlenko and Feldman to discuss the operation (DE1137:92-93; DE1138:53). After learning how the operation worked, Takhalov became manager of Stars, supervising the B-Girls and handling the finances.[14] Believing he could make more money on his own, Takhalov then started up his own clubs using the same model, hiring B-Girls and renting out spaces for Moreno, Nowhere, Tangia and Steel Toast.[15]

---

returned to the provider (*id.*). If, as happened here, the merchant had spent the funds or did not have enough cash to cover the chargeback, the credit card provider absorbed the loss (*id.*; *see, e.g.*, DE1211:13).

The conspirators would use a variety of techniques to minimize the risk that credit card companies would suspect fraud or impose chargebacks. For example, as Feldman explained in Takhalov's presence, "we charge a thousand twenty cents, [then] next one charge a thousand nineteen cents" to eliminate the appearance of accidental double charges to the victim's card (GX462A:3). Conspirators would also split a single charge into two charges to make it seem smaller, or run a victim's card one bottle at a time to prevent the total bill eventually running so high that it would "max out" the card and the entire night's effort be wasted (GX45,66,69).

[13] (DE1121125:220-23; DE1128:192; DE1131:212; DE1136:05-06; GX402A,408A,414A).

[14] (DE1125:110,220; DE1126:42-43; DE1136:24; DE1151:188; GX404A,418A,444A). He also managed VIP (GX8JJ,8V).

[15] (DE1123:109; DE1124:133; DE1129:109; DE1131:101,223-27,242;

Takhalov referred to himself as the "f--ing boss" at the second set of clubs and told the B-Girls that he was their "owner" (DE1132:40-41; DE1134:60-61,91; GX453A). Takhalov also said that even Simchuk could not "f--- with" him because "I handle all the financing. Everything goes through me. [] Absolute everything" (GX449A:16, attached as Ex. 1). Takhalov arranged and paid for the B-Girls' travel, even going personally to a Russian-speaking travel agent to book tickets (DE1153:215-24; DE1136:68-72). He also handled the extraordinary number of chargebacks occurring at the clubs directly as a result of the fraud (GX12L,60,136,411A,435A,444A-2).

C. The Scheme to Defraud

The scheme at all the venues was virtually identical (DE1131:130; DE1138:179; *infra*:51). The defendants' plan required lounge space on Miami Beach that could be presented to customers as a genuine nightclub. To that end, organizers invested their own capital or obtained financing from partners here or overseas, filed for liquor and business licenses, and acquired merchant accounts and credit card terminals for inside the clubs (*e.g.*, GX127-130).

DE1132:18-27; DE1134:9-10,86,90,92, 105,107,140,214-15; DE1135:31; DE1136:54; GX132).

1. Deception to Bring B-Girls to America

To staff the clubs, the defendants brought Russian-speaking women to Miami Beach, primarily from Latvia or Estonia, where many had participated in similar schemes with Simchuk and other conspirators (DE1122:8,58; DE1131:94-98; DE1136:53). These B-Girls typically obtained permission to enter the U.S. by submitting an application via DHS's automated Electronic System for Travel Authorization (ESTA) (DE1124:146-55;DE1131:104-08). The girls declared falsely on their applications that they were not entering the United States to work or for a criminal purpose (*id.*; DE1126:67-68;DE1131:112). Although the defendants denied instructing the girls to lie on the ESTAs, Takhalov was convicted of that offense, and all of them knew at bare minimum the girls were here illegally (DE1136:58; GX60,453A,459A).

2. Deception of Customers

B-Girls would hunt in pairs for victims late at night at legitimate hotels and bars on South Beach (DE1131:131). The targets were wealthy-looking males, preferably tourists or traveling businessmen who would be less likely to stay to dispute fraudulent charges (DE1135:8). Shortly after introducing themselves, B-Girls tried aggressively to get customers drunk, so the men would be incapacitated by the time they lured them back to a club (DE1136:80; GX457). During their

initial conversations, B-Girls "deceiv[ed] the clients" by concealing their relationship to the clubs (DE1122:78,118; DE1126:94,152).[16]

Once they persuaded a victim to visit a club, the girls would send text messages to co-conspirators who would prepare the space for arrival of the targets (DE1129:103; DE1131:134; GX61). Bouncers typically would not let customers inside unless they were male and accompanied by a B-Girl (DE1122:58; DE1131:139-41,163; DE1134:209-10; DE1135:25).

Upon arriving, B-Girls continued to pretend to be unaffiliated with the club and immediately ordered, or encouraged the male victims to order, multiple bottles of champagne or wine from complicit bartenders and managers who pretended not to know the girls. The goal was to produce a bottle, and charge the customer for it, every 15-20 minutes (DE1131:148-49). Alcohol was charged at wildly inflated prices, bearing no resemblance to what the conspirators paid for it or what any rational, conscious person would pay even in a legitimate nightclub; for example, a bottle of Chandon Rose champagne, purchased for $22, was sold for $1,091 (GX66,75); Cook's Brut, $7.99 at the drugstore, was sold for $300 (DE1122:153-54; *see also* GX69, GX65D, GX463A (Takhalov describes charging $300 for a nine-dollar bottle). Many bottles pushed by the girls were charged at $2,000 or

[16] Two of these B-Girls, Julija Vinogradova (DE1121-24) and Marina Turcina (DE1131-34), testified for the government after pleading guilty.

more (*e.g.*, GX66; *infra*:26-28). On top of liquor charges, the conspirators added a mandatory 20% "service charge" and nine percent "tax" (DE1122:118-25).

Victims were not told the prices (or, if they insisted, were told incorrect prices) of the alcohol, and were not informed about the tax or gratuity (DE1131:116,145-46). Although the clubs usually had menus displaying prices, B-Girls and managers went to great lengths to ensure that the customers did not see them, taking the men off to dance, shrouding the clubs in darkness, and positioning the menus behind fixtures or plants.[17] The menus were in place so the clubs could point to them later when customers or credit card companies disputed a bill (DE1131:143-44). Customers who did manage to see the menus invariably left (DE1124:135; DE1125:28; DE1129:98).

B-Girls continued to order bottles on behalf of the victim, often without his knowledge, trying to intoxicate him further (DE1131:137). If a victim was not sufficiently intoxicated, the girls would produce shots of hard liquor kept illegally under the counter, including vodka, to impair him further (DE1122:9; DE1125:141). Some victims felt they were drugged as well (DE1129:143; DE1140:83-94; DE1141:125,146; DE1143:76-77).

---

[17] (*id.*; DE1122:79; DE1125:192; DE1129:98; DE1135:28; GX414A,430A,430A-1,433A).

The entire operation, as devised by the conspirators, depended upon lies and deception (DE1125:181). The B-Girls, with defendants' knowledge, concealed that they worked for the clubs and that they would be receiving a share of the profits (DE1122:78; DE1126:152; DE1134:217; DE1136:83). But that was the tip of the iceberg: the conspirators defrauded customers in other many ways, including:

- Insisting that the girls were simply visiting Miami on vacation (DE1121:167-68,180,182; DE1122:57; DE1131:136,180-81; DE1141:195; DE1145:227). Indeed, Pavlenko told the girls to say that they were just "Russian tourists … from Moscow [on] vacation" because Americans "are fools" (*id.*).

- Concealing how much customers were drinking, instead surreptitiously pouring out drinks and contents of the bottles into vases, plants, or ice buckets, or simply onto the floor, so that more alcohol could be brought, whether ordered by the victim or not, and at night's end the number of bottles would be greater (DE1121:185; DE1125:167-71; DE1129:100; DE1135:17,21,109; DE1136:21,78; DE1131:134; GX457A).

- Lying about what the customers were drinking, by mislabeling cheap alcohol as something different or putting vodka in beer initially so the customer would get drunk more quickly (DE1122:10,122-24; DE1128:251; DE1131:13,141-42,147).

- Opening bottles the customer did not order and charging him for them (DE1126:35; DE1131:143; GX430A-2,439A-2).

- Stealing bottles for which the customer was charged (DE1135:35-38,108-110; DE1136:106; GX414A).

- Lying affirmatively about prices (DE1135:101; DE1145:154-204; GX430A,430A-1).

- Concealing the amount due on bills presented to the customer for signature, using white paper to cover the first number (so a charge of "$1150" would appear as "$150") (DE1134:218).

- Charging gratuities and purported food and beverage taxes even when no food or beverage was purchased (DE1131:186-88).

- Falsifying receipts, not only about the type and quantity of liquor, but also to create a misleading record in the event of a chargeback – for example, stating that the victim brought guests when none existed (DE1131:196), or stating "you were served by Jane" or "Tony" or "Anfre" when no such servers existed (*id.*:185-86,196-97).

- Changing the order to increase the kind or amount of alcohol requested (DE1122:124-25,230).

- Charging the customer for the girls' drinks, when in fact the girls would empty their glasses and substitute water or Red Bull (DE1122:125; DE1131:134; DE1135:21; DE1136:18,21,78; GX441A,457A)

Simchuk and the cooperating B-Girls Turcina and Vinogradova testified that the defendants knew what was going on inside and how their employees ran up the fraudulent bills, consistent with the goal of quick money (*see, e.g.*, DE1121:182 (Vinogradova: Pavlenko "knew what we were doing"); DE1124:138-39 (Feldman was present for meetings where the staff discussed "what was done and what kind of mistakes … how to do better … basically all the previous night and their clients, everything was discussed"), 141 (Takhalov was present when customers' signatures were forged); DE1125:205 (Simchuk testifies "yes" when asked "Did Feldman see how the operation was being conducted at VIP?"), 214 (Simchuk told Feldman at

Stars "we're lying to the customers but we're not lying to our own people"); DE1126:42 (Simchuk with Feldman present taught Takhalov "all the tricks" from Europe); DE1129:70-71 (Turcina: Feldman knew the girls were acting like "monsters" toward the customers); GX441A:6-7 (Takhalov admits: "the girls, what they do is, they take a sip, they go, they dump it, come back with an empty glass. They know exactly what they are doing. They know how to talk to clients, they know what to tell them, know what buttons to press")).[18]

3. Deception of Credit Card Providers

Staff at the clubs made sure to obtain each victim's credit card and driver's license and make copies of the documents to use as evidence when, as fully expected, the customer awoke the next day and realized he had been defrauded (GX407). They also took photographs of the victims with the B-Girls (DE1131:200-01) or recorded events on surveillance cameras to use in disputes (DE1131:143-44; GX402A,432A).

Depending upon the customer's condition at the time, the conspirators used a variety of tactics to get his signature on a receipt. Some victims were so intoxicated that they could not stand and were not physically competent to sign receipts

[18] (*See also* DE1122:19-20; DE1125:148-49,164-71; DE1126:27,32-35; DE1128:58; DE1131:131,200,205; DE1136:21,40-49; DE1151:188; DE1134:213-14; DE1135:54-55; DE1136:40-49; GX405A,422A,443A,447A,457).

(DE1128:252; DE1129:194; DE1136:20-21). Those victims were propped up long enough to obtain signatures, or to nod for a camera (DE1126:35-39; DE1136:109-11). One victim was forced to sign while collapsed naked in a bathroom; he was then handed a bottle of champagne as the girls walked him out before they snatched it back (charging him for it anyway) (DE1135:35-38). Another victim was so incapacitated that the girls spoke to him in "baby talk" to get him to put a signature on a bill (GX415A, attached as Ex. 2). If the victim were still sober enough to object, conspirators would insist that that the bar had video of him ordering the alcohol, and demand that he pay the bill or local police would be called and the victim would be arrested (GX425A,430A-1,433A; *supra*:10 n.11). When all else failed, conspirators simply forged the victim's signature outright or ran his card without his signature; both Pavlenko and Takhalov encouraged this (DE1124:141-44; DE1125:164-65; DE1129:139,168; DE1131:138; DE1134:138). One victim at Caviar was charged while asleep, after the conspirators photographed him shirtless and collapsed next to B-Girl Vinogradova, who had her thumb up in the photo to signify "good job" at getting him "so drunk," because "his credit card was at the bar" and "when he is drunk he spends money easily, especially in such condition" (DE1121:187-88) (GX50A, attached as Ex. 3)

The conspirators continued to make false statements to credit card companies in order to keep funds when confronted with demands for chargebacks. For example, in Spring 2010 AmEx contacted Pavlenko about a disputed $43,000 charge at Caviar for victim John Bolaris, and asked Pavlenko about a photograph (GX211I) from that night showing the victim sitting at Caviar with a woman (GX223; attached Ex. 4, redacted). That woman was Pavlenko's B-Girl, Turcina, and Pavlenko actually got pictures from her phone (DE1131:200-01). Yet rather than disclose Turcina's identity and connection to the club, Pavlenko replied to AmEx with an e-mail implying that he did not know the woman's name or contact information and claiming falsely that Bolaris brought "company" with him (GX223; DE1147:50; DE1142:71).[19]

On those occasions when the charges went through and funds from the credit card companies hit the clubs' bank accounts, at least temporarily, the B-Girls typically received 20% of the proceeds as salary (DE1122:72; DE1136:89,119-20). Complicit managers and bartenders received 5-10% (*id.*; DE1125:229). The remainder was distributed to the organizers and investors overseas (DE1134:213-14).

---

[19] This e-mail was charged as an additional substantive wire fraud offense against Pavlenko in Count 21.

D. The Clubs

The scam operated at multiple clubs operated by the defendants at various times during late 2009 into early 2011, all within a small area of South Beach. As Turcina explained, the strategy was: "'Always change locations, so you come to a new place, you hit it hard for two months, then you go find a new place'" (DE1132:14-15).

1. Simchuk Clubs

Simchuk was the linchpin of the "Simchuk Clubs" that were the focus of the allegations in Counts 1-29 of the indictment. Initially, Simchuk and Pavlenko opened a bar together in late 2009 called Club Dolce, which operated legitimately at first but did not make money; Pavlenko then told Simchuk that he wanted to use the fraud model honed by Simchuk in Eastern Europe (DE1125:157-58).[20] The pair

[20] As Simchuk described it:

> [At first] I told the managers ... to tell the girls … don't lie to the guys[.] Pavlenko [was not] satisfied with how the club was operating at first [.] He was telling me, … "I'm seeing like $100 a day … I don't need this change … that's not kind of business I want."
>
> I told him, "Okay. At this point, like I can say to the managers … just operate the way they do it in Latvia and Estonia, but we could have many problems. … We're going to end up in jail." And he told me, "We're not going to end up in jail … if something happen, we're gonna say we told the girls to tell the customers they're working for the club. So, come on. I need the money."

opened Caviar Bar exclusively for that purpose in March 2010; they operated the club together before Simchuk traveled to Europe and Pavlenko ran it on his own.[21]

Caviar was formed under the corporate name Rose Entertainment, LLC, which Pavlenko created and controlled (DE1147:155; GX102,128). Using Rose Entertainment, Pavlenko obtained the liquor license, credit card merchant accounts, and bank accounts (*see id.*). To distribute salaries to the B-Girls and staff and hide proceeds of the scheme (DE1125:166), Pavlenko formed a shell company, Silvane Public Relations, named after a club manager (DE1125:176-77). Silvane did no public relations and existed purely to funnel money and hide payments to the B-Girls (DE1131:204; DE1143:102-03; DE1147:161). Proceeds would typically originate from credit card sales, go to Rose Entertainment, then to Silvane, from which they would be distributed as profit or as salary to the B-Girls and other complicit staff (DE1143:103,138-42; GX102). Pavlenko sometimes paid B-Girls and managers directly from Rose Entertainment (DE1134:212-13; GX102). In May 2010, one of Caviar's merchant accounts was put on hold due to excessive chargebacks (DE1142:115-16). Operations ceased fully at Caviar in June 2010, largely because AmEx shut down Caviar's merchant accounts and due to a large

---

(DE1125:157-58). Takhalov also planned a cover story, at least at Stars (GX441A:3).

[21] (DE1122:14,27; DE125:166-67,174-75,194,218; DE1126:135; DE1131:205).

volume of chargebacks from victims claiming unauthorized and fraudulent activity on their cards (*id.*).

Meanwhile, in Summer 2010, Feldman approached Simchuk and asked him to invest in a South Beach start-up club called VIP (DE1125:198-202; DE1129:24-25). Simchuk became an investor, and at Feldman's request Simchuk brought his B-Girl contacts and staff to VIP (DE1125:198-202). Simchuk told Feldman the same things about the operation he had told Pavlenko (*id.*:202). VIP also became "exactly the same operation," according to Simchuk (*id.*:206; *see also id.*:202 & 217-19 (VIP was a "fraud operation")). Because Simchuk at first did not want to bring all his B-Girls from abroad, Feldman initially tried to recruit them locally; Simchuk and Feldman eventually arranged for girls to be brought here from Latvia and Estonia in the same manner and under the same false pretenses as at Caviar (*id.*:200-01, 205-06). Takhalov, Feldman's acquaintance, was responsible for the card terminals at VIP and subsequently ran daily operations (*id.*:203,220).

Around the same time, Simchuk, Feldman and other partners formed a third club, Stars, where Caviar had been (DE1125:18-36; DE1126:18-20; DE1129:23; GX100). Takhalov came on board to run the credit cards (DE1129:203), later becoming the manager and then, with Feldman, running the club when Simchuk left for Europe in late 2010 (GX420A; DE1126:57). Simchuk taught Takhalov, in

Feldman's presence, how to operate Stars just like Simchuk's clubs in Europe (DE1126:42-44). Simchuk eventually told Feldman to close VIP and move all the B-Girls to Stars (DE1125:217). By October 2010, within months of opening, Stars was shut down because of "outrageous[ly]" excessive chargebacks (DE1150:218; GX12).

Feldman used a shell company called Ieva Marketing (named for a club manager, Ieva Koncilo (DE1136:76)) to "wash the money" and pay the B-Girl's salaries for VIP and Stars, much as Pavlenko had used Silvane at Caviar (DE1125:213-16,240). Records relating to these clubs were kept at Feldman's business, All Nations Realty, under the eye of Feldman's sister and book-keeper, Alex Burrlader (who also kept club documents for him on a thumb drive at her home, GX30A) (*supra*:8-10). Burrlader would write checks to Ieva Marketing, after which conspirators would cash the checks and pay the salary to the B-Girls (DE1125:229-30,240-41; DE1129:198,216; DE1136:24; DE1143:107-31). Takhalov helped distribute these payments to the girls (DE1131:24-31). Feldman also sent wire transfers overseas to Stars' partners in Latvia, under the name of his entity "Feldman Global Trading" or via Burrlader or All-Nations Realty (DE1125: 234-36; DE1126:17-18; GX10A,10N,12V).

2. Takhalov Clubs

Meanwhile, Takhalov took the initiative to set up his own clubs using Simchuk's model and sources of B-Girls, but without Simchuk himself (GX439A,440A,444A-2,453A). Takhalov would mislead customers about his relationship to these clubs, telling a victim once that he would "lose his job" if the victim did not pay $300 for a bottle that the customer did not order (DE1136:98-99; GX406A). The four clubs operated from approximately October 2010 until defendants' arrests in April 2011 (DE1136:55,55,107,123-24). Takhalov's merchant accounts at these clubs were shut down repeatedly by credit card companies for excessive chargebacks (DE1131:152; DE1132:6-8; DE1142:17-19,119,190-91). Indeed, Takhalov complained on the tapes that most of his time was spent addressing chargebacks (*e.g.*, GX405A). Takhalov concealed his payments to the B-Girls in part by setting up a bank account in the name of a bar manager, Valeria Matsova, who distributed the money for him (DE1132:21-24; DE1143:131-32,159-60; GX105,106).

E. The Victims

As Takhalov said in an undercover recording, "when they see the same story over and over, you know, it cannot be the customer, it's the merchant" (GX405:8). Testimony of the victims bore that out.

Michael Anderson, an executive from Pennsylvania, visited Miami Beach for business in March 2010. While there, he met two B-Girls who got him drunk and then, late in the evening, enticed him to visit Caviar (DE1129:113-194). The girls did not disclose their relationship to the club. At Caviar, he consumed little or nothing else, but nonetheless his credit card was charged over $6,000. According to credit card records, Anderson was charged initially for two bottles of champagne, then charged $1,635 for a third bottle of champagne at 3:14 a.m., $2,387.10 for a bottle of champagne 25 minutes later at 3:39 a.m., and then $2,469.50 for a fifth bottle of champagne 30 minutes after that, at 4:09 a.m. (Counts 6-8). Anderson testified that long before those purported purchases he was not sober enough to sign anything knowingly, and that the signatures which appeared on receipts for his supposed purchases at Caviar were not his.

Another victim at Caviar, John Bolaris, was defrauded for approximately $43,000 (DE1131:177-201; DE1141:10-55). During the evenings of March 28-29, 2010, Bolaris, a Philadelphia weatherman, was approached at the Delano Hotel by Turcina and another B-Girl. After drinking with him, the pair brought Bolaris to Caviar. Bolaris did not remember ordering any liquor at Caviar but did become woozy. He awoke the next day in his hotel room with an unknown painting and missing cash and sunglasses. Offering to help retrieve his sunglasses, the B-Girls

met him and eventually took him back to Caviar the next night, where he again became woozy and awoke later, once again, back in his hotel. A few days after, Bolaris learned that his AmEx card had been charged multiple times without his authorization. One of those charges was for $2,354.24 at 4:50 a.m. on the first night (Count 13), purportedly after he already had incurred over $10,000 in liquor and other charges during the preceding 90 minutes alone. Another series of charges from the second night occurred between 3:48 a.m. and 4:57 a.m., during which time – if defendants were to be believed – Bolaris ordered $15,000 of liquor (Counts 18-20). None of these charges were authorized; for example, although Bolaris does not drink champagne, he was charged on the first night for two $1,000-plus bottles 16 minutes apart, and then a third 15 minutes later. The second night he was charged for two more bottles of champagne 15 minutes apart. The receipts did not contain his signature.

Alan Weitzman met two B-Girls at a legitimate club in Miami Beach in February 2011 (DE1143:14-92). Shortly after, the females suggested going to one of Takhalov's clubs, Tangia, where Weitzman believes he was drugged. Once awake the next day, Weitzman found that he had two credit card slips in his wallet, one for supposed liquor purchases of $3,670.24 at 5:42 a.m. and another for $1,595.76 in additional liquor less than two hours later at 7:34 a.m. (Counts 34-35).

According to defendants' records, Weitzman supposedly consumed six bottles of champagne in that short time. His credit card company later informed him Weitzman that the club had attempted to charge him $16,000, but that charge was declined. The signatures on the receipts were not Weitzman's.

Around the same time, Brendon Ettinger and his roommate Jason Trafton were in Miami Beach on vacation (DE1145:154-204). Both are police dispatchers from Las Vegas. On the night of their visit, at approximately 10:30 p.m., they were at a legitimate bar after which two B-Girls enticed them to Tangia. Once there, the girls immediately ordered champagne. Ettinger inquired regarding the price of the bottle and was told by the manager (Takhalov's wife, Kristina, who pled guilty mid-trial) that it cost "799" (*id.*:162). Ettinger clarified that the price was $7.99 not $799.00 several times (*id.*). The champagne arrived, shortly after which the girls induced him to purchase a second bottle. Ettinger was then informed that his card had been declined because the charge–$1,097.09–now exceeded his balance. A stunned Ettinger complained, in response to which the manager agreed to drop the total bill to $915 but threatened to have them arrested and jailed if they did not pay that exorbitant amount. Ettinger ultimately had to use his roommate's credit card to cover the $915.

Jonathan Osborn, from Chicago, was billed $374.08 for a bottle of wine at Tangia that he did not order (DE1145:231-32; DE1146:8-17) (Count 37). A B-Girl took Osborn to Tangia, where he ordered a beer; the conspirators arranged for a bottle of wine to be sent over as well, which the girl drank and which she encouraged Osborn to take one sip of. Osborn tried to leave soon after, and when he saw the bill, tried to complain about the charge, but was threatened with arrest for non-payment (GX467A). Ultimately the conspirators forced Osborn to sign multiple receipts for the unauthorized charge.

Each of these victims testified at trial, but their experiences were not unique. The government called multiple other individuals who were defrauded in the same manner.[22] Despite defendants' claims during trial of many "satisfied" customers, two, at most, were ever found; in reality, hardly anyone brought to the clubs did not complain justifiably at the time, demand chargebacks, or feel deceived (DE1161:11).

[22] *See* DE1140:83-105 (Adams); DE1144:6-19 (Michalik); DE1142:20-28 (Lavanway). The government also presented evidence, using tapes and financial records, regarding additional victims who did not testify. *See* GX6,45,242,243,309A,430A,586-2. Although the jury did not convict on any substantive wire fraud counts relating to non-testifying victims, that evidence further supported the jury's conspiracy verdicts.

F. Defense Case and Perjury

Although the defendants called other witnesses, including Takhalov's ex-girlfriend, a B-Girl who previously pled guilty and admitted the entire scheme, the centerpiece of their case was their own testimony. Each of them took the stand to place blame on Simchuk and claim that he did not have any fraudulent intent or knowledge of fraudulent activity at the clubs. The district court, after the verdict (DE1160:17) and again at sentencing, found that all three defendants lied repeatedly before the jury, just as they had during the scheme itself. As the court said at Takhalov's sentencing:

> You said Mr. Simchuk is gaming the system. Well, you know what, I think Mr. Takhalov was gaming the system. … He took a chance and lied to the jury hoping that he could avoid responsibility for his crimes.

(DE1161:27-28). *See also* DE1219:62 (to Pavlenko: "I watched you for a day-and-a-half on the stand and even today you still refuse to accept the true facts of what really happened"; [you show] "total disrespect for the laws"); DE1181:36 (to Feldman: "[you] lied during the trial").

3. Standards of Review

Whether an indictment sufficiently alleges a statutorily-proscribed offense is reviewed *de novo*, although denial of a motion to dismiss an indictment is reviewed

for abuse of discretion. *See United States v. Seher*, 562 F.3d 1344, 1356 (11th Cir. 2009).

Sufficiency of the evidence is reviewed *de novo*. *United States v. Calhoon*, 97 F.3d 518, 523 (11th Cir. 1996). "[A]ll reasonable inferences and credibility choices [are made] in the government's favor." *Id.*

Denial of a motion for severance, and evidentiary rulings, are reviewed for "clear" abuse of discretion. *United States v. Chavez*, 584 F.3d 1354, 1360 (11th Cir. 2009); *United States v. Sterling*, 738 F.3d 228, 234 (11th Cir. 2013). Evidentiary rulings are subject to harmless error review. *United States v. Jimenez*, 224 F.3d 1243, 1250 (11th Cir. 2000).

Jury instructions are reviewed "*de novo* to determine whether the instructions misstated the law or misled the jury to the prejudice of the objecting party." *United States v. Felts*, 579 F.3d 1341, 1342 (11th Cir. 2009). Denial of a requested jury instruction is reviewed for abuse of discretion, subject to harmless error review. *United States v. Webb*, 655 F.3d 1238, 1249 n.8 (11th Cir. 2011).

Denial of a mistrial motion is reviewed for abuse of discretion. *United States v. Blakey*, 960 F.2d 996, 1000 (11th Cir. 1992).

"We review the reasonableness of a sentence for abuse of discretion using a two-step process." *United States v. Turner*, 626 F.3d 566, 573 (11th Cir. 2010).

First, this Court looks at whether the district court committed any significant procedural error, such as miscalculating the Guidelines. *See United States v. Pugh*, 515 F.3d 1179, 1190 (11th Cir. 2008). In examining the district court's Guidelines calculations, "[w]e review for clear error the district court's factual findings," and review *de novo* its application of law to the facts. *United States v. Zaldivar*, 615 F.3d 1346, 1350 (11th Cir. 2010). Second, this Court reviews whether the sentence is substantively unreasonable in light of §3553. *Pugh*, 515 F.3d at 1190.

A district court's determination of restitution is reviewed for clear error. *United States v. Valladares*, 544 F.3d 1257, 1269 (11th Cir. 2008).

When a defendant fails to preserve an issue below, this Court reviews for plain error. *United States v. Monroe*, 353 F.3d 1346, 1349 (11th Cir. 2003).

Summary of the Argument

The district court properly managed this two-and-a-half month trial, and none of the defendants' arguments shows reversible error.

Pavlenko, on behalf of all the defendants, essentially claims that the government failed to allege or prove viable wire fraud offenses, because the defendants' scam was not a scheme to defraud. This argument mischaracterizes the scheme alleged here, which was more than simply having the B-Girls deceive customers about their affiliation to the clubs (although that would have sufficed).

This scheme was predicated on deceit at every stage. The wire fraud statute reaches "any" scheme to defraud and this Court's precedent makes clear that the statute protects even foolish or negligent victims of an intentional fraud. As for the elements of the wire fraud and money laundering offenses, the government amply proved the defendants' guilt, relying upon testimony from three cooperating co-conspirators, undercover recordings of Takhalov and Feldman and the girls at work, and the defendants' own patently false testimony.

The court properly declined to give inaccurate and misleading jury instructions proposed by the defendants, including Pavlenko's theory of defense instruction. The defendants' more technical arguments about the charges also fail. In particular, Count 1 correctly alleged a single conspiracy regarding the Simchuk Clubs, and the money laundering charges against Takhalov did not merely duplicate his fraud charges.

The court did not clearly abuse its discretion by denying defendants' severance motions, made before and during trial on various grounds. Conspirators should normally be tried together, blame-shifting is not a basis for severance, and the court gave proper cautionary instructions.

The district court's evidentiary rulings were likewise not clearly abuses of discretion. In particular, evidence that Takhalov threatened Simchuk to keep him

from testifying was admissible to show Takhalov's consciousness of guilt. Defendants' hyperbolic claim of an ethnic "strategy" accusing the defendants of guilt because of their Russian Mafia ties, or simply because they are Russian, has no true foundation in the record; most of the limited evidence the court did admit in these areas was offered by the defendants themselves cross-examining Simchuk or during their own testimony.

The district court's sentencing rulings were also all thoughtful and correct. The court conducted a separate sentencing hearing, and a separate restitution hearing, for each defendant, and carefully considered the parties' written and oral arguments under the Guidelines and §3553. The defendants' objections to these rulings are legally and factually unpersuasive. In particular, the court properly enhanced the defendants' sentences, and varied upward for Feldman, because they committed perjury.

Takhalov quotes Shakespeare's *Merry Wives of Windsor* (TBr.:2), but the defendants would have been wiser to heed *King John*: "Whose tongue soe'er speaks false, not truly speaks; who speaks not truly, lies."[23] In its conception, and at every stage, defendants' scheme depended upon lies – online, inside and outside

[23] Act IV, Sc. 3.

the clubs, on the stand; to DHS, customers, banks, and a jury. The defendants' convictions and sentences should be affirmed.

Argument

I. THE INDICTMENT ALLEGED, AND THE PROSECUTION PROVED, A VIABLE SCHEME TO DEFRAUD.

Pavlenko's primary legal argument is essentially that the scheme in this case does not, on its face, come within the wire fraud statute. He also asserts that the proof of this scheme at trial did not show a viable wire fraud offense. He is mistaken.

Pavlenko's claim that the indictment fails to state a wire fraud offense is unpersuasive. The indictment alleged all of the elements of the charged offenses, including the wire fraud conspiracies and substantive wire fraud counts. The elements of wire fraud under 18 U.S.C. §1343 are (1) intentional participation in a scheme to defraud, and (2) use of the interstate wires in furtherance of the scheme. *See, e.g.*, *United States v. Maxwell*, 579 F.3d 1282, 1299 (11th Cir. 2009). To prove a wire fraud conspiracy, the government must show that the defendant knew of and willfully joined in the unlawful scheme to defraud; circumstantial evidence can supply proof of knowledge of the scheme. *Id.* A scheme or artifice to defraud "requires proof of a material misrepresentation, or the omission or concealment of a material fact calculated to deceive another out of money or property." *Id.*

This indictment expressly asserted a scheme to defraud predicated upon material misstatements and omissions relating to the clubs, it identified the types of deception practiced by the conspirators inside and outside the clubs, and it listed various credit card transactions and other wire communications to establish federal jurisdiction (DE953). These allegations on their face state a claim. That should end the debate. *See Seher*, 562 F.3d at 1356-58; *United States v. Hooshmand*, 931 F.2d 725, 735 (11th Cir. 1991) (validity of an indictment governed by practical, not technical considerations; question is whether it "conforms to minimal constitutional standards").

As defendants see it, however, the scheme alleged in this case was lying to customers about the B-Girls affiliations to the clubs, and such a scheme cannot support a federal wire fraud claim. Moreover, they say, customers got the benefit of their bargain, specifically an evening at a South Beach lounge in the company of a flirtatious woman. *See, e.g.*, PBr.:33 ("The 'fraud' at the core of the government's case is nothing more than seeking advantage from the customer's hope that being with an exciting or sexy companion he or she has found will be worth a very expensive night on the town."). Of course, customers were never told that accompanying the B-Girls would result in a "very expensive night," let alone one involving a largely if not wholly unauthorized tab. But there are two greater flaws

in this argument – (1) the law does not so restrict the types of scams that may qualify as a "scheme to defraud," and (2) defendants' scheme in this case went beyond merely having B-Girls lie to customers about their affiliation with the clubs.

The wire fraud statute prohibits intentional participation in "*any* scheme … to defraud" 18 U.S.C. §1343 (emphasis added). "Read naturally, the word 'any' has an expansive meaning, that is, 'one or some indiscriminately of whatever kind.'" *United States v. Gonzales*, 520 U.S. 1, 5, 117 S. Ct. 1032, 1035 (1997) (quoting Webster's). Beyond that, this Court has held that the concept of a "scheme to defraud" under federal law "'is broader than the common law conception of fraud.'" *United States v. Bradley*, 644 F.3d 1213, 1240 (11th Cir. 2011) (citation omitted). A scheme to defraud exists *whenever* the defendant intentionally "attempt[s] to obtain, by deceptive means, something to which he was not entitled." *Id.* This definition "'is a reflection of moral uprightness, of fundamental honesty, fair play and right dealing in the general and business life of members of society.'" *Id.* (citation omitted); *see also McNally v. United States*, 483 U.S. 350, 358, 107 S. Ct. 2875, 2881 (1987) ("[T]he words 'to defraud' commonly refer 'to wronging one in his property rights by dishonest methods or schemes,' and 'usually signify the deprivation of something of value by trick, deceit, chicane or overreaching.'") (citation omitted). The indictment in this case alleged that the defendants sought to

obtain, by lies and deception, money from individual credit card holders and credit card companies they had no right to legitimately (DE953:¶¶17-60). The scheme alleged here is not outside the bounds of the wire fraud statute simply because in its genesis it preyed on male desire for female company.

Defendants are not only wrong legally, but are also wrong in their characterization of the alleged scheme. The indictment does not allege that entirety of the fraud scheme was lying to customers about B-Girls' affiliation with the clubs. In the "object of the conspiracy" section in Count 1, for example, the government alleged that the defendants sought to profit not only from that particular deception, but also by "us[ing] illegally-employed female co-conspirators from Eastern Europe … to lure victim[s]" to the clubs and "by inducing the victim credit card holders to become intoxicated both before bringing them to the clubs and while in the clubs" (DE953:17). Moreover, "it was further the object and purpose of the conspiracy for the [conspirators] to mislead victim credit card companies during the companies' review of circumstances leading to any disputed credit card charges" (*id.*).[24] In the "manner and means" section, the indictment detailed these circumstances, which included lies about the price, quantity, and nature of alcohol (*id.*:¶¶26-28), and the

[24] Defendants' briefs ignore that credit card companies were intended victims along with the card holders (*id.*:¶¶16,59; *see supra*:10 n.12).

creation of forged receipts or other misleading proof that the exorbitant credit card charges had been authorized when in fact they were not (*id.*:¶¶29-33).

There is no reason that deceiving victims about the girls' relationship to the clubs would not be enough to sustain a wire fraud conviction under *Bradley* assuming the government proved the other elements of the crime. But this indictment alleged more, because the defendants' scheme involved more than a singular deception of one set of victims.

Even looking solely at the interaction between the girls and prospective customers when they met, which is the approach taken by defendants' briefs, their argument is really just a variation on the "fool and his money" defense rejected by this Court in *United States v. Svete*, 556 F.3d 1157 (11th Cir. 2009) (*en banc*). In *Svete*, the defendants' sales agents made false claims to induce customers to enter into contracts to purchase complex financial products. The contracts themselves did not repeat the false claims. The defendants argued that a person of ordinary prudence and sophistication would have read the contracts and ignored the false statements by the sales agents. To that end, they asked for a jury instruction to the effect that a fraud scheme must be calculated to deceive a person of at least ordinary prudence. This Court held *en banc* that there is no requirement that a fraud scheme be calculated to deceive a person of ordinary prudence. *Id.* at 1165. In so doing,

the court confirmed that contributory negligence is not a defense to the federal crime of fraud. "[W]hatever role, if any, a victim's negligence plays as a bar to civil recovery, it makes little sense as a defense under a criminal statute that embraces 'any scheme or artifice to defraud.' A perpetrator of fraud is no less guilty of fraud because his victim is also guilty of negligence." *Id.* at 1165 (citations omitted).

> One who practices upon another's known idiosyncrasies cannot complain if he is held liable when he is successful in what he is endeavoring to accomplish. The focus of the language defining a scheme to defraud is on the violator, not the victim. [A] defendant who intends to deceive the ignorant or gullible by preying on their infirmities is no less guilty.

Id. (internal citations and quotation marks omitted).

Svete also rejects the idea, implicit in our defendants' arguments, that no fraud exists when the victims were, in essence, willing to be deceived. As defendants describe it, these victims were perfectly happy to go along with anything they were told or sold if it brought them more time with the girls. That is untrue on this record, but as this Court observed, "'the government can convict a person for mail or wire fraud even if his targeted victim never encountered the deception—or, if he encountered it, was not deceived.'" *Id.* at 1166 (citation omitted).

Defendants' argument ignores the proof of their intent to defraud, focusing instead on the supposed lust or poor judgment of their customers, and failing to confront the overwhelming evidence (including their own false trial testimony) that

they meant to deceive patrons, credit card companies, immigration officials, and law enforcement about the true activity of these clubs.[25]

Pavlenko claims that the conspirators' "failure to announce to patrons" that the B-Girls worked for the bars was simply a "technique to lure customers" into a transaction and "not sufficient to support a charge of wire fraud" (PBr.:28). He offers no support for this alleged limitation on the statute. As discussed, this argument also ignores the myriad other components of the defendants' scheme, which involved lies and omissions before and after the initial meetings between the B-Girls and their unsuspecting targets.

The defendants' deception was also not simply raising customers' expectations with puffery or "seller's talk." The misrepresentations in this case were not exaggerated opinions or hyped-up sales pitches about the good times awaiting men at the purported clubs. Instead, the conspirators made factual statements that were verifiably refutable. Even looking solely at the interactions

[25] At one point Pavlenko suggests that his argument is consistent with *Svete* because even *Svete* requires a material misrepresentation or omission. A misrepresentation is material if it has "a natural tendency to influence a person's decision" (DE1154:26). The indictment alleged the materiality of the conspirators' lies and omissions and detailed how they impacted the decisions of customers and credit card providers (DE953:¶¶16-17,24,25-28,31). Then, at trial, the government proved the materiality of these deceptions through live witness testimony and the tapes (*supra*:25-29).

between conspirators and the customers (ignoring the deceit of credit card providers and DHS), the conspirators lied about specific details, including whether the B-Girls were tourists, the price of alcohol, the quantity of alcohol, the type of alcohol, the existence of other guests and servers, and what the customer owed. All those affirmative misrepresentations were on top of the conspirators' concealment of the relationship between the girls and the clubs. *See United States v. Rodriguez*, 732 F.3d 1299, 1304 (11th Cir. 2013) (affirming convictions where the defendants did not merely give inflated "opinions and assurances" but rather lied about specific facts relevant to the transaction and were "also actively concealing relevant information from potential customers"). Pavlenko further claims that the victims "got the benefit of their bargain," presumably meaning the company of the B-Girls at what appeared to be a nightclub. The indictment makes no references to anyone's "bargain," however, and certainly the credit card companies (on the hook if no funds were available after a chargeback) made no bargain of any kind with the B-Girls. That said, inside the clubs, the conspirators undeniably made misrepresentations and omissions going to essential elements of the "bargain" between customers and the clubs regarding the type, quantity and price of alcohol and other services.

Pavlenko's "benefit of the bargain" argument has also has no support in this Circuit's case law. He relies primarily upon *United States v. Regent Office Supply*

Co. Inc., 421 F.2d 1174 (2nd Cir. 1970) and *United States v. Starr*, 816 F.2d 94 (2nd Cir. 1987). Neither opinion has been applied in this Circuit, and *Regent* at least conflicts directly with *Svete*'s holding. But whatever their soundness as a matter of law, these opinions are wholly inapposite.

In both cases, the defendants' schemes involved a discrete deception that yielded profit for their business while causing no injury to their customers. In *Regent*, for example, the defendant was a legitimate business that sold legitimate goods to customers for the bargained-upon price; the alleged misstatements related only to how the defendants' agents would "'get by' secretaries on the phone" and be given the chance to make a sales pitch. Similarly in *Starr*, the majority found that the defendants intended to enrich themselves, but not at the expense of their customers. Despite lying about how they mailed certain items (to save themselves money), they performed the service bargained for, did not intend to harm their customers, and "in no way misrepresented to their customers the nature or quality of the service they were providing." *Id.* at 99. Here, by contrast, the victims of this scheme suffered financial and personal harm directly as a result of the lies and omissions of the conspirators. Those lies and omissions were designed to extract money from customers that otherwise would never have been spent at the purported clubs.

Finally, Pavlenko asserts that "[t]rade practice issues that are otherwise capable of regulation or deregulation by the state or local government remain outside the scope of the fraud statutes" (PBr.:30). Absolutely no case supports this proposition, let alone on these facts. His citations (*id.*:30-35) have nothing to do with federal criminal liability for wire fraud, and do not sweep broadly even in their unrelated holdings. The international components of this scheme – including the importation to the United States of female conspirators from Eastern Europe, lies to federal immigration officials, foreign coconspirators, and the diversion of illegally-gained profits overseas – obviously distinguish this case from a municipal affair supposedly reserved by the Constitution for city regulation and enforcement. The fact that evidence of one aspect of the B-Girls' conduct incidentally proved a violation of a Florida statute is a proper corollary of the proof adduced at trial and certainly not a basis to declare the defendants' scheme immune from federal prosecution.

In summary, the indictment satisfactorily alleged violations of the wire fraud statute, including a viable scheme to defraud. The government then proved its allegations at trial. The district court properly denied the defendants' motions to dismiss and for judgments of acquittal on these grounds.

II. THE EVIDENCE WAS SUFFICIENT.

The defendants make selective challenges to the sufficiency of the evidence. None of these challenges has merit.

Pavlenko is the only defendant who fairly tries to develop a sufficiency challenge to the government's proof of fraudulent intent, a requirement for the wire fraud charges. But even his effort mostly repackages arguments elsewhere in his brief about the legal sufficiency and multiple conspiracies (*see infra*:49-52). To the extent Pavlenko actually focuses upon the evidence, he simply presents his version of events, such as his attempted explanation of the misleading email to AmEx in which he implied that he did not know his own B-Girl or how to contact her (*supra*:20). Pavlenko ignores both the standard of review–which requires that all inferences be drawn in the government's favor–and the fact that he testified. *See United States v. Joseph*, 709 F.3d 1082, 1103 (11th Cir. 2013) (on appeal defendant's unsuccessful testimony is "substantive evidence of [his] guilt"); *United States v. Tobin*, 676 F.3d 1264, 1287 (11th Cir. 2012); (on appeal "[A] defendant's decision to offer testimony on the issue of *mens rea* can also be fatal to his attempt to exculpate himself") (citations and internal quotation marks omitted). Beyond Pavlenko's own false testimony, multiple cooperating witnesses, including Simchuk and the

B-Girls, told the jury directly that Pavlenko knew about the scam at Caviar Bar and intended it to operate that way (*supra*:7-8).

Pavlenko also offers a grab-bag of arguments in four sentences about the insufficiency of the Simchuk Clubs money laundering conspiracy charge against him in Count 29 (PBr.:42-43), but does not develop any of them or cite case law, and does not grapple with the evidence that the government highlighted to the jury on this count. In any event, the government proved the elements of that offense (*see* DE1154:31-32; DE1022:16-17). Pavlenko was convicted in Count 29 of conspiring to commit money laundering by "international promotion," in other words, transmitting money to or from the United States with intent to promote the carrying on of specified unlawful activity, contrary to 18 U.S.C. §1956(a)(2)(A).[26] That is exactly what Pavlenko agreed to do, for example transferring money from Rose Entertainment to travel agents in Latvia in March 2010, after Caviar opened, to purchase airplane tickets that brought the B-Girls here to engage in fraud (DE1143:131-42; DE1154:89; GX102; *see also* GX109).

[26] Count 29 also alleged a violation of §1956(a)(1) on a concealment of criminally-derived proceeds theory. On the verdict form (DE954), the jury could choose either theory of money laundering; it checked "international promotion" and left "concealment" blank for Pavlenko and for Feldman. For Takhalov, the jury checked "concealment" and left "promotion" blank. In Count 39, the jury convicted Takhalov of money laundering at the Takhalov clubs; the government's only theory there was concealment.

Pavlenko hints at a distinct argument about Count 29 elsewhere in his brief, asserting that his conviction is flawed because the indictment alleged that the source of the laundered funds could have been wire fraud or visa fraud, yet the jury was not instructed about and did not find visa fraud. Pavlenko did not make this objection below. Regardless, a promotional theory of money laundering under §1956(a)(2)(A) does not require that the funds be sourced from any criminal activity. *See, e.g., Regalado Cuellar v. United States*, 553 U.S. 550, 561, 128 S. Ct. 1994, 2001 n.3 (2008) (this provision "punishes the mere transportation of lawfully-derived proceeds"). Accordingly, this jury did not have to find, to convict Pavlenko for conspiring to violate §1956(a)(2)(A), whether the source of the funds was visa fraud or any other crime. Pavlenko's financial transfers simply had to be intended to promote at least the underlying wire fraud, and the government proved that easily.

Takhalov separately complains about his concealment money laundering conspiracy convictions in Counts 29 and 39, asserting that they are defective under *United States v. Christo*, 129 F.3d 578, 580 (11th Cir. 1997) because they allegedly duplicate the underlying wire fraud offenses. It appears that he did not make this argument below, so the standard is plain error, but the argument fails regardless. In *Christo*, a case involving a single check-kiting scheme, this Court remarked that

"money laundering is an offense to be punished separately from an underlying criminal offense." There, the money laundering charge–based upon a theory of concealing the proceeds of criminal activity–was predicated on the absolutely identical transaction as the underlying bank fraud charge: writing checks on accounts with insufficient funds and causing the bank to pay those checks through the check-kiting scheme. In other words, on those facts, the underlying criminal activity was not complete by the time of the money laundering, so there were no criminally-derived proceeds yet to conceal.

Christo involved a unique set of allegations and has never been applied in this Circuit to reverse a wire fraud conviction such as Takhalov's. *Compare United States v. Silvestri*, 409 F.3d 1311, 1334-35 (11th Cir. 2005) (distinguishing *Christo*). Here, defendants' wire fraud offenses were complete when the conspirators attempted to execute their scheme to defraud by running customers' credit cards; the conspiratorial agreement, of course, was complete even earlier. *See id.*; *United States v. Williamson*, 339 F.3d 1295 (11th Cir. 2003). Takhalov's money laundering–his agreement to conceal the proceeds of the fraud–occurred afterwards, when he agreed to distribute the profits to the B-Girls and other conspirators. His money laundering concealment undeniably involved additional conduct. Moreover, *Christo* does not, as Takhalov suggests, require the "purpose" of the

underlying fraud to be distinct from the purpose of the money laundering. Even if it did, his argument makes no sense. Takhalov says that the purpose of both was to conceal the relationship between the B-Girls and the clubs. As discussed above, the underlying fraud scheme went beyond hiding the girls' relationship to the clubs. Moreover, the underlying fraud relied upon hiding that relationship from customers, who otherwise would not come to the clubs; when it came time to launder the proceeds, defendants' concern was not the knowledge of customers (who would have no idea how the B-Girls got their salaries), but of rather law enforcement and regulators, who might discover that the girls were working here illegally and unravel the scam. The defendants are not entitled to judgments of acquittal on any counts.

III. COUNT 1 DOES NOT CONTAIN MULTIPLE CONSPIRACIES.

Pavlenko contends that Count 1 is improper as to him because it includes "multiple conspiracies."[27] Count 1 charged Pavlenko and others with a wire fraud conspiracy relating to the Simchuk Clubs (Caviar, Stars and VIP) between October 2009 and November 2010. Pavlenko does not actually identify the "multiple conspiracies" he sees in this count, but the gist of his complaint seems to be that he

[27] To the extent Pavlenko asserts that the money laundering conspiracy charge against him (Count 29) also contains multiple conspiracies, the same principles discussed below apply. Notably, while Pavlenko insisted at trial that he had nothing to do with Stars or VIP, it does not appear he made a variance argument to the court. If he did not, plain error is the standard.

was involved only in Caviar, that Caviar was somehow different from Stars and VIP, and thus there was a variance from the indictment.

"[T]he arguable existence of multiple conspiracies does not constitute a material variance from the indictment if, viewing the evidence in the light most favorable to the Government, a reasonable trier of fact could have found that a single conspiracy existed beyond a reasonable doubt." *United States v. Moore*, 525 F.3d 1033, 1042 (11th Cir. 2008). "To determine whether the jury could have found a single conspiracy, we consider: (1) whether a common goal existed; (2) the nature of the underlying scheme; and (3) the overlap of participants." *Seher*, 562 F.3d at 1366. "Courts typically define the common goal element as broadly as possible." *Moore*, 525 F.3d at 1042. Even if a variance existed, it must have substantially prejudiced the defendant. *Seher*, 562 F.3d at 1368 n.25.

The jury undeniably could have found Pavlenko's participation in the single conspiracy alleged in Count 1. Simchuk and Pavlenko conspired to form Caviar as the first of the wholly sham clubs and honed their fraud model at that venue after initiating it at Dolce (DE1125:173-74). They anticipated an ongoing business relationship (DE1125:148-49,152,165,173). Simchuk and Feldman then opened Stars in Summer 2010 at the same venue where Caviar had operated until weeks before, to run on the same model as Caviar. Simchuk and Feldman also opened

VIP, at a different location but around the same time and again to run on the same model. Takhalov handled the credit card charges at both of those venues. The evidence was overwhelming that all three Simchuk Clubs used the B-Girls in the same way and engaged in the same deceptive tactics with customers and credit card companies; Simchuk testified expressly to that fact (DE1125:202,217; DE1126:37) as did Vinogradova (DE1122:42,57-58) and Turcina, who worked as a B-Girl or manager at all three clubs (DE1131:129-30). Without Caviar and Pavlenko's role in it, the other clubs would not have followed. *See Seher*, 562 F.3d at 1366 ("'If a defendant's actions facilitated the endeavors of other coconspirators, *or facilitated the venture as a whole*, then a single conspiracy is shown.'") (emphasis original) (citation omitted).

There is no dispute that Pavlenko never legally withdrew from the conspiracy he formed with Simchuk to open the sham clubs. Indeed, the proof was just the opposite. Although Caviar shut down in June 2010, as late as October 2010, Pavlenko was warning Takhalov to be careful at Stars because the FBI was investigating (DE1136:17; DE1151:199,206-08; GX441A,443A). Pavlenko also knew the participants in Stars and VIP and overlapped with them; indeed, it was Pavlenko who had introduced Simchuk to Takhalov in the first place at Dolce (DE1125:182; DE1136:63).

Count 1 fits comfortably in the boundaries of a hub-and-spoke conspiracy, especially bearing in mind that each conspirator "need not know all the details of the conspiracy" or "participate in every phase of the scheme." *United States v. Orr*, 825 F.2d 1537, 1543 (11th Cir. 1987). *United States v. Chandler*, 388 F.3d 796, 800, 806-07 (11th Cir. 2004) is inapposite because that was an extreme case where the "spokes" knew absolutely nothing about the "hub's" connection to any other "spoke," to the point that the conspiracy's organizer purposefully prevented his co-conspirators from even finding out about each other's existence or the nature of the activity that was the object of the conspiracy. By contrast, Pavlenko knew that co-conspirators were setting up other clubs with Simchuk. All three clubs shared a common goal and used the identical fraudulent scheme that Simchuk and Pavlenko initiated at Dolce then Caviar. *See United States v. Pacchioli*, 718 F.3d 1291, 1234 (11th Cir. 2014) (emphasizing that defendant only had "to be aware of the existence of other spokes and of their common and unlawful aim"); *United States v. Huff*, 609 F.3d 1240, 1244 (11th Cir. 2010); *Seher*, 562 F.3d at 1367 (distinguishing *Chandler).* Count 1 was properly charged and proved as a single conspiracy. There was also no prejudice, for exactly the reasons stated by this Court in *Seher* (*id.* at 1368 n.25).

IV. THE COURT PROPERLY DENIED INCORRECT PROPOSED DEFENSE JURY INSTRUCTIONS.

Defendants do not claim that court instructed the jury incorrectly about the charged offenses; Pavlenko, however, claims that the court erred by failing to give a multiple conspiracy instruction. Pavlenko never sought such an instruction, so review is for plain error (*compare* DE914-15; DE1152:287).[28] In any event, for the reasons just discussed, Pavlenko was not entitled to a multiple conspiracies instruction. *See Orr*, 825 F.2d at 1542–43 (refusal to grant an instruction on multiple conspiracies can only result in reversal if the record reflects a genuine factual basis for a finding of multiple conspiracies). A jury instruction on multiple conspiracies is not warranted simply because the indictment as a whole contains numerous conspiracy counts; that situation is covered by the standard instruction regarding the jury's duty to consider each count separately. *See, e.g., United States v. Calderon*, 127 F.3d 1314, 1328 (11th Cir. 1997). Furthermore the defendant must have been prejudiced, which Pavlenko was not. *Id.* at 1330.

All defendants argue that court erred by failing to give Pavlenko's proposed theory of defense instruction (PBr.:20-21). Failing to give a defense instruction is

[28] Co-defendant Feldman did, but he is not in the same position and worded his proposal inaccurately without conforming to the language of Count 1. The court declined to give Feldman's instruction as phrased (*id.*:288), and no defendant followed up or revisited the idea despite being invited to do so (*id.*:293).

error only where the requested instruction "(1) was correct, (2) was not substantially covered by a charge actually given, and (3) dealt with some point in the trial so important that failure to give the requested instruction seriously impaired the defendant's ability to conduct his defense." *United States v. Dohan*, 508 F.3d 989, 993 (11th Cir. 2007); *see also United States v. Silverman*, 745 F.2d 1386, 1395 (11th Cir. 1984) ("A district judge is vested with broad discretion in formulating his charge to the jury so long as it accurately reflects the law and the facts.").

Pavlenko's proposed instruction was incorrect in multiple ways, as the district court found (DE1152:285-87). First, it was incorrect legally, because it proposed to tell the jury that defendants' conduct was outside the reach of the wire fraud statute. The restrictions Pavlenko wanted to put on the jury about what conduct may or may not violate federal law, stated in absolute terms which do not appear in the wire fraud statute itself, were unsupported and simply wrong. For example, he wanted to tell the jury that: "There is no duty to disclose the financial arrangement between the B-girls and the Bar. … The financial arrangement between the B-girls and the Bar is immaterial to the transaction." That statement imposes a rigid and inaccurate limitation on the scope of the statute, and is even more pernicious to the extent it basically declares trial evidence irrelevant and off-limits to the jury. The court properly instructed the jury about the meaning of a "scheme to defraud"

(DE1154:25), and Pavlenko was not entitled, in a theory of defense instruction, to undercut that definition.

Second, Pavlenko's instruction was incorrect in its portrayal of the charges. For example, he proposed telling the jury: "A scheme to have attractive women induce patrons to purchase and consume alcoholic beverages under the illusion that the patron may later persuade the women to have sexual relations is NOT sufficient to convict of the federal crimes charged" (emphasis original). The government never described the scheme that way, in the indictment or in its case. This language bears no resemblance to the proof of what most victims experienced (*e.g.*, DE1143:54), and legally speaking there is no restriction on the type or subject matter of scam that may qualify as a "scheme to defraud," but at minimum a theory of defense instruction cannot mislead the jury about the nature of the charges. *See, e.g.*, *United States v. Arias-Izquierdo*, 449 F.3d 1168, 1188 (11th Cir. 2006).

Third, Pavlenko's instruction was incorrect in its depiction of the facts. For example, Pavlenko wanted the jury told that "[t]he law does not excuse a patron from his obligation to pay for beverages/goods just because he became intoxicated voluntarily. … Unless the establishment forces the patron to consume the beverage or adulterates the beverage, a patron remains responsible for his consumption of alcoholic beverages …" The evidence showed convincingly that the conspirators,

through alcohol or other means, intoxicated patrons without their knowledge or knowing consent, forcing liquor onto patrons, adulterating beverages, and physically pouring it down victims' throats in some instances (*e.g.*, DE1129:129; GX437A). A defendant cannot use his theory of defense instruction to "place the defendants' desired factual findings into the mouth of the court." *Maxwell*, 579 F.3d at 1304-05 (internal quotation marks and citations omitted). Moreover, the government never claimed that patrons were excused from paying a legitimate bar tab because they became intoxicated, or were "excused" at all for their behavior—as discussed above, the focus of the wire fraud statute is on the intent of the defendant, not the victims' alleged negligence.

At best, Pavlenko's instruction sought to convey to the jury that the defendants did not believe they were doing anything wrong by simply taking advantage of a man's desire to spend time with a seemingly willing female and provide him drinks for the occasion. But the court granted the defendants' request–over the government's objection–for a detailed good faith instruction to accommodate that defense (DE1152:279-84; DE1154:37-38). That instruction told the jury that an "honestly held belief" or even an "error in management" cannot establish fraudulent intent (*id.*).

Because Pavlenko's proposal was legally mistaken, did not fit the charges or evidence, and was covered by the court's other instructions, the district court acted within its discretion by denying that request.[29]

V. THE COURT PROPERLY DENIED SEVERANCE.

Each of the defendants makes some variation of an argument for severance, the upshot from the totality of these arguments being that the court should have had four separate trials (one for each defendant on appeal and one for Zargari). The court did not clearly abuse its discretion in deciding on a single trial.

"There is a preference in the federal system for joint trials of defendants who are indicted together." *Zafiro v. United States*, 506 U.S. 534, 537, 113 S. Ct. 193, 938 (1993). This preference for joint trials is particularly compelling when the defendants have been indicted for conspiracy. *See, e.g., United States v. Baker*, 432 F.3d 1189, 1236 (11th Cir. 2005); *United States v. Walker*, 720 F.2d 1527, 1533 (11th Cir. 1983). The burden is on the defendant to demonstrate that a joint trial will result in "specific and compelling prejudice." *Id.* A certain degree of prejudice is

[29] Pavlenko argued his instruction as a whole (DE1154:285-87) and the court denied his request as a whole after hearing argument. The next day, Pavlenko's lawyer asked the court to consider each "statement" as a separate proposed instruction, but did not offer any additional argument or suggest how any one "statement" solved the problems permeating the whole (DE1155:43). In fact, each component of the proposed instruction was wrong in its depiction of the law, charges or facts. Even if the court erred, especially in light of the good faith instruction and the strength of evidence, there was no "serious impairment" of the defense.

inherent and accepted in multi-defendant trials. *See, e.g., Zafiro*, 506 U.S. at 539–40, 113 S. Ct. at 938; *Puiatti v. McNeil*, 626 F.3d 1283, 1310 (11th Cir. 2010); *United States v. Alvarez*, 755 F.2d 830, 857 (11th Cir. 1985). "A court's limiting instruction to the jury will often cure any prejudice resulting from a joint trial." *Puiatti*, 626 F.3d at 1310.

Pavlenko argues that he was entitled to a severance because Caviar "lacked the core badges of fraud" of the other clubs. That is untrue; as Simchuk explained, Caviar was a scam from the start, with Pavlenko's knowing participation. Vinogradova and Turcina also refuted this claim from the perspective of B-Girls who worked at Caviar and the other clubs. Pavlenko further complains that the jury may have drawn unfair inferences about him from King's taped conversations, none of which occurred at Caviar. But King's conversations with Feldman and Takhalov about the Simchuk Clubs were certainly relevant to the Pavlenko's guilt as a member of the Simchuk Clubs conspiracy. Moreover, the court repeatedly instructed the jury about the distinctions among the charges and the defendants, and directed the jury to consider each defendant's guilt separately (DE1125:112; DE1126:248). Finally, even where – unlike here – there is an "enormous" disparity in the amount of evidence relating to other defendants or charges, severance is not

mandated. *United States v. Hill*, 643 F.3d 807, 828 (11th Cir. 2011); *United States v. Toler*, 144 F.3d 1423, 1428 (11th Cir. 1998).[30]

Takhalov makes an additional argument that the court should have, two months in, severed co-defendant Zargari, because Zargari when he took the stand became a "second prosecutor" against Takhalov. Takhalov makes this argument by selectively quoting testimony and overlooking adverse binding precedent such as *United States v. Blankenship*, 382 F.3d 1110, 1129 (11th Cir. 2004).[31]

---

[30] Pavlenko also asserts that he was not properly joined in the first place pursuant to Federal Rule of Criminal Procedure 8. As discussed above, Pavlenko was properly included in the conspiracy and wire fraud charges relating to the Simchuk Clubs. The charges involving the Simchuk Clubs were properly joined in the indictment with the charges involving the Takhalov Clubs, because Takhalov was a participant in both sets of conspiracies. *See Hill*, 643 F.3d at 829.

[31] This portion of Takhalov's brief contains partial quotations that do not reflect fully what was said on the record, as well as complaints about testimony to which there was no objection. For example, Takhalov asserts that "Zargari's defense was that … Takhalov and other club owners were 'unscrupulous business partners' engaged in fraud" (TkBr.:52). The citation for this is an argument by Zargari's counsel in closing – not Zargari's testimony – and even Zargari's counsel did not say Takhalov was engaged in fraud; Takhalov made no objection to what counsel did say. Zargari also did not say that Takhalov was affiliated with "Russian organized crime" (*id.*), let alone assert personally or through counsel that his co-defendants were guilty because they were Russian not Iranian like Zargari. In similar fashion, Takhalov contends that he repeatedly moved for severance and the court repeatedly denied his motions "without explanation" (*id.*). In fact, Takhalov withdrew his first motion for severance after a sidebar (DE1139:188-90), and when he made another motion later during Zargari's testimony, the court did explain its ruling (DE1153:48 ("you have the opportunity to cross-examine him, plus he said many, many times, I didn't agree with what was going on but it wasn't a fraud"). The court had also denied severance in writing pre-trial (DE582).

Zargari claimed that while he owned the space where VIP (under Feldman) and later Tangia Club (under Takhalov) operated, he did not participate in their business, having signed a management agreement with them and other partners. Zargari testified that he became aware of things he did not think were proper at Tangia (such as overly high prices for liquor), and spoke to Takhalov about them (*see, e.g.*, DE1152:259-60). But he did not testify that Takhalov committed fraud in general or in any specific instance (*see id.*). Moreover, while correctly reinforcing that Takhalov was the man in charge at Tangia (*id.*:236), Zargari supported Takhalov's defense on several points. For example, when asked whether he saw Takhalov pay money to King for a bribe, Zargari said that he did not see it and did not know that it happened, testimony that presumably aided Takhalov's acquittal on the bribery charge in Count 40 (DE1153:23-24).

Takhalov also never articulates the legally-recognized theory of severance that would entitle him to relief. He does not contend nor could he that he and Zargari had antagonistic defenses. *Compare, e.g.*, *United States v. Dinkins*, 691 F.3d 358, 369 (11th Cir. 2012). Takhalov did not have to prove anything about Zargari to support his defense that nothing he did there was illegal. Likewise, Zargari did not need to show anything about Takhalov's intent to mount his own defense that he did not know what was going on at Tangia Club. And it is

well-settled that "hostility among defendants," *id.* at 369, and "finger-pointing and blame-shifting among coconspirators" do not warrant severance. *United States v. Voigt*, 89 F.3d 1050, 1095 (3d Cir. 1996) (collecting cases).

VI. THE COURT'S EVIDENTIARY RULINGS WERE PROPER.

A. Testimony about Takhalov's Threat to Simchuk and the Subsequent Attack on Simchuk

Defendants assert that the court improperly allowed Simchuk to testify about Takhalov warning him not to come to the United States to testify, and about a subsequent attack on Simchuk before Simchuk left Russia to come here to plead guilty. Feldman and Pavlenko also sought a severance given this testimony. The court did not clearly abuse its discretion in admitting the testimony, and gave a strong cautionary instruction to ensure no unfair prejudice.

In a November 2010 recorded conversation during the conspiracy, in the process of breaking off to open his own clubs, Takhalov told King that Simchuk could not "f--- with [me]" (DE449A:16, attached Ex. 3). He also said that if Simchuk took money from him, he would "take it from [Simchuk], and that "I'm telling you, this guy's gonna get hurt one day" (*id.*; DE1136:50-51). Earlier, in October 2010, Takhalov had told King "I will make his f----n life miserable if he starts f----n with anybody else" (GX443A:4; *see also* GX453A).

On October 16, 2012, a week into trial, the government proffered that Simchuk, when called to testify the next day, would state that he had received a phone call from Takhalov in March 2012 warning him not to testify (DE1124:169) According to the proffer, which Simchuk confirmed on the stand, Takhalov called Simchuk while Simchuk was in Russia, telling him not to come to Miami (*id.*; DE1125:114-19). The government also proffered that Simchuk would testify that, several weeks after the call, he was attacked by two men in Russia, who pointed a gun at him and broke his leg (*id.*:169-70). Simchuk came to the United States anyway. The government explained that it learned about Takhalov's phone call only the previous day (October 15), and disclosed that Simchuk had initially told prosecutors that he broke his leg slipping on ice (*id.*).

The court declined to exclude this testimony but stated that it would give a cautionary instruction (DE1125;112-120). It did so before Simchuk testified about these events, telling the jury that "you have to consider the evidence as to each defendant separately" and "this act, if it occurred, occurred after the conspiracy was charged, so you cannot consider this testimony as to any other defendant other than the defendant that's named" (*id.*:112-13).

The court acted within its discretion by allowing this evidence. Takhalov complains unconvincingly that the evidence was irrelevant and unfairly prejudicial.

On the contrary, this evidence was highly relevant to Takhalov's consciousness of guilt, and well as to show his evolving relationship with Simchuk and his progression from a credit card processor to manager to club owner to ringleader of the entire operation. *See, e.g.*, *United States v. Gonzales*, 703 F.2d 1222, 1223 (11th Cir. 1983) ("Courts may consider evidence of threats to witnesses as relevant in showing consciousness of guilt.").

Neither was the evidence unfairly prejudicial. FRE 403 is an "extraordinary remedy . . . which should be used sparingly." *United States v. Wright*, 392 F.3d 1269, 1276 (11th Cir. 2004). The court gave a detailed cautionary instruction, the wording of which Takhalov voiced no objection to. The court also gave defendants incredible latitude to cross Simchuk, which they did for four days (DE1128:148-60). Contrary to Takhalov's implication, Simchuk did not say that the Russian mob committed the assault (*infra*:71-73). Simchuk did not testify that Takhalov broke his leg, or even speculate about Takhalov's role in the assault. The prosecution did not make this incident a centerpiece of its closing. Takhalov chides Simchuk's "inflammatory theatrics" about his still-injured leg, but his citations do not support that claim; for example, the jury undoubtedly saw Simchuk with his crutch whether or not the prosecutor asked about it (DE1126:62-63).

There was also no impropriety in the disclosure of this evidence; the government revealed it as soon as Simchuk told prosecutors. Takhalov invokes *United States v. Carrasco*, 381 F.3d 1237 (11th Cir. 2004), which concerns non-disclosure of "other act" evidence subject to FRE 404(b). *Carrasco* is inapposite because the government did disclose this information before the witness testified, promptly after it learned it. *See United States v. Perez–Tosta*, 36 F.3d 1552, 1562 (11th Cir. 1994). *Carrasco* is also inapposite because this incident was not "other act" evidence. *See United States v. Leavitt*, 878 F.2d 1329, 1339 (11th Cir. 1989).[32] Evidence that is "inextricably intertwined with the evidence of the charged offense or is necessary to complete the story of the charged offense" is not subject to 404(b). *Id.* Takhalov's direct threat to Simchuk, following up on the statements Takhalov made about Simchuk around the time he started his own clubs, was necessary to complete the story of this crime. In addition, this evidence "form[ed] a natural and necessary part of the witness's testimony regarding the charged offenses." *United States v. Foster*, 889 F.2d 1049, 1055 n.5 (11th Cir. 1989); *see generally United States v. Ellisor*, 522 F.3d 1255, 1269 (11th Cir. 2008).[33]

---

[32] Takhalov did not invoke *Carrasco* or 404(b) at the time.

[33] Even if viewed as 404(b), the evidence was relevant to show consciousness of guilt, the relationship of Simchuk and Takhalov, and other non-character purposes. *See id.* Rule 404(b) is a rule "of inclusion." *Id.; see also United States v. Zapata*, 139 F.3d 1355, 1358 (11th Cir. 1998).

Indeed, this evidence was integral to Simchuk's testimony about why and how he left Russia voluntarily to come to Miami to plead guilty and cooperate.

Finally, and in any event, there was no substantial or unfair prejudice from the timing of the disclosure. Simchuk acknowledged to the jury that he had no outside corroboration for the call,[34] so it is unclear what "investigation" defendants would have undertaken if advised earlier. Takhalov testified and denied that the call took place, so the jury had his version. Takhalov's claim of prejudice is further undermined by the strong weight of evidence against him – highlighted by his own admissions and false trial testimony – as well as the fact that the jury already knew, from the tapes, Takhalov's increasing anger toward Simchuk. All told, the court did not err reversibly by allowing Simchuk to testify about the threat and assault.

There was also no basis to sever the other defendants, who were not prejudiced. The court pointedly instructed the jury, when Simchuk testified, that this evidence should be considered only as to Takhalov. The court crafted this instruction with input from the defendants (DE1125:99-100). The court reiterated in its instructions at the end of the case about the need for individualized consideration of the evidence (DE1154:21). Simchuk's testimony about the threats

[34] Simchuk's testimony was nonetheless reliable: he knew Takhalov's voice; the caller said he was "here" in Miami, and the call came right after Simchuk told a co-conspirator privately about leaving Russia (DE1125:108-14).

against him and his injury did not refer to Feldman or Pavlenko. Given the extensive ties among the defendants, the court acted within its discretion by allowing the joint trial to proceed. Feldman's reliance on *United States v. McLain*, 823 F.2d 1457 (11th Cir. 1987), is misplaced as the district court there gave no instructions to the jury; moreover, the damning evidence about the co-defendant related to an entirely separate conspiracy. *United States v. Engleman*, 648 F.2d 473 (8th Cir. 1981) is equally inapposite; as in *McLain*, the district court refused to give any instructions to the jury about the co-defendant's act (a murder that had occurred years before and was unrelated to the pending charge).

B. Testimony about the "Russian Mafia" and the Conspirators' Russian Background

Feldman complains vigorously that a new trial is warranted because of "repeated references throughout the trial" to the Russian Mob and "appellants' Russian ethnicity," which he even suggests was discrimination in violation of the Fifth Amendment (FBr.:37). Notably, however, defendants rarely specify the exact pieces of evidence or argument that the court supposedly erred in admitting, or whether they objected at the time. As a result, they argue the issue only at the most

abstract level.[35] However viewed, the court did not abuse its discretion in admitting the testimony that it did, or violate Due Process.

Lost in defendants' broad-brush approach is the fact that, before trial, the court *granted* a defense request to exclude the term "Russian Mafia" from coming in during the trial in the government's case-in-chief, "subject obviously to cross-examination" (DE1120:42). All of the defendants represented that they did not intend to elicit the fact that the Simchuk was associated with Russian organized crime or the Russian Mafia (*id.*:40-42). The court then entered a written order stating "[t]here shall be no references to the Russian Mafia in the Government's case-in-chief" (DE826:2).

Yet on cross-examination of Simchuk, it was the defense who brought up exactly that topic, accusing Simchuk of membership in the St. Petersburg mafia (DE1128:139). Despite opening the door to the subject of the Russian Mafia, the court still did not allow the government to elicit evidence of the defendants' own mob ties (DE1128:144 ("He is not going to say anybody who is on trial here are in the Mafia")). The defense later cross-examined King about his knowledge of

[35] Feldman says that the term "Russian mafia" was used 53 times and "Russian organized crime" 17 times. He does not identify these references (let alone clarify how many occurred before the jury or who asked the question; in fact, there were few references, especially given the length of the trial). None of the cites he provides (FBr.:23-24) contain any explicit reference to the Russian Mafia.

Simchuk's Russian Mafia ties (DE1138:129-30; DE114015-16). Yet still the government did not explore the defendants' own ties.

Indeed, the most explicit association of any of these defendants with the Russian Mafia came when Takhalov's own lawyer asked him: "[E]ven though you have the appearance to some as a person that might depict somebody involved in organized crime, have you ever been affiliated with . . . organized crime?" (DE1151:22). Takhalov answered no, but even then, with the door again open, the government did not introduce any evidence about the defendants' organized crime affiliations. The subject came up when the defense chose to do so for its own perceived advantage.

Likewise, there is absolutely no evidence that the government or the court invoked the defendants' Russian background as a reason to convict them. The suggestion is outrageous. The government made no claim that the defendants must have committed fraud because they are Russian, or argue that this fraud scheme is characteristic of Russian people generally; neither Feldman nor Takhalov was even from Russia (DE1150:108).

The fact that the defendants were part of the South Florida Russian-speaking community was a legitimate subject addressed by all parties, including the defendants themselves in their questioning and testimony (DE1129:226 &

DE1138:33 (Feldman questions witnesses about Feldman's ties in the Sunny Isles Russian community); DE1146:102,112-16 (Pavlenko begins direct by discussing his Russian origins)). That the defendants shared a common language and culture was relevant to explain basic details about the conspiracy – how they met, how they communicated with each other and Simchuk, and why they felt comfortable sharing details of the illegal scheme (DE1146:202 (Pavlenko met Takhalov "through Russian community"); DE1150:247 (Takhalov met Feldman at "a Russian party" and through the "Russian community"); DE1129:94 (Feldman initially recruited B-girls at "Russian restaurants")). Evidence of the basis for the relationship between alleged co-conspirators is relevant and admitted routinely. *See, e.g.*, *United States v. Pineiro*, 389 F.3d 1359, 1368 (11th Cir. 2004); *United States v. Pantoja-Soto*, 739 F.2d 1520, 1525 (11th Cir. 1984). Moreover, the defendants' Russian ties were integral to understanding how they were able to import this scheme from Eastern Europe (where Russian is spoken widely) and obtain Russian-speaking trained fraudsters from those areas to come to Miami Beach to target victims. The government's own cooperators were Russian or Russian-speakers. There was no "strategy" of appealing to imagined jury bias against Russians.[36]

[36] While Zargari was Iranian, the government prosecuted him just as vigorously.

C. Other Evidentiary Rulings

Takhalov asserts that a brief reference to his failure to file a tax return in 2009 was "other crimes" evidence precluded by Rule 404(b). Takhalov made no mention of 404(b) at the time, solely asserting that the evidence was irrelevant (DE1130:170). No matter how viewed, admitting limited evidence on this topic was not error, let alone reversible.

In trial, the government called an IRS official who testified, among many things, that the IRS has no record of Takhalov filing a tax return for 2009 (*id.*:185; GX137F). That was the first year of the Simchuk Clubs conspiracies, including the money laundering conspiracy to conceal the proceeds of the scheme in which Takhalov was participating (Count 29). Takhalov's concealment of his income from 2009, and his failure to file a tax return for that year when it came due in 2010, at the height of the conspiracy, was relevant to proving his intent to deceive. Takhalov put his openness front and center, insisting on the stand "no" when asked by his lawyer "Was there ever any intention of you to conceal money here?" (DE1151:49).

This information was also just a snippet of proof mentioned very briefly in a months-long trial. It was not mentioned at all in closing. Takhalov elicited on cross that the IRS's not having a record of the return does not definitely establish

that he never filed one (*id.*:229-31). The government never stated that Takhalov committed a crime by failing to file a 2009 return; it simply brought out evidence that the IRS has no record of a return. Ironically, it was Takhalov's own lawyer who raised the possibility that Takhalov violated tax laws, by failing to withhold taxes on the B-Girls' salaries (*id.*:50-51). In any event, the government certainly did not implore the jury that, because Takhalov committed "tax fraud," he must also have committed this scheme.

Feldman complains that the court allowed Simchuk to "bolster" his testimony and allowed Simchuk and King to opine that the defendants were guilty of the charged offenses. Once again, Feldman's broad-brush approach obscures what actually occurred in the record and does not show a clear abuse of discretion. Every example cited in Feldman's brief (FBr.:49-55) happened during cross-examination by defense lawyers (not the government) and was in response to their aggressive questioning. In some of those instances, there was no objection to the answer (DE1126:232; DE1140:22). In the other instances, an objection was sustained (DE1128:54; DE1140:13-14,23), or the objection was overruled because it was a fair and factually-related rejoinder to counsel's suggestions in his question (DE1127:90-91; DE1128:108). Regardless, there was no prejudice from any of this supposedly improper testimony. The evidence properly presented by Simchuk

and King was based on their personal knowledge and highly incriminating of the defendants; a jury did not need to rely on supposed "bolstering" or "opinions" to believe these witnesses, especially corroborated as they were by the B-Girls and the tapes. Neither witness said explicitly that the defendants committed the elements of the charged offenses. In addition, this is not a situation like *United States v. Sorondo*, 845 F.2d 945 (11th Cir. 1988) where the offending testimony was elicited by the government on direct and relayed irrelevant extrinsic facts about the results of other trials and the credibility of a different witness.

Takhalov additionally contends that the court should have excluded evidence that he bribed King to fix traffic tickets. This evidence was relevant to reinforce the relationship between the two and show why Takhalov trusted King enough, and in his mind thought King corrupt or complicit enough, that he could made incriminating admissions to King. That point was important especially in light of Takhalov's insistence on cross that he was often "misrepresenting" himself in the taped conversations. Moreover, the court's cautionary instruction was so strict that, intentionally or not, it effectively told the jury to disregard the evidence completely (DE1135:85 (stating that Takhalov "is not on trial for" ticket-fixing and thus "[w]hen you go look at each individual charge, you can't consider the evidence as to whether it proves those charges")).

VII. THE COURT DID NOT ABUSE ITS DISCRETION IN HANDLING CLOSING ARGUMENTS OR JURY NOTES.

Pavlenko complains that the court should not have told the jury about co-defendant Kristina Takhalov's presence in the courtroom during closing arguments. Kristina had pled guilty mid-way through the trial, and was free on bond thereafter. After granting the defendants' request that she be present, the court said it would instruct the jury that it should not speculate on the outcome of her case. It told the jury just that, adding: "whether she pled guilty and I allowed her to remain on bond until her sentencing, or whether her case was dismissed or whether there was some other resolution of her case is absolutely irrelevant" (DE1154:5,21). This instruction was legally accurate and well within a judge's discretion to manage a courtroom. Moreover, Pavlenko fails to show how this even-handed instruction caused him to be convicted unjustly. *United States v. Griffin*, 778 F.2d 707, 710 (11th Cir. 1985), is inapposite as it involved prosecution evidence during trial about a fugitive co-defendant who had been adjudicated guilty.

Feldman, meanwhile, complains that the court erred by failing to read back to the jury, during deliberations, the testimony of five lengthy trial witnesses. He concedes, however, that the decision not to read back testimony is committed to the "broad discretion" of the court. *United States v. Delgado*, 56 F.3d 1357, 1363 (11th Cir. 1995).

During deliberations the jury requested the entire testimony of five witnesses: three prosecution witnesses (Simchuk, King and Feldman's assistant, Nefodova), plus Feldman and Takhalov. The court had powerful reasons for declining that request, although its response did not do so definitively (DE931). The testimony at issue spanned weeks and today exists in over 15 volumes; it was not transcribed at the time, so the court would have had to read all of it painstakingly. "[D]istrict courts have discretion to refuse to read back testimony … where the testimony is simply too long." *Pacchioli*, 718 F.3d at 1306. Feldman asserts that readbacks were necessary because the native Russian-speaking witnesses were difficult to understand testifying in English. Holding aside that Feldman and Takhalov freely chose to testify in English, the court made no finding that the witnesses were difficult to understand, and the jury did not write that it needed the transcripts for that reason. Indeed, the jury requested the testimony of native English-speaking King, belying any speculation that its concern was exculpatory evidence lost in translation.

Feldman also contends that the court misled the jury into thinking that it would have the transcripts available during deliberations. It did no such thing (*see* DE1121:16), and also put the lawyers on notice before closings that it would not necessarily allow readbacks (DE1152:277).

Additionally, Feldman cannot show prejudice because the requested testimony "did not clearly benefit" the defendants. *See Pacchioli*, 718 F.3d at 1306. Simchuk's and King's testimony powerfully reinforced the defendants' guilt. Even the defendants' own testimony – replete with falsehoods and evasion – "had at least as much potential to damage [them] as it did to help." *Id.* Moreover, once the court instructed the jury to rely on its memory, there were no further questions on this topic, and the mixed verdict shows that jurors were able to sift carefully though their recollections.

VIII. THE COURT DID NOT ERR AT SENTENCING.

The defendants make numerous arguments about their sentencings, which are summarized above (*supra*:4-6). These objections are meritless.

A. Money Laundering Guideline for Pavlenko

Pavlenko objects to the court's choice of the money laundering guideline (USSG §2S1.1) as the most appropriate Guideline for his offense.[37] He is mistaken, and cannot show prejudice anyway.

Pavlenko's PSI initially used the fraud Guideline, USSG §2B1.1. In its sentencing memorandum, however, the government pointed out that the money

[37] Feldman makes this argument in his brief but did not make it below; his PSI, unlike Pavlenko's, used the money laundering Guideline from the start (F-PSI ¶80). Takhalov was sentenced using the fraud Guideline.

laundering Guideline should be used instead. Probation agreed, and so did the district court (DE1219:33-38). As a result, pursuant to §2S1.1(a)(1), the court set Pavlenko's base offense level using the loss analysis in §2B1.1 (as required by the cross-reference from §2S1.1), then applied a two-level enhancement in §2S1.1(b)(2)(B)) itself for Pavlenko's having a money laundering conviction under 18 U.S.C. §1956.

Pavlenko contends that because his PSI originally calculated his Guidelines range using the fraud Guideline, and the government did not formally "object" to the PSI, the court was stuck with that approach. This argument is wholly artificial, as the court observed pointedly (DE1219:35). The government put Pavlenko on notice in its sentencing memorandum that the correct starting point for Pavlenko was §2S1.1 not §2B1.1 (DE1079). Pavlenko received that memorandum (filed May 15, 2013) over two weeks prior to the May 31 sentencing hearing. The government discussed its position with defense counsel prior to the hearing, then reiterated its position for the court at the start (DE1219:4-5). There was no genuine confusion. *See also United States v. Edouard*, 485 F.3d 1324, 1351 (11th Cir. 1987) (untimely objections can be considered).

Pavlenko next asserts that the money laundering guideline should not have been used regardless, because it does not apply to his particular money laundering

offense. He contends, it appears, that §2S1.1 is inapplicable to the "international promotion" theory of money laundering conspiracy for which he was convicted under §1956(a)(2)(A) and (h), as opposed to the "concealment of proceeds" theory under §1956(a)(1) and (h), on which the jury did not render a verdict. He makes this argument relying on §2S1.1(a)(1), which states that, to set the base offense level under §2S1.1, the court uses "the offense level for the underlying offense from which the laundered funds were derived"; Pavlenko says that this language does not fit promotional money laundering contrary to §1956(a)(2)(A), because that provision does not require that the funds be derived from criminal activity. But §2S1.1 expressly applies to all convictions under 18 U.S.C. §1956, without limitation. *See* USSG §2S1.1, cmt. "Statutory Provisions" (listing "18 U.S.C. §§ 1956 ..."). Pavlenko cites no case law excluding from this expansive plain language a §1956(h) conspiracy conviction for "promotional" money laundering contrary to §1956(a)(2)(A). *See also United States v. Lucena-Rivera*, 750 F.3d 43, 48 (1st Cir. 2014) (holding in context of multiple §1956(a)(1) convictions that a sentencing court does "not have to distinguish between those funds that may have been laundered for concealment rather than for promotion.").

In any event, this seems much ado about nothing. "[A] Guidelines miscalculation is harmless if the district court would have imposed the same

sentence without the error." *United States v. Scott*, 441 F.3d 1322, 1329 (11th Cir. 2006). Pavlenko says that if the fraud Guideline had been used, he would not have been subject to an enhancement for role, or to the two-level Guidelines enhancement under §2S1.1(b)(2) (PBr.:69). But a role enhancement under USSG §3B1.1 can apply no matter what provision is used to set the base offense level (*infra*:83-85); and while it is true that §2S1.1(b)(2) would not have applied to Pavlenko under the fraud Guideline, if the fraud Guideline had been used, Pavlenko would have been subject instead to a two-level enhancement for vulnerable victims that does not apply under the money laundering Guideline (*see infra*:86-87). In other words, his adjusted offense level would have been identical (DE1219:5).

B. Calculation of Loss

The defendants next complain about the district court's calculation of loss. The court treated all of the proceeds of each club for which a defendant was responsible as that defendant's intended loss, because all of those proceeds were gained through the fraud (DE1161:14). The court then selected the appropriate enhancement based upon the loss amount table in USSG §2B1.1. This approach was not clear error.

The Guidelines define loss as "the greater of actual loss or intended loss," with "intended loss" being "the pecuniary harm that was intended to result from the

offense." USSG §2B1.1 cmt. 3(A)(i),(ii). The Guidelines merely require the district court to "make a reasonable estimate of the loss." *Bradley*, 644 F.3d at 1289; USSG §2B1.1 cmt. 3(C). "[T]he district court is in a unique position to assess the evidence, [so] its loss determination is 'entitled to appropriate deference.'" *Id.*

There was nothing legitimate about defendants' clubs; they did no genuine business, and were set up to defraud every person brought through the door. The defendants intended the entire operation to be fraudulent, and by definition therefore, intended every dollar that they made to be derived through fraud (*see* DE1079:3-6). As the court explained:

> Every one of these people are victims. Whether they walked away feeling satisfied, they were brought there under false pretenses, and it was the intent of the defendant[s] to get monies from these people that they're not entitled to and to present a product that was fraud.

(DE1161:14; DE1181:18).

Starting from this principle, the court considered the government's proof about the amount of proceeds generated at each club for which a particular defendant was responsible. According to those records, Pavlenko was responsible for $273,897 in intended loss (DE1219:13-14; P-PSI ¶65); Feldman, $334,040 (F-PSI ¶80); and Takhalov, $719,219 (DE1161:13-14; T-PSI ¶80). The defendants do not dispute the accuracy of these figures, but contend that the court's decision to treat all

of these proceeds as intended loss was mistaken. For the reasons just discussed, that argument is unpersuasive. Their primary citation, *United States v. Martello*, 76 F.3d 1304 (3d Cir. 1996) is not from this Circuit and in any event addressed the district court's actual loss, not intended loss, calculation. As for their suggestion that they were entitled to some unspecified "credit" for the goods and services they provided, defendants' argument fails. "Costs incurred in defrauding victims should not be deducted from a defendant's loss calculation." *United States v. Pelle*, 263 Fed. App'x 833, 840 (11th Cir. 2008) (collecting cases); USSG §2B1.1, cmt. 3E (identifying the two situations, neither of which exists here, where a credit may be proper) & 3(F)(v). The "entertainment" and liquor they provided, even when unadulterated, had no real value beyond facilitating the fraud. Finally, defendants' suggestion that the court should have reduced the loss figure to reflect their acquittal on some substantive wire fraud counts reflecting individual credit card transactions ignores the fact that each of them was convicted of the over-arching wire fraud conspiracies. Moreover, acquitted conduct still can be considered in determining the advisory Guidelines, *see United States v. Faust*, 456 F.3d 1342, 1348 (11th Cir. 2006), notwithstanding the Supreme Court's recent sentencing jurisprudence.

C. Obstruction Based Upon Defendants' Perjury

Pavlenko complains that he should not have been enhanced for obstruction, USSG §3C1,1, cmt.4(B). Although the government identified multiple areas where Pavlenko lied (DE1079:15-16), the court cited Pavlenko's extended false testimony (DE1147:195-206) about why, in the email to AmEx, he suggested that he did not know his own B-Girl, Marina Turcina (DE1129:25,28-33; *supra*:20). When asked about his e-mail (Ex. 4, attached), Pavlenko denied that he was trying to deceive AmEx. That statement was perjury, as were his false and shifting explanations for why, if not to deceive AmEx, he would deny knowing her. Among other things, by way of attempted explanation, Pavlenko claimed falsely that (1) this fact was "irrelevant" to Amex, (2) Turcina was Simchuk's employee, not his (even though they were partners), (3) "it was not the matter that was discussed," and (4) Amex had already resolved the dispute in his favor so what he said didn't matter. The district court heard all of this testimony, observed Pavlenko's demeanor, and was not required to quote each line back at sentencing; it identified the subject matter of Pavlenko's perjury and explained cogently: "[H]e's not getting an enhancement for sending the email even though it would reasonably mislead [AmEx] but once he testified and has a chance to explain that ambiguity and lies about it, that is what the perjury is. … He could have said the truth, okay, which was, yeah, I knew it was

Marina Turcina and I made the email intentionally vague because I didn't want to lie to them, but I didn't want them to know she was an employee. Okay. He chose not to do that. He chose to lie about it." (DE1219:29-30).[38]

Feldman also objects to his enhancement for perjury. The government asserted that Feldman lied when he testified about six different issues (DE1179:16). Feldman contends that all of his claims were true in whole or part, and that any evidence to the contrary from Simchuk or other witnesses was unreliable. The district court, having listened to every witness firsthand, found unequivocally that Feldman was untruthful and perjured himself (DE1160:17; DE1181:35-36). It also overruled Feldman's objections to the factual recitations in the PSI that demonstrated the falsity of his trial testimony (*id.*; F-PSI ¶¶4-17).

Moreover, the court expressly contrasted Feldman's testimony with Simchuk's, which it found truthful (DE1181:35-36). For example, Feldman claimed on the stand that it was bar manager Ieva Koncilo's idea to set up Ieva Marketing, the shell company he used to launder money for Stars and VIP, as a corporation for her personal business affairs (DE1149:251; DE1150:161). Simchuk, by contrast, testified that he told Feldman to create a shell company to

[38] The court unquestionably saw Pavlenko's obstruction as going beyond one topic, and this Court can affirm on any ground (DE1219:62; *see also* DE1149:30; DE1160:17; DE1219:28-29).

"wash" the money from VIP (DE1125:213-15). Feldman also insisted that he was not involved in the clubs' operations (*e.g.*, DE150:92), but Simchuk contradicted him by testifying that Feldman was the "working partner" (DE1129:93-94). When a court finds that the testimony of the defendant on a material matter is false because it is inconsistent compared to another witness's testimony that the court determines is truthful, the enhancement properly applies. *See United States v. Dobbs*, 11 F.3d 152, 155 (11th Cir. 1994).

Feldman's testimony also contradicted his own records in evidence. He claimed that he was unaware that VIP– in which he had invested tens of thousands of dollars–was under siege from all the chargebacks (DE1150:83-84,149-51,156). Yet the documents relating to chargebacks at VIP and Stars were kept at Feldman's office, and Feldman's own sister – the bookkeeper for the clubs, who he saw every day – even received urgent e-mail from Takhalov indicating that Stars would be shut down for excessive chargebacks (DE1150:148-51; GX12L, attached as Ex. 5 (redacted)). Feldman's attempt to reargue the truthfulness of his testimony does not demonstrate clear error.

D. Other Sentencing Rulings

1. Pavlenko

Pavlenko claims that the court erred in enhancing his Guidelines range for being a manager/supervisor in the offense, USSG §3B1.1(b) (DE1219:22). Pavlenko gave instructions to B-Girls about what kind of targets they should lure to Caviar and how they should charge victims' cards (*supra*:7-8). For example, after Bolaris was defrauded, Pavlenko (not Simchuk) specifically instructed the B-Girls that they should not accept AmEx since there likely would be an investigation after that incident (DE1131:200). Pavlenko also expressly described himself as "MGMR" – "managing member" – of Rose Entertainment (the corporate entity behind Caviar) (GX128).

Pavlenko's attempt to spin his role as merely an "investor" who gave "information" to the B-Girls is makes no sense and certainly does not show clear error in the court's assessment of the evidence. His citations are also misplaced; for example, *United States v. Martinez*, 584 F.3d 1022 (11th Cir. 2009) dealt with subsection (a) not (b), while in *United States v. Glover*, 179 F.3d 1300 (11th Cir. 1999), the defendant supplied drugs to a narcotics distribution conspiracy and had no authority of any kind over individuals. More pertinent are *United States v. Jones*, 933 F.2d 1541, 1547 (11th Cir. 1991) (defendant helped subordinates "plan the

operational aspects of the [] effort" and "had the responsibility of ensuring that the contemplated [illegal] venture would succeed") and *United States v. Jennings*, 599 F.3d 1241, 1253-54 (11th Cir. 2010) (same).

Pavlenko further contends that court, having decided to apply the money laundering Guideline, was required to assess his role solely by reference to his money laundering activity. Pavlenko did not make this objection during argument on the §3B1.1(b) issue (DE1219:15-22), so plain error review should apply. Regardless, the court did not base its ruling solely on Pavlenko's role in the underlying fraud as opposed to the money laundering; it made no distinction. Rightly so. Pavlenko was a manager/supervisor in both offenses, dictating payments to and for his B-Girl employees through Rose Entertainment, the entity he managed and controlled (*supra*:49).

2. Takhalov

Takhalov, for his part, develops two unpersuasive Guidelines objections. First, he contends the court erred by imposing a two-level enhancement for sophisticated means, USSG §2B1.1(b)(10)(C). "Sophisticated means" is defined as "especially complex or especially intricate offense conduct." USSG §2B1.1, cmt. 8(B). Each of a defendant's actions need not be sophisticated for the enhancement to be warranted as long as the totality of the scheme is sophisticated. *United States*

v. Barrington, 648 F.3d 1178, 1199 (11th Cir. 2011). In this Circuit, concealment is a hallmark of sophisticated means. *Id.*; *see also* USSG §2B1.1, cmt. 9(B) (noting that "sophisticated means" exists when there is especially intricate conduct "pertaining to the … concealment of an offense," giving as examples the use of hidden assets and "fictitious entities"). Takhalov was involved with coordinating payments to the B-Girls through Ieva Marketing, the shell company set up to launder the proceeds of VIP and Stars, and later at his clubs through Valeria Matsova. However "primitive" the idea of preying on men's "prurient interests," (TBr.:61), Takhalov's efforts to conceal the scheme were not, and they are in line with prior cases where this Court upheld the enhancement. *See Barrington*, *supra*; *United States v. Ghertler*, 605 F.3d 1256, 1267-68 (11th Cir. 2010); *United States v. Campbell*, 491 F.3d 1306, 1315–16 (11th Cir. 2007).

Takhalov also objects unconvincingly to his enhancement for vulnerable victims. The Guidelines provide for a two-level upward adjustment "[i]f the defendant knew or should have known that a victim of the offense was unusually vulnerable due to age, physical or mental condition, or that a victim was otherwise particularly susceptible …" USSG §3A1.1(b)(1) & cmt. 2.

As Takhalov sees it, there was nothing vulnerable about his victims, other than being men who enjoy female company. But once patrons came the clubs,

Takhalov and his co-conspirators got them drunk precisely so he could present them with inflated and fraudulent bills at a point where they lacked the capacity to object. Of course, many of the victims were drunk already by the time the B-Girls lured them back to the clubs. No case, let alone a published Eleventh Circuit opinion, holds that a victim in that state due to alcohol cannot be deemed a vulnerable victim. Here, the defendants' victims were incapacitated by the volume of alcohol and other substances plied into them by the conspirators, meant to prevent them from being conscious of the bills they were being told sign, remember all the night's events, or involve law enforcement effectively.

Moreover, Takhalov suggests wrongly that this enhancement hinges on the "characteristics of the victims" (TBr.:62). In fact, "the vulnerable victim adjustment focuses chiefly on the *conduct of the defendant* and should be applied only where the defendant selects the victim due to the victim's perceived vulnerability to the offense." *United States v. Malone*, 78 F.3d 518, 522 (11th Cir. 1996) (citation and internal quotation marks omitted) (emphasis added). That is precisely what occurred here.

3. Feldman

Feldman like Takhalov complains about the imposition of a two-level sophisticated means enhancement, although his enhancement was under

§2S1.1(b)(3), which specifically addresses sophisticated money laundering. Sophisticated laundering is "complex or intricate offense conduct pertaining to the execution or concealment of the 18 U.S.C. §1956 offense," typically involving the use of "fictitious entities," "shell corporations," "two or more levels (*i.e.*, layering) of transactions," or "offshore financial accounts." USSG §2S1.1, cmt. n.5(A). Feldman created and used his shell company Ieva Marketing to launder funds from Stars and VIP, and also layered salary payments to the B-Girls and staff through multiple individuals (*supra*:24-25). It is of no moment that the court did not apply this enhancement to Pavlenko, whose conduct on this front was not identical; in any event, the government believed the enhancement was warranted for him too. Because acquitted conduct can be considered under the Guidelines, it is likewise of no moment that the jury remained silent on "concealment of proceeds" money laundering while convicting Feldman on the "international promotion" theory (*supra*: 46 n.26). That said, even looking solely at his "international promotion" offense, it is indisputable that money was wired from Stars' account to co-conspirators' bank accounts overseas. The commentary says plainly that using "offshore financial accounts" can justify the enhancement.

Feldman further claims that his sentence is substantively unreasonable because the court gave undue weight to his perjury and "wholly failed to consider"

(FBr.:65) any other §3553 factors. Feldman's 100-month sentence was only slightly above his 70-87 month range and well below his 40-year maximum (DE1181:23,35-36). A district court is entitled to consider a defendant's perjury in its §3553 analysis even where the same false testimony provided a basis for a Guidelines enhancement. *See United States v. Mateos*, 623 F.3d 1350, 1366-67 (11th Cir. 2010); *United States v. Sattar*, 590 F.3d 93, 149-51 (2nd Cir. 2010). The weight or discussion given any specific §3553 factor is entirely discretionary. *See United States v. Clay*, 483 F.3d 739, 743, 747-48 (11th Cir. 2007). Moreover, the court here did not focus solely on this one topic; it considered the §3553 factors as a whole and Feldman's arguments for leniency (DE1181:34). Then, in explaining its variance, the court emphasized Feldman's role in the offense and the need to prevent unfair disparity as well as the perjury (*id.*:35). There was no abuse of discretion.

IX. THE COURT DID NOT CLEARLY ERR IN DECIDING RESTITUTION.

Pavlenko asserts that the court erred in ordering him to pay $6,491.60 in restitution because, he says, there was no evidence that any victim claimed pecuniary harm. At Pavlenko's restitution hearing (DE1220), the court reviewed the trial record and found that the victim of the substantive wire fraud offenses for which Pavlenko was convicted (Anderson, Counts 6-8) personally paid $6,491.60 to his credit card provider to cover charges he incurred fraudulently at Caviar

(DE1129:144,189). Pavlenko offered no proof that Anderson had been reimbursed, so Anderson's uncontradicted trial testimony about his payment to AmEx satisfied the government's burden to show by a preponderance this victim's actual loss (DE1220:9,11). *See United States v. Rodriguez*, 751 F.3d 1244, 1261 (11th Cir. 2014). Pavlenko's suggestion that a victim must affirmatively demand restitution is unsupported, and at odds with the mandatory nature of restitution in a fraud case. *See id.* at 1260. The court's order was correct.[39]

[39] Feldman and Takhalov cannot adopt Pavlenko's fact-specific restitution argument, but their complaints are particularly unpersuasive because the court at their hearings heard live testimony from FBI agents about victims' demands for restitution (DE1211,1241).

Conclusion

For the foregoing reasons, the judgments should be affirmed.

Respectfully submitted,

Wifredo A. Ferrer
United States Attorney

By:
s/John Shipley
John Shipley
Assistant United States Attorney
99 N.E. 4th Street, Suite 500
Miami, FL 33132
(305) 961-9111
John.Shipley@usdoj.gov

Kathleen M. Salyer
Chief, Appellate Division

Emily M. Smachetti
Assistant United States Attorney

Of Counsel

Certificate of Compliance

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 19,984 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements for Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally-based typeface using Microsoft Word 2010, 14-point Times New Roman.

Certificate of Service

I hereby certify that seven copies of the foregoing Brief for the United States were mailed to the Court of Appeals via Federal Express this 26th day of November, 2014, and that, on the same day, the foregoing brief was filed using CM/ECF and served via CM/ECF on Howard Srebnick, Esq. and Marcia J. Silvers, Esq., counsel for Albert Takhalov, John E. Bergendahl, Counsel for Isaac Feldman, and Richard Douglas Docobo, Esq., counsel for Stanislav Pavlenko.

s/John Shipley
John Shipley
Assistant United States Attorney

ab

Exhibit 1

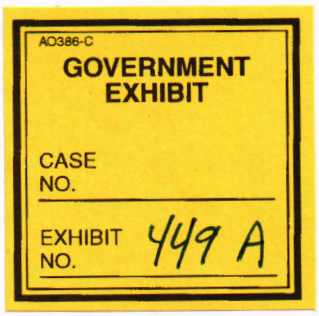
UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

16320 NW 2nd Avenue, North Miami Beach, Florida 33169

TAPE NUMBER:	CD# 82
DATE OF TAPE:	NOVEMBER 22, 2010

PARTICIPANTS:	UCE -	UNDERCOVER EMPLOYEE
	AT -	ALBERT TAKHALOV

ABBREVIATIONS:	UI -	UNINTELLIGIBLE
	PH -	PHONETIC
	IA -	INAUDIBLE
	SC -	SIMULTANEOUS CONVERSATIONS
	[ ] -	***RUSSIAN*** CONVERSATION(S) or ***SPANISH*** CONVERSATION(S)



281H-MM-114005
CD#82

START Session 1 00:30:40

AT: He's on, he's on the other line.

UCE: Okay.

AT: He (UI).

UCE: That's one of the things that ah, it really caught my attention when I was talking to Oleg was. He said that ah, ah, Valerie and, and the ah, the Estonian girls were com-, coming back. Were to come back to work there.

AT: Yeah.

UCE: Oh they're not? (laughs)

AT: You were counting on that (UI).

UCE: Oh, okay.

AT: A hundred percent.

(Background restaurant noises)

AT: I got new girls who came from his club yesterday. I mean…

UCE: The club…

AT: (UI).

UCE: … over there?

AT: From his place.

(Background restaurant noises)

AT: He came to me and said that, Oleg fucked him over again like he did to everybody else. And this is my concern about you. When the shit hits the fan, he gonna (UI). He's never here. He's (UI).

WAITER: (UI)?

AT: Everything's good.

WAITER: Very good (UI).

AT: Thank you, (UI). And he's just gonna disappear. He's got nothing holding him here. You know. I'm sure you need something solid. Not…

UCE: Ah huh.

AT: …a one or two-day thing. So keep (UI). But ah. Isaac invested money. Isaac lost it. Illya invested money. He just told him to go fuck himself. He's not giving him his money. Nothing. You know? I'm telling you, this guy's gonna get hurt one day.

(Noises at table)

AT: With me, he knows he can't fuck with. Cause I handle all the financing. Everything goes through me.

(Traffic noises)

AT: Absolute everything. So before he would take money from me, I would take it from him. You like that?

UCE: Ah huh.

AT: So. You need to think ahead a little bit as far as (clears throat).

(Noises at table)

AT: Again.

UCE: If you were, if you were in my position, how would you do it?

AT: I'll tell you one thing. Again, he's afraid that you're a cop.

UCE: Ah huh.

AT: That's, that's, it balances out where he would, he doesn't wanna fuck with you. So. The only thing is that I'm gonna have to warn you. When you do say Albert, you know, these terms are good for me. Not, not on the salary. We're talking about percentage wise. I'll tell him, Oleg, this is what Lewis wanted me to tell you. A lot of girls are gonna be workin'. They complain, they never got paid, they did this, did that. We heard a lot of stories. He just wants to, he warned me if anything like that happens to him, he'll make sure that you, you know, you're gonna pay for a long fuckin' time. You don't want, you know, (UI). I don't wanna have any bad terms with Lewis because he's with Miami Beach. So. I would, that, once I put (UI) to him like that….

UCE: Ah huh.

AT: … he's gonna make sure before he thinks of fucking (UI), he's gonna think twice, should he do it or not. Lewis, you have to understand one thing. I'm on your side. I'm ah, you're working with me or you're not working with me.

UCE: Alright. I appreciate it.

AT: That's the bottom line. And I will cause you help me out a lot. You're a nice guy, you know, and. I just, I'm the type of guy where, if you're nice to me, I'm gonna be double, you know, twice as nice to you (UI). So. You're here to make money just like me and him. So, if you're in it, you're in it, you know?

(Background restaurant noises – noises at table – Spanish music heard)

AT: We have to, we have to plan this, right? So nobody gets hurt (UI), you know?

UCE: Ah huh.

AT: He doesn't screw anybody over.

STOP Session 1 00:35:06

Exhibit 2

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

TAPE NUMBER: CD# 107

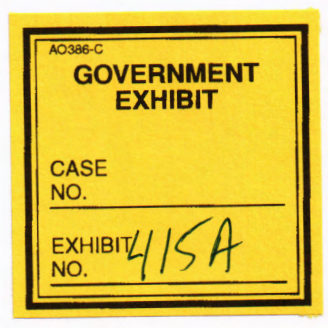
DATE OF RECORDING: MARCH 29 - 30, 2011

PARTICIPANTS:

UCE -	UNDERCOVER EMPLOYEE		
UF –	UNKNOWN FEMALE (S)		
UM -	UNKNOWN MALE(S)		
SZ -	SIAVASH ZARGARI, AKA SAMMY		
CHRIS -	CHRIS LAST NAME UNKNOWN (LNU)	VM -	VALERIA MATSOVA
AK -	ANNA KILIMATOVA		
ID -	IRINA DOMKOVA	AM -	ANASTASSIA MIKRUKOVA

ABBREVIATIONS:

UI -	UNINTELLIGIBLE
PH -	PHONETIC
IA -	INAUDIBLE
SC -	SIMULTANEOUS CONVERSATIONS
[ ] -	***RUSSIAN*** CONVERSATION(S) or ***SPANISH*** CONVERSATION(S)



281H-MM-114005
CD#107

START Session 3 00:05:05

UF: Inguna (UI).

SZ: Inguna?

UF: Inguna comes (UI) for ah, here to, because this client with Era (PH). I know this client. We speak with him in Delano. I don't want that he, he see me. What?

SZ: Him?

UF: Yes.

SZ: What is (UI)?

UF: Thank you.

UF: But that one girl was saying (UI) that there are, because she was trying to go, I think, today, 8:00 P.M., and then come back here.

SZ: Who?

UF: The blonde girl.

SZ: We closing right now. They can't come this time anymore. Before five. After five, we close.

UF: (In background) (UI).

UF: (In background) They can sit (UI) and a lot more. He will make them sit (UI)…

UF: (In background) (UI).

UF: (In background) …(UI).

UF: (In background) Right (UI), for (UI).

UF: (In background) (UI) on the right. And I need the (UI) for it, please. Mady (PH), was given ah, you know, a (UI) because we had to make ah, I think, (UI).

UF: (In background) (UI).

UF: (In background) I'm gonna (UI).

SZ: (UI).

UM: (UI).

SZ: Do you want me ah.

UF: (In background) (UI) that long.

UF: (In background) It's ah. (UI) so you find better.

CHRIS: Alright. I can do that.

UF: Thank you.

AK: Ok, quick. Let's take a seat, and maybe then we will sign better. Quick come here, come here. Calm down.

SZ: (In background) (UI).

AK: Probably.

(Chair scraping across the floor)

SZ: More than (UI).

AK: take a seat.

CHRIS: Let me just… just..

CHRIS: (laughs)

AK: Please, please, take a seat…

CHRIS: (UI).

AK: …take a seat. Ah, and (UI). Take a seat.

(Car horn heard in distance – background noises)

AK: You're good.

(Background noises)

AK: Here's the pen. Please, give back (UI).

CHRIS: Ah, lets get this done.

(Scraping noise)

CHRIS: Right, and so.

AK: I need a signature here and tell (UI)….

CHRIS: Ahhh.

AK: …okay? Concentrate. Write down your name. Like Chris, okay? Can you do it quick for me? I wanna go home.

CHRIS: You got it.

AK: Okay.

CHRIS: Right here?

AK: Here. No. Yes. Right, right here.

CHRIS: Yeah (UI).

AK: Here, sweetie.

(Background noises – background noises)

CHRIS: (UI).

AK: This one.

(Background noises)

281H-MM-114005
CD#107

AK: (UI). What?

CHRIS: You know your stuff?

SZ: (In background) Hey!?

AK: Hold, sweetie. Yeah. Yeah. **00:07:30** [***Russian*** words] to **00:07:32**

CHRIS: And give it to me.

AK: Valerie.

SZ: Valerie.

VM: (In background) Coming.

AK: He will take, wait ah…

SZ: Yeah.

AK: … ah, wait a second, wait a second. We are signing something.

SZ: It's our (UI) .

AK: Chris, Chris. Sit down, sit down. Sign for me, sign.

(Chair scraping)

AK: Wait a second.

CHRIS: No, I just.

AK: Wait, sweetie. You've had a lot to drink. They had to make a new signature.

(Coughing in background – background noises)

AK: Please.

(Traffic noise – banging noises)

AK: Ok, please. That's okay, so. Give me, please. In the (UI). Cause I cannot make

you print for me. Concentrate. Write it down. Write your name. Write your signature, okay? Your signature is like Chris.

CHRIS: Shit. Shit.

AK: No, no, no! Baby! Right here. Like this. Okay, okay? Like this. Like in school. Here. Write your name, your signature. Okay?

SZ: (UI in background)

AK: This one is beautiful. I need the same one, beautiful here. Write same one here. Okay?

(Background noise).

AK: Okay, here.

(Background noises)

AK: No.

CHRIS: No, this is crap.

AK: Hold the pen, it's like this, ah. This one is much more better. Hold it, Valerie!

VM: Yes?

AK: (In background) Look at those. This, this one is much more better. (UI) have.

VM: Yeah, this, this is better. I need the same (UI).

AK: Okay.

UF: The same (UI).

AK: Okay, let's do. Much more better. (UI). Wait just a second. The last two signature.

CHRIS: Ah huh.

AK: You see when I told you that we are like in a school? You know (UI) much more

better. I'm a good teacher. Yep.

(Footsteps heard)

CHRIS: You oughta hear (UI).

UF: (UI).

AK: You know (UI). You feel better? You need any water?

CHRIS: No, I'm fine.

AK: (UI) fine.

(Footsteps heard – UF's are UI in background)

UF: (UI).

(Rustling noises – police radio transmissions heard lightly)

(UF and UM in UI conversations for some time)

AK: You got it?

VM: (UI), I tried to make the same sign, like on the apartment (UI).

CHRIS: Crap!

AK: Chris.

CHRIS: Yeah.

AK: (UI). Do not try. It's beautiful. Here's a pen. Okay? Like in school. (UI). Yes, like your making a (UI). This one's beautiful. That's what I need. Okay? Down here.

CHRIS: (UI).

AK: He ask me.

CHRIS: Okay. Got it.

AK: Like in school.

CHRIS: Green.

AK: 'Scuse me lady? Can you please leave us alone? I'm so sorry. Thank you so much. We have a class.

(Footsteps heard.)

CHRIS: No, this is bullshit.

AK: Okay.

CHRIS: You know what?

AK: Okay. Sweetie. Pen here one more time.

CHRIS: This is bullshit.

AK: I know. That's why, it's light here (UI).

(Background noises)

AK: No. No good. (UI due to recorder noise). Put whatever you like. (UI) you know, if it (UI), I can't (UI).

AK: We, we, we can't make you sign it (UI).

AK: Can you concentrate at least one more time?

CHRIS: Oh, shit.

VM: No, that's fine. Three signatures and you can go home.

CHRIS: Alright.

AK: And I can go home.

CHRIS: Okay.

UF: (UI).

CHRIS: Bring it.

AK: Okay? Okay, sweetie. Here. Take a pen. Sign here, okay? So, write this. (UI). Now here (UI). Okay? Now here. From a (UI).

SZ: (In background) We have a (UI) on the (UI).

VL: (In background) I don't know much (UI).

(UI talking)

CHRIS: Just do the deal thing.

AK: Just do the deal. Just sign here, you know. And everybody (UI).

CHRIS: Oh, that's cool. Alright, so.

AK: Right here.

CHRIS: Boom, boom, boom. Right here?

AK: Yes.

CHRIS: Boom. Boom.

AK: Good.

CHRIS: Alright. Boom.

AK: One more. Next page.

CHRIS: Boom.

AK: With, yes. Boom.

CHRIS: Boom. Boom.

AK: Okay?

CHRIS: Done.

AK: And the last one, the last one, please. That's it. The last one and…

CHRIS: Alright.

AK: … then we let you go.

CHRIS: I want.

AK: Down here.

CHRIS: Boom. Boom. (tapping noises)

AK: And what about ah?

AK: The last one?

CHRIS: And, and, and then boom.

AK: The boom, boom (UI).

(UI conversations)

CHRIS: Alright.

(UF's are UI in background)

CHRIS: Where do you want me? Right here?

UF: Here, baby. Here. Down.

CHRIS: Yeah. You know what? Ah.

SZ: Your husband?

UF: Ah huh.

UF: I guess it's my boyfriend.

UF: Okay.

SZ: It shouldn't have remained.

AK: Sweetie. Look here. This is (UI).

(UI conversations – background noises)

UF: (UI) I need to talk (UI).

AK: He has well all the time (UI).

(UI conversations)

CHRIS: No, I will.

(UI conversations).

UF: Keep it, keep it for you and wait (UI).

CHRIS: Okay.

UF: (UI) with (UI). Wait (UI).

(Footsteps heard – background noises)

UF: Baby.

UF: Wrong (UI).

UF: Here is your top.

CHRIS: Oh!

UF: This is also yours.

CHRIS: This is my shirt.

UF: Chris (UI).

UF: And Chris, I don't know if know your wasted.

CHRIS: Fair enough! (UI).

(Chair scraping across the floor)

UF: Baby, (UI).

CHRIS: Alright.

AK: (UI) so, on this one, this one come your receipt.

CHRIS: Thank you.

AK: Hey.

UF: Yeah. Sweetie (UI).

UF: (UI).

AK: You, you need the help? Let, let me help you.

(Background noises)

CHRIS: I'm fine.

AK: Please. Don't lose your card.

CHRIS: It ain't the (UI).

AK: Don't lose your ID, please. You want me to help you?

CHRIS: No, I'm good.

AK: You want me to put it your (UI)?

CHRIS: You are so (UI).

UF: (UI).

AK: Maybe, you, you want me to put it in your pocket. Okay.

CHRIS: Well these are mine.

UF: Okay.

CHRIS: Alright.

AK: Look here. Where is your card? You keep.

CHRIS: Alright. So we're ah.

AK: ID. Your Amex. Okay?

CHRIS: No, we're good.

AK: Your, your receipt.

CHRIS: Yeah. They were all in there. I got his shit.

UF: (UI).

AK: Take it. Don't lose it. Okay?

CHRIS: Thank you.

AK: Here is some your receipt. I will put it here, okay? Hey, everything is fine. You have all your stuff. Ah, let them make a reserve-. Let's go. I will catch a cab (UI). Okay?

CHRIS: Yeah.

AK: Chris, I will help you.

UF: Chris, you don't want your.

CHRIS: What?

UF: Where is your wallet?

UF: I will help you.

CHRIS: (UI).

UCE: He has it.

CHRIS: Well, my wallet, my wallet's.

UCE: It's in his.

CHRIS: My wallet is, ah.

AK: Let me help you.

CHRIS: My wallet.

UF: You're a clean drunk, darling.

CHRIS: No (UI).

UF: It really sucks.

AK: Shit happens.

CHRIS: Shit happens. Thank you.

(Background noises – sounds of chairs moving – UI talking)

UM: Correct. So, look.

UF: Bye-bye.

UF: Bye.

(Footsteps heard – background noises)

00:17:02 [***Russian*** conversation] to **00:17:06**

AK: I will, I will catch a cab, a cab for you, okay? For you.

CHRIS: Yep.

UF: (UI).

CHRIS: Alright. Whatever.

281H-MM-114005
CD#107

(UI conversations – background noises)

CHRIS: (UI) do alright. It's great!

UM: Thank you.

(Background noises)

UCE: Alright. Sammy. I'm gonna go ahead and go, 'cause I gotta wake up and drive some of the girls to, ah, the airport at one.

SZ: (UI) and lock the door and.

UCE: So. They're still upfront trying to get him a cab.

SZ: Yeah.

(Background noises – footsteps heard)

SZ: (In background) Alright.

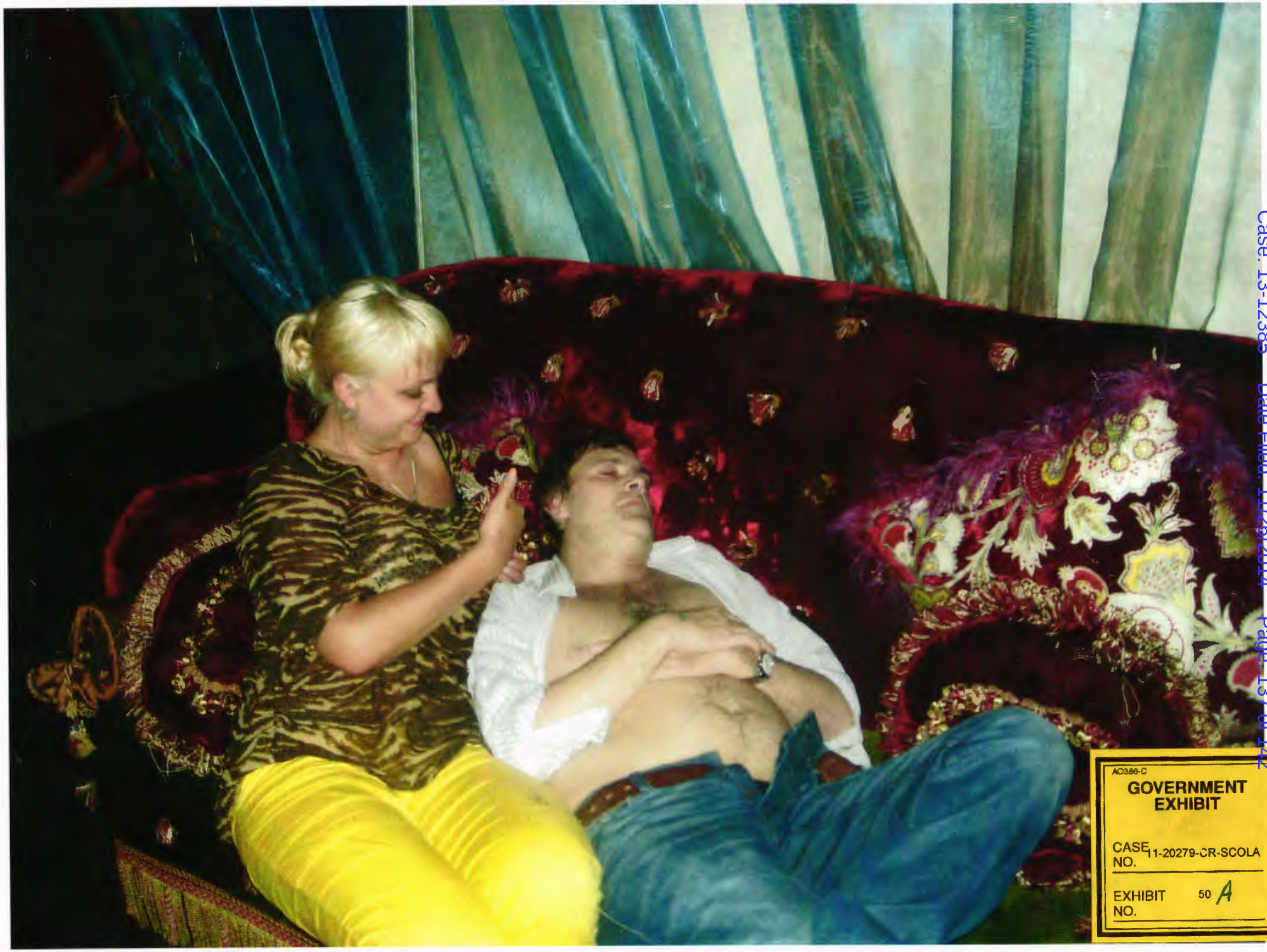
(Traffic noises – outside noises – footsteps heard)

AK: Lewis. Lewis, you, you will help us to catch a cab?

UCE: Yeah.

STOP Session 3 00:18:00

Exhibit 3



AO386-C
GOVERNMENT EXHIBIT
CASE NO. 11-20279-CR-SCOLA
EXHIBIT NO. 50 A

Exhibit 4

satpham@sflhidta.org Help Sign Out

Reply | Reply to All | Forward

From: [redacted]
To:
Sent:
Subject:

[redacted]

Thank You,

Stephanie Barkey
U.S. Fraud Investigations / American Express
Office [redacted]
Fax [redacted]
[redacted]

----- Forwarded by Stephanie A Barkey/AMER/TRS/AEXP on 07/14/2010 03:38 PM -----
Caviar Bar <caviarbar@gmail.com>
04/21/2010 09:32 AM

To Stephanie A Barkey/AMER/TRS/AEXP@AMEX
cc
Subject John Bolaris

Stephanie:

At this point I was not able to find more pictures, however I was informed by staff that lady who was with Bolaris came couple of more times after the visit with Bolaris and whenever she comes next I asked to get her name and contact info since Manager and Bar stated that during the visit Bolaris and Company were taking pictures.

I misplaced your direct phone # please email it to me.

Best regards,

Stan Pavlenko
Caviar Bar
643 Washington Ave Miami FL 33139
305.747.1848

-----Original Message-----
From: Stephanie A Barkey [mailto:[redacted]]
Sent: Friday, April 16, 2010 3:37 PM
To: Caviar Bar
Subject: RE: John Bolaris (5)

Stan,
Thanks so much!!! These scanned documents are much clearer than the faxed docs.
That picture is priceless and perfect!!! I am on this and will be in touch Monday at the very latest. If you find more photos, it's just icing on the cake!
(Embedded image moved to file: pic16895.gif)

Caviar Bar

<caviarbar@gmail.com>

To

Stephanie A Barkey/AMER/TRS/AEXP@AMEX

04/16/2010 12:24 PM

cc

Subject

RE: John Bolaris (5)

Stephanie:

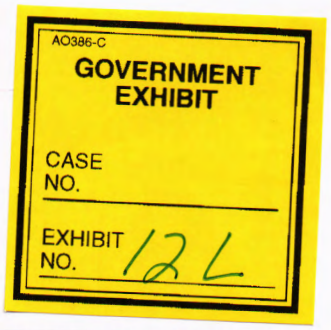
Thank you,

Caviar Bar
643 Washington Ave Miami FL 33139
305.747.1848

-----Original Message-----
From: Stephanie A Barkey [mailto:[redacted]]
Sent: Friday, April 16, 2010 2:33 PM
To: caviarbar@gmail.com
Subject: John Bolaris

Exhibit 5

Fw: Fwd: stars lounge - review asap !!!!



From: **albertfinancing@gmail.com**
Sent: Wed 10/20/10 5:54 PM
To: albu27@msn.com

Sent via BlackBerry from T-Mobile

From: World Global Financing <[redacted]>
Sender: visapayment@gmail.com
Date: Wed, 20 Oct 2010 10:26:33 -0400
To: Albert Takhalov<albert@wgfinancing.com>; WGF FAX<wgfinancing@gmail.com>
Subject: Fwd: stars lounge - review asap !!!!

Albert !!!!

WTF is going on with them? 30k worth of chargebacks this month..Risk department is freaking out

From: **Richardson, Gladys** <[redacted]>
Date: Wed, Oct 20, 2010 at 8:32 AM
Subject: stars lounge
To: visapayment <[redacted]>, World Global Financing <[redacted]>

Good morning. I'm about to terminate this account because of excessive chargebacks. Any idea why there chargebacks would be so high?

STARS LOUNGE
643 WASHINGTON AVE
MIAMI BEACH FL 33139-6207 US

Retrievals Summary

Wed, Oct 20 2010, 8:31:24 EDT
518089450131479
8566/4500/0100

Merchant Number:

TRANSACTION COMPLETED

Retrieval Amount	Original Request Date	Request Age	Request Type	CardHolder Number	Transaction Date	Status	Origin
[redacted]							