

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - X
UNITED STATES OF AMERICA :
 :
 - v. - :
 :
 ARTHUR G. NADEL, :
 :
 Defendant. :
 :
 - - - - - X

09 Cr. 433 (JGK)

GOVERNMENT'S MEMORANDUM OF LAW IN OPPOSITION TO
DEFENDANT'S MOTION FOR MODIFICATION OF BAIL CONDITIONS

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TABLE OF CONTENTS

Procedural Background.....1

Statement of Facts.....4

Applicable Law.....10

Discussion.....11

 I. The Defendant Poses An Actual Risk of Flight And A
 Danger To The Community.....15

 A. The Defendant Poses An Actual Risk Of Flight....15

 B. The Defendant Is A Danger To The
 Community.....19

 II. There Are No Conditions Or Combination Of Conditions
 That Can Reasonably Assure Nadel's Required Attendance
 Or The Safety Of The Community.....20

Conclusion.....25

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The Government respectfully submits this memorandum of law in opposition to the motion of Arthur G. Nadel (the "defendant" or "Nadel") for modification of his bail conditions. For the reasons set forth below, and the reasons set forth in the Government's Memorandum of Law dated February 12, 2009, Nadel's motion should be denied because there are no conditions or combination of conditions that will reasonably assure his appearance.

Procedural Background

On January 27, 2009, Arthur G. Nadel, the defendant, was presented before United States Magistrate Judge Mark A. Pizzo on a criminal complaint charging him with one count of securities fraud in violation of Title 15, United States Code, Sections 78j(b) and 78ff, Title 17, Code of Federal Regulations, Section 240.10b-5, and Title 18, United States Code, Section 2; and one

count of wire fraud in violation of Title 18, United States Code, Sections 1343 and 2.

On January 30, 2009, Judge Pizzo held a detention hearing. Following that hearing, Judge Pizzo found that there were no conditions or combinations of conditions that could reasonably assure Nadel's appearance. Accordingly, Judge Pizzo ordered Nadel's detention pending trial and removal from the Southern District of Florida. On February 6, 2009, Nadel filed an emergency motion to stay the removal pending an appeal of the detention order. Judge Pizzo denied the motion.

Thereafter, Nadel appealed Judge Pizzo's detention order to the Honorable Denise L. Cote. The defendant based his argument for relief on virtually the identical issues that the defendant now raises in his May 22, 2009 submission (*i.e.*, that the defendant does not have access to any funds and is in no condition to flee).¹ Based on the defendant's motion, Judge Cote held a bail hearing on February 17, 2009 and February 25, 2009. On February 25, 2009, after receiving extensive briefing, and hearing from the parties, Judge Cote overturned Judge Pizzo's detention order and set bail. In reaching her decision that conditions could be set that would reasonably assure the defendant's appearance at trial, Judge Cote found as an initial

¹ The defendant does raise for the first time his claim that he will not effectively be able to assist in his defense if he is denied bail.

matter that "the government had easily - easily - carried [its] burden" that the defendant was an actual risk of flight. See Tr. 2/25/2009 at 42. Judge Cote also found that the defendant had made the deliberate and calculated decision to flee from potential criminal prosecution, and only returned to custody after "the FBI moved in on him." See Tr. 2/25/2009 at 44. However, given, in large part, "the defendant's personal circumstances and history," including his proffered ties to the community, Judge Cote set bail as follows: a \$ 5 million personal recognizance bond co-signed by 4 financially responsible persons and secured by \$1 million in cash; confessions of judgment or execution of forfeiture agreements with respect to all property for which the defendant owns or co-owns; assisting the Government in locating each withdrawal made by the defendant after October 1, 2008; assisting the SEC and the Receiver in the tracing and recovery of all assets; surrender of all travel documents; travel restricted to the Southern District of New York, the Middle District of Tampa, and all points in between for purposes of travel, provided that all travel is approved by the U.S. Attorney's Office in advance; and home incarceration with electronic monitoring and no Internet access. See Tr. 2/25/2009 at 48-49.

On April 28, 2009, a federal grand jury returned a fifteen count indictment against the defendant charging him with: (a) six

counts of securities fraud in violation of Title 15, United States Code, Sections 78j(b) and 78ff, Title 17, Code of Federal Regulations, Section 240.10b-5, and Title 18, United States Code, Section 2; (b) one count of mail fraud in violation of Title 18, United States Code, Sections 1341 and 2; and (c) eight counts of wire fraud in violation of Title 18, United States Code, Sections 1343 and 2.

Statement of Facts²

From in or about 1999 through on or about January 14, 2009, Nadel defrauded more than 370 investors of hundreds of millions of dollars. See Indictment at ¶ 8. During that time, Nadel falsely claimed to investors and others that he was an attorney and a successful trader. In reality, Nadel was neither. See Exh. B, *In the Matter of Arthur G. Nadel*, 447 N.Y.S.2d 12 (App. Div. 1982) (disbarring Nadel for misappropriating client funds). However, as a result of his repeated lies, Nadel obtained approximately \$360 million dollars from investors while managing six different funds as an investment adviser. See Indictment at ¶ 9.

Nadel formed the vehicles through which he operated his fraudulent scheme in or about 1998. See Confidential Memo of

² The Statement of Facts is substantially similar to that set forth in the Government's Memorandum of Law dated February 12, 2009. It has been supplemented, however, to include certain analyses that were generated by the SEC Receiver.

Arthur Nadel, attached hereto as Exh. C. Starting from at least 1999 through in or about January 2009, Nadel consistently lied to investors about having consistent, positive annual returns from trading. See Indictment at ¶¶ 8-16; see also Def. Exh. A at 8-10, 13-14. For example, as exemplified in the Receiver's First Interim Report, between 2003 and 2008, Nadel represented to investors that his funds had profited by more than \$270 million. See Def. Exh. A at 9. In reality, Nadel's funds had actually suffered more than \$18 million in losses. See Def. Exh. A at 9-10. Similarly, Nadel claimed that his funds realized consistent, positive returns ranging from 11.52% to 48.67%. In reality, the funds Nadel managed suffered losses of up to 33.35%. See Def. Exh. A at 13; see also Indictment at ¶ 10.

Nadel used those lies about the performance of his funds to dupe investors into investing and keeping their money with him, and to cause them to inject more cash into his fraudulent scheme. See Exhs. D-F. Significantly, Nadel also used those lies to:

- (a) justify over \$97 million in so-called performance and management fees to him and his partners, see Def. Exh. A at 10-11;
- (b) divert over \$23.5 million in investor money which he wrongly transferred to his account and accounts controlled by him, see Def. Exh. A at 11; and
- (c) allocate profitable trades to himself in amounts totaling over \$22 million, see Def. Exh. A at 13-14.

In 2008, Nadel's fraudulent scheme came crashing down. The economy declined sharply. In turn, investors demanded redemptions. Nadel tried to stall the redemptions by continuing to lie about his trading. For example, on or about July 9, 2008, Nadel signed a letter telling investors that during the past nine months "[i]t was wonderful to find out that our active trading allowed our clients to have positive returns of over 10% while the S&P 500 and the Dow were down over 16% and 18% respectively during that time." See Exh. D. On or about September 8, 2008, Nadel signed another letter asking investors for more money, stating "[c]urrently we have a handful of open slots in each of our funds. If you are interested in adding to your account or open an additional account, we would be happy to accommodate your request." See Exh. E.

Similarly, on or about December 10, 2008, Nadel signed a letter to investors stating that "[w]e are very proud to report that during this extremely turbulent time our focus on active daily trading brought our funds a return for November slightly greater than ½ of a percent" as compared to double-digit declines in the S&P 500 index. See Exh. F. The December 10, 2008 letter further stated that "[w]e have recently had the pleasure of being introduced to many new referrals from clients that have shared our investment performance to friends who are looking to make disciplined investment decisions." See Exh. F.

However, contrary to the statements Nadel made to investors, the investment vehicles suffered substantial losses and the amount of money in the funds dropped precipitously. Indeed, at the time Nadel authored the December 10, 2008 letter to investors, the money in Nadel's funds had dropped to substantially less than a few hundred thousand dollars. See generally Indictment at ¶ 11.

Following the arrest of Bernard L. Madoff in December 2008, Nadel's partners insisted on an independent audit of the assets in the funds. See Compl. at ¶ 14. An independent audit, of course, would have revealed that Nadel had been lying about his trading activities. On or about January 13, 2009, Nadel received a letter from his partners regarding the hiring of an independent auditor. See Compl. at ¶ 14. The next day, January 14, 2009, Nadel fled. Compl. at ¶ 15. Nadel left a note for his wife stating that, among other things, "[t]he Funds did not reflect their true performance" and that "[t]here will be many people who would like to kill me, but you can assure them that I will do the job myself." See Exh. H. In addition to suggesting that he was going to kill himself and offering excuses for his criminal conduct, Nadel claimed that there was no money left. See Exh. H.

Following Nadel's disappearance, there was chaos at Nadel's offices. The police department in Sarasota, Florida was asked, at the request of Nadel's family, to search for Nadel. Investors

were told that all of their money was gone. The police found Nadel's vehicle at a nearby international airport and asked the FBI to join the search. Shortly after January 14, 2009, it was widely reported in newspapers and other places that Nadel had disappeared, that the Securities and Exchange Commission (the "SEC") had begun an investigation into potential fraud relating to Nadel's investment advisory business, that the Sarasota police were looking for him, and that the FBI was looking for him. These newspaper reports made it clear that Nadel was wanted by law enforcement and the SEC, and Nadel was keeping himself abreast of the news. See Exh. G at 3-4 ("My present state of mind is OK if I can eliminate the BS that the press loves to hand out to sell papers, and to get a fair shake from the authorities. Speaking of which, you can tell Michael Pollick 'Hello Again' for me, and that I appreciate the slight softening of today's (Sunday) article compared to yesterday's. You can also feel free to give him a scoop with this Memo (see first page, please)."). Indeed, the letters also make clear that Nadel did not want law enforcement to learn of his whereabouts. See Exh. G at 1 ("... but if you eliminate the fax sending info, you can distribute it to press and authorities.")

On January 21, 2009, the FBI filed a two-count complaint under seal against Nadel, charging him with securities fraud and wire fraud. On that same day, the Honorable Henry B. Pitman

issued an arrest warrant for him. Shortly thereafter, the FBI visited Nadel's relatives in Georgia and Sarasota. On or about January 22, 2009, the FBI executed a search warrant of Nadel's residence in North Carolina. On or about January 24, 2009, two FBI agents from New York went to Florida to join the search for Nadel. Among other things, these agents spoke with Nadel's former employees and visited Nadel's residence in Sarasota, Florida.

On January 26, 2009, the U.S. Attorney's Office learned that Nadel had counsel, and called his counsel. The U.S. Attorney's Office informed Nadel's counsel that there was a warrant for Nadel's arrest, and that Nadel should surrender immediately. Nadel's counsel wanted to discuss the terms of Nadel's surrender, but the U.S. Attorney's Office advised counsel that the Government did not negotiate with fugitives. Thus, at the insistence of the United States Attorney's Office, Nadel surrendered to the FBI on January 27, 2009. Asked where he had been, Nadel stated that he had been "on vacation."

Toll records for Nadel's cellular phone, fax header information from documents recovered from Nadel's home, and subpoenaed records from hotels and financial institutions revealed that this "vacation" involved "traveling" to Louisiana (where the defendant promptly dropped his cellular phone), San Antonio, Texas and San Francisco (where he stayed at two hotels).

Applicable Law

Title 18, United States Code, Section 3142(e) provides that if a judicial officer concludes after a hearing that "no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community," he or she shall order the defendant detained pending trial. 18 U.S.C. § 3142(e). In assessing the defendant's risk of flight, Congress has directed courts to consider several factors: (1) "the nature and circumstances of the offense charged;" (2) "the weight of the evidence against the person;" and (3) the "history and characteristics of the person." 18 U.S.C. § 3142(g).

In seeking pretrial detention, the Government bears the burden of showing by a preponderance of the evidence that the defendant poses a risk of flight or, by clear and convincing evidence, that the defendant poses a danger to the community, and that no condition or combination of conditions can address these risks. *United States v. Sabhnani*, 493 F.3d 63, 68 n.5 (2d Cir. 2007); *United States v. Mercedes*, 254 F.3d 433, 436 (2d Cir. 2001); *United States v. Friedman*, 837 F.2d 48, 29 (2d Cir. 1988); *United States v. Shakur*, 817 F.2d 189, 195 (2d Cir. 1987); 18 U.S.C. § 3142(f).

Discussion

In his brief, the defendant argues that his bail conditions should be modified primarily based on three reasons: (1) the current bail conditions are "financially onerous"; (2) he is "in extremely poor health . . . and he has no physical ability to support himself in hiding"; and (3) he cannot "effectively prepare his defense so long as he remains behind bars." The defendant's arguments should be rejected.

As set forth below and in the Government's Memorandum of Law dated February 12, 2009, as well as in the Receiver's letter of May 28, 2009, which is attached hereto as Ex. A, the defendant was involved in a financial fraud that involved approximately \$360 million. As a result of that fraud, the defendant took over \$95 million from investors for his own personal use, much of which still cannot be accounted for based on the defendant's known assets and investments.³

³ In his letter, the Receiver states that he has not been able to account for \$28 million. See Exh. A. Based on my conversations with the Receiver, I have learned that this number refers to the amount of money that the Receiver has not been able to trace to any source (e.g., to Nadel; the Moodys; trading losses; or redemptions). This figure does not mean, as defense counsel suggests in his brief, that the Receiver has been able to trace the nearly \$100 million that Nadel took in fees and trading "gains" because, for purposes of the Receiver's initial analysis, this money has been "accounted for" as being diverted to Nadel.

Conversely, for purposes of bail, the relevant question is what amount of this \$95 million, if any, the Government has been able to trace and seize, and what amount Nadel still has access to. As described more fully below, it is the Government's

In light of the amount of monies involved in the fraud (and thus, the amount of money the defendant was able to raise in the past), and the wealth of the community in which the defendant was a part, a \$5 million personal recognizance bond, which is secured by \$1 million cash security is far from a financially onerous condition. Indeed, given the defendant's long and purported strong ties to the community, he should easily be able to meet this condition. The fact that he has not been able to do so speaks volumes. It shows that the people who know the defendant best do not trust him enough to put any of their own assets at risk; and, if the people who know him best do not trust the defendant's word that he will not flee, neither should the Government or the Court.

Similarly, the defendant's medical condition is another factor that militates against modifying his bail conditions. As a preliminary matter, the defendant has not attempted to make any showing that he will not be afforded adequate medical care while in the Bureau of Prisons (the "BOP") or that he desires to receive such care. Indeed, the record currently supports a finding that, even outside the BOP system, the defendant has, and

contention, that it has only been able to identify the location of approximately \$16-17 million of the \$65.5 million which Nadel netted as a result of this fraud. Accordingly, there is over \$40 million, which Nadel received and which the Government has not been able to locate. Nadel's access to that money creates a significant risk of flight.

likely will, refuse the medical care needed to treat the ailments of which he now complains. Thus, the defendant's health is only relevant in so far as it: makes any potential sentence he receives a likely life sentence, diminishes the practical effect of a bail jumping charge, and thus, gives Nadel an even stronger incentive to flee.

Finally, the defendant claims that he cannot effectively prepare his defense if he continues to remain incarcerated prior to trial. In support of this contention, the defendant asserts that his ability to communicate with his attorneys is "greatly impaired" because he does not have unfettered telephone access to his attorneys, and because this is a document-intensive case. As a preliminary matter, the BOP is equipped to accommodate the needs of defendants to review discovery in both white collar and non-white collar cases, and the defendant has not given any concrete example of how or when it has not been able to do so in this case.⁴ Thus, the Court should only address this issue should it ever become ripe - *i.e.*, if Nadel is actually denied access to his counsel or discovery - and not based on defense counsel's speculation. Without any such tangible evidence, the defendant's argument, if credited, would effectively afford bail

⁴ Indeed, in connection with the detention hearing in February 2009, the defendant and his counsel were given access to, and reviewed, approximately 17 boxes of documents over the course of only a few days.

to any defendant in a document-intensive case, regardless of the history and characteristics of that defendant or the nature and circumstances of the given offense. This offends the notion of justice. A white collar defendant, who is an actual risk of flight or a danger to the community, should not be afforded bail as a matter of course (where others would not), simply because he committed his crimes in the confines of an office environment where there are bound to be many files and electronic equipment. The mere volume of discovery involved in a case - whether it is in the form of documents or wiretap evidence - is not a factor under section 3142, nor should it be.

Accordingly, the defendant has not set forth any material, changed circumstance that supports a modification of his bail conditions.⁵ Indeed, the Government continues to maintain, for the reasons set forth below, as well as those set forth in its Memorandum of Law dated February 12, 2009, that detention in this case would be appropriate on the basis of both risk of flight and pecuniary danger to the community principally for the following reasons: (1) the nature and circumstances of the offenses; (2) the overwhelming evidence against the defendant; (3) the defendant's long history of deceit, his current lack of positive ties to the Sarasota community (given the number of victims he

⁵ The Government respectfully submits that the only material, changed circumstances is that the defendant was indicted for his crimes - a factor that militates against bail.

defrauded within that community), and his initial flight; and (4) the financial danger he would pose to others upon his release.

I. The Defendant Poses An Actual Risk Of Flight And A Danger To The Community

A. The Defendant Poses An Actual Risk Of Flight

Nadel has been charged with serious crimes that carry a maximum sentence of 300 years' imprisonment. Given, among other things, the loss amount, the number of victims, and the complex nature of the scheme, the Government calculates Nadel's advisory Guidelines range to be life imprisonment. The substantial sentence that Nadel faces, coupled with his lack of a viable defense, gives the defendant a strong incentive to flee and makes him an actual risk of flight. *See generally United States v. Londono Villa*, 898 F.2d 328, 329 (2d Cir. 1990) (noting, in a case involving bail pending sentencing, that the prospect of long prison term creates a "powerful incentive to flee"). Indeed, in light of Nadel's advanced age - he is 76 years old - and apparent medical condition, almost any likely sentence Nadel would receive, if convicted of these crimes, would effectively amount to a life sentence.

The risk of flight that exists because of the strength of the evidence and the prospect of a lengthy prison term is even more acute given Nadel's actions in January 2009. As set forth in the Government's brief of February 12, 2009, the evidence

clearly shows that on January 14, 2009, Nadel made the premeditated and calculated decision to flee from authorities.⁶

See Government's Br. of 2/12/09 at 12-16.

For example, on or about January 6, 2009, Nadel wrote a check to himself and his wife in the amount of \$50,000. See Exh. I at 3. On or about January 9, 2009, Nadel withdrew \$50,000 from the Scoop Capital Account by writing the check to "Wachovia Bank" and labeling it as an "official ck." See Exh. I at 7. Nadel then tried to transfer the \$50,000 "official" check to a new Bank of America credit card for his use while on the run. Indeed, Nadel tried to access that money (unsuccessfully) for the first time on January 16, 2009 - only two days after he left Florida. See Exh. K.

In addition, on or about January 6, 2009, the defendant's son - Chris Nadel - sent an e-mail to the defendant, which stated in pertinent part, "I received a rather frantic call from Geoff [Quisenberry - the defendant's stepson], as you might imagine they have not planned for anything (financially) at all. They have finally realized that this is the time they will have to fend for themselves and make some sort of short, med, longer range plans. At present they have burned all of their cash and are eagerly awaiting the final disbursement to cover their basic

⁶ The evidence suggests that Nadel had been planning his escape for weeks, if not months, in that he started making a series of unexplained withdrawals starting in October.

expenses." See Exh. J. The defendant responded to Chris Nadel's e-mail as follows: "The final final will be in the mail this week to Geoff and you can pick yours up. I think they will need a lot of coaching and thank you for that." See Exh. J. Thus, it appears from this e-mail exchange that Nadel's family knew of his plans to leave, and that Nadel distributed money to them accordingly.

The evidence that Nadel had attempted to evade arrest is not limited solely to his planning, but also to the actions on the day he left, and each of the days subsequent to that.⁷ For instance, on the day of his flight, Nadel left at least two letters for his wife - one that was intended for law enforcement and suggests that Nadel was suicidal, and one that his wife was instructed to "destroy" after "reading." See Exhs. H & M. The latter document was discovered by an employee in the shredding machine at Nadel's offices, and reconstructed by the FBI. Unlike the "suicidal letter," Nadel makes clear in the shredded letter that he expected his accounts to be frozen, and instructs his wife as follows: "Look for the BOA credit card account and you will see a large credit balance that can be used in the usual way or to withdraw cash. Withdraw as much cash as you can, as this account might also become blocked." See Exh. M. Notably, Nadel

⁷ Many of these actions are listed in greater detail in the Government's Memorandum of Law dated February 12, 2009 at 12-16.

also assures his wife that he will "send [her] a letter in a day or so" with further instructions, thus contradicting any implication of suicidal thoughts contained in the letter that was shown to law enforcement.

After leaving those initial letters, Nadel moved from city to city relatively quickly, and even dropped his cell phone moments after his wife had been informed by members of local law enforcement that they were "pinging" Nadel's telephone and had tracked him to Louisiana. Additionally, Nadel sent letters to his wife and family, in which he made clear that he was keeping track of newspaper accounts and knew that law enforcement was searching for him. (See, e.g., Exhs. C , G & L at 2 ("I would advise [you] to cooperate with the authorities, but only [after] consulting counsel.")). None of the letters that Nadel sent were voluntarily turned over to law enforcement.

Moreover, during the time that Nadel was on the run and in contact with his family, agents of the FBI had repeatedly interviewed members of his family and his associates, and had even executed a search warrant on his North Carolina residence. As a result, at least one of Nadel's family members contacted attorneys for representation, as did Nadel. Thus, the notion that Nadel did not understand that he was wanted by law enforcement authorities strains belief.

Accordingly, the only logical conclusion that one can draw from the evidence is that Nadel understood that law enforcement was looking for him, and tried to evade arrest until January 27, 2009 - a date on which he knew that law enforcement was not only in his area, but closing in on him. Thus, there can be no serious dispute that Nadel's actions in January strongly supports a finding that Nadel is an actual risk of flight.

B. The Defendant Is A Danger To The Community

Besides posing an actual risk of flight, Nadel is also a danger to the community. See *United States v. Reynolds*, 956 F.2d 192 (9th Cir. 1992); see also *United States v. Madoff*, 2009 WL 728379, at *1 (2d Cir. 2009) (unpublished) (noting "that there was substantial evidence in the record to support a finding by the district court that bail should be denied to the defendant because he had failed to prove by clear and convincing evidence that he does "not ... pose a danger to the [pecuniary] safety of any other person or the community if released"). As detailed above, Nadel perpetrated a scheme to defraud investors that spanned nearly a decade. See Indictment at ¶¶ 8-16; see also Exh. L ("For more than ten [years], I have truly believed that [I could] trade my way out of this mess, and in 2008 did it finally penetrate my addled [mind] that this is not to be. I have mangled [sic] in hundreds of lives, and I deserve whatever . . . I receive."). Moreover, in connection with this scheme, Nadel

convincingly lied to the people he knew best - his own wife, his extended family, and members of his community - and received his primary source of income because of these lies. Indeed, the evidence strongly supports a finding that, from 2002 to 2008 alone, Nadel was able to personally pocket more than \$65 million (after taxes) as a result of his crimes. See discussion *infra* at 20-21. The hundreds of millions of dollars that Nadel stole significantly impacted the lives over 370 victims - some of whom lost a significant portion of their life savings as a result. Thus, while Nadel did not use weapons to perpetrate his scheme, he caused massive harm and destruction, nonetheless. And, given the length and success of Nadel's crimes (and his history of deceit dating back to the conduct that led to his disbarment in the early 1980s), the Government submits that Nadel would continue to pose a pecuniary danger to society if released.

II. There Are No Conditions Or Combination Of Conditions That Can Reasonably Assure Nadel's Required Attendance Or The Safety Of The Community

In the Government's brief of February 12, 2009, the Government sets forth in detail many of the factors that support a finding that there are no conditions or combinations of conditions that can reasonably assure the defendant's presence in court or the safety of the community. The Government primarily relies on the arguments set forth in its February 12, 2009 brief to establish that the nature and circumstances of the offense,

the weight of the evidence, and the history and characteristics of the defendant strongly support a finding of detention. See Government's Br. of 2/12/2009 at 9-11.

Additionally, as argued before Judge Cote on February 25, 2009, the Government maintains that the defendant potentially has access to tens of millions of dollars that he can use to facilitate his escape. As set forth in the Receiver's First Interim Report, Nadel and his partners received approximately \$97,168,122 in so-called fees, from in or around 2003 to in or around 2008. Based on financial documents, tax records and witness statements, Nadel received at least half of those fees, which conservatively amounts to \$48,584,061.⁸ In addition to the \$48,584,061 that Nadel received in "fees," Scoop Management transferred approximately \$17,177,896.56 to accounts owned individually or jointly by the defendant and his wife, and another \$6,433,804.40 to other entities controlled by the defendant. (See Def. Exh. A at 11). Finally, Nadel realized approximately \$22,859,667 in trading gains. Thus, in a five or six year span, Nadel was able to gross approximately \$95,055,428.96, and net (assuming he reported all of this income, as the evidence seems to suggest) approximately \$65,588,245.98, as a result of his scheme.

⁸ According to the defendant's 2005-2007 tax records, Nadel "earned" approximately \$45,178,480 in 2005, 2006 and 2007, alone.

Of the approximately \$65.5 million that Nadel actually netted, the Government has only been able to locate and seize assets for which Nadel expended approximately \$16,035,549.37 to acquire - thus, leaving a balance of more than \$40 million unaccounted. The known assets as follows:⁹

<u>Type of Asset</u>	<u>Description of Property</u>	<u>Approximate Amount Used To Acquire</u>	<u>Year of Purchase</u>
Cash	Financial accounts titled in the name of the hedge funds and investment managers	\$556,758.33	Various dates
Cash	Financial Accounts titled in the name of other entities	\$556,654.72	Various dates
Cash	Business Income	\$260,789.98	Various dates
Cash	Interest/Dividend Income	\$9,371.00	Various dates
Cash	Miscellaneous Income	\$30.00	Various dates
Trust	Marguerite J. Nadel Revocable Trust	\$381,142.34	created - 2007
Foundation	Guy-Nadel Foundation, Inc. - Thomasville, GA	\$38,966.00	2006
Property	Thomasville, GA - 14 acres	\$887,000.00	Various dates
Property	Defendant's primary home in Sarasota, FL	\$82,271.00	2001
Property	Adjacent lot in Sarasota, FL	\$65,000.00	2003
Property	131 Garren Creek Road, Fairview, NC	\$176,000.00	2004

⁹ See Def. Exh. A at 15-33; Nadel's Personal Financial Statement as of Nov. 30, 2007, attached hereto as Exh. N.

<u>Type of Asset</u>	<u>Description of Property</u>	<u>Approximate Amount Used To Acquire</u>	<u>Year of Purchase</u>
Property	Bird Creek Estates Road, Rte 9, North Carolina (Laurel Preserve, LLC)	\$1,130,085.00	2003
Property	Laurel Mountain Property	\$319,800.00	2005
Property	Laurel Cottage Drive, Black Mountain, NC (Laurel Preserve, LLC)	\$3,229.00	2005
Property	Laurel Mountain financing to Laurel Preserve	\$2,900,000.00	2006
Property	Grady County, Georgia	\$151,125.00	
Property	841 South Main Street, Graham, North Carolina		
Property	4905 Waters Edge, Raleigh, North Carolina	\$1,900,000.00	
Property	2433 West Main Street, Tupelo, Mississippi	\$941,000.00	
Gas Station	5 McCollum Station, Newnan, GA	\$2,450,000.00	
Property	Venice Jet Center	\$1,854,468.00	2006
Property	Tradewind, LLC (Newnan Airport, GA)	\$207,848.00	2006
Business/Property	Lime Avenue Enterprises, LLC and A Victorian Garden Florist, LLC		2005/2006
Business	Home Front Homes, LLC		2006
Business	Sumer Place Development Corporation		2005

<u>Type of Asset</u>	<u>Description of Property</u>	<u>Approximate Amount Used To Acquire</u>	<u>Year of Purchase</u>
Car	2007 Acura	\$42,000.00	2006
Car	2006 Suburu	\$29,011.00	2007
Car	2001 Jeep Wrangler	\$10,000.00	2006
Car	2002 Nissan Pathfinder	\$19,000.00	2003
Equipment	Office Equipment	\$70,000.00	2006
Airplane	1977 Beech B55	\$194,000.00	2004
Airplane	1996 Learjet 31A	\$800,000.00	2005
Airplane	1971 Piper PA-28/140		
Airplane	1978 Cessna 152		
Airplane	1992 Citation		
Airplane	1977 Baron		
Helicopter	1997 Schweizer 300		
	TOTAL	\$16,035,549.37	

Finally, the Receiver has still not been able to account for approximately \$28 million of investor monies, and has not been able to identify the identity of so-called foreign investors who redeemed approximately \$10,606,936.87, and who were not identified in any way other than by the name of the bank in which the monies should be sent. Accordingly, there remains a significant amount of assets which cannot be located - despite months of diligent work - and which increases Nadel's ability and likelihood to flee.


Conclusion

For the forgoing reasons, this Court should deny the defendant's motion to modify the conditions of his release, and order him detained.

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May 30, 2009

Respectfully submitted,

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