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10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**
12 **WESTERN DIVISION**

13 UNITED STATES OF AMERICA,) Case No. 20-CR-579-SVW-8
14)
15 Plaintiff,) **DEFENDANT VAHE DADYAN' S**
16) **OBJECTIONS TO PSR (DOC. #**
17) **892) AND RESPONSE TO**
18 v.) **GOVERNMENT OBJECTIONS**
19) **TO PSR [DOC. # 966]**
20 VAHE DADYAN (Defendant #8))
21 Defendant) **Sentencing Date: October 4, 2021**

22 Mr. Vahe Dadyan, by his attorney, Peter Johnson, presents the following
23 objections to the Presentence Report (“PSR”) [Doc. #892], and responds to the
24 government’s objections to the PSR [Doc. #966]. Mr. Dadyan will address the factors
25 pursuant to 18 U.S.C § 3553 (a) in a separate filing.

26 DATED: September 22, 2021 Respectfully submitted

27 By: _____/s/_____
28 PETER JOHNSON

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I. OBJECTIONS TO PSR

a. Summary of U.S. Probation Guideline Calculation

In the PSR, U.S. Probation found the following guideline calculation:

Base Offense Level:	+7	U.S.S.G. § 2B1.1(a)
Specific Offense Characteristics Loss \$1.5M > \$3.5M	+16	U.S.S.G. § 2B1.1(b)(1)(I)
Specific Offense Characteristics (Convicted of 18 U.S.C. § 1956)	+2	U.S.S.G. § 2S1.1(b)(2)(B)
Specific Offense Characteristics (Sophisticated laundering)	+2	U.S.S.G. § 2S1.1(b)(3)(B)
<hr/>		
Total Offense Level	27 ¹	

b. Summary of Vahe Dadyan’s Guideline Calculation²

Mr. Dadyan proposes the following guideline calculation:

Base Offense Level:	+7	U.S.S.G. § 2B1.1(a)
Specific Offense Characteristics Loss \$150K > \$250K	+10	U.S.S.G. § 2B1.1(b)(1)(F)
Specific Offense Characteristics (Conviction of 18 U.S.C. 1956)	+2	U.S.S.G. § 2S1.1(b)(2)(B)
Specific Offense	+2	U.S.S.G. § 2S1.1(b)(3)(B)

¹ The advisory sentencing range for an offense level of 27, criminal history I, is 70 to 87 months in prison.

² The proposed guideline calculation is subject to the general objections outlined in section c., i., *infra*.

1 Characteristics
(Sophisticated laundering)

2
3 Total Offense Level 21³

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5 **c. Explanation of Vahe Dadyan’s General and Specific Objections.**

6 **i. General Objections**

7 Mr. Dadyan has a general factual objection to the offense conduct in paragraphs
8 18 through 63 of the PSR. He understands that a jury found him guilty of Counts 1, 7-
9 12, 18-20 and 26-27, and that the Court will sentence him in accordance with those
10 findings. However, he does not intend to waive objections to any of the facts associated
11 with the offenses of conviction that are described in the PSR. This general objection
12 includes paragraphs that incorrectly name him where he was neither charged nor
13 convicted. *See e.g.*, ¶¶ 35-96, 55-56. This objection also includes an objection to the
14 absence in the PSR of any Guideline and/or sentencing considerations that would have
15 applied, including a downward adjustment pursuant to U.S.S.G. § 3E1.1, had the Court
16 accepted his guilty plea on June 15, 2021.⁴

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20 **ii. The loss amount calculation in paragraph 75 should be a 10-
21 level increase, not a 16-level increase.**

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23 _____
24 ³The advisory sentencing range for an offense level of 21, criminal history I, is 37 to
25 46 months in prison. Should the Court find that a 16-level increase should apply, Mr.
26 Dadyan respectfully requests the Court to consider the application of a 4-level
27 downward adjustment pursuant to U.S.S.G. §3B1.2(a). *See* section c., iii., *infra*.

28 ⁴ On June 15, 2021, Mr. Dadyan attempted to plead guilty to Count Seven of the FSI.
[Doc. # 652]. He accepted responsibility for the conduct alleged in Count Seven and
requested that the Court accept his guilty plea. After questioning Mr. Dadyan pursuant
to Rule 11, the Court rejected the change of plea.

1
2 U.S. Probation did not correctly apply the “relevant conduct” pursuant to
3 U.S.S.G. § 1B1.3 and, consequently, miscalculated the loss amount detailed in paragraph
4 75. The sentencing guideline loss amount increase should be based on the \$157,500.00
5 in PPP loan proceeds issued to Voyage Limo from Celtic Bank in May 2018, not the
6 approximately \$1.5 million as described in the PSR. (See PSR at ¶ 75).

7
8 At trial, the jury found Mr. Dadyan liable for the overt acts of co-conspirator
9 Tamara Dadyan and others pursuant to *Pinkerton* liability. But *Pinkerton* liability and
10 sentencing culpability are not the same.⁵ Application notes to §1B1.3 acknowledge that
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15 ⁵ See, *United States v. Collazo*, 984 F.3d 1308, 1334 (9th Cir. 2021) (“*Pinkerton* clearly
16 distinguishes between conspiracy and a substantive offense, see [*Pinkerton v. United*
17 *States*]328 U.S. [640] at 643, 66 S.Ct. 1180, while the Guidelines does not.”) William
18 W. Wilkins, Jr. and John R. Steer, *Relevant Conduct: The Cornerstone of the Federal Sentencing*
19 *Guidelines*, 41 S.C.L. Rev. 495, 510 (1990). See generally *United States v. McClatchey*, 316
20 F.3d 1122, 1127-29 (10th Cir. 2003) (conviction of conspiracy does not make
21 defendant responsible under § 1B1.3 for all reasonably foreseeable bribes paid by his
22 co-conspirators; the bribes must also fall within the scope of the defendant's joint
23 undertaking); *United States v. Soto-Piedra*, 525 F.3d 527, 531-33 (7th Cir.) (“Conspiracy
24 liability . . . is generally much broader than jointly undertaken criminal activity under
25 section 1B1.3. . . . Actions of coconspirators that a particular defendant does not assist
26 or agree to promote are generally not within the scope of that defendant’s jointly
27 undertaken activity.”), cert. denied, 129 S. Ct. 261, 172 L. Ed. 2d 195 (2008); *United*
28 *States v. Swiney*, 203 F.3d 397, 404 (6th Cir. 2000) (“[T]he Sentencing Guidelines have
modified the *Pinkerton* theory of liability so as to harmonize it with the Guidelines’
goal of sentencing a defendant according to the ‘seriousness of the actual conduct of
the defendant and his accomplices.’”) (quoting Wilkins & Steer, *supra*) (distinguished
in *United States v. McIntosh*, 236 F.3d 968, 974 (8th Cir. 2001)); *United States v. Lanni*, 970
F.2d 1092, 1093 (2d Cir. 1992) (“[A]n important distinction exists between the
criminal law standard for convicting a defendant of conspiracy and the Guidelines
standard for sentencing a defendant convicted of conspiracy.”).

1 the Guidelines do not purport to establish standards of criminal liability. *See* U.S.S.G. §
2 1B1.3, cmt. n.1 (2018). The commentary to U.S.S.G. § 1B1.3 provides:

3 **Sentencing Accountability and Criminal Liability.**—The principles
4 and limits of sentencing accountability under this guideline are not always
5 the same as the principles and limits of criminal liability. . . . [T]he focus
6 [of the Guidelines] is on the specific acts and omissions for which the
7 defendant is to be held accountable in determining the applicable guideline
8 range, rather than on whether the defendant is criminally liable for an
9 offense as a principal, accomplice, or conspirator.

10 U.S.S.G. § 1B1.3, comment. (n.1) (Emphasis Added).

11 Under the “relevant conduct” standard, Mr. Dadyan’s offense level is determined
12 based on the conduct of coconspirators only if the conduct falls “within the scope of
13 the jointly undertaken criminal activity,” is committed “in furtherance of that criminal
14 activity,” and is “reasonably foreseeable in connection with that criminal activity.”

15 U.S.S.G. § 1B1.3, cmt. n.3(A) (2018). [W]hen the conduct of others does not meet [the
16 above criteria], the conduct is not relevant conduct....” *Id.* (Emphasis added). This
17 sentencing determination must be supported by a preponderance of the evidence. *See*
18 *United States v. Perez*, 962 F.3d 420, 448 (9th Cir. 2020).

19 The scope Mr. Dadyan’s jointly undertaken criminal activity relates only to the
20 \$157,500.00 Voyage Limo PPP loan. The government has presented no evidence to
21 show that Mr. Dadyan jointly participated in the commission of the substantive offenses
22 in Counts 8-12 and/or 19-20 on which his conviction has been sustained. Instead, the
23 government’s theory of liability was based upon the timing of Mr. Dadyan’s PPP loan
24 for Voyage Limo (May 2020), holding him responsible for each of the PPP and EIDLL
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1 loans submitted by all co-defendants after that date. At trial, the jury found that there
2 was evidence to show that these substantive offenses were in fact committed by co-
3 defendants in furtherance of the unlawful scheme existing between the parties.
4
5 However, without more, this finding does not support a 16-level increase in the advisory
6 guideline calculation based on the jointly undertaken criminal activity of Mr. Dadyan.

7 Significantly, Mr. Dadyan benefited only from a portion of the loan proceeds
8 directly related to \$157,500.00 connected to PPP loan from Celtic Bank to Voyage
9 Limo. He did not receive any other loan proceeds. He was not involved in the
10 application of any other PPP or EIDL loans. He was not involved in the transfer of any
11 other loan proceeds. No other PPP or EIDL loan proceeds flowed through his bank
12 accounts. He was not involved the purchase of any luxury homes or jewelry. He did not
13 design the scheme or set it into motion. He was not involved in the opening or
14 management of bank accounts in fictitious names. All bank accounts connected to him
15 -- Voyage Limo and V&D Limo --were registered to him and easily traced back to him
16 through bank records and registration of companies with the State of California.
17

18 Under these circumstances, the Court is without sufficient evidence to make the
19 required findings that the actions of others -- using fake or synthetic to take out millions
20 of dollars in PPP and EIDL loans -- were within the scope of the joint activity
21 undertaken by Mr. Dadyan. Therefore, a 10-level increase should apply, based upon
22 the loss amount of \$157,500.00, rather than the 16-level increase.
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1 **iii. If the Court finds that a 16-level increase is applicable, a 4-**
2 **level downward adjustment is warranted for Vahe Dadyan’s**
3 **minimal role in the offense.**

4 If the Court applies the 16-level increase, the Court should apply a 4-level
5 decrease in the advisory guidelines pursuant to U.S.S.G. §3B1.2(a). That section
6 provides for a four-level decrease if the defendant’s participation in the offense was
7 minimal. Application Note 4 defines minimal participant as one who is plainly among
8 the least culpable of those involved in the conduct of the group.

9
10 In this case, the First Superseding Indictment (FSI) makes clear that Mr.
11 Dadyan’s relative degree of culpability is the least among those involved in the offense.
12 The original defendants are charged in almost every single count of the FSI. In contrast,
13 Mr. Dadyan is named in only 5 of the 64 overt acts in Count One; he is not named in
14 Counts 2-6 (wire fraud); he is not named in Counts 13-17 (bank fraud); he is not named
15 in any of the Counts charging aggravated identity theft; and he is not named in Counts
16 28-32, which charge money laundering.

17
18 Mr. Dadyan is also not alleged to have used fraudulent or synthetic identities or
19 business names. Instead, he is alleged to have participated in the application and receipt
20 of loan funds for a single PPP loan in his own name on behalf of his own pre-existing
21 business, Voyage Limo. (FSI at Doc. #154, pg. 19-20, OA 37- 40).

22
23 The Guideline application notes support the reduction. Mr. Dadyan is being held
24 accountable for loss “that greatly exceeds the defendant’s personal gain from a fraud
25 offense.” U.S.S.G. § 3B1.2 cmt. n.3(A).
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1 **II. RESPONSE TO GOVERNMENT OBJECTIONS TO PSR**

2 **a. The Court should reject the government’s request for a 2-level**
3 **increase for obstruction of justice pursuant to U.S.S.G. § 3C1.1.**

4 Under U.S.S.G. § 3C1.1, a two-level enhancement to the total offense level
5 applies when the defendant has “willfully obstructed or impeded, or attempted to
6 instruct or impede, the administration of justice with respect to the investigation,
7 prosecution, or sentencing of the instant offense of conviction.” This increase does not
8 apply to Mr. Dadyan.
9

10 In its filing, the government requested the Court to apply 2-level increase in the
11 Guideline calculation for statements Mr. Dadyan made during the June 15, 2021, change
12 of plea hearing. Even if the statements during Mr. Dadyan’s change of plea hearing
13 could be misinterpreted as false, the statements were not “materially” false as required
14 under U.S.S.G. § 3C1.1. *See* Application Note 4 (F). Mr. Dadyan was pleading guilty
15 to Count Seven of the FSI, which charged wire fraud related to the Voyage Limo PPP
16 loan. During the change of plea hearing, Mr. Dadyan responded to questions from the
17 Court regarding his use of the loan proceeds. Mr. Dadyan’s use of the money had
18 nothing to do with the elements of that offense. *See*, 9th Circuit Model Jury Instruction
19 Nos. 8.124 (wire fraud). Indeed, even if all loan proceeds were used for business
20 expense, Mr. Dadyan could still be found guilty of wire fraud. Therefore, the
21 conversation related to the use of the funds was immaterial to the elements of the
22 offense.
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1 Furthermore, when questioned about how he used the proceeds, Mr. Dadyan
2 admitted to receiving and using a portion of the funds for personal expenses, including
3 his children and household expenses.⁶ Therefore, even if the conversation related to
4 the use of funds was material for the Court's consideration, the material portion of the
5 statement was that Mr. Dadyan used a portion of the PPP loan proceeds for personal
6 expenses – a prohibited use. Once making that admission, Mr. Dadyan had no other
7 reason to lie. Therefore, any misinterpretation or misunderstanding of the
8 disbursement of business expenses is not material.
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11 Finally, the government is taking the statement out of context. When asked what
12 type of business expenses occurred, Mr. Dadyan, speaking through the Court's
13 Armenian Language interpreter, began with "For example," and began discussing the
14 types of business expenses. While Mr. Dadyan was answering, the Court interrupted
15 saying, "I see," and then Mr. Dadyan continued talking until interrupted again by the
16 Court to turn back to the primary purpose of the hearing – Mr. Dadyan's involvement
17 in the Voyage Limo PPP loan application and the elements of wire fraud. The
18 government conveniently omits that portion of the transcript, which is provided below
19 for context:
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23 THE COURT: And what type of business expenses did you incur?
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25 ⁶ During the change of plea hearing, Mr. Dadyan admitted to receiving \$75,000.00 of
26 the loan proceeds, despite the government only having evidence at the time that he
27 received \$50,000.00. While this fact also has nothing to do with the elements of wire
28 fraud, it does demonstrate Mr. Dadyan's truthfulness and willingness to accept
responsibility – facts that are inconsistent with obstruction of justice and the
application U.S.S.G. § 3C1.1.

1 [MR. VAHE DADYAN]: For example, I needed to pay lease
2 payments. I needed to pay for the car payments. I
3 needed to have money for the gas.

4 THE COURT: I see.

5 [MR. VAHE DADYAN]: And mechanical expenses of the
6 cars.

7 THE COURT: Let me turn back to your participation
8 in the application to the SBA. You signed that
9 application on behalf of Voyage Limo; correct?

10 [MR. VAHE DADYAN]: Your Honor, my English is not well
11 at all. I just did what they told me. They put the
12 document in front of me. They said sign here.

13 (Trans., June 15, 2021, pg. 21, lines 2-15)(Emphasis added). In context, this can hardly
14 be considered a willful and materially false statement. As noted in the application note
15 provides that

16 “In applying this provision in respect to alleged false testimony or
17 statements by the defendant, the court should be cognizant that inaccurate
18 testimony or statements sometimes may result from confusion ...and,
19 thus, not all inaccurate testimony or statements necessarily reflect a willful
20 attempt to obstruct justice.”

21 §3C1.1, comment. (n.2). Under these circumstances, the Court should reject the
22 government’s request to apply the enhancement.

23 **b. The Court should reject the government’s proposed loss**
24 **calculations and proposed 20-level increase.**

25 As discussed more fully above, the government confuses *Pinkerton* liability and
26 sentencing culpability to reach a flawed and exaggerated sentencing loss calculation. The
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1 Court should reject the government’s unreasonable approach, as it is inconsistent with
2 the sentencing guidelines and the cases addressing the issue. *See* fn. 3, *supra*.

3
4 **III. CONCLUSION**

5
6 Therefore, Mr. Dadyan respectfully objects to the above-mentioned portions of
7 the PSR and the government’s proposed amendments.

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9 DATED: September 22, 2021

Respectfully submitted,

10 By: _____/s/_____

11 PETER JOHNSON

12 Attorneys for Defendant Vahe Dadyan

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