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16 Attorneys for Plaintiff
 17 UNITED STATES OF AMERICA

18 UNITED STATES DISTRICT COURT
 19 FOR THE CENTRAL DISTRICT OF CALIFORNIA

20 UNITED STATES OF AMERICA,
 21 Plaintiff,
 22 v.
 23 RICHARD AYVAZYAN,
 aka "Richard Avazian" and
 24 "Iuliia Zhadko,"
 MARIETTA TERABELIAN,
 25 aka "Marietta Abelian" and
 "Viktoria Kauichko,"
 26 ARTUR AYVAZYAN,
 aka "Arthur Ayvazyan," and
 27 TAMARA DADYAN,
 MANUK GRIGORYAN,
 28 aka "Mike Grigoryan," and

No. 2:20-cr-579 (A) -SVW
GOVERNMENT'S RESPONSE TO
PRESENTENCE INVESTIGATION
REPORT FOR VAHE DADYAN
 Sentencing: October 4, 2021
 Time: 11:00 a.m.
 Location: Courtroom of the
 Hon. Stephen V. Wilson

1 "Anton Kudiumov,"
2 ARMAN HAYRAPETYAN,
3 EDVARD PARONYAN,
4 aka "Edvard Paronian" and
5 "Edward Paronyan," and
6 VAHE DADYAN,
7
8 Defendant.

9 Plaintiff United States of America, by and through its counsel
10 of record, the Acting United States Attorney for the Central District
11 of California, Assistant United States Attorneys Scott Paetty,
12 Catherine Ahn, and Brian Faerstein, and Department of Justice Trial
13 Attorney Christopher Fenton, hereby files its initial response,
14 pursuant to Federal Rule of Criminal Procedure 32(f), to the
15 Presentence Investigation Report ("PSR"), prepared by the United
16 States Probation and Pretrial Services Office ("Probation"), for
17 defendant VAHE DADYAN ("V. Dadyan") (ECF 892).

18 **The PSR Should Apply a Two-Level Obstruction Enhancement**

19 Paragraph 62 of the PSR states, "The Probation Officer has no
20 information indicating V. Dadyan impeded or obstructed justice."
21 (See also PSR ¶ 87.) The government respectfully submits that the
22 PSR should include a two-level enhancement pursuant to USSG § 3C1.1
23 for "Obstructing or Impeding the Administration of Justice." As
24 detailed in the government's opposition to V. Dadyan's motion for
25 judgment of acquittal and motion for a new trial (ECF 789), V. Dadyan
26 knowingly and intentionally made a false and misleading statement to
27 this Court about how he used the COVID-19 disaster relief loan
28 proceeds that he fraudulently obtained (*id.* at 4-6).

Specifically, on June 15, 2021, a change of plea hearing was
held in which defendant attempted to plead guilty to one count of
wire fraud based on his role in connection with the submission of a

1 fraudulent Paycheck Protection Program ("PPP") application for
2 \$157,500 using his company Voyage Limo LLC. (July 15, 2021
3 Transcript of V. Dadyan Change of Plea Hearing ("Change of Plea Tr.")
4 at 10:16 - 16:15.) In response to the Court's questions during his
5 plea allocution, V. Dadyan claimed he sought a PPP loan to help his
6 business Voyage Limo and that, because he did not speak English well,
7 his cousin and co-defendant Tamara Dadyan ("T. Dadyan") helped him to
8 complete the application. (Id. at 16:16 - 26:22.) He further
9 claimed that T. Dadyan made the false and misleading statements on
10 the loan application without his knowledge of the consequences.
11 (Id.) He also claimed that, after the loan was approved and the
12 funds were received, he used the money to pay legitimate business
13 expenses:

14 THE COURT: Now, when the loan proceeds came, they went to
15 your Voyage Limo bank account; correct?

16 V. DADYAN: Yes.

17 THE COURT: And how soon after -- and did you spend any of
18 those funds on your business, either payroll or
some other type of business expense?

19 V. DADYAN: When the money was transferred into my account, I
20 informed my cousin. She said to send the monies
21 for the tax firm [Runyan Tax Services Inc.] so
22 that it can manage the money from the beginning.
23 Then they sent me an amount of money so that I
could pay my business expenses, and, yes, your
Honor, I did pay business expenses.

24 THE COURT: Well, let me -

25 V. DADYAN: Part of it was for my business expenses.

26 * * *

27 THE COURT: Did some of the money that you sent to the Runyan
28 Tax [a]ccount come back to you or be returned to
you at a later time?

1 V. DADYAN: Yes, it did.
2
3 THE COURT: How much of that money?
4
5 V. DADYAN: 75,000.
6
7 THE COURT: And what did you do with that money?
8
9 V. DADYAN: I paid my business expenses. I paid for my house,
10 and I paid for the kids and just household
11 expenses.
12
13 THE COURT: If you can estimate how much of the 75,000 you
14 spent on your business and how much you spent on
15 family or other personal expenditures.
16
17 V. DADYAN: Basically, your Honor, the money was divided into
18 three groups. One was for home and household
19 expense. One was the expenses of my business. Two
20 things: Home and family and my business. That is
21 it.
22
23 THE COURT: And what type of business expenses did you incur?
24
25 V. DADYAN: For example, I needed to pay lease payments. I
26 needed to pay for the car payments. I needed to
27 have money for the gas.
28
29 THE COURT: I see.
30
31 V. DADYAN: And mechanical expenses of the cars.

(Id. at 18:17 - 21:9.)

Based on V. Dadyan's representations during the plea allocution, the Court rejected his plea and admonished the government that "if he says this to the jury, he is likely to be acquitted. And if he is not acquitted, I would have to seriously consider a post-verdict motion." (Id. at 29:6 - 29:10.)

Following the hearing, the government again reviewed records for the relevant bank accounts and re-confirmed that V. Dadyan's representations to the Court about his use of the PPP funds were

1 false and misleading: in truth, none of the \$75,000 was used to pay
2 for Voyage Limo business expenses. Rather, all of the money was
3 deposited into a bank account opened in the name of a new company
4 called "V&D Limo". (See Declaration of Christopher Fenton ("Fenton
5 Decl.") ¶ 1 (ECF 789-1), Ex. 1 (789-2).) Moreover, approximately
6 \$32,000 of the \$75,000 was subsequently transferred to another new
7 company named "G&D Home Health", which purports to be a home health
8 care agency for which defendant is Chief Executive Officer.¹ (Fenton
9 Decl. ¶ 2 (ECF 789-1), Ex. 2 (789-3).)

10 Most of the remaining PPP money was used for defendant's
11 personal benefit. For example, approximately \$13,000 was withdrawn
12 via checks written to "Vahe Dadyan" or "Cash". (ECF 789-2.) And
13 approximately \$9,531 was used to make purchases from Gilt.com (an
14 online retail store that sells luxury clothing), Nordstrom,
15 Amazon.com, Home Depot, and other retail stores. (Id.)

16 Only \$2,524 was used to make car payments that may or may not
17 have been related to a business. (Id.) None of the PPP money was
18 used to pay for gas. And none of the PPP money was used to pay for
19 the "mechanical expenses of cars". Therefore, at most, only 1.6
20 percent of the \$157,500 from the Voyage Limo PPP loan was arguably
21 used to pay for the purported business-related expenses of Voyage
22 Limo about which defendant averred to the Court - and even that small
23 amount appears to have been used for a purpose unrelated to Voyage
24 Limo.

25

26

27 ¹ Defendant Vahe Dadyan incorporated "G&D Home Health" on
28 January 29, 2020, and he incorporated "V&D Limo LLC" on June 7, 2020.
(ECF 789-3.) Recently, on May 7, 2021, he incorporated a third
company named "Saint George Hospice," for which he is also Chief
Executive Officer. (Id.)

1 The significant lie V. Dadyan told to the Court is a
2 paradigmatic example of the type of conduct to which the obstruction
3 adjustment applies. Application Note 4(F), which provides examples
4 of covered conduct, expressly includes "providing materially false
5 information to a judge." That is exactly what V. Dadyan did here.
6 Indeed, the materiality of V. Dadyan's false statements is evident,
7 as they led the Court not to accept his change of plea during the
8 hearing. See USSG § 3C1.1 cmt. n.6 (defining "material" to mean
9 "evidence, fact, statement, or information that, if believed, would
10 tend to influence or affect the issue under determination"); see
11 also, e.g., United States v. Taylor, 749 F.3d 842, 847 (9th Cir.
12 2014) (affirming obstruction enhancement for false statements during
13 bond hearing, explaining false statements were material under USSG
14 § 3C1.1 cmt. n.6); United States v. Freixas, 332 F.3d 1314, 1321
15 (11th Cir. 2003) (affirming obstruction enhancement where defendant
16 made false statements under oath in support of motion to withdraw
17 plea). Accordingly, the PSR should apply a two-level obstruction
18 enhancement pursuant to USSG §3C1.1.

19 **The PSR Should Apply a 20-Level Loss Enhancement**

20 The PSR limits the loss amount for offense level calculation
21 purposes and the actual loss for restitution purposes to only those
22 fraudulent loan applications related to the specific substantive
23 counts for which the jury found V. Dadyan guilty, namely seven PPP
24 and EIDL loan applications for which V. Dadyan and his co-
25 conspirators obtained \$1,512,503 from three lenders, as well as the
26
27
28

1 SBA.² (PSR ¶¶ 59-61, 65-68, 75, 160.) In the PSR, Probation
2 explained the reasoning for the limitation as follows:

3 Based on the evidence received to date, it is not believed
4 that the preponderance of the evidence reflects the scope
5 of the jointly undertaken activities, as it relates to V.
6 Dadyan, to include all of the PPP and EIDL loan
7 applications conducted by R. Ayvazyan and T. Dadyan.
8 Similarly, based on information available to the
9 undersigned, the government has not shown that such conduct
10 was reasonably foreseeable to V. Dadyan.

11 (PSR ¶ 68 (applying USSG §1B1.3, Application Notes 1 and 2).)

12 The government respectfully disagrees and submits that the PSR
13 should include as relevant conduct all of the fraudulent loan
14 applications submitted by V. Dadyan's co-conspirators after the time
15 when V. Dadyan's joined the conspiracy. As set forth in the
16 information that the government provided to Probation via email on
17 September 8, 2021, including all of these fraudulent loan
18 applications would result in a finding of an actual loss of
19 \$10,854,188.13 and an intended loss of \$12,685,827.13. Accordingly,
20 a 20-level enhancement should apply pursuant to USSG §2B1.1(b)(1)(K),
21 not the 16-level enhancement that Probation currently recommends.³

22 (PSR ¶ 75.)

23 Including as relevant conduct all of the fraudulent loan
24 applications submitted after the time that V. Dadyan joined the

25 ² Even under this more narrow approach, the PSR omits the
26 inclusion of a \$276,650 loan application submitted to Lender B in the
27 name of Redline Auto Mechanics on June 25, 2020, as charged in Count
28 19 of the First Superseding Indictment. (PSR ¶¶ 61, 160; ECF 154
¶ 41 (Count 19).) In any event, for the reasons discussed below, the
government respectfully submits that the PSR's approach to
calculating loss in this case is incorrect.

³ Were the PSR to include all of the fraudulent loan
applications submitted after V. Dadyan joined the conspiracy as
relevant conduct, it would also change the number of victims from
four to eight and the specific amounts of restitution owed along the
lines set forth in September 8, 2021 email to Probation.

1 conspiracy is important to give meaning to the jury's verdict finding
2 him guilty of conspiracy to commit wire fraud and bank fraud and
3 conspiracy to commit money laundering. As currently drafted, the PSR
4 does not reflect the jury's verdict because it arrives at the same
5 loss calculation that it would have had the jury only found V. Dadyan
6 guilty of the substantive wire fraud, bank fraud, and money
7 laundering counts, and not the conspiracy counts.

8 Separately, including as relevant conduct all of the fraudulent
9 loan applications submitted after the time that V. Dadyan joined the
10 conspiracy is consistent with the Guidelines, including specifically
11 the principles set forth in USSG §1B1.3.

12 In his post-trial motions, V. Dadyan argued that the evidence at
13 trial was insufficient to prove beyond a reasonable doubt his
14 knowledge of the scope of the jointly undertaken activities and the
15 reasonable foreseeability of his co-conspirators' conduct. (ECF 689
16 at 3-6.) The Court disagreed. In a detailed opinion and order, the
17 Court denied V. Dadyan's motion, explaining that "the evidence at
18 trial was sufficient for a rational trier of fact to conclude that
19 Vahe had reason to know that (a) other conspirators besides Tamara
20 were involved, and (b) Vahe's benefits depended upon the success of
21 the entire venture." (ECF 875 at 13.) The Court reviewed the trial
22 evidence in detail, providing a summary which also substantively
23 addressed the issues of whether V. Dadyan had knowledge of the scope
24 and whether his co-conspirators' conduct was reasonably foreseeable.
25 (ECF 875 at 14.) Moreover, the Court further found that the fact
26 that V. Dadyan's co-conspirators included close family members
27 provided additional evidence supporting an inference that he knew of
28

1 his co-conspirators' activities, which directly speaks here to scope
2 and foreseeability:

3 [T]he relationships between the defendants further supports
4 that inference. Vahe is Tamara's cousin, Tamara's husband
5 is Artur, and Artur is Richard's brother. Simply put, these
6 four defendants (along with Richard's wife, Marietta
7 Terabelian) are family. And they were all participating in
8 the same fraudulent activity: submitting PPP loans with
9 materially false information, transferring the proceeds to
10 one another using various accounts belonging to fake
11 entities, and using the proceeds for personal expenses.
12 Given that Vahe's relatives were perpetrating the same
13 fraud that he was, a juror may have reasonably inferred
14 that Vahe knew about his relatives' participation in the
15 conspiracy and that his benefits were dependent upon his
16 relatives' success.

17 (ECF 875 at 15.) Taken together, this evidence - which was
18 sufficient to support a conviction beyond a reasonable doubt - is
19 more than sufficient to show by a preponderance that V. Dadyan had
20 sufficient knowledge of the scope of the criminal activities he
21 jointly undertook with his family members and that his family
22 members' other fraudulent loan applications were reasonably
23 foreseeable to him. Accordingly, V. Dadyan should be held
24 accountable for all of the fraudulent loan applications submitted by
25 his co-conspirators after he joined the conspiracy, which would
26 result in a 20-level enhancement rather than the 16-level enhancement
27 reflected in the current PSR.

28 **Corrections and Clarifications**

In addition to the above, the government submits this response
to correct or clarify the following:

- On page two, the sentencing date should be listed as
October 4, 2021, not September 13, 2021.
- Paragraphs 10 and 12 under the section titled "Co-
Defendants" should be corrected to state that co-defendants

1 R. Ayvazyan and A. Ayvazyan were found guilty by jury trial
2 on June 25, 2021, not June 28. Paragraph 12 should also be
3 corrected to state that A. Ayvazyan's sentencing date is
4 October 18, 2021, not October 4, 2021.

- 5 • The beginning of paragraph 23 appears to be missing the
6 words, "The Economic Injury Disaster Relief Loan Program
7 (EIDL)"
- 8 • Paragraph 28 under the section titled "The Conspiracy"
9 should be corrected to state the alleged conspiracy
10 continued "through at least August 2020," not "through July
11 2020."
- 12 • Footnote 2 under the section titled "The Conspiracy" should
13 be corrected to state that "T. Dadyan texted R. Ayvazyan,"
14 not "T. Dadyan texted A. Ayvazyan."
- 15 • Paragraphs 35, 36, 40, 45, 48, 52, and 55 under the section
16 titled "The Conspiracy" should be corrected to state
17 "submitted and caused to be submitted", not "submitted";
18 paragraph 47 should be corrected to state "wired or caused
19 to be wired", not "wired".
- 20 • Footnote 8 under the section title "The Conspiracy" should
21 be corrected to state "V. Dadyan and his co-conspirators"
22 rather than "Terabelian and her co-conspirators".
- 23 • Paragraphs 35 through 39 under the section titled "The
24 Conspiracy" pertain to EIDL applications (and the
25 corresponding use of funds obtained through those
26 applications) that were submitted prior to V. Dadyan
27 joining the conspiracy on May 18, 2020. Thus, the
28 government submits that these paragraphs relating to the

1 G&A Diamonds and Redline Auto Collision Loans should be
2 removed from this section of the PSR.

- 3 • Paragraph 42 under the section titled "The Conspiracy"
4 incorrectly describes the immediate use of the \$155,000
5 that V. Dadyan wired to Runyan Tax Services on July 3,
6 2020. Specifically, the government suggests revising the
7 fifth sentence that begins, "Rather, all the money was
8 deposited . . .," as follows: "Rather, some or all of the
9 \$155,000 wired into the Runyan Tax Services account was
10 soon thereafter transferred to an escrow account to be used
11 for V. Dadyan's co-conspirators' purchase of a residential
12 property in Glendale, California in the name of "Iuliia
13 Zhadko," which was an alias used by codefendant Richard
14 Ayvazyan. In consideration of V. Dadyan having submitted
15 the fraudulent PPP loan application using his company
16 Voyage Limo, the co-conspirators later wired approximately
17 \$75,000 back to V. Dadyan from a bank account in the name
18 of purported company Timeline Transport and EM
19 Construction, and all the money was deposited into a bank
20 account opened in the name of a new company called 'V&D
21 Limo.'" The remaining sentences of the paragraph are
22 accurate.

- 23 • The last sentence of Paragraph 43 under the section titled
24 "The Conspiracy" states "V. Dadyan received multiple wires
25 over an extended period of months between May 2020 through
26 August 2020." The government suggests deleting this
27 sentence and replacing it with the following: "In
28 addition, on August 6, 2020, V. Dadyan received a check for

1 \$25,000 from a bank account in the name of EM Construction,
2 which was another fake company. V. Dadyan therefore
3 received his 'cut' in three separate payments."

- 4 • Paragraph 57 under the section titled "Search of the
5 Residences" states that law enforcement conducted a search
6 of "an apartment under Grigoryan's control in Woodland
7 Hills". Based on the evidence presented at trial, this
8 apartment - which was located at 6150 Canoga Avenue, Unit
9 337 - was also under the control of co-defendants R.
10 Ayvazyan and Marietta Terabelian. Specifically, the
11 evidence showed that, among other things, at the time of
12 her arrest, Terabelian was in physical possession of a
13 credit card in the name of "Viktoria Kauichko" that had
14 been used to the pay the rent for this apartment which was
15 leased in the name of "Viktoria Kauichko". (Gov't Trial
16 Exhibits 44, 76, 88.)
- 17 • The government agrees that the counts described in
18 paragraphs 70, 71 and 73 all group under the "Groups of
19 Closely Related Counts" rules set forth in U.S.S.G.
20 § 3D1.2. However, the government believes these counts of
21 conviction are more appropriately grouped under § 3D1.2(d)
22 as opposed to § 3D1.2(b) because the offense level for
23 those counts of conviction "is determined largely on the
24 basis of the total amount of harm or loss."
- 25 • The government submits that a new paragraph should be added
26 after the current paragraph 73 that explains that the
27 previously-grouped fraud counts of conviction (Counts 1, 7-
28 12, 18-20) should group with the previously-grouped money

1 laundering counts of conviction (Counts 26 and 27) under
2 § 3D1.2(c), which applies “when one of the counts embodies
3 conduct that is treated as a specific offense
4 characteristic in, or other adjustment to, the guideline
5 applicable to another of the counts.” See U.S.S.G.
6 § 2S1.1, App. Note 6 (“In a case in which the defendant is
7 convicted of a count of laundering funds and a count for
8 the underlying offense from which the laundered funds were
9 derived, the counts shall be grouped pursuant to subsection
10 (c) of §3D1.2 (Groups of Closely-Related Counts).”).

- 11 • Paragraph 79 under the section titled “Offense Level
12 Computation” contains the same factual inaccuracy as
13 described above with respect to paragraph 42. The
14 government suggests making revisions to paragraph 79 that
15 are consistent with its suggested revisions to paragraph
16 42.

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- At this stage of the proceedings and based on the information currently available to it, the government disagrees with the PSR's statement in paragraph 164 that V. Dadyan's history and characteristics and/or the nature and circumstances of his involvement in the offense warrant a sentence outside of the advisory guideline system.

Dated: September 13, 2021

Respectfully submitted,

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