

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF HAWAII

3 UNITED STATES OF AMERICA,) CRIMINAL NO. 21-00061LEK
4)
5 Plaintiff,) Honolulu, Hawaii
6 vs.) April 30, 2025
7 (1) MARTIN KAO,)
8 Defendant.) MOTION HEARING TO DETERMINE
9) THE AMOUNT OF RESTITUTION
) OWED TO PACMAR, F/K/A
) NAVATEK, PURSUANT TO 18
) U.S.C. SECTION 3664(d) (5)

10 TRANSCRIPT OF PROCEEDINGS
11 BEFORE THE HONORABLE LESLIE E. KOBAYASHI
12 UNITED STATES DISTRICT JUDGE

13 APPEARANCES:

14 For the Government: CRAIG S. NOLAN, ESQ.
15 Office of the United States Attorney
PJKK Federal Building
300 Ala Moana Blvd., Suite 6100
Honolulu, Hawaii 96850

16 For the Defendant: RANDALL K. HIRONAKA, ESQ.
17 Miyoshi & Hironaka, LLC
City Financial Tower
201 Merchant Street, Suite 2240
18 Honolulu, Hawaii 96813

19
20 Official Court Cynthia Fazio, RMR, CRR, CRC
21 Reporter: United States District Court
300 Ala Moana Blvd., C-270
Honolulu, Hawaii 96850
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23
24 Proceedings recorded by machine shorthand, transcript produced
25 with computer-aided transcription (CAT).

1 WEDNESDAY, APRIL 30, 2025 10:02 A.M.

2 THE COURTROOM MANAGER: Criminal Number 21-00061LEK,
3 United States of America versus Martin Kao. This case has been
4 called for a hearing to determine the amount owed to PacMar,
5 f/k/a Navatek.

6 Counsel, please make your appearances for the record.

7 MR. NOLAN: Good morning, Your Honor. Craig Nolan for
8 the government. Also present is probation officer Sara
9 Nieling.

10 THE COURT: All right, good morning to you both.
11 Mr. Hironaka.

12 MR. HIRONAKA: Good morning, Your Honor. Randy
13 Hironaka on behalf of Martin Kao. Your Honor, he's not
14 present. I actually did not look up his rights with respect to
15 being present at a restitution hearing, but I'm willing to
16 waive his presence if it's okay with Your Honor.

17 THE COURT: Yes, I think we should waive his presence.

18 MR. HIRONAKA: Thank you.

19 THE COURT: All right. You may be seated.

20 All right. I've had an opportunity to review through
21 the submissions, and particularly to take a look at *United*
22 *States versus Bright*, which is 353 F.3d 1114, a 2004 Ninth
23 Circuit case. I also took a look at, which is, I thought, was
24 a very good discussion of the *Bright* case, *United States of*
25 *America versus Williams*, which is a District of Oregon case by

1 Judge Anna Brown; it's found at 2009 Westlaw 10691088.

2 And it's my inclination that just because there was an
3 arbitration and there was an arbitration award, which I just
4 need confirmation that it has not yet been paid, that fact does
5 not prevent me from awarding restitution. So I'm inclined to
6 say that PacMar can get restitution for attorney's fees that
7 they expended as a result of federal subpoenas, et cetera.

8 The problem is that I've looked through the submission
9 of all of the attorney's fees and, I mean, I haven't gone
10 through it with a fine-tooth comb, but I would say the
11 majority, I don't know, I can't give a number, but more than
12 50 percent, have nothing to do with that and so should not be
13 included in a restitution award. And I've looked at
14 Ms. Nieling's e-mail and I agree with her, I don't think it's
15 Probation's role to go through all these attorneys' bills and
16 figure out how much was spent in responding to the federal
17 investigation in the District of Hawaii.

18 Now, I know I saw several entries that had to do with
19 responding to the federal prosecution in the District of
20 Columbia, which is a separate case from this and for which I
21 did not sentence him. So I don't think it's appropriate for me
22 to order restitution having to do anything with the prosecution
23 in the District of Columbia. I would leave it to that
24 sentencing judge if that's appropriate.

25 There are other things that had to do with, I guess,

1 working with federal agencies. I guess there's a concern that
2 there is going to be a problem with regard to, you know, future
3 business and so forth. That, again, you know, strikes me as
4 something that would not be part of restitution, that that was
5 a voluntary aspect of the business and those who could make
6 those decisions for the business to try to ameliorate any of
7 the damage that was done to Mr. -- done by Mr. Kao to the
8 reputation of PacMar. Again, they could get that in
9 arbitration. I don't think that's part of restitution.

10 So, those are my thoughts after reviewing everything.
11 I certainly don't want to go through all of these attorney's
12 fees and so forth. I would place that on the government, but
13 not really Mr. Nolan, but if PacMar's -- PacMar and their
14 attorneys wish to have that in a restitution award, then they
15 need to go through it and then provide me with the
16 documentation and point out why that's related to the District
17 of Hawaii prosecution, and the expense and time that was spent
18 in responding to government requests or what have you.

19 For instance, I would just point out, I don't mean to
20 beat a dead horse here, but this is Invoice Number 101419,
21 Exhibit B at Page 65, and there are several entries, one of
22 which it says on December 31, 2020, an entry for P. Burton,
23 confer with D. Drunk -- I'm sorry, Brunk, B-R-U-N-K, exchanges
24 and conferences with counsel and client on numerous issues,
25 conference with the District of Columbia U.S. Attorney's Office

1 and Department of Justice Public Integrity Section attorneys
2 and draft report regarding the same.

3 That to me indicates two things. One, that had to do
4 with the District of Columbia prosecution, and two, I can't
5 tell what exchanges and conferences with counsel and client on
6 numerous issues has to do.

7 So I wouldn't award that as restitution because it's
8 not related to responding to the government's request, or if
9 they were responding and corresponding with Mr. Hironaka
10 regarding the District of Hawaii, that would be part of, I
11 think, the restitution. But general entries such as review
12 documents for privilege, prepare electronic documents for
13 attorney review and coding, I couldn't in good conscience award
14 that as restitution because I don't know what that was in
15 reference to.

16 I did see a couple of entries that talked about
17 responding to subpoena requests and so forth. Those, where
18 it's documented, had to do with the District of Hawaii
19 prosecution, I think those would be part of what I would look
20 upon as being part of the restitution.

21 But I really can't tell from the majority of the
22 entries what that is related to with regard to being qualified
23 to be awarded as restitution.

24 Okay. So that's my inclination. If I follow my
25 inclination, what I would do is deny without prejudice PacMar's

1 restitution request and permit a refiling with documentation
2 supporting a specific amount and with documentation that
3 supports that those attorney's fees and services were expended
4 because of the District of Hawaii prosecution and responded to
5 subpoenas, requests by the government, meetings with the
6 government, possibly meetings with defense counsel related to
7 the District of Hawaii prosecution. That as PacMar's the
8 victim and they had to expend that, makes sense to me.

9 But without that kind of specificity and
10 documentation, I really can't say that it meets the
11 requirements for restitution, i.e., a loss under the statute
12 related to the criminal activity for which Mr. Kao has been
13 convicted.

14 So, I want to hear your thoughts with regard to the
15 same. And I'll go around the room and have Mr. Nolan,
16 Mr. Hironaka and then Ms. Nieling sort of weigh in. Mr. Nolan?

17 MR. NOLAN: Yes, and I certainly understand the
18 Court's thoughts on this. Can I get a minute?

19 THE COURT: Sure.

20 MR. NOLAN: So one option here --

21 THE COURT: Yeah.

22 MR. NOLAN: -- PacMar, as I understand it, went
23 through a process to determine which parts of the bills are
24 related to the subpoena responses and which are not.

25 THE COURT: Okay.

1 MR. NOLAN: And they can explain that process. And I
2 just want to see, now that PacMar through its CEO and through
3 its attorney have heard the Court's thoughts on what they've
4 provided to the government, the probation office and the Court,
5 I want to just ask them kind of what their thinking is.
6 Because ultimately really the burden here, although it comes
7 through the government's request, is -- is on PacMar, you know,
8 a sophisticated victim with lots of lawyers, right? So if I
9 can get 30 seconds.

10 THE COURT: Absolutely. No, I mean I don't mean to
11 rush you and then maybe you want to have -- confer and then let
12 Ms. Cortez know when you're ready and I can come back in. And,
13 you know, if you want to fold Ms. Nieling in the discussion as
14 well because she's going to review it as well and possibly make
15 a recommendation to the Court.

16 It's just that whole amount -- what is it, that
17 amazing amount -- 834,000.

18 MR. NOLAN: Yeah, it's about \$850,000, Your Honor.
19 Now, I will tell you that it was hundreds of thousands of
20 documents that came my way.

21 THE COURT: Yes.

22 MR. NOLAN: But -- and let me just ask, so that PacMar
23 maybe further understands, so if we were just to look at
24 Exhibit B, Page 65.

25 THE COURT: Yes.

1 MR. NOLAN: Just because you pointed that out.

2 THE COURT: Yes.

3 MR. NOLAN: And there's a yellow and a purple. Yellow
4 means included, right?

5 So, what you would hear from the witness is that if
6 it's in yellow, it's included in the total that's been
7 presented to the Court, because it's Hawaii, the Hawaii
8 investigation.

9 If it's in, I'll call it purple, but maybe it's blue,
10 including the -- the entry you remarked on, that was excluded
11 from the ultimate total numbers because it was, as the Court
12 pointed out, related to D.C.

13 So there is that level of specificity in the sense
14 that a witness would get on the stand, I think maybe it's in
15 the declaration, and say, Items marked in yellow were included
16 in the total; items marked in blue or purple were not. There
17 are some items that are not highlighted and they are neither.
18 So they're not included. So it's only yellow items.

19 So what I am wondering, from the Court's perspective,
20 is essentially you have an assertion by PacMar that the yellow
21 entries represent expenditures that were incurred in response
22 to the grand jury subpoenas here. And everything else is
23 excluded in the totals presented. So you have that level of
24 detail.

25 THE COURT: Well, you do, but look on Page 61, the

1 first entry, 12/4/2020 by J. Hagen, 5 hours .10, review files
2 received from client regarding credit card charges. Create
3 chart regarding credit card charges by client. Review ledger
4 received from client. E-mail correspondence regarding document
5 collection. E-mail correspondence with Lori McMullen, Clifford
6 Chen regarding additional documents. Review documents received
7 from client for privilege.

8 Yeah, I don't know how that responds to any of the
9 subpoenas from the government or assisting the government. It
10 may, but if I look at that entry I would deny it.

11 Now, I don't want to go through each of these entries
12 and figure out what it is. You know what I'm saying? So I
13 just offer that as an example.

14 MR. NOLAN: So, right, and I -- and I knew that of
15 course we had entries like that, that are general in nature.
16 They don't even mention a subpoena, right?

17 THE COURT: Right.

18 MR. NOLAN: So did the Court -- does the Court have in
19 its contemplation, for entries like that, that are not facially
20 obvious as included, as a response to a grand jury subpoena, is
21 there some -- what level of detail or documentation are you
22 asking for from PacMar? Would you want -- would you want
23 essentially a long declaration that addresses each entry, which
24 of course there must be, I'm going to say hundreds, there could
25 be more. Are you expecting that there would be some sort of

1 paper documentation on top of that? Because otherwise
2 essentially what they're offering is a general assertion that
3 items in yellow were related to their subpoena response to us.

4 THE COURT: Right.

5 MR. NOLAN: So it would be informative for them to
6 know kind of what is the -- the backup the Court thinks it
7 would need or want to see to make a determination.

8 THE COURT: So, I guess starting from the large and
9 going to the small. No, it's not enough to just highlight what
10 it is because I question so many of these that are highlighted
11 in yellow. For instance, 12/8/2020, P. Burton, draft document
12 request for M. Hunsaker. What's that have to do with
13 responding to the government? I don't know.

14 MR. NOLAN: Sure.

15 THE COURT: Confer with counsel for individual T. Lam.
16 Again, I don't know.

17 Conference with V. Woo. Numerous exchanges with team
18 and Hawaiian counsel on numerous issues regarding production
19 and investigation, including review of draft confidentiality
20 order.

21 Who drafts a confidentiality order when responding to
22 a subpoena from the federal government? Maybe. I don't know.
23 It doesn't seem like it's related.

24 Review draft Navy submission document and comment on
25 the same.

1 What's the Navy doing with the subpoenas? I don't
2 know.

3 MR. NOLAN: Right.

4 THE COURT: I don't see the -- there has to be
5 something in the -- the description that ties it to, you
6 know -- for instance, telephone call with C. Nolan. Okay, I
7 get that. I know that's you. You were on the case.

8 Review subpoena, conference with government attorneys
9 regarding scope. Review documents to be produced pursuant to
10 subpoena for attorney-client privilege.

11 Okay. I see that, but -- and part of it is that it's,
12 you know, there's a lot packed in -- in the billing, I think,
13 and it hasn't been separated because these are highlighted.
14 Like, the whole 3 hours, 3.10 is, you know, highlighted as
15 having to do with response to the subpoena. One, I don't see
16 it, and two, I'm pretty sure that had to do with work for other
17 things for PacMar and not with the District of Hawaii
18 prosecution.

19 So, I guess what I would say is, in a redo, if you are
20 going to claim this, then for each of those you have to have
21 somebody explain in some sort of format, like you want to do
22 it -- an affidavit. I mean that's a lot for me to review.
23 It's almost like reviewing each of the entries.

24 MR. NOLAN: Yes.

25 THE COURT: But someone saying, Well, when we reviewed

1 for attorney-client privilege, it had to do with the documents
2 that were responding to the government's subpoena in the
3 District of Hawaii case.

4 I suspect that when they go back, if they want it,
5 they go back through all of this, that a majority of what has
6 been highlighted in yellow will either be reduced or withdrawn.

7 I mean, so, you know, when you talk about doing work
8 for the internal investigation, well, I don't know how that's
9 related to the government's investigation.

10 MR. NOLAN: Right.

11 THE COURT: So those are the kind of questions that I
12 -- I have to see a direct connection to the District of Hawaii
13 prosecution in the sense that because the government was
14 prosecuting Mr. Kao, that created the victim, a responsibility
15 and obligation, right, to expend time and attorney's fees in
16 seeking these documents, producing them to the government. And
17 so I think those are rightly characterized as restitution. And
18 the fact that they got this huge arbitration award but haven't
19 yet received it, then that's going to be an offset at a later
20 time.

21 MR. NOLAN: Sure.

22 THE COURT: But that's not for me to decide and, you
23 know, we're not involved with that.

24 So, I'm pretty sure under the *Bright* case that I can
25 award restitution. So then the more -- the smaller, more

1 direct point is, I can only order restitution for any injuries
2 to the victim as a result of, you know, Mr. Kao's wrongdoing in
3 the District of Hawaii case.

4 MR. NOLAN: Right. Right. It's certainly a narrower
5 measure of damages, if you will, than in their civil disputes
6 with Mr. Kao.

7 Yeah, I really -- I mean, I think the government's of
8 the same view. I wanted PacMar to hear your thoughts on what
9 you might want to see with respect to entries that would then
10 demonstrate to you that any particular entry or part of an
11 entry is compensable under that standard.

12 THE COURT: Yeah.

13 MR. NOLAN: So that's helpful. Thank you.

14 THE COURT: So I guess we can do two things. One, I
15 would highly recommend they take a look at the local rules
16 having to do with applications for attorney's fees when we have
17 to apply the lodestar analysis, just because it gives you kind
18 of categories that we do award as attorney's fees and we don't.
19 Not that I would apply it strictly to this, but I think it's a
20 good guideline.

21 Secondly, after they go through all of this, one
22 aspect of it is that we could ask the magistrate judge or
23 somebody to sit down with them and kind of help them go on a --
24 not a line by line, but you know what I'm saying, with regard
25 to it and just have a general idea. So before they submit it

1 to me, that somebody can go over it with them generally.

2 I would offer to do it myself. The only problem is
3 I'll be the ultimate decision-maker on this and I don't want it
4 to be kind of like I have these ex parte discussions and then
5 we came up with this order. So that's the only thing I think
6 why I would offer the sacrificial lamb of the magistrate judge.
7 But -- because it might be a good sounding board, right?

8 MR. NOLAN: Sure.

9 THE COURT: With regard to that. But I just offer
10 that as a thought. I'm not saying I'm going to require that.

11 MR. NOLAN: Okay. All right. That's helpful. Thank
12 you.

13 THE COURT: Okay. Do you want to have a little
14 discussion -- not little. Do you want to have a discussion?

15 And then, Mr. Hironaka, I'd love to hear your
16 thoughts.

17 MR. HIRONAKA: No. Yeah, so I just -- before they
18 have a discussion so we don't keep going back and forth, just a
19 few things, Your Honor.

20 I don't necessarily mind litigating this by paper.
21 What I kind of hear you saying, but I don't want to speak for
22 you, is, I think maybe this needs to be similar to like a
23 privilege log, and I have no desire to go through it. But if
24 it's got to be done, it's got to be done, because there's
25 literally, as Mr. Nolan said, there's hundreds of entries.

1 So I think what PacMar's attorneys need to do is to
2 basically go through each one and then list why it's
3 compensable. And so -- and then I would respond, I guess.

4 But there's a couple issues related to that that's
5 just, you know, factually. So I don't know if they can be
6 asked about this as well. But it occurs to me that, I think
7 Your Honor kind of needs to know what the grand jury subpoenas
8 were asking for in the first place. And so I get that that's
9 secret. I've spoken with Mr. Nolan about it. I know it wasn't
10 part of discovery. But I think that that basic universe needs
11 to be established.

12 And then I'm guessing that, and maybe we disagree on
13 this, but I'm guessing the response for most of these entries
14 is going to have to do with scrubbing the documents for
15 privilege, which I then had a short conversation with
16 Ms. Nieling about this morning and my position would be that
17 that's not necessarily something that's compensable as
18 restitution.

19 But again, I haven't looked at these cases that you
20 cited to, so maybe they are, maybe they aren't.

21 THE COURT: Yeah, I mean those cases actually didn't
22 talk about what specifically -- they just talked about, mostly
23 it was an issue that actually doesn't have to do with the issue
24 before us. But one point, though, that runs through *Bright* is
25 just because that there's insurance, for instance, out there,

1 that will compensate the victim, it doesn't mean you can't
2 order restitution. It just means later on when they get the
3 insurance they get an offset. So if they get a hundred
4 thousand dollars in restitution and then the insurance policy
5 covers their business loss for 250,000, they don't get the
6 hundred thousand restitution plus the 250 from the insurance
7 coverage. There is an offset there for the -- and the
8 insurance company will then pay over 150,000.

9 MR. HIRONAKA: Right. And with respect to my
10 collateral estoppel argument, I -- I -- you know, I read the
11 submission, the response by the government, and I agree that,
12 you know, we're probably not really in that realm anymore. So
13 we're really just focused on the --

14 THE COURT: Right, what's compensable. Right.

15 MR. HIRONAKA: Right.

16 THE COURT: So it doesn't really give me guidance with
17 regard to that.

18 I hear what your argument is, is that that's really
19 for their benefit. You know, it's not because it was required
20 by a response to the government.

21 On the other hand, you know, say there was a rape
22 victim and as a result of, whatever, you know, the prosecution,
23 there was a request for medical records, or something like
24 that. I think it would be unfair that a victim would just have
25 to turn over all of his or her medical records without first

1 perhaps someone taking a look at it and saying there may be
2 some things that there's a legal reason to say it doesn't fall
3 within the subpoena for privacy concern, or whatever.

4 So I kind of, you know -- your client put them in the
5 position where their business records were subpoenaed, and
6 contained within their business records perhaps were
7 privileged. I suspect there was more of a concern about
8 corporate work product.

9 But, be that as it may, I'm not -- unless I see some
10 sort of, you know, other case law or some sort of factual
11 information that causes me to question about the extent of the
12 review for attorney-client privilege, at this point I think
13 it's in, if it was in response to documents that were requested
14 by the government.

15 MR. HIRONAKA: So that brings me to my last point,
16 which is that, so again, we don't keep going back and forth.
17 I -- you know, part of my argument today was going to be that I
18 think it's the Buckley attorneys that need to be the ones kind
19 of addressing the applicability here, you know, because they're
20 the ones who responded, basically, to the subpoena. I mean,
21 and I'm not saying a client could never know that, but it's
22 just if we're going straight off of these, I don't think
23 anybody's memory is, yeah, that day, this is what we did.
24 So -- and I'm not even sure the Buckley attorneys could do it,
25 but I just -- I just feel like it's a little bit strange to

1 have PacMar itself responding to it. It almost needs to be
2 Buckley because these are literally attorney's fees that
3 they're asking to be -- get restitution for.

4 THE COURT: Yeah, I'm sure they're going to have to
5 work with the attorneys because there's no way that the client
6 would know what was done with regard to it.

7 So -- so I guess the privilege log is not something
8 I'm requiring. What I'm really asking, I mean, is that they go
9 back, and all the ones that they -- now that Mr. Nolan has
10 advised me, the ones that are highlighted in green or yellow
11 are supposedly related to the District of Hawaii prosecution --
12 excuse me -- take a look at those and show me why those are
13 related to the District of Hawaii production of the subpoena.
14 Because most of these entries, one, I either can't tell or,
15 two, it doesn't look like it has anything to do with the
16 District of Hawaii pros -- or the subpoenas from the government
17 in the District of Hawaii prosecution.

18 MR. HIRONAKA: Thank you, Your Honor.

19 THE COURT: Yeah. So I would say, they would look
20 at -- this is how I was thinking -- they would look at it, they
21 would say, Okay, you know, this isn't clear enough, or
22 whatever; oh, yeah, this has nothing to do with it. So they
23 would delete those now upon second review, Court's guidance,
24 they can't justify as being part of the District of Hawaii
25 prosecution in response to the government. Okay.

1 And then the ones that they think are or believe are,
2 then for those, they would give me something that would clarify
3 as to each of those entries why that was related, if it's not
4 apparent from the current descriptions -- I think there were a
5 couple of them that talked about it.

6 MR. NOLAN: I mean some are plain on their face.

7 THE COURT: Yeah.

8 MR. NOLAN: But most are not. So I think what the
9 government is hearing from the Court is essentially PacMar
10 needs to look back at the ones they're claiming and they really
11 need to explain each entry for which they're claiming. You
12 know, it may be as simple as, you know, see the entry, right?
13 If it says, Responded to grand jury subpoena --

14 THE COURT: Yes.

15 MR. NOLAN: -- in -- in Hawaii case. But for a number
16 of them, they'll need at least a short explanation as to why
17 that particular billing entry relates.

18 THE COURT: Exactly. Like there's this one on Page 54
19 could be, research issues related to searches of employees'
20 phones and devices. So it's like, I don't know, was the
21 government, like, going to search them or is demanding it?
22 Maybe. Or maybe they're just worried about it. I don't know.
23 So that I would say, What has that to do with it? Stuff like
24 that.

25 MR. NOLAN: Right. I know what it has to do, but I

1 have a lot more knowledge than the Court, and so they need to
2 make that plain.

3 THE COURT: Yeah.

4 MR. NOLAN: I get that. Let me propose -- I mean
5 they're here, they've heard what you have to say. Putting on
6 the CEO or their counsel to generally address these things is
7 not going to do what the Court's looking for. So there's no
8 point in doing that.

9 I will get with them to talk about how they want to do
10 this. It's really at their option, right? And how that might
11 be formatted. And then I will get with Mr. Hironaka and say,
12 Hey, look, we're going to produce it as a spreadsheet, or we're
13 going to produce it as, whatever, a declaration. We're going
14 to give it to Mr. Hironaka first. We will try to see if we
15 have some agreement. And then if there is disagreement, then
16 assuming PacMar wants to go forward, we will provide the Court
17 with the agreed upon numbers, to the extent there are any, and
18 the disagreed upon numbers, we'll give you the document, the
19 supporting document. And then, you know, I guess Mr. Hironaka
20 may want an opportunity to cross-examine a live witness about
21 that. The Court may or may not want to hear any evidence. But
22 does that work as a procedure?

23 THE COURT: That sounds great, Mr. Nolan. That sounds
24 terrific. So what I would do -- oh, go ahead, Mr. Hironaka.

25 MR. HIRONAKA: Sorry, just one question. When you

1 mentioned the local rules, attorney's fees and lodestar, I'm
2 not sure what that is, but were you speaking with -- I just
3 want to make sure I'm not missing an issue. Were you speaking
4 about reasonableness or that has nothing to do with that?

5 THE COURT: No, I wasn't talking about reasonableness.

6 MR. HIRONAKA: Okay.

7 THE COURT: Because, you're right, an award of
8 attorney's fees, case law indicates that the Court is supposed
9 to scrutinize for reasonableness and everything. This is a
10 direct loss. So this is, you know, you get punched in the
11 face, you go to Queen's, you get -- I don't look to, Queen's,
12 you charged too much for, you know, doing the X-ray. That was
13 the X-ray charge, that was the out-of-pocket loss, you know. I
14 just need to know that the -- you know, they don't just say
15 X-ray. For, like, for what? The X-ray of the left orbital
16 area, you know, having -- and it was the same date as the
17 assault. Okay. So then that would be, you know, a
18 compensated -- a compensated fee that was charged to the victim
19 as a result of the criminal act. Something like that. That
20 kind of directness.

21 MR. HIRONAKA: Don't get me wrong, I would love to
22 charge a thousand dollars an hour but I --

23 THE COURT: Understood. So I wouldn't apply lodestar
24 where we look at in terms of the -- you know, what is the -- in
25 the -- we usually look at what is the going rate for an

1 attorney with X number of years of experience. And of course
2 the Hawaii market is very different than --

3 MR. HIRONAKA: Got it.

4 THE COURT: -- many of the Mainland markets. So, but
5 I would not look at reasonableness because it was charged and
6 I'm assuming it was, you know, paid by the victim. I'm looking
7 for the directness in terms of -- to -- to the -- to Mr. Kao's
8 wrongdoing in the District of Hawaii and as a result of the
9 government's investigation. So if that's response to
10 subpoenas, or maybe not a subpoena, but a request or an
11 indication that the government will issue subpoenas for, you
12 know, for employees' phones and things like that, then I think
13 that's a natural consequence.

14 I just can't tell. And so I guess either they -- you
15 know, for -- I'm not going to tell you how to do it, but there
16 must be some sort of format they can come up with; these are
17 what we're claiming for and then you can have an annotation or
18 something --

19 MR. HIRONAKA: Sure.

20 THE COURT: -- to indicate to me.

21 So what I propose doing, just for our recordkeeping
22 purposes, is that our minutes will reflect that the motion is
23 denied -- for restitution is denied without prejudice to
24 refile with additional documentation. And that way it
25 terms the motion in terms of I'm not just leaving it open and

1 not resolving it. But that also because without prejudice
2 gives PacMar an opportunity to then recalibrate and provide the
3 documentation, have this meet and confer with Mr. Hironaka, and
4 whatever you can't, you know, agree upon or resolve, then you
5 can either bring back to me or, again, I could talk to Chief
6 Magistrate Judge Mansfield and have him or assign -- he could
7 assign one of the magistrate judges to sit down with you folks
8 and see if you can work out an agreement or work out some sort
9 of format. Again, I'm not going to require it, I'm just
10 offering that.

11 MR. NOLAN: Okay. That makes a lot of sense to the
12 government.

13 THE COURT: All right. Very good. Ms. Nieling, do
14 you have anything? As long as I don't task you to go through
15 each of the billing?

16 THE U.S. PROBATION OFFICER: No, Your Honor, I have
17 nothing more to add. I think the Court's discussions are
18 consistent with what we articulated in the PSR in terms of just
19 requiring more specificity and documentation.

20 THE COURT: Yeah. Yeah. So we just can't tell at
21 this point. I'm not saying -- I do think they are legally
22 entitled to certain restitution and they're not denied because
23 of the arbitration award, but I just can't tell for lack of
24 specificity.

25 All right. Very good. So our minutes will serve as

1 the order then denying without prejudice to refiling. And then
2 I won't give you any deadline. You guys work it out and then
3 you file it and we'll schedule a hearing and go forward from
4 there.

5 MR. NOLAN: Thank you.

6 THE COURT: All right. Thank you all. Appreciate it.
7 We stand in recess. Good day everyone.

8 (The proceedings concluded at 10:37 a.m.,
9 April 30, 2025.)

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1 COURT REPORTER'S CERTIFICATE

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3 I, CYNTHIA FAZIO, Official Court Reporter, United
4 States District Court, District of Hawaii, do hereby certify
5 that pursuant to 28 U.S.C. §753 the foregoing pages is a
6 complete, true, and correct transcript of the stenographically
7 reported proceedings held in the above-entitled matter and that
8 the transcript page format is in conformance with the
9 regulations of the Judicial Conference of the United States.

10

DATED at Honolulu, Hawaii, March 1, 2026.

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13 /s/ Cynthia Fazio
14 CYNTHIA FAZIO, RMR, CRR, CRC

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