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MARTIN KAO

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA

vs.

MARTIN KAO,

Defendant.

CR. NO. 21-00061 LEK

DEFENDANT MARTIN KAO'S
MEMORANDUM IN
OPPOSITION TO MOVANT
PACMAR TECHNOLOGIES
LLC'S RENEWED MOTION FOR
RESTITUTION PURSUANT TO
18 U.S.C. §3663A AND §3664;
CERTIFICATE OF SERVICE

DEFENDANT MARTIN KAO'S MEMORANDUM IN OPPOSITION
TO MOVANT PACMAR TECHNOLOGIES LLC'S RENEWED MOTION
FOR RESTITUTION PURSUANT TO 18 U.S.C. §3663A AND §3664

DEFENDANT MARTIN KAO'S MEMORANDUM IN OPPOSITION
TO MOVANT PACMAR TECHNOLOGIES LLC'S RENEWED MOTION
FOR RESTITUTION PURSUANT TO 18 U.S.C. §3663A AND §3664

Martin Kao, by and through his attorney, Randall K. Hironaka, hereby submits the instant memorandum in opposition to PacMar's renewed request for restitution in the above-captioned matter.

DATED: Honolulu, Hawai'i, April 8, 2026.

Respectfully submitted,

MIYOSHI & HIRONAKA, LLC
Attorneys at Law

By: /s/ Randall K. Hironaka
RANDALL K. HIRONAKA

Attorney for Defendant
MARTIN KAO

MEMORANDUM IN OPPOSITION

I. ARGUMENT

Mr. Kao opposes PacMar's renewed request for restitution ("renewed request").

This Honorable Court ordered that PacMar's renewed request should be filed with a memorandum which "should, at a minimum, explain why the Court retains jurisdiction to order restitution after the conclusion of sentencing." While Mr. Kao generally agrees that any argument that this Court lacks jurisdiction to order restitution is undermined by *United States v. Moreland*, (Mandatory Victims Restitution Act of 1996 (MVRA) (18 U.S.C. §§ 3663A-3664) "timing requirements are procedural, rather than jurisdictional."), the specific concern that the Court had when it denied PacMar's request for restitution last year has still not been addressed by PacMar. In fact, the issue has been exacerbated by PacMar's renewed request.

As an initial matter, Mr. Kao incorporates herein his prior argument from his memorandum in opposition to PacMar's prior request for restitution. Mr. Kao's opposition was filed at ECF No. 172. Specifically, the following was argued:

Alternatively, Mr. Kao also agrees with the PPSO's conclusion that it (and therefore, the Court) is unable to determine the exact restitution PacMar might be entitled to as a result of "incurring legal fees paid to respond to and assist the government's case involving the instant offense." As PacMar and the United States have not met their burden

of proof with respect to the requested restitution, Mr. Kao again argues that PacMar's request should be denied in its entirety.

ECF No. 172 at 6. This Honorable Court took the baton, expressed the same concern several times at the April 30, 2025 hearing, and ultimately denied PacMar's request for restitution without prejudice. The Court specifically stated the following:

If I follow my inclination, what I would do is deny without prejudice PacMar's restitution request and permit a refiling with documentation supporting a specific amount and with documentation that supports that those attorney's fees and services were expended because of the District of Hawaii prosecution and responded to subpoenas, requests by the government, meetings with the government, possibly meetings with defense counsel related to the District of Hawaii prosecution. That as PacMar's the victim and they had to expend that, makes sense to me.

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

Transcript from April 30, 2025 hearing at 5-6, attached to Movant PacMar Technologies LLC's Renewed Motion for Restitution Pursuant to 18 U.S.C. §3663A and §3664 as *Exhibit "B"* (emphasis added) ("04/30/25 Tr"). This statement by the Court clearly delineated what it needed -- specificity and documentation -- before it could determine whether the amounts claimed met the "requirements for restitution." The Court further clarified its concerns, and what it needed from PacMar, when it stated:

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

04/30/25 Tr at 10. Expressing the need to have PacMar break down its attorneys'

"block billing" in order to be able to determine an accurate restitution amount, the

Court further stated:

I don't see the -- there has to be something in the -- the description that ties it to, you know -- for instance, telephone call with C. Nolan. Okay, I get that. I know that's you. You were on the case. Review subpoena, conference with government attorneys regarding scope. Review documents to be produced pursuant to subpoena for attorney-client privilege. Okay. I see that, but -- and part of it is that it's, you know, there's a lot packed in -- in the billing, I think, and it hasn't been separated because these are highlighted. Like, the whole 3 hours, 3.10 is, you know, highlighted as having to do with response to the subpoena. One, I don't see it, and two, I'm pretty sure that had to do with work for other things for PacMar and not with the District of Hawaii prosecution.

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

04/30/25 Tr at 11 (emphasis added).

In its renewed request for restitution, PacMar attempts to provide the Court with the required specificity and documentation via an affidavit from former Buckley LLP partner, Preston Burton. However, instead of providing this Court with the requested specificity, PacMar has exacerbated the issue by applying a

two-part generalized reduction. First, PacMar took the total amount of legal fees billed by Buckley, \$857,615, and multiplied it by 90 percent -- the estimated portion of the total time Buckley spent responding to one or both of the grand jury investigations (one grand jury in Hawaii, one in Washington D.C.), as attested to by Mr. Burton. Renewed Request at 3-5. This results in a reduced total figure of \$771,853.50. PacMar next took that number and multiplied it by 25 percent -- the estimated portion of the total time spent responding to one or both of the grand jury investigations which was work related to responding to the Hawaii grand jury investigation, as attested to by Mr. Burton. Renewed Request at 5. This results in a reduced total requested figure of \$192,963.38. PacMar proposes an alternative generalized calculation for requested restitution which takes Mr. Burton's approximately \$330,000 total amount billed in responding to the "two overlapping criminal matters," and dividing it in half -- essentially apportioning that total amount equally between the Hawaii and D.C. investigations.

The problem with both of these proposals is that they neither provide the Court with what it requested, nor what it needs -- specificity. Again, it is making the matter worse. It is providing more generalizations and failing to break down and explain the billings. Instead of going "large to small," as directed by the Court, PacMar has gone from large to larger.

PacMar's inability to provide a breakdown and more specificity in order for the Court to be able to determine an accurate restitution amount was foreshadowed by the defense at the April 30, 2025 hearing:

HIRONAKA: So that brings me to my last point, which is that, so again, we don't keep going back and forth. I -- you know, part of my argument today was going to be that I think it's the Buckley attorneys that need to be the ones kind of addressing the applicability here, you know, because they're the ones who responded, basically, to the subpoena. I mean, and I'm not saying a client could never know that, but it's just if we're going straight off of these, I don't think anybody's memory is, yeah, that day, this is what we did. So -- and I'm not even sure the Buckley attorneys could do it, but I just -- I just feel like it's a little bit strange to have PacMar itself responding to it. It almost needs to be Buckley because these are literally attorney's fees that they're asking to be -- get restitution for.

04/30/25 Tr. at 17-18 (emphasis added). Buckley's inability to break down the block billings and to provide anything more than more generalizations is not an indictment of Buckley, it is simply to say that neither Buckley nor PacMar is able to comply with the Court's following request:

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

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

04/30/25 Tr. at 18-19 (emphasis added). Buckley and PacMar tried, but are simply unable to provide clarity “as to each of those entries [and] why that was related.”

II. CONCLUSION

As the Buckley attorneys are the only ones capable of providing the specificity and clarity this Court needs to determine whether and how much restitution to award, and they are unable to do so one year after the first request was denied without prejudice, there is no need for this Honorable Court to hold an evidentiary hearing. PacMar’s renewed request for restitution should be denied in its entirety with prejudice.

DATED: Honolulu, Hawai‘i, April 8, 2026.

Respectfully submitted,

MIYOSHI & HIRONAKA, LLC
Attorneys at Law

By: /s/ Randall K. Hironaka
RANDALL K. HIRONAKA

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MARTIN KAO