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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA, Plaintiff, vs. MARTIN KAO, Defendant.	CR. NO. 21-00061 LEK MOVANT PACMAR TECHNOLOGIES LLC'S **REPLY** IN SUPPORT OF RENEWED MOTION FOR RESTITUTION PURSUANT TO 18 U.S.C. § 3663A AND § 3664; CERTIFICATE OF SERVICE

MOVANT PACMAR TECHNOLOGIES LLC'S REPLY IN SUPPORT OF RENEWED MOTION FOR RESTITUTION PURSUANT TO 18 U.S.C. § 3663A AND § 3664

I. INTRODUCTION

PACMAR TECHNOLOGIES LLC f/k/a MARTIN DEFENSE GROUP, LLC f/k/a NAVATEK LLC ("**PacMar**") respectfully submits this Reply in support of its Renewed Motion for Restitution [Dkt. 190] (“**Renewed Motion**”) and in response to Defendant Martin Kao's Memorandum in Opposition to the Renewed Motion [Dkt. 195] ("**Kao MIO**").

Kao's MIO makes a single argument: that PacMar's Renewed Motion fails to provide the "specificity" the Court requested at the April 30, 2025 hearing (the "**2025 Hearing**"). As demonstrated below, this argument mischaracterizes what PacMar has submitted, misrepresents what the Court actually required, and ignores that the Mandatory Victim Restitution Act (“**MVRA**”) mandates restitution for PacMar as a determined victim of Mr. Kao's criminal offenses. Moreover, well-established case law confirms that PacMar's reasonable-estimate methodology is precisely the approach courts require under the MVRA.

PacMar's Renewed Motion provides exactly what the Court requested: a sworn declaration from the lead Buckley attorney who performed the work, Preston Burton, attesting to the apportionment of legal fees between the Hawaii and D.C. investigations, supported by highlighted invoices identifying the relevant billing entries. This is the "affidavit" format the Court itself suggested. *See* Transcript of 2025 Hearing ("**Tr.**"), attached to the Renewed Motion as Exhibit B, at 11:19-22.

II. ARGUMENT

A. PacMar Has Provided the Specificity and Documentation the Court Requested

Kao contends that PacMar has merely applied "generalized percentage reductions" to lump-sum billing. Kao MIO at 5-6. This fundamentally mischaracterizes PacMar's submission. PacMar has provided:

First, a sworn Declaration of Preston Burton, formerly a partner at Buckley LLP and now a partner at Orrick, Herrington & Sutcliffe LLP, the lead attorney who personally directed Buckley's representation of PacMar in connection with both the USAO Hawaii and USAO DC grand jury investigations. *See* Declaration of Preston Burton, attached to the Renewed Motion ("**Burton Decl.**") ¶¶ 1-2. Mr. Burton is the person best positioned to assess what the invoiced work entailed, having led the engagement, reviewed the invoices, consulted with two remaining team members, and reviewed correspondence with the government regarding document productions. *See id.* ¶¶ 3, 7.

Second, Mr. Burton's informed, professional estimate -- based on his personal recollection, his review of the invoices, and consultation with his colleagues -- that at least 90% of the invoiced work through October 18, 2021 was related to one or both of the grand jury investigations, and that at least 25% of that work was attributable to the Hawaii investigation, resulting in a figure of at least **$192,963.38**. *See id.* ¶ 7.

Third, a corroborating alternative calculation based on PacMar's review and highlighting of Buckley invoice entries related to document collection, review, and production activities, totaling approximately $330,000, divided evenly between the two overlapping criminal investigations, yielding **$165,000**. *See id.* ¶¶ 8-9.

Fourth, the highlighted Buckley invoices themselves (Exhibit C), with entries related to collection, review, and production activities specifically identified. *See id.* ¶ 8.

Fifth, Mr. Burton's attestation under penalty of perjury that both figures likely **understate** the actual amount attributable to the Hawaii investigation, because they exclude post-October 2021 work, certain other collection and review entries, discussions with company personnel, expenses, and database costs. *See id.* ¶ 9 (emphasis added).

This is precisely the type of submission the Court contemplated. At the 2025 Hearing, the Court stated that if PacMar intended to claim restitution for the highlighted entries, it needed "to have somebody explain in some sort of format, like you want to do it -- an affidavit." Tr. at 11:19-22. The Burton Declaration is that affidavit.

B. Kao Mischaracterizes the Court's Guidance in the 2025 Hearing

Kao's MIO selectively quotes the 2025 Hearing transcript to suggest the Court demanded a line-by-line annotation of every invoice entry. *See* Kao MIO at 6-8. A complete reading of the transcript reveals a far more nuanced record.

The Court acknowledged flexible formats and did not prescribe a single required format, stating: "I'm not going to tell you how to do it, but there must be some sort of format they can come up with; these are what we're claiming for and then you can have an annotation." Tr. at 22:14-18.

The Court's central concern was the Hawaii nexus, not line-by-line granularity. The Court explained that its core requirement was a demonstrable connection between the claimed fees and the Hawaii prosecution: "I have to see a direct connection to the District of Hawaii prosecution in the sense that because the government was prosecuting Mr. Kao, that created the victim, a responsibility and obligation, right, to expend time and attorney's fees in seeking these documents, producing them to the government." Tr. at 12:11-17. The Burton Declaration provides precisely this nexus.

The Court endorsed the process PacMar followed. AUSA Nolan proposed that PacMar revisit its entries, remove those that cannot be justified as Hawaii-related, and for the remainder, "provide at least a short explanation as to why that particular billing entry relates." Tr. at 19:15-17. The Court responded: "That sounds great, Mr. Nolan. That sounds terrific." *Id.* at 20:23-24. PacMar has substantially complied: the highlighted entries in Exhibit C represent the entries PacMar is claiming, non-Hawaii entries have been excluded, and Burton's Declaration provides the overarching explanation for why those entries relate to the Hawaii investigation.

The Court recognized that some entries are self-evident. Mr. Nolan observed: "I mean some are plain on their face." The Court agreed: "Yeah." Tr. at 19:6-7. Entries such as "Review subpoena, conference with government attorneys regarding scope" and "Review documents to be produced pursuant to subpoena for attorney-client privilege" (Tr. at 11:8-10) are plainly compensable on their face and require no further annotation.

The Court itself did not want to conduct a line-by-line review. Tr. at 9:11-13. The Court's purpose was to illustrate its concerns, not to mandate that PacMar produce an entry-by-entry annotation of hundreds of time entries from work performed over five years ago.

C. PacMar's Estimate Is Conservative, Well-Supported, and Appropriate Given the Nature of the Work

Mr. Burton attests that the workstreams for the overlapping Hawaii and D.C. criminal investigations were not tracked separately by Buckley. *See* Burton Decl. ¶ 7. This is not a deficiency in PacMar's presentation -- it is a factual reality of how overlapping grand jury investigations are handled in practice, particularly where, as here, the investigations involved overlapping responsive documents, document custodians, and time periods. *See id.* ¶ 6.

The Court itself recognized this practical reality at the 2025 Hearing, suggesting that a magistrate judge could assist the parties in working out an agreement on format -- a suggestion that reflects the Court's understanding that reasonable estimation and negotiation, not forensic precision, were the appropriate path forward. *See* Tr. at 23:5-8. The Court also stated it would not scrutinize the reasonableness of the hourly rates: "I would not look at reasonableness because it was charged and I'm assuming it was, you know, paid by the victim." *Id.* at 22:4-6.

PacMar's estimate is conservative by any measure. Two independent methodologies -- Burton's 90%/25% estimate yielding $192,963.38, and the 50/50 split of highlighted entries yielding $165,000 -- produce figures in the same range. *See* Section II. A, *supra*, at 2-3. Both are attested by the billing attorney to likely understate the true amount. And PacMar's current request of $192,963.38 is a fraction of the $858,933.41 the United States itself requested on PacMar's behalf in the prior round. *See* Dkt. 177 at 6 (US Reply Brief requesting $858,933.41 in restitution). PacMar has dramatically narrowed its claim in a good-faith effort to address the Court's concerns. The United States continues to support PacMar's entitlement to restitution, having filed a Response in Support of PacMar's Renewed Motion. *See* Dkt. 193.

D. <u>Case Law Supports PacMar's Reasonable-Estimate Methodology</u>

Kao's MIO implicitly demands a level of precision that is neither required by the MVRA nor supported by the case law. To the contrary, well-established authority confirms that PacMar's approach is precisely the methodology courts require.

The Ninth Circuit has consistently held that restitution amounts need only be estimated with "reasonable certainty" based on the facts in the record. *United States v. Kennedy*, 643 F.3d 1251, 1261 (9th Cir. 2011) (the government must provide evidence sufficient to allow the court to estimate, based upon facts in the record, "the full amount of the victim's losses with some reasonable certainty"); *United States v. Doe*, 488 F.3d 1154, 1160 (9th Cir. 2007) (upholding restitution award based on reasonable estimate of future counseling costs). This standard does not require exact proof or forensic-level documentation. It requires a sound methodology supported by competent evidence. As discussed above, PacMar has provided exactly that.

A leading case on attorneys' fees as restitution under the MVRA is *United States v. Battista*, 575 F.3d 226, 233-34 (2d Cir. 2009), which PacMar cited in its Renewed Motion. In *Battista*, the Second Circuit upheld a restitution award for attorneys' fees incurred by the victim (the NBA) in assisting the government's investigation and prosecution of the criminal offense. *Id.* at 233-34. Critically, the *Battista* court held that attorneys' fees and accounting costs qualify as "other expenses" under 18 U.S.C. § 3663A(b)(4)[1], and the district court properly "parsed out" compensable expenses using a reasonable methodology -- it did not require that

[1] As used in the Renewed Motion, the citation to 18 U.S.C. § 3663A(a)(4)(A) is corrected to 18 U.S.C. § 3663A(b)(4).

every single billing entry be independently verified. *Id.* This is directly analogous to PacMar's approach, where Mr. Burton has "parsed out" the fees attributable to the Hawaii investigation using two reasonable methodologies.

United States v. Afriyie, 27 F.4th 161, 169 (2d Cir. 2022), specifically recognized that fees and costs incurred in responding to government subpoenas and document requests qualify as compensable "other expenses" under § 3663A(b)(4). The court explained that the victim entity "had to respond to numerous subpoenas and document requests from the government . . . and needed counsel to appropriately respond." *Id.* Kao's MIO does not, and cannot, dispute that the fees and costs PacMar seeks as restitution are recoverable under applicable law. This is precisely the nature of PacMar's claimed expenses -- Buckley was engaged specifically to respond to grand jury subpoenas in the Hawaii investigation, and the highlighted invoice entries reflect work related to document collection, review, production, and privilege screening in connection with those subpoenas.

E. The MVRA's Mandatory Framework Precludes Denial Based on Documentation Difficulties

The Supreme Court has made clear that the MVRA's restitution provisions are mandatory, not discretionary. *See Dolan v. United States*, 560 U.S. 605, 611-12 (2010) (holding that failure to meet the 90-day deadline does not divest the court of authority to order restitution where the court has indicated its intent to do so). The Ninth Circuit has applied this principle, holding that the 90-day period is a "claimsprocessing rule, not a jurisdictional limitation." *United States v. Moreland*, 622 F.3d 1147, 1172 (9th Cir. 2010). This position is generally agreed to by Kao. *See* Kao MIO at 3. Where a victim has been determined to be entitled to restitution, the Court retains both the authority and the obligation to determine the appropriate amount. Denying PacMar's claim with prejudice simply because the billing records are not amenable to line-by-line parsing would effectively nullify the MVRA's mandatory restitution requirement for any case involving overlapping investigations or complex billing arrangements -- a result inconsistent with both the statute and Supreme Court precedent.

F. <u>Denial With Prejudice Is Inappropriate</u>

Kao requests that PacMar's Renewed Motion be denied in its entirety with prejudice. *See* Kao MIO at 8. This request is contrary to the Court's own findings, the MVRA's mandatory restitution framework, and the record in this case.

The Court has already determined that PacMar is entitled to restitution. At the 2025 Hearing, the Court stated unequivocally:

> "I do think [PacMar is] legally entitled to certain restitution and they're not denied because of the arbitration award, but I just can't tell for lack of specificity."

Tr. at 23:21-24. The Court denied the prior request without prejudice, specifically to afford PacMar "an opportunity to then recalibrate and provide the documentation" to support its claim. *Id.* at 23:2-3. The Court imposed no deadline: "I won't give you any deadline. You guys work it out and then you file it and we'll schedule a hearing and go forward from there." *Id.* at 24:1-4.

The Court's statements reflect a clear intent to see the restitution issue resolved on the merits, not abandoned due to documentation challenges. The MVRA mandates restitution for qualifying victims. Restitution under 18 U.S.C. § 3663A is mandatory, not discretionary. The Court has determined -- and Kao has not challenged -- that PacMar is a victim of Mr. Kao's criminal offenses, as confirmed by USPO Officer Ms. Nieling. *See* Dkt. 177-1, Exhibit 1 (USPO's Victim Finding). Denying restitution with prejudice would improperly deprive a determined victim of the mandatory restitution to which the Court has already found PacMar is legally entitled. *See Dolan*, 560 U.S. at 611-12; *Moreland*, 622 F.3d at 1172.

III. CONCLUSION

For the foregoing reasons, PacMar respectfully requests that this Court grant its Renewed Motion for Restitution and order Defendant Kao to pay restitution to PacMar in the amount of $192,963.38, or, alternatively, no less than $165,000.

DATED: Honolulu, Hawaii, April 14, 2026.

/s/ Jesse W. Schiel
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