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The Honorable Frederic Block
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

RE: United States v. Hashim Campbell
Criminal Docket No. 21-478(FB)

Your Honor:

Thank you for the grace of receiving this letter on today's date. Mr. Campbell in his continued emotional response to this matter was again so frozen I had to push and push to get his review and perception of the Government's submission. He is not intentional in his inability, but emotionally incapacitated as described in the defense sentencing memorandum. He has always intended to be a person of community and good service to others as this was the basis of his self-esteem: to be a good person.

In essence with the input of Mr. Campbell's review received today, the insight which must impact restitution from the perspective of the defense is the question of, "what is in fact the current loss?" Many of the illicit loans were in fact set forth as loans. If the justification for the loan was not provided or was, as here false, the loan would have to be repaid. As the scheme was laid bare, many people's fund proceeds from their illegitimate loans were frozen. Thus the loss was not fully dispersed. Is this factor taken into account for the Government calculation? Many people are still within the time period to repay their loans. Is this repayment period within the context of the Government's calculation or that of the support provided by submission of the victim?

Restitution is due here, certainly at the very least the $100,000.00 Mr. Campbell received is due as there is no rubric mathematically that that sum would be repaid without this defendant's input. Either the bank would be out these funds, or the illicit loan receiver would be out ten percent of their portion of the repayment of these funds. (It was clear that Mr. Campbell made 10% on those loans which he processed.)

The calculations within the submission set forth prior to sentencing must be assessed against the backdrop of what was repaid and is to be repaid. The victim as well is not entitled to a windfall. See, United States v. Nucci, 364 F.3d 419, 422-423 (2d Cir. 2004). For, if all of the funds were repaid under the terms of the loan the static restitution amount set now would provide an overpayment/windfall to the bank and not a just restitution. It is as well understood that the loans for repayment purposes came with a low interest rate. Thus. if the loans are repaid with interest the bank is made whole and has earned in one of the manners that banks make money- interests on their loans.

It is undisputed that Mr. Campbell himself was responsible for approximately $1,000,000.00 to 1,200,000.00 in loans. See, Government letter page 2, penultimate paragraph; page 3, paragraphs 4 and 5; and page 4, last paragraph and PSR paragraph 18.

The amount of loss set out in its submission prior to sentencing directly attributable to Mr. Campbell was $1,704,426.02. The next question to be tackled is what amount has been recouped, either by loan repayment, the freezing of accounts where illegitimate loans were funded and halted, or other means. A number of Mr. Campbell's former clients have related the receipt of bank statements demonstrating the reduction of that which is owed in relation to their loans, installment payments or a completion of repayment.

Is the restitution amount in a matter such as this static or does it temper with the ultimate repatriation of funds from the loan recipients?

"[A]bsent a statutory command, there is no legal basis to permit an award that allows a victim to recover more than his due. " U.S. v. Nucci, 364 F.3d 419, 424 (2d Cir. 2004).

As the Government points out, "[The 'g]uidelines do not require that the sentencing court calculate the amount of loss with certainty or precision.' United States v. Bryant, 128 F.3d 74, 75 (2d Cir.1997). The sentencing court 'need only make a reasonable estimate of the loss, given the available information.' United States v. Uddin, 551 F.3d 176, 180 (2d Cir.2009) (internal quotation marks omitted); *see also* U.S.S.G. § 2B1.1, cmt. n. 3(C), at 87. Disputed facts relevant to sentencing determinations should be supported by a preponderance of the evidence. *See, e.g.,* United States v. Garcia, 413 F.3d 201, 220 n. 15 (2d Cir.2005). Because the sentencing court "is in a unique position to assess the evidence and estimate the loss based upon that evidence," its findings are "entitled to appropriate deference" on appeal. U.S.S.G. § 2B1.1, cmt. n. 3(C), at 87. 'In reviewing a district court's application of the Guidelines to the specific facts of a case," this Court will "accord de novo review to issues of law, and accept its findings of fact unless they are clearly erroneous.' United States v. Guang, 511 F.3d 110, 122 (2d Cir.2007)." United States v. Bahel, 662 F.3d 610, 646 (2d Cir. 2011).

Also, so that the defense is not remiss in pointing out: "The Mandatory Victims Restitution Act ("MVRA") requires a defendant to reimburse a victim for, inter alia, "necessary ... other expenses incurred during the participation in the investigation or prosecution of the offense or attendance at proceedings related to the offense." 18 U.S.C. § 3663A(b)(4). Attorneys' fees are "other expenses" that are properly included within a restitution award. *See United States v. Amato,* 540 F.3d 153, 159–60 (2d Cir.2008). "Any dispute as to the proper amount or type of restitution shall be resolved by the court by the preponderance of the evidence." 18 U.S.C. § 3664(e)." Bahel, at 646. Thus, the defense recognizes a restitution concept beyond the actual loss is a potential.

The designation of loss apportionment is the area where the defense secondarily suggests that they individual be responsibility for their respective impact. "[T]he pertinent statutory provisions establish that the decision whether to apportion restitution among defendants is a discretionary one. *See* 18 U.S.C. § 3664(h). .... It has long been the law of this circuit that the restitution obligation may be ordered to be joint and several. *See, e.g.,* United States v. Tzakis, 736 F.2d 867, 871 (2d Cir. 1984). Thus, it is within the district court's discretion to order that Mr. Campbell, who pleaded guilty to a conspiracy, be held jointly and severally liable for the full amount of the restitution. U.S. v. Nucci, 364 F.3d 419, 422 (2d Cir. 2004).

It is submitted that against the backdrop of Mr. Campbell's history, his restitution should be apportioned to that for which he was directly responsible. The concept of foreseeability in this moment of pandemic pandemonium is a distorted mirror. Mr. Campbell contributed to a significant loss and with his loss of licenses, loss of professions and his family obligations he can only hope to repay that for which he was directly responsible upon further divining of that amount.

Finally, [u]pon determination of the amount of restitution owed to each victim, the court shall, pursuant to section 3572, specify in the restitution order the manner in which, and the schedule according to which, the restitution is to be paid, in consideration of- the financial resources and other assets of the defendant, including whether any of these assets are jointly controlled; projected earnings and other income of the defendant; and any financial obligations of the defendant; including obligations to dependents. 18 U.S.C. § 3664(f)(2).

As noted in the PSR Mr. Campbell has two children, one with special needs; and he and his wife are trying to have a child of their own. Mr. Campbell due to his felony conviction has lost his ability to hold certain licenses and thus his businesses. The victim is absolutely entitled to its restitution but this defendant must set upon a path to rebuild his ability to earn and upon that a path to pay his restitution.

What remains outstanding from the defense viewpoint is what that *just* number is.

I respect deeply the work we have all done together to get to this point. But restitutions are a part of sentencing in financial matters that are extremely meaningful to justice for the victim, society and the offender for the penance should be balanced to the loss and not greater. It is again a return to the wisdom of 18 U.S.C. 3553a, sufficient but not greater than necessary.

Thus the defense advocates for a restitution order tied to the individual for his actions and not joint and several liability as it may disincentivize others from making proper efforts in the hopes that their conspiratorial other will take up their balance.

Most respectfully,

Stacey Richman