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UNITED STATES OF AMERICA

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

NATIONAL DISTRIBUTION SERVICES, INC.,
aka "NDSI,"
WHOLESALE DISTRIBUTION, INC.,
dba "Quality Services,"
CARL BRADLEY JOHANSSON,
aka "Brad Johnson,"
aka "Carl Johnson,"
aka "C. Brad Johanson,"
aka "Keith Golatta,"
ENRIQUE GARCIA,
aka "Henry Garcia," and
DONALD CAMERON SPICER,

Defendants.

And the additional following case

ED CR No. 5:18-00114(B)-VAP
ED CR No. 5:21-00170-VAP

GOVERNMENT'S OBJECTIONS TO THE PRESENTENCE REPORT AND SENTENCING MEMORANDUM RE DEFENDANT CARL BRADLEY JOHANSSON

Hearing Date: August 22, 2022
Trial Time: 9:00 a.m.
Location: Courtroom of the Hon. Virginia A. Phillips

UNITED STATES OF AMERICA,

Plaintiff,

v.

WESTERN DISTRIBUTION, LLC,
aka "Advanced Distribution Inc.," and
CARL BRADLEY JOHANSSON,
aka "Brad Johnson,"
aka "Carl Johnson,"
aka "C. Brad Johanson,"
aka "Jay Johnson,"
aka "Keith Golatta,"

Defendants.

Plaintiff United States of America, by and through its counsel of record, the United States Attorney for the Central District of California, and Assistant United States Attorneys Matthew O'Brien and Joseph Johns, hereby submits its Objections to the Presentence Report and Sentencing Memorandum regarding defendant CARL BRADLEY JOHANSSON in the above-captioned cases.

This submission is based upon the attached memorandum of points and authorities, the Declaration of Matthew O'Brien and exhibits thereto (filed under seal concurrently herewith), the Presentence

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Investigation Report disclosed on April 4, 2022, the files and records in these cases, and such further evidence and argument as the Court may permit.

Dated: July 29, 2022

Respectfully submitted,

STEPHANIE S. CHRISTENSEN
Acting United States Attorney

SCOTT M. GARRINGER
Assistant United States Attorney
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/s/
MATTHEW W. O'BRIEN
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Defendant CARL BRADLEY JOHANSSON ("JOHANSSON") is a confessed recidivist and fraudster whose welding crimes in this District over the past three decades have killed two of his workers and seriously injured another. (Several other people have been killed and seriously injured as a result of JOHANSSON's unsafe practices, as discussed below.) In 2000, then-District Court Judge Richard A. Paez imposed a low-end sentence of 16 months on JOHANSSON for, inter alia, ordering a welder to conduct a repair on one of JOHANSSON's cargo tanks when JOHANSSON's company lacked the federally required "R" Stamp to conduct such repairs safely. The welder, L.Q., was killed by the explosion caused by the welding because JOHANSSON's company had failed to purge the cargo tank of its hazardous fumes.

Upon his release from prison, JOHANSSON got right back in the game. Having learned nothing from Judge Paez's sentence (except that he should more carefully conceal his crimes), JOHANSSON went back to running corrupt and unsafe trucking companies, but covered up his ownership of those companies. JOHANSSON continued to order his welders to conduct dangerous repairs on cargo tanks that had not been purged of their hazardous fumes. And JOHANSSON continued to refuse to spend the money necessary to obtain the "R" Stamp required for such welding, despite living a lavish lifestyle that was (1) built on the backs of his workers' life-threatening labor, and (2) enabled by his willful failure to pay any federal income taxes.

When another explosion occurred in JOHANSSON's shop in September 2012 as a result of welding on an unpurged tanker, JOHANSSON kept at it. He continued to order his welders to conduct illegal repairs, continued to ignore their complaints about the dangers, and continued to refuse to buy basic safety equipment.

Another explosion inevitably followed, this time with tragic consequences. On May 6, 2014, JOHANSSON ordered his two welders, D.L.V. and S.E., to conduct yet another welding repair without the requisite "R" Stamp and without having purged the tank of the crude oil and fumes inside the tank. The welding caused another violent explosion that killed S.E. and permanently injured D.L.V.

Rather than fess up, JOHANSSON covered up his crime by repeatedly lying to investigators about his control of his company, his employment of S.E. and D.L.V., and his role in ordering the fatal repair. When the government ordered JOHANSSON to stop using 37 of his tankers later in 2014 because of safety concerns, JOHANSSON formed a new company to operate the prohibited tankers.

The government indicted JOHANSSON for a second time in April 2018. Over the government's objection, JOHANSSON was released on bond and allowed to continue operating his companies. As he prepared for trial in 2019, JOHANSSON started another trucking company as yet another "reincarnated" or "chameleon" carrier, established to trick regulators and insurance companies into thinking he had a clean safety record.

When COVID-19 hit Southern California in early 2020, JOHANSSON laid off most of his employees. Then a lifeline emerged: the federal Paycheck Protection Program ("PPP"), enacted to help businesses keep their employees on payroll during the depths of the public-health crisis. JOHANSSON, now living on a golf course in a gated Newport Beach community, leapt at the opportunity to use taxpayers' dollars to pay his bills (despite not having paid a penny in federal income taxes for a decade). Using his mother and son as strawmen, JOHANSSON obtained $722,890 in PPP loans for two of his trucking companies in April 2020 by means of fraudulent loan applications. Rather than use the PPP funds to pay his employees as required by law, JOHANSSON spent much of the funds on other debts he had piled up. When the time came to account for the expenditure of the PPP funds in late 2020, JOHANSSON – awaiting trial for fraud – cooked up yet another scheme. He transferred 21 employees from the payroll of one of his companies to the payroll of another of his companies, to make it look like he had used PPP funds to pay his laid-off employees, when he had not.

When the government informed JOHANSSON’s counsel in late 2020 that JOHANSSON was under investigation for committing PPP fraud while on pretrial release, JOHANSSON doubled down. JOHANSSON continued to submit fraudulent PPP documents to his banks in early 2021 and even got a third PPP loan, for $231,527. JOHANSSON’s schemes came to an end (one hopes) when he was indicted in a third federal criminal case in mid-2021 and detained.

This Court now has the opportunity to sentence JOHANSSON for his criminal conduct spanning from 2012 to 2021. The Presentence Report (“PSR”) found that JOHANSSON’s Guidelines range is 57-71 months, but the Probation Office recommended an above-Guidelines sentence of 90 months due to JOHANSSON’s egregious conduct. As detailed below, the government respectfully disagrees with the PSR’s calculations; JOHANSSON’s Guidelines range should be 87-108 months.

The government respectfully recommends a sentence of 120 months. The Guidelines simply do not account for a criminal like JOHANSSON, or the decade-long trail of fraud confronting the Court here. Rarely has the government encountered a criminal with such an unyielding desire to commit fraud at the expense of his employees and taxpayers. A ten-year sentence is necessary to show JOHANSSON and the public that committing fraud, over and over again, and particularly while on pretrial release, will result in a severe punishment.

II. FACTUAL BACKGROUND

In the interest of brevity, the government respectfully refers the Court to the following summaries of JOHANSSON's criminal conduct over the past three decades:

- The Factual Basis from JOHANSSON's guilty plea in March 1999 in his first federal criminal case (Dkt. No. 264 at 42-44);[1]
- The 36-page PSR from JOHANSSON's first criminal case, dated September 20, 1999 (Exh. C);
- The 72-page complaint filed against JOHANSSON in his second federal criminal case on April 5, 2018 (Dkt. No. 1);
- The nine-count second superseding indictment filed in JOHANSSON's second federal case on November 20, 2019 (Dkt. No. 149);
- The 48-page complaint filed against JOHANSSON in his third federal criminal case on July 2, 2021 (PPP Dkt. No. 1);
- The four-count indictment filed in JOHANSSON's third federal criminal case on July 21, 2021 (PPP Dkt. No. 14);
- The 17-page Factual Basis from JOHANSSON's consolidated plea agreement, filed on August 12, 2021 (Dkt. No. 264); and
- JOHANSSON's most recent PSR, filed on April 4, 2022 (Dkt. No. 306).

[1] All references to the docket herein refer to the docket in 5:18-CR-114(B)-VAP; references to the "PPP Dkt." refer to the docket in 5:21-00170-VAP.

III. THE PRESENTENCE REPORT AND THE GOVERNMENT'S OBJECTIONS

The PSR calculated JOHANSSON's offense level of 24 as follows:

Group 1 (Conspiracy/Welding)		
Base Offense Level	8	U.S.S.G. § 2Q1.2
Defendant was convicted under 49 U.S.C. § 5124	+2	U.S.S.G. § 2Q1.2(b)(7)
Aggravating Role	+4	U.S.S.G. § 3B1.1(a)
Obstruction of Justice	+2	U.S.S.G. § 3C1.1
Subtotal	**16**	
Count Four (Tax Evasion)		
Base Offense Level	18	U.S.S.G. §§ 2T1.1(a)(1), 2T4.1(G)
Sophisticated Means	+2	U.S.S.G. § 2T1.1(b)(2)
Subtotal	**20**	
Group 2 (PPP Fraud)		
Base Offense Level	7	U.S.S.G. § 2B1.1(a)(1)
Loss	+14	U.S.S.G. § 2B1.1(b)(1) (H)
Sophisticated Means	+2	U.S.S.G. § 2B1.1(b)(10)
Offense Committed on Pretrial Release	+3	U.S.S.G. § 3C1.3
Subtotal	**26**	
Multiple Count Adjustment	+1	U.S.S.G. § 3D1.4
Acceptance of Responsibility	-3	U.S.S.G. § 3E1.1(a)
TOTAL	**24**	

(PSR ¶¶ 90-123.) The government concurs with the PSR's findings except for the following objections.

A. A Nine-Level Enhancement Should Apply Because the Offense Resulted in the Substantial Likelihood of Death or Serious Bodily Injury

The government objects to Paragraph 95(b) of the PSR, in which the Probation Office declined to apply Section 2Q1.2(b)(2)'s nine-level enhancement for an offense resulting in the substantial likelihood of death or serious bodily injury "[a]t this juncture based on available information." (PSR ¶ 95(b).) The nine-level enhancement applies for two independent reasons. First, the PSR incorrectly framed the offense (for purposes of "Count Group 1:

Conspiracy") as making welding repairs without an "R" Stamp, whereas Count One also expressly charged JOHANNSON with making welding repairs without purging the tankers of their hazardous fumes and lading, an even more dangerous activity. Second, even if the PSR's narrow construction of the offense as being limited to the welding without an "R" Stamp were correct, that conduct by itself was substantially likely to lead to death or serious bodily injury (as the Honorable André Birotte Jr. found when sentencing JOHANSSON's long-time Shop Manager, co-defendant Enrique "Henry" Garcia, on April 25, 2022).

1. The "Offense" Includes JOHANSSON's Highly Dangerous Failure to Clean and Purge the Cargo Tanks of Their Hazardous Lading and Fumes

a. The Offense of Conviction Expressly Includes JOHANSSON's Failure to Clean and Purge the Tanks

The "offense of conviction" charged in Count One – to which JOHANSSON pled guilty - includes the failure to purge the cargo tanks of their hazardous lading. The first object of the conspiracy charged in Count One expressly alleges an agreement to violate 49 C.F.R. 180.413(a)(2), which requires the purging of hazardous fumes from cargo tanks prior to welding. (See Dkt. No. 149 at 7:10-14.) Likewise, the second object of the conspiracy is to defraud the United States by defeating "the lawful and legitimate functions of the USDOT in investigating and enforcing federal laws and regulations related to ... purging requirements for cargo-tank repair work." (Dkt. No. 149 at 7:15-20 (emphasis added); see also id. at 8:6-13 (alleging JOHANSSON's failure to purge his cargo tanks); id. at 10:16-20 (same); id. at 12:4-8 (same).)

Accordingly, contrary to the PSR's finding, the "offense of conviction" expressly includes JOHANSSON's practice of ordering welders to weld on tanks that still contained crude oil and vapors.

b. The Failure to Purge the Tanks Was Extremely Dangerous

It is extraordinarily dangerous to conduct welding on cargo tanks that have not been cleaned and purged of their crude oil and hazardous fumes. If there were any doubt, one need only look at the trail of explosions at JOHANSSON's companies:

- In 1993, L.Q. was killed in an explosion caused by his welding inside a cargo tank that had not been purged of its fumes (Dkt. No. 294 at 7:17-22; PSR ¶ 22);
- A similar explosion occurred in September 2012 when D.L.V. was conducting a welding repair on an MC-306 cargo tank (Dkt. No. 294 at 7:23-27; PSR ¶ 23); and
- The explosion that killed S.E. and crippled D.L.V. also was caused by a welding repair igniting unpurged fumes emanating from crude-oil residue remaining inside an MC-306 cargo tank (Dkt. No. 294 at 8:8-12; PSR ¶ 24).

JOHANSSON admits that he "knew that welding on the shells or components of specification MC 306 cargo tanks was dangerous because the MC 306 cargo tanks were used to haul hazardous materials that <u>could explode if not properly purged</u> prior to conducting welding repairs or modifications." (Dkt. No. 264 at 26:21-27:2) (emphasis added.) He further admits that he nevertheless directed such welding "even if the cargo tanks had not been emptied of hazardous materials or sufficiently cleaned of residue and purged of vapors, as required by the HMTS and the HMTS regulations." (<u>Id.</u> at 27:27-28:2.)

Even putting aside the highly relevant explosions from 1993 and 2012, the welding repair on May 6, 2014 was substantially likely to result in a deadly explosion. Co-defendant Henry Garcia admits that he "directed S.E. and D.L.V. to conduct welding on cargo tanker #678238 <u>even after D.L.V. told defendant [i.e., Garcia] it was not safe to conduct the welding</u>," because D.L.V. could smell the crude oil that remained inside the tank. (Dkt. No. 294 at 8:4-6 (emphasis added); PSR ¶¶ 40, 41.) As D.L.V. told an investigator in 2014, "I told Henry. Henry Garcia and [J.S., JOHANSSON's Assistant Shop Manager]. I told them. I remember I told them you cannot do the welding in this tank and they asked me why. This smell is very strong. It's very strong. The odor is very strong. Well, the boss wants it right away so they ordered the parts and we start cutting." (Exh. D at 49 [USAO_00027638].) The "boss" was JOHANSSON. (PSR ¶ 41.) D.L.V. went on to recount how, on previous occasions, Garcia threatened to send D.L.V. home without pay if D.L.V. refused to perform the dangerous welds. (PSR ¶ 40; Exh. D at 52 [USAO_00027641].)

On May 6, 2014, JOHANSSON and Garcia had not even taken the simple step of draining the liquid crude oil from the tank prior to the repair. When investigators opened the cargo tank's drainage pipe valve underneath the tanker hours after the explosion, crude oil poured out of the pipe. (<u>See</u> Exh. E at USAO_00327246.) The investigators had to shut the valve to keep the remaining crude oil from draining out of the tank and its piping. (<u>See</u> <u>id.</u>) Not only had the tanker not been cleaned and purged of crude-oil residue and fumes before the repair, but JOHANSSON had not even bothered to have the liquid crude oil emptied from the tanker by opening the drainage pipe valve beforehand. As a result, the explosion was nearly inevitable.

JOHANSSON's failure to have the tanker properly purged on May 6, 2014 was not an aberration. The same thing had happened on September 25, 2012, in the same location, under nearly identical circumstances. In an interview in February 2019, D.L.V. said the following about the explosion on September 25, 2012:

> [D.L.V.] said the tank not being purged was the reason for the explosion. He told "them" a lot of times about the danger. He said it stank of oil and vapors. He said Enrique Garcia did not want to hear about that. Garcia told him to solder that day even though he told Garcia he could smell fumes. However, Garcia said they needed the tank and to fix it…
>
> [D.L.V.] always told Garcia there was a lot of danger, but Garcia didn't want to purge or clean the tanks.

(Exh. F at 2 [USAO_00285807].)

In sum, the welding repair that JOHANSSON ordered on May 6, 2014 was substantially likely to result in the welders' deaths or serious bodily injuries because (1) JOHANSSON and his co-defendants had failed to clean and purge the tank of its crude oil and flammable fumes; (2) when D.L.V. and others complained about unpurged fumes in the tankers, defendants ordered them to carry out the welding anyway; and (3) as everyone knew, welding on unpurged tankers could result in a deadly explosion.

2. <u>Even if the "Offense" Were Somehow Limited to Welding Without an "R" Stamp, That Conduct Also Was Highly Dangerous</u>

In the alternative, even if the Court does not agree that JOHANSSON's failure to clean and purge tanker #678238 is expressly part of the "offense of conviction" (or relevant conduct under U.S.S.G. § 1B1.3(a)), the offense of conviction set forth in Count

Two, by itself, was substantially likely to result in death or serious bodily injury. As the Court ruled in February 2020, "welding without an 'R' Stamp could cause fatalities," as JOHANSSON knew because of L.Q.'s death in 1993. (Dkt. No. 222 at 2.) The PSR itself acknowledges that "[w]elding on cargo tanks that haul crude oil and other hazardous materials can be extremely dangerous due to the risk of explosions." (PSR ¶ 28) (emphasis added.)

The government briefed this same argument in its sentencing memorandum for Garcia, which it incorporates by reference herein. (Dkt. No. 304 at 13:17-16:17.) In response, the Probation Office changed its position and agreed that the nine-level enhancement should apply. (*See* Dkt. No. 319, ¶¶ 39-40; Dkt. No. 320 at 1-2.) At Garcia's sentencing on April 25, 2022, Judge Birotte agreed with the Probation Office, the government, and Garcia (*see* Dkt. No. 294 at 9) that the nine-level enhancement applied for Garcia.

The argument applies with even more force to JOHANSSON, who had firsthand knowledge of L.Q.'s grisly death. Accordingly, even if the Court were to ignore the failure-to-purge allegations in Count One, the welding without an "R" Stamp was substantially likely to result in death or serious bodily injury. Thus the nine-level enhancement should apply.

B. A Four-Level Enhancement Should Apply Because of JOHANSSON's Aggravating Role in the PPP Fraud

The government objects to Paragraph 113 of the PSR because it states that JOHANSSON had no aggravating role in the PPP fraud. Pursuant to Section 3B1.1(a), a four-level enhancement should apply because JOHANSSON was the organizer and leader of the PPP scheme, which involved at least the following seven participants:

1. JOHANSSON counts as one participant. See United States v. Walter-Eze, 869 F.3d 891, 914 (9th Cir. 2017) (the defendant "may be included among the participants in the criminal activity for purposes of section 3B1.1(a)") (citations omitted).
2. Co-defendant Western Distribution ("Western") counts as well, as the company was indicted and pled guilty for conduct directed by JOHANSSON. (See PPP Dkt. No. 30 at 17-21.) Although corporate entities are not always considered criminal "participants" under Section 3B1.1, here Western was charged and convicted of the same crimes.[2] (Western is not alleged to be JOHANSSON's alter ego, so there is no concern of "double counting.")
3. For the same reason, Agri-Comm counts as a participant. Although Agri-Comm was not indicted, it was named in the PPP indictment as "Co-conspirator #1" for the criminal acts it carried out at JOHANSSON's direction. (PSR ¶¶ 69, 73, 75; PPP Dkt. No. 14 at 7:4-19, Overt Acts 1-3, 11, 14, 16-18.)
4. C.S.J. (JOHANSSON's son and Co-conspirator #2 in the PPP indictment) has claimed to the Court under oath that he has been the "sole owner" of Western "since March of 2019." (Dkt. No. 251, ¶ 3.) C.S.J. signed Western's fraudulent loan forgiveness application as well as Western's second fraudulent PPP application in his capacity as Western's owner and expressly vouched for the truth of the statements therein. (See PPP Dkt. No. 1, ¶¶ 70-74, 77.)[3] Both documents were replete with false

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[2] The Guidelines define a "participant" as "a person," not an "individual." U.S.S.G. § 3B1.1 n.1. A corporate entity can be a "person." See, e.g., 18 U.S.C. § 18 ("As used in this title, the term 'organization' means a person other than an individual.").

[3] The PPP complaint refers to C.S.J. as "Co-conspirator #1"; he is Co-conspirator #2 in the PPP indictment.

statements. (PSR ¶ 77; PPP Dkt. No. 14 at 7:20-8:9, Overt Acts 20-22, 25-27; Dkt. No. 264 at 39:15-40:22.) When C.S.J. made these statements, he was aware of the federal investigation and even had retained his own lawyer because of it.

5. L.S. (Co-conspirator #3 in the PPP indictment) had been JOHANSSON's office manager and "lieutenant" since 1986.[4] On February 22, 2021, as part of JOHANSSON's criminal effort to have BAC Bank forgive Western's first PPP loan, she wrote to the bank that Agri-Comm's 21 employees actually worked for Western, even though she knew that they did not. (PSR ¶ 76; PPP Dkt. No. 14, Overt Act 23; PPP Dkt. No. 1, ¶ 75.)

6. J.M. had worked at Agri-Comm for 36 years, most recently as "General Manager/President"; in 2021 he said he "report[ed] to Johansson" and nobody else. (Exh. G at 1.) At JOHANSSON's direction, J.M. filled out Agri-Comm's PPP application, which fraudulently concealed JOHANSSON's role at Agri-Comm and concealed that JOHANSSON also managed Western, as J.M. knew. (PSR ¶ 69; Exh. G at 3.) J.M. then followed JOHANSSON's orders to have Agri-Comm's 21 drivers switched to Western's payroll even though J.M. knew they did not work for Western and even though Agri-Comm continued to fund the drivers' payroll. (Exh. G at 3-4.) J.M. knew this was improper – he and his wife "fought Johansson about doing it," but ultimately gave in. (Id. at 3.)

[4] L.S. is Co-conspirator #2 in the second superseding indictment in the second federal criminal case. (See Dkt. No. 149, Overt Act 31.) The PPP complaint refers to L.S. as "Co-conspirator #2"; she is Co-conspirator #3 in the PPP indictment.

7. K.O. (JOHANSSON's wife) has been abetting JOHANSSON's schemes for at least a decade. (See, e.g., PSR ¶ 58 & n.2 & n.4; Dkt. No. 1, ¶¶ 51-55 (explaining how K.O. was the sole officer of Trucking Equipment Co., Inc., the phony entity that "owned" the tanker that exploded on May 6, 2014).) As is relevant here, in the fall of 2020 K.O. "set up a separate account with Paychex for them to move the [21 Agri-Comm] drivers to." (Exh. G at 3.) The sole purpose of the new Paychex subaccount was to facilitate the fraudulent transfer of the 21 employees.

Because JOHANSSON organized a PPP scheme involving at least seven criminal participants, the four-level enhancement should apply pursuant to Section 3B1.1(a).

C. Additional Objections

The government objects to several statements in the PSR that relay what JOHANSSON told the Probation Office. JOHANSSON's misrepresentations to the Court exemplify his disregard for the truth.

1. JOHANSSON's Purported Jobs and Salaries

The PSR relays JOHANSSON's claims that (1) he worked for W.S. at co-defendant National from 2008 until JOHANSSON "left in 2014," and (2) JOHANSSON "was employed as general manager at Wholesale" by the "President and owner of the company," J.C. (PSR ¶¶ 162-163.) The government has repeatedly debunked these claims; dozens of witness statements and hundreds of documents prove that W.S. (JOHANSSON's old prison cellmate) and J.C. (his tire salesman) were strawmen at National and Wholesale, respectively, whom JOHANSSON used to try to conceal his own control over both companies. (See, e.g., PSR ¶¶ 23, 35, 43, 49, 51, 53, 56, 57; Dkt. No. 1, ¶¶ 73-101, 110-124.)

JOHANSSON seems to have forgotten that in his own plea agreement he admitted that he "controlled and operated" both companies and that J.C. was a "nominee owner." (Dkt. No. 264 at 24:6-12, 34:13-14.) Likewise, JOHANSSON's claims about his salaries at both companies are refuted by his admissions in the plea agreement. (Compare PSR ¶¶ 162, 163, with Dkt. No. 264 at 33:16-34:9; see also PSR ¶ 61 n.5 (noting that the IRS's estimates of JOHANSSON's income were conservative).)[5]

1. JOHANSSON's Purported Faith-Based Lack of Assets

The PSR relays JOHANSSON's claim that – as he has previously represented to the Court - he has no assets (other than a 12-year-old minivan). (PSR ¶¶ 166-170.) JOHANSSON attributes his lack of "material possessions" to his deep religious faith, claiming it would be "immoral" to possess assets. (PSR ¶ 170.) As the Factual Basis to JOHANSSON's own plea agreement confirms, this is utter nonsense. JOHANSSON has spent at least the past fifteen years hiding his considerable assets from government scrutiny. (See Dkt. No. 264 at 32:17-33:10, 34:10-35:22; see also PSR ¶ 58 & n.2.) If JOHANSSON is telling the truth when he says he has no assets in his own name, it is because he has concealed his assets in corporate shells under the purported control of strawmen including his mother, son, wife, tire salesman, and former cellmate. (See, e.g., PSR ¶¶ 58 & n.4, 66, 69.)

JOHANNSSON's professed faith-based parsimoniousness also is difficult to reconcile with (1) the three teams of skilled lawyers that JOHANSSON retained to aggressively defend JOHANSSON and his

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[5] JOHANSSON's disregard for the Factual Basis in his plea agreement is nothing new; in January 2015 he told federal investigators that the Factual Basis to his 1999 plea agreement was "completely false." (Dkt. No. 1, ¶ 32(d).)

companies prior to the PPP indictment; and (2) the fact that from 2012 to 2018 JOHANSSON paid at least $882,697 in rent (often in cash) to live in the mansion pictured below, thanks to income he concealed from the government. (See Dkt. No. 264 at 33:19-20, 34:22-35:41; see also PSR at 12 n.3 (noting that JOHANSSON used countersurveillance techniques to prevent federal agents from locating his mansion).)

Likewise, between his arrest in the second federal criminal case in 2018 and his arrest in the PPP case in 2021, JOHANSSON lived in a 2,800-square-foot condominium, valued at more than $2.1 million, on a golf course in a gated Newport Beach community.

2. The Purported Three Months in Solitary Confinement

The PSR relays JOHANSSON's claim that "he was in solitary confinement for three months for COVID-19 quarantine." (PSR ¶ 139; see also id. ¶ 156 (discussing the mental-health toll of "all the solitary confinement"); id. ¶ 154 ("[d]uring solitary confinement, Johansson lost 75 pounds"). This is nonsense. In reality, JOHANSSON was never put in solitary confinement and was subject to the same quarantine rules that many other federal prisoners faced last summer. According to prison officials, JOHANSSON was in three COVID-related quarantines last summer, for a total of approximately 44 days: July

8-25 at the Santa Ana Jail; August 14-20 at the San Bernardino County Jail; and September 2-22 at MDC-LA.

3. The Purported Claustrophobia

The PSR relays JOHANSSON's claim that he has suffered from claustrophobia since he was seven years old. (PSR ¶¶ 139, 155.) The government is not aware of any evidence supporting this claim. JOHANSSON's sister said she "was not aware that Johansson had any traumas or phobias." (PSR ¶ 155.) Likewise, JOHANSSON's PSR from 1999 does not mention claustrophobia. (See Exh. C, ¶¶ 156-158.)

4. The Purported Master's Degree in Risk Management

The PSR relays JOHANSSON's claim that he "obtained his master's degree in Risk Management from St. John's University in Los Angeles" in 1981. (PSR ¶ 159.) While such a degree would be ironic given JOHANSSON's trail of dead employees (see also Part IV.B.1, infra), the government is not aware of any evidence supporting his claim. The 1999 PSR's discussion of JOHANSSON's education mentions no such degree. (See Exh. C, ¶¶ 160-161; see also id. at USAO_00329612 (noting that JOHANSSON had 16 years of education).)

D. The Government's Guidelines Calculation

Given the objections set forth above, in the government's view the following Guidelines apply to JOHANSSON.

Group 1 (Conspiracy/Welding)		
Base Offense Level	8	U.S.S.G. § 2Q1.2
Substantial Likelihood of Death or Serious Bodily Injury	+9	U.S.S.G. § 2Q1.2(b)(2)
Defendant was convicted under 49 U.S.C. § 5124	+2	U.S.S.G. § 2Q1.2(b)(7)
Aggravating Role	+4	U.S.S.G. § 3B1.1(a)
Obstruction of Justice	+2	U.S.S.G. § 3C1.1
Subtotal	**25**	
		(continued)

Count Four (Tax Evasion)		
Base Offense Level	18	U.S.S.G. §§ 2T1.1(a)(1), 2T4.1(G)
Sophisticated Means	+2	U.S.S.G. § 2T1.1(b)(2)
Subtotal	**20**	
Group 2 (PPP Fraud)		
Base Offense Level	7	U.S.S.G. § 2B1.1(a)(1)
Loss	+14	U.S.S.G. § 2B1.1(b)(1)(H)
Sophisticated Means	+2	U.S.S.G. § 2B1.1(b)(10)
Aggravating Role	+4	U.S.S.G. § 3B1.1(a)
Offense Committed on Pretrial Release	+3	U.S.S.G. § 3C1.3
Subtotal	**30**	
Multiple Count Adjustment	+1	U.S.S.G. § 3D1.4
Acceptance of Responsibility	-3	U.S.S.G. § 3E1.1(a)
TOTAL	**28**	

With a criminal history category II and a total offense level of 28, JOHANSSON's Guidelines range is 87-108 months.

IV. THE GOVERNMENT'S SENTENCING RECOMMENDATION

The government respectfully recommends a sentence of 120 months' imprisonment, followed by five years of supervised release, a special assessment of $500, and restitution in an amount to be determined.

The recommended sentence is reasonable and necessary to accomplish the purposes set forth in 18 U.S.C. § 3553(a). United States v. Booker, 543 U.S. 220 (2005), requires the Court to consider the factors identified in Section 3553(a) when imposing a sentence. Among the factors to be considered are the nature and circumstances of the offense, the history and characteristics of the defendant, and the need to deter future criminal conduct, promote respect for the law, and provide just punishment. 18 U.S.C. § 3553(a).

A. The Nature and Circumstances of the Offenses

The offenses here span almost a decade and encompass ordering deadly welding, defrauding DOT regulators, evading income taxes, defrauding banks of relief funds during a pandemic, and multiple cover-ups. The breadth of the offenses is matched by their duration.

Putting aside the technical application of the Guidelines and grouping, the most serious crime here is what JOHANSSON did to S.E. and D.L.V. But for JOHANSSON, S.E. would be alive today, his wife would have a husband, his children a father, and his grandchildren a grandfather. (PSR ¶¶ 81, 82; Exhs. A, B.) But for JOHANSSON, D.L.V. would have lived for the past eight years without crippling back pain and other chronic maladies. (PSR ¶¶ 42, 79, 80.) No punishment will undo the human consequences of JOHANSSON's welding crimes.

As discussed above, the May 2014 explosion was not an "accident" in the sense of other workplace tragedies where something terrible happens as a result of a series of different people's poor decisions and some bad luck. D.L.V. had predicted another explosion, and had complained about the smell of crude oil emanating from tanker #678238 on the morning of May 6, 2014. The same thing had happened on September 25, 2012 (JOHANSSON responded to that explosion by concealing it from law enforcement). (See PSR ¶ 38 (noting how JOHANSSON hid the tanker from fire investigators); Dkt. No. 1, ¶¶ 33-34.) And the same thing happened on September 27, 1993, after (1) a DOT inspector specifically warned JOHANSSON that L.Q. should not be welding on his tankers in December 1992; (2) JOHANSSON lied to the inspector and said he would no longer have L.Q. conduct the welding repairs; and (3) JOHANSSON continued using L.Q. to do the repairs anyway. (See Exh. C ¶¶ 33-36; Dkt. No. 1, ¶ 31; see also Exh. C, ¶¶ 79-80 (discussing additional warnings that welding companies gave to JOHANSSON about L.Q.'s illegal welding prior to the explosion).)

If the 1993 and 2012 explosions had not happened, JOHANSSON might credibly disclaim knowledge of the dangers associated with what he was ordering his welders to do on a routine basis. The death of L.Q. and JOHANSSON's subsequent prison sentence put him on notice that he was engaged in an extremely dangerous scheme. The September 2012 explosion was another wake-up call, but it did not change JOHANSSON's mindset whatsoever.

From 2012 through 2014, JOHANSSON's repair shop continued to lack the basic safety precautions to protect D.L.V., S.E., and others from the well-known dangers they faced. (PSR ¶39.) JOHANSSON often chose to not send the tankers to an authorized repair shop for legal welding repairs. Nor did he send the tankers to a "wash rack" to be properly cleaned and purged prior of their crude-oil residue and fumes prior to welding repairs. (<u>See</u> Exh. H at USAO_00038168 (Question 24); Exh. I at USAO_00285915.) Nor did JOHANSSON obtain a "sniffer," an inexpensive device used to detect hazardous fumes inside a tank. Instead, JOHANSSON had his workers attempt to purge the crude-oil residue from inside the tankers with rags attached to broomsticks. (PSR ¶ 39; Exh. H (Question 23).) And when D.L.V. complained about having to weld on the unpurged tanks, Garcia threatened to send D.L.V. home without pay. (PSR ¶40; Exh. D at 52; Exh. H (Question 25).)

The welding crime – by itself – would justify an above-Guidelines sentence. But JOHANSSON <u>expanded</u> his criminal activity after May 2014. Rather than reform his ways after the May 2014 explosion (for which he quickly was charged with felonies by the State of California (PSR ¶ 130)), JOHANSSON did everything possible to conceal role in the crime. Perhaps most comically, JOHANSSON went so far as to hire himself as a temp at his own company to make it look like – in his words - he was merely a "paper pusher." (PSR ¶ 45; Dkt. No. 1, ¶¶ 80, 81.) More seriously, he also lied, repeatedly, to federal investigators, and urged his employees and contractors to do the same. (PSR ¶¶ 43, 44, 46, 47, 85; Dkt. No. 264 at 30:15-31:17.) Then JOHANSSON started a new company, Wholesale, so that he could surreptitiously operate 37 tankers that the DOT had banned him and National from operating because they were unsafe. (PSR ¶¶ 48-50; Dkt. No. 264 at 31:18-26.) Wholesale was a paradigmatic reincarnated carrier, created to evade regulators and conceal JOHANSSON's involvement. (PSR ¶¶ 49, 50; Dkt. No. 264 at 31:25-32:6.) Under Wholesale's name, JOHANSSON had the 37 prohibited tankers make thousands of hauls of hazardous materials across Southern California. (PSR ¶ 52; Dkt. No. 264 at 32:7-10; Exh. J (a chart showing hundreds of violations of the Out-of-Service Order from a sampling of just seven months of records between April 2015 and April 2018).)

Even after being indicted again in 2018, JOHANSSON could not abstain from fraud. He set up Western as yet another reincarnated carrier and lied to the DOT repeatedly about Western's size and lack of connection to Wholesale. (PSR ¶ 66; PPP Dkt. No. 1, ¶¶ 39, 80-86.) Under indictment for tax fraud, JOHANSSON then fraudulently applied for, obtained, and spent nearly a million dollars in taxpayers' funds through three PPP loans, including in 2021 after he already knew the government was investigating him for PPP fraud.

B. JOHANSSON's History and Characteristics

JOHANSSON's history and characteristics are aggravating. His criminal history includes a conviction and prison sentence for two of the same crimes for which he is being sentenced here. After serving that sentence, JOHANSSON went right back to his criminal ways. And after the May 2014 explosion, he persistently lied to law enforcement about his role at National (and Western), and initiated his other criminal schemes regarding the Out-of-Service Order and the PPP fraud.

1. Additional Victims of JOHANSSON's Schemes

L.Q., S.E., and D.L.V. were just a few of the many victims of the unsafe business practices at JOHANSSON's companies. (See, e.g., Exh. C, ¶¶ 48-77 (detailing JOHANSSON's widespread practice in the 1990s of having his managers falsify drivers' records to cover up, inter alia, excessive hours and related safety violations).) For example:

- On December 11, 2008, Johansson's driver E.O.V. was hauling one of JOHANSSON's double-trailers near Tulare, California when he did an illegal U-turn and caused a crash that killed victim G.G. JOHANSSON had lied when he applied for insurance for the truck that E.O.V. was driving (by claiming that it would not be used to haul double-trailers, and by claiming the truck would be used in Minnesota rather than California), thereby causing the insurance company to void the policy and making the insurance policy unavailable to the victim's next of kin. See Tulare County Superior Court Case # 09-232230; E.D. Cal. Case # 1:10-cv-00475-OWW-MJS. (See also Dkt. No. 1 at 10 n.2.)
- On February 6, 2008, JOHANSSON's driver D.T. seriously injured victim S.R. in a collision in Colorado. The victim sued two of JOHANSSON's companies, but JOHANSSON refused to have his companies appear in court, leaving the victim to obtain a

default judgment of nearly $2 million. See 1:09-cv-2775-CMA-BNB (D. Col.).

- On July 4, 1996, JOHANSSON's driver M.B. was killed while driving one of JOHANSSON's trucks near Petaluma. M.B. was an experienced driver who was familiar with the off-ramp where the accident occurred. At the crash scene, the skid marks indicated that only one side of the axle brakes had locked up, indicating a mechanical failure. Two other drivers for JOHANSSON, M.R. and A.D., said that the brakes on the truck that M.B. was driving were faulty. M.R. said he had driven the same truck the day before the deadly accident, and had submitted a complaint that when he applied the brakes, the truck would speed up temporarily before the brakes started to work. M.R. said that the records of his complaint the day before the accident had been destroyed by one of JOHANSSON's employees. (Exh. K at 2-3; Exh. L.)
- On December 2, 1995, JOHANSSON's driver C.A. flipped JOHANSSON's tanker on the 101 Freeway over the Ventura River and was killed in the subsequent explosion, during which flames shot hundreds of feet in the air. The accident also caused a significant oil spill, leading to a clean-up of approximately 3,000 tons of gas-soaked soil from the Ventura River's riverbed. Law enforcement determined that the crash was caused by speeding. According to interviews with C.A.'s colleague A.D.H. in 1996, at the time of the crash C.A. was within one hour of being over his hourly regulatory limit, meaning that if C.A. had not crashed and had finished his haul, he would have been three hours over the regulatory limit. JOHANSSON's managers threatened A.D.H. and forced him to alter C.A.'s driver logs to cover up the

violation. Another one of JOHANSSON's drivers, R.T., told law enforcement that C.A. was too inexperienced and should never have been hired by JOHANSSON. (See Exhs. M, N; Exh. C, ¶¶ 68-69) (discussing the same accident).)

JOHANSSON's trail of victims and creditors explains his decades-long pattern of illegally creating reincarnated carriers to evade plaintiffs, federal regulators, and the IRS.[6] (See, e.g., PSR ¶ 31; Dkt. No. 149 at 6:6-13, 9:3-10; PSR ¶ 173 (listing millions of dollars in liens and judgments against JOHANSSON); PPP Dkt. No. 1, ¶¶ 40-42 (explaining how JOHANSSON stole the name of another trucking company in 2019 to obtain insurance and a new DOT number).) For example, after his company Atlas Bulk racked up $369,780 in (unpaid) fines in the 1990s for falsifying drivers' records (PSR ¶ 127) and failed to pay hundreds of thousands of dollars in employment taxes (PSR ¶ 54), JOHANSSON shut down Atlas and started a new company, Tech Logistics. (See Dkt. No. 148 at 2 (discussing how JOHANSSON operated Tech Logistics out of the same warehouse as National from 1999-2007); PSR ¶ 34.)

2. Mitigating Factors

It is difficult to identify any mitigating factors. Typically, the fact that a business owner employed so many employees over the years would be mitigating. That is not the case here, where JOHANSSON subjected his employees to criminal liability, unsafe working conditions, low wages, and immigration-related threats, and

[6] The 1999 PSR mentions an additional (unrecorded) fatal accident involving one of JOHANSSON's drivers; the government lacks details. (Exh. C, ¶¶ 40-41.)

pocketed a six-figure PPP loan rather than re-hiring laid-off employees in the midst of a pandemic.

Likewise, typically the fact that a father of four had raised a family would be mitigating. That is not the case here given, for example, that (1) a significant component of JOHANSSON's crimes was using more than $1 million in untaxed income from National and Wholesale to pay for his family's mansion and his children's private school educations; (2) JOHANSSON recruited one of his sons into the PPP fraud; (3) JOHANSSON's wife was intimately involved in his schemes (see, e.g., PSR ¶ 104 and Part III.B, supra); and (4) JOHANSSON knowingly jeopardized his sister's home, which she used to secure his release from custody in 2018, by carrying out the PPP fraud while on pretrial release. (See Dkt. No. 35.)

The PSR does not identify and charitable, philanthropic, or volunteer activity by JOHANSSON, ever. (See also Exh. O at 2 (JOHANSSON's former colleague relaying JOHANSSON's statement that "only poor people pay taxes").) Nor is there any indication that, since his indictment in April 2018, JOHANSSON has done a single thing to contribute to his community or to manifest any remorse. This vacuum sets JOHANSSON apart from many white-collar defendants.

The only mitigating factor that the government can identify is JOHANSSON's age. Given his age, the government is not recommending a prison sentence longer than ten years.

C. The Section 3553(a)(2) Factors

Pursuant to Section 3553(a)(2), a ten-year sentence would reflect the seriousness of the offenses, promote respect for the law, provide just punishment for the offenses, afford adequate deterrence to criminal conduct, and protect the public from further crimes by

JOHANSSON. JOHANSSON can receive any necessary medical care or correctional treatment while in custody.

D. The Need to Minimize Sentencing Disparities

Section 3553(a)(6) requires the Court to minimize sentencing disparities among similarly situated defendants. The breadth and duration of JOHANSSON's criminal schemes warrant an above-Guidelines sentence. There is no risk of disparities among similarly situated defendants because there is no defendant who is even remotely comparable to JOHANSSON.

On April 25, 2022, Judge Birotte sentenced Garcia to a low-end sentence of 30 months in prison. While Garcia also bears criminal responsibility for the death of S.E. and D.L.V.'s injuries, he did not enrich himself from the welding scheme. Garcia was merely JOHANSSON's employee, and he was not involved in JOHANSSON's other schemes. The low-end sentence imposed on Garcia should not impact the sentence imposed on JOHANSSON.

E. Restitution

Restitution is mandatory. (PSR ¶¶ 78, 84.) JOHANSSON owes restitution to the IRS ($298,562), BAC Bank ($667,917), and Bank of the West ($286,500). (PSR ¶¶ 84, 196-199.) One of the victims of the welding crimes submitted a restitution request as part of Garcia's sentencing (see Exh. B), but the government currently lacks sufficient information supporting the request. (See Dkt. No. 336.)

V. CONCLUSION

For the foregoing reasons, the government respectfully recommends a 120-month prison sentence, followed by five years of supervised release, a special assessment of $500, and restitution in an amount to be determined.