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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. MANUK GRIGORYAN, aka "Mike Grigoryan," and "Anton Kudiumov," Defendant.	No. CR 20-00579(A)-SVW-5 GOVERNMENT'S SENTENCING POSITION FOR DEFENDANT MANUK GRIGORYAN Date: October 25, 2021 Time: 11:00 a.m. Location: Courtroom of the Hon. Stephen V. Wilson

Plaintiff United States of America, by and through its counsel of record, the Acting United States Attorney for the Central District

of California, Assistant United States Attorneys Scott Paetty, Catherine Ahn, and Brian Faerstein, and Department of Justice Trial Attorney Christopher Fenton, hereby files its sentencing position regarding defendant Manuk Grigoryan.

The government's sentencing position is based upon the attached memorandum of points and authorities, the presentence investigation report, the files and records in this case, and any other evidence or argument that the Court may wish to consider at the time of sentencing.

The government reserves the right to file any supplemental sentencing position(s) that may be necessary.

Dated: October 18, 2021

Respectfully submitted,

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The government respectfully submits this sentencing memorandum to advise the Court of its sentencing position regarding defendant Manuk Grigoryan ("defendant"), who has pleaded guilty to bank fraud and aggravated identity theft in connection with his role as part of a massive fraud to profit from a national catastrophe at the expense of his fellow citizens. Consistent with the parties' plea agreement, the government agrees with the United States Probation and Pretrial Services Office's (the "USPO") calculation of the advisory Guidelines range and submits that a sentence within that range is appropriate in light of the sentencing factors under 18 U.S.C. § 3553(a). The government also agrees with the USPO's recommendation of four years of supervised release, but recommends an additional condition reasonably related to defendant's underlying offense conduct. The government takes no position on the imposition of a fine, but, for the reasons explained in the government's response to the presentence investigation report ("PSR") and additional information discussed herein, the government submits that defendant should be ordered to pay restitution in the amount of $2,684,798, not $2,602,798.

II. RELEVANT PROCEDURAL HISTORY

On March 11, 2021, a grand jury returned a first superseding indictment against defendant and seven codefendants, charging defendant with conspiracy to commit wire fraud and bank fraud, multiple counts of wire fraud and bank fraud, aggravated identity theft, and conspiracy to commit money laundering. (ECF 154.) On June 7, 2021, pursuant to a plea agreement with the government, defendant pleaded guilty to one count of bank fraud (Count 19), in

violation of 18 U.S.C. § 1344(2), and one count of aggravated identity theft (Count 23), in violation of 18 U.S.C. § 1028A(a)(1). (ECF 436, 454.)

On September 20, 2021, the USPO filed its PSR in which it calculated a total offense level of 22 (with respect to Count 19, the bank fraud offense) and a Criminal History Category I, resulting in an advisory Guidelines range of 41 to 51 months' imprisonment for Count 19. (ECF 974.) Taking into account the 24-month mandatory consecutive sentence for Count 23, the USPO thus calculated the effective advisory Guideline range as 65 to 75 months' imprisonment. The USPO recommends that defendant be sentenced to a term of 65 months in prison, four years of supervised release, no fine, restitution of $2,602,798, and a $200 mandatory special assessment. (ECF 973.)

The government agrees with the USPO's offense level and criminal history calculations and the resulting effective advisory Guidelines range of 65 to 75 months' imprisonment (which includes the mandatory consecutive 24 months). For the reasons described below, the government believes that a custodial sentence within this range is appropriate and that a variance below the Guidelines (as defendant requests) is not warranted in this case.[1] The government also addresses the other components of defendant's sentence below.

III. DEFENDANT'S OFFENSE CONDUCT

Defendant was actively involved in numerous aspects of his and his codefendants' fraudulent scheme to submit fraudulent Paycheck

[1] Consistent with its obligations under the parties' plea agreement, the government does not make a recommendation as to the appropriate point within the applicable advisory Guidelines range.

Protection Program ("PPP") and Economic Injury Disaster Loan ("EIDL") program loan applications from March 2020 through August 2020. (PSR ¶ 31.)

Defendant used or was associated with multiple synthetic or stolen individual identities that were central to the fraudulent scheme. For example, defendant used the synthetic identity "Anton Kudiumov" to submit seven separate PPP and EIDL loan applications on behalf of four separate fictitious businesses or businesses defendant knew not to have actual operations. (Id. ¶ 37.) For three of those supposed business entities ("Fadehaus Barbershop," "Redline Auto Mechanics," and "TM Events Inc."), defendant submitted or caused to be submitted both a fraudulent PPP loan application to an institutional lender and a fraudulent EIDL loan application to the United States Small Business Administration (SBA), doubling down on the fraud. (Id.)

Defendant used other synthetic or misappropriated identities in furtherance of the fraudulent scheme. Defendant knowingly used the synthetic identity "Viktoria Kauichko," among other things adding this name to the lease of an apartment he rented on Canoga Avenue in Woodland Hills in order to aid in the submission of additional fraudulent loan applications that used this fraudulent applicant name and purported address. (Id. ¶ 32.) At codefendant Richard Ayvazyan's direction, defendant collected mail at the Canoga Avenue apartment that was addressed to "Viktoria Kauickho" and other purported names identified as business owners in connection with fraudulent PPP/EIDL loan applications. (Id. ¶ 32.) The Kauichko identity was used in six fraudulent PPP or EIDL loan applications,

including four separate loan applications submitted on behalf of the purported company "Fiber One Media, Inc." (Id. ¶ 37.)

Defendant also used the name "Anna Manukyan" to submit five additional PPP or EIDL applications on behalf of three separate purported businesses ("Manukyan Construction," "Apex Health and Safety Consultants," and "Greenshop Hydro Inc."). (Id.) And defendant went so far as to use his father's name, Artashes Grigoryan, to submit two additional fraudulent PPP and EIDL loan applications for the business G&A Diamonds, lying about the number of employees the business had (it had none) and the intention to use the loan proceeds for business purposes (they were not). (Id. ¶¶ 34, 37, 71.)

In connection with the fraudulent PPP and EIDL loan applications he submitted, defendant used and submitted numerous fraudulent materials to further the scheme. For example, as part of a PPP application on behalf of the fictitious company "Redline Auto Mechanics" for $276,600 (the basis for Count 19 to which defendant pleaded guilty),[2] defendant submitted a copy of a fraudulent California's driver's license in the name of the synthetic identity "Anton Kudiumov" and the address of the Canoga Avenue apartment. (Id. ¶ 35.) Defendant also submitted a fake payroll report in support of this loan application, using a form that fraudulently purported to have been prepared by payroll service provider Gusto.

[2] According to defendant, he has been employed by Redline Auto Collision (as distinguished from Redline Auto Mechanics) in Sun Valley, California since 2018. (PSR ¶ 93.) Redline Auto Collision is or was operated by codefendant Edvard Paronyan (id.), and was used by defendant Paronyan to submit two separate fraudulent PPP and EIDL loan applications (see ECF 469 (Defendant Paronyan Plea Agreement) ¶ 11).

(Id.) Defendant further submitted a fake Internal Revenue Service Form 940, which falsely listed an annual payroll amount for Redline Auto Mechanics, a fictitious company with no actual operations. (Id.)

In order to seek to further lend the appearance of legitimacy to this fake tax document, the Form 940 listed an actual tax preparer, victim A.F., as the preparer of the form, when in fact A.F. had no idea his/her name and identifying information were being used. (Id.) Defendant knew A.F. was a real person and that defendant did not have authority to use A.F.'s name. (Id.) Defendant's knowing possession, use, and transfer of A.F.'s name without lawful authority in connection with the Redline Auto Mechanics fraudulent PPP loan submission (i.e., aggravated identity theft) forms the basis for the 24-month mandatory consecutive custodial sentence defendant faces in this case. (Id.)

In all, as part of the same course of conduct and common scheme and plan as defendant's offenses of conviction, defendant submitted, caused to be submitted, or was otherwise associated with twenty fraudulent PPP/EIDL loan applications. (Id. ¶ 37.) These loan applications collectively sought $3,405,282 in fraudulent proceeds and caused the actual loss of $2,684,798 to victim lenders and the SBA.[3] (Id.; see also Appendix A.)

IV. ADVISORY SENTENCING GUIDELINES CALCULATION

Applying the November 1, 2018 Sentencing Guidelines, and taking into account relevant conduct, the USPO calculated defendant's total

[3] For the reasons explained in section VI.C herein, the intended loss amount in the PSR should be corrected from $3,398,282 to $3,405,282, and the actual loss amount should be corrected from $2,602,798 to $2,684,798.

offense level for Count 19 (bank fraud) as 22 based on the following calculations: base offense level of 7 under U.S.S.G. § 2B1.1(a)(1); 16 additional levels for an intended loss of $3,405,282 (greater than $1,500,000 but less than $3,500,000) under U.S.S.G. § 2B1.1(b)(1)(I); 2 additional levels for the offense conduct involving sophisticated means under U.S.S.G. § 2B1.1(b)(10)(C); and a 3-level reduction for acceptance of responsibility under U.S.S.G. §§ 3E1.1(a) and (b). (PSR ¶¶ 45-58.) With respect to Count 23 (aggravated identity theft), the USPO found that the mandatory consecutive 24-month sentence applies by application of statute under U.S.S.G. § 2B1.6. In addition, the USPO determined that defendant has zero criminal history points, resulting in a Criminal History Category I. (See id. ¶¶ 61-65.) With a total offense level of 22 (for Count 19) and a Criminal History Category I, the resulting advisory Guidelines range is 41 to 51 months' imprisonment for the bank fraud offense. Accounting for the mandatory consecutive 24-month sentence for the aggravated identity theft offense (Count 23), the effective advisory Guidelines range is 65 to 75 months' imprisonment.

V. SECTION 3553(a) FACTORS

The Court should impose a sentence sufficient, but not greater than necessary, to reflect the purposes of sentencing identified in 18 U.S.C. § 3553(a). United States v. Carty, 520 F.3d 984, 991 (9th Cir. 2008). The advisory Guidelines range provides the "starting point and . . . initial benchmark" for this Court's consideration of an appropriate sentence. Molina-Martinez v. United States, 136 S.Ct. 1338, 1345 (2016) (quoting Gall v. United States, 552 U.S. 38, 49 (2007)). Although the Guidelines are not binding, they "reflect a

rough approximation of sentences that might achieve section 3553(a)'s objectives." United States v. Rita, 551 U.S. 338, 350 (2007).

Under 18 U.S.C. § 3553(a), in arriving at the appropriate sentence, the Court should consider, among other factors, the nature and circumstances of the offense and the history and characteristics of the defendant, § 3553(a)(1); the need for the sentence imposed to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense, § 3553(a)(2)(A); the need for the sentence imposed to afford adequate deterrence to criminal conduct, § 3553(a)(2)(B); the need for the sentence imposed to protect the public from further crimes of the defendant, § 3553(a)(2)(C); and the need to avoid unwarranted sentence disparities, § 3553(a)(6).

VI. GOVERNMENT'S SENTENCING RECOMMENDATION

A. Term of Custody

In light of the relevant 18 U.S.C. § 3553(a) factors, a sentence within the advisory Guidelines range of 65 to 75 months' imprisonment is sufficient, but not greater than necessary, to achieve the goals of sentencing in this case.

1. Nature and Circumstances of the Offense and History and Characteristics of the Defendant (18 U.S.C. § 3553(a)(1))

Defendant's involvement in the fraudulent scheme to submit fraudulent PPP and EIDL loan applications was integral and extensive. Defendant used or facilitated the use of multiple identities, including the synthetic identities "Anton Kudiumov" and "Viktoria Kauichko," in the submission of twenty fraudulent PPP and EIDL loan applications. The applications were in the names of a variety of

purported businesses, many of which were fictitious or did not have actual operations as reflected in the fraudulent applications. The same purported businesses were used multiple times to submit fraudulent applications, both to institutional lenders and the SBA.

Defendant leased the Canoga Avenue apartment that was used as the supposed associated address for purported applicants for a number of these fraudulent loan applications. Defendant coordinated with codefendant Richard Ayvazyan in controlling the Canoga Avenue apartment for this illicit purpose. Defendant's leasing and control of the Canoga Avenue apartment further enabled the overall fraudulent scheme. By adding the Kauichko synthetic identity to the lease, defendant provided fuel to the fiction that Kauichko was a real person that could legitimately apply for PPP/EIDL loans, in the same vein that defendant used the Canoga Avenue apartment as the purported address of "Anton Kudiumov" for loan applications submitted in the name of that synthetic identity.

In addition to the fraudulent loan applications themselves, defendant submitted or caused the submission of the three chief types of fraudulent documents used to paper and perpetrate the scheme: fake driver's licenses, fake IRS tax forms, and fake Gusto payroll reports. Defendant used all three of these fraudulent devices in the Redline Auto Mechanics PPP application, making it more difficult for the lender to detect the fraud. Defendant used the stolen identity of one victim (tax preparer A.F.) to lend further credence to the appearance of the fabricated IRS tax form in this application.

Defendant's history and characteristics do not mitigate the deliberate and calculated nature of his involvement in the fraudulent

scheme to warrant a variance below the advisory Guidelines range, which defendant seeks in this case.[4] By all accounts from the PSR, defendant appears to have had a stable and supportive upbringing, both prior to emigrating to the United States and since arriving here and being naturalized as a citizen in 2012. While defendant provided background information to the USPO about certain substance abuse issues,[5] any such issues do not excuse nor explain defendant's engaging in a sophisticated and elaborate fraudulent scheme over the course of approximately five months. Defendant's involvement in the scheme was intentional and prolonged and not on account of a momentary lapse of judgment. Moreover, defendant's lack of prior criminal convictions is reflected in his Criminal History Category I and the resulting advisory Guidelines range.[6]

In sum, the nature and circumstances of defendant's offenses of conviction and relevant conduct typified the hallmarks of the fraud at the heart of the PPP/EIDL scheme and the coordination that was necessary to execute the extensive and sophisticated scheme. Defendant's history and characteristics do not warrant a sentence below the advisory Guidelines range.

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[4] Defendant seeks a custodial sentence of 40 months in prison. (See ECF 1054.)

[5] These issues are reflected in the publicly-filed modification of the conditions of defendant's pretrial release as well as defendant's sentencing position. (See ECF 873, 1054.)

[6] Defendant had two prior state arrests in 2016 (including one for identity theft) that were not prosecuted for lack of sufficient evidence. Defendant also has a pending state court case for identity theft and possession of a controlled substance. (PSR ¶¶ 67-69.)

2. Seriousness of the Offense, Respect for the Law, and Just Punishment (18 U.S.C. § 3553(a)(2)(A))

A custodial sentence within the advisory Guidelines range is also needed in this case to reflect the seriousness of the offense, promote respect for the law, and provide just punishment for the offense.

As described further in sections III and VI.A.1 above, the scope and execution of defendant's offenses of conviction and relevant conduct make plain the seriousness of the offense. The context in which the fraudulent scheme was carried out only underscores the gravity of the offenses. Defendant and his co-schemers sought critical COVID-19 disaster relief funds as the pandemic paralyzed the economy in the spring and summer of 2020. While businesses and their employees were trying to make ends meet, defendant turned his attention to exploiting the national emergency. The use of multiple synthetic or misappropriated identities, sham business entities, and fraudulent back-up documentation sought to deceive institutional lenders and the SBA as they worked to meet the vital needs of legitimate businesses. Defendant's and his co-schemers' conduct was as brazen as it was callous, causing the submission of multiple fraudulent loan applications in the names of the same purported companies to the victim lenders and SBA. The intricacies and coordination of the scheme which defendant and his codefendants carried out against the backdrop of an unprecedented public health and economic crisis reflect a significant lack of respect for the law and the need for just punishment in this case.

Based on the fraudulent conduct for which the parties agree defendant should be held accountable, defendant and his codefendants caused the submission of 20 fraudulent loan applications seeking $3,405,282 in fraudulent loan proceeds. The corresponding 16 additional levels under the loss table and the 2 additional levels for sophisticated means appropriately capture the nature and scope of defendant's fraudulent conduct. See U.S.S.G. § 2B1.1 cmt. backgr. ("[O]rdinarily, the sentences of defendants convicted of federal offenses should reflect the nature and magnitude of the loss caused or intended by their crimes. Accordingly, along with other relevant factors under the guidelines, loss serves as a measure of the seriousness of the offense and the defendant's relative culpability and is a principal factor in determining the offense level under this guideline.") The reduction of three levels for defendant's acceptance of responsibility also adequately accounts for defendant's willingness to be held responsible for his conduct. And the inclusion of the 24-month mandatory term of imprisonment in the effective Guidelines range based on defendant's aggravated identity theft conviction appropriately accounts for the seriousness of that offense.

The resulting advisory Guidelines range of 65 to 75 months' imprisonment is the proper measure of the seriousness of defendant's offense conduct, and a sentence within that range is sufficient, but not greater than necessary to strike the right balance of achieving the goals of sentencing in this case.

3. Affording Adequate Deterrence and Protecting the Public from Further Crimes of the Defendant (18 U.S.C. § 3553(a)(2)(B) and (C))

A Guidelines sentence in this case would also serve as an effective deterrent, both as to defendant and others in society more broadly.

With respect to specific deterrence, defendant acted with volition and intent in engaging in the fraudulent scheme over the course of a number of months and at the height of the pandemic, with the backdrop of the unfolding economic disaster. The fraudulent scheme was sophisticated and designed to deceive numerous victims, including the federal government, and to evade law enforcement detection. Defendant needs to be deterred from engaging in the same criminal calculus after he serves a term of custody in this case.

The government also notes several additional factors for the Court's consideration. While defendant has been on pretrial release in this case, the USPO has filed two Pretrial Violation Reports. The first alleged that defendant had not disclosed certain information to Pretrial Services following his arrest that he later provided to the USPO, ultimately leading to additional conditions of pretrial release. (See ECF 871, 873.) The second alleged separate issues relating to a trip defendant took in or around August 2021, with a recommendation to the Court that no action be taken at that time. (See ECF 962.) To the extent these issues reflect on defendant's appreciation of the magnitude of the instant proceedings and his underlying criminal conduct, a Guidelines sentence is necessary to impress upon defendant the consequences of his choices.

The sentence here should also deter others from similarly exploiting the ongoing pandemic or a future national economic crisis where federally-backed resources are made available for those who need them most. Similar to the need to promote respect for the law, a sentence within the Guidelines range in a case such as this will signal to other potential wrongdoers that they will be held accountable for taking advantage of national emergencies.

With these factors in mind, the government respectfully submits that defendant should receive a custodial sentence within the advisory Guidelines range and not receive a variance below the Guidelines. Such a custodial sentence is sufficient, but not greater than necessary, to achieve the goals of sentencing in this case.

B. Supervised Release

The government concurs with the USPO's recommended term of four years of supervised release following defendant's release from prison. The government recommends one additional special condition of supervised release in light of defendant's underlying financial crimes and fraudulent conduct. Specifically, the government recommends that defendant shall be prohibited from engaging in any financial transaction in an amount of $10,000 or greater unless he obtains prior approval from the USPO. This condition was imposed as one of defendant's pretrial release conditions in this case (ECF 191), and, in light of the alleged conduct described in the Pretrial Violation Report filed with the Court on September 13, 2021 (ECF 962), the government believes this condition should be reimposed when defendant commences supervised release following incarceration. This condition is aimed at protecting the public from further financial

crimes of defendant, which is reasonably related to the sentencing factors described more fully above. U.S.S.G. § 5D1.3(b).

C. Restitution, Fine, and Mandatory Special Assessment

The government explained in its response to the PSR that the actual loss amount calculated in the PSR undercounted restitution by a net $75,000, omitting $79,000 in EIDL advance payments disbursed by the SBA and overcounting one fraudulent EIDL loan by $4,000. (See ECF 1036 at 2-4, 9.) In its further review of the underlying loan documentation, the government has identified one additional EIDL advance payment that was undercounted by $2,000 (for the Redline Auto Mechanics EIDL loan) and a $5,000 EIDL advance payment that was omitted (for the G&A Diamonds EIDL loan). The government has updated the loan chart to account for these omissions and attached it to this memorandum as Appendix A.[7] Accounting for this additional $82,000, the government submits that the restitution amount owed in this case as to defendant should be calculated as $2,684,798, not $2,602,798.[8]

The government takes no position on the imposition of a fine, including the USPO's recommendation that the Court waive a fine in this case.

Finally, the government concurs with the USPO's recommendation that defendant pay the $200 mandatory special assessment.

VII. CONCLUSION

For the reasons set forth above, the government respectfully requests that defendant be sentenced as follows: (1) a custodial

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[7] The government provided a copy of the updated loan and loss chart to defendant and the USPO.

[8] For the same reasons, the amount of restitution to be ordered as payable to the SBA should be adjusted to $1,480,000 instead of $1,398,000.

sentence within the effective advisory Guidelines range of 65 to 75 months' imprisonment; (2) a four-year period of supervised release to follow; (3) restitution of $2,684,798; (4) a fine, if any, to be determined by the Court; and (5) a mandatory special assessment of $200.

APPENDIX A

Company	Applicant	Amount	Lender	Status	Advance
Fadehaus Barbershop	Anton Kudiumov	$150,000	SBA	Disbursed	$10,000
Fadehaus Barbershop	Anton Kudiumov	$182,637	WebBank	Cancelled	
Nelson's Nursery	Anton Kudiumov	$49,000	SBA	Disbursed	$7,000
Redline Auto Mechanics	Anton Kudiumov	$150,000	SBA	Disbursed	$9,000
Redline Auto Mechanics Inc.	Anton Kudiumov	$276,600	Celtic Bank	Disbursed	
TM Events Inc.	Anton Kudiumov	$276,600	Newtek	Disbursed	
TM Events Inc.	Anton Kudiumov	$150,000	SBA	Disbursed	$7,000
Manukyan Construction	Anna Manukyan	$131,195	Cross River Bank	Disbursed	
Manukyan Construction	Anna Manukyan	$131,195	Celtic Bank	Cancelled	
G&A Diamonds	Artashes Grigoryan	$145,000	SBA	Disbursed	$5,000
G&A Diamonds	Artashes Grigoryan	$113,750	Cross River Bank	Disbursed	
Apex Health and Safety Consultants	Anna Manukyan	$150,000	SBA	Disbursed	$10,000
Greenshop Hydro Inc	Anna Manukyan	$150,000	SBA	Disbursed	$10,000
Manukyan Construction	Anna Manukyan	$150,000	SBA	Disbursed	$10,000
Runyan Tax Service, Inc	Viktoria Kauichko	$276,653	Seattle Bank	Disbursed	
Journeymen Construction	Viktoria Kauichko	$150,000	SBA	Disbursed	$8,000
Fiber One Media, Inc.	Viktoria Kauichko	$150,000	SBA	Disbursed	$10,000
Fiber One Media, Inc.	Viktoria Kauichko	$276,652	WebBank	Cancelled	
Fiber One Media, Inc.	Viktoria Kauichko	$130,000	Celtic Bank	Cancelled	
Fiber One Media, Inc.	Viktoria Kauichko	$130,000	Ready Capital	Disbursed	