

intend to waive objections to any of the facts associated with the offenses of conviction that are described in the PSR.

Page 1 – “Defense Counsel” –David D. Diamond is not, and never has been, an attorney for Mr. Artur Ayvazyan. Artur Ayvazyan respectfully requests that Mr. Diamond’s name and contact information be removed from the PSR.

Page 2 – “Sentencing Date” – Since the disclosure of the PSR on September 23, 2021, the sentencing hearing for Artur Ayvazyan has been continued to November 15, 2021. Artur Ayvazyan respectfully requests that this information be updated.

Page 3 – “Citizenship” – The PSR lists Artur Ayvazyan as a Permanent Resident. Artur Ayvazyan is a Naturalized Citizen. Artur Ayvazyan was under the age of 18 when his mother became a United States Citizen, therefore he became a Naturalized Citizen at that time. Artur Ayvazyan was issued a United States Citizen passport – which is currently in the possession of the Department of Justice. Artur Ayvazyan respectfully requests that this information be corrected.

Page 4 – “Guideline Summary” – Artur Ayvazyan respectfully objects to:

The Base Offense Level calculation of 33;

The Special Offense Characteristics of +2;

The lack of a mitigating Role Adjustment;

The Adjusted Offense Level of 35;

The Total Offense Level of 35;

The Guideline Sentence range of 168-210 months.

Artur Ayvazyan asserts that the correct calculations are:

Base Offense Level 19

Mitigating Role Reduction – 3

Adjusted Total Offense Level 16

Guideline Range 21 – 27 months.

For clarity, the bases for these objections will be discussed below under the specific paragraphs in which they are detailed in the PSR.

¶2 – The guilty verdict against Artur Ayvazyan occurred on June 25, 2021.

Artur Ayvazyan respectfully requests that this information be corrected.

¶17 – Edvard Paronyan was sentenced to 30 months imprisonment on September 27, 2021. Artur Ayvazyan respectfully requests that this information be updated.

¶32 – This paragraph discusses the evidence that Richard Ayvazyan and Tamara Dadyan allegedly recruited others to the conspiracy. While Richard Ayvazyan and Tamara Dadyan are mentioned in a footnote, the non-specific phrase “[t]he defendants also recruited other individuals ...” is misleading by implying that Artur Ayvazyan recruited other people. Artur Ayvazyan did not

recruit other people, and no evidence was presented at trial that he did so. Artur Ayvazyan respectfully requests that this paragraph be amended to replace the phrase “[t]he defendants ...” with “Defendants Richard Ayvazyan and Tamara Dadyan....”

¶42 - Artur Ayvazyan did not submit any G&A Diamond loan applications. Artur Ayvazyan respectfully requests that the phrase “and his co-conspirators” be removed from the first sentence of this paragraph.

¶51 – Artur Ayvazyan did not submit an application for a loan to Voyage Limo. Artur Ayvazyan respectfully requests that the phrase “and his co-conspirators” be removed from the first sentence of this paragraph.

¶55 - Artur Ayvazyan did not submit an application for a loan to Time Line Transport. Artur Ayvazyan respectfully requests that the phrase “and his co-conspirators” be removed from the first sentence of this paragraph.

¶57 - Artur Ayvazyan did not wire funds from Time Line Transport. Artur Ayvazyan respectfully requests that the phrase “and his co-conspirators” be removed from the first sentence of this paragraph.

¶58 - Artur Ayvazyan did not submit an application for a loan to Redline Auto Mechanics. Artur Ayvazyan respectfully requests that the phrase “and his co-conspirators” be removed from the first sentence of this paragraph.

¶61 - Artur Ayvazyan did not submit an application for a loan to Runyan Tax Service. Artur Ayvazyan respectfully requests that the phrase “and their co-conspirators” be removed from the first sentence of this paragraph.

¶62 - Artur Ayvazyan did not control the Runyan Tax Service bank account. Artur Ayvazyan respectfully requests that the phrase “and her co-conspirators” be removed from the first sentence of this paragraph.

¶ 65 - Artur Ayvazyan did not submit an application for a loan to Mod Interiors. Artur Ayvazyan respectfully requests that the phrase “and their co-conspirators” be removed from the first sentence of this paragraph.

¶67 - Artur Ayvazyan did not submit an application for an SBA loan to Mod Interiors. Artur Ayvazyan respectfully requests that the phrase “and her co-conspirators” be removed from the first sentence of this paragraph.

¶75 – Artur Ayvazyan did not submit 151 PPP and EIDL loan applications, did not attempt to obtain \$21,911,962.26, did not obtain \$18,016,141. 26 from 12 lenders or the SBA and objects to the inclusion of this paragraph.

¶71 – See General Objection above as to this paragraph, and specifically to the assertion in footnote 9 that A. Ayvazyan used true names of tax preparers. No evidence was presented at trial that Artur Ayvazyan used the names of tax preparers. Artur Ayvazyan respectfully requests that his name be omitted from footnote nine as untrue.

¶77 – Artur Ayvazyan objects to this paragraph as he did not cause \$18,016,141.26 in actual losses to the SBA and 12 financial institutions listed in this paragraph.

¶94 – Artur Ayvazyan objects to the first sentence of this paragraph. The alleged loss amounts of \$21,911,962 and \$18,016,141 were not “established at trial.”

Artur Ayvazyan objects to the calculation of the loss amount ascribed to him as \$21,911,962 intended and \$18,016,141 actual. Artur Ayvazyan objects to the use of + 20 loss level points in the PSR. The PSR has apparently miscalculated the “relevant conduct” properly ascribable to Artur Ayvazyan under U.S.S.G. §1B1.3 in arriving at these loss amounts. The sentencing guideline loss amount level increase should be based on the \$124,000 and \$150,000 loans dispersed to his legitimate company Allstate Towing and Transport, for a total loss amount of \$274,000, not the over \$21 million ascribed to him in the PSR. At trial, the jury found Artur Ayvazyan liable for the overt acts of co-conspirators pursuant to *Pinkerton* liability. But *Pinkerton* liability does not translate directly into sentencing culpability.¹ The guidelines acknowledge that they do not purport to establish standards of criminal liability as stated in application notes to §1B1.3.

¹ See, *United States v. Collazo*, 984 F.3d 1308, 1334 (9th Cir. 2021) (“*Pinkerton* clearly distinguishes between conspiracy and a substantive offense, see [*Pinkerton v. United States*]328 U.S. [640] at 643, 66

Sentencing Accountability and Criminal Liability.—The principles and limits of sentencing accountability under this guideline are not always the same as the principles and limits of criminal liability. . . . [T]he focus [of the Guidelines] is on the specific acts and omissions for which the defendant is to be held accountable in determining the applicable guideline range, rather than on whether the defendant is criminally liable for an offense as a principal, accomplice, or conspirator.

U.S.S.G. §1B1.3, comment. (n.1) (Emphasis Added)

Artur Ayvazyan’s “relevant conduct” for purposes of determining his offense level may only be based on the actions of co-conspirators when their conduct falls “within the scope of the jointly undertaken criminal activity,” is committed “in furtherance of that criminal activity,” and is “reasonably foreseeable

S.Ct. 1180, while the Guidelines does not.”) William W. Wilkins, Jr. and John R. Steer, *Relevant Conduct: The Cornerstone of the Federal Sentencing Guidelines*, 41 S.C.L. Rev. 495, 510 (1990). See generally *United States v. McClatchey*, 316 F.3d 1122, 1127-29 (10th Cir. 2003) (conviction of conspiracy does not make defendant responsible under § 1B1.3 for all reasonably foreseeable bribes paid by his co-conspirators; the bribes must also fall within the scope of the defendant's joint undertaking); *United States v. Soto-Piedra*, 525 F.3d 527, 531-33 (7th Cir.) (“Conspiracy liability . . . is generally much broader than jointly undertaken criminal activity under section 1B1.3. . . . Actions of coconspirators that a particular defendant does not assist or agree to promote are generally not within the scope of that defendant’s jointly undertaken activity.”), cert. denied, 129 S. Ct. 261, 172 L. Ed. 2d 195 (2008); *United States v. Swiney*, 203 F.3d 397, 404 (6th Cir. 2000) (“[T]he Sentencing Guidelines have modified the *Pinkerton* theory of liability so as to harmonize it with the Guidelines’ goal of sentencing a defendant according to the ‘seriousness of the actual conduct of the defendant and his accomplices.’”) (quoting Wilkins & Steer, *supra*) (distinguished in *United States v. McIntosh*, 236 F.3d 968, 974 (8th Cir. 2001)); *United States v. Lanni*, 970 F.2d 1092, 1093 (2d Cir. 1992) (“[A]n important distinction exists between the criminal law standard for convicting a defendant of conspiracy and the Guidelines standard for sentencing a defendant convicted of conspiracy.”).

in connection with that criminal activity.” U.S.S.G. § 1B1.3, cmt. n.3(A) (2018).

[W]hen the conduct of others does not meet [the above criteria], the conduct is not relevant conduct....” *Id.* (Emphasis added). This sentencing determination must be supported by a preponderance of the evidence. *See United States v. Perez*, 962 F.3d 420, 448 (9th Cir. 2020).

The scope of Artur Ayvazyan’s “jointly undertaken criminal activity” for purposes of sentencing after findings of guilt at trial, extend only to the losses from the loans dispersed to his legitimate company – Allstate Towing. Those loss amounts total \$274,000. Losses from other loans were not “reasonably foreseeable” to Artur Ayvazyan either. Artur Ayvazyan’s convictions appear to have been sustained on the strength of the evidence against his wife Tamara Dadyan, and his brother Richard Ayvazyan. There is no evidence that Artur Ayvazyan was participating with his wife and brother in the filing of multiple loans for multiple fictitious businesses. While a jury found Artur Ayvazyan guilty, the amount of loss attributable to Artur Ayvazyan for sentencing purposes cannot be predicated on that alone.

The proper loss amount as to Artur Ayvazyan is \$274,000, resulting in a level increase of 12 pursuant to U.S.S.C §2B1.1(b)(1)(G).

¶95 – Artur Ayvazyan objects to the inclusion of a two (2) point increase under §2B1.1(b)(2)(A)(i) for more than 10 victims. Only victims which suffer

actual loss from the *relevant conduct of Artur Ayvazyan* may be counted towards the number of victims under §2B1.1(b)(2)(A)(i). §1B1.3(a)(1)(B). As discussed above, Artur Ayvazyan’s relevant conduct runs only to the losses from loans to his business, Allstate Towing. The victims of these two loans would be Cross River Bank, and the SBA. These two (2) lenders are not 10 or more lenders. Because Artur Ayvazyan’s relevant conduct does not extend to 10 or more victims, the application of this specific offense characteristic is unwarranted.

¶97 – Artur Ayvazyan objects to the addition of two (2) points for “Sophisticated Means.” §2B1.1(b)(10) allows for an additional two (2) points if the “defendant intentionally engaged in or caused the conduct constituting sophisticated means.” As discussed previously, Artur Ayvazyan understands that he will be sentenced by this Court subsequent to his conviction at trial. However, the relevant conduct attributable to him for sentencing purposes does not encompass sophisticated means. The loan applications for his legitimate business, Allstate Towing, were in his name (not a fictitious name.) The bank accounts receiving the money from those loans were legitimate business bank accounts on which he was a signatory. The transfer of funds from his business bank account was not done using any fictitious name. He did not use the names of business owners unknown to him to apply for loans. Artur Ayvazyan did not “transfer

money through a network of accounts to pay for personal expenses.”§2B1.1 Cmt. n. 9(B).

Artur Ayvazyan also objects to footnote 11 to paragraph 97, which urges without basis, an alternative two (2) level increase for sophisticated laundering under USSG §2S1.1(b)(3). Artur Ayvazyan did not use, and no evidence was presented at trial, that he used fictitious entities, shell corporations, or multiple levels “layering” of funds when money was transferred from his legitimate business bank account to an escrow company. *See* §2S1.1 cmt. n. 5(A)

¶98-99– Artur Ayvazyan objects to the inclusion of and additional two (2) points under ¶2B1.1(b)(11).

¶103 – Based on the correct level increase of 12 rather than 20, the proper exclusion of sophisticated means and number of victims specific offense characteristics, the correct base offense level is 19.

¶105 – 106 – Artur Ayvazyan objects to the failure to include a mitigating role adjustment. He also objects to the untrue assertion that “A. Ayvazyan was essential in carrying out this fraudulent scheme, and clearly understood the scope and structure of the conspiracy.” As discussed above, the conduct for which Artur Ayvazyan suffered a conviction results in vastly less culpability than other co-defendants, therefore a minor role adjustment of -3 points should be granted.

USSG §3B1.2. “A defendant who is accountable under §1B1.3 (Relevant Conduct)

only for the conduct in which the defendant personally was involved and who performs a limited function in the criminal activity may receive an adjustment under this guideline.” *Id.* As discussed above, Artur Ayvazyan’s conviction at trial appears to be largely based on the evidence of fraud committed by other co-conspirators. No evidence was presented that Artur Ayvazyan participated or agreed to participate in any loans not related to his own legitimate business, Allstate Towing. He did not receive any other loan proceeds. He was not involved in the application of any other PPP or EDIL loans. He was not involved in the transfer of any other loan proceeds. No other PPP or EIDL loan proceeds flowed through his bank accounts. He was not involved in the purchase of any luxury homes or jewelry. He did not design the scheme or set it into motion. He was not involved in the opening or management of bank accounts in fictitious names. In short, he was far from “essential,” but rather occupied a minor role.

Alternatively, should the Court hold Artur Ayvazyan responsible for relevant conduct in establishing a greater loss level than 12, he should still be granted a three (3) level reduction under §3B1.1. Should Artur Ayvazyan be held to a loss amount as calculated by the PSR, he is being held accountable for loss “that greatly exceeds the defendant’s personal gain from a fraud offense.” U.S.S.G. § 3B1.2 cmt. n.3(A). In that circumstance, Artur Ayvazyan would be a “defendant who is accountable under §1B1.3 for a loss amount under §2B1.1 (Theft, Property

Destruction, and Fraud) that greatly exceeds the defendant's personal gain from a fraud offense or who had limited knowledge of the scope of the scheme may receive an adjustment under this guideline.” *Id.*

¶108 – The correct Adjusted Offense Level is 16.

¶112 – The correct Total Offense Level is 16.

¶134 – The phrase “when he returned to Armenia on his honeymoon,” is factually incorrect. Artur Ayvazyan has not been to Armenia since he left as a child. He learned his father was deceased when he returned home to America from his honeymoon. Artur Ayvazyan respectfully requests that this information be updated.

¶137 – The PSR lists Artur Ayvazyan as a Permanent Resident. Artur Ayvazyan is a Naturalized Citizen. Artur Ayvazyan was under the age of 18 when his mother became a United States Citizen, therefore he became a Naturalized Citizen at that time. Artur Ayvazyan was issued a United States Citizen passport – which is currently in the possession of the Department of Justice. Artur Ayvazyan respectfully requests that this information be corrected.

¶165 – Artur Ayvazyan’s Toyota Tundra was purchased for \$15,000 and the balance on the car is \$14,000 and was financed for three years. A typographical error appears to have occurred when listing that the vehicle would be paid off in 2005. Artur Ayvazyan respectfully requests that this information be corrected.

¶199 – As discussed above, Artur Ayvazyan assets that restitution be limited to the loss amounts resulting from the loans dispersed to Allstate Towing.

For the reasons stated, the defense requests that the foregoing objections be sustained.

DATED: October 7, 2021

Respectfully Submitted,

By: /s/ Jennifer J. Wirsching
Jennifer J. Wirsching
Attorney for **Artur Ayvazyan**