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10 UNITED STATES DISTRICT COURT

11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,
 13 Plaintiff,
 14 v.
 15 ANDRANIK AMIRYAN,
 16 Defendant.
 17

No. 2:20-cr-00520-DMG

GOVERNMENT'S SENTENCING
POSITION; EXHIBIT

Hearing: September 17, 2021
3:00pm

18 MEMORANDUM OF POINTS AND AUTHORITIES

19 The government concurs in the findings of the Presentence
20 Report with the following exceptions:

21 **I. DEFENDANT ATTEMPTED TO OBSTRUCT JUSTICE AND FAILED TO ACCEPT
22 RESPONSIBILITY WHEN HE FABRICATED EMPLOYMENT TO HIDE THAT HE IS
A PROFESSIONAL CRIMINAL**

23 Defendant claims to have worked for AAA Painting and Flooring
24 for sixteen years. (PSR ¶ 88, which erroneously lists the business
25 with two instead of three "A"s). This is a lie designed to conceal
26 the fact that defendant had no legitimate employment during that
27 period, and actually supported himself through fraud and theft.
28

1 Defendant's purported employer is his brother, Artak Amiryan,
2 who allegedly runs AAA Painting and Flooring out of the home they
3 shared in Sunland--and which the case agent searched pursuant to a
4 federal warrant. During the search at the purported address for AAA
5 Painting and Flooring, agents observed no construction, painting, or
6 flooring equipment or supplies. What the agents did find was an
7 unlicensed marijuana grow on the premises, and communications on
8 defendant's phone regarding PPP loans, money laundering, and other
9 persons' identifying information. (Exh.)

10 No business or tax records exist to corroborate defendant's
11 claimed employment. EDD, which reports wage income, had no data for
12 defendant for the years checked, which covered 2015 through 2020,
13 even though he said he was employed by AAA Painting and Flooring
14 during that period. Indeed, on defendant's California Franchise Tax
15 Board records, he claims to have been either self-employed or
16 employed at a different "business," Magic Finishing, a shell
17 corporation defendant used in the instant fraud to launder and
18 withdraw in cash funds traceable to fraudulent PPP loans. (PSR
19 ¶¶ 25, 40, 48.) Nor does defendant's brother, Artak Amiryan, the
20 owner of AAA Painting and Flooring, declare income from that
21 purported business on his tax returns: he declared as income on his
22 taxes for the years 2017-2018 wages from the California home health
23 care program given to individuals who assert that they spend their
24 time taking care of the infirm, in this case purportedly defendant's
25 parents, and also claimed to be the owner of a child care business.
26 Indeed, the corporation that defendant claims he worked for during
27 16 years only formed in 2020 according to California Secretary of
28 State records--just in time to receive a CARES Act PPP loan that

1 resembled those that defendant fraudulently obtained for ACBA
2 Technologies and European Cabinets Direct Import. (Exh.)

3 Defendant has a long history not only of fraud and theft
4 generally (PSR ¶¶ 59-62) but in particular of creating shell
5 companies and even fake invoices. (Exh.)

6 Defendant could have remained silent about his employment, or
7 he could have admitted that he has supported himself his entire life
8 through fraud and theft. Defendant chose instead to manufacture
9 bogus employment that he could expect his brother to attest to for
10 one purpose: to deceive the Court into believing that he is
11 generally a legitimate working man, albeit one who succumbed to the
12 allure of easy CARES Act money. In fact, defendant has never held
13 verified, legitimate employment, and his criminal record shows how
14 he has actually supported himself for the last 18 years.

15 Defendant's attempt to deceive the Court regarding his employment
16 affects his guideline range in two ways.

17 **A. DEFENDANT HAS FAILED TO CLEARLY DEMONSTRATE ACCEPTANCE OF**
18 **RESPONSIBILITY**

19 First, it is the defendant's burden to establish that he has
20 "clearly" accepted responsibility for his offense. United States v.
21 Alexander, 48 F.3d 1477, 1493 (9th Cir. 1995); USSG § 3E1.1(a). By
22 lying in hopes of securing a more lenient sentence, defendant has
23 failed to carry this burden. Indeed, his false statements to
24 Probation could have been charged as crimes in and of themselves.
25 18 U.S.C. § 1001. Criminal conduct during the pendency of
26 sentencing justifies a denial of acceptance of responsibility even
27 when the new criminal conduct is unrelated to the offense of
28 conviction. See United States v. Mara, 523 F.3d 1036, 1037 (9th

1 Cir. 2008) (affirming district court's denial of acceptance of
2 responsibility where defendant who pled guilty to being a felon in
3 possession of a firearm engaged in an unrelated jailhouse fight
4 before sentencing).

5 **B. DEFENDANT'S FALSE STATEMENTS FOR THE PRESENTENCE REPORT**
6 **ALSO CONSTITUTE AN ATTEMPTED OBSTRUCTION OF JUSTICE**

7 An obstruction of justice enhancement applies where the
8 defendant has "provid[ed] materially false information to a
9 probation officer in respect to a presentence" report. USSG
10 § 3C1.1, app. note 4(H). C.f., United States v. Barnes, 125 F.3d
11 1287, 1292-93 (9th Cir. 1997) (affirming attempted obstruction of
12 justice enhancement against a materiality challenge when the
13 defendant failed to inform the probation officer preparing the PSR
14 about a fourth marriage in which he was subject to a temporary
15 restraining order due to violent conduct to his former spouse
16 because it had the potential to influence sentencing in his offense
17 of fraudulently impersonating a doctor). While the Court could
18 impose the attempted obstruction of justice enhancement by itself,
19 or could withhold the acceptance of responsibility reduction by
20 itself, those adjustments typically go together in a situation like
21 this one. "Conduct resulting in an enhancement under § 3C1.1
22 (Obstruction . . . of Justice) ordinarily indicates that the
23 defendant has not accepted responsibility. . . ." USSG § 3E1.1,
24 app. note 4.

25 **II. THE 3553(A) FACTORS: DEFENDANT IS UNUSUALLY HARD TO DETER**

26 Defendant has had many encounters with the criminal justice
27 system from which he could have learned the value of leading a law-
28 abiding life. Instead, defendant appears to have learned all the

1 wrong lessons: how to commit the same crimes on a bigger scale, or
2 in a more clever way to foil law enforcement. For example,
3 defendant has been repeatedly removed from this country as an
4 illegal alien following his convictions. But instead of learning
5 from his deportation to abide by immigration rules, defendant
6 learned instead to commit more crimes: he entered a sham marriage
7 (while still married to his current wife) solely to change his last
8 name in hopes of thereby illegally re-entering the U.S. while
9 appearing to be a different person so that his prior record of
10 deportation would not be associated with his new name. (PSR ¶ 78.)
11 As a result, he served 14 months in prison for illegal re-entry
12 after deportation and conviction. (PSR ¶ 62.)

13 Similarly, defendant's fraud and theft have increased over
14 time. His first conviction was for petty theft, for which he has
15 sentenced to probation and a single day in jail. (PSR ¶ 59.) While
16 he was still on probation for this offense, he used three fraudulent
17 credit cards and a check in an attempt to purchase goods worth less
18 than \$1,400, resulting in a prison sentence of two years for
19 commercial burglary. (PSR ¶ 60.) Also while still on probation for
20 the petty theft—and while awaiting the resolution of what would turn
21 out to be his felony commercial burglary conviction mentioned above—
22 he impersonated at least two persons and fraudulently wired \$55,000
23 out of the bank account of one of them, resulting in a three year
24 prison sentence for grand theft and publishing and selling documents
25 resembling court orders. (PSR ¶ 61.) Neither of these prison
26 sentences appears to have deterred defendant who, after all, has now
27 pleaded guilty to a fraud involving at least \$650,600 in actual
28 losses. (PSR ¶ 28.)

1 Defendant's escalating criminality despite prison sentences as
2 long as three years shows that defendant is unusually hard to deter
3 and that only a lengthy sentence could possibly convince him to
4 abandon his criminal career on favor of a lawful one.

5 **CONCLUSION**

6 Probation calculated defendant's guideline range as 63-78
7 months based on a final offense level of 22 and a criminal history
8 category of IV. If the Court finds that defendant willfully
9 attempted to obstruct justice, and failed to accept responsibility,
10 by lying to Probation regarding his employment, then his final
11 offense level would be 27, which corresponds to a guideline range of
12 100-125 months. Regardless of the Court's ruling on the guidelines,
13 however, the government recommends a more modest sentence of 72
14 months in prison as justified by the 3553(a) factors, including
15 defendant's escalating criminality, his repeated violations of court
16 supervision, his lack of gainful employment, and his false
17 statements to Probation about his employment. In order to protect

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1 the public from the likelihood that defendant will re-offend, the
2 government recommends the maximum term of supervised release, five
3 years.

4 Dated: September 1, 2021

Respectfully submitted,

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