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12 UNITED STATES DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA  
14 SAN FRANCISCO DIVISION

15 UNITED STATES OF AMERICA, ) **CASE NO. 19-CR-00340 CRB**  
16 Plaintiff, ) **UNITED STATES' SUPPLEMENTAL**  
17 v. ) **SENTENCING MEMORANDUM**  
18 ROGER KARLSSON, )  
19 Defendant. )  
20

21 **INTRODUCTION**

22 This Court continued the sentencing of Defendant Karlsson in part to further consider the extent  
23 to which his offense caused substantial financial hardship to 25 or more victims, as defined in U.S.  
24 Sentencing Guidelines §2B1.1(b)(2). To aid the Court's analysis, the government has compiled a  
25 summary of the substantial financial hardship experienced by 138 victims of Defendant Karlsson's  
26 fraud. That summary is attached to this filing as Exhibit A, filed under seal. Karlsson's fraud had a  
27 devastating impact on these and hundreds of other victims, easily meeting the threshold for a +6  
28

1 adjustment to his Guidelines range pursuant to U.S.S.G. §2B1.1(b)(2).

2 **ARGUMENT**

3 **I. The Defendant caused substantial financial hardship to 25+ victims**

4 When a defendant causes substantial financial hardship to twenty-five or more victims, U.S.S.G.  
5 §2B1.1(b)(2) provides for a +6 adjustment to the offense level. The Sentencing Guidelines’  
6 commentary is almost always authoritative in its interpretations of Guidelines language. *See United*  
7 *States v. George*, 949 F.3d 1181, 1186 (9th Cir. 2020). The Application Note for U.S.S.G. §2B1.1(b)(2)  
8 provides a non-exhaustive list of factors that a court should consider in assessing whether victims  
9 sustained substantial financial hardship:

- 10 (i) becoming insolvent;  
11 (ii) filing for bankruptcy under the Bankruptcy Code (title 11, United States Code);  
12 (iii) suffering substantial loss of a retirement, education, or other savings or investment  
13 fund;  
14 (iv) making substantial changes to his or her employment, such as postponing his or her  
15 retirement plans;  
16 (v) making substantial changes to his or her living arrangements, such as relocating to a  
17 less expensive home; and  
18 (vi) suffering substantial harm to his or her ability to obtain credit.

19 The summary of the victim hardship in Attachment A references the specific hardship categories by  
20 Roman numeral, corresponding to the numbering in the U.S.S.G. application note.

21 The Victim Impact Statements (VIS) show that for an overwhelming number of victims,  
22 Karlsson caused the hardship articulated in Guidelines commentary factor (iii): “suffering substantial  
23 loss of a retirement, education, or other savings or investment fund.” U.S.S.G. § 2B1.1 cmt. n.4(F).  
24 Victims emptied their entire savings accounts, cashed out their 401(k) accounts, and liquidated other  
25 retirement accounts in order to invest in EMS. The victims are now left without any savings as a result  
26 of Karlsson’s fraud.

27 Karlsson also caused many of his victims to experience the hardship articulated in Guidelines’  
28 commentary factors (i) and (iv): “becoming insolvent,” and “suffering substantial harm to his or her  
ability to obtain credit.” U.S.S.G. § 2B1.1 cmt. n.4(F). Many of Karlsson’s victims spent all they had in  
the world on Karlsson’s “investments.” Victims were so convinced by Karlsson’s sophisticated fraud  
that they took out loans and maxed out credit cards to “invest” with him. Even today, the victims

1 struggle to pay back those loans. They are still in debt because of Karlsson’s fraud and have to go  
2 without essentials just to keep up with payments. Several have declared bankruptcy, a hardship  
3 articulated in Guidelines commentary factor (ii). U.S.S.G. § 2B1.1 cmt. n.4(F).

4 The VIS further show that Karlsson often caused the hardship noted in Guidelines’ commentary  
5 factor (iv): “making substantial changes to his or her employment, such as postponing his or her  
6 retirement plans.” U.S.S.G. § 2B1.1 cmt. n.4(F). Many of Karlsson’s victims spent all they had saved  
7 for retirement on Karlsson’s fraudulent promises of future gain. Some of the victims will now have to  
8 work for the rest of their lives. Others have had to return from a peaceful retirement to make ends meet,  
9 as their savings were exhausted. And some are unable to go back to work, but instead have had to go to  
10 food banks or borrow money from neighbors just to survive.

11 Karlsson also caused numerous victims to experience the hardship outlined in Guidelines’  
12 commentary factor (v): “making substantial changes to his or her living arrangements, such as relocating  
13 to a less expensive home.” U.S.S.G. § 2B1.1 cmt. n.4(F). Karlsson’s victims believed his fraudulent  
14 promises about investments, and they diverted money needed for mortgage payment, rent, and housing  
15 repairs to instead “invest” with Karlsson. Numerous victims faced the loss of their homes, evictions,  
16 and even homelessness as a result.

17 The VIS show that the experiences Karlsson’s victims suffered are repeated over and over again,  
18 in different cities, states, and countries. Defense counsel criticizes the “causation between the monies  
19 allegedly invested in EMS and the ultimate hardship sustained.” Defendant’s Sentencing Memorandum,  
20 ECF No. 45, at 24. The Government does not dispute that – like many Americans – many of Karlsson’s  
21 victims were in tenuous financial situations before investing with Mr. Karlsson. Indeed, Karlsson’s fraud  
22 preyed on and was designed to be attractive to such individuals. In many cases, that only made the dire  
23 consequences of the lost funds even more acute, as detailed in the VIS and in Attachment A. “Substantial  
24 financial hardship . . . [includes] increasing the desperation of those already struggling.” *George*, 949  
25 F.3d at 1187. Karlsson stole from people with little to begin with, who could not afford to lose what he  
26 took from them. The financial consequences of Karlsson’s theft have been devastating.

27 In considering whether a victim suffered substantial financial hardship within the meaning of the  
28 Sentencing Guidelines, the court “must consider how the loss affects the victim.” *George*, 949 F.3d at

1 1185. As the Ninth Circuit observed in *George*, “For some victims, a loss of, say, \$10,000 might not  
2 have any of the listed effects [of §2B1.1(b)(2)]. For others, a much smaller loss might have such  
3 effects.” *Id.* at 1185. The per victim loss for Karlsson’s fraud ranged from hundreds of dollars to over  
4 one hundred thousand dollars, but the hardship of a total or near-total loss of savings was felt by victims  
5 spanning that range of dollar loss. As *George* instructs, a loss that may look small on paper can be  
6 devastating to a family with little to begin with. 949 F.3d at 1186-89. The VIS contain painful accounts  
7 of Karlsson defrauding hundreds of people out of all the money they could spare to invest. That money  
8 was the product of hours of work and of sacrifices as victims scraped and saved to invest what they  
9 could – whether that was hundreds of dollars or tens of thousands.

10 Karlsson argues that the government has failed to show financial hardship because some of his  
11 victims lost “only” \$800. The Ninth Circuit has heard such arguments before, and has rejected them.  
12 The Court in *George* wrote: “‘I stole only from those who were already poor’ is not often advanced as  
13 an argument in mitigation, and we find it unpersuasive.” *George*, 949 F.3d at 1187. As one Karlsson  
14 victim, V.W., explained in her VIS: “[W]e had to tighten our belts and do without it for basic living  
15 expenses. I am not wealthy, and what I lost was a whole lot of money to me.” Another victim, J.C., who  
16 lost \$1,200, poignantly explained:

17 I am a hard-working woman living on a low-income salary of less than \$31K dollars per  
18 year. So, the \$1,200 I invested in good faith didn't come easy but came with the sacrifice  
19 of going without the nicer things in life, living with very basic hygiene products, and  
20 eating peanut butter and crackers many days to save up money to invest. **These things  
may seem trivial to those who have much but for those of us who are literally living  
paycheck to paycheck it's astronomical.** (emphasis added)

21 Victim A.F. lost \$1,480 and recalls, “There were days that I cried endless because of how I am  
22 struggling to find money to buy food.” Victim H.M., who lost \$1,300, explains that before losing the  
23 money to EMS, he could reliably buy groceries once a month, but now that he has lost his small cushion,  
24 even that is a struggle. Victim C.R., a mother of four, lost \$1,352 and notes that “somedays [her  
25 children] go hungry because I have nothing to cook.” Many other victims similarly talk about having to  
26 rely on food stamps or food pantries after losing money to Mr. Karlsson’s scheme. Multiple victims are  
27 now homeless. The VIS are full of stories of victims who took out loans or cash advances in order to  
28 invest with EMS, based on Mr. Karlsson’s assurances of guaranteed returns. Some victims were from

1 countries with lower costs of living, where the dollar value of the loss would be even more notable.  
2 While some high net worth individuals could absorb the loss figures that Karlsson characterizes as  
3 “small,” ECF No. 45 at 25, it is clear that these loss figures were in no way “small” to many of the  
4 victims whose lives were impacted.

## 5 **II. The Court may rely on the VIS to establish substantial financial hardship**

6 The Court has before it, through the VIS and the information contained in the PSR and  
7 supplemental filings, clear and convincing evidence establishing that Karlsson’s actions caused  
8 substantial financial hardship to twenty-five or more victims.

9 Karlsson suggests, without citing support, that the Court should not rely on the PSR and the VIS  
10 in determining whether victims sustained substantial financial hardship. Karlsson observes, “Victim  
11 Impact Statements submitted by the government are not the same things as the direct trial testimony of  
12 victims that the district court relied on in *George* in reaching its conclusions.” ECF No. 45 at 24. The  
13 government is aware of no precedent in any circuit that would require the government to put on the  
14 testimony of twenty-five witnesses at a sentencing hearing in order for the court to apply the 6-point  
15 enhancement, which is the logical extension of the defendant’s apparent position. This would be an  
16 incredible waste of the Court’s time and resources and would make it virtually impossible to apply the  
17 enhancement in the normal course of sentencings.

18 Karlsson goes on to fault Probation, observing that, “Moreover, it does not appear that Probation  
19 conducted any independent research or investigation on this issue other than review the Victim Impact  
20 Statements.” ECF No. 45 at 23. In preparing the PSR, Probation reviewed voluminous materials from the  
21 case file, including financial records pertaining to Karlsson’s accounts and the information from the VIS. It  
22 is unclear what further “independent research or investigation” Karlsson expects Probation or the Court to  
23 engage in. Having read the VIS of the daughters of deceased victim R.C., who recalled their father living in  
24 a dilapidated trailer while sending \$9,000 to Karlsson, would Karlsson expect Probation to visit the trailer to  
25 verify that it was, in fact, rotting and falling apart, with no electricity? For the many victims who explain  
26 that they invested their entire life’s savings with Karlsson, would Karlsson require Probation to engage in a  
27 full audit of the victims’ finances? This is not what the “clear and convincing” standard requires and would  
28 lead to preposterous applications.

1 Contrary to the defendant's characterization in his sentencing memo, ECF No. 45 at 24, the majority  
2 of the VIS at issue contain extensive supporting documentation of the victims' financial payments, as well as  
3 lengthy communications with Karlsson's various aliases. Many of the victims' loss figures have been  
4 verified by comparison to financial documentation gathered during the investigation. Furthermore, the  
5 IRS case agent and NDCA victim specialist have communicated with numerous victims noted in  
6 Attachment A regarding their loss. Karlsson tellingly does not argue that any of the information contained  
7 in the VIS or relied on by pretrial is inaccurate. The court can and should appropriately rely on the  
8 uncontroverted information contained in the VIS, which are consistent with the financial records and other  
9 information gathered during the investigation.

10 **CONCLUSION**

11 For the foregoing reasons, the government respectfully submits that this Court apply the +6  
12 enhancement for substantial financial hardship to twenty-five or more victims pursuant to U.S.S.G.  
13 §2B1.1(b)(2).

14  
15 DATED: July 5, 2021

Respectfully submitted,

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