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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 UNITED STATES OF AMERICA,

11
12 Plaintiff,

13 v.

14 GINA CHAMPION-CAIN,

15 Defendant.
16

Case No.: 20CR2115-LAB

**UNITED STATES' MOTION FOR
RESTITUTION**

HON. LARRY ALAN BURNS

17 The UNITED STATES OF AMERICA, by and through its counsel Randy S.
18 Grossman, United States Attorney, and Aaron P. Arnzen and Janaki Chopra, Assistant U.S.
19 Attorneys, submits this Motion for Restitution to victims of Defendants Gina Champion-
20 Cain and Crispin Torres.

21 **I**

22 **INTRODUCTION**

23 The United States moves for an order of restitution in favor of the victims of
24 Defendants' Ponzi scheme. This motion is based largely on the analysis conducted and
25 positions taken by the court-appointed receiver, Krista Freitag (the "Receiver"), in
26 *Securities and Exchange Commission v. Gina Champion-Cain, et al.*, 19CV1628-LAB (the
27 "SEC Case").
28

1 The United States advocates for a restitution order in favor of the so-called net losers
2 (“Net Losers”) identified by the Receiver, in the amount of each Net Loser’s loss from the
3 fraud, as measured on a money-in money-out (“MIMO”) basis. The United States also
4 recommends that the amount of restitution owed to each Net Loser be credited by any
5 amount recovered by that investor from the Receiver in connection with a claim made in
6 the SEC Case, or as compensatory damages for the same loss that serves as the basis for
7 restitution in this case. For purposes of restitution, such recoveries should not be reduced
8 by victims’ attorney fees and similar expenses. Lastly, the restitution orders issued in these
9 cases should be joint and several as to Champion-Cain and Torres.

10 II

11 STATEMENT OF FACTS

12 **A. The Conspiracy And Plea Agreements**

13 The Information in this case charges Defendant Champion-Cain with securities
14 fraud, in violation of 15 U.S.C. §§ 77q and 77x; obstruction of justice, in violation of 18
15 U.S.C. § 1505; and conspiracy to commit securities fraud and obstruct justice, in violation
16 of 18 U.S.C. § 371. These charges arise from a Ponzi scheme that raised close to \$400
17 million from investors who were persuaded to make fake short-term, high-interest loans to
18 illusory liquor license applicants. Champion-Cain pleaded guilty to all three counts
19 pursuant to a plea agreement on July 22, 2020. (20CR2115-LAB, Dkt 5.) The indictment
20 in a related case charged Defendant Crispin Torres, Jr., with conspiracy to commit
21 securities fraud in connection with the same scheme. (20CR2114-LAB, Dkt 3.) Torres
22 pleaded guilty to the conspiracy count pursuant to a plea agreement on July 22, 2020. (*Id.*,
23 Dkt 6.) The scheme is described in the detailed factual basis contained in each Defendant’s
24 plea agreement.

25 **B. The SEC Receiver’s Claims Process**

26 According to the Receiver’s May 31, 2022, Motion for an Order (1) Approving
27 Receiver’s Recommended Treatment of Claims; (2) Approving Distribution Methodology;
28 and (3) Approving Proposed Distribution Plan (19CV1628-LAB, Dkt 807) (the “Claims

1 Motion”), the Receiver has conducted a detailed forensic review of the scheme’s
2 transactional history and calculated the amount lost by each investor victim of the scheme.
3 The amount was determined on an investor-by-investor, MIMO basis. The Receiver’s
4 analysis found that there are 308 “losing Investor Claimants.” (19CV1628-LAB, Dkt. 807-
5 1, at 8.)¹

6 These Net Losers are likely to benefit from recoveries separate and apart from
7 restitution, primarily through (1) this Court’s ruling on the Claims Motion, and (2) private
8 negotiation and litigation. Indeed, the Claims Motion seeks an order for precisely these
9 recovery streams, *i.e.*, the motion seeks an order that the Receiver make distributions from
10 the Receivership estate after taking into account proceeds arising from private litigation
11 and negotiation. *E.g.*, 19CV1628-LAB, Dkt 807-1 at 9.

12 The Receiver identified four potential claims (Unique Identifiers 77, 158, 241, and
13 403) that the Receiver has recommended be disallowed in the SEC Case because the
14 subject investor either declined or failed to file a claim. (As discussed below, it is the
15 Government’s position that, as Net Losers, these investors nevertheless should be
16 considered victims for restitution purposes.)

17 There is an important distinction between the Receiver’s Claims Motion and the
18 present restitution motion – in addition to determining investor-by-investor losses, the
19 Receiver is also charged with distributing a limited pool of assets to investors and suggests
20 in her motion a manner (the “Rising Tide” methodology) in which to do so fairly and
21 equitably. However, those are not issues that directly impact criminal restitution, given
22 that “the court shall order restitution to each victim in the *full amount* of each victim’s
23

24 ¹ The Receiver also identified creditors of the Receivership Entities by virtue of trade claims
25 and tax claims. While ultimately harmed by the fraud because it rendered the Receivership
26 Entities unable to make good on its debts, the Government does not believe these trade and
27 tax claimants should be considered victims for restitution purposes. This is primarily
28 because the crimes to which Defendants pleaded guilty involved securities fraud because of
lying to and misleading investors. Trade and tax claims are too attenuated from these
investor-focused crimes to make those claims compensable through restitution.

1 losses” and need not concern itself with a smaller pool of limited assets. 18 U.S.C. §
2 3664(f)(1)(A) (emphasis added).

3 **C. Victim Impact Statements And Related Analysis Of Losses**

4 The United States has solicited and received victim impact statements in connection
5 with the scheme.² The FBI has reviewed the victim impact statements in detail. Most of
6 the victims’ specific monetary claims concern the types of losses that would be reflected
7 in the Receiver’s MIMO analysis – *i.e.*, the statements detail money paid into and money
8 received from the Ponzi scheme. Other types of claimed losses include (1) opportunity
9 costs (investors posit that they could have made other, legitimate investments with their
10 funds and earned good money); (2) expenses related to therapy based on psychological or
11 physical trauma caused by news that investors were victimized by the scheme; and (3) legal
12 expenses.

13 **D. The Parties Have Not Yet Agreed To A Recommended Restitution Order.**

14 The parties have not reached a resolution regarding restitution, due primarily to
15 issues that will remain outstanding until this Court rules on the Receiver’s Claims Motion.

16 **III**

17 **THE LAW SURROUNDING RESTITUTION**

18 Restitution on behalf of victims of federal crimes is authorized under 18 U.S.C. §
19 3553(a)(7), and is considered mandatory under 18 U.S.C. § 3663A(c)(1)(A)(ii) for offenses
20 committed by “fraud or deceit,” such as this one. Losses that a defendant must repay are
21 those suffered by “a person directly and proximately harmed as a result of the commission
22 of an offense . . . including, in the case of an offense that involves as an element a scheme,
23 conspiracy, or pattern of criminal activity, any person directly harmed by the defendant’s
24 criminal conduct in the course of the scheme, conspiracy or pattern.” 18 U.S.C.
25 § 3663A(a)(2).

26 _____
27 ² Approximately thirty-five (35) were received in relation to Defendant Champion-Cain, and
28 approximately thirty (30) for Defendant Torres; some of these victim impact statements
were submitted by the same individual victim for each Defendant.

1 Restitution either may be agreed upon, or proven by the Government. “The
2 government bears the burden of proving that a person or entity is a victim for purposes of
3 restitution, and of proving the amount of the loss.” United States v. Gossi, 608 F.3d 574,
4 579 (9th Cir. 2010) (citations, internal quotations omitted). However, the basis for and
5 amount of restitution need not be proven to a jury beyond a reasonable doubt. See United
6 States v. Green, 722 F.3d 1146, 1149-51 (9th Cir. 2013) (holding that Southern Union Co.
7 v. United States, 132 S. Ct. 2344 (2012) does not extend the Apprendi doctrine to
8 restitution, based on circuit precedent and the fact that there is no statutory maximum
9 penalty for restitution). Instead, restitution orders can and should be based on a
10 preponderance of the evidence. “Under 18 U.S.C. § 3664, a dispute as to the proper amount
11 of restitution must be resolved by the district court by a preponderance of the evidence.”
12 Gossi, 608 F.3d at 579 (citing United States v. Waknine, 543 F.3d 546, 556 (9th Cir. 2008)).
13 This burden is typically met through victim impact statements. See Waknine, 543 F.3d at
14 558-59 (“[V]ictim affidavits will generally provide sufficient, reliable evidence to support
15 a restitution order.”).

16 Exactitude is not required; instead, in ordering restitution, the Court must simply
17 make “a reasonable estimate of the loss, given the available information.” United States v.
18 Ali, 620 F.3d 1062, 1074 (9th Cir. 2010) (quoting United States v. Bussell, 504 F.3d 956,
19 960 (9th Cir. 2007)).

20 The calculation of “loss” under the Sentencing Guidelines and “loss” under the
21 restitution statutes may differ, and for good reason. “The different method of calculating
22 loss in each case is due to the different purposes behind the two statutes. A defendant’s
23 culpability will not always equal the victim’s injury.” Gossi, 608 F.3d at 579-580 (quoting
24 United States v. Catherine, 55 F.3d 1462, 1464-65 (9th Cir. 1995)). “Restitution clearly
25 focuses on the victim, not the individual defendant. Restitution seeks to compensate the
26 victim for all the direct and proximate losses resulting from the defendant’s conduct, not
27 only for the reasonable foreseeable losses.” Id. at 581.

28 When there are multiple defendants that have contributed to the losses sustained by

1 victims, the Court has discretion to apportion the restitution amounts among the defendants
 2 to reflect their level of contribution to the victims' losses, or to order joint and several
 3 liability. Joint and several liability is appropriate when there are no clean grounds to
 4 apportion investor losses to either defendant, both defendants have accepted responsibility
 5 for and played essential roles in the conspiracy, and both are partially responsible for the
 6 victims' losses. *See* 18 U.S.C. § 3664(h); *see also* United States v. Booth, 309 F.3d 566,
 7 575-76 (9th Cir. 2002) (holding defendant jointly and severally liable for restitution
 8 payments where defendant claimed he was merely Booth's 'errand boy').

9 IV

10 ARGUMENT

11 **A. The Receiver's Analysis And The Sufficiency Of The Evidence**

12 The United States believes the MIMO analysis is a sufficiently precise loss estimate
 13 for restitution purposes, based on the diligent work that underlies the Receiver's
 14 recommendation. The analysis was informed by an investor-by-investor review of
 15 transactional history, and benefited from investor input throughout the claims process.
 16 This leads to more-than-sufficient precision under Waknine, 543 F.3d at 558-59, wherein
 17 a restitution order relied largely on victim impact statements alone.

18 **B. MIMO Analysis As A Basis For Restitution**

19 The Receiver's MIMO analysis provides a useful, fair, and reasonable basis for a
 20 restitution order. The MIMO analysis takes a straightforward approach – netting money
 21 that investors put into the scheme against money they received from the scheme – that
 22 easily can be applied to all investors. Given these predicates, and the fact that it was based
 23 on a thorough review by the Receiver, the MIMO analysis easily qualifies as “a reasonable
 24 estimate of the loss, given the available information.” Ali, 620 F.3d at 1074. The United
 25 States therefore believes that the Court should award restitution to each of the Net Losers
 26 in the amount of their MIMO losses. These include both those Net Losers who chose to
 27 file and claim with the Receiver, and those Net Losers who did not file a claim.

28 It does not appear that claimed losses associated with (1) opportunity costs; (2)

1 expenses related to therapy based on psychological or physical trauma; or (3) legal
2 expenses are recoverable as restitution in this matter. Those costs and expenses are too
3 speculative, too attenuated from the crimes to which Defendants pleaded guilty, or
4 recoverable only for crimes that result in bodily injury (*e.g.*, 18 U.S.C. § 3663A(b)(2)) to
5 appropriately be incorporated into a restitution order here.

6 **C. Offsetting Proceeds From The Receiver's Claims Process And Compensatory**
7 **Damages**

8 As discussed above, most of the Net Losers are likely to receive proceeds in
9 connection with the Claims Motion and/or as compensatory damages through private
10 litigation or negotiation. The Claims Motion itself indicates that many private settlements
11 have been reached; some of these settlements have already led to payments, and others are
12 expected to lead to payments in the near future. These payments have reduced, or will
13 reduce, the amount of net loss suffered by investors who receive them. The restitution
14 order should offset the amounts that have been paid, and call for a reduction in the amount
15 due to each victim who recovers losses from the Receiver in connection with a claim made
16 in the SEC Case, or as compensatory damages for the same loss that serves as the basis for
17 restitution in this case. *See* 18 U.S.C. § 3664(j)(2); *see also* United States v. Bright, 353
18 F.3d 1114, 1122–23 (9th Cir. 2004). For purposes of restitution, such recoveries should
19 not be reduced by victims' attorney fees and similar expenses. *Cf.*, Lagos v. United States,
20 138 S. Ct. 1684, 1690 (2018) (narrowly construing statutory language regarding what
21 expenses are compensable through restitution and noting that “[a] broad reading would
22 create significant administrative burdens” for district courts). Furthermore, it would be
23 inequitable for victims who relied on the Court's appointed receiver to suffer a reduction
24 in their recovery because other investors proliferated the cases, and ultimately the costs, of
25 identifying, gathering, and distributing the scheme's assets.

26 **D. Disputed Claims**

27 There are a relatively small number of disputed claims in the SEC Case. The United
28 States will attend the August 29 hearing calendared to address those disputes, and

1 preliminary recommends that the Court treat those disputed claims for restitution purposes
2 in the same manner as it treats them for purposes of the Claims Motion.

3 **E. Joint And Several Restitution Orders**

4 Because both Defendants pleaded guilty to the same scheme, both accepted
5 responsibility for a conspiracy to engage in the scheme, and there are no clean grounds to
6 apportion specific investor losses, or portions thereof, to one Defendant vis-à-vis the other,
7 the Government recommends that they be held jointly and severally liable for restitution
8 due to victims of the crime. *See Booth*, 309 F.3d at 576 (“Although Bories contends that
9 he was merely Booth's ‘errand boy,’ there was sufficient evidence to support the district
10 court's finding that Bories played an essential role in the fraudulent scheme. Accordingly,
11 we find no abuse of discretion in the court's decision to hold Booth and Bories jointly and
12 severally liable for the restitution payments.”).

13 **V**

14 **CONCLUSION**

15 The United States respectfully requests that the Court issue an order of restitution in
16 favor of the scheme’s Net Losers, consistent with the Receiver’s MIMO analysis. The
17 United States will seek to submit a proposed order of restitution after the consecutive
18 August 29 hearings in the SEC Case and this case.

19 DATED: August 15, 2022.

Respectfully submitted,

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24 JANA K. CHOPRA
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