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Attorney for PYOTR BONDARUK,

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. PYOTR BONDARUK, Defendant.	No. CR.S-11-450 TLN DEFENDANT PYOTR BONDARUK;S FORMAL OBJECTIONS TO PROBATION REPORT Date: OCT. 22, 2015 Time: 9:00 a.m. Judge: Hon. Troy L. Nunley

By and through his Counsel, PYOTR BONDARUK, makes the below formal objections to the Probation Report:

Page 6, item 7.

We object to the conclusory statement that Palamachuk recruited Bondaruk to act a straw buyer in September of 2006. There has been no evidence when or if Mr. Bondaruk was recruited.

Page 6, item 8.

We object to the statement that indicated Palamachuk provided $25,000 "so it would appear that he had sufficient assets in order for the loans to fund." We do not object to the fact that Palarmachuk provided Mr. Bondaruk with $25,000 but specifically object to conclusion that it was for the purpose of providing him with a showing of assets. The money was placed into Mr. Bondaruk's account and there

was no evidence that it was withdrawn and given back to Ms. Palarmachuk. There was no statements or evidence to support this conclusion that the money was simply present to give an "appearance" of having funds in the account - a reasonable conclusion is that the money was either owed to Mr Bondaruk by Ms. Palarmachuk or it was a gift. Mr. Bondaruk did work for Ms. Palarmachuk and was her boyfriend, there are many reasons why Ms. Palarmachuk could have given Mr. Bondaruk this money.

We further object to the statement that indicates that no work was done on the property. Evidence was presented at the trial that a substantial amount of work was done on both properties. This objection was raised informally. The Probation Officer indicated in the informal response to the objections that the objection was overruled due to her interview of the Government. This objection is being made on the evidence presented at the trial and the reports.

Page 7, item 15.

We object to the loss amount. The Government has the burden of proving the existence of any factor which increases the guideline range, and that includes loss. United States v. Howard, 894 F2d 1085, 1090 (9th Cir. 1990). Both properties involved in this case were substantially improved by Mr. Bondaruk, basically complete remodels inside and out. The value of the homes increased because of these improvements and thus the banks received a properties that were in better condition when they took possession of them and then resold them. There is no indication that the Banks appraised the properties before selling them and thus ignored the substantial improvements made by Mr. Bondaruk which substantially affects the amount of loss and does not correctly assess the fair market value at the time the property is taken into possession by the bank. Without the fair market value of the property being properly assessed when the properties are sold after Mr. Bondaruk defaults, the amount of loss is calculated to Mr. Bondaruk's detriment and he suffers a higher guideline calculation. A wide variety of methods may be used to calculate a reasonable estimate of the amount of loss and it is not error for a sentencing court to accept one of two methods proposed to estimate loss. U.S. v. King 257 F.3d 1013 (9th Cir. 2001); U.S. v. Bennet, 252 F.3d 559 (2d Cir. 2001). It should also be noted that Mr. Bondaruk made his mortgage payments on each of the properties for approximately one year on one property and a few months on the

2nd property - the total which should be decreased from the amount of loss. Application Note 3(E)(I) reduces the loss amount by the value of money and party returned to the "victim" prior to detections. Thus, the loss in loan cases will be reduced by the amount repaid on the principal balance of the loan and other amounts collected by the lender and credited against the principal before detection. U.S. v. White, 737 F3d. 1121 (7th Cir. 2013); U.S. v. Markert, 732 F.3d 920, 932-33 (8th Cir. 2013); U.S. v. Rubashin, 655 F.3d 849 (8th Cir. 2011.) Based on the above, we would ask you to impose a 10 level increase in lieu of the 14 level increase.

We believe that Mr. Bondaruk is a minimal participant and that the guidelines should be reduced by 4 levels. Pursuant to application note 3(A) of section 3B1.2, a defendant who is accountable for a loss amount that greatly exceeds the defendants personal gain from the offense and who had limited knowledge of the scope of the scheme is not precluded from consideration of an adjustment under this guideline. In this case, Mr. Bondaruk had absolutely no real estate experience, had never purchased a home before, and no knowledge of the mortgage loan process. The evidence at trial illustrated that significant improvements were made to the properties. At trial, the Government did not show that Mr. Bondaruk gained anything - he lost all the money he put into the improvements, lost the properties, and ultimately ended up in bankruptcy.

Page 8, item 24.

We believe that the adjusted offense level should be 13

Page 8, item 26.

We believe that Mr. Bondaruk qualifies for a 2 level reduction. Pursuant to application note 1(A)(a), "A defendant may remain silent in respect to relevant conduct beyond the offense of conviction without affecting his ability to obtain a reduction under this subsection. However, a defendant who falsely denies, or frivolously contests, relevant conduct that the court determines to be true has acted in a manner inconsistent with accepting responsibility. In this case, Mr. Bondaruk did not testify at trial, nor did he frivolously contest the allegations, instead he exercised his constitutional right to go to trial. According to

3E1.1, application note 2, "conviction by trial, however, does not automatically preclude a defendant from consideration for such a reduction.

Page 8, item 27.

We believe the adjusted total offense level should be 11.

Page 10, item 36.

We object to the last paragraph in its entirety. The Probation Officer did not have the reports at the time of the interview. The information give by Mr. Bondaruk did not include meeting female at a bar and did indicate it was a consensual sexual encounter.

Page 10, item 37.

We believe that Mr. Bondaruk's criminal history is overstated. Technically, the calculations are correct. However, because the Government chose to indict this case approximately 5 years after the conduct involved in this case, the criminal history is based on cases that happened as early as 1997 - approximately 18 years ago. We would ask that you consider Mr. Bondaruk as a category III.

Page 13, item 59.

We believe the adjusted guideline level should be 13. With category III criminal history, the range would be 18 - 24, prior to any consideration of the 3553 factors.

Page 15, item 75.

We will be submitting character letters to the Court in support of specific characteristics we believe warrant a departure under section 3553(a)(1).

The need to avoid unwarranted sentencing disparities among defendants with similar conduct applies in this case. Other straw buyers in this very district who proceeded to trial and lost, have recently been sentenced and have received sentences home detention. In U.S. v. Anna Kuzmenko, 12-CRS-062 JAM, Ms. Kuzmenko was essentially a straw buyer, did not prevail at trial, and was recently sentenced to

time served. In U.S. v. Svetlana Markevich, 11-CRS-490 JAM, Ms. Markevich was also deemed to be a straw buyer and was recently sentenced to time served. We request that Mr. Bondaruk be sentenced a accordance with other straw buyers in this district.

Page 17, Restitution.

We reserve the right to argue about any restitution amount that may be recommended.

Dated: October 11, 2015

Respectfully submitted,

/s/ Dina L. Santos
DINA L. SANTOS, Attorney for
PYOTR BONDARUK

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CONFIDENTIAL ATTORNEY/INVESTIGATOR WORK PRODUCT
PRIVILEGED COMMUNICATION

October 15, 2015

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RE: U.S. v. Pyotr Bondaruk
ED/CA Case Number: CRS11-450 TLN

7784 Hyde Park Circle, Antelope
7737 Megan Ann Way, Antelope
Deed History

Ms. Santos,

I have reviewed the expert report prepared by Professor Shaun P. Martin with respect to his analysis of properties, included in related cases to the above referenced case. I researched the deed history of the above noted properties and specifically which entity owned the deed at the time of foreclosure filing. My results are as follows. All supporting documents are also attached for your review.

As a follow-up, I conducted a telephonic interview of Professor Martin on October 15, 2015. He confirmed his analysis of the other mortgage fraud cases in our district. I explained to Professor Martin the process that I used to verify the securitization of each of Mr. Bondaruk's primary loans on each property. He concurred that verification of securitization is found in the foreclosure filings, which is what I relied upon. Furthermore, I researched the existence of the trusts in both Moody's and SEC filings of residential mortgage trusts in 2007. He confirmed that he would be shocked if any of the loans in 2007 were not securitized. There was one exception: the HELOC and the Second loan. The lending institution did not file a foreclosure

on either of these loans so there is no way without a MERS subpoena to determine if these loans were securitized. However, keeping in mind that the bank did not file a loss via a foreclosure filing, on either the second deed or the HELOC, implies no reported loss. Professor Martin said that is typical for a lending institution to not file a foreclose when they are in a position behind the first.

7737 Megan Ann Way, Antelope, CA 95843

10/26/06 Bondaruk purchased 7737 Megan Ann Way for $515,000 and two deeds of trust were filed ($412,000 and $103,000)

10/16/2007 A Foreclosure was filed ($412,000- default amount) and the owner of the deed at this time is HSBC Bank USA NA 2007-HE3

Research of this securitization is confirmed via a publication dated 9/25/2013 which lists all 745 Trusts registered with the SAC in 2007. ACE Securities Corp. Home Equity Trust 2007-HE3: Trustee – HSBC Bank. $587,724,000

7784 Hyde Park Circle, Antelope, CA 95843

10/6/2006 Bondaruk purchased for $440,000 with one deed of trust filed for $352,000

2/2/2007 A second deed of trust is filed for $91,000

11/12/2008 A foreclosure is filed listing the current owner of the deed Washington Mutual Mtg. 2007-OA3

Research of this securitization is confirmed via publication by Moody's on 4/11/2007, which notes a AAA rating to WaMu's $1.1 Billion of Mortgage-Backed Securities for Pass Through Certificates Series 2007-OA3 Trust.

If there is anything further that you require with respect to this investigation, please advise.

Sincerely,
/s/
Lisa B. Gara
P.I. #23444

attachments

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IN THE UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, Plaintiff, v. PYOTR BONDARUK, Defendant.	CASE NO. 2:11-CR-0450 TLN UNITED STATES' RESPONSES AND OBJECTIONS TO DEFENDANT PYOTR BONDARUK'S FORMAL OBJECTIONS TO PROBATION REPORT Date: October 22, 2015 Time: 9:30 a.m. Court: Honorable Troy L. Nunley

The United States files this in opposition to defendant Pyotr Bondaruk's formal objections to his Presentence Investigation Report ("PSR"). For ease of reference, the United States will respond to each objection in turn.

I. THE PROBATION OFFICER APPROPRIATELY CHARACTERIZED THE DEFENDANT'S CONDUCT.

With respect to **paragraph 7, page 6**, the PSR states: "In or about September 2006, Palamarchuk recruited Bondaruk to act as a straw buyer and she assisted him in submitting loan applications along with fraudulent supporting documents to purchase . . ." That is a correct statement. Palamarchuk was the loan officer. She admitted and the evidence showed she had engaged in mortgage fraud previously with Peter and Vera Kuzmenko. She then brought the fraud home. Palamarchuk stated: "I had two or

three houses I did myself. . . . And then I got a few houses for myself. But I didn't register any houses in my name, Natasha. . . . I didn't get any in my name….I got two for Bondaruk, but I didn't get any loans for myself. I helped people get them, and I earned money from the loans." Ex. 23G. pp. 1, 4. She also stated, "Well, I got two houses for Bondaruk. . . . I found the houses –" Ex. 23F p. 6. Even the mortgage company used for the Hyde Park Circle purchase was one that she had previously used to do a straw-buyer purchase with Peter Kuzmenko. Is it the defendant's contention that this scheme was his idea? The PSR does not need to be changed.

With respect to **page 6, paragraph 8**, the PSR correctly states, "Palamarchuk provided Bondaruk with $25,000, which he deposited in his credit union checking account so it would appear that he had sufficient assets in order for the loans to fund." The evidence at trial showed that on September 29, 2006, the defendant gave Bondaruk a check for $25,000, which he deposited that same day. Exs. 21B, 21C. That same day, the defendants had a verification of deposit done that showed that Bondaruk had $25,049.96 in his bank account. Ex. 1A14. Before that check, he had $49.96. The verification of deposit was submitted with Bondaruk's loan application to purchase Hyde Park Circle. Ex. 1A14. Olga Palamarchuk even admitted, "He didn't have a credit history, Natasha. Zero! And I transferred the equity to him so he could, uh, get a loan, you know? We needed to show that he had money." Ex. 23G p. 5. The weight of the evidence showed that Olga Palamarchuk gave Bondaruk that money so it would appear he had sufficient assets in order for the loans to fund. The PSR does not need to be changed.

In that **same paragraph**, the PSR correctly states, "Subsequent to the loan closing, a wire in the amount of $32,378 was sent from Alliance Title Company to Kuzmenko's checking account for landscape/pool work that were purportedly performed by Pete's Pool Services, when in fact there was no pool at the property and no work had actually been completed on the property." The evidence showed at trial that Hyde Park Circle had no pool. The evidence also showed that Peter Kuzmenko didn't do landscaping work. The seller also testified she didn't owe Pete's Pools or Peter Kuzmenko any money and no work had been done to the house. When that money was sent, no work had been completed on the property. The PSR does not need to be changed.

II. THE PROBATION OFFICER CORRECTLY CALCULTED THE LOSS.

With respect to page **7, paragraph 15**, the probation officer correctly calculated that the loss was $492,500 with respect to the defendant's conduct. In determining loss, the sentencing court need only "make a reasonable estimate of the loss based on the available information," and is not required to "make its loss calculation with absolute precision." United States v. Zolp, 479 F.3d 715, 719 (9th Cir. 2007); USSG § 2B1.1, cmt. n.3(C). The government bears the burden of proving a loss valuation by a preponderance of the evidence. See United States v. Hymas, 780 F.3d 1285, 1290 (9th Cir. 2015); United States v. Treadwell, 593 F.3d 990, 1001 (9th Cir. 2010); United States v. Armstead, 552 F.3d 769, 776-77 (9th Cir. 2008).

The Probation Officer correctly calculated the loss in this case as $492,500. The Ninth Circuit held last year that calculating loss in mortgage fraud cases is a two-step process:

> [T]he first step is to calculate the greater of actual or intended loss, where actual loss is the reasonably foreseeable pecuniary harm from the fraud. *This amount will almost always be the entire value of the principal of the loan, as it is reasonably foreseeable to an unqualified borrower that the entire amount of a fraudulently obtained loan may be lost.* The second step is to apply the "credits against loss" provision and deduct from the initial measure of loss any amount recovered or recoverable by the creditor from the sale of the collateral. This second calculation is made without any consideration of reasonable foreseeability.

United States v. Morris, 744 F.3d 1373, 1375 (9th Cir. 2014) (emphasis added). The Ninth Circuit articulated that such an approach is "'necessary to ensure that defendants who fraudulently induce financial institutions to assume the risk of lending to an unqualified borrower are responsible for the natural consequences of their fraudulent conduct.'" Id. at 1375.

In United States v. Hymas, 780 F.3d 1285, 1293 (9th Cir. 2015), the Ninth Circuit affirmed a district court's calculation of loss which took the principal amount of the loan and subtracted any credits from the subsequent sale of the property and considered losses by lenders who had purchased the loans. See also United States v. Bernadel, 490 Fed. Appx, 22, 28 (9th Cir. 2012) (unpublished) (holding loss is calculated as "the loan amount less the amount the lender or successor lender recovered through sale of the property after foreclosure"). In addition, the Ninth Circuit previously noted in in the Yeung case that it was appropriate to calculate loss for Sentencing Guidelines purposes as the outstanding principal

balance of the defaulted loans less any money recovered from a sale of the real property in a case where the loans appeared to have been sold and securitized as the Long Beach Trust and J.P. Morgan Trust currently held the loans. United States v. Yeung, 672 F.3d 594, 599, 604 (9th Cir. 2012), *abrogated on other grounds* by Robers v. United States, 134 S.Ct. 1854 (2014) (Supreme Court holding restitution obligation reduced by the money received by financial institution when it sells the house rather than the value of the house when the lender takes title).

Numerous other courts have calculated loss for Sentencing Guidelines purposes by taking the value of the principal of the loan and subtracting the amount recovered by selling the collateral (or if not sold subtracting its fair market value). See, e.g., United States v. Crowe, 735 F.3d 1229, 1236–42 (10th Cir. 2013) (stating "the number of lenders involved and the amount of profit made by the original lender or any intermediate lenders is mathematically irrelevant to the calculation of loss under § 2B1.1"); United States v. Love, 680 F.3d 994, 999 (7th Cir. 2012) (holding in case involving approximately 150 fraudulent mortgage loans that "the loss calculation method used by the district court— subtracting the sales price for each property from the loan amount – is a reasonable method for calculating loss"); United States v. Green, 648 F.3d 569, 584 (7th Cir. 2011) (holding calculation of loss by subtracting sales price of collateral from amount of original loan appropriate); United States v. Mallory, 709 F.Supp.2d 455, 457–60 (E.D.Va.2010), *aff'd.*, 461 Fed.Appx. 352, 361 (4th Cir.2012) (unpublished).

"[W]here losses to both original and successor lenders is foreseeable,"[1] a district court can calculate loss simply by subtracting the foreclosure sales price from the amount of the outstanding balance on the loan. Crowe, 735 F.3d 1229, 1242 (10th Cir. 2013) (citation omitted). "In other words, 'the number of lenders involved and the amount of profit made by the original lender or any intermediate lenders is mathematically irrelevant to the calculation of' loss under § 2B1.1." Id. (internal quotation marks omitted). There is no rational basis for using a different measure of loss here, where the original lender may have sold loans in a secondary market.[2] As the First Circuit noted in United States

[1] Here it was foreseeable that the lenders might resell the loans as the deeds of trust had language in them to that effect. This language is standard in loan paperwork, including the defendant's.

[2] It is still unclear whether all the loans were resold. For example, the United States does not know whether Bank of America sold the HELOC loan.

v. Appolon, 695 F.3d 44, 67 (1st Cir. 2012), "[e]ven if the original lender sells the mortgage to a successor lender, though, and there are subsequent transactions of the same kind, actual loss is always the difference between the original loan amount and the final foreclosure price (less any principal repayments)." Thus, under the Court of Appeals' decisions in Morris, Hymas, Bernadel and Yeung, the law from other circuits, and USSG § 2B1.1, the relevant inquiry for purposes of loss calculation is total loss resulting from the commission of fraud, not the loss to any particular lender in the chain.

Here the Probation Officer appropriately calculated the loss by taking the principal of the amounts loaned and subtracting the amounts received from a third party after the property was foreclosed upon. All defense counsel have been provided with the loss calculations and supporting material that supports this number. This resulted in the $492,500 loss. This calculation is consistent with the law and how loss amounts have been calculated in mortgage fraud cases in this district for years.

Bondaruk argues that he made a limited number of mortgage payments and that Bondaruk's loss should be reduced by this amount. However, the defendant does not provide any alternative loss calculation based on these payments or any support for the number of payments made or the amounts. He also does not provide any support for whether the payments went to principal or interest. The United States notes that for the Hyde Park Circle property the amount owed at the time of foreclosure appears to have been $529,888.88 whereas the principal amount on the loan was originally only $465,000. (Compare Ex. 4C3 with 3A1) For the Megan Ann Way property, the amount owed to the lender at the time of foreclosure on the first loan appears to have been $440,602.36 whereas the principal amount on the loan was originally $412,000. (Compare Ex. 2C3 with 2A1). It seems the United States' loss figure are conservative at it used only the principal on the face of the loan to begin the loss calculation. In any event, if you look at the amount the defendant was in default and do some basic math making assumptions of how many mortgage payments were made based on his monthly mortgage payments and then assume all the payments went to the payment of principal, the defendant's loss amount would still not be below $400,000. Using that calculation, at most, the defendant made approximately $24,000 in loan payments. A +14 enhancement is warranted based on the United States' and probation officer's

reasonable estimate of loss.

III. **THE DEFENDANT IS NOT ENTITLED TO A MINIMAL ROLE ADJUSTMENT.**

The Probation Officer correctly did not give a reduction in the total offense level for minimal or minor role. A jury convicted the defendant of conspiracy to commit mail fraud, making false statements to a financial institution, and money laundering. For each and every one of the loans at issue in this case the defendant was the straw-buyer. He signed fraudulent loan application after fraudulent loan application. He signed fraudulent deed of trust after fraudulent deed of trust. He signed fake rental verifications that falsely represented that he was paying rent to Olga Palamarchuk. He and Palamarchuk deposited money into his bank account so that Palamarchuk could submit a verification of deposit. He lied to one lender by verbally verifying his employment. He went with Olga Palamarchuk to look at Megan Ann Way. He was the one renting out the homes after he said he would live in them. He was the one who walked into Bank of America and took out the HELOC. He personally lied to Bank of America about his income, employment, residency and what he was going to do with the HELOC proceeds. He laundered those fraudulent proceeds. He lied when confronted by the FBI. Bondaruk had significant knowledge of the scope of the scheme. All of these transactions could not have occurred without Bondaruk's active participation. He is not entitled to a minimal role adjustment.

IV. **THE DEFENDANT SHOULD NOT RECEIVE A REDUCTION FOR ACCEPTANCE OF RESPONSIBILITY.**

With respect to **page 8, paragraph 30**, the United States supports the recommendation of the Probation Department that the defendant should not receive a reduction for acceptance of responsibility under U.S.S.G. § 3E1.1. Application Note 2 of the Commentary to U.S.S.G. § 3E1.1 indicates the 2-level decrease is not intended to apply to a defendant who puts the government to its burden of proof at trial by denying the essential factual elements of guilt, is convicted, and only then admits guilt and expresses remorse. See U.S.S.G. § 3E1.1 cmt. n. 2 ("a determination that a defendant has accepted responsibility will be based primarily upon pre-trial statements and conduct"); United States v. Weiland, 420 F.3d 1062, 1080 (9th Cir. 2005) ("When a defendant chooses to put the government to its burden of proof at trial, a downward adjustment for acceptance of responsibility should be 'rare.'"). The

defendant has never admitted his guilt or expressed remorse. He makes excuses blaming the banks and Olga Palamarchuk. He lied to the FBI prior to trial. He blamed other people during the trial. He hasn't expressed any guilt or remorse post-trial. The defendant is not the rare instance for whom this adjustment would be warranted.

V. THE UNITED STATES DEFERS TO THE PROBATION OFFICER WITH RESPECT TO BONDARUK'S DESCRIPTION TO HER OF HIS RAPE CONVICTION.

With respect to **page 10, paragraph 36**, as the United States was not present at the interview, the United States defers to and supports the Probation Officer's summary of how Bondaruk described his sexual assault case at a time when the Probation Officer did not have the police report. In his objections, the defendant admits that he did "indicate it was a consensual sexual encounter." The United States notes that Bondaruk suggesting that removing the clothing of and digitally penetrating a woman who was asleep at a neighboring campsite next to her boyfriend was consensual is but another example of how the public needs to be protected from this defendant and his inability to accept responsibility for his crimes.

VI. THE DEFENDANT'S CRIMINAL HISTORY IS NOT OVERSTATED.

The defendant admits the calculations concerning the defendant's criminal history are correct. The defendant has convictions for sex penetration with a foreign object-victim unaware, grand theft, burglary, trespass, reckless driving, and negligent driving and resisting arrest. His category IV criminal history is not overstated.

VII. A 71-MONTH SENTENCE DOES NOT CREATE UNWARRANTED SENTENCING DISPARITIES.

18 U.S.C. § 3553(a)(6) requires that the Court, "consider," among many factors, "the need to avoid unwarranted sentence disparities among defendants with *similar records* who have been *found guilty* of *similar conduct*." (emphasis added) On its face, this factor only contemplates the avoidance of sentencing disparities for individuals who have similar records and who have been convicted of and sentenced for similar crimes. The Ninth Circuit has held that defendants who cooperate are not similarly situated. United States v. Carter, 560 F.3d 1107, 1121 (9th Cir. 2009) ("[S]o long as there is no indication the defendant has been retaliated against for exercising a constitutional right, the government

may encourage plea bargains by affording leniency to those who enter pleas. Failure to afford leniency to those who have not demonstrated those attributes on which leniency is based is unequivocally . . . constitutionally proper."); United States v. Monroe, 943 F.2d 1007, 1017 (9th Cir. 1991) (defendant who went to trial was not similarly situated with defendant who had participated in same conduct but had a plea agreement to lesser charges).

Here the defendant points the Court's attention to two straw-buyers who received sentences to supervised release with home confinement as a condition. This comparison is inappropriate. Neither Anna Kuzmenko (Peter Kuzmenko's wife) nor Svetlana Markevich had criminal histories at all. In addition, they were not convicted of similar conduct. Each only served as a straw-buyer on one property with one loan transaction. Neither was convicted of money laundering. Both argued in trial that their English was not good and that they had not received any money for their straw-buyer purchases. They both argued that they were not involved in making any fraudulent documents. Anna Kuzmenko argued that she had small children and that her husband was not available to take care of the children due to his incarceration. Markevich too argued that she had children. The Court remarked in both sentencings that it was confident neither would commit crimes again. In contrast, Bondaruk served as a straw-buyer on four separate loan transactions. He himself was involved in making fraudulent documents. He himself made misrepresentations to Bank of America. He personally profited from the scheme receiving well over $100,000. Anna Kuzmenko and Svetlana Markevich do not have similar records and were not convicted of similar conduct.

VIII. A SENTENCE TO HOME CONFINEMENT IS COMPLETELY INAPPROPRIATE FOR THIS DEFENDANT.

The defendant seems to argue for a sentence of home confinement. This recommendation goes to show how the defendant has not accepted responsibility in this case. Home confinement can only be imposed as a condition of supervised release as a substitute to imprisonment so such a sentence is only a sentence to supervised release with a special condition. U.S.S.G. § 5F1.2. Such a sentence would be inappropriate given the facts of this case with this defendant. As is more fully articulated in the United States' Sentencing Memorandum, such a punishment is not adequate and just punishment. It is just basically a curfew. Among other reasons, a person on home confinement as a condition of supervised

release can leave for employment, school, doctors' appointments, religious services, to see her lawyer, and to come to court. It is basically a "be home for supper" sentence. Considering the defendant said he helps his father out at church, it might not even be that. Given the defendant's criminal history, the nature and circumstances of the offense, the need to protect the public from further crimes of the defendant, the need for the sentence imposed to reflect the seriousness of the offense and promote respect for the law and provide just punishment, and the need to afford adequate deterrence to criminal conduct, the United States supports Probation's recommendation of a 71-month sentence.

Dated: October 15, 2015

Respectfully submitted,

BENJAMIN B. WAGNER
United States Attorney

/s/ Lee S. Bickley
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HEIKO P. COPPOLA
Assistant United States Attorneys