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9 IN THE UNITED STATES DISTRICT COURT
10 EASTERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,
12 Plaintiff,
13 v.
14 DANIIL MARKEVICH,
15 Defendant.

CASE NO. 2:11-CR-490 JAM
UNITED STATES' SENTENCING
MEMORANDUM AND RESPONSES TO
DEFENDANT'S FORMAL OBJECTIONS
DATE: November 10, 2015
TIME: 9:15 a.m.
COURT: Hon. John A. Mendez

16
17 The United States hereby submits the following sentencing memorandum for defendant Daniil
18 Markevich. Defendant's total offense level is 21, with an advisory sentencing range of 37 to 46 months.
19 The government recommends that he be sentenced to a term of 37-months imprisonment, a \$100 special
20 assessment, restitution in an amount to be determined at a restitution hearing if necessary, and no
21 criminal fine.

22 **I. GOVERNMENT'S FORMAL OBJECTIONS**

23 **A. The Minor Role Adjustment Should Not Apply**

24 The probation office recommended a minor role adjustment under USSG § 3B1.2(b). PSR ¶ 28.
25 The probation office applied a minor role adjustment to the guidelines calculation because the
26 defendant's role "appears to be limited to that of a straw buyer" in the scheme. PSR 28.

27 The government disagrees that Daniil Markevich's role was limited to that of a straw buyer. In
28 addition to Daniil Markevich's role as the straw purchaser of 599 Watercolor Lane, he also assisted his

1 wife's straw purchase later that same month. He attended Svetlana Markevich's closing and personally
2 verified false employment information in her loan application over the phone. GX 601; GX 6A11; GX
3 502. Daniil Markevich's knowledge and participation in his wife's fraud make him more culpable than
4 someone acting merely as a straw purchaser. Therefore, he should not receive a minor role adjustment
5 under USSG § 3B1.2(b).

6 Regardless, merely being a straw buyer does not qualify the defendant for a minor role
7 adjustment. This Court recently declined to apply the minor role reduction to straw buyer Anna
8 Kuzmenko, in *United States v. Anna Kuzmenko*, 2:12-CR-0062 JAM.¹ Like Anna Kuzmenko, Daniil
9 Markevich was part of a larger wire-fraud scheme. He was not charged with, and is not being held
10 accountable for, the entire \$5 million scheme. However, Daniil Markevich is only being held accountable
11 for the properties he and his wife purchased. PSR ¶ 19. Thus, no adjustment is warranted.

12 **II. GOVERNMENT'S RESPONSE TO DEFENDANT'S OBJECTIONS**

13 **A. The Fraud Loss Amount Is Correct**

14 The fraud loss for the properties Daniil Markevich and his wife purchased totals \$573,500. PSR
15 ¶ 19. The defendant argues that he should only be held accountable for the Watercolor Lane property—
16 a total loss of only \$349,500. Def. Sentencing Mem. (ECF 401) at 2:1-6. Defendant argues that his loss
17 amount should not include other properties because other defendants in this case are not having their
18 loss amounts increased by fraud loss amount of any other co-defendant. *Id.* That is not correct. Other
19 defendants' loss amounts are calculated based on the loss he or she actually caused and it should be the
20 same for Daniil Markevich. For example, the defendant's wife Svetlana Markevich's loss amount
21 included both the amount of the Silvano Street and Watercolor Lane properties. *See* Svetlana
22 Markevich's PSR ¶ 26 ("The defendant and her husband caused a loss of approximately \$573,500.
23 Accordingly, there is a 14-level increase. USSG §2B1.1(b)(1)(H)"). Likewise, defendant Alex
24 Markevich's fraud loss in his PSR also includes loss amount on the Watercolor Lane property in addition to
25 the Pinehurst property, because Alex Markevich wrote the payoff checks to the defendant for the Watercolor
26 Lane property. ECF 402.

27 ¹ This Court did recently find that a minor role adjustment applied to codefendant Svetlana
28 Markevich. However, as the government noted, the evidence showed Svetlana Markevich to be the least
culpable of the six convicted defendants in this case.

1 The defendant's fraud loss amount appropriately takes into consideration the fraud loss amount
2 for both the Silvano Street and Watercolor Lane properties. The defendant was present during his wife's
3 signing of the fraudulent loan documents for the Silvano Street property, signed documents in the loan
4 application for that property, and verified her false employment information. GX 601; GX 6A11; GX
5 502. Simply put, the defendant's wife would not have been able to purchase the property without his
6 involvement. Thus, the fraud loss for the Silvano Street property is fairly attributable to the defendant
7 for the purpose of calculating his fraud loss amount.

8 **B. The 2015 Amended USSG Has No Impact On Total Offense Level**

9 The defendant argued that he should be given a variance to a level 17 based on the 2015
10 Amendments to the United States Sentencing Guidelines. Def. Sentencing Mem. (ECF 401) at 2:7-10.
11 Even though the 2015 Amendments will go into effect on November 1, 2015, the defendant's guidelines
12 range is not affected by those amendments because the defendant's loss is over \$550,000. Thus, an
13 increase of 14-levels is still applicable. In any event, the Guidelines are ultimately advisory to this
14 Court's sentencing determination, and the sentence itself will be based on the Court's consideration of
15 the § 3553(a) factors.

16 **III. THE GOVERNMENT'S SENTENCING RECOMMENDATION**

17 The base offense level for wire fraud is 7. *See* PSR ¶ 25; USSG § 2B1.1(a)(1). The PSR
18 correctly finds that the total loss for which Daniil Markevich is responsible is \$573,500. Accordingly,
19 the offense level is increased 14 levels to level 21. The government does not agree with the probation
20 office that a two-level minor role adjustment under USSG § 3B1.2 should apply for the reasons
21 explained above. Therefore, the total offense level is 21. With a criminal history category of I, the
22 advisory sentencing range is 37 to 46 months. The government recommends a custodial sentence of 37-
23 months.

24 **IV. SENTENCING FACTORS UNDER 18 U.S.C. § 3553**

25 **A. Offense Conduct**

26 Daniil Markevich was convicted of Count 10 of the Indictment, charging him with wire fraud in
27 violation of 1 U.S.C. § 1343. PSR ¶ 1. The defendant joined the scheme with his August 2007 straw
28 purchase of 599 Watercolor Lane. At the time, the defendant and his wife were making less than \$9,000

1 per year and already owned one house. In the span of two weeks they purchased two more houses for a
2 total of over \$900,000, and took out approximately \$900,000 in loans based on loan applications
3 packages rife with fraudulent information about their income, assets, employment, and intent to occupy
4 the houses as a primary residence. GX 4A1; GX 4D1; GX 6A1. Defendant completed his purchase of
5 the Watercolor property with the help of \$32,350 in down-payment funds from Edward Shevtsov's shell
6 company, Voyager Trucking. PSR ¶ 17. About two weeks later, the defendant went to the signing for
7 his wife's purchase, a property on 925 Silvano Street. The defendant predictably defaulted on the
8 Watercolor Lane property just four months later, and it was sold at foreclosure at a loss of \$349,500.
9 GX 4E1; GX 4E3; Kuzmenko et al-073562 (Chart of Loss Amounts); PSR ¶ 17. Defendant's wife also
10 quickly defaulted, and her Silvano Street house was sold at a loss to the lender of \$224,000. GX 6E1;
11 GX 6E3; Kuzmenko et al-073562 (Chart of Loss Amounts); PSR ¶ 18.

12 Daniil Markevich was compensated for his straw purchase. PSR ¶ 18. Two months immediately
13 following the close of escrow on the Watercolor Lane property, defendant Alex Markevich wrote seven
14 checks totaling \$22,519 to Daniil Markevich, a benefit that is nearly identical to the \$22,500 kickback
15 that cooperating witness Andrey Andreyev received for his participation as a straw buyer in the scheme.
16 GX 4C3. Daniil Markevich's compensation should be taken into consideration for his sentence.

17 **B. Other Factors – Immigration Status**

18 The defendant argues that he should not receive a custodial sentence because he is subject to
19 deportation and incarceration prior to deportation would be "unjust." Def. Sentencing Mem. (ECF 401)
20 at 4:1-9. The immigration consequences for the defendant's actions are not before this Court. Whatever
21 those hypothetical consequences, they should have no bearing on whether the defendant receives a
22 custodial sentence for his wire-fraud conviction. Further, the defendant was aware of the potential
23 immigration consequences of his actions at the time of the offense and chose to commit wire fraud
24 anyway. The defendant's immigration status does not give him a free pass to commit wire fraud, nor
25 should there be a sentencing disparity between defendants based on their immigration status. This is not
26 a reason for a lower sentence under § 3553.

27 **C. Avoidance of Sentencing Disparities**

28 Although not an argument raised by the defendant, the government is aware that the Court

1 recently sentenced straw-buyer Anna Kuzmenko to six months home confinement and may have
2 concerns about disparity. *United States v. Anna Kuzmenko*, 2:12-CR-0062 JAM. However, straw
3 buyers in this district have received sentences of imprisonment. For example, Judge Burrell sentenced
4 Roman Malakhov, who pled guilty, to 33-months in prison, a Guidelines sentence. *United States v.*
5 *Chartaev, et al.*, 2:11-CR-514 TLN. In a plea context, Judge England sentenced Anatoliy Bknazarov to
6 17-months in prison and his wife Valentina Bknazarov to 6 months in prison and 6 months of home
7 confinement. *United States v. Bknazarov, et al.*, 2:12-CR-51 MCE. Judge Shubb sentenced Erik
8 Hayrapetyan, who also pled guilty, to 14-months imprisonment. *United States v. Hayrapetyan*, 2:12-
9 CR-162 WBS. Judge Ishii sentenced Darling Montalvo to 24-months in prison after a trial. *United*
10 *States v. Hernandez, et al.*, 1:10-cr-249 AWI.

11 Svetlana Markevich received a sentence of eight months home confinement. ECF 385.
12 However, as the government acknowledged in its sentencing recommendation memo, Svetlana
13 Markevich was significantly less culpable than her codefendants. And the Court applied a minor role
14 adjustment to her total offense level pursuant to USSG § 3B1.2. Thus, a custodial sentence for the
15 defendant Daniil Markevich will not create a sentencing disparity in this case because he is substantially
16 more culpable than defendant Svetlana Markevich.

17 V. CONCLUSION

18 For the foregoing reasons, defendant Daniil Markevich should be sentenced to a custodial
19 sentence of 37 months, a \$100 special assessment, restitution in an amount to be determined at a
20 restitution hearing if necessary, and no criminal fine.

21
22 Dated: November 2, 2015

Respectfully submitted,

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