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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

14 UNITED STATES OF AMERICA,)	NO. CR 18-00196 MMC
15 Plaintiff,)	UNITED STATES' SENTENCING
16 v.)	MEMORANDUM
17 RENATO LIBRIC,)	Date: December 19, 2018
18 Defendant.)	Time: 2:15 p.m.
)	Judge: Honorable Maxine M. Chesney

1 **I. INTRODUCTION**

2 On September 5, 2018, defendant Renato Libric pleaded guilty to a single count of Wire Fraud in
3 violation of 18 U.S.C. § 1343. The Plea Agreement entered into between the parties agreed upon an
4 Adjusted Offense Level of 20 under the United States Sentencing Guidelines. The United States
5 Probation Office has determined that the defendant's applicable Sentencing Guideline Range is 33-41
6 months imprisonment, and the Probation Officer has recommended a sentence of 33 months.

7 As set forth below, the United States agrees with the Guideline Range calculated by the
8 Probation Office, but believes that a sentence in the middle of the applicable Guideline Range is
9 appropriate here. Accordingly, the government respectfully recommends that the Court impose a
10 sentence of 37 months, followed by a three-year term of Supervised Release. The government further
11 requests that the Court order the defendant to pay restitution in the amount of \$1,520,074.

12 **A. Indictment**

13 On May 10, 2018, a one-count indictment was filed in the Northern District of California,
14 charging Renato Libric with a violation of 18 U.S.C. § 1343 – Wire Fraud. (PSR ¶ 1.) The defendant
15 was arrested that same day, and was remanded into custody by the Honorable Joseph C. Spero following
16 a detention hearing on May 15, 2018. (*See* Docket No. 5.)

17 **B. Plea Agreement**

18 On September 5, 2018, the defendant pleaded guilty to the sole count of the indictment. (*See*
19 Docket No. 17.) As set forth in detail below, Libric admitted to defrauding investors of \$1,500,000
20 through a series of false representations supported by fraudulent documents. (*Id.* at ¶ 2.)

21 In the Plea Agreement, the parties agreed that the appropriate Guidelines Offense Level was 20,
22 and Libric agreed to pay the victim investors restitution in an amount no less than \$1,500,000. (*Id.* at
23 ¶¶ 7, 9.)

24 The parties agreed that the defendant could seek a downward sentencing variance pursuant to 18
25 U.S.C. § 3553(a), that that the government reserved the right to oppose any such request. (*Id.* at 7.)

26 **C. Offense Conduct**

27 Libric's offense grew out of his efforts to fraudulent obtain over a million dollars from investors
28 for his company -- Bouxtie, Inc. Libric was the founder and CEO of Bouxtie, a startup company that

1 sought to facilitate the sending and use of digital gift cards. (PSR ¶ 6.) Libric incorporated Bouxtie in
2 2014, but by 2017, the company was in dire financial straits. (PSR ¶ 6, 9.)

3 Beginning in August 2017, and continuing until at least March of 2018, Libric engaged in a
4 complex scheme to defraud Moose Run LLC and its principal investor of \$1,500,000. (PSR ¶¶ 7-15.)
5 Libric first met with Moose Run LLC and its investors in August 2017. From the beginning of their
6 business relationship, Libric made false and misleading statements to the potential investors in order to
7 obtain a significant investment.

8 As an initial matter, Libric falsely informed the investors that he had the authority to sell a
9 significant number of Bouxtie shares to them, when in fact the Board of Directors had not authorized
10 such a sale. (PSR ¶¶ 8-10.) In support of this false claim, Libric eventually created a fraudulent
11 “Corporate Resolution of Bouxtie, Inc.” which purported to authorize Libric to enter into the \$1,500,000
12 transaction with Moose Run LLC. (Plea Agreement, ¶ 2.) In fact, the Board of Directors had not
13 authorized the transaction, and Libric forged the signatures of the directors on this document. (*Id.*)

14 Libric also fraudulently created or altered documents designed to make Bouxtie look like a much
15 stronger investment than it in fact was. Libric created a false Term Sheet that purported to indicate that
16 a large publicly-traded corporation was interested in purchasing Bouxtie for \$150,000,000, and then
17 forged the signature of a corporate executive on that document. (PSR ¶ 8; Plea Agreement ¶ 2.) Libric
18 then caused this document to be transmitted to Moose Run. (*Id.*) When Moose Run sought bank
19 records to verify Bouxtie’s financial strength, Libric provided them with false statements showing a
20 balance of over \$2,000,000. (PSR ¶ 9.) The actual balance of Bouxtie’s account at that time was
21 \$7,642. (*Id.*)

22 Relying on these representations and documents, Moose Run invested \$1,500,000 in Bouxtie on
23 October 13, 2017. (PSR ¶ 10.) On December 12, 2017, Libric sent Moose Run a fraudulent stock
24 certificate indicating that Moose Run had purchased 947,059 shares of Bouxtie stock. (PSR ¶ 12.)
25 Libric further led Moose Run to believe that its principal investor had been made a director of Bouxtie.
26 (*Id.*) In fact, the Board of Directors had not authorized the issuance of the stock, and had not voted to
27 place any Moose Run representative on the board. (*Id.*)

28 In February 2018, Moose Run determined that it had been the victim of a significant fraud, and

1 that Libric's representations and documents were false. By that time, over \$1,300,000 of Moose Run's
 2 \$1,500,000 investment was gone. (PSR ¶ 13.) A review of the company's bank statements showed that
 3 Libric had transferred over \$130,000 of the invested funds to his own personal account in the weeks
 4 immediately following the investment. (PSR ¶ 11.) Prior to his arrest, virtually all of those funds were
 5 transferred overseas to London, England and Zagreb, Croatia.¹

6 Following the discovery of the fraud and the defendant's arrest, Bouxtie ceased to function in
 7 any meaningful capacity.

8 **II. SENTENCING GUIDELINES CALCULATIONS**

9 **A. The Sentencing Guidelines Post-Booker**

10 Under the Sentencing Reform Act as modified by *United States v. Booker*, 543 U.S. 220 (2005),
 11 this Court must analyze and consider the guideline factors before imposing sentences in federal criminal
 12 cases. *Booker*, 543 U.S. at 259 (noting that the Sentencing Reform Act nonetheless requires judges to
 13 take account of the Guidelines together with other sentencing goals; *see also United States v. Cantrell*,
 14 433 F.3d 1296, 1279 (9th Cir. 2006) (noting that the [c]ontinuing duty of district courts to consult the
 15 Guidelines is statutory). This Court, having calculated the guideline range, should then look to the
 16 factors set forth by Congress in 18 U.S.C. § 3553(a) to determine a reasonable sentence for Defendant.

17 **B. Libric's Guidelines Calculations**

18 Libric has a Base Offense Level of 7 pursuant to U.S.S.G. § 2B1.1(a)(1). The defendant is
 19 responsible for a loss of \$1,500,000. Pursuant to U.S.S.G. § 2B1.1(b)(1)(H), if the loss is more than
 20 \$550,000, but not more than \$1,500,000, the offense level increases by 14 levels.² Because Libric
 21 abused his position of trust as CEO of Bouxtie, Inc. to facilitate his fraud, his offense level is increased
 22 by 2. *See* U.S.S.G. § 3B1.3. As Libric has pled guilty, he is entitled to a 3-level reduction for
 23 acceptance of responsibility. *See* U.S.S.G. § 3E1.1. Consequently, Libric has a Total Offense Level of
 24 20. Libric has a Criminal History Category I. A Total Offense Level of 20 and a Criminal History
 25

26 ¹ If needed, the government can provide the Court with copies of the bank statements showing
 27 these transfers. However, the government does not believe that the defendant will contest that these
 transfers were made.

28 ² It is worth noting that, had Moose Run's investment been a single dollar more, Libric's offense
 level would have been increased by 2 levels.

1 Category I results in an advisory guideline imprisonment range of 33-41 months. Under the sentencing
2 guidelines and Section 3553(a), a sentence of 37 months is appropriate in this particular case.

3 4 **III. STATUTORY SENTENCING FACTORS**

5 Congress has provided a statutory sentencing scheme in 18 U.S.C. § 3553, which sets forth
6 numerous factors for the Court to consider in its sentencing decision. Those factors include (1) the
7 nature and circumstances of the offense and the history and characteristics of the defendant; (2) the need
8 for the sentence imposed (A) to reflect the seriousness of the offense, to promote respect for the law, and
9 to provide just punishment for the offense; (B) to afford adequate deterrence to criminal conduct; (C) to
10 protect the public from further crimes of the defendant; and (D) to provide the defendant with needed
11 educational or vocations training, medical care, or other correctional treatment in the most effective
12 manner; (3) the kinds of sentences available; (4) the kinds of sentence and the sentencing range
13 established in the Guidelines; (5) any pertinent policy statement by the Sentencing Commission; (6) the
14 need to avoid unwarranted disparities among defendants with similar records who have been found
15 guilty of similar conduct; and (7) the need to provide restitution to any victims. *See* 18 U.S.C. §
16 3553(a)(1)-(7). Application of these factors to the present case supports a substantial prison sentence of
17 37 months.

18 **A. The Nature and Circumstances of the Offense**

19 The nature and circumstances of the offense warrant a substantial prison sentence. This was not
20 a crime of passion, or a spontaneous bad decision. It was instead an elaborate fraud carried out over a
21 period of months. Libric not only lied repeatedly to his potential investors, he also forged documents to
22 support his lies. In this particular factual context – that of a business investment – the forged documents
23 make the fraud particularly egregious. Here, the victim investors tried to do the right thing by
24 conducting their due diligence prior to investing in Bouxtie. However, when the investors asked Libric
25 for documents to support his claims, he created numerous forgeries – including a term sheet, a board
26 authorization, and a bank statement – to defraud his victims of their investment capital. Businesses,
27 particularly the start-up businesses that are so crucial to the economy of this District, rely on investors
28 for capital. Those investors in turn rely on the businesses to provide them with accurate and honest

1 information with which to make investment decisions. When a business executive defrauds his
2 investors, he not only causes immediate financial harm, he also discourages further investment in
3 unrelated businesses. Thus, the crime committed by Libric has the potential to harm not only his
4 investors, but also other businesses in this District that need investors like Moose Run LLC to get off the
5 ground.

6 **B. The Need for the Sentence Imposed To Reflect the Seriousness of the Offense, Promote**
7 **Respect for the Law, and Afford Adequate Deterrence to Criminal Conduct**

8 The offense of conviction in this case, Wire Fraud, is in the category of what are commonly
9 described as “white collar” offenses. A sentence of imprisonment of 37 months will promote respect for
10 the law and will demonstrate that defendants who commit financial crimes – and who do so over
11 extended periods of time – will be held accountable when they break the law.

12 Moreover, promotion of respect for the law ties in with affording adequate deterrence. Cases
13 involving white-collar crime offer a special opportunity for the Court to achieve the goal of general
14 deterrence. A 37-month prison sentence for the defendant’s conduct will serve as a powerful deterrent
15 against the commission of such crimes by others. It is important to provide this deterrent “[b]ecause
16 economic and fraud based crimes are more rational, cool, and calculated than sudden crimes of passion
17 or opportunity,” and, thus, “are prime candidates for general deterrence.” *United States v. Martin*, 455
18 F.3d 1227, 1240 (11th Cir. 2006) (quotation omitted). “Defendants in white collar crimes often calculate
19 the financial gain and risk of loss, and white collar crime therefore can be affected and reduced with
20 serious punishment.” *Id.*; see also *United States v. Kuhlman*, 711 F.3d 1321, 1329 (11th Cir. 2013)
21 (same). The *Martin* court further noted that “[t]he Congress that adopted the § 3553 sentencing factors
22 emphasized the critical deterrent value of imprisoning serious white collar criminals, even where those
23 criminals might themselves be unlikely to commit another offense.” *Id.*; see also S. Rep. No. 98-225, at
24 76 (1983), reprinted in 1984 U.S.C.C.A.N. 3182, 3259 (“The second purpose of sentencing is to deter
25 others from committing the offense. This is particularly important in the area of white collar crime.”).
26 This defendant apparently calculated that defrauding investors who placed their trust in him was worth
27 the risk. A lengthy sentence will change that calculus for other individuals who find themselves facing
28 the same choices that this defendant faced.

1 Moreover, it is important that the public understand that “white collar” criminals are not treated
2 with undue leniency in our justice system. This is particularly important where, as here, the defendant
3 was a corporate executive who appeared to be running a successful business. The Tenth Circuit
4 addressed these issues in *United States v. Sample*, 2018 WL 4056013 (10th Cir. 2018), where the court
5 held that a sentence of five years of probation for a defendant-broker who had defrauded investors of
6 more than \$1 million was substantively unreasonable. There, the defendant’s Guidelines range was 78 to
7 97 months, but the defendant argued to the district judge that he should receive probation because of his
8 “charity and volunteer work. . . and his previous financial support of his family and friends.” *Id.*, *2.
9 When announcing the sentence of five years of probation, the district judge said that part of his
10 reasoning was the defendant’s current “job and his earning capacity” which would allow the defendant
11 to pay restitution to the investors he defrauded. *Id.*

12 The Tenth Circuit said that a judge “should not rely on a defendant’s wealth in fashioning a
13 sentence (citations omitted).” *Id.*, *3. *See also United States v. Stefonek*, 179 F.3d 1030, 1038
14 (7th Cir. 1999) (“Business criminals are not to be treated more leniently than members of the ‘criminal
15 class’ just by virtue of being regularly employed or otherwise productively engaged in lawful economic
16 activity.”). The Tenth Circuit also emphasized the fact that the defendant had inflicted “considerable
17 harm” on his victims when he misappropriated more than one million dollars, and that fact alone
18 “weighs against the lenient nature of the sentence that the trial court imposed.” *Sample*, *3.

19 The Tenth Circuit further noted that the defendant’s lack of a criminal history, his acceptance of
20 responsibility and the likelihood the defendant would not commit future crimes were not sufficient
21 reasons to justify the significant downward variance from the Guidelines range. *Sample* at *4.

22 Just as in *Sample*, there is no basis for a downward variance in the present case. The government
23 therefore believes that the statutory factors set forth in 18 U.S.C. § 3553(a) support a Guidelines-range
24 sentence of 37 months.

25 **IV. THE COURT SHOULD ORDER THE DEFENDANT TO PAY RESTITUTION OF**
26 **\$1,520,074**

27 The Court, when sentencing a defendant convicted of an offense under Title 18 of the United
28 States Code, shall order that the defendant “make restitution to any victim of such offense.” 18 U.S.C.

