

1 DAVID L. ANDERSON (CABN 149604)
United States Attorney

2 HALLIE HOFFMAN (CABN 210020)
3 Chief, Criminal Division

4 ROBERT S. LEACH (CABN 196191)
ADAM A. REEVES (NYBN 2363877)
5 WILLIAM FRENTZEN (LABN 24421)
Assistant United States Attorneys

6 450 Golden Gate Avenue, Box 36055
7 San Francisco, California 94102-3495
Telephone: (415) 436-7200
8 Fax: (415) 436-7234
robert.leach@usdoj.gov

9 Attorneys for United States of America
10

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

14 UNITED STATES OF AMERICA,) Case No. CR 16-462 CRB
15 Plaintiff,) UNITED STATES' SENTENCING
16 v.) MEMORANDUM
17 SUSHOVAN TAREQUE HUSSAIN,) Sentencing Date: May 13, 2019, 10:00 a.m.
18 Defendant.)
19

20 INTRODUCTION

21 Defendant Sushovan Hussain has been convicted of an \$11.7 billion wire fraud. It is the
22 largest fraud in the history of the Northern District of California. It is one of the largest frauds ever
23 prosecuted by the United States Department of Justice. By itself, the magnitude of Hussain's crime
24 deserves a substantial prison sentence.

25 But there is a second, equally compelling, reason to punish Hussain: he stands to gain tens of
26 millions of dollars from his crime. In 2011, Hussain earned only about \$9.3 million from the direct
27 sale of his (fraudulently inflated) Autonomy stock to Hewlett-Packard. Today, Hussain is personally
28 worth at least \$60 million, and likely much more. What, if anything, did Hussain really do to earn this

1 \$60 million windfall during the very period he was the subject of an array of criminal, regulatory, and
2 private investigations in two countries? The answer is that Hussain has remained beholden to one
3 person, Michael Lynch, his co-conspirator, who bestowed on Hussain 193,188 shares of ICP Darktrace
4 Holdings Ltd. that today are worth approximately \$57,820,800 and 215,000 shares of ICP Holdings
5 that may be worth even more. These facts support the indictment against Lynch for making “hush
6 money” payments to co-conspirators like Hussain. *United States v. Lynch and Chamberlain*, Case No.
7 CR 18-577 CRB. But they also hang heavily over the sufficiency of any sentence the Court may
8 impose on Hussain.

9 Crime can never pay. Yet, the proverbial pot of gold awaits Hussain at the end of any sentence
10 the Court may impose. This anathema warrants an even more substantial prison sentence. Hussain,
11 completely undeterred and accepting no responsibility for his years of crime, looks forward to an
12 unearned and undeserved payday in Lynch’s enterprise the minute he steps out of prison.

13 The Sentencing Guidelines, as determined by the Court, result in a total offense level of 29, or
14 a recommended sentence of 87 to 108 months in prison. For the reasons set forth below, the
15 government submits that the Guideline range understates the severity of the offense, the need to
16 provide just punishment, the need to promote respect for the law, and the need for both general and
17 specific deterrence and that these and other factors set forth in 18 U.S.C. § 3553(a) call for an above-
18 guideline sentence.

19 Therefore, the United States recommends that Hussain be sentenced to prison for a term of 144
20 months or twelve (12) years. The government further recommends that the Court impose the
21 maximum possible financial penalties on Hussain including, but not limited to, a fine of \$4 million,
22 forfeiture in the amount of \$9,227,657 and restitution in the amount of \$1.7 billion, the minimum
23 amount of loss suffered by the victim, the Hewlett-Packard Company.

24 **STATEMENT OF FACTS**

25 After a 29-day trial, the jury found Hussain guilty of one count of conspiracy to commit wire
26 fraud, fourteen counts of wire fraud, and one count of securities fraud. Below is a summary of the
27 offense conduct. The Court’s July 30, 2018 Order Denying Motions for New Trial and Judgment of
28 Acquittal (ECF 419 & 420) and the PSR set forth the defendant’s crimes in even greater detail.

1 **I. The Fraud At Autonomy**

2 From 2009-2011, for more than two and a half years, the defendant, the Chief Financial Officer
3 of Autonomy Corporation plc, systematically falsified Autonomy’s publicly filed financial statements.
4 Quarter after quarter, Hussain and his co-conspirators, including Chief Executive Officer Michael
5 Lynch and Vice President of Finance Stephen Chamberlain, fraudulently inflated Autonomy’s revenue
6 and income by approximately 20-30% to make Autonomy shares more attractive. *See* ECF 413-1
7 (government summary chart titled “Balance Sheet of Fraud”); ECF 413-2 (government summary chart
8 titled “Q1 2009 to Q2 2011 Reported Revenues”); Ex. 2749. Hussain employed virtually every
9 accounting trick in the book – backdating, channel stuffing, roundtrip transactions, undisclosed side
10 agreements, feigned delivery, and massive hidden hardware sales – to create the false appearance that
11 Autonomy was growing when, in fact, it was really flat-lining, like so many other technology
12 companies in the wake of the 2008 Financial Crisis.

13 Greed and hubris motivated Hussain to pretend Autonomy thrived when, in fact, it stagnated
14 like other companies in the tech sector in 2009-2010. As the testimony of the market analysts
15 demonstrated, Autonomy’s (false) claims of growth inflated its stock price while taking advantage of
16 other competitors in the marketplace. By his fraud, Hussain deceived Autonomy’s shareholders, its
17 regulator, analysts that covered the company, and ultimately, the Hewlett-Packard Company, which
18 bought Autonomy for \$11.7 billion in October 2011.

19 To conceal the scheme, Hussain and his co-conspirators retaliated against those who raised
20 questions. The evidence showed that Hussain participated in the firing of whistleblower Brent
21 Hogenson. Hussain personally ordered the firing of two other lower-level accountants who appeared
22 to be supportive of Hogenson. *See, e.g.*, Tr. at 2644 (Autonomy employee Joel Scott: “I recall
23 [Hussain’s] words ... with respect to [Reena Presad] that [Presad] had raised her head above the
24 parapet and that [Hussain] wanted her gone.”). Hussain lied to his regulator, the UK’s Financial
25 Reporting Review Panel, which inquired about Hogenson’s allegations after he was terminated. Ex.
26 3061; Tr. at 4945-4951. A year later, to insure the scheme succeeded, Hussain personally lied to HP’s
27 due diligence team about Autonomy’s revenues and went so far as to create false lists of Autonomy’s
28

1 top agreements and customers in order to better deceive HP's deal team during due diligence calls.
2 PSR ¶¶ 22 & 30; Exs. 2144, 2626, 2627, & 2984.

3 In sum, the offenses here occurred over the course of many years. They involved dozens of
4 transactions. They required lies to multiples audiences. They were motivated by avarice and ego.
5 And they reflected a belief that Hussain and his co-conspirators were too smart to be caught and above
6 the law.

7 **II. The \$11.7 Billion Loss To Hewlett-Packard Company**

8 On August 18, 2011, HP announced an offer to buy all Autonomy shares for £25.50 (\$42.11)
9 per share, or \$11.7 billion. The price was a 64% premium over Autonomy's closing stock price on
10 August 17, 2011. Ex. 2295. Autonomy's market capitalization the day before the announcement was
11 only approximately \$6.3 billion. Tr. at 3629; Ex. 6606 at 7. HP agreed to buy Autonomy for
12 approximately \$5.4 billion more than its present worth based on the false claims of growth Hussain
13 had deceptively disseminated for years.

14 The evidence at trial demonstrated that, in making the decision to buy Autonomy, HP and its
15 advisors relied extensively on Autonomy's public statements about its revenues. PSR ¶ 21; Tr. at
16 3471-73, 3476, 3479-80, 3509, 3515, 3550, 3552, 3726, 4246, 4256. Beginning in the spring of 2011,
17 HP spent weeks preparing and refining a valuation model to assess the value of Autonomy as a
18 standalone company and determine an offer price. Tr. at 3505, 3514, 3560-61, 3600, 3609-10; *see*
19 *also id.* at 3559. During the diligence, HP executive Manish Sarin even showed Hussain portions of
20 the valuation model to ensure its inputs were as accurate as possible. Tr. at 3543-3547. Using the
21 publicly reported numbers that Hussain falsified, HP assessed Autonomy's standalone value at \$9.5
22 billion. Ex. 6606; Tr. at 3628-3629; PSR ¶ 37; HP's Supplemental Victim Impact Statement
23 ("Supplemental VIS") at 2 & 4 (ECF 505-4).

24 The evidence at trial showed that Autonomy's reported revenue was misstated. Chris Yelland,
25 who was hired by Hussain and replaced him as CFO, prepared a restatement that quantified the
26 misstatements, which was admitted at trial. PSR ¶ 38; Supplemental VIS at 2-3; & Ex. 2749. Using
27 the correct accounting (as proven by Yelland and the restatement) rather than the false accounting
28 reflected in Autonomy's public filings results in a \$1.7 billion to \$2.7 billion reduction in the

1 standalone value rendered by HP's valuation model. PSR ¶ 39; Supplemental VIS at 4-5. In other
2 words, "based on this simple substitution of revenue figures (and without importing any other
3 judgments or assumptions) Hussain's fraudulent behavior induced HP to overvalue Autonomy by \$1.7
4 billion to \$2.7 billion." Supplemental VIS at 5.

5 This conservative measure does not come close to reflecting the actual harm that Hussain and
6 his co-conspirators inflicted on HP. As HP stated in its initial Victim Impact Statement ("VIS"):

7 Hussain's fraud also damaged the trust that HP's customers and
8 shareholders had in the Company and its management. It has been
9 a costly—and frankly painful—process for the Company to work
10 at restoring its brand and regaining the trust of its employees,
11 shareholders, and the public. And the Company has expended
12 tremendous resources to shine a light on the truth and achieve
13 justice.... [The fraud] visited on HP lasting reputational injury.

14 VIS at 2 and 5 (ECF 505-6). If it had known the truth about Autonomy's financial performance, HP
15 would have paid billions of dollars less or, more likely, walked away from the \$11.7 billion deal
16 altogether. Indeed, Catherine Lesjak, Chief Financial Officer of HP, testified in the *Hussain* trial that:

17 I'm confident that if I had known about the fraud and that Leo
18 [Apotheker, HP's former CEO] had known about the fraud, we
19 wouldn't have done the deal.

20 Tr. at 5581.

21 Today, the government estimates that HP was defrauded in amounts that definitely exceed \$1.7
22 billion and more likely approach \$11.7 billion. By virtually any metric, Autonomy's fraud on HP was
23 massive, among the largest ever prosecuted by the United States Department of Justice.

24 **III. Hussain's Ill-Gotten Gains Were Staggering**

25 While the loss to HP was huge, the ill-gotten gains to Hussain and the other members of the
26 conspiracy were staggering.

27 From 2009 to 2011, Hussain, like the other conspirators, was well compensated through
28 Autonomy while committing fraud on a quarter-to-quarter basis. In this period, Hussain made
approximately \$15,913,985 million from salary, bonus, and sales of stock. ECF 505-1. Hussain
earned his salary based upon the financial statements he himself falsely certified every single quarter.
During those same years, Hussain sold shares of Autonomy that had been fraudulently inflated by

1 those same quarterly financial statements (falsely) certified by Hussain. Thus, Hussain's income
2 during 2009 to 2011 can be traced to the proceeds of the fraud committed by Hussain and his co-
3 conspirators.

4 In October 2011, after the acquisition with HP closed, Lynch sold his Autonomy stock shares
5 to HP and walked away with approximately \$530 million. ECF 505-7. At the same time, Hussain
6 sold his Autonomy shares to HP and walked away with approximately \$9.3 million. *Id.*

7 In May 2012, after working at HP for only two unsuccessful quarters, Lynch was fired by HP
8 and Hussain resigned. In or about September 2012, Lynch, Hussain, and other former Autonomy
9 senior officers started Invoke Capital, a European venture capital fund allegedly focused on investing
10 in start-up technology companies. ECF 452 at ¶ 5 (Declaration of Special Agent Alex Bryant).
11 Invoke Capital was funded by former Autonomy officers including Lynch and Hussain. *Id.* at ¶ 6.
12 Given that only a year earlier, in October 2011, Lynch received over \$530 million from HP and
13 Hussain received over \$9.3 million from HP, it is likely that some or all of the funds used to initially
14 capitalize Invoke Capital were proceeds from Autonomy's fraud on HP. That possibility has been
15 corroborated by the FBI's investigation and at least one witness statement indicating that "Hussain,
16 Lynch, and [another former senior Autonomy officer] ... invested their personal funds into the
17 capitalization of Invoke [Capital]." *Id.* at ¶ 7.

18 According to bank and other records, Hussain became a fulltime partner at Invoke
19 Capital with ownership of more than 10% of company shares. *Id.* ¶ 18. In statements he made to the
20 United States Probation Office, Hussain said he owned 215,000 shares in ICP Holdings, Invoke
21 Capital's holding company, and 193,188 shares (9.51%) of ICP Darktrace Holdings, a holding
22 company formed by Invoke Capital to hold shares of Darktrace Limited. *Id.* at ¶¶ 8-9, 19-20; April 8,
23 2019 Evidentiary Hearing Gov. Ex. 18 at 4. Because ICP Darktrace Holdings owns 38% of Darktrace,
24 which is valued at \$1.6 billion, Hussain's ICP Darktrace Holdings shares, though illiquid, are worth
25 approximately \$57.8 million. *Id.* at 1; ECF 463-1; *Darktrace Raises Series E at \$1.65bn Valuation*,
26 available at <https://www.darktrace.com/en/press/2018/256/>.

27 For Hussain, crime paid very well. The Court's sentence should factor that in, heavily.

28 //

ARGUMENT

I. The Legal Standards Governing The Sentence

The overarching goal of a sentencing court is to impose a sentence that is sufficient to “reflect the seriousness of the offense, promote respect for the law, and provide just punishment; to afford adequate deterrence; to protect the public; and to provide the defendant with needed education or vocational training, medical care, or other correctional treatment.” *United States v. Ressam*, 679 F.3d 1069, 1088-89 (9th Cir. 2012) (*en banc*); 18 U.S.C. § 3553(a)(2). The Court should begin the sentencing process by correctly calculating the applicable Guidelines range and must “remain cognizant of them throughout the sentencing process.” *Gall v. United States*, 552 U.S. 38, 50 n.6 (2007). The Court should then consider the factors outlined in Section 3553(a) to determine the appropriate sentence. *Ressam*, 679 F.3d at 1089. If the Court determines that a sentence outside of the Guidelines range is warranted, it must ensure that the “justification is sufficiently compelling to support the degree of the variance.” *Id.* (internal quotation omitted). “[A] major departure should be supported by a more significant justification than a minor one.” *Gall*, 552 U.S. at 50.

II. The Government’s Guideline Calculations

The government calculates the total offense level under the Sentencing Guidelines as follows:

	U.S.S.G. Section	Points
Base Offense Level	2B1.1(a)(1)	7
Specific Offense Characteristics		
Loss More Than \$550,000,000	2B1.1(b)(1)(P)	+30
Substantial Part of Fraudulent Scheme Committed from Outside US	2B1.1(b)(10)(B)	+2
Adjustment: Role in the Offense		
Aggravating Role	3B1.1(b)	+3
Abuse of Position of Trust or Use of Special Skill	3B1.3	+2
Total Offense Level		43 or above

The PSR agrees with these calculations, except that it does not apply the three-point adjustment for aggravating role and thus calculates the total offense level as 41.

On April 11, 2019, after multiple hearings and a series of submissions, the Court issued its Order on Application of Sentencing Guidelines (ECF 521) finding that the Total Offense Level is 29

1 and the resulting range is 97-108 months. Respectfully, the government disagrees with the Court's
2 guideline calculation for the reasons fully articulated in our submissions, portions of which are restated
3 here to preserve the record.

4 Principally, the government objects to the Court's calculation of "loss" pursuant to Section
5 2B1.1(b)(1) of the Sentencing Guidelines. Section 2B1.1(b)(1) provides for an enhancement based on
6 loss, which the Guidelines define as "the greater of actual loss or intended loss." U.S. SENTENCING
7 GUIDELINES MANUAL § 2B1.1 application note 3(A) (2012) [hereinafter "U.S.S.G."]. "Actual
8 loss" means the "reasonably foreseeable pecuniary harm that resulted from the offense." *Id.* note
9 3(A)(i). "Intended loss" is "the pecuniary harm that the defendant purposely sought to inflict,"
10 including harm that would have been impossible or unlikely to occur. *Id.* note 3(A)(ii). The Court
11 "need only make a reasonable estimate of the loss," and "[t]he estimate of the loss shall be based on
12 available information." *Id.* note 3(C)(i) ("The sentencing judge is in a unique position to assess the
13 evidence and estimate the loss based upon that evidence."); *United States v. Armstead*, 552 F.3d 769,
14 778 (9th Cir. 2008). "The guidelines do not present a single universal method for loss calculation . . .
15 given the fact-intensive and individualized nature of the inquiry." *United States v. Zolp*, 479 F.3d 715,
16 718 (9th Cir. 2007).

17 Here, the PSR calculates the loss to be between \$1.7 and \$2.7 billion, which results a 30-level
18 enhancement under Section 2B1.1(b)(1)(P). This is amply supported by the evidence at trial and the
19 victim witness statements submitted by HP, which establish that, simply replacing Hussain's
20 fraudulently reported numbers with the correct accounting results in a \$1.7 billion to \$2.7 billion
21 reduction in HP's valuation model's assessment of Autonomy's standalone value. It stands to reason
22 that HP would have offered and paid at least \$1.7 billion less than what it paid based on the fraudulent
23 numbers.¹ The application notes to the Guidelines support this determination. They provide that:

24 _____
25 ¹ Because the loss is reasonably estimable, the Court need not look to gain as an alternative
26 measure of loss. U.S.S.G. § 2B1.1 note 3(B). But "the gain that resulted from the offense" is
27 equally staggering. *Id.* A co-conspirator's gain or gain from jointly undertaken criminal activity
28 should be counted so long as it is reasonably foreseeable, as it was here. *See, e.g., United States*
v. Powell, 666 F.3d 168 (4th Cir. 2011); *United States v. Gordon*, 710 F.3d 1124, 1165 (10th Cir.
2013); *United States v. Lopez*, 222 F.3d 428, 436-37 (7th Cir. 2000); *see also United States v.*
Treadwell, 593 F.3d 990, 1002-05 (9th Cir. 2010); U.S.S.G. § 1B1.3 note 3. Including Lynch's
overall gain of \$536.5 million with Hussain's \$15.9 gain, as other courts have routinely done,
yields a "loss" in excess of the \$550 million threshold in Section 2B1.1(b)(P). ECF 505 at 10-

[t]he estimate of the loss shall be based on available information, taking into account, as appropriate and practicable under the circumstances, factors such as . . . (i) the fair market value of the property unlawfully taken . . . (v) the reduction that resulted from the offense in the value of equity securities or other corporate assets[; and] [m]ore general factors, such as the scope and duration of the offense and revenues generated by similar operations.

U.S.S.G. § 2B1.1 note 3(C). Here the fair market value of the property taken, as assessed by the market was \$6.3 billion, and \$9.5 billion as assessed by HP at the time. Changing the inputs for the valuation based on the restatement produces a reasonable estimate of the value HP would have ascribed.

In sum, the advisory Guidelines result in a total offense level of above 43, which, for all criminal history categories equates to a sentence of life.

III. The Nature And Circumstances Of The Offense

The Guidelines in this case recommend a very high sentence. But they do so for a reason: Hussain’s crimes were incredibly serious, they were extremely sophisticated, and they caused massive financial harm to a United States public company with thousands of shareholders and employees.

The nature and characteristics of the offenses Hussain committed are as aggravating as any financial crime can be. The monetary loss is staggering, and the reputational harm to HP cannot be overstated. The pervasiveness and persistence of the defendant’s fraud and lies are remarkable. He lied to people over and over for *years* to accomplish his fraud. He also lied to multiple audiences – regulators, analysts, auditors and HP – assuming no one would be able to detect his deceptions. He fired anyone who raised her head “above the parapet” or otherwise questioned his conduct. He boasted that Autonomy was outside of the reach of U.S. authorities. Tr. at 1269-1270 (Testimony of David Truitt). Indeed, his and his co-conspirators’ crimes reflect an attitude that, like a James Bond villain or a Mafioso, they were above the law. ECF 160 at 8. In that sense, Hussain is an especially dangerous criminal.

11; ECF 505-7. Including just Lynch and Hussain’s gain on the sale of shares to HP (\$540,264,046) results in a 28 rather than a 30-level increase. ECF 505-7.

1 The history and characteristics of the defendant are likewise remarkable. Hussain had so much
 2 bestowed upon him, and had so many advantages. He has been to college, been married, and had
 3 children. He was making a good living. Other than hubris and greed, there is little in Hussain's
 4 background to help explain why he would undertake such a damaging course of criminal conduct.

5 Significantly, Hussain has never demonstrated remorse or acceptance for wrongful conduct.
 6 To the contrary, to the extent Hussain may claim he was used or intimidated into his illegal actions by
 7 Lynch or others, he has elected to continue working with Lynch and his co-conspirators for years, up
 8 to the day of sentencing.

9 In short, there is nothing to suggest that a variance below the Guidelines-recommended
 10 sentence is warranted, and to the extent the Court decides one is, it should be limited, and should not
 11 lose sight of the significant aggravating circumstances here.

12 **IV. The Government Recommends A Prison Term Of 144 Months**

13 As reprehensible as the defendant's conduct was and as instructive as the Guidelines are, the
 14 government does not recommend a life sentence. Given the sentences for other defendants convicted
 15 of fraud, a life sentence may constitute an unwarranted disparity pursuant to 18 U.S.C. § 3553(a)(6).
 16 Below is a list of the selected sentences for cases from this and other districts involving corporate
 17 executives convicted of fraud offenses similar to Hussain's, none of whom received any cooperation
 18 credit on their sentences:

19 Defendant	Case No.	Approximate Loss Amount	Sentence
20 Charles W. McCall (McKesson-HBOC Chairman of the Board)	00-CR-505 WHA (N.D. Cal.)	\$8.6 billion	120 months (no cooperation)
21 Walter A. Forbes (Cendant CEO)	02-CR-264 AHN (D. Conn.)	More than \$1 billion	151 months (no cooperation)
22 Timothy J. Rigas (Adelphia CFO)	02-CR-1236 LBS (S.D.N.Y.)	More than \$100 million	204 months (no cooperation)
23 John Rigas (Adelphia CEO)	02-CR-1236 LBS (S.D.N.Y.)	More than \$100 million	144 months (no cooperation)
24 Bernard J. Ebbers (WorldCom CEO)	02-CR-1144 BSJ (S.D.N.Y.)	More than \$1 billion	300 months (no cooperation)

1	Sanjay Kumar (Computer Associates CEO)	04- CR-846 ILG (E.D.N.Y.)	More than \$400 million	144 months (no cooperation)
2				
3	Jeffrey K. Skilling (Enron CEO)	04-CR-025 (S.D. Tex.)	More than \$80 million	168 months (no cooperation)
4				
5	Samuel “Mouli” Cohen	10-CR-547 CRB (N.D. Cal.)	\$31 million	264 months (no cooperation)
6				
7	Ebrahim Shabudin (United Commercial Bank Chief Credit Officer)	11-CR-664 JSW (N.D. Cal.)	\$677 million	97 months (no cooperation)
8				
	Sean Clark Cutting (Sonoma Valley Bank CEO)	14-CR-139 SI (N.D. Cal.)	\$47 million	100 months (no cooperation)

9 The average sentence for these ten (10) cases is 169 months. While not scientific, these selected
10 cases show that courts have sentenced defendants to lengthy terms of prison for frauds that
11 caused far less financial loss than Hussain.

12 While every case involves individualized consideration, there should also be an effort for
13 trial courts to fix sentences that are relatively consistent and not subject to wide disparities.
14 Given the loss amount in this case, the huge financial gain to Hussain and his co-conspirators,
15 the sustained duration of Hussain’s fraudulent conduct, the shocking variety of fraudulent means
16 to accomplish Hussain’s scheme, and the number of impacted individuals and companies,
17 Hussain deserves a sentence that is in line with the sentences shown in this table.

18 In the end, the United States submits that the Court’s guideline calculation vastly
19 underestimates the loss – and thus the harm – inflicted by the defendant. Therefore, the
20 government recommends that the Court impose a sentence above the Guidelines it has
21 calculated. To avoid sentencing disparities, the United States recommends varying upward from
22 the Court’s guideline calculation by three levels to a total offense level of 32 with a range of 121-
23 151 months. The government therefore recommends that the Court order a prison term of 144
24 months or twelve (12) years.

25 **V. The Court Should Order Restitution Of \$1.7 Billion**

26 The Mandatory Victims Restitution Act of 1996 (the “MVRA”) provides that “when
27 sentencing a defendant convicted of an offense described in [§ 3663A(c)], the court shall order . . . that
28 the defendant make restitution to the victim of the offense.” 18 U.S.C. § 3663A(a)(1). A “victim” is

1 “a person directly and proximately harmed as a result of the commission of an offense for which
2 restitution may be ordered.” *Id.* § 3663A(a)(2). The MVRA applies to cases of an offense resulting in
3 damage to or loss or destruction of property of a victim. *Id.* § 3663A(b)(1). “In each order of
4 restitution, the court shall order restitution to each victim in the full amount of each victim’s losses as
5 determined by the court and without consideration of the economic circumstances of the defendant.”
6 *Id.* § 3664(f)(1)(A). Any dispute as to the proper amount or type of restitution shall be resolved by the
7 court by the preponderance of the evidence. *Id.* § 3664(e).

8 Here, the preponderance of evidence shows that HP suffered a loss of at least \$1.7 billion.
9 This amount was fully foreseeable by Hussain, who knew the amounts by which Autonomy was
10 overstating revenue, was actively involved in the due diligence process, and made specific
11 representations to HP about the information Autonomy was providing. Although the amount of
12 restitution may dwarf Hussain’s ability to pay, those factors simply are not relevant to the Court’s
13 determination of the restitution amount. The Court should order restitution as required by the MVRA.
14 Alternatively, if the Court determines that the victim’s losses are not fully ascertainable at this time,
15 the Government requests that the Court postpone a final determination of the restitution amount for 90
16 days. *See* 18 U.S.C. § 3664(d)(5).

17 **VI. The Court Should Order A Forfeiture Money Judgment of \$9,227,657**

18 As requested in the government’s Application for an Order of Forfeiture, the Court should
19 issue a money judgment in the amount of \$9,227,657 -- the proceeds Hussain acquired and obtained
20 from the crime of conviction by selling his Autonomy shares to HP. *See United States v. Lo*, 839 F.3d
21 777 (9th Cir. 2015; *United States v. Valdez*, 911 F.3d 960 (9th Cir. 2018); and *United States v. Soto*,
22 915 F.3d 675 (9th Cir. 2019).

23 Additionally, the Court should order discovery pursuant to Rule 32.2(b)(3) so that the
24 government can identify “substitute property” to satisfy the money judgment pursuant to 21 U.S.C.
25 § 853(p). *See United States v. Moffitt, Zwerling & Kemler*, 83 F.3d 660, 670-71 (4th Cir. 1996);
26 *United States v. Saccoccia*, 354 F.3d 9, 13 (1st Cir. 2003); and *United States v. BCCI Holdings*, 980 F.
27 Supp. 522, 524 (D.D.C. 1997).

1 In the interim, the government requests that the Court issue a protective order pursuant to 21
 2 U.S.C. § 853(e)(1) in order to prevent Hussain from diminishing or liquidating the following assets
 3 until the forfeiture proceedings are concluded: (1) Hussain's interest in shares of ICP Holdings; (2)
 4 Hussain's interest in shares of ICP Darktrace Holdings; and (3) the real property located at 24
 5 Ennismore Gardens Mews, London, United Kingdom.

6 **VII. The Court Should Impose The Maximum Fine Of \$4 Million**

7 A defendant who has been found guilty of an offense may be sentenced to pay a fine. 18
 8 U.S.C. § 3571(a). Section 3571(b)(3) provides for fines up to \$250,000 for individuals for each
 9 offense. *Id.* § 3571(b)(3). Section 3572 and the Guidelines set forth factors for the Court to consider,
 10 including evidence of the defendant's ability to pay, restitution that the defendant is obligated to make,
 11 and the need to deprive the defendant of illegally obtained gains. *See, e.g.*, 18 U.S.C. § 3572(a)(1),
 12 (4), & (5); U.S.S.G. § 5E1.2(d). Because the defendant was convicted of sixteen (16) counts, the
 13 maximum fine is \$4 million. *See Robles v. United States*, 279 F.2d 401, 407 (9th Cir. 1960); *United*
 14 *States v. Kenny*, 462 F.2d 1286, 1229 (3d Cir. 1972). The Court should impose that maximum fine
 15 here. At the April 8, 2019, rather than hear testimony from a witness about the value of Darktrace,
 16 Hussain stipulated that a \$4 million fine was reasonable. 4/8/2019 Tr. at 47-48.

17 **CONCLUSION**

18 For these reasons, the Court should sentence Hussain to no less than 144 months in prison,
 19 order him to pay restitution to HP in the amount of \$1.7 billion, order forfeiture in the amount of
 20 \$9,227,657 as set forth in the government's application, and impose a maximum fine of \$4 million.

21 Dated: May 1, 2019

Respectfully Submitted,

22 DAVID L. ANDERSON
 23 United States Attorney

24 /s/

25 _____
 26 ROBERT S. LEACH
 27 ADAM A. REEVES
 28 WILLIAM FRENTZEN
 Assistant United States Attorneys