**IN THE UNITED STATES DISTRICT COURT**
**FOR THE NORTHERN DISTRICT OF FLORIDA**
**PENSACOLA DIVISION**

**UNITED STATES OF AMERICA**

**vs.** **Case No.3:08cr79-MCR**

**CLAUDIA CONSTANCE HIRMER,**
**MARK STEVEN HIRMER,**
**EUGENE JOSEPH CASTERNOVIA,**
**MARK BARRY LYON,**
**JOSEPH WILLIAM MCPHILLIPS**
**ARNOLD RAY MANANSALA,**
**DOVER EUGENE PERRY,**
**MICHAEL GUY LEONARD,**
**MARK DANIEL LEITNER,**
**and,**
**ARTHUR RAMIREZ MERINO**

---

**UNITED STATES' MEMORANDUM REGARDING RESTITUTION**

The United States of America, by and through its attorneys, hereby submits its memorandum regarding restitution in the above-captioned case. Based upon the evidence introduced at trial, the defendants should be jointly and severally liable for full restitution to the United States Treasury in an amount equal to twenty percent (20%) of the gross receipts each defendant earned in their capacity as PQI leaders, marketers and/or vendors. At a minimum, the defendants should be held to account for their respective share of the harm caused to the United States.

## I. Status of the Case

On March 31, 2010, a federal jury in the Northern District of Florida returned guilty verdicts against Claudia Hirmer, Mark Hirmer, Eugene Casternovia, Arnold Manansala, Dover Perry, Michael Leonard, Mark Leitner and Arthur Merino. Prior to trial, defendants Mark Lyon and Joseph McPhillips pleaded guilty to, *inter alia*, conspiracy, as alleged in the indictment. With the exception of defendants Claudia Hirmer and Mark Hirmer, all defendants have been sentenced. This Court deferred sentencing on the issue of restitution and scheduled a hearing on October 27, 2010, to determine whether restitution should be ordered, and in what amount.

## II. Statement of Facts

Each of the above-captioned defendants, by guilty plea or jury verdict, were convicted of conspiring to defraud the United States and to commit wire fraud, in violation of 18 U.S.C. § 371, for promoting and selling fraudulent tax- and debt-elimination products marketed under the umbrella organization known as Pinnacle Quest International (PQI). Defendants Claudia Hirmer, Mark Hirmer, Eugene Casternovia, Mark Lyon, Arnold Manansala, Dover Perry and Michael Leonard were convicted of conspiracy to launder monetary instruments, in violation of 18 U.S.C. § 1956(h). Defendants Claudia Hirmer and Mark Hirmer were convicted of evading the payment of their federal individual income tax liabilities from 1996 through 2001, in violation of 26 U.S.C. § 7201.

From 2002 through 2008, PQI earned over $14 million from the sale of PQI memberships. The primary selling point for these memberships was access to one-of-a-kind "education" taught by purported experts in the fields of, among others, taxation and banking. Potential members were lured with false promises, and instructed that in order to gain access to

PQI's exclusive vendors, they must join at specific levels of membership. The cost of PQI's memberships ranged from $1350 to over $17,000.

Among PQI's most popular vendors were the Southern Oregon Resource Center for Educational Services (SORCE), Financial Solutions, IMF Decoder, and Bill Benson. The former two organization's principals, defendants Casternovia, Lyon, and Merino, were charged in the indictment. The remaining defendants charged in the indictment were PQI marketers, members of PQI's Executive Council, or both.

SORCE sold "structuring" products, whose essential purpose was to disguise asset ownership in order to defraud the Internal Revenue Service. A typical structuring package cost around $10,000. From 2002 through 2006, SORCE earned over $4 million selling structuring packages and related products.

Financial Solutions sold corporations sole and a credit card debt-elimination product. The former was designed to evade taxes; the latter to evade credit card debt. Neither had any legitimate basis in law. From 2002 through 2006 Financial Solutions earned more than $2 million.

IMF Decoder and Bill Benson sold reliance-defense products designed to shield their customers from criminal prosecution for tax crimes. Each of these products was priced in the thousands of dollars.

Evidence presented at trial established that during the conspiracy, the defendants uniformly failed to file federal income tax returns and failed to pay federal income taxes. Thus, the defendants caused harm to the United States Treasury in an amount equal to their unpaid tax liabilities.

## III. Applicable Law

"A federal district court has no inherent authority to order restitution, and may do so only as explicitly empowered by statute." United States v. Dickerson, 370 F.3d 1330, 1335 (11th Cir. 2004) (quoting United States v. Hensley, 91 F.3d 274, 276 (1st Cir.1996) (internal quotations omitted)). The Court must therefore begin its analysis with the language of the statute supporting the Court's authority to order restitution. Here, the Court is required to order restitution under the Mandatory Victims Restitution Act of 1996 ("MVRA"), Pub.L. No. 104-132, 110 Stat. 1227, codified at 18 U.S.C. § 3663A. The MVRA obligates district courts to order restitution in certain cases, including conspiracies involving fraud and deceit. As pertinent, the statute provides that "when sentencing a defendant convicted of an offense described in subsection (c), the court shall order, in addition to . . . any other penalty authorized by law, that the defendant make restitution to the victim of the offense." 18 U.S.C. § 3663A(a)(1). Subsection (c)(1) of the statute provides that restitution is mandatory for any offense

> (A) that is-
>
> (ii) an offense against property under this title . . . including any offense committed by fraud or deceit; . . . and
>
> (B) in which an identifiable victim or victims has suffered a . . . pecuniary loss."

Defrauding the United States Treasury is "an offense against property under [title 18]," specifically, an "offense committed by fraud or deceit." This is clear as the MVRA itself contemplates that the United States is a probable victim. 18 U.S.C. § 3664(i) ("In any case in which the United States is a victim . . ."). Thus, it is clear that count one of the indictment falls within the mandatory restitution provision of § 3663A.

Once the court determines that an offense is within the scope of the mandatory restitution statute, the court must identify the appropriate victim[s] and determine the appropriate amount of restitution. For purposes of the restitution statute, a "victim" is a person "directly and proximately harmed as a result of the commission of an offense for which restitution may be ordered," and in the case of a scheme or conspiracy offense, includes "any person directly harmed by the defendant's criminal conduct in the course of the scheme, conspiracy, or pattern." 18 U.S.C. § 3663A(a)(2). The MVRA demands that courts "order restitution to each victim in the full amount of each victim's losses . . . and without consideration of the economic circumstances of the defendant." 18 U.S.C. § 3664(f)(1)(A). The court must impose specific amounts of restitution for specifically identified victims, and the award must be based on the actual amount of loss caused by the defendant's conduct. United States v. Liss, 265 F.3d 1220, 1231 (11th Cir. 2001). The government bears the burden of proving the amount of the loss by a preponderance of the evidence. United States v. Futrell, 209 F.3d 1286, 1290 (11th Cir. 2000); 18 U.S.C. § 3664(e).

Further, when multiple defendants are charged in a conspiracy or scheme to defraud, the court may order each defendant liable for restitution equal to the entire loss caused by the scheme. United States v. Odom, 252 F.3d 1289, 1298-99 (11th Cir. 2001). Even a minor participant can be held responsible, for restitution purposes, for all losses caused by the conspiracy. See United States v. Newsome, 322 F.3d 328 (4th Cir. 2003) (upholding restitution order in amount attributable to entire conspiracy despite district court's acknowledgment that the defendant joined the conspiracy late and was found to be responsible under the Sentencing Guidelines for only one-eighth of the total loss amount). In this regard, "[a] defendant's

culpability will not always equal a victim's injury." United States v. Huff, 609 F. 3d 1240, 1247 (11th Cir. 2010); quoting United States v. Catherine, 55 F.3d 1462, 1465 (9th Cir. 1995).

The Sentencing Guidelines also support judicial awards of restitution. The Guidelines state that "[i]n a case of an identifiable victim, the court ***shall*** enter a restitution amount of the victim's loss" provided that such an order is authorized by law. U.S.S.G. § 5E1.1(a)(1) (emphasis added).

## IV. Argument

A. Restitution to the United States is Mandatory

Restitution in this matter is mandatory and should be paid to the United States for all unpaid taxes earned in connection with PQI and its vendors.[1] The MVRA specifically states that restitution is appropriate for offenses against property committed by fraud and deceit. 18 U.S.C. § 3663A. The defendants were each convicted of a crime involving fraud and deceit, as the jury was instructed that the defraud clause object of count one requires proof that the defendants

[1]The United States is not seeking restitution for the victims who purchased memberships in PQI or who purchased PQI's vendors products. The MVRA provides an exception to mandatory restitution for otherwise-eligible offenses when the court makes a finding that either: a) the number of identifiable victims makes restitution impracticable, or b) determining complex issues of fact related to the cause or amount of the victim's losses would complicate or prolong the sentencing process to a degree that the need to provide restitution to any victim is outweighed by the burden on the sentencing process. 18 U.S.C. 3663A(c)(3)(A),(B). Moreover, restitution is not authorized for harms to victims performing illegal acts. See United States v. Koonce, 991 F.2d 693 (11th Cir. 1993) (no restitution for a prostitute who was paid with a stolen money order). Some PQI members were genuinely deceived by the false promises made by the defendants about the efficacy of PQI's products; other clients were predisposed to violating the tax laws and found in PQI and its vendors precisely the menu of tax evasion strategies they were looking for. The former are victims, the latter are not. But because of the volume of PQI members and the difficulty in assessing each member's relative culpability – *i.e.* their specific intent or mens rea – it is impossible to ascertain which clients are victims are worthy of restitution.

acted or intended to act via "deceit, craft, trickery, or means that are dishonest." Doc. 1145 p. 17. And crimes against the United States clearly fall within the ambit of the mandatory restitution statute. See United States v. Davis, 117 F.3d 459, 462-63 (11th Cir. 1997) (ordering full restitution to the United States under MVRA predecessor statute for defendant's participation in Medicare fraud scheme).

B. The Harm Caused to the United States

Evidence introduced at trial established the monetary scope of the conspiracy charged in count one of the indictment. Through sales of PQI memberships and associated fees from 2002 through 2008, PQI/SPI earned gross income of $14,727,150. Gvt. Ex. 48.02. Through sales of structuring packages from 2002 through 2006, SORCE earned gross income of $4,291,078. Gvt. Ex. 48.05. From 2002 through 2005, Financial Solutions earned gross receipts of $2,075,687 for sales of debt relief and asset protection products. Gvt. Ex. 48.10. Through these three entities, the defendants collectively earned $21,093,915. Each of the defendants who marketed these products earned significant amounts of additional income.

But not all of this amount can be said to be part of the conspiracy. In the case of SORCE, Casternovia and Lyon did not join the conspiracy until August 20, 2003, when SORCE became a PQI vendor. Gvt. Ex. 8.30. Therefore, SORCE's earnings prior to that date cannot be included in the loss (or restitution) calculation for the charged offense. SORCE also sold to non-PQI members whose sales cannot be said to be a part of the conspiracy. The amount of SORCE's sales that are attributable to the conspiracy are those sales made to PQI members after August 20, 2003.

The government obtained client databases maintained by PQI and SORCE during the

search warrants executed at PQI's offices on February 23, 2006, and at SORCE's offices on May 10, 2006. IRS Special Agent Stephen Walker created a spreadsheet that cross-referenced the 490 SORCE members listed in its client database with the members listed in PQI's client database. Special Agent Walker also reviewed other evidence obtained during the investigation to determine that of the 490 SORCE members listed in its client database, 347 were also members of PQI. See Exhibits 1, 2. Thus, it is reasonable to include within the charged conspiracy 70% of SORCE's sales after August 20, 2003.

In sum, the defendants earned the following amounts during the life of the conspiracy:

| | | |
|---|---|---|
| Claudia Hirmer and Mark Hirmer: | $14,727,150 | (Gvt. Ex 48.02) |
| Eugene Casternovia and Mark Lyon: | $2,723,350[2] | (Gvt. Ex. 48.05; Exhibit 1, 2) |
| Arthur Merino: | $2,075,687 | (Gvt. Ex 48.10) |
| Arnold Manansala: | $1,161,717 | (Gvt. Ex. 48.07) |
| Joseph McPhillips: | $600,712 | (Doc. No. 283) |
| Dover Perry: | $352,359 | (Gvt. Ex. 48.08) |
| Mark Leitner: | $279,062 | (Gvt. Ex. 48.12) |
| Michael Leonard: | $271,260 | (Gvt. Ex. 48.09) |
| Total Gross Receipts | $22,191,297 | |

The total harm to the United States Treasury as a result of the defendants' conduct, as charged in count one of the indictment, is the tax loss attributable to the total gross receipts earned by the defendants.

---

[2]Calculated as follows:

| | | |
|---|---|---|
| Total 2003 earnings $300,445 x 1/3 = | $100,148 | (Gvt. Ex. 48.05) |
| Total 2004 earnings = | $921,002 | (Gvt. Ex. 48.05) |
| Total 2005 earnings = | $1,692,289 | (Gvt. Ex. 48.05) |
| Total 2006 earnings = | $1,177,062 | (Gvt. Ex. 48.05) |
| Total earnings after joining conspiracy = | $3,890,501 | |
| | x .70 | (Exhibit "1,2") |
| | $2,723,350 | |

Calculating the correct tax loss proves a more difficult task than identifying gross receipts. This is largely due to the absence of records from which to determine the defendants' legitimate business deductions. As the evidence showed at trial, most of the defendants failed to keep accurate books and records, if they kept any at all. And due to the intentionally covert manner in which they moved their money and handled their financial affairs, it is not possible to determine with any degree of accuracy what their legitimate business expenses were. In this regard, it is impossible to calculate tax loss with the same confidence as pursuant to an IRS civil audit. But such confidence is unnecessary. "[T]he determination of the restitution amount is by nature an inexact science ... [and] under the MVRA, the district court is directed to engage in an expedient and reasonable determination of appropriate restitution by resolving uncertainties with a view toward achieving fairness to the victim." United States v. Huff, 609 F.3d 1240, 1248 (11th Cir. 2010).

The government suggests that the Court determine the amount of restitution by utilizing the Sentencing Guidelines percentage of gross receipts method. In the section pertaining to tax crimes, the Sentencing Guidelines provide presumptive percentages that the district court may utilize in calculating tax loss when books and records are inadequate. The Guidelines provide that "if the offense involved failure to file a tax return, the tax loss shall be treated as equal to 20% of the gross income (25% if the taxpayer is a corporation) less any tax withheld or otherwise paid, unless a more accurate determination of the tax loss can be made." U.S.S.G. §2T1.1(c)(2)(A). The government proposes that this Court calculate restitution in the amount of 20% of the unreported gross receipts of the defendants, as follows:

| | | | | |
|---|---|---|---|---|
| Claudia Hirmer and Mark Hirmer: | $14,727,150 | *.2 | = | $2,945,430 |
| Eugene Casternovia and Mark Lyon: | $2,723,350 | *.2 | = | $544,670 |

| | | | | |
|---|---|---|---|---|
| Arthur Merino: | $2,075,687 | *.2 | = | $415,137 |
| Arnold Manansala: | $1,161,717 | *.2 | = | $232,343 |
| Joseph McPhillips: | $600,712 | *.2 | = | $120,142 |
| Dover Perry: | $352,359 | *.2 | = | $70,472 |
| Mark Leitner: | $279,062 | *.2 | = | $55,812 |
| Michael Leonard: | $271,260 | *.2 | = | $54,252 |
| Total Gross Receipts | $22,191,297 | *.2 | = | $4,438,259 |

C. Joint and Several Liability

As explained above, the law permits imposition of joint and several liability on co-conspirators. When, as here, a defendant is convicted of conspiracy, the district court can hold the defendant responsible for the entire amount of the loss attributable to the conspiracy. United States v. Rayborn, 957 F.2d 841, 844 (11th Cir.1992); United States v. Dickerson, 370 F.3d 1330, 1339 (11th Cir.2004). The court should impose restitution in such a manner here.

*a. PQI - Claudia Hirmer and Mark Hirmer*

Defendants Claudia Hirmer and Mark Hirmer should be ordered to pay restitution in the full amount of $4,438,259. The Hirmers were solely responsible for handling the finances of PQI. They were the sole signatories on all PQI/SPI bank accounts and had free reign over the profits of the enterprise. The Hirmers retained between fifteen to twenty percent of each PQI membership sold, were fully aware of the business's earnings, and were responsible for maintaining books and records and reporting income earned by the business to the IRS. Of course no such reporting occurred. The Hirmers are at the very least responsible for paying restitution for the amount of taxes owed by PQI.

Additionally, the Hirmers were aware of the success of their codefendants by virtue of the symbiotic relationship between PQI and its vendors and marketers. Every time the Hirmers received their cut from a Q1, Q2 or Q3 membership, they knew that a PQI marketer received the

remaining 80% to 85% as a commission. They were similarly aware that vendor products drove membership sales. And because the organizational message was that the tax system is unlawful or does not apply to PQI's members, the Hirmers knew or should have known that their marketers and vendors were not filing federal income tax returns or paying income taxes. In this regard, the Hirmers were aware of the scope of the harm caused by their coconspirators, and should be held to account for that harm.

At a minimum, the Hirmers must be ordered to pay restitution for the unpaid taxes attributable to PQI's receipts – $2,945,430.

*b. SORCE - Eugene Casternovia and Mark Lyon*

Defendants Eugene Casternovia and Mark Lyon should also be ordered to pay the full amount of restitution of $4,438,259. Mark Lyon testified that he and Casternovia attended multiple offshore conferences to promote SORCE. Casternovia was a featured speaker and, along with Lyon and Robert Pendell, manned SORCE's booth. SORCE was one of PQI's most popular vendors, both for the product itself and for the message of sovereignty that SORCE's constituents so vehemently endorsed. Consistent with SORCE's message, Casternovia and Lyon were themselves "structured," and subscribed to the theory of individual sovereignty. And like SORCE, PQI (operating under the name Synergy Productions International) established itself as a Panamanian entity. Both SORCE and PQI promotional materials bore Panamanian addresses where SORCE's partners in Panama offered offshore nominee services. Gvt. Exs. 1.26, 8.05. Hence, Casternovia and Lyon were well aware that the Hirmers were not paying taxes. Imposing mutual liability for the tax harm caused by these organizations is appropriate.

SORCE was also dependent on PQI marketers in order to generate sales. This is

evidenced by the tremendous growth in sales once SORCE became a PQI approved vendor. Again, Casternovia and Lyon preached the message of sovereignty to these marketers, fully expecting that they would repeat their message while marketing SORCE's product. Thus, Casternovia and Lyon should not avoid sharing liability with their codefendants who assisted their growth in this manner. This includes codefendants Manansala, McPhillips, Perry, Leonard and Leitner.

At the very least, the Court should order Casternovia and Lyon to pay restitution to the United States for all harm caused by SORCE. For Casternovia and Lyon, this amount is $544,670. As noted above, this figure represents the approximately 70% of SORCE's customers who were also PQI customers, and eliminates any earnings that occurred before Casternovia and Lyon joined the conspiracy.

Moreover, since Casternovia and Lyon never withdrew from the conspiracy, all earnings occurring after August 20, 2003, should be included in the calculus. Based upon prior pleadings filed in this matter, Casternovia and Lyon may argue that they withdrew from the conspiracy sometime in 2006 when their relationship with PQI ceased. Yet this termination in the relationship does not equal withdrawal from the conspiracy. "A conspirator's participation in a conspiracy is presumed to continue until all activity relating to the conspiracy is ceased," but the presumption can only be overcome if the defendant can prove his withdrawal. United States v. Starrett, 55 F.3d 1525, 1550 (11th Cir. 1995). To successfully argue withdrawal, the defendant must demonstrate that he "repudiated" the conspiracy – "a mere cessation of participation in the conspiracy" is not enough. United States v. Dabbs, 134 F.3d 1071, 1083 (11th Cir. 1998). Casternovia and Lyon bear the burden of showing that they took affirmative steps to defeat the

conspiracy's objectives, and made a reasonable effort to communicate those steps to co-conspirators or to law enforcement. Id. The evidence before this Court has not shown that Casternovia or Lyon took any affirmative actions to withdraw from the conspiracy. As such, all SORCE proceeds earned after joining the conspiracy may be attributed to the conspiracy.

*c. Financial Solutions - Arthur Merino*

Defendant Arthur Merino should also be ordered to pay the full amount of restitution of $4,438,259. Similar to SORCE, Financial Solutions was a popular Q1 level vendor. Also like SORCE, Merino attended multiple offshore conferences and manned a sales booth. Financial Solutions' message was also consistent with the overall theme at the conferences – that taxes and credit card debt are illegal and can be eliminated by Americans with the right "education." In this respect, Merino was aware of PQI's anti-tax message, knew of the scope of PQI's membership, and was complicit in growing its numbers by perpetuating anti-establishment mythology.

Merino was a member of PQI's inaugural Executive Council. Thus, Merino was among the handful of Global Prosperity holdovers responsible for the continued propagation of philosophies that were manifestly legal. Defendant Merino also joined with codefendants Manansala and Perry at "Cutting Edge" seminars and encouraged marketers like Joseph McPhillips, Douglas Hagerty, Glenn Toups, and Mark Leitner to advertise Financial Solutions' debt elimination product as a selling point for PQI. Merino's promotion of Financial Solutions touched upon all aspects of the conspiracy. It is entirely reasonable that Merino be held liable for the shared harm done by the entire conspiracy.

At the least, the Court should order Merino to pay restitution for the unpaid taxes

resulting from the full amount earned by Financial Solutions. As noted above, this amount is $415,137.

*d. The Executive Council - Arnold Manansala, Joseph McPhillips, Dover Perry, and Michael Leonard*

Defendants Joseph McPhillips, Arnold Manansala, Dover Perry and Michael Leonard should be ordered to pay restitution for the full loss caused by the conspiracy, chiefly because of their membership on PQI's Executive Council. As members of the EC, they were responsible for approving PQI's anti-tax vendors and were in a position to know the financial success of the organization. Each attended multiple offshore conferences, and aggressively marketed PQI. Just as a legitimate board of directors is held responsible for the success or failure of an organization, so too was the Executive Council responsible for the success of PQI. Therefore, the defendants who were members of the Executive Council should jointly share in the losses caused by PQI, its vendors and marketers.

Again, each of these defendant is at least responsible for their own share of the tax loss. The loss amount for defendant Manansala is $232,343; the loss amount for defendant McPhillips is $120,142; the loss amount for defendant Perry is $70,472; the loss amount for defendant Leonard is $54,252.

*e. Mark Leitner*

The Court may also hold defendant Mark Leitner responsible for the entire amount of harm caused during the conspiracy. In his own words, Leitner was a member of PQI "since the beginning of its inception." Gvt. Ex. 200.02. Leitner attended multiple offshore seminars and actively marketed SORCE, Financial Solutions and IMF Decoder. Gvt. Ex. 1.04. He was, and

remains today, a fervent tax and debt protestor. And while Leitner was not a member of the Executive Council, he was sufficiently active within the organization to know its mission and scope. In this regard, it is not unreasonable to hold him liable for the entire loss attributable to the conspiracy.

At a minimum, Leitner must be ordered to pay restitution for the harm he caused individually as a member of the conspiracy. Based upon his own gross receipts, this amount is $55,812.

As expressed above, holding each defendant jointly and severally liable is both proper as a matter of law and justified according to the facts of this case. Moreover, it aligns with Congress' objectives in promulgating the MVRA – that is, to make the victim whole. The United States stands a far greater chance of being made whole if able to collect full restitution from all of the defendants, knowing that many defendants may be serving terms of imprisonment for much of the life of the restitution order. In addition, and consistent with the goals of the MVRA, the government may not receive a windfall by collecting restitution in excess of the total harm caused by the conspiracy. Once restitution is paid in full, the order is satisfied as to all defendants.

////

///

//

/

## V. Conclusion

For the reasons stated above, each defendant should be ordered, jointly and severally, to pay restitution to the United States Treasury in an amount equal to twenty percent of the gross receipts each defendant earned in connection with PQI and its vendors.

Respectfully submitted,

PAMELA MARSH
UNITED STATES ATTORNEY

/s/ Michael J. Watling
MICHAEL J. WATLING
ADAM F. HULBIG
JONATHAN R. MARX
Trial Attorney
U.S. Department of Justice
601 D Street NW
Washington, DC 20004

**CERTIFICATE OF SERVICE**

I certify that on October 1, 2010, I filed this motion via CM/ECF, which will serve a copy on counsel of record.

/s/ Michael J. Watling
Michael J. Watling
Trial Attorney
U.S. Department of Justice