

APPENDIX

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. WILLIAM S. POFF, Defendant-Appellant.

No. 16-30141
D.C. No.
2:09-cr-00160-JLR-3
MEMORANDUM[†]

Appeal from the United States District Court
for the Western District of Washington
James L. Robart, District Judge, Presiding

Argued and Submitted February 9, 2018
Seattle, Washington

Before: GOULD, PAEZ, and CHRISTEN, Circuit
Judges.

William S. Poff (Poff) appeals from an order directing the Bureau of Prisons to turn over funds in his inmate trust account to the Clerk of the United States District Court for the Western District of Washington for payment of his court-ordered restitution. We have jurisdiction under 28 U.S.C. § 1291 and we affirm.

1. The Mandatory Victims Restitution Act (MVRA) requires a prisoner who “receives substantial

[†] This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

resources from any source, including inheritance, settlement, or other judgment, . . . to apply the value of such resources to any restitution or fine still owed.” 18 U.S.C. § 3664(n) (emphasis added). Poff argues that the funds in his inmate trust account do not qualify as “substantial resources from any source, including inheritance, settlement or other judgement.” 18 U.S.C. § 3664(n). Instead, Poff urges that “substantial resources” refers only to windfalls; or, what he characterizes as “economic gains that are unexpected and therefore were not foreseen at the time of sentencing.” He invokes *ejusdem generis* in support of this reading of the statute. But *ejusdem generis* is merely an “aid to the ascertainment of the true meaning of the statute,” and is “neither final nor exclusive.” *Helvering v. Stockholms Enskilda Bank*, 293 U.S. 84, 89 (1934). “If, upon a consideration of the context and the objects sought to be attained and of the act as a whole, it adequately appears that the general words were not used in the restricted sense suggested by the rule, we must give effect to the conclusion afforded by the wider view in order that the will of the Legislature shall not fail.” *Id.* Congress sought, through the MVRA, to restore to victims of crime “the restitution that they are due.” S. Rep. No. 104-179, at 12 (1995); see *In re Partida*, 862 F.3d 909, 911 (9th Cir. 2017). Because “[t]he primary and overarching goal of the MVRA is to make victims of crime whole,” *United States v. Gordon*, 393 F.3d 1044, 1048 (9th Cir. 2004), the plain language of the MVRA does not support the conclusion that the funds in Poff’s inmate trust account are beyond the reach of § 3664(n).

Poff next suggests that the sums deposited into his inmate trust account were not “substantial.” “[W]e follow the common practice of consulting dictionary definitions to clarify the[] ordinary meaning [of statutory language]” *United States v. TRW Rifle 7.62X51mm Caliber*, 447 F.3d 686, 689 (9th Cir. 2006) (internal quotation marks omitted). To describe financial resources as “substantial” is to suggest that they are “[c]onsiderable in amount or value.” *Substantial*, Black’s Law Dictionary 1656 (10th ed. 2014).

“But interpreting a statute is a holistic endeavor,” and we must “look not only to the language itself, [but also to] the specific context in which that language is used, and the broader context of the statute as a whole.” *Johnson v. Aljian*, 490 F.3d 778, 780 (9th Cir. 2007) (internal quotation marks omitted). The statutory scheme reposes in sentencing judges the discretion to devise a payment schedule that accounts for the defendant’s “financial resources and other assets,” “projected earnings and other income,” and “financial obligations.” 18 U.S.C. § 3664(f)(2). This suggests that “resources” are “[c]onsiderable in amount or value” if they positively exceed the sums needed by a criminal defendant to satisfy financial obligations established at the time of sentencing. Because the sentencing court did not find that Poff had competing obligations, the district court did not err in finding the funds in Poff’s inmate trust account to be “substantial” and therefore subject to seizure.

2. Poff also asserts that his veteran disability benefits were exempt from levy for taxes under the Internal Revenue Code and, hence, exempt from enforcement under the MVRA. *See* 18 U.S.C. §

3613(a)(1); IRC § 6334(a)(10). As relevant here, the tax code's exemption applies to "[a]ny amount payable to an individual as a service-connected . . . disability benefit" IRC § 6334(a)(10). Because the tax code distinguishes between amounts that are "payable to," amounts that are "received by," and amounts that are "payable to or received by" an individual, *see* IRC § 6334, the expression of one of these alternatives necessarily excludes another. *See Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 381 (2013). By exempting from levy service-connected disability benefits "payable to" an individual, Congress declined to extend the exemption to those same benefits once they have been paid. As the district court correctly observed, the veteran disability benefits in Poff's inmate trust account were paid to him, not "payable to" him.

Thus, the district court did not err in concluding that these funds were not exempt from enforcement under the MVRA.

3. Poff also contends that the government's seizure of his veteran disability benefits violated the Consumer Credit Protection Act (CCPA)'s prohibitions on garnishment. *See* 18 U.S.C. § 3613, 15 U.S.C. § 1673. Poff concedes that "[t]he CCPA was not expressly cited to the district court." While "[a] document filed pro se is to be liberally construed" and "must be held to less stringent standards than formal pleadings drafted by lawyers," *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (internal citations and quotation marks omitted), Poff's oppositions to the government's turnover motion did not articulate a "general argument" about statutory limits on garnishment and failed to place the government on

notice of his claim. *See Alvarado v. Holder*, 759 F.3d 1121, 1128 (9th Cir. 2014). Poff has therefore waived any rights he might have had under the CCPA. *See Hillis v. Heineman*, 626 F.3d 1014, 1019 (9th Cir. 2010).

In any case, the strictures of the CCPA apply only to “earnings.” 15 U.S.C. § 1673. Under *Usery v. First National Bank of Arizona*, 586 F. 2d 107, 108 (9th Cir. 1978), compensation paid by an employer does not retain its character as “earnings” after it has been deposited into an employee’s bank account. Even assuming that Poff’s veteran disability benefits were wages, the funds already deposited into in Poff’s inmate trust account were not “earnings” and were therefore not shielded by the CCPA.

4. Poff attacks the encumbrance of funds in his inmate trust account as violative of due process because they were initially encumbered without prior notice and an opportunity to be heard. It is undisputed that a prisoner has a property interest in his inmate trust account. *See Shinault v. Hawks*, 782 F.3d 1053, 1057 (9th Cir. 2015). “[T]he question remains what process is due.” *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972). “[U]nder federal law, what process is due is determined by context, to be analyzed in accordance with the three-part balancing test described in *Mathews v. Eldridge*, 424 U.S. 319 (1976).” *Roybal v. Toppenish Sch. Dist.*, 871 F.3d 927, 933 (9th Cir. 2017).

“First, courts must look at the nature of the interest that will be affected by the official action, and in particular, to the degree of potential deprivation that may be created.” *Nozzi v. Hous. Auth. of L.A.*, 806

F.3d 1178, 1192–93 (9th Cir. 2015) (internal quotation marks omitted). Because the funds in Poff’s inmate trust account could not be accessed freely and were not relied on for subsistence, his interest in them was diminished. See *Mathews*, 424 U.S. at 340–41. “Second, courts must consider the fairness and reliability of the existing procedures and the probable value, if any, of additional procedural safeguards.” *Nozzi*, 806 F.3d at 1193 (internal quotation marks omitted). As the amount of restitution to be paid had been determined through prior judicial proceedings, the value of additional procedural safeguards was negligible. “Finally, courts must assess the public interest, which includes the administrative burden and other societal costs that would be associated with additional or substitute procedures.” *Id.* (internal quotation marks omitted). Here, the government had a strong interest in preserving funds available for restitution. Poff questions the necessity of the seizure, averring that the funds in the inmate trust account were held by the Bureau of Prisons. But the government could not legitimately block an otherwise proper use of funds in the account, unless it had the authority to encumber them. Doing so prevented depletion of the account.

Balancing the three *Mathews* factors, we conclude that a pre-deprivation hearing is not constitutionally mandated in a case like this, where the funds to be encumbered were not needed for subsistence, where the entirety of those funds was subject to a judgment lien pursuant to the MVRA, where the amount of the judgment lien had been previously determined through judicial process, and where the funds were only frozen—not distributed—pending resolution of a

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motion before a district court. For all of these reasons, the district court did not err in holding the government's encumbrance of Poff's inmate trust account to be constitutional.

AFFIRMED.

APPENDIX B

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA, <div style="text-align: center;">Plaintiff,</div> <div style="text-align: center;">v.</div> WILLIAM S. POFF, <div style="text-align: center;">Defendant. </div>	CASE NO. CR09- 0160JLR ORDER DIRECTING PAYMENT FROM INMATE TRUST ACCOUNT
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I. INTRODUCTION

Before the court are the following motions: (1) Plaintiff United States of America’s (“the Government”) motion for an order requiring the Bureau of Prisons (“BOP”) to relinquish funds that are presently held in Defendant William S. Poff’s inmate trust account to the Clerk of Court for the purpose of paying criminal monetary penalties imposed upon Mr. Poff in this case (US Mot. (Dkt. # 306)), (2) Mr. Poff’s motion to unencumber his inmate trust account (Poff Mot. (Dkt. # 308)), (3) Mr. Poff’s motion for clarification (2d Poff Mot. (Dkt. # 313)), and (4) Mr. Poff’s motion to preclude fraud (3d Poff Mot. (Dkt. # 315)).[‡] The court has considered the motions, all

[‡] The Government filed its motion on April 20, 2016. (See US Mot.) Mr. Poff filed his initial motion on April 21, 2016. (See Poff Mot.) The court construed Mr. Poff’s initial motion as a

submissions filed by the parties in support of or opposition to the motions, the relevant portions of the record, and the applicable law. Being fully advised, the court GRANTS the Government's motion and DENIES Mr. Poff's motions.

II. BACKGROUND

On October 12, 2010, the court entered a criminal judgment against Mr. Poff for multiple counts of Bank Fraud, Wire Fraud, and Money Laundering. (Judgment (Dkt. # 259).) The court sentenced Mr. Poff to 135 months in prison followed by five years of supervised release. (*Id.* at 3-4.) The sentence also required Mr. Poff to pay restitution in the amount of \$4,258,529.13. (*Id.* at 6.) The criminal judgment recites that Mr. Poff's restitution payment "IS DUE IMMEDIATELY." (*Id.* at 8 (capitalization in original).) The criminal judgment requires Mr. Poff to pay "no less than 25% of [his] inmate gross monthly income or \$25.00 per quarter, whichever is greater"

response to the Government's motion. (*See* 4/15/16 Dkt. Entry.) On April 28, 2016, the Government filed a reply memorandum in support of its motion. (Reply (Dkt. # 309).) However, on May 2, 2016, Mr. Poff filed a response to the Government's motion. (Resp. (Dkt. # 310).) One week later, Mr. Poff filed his motion for clarification, which addresses the same issues as the Government's motion and Mr. Poff's first motion. (*See* 2d Poff Mot.) Accordingly, the court granted the Government leave to file an additional three-page surreply memorandum. (5/10/16 Order (Dkt. # 312).) The Government filed its surreply on May 11, 2016. (Surreply (Dkt. # 314).) On May 26, 2016, Mr. Poff filed his motion to preclude fraud, which also addresses the same issues as those in the Government's motion and Mr. Poff's first and second motions, although it raises a new argument. (*See* 3d Poff Mot.)

while he is imprisoned. (*Id.*) However, this payment schedule “is the minimum amount that the defendant is expected to pay towards the monetary penalties,” and Mr. Poff is expected to “pay more than the amount established whenever possible.” (*Id.*) The remaining balance on Mr. Poff’s restitution as of April 15, 2016, was \$4,255,591.63. (Fernandez Decl. (Dkt. # 307) ¶ 3.)

The BOP establishes inmate trust accounts to maintain inmates’ monies received from prison employment, friends, family, and other sources. 28 C.F.R. § 506.1. Mr. Poff presently has a balance in his inmate trust account of at least \$2,663.05. (Fernandez Decl. ¶ 4.) At the request of the United States Attorney’s Office, the BOP has encumbered Mr. Poff’s inmate trust account to prevent him from making withdrawals. (*Id.* ¶¶ 4-5.) The Government now moves for an order authorizing the BOP to turn over funds from Mr. Poff’s inmate trust account to the Clerk of Court to be applied towards Mr. Poff’s restitution balance (*see* US Mot.), and Mr. Poff moves for an order directing the BOP to unencumber his account (*see* Poff Mot.; 2d Poff Mot.; 3d Poff Mot.). The court now considers the parties’ motions.

III. ANALYSIS

The Government seeks an order authorizing the BOP to turn over funds in Mr. Poff’s inmate trust account to be applied to the \$4,255,591.63 in restitution that Mr. Poff owes as part of his sentence. (*See generally* US Mot.) An order of restitution is a lien in favor of the United States on all property and rights to property of the defendant. 18 U.S.C. § 3613(c). Further, an order of restitution may be enforced by the United States in the same manner that United

States recovers fines or “by all other available and reasonable means.” 18 U.S.C. § 3664(m)(1)(A)(i). In addition, the Mandatory Victims Restitution Act provides:

If a person obligated to provide restitution, or pay a fine, receives substantial resources from any source, including inheritance, settlement, or other judgment, during a period of incarceration, such person shall be required to apply the value of such resources to any restitution or fine still owed.

18 U.S.C. § 3664(n). “Under these statutes, courts have found it appropriate to order the turnover of funds in inmate trust accounts to be applied to restitution.” *See United States v. Hester*, No. 10CR2967 BTM, 2016 WL 1007335, at *2 (S.D. Cal. Mar. 14, 2016) (collecting cases).[§]

Nevertheless, Mr. Poff has objected to the Government’s motion on two general grounds. (*See generally* Poff Mot.; Resp. (Dkt. # 310); 2d Poff Mot.) He objects that BOP encumbered his account without due process. (*See* Poff Mot. at 3; Resp. at 4.) He also objects that his veteran’s disability service benefits are exempt from the Government’s debt collections efforts. (*See* Resp. at 3; 2d Poff Mot. at 3-4; *see generally* 3d Poff Mot.) The court addresses these issues in turn.

[§] The narrow exemptions available to criminal restitution debtors enumerated in 18 U.S.C. § 3613(a) do not apply to the funds contained in Mr. Poff’s inmate trust account. *See* 18 U.S.C. § 3613(a)(1)-(3).

A. Due Process

Mr. Poff asserts that the Government violated his due process rights when the Government requested that the BOP encumber Mr. Poff's inmate trust account pending disposition of the Government's present motion. (Poff Mot. at 3 ("[T]he Ninth Circuit has explicated that there is no question that prisoners have a protected liberty interest in their prison trust accounts, and that the institution 'must provide a hearing prior to freezing a significant sum in the inmate's account.'" (quoting *Quick v. Jones*, 754 F.2d 1521 (9th Cir. 1985)).)

Prisoners have a protected property interest in the funds in their prison trust accounts. *Shinault v. Hawks*, 782 F.3d 1521 1057 (9th Cir. 2015) (citing *Quick*, 754 F.2d at 1523). "[I]n *Mathews v. Eldridge*, the Supreme Court set forth a three-part inquiry to determine whether the procedures provided to protect a liberty or property interest are constitutionally sufficient." *Nozzi v. Hous. Auth. of City of L.A.*, 806 F.3d 1178, 1192 (9th Cir. 2015) (citing *Mathews v. Eldridge*, 424 U.S. 319, 334-35 (1976)). "The *Mathews* test balances three factors: (1) the private interest affected; (2) the risk of erroneous deprivation through the procedures used, and the value of additional safeguards; and (3) the government's interest, including the burdens of additional procedural requirements." *Shinault*, 782 F.3d at 1057 (citing *Mathews*, 424 U.S. at 335).

The first *Mathews* factor—"the private interest affected"—refers to Mr. Poff's interest in his inmate trust account. *See id.* "There is no question that [an inmate's] interest in funds in his prison account is a

protected property interest.” *Id.* In *Shinault*, the inmate received a substantial settlement from a medical liability claim. *Id.* at 1055-56. In response, the Oregon Department of Corrections (“ODOC”) issued an order requiring the inmate to pay the estimated cost of his incarceration pursuant to state law and placed tens of thousands of dollars in the inmate’s prison account on hold pending an administrative hearing on the issue. *Id.* at 1056. The Ninth Circuit found that the prisoner’s interest “was clearly substantial” because the ODOC had “deprived him of access to a significant amount of his funds.” *Id.* at 1057.

The Government, however, asserts that unlike the inmate in *Shinault*, Mr. Poff’s interest in his inmate trust account is tempered by the Government’s \$4.2 million judgment lien that arose upon entry of the criminal judgment and order of restitution in this case. See 18 U.S.C. §§ 3613(c), (f). Indeed, the Government’s judgment lien encompasses “all property and rights to property” owned by Mr. Poff, 18 U.S.C. § 3613(c), and is enforceable upon all of his property at the time judgment is entered, *United States v. Mills*, 991 F.2d 609, 612 (9th Cir. 1993). In the context of a motion under Federal Rule of Criminal Procedure 41(g),** the Ninth Circuit has stated that a restitution order “gives the government a sufficient cognizable claim of ownership to defeat a

** Federal Rule of Criminal Procedure 41(g) provides in pertinent part that “[a] person aggrieved by an unlawful search and seizure of property or by the deprivation of property may move for the property’s return.” Fed. R. Crim. P. 41(g).

defendant's . . . motion for return of property, if that property is needed to satisfy the terms of a restitution order." *Id.*^{††} The Government asserts that it has the same "cognizable claim of ownership" to the funds in Mr. Poff's inmate trust account under the factual circumstances here. (Reply at 2.) The court agrees and thus finds that, although Mr. Poff has a private property interest in his inmate trust account, his interest carries less weight in the context of assessing *Matthews* factors because his account is encumbered by a lien in favor of the Government arising out of a criminal judgment.

The second *Matthews* factor is the risk of erroneous deprivation through the procedures used and the value of additional safeguards. *See Shinault*, 782 F.3d at 1057. In *Shinault*, the court found that the risk of erroneous deprivation weighed in favor of a pre-deprivation hearing because the state statute at issue involved complex mathematical computations and individualized determinations concerning an inmate's ability to pay for the costs of incarceration. *Id.* Here, however, the court finds that there is little risk of erroneous deprivation. Mr. Poff's liability for restitution has already been finally determined and is not subject to refutation. (*See Judgment.*) The funds are already subject to the Government's lien. *See* 18 U.S.C. §§ 3613(c), (f). Given the certainty of Mr. Poff's liability and the magnitude of his restitution debt, there is virtually no risk that the requested \$2,663.05

^{††} At the time that *Mills* was published, the current Federal Rule of Criminal Procedure 41(g) was denominated as Federal Rule of Criminal Procedure 41(e). *See Mills*, 991 F.2d at 612.

payment will result in an overpayment or otherwise wrongfully deprive Mr. Poff of his property.

Finally, as for the third *Matthews* factor, the Government's interest in collecting restitution for the victims of fraud is significant. *See Shinault*, 782 F.3d at 1057. Congress has repeatedly demonstrated the priority it places on the collection of restitution in criminal judgments. For example, Congress has provided crime victims with the right to receive full and timely restitution. *See* 18 U.S.C. § 3771(a)(6). Further, full restitution is mandatory for financial crimes irrespective of the defendant's ability to pay. *See* 18 U.S.C. § 3664(f)(1)(A). In addition, restitution is not dischargeable in bankruptcy. *See* 18 U.S.C. §§ 3613(e), (f). Finally, Congress has limited the type of property that is exempt from the collection of restitution. *See* 18 U.S.C. § 3613(a). Thus, the court concludes that the Government's interest in collecting restitution for the victims of Mr. Poff's fraud easily outweighs Mr. Poff's minimal interest in his lien-encumbered inmate trust account.

The third *Matthews* factor also considers "the burdens of additional procedural requirements." *Shinault*, 782 F.3d at 1057. Mr. Poff seeks advance notice and a hearing before his inmate trust account is encumbered. (*See Resp.* at 4.) As the Government points out, with advance notice, inmates such as Mr. Poff could empty their accounts and frustrate the very collection that Congress has prioritized. Thus, the Federal Debt Collection Procedures Act ("FDCPA") provides for *ex parte* applications for writs of garnishment and other collection remedies, with notice provided only after the writ has attached to and frozen the targeted asset. *See* 28 U.S.C. § 3004(c).

The FDCPA applies to the collection of criminal restitution and thus supports the court's conclusion that the Government need not notify Mr. Poff before encumbering his inmate trust account for this purpose. 18 U.S.C. §§ 3613(a), 3664(m). Indeed, as both the Supreme Court and the Ninth Circuit recognize, "post-deprivation process can suffice 'in limited cases' when prompt action is required, an important government interest is involved, and there is substantial assurance that the deprivation is not baseless or unwarranted." *Shinault*, 782 F.3d at 1058 (quoting *Fed. Deposit Ins. Corp. v. Mallen*, 486 U.S. 230, 240 (1988)). The court finds that this is one such case.

On balance, the *Matthews* factors demonstrate the constitutionality of the Government's encumbrance of Mr. Poff's inmate trust account. The one case Mr. Poff cites in support of his due process argument, *Quick v. Jones*, 754 F.2d 1521 (9th Cir. 1985), is distinguishable. (See Poff Mot. at 3.) In *Quick*, prison officials took an inmate's funds to pay restitution "without a determination of either civil or criminal liability." *Id.* at 1523. In contrast, Mr. Poff was tried and convicted of 30 felony counts of bank fraud, money laundering, and related crimes. (See Judgment.) During his eight-day bench trial and subsequent sentencing hearing, Mr. Poff had a full opportunity to rebut the charges against him and the calculation of his restitution. (Dkt. ## 166-89, 207, 258.) Unlike the inmate in *Quick*, Mr. Poff's criminal prosecution "informed [him] of [his] financial liability" and gave him "a meaningful opportunity to contest the assessment before" the BOP encumbered his account. See *Shinault*, 782 F.3d at 1059.

B. Statutory Exemption

Mr. Poff asserts that most of the funds in his inmate trust account are service-related disability payments from the United States Department of Veterans Affairs (“the VA”). (Poff Mot. at 2.) He claims that these funds are exempt from collection by the Government for purposes of restitution based on 38 U.S.C. § 5301(a)(1). (Poff Mot. at 2-3; Resp. at 2-4; 2d Poff Mot. at 2-4.) Section 5301(a)(1) states in pertinent part:

Payments of benefits due or to become due under any law administered by the Secretary shall not be assignable except to the extent specifically authorized by law, and such payments made to, or on account of, a beneficiary shall be exempt from taxation, shall be exempt from the claim of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary. The preceding sentence shall not apply to claims of the United States arising under such laws

38 U.S.C. § 5301(a)(1). Although there is scant case authority interpreting this provision, the statutory language plainly exempts claims by the United States. *Id.*; see also *Metcalf v. United States*, No. 12-518C, 2013 WL 1517821, at *4 (Fed. Cl. Apr. 15, 2013) (stating that Section 5301(a)(1) “eliminate[s] any bar to the Federal Government attaching or seizing VA benefits.”); *Funeral Fin. Servs., Ltd. v. United States*, No. 98 C 7905, 2000 WL 91919, at *2 (N.D. Ill. Jan. 18, 2000), *aff’d sub nom. Funeral Fin. Sys. v. United*

States, 234 F.3d 1015 (7th Cir. 2000) (“[T]he provision seems to exempt claims of the United States from the general ban on creditors making claims on the benefits.”). Thus, the exemption in Section 5301(a)(1) does not apply to the Government’s claim here.

Further, as the Government points out, although service-connected disability payments are exempt from most creditors, Congress has eliminated exemptions to the collection of criminal restitution except for a narrow set of exemptions specifically enumerated in 18 U.S.C. § 3613. Indeed, Congress has stated that the Government may enforce a restitution order against all of a restitution debtor’s “property or rights to property” “[n]otwithstanding any other Federal law.” 18 U.S.C. § 3613(a). Although courts have not always accorded universal effect to the “notwithstanding” language, as a general proposition “notwithstanding” clauses broadly sweep aside potentially conflicting laws. *United States v. Novak*, 476 F.3d 1041, 1046 (9th Cir. 2007). In the specific context of 18 U.S.C. § 3613(a), the Ninth Circuit has found that by using the “notwithstanding “ and “all property” clauses, Congress intended the Government’s ability to collect criminal restitution to trump even the broad protections against alienation afforded to retirement plans covered by the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. §§ 1001-1461. *Novak*, 476 F.3d at 1047-48. Indeed, by using these clauses, the Ninth Circuit stated that “Congress manifested that § 3613(a) means what it says—that it reaches ‘all property or rights to property’. . . including property otherwise covered by federally mandated anti-alienation provisions.” *Novak*, 476 F.3d at 1048 (*italics in*

original). The court sees no reason not to apply the reasoning of *Novak* to Section 5301(a)(1) so that the protections that ordinarily would apply to Mr. Poff's service-connected disability payments are superseded by the Government's authority to collect restitution under 18 U.S.C. § 3613(a).

Mr. Poff also relies upon 26 U.S.C. § 6334(a)(10)'s exemption for service-connected disability payments. (*See* Resp. at 3; 2d Poff Mot. at 2, 7.) Section 6334(a)(10)'s exemption for service-connected disability payments is expressly incorporated by 18 U.S.C. § 3613(a)(1) and applies to restitution collection. This exemption, however, only protects amounts “payable to an individual,” not amounts already paid and deposited in the recipient's account. 26 U.S.C. § 6334(a)(10). In *Hughes v. IRS*, 62 F. Supp. 2d 796 (E.D.N.Y. 1999), the court held “after an examination of the plain language of the statute, that . . . § 6334(a)(10) . . . exempt[s] from levy only amounts that are payable—that is, amounts that are not yet paid.” *Id.* at 800-01. The court explained that “the funds in plaintiffs' bank account, which were levied upon by the defendants, were no longer capable of being paid” and therefore dismissed the plaintiffs' claims that the levied funds were exempt from seizure. *Id.* at 801; *see also United States v. Coker*, 9 F. Supp. 3d 1300, 1302 (S.D. Ala. 2014). The *Hughes* court reasoned that amounts “payable” must be distinguished from amounts already paid because, elsewhere in Section 6334(a), Congress exempts “any amounts payable to or received by” an individual. *Hughes*, 62 F. Supp. 2d at 800 (citing 26 U.S.C. § 6334(a)(9)).

This court also notes that the term “payable” in Section 6334(a)(10) cannot be construed to include amounts already paid without rendering the clause “or received by” in Section 6334(a)(9) to be mere surplusage. The court is disinclined to interpret a statutory provision in a manner that would render a portion of it to be surplusage. *See Romero-Ruiz v. Mukasey*, 538 F.3d 1057, 1062-63 (9th Cir. 2008) (citing *Am. Vantage Cos. v. Table Mountain Rancheria*, 292 F.3d 1091, 1098 (9th Cir. 2002)). Because Mr. Poff has already received the funds in his inmate trust account, those funds are no longer “payable” to him and therefore are not exempt from collection by the Government under 18 U.S.C. § 3613(a)(1).^{‡‡}

^{‡‡} Mr. Poff also relies upon *Higgins v. Beyer*, 293 F.3d 683 (3d Cir. 2002). (Resp. at 3-4.) *Higgins* involved the State of New Jersey’s attempt to collect a criminal fine under New Jersey state law. *Id.* at 686. Because the state officials derived their authority to seize the inmate’s funds from state law, their authority was limited by contrary federal law. *Id.* at 693. Thus, the provisions of 38 U.S.C. § 5301(a) constituted contrary federal authority and prohibited state officials from seizing the inmate’s veterans’ disability benefits that had been deposited into his inmate account. *Id.* Here, the Government is collecting criminal restitution based on federal statutes that enumerate certain narrow exemptions and otherwise expressly authorize the federal government to enforce an order of restitution against all property “[n]otwithstanding any other Federal law.” 18 U.S.C. §§ 3613(a), (f). As discussed above, the protections of 38 U.S.C. § 5301(a) are not included in 18 U.S.C. § 3613(a)’s enumerated exemptions. *See* 18 U.S.C. §§ 3613(a)(1)-(3). Thus, although 38 U.S.C. § 5301(a) preempted the New Jersey law under which the state officials were operating in *Higgins*, that statute yields to the right of the United States

Finally, Mr. Poff argues that the funds in his inmate trust account are statutorily exempt from the Government's enforcement action pursuant to 26 U.S.C. § 6334(a)(9). (3d Poff Mot. at 1-2.) Section 6334(a)(9) exempts "[a]ny amount payable to or received by an individual as wages or salary for personal services, or as income derived from other sources, during any period, to the extent that the total of such amounts payable to or received by him during such period does not exceed the applicable exempt amount" 26 U.S.C. § 6334(a)(9). Mr. Poff asserts that he has earned less than the applicable exempt amount, and thus the funds in his inmate trust account are exempt from collection by the Government. (3d Poff Mot. at 1-2.) As noted above, 18 U.S.C. § 3613(a)(1) exempts certain types of property from the Government's attempts to enforce a judgment. *See supra* at 11 (discussing the exemption found in 26 U.S.C. § 6334(a)(10)). Exempted property includes "property exempt from levy for taxes pursuant to section 6334(a)(1), (2), (3), (4), (5), (6), (7), (8), (10), and (12) of the Internal Revenue Code of 1986 ." 18 U.S.C. § 3613(a)(1). Notably, Section 3613(a)(1) excludes the exemption set forth in Section 6334(a)(9), upon which Mr. Poff relies. Accordingly, the court concludes that 26 U.S.C. § 6334(a)(9) does not prohibit the Government's enforcement action against the funds in Mr. Poff's inmate trust account.

C. Other Objections

Mr. Poff argues that 18 U.S.C. § 3664(n) does not require payment because he has not received

to collect criminal restitution under 18 U.S.C. § 3613(a). *See Novak*, 476 F.3d at 1048.

“substantial resources” while in prison and has been “in complete compliance with th[e] program to pay his restitution.” (Poff Mot. at 2.) Although the statute does not define “substantial,” the court concludes that \$2,663.05 satisfies the ordinary meaning of this term. Further, numerous courts, including district courts in the Ninth Circuit, have ruled that “any schedule established by a court for payment of restitution does not prevent the United States from levying on a defendant’s property to satisfy the order of restitution.” *United States v. Kuehler*, No. CR-05-60 EBLW, 2006 WL 2981831, at *2 (D. Idaho Oct. 16, 2006) (citing *United States v. Hanhardt*, 353 F. Supp. 2d 957, 960 (N.D. Ill. 2004) and *United States v. Laws*, 352 F. Supp. 2d 707, 711 (E.D. Va. 2004)). Thus, the fact that Mr. Poff has been timely in his restitution payments to date does not prevent the Government from moving to enforce the judgment against other, additional funds in Mr. Poff’s possession.

Finally, Mr. Poff complains that he is unable to pay for phone or email service in prison or make photo copies in the inmate law library. (Resp. at 4.) He also argues that if forced to relinquish the funds demanded by the Government, he will be unable to purchase hygiene materials from the commissary or to save funds in preparation for his eventual release. (*Id.* at 4-5.) The court takes judicial notice of the fact that the BOP will provide for Mr. Poff’s necessities during his period of incarceration. In addition, after his next monthly payment of disability benefits or from the prison payroll, he will again have funds to spend or to save toward his eventual release (which is more than three years away).

IV. CONCLUSION

Based on the foregoing analysis, the court GRANTS the Government's motion to require payment from Mr. Poff's inmate trust account (Dkt. # 306) and DENIES Mr. Poff's motions to unencumber his inmate trust account (Dkt. # 308), for clarification (Dkt. # 313), and to preclude fraud (Dkt. # 315).

In addition, pursuant to 18 U.S.C. § 3664(n), the court ORDERS as follows:

Within 30 days from the date of this Order, the BOP shall turn over \$2,663.05 from Mr. Poff's BOP inmate trust account to the Clerk of this Court, via check payable to "United States District Court, Western District of Washington," referencing Case No. CR09-00160-JLR-3, and delivered either personally or by First Class Mail to:

United States District Court, Western District of
Washington
Attn: Financial Clerk – Lobby Level
700 Stewart Street
Seattle, Washington 98101

Alternatively, the BOP may make the required payment to the Clerk of the Court within 30 days from the date of this Order, via electronic transfer in the manner that it makes payments through the Inmate Financial Responsibility Program.

Dated this 31st day of May, 2016.

/s/ JAMES L. ROBART
JAMES L. ROBART
United States District
Judge

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. WILLIAM S. POFF, Defendant- Appellant.	No. 16-30141 D.C. No. 2:09-cr-00160-JLR-3 Western District of Washington, Seattle ORDER
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Before: GOULD, PAEZ, and CHRISTEN, Circuit Judges.

The panel has unanimously voted to deny Defendant-Appellant William S. Poff's petition for panel rehearing and petition for rehearing en banc.

The full court has been advised of Defendant-Appellant's petition for rehearing en banc, and no judge of the court has requested a vote on the petition for rehearing en banc. Fed. R. App. P. 35.

The petition for rehearing and the petition for rehearing en banc are DENIED.

APPENDIX D

18 U.S.C. § 3613. Civil remedies for satisfaction of an unpaid fine

(a) ENFORCEMENT.—The United States may enforce a judgment imposing a fine in accordance with the practices and procedures for the enforcement of a civil judgment under Federal law or State law. Notwithstanding any other Federal law (including section 207 of the Social Security Act), a judgment imposing a fine may be enforced against all property or rights to property of the person fined, except that—

(1) property exempt from levy for taxes pursuant to section 6334(a)(1), (2), (3), (4), (5), (6), (7), (8), (10), and (12) of the Internal Revenue Code of 1986 shall be exempt from enforcement of the judgment under Federal law;

(2) section 3014 of chapter 176 of title 28 shall not apply to enforcement under Federal law; and

(3) the provisions of section 303 of the Consumer Credit Protection Act (15 U.S.C. 1673) shall apply to enforcement of the judgment under Federal law or State law.

* * *

(f) APPLICABILITY TO ORDER OF RESTITUTION.— In accordance with section 3664(m)(1)(A) of this title, all provisions of this section are available to the United States for the enforcement of an order of restitution.

18 U.S.C. § 3664. Procedure for issuance and enforcement of order of restitution

(a) For orders of restitution under this title, the court shall order the probation officer to obtain and include in its presentence report, or in a separate report, as the court may direct, information sufficient for the court to exercise its discretion in fashioning a restitution order. The report shall include, to the extent practicable, a complete accounting of the losses to each victim, any restitution owed pursuant to a plea agreement, and information relating to the economic circumstances of each defendant. If the number or identity of victims cannot be reasonably ascertained, or other circumstances exist that make this requirement clearly impracticable, the probation officer shall so inform the court.

(b) The court shall disclose to both the defendant and the attorney for the Government all portions of the presentence or other report pertaining to the matters described in subsection (a) of this section.

(c) The provisions of this chapter, chapter 227, and Rule 32(c) of the Federal Rules of Criminal Procedure shall be the only rules applicable to proceedings under this section.

(d)(1) Upon the request of the probation officer, but not later than 60 days prior to the date initially set for sentencing, the attorney for the Government, after consulting, to the extent practicable, with all identified victims, shall promptly provide the probation officer with a listing of the amounts subject to restitution.

(2) The probation officer shall, prior to submitting the presentence report under subsection (a), to the extent practicable—

(A) provide notice to all identified victims of—

(i) the offense or offenses of which the defendant was convicted;

(ii) the amounts subject to restitution submitted to the probation officer;

(iii) the opportunity of the victim to submit information to the probation officer concerning the amount of the victim's losses;

(iv) the scheduled date, time, and place of the sentencing hearing;

(v) the availability of a lien in favor of the victim pursuant to subsection (m)(1)(B); and

(vi) the opportunity of the victim to file with the probation officer a separate affidavit relating to the amount of the victim's losses subject to restitution; and

(B) provide the victim with an affidavit form to submit pursuant to subparagraph (A)(vi).

(3) Each defendant shall prepare and file with the probation officer an affidavit fully describing the financial resources of the defendant, including a complete listing of all assets owned or controlled by the defendant as of the date on which the defendant was arrested, the financial needs and earning ability of the defendant and the defendant's dependents, and such other information that the court requires relating to such other factors as the court deems appropriate.

(4) After reviewing the report of the probation officer, the court may require additional documentation or hear testimony. The privacy of any records filed, or testimony heard, pursuant to this section shall be maintained to the greatest extent possible, and such records may be filed or testimony heard in camera.

(5) If the victim's losses are not ascertainable by the date that is 10 days prior to sentencing, the attorney for the Government or the probation officer shall so inform the court, and the court shall set a date for the final determination of the victim's losses, not to exceed 90 days after sentencing. If the victim subsequently discovers further losses, the victim shall have 60 days after discovery of those losses in which to petition the court for an amended restitution order. Such order may be granted only upon a showing of good cause for the failure to include such losses in the initial claim for restitutionary relief.

(6) The court may refer any issue arising in connection with a proposed order of restitution to a magistrate judge or special master for proposed findings of fact and recommendations as to disposition, subject to a de novo determination of the issue by the court.

(e) Any dispute as to the proper amount or type of restitution shall be resolved by the court by the preponderance of the evidence. The burden of demonstrating the amount of the loss sustained by a victim as a result of the offense shall be on the attorney for the Government. The burden of demonstrating the financial resources of the defendant and the financial needs of the defendant's

dependents, shall be on the defendant. The burden of demonstrating such other matters as the court deems appropriate shall be upon the party designated by the court as justice requires.

(f)(1)(A) In each order of restitution, the court shall order restitution to each victim in the full amount of each victim's losses as determined by the court and without consideration of the economic circumstances of the defendant.

(B) In no case shall the fact that a victim has received or is entitled to receive compensation with respect to a loss from insurance or any other source be considered in determining the amount of restitution.

(2) Upon determination of the amount of restitution owed to each victim, the court shall, pursuant to section 3572, specify in the restitution order the manner in which, and the schedule according to which, the restitution is to be paid, in consideration of—

(A) the financial resources and other assets of the defendant, including whether any of these assets are jointly controlled;

(B) projected earnings and other income of the defendant; and

(C) any financial obligations of the defendant; including obligations to dependents.

(3)(A) A restitution order may direct the defendant to make a single, lump-sum payment, partial payments at specified intervals, in-kind payments, or a combination of payments at specified intervals and in-kind payments.

(B) A restitution order may direct the defendant to make nominal periodic payments if the court finds from facts on the record that the economic circumstances of the defendant do not allow the payment of any amount of a restitution order, and do not allow for the payment of the full amount of a restitution order in the foreseeable future under any reasonable schedule of payments.

(4) An in-kind payment described in paragraph (3) may be in the form of—

(A) return of property;

(B) replacement of property; or

(C) if the victim agrees, services rendered to the victim or a person or organization other than the victim.

(g)(1) No victim shall be required to participate in any phase of a restitution order.

(2) A victim may at any time assign the victim's interest in restitution payments to the Crime Victims Fund in the Treasury without in any way impairing the obligation of the defendant to make such payments.

(h) If the court finds that more than 1 defendant has contributed to the loss of a victim, the court may make each defendant liable for payment of the full amount of restitution or may apportion liability among the defendants to reflect the level of contribution to the victim's loss and economic circumstances of each defendant.

(i) If the court finds that more than 1 victim has sustained a loss requiring restitution by a defendant,

the court may provide for a different payment schedule for each victim based on the type and amount of each victim's loss and accounting for the economic circumstances of each victim. In any case in which the United States is a victim, the court shall ensure that all other victims receive full restitution before the United States receives any restitution.

(j)(1) If a victim has received compensation from insurance or any other source with respect to a loss, the court shall order that restitution be paid to the person who provided or is obligated to provide the compensation, but the restitution order shall provide that all restitution of victims required by the order be paid to the victims before any restitution is paid to such a provider of compensation.

(2) Any amount paid to a victim under an order of restitution shall be reduced by any amount later recovered as compensatory damages for the same loss by the victim in—

(A) any Federal civil proceeding; and

(B) any State civil proceeding, to the extent provided by the law of the State.

(k) A restitution order shall provide that the defendant shall notify the court and the Attorney General of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay restitution. The court may also accept notification of a material change in the defendant's economic circumstances from the United States or from the victim. The Attorney General shall certify to the court that the victim or victims owed restitution by the defendant have been notified of the

change in circumstances. Upon receipt of the notification, the court may, on its own motion, or the motion of any party, including the victim, adjust the payment schedule, or require immediate payment in full, as the interests of justice require.

(l) A conviction of a defendant for an offense involving the act giving rise to an order of restitution shall estop the defendant from denying the essential allegations of that offense in any subsequent Federal civil proceeding or State civil proceeding, to the extent consistent with State law, brought by the victim.

(m)(1)(A)(i) An order of restitution may be enforced by the United States in the manner provided for in subchapter C of chapter 227 and subchapter B of chapter 229 of this title; or (ii) by all other available and reasonable means.

(B) At the request of a victim named in a restitution order, the clerk of the court shall issue an abstract of judgment certifying that a judgment has been entered in favor of such victim in the amount specified in the restitution order. Upon registering, recording, docketing, or indexing such abstract in accordance with the rules and requirements relating to judgments of the court of the State where the district court is located, the abstract of judgment shall be a lien on the property of the defendant located in such State in the same manner and to the same extent and under the same conditions as a judgment of a court of general jurisdiction in that State.

(2) An order of in-kind restitution in the form of services shall be enforced by the probation officer.

33a

(n) If a person obligated to provide restitution, or pay a fine, receives substantial resources from any source, including inheritance, settlement, or other judgment, during a period of incarceration, such person shall be required to apply the value of such resources to any restitution or fine still owed.

(o) A sentence that imposes an order of restitution is a final judgment notwithstanding the fact that—

(1) such a sentence can subsequently be—

(A) corrected under Rule 35 of the Federal Rules of Criminal Procedure and section 3742 of chapter 235 of this title;

(B) appealed and modified under section 3742;

(C) amended under subsection (d)(5); or

(D) adjusted under section 3664(k), 3572, or 3613A; or

(2) the defendant may be resentenced under section 3565 or 3614.

(p) Nothing in this section or sections 2248, 2259, 2264, 2327, 3663, and 3663A and arising out of the application of such sections, shall be construed to create a cause of action not otherwise authorized in favor of any person against the United States or any officer or employee of the United States.

26 U.S.C. § 6334. Property exempt from levy

(a) Enumeration

There shall be exempt from levy—

(1) Wearing apparel and school books

Such items of wearing apparel and such school books as are necessary for the taxpayer or for members of his family;

(2) Fuel, provisions, furniture, and personal effects

So much of the fuel, provisions, furniture, and personal effects in the taxpayer's household, and of the arms for personal use, livestock, and poultry of the taxpayer, as does not exceed \$6,250 in value;

(3) Books and tools of a trade, business, or profession

So many of the books and tools necessary for the trade, business, or profession of the taxpayer as do not exceed in the aggregate \$3,125 in value.

(4) Unemployment benefits

Any amount payable to an individual with respect to his unemployment (including any portion thereof payable with respect to dependents) under an unemployment compensation law of the United States, of any State, or of the District of Columbia or of the Commonwealth of Puerto Rico.

(5) Undelivered mail

Mail, addressed to any person, which has not been delivered to the addressee.

(6) Certain annuity and pension payments

Annuity or pension payments under the Railroad Retirement Act, benefits under the Railroad Unemployment Insurance Act, special pension payments received by a person whose name has been entered on the Army, Navy, Air Force, and Coast Guard Medal of Honor roll (38 U.S.C. 1562), and annuities based on retired or retainer pay under chapter 73 of title 10 of the United States Code.

(7) Workmen's compensation

Any amount payable to an individual as workmen's compensation (including any portion thereof payable with respect to dependents) under a workmen's compensation law of the United States, any State, the District of Columbia, or the Commonwealth of Puerto Rico.

(8) Judgments for support of minor children

If the taxpayer is required by judgment of a court of competent jurisdiction, entered prior to the date of levy, to contribute to the support of his minor children, so much of his salary, wages, or other income as is necessary to comply with such judgment.

(9) Minimum exemption for wages, salary, and other income

Any amount payable to or received by an individual as wages or salary for personal services, or as income derived from other sources, during any period, to the extent that the total of such amounts payable to or received by him during such period does not exceed the applicable exempt amount determined under subsection (d).

(10) Certain service-connected disability payments

Any amount payable to an individual as a service-connected (within the meaning of section 101(16) of title 38, United States Code) disability benefit under—

(A) subchapter II, III, IV, V., or VI of chapter 11 of such title 38, or

(B) chapter 13, 21, 23, 31, 32, 34, 35, 37, or 39 of such title 38.

(11) Certain public assistance payments

Any amount payable to an individual as a recipient of public assistance under—

(A) title IV or title XVI (relating to supplemental security income for the aged, blind, and disabled) of the Social Security Act, or

(B) State or local government public assistance or public welfare programs for which eligibility is determined by a needs or income test.

(12) Assistance under Job Training Partnership Act

Any amount payable to a participant under the Job Training Partnership Act (29 U.S.C. 1501 et seq.) from funds appropriated pursuant to such Act.

(13) Residences exempt in small deficiency cases and principal residences and certain business assets exempt in absence of certain approval or jeopardy

(A) Residences in small deficiency cases

If the amount of the levy does not exceed \$5,000—

(i) any real property used as a residence by the taxpayer; or

(ii) any real property of the taxpayer (other than real property which is rented) used by any other individual as a residence.

(B) Principal residences and certain business assets

Except to the extent provided in subsection (e)—

(i) the principal residence of the taxpayer (within the meaning of section 121); and

(ii) tangible personal property or real property (other than real property which is rented) used in the trade or business of an individual taxpayer.

* * *

APPENDIX E

UNITED STATES DISTRICT COURT
Western District of Washington

UNITED STATES **JUDGMENT IN A**
OF AMERICA **CRIMINAL CASE**

V. Case Number:
WILLIAM S. POFF 2:09CR00160JLR-003

USM Number: 14361-040

William S. Poff, *pro se*

Defendant's Attorney

THE DEFENDANT:

- ☐ pleaded guilty to _____
count(s)
- ☐ pleaded nolo _____
contendere to
count(s) which
was accepted by
the court.
- ☒ was found guilty 1, 3, 4, 11, 12, 13, 15, 20,
on count(s) after a 21, 23, 25, 26, 27, 28, 31,
plea of not guilty. 36, 40, 41, 43, 44, 46, 47,
48, 54, 57, 58, 60, 62, 63,
& 67 of First Superseding
Indictment

The defendant is adjudicated guilty of these offenses:

See **Sheet 1A** for list of counts

The defendant is sentenced as provided in pages 2 through 13 of this judgment. The Sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- ☐ The defendant has been _____
found not guilty on
count(s)
- ☒ Count(s) all remaining of ☐ is ☒ are
First dismissed on the
Superseding motion of the
Indictment United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States Attorney of material changes in economic circumstances.

/s/ Sarah Y. Vogel

Sarah Y. Vogel, Assistant United States Attorney

October 12, 2010

Date of Imposition of Judgement

/s/ James L. Robart

Signature of Judge

The Honorable James L. Robart

United States District Judge

October 12, 2010

Date

40a

* * *

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of: 135 months.

☐ The court makes the following recommendations to the Bureau of Prisons:

Placement in a facility near Ohio (where family located)

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

* * *

CRIMINAL MONETARY PENALTIES

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 3,000	\$ Waived	\$ 4,258,529.13

- ☐ The determination of restitution is deferred until _____. *An Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination,
- ☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
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See
Attached
"Additional
Restitution
Payees"

TOTALS	\$ 0	\$ 0
---------------	------	------

- ☐ Restitution amount ordered pursuant to plea agreement \$ _____

- ☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- ☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:
- ☐ the interest requirement is waived for the ☐ fine ☒ restitution.
- ☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:
- ☐ The court finds that the defendant is financially unable and is unlikely to become able to pay a fine and, accordingly, the imposition of a fine is waived

*Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

* * *

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- ☒ **PAYMENT IS DUE IMMEDIATELY.** Any unpaid amount shall be paid to Clerk's Office, United States District Court, 700 Stewart Street, Seattle, WA 98101.
- ☒ During the period of imprisonment, no less than 25% of their inmate gross monthly income or \$25.00 per quarter, whichever is greater, to be collected and disbursed in accordance with the Inmate Financial Responsibility Program.
- ☒ During the period of supervised release, in monthly installments amounting to not less than 10% of the defendant's gross monthly household income, to commence 30 days after release from imprisonment.
- ☐ During the period of probation, in monthly installments amounting to not less than 10% of the defendant's gross monthly household income, to commence 30 days after the date of this judgment.

The payment schedule above is the minimum amount that the defendant is expected to pay towards the monetary penalties imposed by the Court. The defendant shall pay more than the amount established whenever possible. The defendant must notify the Court, the United States Probation Office, and the United States Attorney's Office of any

material change in the defendant's financial circumstances that might affect the ability to pay restitution.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program are made to the United States District Court, Western District of Washington. For restitution payments, the Clerk of the Court is to forward money received to the party(ies) designated to receive restitution specified on the Criminal Monetaries (Sheet 5) page.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☒ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several and corresponding payee, if appropriate.

**SEE ATTACHED SCHEDULE OF
RESTITUTION**

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

45a

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

* * *

SCHEDULE OF RESTITUTION

Totals

Total Bank Loss Restitution	\$3,018,002.85
Total Private Lender Restitution	\$1,240,526.28
Combined Total Restitution	<u>\$4,258,529.13</u>