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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES Plaintiff, v. LIMING LI., Defendant.	Case No.: 5:23-cr-00096 **SENTENCING MEMORANDUM** Date: May 8, 2025 Time: 8:30 a.m. Dept: Hon. John A. Kronstadt

Defendant Liming Li, through counsel, respectfully submits this Sentencing Memorandum to assist the Court with respect to the May 8, 2025, sentencing hearing in this case. Mr. Li requests that the Court take into consideration this memorandum in determining a reasonable, just, and appropriate sentence. For the reasons set forth below, Mr. Li respectfully requests a sentence of credit for the sixteen days of incarceration that he has already served along with a reasonable term of supervised release.

I. PROCEDURAL HISTORY

On May 19, 2023, Mr. Li was charged by Indictment with six counts of violating 18 U.S.C. § 1832 (a)(3) (unauthorized possession of trade secrets). *See* Docket No. 16. On February

27, 2025, Mr. Li pled guilty to Count 1 of the Indictment pursuant to a plea agreement. *See* Docket No. 49. According to that plea agreement, Mr. Li is free to recommend to the Court whatever sentence he believes is appropriate under 18 U.S.C. § 3553(a). *Id*. The parties agree that the applicable loss amount for the purpose of sentencing is approximately $206,582.29. *Id*. A sentencing hearing is currently set for May 8, 2025.

II. BACKGROUND

A. The Nature of Circumstances of the Offense

The charges in this case relate to Mr. Li's unauthorized possession of Company #1's Proprietary Information. Mr. Li, who holds a doctorate degree in applied mathematics, is a lifelong devotee of mathematical measurement and calculation. Since Mr. Li was young, he has developed a research toolkit that allows him to conduct independent research, self-train, update his source codes to match the newest international standards, and make backups for his research progress. This toolkit contains open-source codes along with codes that Mr. Li developed through his employment and own independent study.[1]

Mr. Li spent almost the entirety of his professional career, from 1996 to 2018, at Company #1, which is Japanese-owned but maintains a wholly-owned subsidiary in the Central District of California. Starting as a software engineer, Mr. Li's devotion to work and passion for research eventually led him to become the chief technologist in charge of research for Company #1's U.S. subsidiary. To be able to work whenever he had new ideas on his research and projects as a supervisor, Mr. Li would, on occasion over his two decades of employment, transfer files from Company #1's laptop onto his personal laptop and use portable devices to transfer them among different devices when working remotely or traveling. When he did so, Mr. Li did not pay sufficient attention to, nor did he take the care to differentiate, which files were confidential and proprietary versus those that were not. Over the course of his employment with Company #1, Mr.

[1] This includes Wen-Based 3D Model rendering, Database application, Java Script Modules (Node.js, Query.js, Sboots.js…), RESTful API, OpenAI, OpenGL, Open Cascade, OpenCV(Open Computer Vision Library), QT, MTConnect and OPC UA, FreeCAD.

Li carelessly commingled the company's proprietary data into his personal devices such that it became part of the research toolkit.[2]

In 2018, Mr. Li was terminated from Company #1 after he bypassed his direct supervisor and proposed a research development plan directly to the company's Japanese headquarters.[3] Mr. Li recalls that his access to Company #1's server and work email was terminated immediately upon his head manager learning of his trip to Japan, before Mr. Li even returned to the office. When Mr. Li met his head manager at the Southern California office upon his return, he was told that he had been fired and had to leave the office within one hour. After his termination from Company #1, Mr. Li did not return any of the files or other proprietary data that he had downloaded from Company #1 over his years of employment there, which were already mixed into his personal toolkit.

At the age of 60, Mr. Li was not ready to retire, and he began desperately looking for another role that would allow him to continue his passion for mathematic computation and measurement. His job search took him to companies all over the world, including the U.K., Germany, the U.S., and ultimately China, where in early 2020 he secured a consulting contract with a company that produces chains and bearings (which is unrelated to the products designed and developed by Company #1). Metadata from his personal laptop demonstrates, and Mr. Li admits, that on several occasions he accessed Company 1's proprietary data files in his personal toolkit after his termination from the company.

At around 6:00 a.m. on September 9, 2020, numerous armed federal agents executed a search warrant at Mr. Li's residence and seized every electronic device they encountered, including the laptops and devices used by elementary school students at his ex-wife's tutoring center. The complaint in this case was filed in May 2023. The years of investigation and litigation in this matter have uncovered no evidence whatsoever that Mr. Li ever distributed Company #1's Proprietary Information to any third party, including the Chinese company he

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[2] See Exhibit 1, Bates USAO_00001714-17.

[3] See Exhibit 2, Severance Letter from MELA President Barry Saylor.

worked for between 2020 to 2023. In addition, there is no evidence that Company #1's Proprietary Information was used directly in any files, codes, or work product produced by Mr. Li while working at the Chinese company.

Mr. Li has always been proud of the contributions he made to Company #1, including the numerous commercial products that were developed under his leadership. Working as the chief technologist for Company #1, Mr. Li had access to the most important proprietary information belonging to the company. Again, there is no evidence or allegation that he ever provided any of that information to any third party. Notably, at the very moment that Mr. Li was fired, he was advocating for a new research development proposal to Company #1's headquarters, believing it would benefit the company. Mr. Li designed the architecture of many of Company 1's products, leading his team to develop source codes over almost two decades. Many of the codes discovered on Mr. Li's personal devices were more than ten years old. Mr. Li made a terrible mistake when he maintained Company 1's proprietary data after he was terminated from the company. He has pled guilty to doing so and has had his life turned upside down as a result. However, he is steadfast that he never gave any of his former employer's information to anyone, nor did he ever intend to.

B. Mr. Li's Cooperation with the Investigation Demonstrates His Character and Limited Intent in Accessing the Files

When Mr. Li's house was searched by federal agents around 6:00 a.m. on September 9, 2020, he agreed to be immediately interviewed by the agents for almost two hours and then voluntarily followed the agents in his own vehicle to their station in West Covina. There, he voluntarily underwent another interview with multiple agents from 2 p.m. to 7 p.m. without ever asking to talk with anyone, including a lawyer. At the time, Mr. Li was unaware that he had broken any laws. The interviewing agents even commented in the interview that Mr. Li was "truthful and cooperative" and that "we're not always met with uh friendliness and cooperativeness . . . . given the nature of . . . . our jobs."[4]

[4] See Exhibit 3, Bates USAO_00001579.

Thus, beginning in 2020, the government was aware that Mr. Li worked for the Chinese company – he was transparent about his employment with the company and never tried to hide the fact that he was working for a company overseas. In fact, when Mr. Li took a month-long business trip to China in 2021, he reported his itinerary to the Assistant United States Attorney who was then assigned to oversee the investigation.[5] In Mr. Li's mind, none of Company #1's Proprietary Information could be used for his work at the Chinese company because the two companies were not in competing industries. He also wrongfully believed that the limited intent of personal use and self-study in accessing the files while working with the Chinese company was acceptable.

Mr. Li admits to making a mistake and accepts responsibility for it. He sincerely reflected on his behavior and genuinely expressed his remorse to the Probation Officer:

> *As a[n] engineer, I kept the source codes with me wherever I went, so that I could work on them whenever new thoughts came to me. However, I made a huge mistake. I failed to return the codes to [Company #1] when I left the company. Although I never disclosed nor transferred them to anyone else, I do understand that keeping the codes at home for my own use, study, skill practice was illegal. I am sorry that my mistake caused a lot of trouble. The government spent huge resources to investigate the case, so did [Company #1]. I pleaded guilty and I am willing to accept the Court's sentence and cooperate with my probation officer. I will never cause any harm to the community.*

III. SOCIAL HISTORY

A. Early Life and Childhood

Liming Li was born on July 5, 1958, to Zhimin Zhang and Yi Lin Li in Shijiazhuang, China, a prefecture-level city within the Hebei province. His mother, Zhiming, worked daily as a teacher at a local elementary school, while his father worked as director of a local manufacturing factory. To provide for their three children, of which Liming was the youngest, they worked

[5] See Exhibit 4, Bates USAO_00002298-99.

incredibly hard in their respective positions, and it was due to this hard work that they enjoyed a middle-class lifestyle. With such a lifestyle came access to a good education, and from a young age Liming cultivated a particular interest and excellency in math. He recalls being obsessed with solving mathematical problems during his free time, and particularly dedicated himself to figuring out problems of increasing complexity. As he prepared for middle school, it was his goal to explore this interest further through additional math and science classes. But, his hopes were soon dashed when the Cultural Revolution began to spread throughout China.

B. The Cultural Revolution

This revolution, launched by Communist Party Chair Mao Zedong in 1966, was intended to cleanse Chinese society of the influence of bourgeois culture and rid the Party of any disloyal members. It was a time characterized by economic insecurity, horrific violence, political reconstruction, and even anarchy, the effects of which were felt by hundreds of millions of citizens. Indeed, Liming was greatly impacted by the changes in the political climate. He vividly remembers how the curriculum taught in schools quickly shifted to adjust to the revolutionary climate – where they once taught about a variety of subjects, schools began centering curriculum solely around politics, a subject in which Liming had no interest. In fact, classes began fervently attacking bourgeois culture, criticizing traditional values, and uplifting Mao's version of the communist party. For Liming, the more his classes concentrated on politics, the less he became interested in school. As a result, what had once been a great source of joy for him became an almost unbearable chore.

A few years later, at the young age of fifteen, Liming was forced to leave his family and hometown behind and relocate to the rural Chinese countryside. Liming's relocation was necessitated by what was commonly known as the "Up to the Mountains and Down to the Countryside Movement," a policy enacted by the Chinese government that forced urban youth to permanently leave their homes and relocate to the rural countryside. "Sent-down" students spent their days training in farmwork and doing manual labor, activities which the government believed

would facilitate their education, develop their loyalty to the Communist Party, and familiarize them with the life of a working-class citizen.

As a "sent-down" student, Liming was forced to put aside his passion for math for the second time in his life. Instead, he was instructed in the ways of farm work. Understandably, this time in Liming's life was incredibly difficult. Not only was he required to do strenuous manual labor, but he was also separated from his family, with whom he was very close. He recalls missing his family constantly while he was away, allowed to visit them for only two weeks a year.

During this time, he was likewise confronted with the reality that his future was not as limitless as he once believed. He would likely spend the rest of his life on a farm, his dream of attending college no longer accessible as students with his background were banned from taking the national college entrance exam. Having been raised by his parents to study hard, utilize his talents to benefit society, and give back to the community, Liming felt trapped and deeply distraught by these changing circumstances.

C. Education

Fortunately for Liming, just 10 years after its beginning, the Cultural Revolution came to an end. The very next year, the government re-instated the national college entrance exam, solidifying Liming's opportunity to again pursue his dreams of becoming an engineer. Accordingly, Liming immediately started preparing for the difficult exam, devoting hours to studying for its various sections. This hard work paid off – he passed the exam with high marks and, in 1978, was accepted to Hebei Teacher's University.

At Hebei, Liming decided to major in math, believing it would best prepare him for a career in his newfound dream field: teaching. For him, though, math was not simply a means to an end. It was his life's passion—a way of making sense of the world, bringing logic to the illogical, and revealing subjective truths. Surprisingly, however, as he began his classes, Liming found himself struggling to keep up academically. Despite having a love and talent for math, it seemed he had fallen behind, the result of years of education lost during the Cultural Revolution. In light of these circumstances, Liming became ever-more determined to earn high marks,

working hard in his first year of university to learn the information he had missed. Four years later, he reaped the benefits of this hard work, graduating with his Bachelor of Science in mathematics.

Soon thereafter, Liming began working as an assistant teacher within Hebei's math department. He taught a variety of classes—including computer programming, computing analysis, and data structures—which provided him with an immense sense of joy and only confirmed his wish to pursue teaching as a career. Importantly, he also met his future wife, a student in one of his classes at the time. He vividly remembers the first occasion they spoke outside of class, when she came to office hours to discuss a low grade she had received on an exam. As they spoke, he became acutely aware of how intelligent and beautiful she was. A true mathematician, he was only further enamored by her passion for math. Later, the two began dating.

Amid such changes in his personal life, Liming remained dedicated to furthering his career in mathematics, ultimately deciding to seek a position as a university professor. In order to do so, he knew he would have to receive a master's degree and began studying rigorously for the required national postgraduate entrance exam. After passing it in 1984, he applied for admission to several universities, eventually committing to the mathematics program at his alma mater.

D. Studying in America

Three years later, Liming graduated, intending to stay in China and look for a position as a professor. But, upon an unexpected offer to move to the U.S. and join Claremont Graduate University's PhD program, Liming's plan changed drastically. The offer, Liming explains, came from a professor who gained a favorable impression of Liming after reading his graduate research paper. So impressed was the professor that he offered to waive Liming's tuition and provide scholarships to cover the cost of living. Such an opportunity, Liming realized, was once in a lifetime, and far outweighed the pursuit of his career goals in China, particularly since professors there were only paid $15-20 per month. So, Liming decided to accept the opportunity and, a few months later, he and his future wife moved to Claremont, California.

Liming officially began the program in 1990, pursuing his doctorate degree in math. Soon after doing so, Liming's advisor recommended that he consider switching to applied math. This, the advisor believed, would better provide Liming with the ability to apply his complex mathematical knowledge to various industries and help them solve their problems. Recognizing that he also had an opportunity for his research to have a wide-scale impact and help improve society, Liming decided his advisor was right and switched his program.

In the succeeding years, Liming dedicated himself fully to his studies, at times sacrificing his own health in favor of his academic success. He stayed in the United States for the duration of his program, never once going back home to visit his family in China. This decision, Liming explains, was rooted in his belief that he needed to devote himself to his academics, particularly because he was learning English in addition to his graduate curriculum. However, not seeing his family for so long was incredibly difficult for Liming. He remained sustained only through the close-knit relationships he had developed with his PhD supervisor and fellow classmates. In many ways, they became his family, and he relied upon them throughout the program.

Five years later, Liming's 17-year-long academic career came to an end, and he graduated with his PhD in applied mathematics. At a transitional point in his life, Liming debated whether he should return to China or stay in America. In the end, he decided to build a future for himself here. For him, it was a land of endless opportunities and freedom, where he could find a job he loved and build a happy life for himself. China, on the other hand, was a place where his life had been characterized by control, instability, and unhappiness. It was where he grew tired of navigating a strict political climate, and where he felt overwhelmed with stress. The American lifestyle, he figured, was more in alignment with his future goals.

E. Work at Company #1

After determining to stay in America, Liming worked with a professor on an industry project, during which the professor helped him to apply for a green card that would allow him to work and live in the U.S. long-term. In doing so, he renounced his Chinese citizenship in or around 2000, distancing himself from the Chinese government and its politics. Liming then

applied for full-time positions, eventually receiving a post-doctoral job at Claremont Graduate University working in the application of mathematic approaches for Chevron. One year later, Liming accepted a job offer with Company #1, a Japanese-owned company specializing in metrology solutions and inline automation.

At Company #1, Liming worked in a variety of positions for over 20 years. Though he started at the company in an entry-level position, he was eventually promoted to senior software engineer, where he oversaw the development of geometric algorithms, operation of the coordinate-measuring machine, and provision of customer support in metrology solutions. During his tenure, he even solved a key problem for one of Company #1's largest customers, beating out their competitor in the process. Then, in 2007, this success, combined with his dedication and hard work, led to his further promotion to program manager, where he led a team of engineers and created a new generation of metrology software that would be used around the world.

Importantly, it was this dedication and hard work that defined Liming's time at Company #1 prior to his departure from its main arm. To ensure he was producing the most cutting-edge technology possible, he consistently continued his education outside of work hours, attending international conferences, participating as a subject expert on a committee with the American Society of Mechanical Engineers, and conducting his own independent research. During his leisure time, he also constantly updated his codes, work he not only saw as necessary to satisfy his own personal standard of excellence and allow Company #1 to remain on the frontline of the industry, but as fulfilling. To facilitate such work, he kept the codes on his personal laptop at all times, even during international travel, assuring his access to them for his own off-the-clock, "extracurricular" work. While this was motivated primarily by his intrinsic values and belief that good ideas could arise at any moment, as an engineer completely absorbed in his work and research, he wanted unfettered access to the codes on his days working from home.

F. Transition from Company #1

Subsequently, in 2013, the department that Liming led was restructured as Micro Encoder Los Angeles ("MELA"), a new arm of Company #1 focused on research and development. At the

same time, Liming received and accepted an offer to work as its chief technologist, a role that closely resembled his previous work at the company, but also involved providing technical consulting to development teams and working in new areas of product specification, dimension, and tolerancing. During his tenure, Liming once again embodied the definition of a hardworking, dedicated employee, continuing to work after hours to ensure the timely completion of his high-quality work. Unfortunately, though, in 2018 Mr. Li was terminated from the position after he stubbornly bypassed his head manager and proposed a research development plan directly to the Japanese headquarters. This was soul-depriving for Liming. Having spent decades at Company #1, it not only constituted almost the entirety of his career, but had also come to define his value and expertise as a mathematician.

Indeed, throughout his career, Mr. Li was extremely devoted to Company #1 and wanted to make the largest impact he could. In the wake of his departure, Liming began desperately looking for another role that would allow him to continue his passion for mathematic computation and measurement. At the age of 60, he was not ready to retire and live on pension plans yet. He still believed his expertise could contribute to the world. As a result, he kept conducting his independent research, training himself, and updating his codes to match the newest international standards.

Unfortunately, Mr. Li's attempt to acquire a new job did not go smoothly at the beginning, mainly due to his age. He applied to a variety of jobs, hoping to simply use his expertise in math and 3D programming to contribute to another company, whether that company be in the U.S. or abroad. However, no such position came his way. Then, in February 2018, he received the opportunity he had been waiting for: an invitation to travel to England as a visiting research scientist for the United Kingdom National Physics Laboratory. Excited and grateful for the chance to continue applying his knowledge, Liming accepted and began his work in April 2018. There, his research focused on integrating inspection technology into a smart manufacturing system. However, because of the short-term nature of the position, Liming continued to search for work.

Upon returning from the United Kingdom later that year, Liming received a job offer with a German company that develops tools for car manufacturing. As the new director of software development, Liming worked in a small city near Frankfurt, Germany for four months before returning to the U.S. to develop an American-based software team. While doing so, he played a key role in the integration of new features in their existing car modeling software that optimized performance. Regrettably, in 2019 Liming was discharged due to disagreements about his style of leadership.

G. Employment at the Chinese Company

Once again, he continued to search for a job where he could make use of his abilities, wanting greatly to continue the work he loved. Then, in late 2019, he was approached by a chain and bearing manufacturer in a prefecture-level city in China, with an offer for an advisory role which allowed him to work remotely in the U.S. There, he would be able to use his knowledge and practical skills to improve its productivity by modernizing and automating their chain manufacturing and inspection processes. Though he was uncertain about involving himself with a Chinese company, the prospect of applying his skills again and transitioning to hardware coding excited him greatly, however. Hence, Liming accepted the job on a three-year contract from March 2020 to March 2023 and continued to look for other opportunities in the U.S.

A little over a year later, Liming was asked by the company to visit China for a few weeks and assess their factories. Liming first rejected, continuing to work remotely in the U.S. Then, in the beginning of 2023, the company requested Liming to visit the company in-person once again. This time, however, Liming obliged, as it was the first time post-pandemic he would have the opportunity to visit his parents, both of whom are over 90 years old, and his contract was nearing its end. When he arrived, he found a new project waiting for him and a corresponding offer to work on it. Intending to return to remote work in the U.S., he accepted. But, when the pending case was filed, he stopped working for the company entirely.

H. Present Circumstances and Family Life

Unable to work in his field during the pendency of this case, Liming has lacked both an income and a means to fulfill his passions. A significant amount of his savings was seized by the government. His bank accounts were closed. No employer will hire him at his age and with the case pending. Left with no choice, he became forced to rely on government benefits and his family's income.

Since the onset of the case, Liming has also experienced a number of deleterious emotional effects. The subjection of his family to several armed government searches of his residence has caused them great shock and substantial mental trauma. Liming remembered that on at least one occasion the search even extended to the minor and elementary school students of the study center run by his ex-wife and their belongings. He was heartbroken that people surrounding him suffered collective punishment because of him. In fact, in the aftermath of the 2020 FBI search of his home, his now ex-wife divorced him. He is no longer able to fulfill the promise he made to his ex-wife to give the family a happy retirement life.

As a proud United States citizen since 2002 and zealous scientist for decades, the allegation that he betrayed America and stole something that did not belong to him has also haunted Liming, who prides himself on being an upstanding citizen. Having long measured himself by the utilization and perfection of his technical skills to help others and contribute to technology and society, being without work has also constituted a fundamental challenge to his identity recognition.

Yet, in spite of these hardships, Liming remained resolute in his wish to continue to contribute to society and started to volunteer for his ex-wife's learning center. Today, he tutors elementary and middle school students there, teaching them to program. He has greatly enjoyed this work. Through it, he has not only been able to positively impact his students' grades and academic progress but has also been able to awaken in them his same passion for math and science.

Notably, as difficult as it has been to be without work, his present circumstances have allowed him to commit more time to his family. A dedicated and loving father, he maintains a good relationship with his daughter Sofia, who is now 27 years old and works full-time in the United States Space Force. He is incredibly proud of the smart, hardworking woman his daughter has become, and looks forward to continuing to grow their relationship.

At his core, Liming Li is an intellectual and a devoted scientist. He is dedicated to continued learning, innovation, and precision. He prides himself on his enthusiasm for his field, in which he is an expert, and is committed to using his expertise to make an impact. Over the span of his 27-year career, he has done just that. His work has truly spanned the globe, making an impact in Japan, Germany, the United Kingdom, China, and America. And, despite the hardships that he has faced, Liming has had an incredible career built on a reputation of honor and reliability. He has also had a fulfilling personal life and is filled with great pride in the accomplishments of his daughter. In this sense, Liming's life and career exemplifies the spirit of the American dream. As he looks towards the future, he hopes to continue making an impact on the next generation of engineers and mathematicians, giving back to those who come after him.

IV. LEGAL DISCUSSION

A. Sentencing Guidelines and the Economic Loss Table

The United States Sentencing Commission was charged by Congress with the task of establishing guidelines that would carry out the basic sentencing objectives contained in 18 U.S.C. § 3553(a). *See United States v. Rita*, 551 U.S. 338, 347 (2007). Those objectives include *inter alia* "certainty and fairness," avoiding unwarranted sentencing disparities, and permitting "individualized sentences when warranted by mitigating or aggravating factors not taken into account in the establishment of general sentencing practices." *Id*. at 348. The primary tool used by the Commission in creating the Sentencing Guidelines, the product of its congressional mandate, was extensive and thorough examination of empirical data that included "tens of thousands of sentences." *Id*. at 349; *see also Gall v. United States*, 552 U.S. 38, 46 (2007) (acknowledging that the Sentencing Guidelines are "the product of careful study based on

extensive empirical evidence derived from the review of thousands of individual sentencing decisions").

Section 2B1.1's economic loss enhancement, however, is entirely untethered from its empirical roots and has lost the confidence of many jurists. *See generally* Barry Boss & Kara Kapp, How the Economic Loss Guidelines Lost its Way, and How to Save It, 18.2 Ohio St. J. of Crim L. 605 (2021). The following is a brief summary of the history of § 2B1.1's economic loss guideline, which is described in far greater detail in Mr. Boss and Ms. Kapp's article.

In cases in which the government can prove the intended or actual loss resulting from an economic offense, the sentencing calculation includes an enhancement under § 2B1.1's economic loss table. *Id*. at 608. The enhancement calculations in the loss table are critical because they can single-handedly drive the severity of sentences imposed on economic crime offenders such as Mr. Li. *Id*. In preparing the initial loss table, which was previously located in § 2F1.1, the Commission reviewed presentence reports from 10,000 prior cases in 1984. *Id*. However, after reviewing the empirical data, the Commission deviated in two substantial ways from its standard practice of anchoring the Guideline ranges in the empirical data. *Id*. at 609. First, the Commission excluded from its analysis every sentence in which a judge had imposed a sentence of probation, which accounted for approximately 50 percent of the total data considered. *Id*. Second, even after excluding half of the relevant data, the Commission chose to recommend more severe sentences than the mean sentences of incarceration reflected in the remaining data. *Id*.

The resulting economic loss table topped out at $5 million, with enhancements increasing by one point for every loss bracket. *Id*. Under this initial table, a first-time offender involved in an economic offense with a $1 million-plus loss amount, with no applicable enhancements other than loss, would have faced an Offense Level of 15 and a Guideline range of 18 to 24 months. *Id*. at 610. A similarly situated offender with a $20 million-plus loss amount would have faced an Offense Level of 17 and a Guideline range of 24 to 30 months. *Ibid*. "The Commission's initial deviations from the underlying empirical data thus resulted in modest increases in the severity of

sentences, but these initial ranges were far from the arbitrary, disproportionate, and at times draconian sentences produced under today's loss table." *Ibid.*

Since the initial loss table was created, there have been three significant amendments that have dramatically increased the severity of sentences for economic offenses under § 2B1.1. The first of these amendments occurred in 1989, in the wake of the savings and loan fraud crisis. The new table increased enhancements for losses greater than $40,000 and extended the loss table by four brackets, topping out at $80 million. *Ibid.* Under this revised table, a first-time offender with a $1 million-plus loss amount would face an Offense Level of 17 and a Guideline range of 24 to 30 months, the range that was previously reserved for offenders with a $20 million-plus loss amount. *Id.* at 611. A first-time offender with a $20 million-plus loss amount would face an Offense Level of 22 and a Guideline range of 41 to 51 months. *Ibid.* Those offenders in the top bracket with a $100 million-plus loss amount would face an Offense Level of 24 and a Guideline range of 51 to 63 months. *Ibid.* This was more than double the range from the initial economic loss table created just five years prior.

In 2001, as part of the Commission's "Economic Crime Package," it merged three guidelines and made the economic loss table even more severe. *Ibid.* The new table used two-level increments instead of the former one-level increment for each loss bracket, and increased the enhancement severity for losses greater than $400,000. *Id.* at 611. Under the new table, a first-time offender with a $1 million-plus loss amount would face an Offense Level of 22 and a Guideline range of 41 to 51 months. *Ibid.* A first-time offender with a $20 million-plus loss amount would face an Offense Level of 28 and a Guideline range of 78 to 97 months. *Ibid.* At the highest end, a first-time offender with a $100 million-plus loss amount would face an Offense Level of 32 and a Guideline range of 121 to 151 months, more than double the range from the previous economic loss table. *Ibid.*

The final significant amendment to the loss table occurred in 2003, after the passage of the Sarbanes-Oxley Act. In addition to increasing the base offense level from 6 to 7, the Commission extended the loss table by two brackets, making the highest loss bracket greater than $400 million.

Id. at 612. A first-time offender with a $400 million-plus loss amount would face an Offense Level of 37 and a Guideline range of 210 to 262 months. *Id*. at 613.

In 2015, the Commission issued amendments to § 2B1.1 that moderately addressed the concerns raised about the operation of the economic loss table. *Id*. at 613. The most significant changes were a narrower interpretation for "intended loss" and an adjustment to the loss ranges to account for inflation. *Ibid*. However, these changes did little to correct the underlying problem—that the loss table is entirely divorced from the empirical data that informed its creation.

The gulf between the recommended Guideline sentences and any grounding in empirical data has resulted in a broad judicial consensus that § 2B1.1's economic loss table very often overstates defendants' culpability. *See, e.g., United States v. Gupta*, 904 F.Supp.2d 349, 351 (S.D.N.Y. 2012) ("By making a Guidelines sentence turn on this single factor, the Sentencing Commission ignored [§ 3553(a)] and . . . effectively guaranteed that many such sentences would be irrational on their face."); *United States v. Parris*, 573 F.Supp.2d 744, 745, 747-48 (E.D.N.Y. 2008) ("[W]e now have an advisory guidelines regime where, as reflected by this case, any officer or director of virtually any public corporation who has committed securities fraud will be confronted with a guidelines calculation either calling for or approaching lifetime imprisonment."); *United States v. Adelson*, 441 F.Supp.2d 506, 509 (S.D.N.Y. 2006) ("What drove the [] calculation in this case, more than any other single factor, was the inordinate emphasis that the Sentencing Guidelines place in fraud cases on the amount of actual or intended financial loss."). Thus, defendants sentenced under § 2B1.1 are frequently sentenced below the applicable Guidelines range, and almost never sentenced above it. Boss & Kapp, *supra*, at 620-622.

Accordingly, there is a groundswell of criticism and a renewed push to reform the current Guidelines. James E. Felman, speaking for the American Bar Association, petitioned the Sentencing Commission to "reduce the unwarranted emphasis on both loss and multiple specific offense characteristics that, alone and especially in combination, tend to overstate the seriousness of many offenses." Mark W. Bennett et al., *Judging Federal White-Collar Fraud Sentencing: An Empirical Study Revealing the Need for Further Reform*, 102 Iowa L. Rev. 939, 979 (2017) (citing

James E. Felman, Chairman, Am. Bar Ass'n Criminal Justice Section, *Testimony on Behalf of the American Bar Association Before the United States Sentencing Commission for the Hearing on Proposed Amendments to the Federal Sentencing Guidelines Regarding Economic Crimes* 9 (Mar. 12, 2015)). He was not alone in his motion for revision of the Guidelines. *See* Daniel S. Guarnera, *A Fatally Flawed Proxy: The Role of "Intended Loss" in the U.S. Sentencing Guidelines for Fraud*, 81 Mo. L. Rev. 715, 717 n.9 (2016).

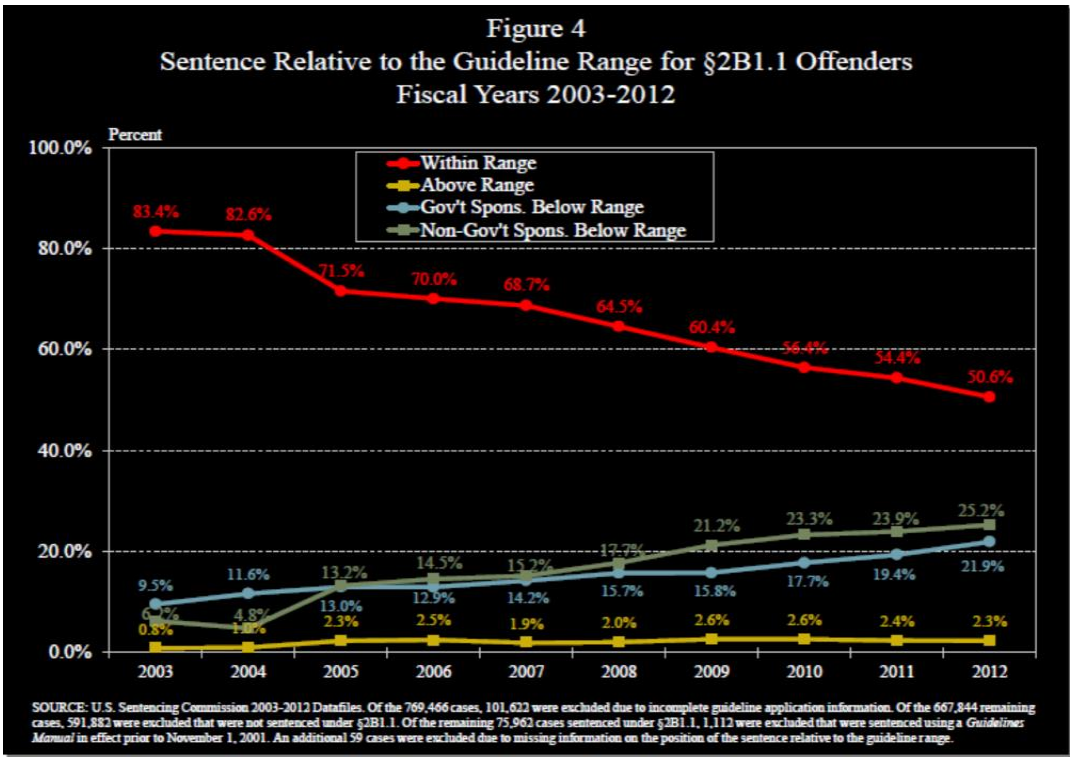
Further criticism of Section 2B1.1 has been documented from its own creators. Frank O. Bowman, III describes himself as "one of the principal architects" of Section 2B1.1. Frank O. Bowman III, *"Loss" Revisited: A Defense of the Centerpiece of the Federal Economic Crime Sentencing Guideline*, 82 Mo. L. Rev. 1 (2017). He describes the fraud Guidelines as being "fundamentally broken." *Id*. at 4 (internal citations omitted). Further, Bowman states that he is "far from satisfied with the current state of Section 2B1.1, the economic crime guideline" and that he agrees with "many others that it can, in too many cases, suggest unreasonable sentences." *Id*. at 32; *See also* Frank O. Bowman III, Damp Squib: The Disappointing Denouement of the Sentencing Commission's Economic Crime Project (and What They Should Do Now), 27 Federal Sentencing Reporter 270 (2015) ("Key to understanding the current dysfunction of the fraud guideline for high-loss offenders is recognition that, because of the logarithmic character of the 43-level Sentencing Table, each increase in offense level has an even-greater absolute effect on sentence length, the higher one goes up the Table.").

In the case of Mr. Li, the loss amount multiplies his base offense level by over 150 percent. Bowman, in addition to his disdain for the loss level enhancements, disagrees with the significant increase in offense level due to the "factor creep" phenomenon. Bowman, *"Loss" Revisited* at 5 ("The inflated significance of loss in the current economic crime guideline has been exacerbated by the creeping proliferation of non-loss specific offense characteristics."). In addition to Mr. Li's 10-level loss enhancement, the "factor creep" phenomenon brings his base offense level from 6 up to 16.

The Supreme Court has held that the Sentencing Guidelines must be solely advisory, ruling that the mandatory Guidelines sentencing scheme was unconstitutional. *United States v. Booker*, 543 U.S. 220 (2005). Since *Booker*, federal judges have largely imposed sentences "far below the guidelines range." Jillian Hewitt, *Fifty Shades of Gray: Sentencing Trends in Major White-Collar Cases*, 125 Yale L.J. 1018 (2016). An empirical study conducted by Jillian Hewitt found that non-government-sponsored below-range sentences received by defendants in S.D.N.Y. "were, on average, fifty to seventy percent shorter than the minimum Guidelines sentence." *Id*. at 1051 (Comparing it to government-sponsored below-range sentences that were found to be "consistently 90% shorter than the minimum Guidelines range"). Hewitt concluded that S.D.N.Y. sentencing data "empirically corroborate[d] scholarly criticism that the loss table often vastly overstates the seriousness of an offense." *Id*. at 1025. Mr. Boss and Ms. Kapp agree that "the loss enhancement exacerbates, rather than corrects, the underlying problem of unwarranted sentencing disparities that the Guidelines were designed to solve. Moreover, the loss enhancement results, at times, in draconian sentences for non-violent offenders that strain our correction facilities and do nothing to rehabilitate offenders." Boss & Kapp, *supra*, at 628.

Because there is a growing awareness in the federal system regarding the over-reliance on the loss amount which is baked into the Sentencing Guidelines, defendants in § 2B1.1 cases are frequently sentenced below the applicable Guidelines range, and almost never sentenced above it. *See Sentencing and Guideline Information for § 2B1.1 Offenders*, United States Sentencing Commission Symposium on Economic Crime (2013). According to the Sentencing Commission's statistics, for the roughly 8,500 federal fraud cases in 2012, over 47 percent of the defendants were sentenced below the applicable Guidelines range, while only 2.3 percent were sentenced above it. *Id*. The trend was moving increasingly toward more below-Guidelines sentences and away from within- or above-Guidelines sentences:

Sentencing Trends for §2B1.1 Offenders: Fiscal Years 2003 – 2012



Id.

These statistics and negative sentiments regarding Section 2B1.1's loss table are reflected in the opinions of many federal judges. Judge Rakoff warns of "the utter travesty of justice that sometimes results from the guidelines' fetish with abstract arithmetic, as well as the harm that guideline calculations can visit on human beings if not cabined by common sense." *United States v. Adelson*, 441 F. Supp. 2d 506, 512 (S.D.N.Y. 2006), aff'd, 301 F. App'x 93 (2d Cir. 2008). The circuit court in *Ebbers* noted that "[u]nder the guidelines, it may well be that all but the most trivial frauds . . . may trigger sentences amounting to life imprisonment." 458 F.3d at 129. The court in *United States v. Parris* relays that while consideration of Congress' judgement is noted, "[it] does not mean that the Sentencing Guidelines for white-collar crimes should be a black stain on common sense." 535 F.3d 999, 1002 (9th Cir. 2008). Judge Underhill called the loss enhancement Guideline "fundamentally flawed, especially as loss amounts climb." *United States v. Corsey*, 723 F.3d 366, 380 (2d Cir. 2013) (Underhill, J., concurring); *see also United States v. Gupta*, 904 F.Supp.2d 349, 351 (S.D.N.Y. 2012) (Rakoff, J.) ("By making a Guidelines sentence

turn, for all practical purposes, on [loss enhancement], the Sentencing Commission . . . effectively guaranteed that many such sentences would be irrational on their face."). In *United States v. Emmenegger*, 329 F.Supp.2d 416, 427 (S.D.N.Y. 2004), the court referred to the loss enhancement as "questionable," noting many problems with the calculation such as lack of consideration for moral seriousness.

B. Section 3553(a) Factors

While the Court must consult the Sentencing Guidelines in considering a fair and just sentencing for Mr. Li, it should be guided primarily by the factors enumerated in 18 U.S.C. § 3553(a). *Gall, supra*. Pursuant to § 3553(a), this Court must fashion a sentence that is sufficient but not greater than necessary to comply with the purposes of the statute.

The Sentencing Guidelines are meant to be just a starting point for the sentence calculation and district courts "may not presume that the Guidelines range is reasonable." *Gall, supra*, 552 at 50. Instead, case law demands district courts to "make an individualized assessment based on the facts" presented in the singular case at hand, as the sentence prescribed by the Guidelines may greater than necessary. *Ibid.*; *Kimbrough v. United States*, 552 U.S. 85, 91 (2007); *see United States v. Gupta*, 904 F.Supp.2d 349, 350 (S.D.N.Y. 2012) ("Imposing a sentence on a fellow human being is a formidable responsibility. It requires a court to consider, with great care and sensitivity, a large complex of facts and factors."); *United States v. Dorvee*, 616 F.3d 174, 184 (2d Cir. 2010) ("[T]he amount by which a sentence deviates from the applicable Guidelines range is not a measure of how 'reasonable' a sentence is. Reasonableness is determined instead by the district court's individualized application of the statutory sentencing factors.").

While a sentence within the applicable Guidelines range may be appropriate for many crimes, courts across the United States have routinely concluded that sentences driven by the fraud Guidelines – U.S.S.G § 2B1.1 – are unreasonable because the loss amount oftentimes increases the offense level to such an extent that the resulting Guidelines range is entirely unhinged from the § 3553(a) factors. *See, e.g., United States v. Gupta*, 904 F.Supp.2d 349, 351 (S.D.N.Y. 2012) ("By making a Guidelines sentences turn on this single factor, the Sentencing Commission

ignored [§ 3553(a)] and . . . effectively guaranteed that many such sentences would be irrational on their face."); *United States v. Adelson*, 441 F.Supp.2d 506, 509 (S.D.N.Y. 2006) ("What drove the [] calculation in this case, more than any other single factor, was the inordinate emphasis that the Sentencing Guidelines place in fraud cases on the amount of actual or intended financial loss."). As such, district courts are permitted to vary from Guideline ranges "based solely on policy considerations, including disagreements with the Guidelines." *Kimbrough*, *supra*, 522 U.S. at 101; *Cutler*, *supra*, 520 F.3d at 129. Notably, the Guidelines calculation in this case places an "inordinate emphasis" on "putatively measurable quantities," or the financial loss, which should focus the sentence determination more on the §3553(a) factors. *United States v. Adelson*, 441 F. Supp.2d 506, 509-12 (S.D.N.Y. 2006), aff'd, 301 F. App'x. 93 (2d Cir. 2008).

C. Character Letters

Mr. Li has received several support letters. In his supporters' view, Mr. Li is a simple, dedicated, meticulous, and caring scientist. Ms. Judy Jiang, who was married to Mr. Li for more than 30 years, writes about his unparalleled devotion to his work, and provides important insight into his character. She describes him as an intellectual above all, saying "I still remember him telling people at a gathering that the happiest moments of his life were when he was working. That is who he is, a man completely devoted to his field." Importantly, she adds that this devotion extended to his job as well. She opines, "He believed in what he was doing, and he wanted his company to succeed, no matter the personal cost." Sophia Li, Mr. Li's daughter, echoes these statements in her own letter of support. While discussing her father's steadfastness, she states, "His work was not just a job to him; it was a passion. He took immense pride in solving complex problems, refining his code, and constantly striving for efficiency and precision." She also shared her mother's reflections on Mr. Li's character. Both describe him not as an individual motivated by greed, nor as one who "acts with malice or deception." Rather, they coin him as a kind-hearted person who is brilliant, honorable, and good.

Sophia Li's letter also provides important insight into who Mr. Li is as a parent. Although he has always been committed to his work, he is also a dutiful father "who has always done

everything in his power to provide for [his family]." Indeed, Sophia underscores Mr. Li's unexpressive but selfless love throughout her letter. She says, for example, "He is the man who, without fail, drives me to the airport no matter how early my flight is." For Sophia, he is also the person who inspired her passion for and talent in STEM: "He wanted to pass on the skills and mindset that had shaped his own success." According to Sophia, this played a significant role in her own achievements, including her current civil service in the U.S. Space Force. She says, "As a provider, he is the man who has enabled me to serve my country and to dedicate my career to protecting my country."

Mr. Li's last support letter comes from the pastor of his church, Harry Wang, who has known the Li family for ten years. In it, Mr. Wang provides a new perspective of Mr. Li as a devout Christian and quiet servant who takes care of his fellow churchgoers. A regular volunteer during church services, Mr. Wang highlights Mr. Li's leveraging of his technical skills to support the church's sound and computer console. Using an anecdote, he also emphasizes Mr. Li's selfless love for people. He describes how Mr. Li once "stayed up all night by himself, looking after the campfires in the [church's] camp and keeping everyone warm and safe" when he became concerned about the welfare of his fellow campers. Taken together with his commitment to family and passion for his work, it becomes clear that Mr. Li is defined not only by his professional successes, but also by his upstanding values.

D. Health

Under §3553(a)(1), both the nature and circumstances of the offense and the history and characteristics of Mr. Li must be considered when making a sentencing determination. In 2014, a 3.3 by 2.8-centimeter mass was found in Mr. Li's brain after he collapsed while playing badminton.[6] Although the mass was later determined to be benign, it threatened a portion of the jugular bulb—a key link in the mechanisms that drain blood from the head and brain—and the hypoglossal canal—a passage that contains the nerve tasked with providing motor innervation to

[6] Exhibit 5**,** Photograph of 10/27/14 Discharge Summary.

the tongue.[7] Both are important to brain functioning. To shrink the tumor, Mr. Li was given Bromocriptine,[8] a hormone treatment that, according to Sophia, "changed him in ways none of [them] could imagine." She says, "The medications affected his mood, made him irrationally stubborn at times, and disrupted his ability to make clear decisions." Mr. Li reports that since the incident, he has consistently suffered from headaches, numbness, and decreased ability in thinking.

Today, he remains under the close care of his medical team due to the potentially severe consequences associated with his growing tumor. Although his levels of prolactin, a hormone associated with tumor growth, have gone down since their high of 1,700 nanograms per milliliter, they remain hundreds of nanograms above the average range.[9] Thus, it is absolutely crucial that Mr. Li continues his well-established care plan, which includes CT and MRI exams every six months, blood exams every three months, and six capsules of bromocriptine daily. Without such regular monitoring, Mr. Li could be exposed to serious health problems—such as vertigo, vision difficulties, neck pain, and trouble swallowing—and require surgery. The severity of these consequences constitutes an undue risk to Mr. Li's health if incarcerated, thereby making a credit for time served sentence just and appropriate under the totality of the circumstances.

E. The length of pretrial detention and supervision and Mr. Li's compliance

Mr. Li was arrested at the border when he returned to the U.S. from China and placed in custody on May 6, 2023. Sixteen days later, on May 22, he was released on bail with highly restrictive conditions, including location monitoring, that require him to report to the pretrial officer regularly and randomly, allow for screen monitoring of all of his devices, and abstain from any contact with any foreign entities about employment. In addition, any employment of Mr. Li needs to be approved by the Supervising Agency. *See* Docket No. 20. The pretrial supervision has factually rendered Mr. Li unemployed since his release in May 2023.

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[7] *Id.*

[8] *Id.*

[9] Exhibit 6, Photograph of 8/16/22 Prolactin Levels.

F. Restitution Calculation

In the plea agreement, the parties stipulate that the applicable loss amount for the purpose of sentencing is approximately $206,582.29. Docket No. 49. This number is composed of the expense Company #1 incurred in its investigation of the case, which is $17,675, and Mr. Li's income while working for Suzhou, which is $188,907.29. However, because there is no evidence that Mr. Li ever transferred any Proprietary Information of Company #1 to any third party, it does not represent the actual loss of Company #1. Since the start of the investigation of this matter, the government has seized $80,031.92 from Mr. Li's accounts and Mr. Li has agreed to forfeit this amount. Mr. Li thus respectfully requests that restitution in this matter be limited to the $17,675 of actual loss to Company #1.

G. Probation's Guidelines Calculation

Mr. Li thanks the Probation Office for its thorough investigation and concurs with Probation's calculation of the applicable Total Offense Level of 11, which rests in Zone B, with a corresponding Guidelines range of 8 to 14 months. Mr. Li will send informal requests to correct some minor factual incorrections in the Pre-Sentence Report which have no bearing on the Guidelines calculation.

V. CONCLUSION

Mr. Li worked for Company #1 almost the entirety of his career, and became the chief technologist of Company #1's U.S. subsidiary. During his time at Company #1, he was loyal to the company and never attempted to use his position and possession of Company #1's Proprietary Information for any improper purpose. No evidence indicates that Mr. Li ever transferred any Company #1's Proprietary Information to anyone else, nor does any evidence indicate that Company #1 suffered any actual loss other than the expense the company spent on this investigation of the case. Mr. Li admits that he accessed Company #1's Proprietary Information after he left Company #1, and that was only for his personal use.

Mr. Li is now 67 years and continues to struggle with serious health conditions. He has also been under strict supervision by Pretrial Services since May 2023. Accordingly, Mr. Li

respectfully requests that he be sentenced to a term of time served, with a reasonable term of supervised release. A sentence of this nature would be sufficient but not greater than necessary, reflecting Mr. Li's characteristics, motivation, the nature of his acts, and his age and health. Furthermore, a guideline range sentence would not align with the treatment of similarly situated white-collar offenders who received below-guideline sentences. A sentence of time served under the specific circumstances of this case conforms to the sentenced purposes of § 3553(a), offering both just punishment and the opportunity for positive change.

DATE: April 24, 2025

Respectfully submitted,

Daniel B. Olmos
Attorney for Defendant Liming Li