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15  
16 UNITED STATES OF AMERICA,  
17 Plaintiff,  
18 v.  
19 SIMON CHU and  
CHARLEY LOH,  
20 Defendants.

No. CR 19-193-DSF

**GOVERNMENT’S OBJECTIONS TO  
PRESENTENCE REPORT AND  
SENTENCING MEMORANDUM RE:  
DEFENDANT CHARLEY LOH**

Hearing Date: July 15, 2024  
Time: 8:30 a.m.  
Location: Courtroom of the  
Hon. Dale S. Fischer





**TABLE OF CONTENTS**

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

TABLE OF AUTHORITIES .....iv

TABLES OF EXHIBITS .....vii

I. INTRODUCTION ..... 1

II. FACTUAL BACKGROUND RELATED TO THE OFFENSE CONDUCT ..... 2

III. THE GOVERNMENT’S OBJECTIONS TO THE PRESENTENCE REPORT ..... 4

    A. The Base Offense Level is 6, but the Guideline for the Klein Conspiracy Charge Is § 2X1.5 ..... 5

    B. The Government Does Not Need to Prove Actual Loss in Calculating the Fraud Loss Amount. .... 6

    C. A Four-Level Enhancement Should Apply Because the Offense Resulted in Substantial Financial Hardship to Five or More Victims ..... 8

    D. A Four-Level Enhancement Should Apply Because Defendant Was the Organizer and Leader of One or More Other Participants ..... 11

    E. The Guideline Term of Imprisonment is 120 Months ..... 14

    F. The Government’s Guidelines Calculation ..... 14

IV. THE GOVERNMENT’S SENTENCING RECOMMENDATION UNDER 18 U.S.C. § 3553(a) ..... 15

    A. The Nature and Circumstances of the Offenses Justify Imprisonment..... 16

        1. LOH deliberately broke laws designed to protect American consumers..... 16

        2. LOH’s conduct put consumers at risk of serious injury and death. .... 19

    B. LOH’s History and Characteristics Further Justify Imprisonment. .... 20

    C. The Need for a Significant Sentence of Imprisonment to Reflect the Seriousness of the Offenses, Promote Respect for the Law, Provide Just Punishment for the Offenses, and Afford Adequate Deterrence ..... 21

    D. The Need to Avoid Unwarranted Sentencing Disparities ..... 22

    E. The Need to Provide Restitution to Victims ..... 23

    F. The Need for a Significant Criminal Fine ..... 24

V. CONCLUSION..... 25

**TABLE OF AUTHORITIES**

**CASES**

*Drake v. Honeywell, Inc.*, 797 F.2d 603 (8th Cir. 1986) ..... 17

*Hillmann v. Gree USA, Inc.*, 4:23-cv-00830 (E.D. Mich. Jun. 6, 2023) ..... 19

*Honeycutt v. United States*, 581 U.S. 443 (2017).....2

*New York Cent. and Hudson River R.R. v. United States*, 212 U.S. 481 (1909)..... 12

*U.S. v. Gree Electric Appliances, Inc. of Zhuhai et al.*,  
2:21-cr-00498-DSF (C.D. Cal. 2022).....7, 12, 13, 24

*United States v. Beusch*, 596 F.2d 871 (9th Cir. 1979) ..... 12

*United States v. Bhutani*, 266 F.3d 661 (7th Cir. 2001) ..... 8

*United States v. Booker*, 543 U.S. 220 (2005)..... 15

*United States v. Caputo*, 517 F.3d 935 (7th Cir. 2008) ..... 8

*United States v. Cincotta*, 689 F.2d 238 (1st Cir. 1982)..... 12

*United States v. George*, 949 F.3d 1181 (9th Cir. 2020)..... 9

*United States v. Goldberg*, 538 F.3d 280 (3d Cir. 2008)..... 8

*United States v. Gonzalez-Alvarez*, 277 F.3d 73 (1st Cir. 2002)..... 8

*United States v. Hilton Hotels Corp.*, 467 F.2d 1000 (9th Cir. 1972)..... 12

*United States v. Hunter*, 618 F.3d 1062 (9th Cir. 2010)..... 8

*United States v. Ihenacho*, 716 F.3d 266 (1st Cir. 2013)..... 8

*United States v. Marcus*, 82 F.3d 606 (4th Cir. 1996)..... 8

*United States v. Milstein*, 401 F.3d 53 (2d Cir. 2005) ..... 8

*United States v. Mirama Enterprises, Inc.*, 185 F.Supp.2d 1148 (S.D. Cal. 2002)..... 17

*United States v. Thompson*, 990 F.3d 680 (9th Cir. 2021) ..... 2

*United States v. Walter-Eze*, 869 F.3d 891 (9th Cir. 2017)..... 12

1 **STATUTES**

2 1 U.S.C. § 1 ..... 12

3 15 U.S.C. § 2051(b)(1)..... 16

4 15 U.S.C. § 2053 ..... 16

5 15 U.S.C. § 2061 ..... 17

6 15 U.S.C. § 2064(b) ..... 1, 6, 17, 18

7 15 U.S.C. § 2064(c)-(j) ..... 17

8 15 U.S.C. § 2068(a)(4)..... 1, 5, 6

9 15 U.S.C. § 2070 ..... 1, 6, 18

10 15 U.S.C. § 2070(a)(2)..... 25

11 15 U.S.C. § 2073 ..... 17

12 18 U.S.C. § 2 ..... 1

13 18 U.S.C. § 3553(a) .....passim

14 18 U.S.C. § 3571(b)(2)..... 25

15 18 U.S.C. § 3571(b)(3)..... 25

16 18 U.S.C. § 3663A(c)(1)(A)(ii) ..... 24

17 18 U.S.C. § 3663A(c)(3)..... 24

18 18 U.S.C. § 3664(d)(5)..... 24

19 18 U.S.C. § 371 ..... 1, 5

18 **U.S. SENTENCING GUIDELINES**

19 U.S.S.G. § 2B1.1 ..... 5, 6, 7, 9

20 U.S.S.G. § 2B1.1(a)(2) ..... 4, 15

21 U.S.S.G. § 2B1.1(b)(1)(K) ..... 4, 8, 15

1 U.S.S.G. § 2B1.1(b)(1)(O).....6  
2 U.S.S.G. § 2B1.1(b)(10)(B).....4, 15  
3 U.S.S.G. § 2B1.1(b)(16)(A) .....4, 15  
4 U.S.S.G. § 2B1.1(b)(2)(B) .....9, 11, 15  
5 U.S.S.G. § 2N2.1.....5  
6 U.S.S.G. § 2N2.1(c)(1).....4, 6, 15  
7 U.S.S.G. § 2X1.1.....5  
8 U.S.S.G. § 2X1.5.....5  
9 U.S.S.G. § 3B1.1 ..... 12  
10 U.S.S.G. § 3B1.1(a) ..... 12, 14, 15  
11 U.S.S.G. § 5E1.2(c).....25  
12 U.S.S.G. § 5E1.2(c)(3).....25  
13 U.S.S.G. § 5E1.2(h)(1).....25  
14 U.S.S.G. § 5G1.1(a) ..... 14  
15 U.S.S.G. § 5G1.2(b)..... 14  
16 U.S.S.G. § 5G2.1(a) ..... 15

15  
16  
17  
18  
19  
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**TABLES OF EXHIBITS**

The government has previously provided the Court with copies of certain admitted trial exhibits, filed as attachments to the Government’s Opposition to Defendants’ Motion for Judgment of Acquittal Notwithstanding the Verdict and For a New Trial (ECF 192). Those attached exhibits were further discussed in the “Factual Summary of Trial Evidence” section of the Government’s Supplemental Opposition to Defendants’ Supplemental Brief in Support of Motion for Judgment of Acquittal Notwithstanding the Verdict (ECF 213 at 6-14).

For efficiency’s sake, the government has not re-attached those same admitted exhibits to this sentencing memorandum. Rather for purposes of the enumerated paragraphs in the “Factual Background Related to the Offense Conduct” in Section II. of this memorandum, *infra*, the government respectfully refers the Court to the previously-provided exhibits (attached to ECF 192) and the fulsome discussion thereof in ECF 213.

<b>Sentencing Memo Enumerated Facts (ECF 220 at 3-4)</b>	<b>Govt’s Suppl. Opp. Brief Pages (ECF 213 at #)</b>	<b>Trial Ex. Nos. [ECF]</b>
¶ 1	6-7	Exs. 30 [ECF 192-1], 34A [ECF 192-2], 42 [ECF 192-3], 43 [ECF 192-4], 45 [ECF 192-5], 48 [ECF 192-6], 50 [ECF 192-8], and 50A [ECF 192-9]
¶ 2	6-8, 11	<i>see exhibits above</i> ; Ex. 49A [ECF 192-7]
¶ 3	8-11	Exs. 52 [ECF 192-10], 80A [ECF 192-17], 152 [ECF 192-23]
¶ 4	9-14	Exs. 53A [ECF 192-11]; 55A [ECF 192-12], 56A [ECF 192-13], 66 [ECF 192-14], 68A [ECF 192-15], 74A [ECF 192-16], 80A [ECF 192-17], 87 [see Ex. A, <i>infra</i> ],

		135 [ECF 192-22], 152 [ECF 192-23], 156 [ECF 192-24]
¶ 5	12-14	66 [ECF 192-14], 97 [ECF 192-18], 109 [ECF 192-19], 113 [ECF 192-20], 125 [ECF 192-21]
¶ 6	14	135 [ECF 192-22]

Additionally, throughout this sentencing memorandum, the government newly references the following lettered exhibits which contain portfolios of documents that are attached to the instant filing:

<b>LOH Sentencing Memo Attachments</b>	<b>Content Description</b>
<b>Exhibit A</b> <i>(ECF 220-01)</i>	<u>Other Admitted Exhibits</u> <ul style="list-style-type: none"> <li>• Trial Ex. 87 <i>(ECF 220-01 at 1-3)</i></li> <li>• Trial Ex. 143 <i>(ECF 220-01 at 4-7)</i></li> <li>• Trial Ex. 144 <i>(ECF 220-01 at 8-24)</i></li> <li>• Trial Ex. 1015 <i>(ECF 220-01 at 25-41)</i></li> </ul>
<b>Exhibit B</b> <i>(ECF 220-02)</i>	<u>Bonuses Paid to LOH and CHU</u> <ul style="list-style-type: none"> <li>• Federal Civil Deposition Trial Testimony, and Related Financial Records, for LOH and CHU</li> </ul>
<b>Exhibit C</b> <i>(ECF 220-03)</i>	<u>Victim Substantial Financial Hardships</u> <ul style="list-style-type: none"> <li>• Trial Ex. 125 <i>(ECF 220-03 at 1-3)</i></li> <li>• Victim Claims:                             <ol style="list-style-type: none"> <li>1. A.S. and E.S. <i>(ECF 220-03 at 4-8)</i></li> <li>2. T.M. <i>(ECF 220-03 at 9-10)</i></li> <li>3. K.H. <i>(ECF 220-03 at 11-15)</i></li> <li>4. A.S. <i>(ECF 220-03 at 16-18)</i></li> <li>5. J.R. and K.R. <i>(ECF 220-03 at 19-32)</i></li> <li>6. J.H. and G.H. <i>(ECF 220-03 at 33-36)</i></li> <li>7. J.D. <i>(ECF 220-03 at 37-38)</i></li> <li>8. N.J. <i>(ECF 220-03 at 39-40)</i></li> <li>9. T.B. <i>(ECF 220-03 at 41-42)</i></li> <li>10. M.R. <i>(ECF 220-03 at 43-44)</i></li> </ol> </li> </ul>

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<b>Exhibit D</b> <i>(ECF 220-04)</i>	<u>Deaths and Serious Injuries</u> 1. K.Z. and P.Z. <i>(ECF 220-04 at 1-49)</i> 2. B.H. <i>(ECF 220-04 at 50-64)</i> 3. J.L. <i>(ECF 220-04 at 65-76)</i>
<b>Exhibit E</b> <i>(ECF 220-05)</i>	Audio file -- 911 call (excerpt) for K.Z. and P.Z.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Defendant CHARLEY LOH (“LOH”) engaged in an unlawful scheme to sell  
4 dangerous and defective dehumidifiers—putting Americans at risk of dying in their own  
5 homes. On November 16, 2023, the jury found defendant LOH guilty for his role in this  
6 scheme, convicting him of: (1) conspiracy to defraud the United States by using deceitful  
7 or dishonest means to frustrate and obstruct the lawful functions and efforts of the United  
8 States Consumer Product Safety Commission (“CPSC”) in violation of 18 U.S.C. § 371  
9 (“Count One”); and (2) the knowing and willful failure to furnish information as required  
10 by the Consumer Product Safety Act (“CPSA”) in violation of 15 U.S.C. §§ 2064(b),  
11 2068(a)(4), 2070; 18 U.S.C. § 2 (“Count Two”).<sup>1</sup> Verdict Form, ECF 158. The jury’s  
12 verdict justifies multiple sentencing enhancements and an adjustment, and LOH’s callous  
13 decision to put sales over safety—and profits over people—clearly warrants  
14 imprisonment.

15 The Presentence Investigation Report (“PSR”) calculates LOH’s total offense level  
16 as 30. PSR, ECF 191 at ¶ 57. The PSR calculation includes enhancements for a loss greater  
17 than \$9.5 million, a substantial part of the fraud scheme being committed from abroad,  
18 and the conscious risk of death or serious bodily injury. The government agrees with the  
19 PSR’s inclusion of these enhancements, and further submits that an additional

20 \_\_\_\_\_  
21 <sup>1</sup> The jury also convicted LOH’s co-defendant, Simon Chu (“CHU”), of the same offenses.

1 enhancement for substantial financial hardship to five or more victims, and an adjustment  
2 for LOH’s organizer/leader role in criminal activity, also apply. This would bring LOH’s  
3 total offense level to 38, with the guidelines calling for a significant custodial sentence.

4 The factors set forth at 18 U.S.C. § 3553(a)—notably, the nature and circumstances  
5 of the offense, the history and characteristics of the defendant, the need for the sentence  
6 to reflect the seriousness of the offense and promote respect for the law, and the need for  
7 both specific deterrence and general deterrence—likewise demand a significant custodial  
8 sentence. With these factors in mind, the government respectfully recommends  
9 consecutive sentences of 60 months in custody on Counts One and Two, for a total of 120  
10 months’ imprisonment. The Court should also order LOH to serve a three-year term of  
11 supervised release; pay full restitution to victims in an amount to be determined in a  
12 deferred restitution hearing; pay a criminal fine between \$250,000 and \$500,000; and pay  
13 the required special assessment of \$100 per Count.<sup>2</sup>

14 **II. FACTUAL BACKGROUND RELATED TO THE OFFENSE CONDUCT**

15 In the interest of brevity, the government respectfully refers the Court to the  
16 comprehensive “Factual Summary of Trial Evidence” on pages 1 to 9 of the Government’s  
17 Supplemental Opposition to Defendants’ Supplemental Brief in Support of Motion for  
18 Judgment of Acquittal Notwithstanding the Verdict. ECF 213 at 6-14. The government’s  
19 supplemental opposition brief and its corresponding trial exhibits (which are attached to

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20 <sup>2</sup> The government declines to pursue a forfeiture money judgment at sentencing due to  
21 limitations in the available financial records. ECF 1 at 20-21 (forfeiture notice); *cf. Honeycutt v.*  
*United States*, 581 U.S. 443 (2017); *United States v. Thompson*, 990 F.3d 680 (9th Cir. 2021).

1 ECF 192) provide an overview of the trial evidence against LOH, including *inter alia*:

- 2 1. By July 2012, LOH knew some of the SoleusAir dehumidifiers he and his  
3 companies had distributed could overheat and catch fire, knew the CPSC  
4 regulated his dehumidifiers, and warned the products should be recalled. ECF  
5 213 at 6-7.
- 6 2. In the months leading up to the September 19, 2012, meeting with Gree  
7 representatives, LOH and CHU learned of dehumidifier defects from multiple  
8 sources; discussed reporting to the CPSC, recalls, and the need to act promptly;  
9 distributed the CPSC's Recall Handbook to various corporate officers; and  
10 discussed the potential civil and criminal liability they could face in withholding  
11 from the CPSC the product safety information they had obtained. *Id.* at 6-8, 11.
- 12 3. At the September 19th meeting with Gree China representatives, LOH and CHU  
13 confirmed the defects causing the dehumidifier fires (*i.e.*, problems with  
14 dehumidifiers' non-UL-compliant plastics, compressor, and safety) and  
15 conspired with others to "handle it cold" for 6-9 months to obstruct the CPSC's  
16 ability to take action to protect consumers from the dehumidifiers. *Id.* at 8-9. A  
17 subsequent company Powerpoint presentation confirms that LOH and CHU  
18 understood the meeting discussion to involve deceit and dishonesty directed  
19 toward the CPSC, and that they agreed to do it. *Id.* at 9-11.
- 20 4. For the next six months, LOH worked with CHU and others in coordinated and  
21 ongoing obstruction of the CPSC's lawful functions and efforts. Despite  
mounting reports of fires from consumers and insurance companies; a third-  
party testing report confirming that the defective dehumidifiers pose serious  
safety hazards; and a warning from their own lawyer that they must report the  
products to the CPSC, LOH and CHU did not report the products to the CPSC  
but continued their self-described "cover up" at the risk of civil and criminal  
liability. *Id.* at 9-12. They also continued to sell the defective dehumidifiers to  
retailers (for consumer repurchase) with false certifications that the  
dehumidifiers met UL safety standards, and caused a company employee to  
send an email soliciting materials that would falsely portray to a concerned  
insurance company that the dehumidifiers were safe and not defective. *Id.* at 11-  
14; *see also* Ex. A at 1-3 (Tr. Ex. 87).
5. When LOH and CHU belatedly reported their dehumidifiers in March and April  
2013, they submitted false and misleading information to the CPSC. LOH and  
CHU's Initial Report to the CPSC did not mention *any* of the dehumidifier  
defects and hazards long known to them. And their subsequent "Full Report"

falsely represented that the dehumidifiers were UL-compliant and “safe for use as intended”—while making no mention that they had concluded that their dehumidifiers were unsafe and defective because they could spontaneously burst into flames; believed that the corrective action of a “recall” was both warranted and inevitable; and knew that the dehumidifiers used plastics that failed to meet UL flame-retardant standards, thereby contributing to the unreasonable risk of serious injury or death posed by the dehumidifiers. These material misrepresentations and omissions to the CPSC stand in sharp contrast to (1) contemporaneous emails acknowledging their dehumidifiers’ failure to meet UL standards and the “risk of serious injury or death,” as well as (2) CHU’s receipt of yet another third-party testing report showing that all the dehumidifiers from production years 2010, 2011, and 2012 failed to meet applicable UL flame-retardant standards. ECF 213 at 12-14.

6. LOH and CHU’s unlawful conduct made it possible for them to continue selling their dangerous dehumidifiers to more and more unsuspecting consumers, until they finally stopped selling in June 2013—after which LOH and CHU received company “bonuses” of more than \$6 million for their dehumidifier-related work. *See* Ex. B. The CPSC’s subsequent investigation led to the September 2013 recall of more than 2.2 million dehumidifiers—more than 1.8 million of which were sold by LOH and CHU and their companies alone. ECF 213 at 14. LOH and CHU then sought to cash in on Gree China’s promises to indemnify them for the recalled units, with LOH demanding more than \$32 million on behalf of LOH and CHU’s companies. *See* Ex. A at 4-24 (Tr. Exs. 143, 144).

**III. THE GOVERNMENT’S OBJECTIONS TO THE PRESENTENCE REPORT**

The PSR calculated LOH’s offense level of 30 as follows:

<b>Group 1 (Conspiracy/Failure to Report)</b>		
Base Offense Level	6	U.S.S.G. § 2N2.1(c)(1), U.S.S.G. § 2B1.1(a)(2)
Loss more than \$9,500,000 but not more than \$25,000,000	+20	U.S.S.G. § 2B1.1(b)(1)(K)
Substantial Part of Fraudulent Scheme Committed Outside the U.S.	+2	U.S.S.G. § 2B1.1(b)(10)(B)
Conscious Risk of Death or Serious Bodily Injury	+2	U.S.S.G. § 2B1.1(b)(16)(A)
<b>TOTAL OFFENSE LEVEL</b>	<b>30</b>	

1 (PSR, ECF 191 ¶¶ 35-57.) The government concurs with the PSR’s findings for defendant  
2 LOH except for the following objections:

3 **A. The Base Offense Level is 6, but the Guideline for the Klein Conspiracy**  
4 **Charge Is § 2X1.5**

5 The government objects to Paragraph 37 of the PSR, which analyzes the base  
6 offense level for the *Klein* conspiracy charge. The government agrees with Probation that  
7 the guideline for a violation of 18 U.S.C. § 371 is typically U.S.S.G. § 2X1.1, and that  
8 §2X1.1(a) cross-references to the base offense level from the guideline for the underlying  
9 substantive offense. But the government does not agree that the underlying substantive  
10 offense of the *Klein* conspiracy is the Knowing and Willful Failure to Report Information  
11 Regarding Consumer Product Safety Hazards, and Risks in violation of 15 U.S.C. §  
12 2068(a)(4), which corresponds to a guideline of U.S.S.G. §§ 2N2.1 and 2B1.1.

13 Unlike the offense prong of the conspiracy statute, the defraud prong (*i.e.*, a *Klein*  
14 conspiracy) does not have an automatic underlying substantive offense. Since there is no  
15 applicable Chapter Two Guideline for a *Klein* conspiracy in the Statutory Appendix, the  
16 Court is to use “the most analogous guideline.” U.S.S.G. § 2X5.1. Under the facts of this  
17 case, the analogous guideline would be the Knowing and Willful Failure to Report  
18 Information Regarding Consumer Product Safety Hazards, and Risks in violation of 15  
19 U.S.C. § 2068(a)(4), which corresponds to a guideline of U.S.S.G. §§ 2N2.1 and 2B1.1.  
20 Thus, the government concurs with Probation’s conclusion that the base offense level is  
21 “6”, but it differs on the applicable guideline for the *Klein* conspiracy offense.

1       **B. The Government Does Not Need to Prove Actual Loss in Calculating the**  
2       **Fraud Loss Amount.**

3           LOH’s guidelines sentence is largely determined by the fraud loss table in U.S.S.G.  
4 § 2B1.1. The offense level for the CPSA violation in Count Two (15 U.S.C. §§ 2064(b),  
5 2068(a)(4), 2070) is determined under § 2B1.1 due to a cross-reference from the consumer  
6 product offense guideline. *See* U.S.S.G. § 2N2.1(c)(1) (regulatory offense guideline  
7 directing that “Consumer Product” offenses involving fraud be sentenced under § 2B1.1).

8           The number of potentially defective dehumidifier units that LOH and CHU claimed  
9 in their Full Report to the CPSC was at least 1.8 million units, representing units sold from  
10 2010 to April 2013 by their two companies. Tr. Ex. 125 at 8 (*see* ECF 192-21 at 9).  
11 Because LOH and CHU were convicted of delaying reporting to the CPSC and defrauding  
12 the United States by obstructing and impeding the lawful functions of the CPSC to: (1)  
13 save the reputation of their brand name; (2) avoid a recall (including of units already in  
14 use by consumers); and (3) continue to sell all units (whether defective or not) still in  
15 commercial retail channels, the intended loss equals at least \$170 per unit—which is a  
16 conservative estimate of the amount that would have been refunded to a consumer for his  
17 retail purchase, as indicated in the Full Report to the CPSC. *Id.* at 5 (*see* ECF 192-21 at  
18 6). Accordingly, LOH and CHU’s intended loss is at least \$306,000,000 and their  
19 corresponding fraud loss adjustment under § 2B1.1(b)(1)(O) should be +28: More than  
20 \$250,000,000 in loss but not more than \$550,000,000.

21           However, in a related case involving only one of Defendants’ companies—namely,

1 Gree USA, Inc. (“Gree USA”)—Probation previously assessed that the fraud loss for the  
2 sale of only the subset of recalled defective units sold between September 2012 and April  
3 2013 was between \$9,500,000 and \$25,000,000. *See United States v. Gree Electric*  
4 *Appliances, Inc. of Zhuhai et al.*, 2:21-cr-00498-DSF (C.D. Cal. 2022), ECF 64 ¶¶ 5, 57,  
5 98. In the interests of justice, the government believes it is appropriate to adopt a similar  
6 approach in this case against LOH and CHU. From January to April 2013 alone (*i.e.*, a  
7 period well after LOH and CHU knew that various dehumidifier models contained safety-  
8 related defects) LOH and CHU’s companies, Gree USA and MJC America, sold 285,596  
9 defective dehumidifiers to major retailers in the United States. Tr. Ex. 125 at 8 (*see* ECF  
10 192-21 at 9). In the sale of these units, LOH and CHU intended to defraud the CPSC, and  
11 ultimately retailers and consumers, to continue their dehumidifier sales and reduce or  
12 avoid the cost of a recall. These fraudulent sales constitute both: (1) Actual Loss, “the  
13 reasonably foreseeable pecuniary harm that resulted from the offense,” and (2) Intended  
14 Loss, “the pecuniary harm that the defendant purposely sought to inflict, [including]  
15 intended pecuniary harm that would have been impossible or unlikely to occur.” U.S.S.G.  
16 § 2B1.1, comment. (n.3(A)(i)-(ii)).

17 In short, Defendants intended to defraud consumers of the full cost of the defective  
18 dehumidifiers, an amount that ranges from “\$170-\$300” retail price per unit. Tr. Ex. 125  
19 at 5 (*see* ECF 192-21 at 6). And under even a very conservative estimate that assigns  
20 culpability to only 20% of the dehumidifier units sold during just this short time between  
21 January to April 2013, and using only the lowest possible retail price of \$170, the fraud

1 loss equals a minimum of \$9,710,264. This amount corresponds to a guideline loss range  
2 between \$9,500,000 but not more than \$25,000,000 (U.S.S.G. §2B1.1(b)(1)(K)), the same  
3 calculation in the related case against the corporate defendants, *supra*.

4 The government objects to Probation’s position that it must demonstrate “how the  
5 defendants’ knowing and willful failure to report . . . caused actual loss to specific  
6 victims.” PSR, ECF 191 at 8-9, n.5. To the contrary, the calculation of “[l]oss under the  
7 Guidelines includes actual *or* intended loss.” *United States v. Hunter*, 618 F.3d 1062, 1065  
8 (9th Cir. 2010) (citations omitted) (emphasis in original). And it is well settled that a  
9 regulated product that fails to comply with a federal statute—and is illegal under that  
10 statute—has no or zero value to whomever bought it, and so the fraud loss is the gross  
11 sales of the illegal product. *See id.* (unlawful services that violate health and safety  
12 requirements have no legal value for purposes of calculating the victims’ losses); *see also*  
13 *United States v. Gonzalez-Alvarez*, 277 F.3d 73, 78-79 (1st Cir. 2002) (illegal FDA product  
14 has zero value and the measure of loss is the full price paid by the victims); *United States*  
15 *v. Ihenacho*, 716 F.3d 266, 279 (1st Cir. 2013); *United States v. Milstein*, 401 F.3d 53, 74  
16 (2d Cir. 2005); *United States v. Caputo*, 517 F.3d 935, 943 (7th Cir. 2008); *United States*  
17 *v. Marcus*, 82 F.3d 606, 608-10 (4th Cir. 1996); *United States v. Goldberg*, 538 F.3d 280,  
18 290-91 (3d Cir. 2008); *United States v. Bhutani*, 266 F.3d 661, 668-70 (7th Cir. 2001).

19 **C. A Four-Level Enhancement Should Apply Because the Offense Resulted in**  
20 **Substantial Financial Hardship to Five or More Victims**

21 The government objects to Paragraph 42 of the PSR, where Probation declined to

1 apply the four-level enhancement for an offense resulting in substantial financial hardship  
2 to five or more victims because of “insufficient information at this time.” As explained  
3 below, LOH’s conduct caused substantial financial hardship to at least five victims.  
4 Therefore, the Court should increase the offense level by four. U.S.S.G. § 2B1.1(b)(2)(B).

5 The Application Notes in § 2B1.1 provide the Court with a non-exclusive list of  
6 financial impacts to consider in determining whether an offense caused substantial  
7 financial hardship. U.S.S.G. § 2B1.1, comment. (n.4). Such impacts include, but are not  
8 limited to, the victim “suffering substantial loss of a retirement, education, or other savings  
9 or investment fund” and “making substantial changes to his or her living arrangements,  
10 such as relocating to a less expensive home.” *Id.* The Ninth Circuit has further clarified  
11 the meaning of substantial hardship, holding that a defendant inflicts “substantial financial  
12 hardship” when he “causes a significant adverse change” in the victim’s financial situation  
13 in light of the victim’s individual financial circumstances. *United States v. George*, 949  
14 F.3d 1181, 1187 (9th Cir. 2020).

15 As documented in the attached exhibit, each of the following victims is among those  
16 who suffered substantial losses that underscore the devastating effect that LOH’s crimes  
17 have had on the victims’ financial circumstances:

- 18 1. **Victims A.S. and E.S.** Victims A.S. and E.S. purchased a SoleusAir  
19 dehumidifier on or about December 19, 2012, during the time of the conspiracy.  
20 On or about September 4, 2017, the dehumidifier spontaneously combusted and  
21 set the home of A.S. and E.S. ablaze, causing at least \$528,300 worth of damage  
and forcing A.S. and E.S. to live in temporary housing for approximately 11  
months. Ex. C at 4-8.

- 1           2. **Victim T.M.** Victim T.M. purchased a SoleusAir dehumidifier on or about  
2           August 17, 2010. On or about September 23, 2012, during the time of the  
3           conspiracy, the home of T.M. was set ablaze after the dehumidifier caught fire,  
4           causing at least \$300,000 worth of damage and forcing T.M. to live in  
5           temporary housing for approximately three months. Ex. C at 9-10.
- 6           3. **Victim K.H.** Victim K.H. purchased a SoleusAir dehumidifier on or about  
7           January 19, 2011. On or about April 10, 2013, during the time of the conspiracy,  
8           the home of K.H. was set ablaze after the dehumidifier spontaneously  
9           combusted, causing at least \$200,000 worth of damage and forcing K.H. to live  
10          in temporary housing for approximately seven to eight months. Ex. C at 11-15.
- 11          4. **Victim A.S.** Victim A.S. purchased a SoleusAir dehumidifier on or about June  
12          16, 2011. On or about November 6, 2012, during the time of the conspiracy, the  
13          home of A.S. was set ablaze after the dehumidifier spontaneously combusted,  
14          causing at least \$150,000 worth of damage and forcing A.S. to live in temporary  
15          housing for approximately 13 months. Ex. C at 16-18.
- 16          5. **Victims J.R. and K.R.** Victims J.R. and K.R. purchased a SoleusAir  
17          dehumidifier sometime in 2011. On or about November 8, 2012, during the time  
18          of the conspiracy, the home of J.R. and K.R. was set ablaze after the  
19          dehumidifier spontaneously combusted, causing at least \$150,000 worth of  
20          damage. Ex. C at 19-32.
- 21          6. **Victims J.H. and G.H.** Victims J.H. and G.H. purchased a SoleusAir  
            dehumidifier. On or about April 15, 2013, the home of J.H. and G.H. was set  
            ablaze after the dehumidifier spontaneously combusted, causing at least  
            \$82,000 worth of damage. Ex. C at 33-36.
7. **Victim J.D.** Victim J.D. purchased a SoleusAir dehumidifier on or about  
            October 28, 2012, during the time of the conspiracy. On or about December 12,  
            2012, the home of J.D. was set ablaze after the dehumidifier spontaneously  
            combusted, causing at least \$32,000 worth of damage. Ex. C at 37-38.
8. **Victim N.J.** Victim N.J. purchased a SoleusAir dehumidifier on or about  
            December 2011. On or about December 17, 2012, during the time of the  
            conspiracy, the home of N.J. was set ablaze after the dehumidifier  
            spontaneously combusted, causing at least \$30,000 worth of damage and  
            forcing N.J. to live in temporary housing for approximately one and a half  
            months. Ex. C at 39-40.

1 9. **Victim T.B.** Victim T.B. purchased a SoleusAir dehumidifier on or about  
2 August 5, 2011. On or about November 11, 2012, during the time of the  
3 conspiracy, the home of T.B. was set ablaze after the dehumidifier  
spontaneously combusted, causing at least \$30,000 of damage. Ex. C at 41-42.

4 10. **Victim M.R.** Victim M.R. purchased a SoleusAir dehumidifier on or about  
5 November 24, 2010. On or about October 14, 2012, during the time of the  
6 conspiracy, the home of M.R. was set ablaze after the dehumidifier  
7 spontaneously combusted, causing at least \$26,000 worth of damage. Ex. C at  
8 43-44.

9 The list of victims above is by no means exhaustive. Given that the recalled  
10 dehumidifiers have been linked to more than 2,000 consumer incidents and 450 fires,  
11 resulting in more than \$19 million in property damage, *see* Ex. A at 40 (Tr. Ex. 1015 at  
12 16), the number of victims who suffered substantial financial hardships is likely in the  
13 dozens, if not hundreds. The families of the four victims who lost their lives in  
14 dehumidifier-related house fires (*see* Section IV.A.2., *infra*) may be among those affected,  
15 as funeral and travel expenses can pose substantial hardships for survivors.

16 Considering the foregoing, imposing the substantial financial hardship adjustment  
17 is consistent with the plain language of U.S.S.G. § 2B1.1(b)(2)(B), the application note,  
18 and Ninth Circuit case law. Therefore, the four-level guideline adjustment is warranted.

19 **D. A Four-Level Enhancement Should Apply Because Defendant Was the  
20 Organizer and Leader of One or More Other Participants**

21 The government objects to Paragraph 49 of the PSR because it states that LOH had  
no aggravating role in the dehumidifier scheme. This is not true. Pursuant to Section  
3B1.1(a), a four-level enhancement applies whenever “the defendant was an organizer or  
leader of a criminal activity that involved five or more participants or was otherwise

1 extensive.” This section should apply because LOH was the organizer and leader of  
2 criminal activity which involved at least the following 11 participants:

- 3 1. LOH was one participant. *See United States v. Walter-Eze*, 869 F.3d 891, 914  
4 (9th Cir. 2017) (the defendant may be included among the participants in the  
criminal activity for purposes of section 3B1.1(a)” (citations omitted).
- 5 2. Co-defendant Simon CHU counts as well, and indeed was convicted for  
6 conduct that LOH directed.
- 7 3. Gree USA counts as a participant, as the company was charged and pled  
8 guilty in a related case for conduct directed by LOH.<sup>3</sup> *See United States v.*  
9 *Gree Zhuhai et al.*, 2:21-cr-00498-DSF (C.D. Cal. 2022), ECF 8 at 13, 39-  
10 55. Although corporate entities are not always considered criminal  
11 “participants” under Section 3B1.1, Gree USA was charged and convicted of  
12 the same CPSA felony offense as was LOH.<sup>4</sup> (Gree USA is not alleged to be  
13 LOH’s alter ego, so there is no concern of “double counting.”)
- 14 4. MJC America, Ltd. (“MJC America”) counts as a participant for the same  
15 reason as Gree USA. Although MJC America was not indicted, it was named  
16 in the instant Indictment as “Unindicted Co-Conspirator COMPANY B” for  
17 the criminal acts it carried out at LOH’s direction. (PSR, ECF 191 ¶¶ 11-18;  
18 ECF 1 at ¶¶ 1-5, ¶ 31 Overt Acts 1, 3, 5, 7, 9, 11, 12, 14, 16; *id.* ¶¶ 33, 35-  
19 38).

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15 <sup>3</sup> The Indictment refers to Gree USA as “Unindicted Co-Conspirator COMPANY A,”  
16 whereas the entity is a named defendant in the Information filed in the related case against the  
17 corporate entities.

18 <sup>4</sup> The Sentencing Guidelines define a “participant” as a “person,” not an “individual.”  
19 U.S.S.G. § 3B1.1 comment. (n.1). Under the law, a business entity is considered to be a person.  
20 It acts through its employees, agents, directors, or officers. A business entity is responsible for  
21 the acts of its employees, agents, directors, and officers that are performed within the scope of  
their employment, and that are motivated, at least in part, by an intent to benefit the business  
entity. *See, e.g.*, 1 U.S.C. § 1 (“In determining the meaning of any Act of Congress, unless the  
context indicates otherwise . . . the words “person” and “whoever” include corporations,  
companies, associations, firms, partnerships, societies, and joint stock companies, as well as  
individuals); *see generally New York Cent. and Hudson River R.R. v. United States*, 212 U.S.  
481, 495 (1909); *United States v. Beusch*, 596 F.2d 871, 877-878, 878 n.7 (9th Cir. 1979); *United*  
*States v. Hilton Hotels Corp.*, 467 F.2d 1000, 1004-1007, 1006 n.4 (9th Cir. 1972); *cf. United*  
*States v. Cincotta*, 689 F.2d 238, 241-242 (1st Cir. 1982).

- 1 5. Gree Electric Appliances, Inc. of Zhuhai (“Gree China”)—which is the  
2 Chinese dehumidifier manufacturer named as “Unindicted Co-Conspirator  
3 COMPANY D” in the Indictment, ECF 1 at ¶ 5—counts as a participant as  
4 well. Gree China entered into a deferred prosecution agreement (“DPA”) in  
5 connection with the same criminal Information filed against Gree USA in a  
6 related case, *supra*. Under the terms of the DPA, Gree China admitted,  
7 accepted, and acknowledged responsibility for the criminal acts of its  
8 officers, employees, and agents, including acts carried out at LOH’s  
9 direction. (DPA, *Gree Zhuhai* ECF 9 at ¶ 2(e); *id.* at 51-67).
- 6 6. DPA party Hong Kong Gree Electric Appliances Sales Co., Ltd. (“Gree Hong  
7 Kong”)—the dehumidifier exporter named as “Unindicted Co-Conspirator  
8 COMPANY C” in the Indictment, ECF 1 at ¶ 5—likewise counts as a  
9 participant for the same reasons as above.
- 7 7. LOH’s now-deceased brother, Jimmy Loh (named as “Unindicted Co-  
8 Conspirator INDIVIDUAL #1” in the Indictment, ECF 1 at ¶¶ 3-4, 18, 26,  
9 31) is yet another participant in the scheme. *See* ECF 192 at Attachments 10,  
10 12, 13, 15, 16, 17, 19, 21.
- 11 8. Two Senior Vice Presidents at LOH’s companies participated in the scheme  
12 as well.
- 13 9. Larry Lam (Gree Hong Kong “Manager” in the Indictment, ECF 1 at ¶ 17) is  
14 a participant. *See* ECF 192 at Attachments 6, 9, 10.
- 15 10. Gordon Zhang (*i.e.*, the Gree Manager who replaced Larry Lam) is also a  
16 participant. *See* ECF 192 at Attachments 6, 15, 16, 17.

16 Thus, there can be no question that the government presented more than sufficient  
17 evidence to establish that LOH’s scheme involved at least five participants. But even  
18 assuming, *arguendo*, it did not, LOH’s scheme would nonetheless be “extensive” within  
19 the meaning of § 3B1.1(a) and still warrant the adjustment.

20 Moreover, LOH (like CHU) was an organizer and leader of the criminal activity in  
21 which these individuals and companies participated. The degree of LOH’s exercise and

1 control is evident in his own contemporaneous emails and subsequent sworn testimony  
2 about his unlawful conduct. Indeed, LOH's statements confirm his exercise of decision-  
3 making authority, the extensive nature of participation in the commission of the offense,  
4 the claimed right to millions of dollars from the fruits of the crime, the degree of his  
5 participation in planning and organizing the offense, the nature and scope of the illegal  
6 activity, and the degree of control and authority he exercised over others. Because the  
7 evidence conclusively shows that LOH led or organized a fraud scheme involving at least  
8 five criminal participants, a four-level enhancement should apply under § 3B1.1(a).

9 **E. The Guideline Term of Imprisonment is 120 Months**

10 The government objects to Paragraph 99 of the PSR, which concludes that the  
11 statutorily authorized maximum sentence in this case is 60 months (5 years), in reliance  
12 on U.S.S.G. § 5G1.1(a) for a *single* count of conviction. Even assuming, *arguendo*, an  
13 offense level of 30 and a criminal history category of I, the sentence should be determined  
14 with reference to *multiple* counts of conviction under U.S.S.G. § 5G1.2(b). Thus, even if  
15 Probation's calculated guideline imprisonment range of 97 months to 121 months were  
16 correct, the final range would merely have been restricted to 97 to 120 months—not  
17 capped at 60 months—because the guidelines total considers the combined statutory  
18 maximums for both counts of conviction.

19 **F. The Government's Guidelines Calculation**

20 Given the objections set forth above, the following Guidelines apply to LOH:

21 

<b>Group 1 (Conspiracy/Failure to Report)</b>
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1	Base Offense Level	6	U.S.S.G. § 2N2.1(c)(1), U.S.S.G. § 2B1.1(a)(2)
2	Loss more than \$9,500,000 but not more than \$25,000,000	+20	U.S.S.G. § 2B1.1(b)(1)(K)
3	Substantial financial hardship to five or more victims	+4	U.S.S.G. § 2B1.1(b)(2)(B)
4	Substantial Part of Fraudulent Scheme Committed Outside the U.S.	+2	U.S.S.G. § 2B1.1(b)(10)(B)
5	Conscious or Reckless Risk of Death or Serious Bodily Injury	+2	U.S.S.G. § 2B1.1(b)(16)(A)
6	Organizer/Leader of Criminal Activity involving 5 or More Participants	+4	U.S.S.G. § 3B1.1(a)
7	<b>TOTAL OFFENSE LEVEL</b>	<b>38</b>	
8			

9 With a criminal history category of I and a total offense level of 38, LOH’s  
 10 Guidelines range is 235-293 months. However, the statutory maximum penalties for each  
 11 of LOH’s two offenses of convictions is five years (or 60 months). Thus, the Guidelines  
 12 sentence is 120 months (*i.e.*, 60 months for each of two counts). U.S.S.G. § 5G2.1(a).

13 **IV. THE GOVERNMENT’S SENTENCING RECOMMENDATION UNDER 18**  
 14 **U.S.C. § 3553(a)**

15 The government respectfully recommends a sentence of 120 months’ imprisonment,  
 16 followed by three years of supervised release, a fine between \$250,000 and \$500,000;  
 17 special assessments totaling \$200, and restitution in an amount to be determined. The  
 18 recommended sentence is reasonable and necessary to accomplish the purposes set forth  
 19 in 18 U.S.C. § 3553(a). The Supreme Court’s decision in *United States v. Booker*, 543  
 20 U.S. 220 (2005), requires the Court to consider the factors identified in Section 3553(a)  
 21 when imposing a sentence. Among the factors to be considered are the nature and  
 circumstances of the offense, the history and characteristics of the defendant, and the need

1 to deter future criminal conduct, promote respect for the law, and provide just punishment.  
2 18 U.S.C. § 3553(a).

3 **A. The Nature and Circumstances of the Offenses Justify Imprisonment.**

4 LOH prioritized greed over the health and safety of American consumers by selling  
5 dehumidifiers he knew could harm or kill consumers, and he obstructed and evaded crucial  
6 CPSC regulations designed to keep Americans safe in their own homes. As a result of his  
7 conduct, the U.S. market was flooded with defective dehumidifiers he knew were  
8 dangerous—some of which may still be in homes to this day. The nature and  
9 circumstances of this offense thus warrant imprisonment.

10 **1. LOH deliberately broke laws designed to protect American consumers.**

11 Evading the CPSC’s requirements was an integral part of LOH’s scheme. The  
12 Consumer Product Safety Act of 1972 (“CPSA”) created the CPSC, 15 U.S.C. § 2053, and  
13 one of the core purposes or lawful functions of the CPSC is “to protect the public against  
14 unreasonable risks of injury associated with consumer products”—a fact LOH understood.  
15 *Id.* § 2051(b)(1). When a dangerous consumer product finds its way into the stream of  
16 commerce in this country, the CPSA provides few avenues to initiate relief. If the product  
17 is first identified by the CPSC and is imminently hazardous, the CPSC may seek relief in  
18 district court to declare the product imminently hazardous, obtain temporary or permanent  
19 relief necessary to protect the public, and initiate rulemaking proceedings applicable to the  
20 product. *Id.* § 2061. Alternatively, state attorneys general and, to a limited extent, private  
21 parties may have a cause of action to enforce certain CPSA violations. *Id.* § 2073. But the

1 primary avenue for the CPSC learning about product hazards and initiating relief—the  
2 exact requirement LOH knowingly and willfully evaded—is through Section 2064(b)  
3 reports (known as “Full Reports”), which require regulated parties who receive sufficient  
4 information about substantial product hazards to immediately furnish that same  
5 information to the CPSC unless they know that the CPSC is already adequately informed.  
6 It is only once the CPSC is adequately informed that the agency may take remedial actions  
7 under the CPSA to protect the public from the products’ risks and hazards. *See* 15 U.S.C.  
8 § 2064(c)-(j).

9 “The [CPSC]’s limited investigatory and enforcement resources underscore the  
10 necessity of voluntary compliance.” *Drake v. Honeywell, Inc.*, 797 F.2d 603, 611 (8th Cir.  
11 1986). Because the CPSC is a relatively small agency with a broad statutory mandate to  
12 oversee more than 15,000 different kinds of consumer products—from infant cribs to all-  
13 terrain vehicles—“[c]ompliance by manufacturers, distributors, and retailers with section  
14 [2064(b)] obviously is critical to the fulfillment of the congressional purpose.” *Id.*  
15 Ultimately, “the thrust of the statutory scheme is for information in the hands of companies  
16 to be disclosed to the [CPSC].” *United States v. Mirama Enterprises, Inc.*, 185 F.Supp.2d  
17 1148, 1163 (S.D. Cal. 2002). This is because “the sooner the [CPSC] knows of a potential  
18 problem, the sooner it can investigate and take necessary action.” *Id.* at 1158.

19 To assist the CPSC’s ability to fulfill that function, the CPSA requires  
20 manufacturers, importers, distributors, and retailers of consumer products to report  
21 immediately to the CPSC information that reasonably supports the conclusion that a

1 product (1) contains a defect that could create a substantial product hazard or (2) creates  
2 an unreasonable risk of serious injury or death. 15 U.S.C. § 2064(b). This duty also applies  
3 to the individual directors, officers, or agents of those companies. *Id.* § 2070. In 2008,  
4 Congress amended the CPSA to provide even tougher penalties for criminal violations of  
5 that duty, ratcheting up to a five-year felony what previously had been a misdemeanor.

6 Here, the trial evidence showed that LOH worked with CHU and others to actively  
7 undermine the CPSC's ability to protect consumers. Indeed, as soon as LOH and CHU  
8 saw the July 2012 YouTube video of one of their burning dehumidifiers, their first  
9 thoughts were of a recall and the CPSC. By September 2012, LOH and his companies had  
10 received multiple reports that their dehumidifiers contained defects that could cause them  
11 to overheat and catch fire—thereby posing a burn or fire hazard to consumers. LOH also  
12 knew that he and his companies were required to report this product safety information to  
13 the CPSC immediately. But in an effort to avoid or reduce the cost of a recall, LOH and  
14 others deliberately decided not to report the required product safety information to the  
15 CPSC for six months. In so doing, LOH showed no regard for the risks to U.S. consumers  
16 posed by his companies' flammable dehumidifiers.

17 Despite mounting consumer fires and independent tests confirming the dangerous  
18 nature of the dehumidifiers, LOH did not report the dehumidifiers to the CPSC until March  
19 2013. Although LOH knew the dehumidifiers were defective, could catch on fire, and were  
20 catching on fire, critical product safety information was omitted from the dehumidifier  
21 reports to the CPSC. In fact, the April 2013 report to the CPSC said the dehumidifiers

1 were UL-compliant and “safe for use as intended”—claims that LOH knew were false.

2 **2. LOH’s conduct put consumers at risk of serious injury and death.**

3 LOH was essential to the success of the dehumidifier scheme, which victimized  
4 consumers nationwide and frustrated the CPSC’s ability to protect them. LOH’s conduct  
5 was extremely harmful, and the fact that he was willing to put millions of people and their  
6 property at risk weighs significantly against him. So, too, does the fact that he was aware  
7 of what the law required of him, but was repeatedly willing to work with CHU and others  
8 to flout the law and defraud retailers, consumers, and the CPSC.

9 The impact of LOH’s crimes cannot be overstated. The Court heard the trial  
10 testimony of consumers like J.K., M.M., and K.H. whose testimony of their house fires,  
11 though greatly sanitized for the jury, illustrated the very real toll that victims suffered on  
12 account of LOH. The substantial financial hardships that LOH’s conduct imposed on  
13 multiple victims is set forth in Section III.C., *supra*. Finally, the government is aware of  
14 the following four deaths or serious injuries associated with dehumidifiers distributed by  
15 LOH:

- 16 1. **Victims K.Z. and P.Z.** K.Z. and P.Z. were a married couple who died in their  
17 home in a closet trapped by flames and smoke. *See Hillmann v. Gree USA,*  
18 *Inc.*, 4:23-cv-00830 (E.D. Mich. Jun. 6, 2023), Notice of Removal, ECF 1,  
19 Ex. 1 at 6 (Complaint & Demand for Jury Trial). According to publicly filed  
20 documents, it is alleged that the source of this fire was a Gree dehumidifier  
21 purchased during the time of the conspiracy. Ex. D at 6-7. As their home was  
burning around them, K.Z. managed to call 911 to report the fire. An audio  
recording of this harrowing call—involving a fire LOH knew could have  
happened and been prevented—is submitted for this Court’s consideration.  
Ex. E.

- 1           2. **Victim B.H.** Sometime in early 2012, B.H purchased a dehumidifier  
2 distributed by LOH and CHU’s company from Home Depot. On or about  
3 August 2014, the dehumidifier caught fire in his basement. B.H. was exposed  
4 to smoke and chemicals released by the fire. The fire damaged his home and  
5 forced his family to live in an RV for six months. He was hospitalized the  
6 same day of the fire, and currently has reduced lung capacity. *See* ECF 114  
7 at 11-12.
- 8           3. **Victim J.L.** J.L. was an elderly woman who lived alone. On or about April  
9 23, 2019, she was discovered deceased after a fire occurred at her residence.  
10 *See* Ex. D at 65-76. A subsequent autopsy report found the immediate cause  
11 of death to be “ACUTE CARBON MONOXIDE INTOXICATION  
12 (72.3%).” *Id.* at 70-74. Later communications with the CPSC revealed the  
13 dehumidifier brand in question was SoleusAir, purchased in around June  
14 2011. *Id.* at 75-76 (“We confirmed with Gree that the unit involved in the []  
15 incident was a Soleusair dehumidifier, model no. SG-DEH-45-1A, that was  
16 subject to the 2013 recall.”).

17           **B. LOH’s History and Characteristics Further Justify Imprisonment.**

18           LOH’s knowing and willful failure to timely report the required product safety  
19 information—and then to mislead the CPSC when he belatedly did report—contributed to  
20 fires that caused millions of dollars in property damage and placed millions of consumers  
21 and their families at risk of serious injury or death. Moreover, LOH’s decision to keep  
selling the dehumidifiers knowing they were defective constituted fraud on his retail  
customers, and resulted in additional millions of dollars in consumer victim losses for  
products that should not have been sold. Finally, LOH’s material misrepresentations and  
omissions in reports to the CPSC defrauded the agency, frustrating its efforts to protect  
consumers from the hazards and risks of LOH’s dangerous products.

          Because LOH was the engine on which the entire scheme ran, he merits the full  
impact of the guidelines sentence for his conduct. Nothing in LOH’s history merits a

1 downward departure or variance; neither has the government identified any mitigating  
2 factors that weigh against imprisonment. *Accord* PSR, ECF No. 191 ¶¶ 114-115. Since  
3 his indictment in March 2019, LOH has shown no remorse, nor has he taken any steps to  
4 accept responsibility for his offenses. And the PSR does not identify any charitable,  
5 philanthropic, community, or volunteer activity by LOH.

6 **C. The Need for a Significant Sentence of Imprisonment to Reflect the**  
7 **Seriousness of the Offenses, Promote Respect for the Law, Provide Just**  
8 **Punishment for the Offenses, and Afford Adequate Deterrence**

9 Given the inherent dangerousness of the dehumidifiers LOH sold, his contempt for  
10 the law, and his repeated and deliberate deceit, it is imperative that the Court impose a  
11 sentence with significant imprisonment. Pursuant to Section 3553(a)(2), a 120-month  
12 prison sentence would reflect the seriousness of the offenses, promote respect for the law,  
13 provide just punishment for the offenses, afford adequate deterrence to criminal conduct,  
14 and protect the public from further crimes by LOH. By contrast, a “slap on the wrist”  
15 would not be sufficient to deter LOH or others when balanced against the millions of  
16 dollars in profits that can be derived from unlawful conduct.

17 The individuals who engage in the type of offenses that LOH committed are  
18 typically intelligent, well-educated, and business-savvy. Their efforts to hide their activity  
19 is a large part of the reason that it is difficult to detect and prosecute these crimes. Thus, it  
20 is important that the sentence in this case not only reflect the seriousness of LOH’s crime,  
21 but also promote respect for the law among those who might be tempted to commit (or  
continue committing) these same crimes. If corporate executives who break the law do not

1 face real consequences, they will continue to do exactly what LOH did here: know exactly  
2 what the law requires of them, but decide that the money that can be made in the short  
3 term is more important than the risk of getting caught. Meanwhile, millions of Americans  
4 will have their families, property, and even their very lives put at risk.

5 In white collar cases, general deterrence is possibly the most important factor this  
6 Court must consider. Here, the demands of general deterrence weigh in favor of  
7 imprisonment, consistent with Congressional intent when the CPSA was first enacted and  
8 again when its criminal penalties were increased. Corporate executives and other violators  
9 like LOH can be deterred—but only if the word gets out that the sentence is significant for  
10 this kind of conduct. As demonstrated at trial, competitors in the consumer products  
11 industry watch their competitors. There was extensive evidence at trial of communications  
12 between LOH and his co-conspirators showing that they shared information with one  
13 another about CPSC product recalls, including official press releases, product testing  
14 information, hidden product defects, stealth manufacturing changes, and delayed and  
15 deceptive reporting to the CPSC. Accordingly, a robust sentence in this matter will be  
16 critical to deterring others from participating in similar unlawful conduct to avoid  
17 reporting and recalling products.

18 **D. The Need to Avoid Unwarranted Sentencing Disparities**

19 The Court should consider the “need to avoid unwarranted sentence disparities  
20 among defendants with similar records who have found guilty of similar conduct[.]” *See*  
21 18 U.S.C. § 3553(a)(6). This case—and the related case against the Gree entities—

1 represent the government’s first-ever *criminal* prosecutions of individuals and companies  
2 for the offense of failing to report required information under the CPSA. Thus, the Court’s  
3 sentences will set the benchmark for other defendants who knowingly and willfully fail to  
4 report immediately in violation of the CPSA and commit other related offenses.

5 Here, the evidence of LOH’s guilt is overwhelming and unassailable, including his  
6 own tape-recorded meetings, internal emails, company presentations, and sworn federal  
7 trial testimony. His brazen disregard for the law and the safety of American consumers  
8 could not be clearer. If there is any case that merits a guidelines sentence of 120 months  
9 with no downward departure, then surely it is this one. And there is no risk of an  
10 unwarranted sentencing disparity where the government has recommended the same  
11 guidelines sentence in its concurrently filed memorandum for convicted co-defendant  
12 CHU.

13 **E. The Need to Provide Restitution to Victims**

14 The government agrees with Probation that restitution is appropriate in this case,  
15 and that a deferred restitution hearing should be scheduled to determine the amount of  
16 restitution that LOH owes to his victims.<sup>5</sup> PSR, ECF 191 ¶¶ 112, 113; ECF 190 at 1; 18

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17  
18 <sup>5</sup> A deferred restitution hearing date, which should be set for no more than 90 days after  
19 sentencing under 18 U.S.C. § 3664(d)(5), would permit the government to obtain more  
20 information from the *Gree* Special Master about the identities of and amounts owed to LOH’s  
21 victims. However, if (1) “full restitution has been made” to LOH’s victims by that hearing date  
or (2) the court finds, from facts on the record, that (A) the number of identifiable victims is so  
large as to make restitution impracticable; or (B) determining complex issues of fact related to  
the cause or amount of the victim’s losses would complicate or prolong the sentencing process  
to a degree that the need to provide restitution to any victim is outweighed by the burden on the  
sentencing process,” then the Court does not have to order restitution in this matter. U.S.S.G. §  
5E1.1(b); 18 U.S.C. § 3663A(c)(3).

1 U.S.C. §§ 3663A(c)(1)(A)(ii), 3664(d)(5). That said, there is a Special Master-  
2 administered restitution program in the related corporate case which may end up  
3 compensating LOH's victims who are entitled to restitution. *See* Judgment, *United States*  
4 *v. Gree Zhuhai et al.*, No. 2:21-cr-00498-DSF, *Gree* ECF 87; *see also* Notice of  
5 Compliance re: Special Master Status Report No. 6, *Gree* ECF 94. Because the Gree  
6 companies are obligated to pay all valid restitution claims presented under the corporate  
7 program, the corporate defendants may pay the restitution that LOH would otherwise owe.

#### 8 **F. The Need for a Significant Criminal Fine**

9 The court “shall impose a fine in all cases, except where the defendant establishes  
10 that he is unable to pay and is not likely to become able to pay any fine.” U.S.S.G. § 5E1.2.  
11 The maximum fine for each of LOH's offenses of conviction is \$250,000 or twice the  
12 gross gain or loss resulting from the offense, whichever is greatest. 18 U.S.C. § 3571(b)(2),  
13 (b)(3), (d); 15 U.S.C. § 2070(a)(2). Under the Alternative Fines Act, LOH's maximum  
14 fine is more than \$97,000,000, based on a conservative loss estimate for dehumidifiers  
15 sold during the conspiracy period.<sup>6</sup> This statutorily-authorized maximum far exceeds the  
16 guidelines fine range of \$25,000 to \$250,000 that would ordinarily apply, *see* U.S.S.G. §  
17 5E1.2(c)(3)-(4), (h)(1)),<sup>7</sup> further counseling in favor of a sentence above \$250,000. *See*  
18 U.S.S.G. § 5E1.2, comment. (n.2), (n.4).

19 \_\_\_\_\_  
20 <sup>6</sup> *See* 18 U.S.C. § 3571(b)(2), (d); U.S.S.G. § 5E1.2(c)(3), (h)(1); Section III.B., *supra*; Tr.  
Ex. 125 at 8 (ECF 192-21 at 9) ((285,596 dehumidifier units sold during 2013 at a minimum  
retail price of \$170/unit = \$48,551,320 gross loss, which is then doubled under § 3571(d)).

21 <sup>7</sup> Because LOH's offenses were committed prior to November 1, 2015, the Court must  
calculate the applicable guideline fine range using the version of § 5E1.2(c) that was in effect on  
November 1, 2014.

1 Here, LOH has substantial assets and an ability to pay a significant fine that would  
2 reflect the seriousness of his crimes, promote respect for the law, provide just punishment,  
3 and afford adequate deterrence to him and others. A fine between \$250,000 and \$500,000  
4 would be within the guidelines and sufficient to ensure that the fine, taken together with  
5 other sanctions imposed, is punitive. It would further be consistent with the fine imposed  
6 on one of LOH’s co-conspirator in the related case. *See* Judgment, *Gree* ECF 87.

7 Finally, the government is cognizant of Probation’s preliminary conclusion that  
8 LOH is unable to pay a fine, ECF 190 at 1, presumably due to the “significant amount of  
9 restitution owed” in this case. ECF 191 at 95. But as discussed in Section IV. above, the  
10 Gree companies are likely to pay the restitution that LOH owes.

## 11 **V. CONCLUSION**

12 For the foregoing reasons, the Court should impose consecutive 60-month sentences  
13 on each of Counts One and Two, for a total of 120 months’ imprisonment, followed by  
14 three years of supervised release. The Court should further order a special assessment of  
15 \$100 on each Count, restitution in an amount to be determined in a deferred hearing, and  
16 a criminal fine between \$250,000 and \$500,000. In this way, the Court will send a strong  
17 and compelling message to LOH and others that people matter more than profits, and that  
18 corporate executives who illegally prioritize sales over safety do so at their peril—just as  
19 Congress intends and consumers expect.