

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 17-CR-160

RONALD H. VAN DEN HEUVEL,

Defendant.

UNITED STATES' SENTENCING MEMORANDUM

The United States of America, by and through undersigned counsel, respectfully submits this memorandum for the January 23, 2019 sentencing of defendant Ronald H. Van Den Heuvel. Van Den Heuvel orchestrated a long-term scheme that used constant deception to obtain nearly \$9.5 million from at least 14 lenders and investors in Green Box. Those victims ran the gamut from international investors to family friends and the State of Wisconsin. Van Den Heuvel's scheme also harmed numerous employees, contractors, and vendors who gave their time and resources, often without compensation, trusting that Van Den Heuvel was making good faith efforts to pursue the Green Box project.

To be sure, Van Den Heuvel engaged in frenetic activity to promote Green Box, making plans in various cities, engaging consultants, and negotiating contracts. In reality, however, those activities were part and parcel of the fraud as Van Den Heuvel pointed to the plans, consultants, and contracts to induce more loans and investments. Meanwhile Van Den Heuvel was diverting millions of dollars away from Green Box, preventing the business plan from proceeding in any meaningful way. Van Den Heuvel may believe that Green Box is viable, but his use of the funds

revealed his true mission—to keep creditors at bay and maintain his wealthy image. Van Den Heuvel was so committed to that mission that he has persisted in fraud, even after being indicted.

For the reasons given below, the United States respectfully requests that the Court impose a sentence of 90 months concurrent to the sentence imposed in Case No. 16-CR-64; a restitution order for at least \$9,428,618.81; a period of supervised release; and a special assessment of \$100.

I. The PSR Correctly Calculates the Guidelines Range

In fashioning a sentence, the Court should begin “by correctly calculating the applicable Guidelines range.” *Peugh v. United States*, 133 S. Ct. 2072, 2080 (2013) (quoting *Gall v. United States*, 552 U.S. 38, 49 (2007)). “As a matter of administration and to secure nationwide consistency, the Guidelines should be the starting point and the initial benchmark.” *Gall*, 552 U.S. at 49. The PSR correctly calculates the offense level to be 30 and the criminal history category to be II, for a Guidelines range of 108 to 135 months. PSR ¶ 142.

The base offense level is 7 pursuant to U.S.S.G. § 2B1.1. An 18-level increase is warranted under U.S.S.G. § 2B1.1(B)(1)(J) because the loss amount exceeded \$3.5 million but was less than \$9.5 million. Based upon its investigation, the United States agrees that the loss amount should be calculated as \$9,428,618.81, as detailed in PSR ¶ 91.

The PSR correctly applies a four-level enhancement for Van Den Heuvel’s role in the offense under U.S.S.G. § 3B1.1(a). PSR ¶ 125. The government detailed its argument for this enhancement in its January 15, 2019 response to the defendant’s PSR objections. In brief, Van Den Heuvel was the leader and organizer of criminal activity that was extensive. The scheme’s length, the nearly \$9.5 million loss, the level of orchestration, and the number of participants make this case similar to other criminal activity the Seventh Circuit has deemed “extensive.”¹

¹ See, e.g., *United States v. Diekemper*, 604 F.3d 345, 353-55 (7th Cir. 2010) (affirming that a \$2.5 million bankruptcy fraud that was carefully orchestrated and lasted nearly four years was

In addition to participants Phillip Reinhart and Tami Phillips, who have pleaded guilty to conspiracy, Van Den Heuvel directed numerous other employees, contractors, and associates to aid the scheme, whether knowingly or not. For instance, Van Den Heuvel used S.A. and brokers in China to make false representations to EB-5 investors to raise over \$4 million. That is comparable to the outsiders in *United States v. Frost* that submitted false documents to obtain Pell Grants. See 281 F.3d at 656-660. During tours of his facilities with investors, Van Den Heuvel ordered other employees to operate machinery that was not fully functioning in order to mislead investors. The defendant directed others to create misleading marketing materials and provide legal services to advance the scheme. Van Den Heuvel obtained millions of dollars from the scheme while the other participants received comparably little and often went unpaid. Given these facts, the four-level organizer enhancement applies here.

Taken together with the other adjustments, the offense level should be 30, and the criminal history category should be II, for a Guidelines range of 108 to 135 months.

II. A Sentence of 90 Months Is Sufficient to Satisfy the § 3553(a) Factors

After determining the Guidelines range, the Court must consider the factors set forth in § 3553(a) to fashion a sentence that is “sufficient, but not greater than necessary, to comply with the purposes” of sentencing. 18 U.S.C. § 3553(a); see *Gall*, 552 U.S. at 49-50. Although the Court “may not presume the Guidelines range is reasonable,” the Guidelines range remains the “lodestone” of sentencing. *Peugh*, 133 S. Ct. at 2083–84 (quoting *Gall*, 552 U.S. at 50). “A district court contemplating a non-Guidelines sentence ‘must consider the extent of the deviation

“otherwise extensive”); *United States v. Frost*, 281 F.3d 654, 656-660 (7th Cir. 2002) (affirming that a federal education loan fraud scheme was “otherwise extensive” when it involved two participants, outsiders who submitted false documents to obtain Pell grants, and a loss of between \$1.5 million and \$2.5 million); *United States v. Miller*, 962 F.2d 739, 745 (7th Cir. 1992) (affirming that a HUD real estate loan fraud involving a loss between \$650,000 and \$1 million, four co-conspirators, and other outsiders was “otherwise extensive”).

and ensure that the justification is sufficiently compelling to support the degree of the variance.”² *Id.* (quoting *Gall*, 552 U.S. at 50). The government respectfully requests that the Court impose a sentence of 90 months concurrent to the 36-month sentence in Case No. 16-CR-64.

A. Nature & Circumstances of the Offense

Section 3553(a)(1) directs the Court to consider the “nature and circumstances of the offense.” Several aspects of this offense warrant a lengthy period of incarceration.

1. Length of Offense. The duration of the offense is significant, reflecting not an isolated lapse in judgment but a pattern of unrelenting deception. The indictment alleges a scheme that spanned over four years, from April 2011, when Van Den Heuvel received \$600,000 from M.A., to September 2015, when Van Den Heuvel received the last EB-5 investment. The scheme actually began even earlier, as Van Den Heuvel spent time pitching M.A. on this “special investment opportunity” at social events. PSR ¶¶ 39-40. And the scheme lasted even longer, as Van Den Heuvel pursued fraudulent transactions even after being indicted. PSR ¶¶ 94-105.

2. Loss Amount. The loss amount—\$9,428,618.81—also makes this a very serious offense. *See* PSR ¶ 91. This amount lands at the top of the Guidelines’ range for the 18-level increase. The same increase would apply to offenses involving just \$3.5 million, whereas a 20-level increase would apply if the loss amount were \$72,000 higher. *See* § 2B1.1(B)(1)(J).²

Further, although the government agrees that this loss amount applies for the Guidelines calculation and restitution, Van Den Heuvel’s conduct caused even broader economic harm. *See* PSR ¶¶ 106-115. Victims incurred additional costs, such as legal fees, that are not included in the loss amount. *See* PSR ¶¶ 107, 109, 112, 113. And the loss amount does not account for the various employees, contractors, and vendors whom Van Den Heuvel failed to pay for their

² The 20-level increase would produce an offense level of 32 and a Guidelines range of 135–168 months.

contributions to the Green Box project even as he diverted funds to maintain his prominent image. *See* PSR ¶¶ 33 & 110 (S.H. was not paid for accounting services worth over \$180,000); PSR Addendum, at 6 (G.K. was not paid for hundreds of thousands of dollars in architectural services).

For example, C.W. and M.R. operated RGEN Systems, a small, start-up company in Texas that was developing a prototype liquefaction unit. PSR ¶ 57. Van Den Heuvel convinced C.W. and M.R. to move their business to De Pere for further development with promises of payment from Clifton Equities' investment. PSR ¶¶ 57-61. After C.W. and M.R. relocated their business, Van Den Heuvel paid C.W. and M.R. less than half the agreed-upon amount. PSR ¶ 58, 61. He instead spent Clifton Equities' funds on such items as Packers tickets, his children's private school tuition, and a new Cadillac Escalade for his wife. *See* PSR ¶ 63; U.S. Ex. 18. Incredibly, Van Den Heuvel then persuaded C.W. and M.R. to loan *him* \$150,000, which he neither repaid nor used fully for the purposes he represented. *See* PSR ¶ 74.

It is true that Van Den Heuvel used some amounts of victims' funds for their intended purposes. Between this criminal case and the Securities and Exchange Commission's parallel civil investigation, the government expended substantial resources to trace how Van Den Heuvel moved funds through over 50 bank accounts, five banks, and numerous corporations. *See* PSR ¶ 32. The government could not determine how some funds were spent, and the government's analysis gives Van Den Heuvel the benefit of any doubt. Still, the government's analysis shows that for each victim save one,³ Van Den Heuvel directed *at least* half the funds to purposes not permitted by the loan or investment agreement. *See* U.S. Ex. 8 (M.A.); U.S. Ex. 14 (Wisconsin Economic Development Corporation ("WEDC")); U.S. Ex. 18 (Clifton Equities' 2012

³ The one potential exception is E.L. Van Den Heuvel converted \$7,500 of his \$25,000 investment to cash, which E.L. would not have approved. It is unclear whether E.L.'s agreement authorized Van Den Heuvel's use of the balance on employees and related taxes. *See* PSR ¶ 45.

investment); U.S. Ex. 25 (Clifton Equities' 2014 investment and EB-5 funds); PSR ¶¶ 76-77 (Van Den Heuvel converted all of D.W.'s \$40,000 investment to cash). Van Den Heuvel misappropriated nearly *three quarters* of the WEDC's \$1,116,000 loan. U.S. Ex. 8. Again, these are conservative estimates.

3. Type of Victims. The type of victims that Van Den Heuvel exploited makes this offense more blameworthy on several points. First, the offense is especially serious because Van Den Heuvel defrauded a State agency—the WEDC—of taxpayer dollars and undermined the integrity of its job-creation programs. *See* PSR ¶¶ 46-54. The WEDC has a finite amount of public funds. In selecting among the many businesses that sought its advantageous loan terms, the WEDC tried to identify businesses that could match public funds with private investments and create solid jobs. *See* PSR ¶¶ 47-48. Accordingly, the WEDC loan agreement required Van Den Heuvel to show that Green Box-Green Bay had raised other capital, acquired the EcoFibre facility, and could create 116 new jobs. *See* U.S. Ex. 11, at 9 (Loan Agreement, Exhibit A). If a different, honest business had received these WEDC funds, it may have led to actual job creation and training to benefit Wisconsin residents.

Instead, Van Den Heuvel made brazenly false representations to the WEDC, claiming that Green Box-Green Bay had raised matching contributions and acquired the EcoFibre facility (even giving WEDC a worthless mortgage). PSR ¶ 47-49. He stressed that the WEDC loan would allow Green Box-Green Bay to hire new employees and immediately start full-time operations. *Id.* Van Den Heuvel then made a mockery of the WEDC program by promptly misappropriating the funds, taking nearly \$40,000 in cash and paying off hundreds of thousands of dollars of debts owed to his ex-wife, former nanny, mother-in-law, friend who co-owned a hunting cabin, and children's private school, among others. U.S. Ex. 14. Van Den Heuvel compounded the fraud by directing subordinates to create false records for training that never occurred to draw the WEDC

training grant funds. PSR ¶¶ 53-54. This theft of public funds and abuse of job-creation programs calls for significant punishment.

Second, the offense is aggravated also because the victims included personal acquaintances whose trust Van Den Heuvel exploited. Van Den Heuvel met two of the victims—M.A. and E.L.—because their children attended the Wisconsin International School together. PSR ¶¶ 39, 45. Similarly, victim D.W. was a long-time personal acquaintance. PSR ¶ 76. These were not sophisticated investors, lenders, or businessmen. Van Den Heuvel took advantage of their trust to obtain whatever amounts possible, ranging from \$25,000 from E.L. to \$600,000 from M.A.

Third, the offense is blameworthy because it defrauded international investors. Countries are competing to attract capital from groups like Clifton Equities who seek to invest in new environmental and energy technologies. One of the United States' historical advantages has been our relatively transparent markets, strong rule of law, and absence of corruption. Van Den Heuvel's fraud harms that reputation, which can increase the costs for legitimate start-up companies. Clifton Equities will doubtless demand even more documentation, security, and due diligence before it invests in another American small business.

Finally, the sentence should reflect that Van Den Heuvel defrauded nine Chinese EB-5 investors and undermined the federal EB-5 program. The EB-5 program aims to attract foreign capital to support job creation in the United States. Van Den Heuvel's offense contributes to an unfortunate collection of schemes that have abused the EB-5 program. On the human level, the nine EB-5 investors could have invested in a different, legitimate project. Because of Van Den Heuvel's fraud, those investors not only have lost their funds but also now face long odds to obtain lawful permanent residence status. *See* PSR ¶ 85.

4. Nature of the Deceit. Although every wire fraud offense involves false representations, Van Den Heuvel's lies were extraordinary for their variety, persistency, and

manipulative nature. This offense did not involve just a single, one-off misrepresentation. Rather, Van Den Heuvel engaged in myriad different misrepresentations. His pitches regarding Green Box were rife with material falsehoods, including claims of “zero waste water discharge”; displaying fuel pellets that were actually made by a different company; and claims of patents and business relationships that did not exist. *See* PSR ¶ 29. Then after receiving funds, Van Den Heuvel told more lies to string victims along, changing stories as necessary to stay just ahead of trouble. Here are just a few of the many examples:

- After misappropriating M.A.’s \$600,000, Van Den Heuvel assured him that Green Box-Green Bay was on track and even directed him to plan for a “grand opening” ceremony that never occurred. PSR ¶ 43.
- The WEDC required Van Den Heuvel to submit Schedules of Expenditures that included an independent accountant’s review. Van Den Heuvel responded by certifying that he had spent the funds properly and falsely claimed he had retained Schenck SC to conduct the review when, in fact, he had not. PSR ¶ 51.
- Van Den Heuvel induced Clifton Equities’ September 2012 investment of \$2 million by claiming it would allow the EcoFibre facility to begin operations with the RGEN liquefaction unit. PSR ¶ 57. When Clifton Equities inquired in December, Van Den Heuvel falsely claimed the unit would be “operational” in four weeks. In truth, the unit was just a prototype, and the plant was not close to regular operations. PSR ¶ 65.
- When S.A. requested an audited financial statement for Green Box-Detroit, Van Den Heuvel submitted inflated financial statements and a letter he forged on Schenck SC’s letterhead to bolster the financial statements. PSR ¶ 83.

Throughout the scheme, Van Den Heuvel deployed complexity to obscure what he was really doing. Van Den Heuvel had over 50 bank accounts during the scheme, and he regularly shuttled funds between them. PSR ¶ 32. Van Den Heuvel formed numerous business entities, frequently changing the names of companies he used in making pitches to potential funders. PSR ¶ 26. Van Den Heuvel would also change the company that he claimed owned assets like the Mayfran Conveyor and Kool Units. *See* PSR ¶¶ 68, 82. This allowed him to play a shell game,

telling different investors in different companies they both owned the same equipment. *See id.* This complexity made it easier for Van Den Heuvel to evade for creditors and law enforcement.

5. Van Den Heuvel's Contrary Characterization. In a troubling way, Van Den Heuvel's submissions to this Court engage in another deception. Van Den Heuvel contends the offense is less serious on the ground that he had noble intentions and was sincerely pursuing a business plan that "was conceptually and practically viable," and that would have succeeded but for the execution of search warrants. Van Den Heuvel Objections to the PSR, at 2-5 (Jan. 9, 2019). As the United States explained in detail in its January 15, 2019 submission to the U.S. Probation Office, that characterization is not accurate.

As to the business plan: Aspects of the Green Box plan are certainly viable, but Van Den Heuvel made claims about other aspects that are false or at least questionable, such as the claim that it would produce "zero waste water discharge." The various reports that Van Den Heuvel cites are generally limited in scope and, in some instances, rely on assumptions provided by Van Den Heuvel himself. It is not accurate to say that the Green Box plan has been fully validated.

As to Van Den Heuvel's efforts: It is not true that he invested "millions of his own dollars." Van Den Heuvel was deeply in debt by the late-2000s and had no money of his own to invest. *See* PSR ¶¶ 24. Nor was the Green Box plan close to succeeding. Van Den Heuvel's agreements to purchase facilities and equipment in different cities were often preliminary and depended upon his ability raise enormous amounts of capital. In many instances, Van Den Heuvel used those agreements in pitches to raise funds that he diverted to other uses. In a similar way, Van Den Heuvel exaggerates the "funding guarantees" that he claimed to have arranged. Many were extremely preliminary and tenuous. Others, like the Raymond James arrangement, depended upon further due diligence that Van Den Heuvel was unlikely to survive. For example, soon after the Michigan Economic Development Corporation ("MEDC") began a more rigorous review of

Van Den Heuvel's proposals, it discovered the numerous liens and judgments against Van Den Heuvel and backed away. Nonetheless, Van Den Heuvel continued to tell EB-5 investors that the MEDC's tax-exempt bond financing was on track. PSR ¶ 81.

As to the search warrants: The factual timeline belies Van Den Heuvel's claim that his Green Box plan stood on the precipice of success before search warrants were executed in July 2015. Four months earlier, creditors sued to foreclose on Green Box-Green Bay's assets, and then in May 2015, a group of creditors—including victims M.A., the WEDC, and Clifton Equities—filed a receivership action against Green Box-Green Bay. PSR ¶ 35-36. Those actions began to shed light on Van Den Heuvel's misuse of victims' funds and likely doomed any real progress on the Green Box plan. Moreover, reports by independent consultants like E3 Consulting and Van Den Heuvel's own projections indicate that he needed to raise over \$100 million for each individual Green Box operation. Van Den Heuvel's checkered history made it doubtful that he ever could have raised such funds.

Thus, the reality is that Van Den Heuvel's wide-ranging activities—the engineering reports, the purchase agreements, the funding agreements—were all part of his fraud. Van Den Heuvel may sincerely believe that the Green Box plan is viable. But Van Den Heuvel's top priority was different. It was to maintain his image as a wealthy and successful businessman. Green Box became the vehicle for projecting that image and attracting funds to sustain his high-end lifestyle. Along the way, Van Den Heuvel was warned. In mid-2013, two accountants wrote a memorandum advising that Van Den Heuvel and his wife's misuse of investor funds “may have exposed both of you to severe IRS tax and possible federal charges.” U.S. Ex. 5. Needless to say, Van Den Heuvel did not heed the warning.

In sum, the nature and circumstances of the offense are very serious and require a lengthy term of imprisonment.

B. History & Characteristics of the Defendant

In fashioning a sentence, the Court also must assess Van Den Heuvel's history and characteristics. 18 U.S.C. § 3553(a)(1). Van Den Heuvel had substantial advantages in life that many other criminal defendants lack. He grew up in a stable, two-parent family. *See* PSR, Part C ¶¶ 1-2. He has a supportive family with many siblings in the area. *Id.* Van Den Heuvel completed high school and some college, was certified as a Master Electrician, and has numerous professional licenses. PSR, Part C ¶ 27-30. Van Den Heuvel appears to have natural intelligence, a persuasive personality, and a capacity for enterprising, constructive work. At times, he has used these advantages to positive ends and provided service in his community. Doc. 111, at 4-5.

Even with these advantages, however, Van Den Heuvel has shown a persistent pattern of deceiving others for personal gain. As his financial condition deteriorated in the late 2000s, Van Den Heuvel conspired with a loan officer to obtain over \$1 million of loans in the names of straw borrowers, leading to his conviction in Case No. 16-CR-64. A few years later, during this offense, Van Den Heuvel persuaded his son-in-law to seek loans based on falsified paystubs. PSR ¶ 93.

Van Den Heuvel's conduct since being indicted has revealed that his deceptive ways are entrenched. Despite the indictments, Van Den Heuvel continued to seek funding sources by making false representations. *See* PSR ¶¶ 94-95. In one pitch, Van Den Heuvel repackaged some of the same false claims—such as a partnership with Cargill, Inc.—under a new business name. *See* PSR ¶ 94 (promoting the “Great Lakes Tissue” project). In late 2017, Van Den Heuvel pledged collateral he did not own to obtain a \$20,000 loan that he represented would fund business purposes, but that he instead directed partially to the Oneida Golf & Country Club. PSR ¶ 96.

That conduct led the Court to impose new bond conditions in April 2018. The conditions required Van Den Heuvel to seek approval for transactions involving \$500 or more, given that he had appointed counsel and owed over \$300,000 in restitution. PSR ¶ 89. Van Den Heuvel

disregarded this requirement, selling a vehicle without approval, adding \$2,000 to his tab at Oneida Golf and Country Club, and paying \$3,500 in cash to the Country Club. PSR ¶ 99. Consequently, the Court remanded Van Den Heuvel to begin serving his sentence in July 2018.

Not even incarceration held Van Den Heuvel back from making false claims to potential investors. *See* PSR ¶¶ 102-105. As recently as November 24, 2018, Van Den Heuvel worked with an associate to send marketing materials under a new company name (“True Sustainability”), claiming that it had obtained a \$9.6 million federal loan and a \$10 million working capital loan from a Minneapolis bank. PSR ¶¶ 104-105. In truth, no such loans exist. Van Den Heuvel has not, to the government’s knowledge, succeeded in defrauding new victims since being incarcerated. But his relentless attempts reflect that Van Den Heuvel has an incorrigible disregard for the truth.

Van Den Heuvel contends that his age (64) and health condition are mitigating factors. Doc. 111, at 13. The relevant policy statements provide that age or health conditions may justify a reduced sentence if age- or health-related considerations are “present to an usual degree and distinguish the case from the typical cases covered by the Guidelines.” U.S.S.G. §§ 5H1.1, 5H1.4. The policy statement provides the example of a defendant who is “elderly and infirm.” U.S.S.G. § 5H1.1. Van Den Heuvel is neither elderly nor infirm. To the contrary, even from jail, he has continued to market his business plans. He reports that the jail has managed his health condition adequately since the Court’s intervention. Doc. 111, at 13. There is no reason to think that federal facilities cannot do the same.

Van Den Heuvel is mistaken in asking the Court to consider his role as the “sole financial supporter for his family.” *Id.* “[F]amily ties and responsibilities are not ordinarily relevant in determining whether a departure [from the Guidelines] may be warranted.” U.S.S.G. § 5H1.6. That is because “[m]ost families suffer emotional and financial harm when a parent is

imprisoned,” and hence, the impact is not a mitigating circumstance. *United States v. Gary*, 613 F.3d 706, 710 (7th Cir. 2010). Moreover, since at least 2011, if not earlier, Van Den Heuvel has supported his family almost exclusively by engaging in fraud.

The notion that incarceration will prevent Van Den Heuvel from paying restitution, *see* Doc. 111, at 13, is no reason to reduce his sentence. The unfortunate reality is that Van Den Heuvel’s enormous indebtedness, *see* PSR Part C, ¶ 34, and criminal convictions make it unlikely that he will be able to repay the victims. Justice is best served by a lengthy term of incarceration.

C. Purposes of Sentencing

The recommended sentence of 90 months would be sufficient, but not greater than necessary, to meet the purposes of sentencing set forth in 18 U.S.C. § 3553(a)(2). Only significant incarceration will reflect the seriousness of the offense, promote respect for the law, and provide just punishment. As noted, Van Den Heuvel engaged in a long-term, deliberate fraud scheme that took advantage of a range of victims and undermined State and federal job-creation programs.

The need to “protect the public from further crimes of the defendant” also supports a lengthy term of imprisonment. 18 U.S.C. § 3553(a)(2)(C). Van Den Heuvel’s history, especially since indictment, has shown that he will engage in fraud unless he is actually restrained from doing so. Significant incarceration is necessary to restrain Van Den Heuvel and impress upon him that such conduct results in real consequences.

A significant sentence is required also to deter others from pursuing fraudulent schemes and abusing public programs. The potential for general deterrence is heightened here because Van Den Heuvel is well known in the Green Bay area. Indeed, because Van Den Heuvel defrauded the WEDC, news media throughout the State have followed this case and likely will report the sentence imposed here. Lengthy incarceration will send the proper message, whereas Van Den

Heuvel’s requested sentence—just 24 months beyond his current 36-month sentence—could send the troubling message that crime pays.

D. Guidelines Range & the Need to Avoid Unwarranted Disparity

Section 3553(a)(6) requires the Court to consider the “need to avoid unwarranted disparities among defendants with similar records who have been found guilty of similar conduct.” After *Booker*, the “federal sentencing scheme aims to achieve uniformity by ensuring that sentencing decisions are anchored by the Guidelines.” *Peugh*, 133 S. Ct. at 2083–84. Although the government is recommending a sentence slightly below the Guidelines, the defendant’s request for 60-month sentence, much further below the Guidelines, would result in unwarranted disparities with other defendants. That is true with regard to defendants sentenced around the country before other District Judges who are all required to use the Guidelines as their starting point. That is also true with regard to defendants sentenced in this District, as the following table demonstrates:

Selected Sentences in White Collar Cases in E.D. Wisconsin

Case No.	Defendant	Judge	Sentence	Appox. Loss
02-CR-206	K. Hackbarth	Randa	120 months ⁴	\$6,000,000
03-CR-170	Leslie Hamilton	Stadtmueller	300 months	\$14,256,346
05-CR-013	Robert Brownell	Clevert	240 months	\$6,738,477
07-CR-245	Martin Valdez	Adelman	72 months	\$1,227,591
07-CR-113	James Lytte	Stadtmueller	84 months	\$1,794,438
08-CR-208	Dale Endries	Griesbach	71 months	\$2,610,443
08-CR-325	M. Morris	Clevert	97 months ⁵	\$20,000,000
07-CR-204	Michael Lock	Stadtmueller	160 months	\$1,458,823
10-CR-006	Sue Sachdeva	Adelman	99 months ⁶	\$34,000,000
10-CR-176	Mervyn Rutley	Adelman	72 months	\$205,247
13-CR-219	Lisa Lewis	Griesbach	180 months	\$2,021,486
13-CR-135	Mark Parks	Griesbach	108 months	\$1,500,000
14-CR-196	D. Jones	Clevert	70 months ⁷	\$705,000
14-CR-196	C. Mitchell	Clevert	72 months	\$550,000
15-CR-214	Gregory Kuczora	Griesbach	70 months	\$1,000,000

⁴ Defendant was 77 years old at the time of sentencing.

⁵ Defendant was 71 years old and in poor health at the time of sentencing.

⁶ This sentence was reduced for substantial assistance to the government in other cases.

In short, a sentence lower than 90 months in this case would create unfair disparities with comparable defendants.

III. The Court Should Order Restitution of at Least \$9,428,618.81

The government requests that the Court order Van Den Heuvel to pay restitution of at least \$9,428,618.81 to the victims listed in paragraphs 151 and 152 of the PSR. As reflected in the PSR Addendum, the government does not believe S.H. or J.K. is entitled to restitution. Although they went unpaid for services rendered to Van Den Heuvel, they were not investors or lenders in the Green Box business plan. As to S.S.'s claim for restitution, the United States has proffered the facts gathered through its investigation, which are reflected in paragraphs 86 to 90 of the PSR. The United States takes no position regarding whether S.S. is entitled to restitution.

CONCLUSION

The United States respectfully requests that the Court impose a 90-month term of incarceration to run concurrently with the sentence imposed in Case No. 16-CR-64; a restitution order for at least \$9,428,618.81; a period of supervised release; and a special assessment of \$100.

Dated at Milwaukee, Wisconsin, this 21st day of January, 2019.

Respectfully submitted,

/s/ Matthew D. Krueger
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