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11 UNITED STATES DISTRICT COURT
12 EASTERN DISTRICT OF WASHINGTON
13 The Honorable Rosanna Malouf Peterson

14 United States of America,
15
16 Plaintiff,
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18 v.
19 Shannon Stiltner,
20
21 Defendant.

No. CR-13-012-RMP-3

**Response to the United States’
Motion to Amend Restitution
Order**

I. Introduction

22 The United States’ Motion to Adjust Restitution Order misstates
23 the applicable law, mischaracterizes this case’s facts, and otherwise
24 asks the Court to make an unprecedented – and inappropriate –
25 adjustment to Shannon Stiltner’s restitution payment plan. Here are
the reasons why the United States’ motion should be denied:

II. Discussion

1. The United States Mischaracterizes the Applicable Law

On November 21, 2013, Shannon Stiltner pleaded guilty to the following charges: 1) Misprision of a Felony (i.e., being aware of a high probability that Gregory Jeffreys was up to no good, but deliberately avoided learning the truth about his conduct); and 2) Conspiracy to Commit Contempt (i.e., speaking with Mr. Jeffreys over the phone when she was directed not to do so by a Court Order). (ECF No. 396.) That is all. Nowhere did Ms. Stiltner ever admit knowing that Mr. Jeffreys was engaged in a scheme to defraud investors – because she did not. Nowhere did Ms. Stiltner ever admit to knowingly participating in Mr. Jeffreys’s scheme to defraud investors – because at no point did she knowingly participate.

Despite a clear record regarding Ms. Stiltner’s involvement – or, more appropriately, lack thereof – the United States suggests otherwise. In its Motion to Adjust, the United States cites the need to make victims whole “[p]ursuant to the MVRA”¹ (ECF No. 580 at 1-

¹ “MVRA” is an acronym for the Mandatory Victim Restitution Act, which is codified under 18 U.S.C. § 3663A.

1 2.) But there are no victims in Ms. Stiltner's case that fall within the
2 MVRA's scope.

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4 The MVRA mandates restitution to victims for offenses such as
5 fraud, crimes of violence, and the like. *See* 18 U.S.C. § 3663A(c)(1)(A)
6 (2014). While the MVRA has applied in at least one prior case where a
7 defendant pleaded to misprision,² the MVRA does not apply to the facts
8 and charges that Ms. Stiltner pleaded to back in November 2013. The
9 parties agreed to restitution in the Plea Agreement in an effort to
10 resolve the case, which is permissible under 18 U.S.C. § 3663(a)(3). Put
11 another way, Ms. Stiltner's restitution obligations are based on a
12 contractual agreement (the Plea Agreement), not statutory authority
13 mandating that certain victims be made whole.

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17 Additionally, the United States refers to the need for Ms. Stiltner
18 to "make *her* victims whole." (ECF No. 580 at 2.) This assertion

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20 ² *See United States v. Marino*, 654 F.3d 310 (2d Cir. 2011). This case is
21 distinguishable. In *Marino*, the defendant was a CPA and helped manage an
22 investment fund. Mr. Marino took a proactive role in his job as CPA in hiding losses
23 from the fund's investors. He actually went as far as to prepare sham audits. So
24 even though Mr. Marino only pleaded to misprision, his admitted conduct more
25 than fell within the "fraudulent conduct" that is covered by the MVRA.

1 misstates both the law and the facts. The MVRA defines “victim” as a
2 “person directly and proximately harmed as a result of the commission
3 of an offense *for which restitution may be ordered*” 18 U.S.C. §
4 3663A(a)(2) (2014) (emphasis added). As mentioned, Ms. Stiltner did
5 not plead to any offenses “for which restitution may be ordered,” nor did
6 she admit to knowingly engaging in any conduct that caused harm or
7 losses to the victims in this case.
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10 It is therefore legally and factually incorrect for the United States
11 to assert that V.P. and S.F. are “Ms. Stiltner’s victims.” These
12 individuals are not Ms. Stiltner’s victims; they are Mr. Jeffrey’s
13 victims.
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16 Ms. Stiltner brings these mischaracterizations to the Court’s
17 attention because the United States’ Motion to Adjust Restitution
18 implies that Ms. Stiltner’s “behavior” runs afoul of the MVRA, which is
19 a subtle “nudge, nudge” to the Court that Ms. Stiltner’s restitution
20 order needs to be modified in order to effectuate the MVRA’s priority of
21 making victims whole. That is not the case for Ms. Stiltner.
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1 **2. The Background Behind the United States' Motion**

2 The United States' Motion to Adjust makes clear that it believes
3 Ms. Stiltner engaged in below-board behavior by accepting a one-time
4 gift from her mother to pay for Gonzaga tickets. (ECF No. 580 at 3.) In
5 reality, nothing is further from the truth. Here is some background to
6 understand why this is the case:
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9 Although the United States filed the pending Motion to Adjust, it
10 is not the driving force behind the requested restitution modification.
11 For reasons unknown, Greg Green, who is Ms. Stiltner's ex-husband,
12 has maintained a close watch on Ms. Stiltner's conduct throughout this
13 case's pendency. Mr. Green and Ms. Stiltner's Gonzaga basketball
14 tickets were a large source of contention during their divorce, and they
15 remain a point of contention to this day.
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18 So when Mr. Green heard that Ms. Stiltner's mother paid for
19 Ms. Stiltner's half of the Gonzaga basketball tickets, he promptly called
20 the Gonzaga ticket office (several times), as well as the United States
21 Probation Office, to report Ms. Stiltner for violating the Court's
22 restitution order.
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1 As it turns out, Ms. Stiltner was perfectly above-board during this
2 process. Before receiving the \$2,700 cash gift from her mother for the
3 Gonzaga tickets, Ms. Stiltner contacted her supervising probation
4 officer to explain the situation and seek advice. Ms. Stiltner's
5 supervising probation officer "staffed" the issue with her supervisor,
6 who ultimately concluded that so long as Ms. Stiltner contributed 10%
7 of this one-time cash gift (\$270) towards her restitution obligation, then
8 she would be fully compliant with the Court's restitution order. So
9 Ms. Stiltner did just that – she paid \$270 (of her own money) to "pay
10 for" the cash gift she received from her mother. All of this was cleared
11 with the United States Probation Office beforehand. All of this was
12 completely above-board. It is therefore awfully aggressive for the United
13 States to characterize Ms. Stiltner's conduct as a "slap in the face" to
14 the Court when, in fact, Ms. Stiltner pre-approved her conduct with the
15 Court's supervisory arm (the United States Probation Office).

21 **3. Why Adjusting the Existing Restitution Order is Inappropriate**

22 The United States asks the Court to modify the existing
23 restitution order to require Ms. Stiltner to turn over 100% of all future
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1 cash gifts to her restitution obligation. (ECF No. 580 at 3.) That is an
2 incredible – and unprecedented – request.

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4 Undersigned counsel contacted the United States Probation Office
5 to inquire if they have ever seen such a modification before – no such
6 extreme modification came to mind. Setting aside that such a request is
7 unprecedented from a historical standpoint, the United States’ Motion
8 to Adjust rests on soft legal authority.

9
10 Section 3664(k) authorizes restitution modifications if there are
11 “any material changes in the defendant’s economic circumstances that
12 might affect the defendant’s ability to pay restitution.” 18 U.S.C. §
13 3664(k). “The relevant inquiry is whether there has been a material
14 change in [Ms. Stiltner’s] ability to pay after the Court ordered
15 restitution.” *United States v. Soroka*, 508 F. Supp. 2d 869, 871 (D. Or.
16 2007); *see also Cani v. United States*, 331 F.3d 1210, 1215 (11th Cir.
17 2003) (noting that a material change means a “bona fide change in the
18 defendant’s financial condition, either positive or negative”).

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22 Ms. Stiltner recently acquired a job at Omega Pacific, which is a
23 company that manufactures rock climbing equipment in Airway
24 Heights. She makes \$1,600 (gross) per month, which equates to \$19,200
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1 per year (gross). Her financial circumstances place her not far above the
2 2014 federal poverty line. According to the United States Probation
3 Office, Ms. Stiltner already has a very difficult time making ends meet
4 financially when considering her current monthly expenses for rent,
5 car, gas, food, utilities, and restitution. A one-time, \$2,700 gift from
6 Ms. Stiltner's mother does not constitute a "bona fide change" in
7 Ms. Stiltner's currently-bleak economic circumstances. *See Cani*, 331
8 F.3d at 1215.
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11 Moreover, it is worth playing out the practical consequences if the
12 Court grants the United States' request. Let's say, for example, that
13 Ms. Stiltner's car breaks down, and the cost to repair it is \$500, which is
14 well above what she can afford to pay in repairs for someone making
15 \$1600 (gross) per month. Under these circumstances, no one would be
16 allowed to give Ms. Stiltner money to help fix her car. She would then
17 be unable to commute from Spokane Valley (where she lives) to Airway
18 Heights (where she works), and she may end up losing her job as a
19 result.
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22 Or let's say, as another example, that Ms. Stiltner forgets her
23 wallet and her friend offers to buy her lunch. Under these
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1 circumstances, Ms. Stiltner could not accept the \$8 or \$11-dollar gift for
2 lunch.

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4 In response, the United States will likely counter that it carves
5 out a distinction between a gift and a loan. But where do you draw the
6 line? Does Ms. Stiltner then need to obtain documentation every time
7 she “borrows” \$10 for lunch, \$25 for gas, or a few hundred dollars to
8 repair her car? Moreover, the United States Probation Office expressed
9 concern that the United States’ requested modifications are incredibly
10 arduous and virtually unenforceable. In fact, these modifications would
11 actually discourage Ms. Stiltner from being forthcoming with her
12 supervising probation officer, as enforcement largely depends on
13 Ms. Stiltner self-disclosing any gifts that she receives.

17 III. Conclusion

18 Shannon Stiltner is struggling find financial footing as she works
19 to rebuild her life from the ground up. Thus far, she is doing an
20 impressive job of securing work and meeting her restitution obligations.
21 A one-time \$2,700 gift from her mother, of which Ms. Stiltner paid \$270
22 of her own money towards her restitution obligation, does not amount to
23 a “bona fide” change in her financial circumstances. Requiring
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1 Ms. Stiltner turn over 100% of all future monetary gifts is
2 unprecedented (according to the United States Probation Office),
3 unwarranted (based on her current financial circumstances), unrealistic
4 (from a supervisory standpoint), and ultimately results in an oppressive
5 restitution condition that runs counter to the ends of justice.
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8 Dated this 13th day of September 2014.

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Service Certificate

I certify that on September 13, 2014, I electronically filed the
foregoing with the District Court Clerk using the CM/ECF System,
which will send a filing notification to the following:

Sean T. McLaughlin

s/ John B. McEntire IV