

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA

Crim. Case No. 21-646-1-TJK

v.

HAOTIAN SUN,

Defendant.

UNITED STATES' MEMORANDUM IN AID OF SENTENCING

For approximately 2.5 years, Haotian Sun dedicated himself to defrauding Apple. Although the government will never know precisely how many phones he returned as part of the fraud scheme, the evidence indicates that Sun submitted at least 3,000 and personally caused an intended loss of more than \$1.5 million and an actual loss of at least \$1.2 million. In January 2018, approximately eight months after he started working for co-conspirators Wen Jin Gao and Qiang Zhang, federal law enforcement agents interviewed Sun. They returned three packages of intercepted phones to him, told him the phones were counterfeit, and instructed him to send them back from where they came (Hong Kong). Sun lied to agents during that interview and then, instead of ceasing his criminal conduct, he arrogantly boasted about getting the phones back and continued to return phones to Apple for nearly two years. He only stopped because he was arrested.

Sun actively participated in the conspiracy. He opened UPS Store mailboxes. He received inauthentic phones from Hong Kong. He returned phones to Apple retail stores and third-party repair facilities. He looked for new third-party repair facilities with whom conspirators could do business. He created multiple email addresses. He used a variety of names. He supervised at least one other person.

Sun warrants a sentence just above the bottom of the 70-to-87-month guideline range, i.e., 72 months. However, given his status as a non-citizen, the government does not oppose a six-month *Smith* variance and a resulting sentence of 66 months' imprisonment. Such a sentence would be sufficient but not greater than necessary to achieve the purposes of sentencing.

I. BACKGROUND

A. Sun's Childhood and Move to the United States

Sun was born in China in 1990. PSR ¶ 76. His dad was a pharmacist until he retired. *Id.* His parents got divorced when Sun was eight; he described their divorce as "complicated." PSR ¶ 78. After they divorced, Sun went to live with his paternal grandparents, who already had played an instrumental role in his upbringing. *Id.* Sun said his childhood was devoid of any abuse and that he never witnessed any incidents of domestic violence between his parents. PSR ¶ 79. He also never saw his parents, grandparents, or siblings struggle with alcohol or drugs. PSR ¶ 79.

Sun came to the United States with his mother in 2007 when he was 17 years old. PSR ¶ 78, 84. Approximately two years later, his mom married his stepdad, who works at the Pentagon. PSR ¶ 81. Sun is not a U.S. citizen, and he is currently out of status. PSR at 3 and 24. He earned his high school diploma in 2010 and then attended the University of Maryland, Baltimore County from 2010 to 2015. PSR ¶ 94. He said he applied to the U.S. Army in 2015 but could not pass the medical examination because he suffered from glaucoma. PSR ¶ 95. Although he reported being in good health overall, he noted that he had his left eye removed in 2020, which he said stemmed from his arrest in the instant case and a failure by the D.C. Department of Corrections to provide him with necessary eye ointment during the two weeks that he was incarcerated.¹ PSR ¶ 88-89.

¹ Sun was detained from his arrest on December 5, 2019, to December 19, 2019, when he was released into the High Intensity Supervision Program.

B. Overview of the Scheme to Defraud Apple

At the heart of the conspirators' scheme was their repeated attempts to exploit Apple's warranty on iPhones. Every new iPhone comes with a one-year manufacturer's defect warranty, which basically means that "if something is wrong with the device, *because it's Apple's fault*, within that year time frame, you'll get a repaired or replaced device." Trial Tr. 38:10-16 (2/15/24 PM) (emphasis added). Apple product identification expert Leah Caras explained that the manufacturer's warranty did not cover accidental damage to the phone, such as dropping it and cracking the glass or getting water on it. *See* Trial Tr. 38:17-19 (2/15/24 PM).² She also explained that using third-party parts, i.e., non-Apple original parts in any repair, voided Apple's warranty, and thus, phones with third-party parts were ineligible for warranty repair/replacement. *See* Trial Tr. 40:3-13 and 67:12-15 (2/15/24 PM).

Gao explained how conspirators tried to exploit Apple's warranty policy. He testified that conspirators submitted two types of inauthentic phones to Apple. The first type consisted of secondhand iPhones that they purchased in bulk from phone resellers. They picked out damaged phones that fell within Apple's warranty period, but that were not eligible for warranty repair/replacement because of the damage, such as cracked screens. They then sent those phones to China to be fixed with third-party, non-Apple original parts. The phones were sent back to conspirators in America, who submitted the modified phones to Apple for warranty repair/replacement hoping that Apple employees would not realize that third-party parts had been used in the phones. Gao testified that if Apple knew the phones had been modified with third-party parts, Apple would not have repaired or replaced the phones. Trial Tr. 15:5-18; 15:24-16:22

² Ms. Caras noted that a customer could protect those types of events by purchasing AppleCare+. Trial Tr. 38:19-24 (2/15/24 PM).

(2/8/24 AM). That of course was consistent with Ms. Caras' testimony about Apple's policy. Trial Tr. 67:12-15 (2/15/24 PM). Gao testified that the second type of inauthentic phones that conspirators submitted to Apple were phones that conspirators assembled by purchasing different pieces and putting them together. Trial Tr. 15:18-23 (2/8/24 AM).

Gao testified that conspirators used three different methods to submit phones to Apple. The "UPS method" involved registering a repair online through the Apple website and dropping the phone off at a UPS Store, which would result in either receiving a new phone from Apple or a non-repaired phone back. Trial Tr. 17: 22-18:7 (2/8/24 AM). The second method involved taking a phone to an Apple retail store, such as the Apple store in Georgetown. Gao said Apple's Genius Bar would perform a simple inspection and usually swap the phone onsite or send it to a facility to be repaired or replaced. Trial Tr. 18:8-14 (2/8/24 AM). The third method consisted of sending the phone to an Apple authorized service provider, also known as a third-party Apple repair facility. Trial Tr. 18:15-18 (2/8/24 AM).

C. Sun's Origin Working for Gao and Zhang, Desire to Expand Role in the Conspiracy, and Red Flags About Criminal Behavior

On May 5, 2017, Sun sent Gao a WeChat message noting that he saw Zhang's salesman recruitment ad and that Zhang told Sun to contact Gao. *See* Gov. Ex. 63 at 1. Within two weeks, Sun started returning phones to Apple. During his time working for the conspiracy, he returned phones to Apple retail stores and to third-party repair facilities. As detailed below, red flags regarding the illegality of the phone return scheme surfaced almost immediately, yet Sun continued to participate in the scheme for more than two years and looked to increase his role soon after he started working for Gao and Zhang.

Gao testified that he and Zhang had dinner with Sun approximately one month after Sun responded to the ad and described Sun as interested in trying to make more money even though at

that point in time—the one-month mark—many people who worked for Gao had quit. Trial Tr. 50:24-51:25 (2/8/24 AM). Indeed, Gao noted that although he tried to recruit others into the conspiracy, his recruitment efforts often failed. He said he usually posted recruitment ads online and that of the approximately 20 people who responded, about half ended up working for him. *See* Trial Tr. 20:2-14 (2/8/24 AM). However, some people who returned phones for him stopped within a couple of weeks or months. He understood that they stopped because they found the activity problematic and sketchy. Trial Tr. 22:8-18; 23:21-24:8; 48:1-24 (2/8/24 AM).³ Gao testified that the two people who returned phones for a much longer period than others were Haotian Sun and Dian Luo. Trial Tr. 24:9-14; 48:25-49:3 (2/8/24 AM).

With respect to early red flags, the evidence included the following. On or about June 9, 2017, Sun messaged Gao, “Because the previous batch were often rejected by Apple stores, these ones were all sent to third parties.” Gov. Ex. 63 at 14. On or about June 13, 2017, Sun messaged Gao, “I got recognized everywhere I’ve been. Might not be able to keep doing this for long.” Gov. Ex. 62 at 1 (Excerpts of SMS Text Messages Between Wen Jin Gao and Haotian Sun). On June 14, 2017, Gao messaged Sun, “Did you have any trouble at the stores today[?]” Sun replied, “Everybody at columbia and montgomery hall [sic] now knows me, and tyson center only accepted one because they said they often received fake phones.” Gov. Ex. 63 at 17. Approximately ten minutes later, after Gao and Sun discussed trying to get a third-party repair facility in Pennsylvania to let them buy access to a GSX account (an Apple system that contains a wealth of information

³ Gao’s experience was similar to Dian Luo’s. *See* Luo Testimony, Trial Tr. 22:11-14 (2/15/24 AM) (noting that one individual Luo recruited to return phones quit, explaining, “Later maybe she felt that there was problem with these phones, maybe they’re fake.”); Gov. Ex. 64 at 42 (Excerpts of WeChat Messages Between Dian Luo and Pengfei Xue) (in response to Luo asking Xue if he scheduled anymore interviews of potential staff/recruits, Xue wrote, “Some inquiry calls but no one really took it into consideration. *Some even asked if it’s against the law.*”) (Emphasis added).

about iPhones), Sun noted, “All the third parties nearby treat me like a bad guy.” Gov. Ex. 63 at 18. On or about July 12, 2017, Sun messaged Gao, “One of the phone. They say the imei and serial number don’t match.... They said they can’t repair this one. This is the 3rd one today. The serial number of the parts inside doesn’t match the IMEI.” Gov. Ex. 62 at 2. On August 28, 2017, Sun messaged Gao, “The serial number is wrong. It reads as a device that’s been out of warranty for two years[.]” Gov. Ex. 63 at 31. On October 12, 2017, Gao messaged Sun, “Remember to use different names.” Gov. Ex. 62 at 10.

D. Sun’s Use of Multiple UPS Mailboxes

Sun willingly used different names per Gao’s direction—yet another red flag—and he also opened multiple UPS mailboxes per Gao and Zhang’s request. The UPS mailboxes were used to receive packages of inauthentic iPhones from Hong Kong. On or about June 18, 2017, Gao messaged Sun, “Try avoid using the same ZIP code when renting Ups mailboxes.” Gov. Ex. 63 at 20. At trial, Gao explained that they were probably using the UPS method of returning phones at this time, so they were trying to have “as many mailing addresses as we could.... [to] trick Apple to swap out more phone for us.” Trial Tr. 58:21-59:3 (2/8/24 AM).

At trial, the government introduced UPS Store records that showed Sun opening UPS Store mailboxes on the following dates:

- June 26, 2017 (two in Columbia, Maryland)
- July 17, 2017 (one in Millersville, Maryland, one in Glen Burnie, Maryland)
- June 19, 2017 (two in Ellicott City, Maryland)
- December 22, 2017 (one in Ellicott City, Maryland (using the name “Frank Sun”))
- December 28, 2017 (one in Ellicott City, Maryland).

See Gov. Ex. 26 (Summary of Mailboxes Opened); Gov. Ex. 25 (UPS Store Mailbox Agreements).

DHL records showed approximately 70 shipments to Sun or aliases used by him between August 2017 and May 2018 at the above addresses. Gov. Ex. 74 (DHL Responsive Shipping

Records). Because the evidence proved that Sun opened more UPS Store mailboxes than the ones identified above, there likely were numerous other DHL shipments about which law enforcement is unaware. *See* Gov. Ex. 63 at 29 (Sun writing Gao, “There are many UPS stores in Pennsylvania and I’ll get some more”).

Law enforcement intercepted five packages that were shipped by DHL from Hong Kong to Sun’s UPS Store mailboxes. Three of the five were addressed to “Fransis S”; two were addressed to “Hao Sun.” The five parcels contained a total of 115 iPhones. *See* Gov. Ex. 75 (Packages Inspected Between October 2017 and May 2018). The following are examples of photos taken by law enforcement agents as part of their investigation into Sun and other conspirators. *See, e.g.,* Gov. Ex. 7, 8, 9, 10, 11 (Photographs taken by Law Enforcement of the Sun Intercepted Packages).



E. Interview of Sun by Law Enforcement and His Continued Involvement in the Scheme

Inspector Cohen and Agent Poorman interviewed Sun on January 31, 2018, in Washington, D.C. They brought three of the DHL packages that had been intercepted to the meeting. During

the interview, Sun noted that he did not work with any other individuals in the United States, which was demonstrably false. At the end of the interview, Inspector Cohen told Sun that all the phones in the packages were counterfeit and instructed him not to return them to Apple. He also told Sun to send the phones back from where they came. Trial Tr. 23:15-24 (2/16/24 AM).

Instead of returning the phones to Hong Kong, Sun submitted the overwhelming majority for warranty repair/replacement through Digital Sunrise, a third-party repair facility in Pennsylvania. Apple intercepted some of those returned phones, which Ms. Caras physically examined and determined contained counterfeit parts. Names used on repairs included “Ellen Dawson,” “John Zhong,” “Mary Zhong,” and “Justin Scott.” *See* Trial Tr. 119:15-121:21 (2/15/24 PM); *see generally* Gov. Ex. 9-11 (Photographs of Intercepted Phones including IMEI numbers), Gov. Ex. 27 (Sunrise Repair Invoices) at 1015 (Ellen Dawson), 1006 (John Zhong), 1021 (Mary Zhong); 1023 (Justin Scott); Gov. Ex. 69.4 (Apple Excel Spreadsheet Regarding Returned Phones); Gov. Ex. 99 (Summary Exhibit of Caras’ Findings).

Notably, Gao testified that on or about February 2, 2018, just days after Inspector Cohen and Agent Cohen interviewed Sun, Gao messaged Zhang, “Those people asked him a lot of questions saying those are counterfeit cell phones directly and Sun Haotian can talk. He had muddled through.” Trial Tr. 22:8-18; 23:21-24:8 (2/8/24 AM); *see also* Gov. Ex. 61 at 23 (Excerpts of WeChat Messages between Zhang and Gao). Gao explained that Sun told him that the people with whom Sun met (i.e., Inspector Cohen and Special Agent Poorman) told Sun that the phones that they were turning over to him were counterfeit. Trial Tr. 39:8-14 (2/8/24 AM). Gao testified that he did not remember Sun expressing any concern about being questioned by law enforcement about counterfeit phones. Instead, Sun seemed happy and kind of arrogant about getting the phones back. Trial Tr. 39:15-21 (2/8/24 AM). Sun continued to return phones for nearly two more years.

On February 8, 2018, just over one week after Inspector Cohen and Agent Poorman interviewed him, Sun misrepresented his encounter with them to the service director of a Richmond third-party repair facility. The Service Director wrote, in relevant part,

“Jack,

I regret to say that Apple has requested that we no longer do business with you going forward. Any devices that have repairs already made in GSX will continue to be processed. Once those repairs are complete, you will not be able to bring in any new devices for repair.”

Sun responded, in part,

“I really hope to talk to your Apple rep. Just last week I got a batch of our phones out of the Homeland Security with little trouble. Nothing we do is against the law or any [sic] rules. I'm sure this is just some misunderstanding. Of course, I'd be happy to pay a find's fee for the contact.”

Gov. Ex. 38 at 6-7 (Wellcare3501 Emails).

Inspector Cohen testified that Sun's above representation, eight days after law enforcement's interview of him, was inaccurate. “I was very clear with Mr. Sun when I met with him. Do not return the phones to Apple. They are counterfeit phones. Send them back where they came from.” Trial Tr. 25:1-26:8 (2/16/24 AM). Inspector Cohen then added more clarity.

Q. During your interview with [Sun], did you tell him that what he was doing was not against the law?

A. No, I never told him that.

Q. Did you tell him that what he was doing was not against any rules?

A. No.

Trial Tr. 26:9-14 (2/16/24 AM).

F. Sun's Use of Multiple Names and Email Addresses

The trial evidence showed that Sun used at least the following names in connection with the conspiracy: Frank Sun, Jack Sun, Andre Sun, David Sun, Dave Sun, Jerry Sun, Fransis Sun,

Fransis S, James Gao, John Zhong, Glenn Dawson, Mary Zhong, and Justin Scott. There undoubtedly are more names about which the government is unaware. Sun also used multiple Gmail email addresses as part of the scheme.

G. Files in Sun’s Electronic Accounts and Phone

Sun’s Gmail accounts and his phone contained multiple files related to the scheme, including spreadsheets with serial numbers and IMEI numbers for iPhones. For example, GX70.19-428.xls, which was retrieved from Sun’s phone, contained a list of 110 different serial numbers, IMEI numbers, and 帐号 addresses, with the same password for all 110 entries. Similarly, GX40.15-144套6p, which came from Sun’s Wellcare3501 Google Drive, contained 144 different IMEI numbers and email addresses with three passwords for all those entries.

A	B	C	D	E
1	序列号	IMEI		
2	NO	SN	帐号	密码
3	1	F9CSW3DQGSQW	355386072999018	hugeousoadfr@yahoo.com Hkk779988
4	2	F9CSW073GSQW	355387072813878	bhuvnghbcck@yahoo.com Hkk779988
5	3	F9CSW05GGSQW	355388072860463	edholmcelwrtzy@yahoo.com Hkk779988
6	4	F9CSW065GSQW	355392072987177	weckmqbsredye@yahoo.com Hkk779988
7	5	F9CSW081GSQW	355392072921499	sumannacszhee@yahoo.com Hkk779988
8	6	F9CST37EGSQW	354999072971638	bigbjmtpch@yahoo.com Hkk779988
9	7	F9CSW04FGSQW	352052078855025	gustunbvts@yahoo.com Hkk779988
10	8	F9CSW3DNGSQW	355388072925688	gabardpyrgxla@yahoo.com Hkk779988
11	9	F9CST23ZGSQW	354999072941649	hankevoqotgr@yahoo.com Hkk779988
12	10	F9CSW09FGSQW	352052079314451	frohliilognoyle@yahoo.com Hkk779988
13	11	F9CSX041GSQW	355381073013893	incohzjzisy@yahoo.com Hkk779988
14	12	F9CSW34AGSQW	352048079003920	proulxbhjzjust@yahoo.com Hkk779988
15	13	F9CST22HG5QW	354999073045275	wildmancsrlki@yahoo.com Hkk779988
16	14	F9CSW09NGSQW	355392072782271	polymidzze@yahoo.com Hkk779988
17	15	F9CSW38CG5QW	355388073071110	breaahziusk@yahoo.com Hkk779988
18	16	F9CSW3FHGSQW	355386073029278	matiaszhziusmy@yahoo.com Hkk779988
19	17	F9CSW09YG5QW	352052078886764	schimatrde@yahoo.com Hkk779988
20	18	F9CSX068GSQW	355381072768521	ursinowzpper@yahoo.com Hkk779988
21	19	F9CSW0DDGSQW	355392072847637	arteriazxwwie@yahoo.com Hkk779988
22	20	F9CSW17ZGSQW	352052078990749	cogisjvwiey@yahoo.com Hkk779988
23	21	F9CSW143GSQW	355388072962491	koskigmtofxhta@yahoo.com Hkk779988
24	22	F9CSW17VG5QW	355388072994700	tarvissnfnfaple@yahoo.com Hkk779988
25	23	F9CSX001GSQW	355386073114138	goswamiacxslu@yahoo.com Hkk779988
26	24	F9CST212GSQW	355385073049872	housebhnhur@yahoo.com Hkk779988
27	25	F9CST20KG5QW	355380073221928	intrfggbjksn@yahoo.com Hkk779988
28	26	F9CST09VG5QW	355385072940881	pasternklifoza@yahoo.com Hkk779988
29	27	F9CSW03GG5QW	355392072987185	troschjfgne@yahoo.com Hkk779988
30	28	F9CSW3CZGSQW	355386072823986	zornskliskjln@yahoo.com Hkk779988
31	29	F9CSW09HG5QW	355392072830955	wooldmkkjry@yahoo.com Hkk779988
32	30	F9CSW09ZGSQW	352052079343468	aalwdgmfmme@yahoo.com Hkk779988
33	31	F9CSW01NGSQW	355392072761168	daicheolewruada@yahoo.com Hkk779988
34	32	F9CSW30KGSQW	352048079033273	thiemjnzldnuan@yahoo.com Hkk779988
35	33	F9CSW0AVGSQW	355388072775992	ordahlsvuxvsr@yahoo.com Hkk779988
36	34	F9CSW027GSQW	355392072782628	cryufdixer@yahoo.com Hkk779988
37	35	F9CSX04WGSQW	355381073006178	obligewyxwlll@yahoo.com Hkk779988
38	36	F9CST01PG5QW	355385072816784	gialliuhhoo@yahoo.com Hkk779988

A	B	C	D
1	NO	IMEI	
2	1	355376072990398	daggbrqfcdjr.jne@yahoo.com Ugg557766
3	2	355376073055308	chipahjywwed@yahoo.com Ugg557766
4	3	355390073068914	ferriedbktgt@yahoo.com Ugg557766
5	4	355377073100755	atonylrcwla@yahoo.com Ugg557766
6	5	355377072901336	delancwgnnjmer@yahoo.com Ugg557766
7	6	355377072880266	hartlyfgsttclu@yahoo.com Ugg557766
8	7	355376072768794	woohlodccaaa@yahoo.com Ugg557766
9	8	355390073093276	mcyjbfmle@yahoo.com Ugg557766
10	9	354380068948189	fecoihvten@yahoo.com Ugg557766
11	10	354435069847168	babecnbdyppxxdg@yahoo.com Ugg557766
12	11	354377068645427	promqdishty@yahoo.com Ak332211
13	12	354379066261874	janssonmdpnenk@yahoo.com Ak332211
14	13	354383067897902	holhbidkld@yahoo.com Ak332211
15	14	354439065731533	deschdsejkr@yahoo.com Ak332211
16	15	354379068265453	ebullmtlnn@yahoo.com Ak332211
17	16	355382073434006	talalaitcy@yahoo.com Ugg557766
18	17	355385073212116	radulilxsrkzgi@yahoo.com Ugg557766
19	18	355377073384235	mahandabqrii@yahoo.com Ugg557766
20	19	355388072753015	wavejcoqpth@yahoo.com Ugg557766
21	20	355381073189081	mozyjaavst@yahoo.com Ugg557766
22	21	352048076415382	outtuijqtpqt@yahoo.com Zdd778866
23	22	352048076010472	aaooiktckt@yahoo.com Zdd778866
24	23	352047075314984	labelqnktbcrd@yahoo.com Ugg557766
25	24	355386073272589	bioecncgy@yahoo.com Ugg557766
26	25	354999073340189	slomerqxothus@yahoo.com Ugg557766
27	26	355386073323143	sainfljjcd@yahoo.com Ugg557766
28	27	354435064603244	mfanldxaat@yahoo.com Ak332211
29	28	354436065443861	gundrfiaizgon@yahoo.com Ak332211
30	29	354382067092779	pepiwotiion@yahoo.com Ak332211
31	30	354438064523768	moonshinqtawn@yahoo.com Ak332211
32	31	358352069642778	lothacsidrad@yahoo.com Ak332211
33	32	354377068483290	bernewzbnv@yahoo.com Ak332211
34	33	354378060120914	laudablytotvia@yahoo.com Ak332211
35	34	354439064456975	razegxwill@yahoo.com Ak332211
36	35	359246068880448	rulemanpcsrning@yahoo.com Ak332211
37	36	352047079291212	daltdcpymb@yahoo.com Ugg557766
38	37	354999073321860	cardozaijck@yahoo.com Ugg557766

H. Gao's Testimony That Gao Knew What He Was Doing Was Illegal No Later than February 2017, Months Before Sun Joined the Conspiracy

Sun has argued that Gao's testimony proves that Gao did not know until perhaps November of 2017 that what he was doing was illegal, and that Gao did not know for certain of the illegality until March 2018. *See* Def. Sun's Reply to Government's Opposition to Sun's Motion for a New Trial or Judgement of Acquittal, ECF No. 200 at 6. In his Objections to the Presentence Report, Sun wrote, "The government's own witness, Wen Jin Gao, testified under oath that he was not aware of the scheme at the beginning." *See* PSR at p. 24 (Disclosure and Objection Chronology).

Notwithstanding Sun's contention, on redirect examination, Gao clarified in no uncertain terms that he knew that he and Zhang were engaged in illegal conduct by no later than February 2017, i.e., several months before Sun started working for them.

Q. On cross-examination, you were asked about when you believed what you were doing was illegal. Do you remember that?

A. (Question interpreted.)
Yeah.

Q. And defense counsel really wanted to make it look like you did not think it was illegal until March of 2018. Right?

A. Yes.

Q. Do you remember testifying that in January of 2018, Customs seized packages that were going to Defendant Sun?

A. Yes.

Q. And do you remember testifying about how Defendant Sun told you that the officers told him that the phones were counterfeit?

A. Yes.

Q. You knew then that what you were doing was wrong, didn't you?

A. Yes.

Q. And that was January of 2018?

A. Yes.

Q. Mr. Gao, did you ever receive a cease-and-desist letter from law enforcement?

A. Yes, I did.

Q. And do you remember when you received that letter?

A. I don't recall. But it was sometime around that time or before that.

Q. Was it in November of 2017?

A. Yeah. It's some -- sometime around that time. I don't recall the exact time.

Q. You knew when you received that letter that what you were doing was wrong, didn't you?

A. Yes.

Q. Mr. Gao, during your direct examination, we looked at the chat messages that you had with Mr. Zhang about modifying the U2 chip. Do you remember that?

A. Yes.

Q. And you knew then that everything you were doing was to defraud Apple, didn't you?

A. Yes.

Trial Tr. 61:17-63:11 (2/8/24 PM).

The above-referenced chat messages between Gao and Zhang about modifying the U2 chip took place on February 8, 2017. Specifically, on direct examination, Gao testified about the U2 chip modification conversation as follows:

Q. Starting with this first page (Gov. Ex. 61), if we can zoom in on the top three lines. Mr. Gao, what was the date of this conversation?

A. *February 8th, 2017.*

Q. So I'm going to read what Mr. Zhang wrote and then ask you a question; is that okay?

A. Okay.

Q. So Zhang wrote to you, "There is a chip on the main board called U-2. It does not affect the cell phone even if it's removed. This is what the Apple data cable reads." What were you and Zhang discussing then?

A. Me and him was talking about how the modification -- like, one of the modification can be done on an iPhone.

Trial Tr. 33:20-34:8 (2/8/24 PM) (emphasis added). Accordingly, Gao clearly knew that what he was doing was illegal in February 2017.

I. Sun's Knowledge About Other Conspirators and His Connection to Pengfei Xue and Dian Luo

Sun's WeChat communications with Gao establish that he knew that he was part of a larger conspiracy no later than early June 2017.

As noted above, on May 5, 2017, Sun contacted Gao via WeChat after he "saw Mr. Zhang's salesman recruitment ad." GX63 (Excerpts of WeChat Messages Between Wen Jin Gao and Haotian Sun) at 1. Sun should have known that Zhang and Gao were recruiting multiple people, not just Sun based on the ad.

On June 3, 2017, Sun already had been returning phones for Gao for at least ten days. *See* GX63 at 4 (Sun's May 24, 2017 messages noted, "For the one delivered to Columbia tonight, its serial number is unreadable... I still have four returned from annopolis, four unrepaired"). On June 3, 2017, Gao asked Sun for information about phones that Sun had returned, writing, "Collect the emails for sent devices when you have time. I need repair IDs and serial numbers that are in the emails, so that I can check the repair progress." *Id.* at 5. Sun, despite working for Gao, replied,

“Sorry, I cannot give you the emails. I only have your name and WeChat. If the repaired phones are picked up by someone else, I wouldn’t be paid and would have to compensate for the phones.” *Id.* at 6. Sun’s message seems to indicate concern that some other conspirator might pick up phones that he submitted.

The very next day, June 4, 2017, Sun told Gao he was setting up a team and proposed giving Gao one out of every ten dollars that Sun earned through his team. *Id.* at 7-8. During that exchange, Gao clarified something about how he paid people, “One thing I need to mention. For a shipped device, there is no pay if it is sent back unrepaired. 25 dollars will be given for each repaired device.” *Id.* at 8. Gao then wrote, “There is a woman in New York who collected over 40 addresses through a social networking group, and we also pay her 25. You can think about trying.” *Id.* Gao then added, “She gave her agents 10 dollars each and kept the remaining 15 dollars. For guys who only provide addresses, I only pay 10 dollars. They are only responsible for receiving devices.” *Id.* at 8-9. At that point, it should have been clear to Sun that Gao had other people working for him as part of the phone return scheme.

Within a week, Sun asked Gao to give him the “recruitment ad for reference.” *Id.* at 15. Gao sent him the following and noted that it was what got published last time.

Advertisement: An electronics company is looking for ***six part-time and one full-time employees***. Candidates must be able to communicate in English without barriers. Driver’s license and ability to drive preferred. U.S. citizenship not mandatory. Part-time working hours: 5 to 7 hours per day, three days per week. May leave early if work is finished early. Full-time working hours: eight hours per day, one day off each weekend. Part-time daily wage: \$100+\$20 (travel subsidy) Daily wage will be \$150 for completing extra workload Wages will be settled each weekend (in cash) Full-time hourly pay: \$12. Telephone: 917- [REDACTED] Mr. Zhang (same number for WeChat).

Id. at 16 (emphasis added).

There was overwhelming evidence at trial linking Sun and Xue to the same conspiracy. Inspector Cohen conducted a trash pull outside Gao’s residence on November 7, 2017, roughly five months after Sun started working for Gao and about one month after Luo and Xue joined the conspiracy. In the two bags of trash that he recovered, he found, among other things, boxes with P. Xue’s name on them, receipts from Capitol Mac to “Jack Sun,” shipping labels from Apple to “Pengfei Xue” and “Haotian Sun,” and a receipt from a third-party repair facility in State College, Pennsylvania, to “Jerry Sun.” *See* Trial Tr. 72:19-82:23 (2/15/24 PM), GX 25, GX68.

Notably, GX71.2-1266.xls, a spreadsheet recovered from Xue’s phone consisted of 1,000 email addresses, two columns of passwords, and names of various individuals, including, “Gao,” “Hao Sun,” and “Haotian Sun.” Portions of GX71.2 appear below.

57	spobzdjnze@hotmail.com	Qq112211	czERniak6347	
58	henterkalttya@hotmail.com	Qq112211	tRIVia3811	
59	gkqamsner@hotmail.com	Qq112211	tEtra8553372	Hao Sun
60	ipwplgkia@hotmail.com	Qq112211	MccaRRen731	Hao Sun
61	rzubllkzn@hotmail.com	Qq112211	bErgMeiEr207	Haotian Sun
62	chandrahupta@hotmail.com	Qq112211	TUiNstRa5155	Haotian Sun
63	fickexzmogoy@hotmail.com	Qq112211	TeKLu538749	
176	iamiszfkwe@hotmail.com	Qq112211	HaRtgrAves61	
177	medinamitien@hotmail.com	Qq112211	fAlCo3876716	
178	genyecaoqman@hotmail.com	Qq112211	bRiSbin35402	Haotian Sun
179	ileenzfeent@hotmail.com	Qq112211	mILlAY584	Haotian Sun
180	ditzlexcenore@hotmail.com	Qq112211	brAucHeR324	Haotian Sun
181	ruqiaggykkon@hotmail.com	Qq112211	villacanA55	Haotian Sun
182	pilatkfzxsng@hotmail.com	Qq112211	Jehu84083	Haotian Sun
183	overxttlet@hotmail.com	Qq112211	mILLiv01T808	
184	kaoofia@hotmail.com	Qq112211	hAUCHE522	

Moreover, GX71.43-2198, a spreadsheet recovered from Xue’s phone, contained three different DHL tracking numbers (Column A), serial numbers (Column D), IMEI numbers (Column E), email addresses for iCloud accounts (Column F) and password files (Column G) for 102 separate phones. Different sections of the spreadsheet appear below.

	A	B	C	D	E	F	G
1		1	6P-64G-黑色	DQGT101RG5QV	352046079142342	euellpuysns@yahoo.com	Yuu445577
2		2	6P-64G-黑色	DQGT11F0G5QV	355384073337213	kickmiemhugy@yahoo.com	Yuu445577
3		3	6P-64G-黑色	DQGT33W1G5QV	355378073345283	soulexgvpeey@yahoo.com	Yuu445577
4		4	6P-64G-黑色	DQGT33W5G5QV	352043079096859	prokkfktnt@yahoo.com	Yuu445577
5		5	6P-64G-黑色	DQGT3526G5QV	355383073297252	coremhuged@yahoo.com	Yuu445577
6		6	6P-64G-黑色	DQGSX1ZEG5QV	355381072865194	felzpwckip@yahoo.com	Yuu445577
7		7	6P-64G-黑色	DQGT5044G5QV	352043079306522	poneanpepodn@yahoo.com	Yuu445577
8		8	6P-64G-黑色	DQGT1058G5QV	355391073156089	veltinckjlnjp@yahoo.com	Yuu445577
9		9	6P-64G-黑色	DQGT31ZQG5QV	355391072907664	nylcepgswm@yahoo.com	Yuu445577
10		10	6P-64G-黑色	DQGT5224G5QV	355383073235922	guntkylujfty@yahoo.com	Yuu445577
11		11	6P-64G-黑色	DQGSN251G5QV	355389073095729	krieqokzfnv@yahoo.com	Yuu445577
12		12	6P-64G-黑色	DQGSPT27AG5QV	354998073136472	sotqmqrbrvy@yahoo.com	Yuu445577
13		13	6P-128G-白色	FK1Q2010G5R1	359249069977478	slonagccdotby@yahoo.com	Yuu445577
14		14	6P-128G-白色	F2LPJ0E9G5R1	356999068810251	sponxjcjil@yahoo.com	Yuu445577
15		15	6P-128G-白色	F2LP71E6G5R1	356997066410561	foundryvaldjen@yahoo.com	Yuu445577
16	转单号 ; 6486905935	16	6P-128G-白色	F2LPN0NBG5R1	359240063936883	boylstonppeyi@yahoo.com	Yuu445577
17	地址 ; 672 1月14号发	17	6P-128G-白色	FK1Q20JCG5R1	352045070754162	arcudiwgbnve@yahoo.com	Yuu445577
18		18	6P-128G-白色	F2LP504DG5R1	358353064421374	bedaubowjysps@yahoo.com	Yuu445577
19		19	6P-128G-白色	F2LNTDUSG5R1	354384069016079	schiavtmlvva@yahoo.com	Yuu445577
50		11	6P-64G-黑色	DQGT663LG5QV	355383073272008	fiordseyxukng@yahoo.com	Yuu445577
51	转单号 ; 6486906775	12	6P-64G-黑色	DQGT64V1G5QV	352043078902578	heilbrowhvgk@yahoo.com	Yuu445577
52	地址 ; 672 1月14号发	13	6P-64G-黑色	DQGSN1YJG5QV	355389072955469	aloniyryjst@yahoo.com	Yuu445577
53		14	6P-64G-黑色	DQGT803HG5QV	355380073316108	padbergfcpkghe@yahoo.com	Yuu445577
54		15	6P-64G-黑色	DQGT53NKG5QV	355383073247125	fulguritexamuk@yahoo.com	Yuu445577
55		16	6P-64G-白色	DQGSQ119G5QV	355390072840792	epigamwfic@yahoo.com	Yuu445577
56		17	6P-64G-白色	DQGSR0RBG5QV	355382072810990	debiagryrnn@yahoo.com	Yuu445577
57		18	6P-128G-金色	FK2NX1C8G5R2	356997060359459	deprfqglime@yahoo.com	Yuu445577
58		19	6P-128G-金色	FK1PV03BG5R2	359240067231190	raiosexlfwkev@yahoo.com	Yuu445577
82		42	6P-128G-金色	DTRSP09XG5R2	355389072913468	daintryhekqra@yahoo.com	Yuu445577
83		43	6P-128G-金色	DQGRR16FG5R2	355379071803547	ancisojpynya@yahoo.com	Yuu445577
84		44	6P-128G-金色	DQGRR18QG5R2	352044077425371	gragegilhvszen@yahoo.com	Yuu445577
85		45	6P-128G-金色	DTRSP09HG5R2	355377072792925	prefucrhre@yahoo.com	Yuu445577
86		46	6P-128G-金色	FK1PX0DUG5R2	359246068730544	beedzdeozy@yahoo.com	Yuu445577
87	转单号 ; 6486905095	47	6P-128G-金色	DQGRR0T8G5R2	355380072273060	hegelsqadbmor@yahoo.com	Yuu445577
88	地址 ; 672 1月14号发	48	6P-128G-金色	DTRSP05SG5R2	355389072907080	coliejpynyy@yahoo.com	Yuu445577
89		49	6P-128G-金色	FK2NX2AGG5R2	358352060392373	lovanbejmr@yahoo.com	Yuu445577
90		50	6P-128G-金色	DQGSW01NG5R2	355392073033401	cybartcahrcxe@yahoo.com	Yuu445577
91		51	6P-128G-金色	DQGRR1BSG5R2	355380072254276	pollutasbayjco@yahoo.com	Yuu445577
92		52	6P-128G-金色	DQGTD006G5R2	355382073391503	thorerhjroga@yahoo.com	Yuu445577

Notably, the three DHL air waybill numbers in Column A each corresponded to January 15, 2018, shipments from Hong Kong to “Frank S” or “Haoti Sun” at the UPS Store on 672 Old Mill Rd. in Millersville, MD, where Sun rented a mailbox in July 2017. *See* GX26; GX25 at 26. A portion of GX74, a DHL spreadsheet showing shipment information, appears below.

	A	B	E	F	H	N	Z	AA	AC	AD
1	awb_no	orig	de	sd_dtm	descr_goods	shaddr1	rcvr_name	rcvr_contact	rcvr_addr1	rcvr_addr2
36	6486905935	HKG	BWI	1/15/2018	USED HANDSET FOR REPAIR	MOBOTE DIRECT LONGLING ROAD	THE UPS STORE	FRANK S	672 OLD MILL RD #233	MILLERSVILLE MD 21108 USA
37	6486905095	HKG	BWI	1/15/2018	USED PHONES FOR REPAIR	MOBOTE DIRECT LONGLING ROAD	FRANK S	FRANK S	672 OLD MILL RD #233	MILLERSVILLE MD 21108
98	6486906775	HKG	BWI	1/15/2018	USED PHONES FOR REPAIR	MOBOTE DIRECT LONGLING ROAD	THE UPS STORE	HAOTI SUN	672 OLD MILL RD #233	MILLERSVILLE MD 21108 USA

Apple records indicate that of the 102 phones listed in GX71.43, i.e., the phones that were shipped to Sun at his UPS Store mailbox in Millersville, Maryland, 97 were returned to Apple through third-party repair facilities. Xue returned 49 of the phones to Computer Concepts. Luo returned 48 to MBS. *See* GX69.11.

J. Sun's Supervisory Role

The evidence at trial proved that at least one unindicted coconspirator worked for Sun, specifically a man whom conspirators referred to as "Uncle Li."

In October 2017, Li's name was associated with phones that Sun returned to Digital Sunrise, a third-party repair facility in Pennsylvania. *See, e.g.*, Gov. Ex. 27 at 136-143, 208-213, 229-233, 251-254, 279-281, 293-294 (Sunrise Receipts showing more than 100 phones submitted under Li's last name between October 23, 2017 and November 7, 2017),

In January 2018, a UPS Store mailbox on Center Park Drive in Columbia, Maryland, was opened in Li's name. Li's driver's license and permanent resident card were included in the application paperwork and show that he is approximately 30 years older than Sun. Sun's Wellcare3501@gmail.com email address was listed on the agreement. GX25 at 81-85. According to Sun, Li also had a mailbox at the UPS Store on Guilford Road in Columbia, Maryland. In May 2018, Sun renewed both of those boxes. GX63 at 53.

In May 2018, DHL records showed two shipments from Hong Kong to Li at the Guilford Road UPS Store. *See* GX74 at Rows 2-3. The manifest described the packages as containing phones and defective phones. *See* GX74.

Li regularly transported phones on Sun's behalf. For example, on December 6, 2017, just over six months after Sun started returning phones for Gao and Zhang, Sun emailed the Service Director at Capitol Mac, "Our partnership has proven successful. And I'm now tasked to develop more cooperations in the same template. Uncle Lee has taken over the delivery, but I will always be reached via phone calls or emails." GX54 at 9. The Service Director emailed Sun six days later, "I have no problem with Uncle Li picking up or dropping off phones. He picked up 38 from us today." GX54 at 7. Similarly, on January 8, 2018, Sun wrote Orozco, who was working for Capitol Mac at the time, "Morning Nick, Uncle Li is en route. For this batch please use the following names: Jack Sunp, James Gaop, John Zhongp, Bob Liamp, Glenn Dawsonp." GX72 at 6. On January 20, 2018, Sun sent Gao a WeChat message stating, "Uncle Lee brought back 127 sets today. I need to go back and put them in order." GX63 at 43.

Orozco testified that Li was subordinate to Sun and brought phones to his store. "[O]ver time we ended up having interactions with what I would consider likely almost a subordinate. His name was Uncle Li. He did bring phones as well." Trial Tr. 67:7-11 (2/15/24 AM). Orozco added, "We had, over time, just depending on whether Jack could make it down from the D.C. area, he would occasionally send them with Uncle Li, who basically would just – he didn't speak much English, but he would just come in, drop the phones off, and Jack would usually let us know either by text or email that we should expect a shipment." Trial Tr. 67-12-17 (2/15/24 AM). In describing a visit by Sun and another conspirator (not Uncle Li) to Orozco's store, Orozco noted how unusual that visit was because he "had only seen Jack interact with Uncle Li, who Uncle Li was very obviously a subordinate to Jack." Trial Tr. 85:12-16 (2/15/24 AM). Moreover, Gao testified that Li worked for Sun. "As far as I know, [Uncle Li's] one of the guys that worked for Sun." Trial Tr.

69:19-25 (2/8/24 AM). Gao told law enforcement that Gao never paid Li. The reasonable presumption then is that Sun did.

K. Evidence Regarding Number of Phones Returned as Part of Scheme

Government Exhibits 69.1-69.13 and 69.15-69.16 consisted of spreadsheets provided by Apple that detailed what happened to various phones that were submitted for warranty repair and/or replacement. Inspector Cohen testified that based on just those spreadsheets, Sun returned more than 2,700 phones, Gao submitted at least 150, Luo submitted at least 1,900, and Xue submitted over 1,000. Apple valued each phone at \$600. *See* Trial Tr. 34:23-35-12 (2/16/24 PM).

As part of its investigation, the government executed multiple search warrants. As a result, the government discovered a number of spreadsheets on the defendants' electronic accounts and/or personal phones. *See* GX40.1 through GX40.47 (certain files recovered from Sun's WellCare3501 Google Drive), GX70.18 through GX70.31 (certain files recovered from Sun's phone), GX71.1 through GX71.100 (certain files recovered from Xue's phone). Inspector Cohen testified that he believed Sun had at least 1,700 unique IMEI numbers in spreadsheets on his Google Drive and phone and Xue had at least 2,600 unique IMEI numbers in spreadsheets on his phone. Trial Tr. 35:13-36-9 (2/16/24 PM). Inspector Cohen also indicated that he did not know what, if anything, happened with those IMEI numbers, meaning he did not know if they were associated with returns to Apple. *See* Trial Tr. 36:7-9 (2/16/24 PM).

After trial, the government sent the unique IMEI numbers to Apple to see if they were associated with returns. Apple indicated that there were an additional 1,735 phones returned, which were on top of the phones referenced in GX69.1-69.16. The government provided the defense with Apple's findings on May 16, 2024. For purposes of sentencing, that file will be referred to as GX69.17. Based on GX69.1-16 and GX69.17, the following table provides a breakdown of phones

submitted by each conspirator. The defense recently requested information about returns before and after November 1, 2017, hence the breakdown by date.

<u>Def.</u>	<u>Dates</u>	<u>Phones Submitted</u>	<u>Phones Replaced</u>	<u>Intended Loss</u>	<u>Actual Loss</u>	<u>Source</u>
Sun	5/26/17 - 10/31/17	946	579	\$567,000	\$347,400	GX69.1-16
Sun	11/1/17 - 1/23/19	1795	1208	\$1,077,000	\$724,800	GX69.1-16
Sun	11/7/17 – 12/5/19	504 ⁴	316	\$302,400	\$189,600	GX69.17
Gao	7/5/17 – 10/26/17	46	29	\$27,600	\$17,400	GX69.1-16
Gao	11/2/17 – 2/9/18	111	78	\$66,600	\$46,800	GX69.1-16
Xue	10/8/17 – 10/30/17	93	77	\$55,800	\$46,200	GX69.1-16
Xue	11/2/17 – 1/7/19	912	619	\$547,000	\$371,400	GX69.1-16
Xue	Jan. 2018	12 ⁵	9	\$7,200	\$5,400	GX69.17
Luo	10/6/17 – 10/27/17	83	64	\$49,800	\$38,400	GX69.1-16
Luo	11/2/17 – 3/31/19	1847	1381	\$1,108,200	\$828,600	GX69.1-16
Total		6,349	4,360	\$3,808,600	\$2,616,000	

⁴ 504 additional phones were associated with Sun from GX69.17 for the following reasons. “Frank Sun” was the name on 75 online self-service phone submissions that were replaced. These phones were submitted between April 2018 and May 2018. Capitol Mac, which Sun used, was associated with 160 phones that were returned between February 2018 and August 2019; 71 were replaced. Random names were associated with these returns, such as Jane Bergstrahl, Jane Klingenger, William Goodale, Jane Wason, Bruce Ebersole, Sandy Nahm, Connie Henderson, Ken Jenkins, Barbara Ivey, and Roy Jester, which is one reason the government believes that the number of phones returned by conspirators far exceeds what we will ever know, i.e., but for seeing IMEI numbers in Excel files on Sun’s Google Drive and phone, we never would have known about these returns. Sunrise Computers, which Sun used, was associated with 147 submitted phones between November 7, 2017, and February 2, 2018; 110 were replaced. iCommand (Orozco’s store) was associated with 42 additional phones that were returned; 2 were replaced. Those phones were all submitted between August 2019 and December 5, 2019. Cantin Brothers (a British Columbia, Canada, third party repair facility) listed “frank sun” as the customer who returned 42 phones; 36 were replaced. Those phones were all submitted between September 2018 and November 2018 (these phones were in addition to the “Frank Sun” phones noted above). Encore Technologies (a third party repair facility in Cincinnati, Ohio, which Sun/Gao discussed shipping phones to) was associated with 38 phones that were submitted; 22 were replaced. Those repairs were initiated between November 20, 2017 and November 29, 2017. B. Li (i.e., Uncle Li) was associated with 12 submitted phones; 9 were replaced. Those phone repairs were initiated in May 2018.

⁵ Computer Concepts, which Xue used, indicated that in January 2018, 12 phones were returned and 9 were replaced. No customer name or address was provided on these returns.

GX69.17 also included over 350 additional phones that were submitted to Apple retail stores as follows:

- Apple Reston Store – 119 phones between the end of October 2017 and July 2018;
- Apple Fair Oaks – 71 phones between the end of September 2017 and July 2018;
- Apple Pentagon City – 69 phones between the end of September 2017 and June 2018;
- Apple Georgetown – 40 phones between mid-October 2017 and June 2018;
- Apple Clarendon – 36 phones between the end of September 2017 and July 2018;
- Apple Tyson’s Corner – 25 phones between the end of September 2017 and May 2018;
- Apple Montgomery Mall – 18 phones between October 2017 and March 2018.

Given that the IMEI numbers associated with these phones were in Excel files admitted at trial, i.e., they were in accounts/phones belonging to Xue or Sun, it certainly would be reasonable to associate these phones with the defendants. But, given the lack of additional identifying information, the government is not seeking to do that.

At the end of the day, the government will never know precisely how many phones were submitted by conspirators as part of this scheme.

L. Trial

Following 3.5 days of testimony, Sun was convicted of both counts for which he was indicted – conspiracy to commit mail fraud, in violation of 18 U.S.C. § 1349 (Count One), and mail fraud, in violation of 18 U.S.C. § 1341 (Count Eight).⁶

⁶ The government conducted a 115-slide PowerPoint reverse proffer session for Sun on October 8, 2021, highlighting its evidence against him and the potential outcomes. At the end of that presentation, the government extended a pre-indictment plea offer to conspiracy to commit mail fraud, in violation of 18 U.S.C. § 371, with an anticipated guidelines range of 30 to 37 months. It noted that after a trial, Sun’s guidelines range could end up being 70-87 months, 87-108 months, or even 108-135 months. Sun rejected the plea offer. The government extended another plea offer right before trial, which included an anticipated guidelines range of 46 to 57 months.

II. U.S. Sentencing Guidelines

The government agrees with the final PSR that the following guidelines apply.

USSG § 2B1.1(a)(1)	Base Offense Level	7
USSG § 2B1.1(b)(1)(I)	Loss Amount: \$1,500,001-\$3,500,000	16
USSG § 2B1.1(b)(10)(B)	Substantial part of scheme committed outside U.S.	2
USSG § 3B1.1(c)	Aggravating Role: Leader/Manager/Supervisor	2

See PSR ¶ 57-67.

A. Defense Objection – Loss Amount

Sun objects to the loss amount arguing that he was not aware of the illegal scheme for a period, and thus, he cannot be held accountable for all the phones with which he was involved when calculating loss. He further notes that he can only be held accountable for foreseeable pecuniary harm and he did not reasonably foresee the involvement of defendant Xue and others, and thus, his loss amount, at most, should be between \$550,000 and \$1,500,000.

The guidelines provide that in the case of jointly undertaken criminal activity, a defendant is responsible not just for his acts, but also for the acts of others if they were within the scope of the jointly undertaken criminal activity, committed in furtherance of the criminal activity, and were reasonably foreseeable in connection with that activity. USSG §1B1.3(a)(1)(A)-(B).

As noted in section I.K, Sun, Gao, Xue, and Luo are associated with the return of more than 6,000 phones, i.e., a cumulative intended loss of more than \$3,500,000. Sun returned 3,245 phones, 2,103 of which were replaced. Based on just his conduct, his intended loss is \$1,947,000 and his actual loss is \$1,261,800. Even assuming for the sake of argument that Sun did not know his conduct was illegal until November 2017 and that he therefore could not be held accountable for phones before then, Apple records link him to the return of 2,299 phones from November 1, 2019, through his arrest, which equates into an intended loss of \$1,379,400. Moreover, given how

closely he communicated with Gao, there is no question that Gao's returns were reasonably foreseeable to him. In addition, even though he believes all Xue and Luo returns should not be attributed to him, that argument strains credulity given that, in January 2018, three packages were shipped to Sun from Hong Kong, and Xue and Luo ended up returning 97 of the 102 phones in those packages. Even if the Court were only to consider phones returned by Sun and Gao after November 1, 2017, and only includes the 97 phones that Xue and Luo returned from the three packages shipped to one of Sun's UPS Store mailboxes, Sun's intended loss amount still would be greater than \$1.5 million as evidenced by the below chart.

<u>Def.</u>	<u>Dates</u>	<u>Phones Submitted</u>	<u>Intended Loss</u>	<u>Source</u>
Sun	11/1/17 - 1/23/19	1795	\$1,077,000	GX69.1-16
Sun	11/7/17 – 12/5/19	504	\$302,400	GX69.17
Gao	11/2/17 – 2/9/18	111	\$66,600	GX69.1-16
Xue	*Phones from packages delivered to Sun in Jan. 2018	49	\$29,400	GX69.11 GX26 GX71.43
Luo	*Phones from packages delivered to Sun in Jan. 2018	48	\$28,800	GX69.11 GX26 GX71.43
Total		2,507	\$1,504,200	

B. Defense Objection – Aggravating Role

Sun contends that a two-level aggravating role adjustment is not appropriate. He argues that he merely “asked a friend of his to pick up and drop off phones several times, but this hardly makes him a supervisor in the general sense of the word. Mr. Li, the person who sometimes went to Virginia to pick up and drop off phones, was a very occasional helper toward the end of this activity, and this guideline envisages a situation where a more robust supervisory or leadership relationship existed.” *See* PSR at 25.

The guidelines provide that if a defendant was an “organizer, leader, manager, or supervisor in any criminal activity . . . , increase by 2 levels.” USSG § 3B1.1. The commentary notes that to qualify for an aggravating role adjustment, the defendant must have organized, led, managed, or supervised at least one other participant. USSG § 3B1.1, comment (n.2). A “participant” is someone criminally responsible for the commission of the offense but need not be convicted or even charged. *See* USSG § 3B1.1, comment (n.1); *United States v. Guzman*, 926 F.3d 991, 1003 (8th Cir. 2019) (“[A]n individual need not be guilty of the precise offense of conviction—or even charged—to be found ‘criminally responsible’ under §3B1.1.” (citations omitted)); *United States v. Fluker*, 698 F.3d 988, 1002 (7th Cir. 2012) (“We have explained that this means a participant ‘could have been charged,’ even if only as an accessory; but ‘mere knowledge of a conspiracy’ is insufficient to establish that a person was ‘criminally responsible.’” (citation and emphasis omitted)); *United States v. Starks*, 815 F.3d 438, 441 (8th Cir. 2016) (“[I]ndividuals may be participants even if they do not benefit from commission of the offense.”); *United States v. Vega*, 826 F.3d 514, 539 (D.C. Cir. 2016) (per curiam) (“[A] party who gives knowing aid in some part of the criminal enterprise is a ‘criminally responsible party.’” (quoting *United States v. Bapack*, 129 F.3d 1320, 1325 (D.C. Cir. 1997))); *United States v. Smith*, 719 F.3d 1120, 1126 (9th Cir. 2013) (“Any person who knowingly abets the defendant’s conduct qualifies as a ‘participant.’”) (citation omitted). Moreover, the D.C. Circuit has held that to receive an enhancement under § 3B1.1, a defendant must exercise some control over other participants, meaning some sort of hierarchical relationship. *United States v. Olejiya*, 754 F.3d 986, 990 (D.C. Cir. 2014) (citations omitted).

Here, the evidence established that Sun was the manager or supervisor of at least one other person, namely Uncle Li. Li participated in the conspiracy by opening at least one UPS Store

mailbox, receiving shipments from Hong Kong, and returning phones. Li regularly transported phones on Sun's behalf. Contrary to Sun's argument that Li was only a very occasional helper toward the end of Sun's criminal activity, Sun used Li as a runner as early as December 2017, merely six months after Sun joined the conspiracy and two years before Sun's arrest. Specifically, on December 6, 2017, Sun emailed the Capitol Mac service director noting that Li would now handle deliveries while Sun moved on to developing relationships with more third-party repair facilities. Six days later, the service director replied, confirming that Li had picked up 38 phones that day. One month later, Sun wrote Orozco that Uncle Li was on his way. That same month, Sun told Gao via WeChat that Uncle Li had brought back 127 phones that day. Moreover, both Gao and Orozco testified in a manner that made it clear that Li was subordinate to Sun, i.e., that the two did in fact have a hierarchical structure.⁷

C. Recommended Guidelines Range

Based on a total offense level of 27 and a criminal history category of I, the recommended sentencing range is 70 to 87 months. PSR ¶ 108. The recommended fine is \$25,000 to \$250,000. PSR ¶ 128.

III. The 18 U.S.C. § 3553(a) Factors

The Court must impose a sentence that is sufficient but not greater than necessary to reflect the seriousness of the offense, to promote respect for the law, to provide just punishment, to afford adequate deterrence, to protect the public from further crimes of the defendant, and to provide the

⁷ Consistent with warranting an aggravating role, Sun also actively sought out new opportunities for the conspiracy. For example, GX40.47, a spreadsheet found in Sun's Wellcare3501 Google Drive titled "WestofMississippi," consisted of what appeared to be 58 third-party repair facilities in Minnesota, Iowa, Missouri, Arkansas, Louisiana, Texas, New Mexico, Colorado, Montana, Oklahoma, Kansas, Nebraska, South Dakota, Idaho, Nevada, Utah, Arizona, Washington, and California. The phrase "Monday call" appears next to two of the facilities. The name Kyle appears next to another. Gao actively solicited new business opportunities for the conspiracy.

defendant with needed educational or vocational treatment. 18 U.S.C. § 3553(a)(2). The Court also must consider the history and characteristics of the defendant, the kinds of sentences available, the sentencing range under the guidelines, any relevant policy statements, the need to avoid unwarranted sentencing disparities, and the need to provide restitution to the victims. 18 U.S.C. § 3553(a)(1)-(7).

A. The Nature and Circumstances of the Offense and the Need for the Sentence to Reflect the Seriousness of the Offense

Defendant Sun dedicated 2.5 years of his life to working with others to defraud an American company. His scheme was not just limited to the D.C. metropolitan area. Instead, it extended to Pennsylvania, Ohio, Canada, and across the Pacific. He did not choose to engage in fraudulent conduct just once or twice, or even for a single year. Instead, he consistently decided to commit criminal acts for more than two years, even after law enforcement agents met with him. Such conduct warrants a stern sentence.

B. The Need to Promote Respect for the Law and to Deter the Defendant and Others from This Type of Criminal Conduct

Sun is an educated, intelligent man. Although it is possible that his arrest and subsequent detention have specifically deterred him from future criminal conduct, he certainly was not deterred when two federal law enforcement agents interviewed him and told him that the phones he was receiving were counterfeit. Instead, he lied to the agents, arrogantly disregarded their instructions, and did not even bother to ask Gao any questions about their activity. His Google search history included an April 4, 2019, search for two college students who were arrested for scamming Apple. Despite visiting an article about the students defrauding Apple out of \$900,000 in iPhones, Sun forged ahead with his criminal conduct, only ending it when he was arrested.

Regardless of whether Sun has been deterred from engaging in additional criminal conduct due to his arrest and trial, a stern sentence is necessary to promote respect for the law and to deter other would-be fraudsters. This type of fraud continues to plague Apple. In fact, five defendants were arraigned last month in Los Angeles for engaging in a similar scheme. *See* <https://www.justice.gov/usao-cdca/pr/chinese-nationals-arrested-alleged-123-million-fraud-involving-fraudulent-return>. Moreover, given that criminals constantly adapt how they operate, a significant prison sentence is necessary to have a chance of deterring would-be defendants from engaging in this type of conduct.

C. The History and Circumstances of the Defendant

Defendant Sun came to America with his mom, earned his high school diploma, and attended a local university. Instead of engaging in a lawful pursuit of the American dream, he arrogantly chose to commit fraud over and over and over again. He has shown no remorse for his criminal conduct, or tried to right his wrongs like many of his co-conspirators have. Nevertheless, given his compliance while on pretrial release and factoring in a *Smith* variance, a sentence of 66 months' imprisonment is appropriate.

D. Unwarranted Sentencing Disparities

The District of Columbia Circuit has recognized that there will “inevitably . . . [be] sentencing disparities and inequities that can be explained by little more than the identities of the sentencing judges.” *United States v. Gardellini*, 545 F.3d 1089, 1096 (D.C. Cir. 2008); *see also United States v. Saez*, 444 F.3d 15, 19 (1st Cir. 2006) (“[W]ith different judges sentencing two defendants quite differently, there is no more reason to think that the first one was right than the second.”). The Guidelines “reduce unwarranted federal sentencing disparities,” *Freeman v. United States*, 564 U.S. 522, 525 (2011), by “creat[ing] a comprehensive sentencing scheme in which

those who commit crimes of similar severity under similar conditions receive similar sentences.” *Id.* at 533.

A sentencing court “necessarily g[ives] significant weight and consideration to the need to avoid unwarranted disparities” by “correctly calculat[ing] and carefully review[ing] the Guidelines range.” *Gall v. United States*, 552 U.S. 38, 54 (2007). “[I]mposing a within-guidelines sentence is the surest way to avoid unwarranted disparities.” *United States v. White*, 737 F.3d 1121, 1145 (7th Cir. 2013).

The following table consists of sentences imposed in similar cases. Notably, unlike Sun, none of these defendants went to trial. The information was submitted as part of the government’s sentencing memorandum in *United States v. Zhiwei Liao*, 19-CR-4407-1 (S.D. Cal.), ECF No. 691.

Defendant & Sentence Imposed (Any departure under USSG § 5K1.1, forfeiture, and/or restitution paid)	Offense of Conviction, Number of Counterfeit iPhones & Loss
<p>Zhiwei Liao, 19-CR-4407 (1) (S.D. Cal.) 51 months in custody -Agreed to forfeiture of two parcels of real property estimated to be worth \$2.2 million -Agreed to forfeiture of \$120,380 cash -Four-level aggravating role adjustment</p>	<p>Conspiracy to traffic in counterfeit goods - 10,000 iPhones with loss of \$6.1 million</p>
<p>Zhimin Liao, 19-CR-4407(2) (S.D. Cal.) 41 months in custody -Agreed to forfeiture of three parcels of real property, whose combined value is estimated to be \$2.8 million -Agreed to forfeiture of \$114,321 cash -Agreed to 2-level aggravating role adjustment</p>	<p>Conspiracy to traffic in counterfeit goods - 10,000 iPhones with loss of \$6.1 million</p>

Defendant & Sentence Imposed (Any departure under USSG § 5K1.1, forfeiture, and/or restitution paid)	Offense of Conviction, Number of Counterfeit iPhones & Loss
<p>Zhiting Liao, 19-CR-4407(3) (S.D. Cal.) 41 months in custody -Agreed to forfeiture of real property estimated to be worth \$826,659 -Agreed to forfeiture of \$22,320 cash -Agreed to 2-level aggravating role adjustment</p>	<p>Conspiracy to traffic in counterfeit goods - 10,000 iPhones with loss of \$6.1 million</p>
<p>Xiaomin Zhong, 19-CR-4407 (4) (S.D. Cal.)</p>	<p>Fugitive Residing in China</p>
<p>Phillip Pak, 19-CR-4407 (5) (S.D. Cal.) 18 months in custody -1-level departure under 5K1.1; -Paid \$40,000 restitution prior to sentencing</p>	<p>Conspiracy to traffic in counterfeit goods – 1,718 iPhones with loss of \$1,087,226</p>
<p>Dao Trieu La, 19-CR-4407 (6) (S.D. Cal.) 3 years’ probation -Agreed to forfeiture of two parcels of real property estimated to be worth \$2.3 million -Agreed to forfeiture of \$120,370 cash</p>	<p>One substantive count of wire fraud – loss of \$39,589</p>
<p>Mengmeng Zhang, 19-CR-4407 (7) (S.D. Cal.) 3 years’ probation -Agreed to forfeiture of real property estimated to be worth \$826,000 -Agreed to forfeiture of \$22,320 cash</p>	<p>One substantive count of mail fraud – loss of \$9,500</p>
<p>Tam Thi Minh Nguyen, 19-CR-4407 (8) (S.D. Cal.) 3 years’ probation -Agreed to forfeiture of three parcels of real property estimated to be worth a total of \$2.8 million -Agreed to forfeiture of \$114,321 cash</p>	<p>One substantive count of mail fraud – loss of \$9,500</p>

Defendant & Sentence Imposed (Any departure under USSG § 5K1.1, forfeiture, and/or restitution paid)	Offense of Conviction, Number of Counterfeit iPhones & Loss
<p>Deedee Zhu, 19-CR-4407 (9) (S.D. Cal.) 15 months in custody -2-level departure under 5K1.1; -Paid \$40,000 restitution prior to sentencing</p>	<p>Conspiracy to traffic in counterfeit goods – 1,236 iPhones with loss of \$774,741</p>
<p>Danny Tran Chan, 19-CR-4407 (10) (S.D. Cal.) 3 years’ probation -5-level departure under 5K1.1 -Minor role -No restitution paid yet</p>	<p>Conspiracy to traffic in counterfeit goods – 841 iPhones with loss of \$531,067</p>
<p>Charley Hsu, 19-CR-4407 (11) (S.D. Cal.) Time-served (22 months) -3-level departure under 5K1.1 -Minor role -No restitution paid</p>	<p>Conspiracy to traffic in counterfeit goods – 1,777 iPhones with loss of \$1,151,375</p>
<p>Jiaye Jiang, 19-CR-4407 (12) (S.D. Cal.) 3 years’ probation -2-level departure under 5K1.1; -Minor role -Paid \$50,000 in restitution prior to sentencing)</p>	<p>Conspiracy to traffic in counterfeit goods – 219 counterfeit iPhones with a loss of \$135,185</p>
<p>Hyo Weon Yang, 19-CR-4407 (13) (S.D. Cal.) 1 year and 1 day in custody -1-level departure under 5K1.1; -Minor role -Paid \$40,000 in restitution after sentence imposed</p>	<p>Conspiracy to traffic in counterfeit goods – 484 iPhones with loss of \$300,964</p>

Defendant & Sentence Imposed (Any departure under USSG § 5K1.1, forfeiture, and/or restitution paid)	Offense of Conviction, Number of Counterfeit iPhones & Loss
<p>Quan Jiang –19-CR-167 (D. Or.) 37 months in custody</p>	<p>Trafficking counterfeit goods. Defendant admitted that, from 2015 through 2017, he smuggled at least 2,000 counterfeit iPhones resulting in loss of \$1.2 million. Defendant managed other conspirators as part of the scheme. Govt. recommended variance based on defendant's provision of information during proffer sessions, withdrawal of claims to forfeiture of Mercedes-Benz and prepayment of \$200,000 in restitution.</p>
<p>Haiwei Zhong, 17-CR-115 (D. Utah) 33 months in custody</p>	<p>Mail Fraud and False Statements. Defendant admitted that, from early 2016 through January 2017, he acquired 570 new iPhones through submission of more than 1,000 counterfeit iPhones resulting in loss of \$458,262. No aggravating role adjustment recommended by the Government or imposed by the Court.</p>
<p>Haiteng Wu, 20-CR-80-EGS (D.D.C.) Time-served (26 months) -Defendant assisted government in selling two parcels of real property and a car that he agreed to forfeit. -6-month <i>Smith</i> variance -3-level Aggravating Role Adjustment</p>	<p>Conspiracy to Commit Mail Fraud (18 U.S.C. § 371). Wu admitted that, for approximately 3.5 years, he and conspirators caused more than 2,300 inauthentic phones to be submitted to Apple causing an actual loss of \$987,000. He also admitted recruiting others, including his wife, to participate in the scheme.</p>
<p>Jiahong Cai, 20-CR-81-EGS (D.D.C.) Time-served (approx. 5 months) -2-level minor role adjustment -Agreed to Stipulated Judicial Removal Order</p>	<p>Conspiracy to Commit Mail Fraud (18 U.S.C. § 371). The intended loss for Cai (Wu's wife) was \$30,600 and the actual loss was \$23,400.</p>

Defendant & Sentence Imposed (Any departure under USSG § 5K1.1, forfeiture, and/or restitution paid)	Offense of Conviction, Number of Counterfeit iPhones & Loss
<p>Teang Liu, 21-CR-1-EGS (D.D.C) 12 months and 1 day -4-level departure under 5K1.1 -6-month <i>Smith</i> variance -Prepaid \$57,570 forfeiture money judgment</p>	<p>Conspiracy to Commit Mail Fraud (18 U.S.C. § 371). Liu admitted that more than 1,099 inauthentic phones were submitted to Apple, causing an actual loss of \$577,800. Defendant was recruited by Wu.</p>

A sentence of 66 months' incarceration would not lead to an unwarranted sentencing disparity with others given that Sun went to trial and has not offered any sort of assistance to the government unlike many of the above defendants who debriefed, agreed to the forfeiture of property, and/or prepaid restitution.

IV. Restitution and Forfeiture

The government requests that the Court order Sun to pay restitution in the amount of \$1,261,800, and that he be liable for a forfeiture money judgment in that same amount, which represents both the value of the replacement phones that Sun obtained and the loss that he personally caused to Apple.

CONCLUSION

The Government respectfully asks that the Court sentence defendant Haotian Sun to 66 months' imprisonment followed by three years of supervised release.

Respectfully submitted,

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