UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 17-20235-CR-MOORE

UNITED STATES OF AMERICA

v.

HYUNJIN LERNER,

Defendant.

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MOTION TO REDUCE SENTENCE PURSUANT TO RULE 35

The United States, by and through the undersigned attorneys, files this motion for a

reduction in sentence under Rule 35 of the Federal Rules of Criminal Procedure. Rule 35(b) states

in relevant part:

(1)   In General. Upon the government's motion made within one year of
sentencing, the court may reduce a sentence if the defendant, after
sentencing, provided substantial assistance in investigating or prosecuting
another person.

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(3)   Evaluating Substantial Assistance. In evaluating whether the defendant
has provided substantial assistance, the court may consider the defendant's
presentence assistance.

The United States believes that Defendant Hyunjin Lerner should receive a reduction in

his sentence because he provided substantial assistance in the government's investigation

and prosecution of Edward DiMaria, the former Chief Financial Officer of Bankrate, Inc.

(Bankrate), which ended with DiMaria pleading guilty. *See United States v. DiMaria*,

Case No. 17-20898-CR-MOORE.

BACKGROUND

On October 12, 2017, Defendant Hyunjin Lerner entered a guilty plea to a one-count Information charging him with Conspiracy to Make False Statements to a Public Company's Accountants, to Falsify a Public Company's Books and Records, and to Commit Securities Fraud, in violation of Title 18, United States Code, Section 371. (D.E. 45.) On January 11, 2018, this Court sentenced Lerner to 60 months of imprisonment followed by three years of supervised release, and further ordered Lerner to pay restitution in the amount of $21,234,214.00. (D.E. 57 & 59.) The government now brings this motion pursuant to Rule 35(b), filed within one year of Lerner's sentencing.

THE DEFENDANT'S SUBSTANTIAL ASSISTANCE

Lerner's cooperation has been significant, productive, and extensive. Lerner served directly under DiMaria as the Vice President of Finance at Bankrate from September 2006 through September 2014. In this role, Lerner served as a conduit of information between the accounting department, which he oversaw, and DiMaria, who directed and orchestrated the Bankrate fraud scheme. Lerner provided the government with extensive information about Bankrate's books and records, including details about the intricate and complex nature of the fraud scheme, which involved generating and tracking unsupported expense accruals, unsupported revenue, and inappropriately characterizing certain expenses as deal-costs across multiple business units to manipulate earnings. Put simply, Lerner was vital in assisting the government with the prosecution of DiMaria.

Although Lerner did not enter a guilty plea until after he was charged by indictment, he provided valuable information to the Department of Justice early in its investigation, and when he was not meeting with the government in-person, Lerner reviewed documents and prepared for

future meetings. Before and after he entered his guilty plea, Lerner spent nearly a dozen days in meetings with the government, including while he was in custody. And during the months after Lerner was sentenced but prior to DiMaria's scheduled trial, Lerner remained in custody at FDC Miami which was helpful to the government in scheduling debriefs on short notice and preparing for trial. Lerner's description of the manner, methods and operation of the conspiracy allowed investigators to put many previously unconnected events into context, and assisted the government's forensic accounting experts in focusing on relevant portions of the conspiracy as it related to the remaining co-conspirators. In what amounted to a complex investigation, Lerner's information was critical to the Government's understanding and prosecution of this case.

Moreover, Lerner often brought to the government's attention the significance of accounting decisions that the government had not previously understood, and did so in a timely fashion, which allowed the government to corroborate the evidence, and prepare for its use at trial. For example, Lerner provided information about, among other things: (1) accounts that DiMaria would use to book unsupported reserves that would serve as "cushion" and would be easy to conceal from auditors (which assisted the government's experts in locating "cushion" across multiple sets of books); (2) accounts containing unjustified accruals (and reversals of those accruals) which DiMaria used to manipulate Bankrate's publicly reported financial statements; and, (3) transactions ordered by DiMaria that were designed to hide the "cushion" from the auditors. Lerner's cooperation was credible and truthful. When Lerner provided information to the government, the government was able to corroborate the information through multiple sources, including other witnesses and contemporaneous documents.

Had DiMaria proceeded to trial, Lerner's expected testimony would have been critical to the government's case. Moreover, the government believes that Lerner's expected testimony

contributed to DiMaria's decision to plead guilty prior to trial to one count of Conspiracy to Make False Statements to a Public Company's Accountants, to Falsify a Public Company's Books and Records, and to Commit Securities Fraud, in violation of Title 18, United States Code, Section 371, as well as to one count of False Statements, in violation of Title 18, United States Code, Section 1001(a)(2). *DiMaria*, Case No. 17-20898-CR-MOORE (D.E. 67). Lerner was the government's principal insider witness against DiMaria, who received a 10-year sentence from this Court, in part because of his position, but more so because he was able to coherently and credibly explain what happened to the government, and would have done the same to a jury. The criminal convictions of CFOs of publicly-traded companies for fraud are exceedingly rare. To bring such a case is challenging, and often requires the cooperation of other senior executives, who are both knowledgeable about the fraud and credible to a jury. Such was the case here.

The undersigned attorneys have met with the agents in this case and have evaluated the significance of Lerner's cooperation and compared it with others who have debriefed and been willing to cooperate. Moreover, the government has considered Lerner's genuine remorse for his involvement in the scheme. Based on the timeliness, significance, and trustworthiness of Lerner's cooperation, including what would have been his trial testimony, the United States believes that a sentencing reduction is justified. The Court previously sentenced Lerner to 60 months' imprisonment. The United States recommends a reduced sentence of **40 months** for the reasons stated herein.

<div style="text-align:center">Respectfully submitted,</div>

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U.S. Department of Justice

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By: */s/ Henry Van Dyck*
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Dated: January 3, 2019

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<u>CERTIFICATE OF SERVICE</u>

I hereby certify that on January 3, 2019, the foregoing has been served on all attorneys of

record in the above-captioned case, either via the CM/ECF electronic filing system or via email.

<u>/s/ *Jason M. Covert*</u>
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