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 UNITED STATES OF AMERICA

17 UNITED STATES DISTRICT COURT

18 FOR THE CENTRAL DISTRICT OF CALIFORNIA

19 UNITED STATES OF AMERICA,

20 Plaintiff,

21 v.

22 GREE USA, INC.,

23 Defendant.
 24

No. CR 2:21-CR-00498-DSF

JOINT STATEMENT OF FURTHER
INFORMATION IN RESPONSE TO DOCKET
NO. 41

25 The United States of America (the "government"), by and through
 26 the undersigned counsel, and defendant GREE USA, INC. ("Gree USA"), by
 27 and through its attorneys, hereby jointly submit the Joint Statement
 28

1 of Further Information below for the Court's consideration related to
2 Gree USA's plea agreement under Federal Rule of Criminal Procedure
3 11(c)(1)(C). The parties submit this additional information in support
4 of the filed Gree USA plea agreement to show that the plea agreement
5 complies with the law and provides an appropriate procedure for
6 potential victims to seek, and if appropriate, receive restitution.

7 I. PROCEDURAL BACKGROUND.

8 This matter concerns a coordinated corporate resolution involving
9 three related corporate entities (the "Gree companies"). Gree Electric
10 Appliances, Inc. of Zhuhai ("Gree Zhuhai") is a diversified global
11 industrial group, mainly engaged in residential air conditioners,
12 central air conditioning systems, air to water heat pumps, mobile
13 phones, home appliances and refrigerators. It is the direct parent of
14 Hong Kong Gree Electric Appliance Sales Co., Ltd. ("Gree Hong Kong")
15 and the indirect parent, through Gree Hong Kong, of Gree USA, Inc.
16 ("Gree USA"). Collectively, the three Gree companies have admitted
17 that they willfully failed to furnish information to the Consumer
18 Product Safety Commission ("CPSC") as required by 15 U.S.C. § 2064(b),
19 in violation of 15 U.S.C. §§ 2068(a)(4) and 2070. In essence, the Gree
20 companies admitted that they became aware in 2012 of reports of fire
21 or overheating in certain of their dehumidifiers sold in the United
22 States but failed to report this to the CPSC for several months.

23 Pursuant to a deferred prosecution agreement ("DPA") between the
24 government and Gree Zhuhai and Gree Hong Kong, and a plea agreement
25 between the government and Gree USA, the three Gree companies have
26 agreed to collectively pay a total of \$91 million in combined monetary
27 penalties and forfeiture, calculated pursuant to the United States
28 Sentencing Guidelines, with a \$15.45 million credit for civil penalties

1 previously paid to the CPSC for the same conduct. Additionally, even
2 though the count charged in the Information accompanying the DPA and
3 plea agreement does not fall within the scope of mandatory federal
4 restitution statutes, the three Gree companies have agreed, pursuant
5 to 18 U.S.C. § 3663(a)(3), as part of the resolution to provide
6 restitution to victims who were directly and proximately harmed by a
7 fire or overheating that was caused by certain of their dehumidifiers.
8 As a matter of law, any later identified victims are not entitled to
9 restitution based on the charges, but rather, they may be entitled to
10 restitution based on the restitution provisions set forth in the plea
11 agreement.¹ Identical restitution provisions giving effect to this
12 agreement were included in the DPA and the plea agreement.

13 The government filed the Information on October 26, 2021 (ECF No.
14 6) and the DPA and plea agreement on October 28, 2021 (ECF Nos. 8 and
15 9). The Court granted the parties' joint motion to toll the Speedy
16 Trial Act clock, accompanying the DPA, on November 1, 2021. ECF No.
17 26. Gree USA was arraigned on the Information and entered a plea of
18 not guilty on November 8, 2021. ECF No. 33. During a status conference
19 on January 12, 2022, however, the Court expressed concerns about
20

21 ¹ The offense to which Gree USA agrees to plead guilty, i.e., a
22 violation of 15 U.S.C. §§ 2068(a)(4) and 2070, is not specifically
23 covered by any federal restitution statute. Orders of restitution
24 are authorized under 18 U.S.C. §§ 1593, 2248, 2259, 2264, 2327, 3663,
25 and 3663A, and 21 U.S.C. § 853(q). Specifically, sections 1593,
26 2248, 2259, and 2264 of Title 18 only authorize restitution for
27 offenses "under this chapter," namely, Title 18 offenses. Section
28 2327 of Title 18 authorizes restitution for specific Title 42
offenses. Section 853(q) of Title 21 applies to convictions of
certain offenses under Title 21. Section 3663A of Title 18 applies to
convictions of crimes of violence, offenses against property under
Titles 18 or 21, sections 1365 or 670 of Title 18, and violations of
section 3 of the Rodchenkov Anti-Doping Act of 2019. And, finally,
section 3663(a)(1) of Title 18 applies to convictions of offenses
under Title 18, certain offenses under Title 21, and certain offenses
under Title 49.

1 certain aspects of the plea agreement, including the restitution
2 provisions. See ECF No. 41. In its Minute Entry for the status
3 conference, the Court ordered that “[c]ounsel are to meet and confer
4 and file an amended agreement and further information, as appropriate.”
5 *Id.* The parties hereby file this Joint Statement of Further Information
6 in response to that order.

7 II. THE RESTITUTION PROVISIONS IN THE GREE USA PLEA AGREEMENT
8 ARE CONSISTENT WITH THE RESTITUTION STATUTES.

9 Both the DPA and the plea agreement provide, in pertinent part,
10 that “[t]he restitution owed to [the defined victims] shall be reduced
11 by the amount of compensation that they have already received for their
12 losses through earlier payments from the [defendants], or other
13 sources, including but not limited to, insurance.” DPA ¶¶ 17-18; Plea
14 Agreement ¶¶ 10-11. During the January 12, 2022 status conference,
15 the Court expressed concern that providing an offset for insurance was
16 inconsistent with 18 U.S.C. § 3664(f)(1)(B), which provides, “In no
17 case shall the fact that a victim has received or is entitled to receive
18 compensation with respect to a loss from insurance or any other source
19 be considered in determining the amount of restitution.” 18 U.S.C.
20 § 3664(f)(1)(B). Having conferred, the parties agree that the
21 restitution provisions in the Gree USA plea agreement are consistent
22 with the restitution statutes for at least two reasons.

23 A. THE PLEA AGREEMENT DOES NOT CONFLICT WITH 18 U.S.C.
24 § 3664(f)(1)(B).

25 First, although 18 U.S.C. § 3664(f)(1)(B) provides that insurance
26 shall not be considered in determining the amount of restitution in
27 the first instance, a later provision, 18 U.S.C. § 3664(j)(1) expressly
28 provides for an offset for compensation a victim has received from

1 "insurance or any other source." In other words, 18 U.S.C. § 3664
2 establishes "a two-step process" under which the court first calculates
3 the total restitution amount based solely on the victim's loss and then
4 calculates any offsets to which the defendant is entitled to arrive at
5 the remaining restitution owed to the victim. *United States v. Stanley*,
6 309 F.3d 611, 613 (9th Cir. 2002) (restitution paid by co-defendants
7 is subtracted from the amount of the victim's loss); *see also United*
8 *States v. Catledge*, No. 12-CR-00678-MMC, 2020 WL 1940857, at *1 (N.D.
9 Cal. Apr. 22, 2020) (issuing order of restitution where amount to be
10 paid to victim reflected credit for compensation received by victim
11 from prior civil lawsuit) (citing *Stanley*, 309 F.3d at 613). This
12 procedure is consistent with the general principle -- well established
13 within and outside this Circuit -- that a victim should not receive
14 double recovery for the same injury. *See, e.g., United States v.*
15 *Gallant*, 537 F.3d 1202, 1250 (10th Cir. 2008) ("[W]hen determining the
16 amount of a restitution award under the MVRA, the court must reduce
17 restitution by any amount the victim received as part of a civil
18 settlement. This principle achieves the apparent congressional purpose
19 of maximizing the award against a criminal defendant guilty of fraud,
20 while avoiding the undesirable result of restitution effectuating a
21 double recovery.") (internal citation and quotation marks omitted);
22 *United States v. McDaniel*, 398 F.3d 540, 555 (6th Cir. 2005) (noting
23 that "the restitution statutes do not permit victims to obtain multiple
24 recoveries for the same loss"); *Stanley*, 309 F.3d at 613 (noting, when
25 discussing subsection (j)(2), the purpose of "prevent[ing] double
26 recovery by a victim").

27

28

1 B. FEDERAL LAW ALLOWS THE PARTIES TO NEGOTIATE A
2 RESTITUTION PROCEDURE AS PART OF A PLEA AGREEMENT.

3 Second, even assuming *arguendo* that the plea agreement's insurance
4 provision deviates from 18 U.S.C. § 3664(f)(1)(B), this is nevertheless
5 permissible because the government and the defendant agreed to that
6 provision pursuant to 18 U.S.C. § 3663(a)(3) -- which provides that
7 "[t]he court may also order restitution in any criminal case to the
8 extent agreed to by the parties in a plea agreement" -- and Fed. R.
9 Crim. P. 11(c)(1)(C) -- which allows the government and a defendant to
10 agree to "a specific sentence or sentencing range . . . or that a
11 particular provision of the Sentencing Guidelines, or policy statement,
12 or sentencing factor does or does not apply."

13 Subsection (a)(3) of the Victim and Witness Protection Act
14 ("VWPA") permits the Court to "order restitution in any criminal case
15 **to the extent agreed to** by the parties in a plea agreement." 18 U.S.C.
16 § 3663(a)(3) (emphasis added). The words "to the extent" do not mean
17 "if," but instead allow the parties to agree to something other than
18 what would be provided under 18 U.S.C. §§ 3663 and 3664. See *John*
19 *Hancock Mut. Life Ins. Co. v. Harris Trust & Sav. Bank*, 510 U.S. 86,
20 109 (1993) (rejecting reading of "to the extent" in ERISA "to mean
21 nothing more than 'if'"). In other words, subsection (a)(3) does not
22 mean that the Court may order restitution if the parties agree, but
23 rather means that the Court may order the restitution agreed on by the
24 parties -- restitution that would otherwise not be available in light
25 of the charged violation.

26 This reading is true to the canon of statutory interpretation that
27 when Congress "uses certain language in one part of the statute and
28 different language in another, the court assumes different meanings

1 were intended." *Sosa v. Alvarez-Machain*, 542 U.S. 692, 711 n.9 (2004).
2 Here, Congress used the phrase "if agreed to by the parties" in
3 § 3663(a)(1)(A) ("The court may also order, if agreed to by the parties
4 in a plea agreement, restitution to persons other than the victim of
5 the offense."), another part of the same statute. Under the canon,
6 the Court is constrained to assume that when § 3663(a)(3) was added in
7 1990, Congress purposefully chose the different wording "to the extent"
8 so that it would not be conflated with the "if" in subsection (a)(1).

9 This reading is also consistent with the case-law interpretation
10 of the statute. The Ninth Circuit has held that § 3663(a)(3)
11 "expressly" allows courts to order restitution for "an amount
12 stipulated to in a plea agreement." *United States v. Lo*, 839 F.3d 777,
13 785-86 & n.2 (9th Cir. 2016). And this holds true even when a court
14 uses an agreed-upon "formula" -- in lieu of a specific sum -- to "set
15 the amount of restitution." *United States v. Soderling*, 970 F.2d 529,
16 534 n.11 (9th Cir. 1992).

17 The latitude the parties enjoy under § 3663(a)(3) in formulating
18 restitution is even more marked where, as here, the plea agreement
19 containing the restitution provision is entered into pursuant to Rule
20 11(c)(1)(C). Similar to § 3663(a)(3), Rule 11(c)(1)(C) affords the
21 parties much more freedom by allowing them to agree to "a specific
22 sentence or sentencing range . . . or that a particular provision of
23 the Sentencing Guidelines, or policy statement, or sentencing factor
24 does or does not apply." Fed. R. Crim. P. 11(c)(1)(C). For example,
25 in *United States v. Eatough*, No. 2:13-cr-00214-TLN, 2021 U.S. Dist.
26 LEXIS 201768, at *5-6 (E.D. Cal. Oct. 18, 2021), the court held that
27 the defendant's restitution obligation was satisfied by the forfeiture
28 of two properties, as stipulated to in the Rule 11(c)(1)(C) plea

1 agreement, even though the judgment ordered defendant to pay
2 restitution of \$950,000 and the two properties later proved to be worth
3 less than \$950,000. Despite this discrepancy, the court noted that
4 the defendant was "entitled to the benefit of his bargain" under Rule
5 11(c)(1)(C). *Id.* at *5.

6 Finally, 18 U.S.C. § 3664 does not preclude the parties from
7 negotiating different restitution procedures under 18 U.S.C.
8 § 3663(a)(3) or Fed. R. Crim. P. 11(c)(1)(C). Courts have held that
9 the procedural restitution mechanism set forth under 18 U.S.C. § 3664
10 "cannot trump the substantive restitution provisions found elsewhere
11 in the statutes," which would include 18 U.S.C. § 3663(a)(3). *United*
12 *States v. Cliatt*, 338 F.3d 1089, 1093 (9th Cir. 2003) (quoting *United*
13 *States v. Follet*, 269 F.3d 996, 1000 (9th Cir. 2001)) (internal
14 quotation marks omitted); accord *United States v. Thompson*, 792 F.3d
15 273, 277-78 (2d Cir. 2015) ("§ 3664 is procedural rather than
16 substantive, serving not to impose any independent restitution
17 obligations on a defendant . . .") (quoting *United States v. Maynard*,
18 743 F.3d 374, 379 (2d Cir. 2014)) (internal citation and quotation
19 marks omitted).

20 III. NOTICE TO POTENTIAL VICTIMS.

21 During the status conference, the Court inquired about the
22 government's plan to provide notice of the proposed plea agreement to
23 potential victims. The government sent notice by mail to each person
24 the government is aware of who claims to have been harmed by a fire
25 caused by one of the defendant's dehumidifiers as described in the plea
26 agreement. Currently, the government is aware of almost 700 potential
27 victims and the government will continue to add to this list as the
28 government becomes aware of additional potential victims. Although

1 the potential victims in this case cannot be classified as victims
2 under the Crime Victims' Rights Act, the government will provide them
3 case-related notifications and resources under the Victims' Rights and
4 Restitution Act.

5 Additionally, the government created a webpage with resources for
6 potential victims in this case. The webpage includes a copy of the
7 information charging the Gree Companies, the DPA with Gree Zhuhai and
8 Gree Hong Kong, the Gree USA plea agreement, information pertaining to
9 the restitution procedure, the three recall notices for the
10 dehumidifiers recalled by the Gree Companies, and other resources
11 available to the potential victims. The webpage instructs any current
12 owner of a recalled Gree dehumidifier to stop using the dehumidifier
13 and seek a refund for the dehumidifier from the Gree companies as set
14 forth in the recall notices. The webpage is available at the following
15 URL:[https://www.justice.gov/usao-cdca/potential-victims-gree-](https://www.justice.gov/usao-cdca/potential-victims-gree-electric-appliances-inc-zhuhai-hong-kong-gree-electric-appliances)
16 [electric-appliances-inc-zhuhai-hong-kong-gree-electric-appliances.](https://www.justice.gov/usao-cdca/potential-victims-gree-electric-appliances-inc-zhuhai-hong-kong-gree-electric-appliances)

17 In addition, in response to the Court's comments about the
18 difficulty of locating the resolution on Gree's website, Gree has moved
19 the DPA, Information, and Statement of Facts to make them more
20 conspicuously available to the public on the Gree website
21 (<https://global.gree.com/usa/>). Gree will add the plea agreement to
22 the same location when and if the Court accepts it.

23 IV. THE NINTH CIRCUIT DOES NOT RECOGNIZE VICTIM APPELLATE
24 RIGHTS UNDER THE VICTIM AND WITNESS PROTECTION ACT.

25 The plea agreement contains a provision under which Gree USA can
26 appeal certain restitution decisions issued by the Special Master or
27
28

1 Magistrate Judge. Plea Agreement ¶ 15. The Court expressed concern
2 about the lack of a corresponding procedure for potential victims.

3 A victim lacks standing to appeal a restitution order. See *United*
4 *States v. Mindel*, 80 F.3d 394, 397 (9th Cir. 1996); *United States v.*
5 *Johnson*, 983 F.2d 216, 217 (11th Cir. 1993). While some circuit courts
6 find that victims have standing in the Mandatory Victim Restitution
7 Act ("MVRA") context, the Ninth Circuit has not adopted this approach.
8 Compare *United States v. Perry*, 360 F.3d 519, 531-32 (6th Cir. 2004)
9 with *United States v. Kovall*, 857 F.3d 1060, 1067 (9th Cir. 2017). The
10 Ninth Circuit interprets the VWPA and MVRA as not conferring appellate
11 rights to victims who are real or potential beneficiaries of a
12 restitution order. *Kovall*, 857 F.3d at 1073 (victims do not have
13 appellate rights under the MVRA); *Mindel*, 80 F.3d at 397 (victims do
14 not have appellate rights under the VWPA).

15 V. CONCLUSION.

16 The parties respectfully submit that the restitution provisions
17 in Gree USA's plea agreement comply with the law and provide potential
18 victims an opportunity to receive restitution when they otherwise would
19 not have been able to do so. For the foregoing reasons, the government
20 and defendant Gree USA jointly request that the Court accept Gree USA's
21 plea agreement under Federal Rule of Criminal Procedure 11(c)(1)(C).
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1 RESPECTFULLY SUBMITTED:

2 **UNITED STATES ATTORNEY'S OFFICE**
3 **FOR THE CENTRAL DISTRICT OF**
4 **CALIFORNIA**

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9 _____ /s/ _____
10 JOSEPH O. JOHNS
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12 June 8, 2022

June 8, 2022

13 _____
Date

_____ Date

14 FOR DEFENDANT GREE USA, INC.

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21 On Behalf of Defendants
22 GREE ELECTRIC APPLIANCES, INC. OF
23 ZHUHAI, GREE USA, INC., and HONG
24 KONG GREE ELECTRIC
25 APPLIANCES SALES CO., LTD.

_____ Date

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Date

Miscellaneous Filings

[2:21-cr-00498-DSF USA v. Gree Electric Appliances, Inc. of Zhuhai et al](#)

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

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Case Name: USA v. Gree Electric Appliances, Inc. of Zhuhai et al

Case Number: [2:21-cr-00498-DSF](#)

Filer: USA

Document Number: [46](#)

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JOINT STATEMENT OF FURTHER INFORMATION IN RESPONSE TO DOCKET NO. 41 filed by Plaintiff USA as to Defendant Gree USA, Inc. (Attachments: # (1) Exhibit)(Johns, Joseph)

2:21-cr-00498-DSF-3 Notice has been electronically mailed to:

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