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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>UNITED STATES OF AMERICA,</p> <p>Plaintiff - Appellee,</p> <p>v.</p> <p>GLORIA ZACK,</p> <p>Defendant - Appellant.</p>

No. 09-50660

D.C. No. 8:09-cr-00031-JVS

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
James V. Selna, District Judge, Presiding

Submitted March 8, 2011**

Before: FARRIS, LEAVY, and BYBEE, Circuit Judges.

Gloria Zack appeals from the restitution order imposed following her guilty plea conviction for wire fraud, in violation of 18 U.S.C. §§ 1343 and 1346. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Zack contends that her restitution order violated the Eighth Amendment

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

prohibition against excessive fines because it was grossly disproportionate to the crime committed. This argument lacks merit. *See United States v. Dubose*, 146 F.3d 1141, 1145 (9th Cir. 1998) (“Where the amount of restitution is geared directly to the amount of the victim’s loss caused by the defendant’s illegal activity, proportionality is already built into the order.”)

Zack also contends that the government failed to provide facts to substantiate the amount of restitution ordered. The record reflects that the district utilized reliable evidence to resolve the dispute as to the proper amount of restitution by a preponderance of the evidence. *See* 18 U.S.C. § 3664(e); *see also United States v. Waknine*, 543 F.3d 546, 557 (9th Cir. 2008).

Zack’s request for a remand for further hearing on the issue of restitution is denied. *See United States v. Rice*, 38 F.3d 1536, 1546 (9th Cir. 1994).

AFFIRMED.