NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,	No. 11-10338
Plaintiff - Appellee,	D.C. No. 5:09-cr-00928-JF-1
v.	
SETH SUNDBERG,	MEMORANDUM[*]
Defendant - Appellant.	

Appeal from the United States District Court
for the Northern District of California
Jeremy D. Fogel, District Judge, Presiding

Submitted October 17, 2012[**]
San Francisco, California

Before: FISHER, TALLMAN, and CALLAHAN, Circuit Judges.

Defendant-appellant Seth Sundberg ("Sundberg") appeals the district court's

entry of judgment on his guilty plea. We have jurisdiction under 28 U.S.C. § 1291,

and we affirm.

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[*] 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).

Under Federal Rule of Criminal Procedure 11(b)(1)(K), a judge must inform the defendant of, and determine that the defendant understands, the court's authority to order restitution. Despite this express requirement, a judge's failure to comply "is harmless error if it does not affect substantial rights." Fed. R. Crim. Pro. 11(h). We have held that a district court's failure to advise a defendant of its restitution authority is harmless if "the defendant was advised he was subject to a fine in an amount in excess of the restitution imposed." *United States v. Crawford*, 169 F.3d 590, 592 (9th Cir. 1999) (emphasis added). In this case, Sundberg admitted the facts of the indictment, including his unlawful receipt of a $5 million tax refund. Although the district court failed to advise Sundberg of its restitution authority, the court affirmatively warned Sundberg that he could face "a $250,000 fine or twice the value of the gross gain or loss," thus putting Sundberg on notice that he could suffer a fine in excess of $10 million. Because this figure is far higher than Sundberg's eventual $2,488,613.38 restitution order, the error was harmless.

AFFIRMED.