IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA PENSACOLA DIVISION

UNITED STATES OF AMERICA

No. 3:08cr79

v.

EUGENE JOSEPH CASTERNOVIA,

Defendant.

UNITED STATES' SENTENCING MEMORANDUM

The United States, through counsel, hereby submits this sentencing memorandum and requests that the Court sentence defendant Eugene Casternovia to the Guidelines recommendation of 235 months imprisonment.

I. Introduction

The sentencings in this case are the culmination of an Internal Revenue Service investigation into Pinnacle Quest International that began in 2003. PQI and its vendors encouraged its members to defy the tax laws, and sold them tools to get away with it. This lawbreaking was rationalized by an elaborate ideology or "belief system," which was intervowen into the marketing and implementation of the PQI products themselves. Promoting this ideology was also part of PQI's mission. The defendants, all members of PQI's sales force and leadership, enthusiastically embraced PQI's anti-tax message. They stopped filing and paying taxes, encouraged others to do so, and used products designed to hide their assets from the IRS. They lived out the message they were selling, becoming "products of the product."

But that message was a lie. PQI's debt elimination products did not eliminate anything; they brought only financial ruin and heartache to their customers. The "belief system" espoused

on the Q1 CD set and repeated on stage at PQI conferences was the same tax protestor hash that has been rejected by courts for decades. And PQI's tax products did not lawfully eliminate income tax liability, they hid assets unlawfully – just like the products that landed Global Prosperity's principals and vendors in jail. The defendants knew all of this. But motivated by greed and ideology, they would not be deterred from peddling their fraudulent wares.

The Court must now provide that deterrence for the aspiring scammers and tax defiers who share the defendants' contempt for the law.

II. Summary of Offense Conduct

Gino Casternovia is the third-most culpable defendant who will appear for sentencing in this case, behind only the Hirmers. He should be sentenced accordingly.

Casternovia was the founder and CEO of Southern Oregon Resource Center, or SORCE, one of PQI's most intricate, sophisticated, and successful tax evasion vendors. Casternovia claimed, on the Q1 CDs, to have been a tax protestor since 1963.[1] He was also a respected figure within the tax defier movement. He spoke from stage regularly at Q2 conferences. And as the video evidence at trial demonstrated, he eagerly wrapped himself in the Constitution and the flag, rationalizing his lawlessness by claiming to follow in the footsteps of patriots past. If that were not offensive enough, he also put a "spiritual" spin on his tax evasion, claiming (in so many words) that his products and methods had a religious justification. The audience roared. But Casternovia was no spiritual leader, and even less a patriot. Like everyone else on stage at Q2, he was there to tell the crowd what it wanted to hear, then profit from its enthusiasm.

[1] Casternovia did not stop filing returns until the 1999 tax year. It is a telling sign that Casternovia apparently thought he could help his own marketing by *overstating* his non-compliance with the tax laws.

And profit he did. Under Casternovia's direction, SORCE took in over $3.1 million in gross receipts from 2002 to 2005 alone – almost all of it after SORCE joined forces with PQI. Gvt Exs. 48.05; 8.48. Indeed, Casternovia claimed in 2006 to have a net worth of over $5 million. Gvt Ex. 8.25 p.3 (Panamanian brokerage account application).

The main product that earned Casternovia this money was SORCE's "structures," a set of nominee or sham entities organized in the United States and Panama. The entities included domestic LLCs and trusts, and Panamanian corporations and private interest foundations. The particulars of these entities are in the record and need not be repeated here. The critical point is that the client retained control of the money no matter which entity nominally held title to it. But while the means were complex, the goal was clear: tax evasion. In Casternovia's own words, SORCE's goal was to "teach Americans how to establish their land, labor, and property in an organization that is external to the Internal Revenue Code, using private foundations, using corporations, using trusts, foreign entities, using international banking and brokerage relationships." Gvt. Ex. 200.05. What was the method for doing so? Give the false appearance that the client's property was owned by an entity. "If it's not *your* house, if it's not *your* car, and you have access without ownership and equity without liability, you basically can reduce your tax liability down to as low as you wish, and you can begin to take advantage of what it means to actually be a sovereign American in free enterprise as the Founders intended." Id. In other words, "own nothing, control everything." SORCE's structures were touted by PQI salesman as "asset protection," and were held out as a benefit of joining PQI, thereby helping fuel the larger organization's growth.

Sham entities were not the only product Casternovia hawked. SORCE helped its clients

attempt to become "sovereign" – a term that, in the tax protestor world, means roughly that one is not subject to the laws of the United States. This "sovereignty" goal was part of SORCE's mission statement: "1. re-inhabit the American republic with sovereign citizens who understand the spiritual and legal framework set out in the founding documents [of the United States], 2. facilitate a community of like-minded individuals ... , and 3. provide an educational and coaching service along with the legal and business tools necessary to acquire asset protection and economic, legal, and political sovereignty." Gvt. Ex. 8.02. To assist clients in becoming sovereign, SORCE sold purported "private" birth certificates, identification documents, driver's licenses, and passports, products all intended to replace their legal counterparts and sever a client's ties to the government. Of course, "sovereignty" had a tax benefit as well – it provided the clients with a justification for not paying taxes.

When considered in light of SORCE's "sovereignty" claims, Casternovia's argument (through counsel) that he encouraged clients to "pay any taxes due" misses the mark. This type of doublespeak is a hallmark of the tax protestor movement. In accordance with the idea of "sovereignty," Casternovia taught his clients that the government had no authority to tax the labor income of private sector workers. In a happy coincidence, these supposed "jurisdictional" limitations of the federal government posited by Casternovia allowed his clients to arrange their affairs in a way that rendered them completely exempt from tax. To counsel clients to "pay the taxes you owe" while claiming they owe no taxes is a sleight of hand that should fool no one. Casternovia encouraged tax evasion.

Casternovia knew better than to expect that his products would pass muster with the IRS or the courts. He watched as John David Van Hove, a/k/a "Johnny Liberty," was indicted and

convicted for tax crimes for peddling a substantially identical scheme. Indeed, Van Hove's book "the Individual Sovereignty Process" was part of SORCE's "sovereignty" package. Gvt. Ex. 8.01 p. 93. Van Hove started and directed the Ashland Resource Center, which later became SORCE. Casternovia and Lyon were Van Hove's employees. Van Hove devised a system of offshore entities, originally based out of the Bahamas, which SORCE later sold under Casternovia's leadership after Van Hove's arrest. (Casternovia made the decision to relocate the clients' entities to Panama when the Bahamas began sharing financial information with the United States.) Just as with Global/PQI, when one generation was indicted, a new generation of fraudulent promoters took its place, filling in the vacuum left by a indicted or incarcerated predecessor.

Casternovia was also a prolific money launderer. Casternovia used multiple MYICIS accounts to deposit over $2.4 million in client payments, to conduct SORCE's business banking, and to pay Mark Lyon, Rob Pendell, and support staff. He also used MYICIS to wire hundreds of thousands of dollars to brokerage accounts in Panama.[2] Moreover, aside from Wayne Hicks himself, no one did more to grow MYICIS's money laundering operation than Casternovia. Casternovia discovered MYICIS when it was a small-time, backroom operation in Arkansas, and after becoming a client himself, introduced MYICIS to PQI. MYICIS exploded to nearly $100 million in deposits within two years, aided in no small part by SORCE's introductions and seal of approval.

In sum, Casternovia grew rich as the CEO of a profitable PQI vendor. His product,

[2] For example, on May 25, 2005, Casternovia wired $25,250 to Thales Securities, a Panamanian brokerage firm, and on December 21, 2005, he wired another $200,000 to Thales. Gvt. Ex. 200.08 (MYICIS database).

offshore nominee companies, was specifically intended for tax evasion. In that respect it furthered the overall mission of PQI both ideologically and financially. And Casternovia practiced what he preached. All the while, he offensively justified his defiance in the name of patriotism and religion. He merits a lengthy sentence.

III. Guidelines Calculation

A. Count I - Conspiracy to commit an offense or defraud the United States

Defendant Casternovia was convicted of count one of the indictment, which charged a conspiracy with two objects. The first was to defraud the United States by impairing and impeding the Internal Revenue Service; the second was to commit wire fraud. While these two objects are part of a single conspiracy, each object should be treated separately when calculating the sentencing guidelines. United States v. Hersh, 297 F.3d 1233, 1248 (11th Cir. 2002); U.S.S.G. § 1B1.2(d). After calculating the offense level for each such "separate" conspiracy, the court then must group the various offenses, "such that instead of sentencing the defendant[] for each object offense, the court would sentence the defendant[] on the basis of only one of the offenses." United States v. Dale, 991 F.2d 819, 854 (D.C. Cir 1993) (citing § 3D1.2). The court will then sentence according to the offense level for the most serious "count" in the group. With Casternovia, as with every other defendant, the wire fraud conspiracy produces the higher offense level, so in the interest of brevity, the government's analysis will skip the Klein prong and proceed directly to the wire fraud prong.

1. Base Offense Level - Conspiracy to Commit Wire Fraud

Section 2, Part X, of the Sentencing Guidelines governs attempts, solicitations or conspiracies to commit substantive offenses that are not specifically addressed elsewhere in the

guidelines – including conspiracies to commit wire fraud. Section 2X1.1(a) provides that the base offense level for conspiracies covered by this section is that from the guideline for the substantive offense. Hence, we refer to part B, entitled Basic Economic Offenses.

Section 2B1.1 provides the base offense level for defendants convicted of crimes involving fraud and deceit, and various increases in the offense level depending on the amount of money at issue. In determining the loss attributable to relevant conduct, the government bears the burden of proving loss with reliable and specific evidence. See United States v. Dabbs, 134 F.3d 1071, 1081 (11th Cir.1998). The Sentencing Guidelines define actual loss as "the reasonably foreseeable pecuniary harm that resulted from the offense." U.S.S.G. § 2B1.1 comment. (n. 3)(A)(i). Pecuniary harm "means harm that is monetary or that otherwise is readily measurable in money." Id. at comment. (n.3)(A)(iii). A district court may hold all participants in a conspiracy responsible for losses resulting from the reasonably foreseeable acts of co-conspirators in furtherance of the conspiracy. Dabbs, 134 F.3d at 1082; see also United States v. Rayborn, 957 F.2d 841, 844 (11th Cir.1992).

Because defendant Casternovia was charged with and convicted of only conspiracy to commit wire fraud, and not the substantive offense of wire fraud, his initial base offense level is 6. See U.S.S.G. §§ 2B1.1(a)(1), (2).

2. Specific Offense Characteristics - Wire Fraud

a. Loss Amount, § 2B1.1(b)

When determining whether to apply an increase under the specific offense characteristics, the court must first determine the amount of loss arising from the charge of conviction. Evidence introduced at trial established the monetary scope of the conspiracy to commit wire

fraud. Through sales of PQI memberships and associated fees from 2002 through 2008, PQI/SPI earned gross income of $14,727,150. Gvt. Ex. 48.02. Through sales of structuring packages from 2002 through 2006, SORCE earned gross income of $4,291,078. Gvt. Ex. 48.05.[3] From 2002 through 2005, Financial Solutions earned gross receipts of $2,075,687 for sales of debt relief and asset protection products. Gvt. Ex. 48.10. Through these three entities, the defendants defrauded customers to the tune of $21,093,915. The corresponding increase in offense levels would be 22.

However, Casternovia did not join the PQI conspiracy at its inception in 2002. Rather, he joined the conspiracy on approximately August 20, 2003 – when SORCE became a PQI vendor. Gvt. Ex. 8.30. Thus, under Pinkerton and related conduct principles, the court must calculate the gross receipts attributable to the conspiracy after Casternovia joined it. All the 2002 gross receipts of PQI and Financial Solutions,[4] as well as the 2003 gross receipts from

[3] This figure is derived from SORCE's profit and loss statements for 2002-2005 and a deposit analysis of SORCE's MYICIS accounts for 2006. Far from defying calculation, as Casternovia contends, the fraud loss calculation, though complex, is reasonably ascertainable. Moreover, the modified bank deposits method used to arrive at these figures was testified to at length by Revenue Agent Combs.

[4] At the sentencing hearings of co-defendants Manansala, Perry, Leitner, Leonard, and McPhillips, the court excluded all of SORCE's gross receipts from the tax and fraud losses attributable to each defendant. The court's theory for doing so is that (i) not all SORCE clients were PQI members, (ii) the government cannot readily establish which SORCE clients were PQI members or were referred via PQI channels, therefore (iii) the government cannot establish which of SORCE's gross receipts are attributable to the PQI conspiracy, and which are not. But all of SORCE's gross receipts should be imputed to Casternovia as relevant conduct. Even assuming SORCE's 2002 and pre-August 2003 earnings were outside the scope of the conspiracy alleged in the indictment, they are nonetheless relevant conduct within the meaning of U.S.S.G. § 1B1.3. Specifically, relevant conduct includes, with "respect to offenses of a character for which § 3D1.2 would require grouping of multiple counts, all acts and omissions [committed, caused, or reasonably foreseeable by the defendant] that were part of the same course of conduct or common scheme or plan as the offense of conviction." U.S.S.G. §

before August 20, must be excluded from Casternovia's tax loss calculation. Yet there is no ready way to divide the 2003 gross receipts into the periods before and after August 20, although it would be possible in theory by scouring the thousands of pages of bank records in evidence. But a precise figure is not necessary; the purpose of the calculation is to arrive at a loss range that permits an accurate calculation of the Guidelines. Thus, the government submits that because Casternovia's joined the conspiracy on or about Aug. 20, 2003, his loss calculations should exclude 2/3 of the 2003 receipts from PQI, Financial Solutions, and the individual defendants, but should include all the SORCE receipts.

The calculation proceeds as follows. In 2002, PQI earned $1,614,421 and Financial Solutions earned $240,341. In 2003, PQI earned $2,002,732 and Financial Solutions earned $1,316,045. The 2002 combined earnings total $1,854,762; two-thirds of the combined 2003 earnings of Financial Solutions is $2,212,518. Once those figures are subtracted from the total fraud loss, it is apparent that the fraud loss attributable to the period of Casternovia's membership falls in the $7 million to $20 million range. Excluding all the 2002 loss ($1,854,762) and 2/3 of the 2003 loss ($2,212,518) from the overall total ($21,093,915), Casternovia should be held responsible for a fraud loss of $17,026,635. Thus, Casternovia's wire fraud conspiracy offense level should be increased by 20, not 22, based on the foreseeable fraud loss amount attributable to the conspiracy during the period of his membership in it.

1B1.3(a)(2). This provision allows, for purposes of a loss calculation, the inclusion of uncharged conduct with "distinctive similarities" to the offense of conviction, such that the charged and uncharged conduct is "part of a single course of conduct rather than isolated, unrelated events that happen only to be similar in kind." United States v. Vallardes, 544 F.3d 1257, 1268 (11th Cir. 2008). SORCE's fraudulent sales before joining forces with PQI surely qualifies as a single course of conduct.

This entire $17 million loss was reasonably foreseeable by Casternovia. SORCE was one of PQI's main selling points. Access to vendors like SORCE was part of the draw for new PQI customers. Casternovia helped fuel PQI's growth; he cannot claim ignorance of it. Moreover, the jury's verdict necessarily implies that Casternovia understood the mutually beneficial relationship between SORCE and PQI: SORCE gained ready access to a large market of potential clients, and PQI gained another vendor to tout to potential clients as a benefit of membership. Having joined forces with PQI to obtain a larger client base, Casternovia cannot claim ignorance of the organization's scope and purpose. Further, as a regular presenter at Q2 and Q3 conferences, Casternovia had opportunities to observe, from stage and from SORCE's booth, the extent of PQI's membership (and, by extension, its profitability). Because Casternovia was aware of the financial symbiosis between SORCE and PQI, he can reasonably be charged with knowledge that a similar relationship existed between PQI and its other vendors. And of course, the scope of SORCE's membership and profits was eminently foreseeable to Casternovia.

In seeking to avoid responsibility for this loss amount, Casternovia makes several arguments. All are unpersuasive. First, Casternovia (like defendant Merino) contends that the prosecution stipulated that "all PQI customers" were unindicted co-conspirators, and therefore cannot be victims of the fraud. But the stipulation was far narrower than Casternovia suggests. The stipulation was that Q2 conference attendees were unindicted co-conspirators, not that all PQI members were. Many PQI members joined only at the Q1 level. Moreover, this evidentiary stipulation was made only by the Hirmers; other defendants, including Casternovia, pointedly objected to its invocation against them. Having objected to the stipulation, Casternovia should

not be heard to claim its benefits.

In any event, the conclusion that some PQI members became unindicted co-conspirators is not inconsistent with the conclusion that all PQI members are victims. The defendants encouraged and catalyzed lawbreaking by their customers. Some customers were predisposed to violate the tax laws, and were counseled by Casternovia and others in new and effective ways of doing so. Some customers were not predisposed to violate the law, but the defendants convinced them that doing so was justified. Of course, the government cannot prove the mens rea of every PQI customer, and it is unrealistic to expect otherwise. The testimony at trial suggests that some PQI customers entered the organization with their eyes open to the organization's criminal purposes, while some customers were genuinely deceived. But regardless of the customers' intent, it was the defendants' counsel, advice, and persuasion which induced PQI clients to purchase Q1 CDs which advocated noncompliance with the tax laws, and to undertake unlawful plans for tax evasion like SORCE. In that sense, PQI's customers can be plausibly thought of as both victims (because the defendants took their money in exchange for ineffective and unlawful schemes) and co-conspirators (to the degree customers implemented those schemes or later promoted them to others).

In any event, a victim within the meaning of the Guidelines is anyone who sustains any portion of the financial loss resulting from the fraud. U.S.S.G. § 2B1.1, comment. (n.1). Regardless of a PQI customer's mens rea, he paid money for a product (PQI's "education," debt elimination, structures) that the defendants knew could not deliver on the promises made about it. All the customers, whether possessed of a guilty or innocent mind, sustained a financial loss from the fraudulent scheme. Casternovia's argument that PQI customers are not victims misses

the mark.

Casternovia also argues that the fraud losses caused by PQI cannot be attributed to him, because he was not on the Executive Council and occupied a position "far from the source of PQI's true power." But such a conclusion would be inconsistent with the jury's verdict and with ordinary principles of Pinkerton liability and relevant conduct. The conspiracy alleged and proved at trial was not comprised solely of PQI's EC. The conspiracy embraced both PQI and its vendors, as the jury concluded that PQI and its vendors had a symbiotic relationship wherein each profited by promoting the other. Just because Casternovia was not on the EC does not mean he played a *de minimis* role in the conspiracy. The principals of PQI's vendors were leaders in the conspiracy, because the nature of the conspiracy was to promote (i) PQI memberships as a gateway to the fraudulent vendor products *and* (ii) the vendor products themselves. Casternovia's objection overlooks the nature of the conspiracy proven at trial.

Finally, Casternovia argues that his Pinkerton exposure is limited because he withdrew from the conspiracy. "A conspirator's participation in a conspiracy is presumed to continue until all activity relating to the conspiracy is ceased," but the presumption can be overcome if the defendant can prove his withdrawal. United States v. Starrett, 55 F.3d 1525, 1550 (11th Cir. 1995). A withdrawal defense would require Casternovia to demonstrate that he "repudiated" the conspiracy – "a mere cessation of participation in the conspiracy" is not enough. United States v. Dabbs, 134 F.3d 1071, 1083 (11th Cir. 1998). Rather, Casternovia must show that he took affirmative steps to defeat the conspiracy's objectives, and that he made a reasonable effort to communicate those steps to co-conspirators or to law enforcement. Id. Casternovia has not shown that he took affirmative actions to withdraw from the conspiracy. As he admits in his

papers, Mark Lyon's testimony was that PQI kicked SORCE out as a vendor; not the other way around. This cannot support a withdrawal defense.

Even if Casternovia withdrew from the conspiracy in September 2007 as he suggests, his fraud loss would still be in the $7 to $20 million band. PQI earned a mere $223,726 in 2008, and earned $1,074,257 in 2007. Gvt. Ex. 48.02. Even if PQI's 2007-2008 earnings[5] were excluded from Casternovia's fraud loss, he would be responsible for some $15.7 million. Casternovia's withdrawal argument is of no particular significance to his Guidelines range or his culpability under § 3553(a).

In sum, Casternovia should be held accountable for a $7 to $20 million fraud loss.

b. Number of Victims, § 2B1.1(b)(2)

The fraud guidelines include a specific offense enhancement for number of victims. Here, an additional six-point increase is merited because the fraudulent scheme involved more than 250 victims. U.S.S.G. § 2B1.1(b)(2)(C). A victim is "any person who sustained any part of the actual loss determined under subsection (b)(1)." § 2B1.1, comment. (n.1). The government introduced evidence at trial in the form of a PQI customer database maintained by Claudia Hirmer and Mark Hirmer. The database contained over eleven thousand entries for customer accounts. Some entries were for married couples – indicating that the number of individual members exceeded the number of entries in the database. Thus, at a minimum, PQI had some eleven thousand members. Moreover, according to Mark Lyon's testimony, SORCE alone had "hundreds" of clients. Given SORCE's gross receipts in excess of $4 million, Gvt. Ex. 48.05,

[5] The government did not offer any proof of SORCE or Financial Solutions earnings for 2007-2008. Gvt Ex. 48.10; 48.05.

and its pricing structure – the most expensive package cost approximately $10,000, Gvt. Ex. 8.02 p.11 – a conservative estimate would be that SORCE had 400 clients. In addition, the gross receipts of Financial Solutions, in combination with evidence about its pricing structure, suggests that it too had hundreds of clients.

The loss amount of $21,093,915 is directly attributable to PQI members. Each of the members in the database paid either membership costs or consultant fees, or both, to PQI. Further, these members comprised the exclusive customer base for Financial Solutions and the primary customer base for SORCE. The government identified amounts paid to these three entities as product fees due to their size, the timing of the payments, and other factors relevant to establish their inherent appearance as income. In this regard, the nexus between PQI's customers and the pecuniary harm inflicted by PQI supports application of the six-point enhancement found at Section 2B1.1(b)(2)(C).

Casternovia's argument that PQI customers are not "victims" is discussed at length supra concerning the loss amount, as the issue of whether PQI and SORCE customers are victims is intertwined with whether customers' payments constitute part of the fraud loss. The bottom line is that PQI customers are victims regardless of their states of mind, and that PQI, SORCE, and Financial Solutions customers each numbered in the hundreds. The enhancement is warranted.

c. Committed Outside the United States, §2B1.1(b)(9)(B)

Lastly, an additional two-point enhancement is merited because Casternovia and his codefendants committed a substantial part of the scheme outside of the United States. U.S.S.G § 2B1.1(b)(9)(B). PQI conducted all Q2 and Q3 seminars "offshore," most often in Cancun, Mexico. The stated purpose of conducting the seminars in foreign venues was to place PQI

outside of the jurisdiction of the United States government. This decreased the chances that United States-based law enforcement would attend and/or monitor the conferences and provided PQI and its consultants an added sales perk: that attendees would have access to "high-yield" investment products unavailable for sale in the United States due to federal securities regulations. Most, if not all, of the clients who paid money for these unregulated securities lost their entire investment.

The two point enhancement for a scheme outside the United States is warranted. The total base offense level under the wire fraud prong of count one is 34.

B. Count II - Conspiracy to Commit Money Laundering

1. Base Offense Level

Section 2, Part S, of the Sentencing Guidelines governs offenses related to money laundering. Section 2S1.1(a) provides that the base offense level shall be the same as "[t]he offense level for the underlying offense from which the laundered funds were derived, if (A) the defendant committed the underlying offense . . . ; and (B) the offense level for that offense can be determined[.]" The "underlying offense" here is wire fraud.

Casternovia and each of his codefendants who were convicted in count two committed the underlying offense since each was convicted in count one of conspiracy to commit wire fraud. Further, the offense level for that offense can be determined – as noted above, the offense level, prior to any Chapter 3 enhancements, is 34. Thus, the base offense level under the money laundering guidelines is 34.

2. Specific Offense Characteristics - Money Laundering

a. 18 U.S.C. § 1956(h)

Casternovia should receive a two-point increase pursuant to U.S.S.G. § 2S1.1(b)(2)(B) because he was convicted of an offense under 18 U.S.C. § 1956.

b. Sophisticated Laundering

Each defendant convicted of count two should also receive an additional two-point increase for sophisticated laundering pursuant to U.S.S.G. § 2S1.1(b)(3). A defendant convicted under 18 U.S.C. § 1956, is subject to an additional two-point increase if the offense of conviction involved sophisticated laundering. The guidelines commentary explains that " 'sophisticated laundering' means complex or intricate offense conduct pertaining to the execution or concealment of the 18 U.S.C. § 1956 offense" and that it typically involves the use of "fictitious entities," "shell corporations," "two or more levels (i.e., layering) of transactions," or "offshore financial accounts." U.S.S.G. § 2S1.1, comment. n.5(A). The enhancement will not apply when "the conduct that forms the basis for an enhancement under the guideline applicable to the underlying offense is the only conduct that forms the basis for the application [under this] subsection." § 2S1.1, comment. n.5(B). In other words, the same conduct cannot justify an increase in the offense level for the underlying crime (here, wire fraud) and for the money laundering offense. Since a similar enhancement does not apply to the underlying offense in this matter, it is appropriate to include it here.

Casternovia's conduct supporting the sophisticated laundering enhancement is the promotion and use of "MYICIS" – a warehouse bank – and the use of offshore/foreign bank accounts. Casternovia used his MYICIS accounts to receive SORCE receipts and to wire funds offshore. By design, MYICIS was intended to conceal and disguise the nature, location, source, ownership and control of the funds deposited into the pooled account. So, too, was the purpose

of nominee and foreign bank accounts. Used in conjunction, Casternovia received fraudulently obtained profits from SORCE clients, paid personal expenses, paid PQI/SPI for conference tickets and booth fees, and wired funds offshore, all entirely anonymous. In this manner, Casternovia used false and fictitious entities and layered structures in order to conceal and disguise the source and ownership of funds earned in connection with PQI and SORCE. This is the precise behavior described in the application notes pertaining to sophisticated laundering.

Thus, the total base offense level for conspiracy to launder monetary proceeds as charged in count two is 38.

C. Chapter Three Enhancments

1. Leader/Organizer

The guidelines provide for a four-point upward adjustment "[i]f the defendant was an organizer or leader of a criminal activity that involved five or more participants or was otherwise extensive." U.S.S.G. § 3B1.1(a). If a defendant was a "manager or supervisor, but not an organizer or leader" a three-point upward adjustment should be applied. The factors that a sentencing court considers when determining if this enhancement applies are: "(1) exercise of decision-making authority, (2) nature of participation in the commission of the offense, (3) recruitment of accomplices, (4) claimed right to a larger share of the fruits of the crime, (5) degree of participation in planning or organizing the offense, (6) nature and scope of the illegal activity, and (7) degree of control and authority exercised over others." United States v. Vallejo, 297 F.3d 1154, 1169 (11th Cir.2002) (citing U.S.S.G. § 3B1.1, comment. n.4).

Casternovia warrants the four-point enhancement for his organizational role in the 18 U.S.C. § 371 conspiracy. Casternovia was the CEO of a PQI tax evasion vendor with hundreds

of clients. He exercised final decision-making authority over SORCE's affairs and enjoyed the lion's share of its profits. He was a frequent speaker at PQI events and was held out by PQI as a teacher and leader within the "movement." He supervised Lyon, Pendell, and SORCE's staff. SORCE was just as much a part of the conspiracy as PQI's Executive Council, and Casternovia was its head.

Casternovia argues that he was far from the center of the fraud because he was not on PQI's Executive Council. But such an argument is inconsistent with the nature of the charges and the jury's verdict. The conspiracy alleged and proved at trial encompassed not just PQI, but the relationship between PQI and its vendors to promote fraudulent vendor products and PQI memberships as a gateway to those products. Once the conspiracy's scope is properly stated, it is readily apparent that Casternovia was a leader of it. Moreover, the evidence established that Casternovia knew that PQI vendors were promoting SORCE's wares. As Mr. McPhillips testified, Casternovia agreed to (and did) pay bonuses to PQI Qualified Consultants who directed clients to SORCE. And Casternovia recorded promotional calls which were used by PQI salesmen in promoting SORCE. In this regard, Casternovia was guiding and directing the marketing efforts of PQI's salesmen who were promoting SORCE. Moreover, Casternovia was held out by PQI as an expert and a leader within the organization, and he held himself out as such. He was a leader in the conspiracy.

Second, evidence presented at trial firmly established that at least five individuals participated in the conspiracy to a degree sufficient to make them criminally responsible. The jury found that at least nine participants were involved to this degree. Moreover, PQI's scheme was otherwise extensive. "In assessing whether an organization is 'otherwise extensive,' all

persons involved during the course of the entire offense are to be considered." § 3B1.1, comment. n. 3. In this regard, the conspiracy involved at least eleven thousand individual members, spanned over seven years, was international in scope, and brought in over $20 million. Certainly this qualifies as extensive. See United States v. Gupta, 463 F.3d 1182, 1198 (11th Cir. 2006) (medicare fraud scheme involving "seven corporations, numerous straw owners, Medicare reimbursement of over $15 million, and repeated failure to disclose related party status over a seven-year period" was extensive); United States v. Rodriguez, 981 F.2d 1199, 1200 (11th Cir. 1993) (geographically dispersed narcotics transaction involving $350,000 in wholesale proceeds was "otherwise extensive"). Due to the symbiotic relationship between PQI and its vendors, SORCE and Financial Solutions were part of the same extensive scheme. PQI and its vendors relied upon the same network of marketers, utilized the same promotional and advertising channels and benefitted from an exclusive, or semi-exclusive relationship. The conspiracy was extensive. The four-point enhancement is warranted.

D. Final Guidelines Calculations

Count One, Wire Fraud prong:
6 (base)
+ 20 (loss amount)
+ 6 (number of victims)
+ 2 (outside U.S.)
+ 4 (leader/organizer)
= 38

Count Two:
34 (wire fraud offense level before Chapter 3 enhancements)
+ 2 (sophisticated laundering)
+ 2 (18 U.S.C. § 1956 conviction)
= 38

All these counts group pursuant to §§ 3D1.1 and 3D1.2. Accordingly, Casternovia's final offense level is 38. U.S.S.G. § 3D1.3(a). In conjunction with a criminal history category of I, as Casternovia has no criminal history, Casternovia's Guidelines range is 235-293 months.

E. 18 U.S.C. § 3553(a) Factors

The pertinent factors the Court must consider under § 3553(a) all point to a sentence within the Guidelines range. Pursuant to 18 U.S.C. § 3553(a), "the court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection, namely,

> (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (B) to afford adequate deterrence to criminal conduct; (C) to protect the public from further crimes of the defendant; and (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.

A sentence of 235 months imprisonment complies with the purposes of 18 U.S.C. § 3553(a)(2), in that it reflects the seriousness of the offenses and the history and characteristics of the defendant.

First, the Court must consider the Guidelines themselves. The Guidelines are the result of the full-time empirical and analytical research by the Sentencing Commission, which has considered data from thousands of cases. See U.S.S.G. § 1A1.1, App. Note, Editorial Note. The Guidelines represent an important attempt to inject predictability and uniformity in the system, so that like offenses are treated with like results. The importance of the Guidelines to the system of justice is itself an important factor for the Court to consider. Second, the Court is to consider the critical importance of deterrence. Here, the deterrence is important not only to Casternovia himself, but also to deter those who might consider utilizing products like those he promoted. The Sentencing Guidelines specifically discuss the importance of deterrence in criminal tax cases:

> The criminal tax laws are designed to protect the public interest in preserving the integrity of the nation's tax system. Criminal tax prosecutions serve to punish the violator and promote respect for the tax laws. Because of the limited number of criminal tax prosecutions relative to the estimated incidence of such violations,

> deterring others from violating the tax laws is a primary consideration underlying these guidelines. Recognition that the sentence for a criminal tax case will be commensurate with the gravity of the offense should act as a deterrent to would-be violators.

U.S.S.G. § 2T.1, Introductory Commentary. Putting this in terms that articulate, intelligent, and calculating criminals like Mr. Casternovia can understand: the financial benefits of tax crimes can be significant, and the risk of getting caught, depending on the nature of the scheme, can be quite low. Therefore, the only way to adequately deter the conduct is to make the cost of getting caught so high that it is not worth running even a low risk. Realistically, the main way to strike this fear in the heart of prospective tax criminals is to impose substantial prison time on those who are caught and convicted. Failing to do that would send the opposite message: that it pays to engage in tax fraud, because you are likely to get away with it; if you are unlucky and do not, you still might just get "slapped on the wrist."

Casternovia's conduct cries out for a lengthy prison sentence, as the Guidelines recommend. Because he made a great deal of money selling tax evasion products, his sentence must be proportionately higher, in order to deter others similarly tempted. Further, Casternovia's conduct was morally reprehensible and merits significant punishment independent of any deterrent effect. Casternovia earned $3-5 million selling tax evasion products, and laundered some $2 million of it. Casternovia's defiance of the law was willful. As Mark Lyon testified and the email evidence confirms, Casternovia knew the IRS was watching and probably trying to infiltrate his organization. He described a potential client's email as having "agent written all over it." Gvt. Ex. 8.34. In fact, Lyon and Casternovia recorded a conference call on August 23, 2005 entitled "Exculpatory Evidence" and advertised it on their web site as follows: "Creating an evidence package as you progress through your journey to freedom will provide you with an

invaluable tool to protect your sovereign rights should they come under attack." Gvt. Ex. 8.02. p.63. That such a call, advising clients on how to manifest good faith, was deemed necessary reflects Casternovia's guilty mind. He knew his scheme would land clients in trouble with the law – otherwise why teach them how to create a trail of exculpatory evidence? But Casternovia did not stop. He thought his "interpretation" of the laws was right, and the professionals and the courts were wrong. Further, Casternovia deliberately averted his eyes as John David Van Hove went to jail for selling bogus offshore entities, and continued selling the same products as before exact product after Van Hove's arrest. Only the Bahamanian government's willingness to cooperate with US taxing authorities prompted Casternovia to change his product, and then he did so by changing his business to set up offshore corporations in a new country that was more conducive to tax evasion. Casternovia's protestations that he tried to conform his products to the law as he understood it are belied by the facts.

In many respects, SORCE's defiance was more insidious than some of PQI's more overt "protest" vendors like IMF Decoder. Nonfilers who send reams of frivolous correspondence to the IRS announce their own non-compliance. SORCE taught its clients, who numbered in the hundreds, to avoid banks and the use of social security numbers, to divert their income to sham companies they controlled, and to get their money offshore – a strategy that is far more likely to actually obstruct the IRS in performing its civil function than a letter-writing campaign. But Casternovia's conduct was no less defiant than that of Mark Leitner or Arnold Manansala. As Casternovia himself said, "the IRS came and started telling me I had to pay taxes on my own money, and I said 'no'." Gvt. Ex. 200.05 (Sovereign Solutions video). Casternovia's defiance

was on full display in SORCE's written materials and in his presentations from PQI's stage, but his money (and that of his clients) was carefully hidden.

Beyond SORCE's fraudulent products themselves, and the money he made from them, Casternovia's conduct manifests extraordinary arrogance and moral blindness. Casternovia was an opportunist who wrapped himself in a cloak of self-proclaimed virtue. He told the crowd at offshore conferences that they were independent thinkers, while law-abiding taxpayers were lazy, cattle being manipulated by shadowy elites and ultimately fattened for slaughter. But Casternovia himself was leading this herd of independent minds into lawlessness, assuaging their consciences that such lawlessness was actually integrity and patriotism. In this respect, his marketing efforts are particularly blameworthy. And Casternovia's much-vaunted reputation for integrity is itself a lie, as his claims to have lived a life free of dependence on the state are untrue.[6] When he was filing tax returns in the 1990s, Casternovia gladly accepted the Earned Income Tax Credit. Gvt. Ex. 28.01. The point is not to belittle the EITC; quite the opposite. Rather, Casternovia is either a hypocrite, or breathtakingly oblivious to the benefits he accepted from the very government he profited from condemning. Casternovia accepts benefits from the government when it suits his immediate self-interest. But when there was money to be made by teaching people how to cheat on their taxes, Casternovia beat the anti-government drum louder than anyone, stirring up demand for his services. The contention that Casternovia is a person of

[6] In this regard, Casternovia's claim, through counsel, that his products were not "anti-government" and merely sought to provide tax benefits within the confines of the law is belied by the "sovereignty" aspect of SORCE's business. Sovereignty products were an effort to remove oneself from the authority of the United States (and, indeed, of government more generally). That is why SORCE endeavored to help its clients attain "legal and political" sovereignty as well as "economic" sovereignty. Gvt. Ex. 8.02.

integrity is demonstrably false. Insofar as SORCE and PQI are concerned, he was a cunning opportunist.

Casternovia's own letter to the court reveals his obstinate refusal to acknowledge that his conduct was wrongful. Casternovia states that he did not "conspire to defraud or launder." Twelve ordinary Americans saw things differently. Casternovia acknowledges poor accounting by SORCE, which, he claims, prevented accurate returns from being filed. But he made no effort to file tax returns throughout the conspiracy, and to the government's knowledge has not done so since. Casternovia still stands behind the SORCE product, claiming that no one used it to avoid taxes. Indeed, Casternovia has the temerity to claim that SORCE actually increased the overall rate of tax compliance within PQI. But Rachel Willen testified that she bought SORCE and IMF Decoder for the specific purpose of not paying taxes, and Mark Lyon and Joseph McPhillips testified that SORCE was marketed as a way to hide assets from the IRS. Casternovia continues to misrepresent his business's purpose. And perhaps most gallingly, he continues to claim that he would "never intentionally break the law." Nonsense. Anyone on the lookout for federal agents, who instructs clients on how to create a paper trail to exculpate themselves, knows full well that he is doing something illegal. Casternovia is entitled to maintain his innocence, but his statements minimizing the wrongfulness of his conduct do not suggest he is likely to be rehabilitated, nor deterred from future fraud schemes. And he certainly has not accepted responsibility for his conduct in any meaningful sense.

The Court must also seek to avoid disparities between similarly situated defendants – or, put another way, sentence each defendant commensurate with his relative culpability, in light of the other § 3553(a) factors. Despite Casternovia's protestations, he is indeed the third most

culpable defendant in the case, ahead of everyone but the Hirmers. He earned the third most money. See Gvt Ex. 48.02, 48.05, 48.07, 48.10 (Hirmers: $14.7 million; Casternovia: $4.1 million; Merino: $2 million; Manansala: $1.1 million). He was a highly visible figure within PQI because of his presence on stage at Q2 events and on the Q1 CDs. He was the principal of a leading tax evasion vendor. And he helped introduce MYICIS to PQI. Whether measured by fraudulent profits, by visibility in the criminal organization, or by damage to the public fisc caused by his products, Casternovia is the third most culpable defendant in this case.

To conclude, Casternovia grew rich selling a product intended for tax evasion – richer than any defendant but the Hirmers. He helped fuel PQI's growth not only by the association between SORCE and PQI, but by being a mouthpiece for tax evasion and "sovereignty." Casternovia was also a primary advocate of money laundering and hiding money overseas. He practiced what he preached, and he taught his clients to engage in similar lawlessness. All the while, he offensively justified his defiance in the name of patriotism and religion. He is more culpable than any defendant in this case except Claudia Hirmer and Mark Hirmer, and he deserves a 235 month sentence as the Guidelines recommend.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I certify that on September 9, 2010, I filed this motion via CM/ECF, which will serve a copy on counsel of record.

/s/ Jonathan R. Marx
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