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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA,)	No. CR 05-30047-PA
)	
Plaintiff,)	GOVERNMENT’S SENTENCING
)	MEMORANDUM
v.)	
)	
BARTON ALBERT BUHTZ,)	
)	
Defendant.)	

The United States of America, by and through its undersigned attorneys, Karin J. Immergut, United States Attorney, District of Oregon, and William E. Fitzgerald, Assistant United States Attorney, hereby submits the following sentencing memorandum.

On October 5, 2007, a jury returned guilty verdicts against Defendant BARTON ALBERT BUHTZ as to one count of conspiracy to present fictitious financial

instruments, in violation of 18 U.S.C. §371, and five counts of presenting fictitious financial instruments, in violation of 18 U.S.C. §514(a)(2) and 2. Sentencing is set for 10:00 a.m. on December 17, 2007, in Medford, Oregon, before The Honorable Owen M. Panner, Senior United States District Judge.

OFFENSE CONDUCT

According to trial testimony, defendant BARTON ALBERT BUHTZ conducted “Redemption” seminars in Oregon and elsewhere to promote the use of so-called bills of exchange. It was undisputed at trial that the Redemption doctrine was not based on valid authority. Rather, the movement distorted the truth regarding the monetary system and misled people into believing that they could use bills of exchange, purportedly drawn on the United States Treasury, to discharge debts to third parties. The experts testified that the accounts from which these funds were supposedly drawn did not exist and that the U.S. Treasury has no currently authorized bills of exchange.

The government presented U.S. Treasury employees who testified about their contacts with BUHTZ, who was on an apparent mission to find someone within the Treasury to validate his Redemption beliefs. BUHTZ himself testified about his efforts to validate the theories. That testimony suggested that BUHTZ used a “trial and error” method to conduct his investigation and used others to test out his unproven theories.

When creditors refused to honor the fictitious instruments – the bills were

rejected in all but a few cases – BUHTZ would often write a series of letters on the debtor’s behalf to browbeat creditors into accepting the bogus bills. BUHTZ pitched his message to the masses via the internet and print media. Though he did not demand money for payment for his services -- that would have been an obvious red flag to law enforcement -- he did accept “donations.” At the end of the day, he got paid for giving people worthless advice.

VICTIM IMPACT

The presentence report says that there were intended losses but no actual losses in this case. The government disagrees. The actual losses proved by the evidence included: “donations” to BUHTZ for his Redemption advice; depreciation charged off by U.S. Bank regarding the Aquila/Shollenburg vehicle purchases, and home equity/credit card indebtedness that Nelda Handke and others incurred in reliance on BUHTZ’ promises of government “Redemption.”

SENTENCING CONSIDERATIONS

A. UNITED STATES V. BOOKER

In United States v. Booker, 543 U.S. 220, 125 S. Ct. 738 (2005), the Supreme Court held that the United States Sentencing Guidelines, as written, violate the Sixth Amendment principles articulated in Blakely v. Washington, 124 S. Ct. 2531 (2004). The Court determined that a mandatory system in which a sentence is increased based on factual findings by a judge violates the right to trial by jury. As a remedy, the Court

severed and excised the statutory provision making the Guidelines mandatory, 18 U.S.C. § 3553(b)(1), thus declaring the Guidelines “effectively advisory.” Booker, 125 S. Ct. 757. This ruling results in a system in which the sentencing court, while informed by the Guidelines, may impose any sentence within the statutory maximum penalty for the offense of conviction. The sentence will be subject to review by the Court of Appeals for “reasonableness.” Id. at 769.

In the wake of Booker, this Court must make a correct calculation under the existing Sentencing Guidelines, and then consider the final guideline calculation when determining the sentence to be imposed. Justice Breyer’s majority opinion directed that “[t]he district courts, while not bound to apply the Guidelines, must consult those Guidelines and take them into account when sentencing.” Id. at 767.

The position of the United States is that, absent highly unusual circumstances, the sentence in a criminal case should fall within the guideline range as determined by the Court.

A sentence within the guideline range is presumptively reasonable, and accommodates the Congressional purpose, affirmed by the Supreme Court, of obtaining fair sentences which are uniform to the extent possible. The Government anticipates that only sentences outside the guideline range will be subject to appellate scrutiny for reasonableness in light of the Congressional mandate.

In this case, no unusual circumstances exist which would call for an exception to

guideline sentencing. Accordingly, the Government respectfully recommends that the Court sentence the defendant within the Guidelines range established by the following analysis.

B. GUIDELINE ANALYSIS

The Government agrees with Probation's calculation of Defendant's guidelines, except for the leadership role enhancement. The government urges the Court to consider a 4-level role enhancement.

Advisory guideline calculations are governed by the 2006 version of the United States Sentencing Guidelines Manual, hereinafter "U.S.S.G."

The base offense level is 6 under U.S.S.G. §§ 2X1.1 and 2B1.1. Pursuant to U.S.S.G. § 2B1.1(b)(1)(J), the offense level is increased 18 levels for an intended loss in excess of \$2,500,000. A 2-level increase for mass-marketing under U.S.S.G. § 2B1.1(b)(2)(A)(ii) is warranted because of Defendant's seminars and his use of the internet and print media. A 4-level role enhancement is warranted under U.S.S.G. § 3B1.1(a) because the criminal activity of which he was a part included five or more participants. David Edwards, Steven Shollenburg, Rebecca Shollenburg, Richard Aquila, Steven Kelton, Nelda Handke, Vicki Clifford, Marsha Rasmussen and Douglas Grabinsky participated with BUHTZ in the same criminal activity, a scheme to pass phony bills of exchange. No reduction under U.S.S.G. § 3E1.1 is warranted because Defendant has not accepted responsibility for his crimes.

The final offense of 30 combined with Defendant's criminal history category of I, produces a guideline range of 97 to 121 months.

RECOMMENDATIONS

The government recommends a sentence at the low end of the guideline range, 97 months of imprisonment. In addition, the government recommends restitution to Nelda Handke and Vicki Clifford in the amount of \$100 each, and to Douglas Grabinsky in the amount of \$500. Finally, the Government requests leave of court to present witnesses and allocute at sentencing, and to supplement this memorandum as necessary.

DATED this 12th day of December, 2007.

Respectfully submitted,

KARIN J. IMMERGUT
United States Attorney

/s/ William E. Fitzgerald
WILLIAM E. FITZGERALD
Assistant United States Attorney