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16 UNITED STATES DISTRICT COURT  
 17 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
 18 SOUTHERN DIVISION

19	UNITED STATES OF AMERICA,	)	NO. SA CR 09-00077(D)-JVS
		)	
20	Plaintiff,	)	<u>GOVERNMENT'S SENTENCING POSITION;</u>
		)	<u>MEMORANDUM OF POINTS AND</u>
21	v.	)	<u>AUTHORITIES</u>
		)	
22	PAUL COSGROVE,	)	<b><u>Sentencing Hearing:</u></b>
		)	September 13, 2012
23	Defendant.	)	9:00 a.m.
		)	
24	_____)		

25 Plaintiff United States of America, by and through its  
 26 attorneys of record, the United States Department of Justice,  
 27 Criminal Division, Fraud Section, and the United States Attorney  
 28 for the Central District of California (collectively, "the

1 government"), hereby files its Sentencing Position for defendant  
2 Paul Cosgrove. The government's position is based upon the  
3 attached memorandum of points and authorities, the files and  
4 records in this matter, as well as any evidence or argument  
5 presented at any hearing on this matter.

6 DATED: September 6, 2012 Respectfully submitted,

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17 /s/

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19 Attorneys for Plaintiff  
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **INTRODUCTION AND THE PSR**

4 Defendant Paul Cosgrove ("defendant") is before the court  
5 for sentencing following his plea of guilty to a one-count  
6 information charging him with a violation of 15 U.S.C. § 78dd-2,  
7 the Foreign Corrupt Practices Act ("FCPA"). Defendant's guilty  
8 plea arises from his involvement in the authorization of a  
9 payment to officials of a Chinese state-owned facility to secure  
10 business for defendant's then-employer, Control Components, Inc.  
11 ("CCI").

12 Applying the advisory United States Sentencing Guidelines,  
13 the United States Probation Office ("USPO") calculated that  
14 defendant's total offense level is 12, based on:

15 (1) a base offense level of 12 (U.S.S.G. § 2C1.1(a)(2));

16 (2) a two-level increase because the value of the payment  
17 exceeded \$5,000 (§ 2C1.1(b)(2) and § 2B1.1(b)(1)(B)); and

18 (3) a two-level reduction for defendant's acceptance of  
19 responsibility (§ 3E1.1). Pre-Sentence Report ("PSR") ¶¶ 36-50.

20 The USPO further calculated that defendant's criminal history is  
21 category I. PSR ¶¶ 75-80. Defendant's advisory guidelines range  
22 as calculated by the USPO is thus 10-16 months. PSR ¶ 116.

23 **II.**

24 **GOVERNMENT'S RESPONSE TO THE PSR**

25 A. The Plea Agreement

26 The parties have entered into a binding plea agreement under  
27 Federal Rule of Criminal Procedure 11(c)(1)(C). Under the terms  
28 of that agreement, the parties have agreed that "an appropriate

1 disposition of this case is that the court impose a sentence of:  
2 no more than 15 months imprisonment; three years supervised  
3 release with conditions to be fixed by the Court; up to a \$20,000  
4 fine; no amount of restitution; and a \$100 special assessment.”  
5 Plea Agreement (Dkt. #792) at 10.

6 B. Response to the PSR

7 The government has no factual objections to the PSR and  
8 adopts the factual findings contained in the PSR. The government  
9 concurs in the Probation Office’s determination of defendant’s  
10 adjusted offense level and criminal history category, the former  
11 of which is consistent with the calculations provided in the  
12 parties’ plea agreement. See id. Provided that defendant  
13 continues to demonstrate an acceptance of responsibility through  
14 the time of sentencing, the government recommends that the Court  
15 reduce defendant’s offense level by two levels under § 3E1.1.

16 **III.**

17 **GOVERNMENT’S SENTENCING RECOMMENDATION**

18 According to United States v. Booker, 543 U.S. 220 (2005),  
19 and Rita v. United States, 551 U.S. 338 (2007), this Court must  
20 consider the Sentencing Guidelines and the guidelines range  
21 determined under those guidelines when sentencing. That  
22 guidelines range then becomes one of several factors identified  
23 in 18 U.S.C. § 3553(a) that the Court must look to when  
24 fashioning defendant’s sentence. See United States v. Cantrell,  
25 433 F.3d 1269, 1280 (9th Cir. 2006).

26 Under these authorities, the Court’s analysis of what  
27 sentence to impose should start with the undisputed advisory  
28 guidelines range of 10-16 months. Within that range, defendant’s

1 conduct involved aggravating factors that warrant a sentence near  
2 the high end of the guidelines range, or the 15 month sentence  
3 contemplated by the plea agreement. Defendant was the top sales  
4 executive at CCI from 1997 to 2007. See PSR ¶ 20. In that role,  
5 defendant advocated a sales model which encouraged CCI's sales  
6 people to cultivate relationships with employees of its  
7 customers, commonly referred to as "friends-in-camp" or "FICs."  
8 See id. ¶¶ 26-27. Ultimately, this sales model fostered the  
9 circumstances which led to defendant's offense conduct, where  
10 defendant approved the payment of a commission to an employee of  
11 a state-owned customer. See id. ¶¶ 30-32.<sup>1</sup>

12 At least two of the 18 U.S.C. § 3553(a) factors instruct the  
13 Court to look at the offense conduct itself, as the statute  
14 directs the Court to examine "the nature and circumstances of the  
15 offense," § 3553(a)(1); and to impose a sentence that "reflect[s]  
16 the seriousness of the offense [and] promote[s] respect for the  
17 law," § 3553(a)(2)(A). While the dollar amount involved in  
18 defendant's offense conduct may not be large, it is the  
19 government's view that any violation of the FCPA represents a  
20 serious offense. The FCPA was enacted by Congress to combat  
21 corruption harmful to foreign economies and governments, to  
22 enhance the United States' public image worldwide, and to foster  
23 an international business environment in which legitimate  
24 businesses could compete against corrupt businesses. The

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25  
26 <sup>1</sup> As this Court is aware, CCI pleaded guilty to violating  
27 the FCPA, admitted making approximately \$6.85 million in corrupt  
28 payments from 2003 to 2007, and paid an \$18.2 million fine. See  
United States v. Control Components, Inc., No. SA CR 09-162-JVS,  
Dkt. #7 (plea agreement), Exh. A at 6; id., Dkt. #23 (judgment).

1 legislative history reflects a rationale behind the statute's  
2 enactment that remains valid 35 years later:

3 Corporate bribery is bad business. In our  
4 free market system it is basic that the sale  
5 of products should take place on the basis of  
6 price, quality, and service. Corporate  
7 bribery is fundamentally destructive of this  
8 basic tenet. Corporate bribery of foreign  
9 officials takes place primarily to assist  
10 corporations in gaining business. Thus,  
11 foreign corporate bribery affects the very  
12 stability of overseas business. Foreign  
13 corporate bribes also affect our domestic  
14 competitive climate when domestic firms  
15 engage in such practices as a substitute for  
16 healthy competition for foreign business.  
17 Managements which resort to corporate bribery  
18 . . . to enhance their business reveal a lack  
19 of confidence about themselves. . . .  
20 Unfortunately, the reputation and image of  
21 all U.S. businessmen has been tarnished by  
22 the activities of a sizable number, but by no  
23 means a majority of American firms. A strong  
24 antibribery law is urgently needed to bring  
25 these corrupt practices to a halt and to  
26 restore public confidence in the integrity of  
27 the American business system.

16 S. Rep. No. 95-114 (1977) at 3-4, reprinted in 1977 U.S.C.C.A.N.  
17 4098 (emphasis added). These important ends served by the FCPA  
18 weigh in favor of a serious sentence.

19 Additionally, the need for the Court's sentence "to afford  
20 adequate deterrence to criminal conduct," 18 U.S.C. §  
21 3553(a)(2)(B), is a separate factor that warrants a sentence near  
22 the top of the guidelines range. The sentencing end of  
23 deterrence in FCPA cases is important as the statute is intended  
24 to combat a culture of corruption that could otherwise undercut  
25 the business development and good governance of nations around  
26 the world. FCPA cases are typically difficult to investigate and  
27 prosecute because documents and witnesses are located outside the  
28 United States' jurisdiction. Unlike a fine, which may be paid

1 and considered a cost of doing business, a sentence of  
2 incarceration serves as an effective deterrent against corrupt  
3 behavior. Punishment in the form of incarceration has a  
4 significant impact on the calculus of businesspeople who would  
5 engage in behavior like defendant's. This Court's sentence  
6 should send a strong message that those who engage in this sort  
7 of illegal activity should think twice, given the prospect of  
8 such punishment.

9 While acknowledging that defendant's offense is a "serious  
10 offense," Recommendation Letter at 3, the Probation Office  
11 recommends a sentence of three years of probation with a  
12 condition of six months home confinement as well as a \$20,000  
13 fine, id. at 1-2. The Probation Officer reaches this recommended  
14 sentence by concluding that "[defendant's] age, considered in  
15 combination with his medical condition, supports a two-level  
16 downward departure from the advisory guideline range pursuant to  
17 U.S.S.G. §§ 5H1.1 and 5H1.4, resulting in an adjusted guideline  
18 range of 6 to 12 months (Zone B)." Id. at 5.

19 The government cannot dispute the Probation Officer's  
20 conclusion that defendant has serious health issues. Defendant  
21 has presented medical records and other information to  
22 substantiate not only his 2010 quadruple bypass surgery but also  
23 his chronic medical problems including heart disease, high blood  
24 pressure, diabetes, and sleep apnea that require consistent long-  
25 term monitoring and treatment by his doctors. Defendant's  
26 Sentencing Memorandum at 3-4. Defendant has been hospitalized  
27 twice and admitted for two additional overnight stays for testing  
28 and monitoring over the past few months. Id. at 4. According to

1 defendant's cardiologist, "each of Mr. Cosgrove's health issues  
2 increase the risk that Mr. Cosgrove will suffer another cardio or  
3 other life threatening event if not managed and treated  
4 vigilantly." Declaration of Michael J. Gault, M.D., ¶ 4. Nor  
5 can the government vigorously dispute that a period of  
6 incarceration would not only necessitate a transition from  
7 defendant's longtime physicians to physicians less familiar with  
8 his health history, but also likely create a period of increased  
9 stress and anxiety.

10 To the extent the Court concludes that these factors  
11 outweigh the aggravating factors which would otherwise warrant a  
12 sentence of imprisonment within the guidelines range, any period  
13 of home confinement should be as long as the otherwise-applicable  
14 term of incarceration. To state it differently, the government  
15 sees nothing in the Probation Officer's analysis which would  
16 warrant only six rather than 15 months of home detention.  
17 Additionally, home confinement for 15 months will place the cost  
18 and risk of defendant's medical care and treatment upon the  
19 defendant while achieving a confinement commensurate with the  
20 seriousness of the offense.

21 **IV.**

22 **CONCLUSION**

23 Absent defendant's health condition, the government would  
24 recommend a term of incarceration of 15 months. However, to the  
25 extent the Court believes that defendant's health condition  
26 warrants a non-incarceratory sentence, the government recommends  
27 that the term of home confinement be 15 months.