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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(B)-JVS                |
|                              | )  |
| 20 Plaintiff,                | ) <u>GOVERNMENT'S SENTENCING POSITION;</u> |
|                              | ) <u>MEMORANDUM OF POINTS AND</u>          |
| 21 v.                        | ) <u>AUTHORITIES</u>                       |
|                              | )  |
| 22 HONG CARSON,              | ) <u>Sentencing Hearing:</u>               |
|                              | ) November 5, 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 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.

3 INTRODUCTION AND THE PSR

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

12 Applying the advisory United States Sentencing Guidelines,<sup>1</sup>  
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 eight (U.S.S.G. § 2B4.1(a));

16 (2) a six-level increase because the value of the payment  
17 exceeded \$30,000 (§ 2B4.1(b)(1) and § 2B1.1(b)(1)(D)); and

18 (3) a two-level reduction for defendant's acceptance of  
19 responsibility (§ 3E1.1). Pre-Sentence Report ("PSR") ¶¶ 34-48.  
20 The USPO further calculated that defendant's criminal history is  
21 category I. PSR ¶¶ 72-77. Defendant's advisory guidelines range  
22 as calculated by the USPO is thus 10-16 months. PSR ¶ 111.

23  
24  
25  
26  
27 \_\_\_\_\_  
28 <sup>1</sup> The Probation Office used the November 1, 2001 Guidelines  
Manual for defendant's 2002 conduct to avoid an ex post facto  
issue. See Pre-Sentence Report ¶ 35.

1 II.

2 GOVERNMENT'S RESPONSE TO THE PSR

3 A. The Plea Agreement

4 The parties have entered into a binding plea agreement under  
5 Federal Rule of Criminal Procedure 11(c)(1)(C). Under the terms  
6 of that agreement, the parties have agreed that "an appropriate  
7 disposition of this case is that the court impose a sentence of:  
8 three years probation with conditions to be fixed by the Court,  
9 which may include a condition of up to six months home  
10 confinement; a fine of no more than \$20,000; no amount of  
11 restitution; and a \$100 special assessment." Plea Agreement  
12 (Dkt. #696) at 16.

13 The plea agreement also contains the parties' stipulation to  
14 a two-level downward variance based on mitigating factors under  
15 18 U.S.C. § 3553(a). Id. at 15. The Probation Office concluded  
16 that the combination of defendant's "education, employment  
17 record, and family ties and responsibilities" warrant a "two-  
18 level downward variance from the advisory guideline range,  
19 resulting in an adjusted guideline range of 6 to 12 months."  
20 Recommendation Letter at 4.

21 B. Response to the PSR

22 The government has no factual objections to the PSR and  
23 adopts the factual findings contained in the PSR. The government  
24 concurs in the Probation Office's determination of defendant's  
25 adjusted offense level and criminal history category. Provided  
26 that defendant continues to demonstrate an acceptance of  
27 responsibility through the time of sentencing, the government  
28 recommends that the Court reduce defendant's offense level by two

1 levels under § 3E1.1.

2 **III.**

3 **GOVERNMENT'S SENTENCING RECOMMENDATION**

4 According to United States v. Booker, 543 U.S. 220 (2005),  
5 and Rita v. United States, 551 U.S. 338 (2007), this Court must  
6 consider the Sentencing Guidelines and the guidelines range  
7 determined under those guidelines when sentencing. That  
8 guidelines range then becomes one of several factors identified  
9 in 18 U.S.C. § 3553(a) that the Court must look to when  
10 fashioning defendant's sentence. See United States v. Cantrell,  
11 433 F.3d 1269, 1280 (9th Cir. 2006).

12 As noted above, the parties have agreed that two-level  
13 variance from the guidelines range of 10 to 16 months to a post-  
14 variance guidelines range of 6 to 12 months is appropriate under  
15 defendant's circumstances. Plea Agreement at 15. The government  
16 continues to maintain that such a variance is warranted. The  
17 Probation Office recognized several mitigating factors which  
18 would, in combination, justify such a variance. Recommendation  
19 Letter at 4. Defendant additionally argues that she is  
20 differently situated from her co-defendants, in that she "viewed  
21 business [in China] through very different lenses based on her  
22 upbringing, education, and professional experience." Defendant's  
23 Sentencing Memorandum at 5. The government cannot disagree that  
24 defendant, who was born in China and lived there until age 26,  
25 lacked the American education and early business training of her  
26 co-defendants. See PSR ¶¶ 79, 82.

27 The government also notes two separate factors that warrant  
28 the two-level variance. First, defendant agreed to cooperate

1 with the government, and, if asked, to testify during the  
2 government's rebuttal case at the anticipated trial against co-  
3 defendants Cosgrove and Edmonds. See Plea Agreement at 5.  
4 Additionally, defendant's willingness to plead guilty enabled the  
5 government to reach simultaneously a cooperation plea agreement  
6 with her husband, co-defendant Stuart Carson, see Plea Agreement  
7 at 2 (stating that agreement is part of a "package deal" with co-  
8 defendant Stuart Carson). Accordingly, the Court's analysis of  
9 what sentence to impose should start with an advisory guidelines  
10 range of 6 to 12 months.

11 Such an advisory guidelines range would permit the  
12 imposition of a sentence in which the low-end of the guidelines  
13 range would be satisfied by a term of probation that includes a  
14 condition that substitutes home detention for imprisonment.  
15 U.S.S.G. § 5C1.1(c)(3). The government recommends such a  
16 sentence as contemplated by the plea agreement: three years of  
17 probation with a term of six months' home detention. Consistent  
18 with the plea agreement, the government recommends that any  
19 period of home detention be structured to permit defendant to  
20 travel both domestically and internationally as necessary for her  
21 employment. Plea Agreement at 6.

22 Defendant argues that no term of home confinement should be  
23 imposed. Defendant's Sentencing Memorandum at 2-5. The  
24 government does not believe that defendant's offense conduct  
25 would be adequately addressed by a sentence that further departs  
26 from the advisory guidelines range. Defendant was CCI's sales  
27 director for China and Tawian from 2000 to 2007. See PSR ¶¶ 21,  
28 27. In that role, defendant was aware that CCI used a sales

1 model that encouraged CCI's sales people to cultivate  
2 relationships with employees of its customers, commonly referred  
3 to as "friends-in-camp" or "FICs." See id. ¶¶ 26, 30.<sup>2</sup>  
4 Ultimately, this sales model fostered the circumstances that led  
5 to defendant's offense conduct, where defendant approved the  
6 payment of a commission to an employee of a state-owned customer.  
7 See id. ¶¶ 27-30.<sup>3</sup>

8 At least two of the 18 U.S.C. § 3553(a) factors instruct the  
9 Court to look at the offense conduct itself, as the statute  
10 directs the Court to examine "the nature and circumstances of the  
11 offense," § 3553(a)(1); and to impose a sentence that "reflect[s]  
12 the seriousness of the offense [and] promotes respect for the  
13 law," § 3553(a)(2)(A). While the dollar amount involved in  
14 defendant's offense conduct may not be large, it is the  
15 government's view that any violation of the FCPA represents a  
16 serious offense. The FCPA was enacted by Congress to combat  
17 corruption harmful to foreign economies and governments, to  
18 enhance the United States' public image worldwide, and to foster  
19 an international business environment in which legitimate  
20 businesses could compete against corrupt businesses. The  
21 legislative history reflects a rationale behind the statute's  
22 enactment that remains valid 35 years later:

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23  
24 <sup>2</sup> Defendant's plea agreement contains the admission that she  
25 knew that CCI's sales model included the cultivation of FICs who  
sometimes included employees of CCI's customers.

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

14 S. Rep. No. 95-114 (1977) at 3-4, reprinted in 1977 U.S.C.C.A.N.  
15 4098 (emphasis added). These important ends served by the FCPA  
16 weigh in favor of a sentence that includes a term of home  
17 detention.

18 **IV.**

19 **CONCLUSION**

20 The government recommends a sentence of three years  
21 probation with a term of six months of home confinement and the  
22 imposition of a \$20,000 fine.