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9 UNITED STATES OF AMERICA

10 UNITED STATES DISTRICT COURT
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12
13 UNITED STATES OF AMERICA,) CR No. 07-1104 PSG
)
14 Plaintiff,) **GOVERNMENT'S SENTENCING**
) **POSITION AND PARTIAL**
15 v.) **CONCURRENCE WITH PRESENTENCE**
) **REPORT**
16 MARK FORREST COHN,)
) **Sentencing:**
17 Defendant.) **9/15/2008 at 10:00 a.m.**
)
18)
)
19)

20 Plaintiff United States of America, by and through its
21 counsel of record, the United States Attorney for the Central
22 District of California, hereby respectfully submits its
23 sentencing position and partial concurrence with the US Probation
24 Office's Presentence Investigation Report ("PSR") for defendant
25 Mark Forrest Cohn.

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1 For the reasons stated below, the government and the
2 defendant have stipulated to recommending the following sentence:

3 (1) A five-year term of probation.

4 (2) As a condition of probation, that defendant be
5 sentenced to two years of home detention/curfew with monitoring
6 as determined to be appropriate by the United States Probation
7 Office ("USPO"). Upon prior approval of the USPO, defendant may
8 travel outside the District of Arizona for the approved duration,
9 including overnight, as reasonably necessary for defendant's job,
10 family health needs, and emergencies. However, any nights spent
11 away from defendant's home shall not be credited against the
12 two-year term of home detention.

13 (3) Defendant will perform 2,500 hours of community service.

14 (4) No fine will be imposed.

15 (5) Defendant will be ordered to pay restitution as stated
16 in the PSR, namely \$23,094,988.10.

17 The government's sentencing position and partial concurrence
18 with the PSR is based on the attached Memorandum of Points and
19 Authorities, the PSR, the documents and files in this case, and
20 any arguments raised during the sentencing hearing.

21
22 Dated: September 3, 2008

Respectfully submitted,

23 THOMAS P. O'BRIEN
24 United States Attorney
25 SANDRA R. BROWN
26 Assistant U.S. Attorney
27 Chief, Tax Division

28 _____/s/_____
EVAN J. DAVIS
Assistant United States Attorney
Attorneys for Plaintiff
UNITED STATES OF AMERICA

MEMORANDUM OF POINTS AND AUTHORITIES

A. Background

On November 2, 2007, defendant Mark Forrest Cohn pled guilty to both counts of a two-count Information charging defendant with conspiracy, in violation of 18 U.S.C. § 371, and wire fraud, in violation of 18 U.S.C. § 1343. These counts carried a combined ten-year statutory maximum sentence. At the time of defendant's guilty plea, he was completing his sentence on a telemarketing fraud conviction in the District of Maryland, for which he was sentenced to 57 months of incarceration.

Defendant's guilty pleas were entered pursuant to a cooperation Plea Agreement, which stipulated to a fraud loss of \$19,733,956.85, resulting in a United States Sentencing Guideline Base Offense Level of 6, a 20-point enhancement for amount of loss, a four-point enhancement for more than 50 victims, at least a two-point enhancement for role in the offense, and a three-point reduction for acceptance of responsibility. These stipulations resulted in a total offense level of at least 29, although the government noted its intention to seek an additional two-level role enhancement. The parties waived their right to argue for or against any other Guideline offense characteristics, adjustments, and departures beyond those noted in the Agreement. Defendant intended to argue for reductions based on crediting time served on defendant's Maryland conviction based on that conviction's purported relatedness to the present conviction and taking the three-point reduction for acceptance of responsibility after the 120-month statutory maximum had kicked in. The parties also agreed to recommend crediting eight months toward any

1 sentence based on defendant's cooperation-based delay in starting
2 the Bureau of Prisons' Residential Drug Abuse Program ("RDAP")
3 program.

4
5 **B. The Presentence Report**

6 Counsel for the government has reviewed the PSR, and
7 disputes its decision to give a three-point, instead of a four-
8 point, role enhancement. Otherwise, the government concurs with
9 the PSR.

10 The government has also reviewed the Probation Office's
11 Recommendation Letter, and disagrees that the recommended
12 downward adjustments and § 3553 variances should result in a 21-
13 month sentence before any cooperation is considered. This
14 reduction is based on defendant's admittedly severe family
15 circumstances, post-offense rehabilitation, charitable work,
16 mental condition, history of prescription medication abuse, and
17 other characteristics. Defendant's post-offense rehabilitation
18 is adequately covered by the government's nine-level departure
19 for cooperation, the described mental condition is not a basis
20 for reducing the sentence, and his history of prescription
21 medication abuse is a routine, and unpersuasive, excuse given by
22 many defendants. However, the government's objections do not
23 affect its recommendation, because after cooperation has been
24 considered, the government is recommending a probationary
25 sentence.

26 The PSR differs from the Plea Agreement in its treatment of
27 defendant's Maryland telemarketing-scheme conviction. (PSR
28 ¶¶ 42, 46). Although defendant noted in the Plea Agreement that

1 he intended to argue that any sentence to be imposed should fully
2 credit the 57-month sentence from the Maryland case, the parties
3 did not stipulate in the Plea Agreement that defendant was
4 entitled to any credit.

5 Recognizing the parties' dispute, the PSR sided with
6 defendant's interpretation and recommended combining the two
7 cases' offense conduct for calculation purposes and fully
8 crediting the Maryland sentence pursuant to U.S.S.G. §§ 5G1.3 (b)
9 and 1B1.3(a)(1), which together require crediting of any sentence
10 imposed in a related case. In particular, any criminal activity
11 undertaken to avoid detection of another criminal activity is
12 deemed related under these U.S.S.G. sections. The PSR stated the
13 cases were related because defendant perpetuated the Four Star
14 Ponzi Scheme by shuttling money from the Maryland telemarketing
15 scheme to Four Star investors. Defendant also claimed that he
16 continued the telemarketing scheme so as to avoid reporting the
17 related loans and interest due as a bad debt on Four Star's
18 financial statements, which were used to solicit investments.

19 After receiving the PSR's recommendation that the Maryland
20 sentence be fully credited, the parties engaged in additional
21 discussions and reviewed extensive transcripts of defendant's
22 Maryland trial and sentencing. An IRS Special Agent conducted a
23 weeks-long analysis of Four Star's bank records that demonstrated
24 that the telemarketing scheme received more from Four Star than
25 it sent to Four Star. This seemed to undercut defendant's
26 contention that telemarketing funds were used to lull Four Star
27 investors into believing their investments were still paying

28

1 interest.

2 However, defendant documented that funds from the
3 telemarketing scheme were transferred to Four Star's then-
4 depleted bank accounts and were used to pay fake "interest"
5 payments to Four Star investors. These payments, many of which
6 were obtained by deceiving banks, acted as "bridge" loans to Four
7 Star, which later paid funds back to the telemarketing operation.
8 If those bridge payments had not been made, however, then Four
9 Star's precarious financial position would have become apparent
10 in 1999 or 2000. Investors would have turned off the flow of
11 investments and many millions of dollars of Four Star investor
12 losses, including the Arbitrage losses, would never have
13 happened.

14 Further, if defendant were required to shut down the
15 telemarketing scheme, he would have had to reveal to the outside
16 auditors preparing Four Star's financial statements that more
17 than ten million dollars of loans and interest had to be written
18 off. Defendant presented compelling information that some
19 investors, who later sued defendant for having misled them by
20 presenting false financial statements, relied on the financial
21 statements in deciding to contribute more funds to Four Star.
22 Writing off the Katz loans and interest could have led the
23 investors to stop giving defendant money and to the unraveling of
24 Four Star, even if investors were still being paid their monthly
25 interest payments.

26 Government counsel also spoke to counsel for Four Star's
27 other managers, Ronald Anson and Jack Garrett, and to defendant's
28

1 former employee Suzanne Tikkanen. Anson and Garret, through
2 counsel, stated that defendant did not use telemarketing funds to
3 make investor payments and that there was no concern about Katz
4 defaulting because Four Star was holding millions of dollars
5 worth of Katz's cartoon artwork. Although Anson and Garrett
6 stated that certain assets secured the telemarketing scheme loans
7 and that Anson and Garrett used their line-of-credit to make up
8 investor payment shortfalls instead of the telemarketing funds,
9 their recollections did not match the timing of bank and other
10 records. Anson's and Garrett's recollections were consistent
11 with periods before the telemarketing scheme, but by the time
12 that the scheme was in defendant's hands the collateral --
13 cartoon artwork -- had been identified as nearly valueless.
14 Further, although the line-of-credit was used to make up
15 shortfalls, it was not the sole source of such funding.

16 Tikkanen confirmed that defendant did not want to write off
17 the telemarketing loans and that defendant was frequently
18 desperate for money to pay investors. She also confirmed that,
19 at the time that defendant was actively perpetuating the
20 telemarketing scheme, he explicitly tied his criminal actions in
21 Maryland to ensuring that Four Star investors would be paid.
22 These statements, which were consistent with Tikkanen's trial
23 testimony, demonstrate that defendant was using the telemarketing
24 scheme to avoid detection of the Four Star Ponzi scheme.

25 The result of this sentencing investigation was that,
26 although the schemes appeared facially separate and distinct, the
27 telemarketing scheme was related to the Four Star scheme and the
28

1 Maryland sentence had to be fully credited against any sentence
2 imposed in the present case. Further, because the 57 months
3 should be viewed as a credit against the sentence imposed here,
4 the parties agreed that the sentence should be calculated without
5 regard to the 57 months already served, and then the 57 months
6 should be credited against the resulting sentence. As a result
7 of government counsel reaching those conclusions, the parties
8 negotiated the recommended sentence.

9 The PSR and Plea Agreement differ in their loss
10 calculations, although the difference is immaterial to the
11 Guidelines calculation. The PSR adds the \$3 million Maryland
12 criminal losses to a \$23 million loss from the Four Star scheme,
13 yielding a \$26 million criminal loss calculation. (PSR
14 ¶¶ 45,46). The Plea Agreement stipulated to a \$19 million from
15 the Four Star scheme, to which the \$3 million telemarketing
16 scheme loss would be added, yielding a \$23 million loss. (PSR
17 ¶ 45). Given that the Maryland telemarketing loss will be added
18 to any Four Star loss, the discrepancy between the PSR and the
19 Plea Agreement loss calculation is immaterial, as the Sentencing
20 Guidelines calculation is the same for a \$23 million or \$26
21 million combined loss.

22 The Sentencing Recommendation and PSR credits defendant's
23 Maryland sentence by reducing the 120-month statutory maximum to
24 63 months, and then subtracting 42 months for a variety of non-
25 cooperation issues to result in a 21-month recommendation. This
26 method of reducing the statutory maximum by 57 months, instead of
27 calculating the appropriate combined sentence and then reducing
28 it by 57 months, does not appropriately credit defendant's time

1 served. Further, it is unclear how the Probation Office arrived
2 at the 42-month reduction, as no calculations are given in the
3 letter or PSR. However, even if the recommended 21-month
4 sentence were calculated as an offense level of 14, 15, or 16,
5 and then a nine-level downward cooperation departure from that
6 recommended sentence were applied, defendant's sentencing range
7 would be 0-6 months.

8 As detailed more fully in another filing, the government
9 believes that a nine-point reduction based on defendant's
10 cooperation is appropriate. Defendant provided the entire basis
11 of the government's charges against Ronald Anson and Jack
12 Garrett, both of whom recently pleaded guilty to Informations.
13 Defendant also testified against a human-trafficking defendant
14 who had tampered with a witness and achieved a hung jury and
15 mistrial in his first trial. In part based on defendant's
16 testimony, that defendant was convicted of the substantive counts
17 and witness tampering and sentenced to life in prison.

18
19 **C. The parties' stipulated Guidelines calculation**

20 After determining the impact of crediting the Maryland
21 telemarketing sentence against any Four Star sentence, the
22 parties agreed to the following Guidelines calculations. These
23 Guideline calculations are the most severe possible, as they
24 include a four-point role enhancement and give no effective
25 weight to acceptance of responsibility as the points are deducted
26 before the statutory maximum sentence reduces the Guideline to
27
28

1 120 months:¹

2 **Guideline (11/1/2001 ed.)**

3	2B1.1(a)	Base Offense Level	6
4	2B1.1(L)	Loss more than \$20 million	+22
5	2B1.1(2)(B)	More than 50 victims	+4
6	3B1.1	Leader/otherwise extensive	+4
7		Subtotal	36
8	3E1.1	Acceptance of Responsibility	-3
9		Total before 5K1.1 reduction	33

11 **Range 135-168 months**

12 Reduced to **120 months** by
 13 statutory maximum

14 Approx. Guideline level 31

16 5K1.1 Substantial assistance -9

17 **Guideline total 22**

18 **Range 41-51 months**

20 **Credit 57 months for MD sentence Range 0-0**

21 **Credit 8 months for RDAP Range 0-0**

23 **Total Range 0-0**

24 //

25 //

26
 27 ¹ Even if the nine-point reduction for substantial
 28 assistance were applied *before* the statutory maximum were
 calculated -- which it should not be -- the results would be
 almost identical, yielding a 0-6 month Guideline range.

1 D. A probationary sentence with two years home detention, 2,500
2 hours of community service, and more than \$23 million in
3 restitution is consistent with the § 3553(a) factors

4 The § 3553(a) factors weigh in favor of a the stipulated
5 probationary sentence. Section 3553(a) requires that, in
6 determining a sentence, the Court must consider:

7 (1) the nature and circumstances of the offense and
8 history and characteristics of the defendant;

9 (2) the need for the sentence imposed to reflect the
10 seriousness of the offense, promote respect for the
11 law, provide just punishment, afford adequate
deterrence, protect the public from future crimes of
the defendant, and provide the defendant with needed
training and medical care;

12 (3) the kinds of sentences available;

13 (4) the kinds of sentence and the sentencing range
14 recommended by the Guidelines;

15 (5) any pertinent policy statement;

16 (6) the need to avoid unwanted sentencing disparities;
and

17 (7) the need to provide restitution to any victims.
18

19 *1. Nature and circumstances of the offense*

20 Because the Maryland case is related for sentencing
21 purposes, the offense conduct includes both the Maryland
22 telemarketing scheme and the Four Star Ponzi scheme.

23 a. Four Star Ponzi Scheme

24 In essence, defendant made promises to Four Star investors
25 that were not sustainable, including essentially guaranteeing up
26 to 30% interest rates on funds invested in Four Star. (PSR
27 ¶ 10). In a vain attempt to deliver on these promises, defendant
28 entered risky investments with shady characters and ended up

1 losing investors' funds instead of obtaining the sky-high profits
2 necessary to feed investors' expectations. When reality caught
3 up with defendant's promises, he lied to investors and to his
4 Four Star co-managers, Ronald Anson and Jack Garrett, regarding
5 the fate of Four Star investments and the company's financial
6 fitness.

7 In an effort to cover up the losses and the fact that Four
8 Star was in dire financial straits, defendant continued to
9 solicit funds for so-called Arbitrage investments, promising
10 double-digit returns. Those funds were instead used for other
11 investments, to pay off earlier investors as "income" payments,
12 and to make payments to defendant and other insiders. (PSR
13 ¶¶ 13-15).

14 Although many more investors were touched by defendant's
15 mismanagement of Four Star, 108 victims lost more than \$23
16 million in Four Star's Arbitrages. (PSR ¶ 33). Some investors
17 lost their retirement plans, life savings, and children's college
18 funds. (PSR ¶¶ 34). Although defendant may suggest that all
19 investors were sophisticated, defendant's fraud devastated the
20 financial well-being of numerous Four Star investors. They could
21 not afford to incur the losses occasioned by defendant's willful
22 fraud.

23 b. The Maryland telemarketing scheme

24 After Joel Katz was in danger of defaulting on loans from
25 Four Star, Katz started a telemarketing business with additional
26 Four Star loans in which he offered what appeared to be secured
27 credit cards to persons with poor credit histories. (PSR ¶¶ 20,
28 21). In truth, Katz was sending a nearly worthless packet of

1 documents that included mere credit card applications. (PSR
2 ¶ 24).

3 Dissatisfied with the amount of money that Katz was paying
4 to Four Star in satisfaction of the loans, defendant
5 incrementally took control of the telemarketing operation. (PSR
6 ¶¶ 25, 26).

7 Eventually, defendant took over complete control of the
8 telemarketing scheme and continued to operate it with many of the
9 same cast of characters from Katz's scheme. (PSR ¶¶ 26, 27).
10 The telemarketers under defendant's direction continued to sell
11 what Katz had been selling -- a worthless packet of documents.
12 Defendant played a shell game with companies handling complaints
13 about the telemarketing scheme, dictating that the companies not
14 be paid, hiring companies unable to handle the sheer volume of
15 complaints, and directing the companies not to issue refunds.
16 (PSR ¶¶ 27, 28). As noted earlier, defendant demonstrated to the
17 government that he was shuttling funds from the telemarketing
18 scheme to Four Star and back, partly to avoid discovery of the
19 Four Star Ponzi scheme.

20 In all, 27,000 consumers were duped by defendant's
21 telemarketing scheme, together losing more than \$3 million. (PSR
22 ¶¶ 30, 33).

23 24 2. *Defendant's history and characteristics*

25 Defendant is a former attorney who resigned on December 25,
26 2003 ahead of expected disbarment as a result of the July 2003
27 Maryland conviction. (PSR ¶ 120). Defendant attended U.C.
28 Berkeley and Stanford for his undergraduate studies and U.C.

1 Davis for law school. (PSR ¶¶ 120, 121). Lawyers are supposed
2 to uphold the law, not break it, and should be dealt with more
3 severely than similar defendants not schooled in the law.
4 Defendant was well aware that his conduct was criminal at the
5 time he was committing the crimes charged here and in Maryland,
6 but he brushed aside the law in a selfish attempt to keep his
7 scheme afloat. We expect more of all persons, but certainly of
8 attorneys.

9 The PSR details defendant's work history, including as
10 general counsel and executive vice president of Four Star
11 Financial Services, LLC and in turning around a hotel at
12 Chicago's O'Hare airport. (PSR ¶¶ 127, 129-30).

13 The PSR spends nearly four pages detailing defendant's
14 family's severe medical issues. These issues include defendant's
15 wife's physical and emotional inability to adequately care for
16 their daughters, two of whom have serious medical issues. For
17 the sake of the girls' privacy, those issues are not detailed in
18 this publicly filed document.

19 The PSR also details defendant's diagnosed medical,
20 substance-abuse, and psychological issues. (PSR ¶¶ 106-119).
21 Defendant also went to a psychologist for an evaluation --
22 presumably undertaken for sentencing purposes -- that concluded
23 defendant is a dramatically different individual than at the time
24 of his Maryland conviction. (PSR ¶ 112). Defendant was addicted
25 to a prescription painkiller during the offense conduct period,
26 which was tied to some degree to defendant's back pain. (PSR
27 ¶ 116). Defendant completed the RDAP program while at the Bureau
28 of Prisons Terminal Island facility and has not tested positive

1 for drug use after having been released from Terminal Island.

2 Defendant assisted other inmates while serving his sentence
3 and has continued public service while in a halfway house and on
4 supervised release. (PSR 95-98). The halfway house director
5 lauded defendant in a letter, stating that he was a model
6 prisoner and that his risk of recidivism was low. (PSR ¶ 99).

7 Defendant's characteristics also include defendant's
8 cooperation with federal authorities, detailed in another filing.

9
10 3. *Need for the sentence to reflect the crime*

11 Absent crediting defendant with the 57-month sentence
12 imposed in the Maryland case, defendant should have received a
13 significant term of incarceration for the Four Star Ponzi scheme.
14 Defendant intentionally duped investors out of millions of
15 dollars, ruining the financial health of many investors. No
16 amount of cooperation with authorities, post-offense
17 rehabilitation, or family circumstances could have erased the
18 need for a severe sentence, in the range of 41 to 51 months as
19 noted in the above Guidelines calculation.

20 However, the Sentencing Guidelines mandate that the two
21 cases be treated as related and that defendant receive full
22 credit for the 57-month sentence. When combined with other
23 Guideline calculations and 18 U.S.C. ¶ 3553 factors, defendant
24 merits a probationary sentence. The government and defendant
25 agreed to jointly recommend a particularly long term of home
26 confinement -- two years -- and 2,500 hours of community service
27 as part of any probationary sentence. Defendant also agreed to
28 concede a variety of arguments, including that he not be given a

1 further role enhancement, that the restitution should be lower
2 than \$23 million, and that the three-point reduction for
3 acceptance of responsibility be taken after the statutory maximum
4 reduced the Guideline calculation. Although these concessions
5 did not substantially affect the overall result, they place
6 defendant at a greater risk of a higher sentence.

7 Although a probationary sentence for a \$26-million dollar
8 series of crimes facially appears to be too lenient under the
9 § 3553 factors, the 57-months credit underlying this result shows
10 that the proposed sentence would reflect the seriousness of the
11 offense and is adequate with this defendant to promote respect
12 for the law, provide just punishment, afford adequate deterrence,
13 and protect the public from future crimes of the defendant.

14
15 4. *Kinds of sentences available, including under the*
16 *Guidelines*

17 No mandatory minimum sentences are applicable, and a
18 straight probationary sentence is permitted. As noted above, the
19 Guidelines sentence would be zero, or at most zero to six months
20 to the extent that Offense Levels begin at level one.

21
22 5. *Pertinent policy statements*

23 The Introductory Commentary to U.S.S.G. Part T applies to
24 this tax prosecution:

25 The criminal tax laws are designed to protect the
26 public interest in preserving the integrity of the
27 nation's tax system. Criminal tax prosecutions serve
28 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

1 tax laws is a primary consideration underlying these
2 guidelines. Recognition that the sentence for a
3 criminal tax case will be commensurate with the gravity
4 of the offense should act as a deterrent to would-be
5 violators.

6 *6. Need to avoid unwanted sentencing disparities*

7 Defendant is in a unique situation, including having served
8 a 57-month sentence on a related case, cooperated with federal
9 authorities extensively on investigations of Anson and Garrett
10 that yielded guilty pleas by both, and testified against another
11 defendant in an unrelated case. A straight-probationary sentence
12 in these circumstances is not disparate, despite the enormity of
13 the harm that defendant caused to hundreds of victims of the Four
14 Star scheme and thousands of victims of the Maryland
15 telemarketing scheme.

16 Given that this is a within-Guidelines sentence after
17 accounting for all of these factors, there are no apparent
18 sentencing disparities.

19 *7. Need to retribute the victims*

20 Defendant has agreed to pay restitution to the Four Star
21 victims to the extent possible. However, defendant already faces
22 more than \$100 million in judgments stemming from the Four Star
23 scheme, so the \$23,094,988.10 in restitution ordered herein
24 likely will not be substantially paid. Defendant has suggested
25 that his fine in the Maryland case be waived or included within
26 defendant's current conviction, allowing him to prioritize
27 payments to victims instead of toward the fine. Undersigned
28 counsel has stated that he does not oppose this request, but that

PROOF OF SERVICE BY CERTIFIED MAILING

I am over the age of 18 and not a party to the within action. I am employed by the Office of United States Attorney, Central District of California. My business address is 300 North Los Angeles Street, Suite 7211, Los Angeles, California 90012.

On September 3, 2008, I served, **GOVERNMENT'S SENTENCING POSITION AND PARTIAL CONCURRENCE WITH PRESENTENCE REPORT**, on the person or entity named below by enclosing a copy in an envelope addressed as shown below and placing the envelope for collection and mailing on the date and at the place shown below following our ordinary office practices. I am readily familiar with the practice of this office for collection and processing correspondence for first class mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

Date of mailing: September 3, 2008, Place of mailing: Los Angeles, California.

Person(s) and/or Entity(s) to Whom mailed:

**Elizabeth Morony
United States Probation Officer
600 U.S. Courthouse
312 N. Spring Street
Los Angeles, CA 90012**

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on: September 3, 2008, at Los Angeles, California.

AMANDA F. CARRILLO