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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

United States of America,
Plaintiff,

v.

Mark Richard Fuller,
Defendants.

CR10-0605-PHX-DGC

**UNITED STATES' SENTENCING
MEMORANDUM**

The United States of America, by and through undersigned counsel, respectfully submits the following sentencing memorandum for the Court's consideration. The United States recommends that the Court impose a twelve month term of imprisonment for the defendant's deceptive actions against the United States. This memorandum addresses the reasonableness of a twelve month sentence based on an analysis of the sentencing factors set forth in 18 U.S.C. § 3553(a).

Respectfully submitted this 4th day of January, 2011.

DENNIS K. BURKE
United States Attorney
District of Arizona

/s Raymond K. Woo

RAYMOND K. WOO
Assistant U.S. Attorney

A. Appropriate Guideline Calculation

The parties' plea agreement stipulates that the value of the structured funds, for purposes of calculating the defendant's offense level under U.S.S.G. § 2S1.3, should be between \$200,000 and \$400,000. This range represents the amount of cash deposits made by the defendant, between October 2005 and February 2006, which were deceptively structured to prevent the banks from notifying the United States about his deposits of \$100 uncirculated bills.

The parties' plea agreement stipulates that the specific offense characteristics, under U.S.S.G. §§ 2S1.3(b)(1), (b)(2) and (b)(3), shall not be applied at sentencing.

The parties' plea agreement stipulates that the defendant's sentence shall not exceed the low-end of the applicable guideline range.

The parties' plea agreement further stipulates that the defendant shall pay a \$150,000 fine for each felony count (total of \$300,000).

The government requests that the Court accept the parties stipulations and calculate the defendant's offense level as follows:

Base Offense Level (U.S.S.G. § 2S1.3):	6
Upward Adjustment for \$200,000 to \$400,000 Value of Structured Funds:	+12
Adjustment for Acceptance of Responsibility:	-3

The defendant's total offense level is 15 which provides for an 18 - 24 month guideline sentence.

B. Facts

The defendant is a Marine Major who was deployed to Iraq in February 2005. While in Iraq, the defendant was assigned to the 5th Civil Affairs Group ("5th CAG") in Camp Fallujah, Iraq, as a Project Purchasing Officer ("PPO") for Commander Emergency Response Program ("CERP") funds.

CERP funds were part of a \$180 million dollar appropriation to Iraq from Congress. There are only 19 authorized uses for CERP funds which include making condolence payments and paying constructions projects. Congress has made it clear that CERP funds were not to be

1 used to either directly or indirectly benefit the United States, Coalition members, or other
2 supporting military personnel. As part of this program, the United States Treasury department
3 delivered brand new uncirculated \$100 bills to Iraq to be used for CERP payouts. As a PPO, the
4 defendant had supervisory responsibility for, and oversaw, the CERP contracting processes for
5 his team. With respect to CERP funds, the defendant selected an Iraqi contractor to work on a
6 project he identified, negotiated contract terms with the Iraqi contractor, and verified whether
7 the Iraqi contractor completed the project.

8 The defendant's contract terms were reviewed by another officer designated as the
9 comptroller. If the comptroller approved the defendant's contract, a disbursement officer would
10 provide the \$100 uncirculated bills to the Iraqi contractor. The defendant was not involved with
11 making the actual cash payments to the Iraqi contractor. However, the defendant would, in many
12 cases, be present with the Iraqi contractor when the payment was made by the disbursement
13 officer.^{1/}

14 The defendant returned to the United States in September 2005. Shortly thereafter, the
15 defendant began making significant cash deposits into his bank accounts in the form of brand
16 new uncirculated \$100 bills. The defendant concealed his actions from the United States by
17 structuring his cash deposits so that the banks' federal reporting requirements would not be
18 triggered. In many cases, the defendant would make several cash deposits, under \$10,000 each,
19 on the same day to different banks. Some of these deposits would be made within fifteen
20 minutes of each other.

21 Notably, during one of the defendant's cash deposits in November 2005, Joanne Rautio,
22 a Navy Federal Credit Union teller, questioned the defendant about the source of his money.
23 The defendant informed her that he was selling a family member's personal property and that
24

25
26 ^{1/} While in Iraq, the defendant informed Marine Major Butler that he had come across
27 something that would set him up for life. Also, the defendant mailed approximately 20 packages
28 to his wife while in Iraq. The United States has not been able to confirm that the packages
contained money.

1 this was the last cash deposit he would make. Ms. Rautio had observed other cash deposits made
2 by the defendant and noted that the deposits were all in \$100 uncirculated bills.^{2/}

3 After being questioned about the source of his funds by Ms. Rautio, the defendant
4 immediately opened checking (#6868) and money market savings accounts (#6785) at Bank of
5 America^{3/} on November 29, 2005^{4/}, and a checking account (#8024) at Chase bank on
6 December 9, 2005.

7 On January 9, 2006, the defendant attempted to deposit \$7700, in the form \$100 bills, into
8 his Navy Federal Credit Union account # 2700 at the branch located on 1683 S. Arizona Avenue,
9 Yuma, Arizona. Anna Engblom served as the bank teller for this transaction and she informed
10 the defendant that she would have to file a CTR ("currency transaction report"). The defendant
11 canceled his transaction by retrieving his cash and leaving the bank.

12 Ms. Engblom also served as the bank teller for other cash deposits made by the defendant.
13 During one of those deposits, the defendant informed her that the source of his cash was from
14 the sale of items that belonged to his father.^{5/}

15
16
17
18 ^{2/} Veronica Pettit, a branch manager for Navy Federal Credit Union in Monterey,
19 California, reported that it is highly unusual for a person to be in the possession of numerous
20 \$100 uncirculated bills. Ms. Pettit stated that banks will typically mix circulated and
uncirculated \$100 bills before providing the money to the customer.

21 ^{3/} Kathleen Baumbeck is the former assistant branch manager for the Bank of America
22 at the 4th Avenue branch, Yuma, Arizona. Ms. Baumbeck reported that it is highly unusual for
23 a customer to have more than a few brand new uncirculated \$100 bills. Ms. Baumbeck's bank
would typically receive brand new uncirculated \$100 bills only in December and it would not
amount to more than \$10,000.

24 ^{4/} The defendant created these accounts on the internet which allowed him to open the
25 account without providing identification or a signature sample. The defendant did provide a
signature sample on June 27, 2006, when he added his wife, Martha Fuller, onto both the
26 checking and money market account. The defendant transferred the remaining monies in these
accounts (\$100,000) to a company called Yuma Funding on November 29, 2006.

27 ^{5/} The United States has confirmed that the defendant's father is not deceased. The
28 defendant's mother passed away on August 28, 2008.

The defendant's structured cash deposits are listed below:

Date	Bank	Account No.	Amount of Deposit in \$100 Bills	Time of Deposit
10/21/05	Navy Federal Credit Union	#2700	\$3,000.00	
10/22/05	Navy Federal Credit Union	#2700	\$8,000.00	
11/2/05	Navy Federal Credit Union	#2700	\$8,500.00	
11/4/05	Navy Federal Credit Union	#2700	\$6,600.00	
11/14/05	Navy Federal Credit Union	#2700	\$7,400.00	
11/18/05	Navy Federal Credit Union	#2700	\$4,800.00	11:58 a.m.
11/18/05	Navy Federal Credit Union	#2700	\$3,200.00	12:30 a.m.
12/5/05	Bank of America	#6785	\$7,500.00	
12/6/05	Navy Federal Credit Union	#2700	\$2,000.00	9:05 a.m.
12/6/05	Bank of America	#6868	\$7,000.00	9:40 a.m.
12/8/05	Bank of America	#6868	\$7,000.00	9:32 a.m.
12/8/05	Navy Federal Credit Union	#2700	\$2,000.00	9:44 a.m.
12/9/05	Chase Bank	#6520	\$5,000.00	

1					
2	12/12/05	Bank of America	#6868	\$9,000.00	11:05 a.m.
3		Navy Federal Credit Union	#2809	\$2,000.00	11:31 a.m.
4					
5	12/13/05	Bank of America	#6785	\$9,000.00	10:00 a.m.
6		Navy Federal Credit Union	#2809	\$5,000.00	10:37 a.m.
7					
8	12/15/05	Bank of America	#6868	\$8,000.00	9:49 a.m.
9		Navy Federal Credit Union	#2809	\$3,000.00	10:15 a.m.
10					
11					
12	12/27/05	Navy Federal Credit Union	#2809	\$2,000.00	12:42 p.m.
13		Bank of America	#6785	\$9,000.00	4:21 p.m.
14					
15	12/28/05	Bank of America	#6785	\$9,500.00	4:32 p.m.
16		Navy Federal Credit Union	#2809	\$3,000.00	4:44 p.m.
17					
18	1/3/06	Bank of America	#6785	\$8,500.00	4:19 p.m.
19		Navy Federal Credit Union	#2809	\$2,000.00	4:53 p.m.
20		Chase Bank	#6520	\$6,000.00	Unknown
21					
22					
23	1/4/06	Chase Bank	#6520	\$8,000.00	9:01 a.m.
24		Bank of America	#6785	\$8,000.00	9:26 a.m.
25					
26	1/6/06	Chase Bank	#6520	\$8,000.00	9:07 a.m.
27		Bank of America	#6785	\$8,000.00	9:18 a.m.
28					

1/9/06	Bank of America	#6868	\$9,000.00	10:07 a.m.
	Navy Federal Credit Union	#2809	\$4,700.00	10:23 a.m.
1/10/06	Chase Bank	#6520	\$6,600.00	9:58 a.m.
	Bank of America	#6785	\$8,800.00	10:10 a.m.
1/31/06	Navy Federal Credit Union	#2700	\$2,000.00	10:21 a.m.
	Chase Bank	#6520	\$6,000.00	10:48 a.m.
	Bank of America	#6868	\$6,000.00	11:01 a.m.
2/2/06	Bank of America	#6868	\$6,000.00	3:06 p.m.
	Chase Bank	#6520	\$6,000.00	3:57 p.m.
2/7/06	Chase Bank	#6520	\$6,000.00	10:25 a.m.
	Bank of America	#6868	\$6,000.00	10:49 a.m.
2/13/06	Chase Bank	#6520	\$6,000.00	3:01 p.m.
	Navy Federal Credit Union	#2700	\$2,000.00	3:28 p.m.
	Bank of America	#6868	\$6,000.00	Unknown
2/16/06	Chase Bank	#6520	\$5,000.00	1:16 p.m.
	Bank of America	#6868	\$5,000.00	1:27 p.m.
	Navy Federal Credit Union	#2700	\$2,000.00	2:23 p.m.

2/21/06	Chase Bank	#6520	\$6,000.00	9:06 a.m.
	Bank of America	#6868	\$6,000.00	9:32 a.m.
	Navy Federal Credit Union	#2700	\$1,000.00	10:52 a.m.
	Bank of America	#6868	\$6,000.00	11:06 a.m.
2/23/06	Chase Bank	#6520	\$4,000.00	10:25 a.m.
	Bank of America	#6868	\$6,000.00	10:49 a.m.

The defendant pled guilty to two counts of structuring of financial transactions on August 4, 2010.

C. The Government Submits That A Twelve-Month Term of Imprisonment Satisfies The Factors Under 18 U.S.C. § 3553 And Is A Reasonable Sentence

The Supreme Court has explained that the Sentencing Guidelines should be utilized as the “starting point and initial benchmark” for sentencing decisions by the court. *Gall v. United States*, 128 S. Ct. 586, 597 (2007). The Guidelines are not the only consideration as the Court should consider the parties sentencing recommendations, and all of the factors set forth under Section 3553(a). *Id.* Ultimately, this Court is only required to impose a reasonable sentence. As the Ninth Circuit set forth in *United States v. Zolp*, “the scheme of downward and upward ‘departures’ [is treated] as essentially replaced by the requirement that judges impose a ‘reasonable’ sentence ... any post-*Booker* decision to sentence outside of the applicable guideline range is subject to a unitary review of reasonableness.” *United States v. Zolp*, 479 F.3d 715, 722 (9th Cir. 2007).

a. Sentencing Factors.

1. Nature and Circumstances of the Offense.

The defendant’s offenses were repetitive, deceptive, and very serious. The structuring crime stems from Congress’s 1970 enactment of the Currency and Foreign Transactions

1 Reporting, otherwise known as the “Bank Secrecy Act.” Pub.L. No. 91-508, Title II, 84
2 Stat.1118. The Bank Secrecy Act legally required domestic financial institutions to report any
3 cash transactions exceeding \$10,000 to the Internal Revenue Service. 31 U.S.C. 5313(a) and 31
4 C.F.R. 103.22(b). Congress enacted this reporting requirement because it recognized “the
5 importance of reports of large and unusual currency transactions in ferreting out criminal
6 activity.” *California Bankers Ass’n v. Shultz*, 416 U.S. 21, 38 (1974).

7 As explained herein, the defendant did not simply make cash deposits under \$10,000; he
8 instead engaged in a pattern of deception to conceal his \$100 bill deposits from the United States
9 government.

10 When questioned about the source of his money by a bank teller in November 2005, the
11 defendant immediately opened other bank accounts to deposit his \$100 bills. The defendant
12 clearly knew that his conduct was unlawful as evidenced by his intentional use of different bank
13 accounts, deposit of sums under \$10,000, and by his reaction to questions from bank tellers.

14 The nature and circumstances of the defendant’s offenses are very serious and require a
15 term of imprisonment.

16 **2. History and Characteristics of the Defendant.**

17 The defendant does not have any criminal history, and this fact may support some
18 leniency in this case. At the same time, however, the defendant is a Marine Major in the Marine
19 Corps. He is held to a higher standard of conduct in the military because of his rank which
20 allows him to lead other military personnel. Therefore, a lengthy term of imprisonment may be
21 appropriate here because the defendant intentionally engaged in deceptive actions against the
22 United States while holding a leadership position in the Marine Corps.

23 **3. Adequate Deterrence/Protection to the Public.**

24 The United States does not expect the defendant to commit this type of offense.
25 However, a term of imprisonment is required here to address the defendant’s criminal conduct,
26 and to deter others from engaging in similar criminal activity. A sentence below the advisory
27 range, such as twelve months of imprisonment, will accomplish the dual goal of protecting the

1 public from any further harm from the defendant, as well as send a message of deterrence to
2 those who would emulate them.

3 **4. Promote Respect for the Law and Provide Just Punishment.**

4 The United States believes that a twelve month sentence, which is *significantly less* than
5 the advisory guideline range, will promote respect for the law and provide just punishment.

6 **D. Sentencing Recommendation.**

7 The United States agrees with the Probation Officer's justification, analysis, and
8 recommendation. The defendant is a military officer who is held to a higher standard because
9 of the ideals and standards he has sworn to uphold. The defendant's flagrant violation of law
10 should not be tolerated and he should be punished accordingly. However, the United States
11 believes that a low-end guideline sentence of 18 months is needlessly lengthy for a structuring
12 crime, and therefore recommends that the Court impose a sentence of **twelve months** of
13 incarceration. The United States believes that a twelve month term of imprisonment is a
14 reasonable sentence that fully addresses the scope of the defendant's criminal conduct in this
15 case, and is a fair and just result in light of all of the sentencing factors.

16 Respectfully submitted this 4th day of January, 2011.

17 DENNIS K. BURKE
18 United States Attorney
19 District of Arizona

20 /S/ Raymond K. Woo

21 RAYMOND K. WOO
22 Assistant U.S. Attorney

23 I hereby certify that on this date,
24 I electronically transmitted the attached
25 document to the Clerk's Office using the
26 CM/ECF system for filing and
27 transmittal of a Notice of Electronic Filing
28 to the following CM/ECF registrants:

Eric Chase