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CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. MICHAEL HUMPHRESS, Defendant.	Case No. CR-97-40111-DLJ **UNITED STATES' SENTENCING MEMORANDUM AND MOTION FOR DOWNWARD DEPARTURE** **Date:** **April 11, 2003** **Time:** **10:00 a.m.** **Court:** **Hon. D. Lowell Jensen** **Courtroom 1**

OVERVIEW AND RECOMMENDED SENTENCE

After participating in a scheme with other top executives at Media Vision to falsely inflate the company's publicly-reported sales and profits, the defendant, Michael Humphress, promptly accepted responsibility for his wrongdoing and pleaded guilty to an information charging him with one count of wire fraud, in violation of 18 U.S.C. § 1343. The Probation Office has properly calculated his adjusted offense level (without any departure) as 26, and his criminal history category as I. This yields a sentencing range of 63 to 78 months, which exceeds the applicable statutory maximum sentence of 5 years.

Because Humphress provided early, truthful, and extensive cooperation in the government's investigation and prosecution of others involved in the revenue recognition

fraud at Media Vision, the United States has concluded that he provided "substantial assistance," as that term is used in USSG §5K1.1. As a result, the United States moves the Court for a downward departure from offense level 26 to offense level 8, and requests that the Court sentence Humphress to 2 years of probation, no restitution, and (consistent with the terms of the plea agreement) no criminal fine.

SENTENCING GUIDELINES CALCULATION

The Probation Office properly calculated the applicable Sentencing Guideline range as follows:

Base Offense Level, §2F1.1(a)	6
Loss in Excess of $80 million, §2F1.1(b)(1)(S)	+18
More than minimal planning, §2F1.1(b)(2)(A)	+2
Role in the Offense Adjustment Manager/Supervisor, §3B1.1(b)	+3
Acceptance of Responsibility, §3E1.1	-3
Adjusted Offense Level (without departure)	26
Sentencing Range without §5K1.1 departure	63 to 78 months
Statutory Maximum Sentence	5 years

JUSTIFICATION FOR DOWNWARD DEPARTURE

Michael Humphress was the first person at Media Vision to accept responsibility for his criminal conduct and plead guilty. He began cooperating in this investigation more than six years ago, long before any charges were filed and well before any other defendant acknowledged guilt. Over the course of those six years, Humphress went to extraordinary lengths to assist the government, not only in understanding the scope of what had occurred at Media Vision, but in developing the evidence necessary to prove it in court. Due in large measure to his forthright cooperation and credible trial testimony, the government has now been able to convict all of the top executives at Media Vision who were responsible for perpetrating this massive and devastating fraud on the company's shareholders.

Humphress exhibited genuine remorse from the outset of this investigation. He accepted without contest an SEC ruling permanently barring him from serving as a director or officer in a public company and he paid a $200,000 civil penalty. After committing himself to assisting in the government's criminal investigation, Humphress showed dedication and patience in seeing the lengthy process through to the end. Year after year, Humphress spent countless hours in debriefings with FBI agents and Assistant U.S. Attorneys, reviewing documents and giving detailed accounts of meetings, telephone calls, and conversations he had with other members of the Media Vision management team. He was painstakingly precise in the information he provided over the course of more than 35 separate sessions. And in each instance, his answers to the government's questions were credible, corroborated, and reliable.

As an example, using his contemporaneous notes to refresh his recollection, Humphress was able to reconstruct for the government what he did, what he saw, what he said, and what he heard on a virtually day-to-day basis – sometimes even hour-to-hour. This detailed time-line was invaluable to the government and it generated a wealth of investigative leads.

Moreover, Humphress' willingness early on to testify against his former colleagues dramatically strengthened the government's hand against Faust and Jain and contributed directly to their decisions to plead guilty themselves. In addition, Humphress provided lengthy and compelling testimony at both trials of Steve Allan. In fact, the jurors in both trials later told the government that they found him to be an exceedingly credible witness. Anticipating this reaction, the United States called Humphress as its first witness in the Allan retrial. There is little question that Humphress' testimony helped the government secure the convictions against Steve Allan.

Given the complexity and difficulty of accounting fraud investigations, it is difficult to overstate the value of Humphress' timely and sustained cooperation. Without it, the government would have had a far more difficult time, and would likely have

expended far greater resources, holding Jain, Allan, and Faust – the three more culpable executives -- accountable for their crimes. While Humphress' extensive cooperation does not minimize the seriousness of his criminal behavior, under §5K1.1 it does provide an appropriate basis for the Court to mitigate his punishment.

As the first top executive at Media Vision to cooperate, and in view of the extraordinary assistance he provided over the course of six years, the United States believes that Humphress has more than earned a downward departure to a sentence of two years probation.[1]

Finally, because Humphress has already paid a $200,000 civil penalty and is unable to pay a restitution award, the Court should decline to impose any restitution obligation upon him.

CONCLUSION

The Court should adopt the Probation Officer's offense level calculation of 26. The United States requests that the Court depart downward under USSG §5K1.1 to offense level 8 and impose a sentence of 2 years probation, no restitution, and no fine.

Respectfully submitted,

KEVIN V. RYAN
United States Attorney

Dated: 4/8/03

MILES F. EHRLICH
JOHN H. HEMANN
Assistant United States Attorneys

[1] The United States opposes all other grounds proffered by the defense for downward departures in this case.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an employee of the Office of the United States Attorney, Northern District of California and is a person of such age and discretion to be competent to serve papers. The undersigned further certifies that she caused a copy of the UNITED STATES' SENTENCING MEMORANDUM AND MOTION FOR DOWNWARD DEPARTURE; in the case UNITED STATES v. MICHAEL HUMPHRESS, NO. CR-97-40111-DLJ to be served this date upon the person(s) below:

By United States Mail

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I certify under penalty of perjury that the foregoing is true and correct.

Executed on April 8, 2003, at San Francisco, California.

Lori Lucchetti
LORI A. LUCCHETTI
Legal Assistant