

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

**FILED**  
**NOV 24 2008**  
**CLERK'S OFFICE**  
**U.S. DISTRICT COURT**  
**EASTERN MICHIGAN**

UNITED STATES OF AMERICA,

Plaintiff,

No. 2:06-cr-20285

-VS-

HON. Battani

Douglas A. Benit,

Defendant.

OFFENSE: MAIL FRAUD 18 U.S.C. §§ 1341,  
1346

STATUTORY MAXIMUM PENALTY: 20 Years

OFFENSE: BANK FRAUD 18 U.S.C. § 1344

STATUTORY MAXIMUM PENALTY: 30 Years

**RULE 11 PLEA AGREEMENT**

Pursuant to Rule 11 of the Federal Rules of Criminal Procedure, Defendant Douglas

A. Benit and the Government agree as follows:

**1. GUILTY PLEA**

**A. Count of Conviction**

Defendant will enter pleas of guilty to Counts Four and Seven of the Indictment, which charges, respectively, Mail Fraud for which the penalty is a fine or imprisonment of not more than 20 years, or both, and Bank Fraud for which the penalty is a fine of not more than \$1,000,000 or imprisonment of not more than 30 years, or both.

**B. Elements of Offense**

The elements of Count Four are the Defendant knowingly devised or intended to devise a scheme to defraud or to obtain money or property by false or fraudulent pretenses, representations or promises; the scheme included a material misrepresentation

or concealment of a material fact; the Defendant had the intent to defraud; and, the Defendant used the mail or caused another to use the mail in furtherance of the scheme.

The elements of Count Seven are the Defendant knowingly executed or attempted to execute a scheme to defraud a financial institution or to obtain money or other property owned by or in the control of a financial institution by means of false or fraudulent pretenses, representations or promises; the scheme related to a material fact or included a material misrepresentation; the Defendant had the intent to defraud; and, the financial institution was federally insured.

**C. Factual Basis for Guilty Plea**

The parties stipulate to the following, which the Government is prepared to prove, as an accurate factual basis for Defendant's guilty plea:

As to Count Four: Beginning on or about March 1, 1999, up to and including July 29, 2003, in the Eastern District of Michigan and elsewhere, the Defendant Douglas A. Benit and others devised and intended to devise a scheme and artifice to defraud Ecorse Public Schools ("EPS") and USAC as to a material matter and to obtain money and property, by means of materially false and fraudulent pretenses, representations, and promises, and, to deprive EPS and USAC of the right to Douglas A. Benit's honest services in the affairs of EPS and USAC.

Specifically, from 1997 until 2003, Douglas A. Benit was a school official at EPS responsible for the construction of new facilities with funds from several sources, including EPS's general funds, a \$45 million bond issuance and a federal program called E-Rate.

Douglas A. Benit used his position at EPS as Facilities Manager and Assistant Superintendent to steer contracts from EPS to companies that directly or subsequently benefitted him and his company, Coral Technology, Inc. ("Coral"). These contracts were paid from EPS's general funds, the bond funds and the E-Rate funding. He and Coral benefitted from this scheme by at least \$2.276 million. Further, Douglas A. Benit took actions to hide his association with Coral from others at EPS. On or about January 17, 2002, in the Eastern District of Michigan, the Defendants, for the purpose of executing the scheme, knowingly caused to be sent through the United States Postal Service or by a commercial interstate carrier, according to the directions thereon, documents relating to Coral's application for federal E-Rate funding, sent via U.S. Postal Express Mail from Douglas A. Benit, EPS, 27385 W. Outer Drive, Ecorse, Michigan 48229 to the E-Rate administration, Form 471, c/o Ms. Smith, 3822 Greenway Drive, Lawrence, Kansas 66046.

As to Count Seven: On or about December 10, 2002 up to and including April 16, 2003, in the Eastern District of Michigan and elsewhere, Douglas A. Benit and others devised and intended to devise a scheme and artifice to defraud TCF National Bank, an insured depository institution, as to a material matter, and to obtain money, funds, credits, assets, securities, or other property owned by or under the custody or control of TCF National Bank, namely, a loan, by means of materially false or fraudulent pretenses, representations, or promises.

Specifically, in December 2002, Douglas A. Benit applied for and received a mortgage to refinance the debt for 3140 Andora Drive, Ann Arbor, Michigan, in the amount

of \$575,000.00, and an equity credit line for \$100,000.00, both from TCF National Bank. TCF National Bank is a federally insured depository institution. In March 2003, Douglas A. Benit applied for another equity credit line for \$200,000.00, from TCF National Bank. During the course of the application for this loan, Douglas A. Benit misrepresented and inflated his stated income and assets on the application and supporting documents in order to obtain this loan.

The income and assets of Douglas Benit were material to TCF National Bank's approval of the credit equity line, and TCF National Bank relied upon these materially false or fraudulent pretenses and representations in approving the loan and providing the Defendants with these funds.

## **2. SENTENCING GUIDELINES**

### **A. Standard of Proof**

The Court will find sentencing factors by a preponderance of the evidence.

### **B. Agreed Guideline Range**

There are no sentencing guideline disputes. Except as provided below, Defendant's guideline range is 51-63 months, as set forth on the attached worksheets. If the Court finds:

- a) that Defendant's criminal history category is higher than reflected on the attached worksheets, or
- b) that the offense level should be higher because, after pleading guilty, Defendant made any false statement to or withheld information from his

probation officer; otherwise demonstrated a lack of acceptance of responsibility for his offense; or obstructed justice or committed any crime, and if any such finding results in a guideline range higher than 51-63 months, the higher guideline range becomes the agreed range. However, if the Court finds that Defendant is a career offender, an armed career criminal, or a repeat and dangerous sex offender as defined under the sentencing guidelines or other federal law, and that finding is not already reflected in the attached worksheets, this paragraph does *not* authorize a corresponding increase in the agreed range.

Neither party may take a position concerning the applicable guidelines that is different than any position of that party as reflected in the attached worksheets, except as necessary to the Court's determination regarding subsections a) and b), above.

### **3. SENTENCE**

The Court will impose a reasonable sentence after considering the sentencing guidelines range and the factors set forth in 18 U.S.C. §3553.

#### **A. Imprisonment**

Pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C) the sentence of imprisonment in this case may not exceed the top of the sentencing guideline range as determined by Paragraph 2B.

#### **B. Supervised Release**

A term of supervised release follows the term of imprisonment. The Court **must** impose a term of supervised release on Count Four of no less than 3 years but not more

than five years, and on Count 7 of no less than 3 years but no more than 5 years. The agreement concerning imprisonment described above in Paragraph 3A does not apply to any term of imprisonment that results from any later revocation of supervised release.

**C. Special Assessment(s)**

Defendant will pay a special assessment of \$200.00 and must provide the government with a receipt for the payment before sentence is imposed.

**D. Fine**

The Court may impose a fine on each count of conviction in any amount up to \$100,000.00.

**E. Restitution**

The Court may order restitution to every identifiable victim of Defendant's offense. There is no agreement on restitution. The Court will determine who the victims are and the amounts of restitution they are owed.

**4.**

**4.A. COOPERATION AGREEMENT**

The written cooperation agreement between Defendant and the government, which is dated November 24, 2008, is part of this plea agreement.

**4.B. WAIVER OF RIGHTS UNDER HYDE AMENDMENT**

Defendant is not a "prevailing party" within the meaning of the Hyde Amendment, and waives any right he has to file a claim under that Act.

#### **4.C. Use of Withdrawn Guilty Plea**

If the Court allows Defendant to withdraw his guilty plea for a “fair and just reason” pursuant to Fed. R. Crim. P. 11(d)(2)(B) , Defendant waives his rights under Fed. R. Evid. 410, and the government may use his guilty plea, any statement made under oath at the change-of-plea hearing, and the factual basis statement in this plea agreement, against him in any proceeding.

#### **5. OTHER CHARGES**

If the Court accepts this agreement, the government will dismiss counts One, Two, Three, Five, Six, Eight, and Nine in the Indictment, and the sole count in the second indictment (2:06-cr-20403). In addition, the government will not bring additional charges against Defendant based on any of the conduct reflected in the attached worksheets.

#### **6. Each Party’s Right To Withdraw From This Agreement**

The government may withdraw from this agreement if the Court finds the correct guideline range to be different than is determined by Paragraph 2B.

Defendant may withdraw from this agreement, and may withdraw his guilty plea, if the Court decides to impose a sentence higher than the maximum allowed by Part 3. This is the only reason for which Defendant may withdraw from this agreement. The Court shall advise Defendant that if he does not withdraw his guilty plea under this circumstance, the Court may impose a sentence greater than the maximum allowed by Part 3.

**7. RIGHT TO APPEAL**

If the sentence imposed does not exceed the maximum allowed by Part 3 of this agreement, Defendant waives any right he has to appeal his conviction or sentence. The government agrees not to appeal any sentence within the guideline range specified in Paragraph 2B, but retains the right to appeal any sentence below that range. Each party retains its right to directly appeal this Court's Order of Restitution.

**8. CONSEQUENCES OF WITHDRAWAL OF GUILTY PLEA OR VACATION OF CONVICTION**

If Defendant is allowed to withdraw his guilty plea or if any conviction entered pursuant to this agreement is vacated, the Court shall, on the government's request, reinstate any charges that were dismissed as part of this agreement. If additional charges are filed against Defendant within six months after the date the order vacating Defendant's conviction or allowing him to withdraw his guilty plea becomes final, which charges relate directly or indirectly to the conduct underlying the guilty plea or to any conduct reflected in the attached worksheets, Defendant waives his right to challenge the additional charges on the ground that they were not filed in a timely manner, including any claim that they were filed after the limitations period expired.

**9. PARTIES TO PLEA AGREEMENT**

Unless otherwise indicated, this agreement does not bind any government agency except the United States Attorney's Office for the Eastern District of Michigan and the United States Department of Justice, Antitrust Division.



**10. SCOPE OF PLEA AGREEMENT**

This agreement, which includes all documents that it explicitly incorporates, is the complete agreement between the parties. It supersedes all other promises, representations, understandings, and agreements between the parties concerning the subject matter of this plea agreement that are made at any time before the guilty plea is entered in court. Thus, no oral or written promises made by the government to Defendant or to the attorney for Defendant at any time before Defendant pleads guilty are binding except to the extent they have been explicitly incorporated into this agreement.

This agreement does not prevent any civil or administrative actions against Defendant, or any forfeiture claim against any property, by the United States or any other party.

**11. ACCEPTANCE OF AGREEMENT BY DEFENDANT**


This plea offer expires unless it has been received, fully signed, by the undersigned U.S. Department of Justice, Antitrust Division attorneys on November 24,

2008. The government reserves the right to modify or revoke this offer at any time before Defendant pleads guilty.

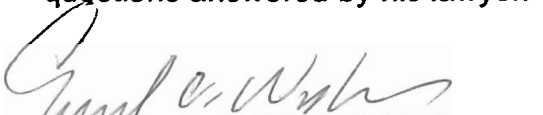
TERRENCE BERG  
*Acting United States Attorney*

Date: 11/24/08

  
TIMOTHY A. WESTRICK

  
JON R. SMIBERT  
ATTORNEYS  
U.S. Department of Justice  
Antitrust Division

By signing below, Defendant acknowledges that he has read (or been read) this entire document, understands it, and agrees to its terms. He also acknowledges that he is satisfied with his attorney's advice and representation. Defendant agrees that he has had a full and complete opportunity to confer with his lawyer, and has had all of his questions answered by his lawyer.

  
EDWARD C. WISHNOW  
Attorney for Defendant

  
DOUGLAS A. BENIT  
Defendant

Date: 11-24-08

## WORKSHEET A (Offense Levels)

Defendant: Douglas A. Benit

Counts: 4 and 7

Docket No.: 2:06-cr-20285; 2:06-cr-20403

Statutes: 18 U.S.C. §§ 1341, 1344, 1346

Complete one Worksheet A for each count of conviction (taking into account relevant conduct and treating each stipulated offense as a separate count of conviction) before applying the multiple-count rules in U.S.S.G. ch. 3, pt. D. However, in any case involving multiple counts of conviction, if the counts of conviction are all “closely related” to each other within the meaning of U.S.S.G. § 3D1.2(d), complete only a single Worksheet A.

## 1. BASE OFFENSE LEVEL AND SPECIFIC OFFENSE CHARACTERISTICS (U.S.S.G. ch. 2)

<u>Guideline Section</u>	<u>Description</u>	<u>Levels</u>
<u>§2B1.1(a)(1)</u>	<u>MAIL FRAUD (Closely related with Ct. 7 Bank Fraud)</u>	<u>7</u>
<u>§2B1.1(b)(1)(F)</u>	<u>More than \$1,000,000</u>	<u>16</u>
<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>

## 2. ADJUSTMENTS (U.S.S.G. ch. 3, pts. A, B, C)

<u>Guideline Section</u>	<u>Description</u>	<u>Levels</u>
<u>§3B1.1(c)</u>	<u>Defendant was organizer, leader, manager or supervisor</u>	2
<u>§3B1.3(c)</u>	<u>Abuse of position of trust</u>	2

### 3. ADJUSTED OFFENSE LEVEL

Enter the sum of the offense levels entered in Items 1 and 2. If this Worksheet A does not cover every count of conviction (taking into account relevant conduct and treating each stipulated offense as a separate count of conviction), complete one or more additional Worksheets A and a single Worksheet B.

\*\*\*\*\*

*If this is the only Worksheet A, check this box and skip Worksheet B.*

*If the defendant has no criminal history, check this box and skip Worksheet C.*

## WORKSHEET B (Multiple Counts)

### Instructions (U.S.S.G. ch. 3, pt. D):

- Group the counts of conviction into distinct Groups of Closely Related Counts. “All counts involving substantially the same harm shall be grouped together into a single Group.” (See U.S.S.G. § 3D1.2.)
- Determine the offense level applicable to each Group. (See U.S.S.G. § 3D1.3.)
- Determine the combined offense level by assigning “units” to each Group as follows (see U.S.S.G. § 3D1.4):
  - assign 1 unit to the Group with the highest offense level,
  - assign 1 unit to each additional Group that is equally serious as, or 1 to 4 levels less serious than, the Group with the highest offense level,
  - assign ½ unit to each Group that is 5 to 8 levels less serious than the Group with the highest offense level,
  - assign no units to each Group that is 9 or more levels less serious than the Group with the highest offense level.

1. **GROUP ONE:** COUNTS \_\_\_\_\_  
ADJUSTED OFFENSE LEVEL

2. **GROUP TWO:** COUNTS \_\_\_\_\_  
ADJUSTED OFFENSE LEVEL

3. **GROUP THREE:** COUNTS \_\_\_\_\_  
ADJUSTED OFFENSE LEVEL

4. **GROUP FOUR:** COUNTS \_\_\_\_\_  
ADJUSTED OFFENSE LEVEL

5. **TOTAL UNITS**

6. **INCREASE IN OFFENSE LEVEL**

1 unit → no increase      2½-3 units → add 3 levels  
1½ units → add 1 level    3½-5 units → add 4 levels  
2 units → add 2 levels     >5 levels → add 5 levels

7. **ADJUSTED OFFENSE LEVEL OF GROUP  
WITH THE HIGHEST OFFENSE LEVEL**

8. **COMBINED ADJUSTED OFFENSE LEVEL**

Enter the sum of the offense levels entered in Items 6 and 7.

## WORKSHEET C (Criminal History)

Date of defendant's commencement of the instant offense (taking into account relevant conduct and stipulated offenses): \_\_\_\_\_

### 1. PRIOR SENTENCES

#### **Prior Sentence of Imprisonment Exceeding 13 Months (U.S.S.G. §§ 4A1.1(a)):      3 POINTS**

Enter 3 points for each prior adult sentence of imprisonment exceeding one year and one month that either (1) was imposed within 15 years of the defendant's commencement of the instant offenses (taking into account relevant conduct and stipulated offenses) or (2) resulted in the defendant's confinement during any part of that 15-year period. (See U.S.S.G. §§ 4A1.1(a), 4A1.2(d)(1), (e)(1).)

#### **Prior Sentence of Imprisonment of at Least 60 Days (U.S.S.G. §§ 4A1.1(b)):      2 POINTS**

Enter 2 points for each prior sentence of imprisonment of at least 60 days not counted under U.S.S.G. § 4A1.1(a) that either (1) resulted from an offense committed after the defendant turned 18 and was imposed within 10 years of the defendant's commencement of the instant offense (taking into account relevant conduct and stipulated offenses) (see U.S.S.G. §§ 4A1.1(b), 4A1.2(e)(2)) or (2) resulted from an offense committed before the defendant turned 18 and resulted in the defendant's confinement during any part of the 5-year period preceding the defendant's commencement of the instant offense (see U.S.S.G. §§ 4A1.1(b), 4A1.2(d)(2)(A)).

#### **Other Prior Sentences (U.S.S.G. §§ 4A1.1(c)):      1 POINT**

Enter 1 point for each prior sentence not counted under U.S.S.G. § 4A1.1(a) or (b) that either (1) resulted from an offense committed after the defendant turned 18 and was imposed within 10 years of the defendant's commencement of the instant offense (taking into account relevant conduct and stipulated offenses) (see U.S.S.G. §§ 4A1.1(c), 4A1.2(e)(2)) or (2) resulted from an offense committed before the defendant turned 18 and was imposed within 5 years of the defendant's commencement of the instant offense (taking into account relevant conduct and stipulated offenses) (see U.S.S.G. §§ 4A1.1(c), 4A1.2(d)(2)(B)). NOTE: No more than 4 points may be added under this item.

<u>Date of Imposition</u>	<u>Status*</u>	<u>Offense</u>	<u>Sentence</u>	<u>Release Date**</u>	<u>Points</u>
_____	_____	_____	_____	_____	<div></div>
_____	_____	_____	_____	_____	<div></div>
_____	_____	_____	_____	_____	<div></div>

\* If the defendant committed the offense before turning 18, indicate whether he or she was sentenced as a juvenile (J) or as an adult (A).

\*\* A release date is required in only three situations: (1) when a sentence covered under U.S.S.G. § 4A1.1(a) was imposed more than 15 years before the defendant's commencement of the instant offense (taking into account relevant conduct and stipulated offenses) but resulted in his or her confinement during any part of that 15-year period; (2) when a sentence counted under U.S.S.G. § 4A1.1(b) was imposed for an offense committed before the defendant turned 18 but resulted in his or her confinement during any part of the 5-year period preceding his or her commencement of the instant offense (taking into account relevant conduct and stipulated offenses); and (3) when 2 criminal history points are added pursuant to U.S.S.G. § 4A1.1(e) because the defendant committed the instant offense (taking into account relevant conduct and stipulated offenses) shortly after or during imprisonment resulting from a sentence counted under U.S.S.G. § 4A1.1(a) or (b) or while he or she was on escape status for such a sentence.

(rev. 06/99)

## 2. COMMISSION OF INSTANT OFFENSE WHILE UNDER PRIOR SENTENCE (U.S.S.G. § 4A1.1(d))

Enter 2 points if the defendant committed any part of the instant offense (taking into account relevant conduct and stipulated offenses) while under any criminal justice sentence having a custodial or supervisory component, including probation, parole, supervised release, imprisonment, work release, and escape status. (See U.S.S.G. §§ 4A1.1(d), 4A1.2(m), (n).) List the type of control and identify the sentence from which it resulted.

## 3. COMMISSION OF INSTANT OFFENSE SHORTLY AFTER OR DURING IMPRISONMENT (U.S.S.G. § 4A1.1(e))

Enter 2 points if the defendant committed any part of the instant offense (taking into account relevant conduct and stipulated offenses) either less than 2 years after release from imprisonment on a sentence counted under U.S.S.G. §§ 4A1.1(a) or 4A1.1(b) or while in imprisonment or escape status on such a sentence. However enter, only 1 point for this item if 2 points were added under Item 2. (See U.S.S.G. §§ 4A1.1(e), 4A1.2(n).) List the date of release and identify the sentence from which it resulted.

## 4. PRIOR SENTENCE RESULTING FROM CRIME OF VIOLENCE (U.S.S.G. § 4A1.1(f))

Enter 1 point for each prior sentence resulting from a conviction for a crime of violence that did not receive any points under U.S.S.G. § 4A1.1(a), (b), or (c) because such sentence was considered related to another sentence resulting from a conviction for a crime of violence. But enter no points where the sentences are considered related because the offenses occurred on the same occasion. (See U.S.S.G. §§ 4A1.1(f), 4A1.2(p).) Identify the crimes of violence and briefly explain why the cases are considered related. NOTE: No more than 3 points may be added under this item.

## 5. TOTAL CRIMINAL HISTORY POINTS

Enter the sum of the criminal history points entered in Items 1-4.

## 6. CRIMINAL HISTORY CATEGORY

Total Criminal History Points

Criminal History Category

0 – 1  
2 – 3  
4 – 6  
7 – 9  
10 – 12  
≥ 13

I  
II  
III  
IV  
V  
VI

## WORKSHEET D (Guideline Range)

### 1. (COMBINED) ADJUSTED OFFENSE LEVEL

Enter the adjusted offense level entered in Item 3 of Worksheet A or the combined adjusted offense level entered in Item 8 of Worksheet B.

27

### 2. ADJUSTMENT FOR ACCEPTANCE OF RESPONSIBILITY (U.S.S.G. § 3E1.1)

3

### 3. TOTAL OFFENSE LEVEL

Enter the difference between Items 1 and 2.

24

### 4. CRIMINAL HISTORY CATEGORY

Enter "I" if the defendant has no criminal history. Otherwise, enter the criminal history category entered in Item 6 of Worksheet C.

I

### 5. CAREER OFFENDER / CRIMINAL LIVELIHOOD / ARMED CAREER CRIMINAL (U.S.S.G. ch. 4, pt. B)

a. Total Offense Level: If the career offender provision (U.S.S.G. § 4B1.1), the criminal livelihood provision (U.S.S.G. § 4B1.3), or the armed career criminal provision (U.S.S.G. § 4B1.4) results in a total offense level higher than the total offense level entered in Item 3, enter the higher offense level total.

b. Criminal History Category: If the career offender provision (U.S.S.G. § 4B1.1) or the armed career criminal provision (U.S.S.G. § 4B1.4) results in a criminal history category higher than the criminal history category entered in Item 4, enter the higher criminal history category.

### 6. GUIDELINE RANGE FROM SENTENCING TABLE (U.S.S.G. ch. 5, pt. A)

Enter the guideline range in the Sentencing Table (*see* U.S.S.G. ch. 5, pt. A) produced by the total offense level entered in Item 3 or 5.a and the criminal history category entered in Item 4 or 5.b.

51-63 months

### 7. STATUTORY RESTRICTIONS ON OR SUPERSESION OF GUIDELINE RANGE

If the maximum sentence authorized by statute is below, or a minimum sentence required by statute is above, the guideline range entered in Item 6, enter either the guideline range as restricted by statute or the sentence required by statute. (*See* U.S.S.G. § 5G1.1.) If the sentence on any count of conviction is required by statute to be consecutive to the sentence on any other count of conviction, explain why.

months

## **WORKSHEET E (Authorized Guideline Sentences)**

### **1. PROBATION (U.S.S.G. ch. 5, pt. B)**

#### **a. Imposition of a Term of Probation (U.S.S.G. § 5B1.1)**

☒

1. Probation is not authorized by the guidelines (minimum of guideline range > 6 months or statute of conviction is a Class A or a Class B felony). If this box is checked, go to Item 2 (Split Sentence).

☐

2. Probation is authorized by the guidelines (minimum of guideline range = zero months).

☐

3. Probation is authorized by the guidelines, provided the court imposes a condition or combination of conditions requiring intermittent confinement, community confinement, or home detention satisfying the minimum of the guideline range (minimum of guideline range > 0 months but ≤ 6 months).

#### **b. Length of Term of Probation (U.S.S.G. § 5B1.2)**

☒

1. At least 1 year but not more than 5 years (total offense level ≥ 6).

☐

2. No more than 3 years (total offense level < 6).

#### **c. Conditions of Probation (U.S.S.G. § 5B1.3)**

The court must impose certain conditions of probation and may impose other conditions of probation.

### **2. SPLIT SENTENCE (U.S.S.G. § 5C1.1(c)(2), (d)(2))**

☒

- a. A split sentence is not authorized (minimum of guideline range = 0 months or > 10 months).

☐

- b. A split sentence is authorized (minimum of guideline range > 0 months but ≤ 10 months). The court may impose a sentence of imprisonment that includes a term of supervised release with a condition that substitutes community confinement or home detention for imprisonment, provided that at least one-half of the minimum of the guideline range is satisfied by imprisonment (if the minimum of the guideline range is 8, 9, or 10 months), or that at least one month is satisfied by imprisonment (if the minimum of the guideline range is 1, 2, 3, 4, or 6 months). The authorized length of the term of supervised release is set forth below in Item 4.b

### **3. IMPRISONMENT (U.S.S.G. ch. 5, pt. C)**

A term of imprisonment is authorized by the guidelines if it is within the applicable guideline range (entered in Item 6 of Worksheet D). (See U.S.S.G. § 5C1.1.)



**4. SUPERVISED RELEASE (U.S.S.G. ch 5., pt. D)****a. Imposition of a Term of Supervised Release (U.S.S.G. § 5D1.1)**

The court must impose a term of supervised release if it imposes a term of imprisonment of more than one year, or if it is required to do so by statute. The court may impose a term of supervised release if it imposes a term of imprisonment of one year or less.

**b. Length of Term of Supervised Release (U.S.S.G. § 5D1.2)**
☒

1. At least 3 years but not more than 5 years, where the count of conviction is a Class A or a Class B felony, i.e., an offense carrying a maximum term of imprisonment  $\geq 25$  years.

☐

2. At least 2 years but not more than 3 years, where the count of conviction is a Class C or a Class D felony, i.e., an offense carrying a maximum term of imprisonment  $\geq 5$  years but  $< 25$  years.

☐

3. 1 year, where the count of conviction is a Class E felony or a Class A misdemeanor, i.e., an offense carrying a maximum term of imprisonment  $> 6$  months but  $< 5$  years.

☐

4. The statute of conviction requires a minimum term of supervised release of \_\_\_\_\_ months.

**c. Conditions of Supervised Release (U.S.S.G. § 5D1.3)**

The court must impose certain conditions of supervised release and may impose other conditions of supervised release.

**5. RESTITUTION (U.S.S.G. § 5E1.1)**
☒

1. The court will determine whether restitution should be ordered and in what amount.

☐

2. Full restitution to the victim(s) of the offense(s) of conviction is *required* by statute. (See, e.g., 18 U.S.C. §§ 3663A, 2327.) The parties agree that full restitution is \$\_\_\_\_\_.

☐

3. The parties agree that the court may order restitution to the victim(s) of the offense(s) of conviction in any amount up to and including \$\_\_\_\_\_. (See 18 U.S.C. §§ 3663(a)(3).)

☐

4. The parties agree that the court may *also* order restitution to persons other than the victim(s) of the offense(s) of conviction. (See 18 U.S.C. §§ 3663(a)(1)(A), 3663A(a)(3).)

☐

5. Restitution is not applicable.

**6. FINE (U.S.S.G. § 5E1.2)**

**a. Fines for Individual Defendants**

The court must impose a fine unless “the defendant establishes that he [or she] is unable to pay and is not likely to become able to pay any fine.” (See U.S.S.G. § 5E1.2(a).) Generally, the fine authorized by the guidelines is limited to the range established in the Fine Table. (See U.S.S.G. § 5E1.2(b).) However, there are exceptions to this general rule. (See U.S.S.G. § 5E1.2(b), (c)(4).)

**b. Fine Range from Fine Table (U.S.S.G. § 5E1.2(c)(3))**

<u>Minimum Fine</u>	<u>Maximum Fine</u>
\$ <u>10,000.00</u>	\$ <u>100,000.00</u>

**7. SPECIAL ASSESSMENT(S) (U.S.S.G. § 5E1.3)**

The court must impose a special assessment on every count of conviction. The special assessments for individual defendants are

- \$100.00 for every count charging a felony (\$50.00 if the offense was completed before April 24, 1996)
- \$ 25.00 for every count charging a Class A misdemeanor,
- \$ 10.00 for every count charging a Class B misdemeanor, and
- \$ 5.00 for every count charging a Class C misdemeanor or an infraction.

The defendant must pay a special assessment or special assessments in the total amount of \$ 200.00.

**8. ADDITIONAL APPLICABLE GUIDELINES, POLICY STATEMENTS, AND STATUTES**

List any additional applicable guideline, policy statement, or statute.

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**9. UPWARD OR DOWNWARD DEPARTURE (U.S.S.G. ch. 5, pts. H & K)**

List any applicable aggravating or mitigating circumstance that might support a term of imprisonment above or below the applicable guideline range. \_\_\_\_\_

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