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7

8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10	UNITED STATES OF AMERICA,)	Criminal Case No. 08CR2386-JM
11)	
12	Plaintiff,)	
13	v.)	GOVERNMENT'S RESPONSE AND
14	RYAN WEDDING,)	OPPOSITION TO DEFENDANT'S
15)	DEPARTURE REQUEST AND
16	Defendant.)	SENTENCING MEMORANDUM

17 COMES NOW the plaintiff, UNITED STATES OF AMERICA, by and through its counsel,
18 Karen P. Hewitt, United States Attorney, and Orlando Gutierrez, Assistant United States Attorney, and
19 files its Response and Opposition to defendant's Departure Request and Sentencing Memorandum in
20 the above-captioned case.

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I

STATEMENT OF THE FACTS

The Federal Bureau of Investigation ("FBI") has been investigating the money laundering and drug distribution activities of Elmar Akhundov ("Akhundov") and Michael Krapchan ("Krapchan"). As described in greater detail below, Hassan Shirani ("Shirani") and Ryan Wedding ("WEDDING") are drug trafficking associates of Akhundov and Krapchan.

A. Investigative Background-Money Laundering

On January 3, 2007, Confidential Source of Information ("CS-1") was contacted by Krapchan. Krapchan stated that he and his associates were looking for someone to launder money for their organization and to possibly traffic in cocaine, ecstasy and ephedrine. Krapchan later introduced CS-1 to Akhundov.

Krapchan proposed that CS-1 initially launder \$100,000.00 to gain their [Akhundov and Krapchan's] trust and eventually CS-1 would be given \$1,000,000.00 per week. During recorded telephone conversations between Krapchan and CS-1, Krapchan explained that the laundered funds resulted from drug trafficking activities.

B. Drug Transaction

During the months prior to June 13, 2008, CS-1 met with Akhundov and Krapchan regarding the purchase of cocaine. These negotiations were recorded and occurred over the telephone and in person, in locations that included, but were not limited to, Seattle, Washington and San Diego, California. Specifically, on May 20, 2008, over a recorded telephone conversation between CS-1 and Krapchan, Krapchan told CS-1 that they [Krapchan and Akhundov] distributed approximately "twenty kilos a week." Krapchan also stated that they [Krapchan and Akhundov] were "looking at 24" [wanting to buy 24 kilograms of cocaine]. CS-1 assured Krapchan that the cocaine was, "100% Columbian." Ultimately Krapchan and Akhundov agreed to travel to San Diego, California on or about June 9, 2008 to purchase 24 kilograms of cocaine from CS-1.

On June 3, 2008, over a recorded conversation between Krapchan and CS-1, Krapchan confirmed that the order was for 24 kilograms and that he [Krapchan] would like the deal to occur two kilograms at a time. Again, on June 5, 2008, Krapchan again confirmed the order was for "24." During

1 this call, Krapchan again articulated his desire to purchase the cocaine in several smaller transfers,
2 suggesting "5,5,5,5,4." On the same day, over two separate recorded conversations, Krapchan
3 confirmed that the final order would be for "24."

4 On June 5, 2008, over a recorded conversation between Krapchan and CS-1, Krapchan told CS-1
5 that he [Krapchan] will be in San Diego with two other individuals; a "Canadian athlete" and an
6 "Iranian." Krapchan explained to CS-1 that the money will be in Los Angeles and that the other two
7 individuals would "stay in a different hotel room." According to Shirani's testimony at trial, the money
8 to purchase 24 kilograms of cocaine was provided by WEDDING and transferred to southern California
9 via a cultural money laundering network.

10 On June 5, 2008, over a recorded conversation between Krapchan and CS-1, Krapchan told CS-1
11 that the aforementioned Canadian athlete and the Iranian must fly into Los Angeles because that is
12 where the money would be located.

13 Like Krapchan, Shirani and WEDDING traveled to Southern California from Canada. On June
14 10, 2008, Krapchan introduced CS-1 to Shirani. During recorded conversations between Krapchan,
15 Shirani, WEDDING and CS-1, Shirani and WEDDING both explained to CS-1 that the buy-money was
16 not instantly available upon their arrival at the Los Angeles International Airport.

17 Specifically, WEDDING told CS-1 that they [WEDDING and Shirani] understood that the
18 "deal" [drug transaction] would not occur in Los Angeles, but that is where the "paper" [buy money]
19 was located. WEDDING explained that if they [WEDDING and Shirani] had known that the "deal"
20 would occur immediately upon arrival they would have arrived a few days earlier. WEDDING stated
21 that the money was in Los Angeles waiting for "us" [WEDDING and Shirani], but that they just had to
22 pick it up. WEDDING then stated, "Obviously, I didn't put "it" [the buy money] in my fucking
23 suitcase."

24 WEDDING also stated that their [WEDDING and Shirani's] intention was to "grab one"
25 [kilogram of cocaine] and "have a look at it . . . and grab the rest of them later." Shirani subsequently
26 stated that "[W]e [WEDDING and Shirani] cannot carry money over the border" and stated that they
27 had to get the money to Los Angeles before they [WEDDING and Shirani] arrived in Los Angeles. On
28 June 11, 2008, during a recorded telephone conversation between Shirani and CS-1, Shirani described

1 how he intended the pending drug transaction to occur. Shirani stated that he would give CS-1 money
2 for "two" [kilograms of cocaine]. Shirani explained that once the transfer for "two" was completed then
3 they would do another "two." Shirani then stated that the first transfer would be for one "car" [kilogram
4 of cocaine] so that he [Shirani] can inspect the "car" [cocaine] and see if it met his expectations.
5 Ultimately, the parties agreed to conduct the first of several exchanges on June 13, 2008.

6 On June 13, 2008, FBI agents observed Krapchan, Shirani, and WEDDING arrive together at
7 a San Diego Hampton Inn hotel while driving in a 2008 Toyota Prius (Cal Lic. # 6DCW983). This
8 vehicle was rented by WEDDING. Krapchan, Shirani and WEDDING entered the hotel together. A
9 short time later, using the aforementioned Toyota, Prius, Krapchan left the San Diego Hampton Inn
10 Hotel and traveled alone to a predetermined location where the previously negotiated drug transaction
11 was to occur. Upon arrival, CS-1 met with Krapchan, whereupon Krapchan exchanged seventeen-
12 thousand dollars for one kilogram of cocaine. After the exchange took place, CS-1 asked Krapchan to
13 call and inform Shirani and WEDDING that the exchange did, in fact, take place as previously
14 negotiated. Using his cellular telephone, Krapchan placed a call to Shirani and WEDDING and stated
15 that he [CS-1] had in fact received the "cocaine" from CS-1. After making this telephone call, Krapchan
16 was placed under arrest.

17 After Krapchan was arrested, Shirani and WEDDING were placed under arrest as they were
18 leaving the San Diego Hampton Inn hotel. During a subsequent search of the aforementioned Toyota,
19 Prius agents located *inter alia*:

- 20 1) a credit card type hotel key for Comfort Inn with the number "304" written upon
21 it;
- 22 2) a vehicle rental agreement in the name of "Ryan Wedding" with Shirani's
23 signature listing Shirani as an additional driver; and
- 24 3) a real estate magazine for the San Fernando Valley area.

25 The management at the Comfort Inn located at 20157 Ventura Boulevard, Woodland Hills, CA
26 91364, confirmed that room #304 was registered to WEDDING.

1 Pursuant to a search warrant issued in the Central District of California, agents from the FBI
2 searched Room #304. Hidden within a piece of the hotel room's furniture, agents located approximately
3 \$100,000.00 of United States currency.

4 **II**

5 **ARGUMENT**

6 **A. Section 2x1.1 Is Inapplicable to Wedding's Conviction**

7 In United States v. Rodriguez, Slip Copy, 2009 WL 2982893 (E.D.Cal.,2009), the Ninth
8 Circuit ruled that U.S.S.G. § 2X1.1 is not applicable to U.S.S.G. § 2D1.1 drug conspiracies.
9 Specifically, the Court stated:

10 "Petitioner's base offense level was determined under § 2D1.1. Application Note 1 to §
11 2X1.1 explains that certain attempts, conspiracies, and solicitations are covered by other
12 offense guidelines and states that offense guidelines that expressly cover conspiracies
13 include § 2D1.1. Because Petitioner's offense was covered by a specific offense
14 guideline, **§ 2X1.1 does not apply and provides no basis for modification of**
15 **Petitioner's sentence.** [emphasis added] See United States v. Smith, 2004 WL 259228
(6th Cir.), cert. denied, 541 U.S. 1082, 124 S.Ct. 2438, 158 L.Ed.2d 999 (2004); United
States v. Augarten, 2003 WL 23095537 (6th Cir.2003), cert. denied, 541 U.S. 1004, 124
S.Ct. 2056, 158 L.Ed.2d 521 (2004); United States v. Shipp, 2002 WL 1732603 (7th
Cir.2002).

16 U.S.S.G. section 2X1.1 provides that when a conspiracy "is expressly covered by another offense
17 guideline section," the other section should be applied. U.S.S.G. § 2X1.1(c)(1). Application Note 1 to
18 U.S.S.G. § 2X1.1 states that "[o]ffense guidelines that expressly cover conspiracies include ... § 2D1.1,"
19 the guideline that applies to the conspiracy to which the defendants pleaded guilty. U.S.S.G. § 2X1.1,
20 cmt. n.1. Therefore, it follows that the three-level adjustment provided in U.S.S.G. § 2X1.1 is not
21 available to Wedding, because the plain text of the Guidelines requires the application of U.S.S.G. §
22 2D1.1 in determining their sentences. See also United States v. Onheiber, 173 F.3d 1254, 1256-57 (10th
23 Cir.1999) (holding that § 2X1.1 does not apply to attempts involving drugs); United States v. Adipietro,
24 983 F.2d 1468, 1472 (8th Cir.1993) (concluding that U.S.S.G. § 2X1.1 does not apply to conspiracies
25 involving controlled substances). Because U.S.S.G. section 2D1.1 does not provide a similar downward
26 adjustment for uncompleted conspiracies Wedding cannot now avail himself to the adjustment outlined
27 in U.S.S.G. section 2X1.1.

1 **B. The Proper Amount of Cocaine Attributable to the Conspiracy was 24 Kilograms**

2 Wedding urges the Court to adopt a position contrary to the evidence and the jury's verdict
3 in this case. Specifically, WEDDING asks this court to set the amount of cocaine attributable to the
4 conspiracy at one kilogram; the amount actually exchanged before WEDDING was arrested.

5 The testimony at trial was uncontradicted by any of the witnesses who testified, as to the amount
6 of cocaine that was intended to be purchased. Shirani testified that the purpose of the trip to southern
7 California was to purchase twenty-four kilograms of cocaine. Whether it was from CS-1 or various
8 other back-up sources, the purpose was to acquire twenty-four kilograms of cocaine. Twenty-four
9 kilograms was what was told to CS-1 during the course of more than one person-to-person meeting as
10 well as during the course of numerous recorded telephone conversations. Shirani also testified that the
11 money which was to be used to purchase the twenty-four kilograms of cocaine was provided by
12 WEDDING and was sent previously *via* a cultural money laundering network. Shirani also testified
13 that WEDDING, with Shirani's assistance, had used this money laundering network on one prior
14 occasion. The ongoing crime of conspiracy was technically complete in Canada, well before
15 Wedding's trip to southern California. Though not required in a federal drug conspiracy (21 U.S.C.
16 841(a)(1)), there were numerous acts in furtherance of the plan created in Canada. A plan to purchase
17 24 kilograms of drugs via several smaller 1-2 kilogram purchases. Neither WEDDING, Shirani or
18 KRAPCHAN ever, **at any time**, withdrew from the conspiracy to distribute cocaine. Assuming
19 *arguendo* that the original plan with CS-1 fell through completely, Shirani and WEDDING had at least
20 one other back-up source for cocaine. After all, part of Shirani's compensation for his facilitation of
21 the cocaine deal was to take a cut from the pre-arranged transportation of the cocaine to Canada. The
22 conspiracy did not require CS-1 and legally CS-1, as a government agent, could not have been a
23 member of any such conspiracy. The conspiracy was between Akhundov, Krapchan, Shirani and
24 WEDDING to travel to southern California and acquire 24 kilograms of cocaine. After, some initial
25 problems with logistics and timing, Krapchan, Shirani and WEDDING did everything they needed to
26 do to implement their original plan to purchase 24 kilograms of cocaine via several smaller transfers;
27 they made the first actual purchase. There were no new negotiations regarding price or quantity; the
28

1 quantity, method of transfer, and price remained the same from the time the agreement was made in
2 Canada until the time Krapchan made the first transfer in San Diego, California.

3 **C. 3553 Factors**

4 The following is a brief response to each of the factors referenced in WEDDING's underlying
5 sentencing memorandum

6 **1. Section 3553(a)(1)**

7 WEDDING asserts that his conduct is somehow mitigated by the fact that the instant
8 investigation resulted in a "sting" operation "created" by the defendant. Properly portrayed, this was
9 originally a money laundering investigation that led to the investigation of Krapchan and Akhundov who
10 were both recorded as they bragged about their pre-disposition or demonstrated ability to move multi
11 kilogram quantities of cocaine per week. The government never had any contact with WEDDING prior
12 to his own, self initiated, arrival in Los Angeles, California. It was the desire to make a substantial
13 profit by selling drugs that led WEDDING to southern California and not anything the government did
14 or did not do.

15 **2. Section 3553(a)(2)**

16 Although WEDDING urges the Court to "offset" the seriousness of the crime because it "was
17 created by the government, the fact of the matter is WEDDING came to southern California to buy
18 cocaine; if not from CS-1 then via at least one back up source known to Shirani. Whether the
19 government was involved or not, WEDDING was ready and willing to purchase 24 kilograms of cocaine
20 from whatever southern California source would supply him.

21 Using Shirani's sentence of 18 months as a factor to justify a lessor sentence fro WEDDING is
22 shocking. Shirani received a reduced sentence because he pled very early in the proceedings,
23 cooperated with the government and, while concerned for his and his family's safety, even testified at
24 trial. WEDDING did none of these things. Rather, WEDDING, as he candidly admitted during a
25 debrief, himself, chose to go to put the government to its burden and go to trial. Stating that he should
26 now be entitled to a sentence approaching that of Shirani's would effectively make a mockery of
27 Shirani's conscientious decision to admit guilt early and cooperate with the government; even if such
28 cooperation would be risky. Krapchan, unlike WEDDING, also plead early in the proceedings.

1 As part of an underlying sentencing agreement the government has agreed to not object to
2 WEDDING's stated desire to participate in the Prisoner Exchange Program in place between the United
3 States and Canada.

4 **3. Adjustment for Minor Role**

5 The Defendant contends he is entitled to a two-level downward adjustment for his alleged minor
6 role under USSG § 3B1.2. The Defendant's claim, in light of the fact he provided the purchase money,
7 lacks merit and should be rejected.

8 The Ninth Circuit "has consistently stated that a downward adjustment under section 3B1.2 is
9 to be used infrequently and only in exceptional circumstances." United States v. Davis, 36 F.3d 1424,
10 1436 (9th Cir. 1994). "The defendant has the burden of proving by a preponderance of the evidence that
11 he is entitled to a downward adjustment based on his role in the offense." United States v. Ladum, 141
12 F.3d 1328, 1348 (9th Cir. 1998). That a defendant may be less culpable than other participants in the
13 crime does not necessarily entitle him to an adjustment under section 3B1.2. See id. Instead, a
14 defendant "must show that he was substantially less culpable than the average co-participant." Id.
15 Moreover, a court's finding of the appropriate role reduction can only be disturbed by a showing of clear
16 error. United States v. Hatley, 15 F.2d 856, 860 (9th Cir. 1994).

17 Here, the Defendant has failed to meet his burden of proving that the facts of this case which
18 warrant application of the exceptional downward adjustment requested.

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IV.

CONCLUSION

The Defendant should be sentenced to 78. This represents the low end of the Defendant's guideline range based on the following: a base offense level of 32; a two level downward adjustment for the Safety Valve; a three-level downward adjustment for the Defendant's acceptance of responsibility. The adjusted offense level is 28, and based on a criminal history category of I, the Defendant's guideline range is 78-97 months imprisonment.

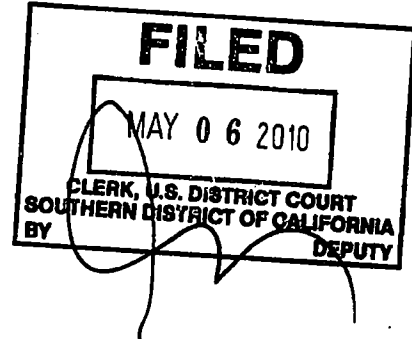
Dated: May 5, 2010

Respectfully Submitted,

KAREN P. HEWITT
United States Attorney

/s/ Orlando B. Gutierrez
ORLANDO B. GUTIERREZ
Assistant U.S. Attorney

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10 UNITED STATES DISTRICT COURT
 11 SOUTHERN DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,) Criminal Case No. 08CR2386
)
 13 Plaintiff,)
)
 14 v.)
) SENTENCING AGREEMENT
 15 RYAN WEDDING,)
)
 16 Defendant.)
)
 17 _____)

18 IT IS HEREBY AGREED between the plaintiff, UNITED STATES OF
 19 AMERICA, through its counsel, KAREN P. HEWITT, United States Attorney,
 20 and Orlando B. Gutierrez, Assistant United States Attorney, and
 21 defendant, Ryan Wedding, with the advice and consent of Benjamin Lee
 22 Coleman, counsel for defendant, as follows:

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Def. Initials RW

I

THE CONVICTION

A. THE CHARGE. Defendant was found guilty of a one count indictment in Criminal Case No. 08CR2386-JM charging defendant with:

Count 1

Beginning on a date unknown and continuing up to and including June 13, 2008, within the Southern District of California, and elsewhere, defendant MICHAEL KRAPCHAN, Ryan Wedding, and RYAN WEDDING did knowingly and intentionally conspire and agree with each other and with others known and unknown, to possess with the intent to distribute and to distribute 5 kilograms and more of cocaine, a Schedule II Controlled Substance; in violation of Title 21, United States Code, Sections 841(a)(1) and 846.

Additionally, the jury found that the government had proven, beyond a reasonable doubt, that the amount of cocaine, which was the subject of the conspiracy was, 5 kilograms or more.

II

THE AGREEMENT

In addition to the terms listed in the instant agreement, Defendant consents to the criminal forfeiture of the following assets pursuant to the provisions of Title 21 U.S.C. §§ 853(a)(1)(A) and/or (a)(1)(B).

1. Approximately \$100,000.00 in U.S. Currency seized on June 15, 2008 from Comfort Inn, Room #304 Venture Blvd. Woodland Hills, California.
2. Approximately \$1,570.00 in U.S. Currency seized on June 13, 2008.
3. Approximately \$17,000.00 in U.S. Currency seized on June 13, 2008.
4. Approximately \$3,000.00 in U.S. Currency seized on June 13, 2008.

Def. Initials RW

1 Defendant further represents and agrees that the above named assets
2 are forfeitable as property constituting or derived from proceeds
3 obtained directly or indirectly as result of the felony violation to
4 which he was convicted or are assets used or intended to be used to
5 commit or to facilitate the commission of said felony violation. The
6 defendant agrees that he will not contest or assist any other person
7 or entity in contesting the criminal or civil administrative
8 forfeiture of the above referenced assets.

9 In addition, defendant agrees that he will not contest or assist
10 any other person or entity in contesting the criminal or civil
11 forfeiture of the following assets seized from his co-conspirators:

12 1. Approximately \$125.00 in U.S. Currency seized from co-
13 conspirator Michael Krapchan on June 13, 2008.

14 Defendant hereby waives any rights he may have to notice of any
15 criminal or civil or administrative forfeiture proceedings against the
16 property described above and agrees that forfeiture orders may be
17 entered against those assets without any further notification.

18 **III**

19 **PENALTIES**

20 Defendant understands that the crime to which defendant was
21 convicted carries the following penalties:

- 22 A. a maximum of life in prison, and a mandatory minimum 10
23 years;
- 24 B. a maximum \$4,000,000 fine;
- 25 C. a mandatory special assessment of \$100 per count; and
- 26 D. a term of supervised release of at least 5 years but no
27 more than 5 years. Defendant understands that failure to
28 comply with any of the conditions of supervised release may

Def. Initials RW

1 result in revocation of supervised release, requiring
2 defendant to serve in prison all or part of the term of
3 supervised release.

4 E. Forfeiture of all conveyances used in connection with the
5 offenses of which the Defendant is convicted, and all
6 property, real and personal that constitutes, or is derived
7 from or is traceable to the proceeds obtained directly or
8 indirectly from the commission of the offense of which the
9 Defendant is convicted, and all property real or personal
10 that is used to facilitate, or is intended to be used to
11 facilitate the commission of the offenses of which the
12 Defendant is convicted.

13 Defendant further understands that, by virtue of his conviction,
14 defendant may be deported or removed and may become ineligible for
15 federal benefits.

16 IV

17 WAIVER OF EIGHTH AMENDMENT RIGHTS AS TO THE FORFEITURE

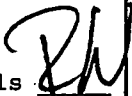
18 Defendant knowingly and voluntarily waives any rights and
19 defenses defendant may have under the Excessive Fines Clause of the
20 Eighth Amendment to the United States Constitution to the forfeiture
21 of property in this proceeding or any related civil proceeding.

22 V

23 DEFENDANT'S REPRESENTATION THAT THIS
24 AGREEMENT IS KNOWING AND VOLUNTARY

25 Defendant represents that:

26 A. Defendant has had a full opportunity to discuss all the
27 facts and circumstances of this case with defense counsel,
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Def. Initials 

1 and has a clear understanding of the charges and the
2 consequences of this agreement;

3 B. No one has made any promises or offered any rewards in
4 return for this agreement, other than those contained in
5 this agreement or otherwise disclosed to the court;

6 C. No one has threatened defendant or defendant's family to
7 induce this agreement; and

8 D. Defendant is making this agreement because in truth and in
9 fact defendant is guilty and for no other reason.

10 VI

11 **AGREEMENT LIMITED TO U.S. ATTORNEY'S OFFICE**
12 **SOUTHERN DISTRICT OF CALIFORNIA**

13 This agreement is limited to the United States Attorney's Office
14 for the Southern District of California, and cannot bind any other
15 federal, state or local prosecuting, administrative, or regulatory
16 authorities, although the Government will bring this agreement to the
17 attention of other authorities if requested by defendant.

18 VII

19 **APPLICABILITY OF SENTENCING GUIDELINES**

20 Defendant understands the sentence imposed will be based on the
21 factors set forth in 18 U.S.C. § 3553(a). Defendant understands
22 further that in imposing the sentence, the sentencing judge must
23 consult the United States Sentencing Guidelines (Guidelines) and take
24 them into account. Defendant has discussed the Guidelines with
25 defense counsel and understands that the Guidelines are only advisory,
26 not mandatory, and the court may impose a sentence more severe or less
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28 Def. Initials 

1 severe than otherwise applicable under the Guidelines, up to the
2 maximum in the statute of conviction.

3 VIII

4 SENTENCE IS WITHIN SOLE DISCRETION OF JUDGE

5 Defendant understands that the sentence is within the sole
6 discretion of the sentencing judge. The Government has not made and
7 will not make any representation as to what sentence defendant will
8 receive. Defendant understands that the sentencing judge may impose
9 the maximum sentence provided by statute, and is also aware that any
10 estimate of the probable sentence by defense counsel is a prediction,
11 not a promise, and is not binding on the Court. Likewise, the
12 recommendation made by the Government is not binding on the Court, and
13 it is uncertain at this time what defendant's sentence will be.
14 Defendant also has been advised and understands that if the sentencing
15 judge does not follow any of the parties' sentencing recommendations,
16 defendant nevertheless has no right to withdraw from this agreement.

17 IX

18 PARTIES' SENTENCING RECOMMENDATIONS

19 A. SENTENCING GUIDELINE CALCULATIONS

20 Although the parties understand that the Guidelines are only
21 advisory and just one of the factors the court will consider under 18
22 U.S.C. § 3553(a) in imposing a sentence, the parties will jointly
23 recommend the following Base Offense Level, Specific Offense
24 Characteristics, Adjustments and Departures (if applicable) under the
25 Guidelines:

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1	1. Base Offense Level [§ 2D1.1]	32 ^{1/2}
2	2. Safety Valve [§ 5C1.2]	-2
3	3. Acceptance of Responsibility [§ 3E1.1]	<u>-2</u>
4	Total Offense Level	28

5 **B. ADJUSTMENTS**

6 The parties agree that defendant may request additional downward
7 adjustments. The government will oppose additional adjustment
8 requests.

9 **C. NO AGREEMENT AS TO CRIMINAL HISTORY CATEGORY**

10 There is no agreement as to defendant's Criminal History
11 Category.

12 **D. DEPARTURES**

13 The parties agree that defendant may request additional downward
14 departures, including criminal history departures under U.S.S.G.
15 § 4A1.3.; however defendant may not file or argue substantive motions,
16 including those described in Fed. R. Crim. P. 12, under this
17 subsection. The government will oppose additional departure requests.

18 **E. PARTIES' RECOMMENDATIONS REGARDING CUSTODY**

19 The parties agree that the Government will recommend that
20 defendant be sentenced to the low end of the advisory guideline range

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22 1/ As part of this agreement, in addition to other adjustments
23 and/or departures, the parties agree that the defendant may argue that
24 the Base Offense Level ("BOL") should be calculated based either upon
25 7 kilograms of cocaine (BOL 32) or 1 kilogram of cocaine (BOL 26).
26 The parties cannot make any additional arguments relating to the BOL
27 other than the BOL being based upon a BOL 32 or a BOL of 26.
28 Although, for the purposes of this agreement, the government is
agreeing that the amount of cocaine for which Defendant is responsible
is 7 kilograms, this does not preclude the government from advocating
the position that the overall conspiracy was for twenty-four kilograms
of cocaine, when factually responding to any defense argument that the
amount attributable to the conspiracy was only 1 kilogram of cocaine.

Def. Initials 

1 as calculated by the Government pursuant to this agreement. However,
2 if the Court adopts an offense level or downward adjustment or
3 departure below the Government's recommendations in this agreement,
4 the Government will recommend a sentence as near as possible to what
5 the sentence would have been if the Government's recommendations had
6 been followed.

7 The United States Attorney's Office for the Southern District of
8 California will not oppose a request by Defendant that he be
9 transferred under the International Prisoner Transfer Program to
10 Canada to serve his sentence. This agreement to not oppose a transfer
11 request is contingent on Defendant not being a party to any pending
12 litigation and not being a party to any new charges or the
13 government's need for Defendant's testimony as a party or witness to
14 any new charges. Defendant understands that the decision to approve
15 or deny a proposed transfer is committed to the discretion of the
16 Office of Enforcement Operations ("OEO") at the United States
17 Department of Justice and is based upon the entire record of the
18 applicant. The factors considered in determining the appropriateness
19 of transfer include the seriousness of the offense and the prisoner's
20 role in it, the existence of outstanding fines or restitution orders,
21 the offenders prior criminal record (if any), the strength of the
22 offender's ties to each country and the likelihood that the transfer
23 of the prisoner will, in fact, promote his rehabilitation. Defendant
24 further understands that the government has made no representation or
25 promise as to whether his application will be approved or the time in
26 which it will be processed.

27 Essentially, this portion of the agreement only binds the United
28 States Attorney's Office for the Southern District of California to

Def. Initials 

1 not oppose Defendant's application for transfer. This portion of the
2 agreement in no way binds OEO from making its independent and due
3 course review and consideration of any application Defendant may
4 submit.

5 **F. SPECIAL ASSESSMENT**

6 The parties will jointly recommend that defendant pay a special
7 assessment in the amount of \$100.00 to be paid forthwith at time of
8 sentencing. The special assessment shall be paid through the office
9 of the Clerk of the District Court by bank or cashier's check or money
10 order made payable to the "Clerk, United States District Court."

11 **G. STIPULATED DEPORTATION**

12 Either before or immediately following sentencing, defendant
13 agrees to appear before an Immigration Judge and stipulate to the
14 entry of an order of deportation. Defendant understands that
15 defendant will not be deported until defendant has served any criminal
16 sentence imposed in this or any other case. Defendant further waives
17 any right to appeal, re-open or challenge the deportation order.

18 **XII**

19 **DEFENDANT WAIVES APPEAL AND COLLATERAL ATTACK**

20 In exchange for the Government's concessions in this agreement,
21 defendant waives, to the full extent of the law, any right to appeal
22 or to collaterally attack the conviction and sentence, including any
23 restitution order, unless the court imposes a custodial sentence
24 greater than 78 months. If the custodial sentence is greater than 78
25 months, defendant may appeal the sentence only, but the Government
26 will be free to support on appeal the sentence actually imposed. If
27 defendant believes the Government's recommendation is not in accord

28

Def. Initials 

1 with this agreement, defendant will object at the time of sentencing;
2 otherwise the objection will be deemed waived.

3 **XIII**

4 **CRIMES AFTER ARREST OR BREACH OF THE AGREEMENT WILL PERMIT**
5 **THE GOVERNMENT TO RECOMMEND A HIGHER SENTENCE OR SET ASIDE**
6 **THE AGREEMENT**

7 This agreement is based on the understanding that, prior to
8 defendant's sentencing in this case, defendant has not committed or
9 been arrested for any offense not known to the Government prior to
10 defendant's sentencing. This agreement is further based on the
11 understanding that defendant has committed no criminal conduct since
12 defendant's arrest on the present charges, and that defendant will
13 commit no additional criminal conduct before sentencing. If defendant
14 has engaged in or engages in additional criminal conduct during this
15 period, or breaches any of the terms of any agreement with the
16 Government, the Government will not be bound by the recommendations
17 in this agreement, and may recommend any lawful sentence. In
18 addition, at its option, the Government may move to set aside the
19 agreement.

20 **XIV**

21 **ENTIRE AGREEMENT**

22 This agreement embodies the entire agreement between the parties
23 and supersedes any other agreement, written or oral.

24 **XV**

25 **MODIFICATION OF AGREEMENT MUST BE IN WRITING**

26 No modification of this agreement shall be effective unless in
27 writing signed by all parties.

28 / / /

/ / /

Def. Initials 

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XVI

DEFENDANT AND COUNSEL FULLY UNDERSTAND AGREEMENT

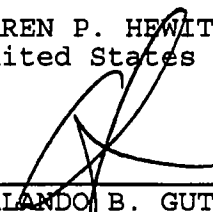
By signing this agreement, defendant certifies that defendant has read it (or that it has been read to defendant in defendant's native language). Defendant has discussed the terms of this agreement with defense counsel and fully understands its meaning and effect.

XVII

DEFENDANT SATISFIED WITH COUNSEL

Defendant has consulted with counsel and is satisfied with counsel's representation.

KAREN P. HEWITT
United States Attorney



ORLANDO B. GUTIERREZ
Assistant U.S. Attorney

5-6-10

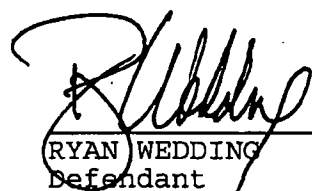
DATED



BENJAMIN LEE COLEMAN
Attorney for Defendant

5/4/10

DATED



RYAN WEDDING
Defendant

5/4/10

DATED