UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA, Plaintiff, vs. GREGORY CARR, Defendant.	)	Case No.: 10-cr-20400 AJT-PJK Hon. Arthur J. Tarnow

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DEFENDANT GREGORY CARR'S SENTENCING MEMORADUM

Gregory Carr respectfully requests this Court to impose a sentence that is "sufficient, but not greater than necessary" to achieve the sentencing purposes of 18 U.S.C. § 3553(a).

FACTS

A. Introduction

Gregory Carr is a 44 year old male, divorced, and a father of one child, 5 years old. He stands before the Court for sentencing on his first and only criminal offense. Prior to this case, Mr. Carr has had no contact with the criminal justice system, state or federal. Currently he

resides with his parents, and his girlfriend. He sees his son whenever possible, usually every weekend. He holds gainful full-time employment as a courier. He has been on pre-trial release since July 23, 2010, and has complied with all conditions imposed by the Southern District of Florida, and this Court.

B. Personal Background

Greg was born on September 22, 1966 to Leonard and Rita Carr. Greg has a younger brother, Steven Carr, and no sisters. He was born in Dearborn, Michigan, and attended elementary, middle school and high school in Dearborn Heights. During high school, Greg was recognized and awarded a certificate of recognition by the State of Michigan for outstanding academic achievement in the State of Michigan Scholarship Competition. (*Exhibit A*). After High School, Greg attended and graduated Central Michigan University with a Bachelor of Arts Degree, majoring in journalism. (*Exhibit B*). After graduating from college, Greg moved to Naples, Florida to take a job with the Naples Daily News. Greg worked and lived in Naples until 1991 and then moved to Fort Lauderdale, Florida to take a position with the Sun Sentinel newspaper. Greg worked as an account representative for the Sentinel until 1994. While Greg was living in Florida, the Internet emerged, affording businesses the opportunity to advertise "online." Greg recognized this opportunity and began taking courses in computer-based graphic design, which led him to a position in the Graphic Design Department of Viacom Corporation's Fort Lauderdale office.

In 1996, Greg launched his own local newspaper called the Coral Springs Community News. The paper catered to the local community, and, like all newspapers, derived its income from selling advertising space. The paper struggled for two years, and in 1998, the business closed.

C. The Escort Service

One of the many advertisers of the Coral Springs Community News was a woman who owned and operated an escort service. In 1998, when the Coral Springs Community News failed leaving Greg destitute, he and a partner decided to launch their own escort service called "South Beach Escorts" which later became known as "Miami Companions" (herein "MC"). At first, the business was a State of Florida, licensed escort agency with escorts serving the South Florida area. In October of 1999, MC posted its first website, and suddenly, the company grew exponentially. With the boom of the Internet and advances in technology, MC was no longer restricted by geographic boundaries. MC grew with the boom and it was during this time that Greg met and began a working relationship with co-defendant Laurie Carr. The business relationship of Greg and Laurie Carr developed into a romantic relationship, and eventually the couple married.

From the day they met, Laurie was involved in the managerial decisions of MC. The idea of coordinating "tours" for the escorts was first suggested by Laurie, and she floated the idea to several of the escorts who were featured on the Internet. The escorts were very receptive to the idea. Specifically, the escorts liked the idea of planning their own "tour" dates because it afforded them the opportunity to plan a day-to-day schedule in advance. As MC was then a successful, quick-growing company with a good reputation, the number of escorts who wanted to be represented by MC and appear on the website also grew quickly. At no time did Greg ever "recruit" an escort; every escort contacted MC for interviews, which Greg conducted. These interviews were usually conducted in coffee houses and restaurants, and were never held in private. MC represented several adult film stars, including Brianna Beach, who is referred to in the indictment as Female "C". Brianna Beach first applied to be an independent contractor with

Miami Companions on December 3, 2006. (*Exhibit C*). This kind of notoriety turned MC into the nation's "most prestigious dating service."

As time passed, the number of escorts grew and the list of clients also grew, increasing the demands from escorts and clientele. This growth necessitated the need for additional office staff. The decision was made to outsource the appointment setting by phone to a call center located in Panama, based upon the low cost of wages in Central America. There, co-defendant, Nayubet L. Swaso first applied to be a phone operator, was hired, and was later promoted to manage the MC's call center. Eventually the call center relocated to Costa Rica, and Swaso asked to be relocated there to continue with her employment. Greg and Laurie agreed to this request; Swaso was the lone employee who transferred to Costa Rica. Otherwise, an entirely new office staff was brought on board.

In 2008, like all businesses in the United States, MC began to feel the pinch of the economy, and business was dropping fast. The call center was closed, and the task of answering phones was moved back to the United States. Greg and Laurie Carr wanted out of the business, and began exploring other business opportunities. Meanwhile, co-Defendant Michelle Matarazzo, (also known as "Liv Lawless" when she was an adult film actress) who had been making travel arrangements for the escorts for several years, wanted MC to continue business operations. Michelle and her husband set up a bank account under the company name DJM Entertainment, where they deposited MC's revenues. (*Exhibit D*). While Greg had other ideas for starting new businesses, MC was the only means of income for Matarazzo. Thus, on May 26, 2009, MC officially changed ownership from Greg and Laurie to Michelle Matarazzo and her husband Dominick.

When DJM began to fully operate and control MC, the company's revenues rapidly declined, so much so that Matarazzo decided to go back out on "tour" herself, and on or about July 14, 2009, she was arrested. Matarazzo was interviewed by the IRS and FBI on August 26, 2009. (*Exhibit E*). During the interview, she indicated to the FBI that Greg and Laurie still owned and operated the business, which was clearly a false statement. Matarazzo indicated that Laurie was the "boss" of MC. At her interview, Matarazzo, who was also the company's bookkeeper, admitted that prior to her takeover of MC, she had "skimmed" cash deposits without the knowledge of Greg or Laurie.

Despite being arrested and speaking to the FBI and IRS, Matarazzo continued to own and operate MC as well as her new start-up, the "Adult Resource Center", intended to be a shell company, to which Matarazzo intended to transfer all MC's business activities and clientele. (*Exhibit F*). Matarazzo continued running the businesses under the watchful eye of the Federal Government. Finally, after Matarazzo's "skimming" had elevated to the point where she retained virtually all company revenue and refused to pay any company expenses, her activities were recognized by Greg and Laurie Carr creating animosity between the Matarazzos and the Carrs. The business was on the verge of closing. Greg, now separated from Laurie, reluctantly agreed to take the company back in February of 2010. However, most of the escorts that once worked for MC had moved on to other agencies or began escorting independently. Upon information and belief, most of the escorts no longer wanted to contract with MC because Matarazzo was taking money from them that was earmarked for advertising and diverting it to her own use.

The Carrs eventually were forced to file for relief under the Bankruptcy Code in September 2009 since neither were able to afford the mounting debt they faced. In early 2010, the Matarazzos essentially abandoned MC after having pilfered and embezzled as much money

from the escorts as possible and, when MC had been virtually mismanaged into bankruptcy, they gave it back to Greg. Greg attempted to resurrect MC from the ashes, but was virtually starting over from scratch. Escort services are built largely on reputation and the Matarazzos had destroyed the reputation of MC. It was a slow go for many months, and just as MC was starting to show signs of life, Greg was arrested on the charges for which he now faces sentencing.

Since his arrest, Greg has complied with all conditions of his probation. He is no longer involved in the adult industry in any way.

ARGUMENT

A. Impact of the Guidelines

It has been six years since the Supreme Court released the district courts from the mandatory Sentencing Guidelines in *United States v. Booker*, 543 U.S. 220 (2005). In the wake of *Booker*, it is essential that district courts make an "individualized assessment based on the facts presented." *Gall v. United States*, 552 U.S. 38, 50 (2007). The Supreme Court further emphasized that the District Court "is in a superior position to find facts and judge their import under §3553(a) in the individual case…This means that "[t]he sentencing judge has access to, and greater familiarity with the individual case and the individual defendant before him than the [Sentencing] Commission or the appeals court." *Id*., quoting *Rita v. United States*, 551 U.S. 338, 357-58 (2007). After *United States v. Booker* invalidated the mandatory use of the Sentencing Guidelines and declared them "effectively advisory," the district court has been tasked with imposing "'a sentence sufficient, but not greater than necessary to comply with the purposes' of § 3553(a)(2)." *United States v. Foreman*, 436 F.3d 638, 644 n. 1 (6th Cir. 2006).

One of the earliest resentencing cases after Booker was the District Court for the Southern District of Texas' resentencing of James Olis in a conspiracy to commit mail fraud case

arising out of the Dynergy collapse, in which he had been sentenced under mandatory guidelines to a 292-month term of imprisonment. *United States v. Olis*, 2006 WL 2716048 (S.D.Tex. 2006). Upon resentencing, United States District Judge Sim Lake imposed a 72-month sentence and with respect to the Guidelines, explained that "since Booker the guidelines are 'merely one sentencing factor among many, and the calculated guideline range must be considered in conjunction with the other § 3553(a) factors.'" The court further emphasized that "the guidelines do not have 'quasi -mandatory status.'" *Id*, at *11 (citation omitted).

The Government will mechanistically argue for a "sentence within the Guidelines." despite the unambiguously clear mandate from the Supreme Court that the Sentencing Guidelines are only advisory, are but one factor to be considered under § 3553(a), and need not be presumed reasonable. Respectfully, this Court should reject the Government's invitation.

The Sixth Circuit has opined on the issue of "presumptive reasonableness" and noted that:

> We pause to make two observations. First, in United States v. Foreman, we recently suggested in dicta that Williams' statement regarding the Guidelines' rebuttable presumption of reasonableness was "rather unimportant" even though it seems to "imply some sort of elevated stature to the Guidelines ...." United States v. Foreman, 436 F.3d 638, 644 (6th Cir.2006). Foreman observed that "Williams does not mean that a Guidelines sentence will be found reasonable in the absence of evidence in the record that the district court considered all of the relevant section 3553(a) factors." Id. Lest there be some confusion on this point, we note that as Foreman properly explained, "Williams does not mean that a sentence within the Guidelines is reasonable if there is no evidence that the district court followed its statutory mandate to `impose a sentence sufficient, but not greater than necessary' to comply with the purposes of sentencing in section 3553(a)(2)." Id.
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> Second, although ancillary to our decision in this case, we are mindful of the ongoing discussion among the circuit courts since our decision in Williams as to whether Booker accords the Guidelines a presumption of reasonableness. See, e.g., United States v. Jimenez-Beltre, 440 F.3d 514, 518 (1st Cir.2006) (en banc) ("[a]lthough making the guidelines `presumptive' or `per se reasonable' does not make them mandatory, it tends in that direction ...."); United States v. Fernandez,

> 443 F.3d 19, 27 (2d Cir.2006) ("declin[ing] to establish any presumption, rebuttable or otherwise, that a Guidelines sentence is reasonable"); United States v. Kristl, 437 F.3d 1050, 1054 (10th Cir.2006) (observing that sentences correctly calculated under the Guidelines are "entitled to a rebuttable presumption of reasonableness on appeal"); United States v. Lewis, 436 F.3d 939, 946 (8th Cir.2006) ("[A] sentence falling within the applicable guideline range is presumptively reasonable."). In particular, we note the recent deliberations of the Ninth Circuit and the Fourth Circuit in United States v. Zavala, 443 F.3d 1165 (9th Cir.2006), and United States v. Johnson, 445 F.3d 339 (4th Cir.2006), respectively.

U.S. v. Cage, 458 F.3d 537 at 541-542 (6th Cir., 2006). The Sixth Circuit, later reaffirmed the "reasonableness" standard of review for appellate purposes and not the standard by which the District Court determined a sentence under § 3553 in *U.S. v. Vonner*, 516 F.3d 382 (6th Cir., 2008).[1]

The Honorable Jed Rakoff in the Southern District of New York revealed the "travesty of justice that sometimes results from the guidelines' fetish with abstract arithmetic, as well as the harm that guideline calculations can visit on human beings if not cabined by common sense." *United States v. Adelson*, 441 F.Supp.2d 506, 511 (S.D.N.Y. 2006). In the Court's Sentencing Memorandum, Judge Rakoff attested to the absurdity of a government attorney blindly adhering

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[1] In United States v. Williams, 436 F.3d 706, 708 (6th Cir.2006), this court embraced an appellate presumption of reasonableness for within-guidelines sentences. In Rita, the Court upheld the presumption. 127 S.Ct. at 2462. Rita, we recognize, does not hold that appellate courts must embrace the presumption. See id. at 2462, 2467; see also Gall v. United States, ___ U.S. ___, 128 S.Ct. 586, 597, 169 L.E d.2d 445 (2007). But we see no good reason to abandon the presumption now—after using it for some time and after being told that we may continue to use it. The presumption, as the Supreme Court has explained, rests on sound reasoning. The guidelines represent the Sentencing Commission's attempt to reconcile the same § 3553(a) factors that district courts must consider in sentencing defendants. See Rita, 127 S.Ct. at 2463-64. These factors seek to balance Congress's competing interests in consistency, see § 3553(a)(4)-(6) (requiring sentencing courts to consider the guidelines, pertinent policy statements and "the need to avoid unwarranted sentencing disparities"), and in individualized sentencing, see § 3553(a)(1)-(3), (7) (requiring sentencing courts to consider "the nature and circumstances" of the crime and the defendant, the purposes of punishment and the types of punishment available). And, perhaps most importantly, when there is a confluence between the national views of the Sentencing Commission and the independent views of a sentencing judge, that "double determination significantly increases the likelihood that the sentence is a reasonable one." Rita, 127 S.Ct. at 2463. Add to this the reality that the presumption is rebuttable, id., and that there is no "presumption of unreasonableness" for outside-guidelines sentences, id. at 2467, and we fail to see a material downside to continuing to use the presumption as a modest tool for appellate review.

to the "prevailing policy" of the Department of Justice seeking "a guideline sentence" when it was obvious that other important factors under § 3553(a) would not support the lengthy term of imprisonment under the Guidelines.

In fact, almost one year ago, the Attorney General of the United States issued a comprehensive, revised "Department Policy on Charging and Sentencing," which rejected the prior blind adherence to a "Guidelines Sentence" and imposed a new policy reflecting that "equal justice depends on individualized justice, and smart law enforcement demands it." See, May 19, 2010 Memorandum to All Federal Prosecutors. While the Memorandum directs prosecutors to "generally continue to advocate for a sentence within [the guidelines] range," advocacy at sentencing – like charging decisions and plea agreements – must also follow from an individualized assessment of the facts and circumstances of each particular case." *Id* at pp. 2-3. The compelling individual facts of this case establish that the general rule of sentencing within the Guidelines range is inappropriate, will not serve the ends of individualized justice, and is not equitable law enforcement. A copy of the Attorney General's May 19, 2010 Memorandum is attached hereto as Exhibit "F". More importantly, advocating a "Guidelines Sentence" is in direct contrast to the trend of the district courts in every circuit of this Nation, which are imposing sentences below the Guidelines range when merited. The most recent quarterly data published by the U. S. Sentencing Commission reflects a steady decrease of sentences "within range" and a progressive increase of sentences "below range," even when they are not Government sponsored pursuant to Guideline 5K1.1.10 Any contention by the Government that seeks to impose a Guidelines Sentence in this case without justifying such a sentence under all of the factors of § 3553(a) should be rejected by this Court as being violative of *Booker*, *Gall* and *Rita*.

To be sure, in imposing the final sentence in this case, the Supreme Court commands that this Court must calculate the Advisory Guidelines, before deciding whether to apply any departures or variance from the Guidelines. However, the Supreme Court does not require this Court to commence its sentencing analysis with a review of the Advisory Guidelines. In fact, Congress mandated that of all the factors set forth under § 3553(a), "the kinds of sentence and the sentencing range established" by the Guidelines is only the fourth consideration. As District Judge Rakoff explained in *Adelson*, § 3553(a) "gives first position to '(1) the nature and circumstances of the offense and the history and characteristics of the defendant." 441 F.Supp.2d at 512-13. Gregory Carr has no criminal history. Circuit Judge Barkett of the U.S. Court of Appeals for the Eleventh Circuit recently explained the importance of not deferring to the Guidelines in imposing a sentence. See *United States v. Docampo, Jr.*, 573 F.3d 1091, 1105 (11th Cir. 2009)(concurring in part and dissenting in part). Judge Barkett addressed the conflict in the Supreme Court's post-*Booker* decisions that the district court start the imposition of the sentence with a calculation of the Guidelines, while permitting the district courts to "tailor the sentence in light of other statutory concerns" and reaffirming that the district courts may not presume that the Guidelines range is reasonable. Judge Barkett explained:

> There is, of course, a wide range between a "starting point warranting respectful consideration" and "no presumption of reasonableness." Some of the Supreme Court Justices have expressed serious concern about how to apply the Guidelines given the latent ambiguity in their advisory nature: "[I]f sentencing judges attributed substantial gravitational pull to the now-discretionary Guidelines, if they treated the Guidelines result as persuasive or presumptively appropriate, the *Booker* remedy would in practical terms preserve the very feature of the Guidelines that threatened to trivialize the jury right." Rita, 551 U.S. at 390, 127 S.Ct. 2456 (Souter, J., dissenting); see also id. At 366, 127 S.Ct. 2456 (Stevens, J., concurring)("I am not blind to the fact that, as a practical matter, many federal judges continued to treat the Guidelines as virtually mandatory after our decision in Booker.")

Circuit Judge Barkett further explained how the Guidelines inevitably have a considerable "anchoring" effect on a district court's analysis:

> Anchoring is a strategy to simplify complex tasks, in which numeric judgments are assimilated to a previously considered standard. When asked to make a judgment, decision-makers take an initial starting value (i.e., the anchor) and then adjust it up or down. Studies underscore the significance of that initial anchor; judgments tend to be strongly biased in its direction. *Id*., at note 5. Finally, Judge Barkett explained that sentencing judges must "make a concerted effort to reach independent conclusions about the appropriateness of a sentence in each specific case." *Id*. (emphasis in original).

In this matter, Probation has calculated the guidelines at 41 – 51 months based upon the information provided by the Justice Department. However, the parties have agreed to guidelines of 21 – 27 months in the Rule 11 plea agreement.

The difference between the scoring by Probation and the agreed upon range in the rule 11 agreement is: (i) the rule 11 agreement, as mutually agreed by the parties, does not score all of the women contained in the indictment, and (ii) the parties scored Greg's role at three (3) points, rather than the four (4) points. The defense would argue that the calculations agreed to in the rule 11 plea agreement are more in line with the best possible outcome after a trial for the Government, and reflect the reality of the case.

(i) *The scoring disparity regarding the various women*

While probation scored witness A-H and Co-Defendant Swaso, the parties agreed to score only Witness B and Co-Defendant Swaso. Witness A, upon her arrest had indicated to police that MC did not require the escorts to have sex with client. (*Exhibit G*). Witness C is an adult film star who has made over 75 movies during her career. Witness D currently tours as an independent escort, and during the pendency of this case, the Defense was able to locate her in Columbus from October 18th – the 23rd, Cleveland from October 24th – the 29th, and in Philadelphia on January 10th, 2011. Witness E is currently working independently touring

throughout Canada. Defense has no information on Witness F but suspects that she no longer resides in the Country. Witness G is currently working independently out of Boston, and the Defense was able to track her movements throughout New England during the pendency of this matter. Witness H had filed for Bankruptcy a month before being arrested in Michigan, and actually attended her meeting of creditors just a few days before her arrest. She had disclosed, on her Schedule I that her occupation was "entertainer," and listed thousands of dollars a month in travel expenses in her Schedule J. She testified at her meeting of creditors that certain fees paid as house fees or management fees.

The point of this witness breakdown is to illustrate that the Defense believes that these multiple witness issues were the cornerstones of the successful plea negotiations. By having an open and mutually respectful dialog between the defense and the Government, each side giving the other a look at what the evidence actually shows and what the issues would beat trial lead to the agreement that was achieved and how and why the agreed upon guidelines are at the 21 – 27 month range is appropriate, and that the Court should give greater weight to the agreed upon guidelines which contain recommend variances when considering its starting point for sentencing.

(ii) *Role in the offense*

Probation scored Greg the full four (4) points as the alleged leader of the criminal enterprise, however, the Defense disagrees with that scoring and proffers that the three (3) point enhancement is more appropriate.

> A district court may increase a defendant's offense level if the defendant was an "organizer, leader, manager, or supervisor of one or more other participants." U.S.S.G. § 3B1.1, cmt. n.2. "A 'participant' is a person who is criminally responsible for the commission of the offense, but need not have been convicted." U.S.S.G. § 3B1.1, cmt. n.1. In determining whether a § 3B1.1(c) sentencing enhancement is appropriate, a district court should consider the following factors:

> [T]he exercise of decision making authority, the nature of participation in the commission of the offense, the recruitment of accomplices, the claimed right to a larger share of the fruits of the crime, the degree of participation in planning or organizing the offense, the nature and scope of the illegal activity, and the degree of control and authority exercised over others.

United States v. Lalonde, 509 F.3d 750, 765 (6th Cir. 2007). "Merely playing an essential role in the offense is not equivalent to exercising managerial control over other participants. The government bears the burden of proving that the enhancement applies by a preponderance of the evidence." *United States v. Vandeberg*, 201 F.3d 805, 811 (6th Cir. 2000).

In this matter, MC was operated "by committee". MC never had a centralized office location or clearly defined leadership roles within the organization. Greg was primarily responsible for interviewing new applicants that had contacted the company, arranging the photography, touching up photos, and sometimes collecting money from women who preferred not deposit into the various accounts while on tour. Greg also authorized transfer of funds to the call centers for payroll after review and approval of both Laurie and Michelle. Laurie Carr reviewed each female profile before they were posted on the website, determined which photos were to be used, had the day to day contact with MC clients in arranging meetings, and handling complaints from Clients. Michelle Matarazzo kept track of the income into the company, prepared deposits, created and maintained reports, made and paid for travel arrangements such as airfare and hotel reservations. Nayubet Swaso was responsible for managing the call center in Panama, and eventually Costa Rica.

Although Greg initially formed MC, and was one of the signers on the bank account along with co-defendant Laurie Carr, it does not mean that he exercised managerial control of the day to day operations. In fact, according to the Government's star witness, Michelle Matarazzo, Laurie was "the boss" of MC. (see *Exhibit E*). To assess four (4) points against Greg, and not

assess any leader or organizer points against any of the other co-defendants[2] is counter to the holding in *Vandenburg*. The parties have agreed to a variance in the plea agreement, only assessing three (3) points for Greg's role in the offense and the Defense urges the Court to do the same when determining its evaluation of the advisory guidelines.

In closing out this portion, the Defense urges the Court to analyze the appropriate sentence for Greg by considering and utilizing the agreed upon guidelines attached to the Rule 11 plea agreement filed with the Court. Those guidelines reflect a more realistic basis for calculation of sentencing based upon the evidence that would have been produced at trial, and are more consistent with Greg's participation in MC.

B. §3553 Factors

18 USC § 3553 states in relevant part

Section 3553 Imposition of a sentence

(a) Factors To Be Considered in Imposing a Sentence. - The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed, shall consider –

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

(2) the need for the sentence imposed -
(A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
(B) to afford adequate deterrence to criminal conduct;
(C) to protect the public from further crimes of the defendant; and (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;

(2) the kinds of sentences available;

(3) the kinds of sentence and the sentencing range established for –

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[2] With the exception of Fabiola Contreras.

> (A) the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines

(i) The Offense - 18 USC §3553(1)

As stated earlier in this memorandum, Judge Rakoff explained in *Adelson*, § 3553(a) "gives first position to '(1) the nature and circumstances of the offense and the history and characteristics of the defendant.'" 441 F.Supp.2d at 512-13. Furthermore, during the plea, the Court indicated that it did not know what it would sentence Greg to because as the court knew very little about Greg, and very little about the offenses he pled guilty to. As noted herein, Greg has no criminal history and did not have a clearly defined "mastermind" role within MC.

Greg plead guilty to two (2) counts, Count I – Conspiracy to commit violations of 18 USC §2422(a) Coercion and enticement to travel in interstate commerce to engage in prostitution, and Count XI Conspiracy to Launder Monetary Instruments.

18 USC 2422(a) states in relevant part:

> **Sec. 2422. Coercion and enticement**
> (a) Whoever knowingly persuades, induces, entices, or coerces any individual to travel in interstate or foreign commerce, or in any Territory or Possession of the United States, to engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense, or attempts to do so, shall be fined under this title or imprisoned not more than 20 years, or both.

The statute is commonly referred to as "the Mann Act". The Mann Act was originally entitled the "White-Slave Traffic Act of 1910." It should be noted that, in the United States, women did not have the Constitutional right to vote until the Nineteenth Amendment to the Constitution was ratified in 1920. Prior to that, women were treated more like property: their property rights were subordinate to their husbands, and they did not enjoy equal rights under the law. When the "White-Slave Traffic Act of 1910" was passed, its original intent was to prohibit the

transportation of "slaves" – in this case, women – for immoral purposes.[3] The Supreme Court elaborated on the concept of "immoral purposes" when it stated

> [There is] no doubt as to what class was aimed at by the clause forbidding the importation of alien women for purposes of 'prostitution.' [citing to what is now 12 USC 1328] It refers to women who, for hire or without hire, offer their bodies to indiscriminate intercourse with men. The lives and example of such persons are in hostility to 'the idea of the family, as consisting in and springing from the union for life of one man and one woman in the holy estate of matrimony; the sure foundation of all that is stable and noble in our civilization; the best guaranty of that reverent morality which is the source of all beneficent progress in social and political improvement.'

Murphy v. Ramsey, 114 U. S. 15, 45, 29 L. ed. 47, 57, 5 Sup. Ct. Rep. 747 (1885). It was later amended to cure the ambiguity of what "immoral purposes" meant. During the "immoral purposed debate, and whether congress had the authority to regulate what "immoral purposes" the Court's punted and simply relied upon the Commerce Clause to resolve the unconstitutional meddling into individuals' lives and bedrooms. The United States Supreme Court stated in one of the early cases:

> It may be conceded, for the purpose of the argument, that Congress has no power to punish one who travels in interstate commerce merely because he has the intention of committing an illegal or immoral act at the conclusion of the journey. But this act is not concerned with such instances. It seeks to reach and punish the movement in interstate commerce of women and girls with a view to the accomplishment of the unlawful purposes prohibited.
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> The transportation of passengers in interstate commerce, it has long been settled, is within the regulatory power of Congress, under the commerce clause of the Constitution, and the authority of Congress to keep the channels of interstate commerce free from immoral and injurious uses has been frequently sustained, and is no longer open to question.

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[3] Notably, in 1910, this transport was not by commercial airline. The first commercial flight in the United States was in 1914, between Tampa and Saint Petersburg, Florida. Interstate commercial flights came several years later, and were not widely available until after World War II. It was likely not by automobile either; the Ford Model T had just been produced in 1908. The drafters of the Mann Act, who were all likely born before 1880, were *literally* concerned with "transporting" women – "white slaves" – by covered wagon.

> Moreover, this act has been sustained against objections affecting its constitutionality of the character now urged. *Hoke v. United States*, 227 U. S. 308, 57 L. ed. 523 (1913).

Drew Caminetti v. United States No 139 Maury Diggs v. United States No 163 Hays v. United States No 464, 242 U.S. 470, 37 S.Ct. 192, 61 L.Ed. 442 (1917). In other words, in that 1917 decision, the Court was not concerned with people who traveled so they could have sex, for profit or otherwise. Instead, the Court said that its concern was about the "movement" of "women and girls" – both of whom were more like property than people – in interstate commerce. (The act could have just as well included animals in those parcels that could not be transported.)

Throughout its history, the Mann Act has had various levels of penalties, most changes have dealt with violations of section B, which is focused upon individuals under the age of 18, which is not an issue in this case, but in its current form, holds a maximum penalty of 20 years in prison.[4] While not binding upon this Court, an examination of state law and specifically how the State of Michigan views what is substantially the same conduct is helpful determine the severity of the offense when considering §3553(1). Michigan's pandering statute 750.455 is Michigan's analog to the Mann Act. Specifically the act states "who shall inveigle, entice, persuade, encourage, or procure any female person to come into this state or to leave this state for the purpose of prostitution . . . or who shall receive or give or agree to receive or give any money or thing of value for procuring or attempting to procure any female person to become a prostitute or to come into this state or leave this state for the purpose of prostitution, shall be guilty of a felony, punishable by imprisonment in the state prison for not more than 20 years." MCL 750.544.

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[4] Greg Carr is charged with Conspiracy which holds a maximum of 5 years, but for the purposes of sentencing, the Defense focuses on the offense that Greg has plead guilty to conspiring to commit.

Michigan, like in the Federal Criminal Code, utilizes guidelines for sentencing of felony offenders which were created by MCL 769.34 in 1999. Michigan's sentencing scheme first determines the category of crime by "victim" or type. Examples of "types" are crimes against a person, drug crimes, and crimes against public order. Pursuant to the most current sentencing manual, pandering is a crime against public order. After determining the group into which the crime falls, Michigan classifies crimes from Second Degree Murder, being the most severe, to Classes A – H, with Class H being the least severe. Pandering is a Class G Felony. Upon the most stringent of scoring, Greg would score a prior record variable of 10 points because of the concurrent conviction of money laundering. Greg's offense variables would equal 20 points, which includes a full 10 points for the misguided allegation that he is the leader of the organization. According to the sentencing Grid for class G offenses, Greg would fall into an "intermediate cell" with a guideline range of 0 – 17 months. However, Michigan defines intermediate sanctions as:

> **Intermediate sanction**: Any sanction, **other than imprisonment in a state prison or state reformatory**, which may lawfully be imposed. MCL 777.1(d); MCL 769.31(b). Intermediate sanctions include, but are not limited to, one or more of the following:
>
> 1) Inpatient or outpatient drug treatment or participation in a drug treatment court.
> 2) Probation with any probation conditions required or authorized by law.
> 3) Residential probation.
> 4) Probation with jail.
> 5) Probation with special alternative incarceration.
> 6) Mental health treatment.
> 7) Mental health or substance abuse counseling.
> 8) Jail.
> 9) Jail with work or school release.
> 10) Jail with or without authorization for day parole.
> 11) Participation in a community corrections program.
> 12) Community service.
> 13) Payment of a fine.
> 14) House arrest.
> 15) Electronic monitoring.

2010 *Michigan Judicial Institute, Michigan Sentencing Guidelines Manual*, p. 10 (emphasis added). Under the Michigan Sentencing Scheme, for the identical conduct, Greg, absent a departure, would face a maximum incarceration of 12 months in the county jail.[5]

How does a Court measure the "seriousness of the offense" in terms of fashioning a just and proper sentence? By definition, all crimes are serious, and to look at the report of probation, it is hard to determine what level of seriousness probation has assigned. Certainly the Defense has a different view than the Government on the seriousness of the crime: This was a crime of "enticement." Even the Government never alleged any fraud or any threat of force or violence. Simply stated, this is because there was none.

Do we look at the Victims? Who are they? The answer to that can be found in paragraph 44 of the Pre-Sentence Report. It is clear that Greg, Laurie, Michelle, and Nya never made any woman do anything against her will. In fact, the irrefutable evidence, including the business records of MC, the client list, calendar, and escort contact list, is littered with references and notes indicating that the escorts were in complete control of their travel, rate of pay, the types of clients they would see or not see, and their entire schedules. No personnel from MC ever traveled with the escorts or even kept an eye on the escorts while they were touring. In fact, many of them traveled with their husbands or boyfriends, who were not in any way affiliated with MC. (Contrast, the image of "transporting white slaves" in a covered wagon.) MC *never* required escorts to have sexual contact with any of their clients. (see *Exhibit G*). In fact, as the Court will read, many of the escorts (who are the Government's purported victims) have asked the Court to consider that Greg and MC provided them with nothing more or less than a safe

[5] It should be noted that the Michigan Sentencing Guidelines consider up to twenty (20) offense-specific variables when determining the severity level of the offense. In contrast, the Federal advisory guidelines has very few, if any, offense-specific variables.

alternative to doing what they would do otherwise (and what many of them are doing following Greg's arrest): working as independent escorts, without the safety net of a client screening service. As a result of Greg's conduct, these women knew that when they met clients, the clients had been screened, verified, and that they were in a safe situation. If the government really sought to *protect* these women, it might not have shut down MC at all; while acknowledging that the women were engaging in illegal conduct, the government might have realized (as it acknowledges every day when it dispenses clean needles to heroin addicts) that they are at least engaging in that conduct in a manner which is safer for all involved.

The Mann Act itself seeks only to punish the placing of the escorts into the "Stream of Commerce" with certain intent. Even after years of refinement, the act seeks to punish indiscriminately those who entice or coerce travel for the purpose of prostitution or any other sexual misdeeds that a particular State has deemed illegal. For example, MCL 750.30 makes adultery a felony in the state of Michigan, and MCL 750.29 defines that "[a]dultery is the sexual intercourse of 2 persons, either of whom is married to a third person." So, in any federal district court in Michigan, under the Mann act, the government could charge a service like AshleyMadison.com, which encourages that "Life is short. Have an affair,"[6] and guarantees that "Under the AshleyMadison.com Affair Guarantee Program, if you don't find someone within the initial 3 months after purchasing the 'Affair Guarantee' Membership Package, [AshleyMadison.com will] refund . . . the amount you paid for participating in the Program."[7] If a member of AshleyMadison.com decides to "Have an affair" and visit Michigan to do so, under its terms, the Mann act applies. The Government can obtain a conviction under the Mann Act

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[6] See http://www.ashleymadison.com/

[7] See http://www.ashleymadison.com/app/public/guarantee/detailsform.p

without any conviction or even charging of the underlying state-based sexual offense, just that the conduct be intended before or during the travel in the stream of commerce. Should the founders of AshleyMadison.com or other websites that "entice" people to travel to meet each other be subject to imprisonment for it?

The Mann Act is also one of the few criminal statutes that is dependent upon particular state law making it illegal "to engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense." 18 U.S.C. § 2422. Currently, the exchange of money for sex is legal, under certain circumstances in the State of Nevada. Rhode Island recently outlawed prostitution in 2009. The Mann Act is dependent upon whether or not the intended activity upon completion of travel could be charged under State law for prostitution or other sexual activity that is deemed illegal in a particular state. This begs the question: how serious is an offense under United States law in one part of the United States where the *identical conduct* would not have been an offense under the same United States law in another part of the United States?

It is interesting that in the Government's Sentencing Memorandum [DE 90] it cites to Prostitution and Trafficking in 9 Countries: *An Update on Violence and Posttraumatic Stress Disorder*, 2 Journal of Trauma Practice 34, 60 (2003) which talks of the way the women are often treated. They cite to the article, but fail to apply the finding of the authors to any specific facts or circumstances of the case of Miami Companions. Additionally, it is disingenuous of the Government to raise the issue of the plight of the prostitute in general, when the Department of Justice in Detroit has stated publicly that "Our goal is not to stamp out prostitution. I don't think we'll ever do that." she said. "But what we are concerned about is deterring criminal organizations from exploiting women as a commodity for profit." In sex cases, clients go free;

officials target bosses, *Detroit Free Press*, Feb. 14, 2011 (quoting Barbra McQuade, US Attorney for E.D. of Michigan). However in this case, by the time the Government decided to act, MC was bankrupt and doing very little business. The charges could have been brought immediately following the arrest of the first woman working in Detroit in 2007 when the business was thriving. Instead the Government waited until almost all the Defendants in this matter were broke, bankrupt, and almost homeless before it took action to shut down MC. The Government is obviously not seeking to *protect* anyone. Certainly such procrastination would not have occurred if the government considered there to be any person at risk or any true victim to exist.

The government, shamelessly, speaks about the exploitation of women, but had no problem with offering a 5K1 substantial assistance reduction to Rafael M. Bernabe-Caballero (herein "Marco") in Case No. 08-CR-20658 for assistance and testimony in this case, and possibly others. Marco was charged with similar conduct arising out of his Escort Agency, known as Miami Ultimate. However, unlike Greg, Marco was very abusive to the women who worked for his agency. As explained by Witness A, in 2008 to federal investigators a tale of being forced to have sex with men without time for meals, threats of public humiliation, violence, and death threats. Marco was eventually indicted in the Eastern District of Michigan and the first superseding indictment charged him with four (4) Counts of "Sex Trafficking by Force or Coercion" 18 USC §1591, seven (7) counts of "Coercion and Enticement for the Purposes of Prostitution" 18 USC § 2422(a), one (1) Count of "Importation of Alien for Immoral Purposes" 8 USC §1328, Conspiracy and Finally, Forfeiture. The government graciously offered to dismiss 13 of 14 counts against Marco in exchange for his assistance in this and possibly other matters under investigation. It is astonishing that the Government would make a deal with

Marco, with his violent nature, in exchange for his cooperation and possible testimony against Greg, Laurie, Michelle, and Fabiola. In the tens of thousands of pages of emails, investigative reports, and other documents, there is not one mention that Greg engaged in any form of violence or force upon the women who contracted with MC. These facts, in addition to the others outlined above clearly demonstrate the inconsistent policies behind the prosecution of what the US Attorney refers to as "deterring criminal organizations from exploiting women as a commodity for profit." One would think that deterring the use of violence against women to force them into prostitution, by individuals like Marco, would hold a high priority over simply shutting down an agency known for its policies of not requiring anyone to do anything illegal, and left 99% of the decision making to the escorts.

In summary, when evaluating the seriousness of the offense, the Court should focus not only on the crime classifications assigned to the criminal offense by the legislator, but the facts and circumstances of the offense as applied to the specific facts of this case. In this case the facts and circumstance favor a finding by the Court that this matter is considerably less serious than other similar cases throughout the Country.

(ii) *The Offense - 18 USC §1956*

Greg also plead to one (1) count of Money Laundering pursuant to 18 USC §1956 which states in part:

> Sec. 1956. Laundering of monetary instruments (a)(1) Whoever, knowing that the property involved in a financial transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conduct such a financial transaction which in fact involves the proceeds of specified unlawful activity - (A)(i) with the intent to promote the carrying on of specified unlawful activity;

The factual basis for the plea to this Count is straight forward. Greg directed funds to be transferred from Miami to Panama and Costa Rica for payment of wages of those who worked in

the call centers. While the conduct is deemed illegal, there is no support for a finding that this behavior is equal to or more heinous than the other allegations for which Greg has taken responsibility.

(iii) *The history and characteristic of the Defendant*

This factor is more subjective and relies less upon statements of law, and more upon the Court's own observations of the Defendant, the information contained in the presentence report, information contained herein, and letters of support from those who know Greg.

At the outset, it should be noted that Greg has been on pre-trial release for nine (9) months without incident. He obtained full time employment, and maintains a solid parental relationship with his young son. He has abstained from the use of illegal drugs, or any further contact with law enforcement. These actions demonstrate that he is capable of being a productive member of the community, and is able to follow terms and conditions imposed upon him by the Court which bodes well for a probationary sentence. Furthermore, this matter represents Greg's first contact with any state or federal criminal justice system in his 44 years.

Attached to this memorandum are numerous letters of support from friends, family and even former Escorts who worked with MC in the past. The defense has spent a lot of time contemplating whether or not to include the letters of support from the Escorts, but in the end, if the Court is truly to have an understanding of Greg that such information should not be withheld from the court, especially in light of the sentencing memorandum filed by the Government.

The letters from friends and family talk about Greg's caring, and sacrificing nature. They speak of him as a good father, and someone who can be counted on when times are tough, or someone is in need. The letters tell the Court that Greg is not known to be violent or aggressive

towards women. Most speak to his loyalty as a friend, and his openness about his charges. They seek leniency from the Court and so does Greg.

The letters from the former escorts talk about MC as a good place to work, and how respectfully they were treated by the staff and management of the company. Some common themes throughout these letters are Greg's respectful nature, and the safe environment that MC provided though its screening process. The Court might remember the fight over the client list, and the references to the depth of information that was maintained on the client list (the "List"). Greg has always viewed the List from the aspect of safety of the women. The List has a far different significance to the Government and the public than it has to Greg, his co-defendants, and the escorts who chose to tour for MC. To Greg, MC and the women who chose to Tour for MC, the list represents more than 30,000 men and women who are known as safe, non-violent, and respectfully individuals to meet with, and after viewing the notes contained in the client list, the calendar, and the escort contact list it is clear that any client, male or female, who was less than respectful to the escorts was immediately blacklisted, and no further appointments could or would be booked. The Government fought to keep the List protected as though it was some sort of national security document; however, it should be noted that the List has existed for many years, and never once was the information made public.[8]

Some of the former escorts who chose to write letters on Greg's behalf have sent unsigned anonymous letters, and they have been included. In each instance, they were submitted anonymously for fear of retribution by the Government. Of course, the Court is free to consider them or disregard them; however, the Defense has included these letters for the purpose of complete and full disclosure of all of the facts, in the interest of justice.

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[8] With the exception of Laurie's disclosure of some clients in her pitch for a reality TV show.

The Defense is certain that after reviewing the information available to the Court about Greg's character, except for the charges he has pled guilty to, Greg is a man of good character. Despite the fact that he stands before the Court awaiting a sentence on criminal charges, the Defense asks the Court to consider the whole person, and to judge Greg as a human, who is not perfect, but who stands before the Court remorseful and truly taking responsibility for his actions.

(v). *The need to impose a sentence*

18 USC §3553 directs the court to evaluate the need to impose a sentence to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; to afford adequate deterrence to criminal conduct; to protect the public from further crimes of the defendant; and to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.

The Defense has already discussed in depth its view of the seriousness of the offense earlier in this memorandum, and would ask the Court to consider those same arguments when evaluating this factor.

Greg was arrested at gun point half naked in his home, handcuffed, and taken to jail on July 22, 2010. The Defense would argue from that alone was sufficient to instill a great respect for the law. As early as July 23, 2010, Greg had garnered a new respect for the law, and has already been adequately deterred from any further criminal conduct since his arrest. Greg has adhered to the conditions of his pre-trial release, and has had no further contact with law enforcement. Any incarceration of Greg would simply serve to drive home a point that has

already been made, and each month the Court orders Greg to serve merely represents an exclamation point. Greg is a candidate for sentencing alternatives such as house arrest and probation. The Defense would further argue that to the extent that the Court wishes to fashion a sentence that will deter the public at large against engaging in similar conduct, that this matter is not an appropriate set of facts and circumstances about which to make a public statement.

The Court and the public at large need not be concerned that Greg will be a repeat offender of any kind as Greg and there is no need to incarcerate him to protect the public. Any incarceration only serves as pure punishment.

C. Disparity among Co-Defendants

Co-Defendants Laurie Carr and Michelle Matarazzo all stand to receive a substantial assistance credit which could produce a sentence far less severe that the sentence which the Government has advocated for Greg. However such disparity is unjustified in this case.

(i) Laurie Carr

Laurie Carr, upon her arrest, spoke with investigators at length, and then followed that up with a proffer to the US Attorney in August, 2010. On the morning of July 22, 2010, there was a equal chance that it would have been Greg talking to investigators rather than Laurie because Greg and Laurie equally split custody of their child. Laurie just happen to have the couple's child with her when the Federal Agents stormed her home, with guns drawn. The Agents threatened to take the child from her, and place the child with a State agency if she refused to talk to the agents. Under the pressure and fear of losing her child, she spoke to the Government. Had it been Greg who had his child that morning, it would be he receiving a substantial assistance recommendation.

(ii) Michelle Matarazzo

Michelle Matarazzo stands to receive a recommendation for a substantial assistance reduction for her early, pre-indictment, co-operation and her agreement to testify. During her tenure at MC her primary responsibility was to make the travel arrangements for the escorts going on tour. Later, she purchased the company from Greg and Laurie when they announced their intention to get out of the business. Michelle and her husband loved MC, and sought to run it better than ever. After she was arrested in July of 2009, she continued to operate the business. Her post-arrest operations can best be described as a corporate "bust out". Knowing that her days were limited as the owner/operator of MC, she quickly developed plans to integrate MC into her new company the "adult resource center", but her proclivity for stealing money from the companies prevented her from achieving any level of success. Rather than use the money given to DJM Entertainment for advertising that the escorts paid for, she embezzled the funds to her own personal use. Matarazzo's theft also extended to her keeping monies from MC clients paid via credit cards for her own personal use, when the moneys were owed to the escorts. The Government tries to portray her as a victim in this case, when the fact of the matter is that she did more to victimize the escorts (by her theft) than any other person involved in this case.

Greg is not arguing to strip Laurie and Michelle of their substantial assistance credit, but rather he argues that he, Laurie and Michelle should be treated equally in this case because they all played an important role in the operation of MC, and were interdependent upon each other.

D. Request for Recommendation to FPC-Miami and for Voluntary Surrender

Finally, Greg respectfully requests that this Court include in its Judgment of Conviction a recommendation to the U.S. Bureau of Prisons ("BOP") that he serve any term of imprisonment at the Federal Prison Camp in Miami. Under BOP Guidelines, Greg will be allowed more visitation time with his son, if he and Laurie agree that his Son will visit him

should he be incarcerated. Surely, a proper purpose of sentencing includes the humanitarian condition of providing as much contact between family and friends who desire to visit Greg, should he be incarcerated.

Furthermore, Greg chose to negotiate a provision in his Rule 11 plea agreement that allows him to serve any sentence to prison time to be served after Laurie Carr serves her sentence, should she be imprisoned. This arrangement would allow for one parent to remain with the couple's young child at all times, minimizing trauma to the child. Therefore, Greg would respectfully ask this Court to allow him to voluntarily surrender within 30 days of the release of Laurie Carr from custody.

Greg should also be permitted to voluntarily surrender to his designated place of incarceration. First, Greg has fulfilled all conditions of his pretrial release, including adhering to travel restrictions. He is not a risk of flight and the undersigned is confident that U.S. Pretrial Services would support that position. Second, allowing Greg to voluntarily surrender is considered an important positive factor under BOP Guidelines. Third, not allowing Greg to voluntarily surrender would only impose an unnecessary additional punishment on the Defendant and his family.

CONCLUSION

Greg does not stand before the Court arguing that he should not be punished for his conduct. He is only seeking that when the Court fashions the sentence that it be based upon accurate facts, and takes into consideration all the statutory factors outlined in 18 U.S.C. § 3553. After considering those facts, Greg asks the Court to recognize that he is not a hardened criminal or an abuser or exploiter of women as the Government has tried to portray. He understands that

a period of imprisonment is highly likely, but he respectfully seeks consideration of the sentencing alternatives available to the Court, such as home confinement and probation.

Greg stands before the Court with the support of numerous friends and family. Some will be present in the Courtroom, and others have written letters of support. Much has been reported by the Government and the media that is wholly inaccurate, he has been painted as some sort of Miami playboy who lived like the rich and famous, and nothing could be further from the truth. Just a few years ago, Greg and his now former wife were forced to file bankruptcy, with their homes in foreclosure and their nice cars gone, and there are no assets or wealth that has been undisclosed or hidden.

One of the common themes in the letters of support from friends and family is the dedication that Greg has as a father. While the fact that Greg has a child is not an excuse or mitigating factor when the Court weighs the facts and circumstances, it is, however, indicative of his true character and his love of life, his son, and his family.

Greg, his family, and his friends all ask this Court for leniency and for compassion in this matter. They all request that the Court look at the whole person, and look beyond the Government's fictional characterization of him, clearly the facts do not support such a finding.

WHEREFORE, the Defendant, Gregory Carr, through undersigned Counsel prays that this Court exercise it vast discretion in sentencing, and sentence him to a term of home confinement, and probation and to afford him any other relief that the Court deems equitable.

I certify that I am admitted to practice in the District Court for the Eastern District of Michigan pursuant to LR 83.20

By:s/ Paul DeCailly
Paul DeCailly, P59341
Attorney for Defendant

Dated: May 6, 2011

CERTIFICATE OF SERVICE

I hereby certify that on May 6, 2011, I, Paul DeCailly, electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the following: *Assistant U.S. Attorney Jennifer Blackwell.*

By:s/ Paul DeCailly
Paul DeCailly, P59341
Attorney for Defendant