

1 E. MARTIN ESTRADA
 United States Attorney
 2 ANNAMARTINE SALICK
 Assistant United States Attorney
 3 Chief, National Security Division
 NISHA CHANDRAN (Cal. Bar No. 325345)
 4 Assistant United States Attorney
 Cyber and Intellectual Property Crimes Section
 5 1500 United States Courthouse
 312 North Spring Street
 6 Los Angeles, California 90012
 Telephone: (213) 894-2429
 7 Facsimile: (213) 894-0141
 E-mail: nisha.chandran@usdoj.gov
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Attorneys for Plaintiff
 9 UNITED STATES OF AMERICA

10 UNITED STATES DISTRICT COURT

11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 v.

15 ROBERT SLOAN MATEER,

16 Defendant.

No. CR 20-CR-00580-ODW

GOVERNMENT'S SENTENCING POSITION
REGARDING DEFENDANT ROBERT SLOAN
MATEER

Sentencing
 Hearing Date: April 17, 2023
 Hearing Time: 11:00 a.m.
 Location: Courtroom of the
 Honorable Otis D.
 Wright, II

19 Plaintiff United States of America, by and through its counsel
 20 of record, the United States Attorney for the Central District of
 21 California and Assistant United States Attorney Nisha Chandran,
 22 hereby files its sentencing position for defendant ROBERT SLOAN
 23 MATEER.

24 This sentencing position is based upon the attached memorandum
 25 of points and authorities, the files and records in this case, the
 26 United States Probation and Pretrial Services Office's presentence
 27 investigation report, and such further evidence and argument as the
 28

1 Court may permit.

2 The government respectfully requests the opportunity to
3 supplement its position or otherwise respond to defendant as may
4 become necessary.

5

6 Dated: April 6, 2023

Respectfully submitted,

7

E. MARTIN ESTRADA
United States Attorney

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ANNAMARTINE SALICK
Assistant United States Attorney
Chief, National Security Division

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/s/

NISHA CHANDRAN
Assistant United States Attorney

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Attorneys for Plaintiff
UNITED STATES OF AMERICA

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

On October 1, 2020, defendant ROBERT SLOAN MATEER ("defendant") and his co-defendant Sarah Taylor Brown were stopped for a traffic violation. A search of defendant's car revealed, in relevant part, 85 grams of pure methamphetamine, a 9mm caliber pistol with no serial number loaded with two rounds of ammunition, one additional round of ammunition in the driver's side pocket of the car, and 17 State of California Employment Development Department ("EDD") cards and five credit and debit cards embossed with other individuals' names. Defendant and other co-conspirators used those fraudulent EDD cards in a scheme to fraudulently obtain unemployment benefits issued to other persons, causing actual losses to the EDD program of \$937,173.88. In November 2022, defendant pleaded guilty to one count of use of unauthorized access devices, in violation of 18 U.S.C. § 1029(a)(2) (Count One), one count of possession with intent to distribute methamphetamine, in violation of 21 U.S.C. § 841(a), (b)(1)(A) (Count Five), and one count of felon in possession of ammunition, in violation of 18 U.S.C. § 922(g)(1), pursuant to a plea agreement filed with the Court on October 30, 2022. (CR 79 ("Plea Agreement") and 81.)

The United States Probation and Presentence Office ("USPPO") issued its Presentence Investigation Report ("PSR") and recommendation letter on March 7, 2023. (CR 102, PSR; CR 101.) The PSR calculated a total offense level of 29 on Counts Five and Seven, which group together and control defendant's Guidelines calculation, and a Criminal History Category of IV, which results in an advisory Guidelines range of 121 to 151 months. The PSR highlighted that the

1 parties disagree about the restitution amount owed by defendant. But
2 the USPPPO agreed with the government that restitution in the amount
3 of \$937,173.88 was owed to EDD.

4 Here, the government concurs with the calculations of the USPPPO,
5 and similarly recommends that the Court impose a low-end Guidelines
6 sentence of 121 months' imprisonment; a five-year term of supervised
7 release; the mandatory special assessment of \$300; and restitution in
8 the amount of \$937,173.88.

9 **II. STATEMENT OF FACTS**

10 Defendant admitted to the following facts at his change of plea
11 hearing and in the plea agreement (PSR ¶¶ 17-21; Plea Agreement
12 ¶ 22):

13 On October 1, 2020, in Los Angeles County, within the Central
14 District of California, defendant and co-defendant Sarah Taylor Brown
15 were stopped for a traffic violation and defendant's car was
16 searched. The search of defendant's car revealed the following,
17 among other things: (1) 85 grams of pure methamphetamine; (2) two
18 cell phones with debit and credit cards in names belonging to persons
19 other than defendant and co-defendant Brown; (3) a Glock-type 9mm
20 caliber pistol with no serial number loaded with two rounds of
21 ammunition, (4) one additional round of 9mm Luger caliber ammunition
22 in the driver's side pocket of the car; (5) 17 State of California
23 EDD cards embossed with various names belonging to persons other than
24 defendant and co-defendant Brown; (6) five credit and debit cards in
25 names other than defendant or co-defendant Brown; and
26 (7) approximately \$197,711.79 in cash.

27 EDD debit cards like the cards found in defendant's car are
28 linked to bank accounts that contain money intended for individuals

1 who qualify for unemployment or other state benefits administered by
2 EDD. Defendant fraudulently obtained EDD debit cards by applying for
3 EDD benefits using another individual's personal identifying
4 information on the EDD website. On the website, defendant would
5 direct the EDD debit card to be sent to an address that did not
6 belong to the individual whose identity he was using. Defendant, co-
7 defendant Brown, and other co-conspirators would then retrieve the
8 EDD card from the address he designated and would use the card at an
9 ATM machine to withdraw EDD cash benefits.

10 In furtherance of this scheme, defendant knowingly and with the
11 intent to defraud, used debit card account numbers issued to persons
12 other than defendant and co-defendant Brown to fraudulently obtain
13 money from the EDD program. For example, beginning no later than
14 August 2020, and continuing through at least October 2020, in Los
15 Angeles County, defendant used: (1) a Bank of America account number
16 ending in 9089 issued to victim B.S. to obtain \$1,000 of EDD
17 benefits; and (2) a Bank of America account number ending in 5119
18 issued to victim G.T. to obtain \$1,000 of EDD benefits. In total, as
19 a result of the EDD fraud scheme, defendant, co-defendant Brown, and
20 other co-conspirators caused actual losses to the EDD program of at
21 least approximately \$227,230.67 and up to approximately \$937,173.88.

22 Defendant also knowingly and intentionally possessed the 85
23 grams of methamphetamine located in his car during the traffic stop
24 on October 1, 2020, with intent to distribute the methamphetamine to
25 at least one person.

26 Also on October 1, 2020, defendant knowingly possessed a Glock-
27 style handgun without a serial number (a "ghost gun"), one round of
28 CCI/Speer 9mm caliber ammunition, one round of Yavascular A.S. 9mm

1 caliber ammunition, and one round of Starlin Brass 9mm caliber
 2 ammunition (collectively, the "ammunition"). Prior to defendant's
 3 knowing and unlawful possession of the ammunition, defendant had been
 4 convicted of the following felony crime punishable by imprisonment
 5 for a term exceeding one year: Driving or Taking a Vehicle Without
 6 Consent, in violation of California Vehicle Code Section 10851(a), in
 7 the Superior Court for the State of California, County of Los
 8 Angeles, Case Number GA107537, on or about March 24, 2020. At the
 9 time of his knowing and unlawful possession of the firearm and
 10 ammunition, defendant knew that he had been convicted of the
 11 aforementioned felony.

12 **III. THE USPPPO'S GUIDELINES CALCULATIONS**

13 **A. The Government Concurs with USPPPO's Criminal History**
 14 **Category**

15 The USPPPO correctly calculated that defendant has a criminal
 16 history score of eight. (PSR ¶ 66.) Defendant is thus squarely in
 17 Criminal History Category IV. (Id.)

18 **B. The Government Concurs with USPPPO's Offense Level**
 19 **Calculation**

20 The government agrees with the USPPPO's calculation of
 21 defendant's total offense level of 29. (PSR ¶ 52.) The PSR's total
 22 offense level calculation is as follows:

22	Base Offense Level:	30	U.S.S.G. § 2D1.1(a)(5)
23	Possession of	+2	U.S.S.G. § 2D1.1(b)(1)
24	Dangerous Weapon:		
25	Acceptance of	-3	U.S.S.G. § 3E1.1(a)-(b)
26	Responsibility:		
27	<hr/>		
	Total:	29	

28 (PSR ¶¶ 30-37, 50-52.)

1 The USPPPO recognized that a total offense level of 29 on Counts
2 Five and Seven, which group together and control defendant's
3 Guidelines calculation because they produce the highest offense level
4 (PSR ¶¶ 29, 45-46), and a Criminal History Category of IV result in
5 an advisory Guidelines range of 121-151 months, followed by a period
6 of supervised release of at least five years. (PSR ¶¶ 116-117, 119-
7 121.) Count Five also carries a mandatory minimum term of
8 imprisonment of 10 years. (21 U.S.C. 841(a)(1), (b)(1)(A)(viii); PSR
9 ¶ 116.) In the PSR, the USPPPO did not identify any factors that
10 would warrant a departure from or variance outside the advisory
11 Guidelines range. (PSR ¶¶ 132-133.)

12 As noted above, and consistent with the parties' plea agreement,
13 the government specifically agrees that defendant possessed more than
14 50 grams, but less than 150 grams, of pure methamphetamine, as well
15 as a Glock-type 9mm caliber pistol without a serial number that was
16 loaded with two rounds of ammunition. (U.S.S.G. §§ 2D1.1(a)(5),
17 2D1.1(b)(1); PSR ¶¶ 30-33.)

18 **C. The Government Concurrs with USPPPO's Restitution Calculation**
19 **of \$937,173.88.**

20 "[I]n a case involving a conspiracy or scheme, restitution may
21 be ordered for all persons harmed by the entire scheme." United
22 States v. Riley, 335 F.3d 919, 931 (9th Cir. 2003). "Restitution is
23 not confined to the harm caused by the particular offenses to which
24 defendant pleaded guilty." Id. at 931-32. Rather, a "conspirator is
25 vicariously liable for reasonably foreseeable substantive crimes
26 committed by a coconspirator in furtherance of the conspiracy." Id.
27 at 932 (citing United States v. Fonseca-Caro, 114 F.3d 906, 907 (9th
28 Cir. 1997)). Thus, where relevant conduct of the full conspiracy is

1 properly attributed to the defendant, the defendant may be ordered to
2 pay restitution for losses created by his coconspirators. Id.

3 Here, defendant was at the center of the EDD fraud conspiracy,
4 and thus, the activities of the full conspiracy are relevant conduct
5 for purposes of defendant's sentencing. To determine whether the
6 conduct of the full conspiracy is properly attributed to the
7 defendant, the relevant conduct includes jointly undertaken criminal
8 activities, or any scheme undertaken by the defendant in concert with
9 others, whether or not that conduct was charged as a conspiracy.

10 U.S.S.G. § 1B1.3. In the case of jointly undertaken criminal
11 activities, all acts and omissions of others that occurred during the
12 commission of the offense are considered so long as those acts and
13 omissions were: (1) within the scope of the jointly undertaken
14 criminal activity; (2) in furtherance of that criminal activity; and
15 (3) reasonably foreseeable in connection with that criminal activity.

16 U.S.S.G. § 1B1.3(a)(1)(B). "In determining the scope of the criminal
17 activity that the particular defendant agreed to jointly undertake
18 (i.e., the scope of the specific conduct and objectives embraced by
19 the defendant's agreement), the court may consider any explicit
20 agreement or implicit agreement fairly inferred from the conduct of
21 the defendant and others." U.S.S.G. § 1B1.3, cmt. n. 2. The Court
22 "is not required to proceed item-by-item through a complete list of
23 all losses attributed to a criminal conspiracy and to then make an
24 individualized determination whether or not each item was within the
25 scope of the defendant's 'joint undertaking' and was 'reasonably
26 foreseeable to that defendant.'" United States v. Treadwell, 593
27 F.3d 990, 1002-03 (9th Cir. 2010).

28

1 "Section 1B1.3(a) is a general provision that prescribes the
2 relevant range of conduct a district court should consider when
3 calculating the applicable Guidelines range, and must be interpreted
4 in conjunction with the specific guideline being applied" to the
5 conduct. Id. The applicable guideline here for purposes of
6 calculating defendant's owed restitution is U.S.S.G. § 2B1.1, which
7 requires only that a district court "make a reasonable estimate of
8 the loss," U.S.S.G. § 2B1.1 cmt. n.3(C), as limited by the principles
9 of U.S.S.G. § 1B1.3(a)(1)(B). Here, the Court should find defendant
10 accountable for the full loss of \$937,173.88 that he and his co-
11 conspirators caused because that amount was (1) within the scope of
12 the jointly undertaken criminal activity; (2) in furtherance of that
13 criminal activity; and (3) reasonably foreseeable in connection with
14 that criminal activity. See U.S.S.G. § 1B1.3(a)(1)(B).

15 As an initial matter, defendant concedes he played a central
16 role in and jointly undertook a broad fraud scheme. Defendant agrees
17 that he obtained the EDD cards used in the scheme by applying for
18 those EDD benefits using another individual's personal identifying
19 information on the EDD website. (PSR ¶ 18; Plea Agreement ¶ 22.)
20 Defendant also agrees that, on the EDD website, he would direct the
21 EDD cards to be sent to an address that did not belong to the
22 individual whose identity he was using. (Id.) Then, defendant,
23 agrees that he, co-defendant Brown, and others would retrieve the EDD
24 card from the address that defendant designated, and then use the
25 card at an ATM to withdraw EDD cash benefits. (Id.) Defendant is
26 personally captured on ATM surveillance footage making withdrawals
27 alone or with co-defendant Brown for 222 withdrawals. Exhibit A.

28

1 The \$937,173.88 in actual loss to EDD is attributable to the jointly
2 undertaken criminal activity.¹

3 Defendant's text messages also show his central role and
4 coordination with other co-conspirators to orchestrate and grow the
5 fraud scheme.

6 First, defendant solicited co-conspirators to the scheme. For
7 example, he told co-defendant Brown, "I need your help with drying
8 some cash out of an ATM if you don't mind I'll pay you for every
9 thousand dollars you pull out." Exhibit D at 5.

10 Second, defendant solicited and obtained from multiple
11 individuals the personal identifying information that was needed to
12 apply for the EDD benefits. For example, defendant texted a contact
13 in his phone labeled "Jenna," asking "Do you have any profiles I can
14 buy? I need a bunch like I'm talking thousands if you have it." (Id.
15 at 7.) He also asked a contact in his phone labeled "Cloyd," "Hey so
16 if you're down to sell some profiles . . . how much for a couple
17 thousand?" (Id.) And he asked a contact in his phone labeled "Mel,"
18 "I need as many as you can get and I'll pay you hell good money . . .
19 If you can give me a thousand or something I'll give you whatever
20 amount you want for them Just need name, social and
21 birthday." (Id.)

22 Third, defendant coordinated with multiple co-conspirators
23 regarding applications for and delivery of the EDD cards. For
24 example, defendant texted with a contact in his phone labeled
25 "Markk," who told defendant that he was "Activating these cards and
26 then gonna hit atms later tonight." Defendant also texted with a
27

28 ¹ The calculation of the \$937,173.88 in actual loss is
illustrated in Exhibits B and C.

1 contact saved as "Thai," who sent defendant images of EDD mail
2 addressed to 462 Prescott Street, the address where defendant sent
3 several EDD cards. (Id.)

4 Fourth, defendant conferred with multiple individuals about
5 sending EDD cards to their addresses. For example, he asked a
6 contact labeled "Marie," "Can I send a couple cards to your house?
7 I'll give you \$1000 for each one." He also told "Marie," "I need
8 another SECURE address if you know anyone that wants to make money."
9 (Id. at 8.) He also asked his contact "Cloyd," "Can I buy a 91601
10 mailbox key from you? . . . I just need for a couple weeks while
11 receiving mail at this particular address then I'm done." (Id. at
12 7.)

13 Finally, defendant spoke about and coordinated withdrawals and
14 sharing EDD cards with multiple other co-conspirators. For example,
15 defendant's contact "Markk" told defendant that he had "a mountain of
16 cards to get through so I gotta hit multiple spots," specifying "27
17 cards on me right now." (Id. at 6.) The contact labeled as "Markk"
18 also coordinated with defendant to share cards, stating, "Just lemme
19 know and lemme know when I can grab that card." (Id. at 5.)
20 Defendant also received an update from a number ending in 9871
21 stating that "Me and Rachel are about to do bank run." (Id.) He
22 also coordinated with a contact saved as "Princess," stating "I got
23 more for you - still haven't gotten cards yet but they are coming
24 100%." Defendant then said that he has only gotten one card from the
25 list from "Princess," and shares an email address and password
26 "Princess" to access the card. He also told "Princess" that he will
27 "give [her] the pins and so on when they arrive," again giving an
28 update about the cards he had received from her list. (Id. at 9.)

1 Defendant also coordinated with a contact saved as "Anthony P," who
2 asked defendant when the card was coming and asking "Can I come get
3 that card?" (Id.) Defendant provided to "Anthony P," the password
4 to access an EDD card. (Id.)

5 In other words, defendant personally solicited co-conspirators,
6 personal identifying information for victims, and mailboxes to grow
7 the conspiracy. He was also aware of and working in connection with
8 other co-conspirators to secure personal identifying information to
9 apply for EDD cards and addresses to send the EDD cards. Defendant
10 was also aware of and was coordinating with other co-conspirators who
11 were similarly making withdrawals on the EDD accounts. Defendant
12 expressly contemplated an expansive scope of the scheme, soliciting
13 "thousands" of personal identifying information, or "profiles," from
14 multiple sources.

15 Thus, in light of the broad scope of his plan to organize and
16 grow the EDD fraud scheme, with co-conspirators including and beyond
17 co-defendant Brown, the full loss attributable to the EDD fraud
18 scheme falls within the scope of his agreement to participate in the
19 jointly undertaken criminal activity and is properly attributed to
20 him. The additional withdrawal transactions, which caused the
21 additional loss amount beyond defendant's proposed loss amount, were
22 all in furtherance of the EDD fraud scheme that defendant propagated
23 and were reasonably foreseeable in connection with that criminal
24 activity. See Riley, 335 F.3d at 931 (explaining that when relevant
25 conduct of the full conspiracy is properly attributed to the
26 defendant, the defendant may be ordered to pay restitution for losses
27 created by his coconspirators). The higher loss amount to EDD meant
28

1 that defendant and his co-conspirators were reaping the exact
2 benefits that the scheme was intended to provide them.

3 **D. Defendant's Proposed Restitution Amount is Underinclusive.**

4 Defendant believes that the appropriate restitution amount is
5 \$242,900. (CR 105, Defendant's Sentencing Position, at 6-7.) This
6 number would limit defendant's loss to only those specific EDD
7 withdrawal transactions made when defendant or co-defendant Brown
8 were personally present and where defendant or co-defendant Brown
9 were captured on the ATM surveillance camera in connection with the
10 transaction.

11 Defendant arrives at this loss amount as follows: defendant is
12 observed on ATM surveillance video for approximately 192 transactions
13 totaling \$188,160. And, in addition, both defendant and co-defendant
14 Brown are observed together on ATM surveillance video for
15 approximately 30 transactions totaling \$29,000. And co-defendant
16 Brown is observed on ATM surveillance video for approximately 26
17 transactions totaling \$25,740. Exhibit A. Thus, defendant has added
18 the values of the transactions only for those transactions where he
19 or co-defendant Brown were (1) physically present; and (2) were
20 captured on ATM surveillance video.

21 But defendant's loss calculation is underinclusive and contrary
22 to the law and Sentencing Guidelines. Defendant's own text messages
23 outlined above show that the EDD fraud scheme involved multiple other
24 participants and that defendant had a central role in the EDD fraud
25 scheme. Defendant's calculation fails to consider any conduct by co-
26 conspirators outside the presence of defendant, or to include any
27 conduct by defendant or his co-conspirators on the EDD cards in
28 defendant's possession that was not captured on ATM surveillance.

1 Particularly in light of defendant's role in the scheme, defendant is
2 liable in restitution for the full \$937,173.88 loss to EDD.

3 **IV. THE GOVERNMENT RECOMMENDS A LOW-END GUIDELINES SENTENCE OF 121**
4 **MONTHS' IMPRISONMENT.**

5 The government recommends that the defendant be sentenced to a
6 low-end term of 121 months' imprisonment, followed by a five-year
7 period of supervised release, a \$300 special assessment, and
8 restitution in the amount of \$937,173.88. Such a sentence is
9 sufficient, but not greater than necessary, to achieve the purposes
10 set forth in 18 U.S.C. § 3553(a).

11 **A. The Nature and Circumstances of the Offense and History and**
12 **Characteristics of Defendant Warrant a Low-End Guidelines**
13 **Sentence.**

14 Defendant's history and characteristics present mitigating
15 circumstances and support a low-end Guidelines sentence of 121
16 months' imprisonment. 18 U.S.C. § 3553(a)(1). First, defendant had
17 an unusual and difficult childhood. While he was financially secure,
18 his relationship with his father had to be kept secret. (PSR ¶ 76-
19 77.) And defendant tragically lost his mother when he was twelve
20 after she had a brain aneurysm and died in a car accident. (PSR ¶
21 78.) Defendant began self-harming to cope with the loss of his
22 mother, and eventually turned to drugs. (PSR ¶ 80.) Defendant's
23 substance abuse has shaped much of his adult life. He began using
24 heroin on a daily basis at age eighteen or nineteen and has continued
25 using heroin, methamphetamine, and Xanax. (PSR ¶¶ 84, 85-88, 93-
26 101.) As a result of his severe drug addiction, defendant dropped
27 out of college, attempted suicide, and experienced homelessness.

1 (PSR ¶ 82-86.) Defendant reported that his substance abuse is the
2 root of his criminal behavior. (PSR ¶ 101.)

3 A below-Guidelines sentence, however, is not appropriate in
4 light of the seriousness of defendant's criminal conduct. Defendant
5 possessed methamphetamine and a loaded pistol at the time of his
6 arrest. And he, along with his co-conspirators, used personal
7 identifying information of multiple victims and withdrew hundreds of
8 thousands of dollars in EDD benefits from cards issued to those
9 victims. Defendant committed all of this conduct while on probation.
10 (PSR ¶ 65.)

11 Thus, on balance, the nature and circumstances of the offense
12 and defendant's history and characteristics support the government's
13 recommended low-end Guidelines sentence.

14 **B. A Low-End Guidelines Sentence Reflects the Seriousness of**
15 **the Offense, Promotes Respect for the Law, Provides Just**
16 **Punishment, Affords Adequate Deterrence, and Protects the**
17 **Public.**

18 The sentence must satisfy the need to punish defendant, as well
19 as society's need to reflect the seriousness of the offense; promote
20 respect for the law; provide just punishment; afford adequate
21 deterrence; and protect the public. 18 U.S.C. § 3553(a)(2). Here,
22 the government's recommended sentence will provide deterrence both to
23 defendant and to others who might otherwise be inclined to perpetrate
24 a similar crime. Moreover, because the Guidelines calculation
25 reflects the fact the defendant committed the instant offense while
26 on probation, a sentence within the Guidelines promotes respect for
27 the law.

28

1 **C. A Low-End Guidelines Sentence Avoids Unwarranted**
2 **Disparities.**

3 Section 3553(a)(6) requires the Court to minimize sentencing
4 disparities among similarly situated defendants. One way of doing so
5 is to correctly calculate the Guidelines range and then sentence
6 defendants within that range. See Treadwell, 593 F.3d at 1011
7 ("Because the Guidelines range was correctly calculated, the district
8 court was entitled to rely on the Guidelines range in determining
9 that there was no 'unwarranted disparity'"); Gall v. United
10 States, 552 U.S. 38, 54 (2007) ("[A]voidance of unwarranted
11 disparities was clearly considered by the Sentencing Commission when
12 setting the Guidelines ranges."). Here, under the correctly
13 calculated Guidelines range, other defendants "with similar records
14 who have been found guilty of similar conduct" as defendant, can
15 expect a prison sentence between 121 and 151 months' imprisonment.
16 See U.S.S.G. § 5A (Sentencing Table). As such, the government's
17 recommended sentence, which is at the low end of that range, avoids
18 an unwarranted disparity with similarly situated defendants.

19 **V. CONCLUSION**

20 For the foregoing reasons, the government recommends that the
21 Court sentence defendant to 121 months' imprisonment, five years'
22 supervised release, a \$300 special assessment, and restitution of
23 \$937,173.88.