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 UNITED STATES OF AMERICA

12 UNITED STATES DISTRICT COURT
 13 FOR THE CENTRAL DISTRICT OF CALIFORNIA

14 UNITED STATES OF AMERICA,
 15 Plaintiff,
 16 v.
 17 WILLIAM ERIC FULTON,
 18 aka "Eric Fulton,"
 19 Defendant.

No. CR 23-284-DMG

GOVERNMENT'S OBJECTIONS TO
 PRESENTENCE INVESTIGATION REPORT
 AND SENTENCING POSITION FOR
 DEFENDANT WILLIAM ERIC FULTON

21 Plaintiff United States of America, by and through its counsel
 22 of record, the United States Attorney for the Central District of
 23 California and Assistant United States Attorneys Jeff Mitchell and
 24 Dan G. Boyle, hereby files its Objections to the Presentence
 25 Investigation Report and its Sentencing Position for defendant
 26 William Eric Fulton ("Defendant").

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

On July 25, 2023, defendant William Eric Fulton ("defendant") pleaded guilty pursuant to a plea agreement to a single-count Information charging defendant with Making False Statements, in violation of 18 U.S.C. § 1001. See ECF Nos. 1, 7.

The United States Probation Office ("USPO") filed its Presentence Investigation Report ("PSR") on October 18, 2023. See ECF No. 21. The USPO calculated a total offense level of 21, based on a base offense level of 26, a 2-level downward adjustment as a zero-point offender, and a 3-level downward adjustment for acceptance of responsibility. The USPO also calculated a criminal history score of zero, corresponding to a criminal history category of I.

The USPO's calculations thus yielded an imprisonment range of 37-46 months under the United States Sentencing Guidelines ("U.S.S.G." or the "Guidelines"). The USPO calculated a Guidelines term of supervised release to be 1 to 3 years, a fine of \$15,000 to \$150,000, and a mandatory special assessment of \$100.

The government has three objections to the PSR: first, the PSR incorrectly applies the money laundering guidelines set forth under U.S.S.G. § 2S1.1(a)(2), but the PSR fails to recognize that defendant participated in the underlying offense, and thus the guidelines should be calculated based on such an offense pursuant to U.S.S.G. § 2S1.1(a)(1). Here, the relevant guidelines for the gambling offense detailed in the factual basis of defendant's Plea Agreement (the "Factual Basis") would result in a base offense level of 12.

Second, the government submits that the PSR should include a role adjustment pursuant to U.S.S.G. § 3B1.1(c), as defendant was the

1 founder and managing member of a 50-person business management firm
2 which he put at the service of a criminal operation. As such, he
3 qualifies for a two-level upward adjustment as an organizer, leader,
4 manager, or supervisor.

5 Third, while the PSR was submitted prior to the November 1, 2023
6 revisions to the U.S.S.G., it applied § 4C1.1, commonly referred to
7 at the zero-point-offender adjustment. The government submits that
8 defendant does not qualify for the zero-point offender adjustment,
9 because defendant should receive an adjustment under §3B1.1 for an
10 aggravating role, and pursuant to § 4C1.1(a)(10), the zero-point-
11 offender adjustment is not applicable where such a role adjustment is
12 applied.

13 Based on the above objections, the government submits that
14 defendant's proper total offense level should be 12, and with a
15 criminal history category of I, this would result in a Guidelines
16 imprisonment range of 10-16 months. Accordingly, the Government
17 recommends a low-end sentence of 10 months in prison, three years of
18 supervised release, a total fine of \$673,290, and the mandatory \$100
19 special assessment.

20 **II. STATEMENT OF FACTS**

21 The parties agreed to the following statement of facts in
22 defendant's plea agreement:

23 The Department of Homeland Security, Homeland Security
24 Investigations ("HSI") and the Internal Revenue Service - Criminal
25 Investigation Division ("IRS-CI") in Los Angeles and the United
26 States Attorney's Office ("USAO") for the Central District of
27 California were conducting a federal criminal investigation into
28 federal crimes, including illegal sports gambling and money

1 laundering (the "Federal Investigation").

2 Wayne Nix was a minor league baseball player from 1995 to 2001.
3 Sometime after 2001, Nix began operating an illegal bookmaking
4 business in the Los Angeles area that accepted and paid off bets from
5 bettors in California and elsewhere in the United States based on the
6 outcomes of sporting events at agreed-upon odds (the "Nix Gambling
7 Business"). Through contacts he had developed during his own career
8 in professional sports, Nix created a client list of current and
9 former professional athletes, and others. Nix used agents, including
10 Agents 1 and 2, to place and accept bets from others for the Nix
11 Gambling Business, thus expanding the business. As part of the Nix
12 Gambling Business, Nix and his agents used a website called Sand
13 Island Sports to create accounts through which wagers would be placed
14 and tracked.

15 Defendant was the founder and senior partner at a financial
16 services company ("The Company"). The Company provided bookkeeping,
17 accounting, and tax preparation services to its clients. Those
18 clients included Nix, Agent 1, and Agent 2. Specifically, The Company
19 provided bookkeeping and accounting services to Nix and Agent 1, in
20 which it paid their bills and transferred money between accounts.
21 Defendant also provided tax preparation services to Agent 2. Nix had
22 a personal and business account with Wells Fargo Bank. Nix used the
23 Wells Fargo business account, which was in the name "Nixy
24 Enterprises," for the gambling business. Defendant was an authorized
25 signer for both accounts and prepared and signed checks for the
26 accounts on Nix's behalf.

27 The Nixy Enterprises bank account lacked activity consistent
28 with a legitimate business. There were no typical business expenses

1 or income. Most of the bank activity came in the form of deposits and
2 personal expenses such as car payments, travel, and food. Nix's
3 gambling clients typically deposited cash and wired money directly to
4 the Nixy Enterprises account. Nix's clients would also send personal
5 checks and cashier's checks to Nix and/or The Company. The "Pay to
6 the Order of" and memo lines of the personal checks were typically
7 left blank, except for a player in the National Football League who
8 wrote "investment" on the memo line of two checks.

9 Beginning no later than 2011, defendant was aware that Nix ran
10 an illegal gambling business. Defendant nonetheless knowingly
11 laundered Nix's illicit gambling proceeds by continuing to provide
12 financial services to Nix and providing access to the financial
13 system. Specifically, defendant continued to transfer money between
14 accounts, issue checks and wires to Nix's gambling clients who won
15 large bets, and helped Nix obtain bank loans to facilitate the
16 gambling business. Between 2010 and 2020, defendant charged Nix
17 approximately \$336,645 in professional fees for his financial
18 services.

19 In addition, defendant further participated in the gambling
20 business by providing three personal loans to Nix totaling \$1,250,000
21 to allow Nix to pay his gambling clients when Nix needed rapid access
22 to liquid funds, which defendant agreed to provide at no cost to Nix.
23 Specifically, On March 23, 2011, defendant wired \$500,000 from his
24 personal account at City National Bank to Nixy Enterprises. Next, on
25 March 6, 2018, defendant wired Nix another \$250,000. Three days
26 later, The Company wired \$250,000 from Nix's account to one of Nix's
27 clients. Finally, on October 10, 2019, defendant sent a \$500,000 wire
28 from his personal account directly to another of Nix's gambling

1 clients. Defendant knew the purpose of all three loans was to allow
2 Nix to pay his gambling clients.

3 Defendant also placed personal bets with Nix. For example, on
4 November 12, 2016, Nix sent a text message to defendant and provided
5 him the URL for the Sand Island Sports website. Defendant replied,
6 "Thanks...what's my username." Nix replied, "R159." That same day,
7 defendant placed 14 bets, including three bets on a professional
8 match of a client of The Company.

9 In addition, defendant also referred at least one client of The
10 Company to Nix for the purposes of illegal gambling. Specifically, on
11 August 10, 2018, a client of The Company emailed defendant and asked
12 for the name of defendant's "sports bookie." That same day, defendant
13 sent Nix a text message and asked, "[a]re you taking on new
14 clients[.] One of my celebrity clients needs your help but doubt
15 he'll be a significant client." Defendant then provided Nix the name
16 of his celebrity client, and Nix told defendant to provide Nix's name
17 and phone number to the celebrity client.

18 On October 8, 2021, defendant was interviewed in the presence of
19 his attorney by HSI, IRS-CI, and the USAO regarding the Federal
20 Investigation. At the beginning of the interview, a Special Agent
21 from IRS-CI admonished defendant that lying to federal law
22 enforcement agents is a crime, and defendant stated that he
23 understood. During the interview, defendant made several false
24 statements to the agents that he knew were false and were material to
25 the investigation. For example, defendant stated that he believed Nix
26 was a consultant or concierge and denied all knowledge of Nix's
27 involvement in Sports Gambling and the Sand Island Sports website.
28 Defendant also stated that he had no knowledge that Nix was a

1 bookmaker until Nix called him and told him that law enforcement
2 searched his home on February 7, 2020. Defendant also repeatedly
3 stated that he never placed a bet with Nix.

4 See Plea Agreement, at ¶ 9.

5 Based on this conduct, defendant agreed to plead guilty to an
6 Information charging him with Making False Statements, in violation
7 of 18 U.S.C. § 1001. See ECF Nos. 1, 7.

8 **III. THE PRESENTENCE REPORT**

9 The USPO calculated defendant's adjusted offense level on Count
10 One as 26, pursuant to the following calculation:

11 Base Offense Level: 26 U.S.S.G. § 2S1.1(a)(2)

12
13 See PSR ¶¶ 44-47. After a three-point downward adjustment for
14 acceptance of responsibility under USSG § 3E1.1(a), and a two-point
15 downward adjustment as a zero-point offender pursuant to U.S.S.G.
16 § 4C1.1, the USPO calculated defendant's total offense level as 21.

17 See PSR ¶ 62.

18 **A. Objection to PSR's Guidelines Calculation**

19 The government objects to the PSR's base offense level
20 calculation. In the Plea Agreement, the parties stipulated to the
21 application of the money laundering guidelines due to the nature of
22 the admitted conduct. See Plea Agreement, ¶ 11. While the PSR
23 correctly referred to the money laundering section of the Guidelines,
24 the PSR incorrectly applied a base offense level inconsistent with
25 the agreed-upon facts stated in the Plea Agreement.

26 Specifically, under U.S.S.G. § 2S1.1(a), the base offense level
27 for a money laundering offense is calculated in one of two ways: if
28 the defendant "committed the underlying offense (or would be

1 accountable for the underlying offense [as relevant conduct]" then
2 subsection (a)(1) applies, and the base offense level is calculated
3 based on the underlying conduct so long as the offense level for that
4 offense can be determined. See U.S.S.G. § 2S1.1(a)(1). In contrast,
5 if the defendant could not be held to account for the underlying
6 conduct, then subsection (a)(2) applies, and the base offense level
7 is "8 plus the number of offense levels from the table in §2B1.1".
8 Here, the PSR calculated defendant's base offense level under
9 subsection (a)(2). See PSR, ¶ 44. In doing so, the PSR failed to
10 recognize that defendant was involved in the operation of the Nix
11 Gambling Business, and thus subsection (a)(1) should apply. For
12 example, the Plea Agreement included the following agreed upon facts:

- 13 • Defendant made payments to Nix's winning gambling clients;
- 14 • Defendant helped Nix obtain bank loans to facilitate the
15 Nix Gambling Business;
- 16 • Defendant extended loans to Nix totaling at least
17 \$1,250,000 to allow Nix to pay winning clients of the Nix
18 Gambling Business when he needed rapid access to funds;
- 19 • Defendant referred a new client to the Nix Gambling
20 Business; and
- 21 • Defendant personally placed bets with the Nix Gambling
22 Business.

23 See Plea Agreement, ¶ 9. In short, defendant and The Company
24 knowingly operated as a de facto back office for the Nix Gambling
25 Business, making payments, moving funds, extending financing, and
26 conducting bookkeeping and administrative tasks that allowed the Nix
27 Gambling Business to continue to operate.

28

1 18 U.S.C. § 1955 states that “[w]henever conducts, finances,
2 manages, supervises, directs, or owns all or part of an illegal
3 gambling business shall be [punished according to law]” (emphasis
4 added). Defendant’s conduct, as admitted in the Plea Agreement, falls
5 squarely within conducting, financing, and/or managing the Nix
6 Gambling Business, or at the very least, pursuant to 18 U.S.C. § 2,
7 he would be accountable for aiding and abetting Nix in the same.
8 Based on these facts, the PSR should have calculated defendant’s base
9 offense level pursuant to U.S.S.G. § 2S1.1(a)(1) and thus applied the
10 guidelines for gambling offenses under U.S.S.G. § 2E3.1. Had the PSR
11 done so, and as detailed further herein, defendant’s base offense
12 level would be 12. See Plea Agreement, ¶ 11.

13 **B. Objection to PSR’s Role Enhancement Determinations**

14 The government also objects to the PSR’s failure to include an
15 aggravating role adjustment reflecting defendant and The Company’s
16 roles in the Nix Gambling Business.

17 Pursuant to U.S.S.G. § 3B1.1(c), a two-level upward adjustment
18 is appropriate where a defendant “was an organizer, leader, manager,
19 or supervisor in any criminal activity other than described
20 [subsection a-b of the same section].” As stated in Application Note
21 two to that section:

22 To qualify for an adjustment under this section, the
23 defendant must have been the organizer, leader, manager, or
24 supervisor of one or more other participants. An upward
25 departure may be warranted, however, in the case of a
26 defendant who did not organize, lead, manage, or supervise
another participant, but who nevertheless exercised
management responsibility over the property, assets, or
activities of a criminal organization.

27 U.S.S.G. § 3B1.1, n.2. The Ninth Circuit has held that this
28 adjustment may be applied where a defendant managed only a single

1 other participant. See United States v. Clark, 67 F.3d 309 (9th Cir.
2 1995) (“The adjustment requires that the defendant supervised or
3 otherwise exercised control over other participants. Under U.S.S.G.
4 § 3B1.1(c) a two point increase is appropriate even if only two
5 participants are engaged in the crime.”(internal citations omitted));
6 see also United States v. Doe, 778 F.3d 814, 818, 823–26 (9th Cir.
7 2015) (holding that a defendant was an organizer when he gave a buyer
8 pricing information and a seller’s contact information, but was not
9 present for the transaction or hold supervisory role).

10 While the PSR does not include a role adjustment, the government
11 submits that the PSR’s findings and the Factual Basis of the Plea
12 Agreement provide more than sufficient evidence for application of a
13 two-level upward adjustment here. As discussed above, the agreed upon
14 facts show that defendant played a key role in the Nix Gambling
15 Business, both personally and through The Company. Defendant
16 “exercised management responsibility over the property [and] assets”
17 of the Nix Gambling Business, as he managed accounts holding the
18 proceeds of the Nix Gambling Business, made payments for the Nix
19 Gambling Business, and obtained credit for the Nix Gambling Business.
20 In addition to defendant’s personal conduct, defendant managed the
21 Company in its role as a participant in facilitating the Nix Gambling
22 Business. For example, defendant agreed in the Factual Basis the
23 “[t]he Company provided bookkeeping and accounting services to Nix
24 and Agent 1, in which it paid their bills and transferred money
25 between accounts,” that “Nix’s clients would also send personal
26 checks and cashier’s checks to Nix and/or The Company,” and that
27 “[t]he Company wired \$250,000 from Nix’s account to one of Nix’s
28 clients” to help Nix pay a winning bettor. See Plea Agreement, ¶ 9.

1 The PSR provides further detail on the size and scope of the Company,
2 confirming that defendant founded the Company, which provides
3 bookkeeping, accounting, and tax preparation service, that it employs
4 50 people, and that defendant manages the Company as senior partner.
5 See PSR, ¶¶ 23.

6 As another example, one former employee of the Company disclosed
7 to investigating agents that, while employed at the Company as a
8 business manager, defendant directed her to manage bookkeeping, bill
9 pay and daily operations of accounts for Nix and the Nix Gambling
10 Business. See Ex. A (filed under seal), ¶¶ 2-3, 10. Defendant
11 dictated to this employee how Nix's accounts would be managed, and
12 directed this employee to make payments for Nix. Id., ¶¶ 5, 19-20. At
13 other times, defendant would direct this employee on how to book
14 specific transactions in Nix's purported sports consulting income,
15 which was in fact income from the Nix Gambling Business. Id., ¶ 21-
16 22. The employee also noted that it was "common knowledge" at the
17 Company that Nix was a bookie, and that the amount of money that the
18 Company was managing for Nix did not make sense for sports
19 consulting. Id., ¶¶ 11, 41.

20 In sum, defendant operated a 50-person financial services firm,
21 which he put into service of Nix and his subagents to facilitate the
22 Nix Gambling Business. In doing so, defendant acted as an organizer
23 or manager of another participant in the criminal activity - i.e.,
24 The Company and its employees - and thus the application of a two-
25 level upward adjustment under U.S.S.G. § 3B1.1(c) is appropriate.

26 **C. Objection to Application of Zero-Point Offender Adjustment**

27 The PSR was filed on October 18, 2023. On November 1, 2023, the
28 Guidelines were amended, including by adding a new section, § 4C1.1,

1 "Adjustment for Certain Zero-Point Offenders." Section 4C1.1 provides
2 for a two-level downward adjudgment for certain defendants who have
3 no criminal history points, subject to certain limitations detailed
4 in § 4C1.1(a).¹ A defendant must meet "all" of the subsection (a)
5 factors for § 4C1.1 to be applicable. Among these factors, subsection
6 (a)(10) includes that the defendant "did not receive an adjustment
7 under §3B1.1 (Aggravating Role) and was not engaged in a continuing
8 criminal enterprise, as defined in 21 U.S.C. § 848."

9 Here, the PSR's failure to include a role adjustment under
10 § 3B1.1 inaccurately led to the application of the zero-point
11 offender adjustment. See PSR ¶ 60. As detailed above, however, the
12 government submits that defendant should receive a role adjustment
13 under § 3B1.1, and accordingly, the zero-point offender adjustment is
14 inapplicable.

15 **D. Criminal History Category and Advisory Guidelines Range**

16 Based on the above, the government respectfully submits that
17 defendant's adjusted offense level on Count One is 14, pursuant to
18 the following calculation:

19	Base Offense Level:	12	U.S.S.G. § 2S1.1(a)(2);
			U.S.S.G. § 2E3.1(a)(2)
20	Role Adj.: Manager	+2	U.S.S.G. § 3B1.1(c)

21
22 After a two-point downward adjustment for acceptance of
23 responsibility under U.S.S.G. §§ 3E1.1(a), defendant's total offense
24 level is 12. With a criminal history category of I, this yields an
25 Guideline range of 10-16 months' imprisonment.

26
27
28 ¹ On August 24, 2023, the Sentencing Commission announced that
§ 4C1.1 would be retroactive as of February 1, 2024.

1 **IV. GOVERNMENT'S SENTENCING POSITION**

2 As detailed above, the government submits that defendant's total
3 offense level should be 12, with a criminal history category of 1.
4 Accordingly, the government recommends a low-end sentence of 10
5 months imprisonment, three years of supervised release, and the
6 mandatory \$100 special assessment. The parties have also stipulated
7 that defendant shall pay a fine of \$673,290. Such a sentence is
8 consistent with the factors set forth in 18 U.S.C. § 3553(a), and no
9 greater than necessary to comply with the factors set forth therein.

10 Defendant's offenses are serious and merit a serious sentence.
11 Defendant admitted to lying to federal agents about a multi-year
12 course of illegal conduct where he provided services facilitating the
13 operation of Nix's unlawful gambling enterprise. Defendant not only
14 provided critical business management and accounting services to Nix
15 while turning a blind eye to widespread illegal conduct, but
16 defendant actively supported Nix's illegal business by providing
17 loans to Nix when winning bettors had to be paid. In doing so,
18 defendant effectively acted as a lender of last resort for an illegal
19 business which likely could not otherwise obtain financing.

20 Defendant is an accountant and financial manager. In essence, he
21 was a gateway to the financial industry. Defendant ignored his
22 responsibilities and knowingly allowed Nix's illicit money to enter
23 the financial system. Fairly considered, the admitted facts establish
24 that Nix's illegal operations would not have existed for as long or
25 at the scope it did without defendant's assistance. This conduct is
26 exacerbated by the fact that, when federal agents questioned
27 defendant about Nix, defendant lied and attempted to cover for Nix,
28 claiming that defendant believed Nix was merely a consultant or

1 concierge - when defendant knew Nix ran an illegal gambling operation
2 and defendant had even placed bets with Nix. As such, a sentence of
3 incarceration, even if at the low-end of the range, reflects the
4 seriousness of the offense and sends an equally-serious message of
5 deterrence pursuant to 18 U.S.C. § 3553(a) (2) (A-B).

6 While the government believes defendant's conduct was serious,
7 the government recognizes mitigating factors here. Indeed, a low-end
8 sentence is justified here by defendant's lack of prior criminal
9 history, acceptance of responsibility, and willingness to plead
10 guilty pre-indictment and pay a substantial fine - effectively
11 disgorging the profits made off of Nix. A low-end sentence is thus no
12 greater than necessary to address the considerations set forth in 18
13 U.S.C. § 3553(a).

14

15 Dated: February 20, 2024

Respectfully submitted,

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/s/

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