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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13 UNITED STATES OF AMERICA,)	NO. CR 17-0557 MMC
14 Plaintiff,)	
15 v.)	UNITED STATES' SENTENCING
16 JEFFREY WERTKIN,)	MEMORANDUM
17 Defendant.)	Sentencing Date: March 7, 2018
)	Sentencing Time: 2:15 p.m.

19 **INTRODUCTION**

20 This is one of the most disturbing cases of public corruption ever prosecuted in the Northern
21 District of California. A United States Department of Justice (DOJ) attorney betrayed the government
22 and secretly stole at least 40 sealed qui tam lawsuits in order to “cash in” on inside information after he
23 left the DOJ to work in the private sector. Defendant, Jeffrey Wertkin, embarked on a meticulously
24 planned year-long crime spree that included using the government’s confidential information to woo
25 potential clients at his new law firm. Wertkin then escalated his efforts to profiteer from stolen
26 government property by trying to sell some of these sealed qui tam complaints to the very companies
27 whose conduct was under investigation by the government. The defendant’s criminal conduct
28

1 culminated in a post-arrest obstruction binge wherein he returned to his law firm, destroyed evidence
 2 and, staged his office-- falsely implicating one of his former DOJ colleagues as the source for some of
 3 the contraband.

4 Jeffrey Wertkin abused the public trust and tried to tarnish the reputation of the DOJ in the
 5 process. Under most circumstances, the defendant's staggering abuse of his public position and the
 6 incalculable harm he caused to his former colleagues and all those who seek justice under the False
 7 Claims Act would warrant a substantial upward variance from the Guidelines range. However, because
 8 the defendant admitted his guilt very early in the process and proactively assisted the government in
 9 unraveling the full extent of his criminal scheme, the government recommends a guideline sentence of
 10 34 months imprisonment.

11 **DISCUSSION**

12 **A. Plea Agreement and Applicable Guidelines Range**

13 On November 29, 2017, defendant pleaded guilty to Counts One through Three of a criminal
 14 information charging him with obstruction of justice in violation of 18 U.S.C. § 1505 (Counts One and
 15 Two) and interstate transportation of stolen property in violation of 18 U.S.C. § 2314 (Count Three).
 16 The parties' plea agreement was entered pursuant to Fed. R. Crim Pro 11(c)(1)(B). The parties have
 17 agreed to specific guideline calculations which result in an adjusted offense level of 19. Dkt 6 and PSR
 18 ¶ 3.

19 U.S. Probation has recommended that defendant is in Criminal History Category I, and has also
 20 recommended an Offense Level of 19, resulting in a Guidelines range of 30 to 37 months of
 21 imprisonment. Probation recommends a sentence of 30 months of imprisonment, followed by three
 22 years of supervised release, and a \$10,000 fine. For the reasons set forth elsewhere in this memorandum,
 23 the United States recommends a sentence of 34 months imprisonment.

24 The government agrees with Probation's calculation of the defendant's Guidelines range of 30 to
 25 37 months of imprisonment. The parties, pursuant to the plea agreement (Dkt 6), have also agreed to the
 26 Obstruction of Justice/Transportation of Stolen Property Guidelines set forth below:

27	a.	Base Offense Level § 2B1.1(a)(2)	6
	b.	Loss Amount > \$250,000 and < \$550,000 § 2B1.1(b)(2)(G)	+ 12
28	c.	Abuse of Position of Trust § 3B1.3	+ 2
	d.	Obstruction of Justice § 3C1.1	+ 2

1	e.	Acceptance of Responsibility	-	3
2	f.	Adjusted offense level	=	19

3 Because defendant's Adjusted Offense Level is 19 and his Criminal History Category is I, his
4 Guidelines range is 30 to 37 months.

5 **B. Offense Conduct**

6 *1. Wertkin's Theft of Over 40 Sealed Complaints From DOJ*

7 Defendant Jeffrey Wertkin, who has a JD and PhD from Georgetown University (PSR ¶ 91) and
8 a Bachelor's Degree from Haverford University (*Id* at ¶ 90), was an attorney licensed to practice law in
9 the District of Columbia and the state of Maryland. PSR ¶ 92.

10 From October 24, 2010, to April 12, 2016, Wertkin was employed by the United States
11 Department of Justice in the Civil Fraud Section. As a Trial Attorney in Civil Fraud, Wertkin
12 specifically handled, reviewed, and worked on sealed qui tam complaints that alleged violations brought
13 under the False Claims Act ("FCA"). Wertkin knew and understood that, by law, these complaints are
14 required to be filed under seal, and that only the federal judge to whom the case is assigned could unseal
15 them. Wertkin was fully aware that the courts' sealing orders and the nature of the complaints
16 prohibited him from showing or discussing the complaints outside of his legitimate work functions.
17 Wertkin also knew that revealing the contents of a sealed complaint could jeopardize and obstruct
18 ongoing proceedings in federal courts. Dkt 6, pg. 3 and PSR ¶ 18. Maintaining the secrecy of these
19 sealed qui tam complaints is also critical in terms of protecting whistleblowers from retaliation by their
20 employers, something that Wertkin fully knew and understood.

21 In early 2016, Wertkin accepted a job as a partner at the law firm Akin Gump in Washington
22 D.C. and began the process of leaving DOJ. PSR ¶ 18. Wertkin's salary at Akin Gump (\$450,000) was
23 triple his DOJ salary, not including a lucrative signing bonus. PSR ¶¶ 97, 99. Unfortunately, Wertkin's
24 impending upward financial trajectory was, in his mind, not enough to satisfy his desire for a bigger,
25 better house in the suburbs and private schools for his children. PSR ¶ 28. Nor was he confident that he
26 could successfully perform and develop business on his own merit at Akin Gump. PSR ¶ 44 at pg. 11.
27 Rather than risk failing at Akin Gump, Wertkin conceived of a criminal scheme which he initiated while
28 employed at DOJ and that he carried out and expanded over ten plus months while he worked at Akin

1 Gump until he was arrested on January 31, 2017. PSR ¶ 16.

2 During Wertkin's last month of employment with the DOJ, and after he received the offer from
3 Akin Gump, he began secretly reviewing and collecting qui tam complaints that had not been assigned
4 to him. Dkt 6, pg. 3. Wertkin stockpiled qui tam complaints in both electronic form and in hard copy.
5 PSR ¶ 25. Wertkin secretly copied and stole at least 40 sealed qui tam complaints in total. *Id.* The theft
6 was accomplished on several occasions. First, Wertkin ran electronic reports from his DOJ issued
7 computer and opened a shared network drive to identify potential newly filed qui tam complaints to
8 steal. He thereafter electronically copied at least 20 sealed qui tam complaints that had not been
9 assigned to him. Second, Wertkin snuck into his boss' office (the Civil Division Fraud Section Director)
10 late at night and took a pile of approximately 20 additional sealed complaints from his boss' desk. PSR
11 ¶¶ 25, 26. Wertkin unstapled these sealed complaints, photocopied them all, re-stapled them and
12 thereafter returned the originals to his boss' office. PSR ¶ 26.

13 Wertkin originally collected the sealed qui tam complaints with the intent to use the complaints
14 to identify clients to solicit for business when he transitioned into private practice and, thereby, to make
15 himself more successful at Akin Gump. PSR ¶¶ 19, 29. Wertkin knew that he could not legitimately
16 take copies of sealed complaints with him when he left his employment with DOJ. PSR ¶ 24. Wertkin
17 also understood that taking the qui tams was an illegal theft of government property. During the DOJ
18 exit process, he intentionally lied to the Department of Justice about taking any government property
19 with him in a written certification that he signed and submitted to the DOJ upon his departure. Dkt 6,
20 pg. 3 and Exhibit 1 attached hereto.

21 2. Wertkin Uses Contraband Qui Tams to Solicit Business at Akin Gump

22 After he left the DOJ in April 2016, and armed with more than 40 stolen sealed qui tam complaints,
23 Wertkin immediately set about trying to parlay the contraband into business opportunities for himself.
24 PSR ¶ 29. While at Akin Gump, Wertkin actively pitched his legal services to companies he knew—
25 based on stolen information--were under investigation by DOJ. PSR ¶ 29. He did so by contacting these
26 companies, making phone calls to them and hinting that “problems” could be lurking for them. In one
27 instance, Wertkin targeted a company he knew was the subject of a purloined qui tam complaint and told
28 one of his partners at Akin Gump that this company “may have a problem coming up.” PSR ¶ 32. This

1 company hired Wertkin based on the sales pitch he made, a solicitation that was initiated as a direct result
2 of secret information garnered from the complaints he stole, specifically that the company was named in
3 a sealed qui tam complaint. PSR ¶ 32. In so doing, Wertkin placed his own financial interest ahead of
4 the public's interest and blatantly and unilaterally compromised the initial protections of anonymity
5 afforded to whistleblowers who come forward with claims of waste, fraud and abuse under the False
6 Claims Act. However, this was only the beginning.

7 3. Wertkin's Crimes Escalate to Selling Qui Tams to Companies Named in Complaints

8 In the fall of 2016, apparently because his scheme to use stolen government property to solicit
9 business was not paying off as quickly or lucratively as he hoped (PSR ¶ 32), Wertkin devised an even
10 more aggressive plan for cashing in on the contraband qui tam complaints. In a stranger than fiction plot,
11 Wertkin created a fictitious persona for himself, "Dan," and bought a burner phone which he used to
12 contact a high ranking employee of a company headquartered in Sunnyvale. PSR ¶ 9. Wertkin knew this
13 Sunnyvale company had been sued in one of the sealed qui tam lawsuits that Wertkin stole from the DOJ.
14 Wertkin left a message for the Sunnyvale employee referencing a sealed False Claims Act complaint
15 against the company filed in the Northern District of California. PSR ¶ 9. Wertkin gave his burner phone
16 as a call back number if the employee wanted to discuss the matter further. *Id.*

17 On November 30, 2016, the employee called "Dan" (later identified by the FBI as Wertkin) and
18 Wertkin offered to mail the employee the first page of the sealed complaint in order to prove to the
19 employee that a qui tam complaint had, in fact, been filed against the company. PSR ¶ 10. Wertkin
20 refused to email the complaint to the employee insisting instead on using the U.S. mail to transmit a
21 redacted version of the first page of the complaint. *Id.* Wertkin offered to provide the entire sealed qui
22 tam complaint to the company in exchange for a "consulting fee" from the company. PSR ¶ 10. Sometime
23 after November 30, 2016, the Sunnyvale employee received a redacted copy of the first page of the sealed
24 complaint and contacted the FBI. PSR ¶¶ 11, 12.

25 On December 22, 2016, the FBI initiated an undercover operation in which the Sunnyvale
26 employee participated in numerous recorded telephone calls with Wertkin. PSR ¶¶ 12, 13. In the first
27 recorded call on December 22, 2016, Wertkin offered to provide the employee with the complete qui tam
28 complaint in exchange for \$300,000. PSR ¶ 12. The employee tried to negotiate a lower price, but

1 Wertkin was unwilling to budge on his demand. *Id.* In a January 5, 2017 recorded call, Wertkin suggested
2 the employee pay him (Wertkin) in Bitcoin and explained to the employee that the advantage to Bitcoin
3 was that it could not be traced. PSR ¶ 13. Wertkin also told the employee that it was in his interest to
4 purchase the complaint from Wertkin so that the company could get ahead of the government’s
5 investigation. *Id.*

6 On January 19, 2017, Wertkin and the employee spoke again in another recorded call. PSR ¶ 14.
7 Wertkin proposed an in person meeting to take place in Sunnyvale on January 31, 2017 and outlined a
8 very detailed plan for how the meeting would transpire. *Id.* Wertkin also upped his price for the complaint
9 to \$310,000, explaining that the increase (\$10,000) was to cover his travel expenses to California and
10 further explained that the higher price was non-negotiable. PSR ¶ 14.

11 Emboldened by the apparent success he was having selling the stolen qui tam complaint to the
12 Sunnyvale employee, Wertkin expanded his fee-for-qui tam scheme to three additional companies named
13 in other stolen complaints. On January 23, 2017, Wertkin, using his pseudonym “Dan,” contacted an
14 employee of a company headquartered in Oregon (“Oregon company) and referenced a sealed complaint
15 against the Oregon company. PSR ¶ 21. Wertkin offered to mail a redacted copy of the face-sheet of the
16 complaint to the Oregon company and to mail the entire lawsuit in exchange for a fee. *Id.* In January
17 2017, Wertkin also contacted an Alabama company and offered to sell it a sealed qui tam complaint in
18 exchange for \$50,000. PSR ¶ 33. Wertkin similarly made an overture to a New York company that was
19 named in one of the qui tam complaints he stole from DOJ, but a price was not set for that proposed
20 transaction.

21 On January 31, 2017, Wertkin sent a text message to “Bill” whom he had been told was a colleague
22 of the Sunnyvale employee and would be the person meeting Wertkin at the hotel selected for the exchange
23 of the qui tam for cash transaction. PSR ¶ 16. “Bill” was, in actuality, an FBI agent acting in an
24 undercover capacity. Wertkin provided “Bill” with a description of the area of the hotel lobby Wertkin
25 selected for the meeting. PSR ¶ 16. Shortly after “Bill” (the FBI agent) sat down at the predetermined
26 location in the hotel, Wertkin approached him and handed over a copy of the sealed complaint. *Id.* After
27 doing so, Wertkin was arrested and shortly thereafter was identified as a former DOJ trial attorney and
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1 current partner at Akin Gump. PSR ¶ 17. At the time of his arrest, Wertkin was wearing a wig to conceal
2 his identity. PSR ¶ 16.

3 *4. Wertkin's Post-Arrest Obstruction of Justice*

4 On February 1, 2017, Wertkin made his initial appearance before a Magistrate Judge in the
5 Northern District of California. PSR ¶ 4. Wertkin was released on a \$750,000 secured bond that contained
6 the standard conditions of release, including that he not commit another federal, state or local crime. *Id.*
7 Immediately following his release, Wertkin travelled back to Washington D.C. and on February 2, 2017
8 returned to his office at Akin Gump. PSR ¶ 30. Before telling anyone at the firm that he had been arrested
9 in Northern California, Wertkin began systematically destroying incriminating evidence of his crimes.
10 PSR ¶ 30. Wertkin tore up a stack of the purloined complaints and “ripped them up.” PSR ¶ 30. He
11 destroyed all but two of the paper copies of stolen complaints. *Id.* Wertkin also “threw out” a CD-ROM
12 containing evidence of his crimes, an AT&T bill (presumably reflecting charges on the burner phone) and
13 “some notes” he thought might contain incriminating evidence. PSR ¶ 30.

14 Wertkin also staged his office to make it appear as though one of his former colleagues at DOJ
15 mailed him two of the stolen complaints, which Wertkin calculated might give him an explanation (albeit
16 false) as to how he gained possession of the complaints. PSR ¶ 31. Specifically, Wertkin placed paper
17 copies of two complaints in an envelope that had originally been used to mail Wertkin a picture of DOJ's
18 emblem that was signed by his DOJ colleagues (commemorating his service to DOJ). That envelope
19 contained the return address of an attorney who worked at DOJ. In doing so, Wertkin intended to make
20 it appear to law enforcement, whom he knew would search his office, that his former colleague was either
21 negligent in enclosing the two complaints with his DOJ seal, or worse yet, that a current DOJ employee
22 was a co-conspirator and the source of the contraband. PSR ¶ 31. Under either scenario, this DOJ
23 employee was falsely implicated by Wertkin in criminal conduct that Wertkin alone was responsible for.
24 *Id.*

25 **C. The Defendant's Conduct Was Not a Single Lapse in Judgment**

26 This Court has encountered defendants who have committed a single—yet significant—error in
27 judgment and who might otherwise deserve a break at sentencing. Jeffrey Wertkin is not one of those
28 defendants. Contrary to the well-intentioned sentiments expressed by his family and friends, none of

1 whom knew about the double life he was living, Wertkin’s crimes do not represent a “one-off” where he
2 experienced a momentary lapse in judgment. Instead, Wertkin committed his crimes over the course of
3 almost a full year during which he had ample opportunity to reflect on what he was doing over and over
4 again. However, instead of ceasing his misconduct after one incident (for example, his success at being
5 hired by one of the companies he solicited based on a stolen complaint, *see* PSR ¶ 32), Wertkin
6 escalated his criminal behavior and continued with impunity until he was caught. Wertkin’s multi-
7 faceted scheme to profit from stolen government property was an extremely calculated effort, designed
8 to maximize the “value” of his secret, inside information.
9

10 The defendant’s crimes began while he was at the DOJ and after taking an oath to uphold the
11 Constitution “against all enemies foreign and domestic.” Rather than doing so, Wertkin became the
12 enemy from within, secretly rooting around his DOJ colleagues’ offices and computer files late at night
13 stockpiling sealed qui tam complaints with the intent to use those complaints to further enrich himself
14 when he went to Akin Gump.
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16 But Wertkin did not stop there. It was not enough for Wertkin to use the information from the
17 purloined complaints to solicit business from companies he knew were named in sealed qui tam
18 complaints. Eight months after the theft itself, in November 2016, Wertkin dramatically expanded the
19 scope of his criminal enterprise and the potential for a quicker payoff. Wertkin went from using the
20 complaints for an inside strategic advantage when pitching his legal services to outright shaking down
21 companies who did not yet know they had been sued (because the qui tam complaints were sealed under
22 court orders) by offering to sell these companies the complaints so they “could get ahead of the
23 investigation.” PSR ¶ 13. In so doing, Wertkin took grotesque advantage of his prior position as a DOJ
24 attorney, knowing full well that the success of the False Claims Act (his area of expertise while he
25 worked at DOJ) depends on whistleblowers coming forward with the prospect of secrecy while the
26 government investigates their claims. Wertkin’s conduct jeopardized the integrity of the civil justice
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1 system and unfairly cast a shadow over the work of the Civil Fraud Section.

2 Nor did Wertkin's criminal behavior end with his arrest. Rather than reflecting on his prior bad
3 acts and choosing not to make additional criminal choices, Wertkin upped the ante when he was released
4 on bond from the Northern District of California. On February 2, 2017, one day after he was arraigned
5 on a criminal complaint arising out of his attempt to sell a qui tam complaint for \$310,000 to a
6 Sunnyvale company, Wertkin returned to Washington D.C. PSR ¶ 43. Rather than coming clean and
7 accepting immediate responsibility for his behavior, Wertkin doubled down and destroyed incriminating
8 evidence—including stolen qui tam complaints, contemporaneous notes he made and an AT&T bill-- in
9 his Akin Gump office. PSR ¶¶ 23, 43.

10
11 To the defendant's credit, when he retained his current counsel, he readily acknowledged his role
12 and quickly indicated his intent to plead guilty. Wertkin also informed the government that his former
13 DOJ colleague had nothing to do with his criminal scheme and that he had staged his office to falsely
14 implicate this DOJ employee. Defendant's early acceptance of responsibility, his explanation of the
15 extent of his crimes, and his admission of his obstructive behavior which enabled law enforcement to
16 "clear" the current DOJ employee early on of any wrongdoing, is the primary reason the government is
17 recommending a guidelines sentence and not something much higher. Nevertheless, we respectfully
18 suggest that the Court should take into account that Wertkin's offenses were a continued course of
19 conduct spanning nearly a full year, a period in which there was plenty of opportunity for the defendant
20 to reflect on what he was doing and to stop, rather than escalate his criminal conduct.

21
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23 **D. A Sentence of 34 Months Is Sufficient but Not Greater than Necessary to Comply
24 with 18 U.S.C. § 3553(a)**

25 *1. Nature and Circumstances of the Offense*

26 Defendant's obstruction of justice and transportation of stolen property was breathtaking in its
27 scope and is the most serious and egregious example of public corruption by a DOJ attorney in recent
28 memory. The defendant's conduct—both in scope and duration--justifies a 34-month sentence, which is

1 the middle of the guideline range. Jeffrey Wertkin traded on his inside knowledge and privileged
2 position as a DOJ attorney to thwart the truth finding process of the civil justice system. He used qui
3 tam complaints stolen from the government in order to line his own pockets and to pollute and corrupt
4 federal courts' sealing orders for his financial benefit. When Wertkin was caught red-handed trying to
5 sell a qui tam complaint for \$310,000 to an undercover agent, the defendant doubled down. Instead of
6 coming clean when the gig was clearly up, defendant went a step further and attempted to obstruct the
7 criminal justice system by destroying incriminating evidence and staging his Akin Gump office to
8 falsely incriminate one of his former DOJ colleagues. This DOJ employee had no knowledge of the
9 imbroglio the defendant perpetrated, creating yet another unwitting victim of the defendant's selfish
10 scheme.

11 Defendant's conduct was extremely pathological. Wertkin continued his pattern of deception by
12 lying repeatedly and directly to potential clients whose identities (and potential exposure under the False
13 Claims Act) were known to him based on the contraband complaints he possessed. Defendant also
14 invented a bogus persona "Dan" and used a burner phone to conceal his identity. Wertkin's conduct was
15 carefully calculated and designed to avoid detection for as long as possible.

16 Moreover, the instant offense was not a one-off crime, but really part of a continuing nearly year-
17 long effort to defraud others by misusing his position as a lawyer. Wertkin serially abused the trust that
18 others placed in him, including his DOJ colleagues at the Civil Fraud section who had no idea their
19 offices and confidential work product were not safe from one of their own. Defendant lied repeatedly
20 and directly to his employers and colleagues—the people who trusted him with confidential documents
21 and case strategy; he lied again and abused the trust of a new set of employers and colleagues at Akin
22 Gump. While at Akin Gump, the defendant made business solicitations to potential clients using
23 information stolen from the DOJ. And, he turned the Akin Gump law firm into a crime scene when he
24 returned to the firm after his arrest and destroyed evidence and staged his office.

25 In the world of corrupt public officials who lie and obstruct justice, defendant is among the very
26 worst because, as a former DOJ attorney, he intentionally misused the prestige of his profession and the
27 trust that was placed in him by others (including federal courts throughout the country who count on
28 their sealing orders to be honored) to facilitate his crimes and thereafter, to cover up his misconduct.

1 This egregious conduct justifies a 34-month sentence.

2 2. *History and Characteristics of Defendant*

3 Defendant's history and personal characteristics also support a lengthy sentence. There is no
4 indication in his personal history of some larger motivating factor for his antisocial behavior that has
5 been, or could be, resolved, or would mitigate his conduct. Defendant had a privileged upbringing in
6 Scarsdale, New York (PSR ¶ 69) in which his basic material needs were amply met. His parents
7 provided him an environment where his athletic and academic potential flourished. PSR ¶¶ 70, 72. The
8 defendant attended some of the best schools in America and earned both a J.D. and a PhD from
9 Georgetown University. PSR ¶ 91. Although the defendant is receiving mental health treatment as part
10 of this case, PSR ¶ 83, there is no reason to believe that defendant's diagnosis is anything more than
11 narcissism and greed. As for defendant's substance abuse issues, he still appears to be in denial about
12 the full extent of his problem, at least insofar as alcohol is concerned. PSR ¶ 86. The defendant's
13 substance abuse problems may be substantial and should be addressed as part of his rehabilitation; they
14 are not, however, an excuse for, or a mitigation of, his many lies and fraudulent behavior.

15 In stealing sealed qui tam complaints, Wertkin acted with reckless disregard for the potential for
16 his actions to jeopardize the very cases he and his colleagues at the Civil Fraud section were entrusted
17 with building. Because a trustworthy workforce is essential to the mission of the Department of Justice
18 and the many other federal and state agencies who serve the public, deterring corrupt behavior is of
19 paramount importance. This case has received national attention and we respectfully urge the Court to
20 send a message that this type of criminal conduct will be punished to the fullest extent of the sentencing
21 guidelines. Any deviation from the agreed-upon sentencing guideline range will communicate to other
22 potentially corrupt government officials that the possibility of a slight prison sentence might be worth
23 the risk in order to profit several hundred thousands of dollars. It is crucial to both specific and general
24 deterrence that the public understand and believe that when a former DOJ attorney is caught trying to
25 criminally profiteer from his public position, he will be dealt with severely by the system of which he
26 was once a part.

CONCLUSION

With full consideration of all the sentencing factors set forth in 18 U.S.C. § 3553(a), the United States respectfully requests that the Court impose a Guidelines sentence of 34 months of imprisonment, three years of supervised release, and a \$300 special assessment.

DATED: February 28, 2018

Respectfully submitted,

ALEX TSE
Acting United States Attorney

_____/s/_____
ROBIN L. HARRIS
Assistant United States Attorney

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