

FILED

JUN 22 2009
CLERK'S OFFICE
U. S. DISTRICT COURT
EASTERN MICHIGAN

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

No. 2:07-CR-20627
HON. Marianne O. Battani

-vs-

OFFENSES:

D-5 WILLIAM C. NEIL,

Count 1: 18 U.S.C. §§ 371, 1037(a)(3)-(4), (b)(2)(B)-(C)(Conspiracy: Fraud in Connection with Electronic Mail)

Defendant.

Count 2: 18 U.S.C. §§ 1037(a)(4), (b)(2)(B), and 2 (Fraud in Connection with Electronic Mail, and Aiding and Abetting)

MAXIMUM PENALTY: 3 yrs on count 1; 3 yrs on count 2

MAXIMUM FINE: \$ 250,000 on each count

RULE 11 PLEA AGREEMENT

Pursuant to Rule 11 of the Federal Rules of Criminal Procedure, defendant WILLIAM C. NEIL ("defendant") and the United States Attorney for the Eastern District of Michigan ("U.S. Attorney" or "government") agree as follows:

1. GUILTY PLEA

A. Counts of Conviction

Defendant will enter a plea of guilty to **Count 1**, which charges a violation of 18 U.S.C. §§ 371, 1037(a)(3), (4), and (b)(2)(B)-(C); and **Count 2**, which

charges a violation of 18 U.S.C. §§ 1037(a)(4), (b)(2)(B). Any other counts against the defendant in this case will be dismissed. The government also agrees that Counts 1-4 against co-defendant ANKI K. NEIL will be dismissed, upon the execution of a pre-trial diversion agreement by ANKI K. NEIL. The defendant acknowledges that the Court may consider these other counts and any other relevant conduct in determining the appropriate sentence.

B. Elements of Offense

The elements of the offense(s) that the government would need to prove beyond a reasonable doubt at trial are set forth below:

- i. The elements of **Count 1**, which charges, inter alia, a violation of 18 U.S.C. §§ 371, 1037(a)(4), (b)(2)(B), are as follows:
 - (1) The defendant, with one or more persons, did knowingly and intentionally conspire to commit the following offense:
 - (a) 18 U.S.C. § 1037(a)(4) (bulk e-mailing using falsified domain registrations), the elements of which are: the defendant, in or affecting interstate commerce, did knowingly (i) register, using information that materially falsified the identity of the actual registrant, (ii) intentionally initiate the

transmission; (iii) of multiple commercial electronic mail messages from any combination of such domain names; and (iv) the offense involved 10 or more falsified domain name registrations, in violation of 18 U.S.C. §§ 1037(a)(4), (b)(2)(B);

- (2) In furtherance of this unlawful conspiracy, W. NEIL committed an overt act, as further described in the Factual Basis of Guilty Plea set forth below in Paragraph 1C of this agreement
- ii. The elements of **Count 2**, which charges a violation of 18 U.S.C. §§ 1037(a)(4), (b)(2)(B), are as follows:
- (1) the defendant, in or affecting interstate commerce, did knowingly:
 - (a) register, using information that materially falsified the identity of the actual registrant, for two or more domain names, and
 - (b) intentionally initiate the transmission of multiple commercial electronic mail messages from any combination of such domain names; and
 - (2) the offense involved 10 or more falsified domain name

registrations, in violation of 18 U.S.C. §§ 1037(a)(4),
(b)(2)(B).

c. Factual Basis for Guilty Plea

The parties stipulate that the following facts are true and are a sufficient and accurate basis for defendant's guilty plea:

From on or about May 2005 through on or about September 2005, defendant WILLIAM C. NEIL ("defendant") conspired and agreed with JOHN BOWN, ALAN RALSKY, and others to send unsolicited bulk commercial electronic mail ("spam") in violation of 18 U.S.C. §§ 1037 (a)(4), (b)(2)(B). During this time frame, the defendant was the Vice President and Chief Operating Officer of GDC Layer One, a company that provided network administration services and software development for the illegal spam operation. During this time frame, the defendant constructed and maintained a computer network used by others to transmit millions of spam emails. Co-conspirator RALSKY, operating from the Eastern District of Michigan, was GDC Layer One's sole client during this time period.

Specifically, the defendant evaluated approximately 100 computers that co-conspirator RALSKY had shipped to GDC Layer One's colocation facility in Los Angeles, California. The defendant selected approximately 25 of those computers to be used for transmitting spam and then installed them in storage

racks and connected them to the Internet at the GDC Layer One colocation facility. Thereafter, the defendant made frequent repairs and adjustments to the computers and the network located at the GDC Layer One colocation facility in Los Angeles to ensure that his co-conspirators could transmit spam in furtherance of the conspiracy on a daily basis.

From on or about May 2005 through on or about September 2005, the defendant knowingly registered at least 300 hundred domain names for the purpose of sending illegal spam in furtherance of the conspiracy. The domain names themselves were generally nonsense words the defendant made up. In registering all of these domain names, the defendant knowingly and intentionally used information that materially falsified the identity of the actual registrant of the domain names. For example, the defendant used fictitious names when he registered the domain names. The defendant used the e-mail address "edwardmiller9@hotmail.com," which had also been registered using materially falsified information, to carry out and monitor his illegal domain name registration activities. The defendant registered domain names knowing that other members of the conspiracy were using the domain names to intentionally initiate the transmission of multiple commercial electronic messages in furtherance of the conspiracy.

2. SENTENCING GUIDELINES

A. Standard of Proof

The Court will find sentencing factors by a preponderance of the evidence.

B. Agreed Guideline Range

There are no sentencing guideline disputes. Except as provided below, defendant's guideline range is 24-30 months, as set forth on the attached worksheets. If the Court finds:

- i. that defendant's criminal history category is higher than reflected on the attached worksheets, or
- ii. that the offense level should be higher because, after pleading guilty, defendant made any false statement to or withheld information from his probation officer; otherwise demonstrated a lack of acceptance of responsibility for his offense; or obstructed justice or committed any crime,

and if any such finding results in a guideline range higher than 24-30 months, the higher guideline range becomes the agreed range.

3. SENTENCE

The Court will impose a sentence pursuant to 18 U.S.C. § 3553, and in doing so must consider the sentencing guideline range.

A. Imprisonment

Pursuant to Federal Rule of Criminal Procedure 11(c)(1)© the sentence of imprisonment in this case may not exceed the top of the sentencing guideline range as determined by Paragraph 2B.

B. Supervised Release

A term of supervised release follows the term of imprisonment. The Court **must** impose a term of supervised release on Count 1 and Count 2 of no less than 3 years. The agreement concerning imprisonment described above in Paragraph 3A does not apply to any term of imprisonment that results from any later revocation of supervised release.

C. Special Assessment

Defendant will pay a special assessment of **\$ 200** and must provide the government with a receipt for the payment before sentence is imposed.

D. Fine

The parties do not agree on a fine amount.

E. Restitution

Because the base offense level is determined using gain rather than loss, there is no restitution.

F. Forfeiture

As part of this agreement, pursuant to 18 U.S.C. §§ 1037 (c) and 982(b),

defendant agrees to forfeit his interest in (\$ 56,000) ("Subject Currency"), which constitutes property, or property traceable to gross proceeds, obtained from violations of Title 18, United States Code, Sections 1037(a), as set forth in this Agreement.

In entering into this agreement with respect to forfeiture, defendant expressly waives his right to have a jury determine the forfeitability of his interest in the Subject Currency as provided by Rule 32.2(b)(4) of the Federal Rules of Criminal Procedure.

With respect to the Subject Currency, defendant agrees to the entry of one or more orders of forfeiture of his interests in such property upon application by the United States at, or any time before, his sentencing in this case.

In entering into this agreement with respect to forfeiture, defendant knowingly, voluntarily, and intelligently waives any challenge to the above-described forfeiture based upon the Excessive Fines Clause of the Eighth Amendment to the United States Constitution.

Defendant further waives the requirements of Federal Rules of Criminal Procedure 32.2 and 43(a) regarding notice of the forfeiture in the charging instrument, announcement of the forfeiture at sentencing, and incorporation of the forfeiture in the judgment. Defendant acknowledges that he understands that the forfeiture of assets is part of the sentence that may be imposed in this case and waives any failure by the court to advise him of this, pursuant to Rule 11(b)(1)(J), at

the time his guilty plea is accepted.

4. EACH PARTY'S RIGHT TO WITHDRAW FROM THIS AGREEMENT

The government may withdraw from this agreement if the Court finds the correct guideline range to be different than is determined by Paragraph 2B.

Defendant may withdraw from this agreement, and may withdraw his guilty plea, if the Court decides to impose a sentence higher than the maximum allowed by Paragraph 3. This is the only reason for which defendant may withdraw from this agreement. The Court shall advise defendant that if he does not withdraw his guilty plea under this circumstance, the Court may impose a sentence greater than the maximum allowed by Paragraph 3.

5. RIGHT TO APPEAL

If the sentence imposed does not exceed the maximum allowed by Part 3 of this agreement, defendant waives any right he has to appeal his conviction or sentence ~~if the sentence~~^{is}. If the sentence imposed is within the guideline range determined by Paragraph 2B, the government agrees not to appeal the sentence, but it retains its right to appeal any sentence below that range.

6. CONSEQUENCES OF WITHDRAWAL OF GUILTY PLEA OR VACATION OF CONVICTION

If defendant is allowed to withdraw his guilty plea or if any conviction entered pursuant to this agreement is vacated, the Court shall, on the government's request, reinstate any charges that were dismissed as part of this agreement. If additional

charges are filed against defendant within six months after the date the order vacating defendant's conviction or allowing him to withdraw his guilty plea becomes final, which charges relate directly or indirectly to the conduct underlying the guilty plea or to any conduct reflected in the attached worksheets, defendant waives his right to challenge the additional charges on the ground that they were not filed in a timely manner, including any claim that they were filed after the limitations period expired.

7. PARTIES TO PLEA AGREEMENT

Unless otherwise indicated, this agreement does not bind any government agency except the United States Attorney's Office for the Eastern District of Michigan and the Criminal Division of the U.S. Department of Justice.

8. SCOPE OF PLEA AGREEMENT

This agreement, which includes all documents that it explicitly incorporates, is the complete agreement between the parties. It supersedes all other promises, representations, understandings, and agreements between the parties concerning the subject matter of this plea agreement that are made at any time before the guilty plea is entered in court. Thus, no oral or written promises made by the government to defendant or to the attorney for defendant at any time before defendant pleads guilty are binding except to the extent they have been explicitly incorporated into this agreement.

This agreement does not prevent any civil or administrative actions against defendant, or any forfeiture claim against any property, by the United States or any other party.

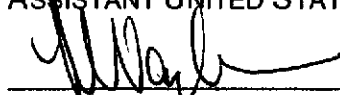
9. ACCEPTANCE OF AGREEMENT BY DEFENDANT

This plea offer expires unless it has been received, fully signed, in the Office of the United States Attorney by 5:00 P.M. on _____. The government reserves the right to modify or revoke this offer at any time before defendant pleads guilty.



SHELDON LIGHT
CHIEF, ECONOMIC CRIMES UNIT
ASSISTANT UNITED STATES ATTORNEY

TERRENCE BERG
UNITED STATES ATTORNEY



MONA SEDKY SPIVACK
TRIAL ATTORNEY
UNITED STATES DEPARTMENT OF JUSTICE



THOMAS DUKES
TRIAL ATTORNEY
UNITED STATES DEPARTMENT OF JUSTICE

DATE: 6/22/09

BY SIGNING BELOW, DEFENDANT ACKNOWLEDGES THAT HE HAS READ (OR BEEN READ) THIS ENTIRE DOCUMENT, UNDERSTANDS IT, AND AGREES TO ITS TERMS. HE ALSO ACKNOWLEDGES THAT HE IS SATISFIED WITH HIS ATTORNEY'S ADVICE AND REPRESENTATION. DEFENDANT AGREES THAT HE HAS HAD A FULL AND COMPLETE OPPORTUNITY TO CONFER WITH HIS LAWYER, AND HAS HAD ALL OF HIS QUESTIONS ANSWERED BY HIS LAWYER.


MICHAEL KEMNITZ
ATTORNEY FOR DEFENDANT
WILLIAM C. NEIL
DEFENDANT

DATE: 6-21-09

WORKSHEET A (Offense Levels)

Defendant: William C. Neil Count(s): 1 and 2

Docket No.: _____ Statute(s): _____

Complete one Worksheet A for each count of conviction (taking into account relevant conduct and treating each stipulated offense as a separate count of conviction) before applying the multiple-count rules in U.S.S.G. ch. 3, pt. D. However, in any case involving multiple counts of conviction, if the counts of conviction are all "closely related" to each other within the meaning of U.S.S.G. § 3D1.2(d), complete only a single Worksheet A.

1. BASE OFFENSE LEVEL AND SPECIFIC OFFENSE CHARACTERISTICS (U.S.S.G. ch. 2)

<u>Guideline Section</u>	<u>Description</u>	<u>Levels</u>
<u>2B1.1(a)</u>	<u>Base Offense Level</u>	<input type="text" value="6"/>
<u>2B1.1(b)(1)(C)</u>	<u>Between \$30,000 and \$70,000</u>	<input type="text" value="6"/>
<u>2B1.1(b)(2)(A)</u>	<u>Greater than 10 victims/mass marketing</u>	<input type="text" value="2"/>
<u>2B1.1(b)(9)(C)</u>	<u>Sophisticated means</u>	<input type="text" value="2"/>
_____	_____	<input type="text"/>

2. ADJUSTMENTS (U.S.S.G. ch. 3, pts. A, B, C)

<u>Guideline Section</u>	<u>Description</u>	<u>Levels</u>
_____	_____	<input type="text"/>
_____	_____	<input type="text"/>
_____	_____	<input type="text"/>

3. ADJUSTED OFFENSE LEVEL

Enter the sum of the offense levels entered in Items 1 and 2. If this Worksheet A does not cover every count of conviction (taking into account relevant conduct and treating each stipulated offense as a separate count of conviction), complete one or more additional Worksheets A and a single Worksheet B.

16

If this is the only Worksheet A, check this box and skip Worksheet B.

If the defendant has no criminal history, check this box and skip Worksheet C.

WORKSHEET B (Multiple Counts)

Instructions (U.S.S.G. ch. 3, pt. D):

- Group the counts of conviction into distinct Groups of Closely Related Counts. "All counts involving substantially the same harm shall be grouped together into a single Group." (See U.S.S.G. § 3D1.2.)
- Determine the offense level applicable to each Group. (See U.S.S.G. § 3D1.3.)
- Determine the combined offense level by assigning "units" to each Group as follows (see U.S.S.G. § 3D1.4):
 - assign 1 unit to the Group with the highest offense level,
 - assign 1 unit to each additional Group that is equally serious as, or 1 to 4 levels less serious than, the Group with the highest offense level,
 - assign ½ unit to each Group that is 5 to 8 levels less serious than the Group with the highest offense level,
 - assign no units to each Group that is 9 or more levels less serious than the Group with the highest offense level.

1.	GROUP ONE: COUNTS _____ ADJUSTED OFFENSE LEVEL	1 AND 5	16	1 unit
2.	GROUP TWO: COUNTS _____ ADJUSTED OFFENSE LEVEL			unit
3.	GROUP THREE: COUNTS _____ ADJUSTED OFFENSE LEVEL			unit
4.	GROUP FOUR: COUNTS _____ ADJUSTED OFFENSE LEVEL			unit
5.	TOTAL UNITS			1
6.	INCREASE IN OFFENSE LEVEL 1 unit → no increase 2½-3 units → add 3 levels 1½ units → add 1 level 3½ -5 units → add 4 levels 2 units → add 2 levels >5 levels → add 5 levels			
7.	ADJUSTED OFFENSE LEVEL OF GROUP WITH THE HIGHEST OFFENSE LEVEL		16	
8.	COMBINED ADJUSTED OFFENSE LEVEL Enter the sum of the offense levels entered in Items 6 and 7.			16

WORKSHEET C (Criminal History)

Date of defendant's commencement of the instant offense (taking into account relevant conduct and stipulated offenses): May 2005

1. PRIOR SENTENCES

Prior Sentence of Imprisonment Exceeding 13 Months (U.S.S.G. §§ 4A1.1(a)): 3 POINTS

Enter 3 points for each prior adult sentence of imprisonment exceeding one year and one month that either (1) was imposed within 15 years of the defendant's commencement of the instant offenses (taking into account relevant conduct and stipulated offenses) or (2) resulted in the defendant's confinement during any part of that 15-year period. (See U.S.S.G. §§ 4A1.1(a), 4A1.2(d)(1), (e)(1).)

Prior Sentence of Imprisonment of at Least 60 Days (U.S.S.G. §§ 4A1.1(b)): 2 POINTS

Enter 2 points for each prior sentence of imprisonment of at least 60 days not counted under U.S.S.G. § 4A1.1(a) that either (1) resulted from an offense committed after the defendant turned 18 and was imposed within 10 years of the defendant's commencement of the instant offense (taking into account relevant conduct and stipulated offenses) (see U.S.S.G. §§ 4A1.1(b), 4A1.2(e)(2)) or (2) resulted from an offense committed before the defendant turned 18 and resulted in the defendant's confinement during any part of the 5-year period preceding the defendant's commencement of the instant offense (see U.S.S.G. §§ 4A1.1(b), 4A1.2(d)(2)(A)).

Other Prior Sentences (U.S.S.G. §§ 4A1.1(c)): 1 POINT

Enter 1 point for each prior sentence not counted under U.S.S.G. § 4A1.1(a) or (b) that either (1) resulted from an offense committed after the defendant turned 18 and was imposed within 10 years of the defendant's commencement of the instant offense (taking into account relevant conduct and stipulated offenses) (see U.S.S.G. §§ 4A1.1(c), 4A1.2(e)(2)) or (2) resulted from an offense committed before the defendant turned 18 and was imposed within 5 years of the defendant's commencement of the instant offense (taking into account relevant conduct and stipulated offenses) (see U.S.S.G. §§ 4A1.1(c), 4A1.2(d)(2)(B)). NOTE: No more than 4 points may be added under this item.

<u>Date of Imposition</u>	<u>Status*</u>	<u>Offense</u>	<u>Sentence</u>	<u>Release Date**</u>	<u>Points</u>
8/23/93	A	Veh, theft/burglary	3 yrs in prison		3
5/14/96	A	Burglary	2 yrs in prison		3
6/11/99	A	Poss. Dang. Weap.; Stolen Prop	4 yrs in prison		3
_____	_____	_____	_____	_____	
_____	_____	_____	_____	_____	

* If the defendant committed the offense before turning 18, indicate whether he or she was sentenced as a juvenile (J) or as an adult (A).

** A release date is required in only three situations: (1) when a sentence covered under U.S.S.G. § 4A1.1(a) was imposed more than 15 years before the defendant's commencement of the instant offense (taking into account relevant conduct and stipulated offenses) but resulted in his or her confinement during any part of that 15-year period; (2) when a sentence counted under U.S.S.G. § 4A1.1(b) was imposed for an offense committed before the defendant turned 18 but resulted in his or her confinement during any part of the 5-year period preceding his or her commencement of the instant offense (taking into account relevant conduct and stipulated offenses); and (3) when 2 criminal history points are added pursuant to U.S.S.G. § 4A1.1(e) because the defendant committed the instant offense (taking into account relevant conduct and stipulated offenses) shortly after or during imprisonment resulting from a sentence counted under U.S.S.G. § 4A1.1(a) or (b) or while he or she was on escape status for such a sentence.

2. COMMISSION OF INSTANT OFFENSE WHILE UNDER PRIOR SENTENCE (U.S.S.G. § 4A1.1(d))

Enter 2 points if the defendant committed any part of the instant offense (taking into account relevant conduct and stipulated offenses) while under any criminal justice sentence having a custodial or supervisory component, including probation, parole, supervised release, imprisonment, work release, and escape status. (See U.S.S.G. §§ 4A1.1(d), 4A1.2(m), (n).) List the type of control and identify the sentence from which it resulted.

3. COMMISSION OF INSTANT OFFENSE SHORTLY AFTER OR DURING IMPRISONMENT (U.S.S.G. § 4A1.1(e))

Enter 2 points if the defendant committed any part of the instant offense (taking into account relevant conduct and stipulated offenses) either less than 2 years after release from imprisonment on a sentence counted under U.S.S.G. §§ 4A1.1(a) or 4A1.1(b) or while in imprisonment or escape status on such a sentence. However enter, only 1 point for this item if 2 points were added under Item 2. (See U.S.S.G. §§ 4A1.1(e), 4A1.2(n).) List the date of release and identify the sentence from which it resulted.

4. PRIOR SENTENCE RESULTING FROM CRIME OF VIOLENCE (U.S.S.G. § 4A1.1(f))

Enter 1 point for each prior sentence resulting from a conviction for a crime of violence that did not receive any points under U.S.S.G. § 4A1.1(a), (b), or (c) because such sentence was considered related to another sentence resulting from a conviction for a crime of violence. But enter no points where the sentences are considered related because the offenses occurred on the same occasion. (See U.S.S.G. §§ 4A1.1(f), 4A1.2(p).) Identify the crimes of violence and briefly explain why the cases are considered related. NOTE: No more than 3 points may be added under this item.

5. TOTAL CRIMINAL HISTORY POINTS

Enter the sum of the criminal history points entered in Items 1-4.

6. CRIMINAL HISTORY CATEGORY

Total Criminal History Points Criminal History Category

0 - 1	I
2 - 3	II
4 - 6	III
7 - 9	IV
10 - 12	V
≥ 13	VI

WORKSHEET D (Guideline Range)

1. (COMBINED) ADJUSTED OFFENSE LEVEL

Enter the adjusted offense level entered in Item 3 of Worksheet A or the combined adjusted offense level entered in Item 8 of Worksheet B.

16

2. ADJUSTMENT FOR ACCEPTANCE OF RESPONSIBILITY (U.S.S.G § 3E1.1)

-3

3. TOTAL OFFENSE LEVEL

Enter the difference between Items 1 and 2.

13

4. CRIMINAL HISTORY CATEGORY

Enter "I" if the defendant has no criminal history. Otherwise, enter the criminal history category entered in Item 6 of Worksheet C.

IV

5. CAREER OFFENDER / CRIMINAL LIVELIHOOD / ARMED CAREER CRIMINAL (U.S.S.G. ch. 4, pt. B)

a. Total Offense Level: If the career offender provision (U.S.S.G. § 4B1.1), the criminal livelihood provision (U.S.S.G. § 4B1.3), or the armed career criminal provision (U.S.S.G. § 4B1.4) results in a total offense level higher than the total offense level entered in Item 3, enter the higher offense level total.

b. Criminal History Category: If the career offender provision (U.S.S.G. § 4B1.1) or the armed career criminal provision (U.S.S.G. § 4B1.4) results in a criminal history category higher than the criminal history category entered in Item 4, enter the higher criminal history category.

6. GUIDELINE RANGE FROM SENTENCING TABLE (U.S.S.G. ch. 5, pt. A)

Enter the guideline range in the Sentencing Table (see U.S.S.G. ch. 5, pt. A) produced by the total offense level entered in Item 3 or 5.a and the criminal history category entered in Item 4 or 5.b.

24-30

months

7. STATUTORY RESTRICTIONS ON OR SUPERSESSION OF GUIDELINE RANGE

If the maximum sentence authorized by statute is below, or a minimum sentence required by statute is above, the guideline range entered in Item 6, enter either the guideline range as restricted by statute or the sentence required by statute. (See U.S.S.G. § 5G1.1.) If the sentence on any count of conviction is required by statute to be consecutive to the sentence on any other count of conviction, explain why.

months

WORKSHEET E (Authorized Guideline Sentences)

1. PROBATION (U.S.S.G. ch. 5, pt. B)

a. Imposition of a Term of Probation (U.S.S.G. § 5B1.1)

1. Probation is not authorized by the guidelines (minimum of guideline range > 6 months or statute of conviction is a Class A or a Class B felony). If this box is checked, go to Item 2 (Split Sentence).

2. Probation is authorized by the guidelines (minimum of guideline range = zero months).

3. Probation is authorized by the guidelines, provided the court imposes a condition or combination of conditions requiring intermittent confinement, community confinement, or home detention satisfying the minimum of the guideline range (minimum of guideline range > 0 months but ≤ 6 months).

b. Length of Term of Probation (U.S.S.G. § 5B1.2)

1. At least 1 year but not more than 5 years (total offense level ≥ 6).

2. No more than 3 years (total offense level < 6).

c. Conditions of Probation (U.S.S.G. § 5B1.3)

The court must impose certain conditions of probation and may impose other conditions of probation.

2. SPLIT SENTENCE (U.S.S.G. § 5C1.1(c)(2), (d)(2))

a. A split sentence is not authorized (minimum of guideline range = 0 months or > 10 months).

b. A split sentence is authorized (minimum of guideline range > 0 months but ≤ 10 months). The court may impose a sentence of imprisonment that includes a term of supervised release with a condition that substitutes community confinement or home detention for imprisonment, provided that at least one-half of the minimum of the guideline range is satisfied by imprisonment (if the minimum of the guideline range is 8, 9, or 10 months), or that at least one month is satisfied by imprisonment (if the minimum of the guideline range is 1, 2, 3, 4, or 6 months). The authorized length of the term of supervised release is set forth below in Item 4.b

3. IMPRISONMENT (U.S.S.G. ch. 5, pt. C)

A term of imprisonment is authorized by the guidelines if it is within the applicable guideline range (entered in Item 6 of Worksheet D). (See U.S.S.G. § 5C1.1.)

4. SUPERVISED RELEASE (U.S.S.G. ch 5., pt. D)

a. Imposition of a Term of Supervised Release (U.S.S.G. § 5D1.1)

The court must impose a term of supervised release if it imposes a term of imprisonment of more than one year, or if it is required to do so by statute. The court may impose a term of supervised release if it imposes a term of imprisonment of one year or less.

b. Length of Term of Supervised Release (U.S.S.G. § 5D1.2)

1. At least 3 years but not more than 5 years, where the count of conviction is a Class A or a Class B felony, i.e., an offense carrying a maximum term of imprisonment \geq 25 years.

2. At least 2 years but not more than 3 years, where the count of conviction is a Class C or a Class D felony, i.e., an offense carrying a maximum term of imprisonment \geq 5 years but $<$ 25 years.

3. 1 year, where the count of conviction is a Class E felony or a Class A misdemeanor, i.e., an offense carrying a maximum term of imprisonment $>$ 6 months but $<$ 5 years.

4. The statute of conviction requires a minimum term of supervised release of _____ months.

c. Conditions of Supervised Release (U.S.S.G. § 5D1.3)

The court must impose certain conditions of supervised release and may impose other conditions of supervised release.

5. RESTITUTION (U.S.S.G. § 5E1.1)

1. The court will determine whether restitution should be ordered and in what amount.

2. Full restitution to the victim(s) of the offense(s) of conviction is *required* by statute. (See, e.g., 18 U.S.C. §§ 3663A, 2327.) The parties agree that full restitution is \$_____.

3. The parties agree that the court may order restitution to the victim(s) of the offense(s) of conviction in any amount up to and including \$_____. (See 18 U.S.C. §§ 3663(a)(3).)

4. The parties agree that the court may *also* order restitution to persons other than the victim(s) of the offense(s) of conviction. (See 18 U.S.C. §§ 3663(a)(1)(A), 3663A(a)(3).)

5. Restitution is not applicable.

6. FINE (U.S.S.G. § 5E1.2)

a. Fines for Individual Defendants

The court must impose a fine unless "the defendant establishes that he [or she] is unable to pay and is not likely to become able to pay any fine." (See U.S.S.G. § 5E1.2(a).) Generally, the fine authorized by the guidelines is limited to the range established in the Fine Table. (See U.S.S.G. § 5E1.2(b).) However, there are exceptions to this general rule. (See U.S.S.G. § 5E1.2(b), (c)(4).)

b. Fine Range from Fine Table (U.S.S.G. § 5E1.2(c)(3))

<u>Minimum Fine</u>	<u>Maximum Fine</u>
\$ <u>3,000</u>	\$ <u>30,000</u>

7. SPECIAL ASSESSMENT(S) (U.S.S.G. § 5E1.3)

The court must impose a special assessment on every count of conviction. The special assessments for individual defendants are

- \$100.00 for every count charging a felony (\$50.00 if the offense was completed before April 24, 1996)
- \$ 25.00 for every count charging a Class A misdemeanor,
- \$ 10.00 for every count charging a Class B misdemeanor, and
- \$ 5.00 for every count charging a Class C misdemeanor or an infraction.

The defendant must pay a special assessment or special assessments in the total amount of \$ 200.

8. ADDITIONAL APPLICABLE GUIDELINES, POLICY STATEMENTS, AND STATUTES

List any additional applicable guideline, policy statement, or statute.

9. UPWARD OR DOWNWARD DEPARTURE (U.S.S.G. ch. 5, pts. H & K)

List any applicable aggravating or mitigating circumstance that might support a term of imprisonment above or below the applicable guideline range.
