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   UNITED STATES OF AMERICA
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                       UNITED STATES DISTRICT COURT
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                 FOR THE CENTRAL DISTRICT OF CALIFORNIA
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   UNITED STATES OF AMERICA,
                                 ) CR No. 08-59(B)-GW
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                   Plaintiff,
                                 ) GOVERNMENT'S RESPONSE AND
                                  ) OBJECTIONS TO PRE-SENTENCE REPORT
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                                  ) AS TO DEFENDANT GERALD GREEN
                   v.
   GERALD GREEN and
                                  ) Sent. Date: January 21, 2010
                                  ) Sent. Time: 8:30 a.m.
   PATRICIA GREEN,
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                   Defendants.
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Plaintiff United States of America, through its counsel of record, the United States Attorney's Office for the Central District of California, hereby submits its attached response and objections as to the Pre-Sentence Report ("PSR") for defendant GERALD GREEN, disclosed on November 30, 2009.

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The government understands the Court is being asked to depart or otherwise adopt a variance from the Federal Sentencing Guidelines. The government submits the following objections in order to ensure an appropriate quidelines analysis as an initial 28 matter. At the time for filing of its main sentencing position

memorandum, the government will address the separate sentencing recommendation letter of the United States Probation Officer who prepared the PSR.

Moreover, the government respectfully requests the opportunity to supplement its response and objections as may become necessary, including upon the disclosure of any addenda to the PSR.

DATED: December 14, 2009 Respectfully submitted,

GEORGE S. CARDONA Acting United States Attorney

CHRISTINE C. EWELL Assistant United States Attorney Chief, Criminal Division

/s/
BRUCE H. SEARBY
Assistant United States Attorney

Attorneys for Plaintiff UNITED STATES OF AMERICA

GOVERNMENT'S RESPONSE AND OBJECTIONS TO PRE-SENTENCE REPORT FOR DEFENDANT GERALD GREEN

Paragraph 11 (Bond)

The PSR indicates that defendant GERALD GREEN's bond did not require posting of collateral. (PSR \P 11.) In fact, one of the conditions of his bond was the security of a \$500,000 deed of trust to real property (defendants' home), which was posted on January 2, 2008. See Docket No. 27.

Paragraph 22 (Victim Impact)

The PSR's characterization of the government's position regarding the monetary loss to the Kingdom of Thailand (PSR ¶ 22) requires correction, as follows: The \$1,822,494 in bribes defendants paid were not only for "film festival contracts" with the Tourism Authority of Thailand ("TAT") but also for unrelated contracts for the development of the Thai Privilege Card project, and for a website, book, video, calendars, and public relations services for the TAT. As set forth in Government's Exhibit 1238, admitted into evidence at trial, these non-BKKIFF contracts resulted in nearly \$800,000 of the bribes paid.

Grounds for Additional Enhancement for Obstruction of Justice

The government submits that applying a two-level enhancement for obstruction of justice to defendant GERALD GREEN under U.S.S.G. § 3C1.1 is appropriate for a reason not discussed in the

When defendant GERALD GREEN's bond was raised in April 2008 by an additional \$200,000, that additional amount was covered solely by an affidavit of surety with no justification.

PSR,² namely, that defendant GERALD GREEN repeatedly and blatantly perjured himself under oath during his testimony over three days of trial in this matter. The government will supply the United States Probation Officer with the transcripts of defendant GERALD GREEN's trial testimony on September 8-10, 2009.

In his direct examination, not only did defendant GERALD GREEN deny the allegations of bribery against him, 3 but also he fabricated elaborate explanations for the payments he directed defendant PATRICIA GREEN and Susan Shore to make to accounts held in the name of the Governor's Daughter, Jittisopa Siriwan, and the Governor's Friend, Kitti Chambundabongse.

These explanations contradicted the evidence (including both witness testimony and documentary evidence) in the case, and were further discredited upon defendant GERALD GREEN's cross-examination.

As demonstrated by the guilty verdicts against him, the jury disbelieved and rejected defendant GERALD GREEN's explanations.

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The PSR noted the government's dismissal of the count of obstruction of justice under 18 U.S.C. § 1519 (on which the jury deadlocked after a day of deliberation), and cited to the complaint affidavit regarding one of the events that formed the evidentiary basis of that count. (PSR $\P\P$ 25-26.)

A defendant's simple denial of the charges, without more, may be insufficient to apply the obstruction enhancement.

Paragraph 39 (Role Adjustment)

The government objects to the PSR's finding that defendant GERALD GREEN was no more culpable than any other participant, and therefore does not merit an aggravating role adjustment. The government contends that a four-level aggravating role adjustment is appropriate for being "an organizer or leader of criminal activity that involved five or more participants or was otherwise extensive." U.S.S.G. § 3B1.1(a) (emphasis added).

This "otherwise extensive" ground for leader/organizer role adjustment is applicable to defendant GERALD GREEN because of the large amount of loss, the extensive duration of the bribery scheme, its international scope, the number of witting and unwitting participants, and defendant GERALD GREEN's role in directing defendant PATRICIA GREEN and others employed at defendants' several companies (including Susan Shore) and at the various prime contractors and subcontractors in executing the details of the scheme.

The PSR's discussion of role exclusively analyzes the applicability of § 3B1.1(c), which only counts criminally culpable participants managed or supervised by the defendant. The government does not argue that this particular role adjustment applies.

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Paragraph 117 (Guideline Provisions for Custody)

The PSR calculates defendant GERALD GREEN's Total Offense Level as 38, his Criminal History Category as I, and his sentencing range as 235-293 months. With the inclusion of the additional role and obstruction enhancements recommended above, his Total Offense Level would be 44 and his sentencing range would be life in prison.

DATED: December 14, 2009

Respectfully submitted,

GEORGE S. CARDONA Acting United States Attorney

CHRISTINE C. EWELL Assistant United States Attorney Chief, Criminal Division

/s/

BRUCE H. SEARBY Assistant United States Attorney

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