

# UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MICHIGAN SOUTHERN DIVISION

UNITED STATES OF AMERICA.

Plaintiff,

-VS-

D-4 JOHN S. BOWN,

Defendant.

No. 2:07-cR-20627 Hon. Marianne O. Battani

OFFENSES:

Count 5: 18 U.S.C. §§ 371, 1037(a)(2)-(3), (b)(2)(C), 1341, and 1343 (Conspiracy: Fraud in Connection with Electronic Mail, Mail Fraud, Wire Fraud)

Count 6: 18 U.S.C. §§ 1037(a)(2), (b)(2)(C), and 2 (Fraud in Connection with Electronic Mail; Aiding and Abetting)

Count 39: 18 U.S.C. §§ 371, 1037(a)(1), (b)(2)(C), 1030(a)(5)(A)(i), (5)(B)(i),1030(b) (Conspiracy: Fraud in Connection with Electronic Mail; Fraud and Related Activity in Connection with Computers)

**MAXIMUM PENALTY:** 5 yrs on count 5; 3 yrs on count 6; 5 yrs on Count 39

MAXIMUM FINE: \$ 250,000 on each count

# **RULE 11 PLEA AGREEMENT**

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

## 1. GUILTY PLEA

#### A. <u>Counts of Conviction</u>

Defendant will enter a plea of guilty to **Count 5**, which charges a violation of 18 U.S.C. §§ 371, 1037(a)(2)-(3), (b)(2)(C), 1341, and 1343; **Count 6**, which charges a violation of 18 U.S.C. § 1037(a)(2), (b)(2)(C); and **Count 39**, which charges a violation of 18 U.S.C. §§ 371, 1037(a)(1), (b)(2)(C), 1030(a)(5)(A)(i), (5)(B), 1030(b). Any other counts against the defendant in this case will be dismissed. The defendant acknowledges that the Court may consider these other counts and any other relevant conduct in determining the appropriate sentence.

## B. <u>Elements of Offense</u>

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 5**, which charges a violation of 18
  U.S.C. §§ 371, 1037(a)(2), (3), (b)(2)(C), 1341, and 1343, are as follows:
  - (1) The defendant, with one or more persons, did knowingly and intentionally conspire to commit the following offenses:
    - (a) 18 U.S.C. § 1037(a)(2) (bulk e-mailing using

proxy computers), the elements of which are: the defendant, in or affecting interstate commerce, did knowingly (i) use a protected computer to relay or retransmit multiple commercial electronic mail messages, (ii) with the intent to deceive or mislead recipients, or any Internet access service, as to the origin of such messages, and (iii) the volume of electronic mail messages transmitted in furtherance of the offense exceeded 2,500 during any 24-hour period, 25,000 during any 30-day period, or 250,000 during any 1-year period, in violation of 18 U.S.C. §§ 1037(a)(2), (b)(2)(C);

(b) 18 U.S.C. § 1037(a)(3) (bulk e-mailing using falsified headers), the elements of which are: the defendant, in or affecting interstate commerce, did knowingly (i) materially falsify header information in multiple commercial electronic mail messages, (ii) intentionally initiate the transmission of such messages, and (iii) the volume of electronic mail messages transmitted in furtherance of the

- offense exceeded 2,500 during any 24-hour period, 25,000 during any 30-day period, or 250,000 during any 1-year period, in violation of 18 U.S.C. §§ 1037(a)(3), (b)(2)(C);
- (c) 18 U.S.C. § 1341, mail fraud, the elements of which are: (i) the defendant knowingly participated in a scheme to defraud in order to obtain money or property; (ii) the scheme included a material misrepresentation or the concealment of a material fact; (iii) the defendant had the intent to defraud; and (iv) the defendant used the mail or caused another to use the mail in furtherance of the scheme; and
- (d) 18 U.S.C. § 1343, wire fraud, the elements of which are: (i) the defendant knowingly participated in a scheme to defraud in order to obtain money or property; (ii) the scheme included a material misrepresentation or concealment of a material fact; (iii) the defendant had the intent to defraud; and (iv) the defendant used or caused another to

use wire communications in interstate commerce in furtherance of the scheme.

- (2) In furtherance of this unlawful conspiracy, BOWN 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 6, which charges a violation of 18U.S.C. §§1037(a)(2), (b)(2)(C), are as follows:
  - (1) The defendant, in or affecting interstate commerce, did knowingly (a) use a protected computer to relay or retransmit multiple commercial electronic mail messages, (b) with the intent to deceive or mislead recipients, or any Internet access service, as to the origin of such messages, and
  - (2) The volume of electronic mail messages transmitted in furtherance of the offense exceeded 2,500 during any 24-hour period, 25,000 during any 30-day period, or 250,000 during any 1-year period, in violation of 18 U.S.C. §§ 1037(a)(2), (b)(2)(C).
- iii. The elements of Count 39, which charges a violation of §§

371, 1037(a)(1), (b)(2)(C), 1030(a)(5)(A)(i), (5)(B), 1030(b), are as follows:

- (1) The defendant, with one or more persons, did knowingly and intentionally conspire to commit the following offenses:
  - (a) 18 U.S.C. § 1037(a)(1) (unauthorized access to computers for bulk e-mailing), the elements of which are: the defendant, in or affecting interstate commerce, did knowingly (i) access a protected computer without authorization, (ii) intentionally initiate the transmission of multiple electronic mail messages from or through such a computer, and (iii) the volume of electronic mail messages transmitted in furtherance of the offense exceeded 2,500 during any 24-hour period, 25,000 during any 30-day period, or 250,000 during any 1-year period, in violation of 18 U.S.C. §§ 1037(a)(1), (b)(2)(C);
  - (b) 18 U.S.C. § 1030(a)(5)(A)(i) (unauthorized access to computers), the elements of which are: the

defendant, did (i) knowingly cause the transmission of a program, information, code or command, (ii) as a result of such conduct, intentionally caused damage without authorization, to a protected computer; and (iii) caused loss during a one-year period aggregating at least \$5,000 in value, in violation of 18 U.S.C. §§ 1030(a)(5)(A)(i), (5)(B), 1030(b).

(2) In furtherance of this unlawful conspiracy, BOWN committed an overt act, as further described in the Factual Basis of Guilty Plea set forth below in Paragraph 1C of this agreement.

# 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 January 2004 through on or about September 2005, defendant JOHN S. BOWN ("defendant") conspired and agreed with Alan Ralsky and others to send unsolicited bulk commercial electronic mail ("spam"). BOWN, during this time frame, was responsible for managing and supervising the spamming operation, which involved 5 or more participants, as the chief

technology officer/network systems manager of the spam operation and as CEO of GDC Layer One, a company that provided network administration services and software development for the spam operation. During this time frame, the defendant caused others to transmit millions of spam emails that used false headers and that were sent via proxy mailing, in order to disguise the true origin of the spam emails and prevent recipients and Internet service providers from detecting and blocking them. The term "proxy mailing" means knowingly using protected computers to relay or retransmit the messages with the intent to disguise their origin. The term "false headers" means knowingly and materially falsifying header information and intentionally initiating the transmission of multiple commercial e-mail messages. Many of the spam emails promoted thinly traded stocks for Chinese companies, including those with the ticker symbols CDGT, WWBP, CWTD, and PGCN, and contained materially false and misleading information or omissions. The defendant was aware that interstate wire communications, the U.S. mail, and common carriers were used to further the fraudulent scheme, which resulted in the defendant and others receiving payments and proceeds from the sale of stocks whose prices were inflated after being promoted by spam email sent in furtherance of the conspiracy.

During this period, the defendant also attempted to send spam using a "botnet" of infected computers. On or about July 20 and 21, 2006, in or around

Los Angeles, California, the defendant communicated via electronic and other means with a third party in an effort to set up and operate a customized "botnet," for the purpose of sending illegal spam on behalf of the Ralsky and other codefendants. A "botnet" is a network of computers infected with malicious software that would allow the defendant or others to control the entire computer network without the knowledge of consent of the computer owners. In these communications, BOWN stated that he already had several parts of a customized botnet mailer system in place, including the botnet software program, and requested that the third party provide him with multiple servers to operate the botnet system. He offered to wire funds to the third party that same day to get the botnet mailer up and running as soon as possible. The defendant would have used each of the infected computers to transmit millions of spam e-mail, in order to hide the true origin of the spam, remain anonymous, and evade anti-spam filters and other spam-blocking techniques.

## 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 <u>51-63 months</u>, as set forth on the attached

worksheets. If the Court finds:

- 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 <u>51-63 months</u>, 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. <u>Imprisonment</u>

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

# B. <u>Supervised Release</u>

A term of supervised release follows the term of imprisonment. The Court **must** impose a term of supervised release on Count 5, Count 6, and Count 39 of <u>no</u>

<u>less than 3 years</u>. 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 \$\\_300\$ 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 (\$ 120,000) ("Subject Currency"), which constitutes property, or property traceable to gross proceeds, obtained from violations of Title 18, United States Code, Sections 1037(a), 1341, 1343, 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. DEFENDANT'S OBLIGATIONS

Defendant agrees to assist the U.S. Attorney and the Computer Crime and Intellectual Property Section of the U.S. Department of Justice in the investigation and prosecution of others involved in criminal activities, as specified below.

## A. TRUTHFUL INFORMATION AND TESTIMONY

Defendant will provide truthful and complete information concerning any and

all unlawful activity, including any such activity involving fraud in connection with the sending of multiple commercial electronic mail messages in violation of the CAN-SPAM Act, 18 U.S.C. § 1037, wire fraud in violation of 18 U.S.C. § 1343, mail fraud in violation of 18 U.S.C. § 1341, and money laundering in violation of 18 U.S.C. § 1957. In particular, defendant agrees to provide information pertaining to the conduct of his co-defendants in this case, United States v. Alan Ralsky, et al., 2:07cr-20627 (filed Dec. 12, 2007, E.D.MI). Defendant will provide full debriefings as requested to the U.S. Attorney and the Computer Crime and Intellectual Property Section of the U.S. Department of Justice, and federal, state, and local civil or criminal law enforcement agencies. Defendant will provide truthful testimony at all proceedings, criminal, civil, or administrative, as requested by the U.S. Attorney and the Computer Crime and Intellectual Property Section of the U.S. Department of Justice. Such testimony may include, but is not limited to, grand jury proceedings, trials, and pretrial and post-trial proceedings. Defendant agrees to be available for interviews in preparation of all testimony. Defendant further agrees to submit, upon request, to government-administered polygraph examinations to verify defendant's full and truthful cooperation. Defendant understands that this obligation to provide cooperation continues after sentencing and that failure to follow through constitutes a breach of this agreement.

### B. NATURE OF COOPERATION

Defendant agrees to cooperate in good faith, meaning that defendant will not only respond truthfully and completely to all questions asked, but defendant will also volunteer all information that is reasonably related to the subjects discussed in the debriefing. In other words, defendant may not omit facts about crimes, participants, or defendant's involvement, and then claim not to have breached this agreement because defendant was not specifically asked questions about those crimes, participants, or involvement. Defendant will notify the U.S. Attorney and the Computer Crime and Intellectual Property Section of the U.S. Department of Justice in advance if defendant intends to offer a statement or debriefing to other persons other than defendant's attorney. Defendant is not prevented in any way from providing truthful information helpful to the defense of any person. Any actions or statements inconsistent with continued cooperation under this agreement, including but not limited to criminal activity, or a statement indicating a refusal to testify, or any other conduct that in any way undermines the effectiveness of defendant's cooperation, constitute a breach of this agreement.

# 5. <u>U.S. Attorney's Authority Regarding Substantial Assistance</u>

#### A. SUBSTANTIAL ASSISTANCE DETERMINATION

It is exclusively within the U.S. Attorney's discretion to determine whether defendant has provided substantial assistance in the investigation or prosecution of

others and has acted in good faith. Upon the U.S. Attorney's determination that defendant's cooperation amounts to substantial assistance, the U.S. Attorney will either recommend to the Court a sentencing range lower than that specified in paragraph 2, as provided in U.S.S.G. 5K1.1, or will move for a reduction of sentence pursuant to Fed. R. Crim. P. 35, as appropriate. In either case, the sentence will be determined by the Court.

## B. ADJUSTED SENTENCE RECOMMENDATION

The parties agree that if the U.S. Attorney determines that defendant has provided substantial assistance in the investigation and prosecution of others, the U.S. Attorney will recommend that defendant be sentenced to a specific sentence within a range of 37-46 months, which amounts to approximately 27% reduction from his guidelines calculation. If the determination is made after sentencing, the U.S. Attorney will move pursuant to Rule 35, Fed. R. Crim. P., and will recommend the same sentence range as stated above. The Court's failure to follow such a recommendation, if made, is not a valid basis for defendant to withdraw the guilty plea or to rescind the plea agreement.

## C. <u>Use of Information Against Defendant</u>

In exchange for defendant's agreement to cooperate with the U.S. Attorney and the Computer Crime and Intellectual Property Section of the U.S. Department of Justice, as outlined above, the U.S. Attorney and the Computer Crime and

Intellectual Property Section of the U.S. Department of Justice agree not to use new information that defendant provides (pursuant to this agreement) about defendant's own criminal conduct against defendant at sentencing in this case. Such information may be revealed to the Court but may not be used against defendant in determining the sentence. There shall be no such restrictions on the use of information: (1) previously known to law enforcement agencies; (2) revealed to law enforcement agencies by, or discoverable through, an independent source; (3) in a prosecution for perjury or giving a false statement; or (4) in the event there is a breach of this agreement.

# 6. 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.

## 7. RIGHT TO APPEAL

Defendant waives any other right he has to appeal his conviction or sentence

if the sentence is within the guideline range determined under Paragraph 2B. If the sentence imposed is within the guideline range determined by Paragraph 2B the government agrees not to appeal the sentence, but retains its right to appeal any sentence below that range.

# 8. 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.

#### 9. 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.

## 10. 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.

# 11. 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.
·	TERRENCE BERG UNITED STATES ATTORNEY
SHELDON LIGHT CHIEF, ECONOMIC CRIMES UNIT ASSISTANT UNITED STATES ATTORNEY  MONA SEDKY SPIVACK TRIAL ATTORNEY UNITED STATES DEPARTMENT OF JUSTICE  DATE: 6/22/09	Thomas Dukes Trial Attorney United States Department of Justice
_	ATTORNEY'S ADVICE AND REPRESENTATION.  AND COMPLETE OPPORTUNITY TO CONFER

# WORKSHEET A (Offense Levels)

Defen	dant: John S. B	own	Count(s):	5, 6 and 39	
Docke	et No.:		Statute(s):		
count of	f conviction) before applying the figure of conviction are set A.	ount of conviction (taking into account the multiple-count rules in U.S.S.G. ch. all "closely related" to each other with	3, pt. D. However, in in the meaning of U.S	any case involving multip S.S.G. § 3D1.2(d), comple	le counts of con- te only a single
1.	BASE OFFENSE L	EVEL AND SPECIFIC OFF	ENSE CHARAC	CTERISTICS (U.S.	.S.G. ch. 2)
	Guideline Section	Descr	<u>iption</u>		Levels
	2B1.1(a)	Base Offense Level			6
	2B1.1(b)(1)(E)	Between \$70,000 and \$12	0,000	·····	8
	2B1.1(b)(2)(A)	Greater than 10 victims/m	ass marketing		2
	2B1.1(b)(9)(C)	Sophisticated means			2
	2B1.1(b)(14)(A)(ii)	Conviction of offense und	er § 1030(a)(5)( <i>a</i>	A)(i)	4
2.	ADJUSTMENTS (U	(.S.S.G. ch. 3, pts. A, B, C)			
	Guideline Section	Descr	iption		Levels
	3B1,1(b)	Manager/supervisor with 5 c	or more or extens	sive	3
	where the second		·		
					<u> </u>
3.	ADJUSTED OFFEN	SE LEVEL		ı	
	of conviction (taking into acc	levels entered in Items 1 and 2. If this Vount relevant conduct and treating each more additional Worksheets A and a sin	stipulated offense as		25
		******	******		
	If this is the only Worl	ksheet A, check this box and sl	kip Worksheet B.		V
	If the defendant has ne	o criminal history, check this l	box and skip Wo	rksheet C.	

(rev. 06/99)

# **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 I 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			l unit
	Adjusted Offense Lev			
_	C			
2.	GROUP TWO: COUNTS ADJUSTED OFFENSE LEY			unit
	ADJUSTED OFFENSE LE	VEL		
3.	GROUP THREE: COUNT	rs		unit
	Adjusted Offense Lev			
4.	GROUP FOUR: COUNTS			unit
	Adjusted Offense Lev	VEL .	<u> </u>	<u> </u>
5.	TOTAL UNITS			
6.	Increase in Offense	LEVEL		
	I unit → no increase	2½-3 units → add 3 levels		
	1½ units → add I level	3½ -5 units → add 4 levels		
	2 units → add 2 levels	>5 levels → add 5 levels		
7.	Adjusted Offense Le	WEL OF CROUP		
/•	WITH THE HIGHEST OF	***************************************		
8.	COMBINED ADJUST	TED OFFENSE LEVEL		
	Enter the sum of the offense levels	entered in Items 6 and 7.		
				(rev. 06

# 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.

Date of Imposition	Status*	<u>Offense</u>	Sentence	Release <u>Date**</u>	<u>Points</u>
1999/2000		Hit and run, DUI, driv susp.	DL, prop dam 180 days		2
1995/96		Transp/sell narcotics	360 days		2

<sup>\*</sup> 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).

(rev. 06/99)

<sup>\*\*</sup> 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 com-mitted before the defendant turned 18 but resulted in his or her confinement during any part of the 5-year period preceding his or her commence-ment of the instant offense (taking into account relevant conduct and stipulated offenses); and (3) when 2 criminal history points are added pur-suant 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.

(rev. 06/99)

COMMISSION OF INSTANT 4A1.1(d))	OFFENSE WHILE UNDER PRIOR	SENTENCE (U.S.S.G.
while under any criminal justice sentence	I any part of the instant offense (taking into account re having a custodial or supervisory component, includitatus. (See U.S.S.G. §§ 4A1.I(d), 4A1.2(m), (n).) Li	ing probation, parole, supervised
COMMISSION OF INSTANT (U.S.S.G. § 4A1.1(e))	OFFENSE SHORTLY AFTER OR D	OURING IMPRISONMI
either less than 2 years after release from imprisonment or escape status on such a s	any part of the instant offense (taking into account re imprisonment on a sentence counted under U.S.S.G. § sentence. However enter, only I point for this item if e date of release and identify the sentence from which	§§ 4A1.1(a) or 4A1.1(b) or while 2 points were added under Item
Enter 1 point for each prior sentence result 4A1.1(a), (b), or (c) because such sentence But enter no points where the sentences as	ting from a conviction for a crime of violence that did e was considered related to another sentence resulting re considered related because the offenses occurred or of violence and briefly explain why the cases are consi	d not receive any points under U. g from a conviction for a crime of n the same occasion. (See U.S.S.
TOTAL CRIMINAL HISTOR	RY POINTS	
Enter the sum of the criminal history point	is entered in Items 1-4.	4
CRIMINAL HISTORY CA	ATEGORY	
Total Criminal History Points	Criminal History Category	
0 - 1 2 - 3 4 - 6	I II III	III
7 – 9	111	
7 – 7	IV	
10 – 12	IV V	

# WORKSHEET D (Guideline Range)

1.	(COMBINED) ADJUSTED OFFENSE LEVEL	25
	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.	
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.	22
4.	CRIMINAL HISTORY CATEGORY	
	Enter "1" if the defendant has no criminal history. Otherwise, enter the criminal history category entered in Item 6 of Worksheet C.	III
5.	CAREER OFFENDER / CRIMINAL LIVELIHOOD / ARMED CAREER CRIMINAL (U.S.S.G. cb. 4, pt. B)	
	a. <u>Total Offense Level</u> : 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. <u>Criminal History Category</u> : 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)	51-63
	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.	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.	PROBAT	TON (U.S.S.G. ch. 5, pt. B)
	a.	Imposition of a Term of Probation (U.S.S.G. § 5B1.1)
	ار.	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 \leq 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 SI	ENTENCE (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 $\le 10$ 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.	IMPRISO	NMENT (U.S.S.G. ch. 5, pt. C)
		imprisonment is authorized by the guidelines if it is within the applicable guideline range attem 6 of Worksheet D). (See U.S.S.G. § 5C1.1.)

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

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.

	ъ.	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 ≥ 25 years.
V	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 ≥ 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.
REST	ritu	TION (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 <i>also</i> 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).)
V	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))

	Minimum Fine	Maximum Fine
	\$ <u>7,500</u>	\$ <u>75,000</u>
SPECIAL	L ASSESSMENT(S) (U.S.S.G. § 5E	1.3)
The court defendants		ery count of conviction. The special assessments for individual
\$	25,00 for every count charging a Class	(\$50.00 if the offense was completed before April 24, 1996) A misdemeanor,
\$ *	10.00 for every count charging a Class I 5.00 for every count charging a Class (	3 misdemeanor, and 7 misdemeanor or an infraction.
-		
The defen	dant must pay a special assessment or sp	ecial assessments in the total amount of \$ 300
		ecial assessments in the total amount of \$\_300  S, POLICY STATEMENTS, AND STATUTES
ADDITIO		s, Policy Statements, and Statutes
ADDITIO	ONAL APPLICABLE GUIDELINE	s, Policy Statements, and Statutes
ADDITION List any ac	ONAL APPLICABLE GUIDELINE	S, POLICY STATEMENTS, AND STATUTES tement, or statute.
ADDITION List any action UPWAR List any actions any action of the control of the	ONAL APPLICABLE GUIDELINE  dditional applicable guideline, policy sta  D OR DOWNWARD DEPARTURE	S, POLICY STATEMENTS, AND STATUTES tement, or statute.
ADDITION List any action UPWAR List any actions any action of the control of the	ONAL APPLICABLE GUIDELINE  dditional applicable guideline, policy sta  D OR DOWNWARD DEPARTURE  pplicable aggravating or mitigating circu	S, POLICY STATEMENTS, AND STATUTES tement, or statute.  (U.S.S.G. ch. 5, pts. H & K)
ADDITION List any action UPWAR List any actions any action of the control of the	ONAL APPLICABLE GUIDELINE  dditional applicable guideline, policy sta  D OR DOWNWARD DEPARTURE  pplicable aggravating or mitigating circu	S, POLICY STATEMENTS, AND STATUTES tement, or statute.  (U.S.S.G. ch. 5, pts. H & K)