

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHN J. CAFARO,

Defendant.

CASE NO. 4:10 CR 00073

JUDGE KATHLEEN M. O'MALLEY

**SENTENCING MEMORANDUM OF
JOHN J. CAFARO**

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John J. Cafaro (“J.J.”), by and through undersigned counsel, respectfully submits this Sentencing Memorandum in connection with his sentencing hearing, scheduled for Tuesday, June 8, 2010, at 12:30 p.m.

I. INTRODUCTION

For the reasons that follow, this Court should sentence J.J. to a term of probation of between zero and six months and a fine of between \$500 and \$5000, all in accordance with the recommendations of the advisory Federal Sentencing Guidelines (“Guidelines”). The recommended sentence is fair, just, and reasonable in light of the both the Guidelines and the applicable statutory sentencing criteria of 18 U.S.C. § 3553(a). Moreover, the recommended sentence gives due consideration to the personal background of J.J. described in his Presentence Investigation Report (“PSR”), the matters set forth in this Sentencing Memorandum, and the various letters from J.J.’s family and friends attached hereto.¹

II. STATEMENT OF FACTS

A. Personal History Of J.J. Cafaro

J.J. Cafaro was born on January 14, 1952, as the second of three children of William and Alyce Cafaro, both of whom are now deceased. (PSR ¶ 44.) William and his brother John were co-founders of The Cafaro Company, the trade name for a series of privately-owned companies that own and develop commercial real estate in eleven states in the Midwest and on the Atlantic and Pacific coasts. (PSR ¶ 57.) J.J. grew up in, and has been a lifelong resident of, the

¹ The originals of all letters of support have already been sent directly to the Court by their respective authors. Copies are attached collectively as Exhibit 1.

Mahoning Valley. In 1970, he graduated from Youngstown's Ursuline High School, and in the following two years, he attended both Youngstown State University and Kent State University. (PSR ¶ 55.)

From 1970 until December of 2009, J.J. was employed by The Cafaro Company. (PSR ¶ 57.) After starting in the Maintenance Department, J.J. worked his way progressively up in the company's hierarchy, with a primary focus on acquisition, leasing, and development issues. At the time of his retirement, J.J. was serving as a Vice-President of the company, which employed approximately 180 people at its headquarters in Youngstown and more than 600 people nationwide in the approximately 30 million square feet of space under its control.

J.J.'s older brother, Anthony, recently retired as President of The Cafaro Company; J.J.'s younger sister, Flora, remains employed as Assistant Treasurer of the company. (PSR ¶ 44.) J.J. has an extremely close relationship with both his brother and his sister. (PSR ¶ 45.)

J.J. married in 1972. (PSR ¶ 46.) Two children were born of J.J.'s union with the former Janet Sylvestri: Capri, now age 32, and Renee, now age 26. (*Id.*) J.J. and Janet take special pride in the commitment to public service that they instilled in their daughters, now exemplified by Capri's positions as an Ohio State Senator for the 32nd District and as Senate Minority Leader, and Renee's work as a Special Assistant to the Secretary of New York Governor David Patterson. Before that, Renee was Deputy Director of External Affairs at the Office of the Manhattan Borough President.

Following his retirement from The Cafaro Company, J.J. became the principal investor in and sole owner of Linens & More, a home-décor retail company based in Brookfield, Ohio. Scheduled to open its first location in Howland, Ohio in July of this year, the company currently employs 14 individuals at its corporate headquarters and expects to employ 35 persons at the

Howland store. Another five stores are slated to open later in 2010 in locations in Ohio, West Virginia, Pennsylvania, Kentucky and Tennessee. Expansion plans include another 12 stores opening in 2011 in Ohio, Tennessee, Missouri, North Carolina and Illinois. Although J.J. has no corporate office or title with the Company, he is a driving force behind the Company's plans and his personal involvement is crucial to the continued development of this nascent enterprise.

B. The Offense And The Plea Agreement

As described in the Plea Agreement, J.J. has acknowledged and admitted that, in 2004, when his daughter Capri was a candidate in the general election for Ohio's 14th U.S. Congressional District, J.J. caused a false statement to be made to the Federal Election Commission ("FEC"). (PSR ¶ 12.) Specifically, J.J. has acknowledged that he knowingly and willfully caused the Capri Cafaro for Congress Committee to file a false quarterly report reflecting that J.J. had only contributed \$2,000 to the campaign. (*Id.*) In point of fact, however, in April of 2004, following Capri's victory in the March Democratic primary election, J.J. made a personal loan of \$10,000 to B.J. Schuerger, who was then considering accepting an offer to become the Campaign Manager for the November general election. (*See Id.*)

Mr. Schuerger was, at that time, enrolled as a law student at the Ohio State University College of Law. J.J. learned that Mr. Schuerger was concerned that if he accepted the position as Campaign Manager and left school in the process, he would potentially face a significant repayment obligation on his student loans. Therefore, J.J. unilaterally – and without the knowledge of anyone else associated with the campaign – loaned Mr. Schuerger \$10,000 for use in meeting his student loan repayment obligation. J.J. sent a check for \$10,000 to Mr. Schuerger, along with a promissory note and an Express Mail envelope in which the signed note was to be

returned. Although Mr. Schuerger never returned the signed note to J.J., J.J. still considers the funds to be due and owing.²

Importantly, there has never been any evidence – indeed, there has never any suggestion by the government during the investigation that led to this charge – that the funds in question were intended to influence the candidate – who, in any event, was J.J.’s oldest daughter, Capri. Accordingly, any suggestion that the instant offense was an attempt to curry favor with the candidate or to influence the candidate’s views on any issues must be set aside. Likewise, there has never been any claim advanced that Mr. Schuerger intended to or did use any of the loan proceeds as a contribution to the campaign.

C. J.J.’s 2001 Conviction

As set forth in the PSR, J.J. does have a prior conviction. Specifically, on May 4, 2001, J.J. was charged with a single count of conspiracy to provide an unlawful gratuity to then-Congressman James Traficant, in violation of 18 U.S.C. §§ 201(c) and 371. (PSR ¶ 39.) According to the PSR, Mr. Traficant “directly and indirectly demanded, sought, received, and accepted things of personal value for and because of official acts performed and to be performed by him” (PSR ¶ 41.) The PSR specifically notes that Mr. Traficant asked J.J. “to assist him in arranging repairs on a wooden boat Congressman Traficant owned.” (PSR ¶ 41.)

On May 14, 2001, J.J. entered a plea of guilty to the charge set forth in the Bill of Information. (PSR ¶ 39.) His sentencing was continued so that J.J. could provide additional cooperation to the government pursuant to U.S.S.G. § 5K1.1. Nearly eighteen months later, after J.J. had provided extensive and substantial assistance to the government including giving testimony at the trial of Mr. Traficant that helped lead to his conviction on ten different charges,

² In point of fact, the \$10,000 loan is included on the Statement of Financial Affairs that J.J. submitted to the Probation Office during the preparation of the PSR.

J.J.'s case proceeded to sentencing before Judge Solomon Oliver. After considering all of the relevant facts and the controlling law, Judge Oliver sentenced J.J. to fifteen months of probation, a fine of \$150,000, and a special assessment of \$100. (PSR ¶ 39.)

The PSR notes that J.J. "was compliant with the terms of his supervision and did not pose any issues during the term." (PSR ¶ 41.)

D. Testimonials Regarding J.J. Cafaro's Character and Contributions to the Community

Submitted under separate cover to the Court are several letters from family, friends, and acquaintances of J.J. These letters are intended to provide the Court with information about J.J. that is not evident from the PSR or the legal matters that bring him before this Court. They also provide the Court with some insight into why J.J. was willing to help Mr. Schuerger when J.J. perceived Mr. Schuerger was in need.

In a truly heartfelt, handwritten letter to the Court, J.J.'s wife of thirty-eight years, Janet, talks about the character and actions of a man she has known since she was nine years old. Janet talks about the shame and humiliation that J.J. experienced during his earlier incarceration in this case and being subject to GPS monitoring since mid-March. She talks of the man who has worked since age sixteen, yet "always made sure he had time for our children and me." Janet attests how J.J. "has instilled in his two daughters, by his own example, a work ethic that has enabled them to establish their own self worth and self esteem." Finally, Janet also describes the good works and deeds that J.J. has done in his home town, how he is "constantly approached" by people in need, and that despite J.J. receiving "many awards for his generosity and community service, he prefers to help anonymously." Janet concludes only by asking that the Court review "my husband's life as a whole when making your decision."

Both Peter Gabriel, a retired veteran of Youngstown radio, and Philip Welce, a former member of the Board of Governors of the Cincinnati Shrine Hospital, tell of J.J.'s enormous financial generosity to the Youngstown Shrine Club. Each year, for more than 30 years, J.J. has provided the funds necessary for the Club to secure Christmas gifts for families throughout the Mahoning Valley. Mr. Gabriel estimates that J.J.'s contributions over the years are in excess of \$120,000.00, all of which was donated with little to no fanfare or publicity. As Mr. Welce says, J.J. "wants to remain unknown as far as all of his generosity is concerned, but these many families he has blessed over the years, with his bounteous giving, will always remember, there really is a Santa Claus."

On a separate note, Mr. Gabriel recounts J.J.'s support of Hands Across America. In addition to a financial donation, J.J. "interrupted his family vacation and drove from Sandusky to stand in line with us." Mr. Gabriel also mentions that when he was trying to raise money to help a local citizen with medical expenses, he called J.J., who immediately made a \$2,500.00 donation.

City of Campbell Detective Sergeant John Rusnak writes in his letter that J.J. recently made it possible for the cities of Campbell and Struthers to field canine police units. Detective Rusnak recounts that J.J. was the largest single donor to both communities when their police departments undertook to raise the funds necessary to secure "this important police tool" that Detective Rusnak thinks is "long overdue." He also writes that J.J. "offered his business services to myself and the city administration, stating that his 'door would be open' at any time should we ever need his assistance."

Kathleen Bowman, a resident of Austintown and winner of a Gold Medal in archery at the 2009 National Senior Olympics, recounts that, in 2008, she wrote to numerous local

businesses and businessmen seeking assistance in raising funds to help defray the costs she would incur in traveling to the competition, which was being held in Palo Alto, California. Ms. Bowman says that J.J. was the *only* person to respond to her letter. “He took time from his busy schedule to call me and set up an appointment so we could meet and talk.” All of this, even though she had “never met Mr. Cafaro before.” After meeting for more than an hour, with talk of Ms. Bowman’s life, children, and interest in archery, J.J. then donated to her Olympic fund. She concludes:

I know without a doubt in my mind that without the generous help of Mr. Cafaro for someone he’d never met before I wouldn’t have made it to California to participate in the Olympics and to win the Gold Medal and set two records. He did this to help me, a stranger; I know he’d do the same to help others.

J.J. and Janet’s family priest, Monsignor John DeMarinis of St. Anthony Parish, writes that he has known “J.J. his entire life, and was J.J.’s teacher and Dean of Boys from his freshman through his senior year at Ursuline High School.” Msgr. DeMarinis writes that “J.J. and Jan have been true patrons to their parish,” supporting not only the parish itself, but other parishioners. “Anytime a person was in trouble, time and time again, he was there to lend a hand.” J.J.’s service to his faith recently culminated in his nomination as a Knight of Malta, “the highest secular honor attainable in the Catholic Church,” given only “to those who demonstrate exceptional charity and service to the less fortunate.”

Finally, Joseph Lordi, Chief Executive Officer of the non-profit Gleaners Food Bank, vividly recounts the more than twenty-five years of advice and support that J.J. has provided to Gleaners. After reading in the newspaper about the challenges that Gleaners was facing in its formative year, J.J. contacted Mr. Lordi for a meeting. At that meeting, J.J. provided advice on “the proper way to launch and sustain the company.” J.J. also donated “a substantial sum of

money to purchase the equipment needed to make our dream of helping the people of Youngstown, who were largely unemployed due to the closing of the steel mills, meet their humble goals of feeding and clothing their family.” Finally, at that first meeting, J.J. “picked up the phone and arranged to have my home mortgage paid off so that I may dedicate my entire time to the Gleaners program.”

But J.J.’s support did not conclude with that one meeting. He went on to serve on Gleaners’ Board of Directors. He arranged for legal services needed to obtain 501(c)(3) tax-exempt status. And, “on a monthly basis, and as needed,” J.J. donated “large sums of money to purchase equipment, a large storage center and to use his business influence to gain access for Gleaners to acquire donations of food, clothing and household products for the thousands of people who now depended upon the Gleaners for the basic needs to sustain their lives and more importantly, some stability in their homes.” That J.J. did all of this for more than two decades is made all the more laudatory by the fact that “he requested [it] would never be made public.” It is thus not without cause that Mr. Lordi labels J.J. as “the benefactor and savior of the Gleaners Food Bank.”

III. LAW AND ARGUMENT

A. Current State Of Sentencing Law Following *United States v. Booker* And Its Progeny

Following the Supreme Court’s decision in *United States v. Booker*, 543 U.S. 220 (2005), a district court imposing sentence in a criminal matter is to impose a sentence that is “sufficient but not greater than necessary” to achieve the purposes of sentencing set forth in 18 U.S.C. § 3553(a)(2). See *United States v. Klups*, 514 F.3d 532, 536 (6th Cir. 2008). The Supreme

Court’s directive that district courts are to impose sentences in light of the criteria set forth in

§ 3553 was made “pellucidly clear” in *Gall v. United States*, 552 U.S. 38 (2007). In *Gall*, the Court established the following procedure for district courts to follow when imposing sentence:

[A] district court should begin all sentencing proceedings by correctly calculating the applicable Guidelines range. As a matter of administration and to secure nationwide consistency, the Guidelines should be the starting point and the initial benchmark. The Guidelines are not the only consideration, however. Accordingly, after giving both parties an opportunity to argue for whatever sentence they deem appropriate, the district judge should then consider all of the § 3553(a) factors to determine whether they support the sentence requested by a party.

Id. at 49-50 (citations and footnote omitted).

Additionally, as this Court explained in *United States v. Stern*, 590 F. Supp.2d 945 (N.D. Ohio 2008) (O’Malley, J.),

when sentencing a criminal defendant, a district court must “explain its reasoning to a sufficient degree to allow for meaningful appellate review.” *United States v. Vowell*, 516 F.3d 503, 510 (6th Cir. 2008). It must “set forth enough facts to [demonstrate] that it [has] considered the parties’ arguments and had a reasoned basis for exercising its own legal decision making authority.” *United States v. Garrett*, 2008 WL 4471420, at *2, 295 Fed. Appx. 778, 780 (6th Cir. 2008); *see also* [*United States v.*] *Vonner*, 516 F.3d [382,] . . . 392, 393 [(6th Cir. 2008)] (Martin, J., dissenting) (“I want to focus on the need for district courts to adequately explain the reasons for a given sentence . . . regardless of whether the sentence is above, below, or within the proposed guidelines range, so that we, as an appellate court, may adequately review [those] sentences.”).

Id. at 949-50.

Whatever sentence is ultimately imposed by this Court, it is no longer reviewed *de novo*, because *Booker* excised that provision of 18 U.S.C. § 3742(e). *See United States v. Crosby*, 397 F.3d 103, 110 (2d Cir. 2005), *cert. denied*, 549 U.S. 915 (2006). Instead, the sentence is reviewed for “reasonableness” only. *United States v. Grossman*, 513 F.3d 592, 596 (6th Cir. 2008). On appeal, a sentence that is consistent with the Guidelines carries with it a presumption

of reasonableness. *United States v. Rita*, 551 U.S. 338, 347 (2007); *United States v. Sedore*, 512 F.3d 819, 823 (2008) (“A rebuttable presumption of substantive reasonableness applies for sentences that fall within the applicable guidelines sentencing range.”).

B. Guideline Calculations

The PSR provides that the Total Offense Level for the offense in question is 6. (PSR ¶ 37.) The PSR also indicates J.J.’s Criminal History Category, inclusive of the 2001 offense described above, is I. (PSR ¶ 39.)

Pursuant to the Sentencing Table of the Guidelines, a defendant with a Total Offense Level of 6 and a Criminal History Category of I is in Zone A. U.S.S.G. Ch. 5, Pt. A. The recommended sentence is 0 to 6 months. *Id.*

C. Application Of Statutory Sentencing Criteria

Set forth below are the various sentencing criteria of 18 U.S.C. § 3553(a), and a discussion of their application to J.J. and the offense in question.

1. § 3553(a)(1) -- Nature and Circumstances of the Offense and History and Characteristics of the Defendant

As the Court is aware, the present offense is manifestly non-violent in nature. Nevertheless, J.J. acknowledges that it is a serious offense, and should be treated accordingly. Importantly, however, as noted above, the Court should not be led astray into thinking that this case is about J.J. trying to exercise improper influence with a candidate for office, because the candidate had no knowledge of the loan that J.J. made to Mr. Schuerger. Moreover, the candidate was J.J.’s own daughter. Thus, his making of a loan that was wholly unbeknownst to her was hardly likely to have any potential to influence her in any respect.

J.J.’s own personal history and characteristics are set forth above. Over his nearly forty years with The Cafaro Company and his other business ventures, J.J. has made material

contributions to economic development and the creation of jobs in both the Mahoning Valley and throughout the country where The Cafaro Company owns and operates its shopping centers. He has instilled in his daughters a dedication to public service, reflected in Capri's service as a public official and Renee's work on behalf of public officials. J.J.'s longstanding commitment and service to his own community is reflected in the sentiments of those who submitted letters on his behalf and his tireless promotion of the Mahoning Valley, including most recently, his work with Linens & More. His documented history of widespread financial philanthropy to both organizations and individuals underscores the fact that J.J.'s motives in making the loan in question to Mr. Schuerger were not evil or malevolent. Instead, he was merely trying to help someone that he perceived was in need. That he did so by deliberately concealing the fact he was making the loan – and thereby causing the campaign to make a false statement to the FEC – is also not inconsistent with his pattern and practice of providing financial assistance quietly and with no fanfare.

J.J. sincerely regrets the necessity of appearing before this Court in connection with a second offense, and at sentencing will speak directly to the Court about this and other issues relevant to the Court's determination of an appropriate sentence. As this Court has recognized, "[t]he task of determining sincerity lies squarely with the district judge, who observes first-hand the words as they are communicated live." *United States v. McIntosh*, 198 F.3d 995, 1001 (7th Cir. 2000), *quoted in Stern*, 590 F. Supp.2d at 955.

2. § 3553(a)(2)(A) -- Reflect the Seriousness of the Offense, Promote Respect for the Law, and Provide Just Punishment

Pursuant to 18 U.S.C. § 3559(a)(3), a violation of 18 U.S.C. § 1001 is a Class D felony. Unlike Class A and B felonies, incarceration is *not* mandatory for a Class D felony. *See* 18

U.S.C. § 3561(a)(1). This provides a strong indication of Congressional intent that not every Class D offender should receive a sentence of incarceration.

Additionally, this Court has written that “[r]espect for the law is promoted by punishments that are *fair*, however, not those that simply punish for punishment’s sake.” *Stern*, 590 F. Supp.2d at 957 (emphasis original, citation omitted).

3. § 3553(a)(2)(B) & (C) -- General and Specific Deterrence

A sentence of probation has been found to provide adequate deterrence for a wide variety of offenses. In one relatively recent example, *United States v. Howe*, 543 F.3d 128 (3rd Cir. 2008), the government appealed a sentence of 24 months probation and no fine imposed on a defendant convicted of two counts of wire fraud, with a total loss amount in excess of \$150,000. The government contended that a sentence of probation was inappropriate given the facts of the case and the recommended Guideline sentence of 18 to 24 months imprisonment. The government specifically contended that the district court had failed to consider the question of general deterrence in imposing a sentence of probation. The Third Circuit rejected this argument and affirmed the sentence, finding that the district court had, in fact, adequately considered the question of general deterrence. *Id.* at 137; *see also United States v. Bragg*, 582 F.3d 965, 973 (9th Cir. 2009) (Smith, J., dissenting) (observing that “deterrence can be sufficiently achieved with probation, fines, and restitution”).

4. § 3553(a)(2)(D) -- Provide Education, Training, and Care for the Defendant

J.J.’s PSR does not indicate that he is in need of any form of education, training, or care that must be obtained during incarceration. As a result, this factor favors a sentence that is minimally restrictive, including the sentence recommended under the Sentencing Guidelines of probation.

5. § 3553(a)(3) -- Kinds of Sentences Available

As noted above, with a Criminal History Category of I and a Total Offense Level of 6, J.J. falls within Zone A of the Guidelines. “If the applicable guideline range is in Zone A of the Sentencing Table, a sentence of imprisonment is not required” U.S.S.G. § 5C1.1(b). Instead, a Zone A sentence may consist of a sentence of probation only. U.S.S.G. § 5B1.1(a)(1).

6. § 3553(a)(4) & (5) -- Sentencing Guideline Considerations

The Plea Agreement reflects J.J.’s agreement with the government that “no other Sentencing Guideline adjustments apply.” (Plea Agreement ¶ 15.) The PSR does identify one potential consideration: “Pursuant to §5K2.0, based on the financial section of the report, it appears the defendant has the ability to pay a punitive fine which is greater than the guideline fine range.” (PSR ¶ 79.)

7. § 3553(a)(6) -- Avoiding Disparities Between Defendants With Similar Records

As the present offense involves no other individuals, this factor has no application to the determination of an appropriate sentence for J.J.

8. § 3553(a)(7) -- Providing Restitution to Victims of the Offense

As the present offense does not involve an issue of restitution (PSR ¶ 76), this factor also has no application to the determination of an appropriate sentence for J.J.

IV. RECOMMENDED SENTENCE

A. A Sentence Of Probation Is Appropriate Under Applicable Statutory Sentencing Criteria.

Based on the foregoing, J.J. respectfully submits that the proper sentence in this case would be a term of probation of between zero and six months, as provided for by the Guidelines.

Such a sentence would reflect the seriousness of the offense (relative to other crimes), provide sufficient specific and general deterrence, and acknowledge his sincere remorse.

Importantly, “[p]robation is not an act of leniency. Probation is a substantial restriction of freedom; it is not forgiveness, and it is not an endorsement of the offense.” *United States v. Myers*, 353 F. Supp.2d 1026, 1032 (S.D. Iowa 2005) (total offense level of 17 for defendant charged with unlawful possession of a firearm; sentenced to time served and a three-month term of supervised release) (quoting *State v. Peckenschneider*, 236 N.W.2d 344, 353 (Iowa 1975) (McCormick, J., dissenting)); *see also Gall*, 128 S. Ct. at 593 (noting that “probation, rather an ‘an act of leniency,’ is a ‘substantial restriction of freedom’”).

Recent cases have recognized the significant penological consequences of probation. For example, in *United States v. Diambrosio*, 2008 WL 732031 (E.D. Pa. March 13, 2008), the defendant engaged in a wire fraud scheme that resulted in a loss of \$2.8 million. He was convicted at trial of ten counts of wire fraud. His total offense level under the Sentencing Guidelines, after all adjustments, was 23, which resulted in a recommendation of imprisonment of 46 to 57 months. Despite this, the court sentenced the defendant to five years of probation (including a year of home confinement) because the terms of probation would “significantly limit Defendant’s liberty and impose restrictions on his activities” *Id.* at 17. In *United States v. Hawkins*, 380 F. Supp.2d, 143 (E.D.N.Y. 2005), *aff’d*, 228 Fed. Appx. 107 (2d Cir. 2007), the defendant, who pled guilty to illegal conspiracy involving fraudulent medical and legal claims arising from staged automobile accidents and who faced a guideline sentence of 12 to 18 months imprisonment, was instead sentenced to a term of probation for 36 months. *Id.* at 178-79. On appeal, the Second Circuit affirmed. And, in *United States v. Bettelyoun*, No. 09-50035-KES (D.S.D. Feb. 1, 2010), a defendant charged with embezzling \$17,552 from the

Oglala Sioux Tribe Home Improvement Program was sentenced to one year of probation and ordered to repay the tribe the funds he had embezzled.

Indeed, a sentence of straight probation has been found to be appropriate in numerous cases charging a § 1001 violation. For example, in *United States v. Jones*, No. 5:03-cr-08112-ECP-1 (W.D. Tex. Aug. 15, 2003), a former Special Agent of the Federal Bureau of Investigation was sentenced to one year of probation and a \$1,000 fine after pleading guilty to falsely reporting three times that he was not involved in surreptitious audio taping of his supervisors, when in fact he was aware that he and another agent had recorded a conversation with FBI management. Likewise, in *United States v. Symonds*, No. 3:07-cr-77-001 (E.D. Tenn. Dec. 18, 2007), a former manager at the Tennessee Valley Authority's Brown's Ferry Plant received a sentence of probation after pleading guilty to one count of making a false statement based on multiple occasions in 2000, 2001 and 2002, that he knowingly failed to report having received nearly \$55,000 in compensation from a source other than his government salary or retirement benefits and which he was required to report on his "Executive Branch Confidential Financial Disclosure Report." Finally, in *United States v. Delfino*, No. 4:01-cr-00315-PJH (N.D. Cal. Dec. 19, 2003), a former employee of Berkeley Nucleonics Corporation was sentenced to a term of probation and a \$1,000 fine after pleading guilty to making a false statement in connection with his role in a scheme to illegally export pulse generators to entities in India without required export license.

Thus, for all the reasons set forth herein, the Court should impose a sentence of probation of between zero and six months.

B. The Court Should Impose A Fine Consistent With The Sentencing Guidelines.

As noted in the PSR, at an offense level of 6, the Guidelines recommend imposition of a fine of between \$500 and \$5,000. U.S.S.G. § 5E1.2(c)(3). In determining the amount of the fine within that range, the Court is to consider the favors set forth in § 5E1.2(d), including many of the same factors analyzed in Section III of this Sentencing Memorandum. J.J. submits that a fine within the range for a level 6 offense is appropriate.

V. CONCLUSION

J.J. Cafaro respectfully requests that the Court sentence him in accordance with the recommendations offered above.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of June, 2010, a copy of the foregoing *Sentencing Memorandum of John J. Cafaro* was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Ralph E. Cascarilla