UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA	)	
	)	No. 08 CR 192
v.	)	
	)	Hon. Ruben Castillo
HANJUAN JIN	)	

GOVERNMENT RESPONSE TO HANJUAN JIN'S OBJECTIONS TO THE PRESENTENCE INVESTIGATION REPORT AND SENTENCING MEMORANDUM

Respectfully submitted,

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The government recommends the Court impose a sentence of imprisonment within a range of 70 to 96 months, which is below the properly calculated Guidelines range of 121-151 months set forth in the PSR. Such a sentence avoids unwarranted sentence disparities among defendants that have been found guilty of similar conduct and accounts for defendant's health.

I. DEFENDANT'S CONDUCT JUSTIFIES A SUBSTANTIAL SENTENCE OF IMPRISONMENT.

Contrary to the view expressed throughout Defendant's Memo, defendant's crime was not an isolated incident of bad judgment or momentary personal weakness. Instead, through a series of lies and manipulation, defendant successfully executed a scheme in February 2007 to return to the United States from China for two weeks in order to steal thousands of critical documents describing iDEN technology, a Motorola invention, before returning to China. Her conduct nearly caused devastating economic consequences for Motorola, the only provider of iDEN technology for twenty years (which generated revenues of $365 million last year alone)[1], its employees (approximately 900 iDEN employees as of 2007), as well as our Nation's economy as a whole. Additional harm resulting from defendant's theft of trade secrets was avoided only when defendant was caught in a lie by a United States Customs and Border officer, who then prevented her from using her one-way ticket to board her flight to China. Had she boarded the plane, defendant's goal was at a minimum to use the stolen documents to economically benefit herself and indirectly her new employer, Sun Kaisens, which she knew developed telecommunications technology for the Chinese military. By late 2006 and early 2007, before stealing Motorola's documents, defendant was so enmeshed on Chinese military projects that defendant was provided copies of classified Chinese military documents.

[1]As the Court noted, the iDEN industry waned between 2007 and 2011, thus the iDEN business was more expansive in 2007 than 2011.

Defendant's disloyalty to Motorola began in 2005. Defendant was working on projects for Sun Kaisens and Lemko (another telecommunications company) starting in 2005, including periods in which defendant was on sick leave from Motorola in 2005 and 2006. For her work at Lemko, defendant was paid $90,000 a year (defendant was earning $87,000 a year as an iDEN engineer at Motorola in March 2005), and even though she was too ill to work at Motorola, Lemko continued to pay defendant twice a month from May 2005 to November 2006. And, when caught red-handed with the stolen Motorola documents on February 28, 2007, defendant told multiple lies to federal law enforcement in the hopes of avoiding scrutiny.

Defendant's suggested sentence of probation is far from sufficient given the numerous aggravating circumstances in this case, and does not satisfy the factors under § 3553(a). A sentence of probation would not reflect the seriousness of the offense, promote respect for the law or provide just punishment. Moreover, a sentence of probation would not adequately deter future thefts of trade secrets. Defendant's crime can be carried out by any trusted employee with access to his or her employer's trade secrets. These trade secrets are often the heart of a company, and the misuse can cause dire economic consequences. The crime is often difficult to detect, and the potential illegal gains are great. A term of imprisonment within the range of 70 to 96 months, which is consistent with sentences received by other defendants who have committed similar conduct, will deter the theft of trade secrets by demonstrating the seriousness of the crime and its significant consequences.

II. THE PSR PROPERLY CALCULATED THE GUIDELINE RANGE.

In Defendant's Memo, defendant objects to the PSR regarding the following calculations: (1) the assessment of loss pursuant to § 2B1.1(b)(1); (2) the two-level enhancement pursuant to § 2B1.1(b)(1)(5) based on defendant's intent to benefit a foreign government; and (3) withholding of

a two-level reduction pursuant to § 3E1.1 for acceptance of responsibility.[2] The Court should reject each of defendant's objections, which are addressed below.

A. The PSR Properly Calculated the Loss Amount Between $20 and $50 Million

Defendant argues that the government's calculation of intended loss of between $20 and $50 million is too high because the evidence did not show that the stolen iDEN documents would serve as a direct benefit to any third party, and because research and development costs of the stolen documents is not an accurate measure of loss in this case. Defendant's Memo, at 10-16. These arguments are without merit because they misconstrue "intended loss" generally as well as the government's proof of intended loss in this case. Application Note 3(A)(ii) to § 2B1.1 defines intended loss as "the pecuniary harm that was intended to result from the offense." In this case, the Court made clear that Jin knew stealing the trade secrets would harm Motorola, as the value of the trade secret documents was driven by actually being kept secret and in Motorola's control. Order, at 74 ("Jin was well-informed that her conduct would harm Motorola . . . .[S]he was aware that information within the documents was not available to the public, that the information derived value from its secrecy . . ."). It is equally clear that defendant sought an economic benefit to herself. Order, at 73 ("The elaborate steps taken by Jin to obtain the documents also show that she was acting with the improper purpose of obtaining an economic benefit for herself.").

The use of development costs as a measure of intended loss is particularly appropriate as applied to the facts of this case. *See* U.S.S.G. §2B1.1, comment. n.3(C)(ii) ("[t]he estimate of loss shall be based on available information, taking into account, as appropriate and practicable under

[2]Defendant criticizes the PSR for adopting the guidelines set forth in the Government's Version of the Offense. *See, e.g.*, Defendant's Memo, at 10 ("The Probation Office parrots the government's version of the offense in calculating the applicable guidelines."). However, at the time the PSR was drafted, defendant failed to provide any competing version of the offense. PSR, lines 41-42.

the circumstances, factors such as: . . .[i]n the case of proprietary information (*e.g.*, trade secrets), the cost of developing that information . . .”). The Court determined that Defendant was well aware of the time and effort that was invested in developing the iDEN technology. Order, at 74 (“as a former Motorola employee, [defendant] knew of the effort and resources that went into developing and protecting the technology described in the trade secrets.”); 67-68 (“[defendant] had worked on iDEN and was aware of the years of research and development that went into iDEN technology. Second, Jin went through the ruse of returning to work in order to obtain the information, something she would not have done had she thought that the documents were worthless.”) Accordingly, it is clear in this case that defendant was well aware of the significant development costs at the time she stole the Motorola documents, and she should be held accountable for actions she took in spite of that knowledge.

Consistent with the Order and the plain language of the Guideline provisions, the government compiled the development costs of a number of stolen documents in connection with its loss calculation. Many of the documents defendant stole from Motorola have development costs in the millions of dollars - including four stolen iDEN documents that had development costs ranging from $13 to $43 million each. Rather than total up each of these four documents, the government calculated a very conservative loss figure of $20 to $50 million. This intended loss range ultimately holds defendant responsible for a small fraction of the development costs for documents she stole from Motorola. Thus, contrary to defendant’s claims, the government’s loss calculation does not hold defendant accountable for the value of *all* of iDEN, but only for the value of a few of the stolen trade secret documents.

Defendant’s suggested alternative methods of calculating loss based on the fair market value of the stolen documents or hypothesizing about defendant’s potential salary are far more speculative.

First, a salary to be paid to a single engineer does not account for the value of documents that took millions of dollars and hundreds of engineers to develop. Next, the fair market value of the documents is highly speculative because Motorola is the only company marketing and selling iDEN. In any event, Motorola would seek to make a profit from its years of work and investment of money. Indeed, Motorola generated hundreds of millions of dollars in revenue just last year (even after the decline in the use of iDEN). This indicates that development costs under-represent the value of the trade secrets.

Additionally, the cost of developing the various documents is a fair estimate of loss in this case because defendant actually stole Motorola property. While there was no actual financial harm suffered from the offense because defendant was arrested before any such harm could be caused, there was an actual theft. It is worth noting that the lack of a financial harm in this case was not attributable to defendant's good judgment or second thoughts. Instead, an officer with Customs and Border Protection discovered defendant carrying the stolen documents onto an airplane bound for China. Shortly thereafter, defendant's theft was detected and the documents recovered. However, while that absence of a pecuniary harm means that intended loss is the appropriate measure of loss in this case, the resulting harm is analogous to actual loss. Namely, defendant actually stole Motorola's property from its offices. This property has value because it cost Motorola millions of dollars just to create one of the stolen documents. Moreover, it is a technology that is still generating hundreds of millions of dollars in revenue for Motorola. Accordingly, defendant should be help accountable for the value of the material she actually stole from Motorola.

B. Defendant Intended to Benefit the Chinese Military

In contesting the PSR's inclusion of a two-level enhancement for intent to benefit a foreign government pursuant to § 2B1.1(b)(1)(5), defendant chiefly argues that the government is relying on a theory rejected by the Court in the Order - when the Court found defendant not guilty of the Section 1831 charges. That is not accurate. The government is well aware that the Court found that "the government did not prove *beyond a reasonable doubt* that Jin intended or knew that her conduct would benefit the PRC in any way." Order, at 75 (emphasis added), 76, 77; Government's Sentencing Memorandum, Docket Number 221, at 4-5. However, at sentencing the burden of proof is the lower standard of a preponderance of the evidence. Accordingly, the government is resubmitting its evidence of Defendant's ties to the Chinese military, set forth in its Sentencing Memorandum, for the Court's consideration under this lesser standard of proof for purposes of Defendant's sentencing (and as a relevant § 3553(a) factor). *See United States v. Watts*, 117 S.Ct. 633, 638 (1997) ("We therefore hold that a jury's verdict of acquittal does not prevent the sentencing court from considering conduct underlying the acquitted charge, so long as the conduct has been proved by a preponderance of the evidence.").

Next, Defendant takes great issue with Shawn Bateman's report submitted to the Probation Officer on July 9, 2012 ("Report"), in which she states that defendant's conduct is consistent with an intelligence collector for the PRC. As an initial matter, the Court found Ms. Bateman "thorough, objective, and credible." Order, at 43. Moreover, her testimony at trial and in her report was based on ten years of research and study of the PRC military for the United States Department of Defense and the Defense Intelligence Agency. Ms. Bateman's duties required her to be well-versed in the means and methods used by the PRC and its military to acquire United States technology. Report, at 1.

Defendant first challenges the Report based on its timing. Namely, defendant suggests that the Report is submitted at sentencing rather than trial because the government doubts its veracity. This is incorrect. The Report was submitted for this sentencing because throughout the course of the trial, defendant argued that her conduct was unsophisticated and dissimilar from someone collecting information for a foreign government. The Report is being presented for defendant's sentencing in large part to rebut this argument and better explain how Chinese intelligence collection operates.

Next, defendant takes issue with certain factors that Ms. Bateman found common among Chinese intelligence collectors. In isolation, some of these factors seem insignificant. However, defendant ignores that Ms. Bateman did not look at one factor in isolation. Instead, defendant ignores the substantial reliance that Ms. Bateman placed on her review of the discovery in this case. More specifically, Ms. Bateman relied heavily on the substance and authoring entities of the Chinese classified military documents taken from defendant as part of the investigation. For instance, Ms Bateman explained that defendant's possession of classified documents drafted by prominent mobile communications research and development agencies for the People's Liberation Army was consistent with someone collecting information on behalf of the PRC. Report, at 5-6.

Defendant argues, however, that "[n]o evidence exists that the PRC knew Ms. Jin possessed those documents, or that she had an affiliation with the government of the PRC." Defendant's Memo, at 22. This argument ignores the email defendant received while in China about a meeting with the 61st Research Institute. Order, at 7 ("In the email, Liu asked Jin to familiarize herself with an attachment to the email, . . .which Liu said was going to be discussed with 'Institute 61 and other units.'") This email, sent to defendant while she was in China working on Sun Kaisens projects for Liu and others, suggests that defendant was going to discuss the attachment at a meeting with the

61st Research Institute, an entity under the General Staff Department that focuses on telecommunications research and development for the PLA. Order, at 44. Defendant ignores the inescapable inference that a person who is provided this quantity and type of classified military material has connections to the government. Notably, defendant had this exposure to the Chinese military and its telecommunication research entities shortly before returning to the United States to steal thousands of Motorola documents.

C. Defendant has not Accepted Responsibility

Defendant next argues that she is entitled to a two-level reduction for acceptance of responsibility following the bench trial because she "asserted a defense at trial that focused on the legal requirements of the Economic Espionage Act ('EEA'), not the factual allegations underlying those charges." Defendant's Memo, 2-3. This argument also lacks merit.

As an initial matter, the government had to prove the following elements beyond a reasonable doubt at the bench trial: "(1) the information at issue . . .were trade secrets; (2) Jin knowingly possessed the trade secrets; (3) Jin knew the trade secret information was stolen or appropriated, obtained, or converted without authorization; (4) Jin intended to convert the trade secrets to the economic benefit of anyone other than Motorola; (5) Jin intended or knew that the offense would injure Motorola; and (6) the trade secrets were related to a product placed in interstate or foreign commerce." Order, at 50-51. As far as each charged document, the government also had to prove beyond a reasonable doubt that "(1) the information in the charged documents was actually secret because it was neither known to, nor readily ascertainable by, the public; (2) that Motorola took reasonable measures to maintain that secrecy; and (3) that independent economic value derived from the secrecy." Order, at 52.

Defendant contested the vast majority of these elements during the bench trial. Moreover,

none of these elements was stipulated to at trial. However, defendant now asks the Court to give her credit for accepting responsibility. The Court should not give defendant credit for acceptance of responsibility because to this day she has not admitted her guilt or expressed any remorse. Further, by contesting factual issues at trial, some of which are at the very core of her criminal conduct (such as whether defendant intended or knew the offense would injure Motorola), defendant has precluded herself from receiving acceptance credit. *See United States v. Lange*, 312 F.3d 263, 269-270 (7th Cir. 2002) (Defendant was convicted at trial of charges under Section 1832, and on appeal the Seventh Circuit rejected defendant's argument for acceptance of responsibility because defendant's "legal points could have been preserved with a conditional plea on stipulated facts, but instead [defendant] chose to put the prosecution to its proof."). Moreover, "[i]n seeking credit for accepting responsibility for [her] crimes, the defendant bears the burden of proving this acceptance by a preponderance of the evidence." *United States v. Lister*, 432 F.3d 754, 759 (7th Cir. 2005).

Defendant has not admitted her guilt or expressed remorse, and she is not entitled to acceptance credit on that basis alone. (*See* PSR at lines 40-42 (noting that defendant did not discuss the details of the offense with the Probation Officer).) Additionally, defendant did much more than simply make legal arguments based on uncontested facts. Indeed, as mentioned above, she contested facts throughout trial and thoroughly cross-examined every witness. Specifically, she contested facts establishing the value of the technology, the victim's security measures, and whether she planned to use the trade secret information after taking them from the victim. Defendant is therefore not entitled to acceptance of responsibility. *See United States v. DeLeon*, 603 F.3d 397, 408 (7th Cir. 2010) (denying acceptance of responsibility credit for a defendant who raised an entrapment defense at trial because such a defense essentially blamed someone else for the crime).

III. A SENTENCE OF IMPRISONMENT WITHIN THE RANGE OF 70 TO 96 MONTHS WILL AVOID UNWARRANTED SENTENCING DISPARITIES.

Defendant argues that any custodial sentence would create a disparity between defendant and all other defendants who have been sentenced for theft of trade secrets under Section 1832. In support of this argument, defendant supplies the Court with a chart that lists many of the §1832 prosecutions and sentences since the statute was enacted by Congress in 1996. However, as explained below, this chart does not include every Section 1832 sentence and omits some of the most recent and relevant sentences. Moreover, this chart is of little value because it only provides the conviction and sentence. It does not present pertinent facts of the cases, such as the volume and value of the material stolen by each defendant, facts that are most instructive in avoiding unwarranted disparities. As the Seventh Circuit has held, "Section 3553(a)(6) applies to defendants . . . who have been found guilty of *similar conduct*." *United States v. Durham*, 645 F.3d 883, 897 (7th Cir. 2011) (emphasis in original). In other words, "only *unwarranted* disparities are impermissible in sentencing." *United States v. Pape*, 601 F.3d 743, 750 (7th Cir. 2010) (emphasis in original). Unwarranted disparities are thus avoided by examining the actual conduct committed by defendants, rather than an examination of the sentence alone. In addition, courts avoid unwarranted disparities by sentencing defendants to terms commensurate with the Sentencing Guidelines. *See United States v. Kirkpatrick*, 589 F.3d 414, 415 (7th Cir. 2009) ("whenever a court gives a sentence substantially different from the Guidelines range, it risks creating unwarranted disparities"). As explained below, cases involving conduct most similar to defendant further support a sentence of imprisonment in the range of 70 to 96 months.

Several cases cited by defendant are not comparable to defendant's conduct here. *United States v. Wilkinson*, 590 F.3d 259, 261-262, 267 (4th Cir. 2010) (defendant pled guilty, and at

sentencing court determined loss amount to be approximately $39,000) and *United States v. Malhotra*, 5:08-CR-00423-JF (N.D. Cal July 11, 2008), docket entry 4 (defendant pled guilty and both sides agreed that the loss amount was between $30,000 and $70,000 with a Guidelines offense level of 10), are not applicable because the defendants in those cases pled guilty, and the volume and value of material stolen by these defendants pale in comparison to the stolen Motorola materials.[3] Defendant directs the Court to *United States v. Roberts*, 08-CR-175 (E.D. Tenn.). Following a trial and sentencing in that case, the government filed an appeal with the Sixth Circuit Court of Appeals contesting the sentence imposed by the district court. *See* appellate case number 11_6040. Thus, the probationary sentence imposed in *Roberts* is still under consideration and has yet to be affirmed. Also, as explained below, *United States v. Dimson and Williams*, which is relied upon by defendant, actually supports the government's recommended range of imprisonment.

Moreover, below are the cases that involve conduct that is most similar to defendant's conduct and, as a result, are most instructive in determining an appropriate sentence.

1. *United States v. Williams*, 526 F.3d 1312 (11th Cir. 2008). Defendant Joya Williams, a former employee of Coca-Cola, Ibrahim Dimson and Edmund Duhaney (who later cooperated with the government) were convicted of conspiring to sell Coca-Cola's trade secrets to a competitor. *Williams*, 526 F.3d at 1316-1318. Williams, the insider at Coca-Cola, was ultimately sentenced to 96 months following her jury trial, and Dimson was sentenced to 60 months following his guilty plea. Duhaney, who cooperated, was sentenced to 24 months. *Id.* at 1316-1318. Williams and Dimson did not object to the Guideline calculations at sentencing. *Id.* at 1323.

[3]In certain instances, the government cites to plea agreements, dockets, sentencing memoranda, Judgements in a Criminal Case, and appellate briefs when discussing comparable sentences. The government will bring these materials to the sentencing hearing on August 29 and will provide the materials earlier upon the Court's request.

The intended loss in the case (there was no actual loss because defendants were dealing with an undercover agent) was $1.5 million. *Id.* at 1321 n.2. In affirming the 96-month sentence, which was above the applicable Guidelines range, the 11th Circuit stated that the judge relied on the following factors: "(1) the fact that Williams lied to the court about her previous criminal history, § 3553(a)(1); (2) the fact that she was well-educated and did not need any additional vocational training, *id.*, § 3553(a)(2)(D); (3) the need to deter Williams and other from committing similar crimes, *id.*, § 3553(a)(2)(B), (C); (4) the guidelines and policy statements, which the district court did not find helpful because they did not deal with this kind of case, *id.*, § 3553(a)(4), (5); (5) the need to protect the trade secrets of companies, *id.*, § 3553(a)(2)(B), (C); and (6) the seriousness of the offense, *id.*, § 3553(a)(2)(A)." *Id.* at 1323. The district court also stated that the offense was particularly serious because of "the harm that Coca-Cola could have suffered if Williams and her co-conspirators had succeeded in selling its trade secrets to a rival, and the danger to the United States economy these crimes pose." *Id.*

Defendant's conduct in this case is similar to that of Williams, a defendant who also went to trial. First, Williams, like defendant, was a company insider who used her position to steal and benefit from trade secrets while employed by the victim company. Second, Williams, like defendant, told a number of lies. Jin did not lie to the Court, but she did lie to Motorola and federal law enforcement.[4] Order, at 72 ("First, Jin lied to Motorola employees in the course of her phony return to work. The evidence showed that Jin never intended to return to work for Motorola and

[4]The Court's finding contradicts the defendant's argument in mitigation that "[n]otably, however, Ms. Jin never - not upon arrest, not during interrogations by and proffers with the government, not at trial and not now - denied taking the documents from Motorola without permission." Memo, at 2. *See e.g.*, Order, at 14 (Jin lied to Officer Zamora about why she was carrying the Motorola documents in her luggage when she said "she had them for work purposes.")

instead returned from medical leave solely to obtain the documents that were found in her possession on February 28, 2007. . . . Jin also lied repeatedly to CBP and FBI officials about her employment with Motorola, the source of documents, and her contacts in China."); *see also* Order, at 69. Lastly, like Williams, defendant was not driven by desperation - she was well educated and very employable (in fact, defendant was working for three different telecommunications companies at the same time).

Moreover, in certain respects, the circumstances of defendant's conduct are more egregious than Williams' conduct. First, the information defendant stole was worth hundreds of millions of dollars. Accordingly, the potential damage to Motorola and the Nation's economy as a whole are much greater in this case than in Williams' case, where the intended loss was calculated at $1.5 million. Jin was also taking the trade secrets to China - rather than another state - where they would have been much harder to recover through litigation. Moreover, Jin, unlike Williams, had executed a scheme to raid Motorola's trade secrets - executed through a series of lies. Lastly, unlike Williams, defendant's career goal was to use her talents to advance Chinese military technology.

The defense will likely counter that there is no evidence that, similar to Williams, defendant transferred the trade secrets to a third party. However, the government arrested defendant before she used a one-way ticket to China to carry the documents to China, where the documents would be the functional equivalent of her property. Once in China, defendant could use those documents as she wished without scrutiny.

2. *United States v. Xiang Don Yu* (E.D. Mich. No. 09-20304) (sentenced April 12, 2011). Defendant Xiang Dong Yu entered into a plea agreement on two counts of theft of trade secrets in violation of Section 1832 and was sentenced to 70 months' imprisonment. *See United States v. Xiang Don Yu*, 09CR20304-1 (E.D. Mich. April 20, 2011), docket entry 38 (Judgement in

a Criminal Case). According to facts set forth in the government's sentencing memorandum, defendant and the government agreed on the loss of the stolen secrets as between $50 and $100 million. *See United States v. Xiang Don Yu,* 09CR20304-1 (E.D. Mi April 20, 2011), docket entry 35, at 1, 12. Yu worked as an engineer for Ford starting in 1997 and, as a result, had access to trade secret information regarding Ford's automobiles, some of which cost Ford years and millions of dollars to compile. *Id.* at 2. In 2005, Yu began misappropriating trade secrets and transporting the trade secrets to China, where, unbeknownst to Ford, Yu was working for a different automotive company. *Id.* at 3-4.

Later, and again without telling Ford or ending his employment with Ford, Yu lined up another job in China. *Id.* at 4-6. In December 2006, defendant copied over 4,000 proprietary documents from his Ford work computer to an external hard drive. *Id.* at 5. When later questioned about the downloading of these documents, Yu claimed that he took the Ford documents to "refresh" his knowledge should he decide to return to the automotive industry in the future. *Id.* at 6. The day after downloading these documents onto an external hard drive, defendant boarded a plane for China with the hard drive. *Id.* at 7. Defendant later provided some of the stolen material to an employee of a Chinese automotive company, but he claimed that he told that employee not to look at the documents. *Id.* at 10.

Yu's conduct is similar to defendant's conduct. Like Yu, defendant took advantage of her years of employment to secretly steal a large volume of proprietary materials shortly before boarding a plane for China with the stated goal of refreshing her memory. The key distinction is that defendant was stopped on the jet way boarding the plane and was therefore unable to share the stolen information with anyone outside of Motorola.

3. *United States v. Wen Chyu Liu,* 3:05CR00085-001, (M.D. La. 2012) (sentenced

January 12, 2012). Defendant Wen Chyu Liu, a former research scientist, was convicted of conspiracy to steal trade secrets and perjury. *United States v. Wen Chyu Liu*, 3:05CR00085-001 (M.D. La. April 27, 2012), docket entry 221 (Amended Judgment in a Criminal Case). On April 27, 2012, defendant was sentenced to 60 months' imprisonment for stealing trade secrets from Dow Chemical Company and selling them to two companies in the People's Republic of China, as well as committing perjury. *Id.*; United States' Memorandum In Opposition to Defendant's Rule 33 Motion for New Trial, *United States v. Wen Chyu Liu*, 3:05CR00085-001 (M.D. La. May 27, 2011), docket entry 181.[5]

4. *United States v. Ameri*, 412 F.3d 893 (8th Cir. 2005). Defendant Nasser Ahmed Ameri was sentenced to 96 months following trial. *Ameri*, 412 F.3d at 895; *United States v. Ameri*, 4:02-cr-00182-WRW (E.D. Ark. September 10, 2004), docket number 123 (Judgment in a Criminal Case). Ameri was charged with theft of trade secrets related to a software program to be used by the Arkansas Department of Motor Vehicles. *Id.* at 895, 899. Ameri was also charged with production of fraudulent documents, social security fraud, computer fraud, identify theft, possession of ammunition by an illegal alien and making false statements. *Id.* at 895. Further, Ameri also made false threats about plans to terrorize the Salt Lake City Olympic games. *Id.* at 896. The Eighth Circuit affirmed the sentence. *Id.* at 900-901. The district court increased the base offense level by 16 levels for a loss amount of $1.4 million. *Id.* at 899. In reaching the appropriate loss amount, the district court considered the total contract price ($10 million), man hours (300-500 hours), cost of production ($700,000) and fair market value of the stolen software ($1 million). *Id.* at 900. Again, the volume and value of the proprietary material taken by defendant far surpasses what was stolen

[5]The sentencing memoranda in this case were filed under seal.

by Ameri, who received a sentence of 96 months.

5 *United States v. Hallstead* (E.D. Tex. 98-41570) (sentenced December 15, 1998). Based on the court's docket and the unpublished appellate decision, the defendant was sentenced to 77 months' imprisonment after pleading guilty to conspiring to commit a theft of trade secrets of Intel Corporation. *United States v. Hallstead*, 189 F.3d 468, 1999 WL 548453, at *1 (5th Cir. 1999) (per curiam). On appeal, Hallstead contested the increase in his offense level based on Intel's research and development costs. *Id.* The court rejected defendant's argument, stating that research and development costs were an appropriate means to calculate loss, and finding there was no market for the product that defendant sought to sell at the time of the offense. *Id.* Defendant Jin's criminal conduct had greater economic consequences than Hallstead's conduct. Specifically, Hallstead stole information related to a product that had yet to develop a market. Defendant, on the other hand, stole proprietary material for technology that generated hundreds of millions of dollars in revenue for Motorola.

IV. ADDITIONAL 3553(a) FACTORS SUPPORT A SENTENCE OF IMPRISONMENT WITHIN THE 70 TO 96 MONTH RANGE.

When defendant committed the crime, she was a highly-educated and financially successful person. For instance, in March 2007, defendant and her husband had at least $115,000 in the bank and no mortgage on their house in the suburbs. Order, at 21. Also, Defendant was not in a situation where she was unable to find legitimate employment. In fact, in 2005, defendant was able to earn a salary of $90,000 from two different telecommunications companies (Motorola and Lemko). In short, defendant was smart enough to know the gravity of her conduct.

In mitigation, since 2005, defendant has struggled with a number of serious health problems that at times have limited her ability to work and have required medical treatment. Defendant's

health problems are the primary reason for the government request for a sentence of imprisonment below the applicable Sentencing Guidelines range.

V. CONCLUSION

Based upon the arguments and evidence discussed above, the government respectfully submits that a sentence of imprisonment in the range of 70 to 96 months would comply with the sentencing purposes set forth in Section 3553(a).

Respectfully submitted,

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