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 UNITED STATES OF AMERICA

11 UNITED STATES DISTRICT COURT

12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 UNITED STATES OF AMERICA,) CR No. 08-59(B)-GW
 14)
 Plaintiff,) GOVERNMENT’S REQUEST FOR JUDICIAL
 15) NOTICE OF RECENT FCPA SENTENCING
 v.) AND LETTER TO COURT; EXHIBITS
 16)
 GERALD GREEN and) Hearing Date: July 1, 2010
 17 PATRICIA GREEN,) Hearing Time: 9:30 a.m.
)
 18 Defendants.)
)
 19)
 20)

21 Plaintiff United States of America, through its counsel of
 22 record, the United States Attorney’s Office for the Central
 23 District of California, and the Fraud Section, United States
 24 Department of Justice, Criminal Division, hereby requests that
 25 the Court take judicial notice of the following two items of
 26 sentencing evidence, namely: (1) that on June 25, 2009, defendant
 27 John W. Warwick (“Warwick”) was sentenced to 37 months in prison
 28 after pleading guilty and accepting responsibility for his role

1 in a conspiracy to pay approximately \$200,000 in bribes to former
2 Panamanian government officials to secure maritime contracts in
3 violation of the Foreign Corrupt Practices Act ("FCPA") (United
4 States v. Warwick, Cr. No. 09-449-HEH EDVA)¹; and (2) a letter to
5 this Court dated June 24, 2010, by Professor Mehdi Krongkaew,
6 writing on behalf of Thailand's National Anti-Corruption
7 Commission ("NACC") in his capacity as a Commissioner of the
8 NACC. Professor Mehdi Krongkaew is the chairman of the
9 subcommittee inquiring into the bribery allegations at issue in
10 this case

11 This request for judicial notice as it pertains to defendant
12 Warwick is made in effort to ensure that the Court is kept
13 current with respect to the FCPA sentencing landscape as it
14 relates to the criminal prosecution of individuals so as to avoid
15 unwarranted disparities in sentencings. A copy of the Plea
16 Agreement and Statement of Facts in the Warwick case is attached
17 hereto as Exhibit 14. The government would specifically like to
18 bring to the Court's attention the fact that defendant Warwick's
19 sentence of 37 months is at the low-end of the advisory guideline
20 range 37 to 46 months.² In addition, and as set forth in

21
22 ¹ This is a companion case to United States v. Jumet, CR No.
23 09-397-HEH EDVA, referenced in the Government's April 20, 2010
Request for Judicial Notice, Docket Entry 343.

24 ² Since the conduct at issue occurred between 1997 and 2003,
25 the 2002 sentencing guidelines manual was used. The 2002 manual
26 contains a more lenient sentencing guidelines range than is in
27 effect today and would have yielded a advisory guideline range of
78 to 97 months. However, due to defendant Warwick's acceptance
and plea of guilty to one-count of violating the FCPA, defendant
Warwick's maximum sentence would have been capped at 60 months.

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

UNITED STATES OF AMERICA,)
)
 v.) CRIMINAL NO. 3:09CR449
)
 JOHN W. WARWICK,)
)
 Defendant.)

PLEA AGREEMENT

Neil H. MacBride, United States Attorney for the Eastern District of Virginia, Denis J. McInerney, Chief, United States Department of Justice, Criminal Division, Fraud Section, Michael S. Dry, Assistant United States Attorney, Rina C. Tucker Harris, Trial Attorney, the defendant, JOHN W. WARWICK, and the defendant’s counsel have entered into an agreement pursuant to Rule 11 of the Federal Rules of Criminal Procedure (the “plea agreement”). The terms of the plea agreement are as follows:

1. Offense and Maximum Penalties

The defendant agrees to plead guilty to the indictment charging the defendant with conspiracy to violate laws of the United States in violation of Title 18, United States Code, Section 371, namely the Foreign Corrupt Practices Act (15 U.S.C. §§ 78dd-1, et. seq.). The maximum penalties for this charge are a maximum term of five years’ imprisonment, a fine of \$250,000 or twice the pecuniary gain or loss resulting from the offense, whichever is greater, a special assessment of \$100.00, and three years supervised release. The defendant understands that this supervised release term is in addition to any prison term the defendant may receive, and that a violation of a term of supervised

release could result in the defendant being returned to prison for the full term of supervised release.

2. Detention Pending Sentencing

The defendant understands that this case is governed by Title 18, United States Code, Sections 3143(a)(2) and 3145(c). These provisions provide that a judicial officer shall order that a person who has been found guilty of an offense of this kind be detained unless there are statutory justifications why such person's detention would not be appropriate.

3. Factual Basis for the Plea

The defendant will plead guilty because the defendant is in fact guilty of the charged offense. The defendant admits the facts set forth in the statement of facts attached to this plea agreement and agrees that those facts establish his guilt of the offense charged beyond a reasonable doubt. The statement of facts, which is hereby incorporated into this plea agreement, constitutes a stipulation of facts for purposes of Section 1B1.2(a) of the Sentencing Guidelines.

4. Assistance and Advice of Counsel

The defendant is satisfied that the defendant's attorney has rendered effective assistance. The defendant understands that by entering into this plea agreement, defendant surrenders certain rights as provided in this plea agreement. The defendant understands that the rights of criminal defendants include the following:

- a. the right to plead not guilty and to persist in that plea;
- b. the right to a jury trial;
- c. the right to be represented by counsel – and if necessary have the court appoint counsel – at trial and at every other stage of the proceedings; and
- d. the right at trial to confront and cross-examine adverse witnesses, to be

protected from compelled self-incrimination, to testify and present evidence, and to compel the attendance of witnesses.

5. Role of the Court and the Probation Office

The defendant understands that the Court has jurisdiction and authority to impose any sentence within the statutory maximum described above but that the Court will determine the defendant's actual sentence in accordance with Title 18, United States Code, Section 3553(a). The defendant understands that the Court has not yet determined a sentence and that any estimate of the advisory sentencing range under the U.S. Sentencing Commission's Sentencing Guidelines Manual the defendant may have received from the defendant's counsel, the United States, the Probation Office, or anyone else, is a prediction, not a promise, and is not binding on the United States, the Probation Office, or the Court. Additionally, pursuant to the Supreme Court's decision in *United States v. Booker*, 543 U.S. 220, 125 S. Ct. 738 (2005), the Court, after considering the factors set forth in Title 18, United States Code, Section 3553(a), may impose a sentence above or below the advisory sentencing range, subject only to review by higher courts for reasonableness. The United States makes no promise or representation concerning what sentence the defendant will receive, and the defendant cannot withdraw a guilty plea based upon the actual sentence imposed.

Further, in accordance with Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure, the United States and the defendant agree that the 2009 Sentencing Guidelines apply in this case and that, provided the defendant enters a plea of guilty to the Indictment and otherwise meets his obligations under this agreement, the United States and the defendant will recommend to the Court that the following provisions of the sentencing guidelines apply:

Base Offense Level	12	U.S.S.G. § 2C1.1(a)(2)
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Offense involved more than one bribe	2	U.S.S.G. § 2C1.1(b)(1)
value of payment is more than \$200,000 but not greater than \$400,000	12	U.S.S.G. § 2C1.1(b)(2)
Offense involved an elected public official or any public official in a high-level decision-making	4	U.S.S.G. § 2C1.1(b)(3)

In addition, the parties agree to not move for any departure or variance above or below the applicable guideline range.

Provided the defendant proceeds to enter a plea of guilty to the indictment under this plea agreement, the United States and the defendant agree that the defendant has assisted the government in the investigation and prosecution of the defendant's own misconduct by timely notifying authorities of the defendant's intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the government and the Court to allocate their resources efficiently. If the defendant qualifies for a two-level decrease in offense level pursuant to U.S.S.G. § 3E1.1(a) and the offense level prior to the operation of that section is a level 16 or greater, the government agrees to file, pursuant to U.S.S.G. § 3E1.1(b), a motion prior to, or at the time of, sentencing for an additional one-level decrease in the defendant's offense level.

6. Waiver of Appeal, FOIA and Privacy Act Rights

The defendant also understands that Title 18, United States Code, Section 3742 affords a defendant the right to appeal the sentence imposed. Nonetheless, the defendant knowingly waives the right to appeal the conviction and any sentence within the statutory maximum described above (or the manner in which that sentence was determined) on the grounds set forth in Title 18, United States Code, Section 3742 or on any ground whatsoever, in exchange for the concessions made by

the United States in this plea agreement. This agreement does not affect the rights or obligations of the United States as set forth in Title 18, United States Code, Section 3742(b). The defendant also hereby waives all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including without limitation any records that may be sought under the Freedom of Information Act, Title 5, United States Code, Section 552, or the Privacy Act, Title 5, United States Code, Section 552a.

7. Waiver of DNA Testing

The defendant also understands that Title 18, United States Code, Section 3600 affords a defendant the right to request DNA testing of evidence after conviction. Nonetheless, the defendant knowingly waives that right. The defendant further understands that this waiver applies to DNA testing of any items of evidence in this case that could be subjected to DNA testing, and that the waiver forecloses any opportunity to have evidence submitted for DNA testing in this case or in any post-conviction proceeding for any purpose, including to support a claim of innocence to the charge admitted in this plea agreement.

8. Special Assessment

Before sentencing in this case, the defendant agrees to pay a mandatory special assessment of one hundred dollars (\$100.00).

9. Payment of Monetary Penalties

The defendant further understands and agrees that, pursuant to Title 18, United States Code, Section 3613, whatever monetary penalties are imposed by the Court will be due and payable immediately and subject to immediate enforcement by the United States as provided for in Section

3613. Furthermore, the defendant agrees to provide all of his financial information to the United States and the Probation Office and, if requested, to participate in a pre-sentencing debtor's examination. If the Court imposes a schedule of payments, the defendant understands that the schedule of payments is merely a minimum schedule of payments and not the only method, nor a limitation on the methods, available to the United States to enforce the judgment. If the defendant is incarcerated, the defendant agrees to participate in the Bureau of Prisons' Inmate Financial Responsibility Program, regardless of whether the Court specifically directs participation or imposes a schedule of payments.

The parties agree that restitution is not applicable in this case. Given the agreed upon forfeiture amount and having considered the defendant's financial resources, the Government is not seeking a fine as part of the sentence to be imposed.

10. Immunity from Further Prosecution in this District

The United States will not further criminally prosecute the defendant in the Eastern District of Virginia or elsewhere for the specific conduct described in the Indictment or statement of facts.

11. Defendant's Cooperation

The defendant agrees to cooperate fully and truthfully with the United States, and provide all information known to the defendant regarding any criminal activity as requested by the government. In that regard:

- a. The defendant agrees to testify truthfully and completely at any grand juries, trials or other proceedings.
- b. The defendant agrees to be reasonably available for debriefing and pre-trial conferences as the United States may require.

- c. The defendant agrees to provide all documents, records, writings, or materials of any kind in the defendant's possession or under the defendant's care, custody, or control relating directly or indirectly to all areas of inquiry and investigation.
- d. The defendant agrees that, at the request of the United States, the defendant will voluntarily submit to polygraph examinations, and that the United States will choose the polygraph examiner and specify the procedures for the examinations.
- e. The defendant agrees that the Statement of Facts is limited to information to support the plea. The defendant will provide more detailed facts relating to this case during ensuing debriefings.
- f. The defendant is hereby on notice that the defendant may not violate any federal, state, or local criminal law while cooperating with the government, and that the government will, in its discretion, consider any such violation in evaluating whether to file a motion for a downward departure or reduction of sentence.
- g. Nothing in this agreement places any obligation on the government to seek the defendant's cooperation or assistance.

12. Use of Information Provided by the Defendant Under This Agreement

The United States will not use any truthful information provided pursuant to this agreement in any criminal prosecution against the defendant in the Eastern District of Virginia or elsewhere, except in any prosecution for a crime of violence or conspiracy to commit, or aiding and abetting,

a crime of violence (as defined in Title 18, United States Code, Section 16). Pursuant to U.S.S.G. section 1B1.8, no truthful information that the defendant provides under this agreement will be used in determining the applicable guideline range, except as provided in section 1B1.8(b). Nothing in this plea agreement, however, restricts the Court's or Probation Officer's access to information and records in the possession of the United States. Furthermore, nothing in this agreement prevents the government in any way from prosecuting the defendant should the defendant knowingly provide false, untruthful, or perjurious information or testimony, or from using information provided by the defendant in furtherance of any forfeiture action, whether criminal or civil, administrative or judicial. The United States will bring this plea agreement and the full extent of the defendant's cooperation to the attention of other prosecuting offices if requested.

13. Defendant Must Provide Full, Complete and Truthful Cooperation

This plea agreement is not conditioned upon charges being brought against any other individual. This plea agreement is not conditioned upon any outcome in any pending investigation. This plea agreement is not conditioned upon any result in any future prosecution which may occur because of the defendant's cooperation. This plea agreement is not conditioned upon any result in any future grand jury presentation or trial involving charges resulting from this investigation. This plea agreement is conditioned upon the defendant providing full, complete and truthful cooperation.

14. Motion for a Downward Departure

The parties agree that the United States reserves the right to seek any departure from the applicable sentencing guidelines, pursuant to Section 5K1.1 of the Sentencing Guidelines and Policy Statements, or any reduction of sentence pursuant to Rule 35(b) of the Federal Rules of Criminal Procedure, if, in its sole discretion, the United States determines that such a departure or reduction

of sentence is appropriate.

15. Forfeiture Agreement

The defendant agrees to forfeit all interests in any asset that the defendant owns or over which the defendant exercises control, directly or indirectly which constitutes proceeds of his offense, as well as any property that is traceable to, derived from, fungible with, or a substitute for property that constitutes the proceeds of his offense, including but not limited to the following specific property: **\$331,000 representing the proceeds of the offense of conviction**. The defendant further agrees to waive all interest in the asset(s) in any administrative or judicial forfeiture proceeding, whether criminal or civil, state or federal. The defendant agrees to consent to the entry of orders of forfeiture for such property and 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. The defendant understands that the forfeiture of assets is part of the sentence that may be imposed in this case.

16. Waiver of Further Review of Forfeiture

The defendant further agrees to waive all constitutional and statutory challenges in any manner (including direct appeal, habeas corpus, or any other means) to any forfeiture carried out in accordance with this Plea Agreement on any grounds, including that the forfeiture constitutes an excessive fine or punishment. The defendant also waives any failure by the Court to advise the defendant of any applicable forfeiture at the time the guilty plea is accepted as required by Rule 11(b)(1)(J). The defendant agrees to take all steps as requested by the United States to pass clear title to forfeitable assets to the United States, and to testify truthfully in any judicial forfeiture proceeding. The defendant understands and agrees that all property covered by this agreement is subject to

forfeiture as proceeds of illegal conduct or substitute assets for property otherwise subject to forfeiture.

17. Breach of the Plea Agreement and Remedies

This plea agreement is effective when signed by the defendant, the defendant's attorney, and an attorney for the United States. The defendant agrees to entry of this plea agreement at the date and time scheduled with the Court by the United States (in consultation with the defendant's attorney). If the defendant withdraws from this plea agreement, or commits or attempts to commit any additional federal, state or local crimes, or intentionally gives materially false, incomplete, or misleading testimony or information, or otherwise violates any provision of this agreement, then:

- a. The United States will be released from its obligations under this plea agreement, including any obligation to seek a downward departure or a reduction in sentence. The defendant, however, may not withdraw the guilty plea entered pursuant to this agreement;
- b. The defendant will be subject to prosecution for any federal criminal violation, including, but not limited to, perjury and obstruction of justice, that is not time-barred by the applicable statute of limitations on the date this agreement is signed. Notwithstanding the subsequent expiration of the statute of limitations, in any such prosecution, the defendant agrees to waive any statute-of-limitations defense; and
- c. Any prosecution, including the prosecution that is the subject of this agreement, may be premised upon any information provided, or statements made, by the defendant, and all such information, statements, and leads

derived therefrom may be used against the defendant. The defendant waives any right to claim that statements made before or after the date of this agreement, including the statement of facts accompanying this agreement or adopted by the defendant and any other statements made pursuant to this or any other agreement with the United States, should be excluded or suppressed under Fed. R. Evid. 410, Fed. R. Crim. P. 11(f), the Sentencing Guidelines or any other provision of the Constitution or federal law.

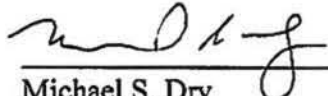
Any alleged breach of this agreement by either party shall be determined by the Court in an appropriate proceeding at which the defendant's disclosures and documentary evidence shall be admissible and at which the moving party shall be required to establish a breach of the plea agreement by a preponderance of the evidence. The proceeding established by this paragraph does not apply, however, to the decision of the United States whether to file a motion based on "substantial assistance" as that phrase is used in Rule 35(b) of the Federal Rules of Criminal Procedure and Section 5K1.1 of the Sentencing Guidelines and Policy Statements. The defendant agrees that the decision whether to file such a motion rests in the sole discretion of the United States.

18. Nature of the Agreement and Modifications

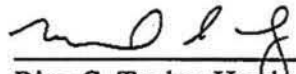
This written agreement constitutes the complete plea agreement between the United States, the defendant, and the defendant's counsel. The defendant and his attorney acknowledge that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in writing in this plea agreement, to cause the defendant to plead guilty. Any modification of this plea agreement shall be valid only as set forth in writing in a supplemental or revised plea agreement signed by all parties.

Neil H. MacBride
United States Attorney

Denis J. McInerney
Chief
United States Department of Justice
Criminal Division, Fraud Section

By: 

Michael S. Dry
Assistant United States Attorney

By: 

for Rina C. Tucker Harris
Trial Attorney
United States Department of Justice
Criminal Division, Fraud Section

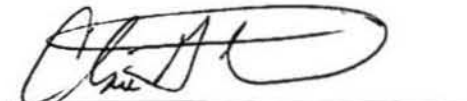
Defendant's Signature: I hereby agree that I have consulted with my attorney and fully understand all rights with respect to the pending Indictment. Further, I fully understand all rights with respect to Title 18, United States Code, Section 3553 and the provisions of the Sentencing Guidelines Manual that may apply in my case. I have read this plea agreement and carefully reviewed every part of it with my attorney. I understand this agreement and voluntarily agree to it.

Date: 2-10-10


John W. Warwick
Defendant

Defense Counsel Signature: I am counsel for the defendant in this case. I have fully explained to the defendant the defendant's rights with respect to the pending Indictment. Further, I have reviewed Title 18, United States Code, Section 3553 and the Sentencing Guidelines Manual, and I have fully explained to the defendant the provisions that may apply in this case. I have carefully reviewed every part of this plea agreement with the defendant. To my knowledge, the defendant's decision to enter into this agreement is an informed and voluntary one.

Date: 2-10-10


Claire Cardwell
Counsel for the Defendant

U. S. DEPARTMENT OF JUSTICE
Statement of Special Assessment Account

This statement reflects your special assessment only. There may be other penalties imposed at sentencing.

ACCOUNT INFORMATION	
CRIM. ACTION NO.:	3:09CR449
DEFENDANT'S NAME:	JOHN W. WARWICK
PAY THIS AMOUNT:	\$100.00

INSTRUCTIONS:

1. **MAKE CHECK OR MONEY ORDER PAYABLE TO:**
CLERK, U. S. DISTRICT COURT
2. **PAYMENT MUST REACH THE CLERK'S OFFICE BEFORE YOUR SENTENCING DATE**
3. **PAYMENT SHOULD BE SENT TO:**

	In person (9 AM to 4 PM)	By mail:
Richmond cases:	Clerk, U.S. District Court 701 East Broad Street, Suite 3000 Richmond, VA 23219	

4. **INCLUDE DEFENDANT'S NAME ON CHECK OR MONEY ORDER**
5. **ENCLOSE THIS COUPON TO INSURE PROPER and PROMPT APPLICATION OF PAYMENT**

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

UNITED STATES OF AMERICA,)	
)	Criminal No. 3:09CR449
)	
v.)	
)	
JOHN W. WARWICK,)	
Defendant.)	

STATEMENT OF FACTS

The parties stipulate that the allegations in the indictment and the following facts are true and correct, and had the matter gone to trial, the United States could have proven each of them beyond a reasonable doubt:

- From at least in 1997 through in and around July 2003, in the Eastern District of Virginia, and elsewhere, the defendant, JOHN W. WARWICK did knowingly combine, conspire, confederate, and agree, together with Charles Jumet, and others known and unknown to the United States, to willfully make use of the mails and means and instrumentalities of interstate commerce corruptly in furtherance of an offer, payment, promise to pay, and authorization of the payment of any money, or offer, or gift, promise to give, and authorization of the giving of anything of value to any foreign official, or to any person, while knowing that all or a portion of such money or thing of value will be offered, given or promised, directly or indirectly, to any foreign official, for purposes of: (i) influencing acts and decisions of such foreign official in his official capacity; (ii) inducing such foreign official to do and omit to do acts in violation of the lawful duty of such official; (iii) securing an improper advantage; and (iv) inducing such foreign

official to use his influence with a foreign government and instrumentalities thereof to affect and influence acts and decisions of such government and instrumentalities, in order to assist PECC, Overman Associates, and Overman de Panama, in obtaining and retaining business for and with, and directing business to PECC, Overman Associates, and Overman de Panama, all in violation of Title 15, United States Code, Sections 78dd-2(a) and 78dd-2(i), and Title 18, United States Code, Section 371.

2. In or about December 1996, JOHN W. WARWICK and Charles Jumet allowed Government Official B, the Deputy Administrator of Panama's National Maritime Ports Authority ("APN"), to establish PECC under the laws of Panama so that JOHN W. WARWICK and Charles Jumet could obtain a government contract to, among other things, maintain the lighthouses and buoys in the waterways outside the Panama Canal.

3. In or about December 1996, JOHN WARWICK, and Charles Jumet established Overman de Panama, a wholly owned subsidiary of Overman Associates, under the laws of Panama. Overman de Panama was a holding company for any investment that its wholly owned subsidiary, Overman Associates, made in the Republic of Panama and Overman de Panama had a management interest in PECC.

4. As President of both PECC and Overman de Panama, JOHN W. WARWICK, a United States citizen, was responsible for overseeing the business activities of PECC and Overman de Panama. JOHN W. WARWICK was a domestic concern and was an employee and majority shareholder of Overman Associates, which was a domestic concern.

5. Charles Jumet, United States citizen, was a domestic concern and was an employee and shareholder of Overman Associates, which was a domestic concern. JOHN W.

WARWICK hired Charles Jumet to develop business for Overman Associates in Latin America. Charles Jumet was the Vice President of PECC and then later replaced JOHN W. WARWICK as the President of PECC. Charles Jumet was also Vice President of Overman de Panama.

6. In or about January 1997, Government Official A, the Administrator of APN, and Government Official B, a Deputy Administrator of APN, provided Charles Jumet and JOHN W. WARWICK with a written description of the scope of the work needed by APN. In response to this, PECC submitted a proposal for the privatization of APN's engineering department, whereby Overman Associates and its affiliate, Overman de Panama would provide the engineering services to APN through PECC, and PECC promised to hire substantially all of APN's former engineering department employees, who were employed by APN as of December 31, 1996. This proposal was signed by JOHN W. WARWICK.

7. In or about January 1997, without seeking any bids from other companies, Government Official A, the Administrator of APN, awarded PECC a provisional contract allowing it to collect tariffs directly from ships that went into port in Panama, to maintain the lighthouses and buoys, to conduct engineering studies, and to maintain aids to navigation.

8. On or about January 24, 1997, shortly after PECC was awarded the provisional contract, JOHN W. WARWICK and Charles Jumet opened a bank account at Lloyds Bank in Panama, listing themselves as signatories on the account. This account was used to make corrupt "dividend" payments to some of PECC's concealed shareholders.

9. In or about February 1997, APN awarded PECC a provisional concession allowing PECC to collect the lighthouse and buoy tariffs. Under the operative contract, PECC was allowed to keep 90 percent of the tariffs pursuant to the contract and gave 10 percent to

APN.

10. On or about March 7, 1997, JOHN W. WARWICK presided over a special PECC's shareholder meeting, during which he, Charles Jumet, and other members of PECC's Board of Directors authorized the issuance of 1,000 non registered common shares, which could be registered shares or "bearer" shares.

11. In or about 1997, JOHN W. WARWICK, Charles Jumet, Warmspell Holding Corporation, Soderville Corporation, and three others who were simply referred to as "bearer" became shareholders of PECC. JOHN W. WARWICK and Charles Jumet each had a 10 percent ownership interest in PECC. Both Warmspell Holding Corporation and Soderville Corporation each held a 30 percent interest in PECC.

12. Warmspell Corporation and Soderville Corporation were made shareholders of PECC to conceal the receipt of corrupt payments by Panamanian government officials for awarding PECC a contract to maintain the lighthouses and buoys in the waterways outside the Panama Canal.

13. Warmspell Holding Corporation had ties to Government Official B, a Deputy Administrator of APN. Soderville Corporation had ties to Government Official A, the Administrator of APN.

14. In or about December 1997, JOHN W. WARWICK signed stock certificates that were issued to PECC shareholders, including "el portador" and Soderville Corporation. The stock certificate issued to "El Portador" was given to Government Official C and the stock certificate issued to Soderville Corporation was given to Government Official A.

15. In or about December 1997, PECC was awarded a 20-year concession to

service the lighthouses and buoys along Panama's waterways outside the Panama Canal. This service was previously performed by the Panamanian government. PECC received equipment and office space from APN to perform this task. In or about January 1997, PECC hired APN workers, who previously worked in APN's engineering department.

16. In or about December 1997, JOHN W. WARWICK, Charles Jumet, and others authorized PECC to issue dividend payments totaling \$300,000 to its shareholders, including JOHN W. WARWICK, Charles Jumet, Warmspell Holding Corporation, Soderville Corporation, and three shareholders who were referred to as "bearer."

17. On or about December 19, 1997, JOHN W. WARWICK signed a dividend payment check number 018767 drawn from PECC's account at Lloyds Bank in the amount of \$18,000 payable to the "bearer." This check was subsequently deposited into an account belonging to Government Official C, a high-ranking Panamanian elected official, as a corrupt payment for awarding PECC the contract.

18. On or about December 19, 1997, JOHN W. WARWICK, Charles Jumet, and others caused a dividend payment of \$81,000 to be issued by check to Warmspell Holding Corporation for the purpose of making a corrupt payment to Government Official B, a Deputy Administrator of APN, for awarding the contract to PECC. The check was subsequently deposited into an account controlled by Government Official B and his relatives.

19. On or about December 19, 1997, JOHN W. WARWICK, Charles Jumet, and others caused a dividend payment of \$81,000 to be issued by check to Soderville Corporation, a company belonging to Government Official A, for the purpose of making a corrupt payment to Government Official A, the Director of APN, for awarding PECC the contract.

20. On or about December 19, 1997, Charles Jumet caused a dividend payment of \$27,000 to be transferred by wire from PECC's Lloyds Bank account to JOHN W. WARWICK's account at First Virginia Bank of Tidewater in Virginia.

21. On or about December 24, 1997, JOHN W. WARWICK had Lloyds Bank remove the stop payment order on the three dividend checks payable to Portador. One of these checks was deposited into an account belonging to Government Official C.

22. In or about late 1999, Panama's Comptroller General began investigating APN's decision to award PECC a contract without soliciting other bids. As a result of this investigation, with few exceptions, the Panamanian government did not make any payments to PECC from 1999 until 2003. The government also did not allow PECC to collect the lighthouse and buoy tariffs.

23. In or about September 1999, JOHN W. WARWICK and Charles Jumet agree that PECC would pay \$109,536.50 to Overman de Panama for worked performed in connection with the contracts.

24. In or about February 2000, JOHN W. WARWICK initiated a civil lawsuit in the Circuit Court for the City of Virginia Beach, Virginia in which Overman de Panama sought a monetary judgment of \$84,536.50 plus expenses and interest from PECC for services performed.

25. In or about November 2000, the Circuit Court in Virginia Beach ordered PECC to pay Overman de Panama \$94,875.07 plus interest.

26. In or about 2002, JOHN W. WARWICK sought to recoup the judgement against PECC through a civil lawsuit brought in Panama.

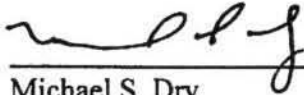
27. In or about June 2003, PECC paid Overman de Panama \$50,000. On or about June 24, 2003, JOHN W. WARWICK caused these funds to be wire transferred from Overman de Panama's Lloyds Bank account to Overman Associates's Wachovia bank account in Virginia Beach, Virginia. JOHN W. WARWICK then caused the funds to be distributed among Overman Associates's shareholders, and personally received approximately \$33,350.

28. In or about July 2003, PECC paid Overman de Panama another \$50,000. On or about July 23, 2003, JOHN W. WARWICK caused these funds to be wire transferred from Overman de Panama's Lloyds Bank account to Overman Associates's Wachovia bank account in Virginia. JOHN W. WARWICK then caused the proceeds to be distributed to Overman Associates's shareholders, giving himself approximately \$33,350.

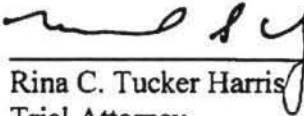
Respectfully submitted,

NEIL H. MACBRIDE
United States Attorney

DENIS J. MCINERNEY
Chief
United States Department of Justice
Criminal Division, Fraud Section

By: 

Michael S. Dry
Assistant United States Attorney

By: 

for Rina C. Tucker Harris
Trial Attorney
United States Department of Justice
Criminal Division, Fraud Section

DECLARATION


By my signature appearing below, I affirm under penalty of perjury that I have read and agree with the contents of this statement of facts and the same is incorporated by reference into the plea agreement. Moreover, I admit that I participated in the underlying criminal conduct as stated. This is the 10th day of ~~January~~ February 2010. *CPA JP MSD*

2/10/10
Date


JOHN W. WARWICK
Defendant

I am the attorney for the defendant and I have carefully reviewed the statement of facts with my client.

2-10-10
Date



Claire Cardwell
Counsel for JOHN W. WARWICK

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

UNITED STATES OF AMERICA, :
 :
v. : Case No. 3:09CR449
 :
JOHN W. WARWICK, :
 :
 :
 :
Defendant. :

**POSITION WITH RESPECT TO SENTENCING
FACTORS AND SENTENCING MEMORANDUM
OF DEFENDANT JOHN W. WARWICK**

COMES NOW, the Defendant, John W. Warwick, by counsel, pursuant to United States Sentencing Guidelines, (“USSG” or “Guidelines”), § 6A1.2, and 18 U.S.C. § 3553(a), and in support of his Position with Respect to Sentencing Factors and states as follows:

Position with Respect to Sentencing Factors

Mr. Warwick has reviewed the Guidelines prepared in this case by the United States Probation Officer and has discussed them with counsel. He does not object to the manner in which the Guidelines were calculated. Mr. Warwick respectfully requests, pursuant to the sentencing factors set forth in 18 U.S.C. § 3553(a), that this Court impose a sentence that is “sufficient, but not greater than necessary” to comply with the purposes of sentencing.

Introduction

The United States Sentencing Guidelines are advisory only. *United States v. Booker*, 543 U.S. 220 (2005). Sentencing courts must now “take account of the Guidelines together with other sentencing goals” set forth in 18 U.S.C. § 3553(a). *Id.*

Specifically, district courts must “impose sentences that reflect the seriousness of the offense, promote respect for the law, provide just punishment, afford adequate deterrence, protect the public, and effectively provide the defendant with needed educational or vocational training and medical care.” *Id.*, citing 18 U.S.C. § 3553(a)(2). Overall, a sentencing court must impose a sentence that comports with all of these factors and is “sufficient, but not greater than necessary” to comply with the purposes set forth in 18 U.S.C. § 3553(a)(2).

Section 3553(a)(1) Offender Characteristics

Until the current conduct leading to his conviction, Mr. Warwick led an exemplary life. Mr. Warwick, who is 64 years old, was raised by both parents in a stable, intact home. He has two siblings. Born in Raleigh, North Carolina, he has lived most of his life in Virginia Beach, Virginia where his family moved when he was 5 years old. Mr. Warwick graduated from the Virginia Military Institute in 1969 and served a 2-year commitment with the United States Army. Mr. Warwick and his wife returned to Virginia Beach, Virginia at the end of his enlistment. PSI, ¶ 45.

Mr. Warwick and his first wife gradually grew apart and were divorced in 1985. PSI, ¶ 52. He has been married to his second wife for over 20 years. Although he has no children of his own, he has been a dedicated and loving stepfather to his second wife’s two children. PSI, ¶ 52, 53. Mr. Warwick maintains a close relationship with his siblings, who remain supportive of him. PSI, ¶ 51. Mr. Warwick’s family describes him as a hard worker and an honorable man. PSI, ¶ 51, 53.

Mr. Warwick has no history of alcohol or substance abuse, PSI, ¶ 35; no prior criminal history, PSI, ¶ 41; and a long history of successful employment. When Mr.

Warwick returned to Virginia Beach after his military service, he was employed full time with Overman Associates, P. C. He was promoted often during his employment with Overman Associates and eventually assumed the position of President and Chief Executive Officer and primary shareholder when Mr. Overman died. Overman Associates merged with Finkbeiner, Pettis & Strout, Inc (FPS) in 2001. PSI, ¶ 63. Mr. Warwick was employed full-time with FPS as a senior engineer and shareholder. PSI, ¶ 62. After FPS merged with ARCADIS, Mr. Warwick was employed as a principal engineer until 2009 when he was laid off due to lack of work. During his engineering career, Mr. Warwick's specialty has been the design and financing of water and wastewater treatment facilities and associated collection and distribution systems. Mr. Warwick is licensed as a professional engineer in both Virginia and North Carolina. PSI, ¶61.

Following his arrest and conviction, Mr. Warwick has made voluntary and candid admissions concerning his involvement in the offense and has demonstrated remorse and accepted responsibility for his actions and inaction. PSI, ¶ 37; *see also* Exhibit 1 (Mr. Warwick's letter to the Court). The conduct in which Mr. Warwick acquiesced was clearly out of character and contrary to how he was raised and how he has lived entire his life prior to this incident. *Id*; *see also* Exhibit 2 (character letters). The common thread running through the character letters written by professional associates, friends, and family is their repeated descriptions of his honesty, integrity, work ethic, as well as their respect for him as an individual and professional.

Mr. Warwick reports his overall general health as fair. This characterization, however, does not address his many chronic conditions. He has been diagnosed with an

enlarged prostate, gastro esophageal reflux disease, esophagitis, chronic heart disease, and chronic renal disease. A stint was inserted in Mr. Warwick's arterial artery in 2001 and he suffered a transient ischemic attack in 2002. Mr. Warwick's kidneys are only marginally functional after suffering an acute appendicitis attack in 2008, during which his appendix ruptured. PSI, ¶ 54. He has recently experienced fainting spells, the cause of which is currently undiagnosed. Since his indictment, Mr. Warwick has suffered from depression and anxiety. *See* Exhibit 3 (note dated 3/29/10 from Dan W. Briddell, Ph.D. ABPP, a clinical psychologist).

Mr. Warwick has been a professional engineer for 38 years and has always been held in high regard by his colleagues and clients. He is respected for not only his professionalism and integrity but also his strong desire to improve the living conditions of entire communities. In recent years he has started working with several Virginia localities in the development of much needed improvements in their water and wastewater facilities and has designed systems to meet the needs of low-income residents.

Mr. Warwick was recently hired by the firm of Hurt & Proffitt. In spite of his new employer's full knowledge of his recent guilty plea and conviction before this Court, Warwick was hired to participate in a major project which will provide local wastewater and septage solutions for several rural communities on the Eastern Shore. Mr. Warwick has been brought on by Hurt & Proffitt for this project because of his extensive experience and expertise in the area of de-centralized wastewater treatment and disposal. In the end, this project will provide enormous environmental and financial benefits to these rural communities. Mr. Warwick's continued work on this particular project could

improve and preserve the quality of life in these communities by helping them to protect their ground water source and anchoring important businesses. For example, the project will enable the only hospital on the Eastern Shore and the largest employer in the county in which it is situated to remain in the area and continue to serve and employ members of the community. Finally, the mere fact that Mr. Warwick was hired by a reputable firm under his tenuous circumstances speaks volumes regarding the strong professional reputation he has built over his 38 years as an engineer and his particular and unique expertise in this area. Clearly Hurt & Proffitt was willing to take a very significant risk in order to have the benefit of his outstanding talent and expertise.

Section 3553(a)(1) Offense Characteristics

Mr. Warwick entered a plea of guilty to the one count indictment charging him with Conspiracy to Violate the Foreign Corrupt Practices Act, in violation of 18 U. S. C. § 371. A Consent Order of Forfeiture was entered pursuant to 18 U. S. C. § 9981 (a)(1)(C) and 28 U. S. C. § 2461(c) for the forfeiture of \$331,000 representing the total of the payments (including those to Charles Jumet, his co-defendant) which were made in this case. PSI, ¶ 4, 5.

Without minimizing in any way his acceptance of responsibility, Mr. Warwick would inform the court that he never imagined at the time his firm began to seek work in foreign countries that illegal payments to foreign government officials would occur. Overman Associates, under the direction of Mr. Overman, had decided to expand its consulting engineering work to South and Central America and had hired Mr. Warwick's co-defendant, Charles Jumet, to pursue that end. When Mr. Overman died, Mr. Warwick assumed the company's leadership role and carried on the company's business plan to

pursue international work. Because Mr. Jumet was previously employed by former Governor Allen's administration to pursue and develop foreign trade on behalf of the Commonwealth of Virginia, Warwick relied heavily on Jumet's experience, expertise and assumed integrity when the firm sent him to Panama. Mr. Warwick has plead guilty and accepts that he is criminally liable for the current offense in that at the most critical times, he failed to ask certain appropriate questions before continuing the company's questionable course of conduct in Panama. He acknowledges and deeply regrets that he failed to exercise proper oversight, failed to ask obvious and significant questions regarding the checks which he signed under extremely suspicious circumstances. While he chose to trust Charles Jumet, based upon his reputation and former affiliation with the governor's office, he also acknowledges that he settled for vague answers under obviously questionable circumstances.

Section 3553(a)(2)(A)-(D): The Need for the Sentence Imposed to:

Section 3553(a)(2)(A) requires a sentencing court to impose a sentence that reflects the seriousness of the offense, promotes respect for the law, and provides a just punishment. In an appropriate case, a sentence that includes the use of alternatives to prison, including supervised probation, can adequately achieve these sentencing goals. Mr. Warwick is deeply ashamed of his actions and is now a convicted felon. Beyond the humiliation caused by this felony conviction, he has already lost and suffered many things as a result of his prosecution and conviction.

John Warwick has spent a lifetime building his career, reputation, and good character. While he has been fortunate enough to find current employment, his professional reputation and career as a professional engineer has been damaged forever.

Mr. Warwick's engineering licenses in Virginia and North Carolina are currently under consideration by their respective review committees for revocation or suspension due to this felony conviction.

Unlike his co-defendant, who was much more involved in the arrangement of the illegal payments and arguably much more culpable, Mr. Warwick has suffered substantial financial punishment. While seeking no forfeiture at all against Mr. Jumet, the government required a \$331,000 forfeiture be paid by Mr. Warwick. This amount was agreed to by Warwick in light of the government's initial effort to forfeit \$798,909.44 from him while seeking no recovery at all from his more culpable co-defendant. As the courts have repeatedly recognized, forfeiture is punitive in nature and it is respectfully submitted that this Court should consider this aspect of punishment which Mr. Warwick has faced alone, without benefit of the joint and several liability of his co-defendant.

In addition to the loss of a major portion of his lifetime savings and investment accounts, Mr. Warwick also lost the value of his stock in Overman Associates which he estimates to be \$763,967. This loss resulted from the fallout from the investigation caused to Overman Associates, P.C. With the abrupt departure of six key employees the firm was forced out of business and the remaining assets were sold for just enough to pay the company's debts. Hence, all that Mr. Warwick had invested in the company was lost. Additionally, prior to having his current counsel appointed, Warwick had to pay approximately \$110,000 in attorney's fees and costs during the year long investigation that preceded his indictment as he responded to numerous document requests. The total financial loss sustained by Mr. Warwick in this matter totals in excess of 1.2 million dollars. Added to that loss is the probable loss or suspension of his engineer's licenses.

There is simply no likelihood of Mr. Warwick re-offending. Warwick has served his country in the military and has no criminal history. He has tremendous support from his family, friends, neighbors and colleagues. He is also deeply remorseful for his actions and understands that his conduct and inaction worked to deprive the citizens of Panama of honest services to which they are entitled. The true irony of this case is that Mr. Warwick has always strived in his long career to improve the lives of others, and never to take advantage of them. Mr. Warwick has never been incarcerated before and his model post-arrest behavior demonstrates that he understands the seriousness of the offense and respects the law; essentially these actions speak louder than mere words of remorse tendered at sentencing and provide tangible proof that a sentence incorporating alternatives to incarceration will promote respect for the law, afford adequate deterrence and would protect the public. Indeed, the Sentencing Commission's own statistics support the proposition that Mr. Warwick will not recidivate. In a White Paper entitled *Sentencing Options under the Guidelines* (Nov. 1996), (*see* http://rashkind.com./alternatives/dir_00/USSC_sentencingoptions.pdf), The Commission found that the recidivism rate for federal violators placed on probation or home detention was historically very low, with only 2.7% of offenders being charged with new offenses. Similarly, in *Measuring Recidivism: The Criminal History Computation of The Federal Sentencing Guidelines*, May 2004, the Sentencing Commission found that individuals with zero criminal history points (such as Mr. Warwick) have the statistically lowest recidivism rates – just over 10% overall, with recidivism being defined to include a new conviction, an arrest without a new conviction and a violation of probation or supervised release. The Commission further found that

factors such as an older age at the time of sentencing, employment during the year prior to sentencing, educational attainment, intact marital status, lack of illicit drug use and a sentence of probation or home detention instead of incarceration all were strong indicators against recidivism.

Finally, a sentence of incarceration is not necessary to meet the sentencing goals of providing medical, vocational or other treatment to Mr. Warwick.

Conclusion

For the foregoing reasons, Mr. Warwick respectfully requests that this Court consider all of the above factors and circumstances in determining an appropriate punishment, keeping in mind that he accepted responsibility and has already lost so much.

Respectfully submitted,

JOHN W. WARWICK

By: _____/s/
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CERTIFICATE

I hereby certify that on the 17th day of June, 2010, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following:

Michael S. Dry, AUSA
Office of the U. S. Attorney
600 East Main Street, Suite 1800
Richmond, Virginia 23219
(804) 819-5400
(804) 771-2316 fax

Rina C. Tucker Harris, Esq.
U. S. Department of Justice
10th & Constitution Ave. N.W.
Bond Building, Room 3118
Washington, D. C. 23530
(202) 353-8611

and by electronic mail and United States mail to:

Blakely D. Brown
United States Probation Officer
600 E. Main Street
Suite 2110
Richmond, VA 23219

/s/

Claire G. Cardwell
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24 June 2010

Judge George H. Wu
Los Angeles Central District Court, Western Division
312 N. Spring Street
Los Angeles, CA 90012
U.S.A.

Dear Honorable Judge Wu,

In pursuant of the request from the US Department of Justice, I would like to report the progress of the so-called Juthamas Case under investigation by the National Anti-Corruption Commission (NACC) as follows:

- (1) On 12 April 2010, the Enquiry Subcommittee on the Juthamas Case of which I am the Chairman agreed on the wordings of the Subcommittee's Notices of Allegations to Ms. Juthamas Siriwan, Ms. Jittisopa Siriwan, and Mr. Kitt Chambundabongse. According to our law, Ms. Juthamas who was classified as state official will be our alleged culprit, whereas Ms. Jittisopa and Mr. Kitt will be Ms. Juthamas' accomplices or supporters.
- (2) Official letters were sent to the three persons named above a week later, asking them to report to the Subcommittee to receive the Official Notice of Allegations on 3 May 2010. None had appeared on the designated day but all had sent written request for postponement to appear before the Subcommittee between a month and two months later. To comply with the NACC established rules and regulations, when the alleged culprit and supporters did not show up to collect the Official Notice of Allegations, we will send the said documents to them by registered mails. This we did on 24 May 2010 with the stipulation that if they did not send back their answers to the written allegations within 15 days after the receipt of our notifications, we could assume that they did not want to clear all the allegations.
- (3) However, by mid June 2010, we have received replies from all three persons acknowledging the receipt of our Official Notices of Allegations but with attached letters saying that they would not be able to send in their explanations until 23 July 2010. My Subcommittee will convene on 30 June 2010 to discuss whether the Subcommittee will allow such an extension. The Subcommittee may agree on a more suitable date in which the three alleged culprit and supporters may come to explain to the Subcommittee verbally, or send in their written statements, or both. The Subcommittee may grant the extension as requested for the sake of fairness and convenience of the alleged culprit and her supporters.
- (4) Once the Subcommittee has received all the explanations, including the testimonies of additional witnesses that may be required, we will deliberate

whether there is any prima facie case against any of these alleged culprit and her supporters. Whatever the case may be, the Subcommittee will submit its final report to the full NACC Board who will convene to consider the report within 30 days after the receipt of the Subcommittee's report. The decision to indict or absolve anyone rests with the majority vote on the NACC Board. If indictment is decided, the case report will be submitted to the Attorney General Office for prosecution in appropriate courts of justice. Other usual judicial procedures follow from this.

I hope the above information is useful in your own court case.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Medhi Krongkaew", with a stylized flourish at the end.

Professor Medhi Krongkaew
Commissioner