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 11 UNITED STATES OF AMERICA

12 UNITED STATES DISTRICT COURT
 13 FOR THE CENTRAL DISTRICT OF CALIFORNIA

14 UNITED STATES OF AMERICA,
 15 Plaintiff,
 16 v.
 17 HEON-CHEOL CHI,
 18 Defendant.

No. CR 16-824(A)-JFW
GOVERNMENT'S OBJECTIONS TO THE
 PRESENTENCE REPORT; MEMORANDUM OF
 POINTS AND AUTHORITIES; EXHIBITS
 Hearing: October 2, 2017
 Time: 9:00 a.m.
 Place: Courtroom of the Hon.
 John F. Walter, 7A

22 Plaintiff, United States of America, by and through its counsel
 23 of record, the United States Attorney for the Central District of
 24 California, Assistant United States Attorney Poonam G. Kumar, and
 25 United States Department of Justice Trial Attorneys Anna G. Kaminska
 26 and David M. Fuhr, hereby files its Objections to the Presentence

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1 Report (Dkt. 188). These objections are based on the attached
2 memorandum of points and authorities and exhibits, the files and
3 records in this case, and such further evidence and argument as the
4 Court may permit.

5

6 Dated: September 11, 2017

Respectfully submitted,

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. INTRODUCTION**

3 On April 12, 2017, defendant Heon-Cheol Chi ("defendant") was
4 charged in a First Superseding Indictment ("FSI") with six counts of
5 engaging in monetary transactions in property derived from specified
6 unlawful activity, in violation of 18 U.S.C. § 1957 and 18 U.S.C. §
7 2(b). (Dkt. 55.) The FSI also sought criminal forfeiture based on 18
8 U.S.C. § 981(a)(1) and 28 U.S.C. § 2461(c). As alleged in the FSI,
9 defendant abused his public position in South Korea by demanding and
10 receiving bribe payments from two private companies in excess of \$1
11 million into his Bank of America bank account in California. On six
12 different occasions, defendant then transferred large portions of
13 these corrupt funds into a Merrill Lynch investment account in New
14 York. The specified unlawful activity underlying each count was a
15 violation of Korean bribery law, specifically, Article 129 of South
16 Korea's Criminal Code. On July 17, 2017, a jury found defendant
17 guilty on one money-laundering count (Count Six), which alleged that
18 defendant deposited a \$56,000 check, representing a small portion of
19 his overall bribe proceeds, from Bank of America into his Merrill
20 Lynch account. (Dkt. 176.) The Court granted defendant's unopposed
21 motion for a mistrial on the other five money-laundering counts.
22 (Dkt. 162.)

23 On August 28, 2017, the United States Probation Office ("USPO")
24 issued its Presentence Report ("PSR"). The USPO calculated
25 defendant's base-offense level under U.S.S.G. § 2S1.1(a), concluding
26 that his underlying offense was a violation of bribery law and
27 thereby applying U.S.S.G. § 2C1.1. (PSR ¶ 20.) The PSR then set the
28 base-offense level at 24, which accounted for a 4-level enhancement

1 resulting from defendant's status as a public official in a high-
2 level, decision-making position, and applied a 1-level enhancement
3 for a conviction under 18 U.S.C. § 1957, yielding an adjusted offense
4 level of 25. (PSR ¶¶ 21-34.) With respect to the more than \$1
5 million in bribe payments, the USPO concluded that "it is unclear how
6 much of these funds constituted bribes versus income legitimately
7 earned by [defendant.]" (PSR ¶ 15, n.1.) Accordingly, the USPO
8 determined that "[i]n the absence of additional evidence, only the
9 \$56,000 is considered the proceeds of illegal activity." (Id.)
10 Given defendant's Criminal History Category of I, the PSR thus
11 calculated the applicable Guidelines range as 57 to 71 months. (PSR ¶
12 80.)

13 For the reasons set forth more fully below, the government
14 objects to the following portions of the PSR: (1) its use of U.S.S.G.
15 § 2S1.1(a)(1) to calculate defendant's base-offense level rather than
16 U.S.S.G. § 2S1.1(a)(2); (2) its inclusion of only the \$56,000 check,
17 when the evidence at trial demonstrated that defendant received and
18 transferred (in violation of 18 U.S.C. § 1957) over \$1 million in
19 bribe payments over the course of his scheme; and (3) its
20 determination not to apply an enhancement for abuse of trust, given
21 defendant's position and influence in South Korea, which allowed him
22 to facilitate the commission of the offense.

23 As detailed below, the government contends that the appropriate
24 calculation under U.S.S.G. § 2S1.1(a)(2) results in an adjusted
25 offense level of 25 with a Guidelines range of 57-71 months.
26 Moreover, the government submits that no variance is warranted based
27 on defendant's conduct, work history, lack of criminal history,
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1 family circumstances, health issues, or any other factor, as will be
2 argued in its separate sentencing memorandum.

3 **II. STATEMENT OF FACTS**

4 From 1994 through 2017, defendant was a public official at the
5 Korea Institute of Geoscience and Mineral Resources ("KIGAM"), a
6 research institute funded principally by the government of South
7 Korea. (PSR ¶ 9.) Defendant worked at all relevant times either as
8 the director of KIGAM's Earthquake Research Center or as a principal
9 researcher. (PSR ¶ 11.) KIGAM was established as the geological
10 survey of South Korea and serves important governmental functions,
11 including monitoring seismic activity from earthquakes and nuclear
12 tests. (PSR ¶ 9.) KIGAM purchases seismic equipment for its own use
13 in research and development from private companies, including Guralp
14 Systems Limited ("Guralp") and Kinemetrics, Inc. ("Kinemetrics").
15 (Id.) In addition, KIGAM is an official testing center that
16 certifies seismic instruments sold to and used by KIGAM and other
17 public entities in South Korea. (Id.)

18 Defendant abused his official position at KIGAM by demanding and
19 receiving bribes from both Guralp and Kinemetrics in exchange for
20 providing them with unfair business advantages, such as:

21 (1) advocating the purchase and use of Guralp and Kinemetrics
22 products by KIGAM at prices that included amounts to be paid to
23 defendant; (2) advocating the purchase and use of Guralp and
24 Kinemetrics products to other research institutes in South Korea,
25 including by using his position on the earthquake-monitoring
26 committee; (3) influencing KIGAM to certify Guralp and Kinemetrics
27 products even in instances when the products were not working; (4)
28 providing market intelligence to help Guralp and Kinemetrics improve

1 their respective positions in South Korea; and (5) providing
2 technical advice to increase the chance of sale of Guralp and
3 Kinemetrics products. (PSR ¶ 11(a)-(e).)¹

4 In order to effectuate his bribery scheme, defendant, who lived
5 and worked in South Korea, entered into secret side arrangements with
6 Guralp and Kinemetrics, pursuant to which he instructed the companies
7 to pay him into his personal checking account at Bank of America in
8 Glendora, California. (PSR ¶ 10.) Defendant also submitted
9 fictitious invoices that listed a false address in New Jersey in his
10 name. (Declaration of Anna G. Kaminska (hereinafter "Kaminska
11 Decl."), Exh. A (Gov't Trial Exh. 57).) As demonstrated at trial,
12 largely through defendant's own witnesses, KIGAM was not aware of
13 defendant's receipt of payments into his personal bank account in the
14 United States. (See, e.g., Chi Trial Tr. July 11, 2017, at 275:7-12
15 (testimony of C. Potts); id. at July 13, 2017, at 728:4-725:8;
16 737:19-738:9 (testimony of J.S. Shin); id. at July 14, 2017, at
17 782:14-784:12; 788:15-789:3 (testimony of J.H. Park); id. at 799:12-
18 21) (testimony of T.S. Lee); id. at 821:20-822:13 (testimony of H.H.
19 Kim); id. at 843:6-8 (testimony of B.C. Kim); id. at 854:13-855:7
20 (testimony of B.W. Kim).

21 Defendant confirmed in emails how he used his official role at
22 KIGAM to assist the companies, explaining to employees of Guralp in
23 2011, "I am fully responsible for the center and I would be involved
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25 ¹ The government objects to the PSR's recitation of defendant's
26 "technical input and support" services listed in paragraph 14. These
27 descriptions appear to be taken directly from a document submitted by
28 counsel for Cansun Guralp in the related civil litigation pending in
the United Kingdom. Given its context, the information contained in
the document is necessarily self-serving and made in anticipation of
litigation; it was not admitted during defendant's trial in this
district.

1 in the official advisory committee. Hence I should be more cautious
2 officially." (PSR ¶ 12.) Defendant also advised representatives of
3 Kinemetrics that "all high-level organizations belong to the
4 committee of earthquake monitoring organizations (this committee is a
5 legal committee by the law right now), and I have recommended to use
6 STS-2," which is equipment sold by Kinemetrics. (Id.) In return for
7 leveraging his influence to assist Guralp and Kinemetrics in doing
8 business in South Korea, defendant received a fee for every sale made
9 by both companies in South Korea. (Id.)

10 Defendant's emails plainly demonstrate his consciousness that
11 each and every payment he received from Guralp and Kinemetrics was
12 illegal. As far back as 2005, he wrote to an employee of Guralp that
13 "[u]sually I deleted all e-mail or papers related to agent fee or
14 advice fee because I am the director of earthquake research center
15 and I am not allowed to be involved in it." (Kaminska Decl., Exh. B
16 (Gov't Trial Exh. 89).) Moreover, defendant wrote in 2010 that "due
17 to my position, I am not allowed to participate in any activity of
18 private companies." (PSR ¶ 13.) In connection with advising
19 representatives of Guralp to send new equipment to KIGAM for testing,
20 defendant explained in 2014, "I am a governmental officer and I
21 should not have any contact with private company. Moreover, it is
22 illegal to assist any company related to the test." (Id.)

23 Between 2009 and 2015, defendant received bribe payments
24 totaling over \$1 million into his personal bank account in Glendora,
25 California. In each year, these bribe payments far exceeded his
26 legitimate income from KIGAM during that time period. (Kaminska
27 Decl., Exh. C (Gov't Trial Exh. 39).) Defendant then used the U.S.
28 financial system as a vehicle to launder his criminally derived

1 funds. For example, defendant made a series of transfers between his
2 Bank of America account in California and his Merrill Lynch
3 investment account in New York, which form the basis for the six
4 counts in the FSI. Defendant sent \$521,000 - approximately half of
5 the funds received into his Bank of America account - to his Merrill
6 Lynch investment account. Most of the remainder of the funds
7 received into his Bank of America account defendant spent back in
8 South Korea, where he lived. (Kaminska Decl., Exh. D (Gov't Trial
9 Exh. 35).)

10 **III. THE BASE-OFFENSE LEVEL SHOULD BE CALCULATED USING U.S.S.G. §**
11 **2S1.1(a)(2)**

12 The PSR used U.S.S.G. § 2S1.1(a)(1) to calculate the appropriate
13 Guidelines range. (PSR ¶ 20.) However, the government contends that
14 U.S.S.G. § 2S1.1(a)(2) should be applied to defendant's case because
15 the specified unlawful activity underlying defendant's money-
16 laundering conviction was a foreign offense (bribery pursuant to
17 Article 129 of South Korea's Criminal Code).

18 U.S.S.G. § 2S1.1(a) provides that the base-offense level for
19 engaging in monetary transactions in property derived from specified
20 unlawful activity may be calculated in one of two ways:

21 (1) The offense level for the underlying offense from which the
22 laundered funds were derived, if (A) the defendant committed the
23 underlying offense (or would be accountable for the underlying
24 offense under subsection (a)(1)(A) of § 1B1.3 (Relevant
25 Conduct)); and (B) the offense level for that offense can be
26 determined; or

1 (2) 8 plus the number of offense levels from the table in
2 § 2B1.1 (Theft, Property Destruction, and Fraud) corresponding
3 to the value of the laundered funds, otherwise.

4 The Ninth Circuit has held that foreign crimes may not be used to
5 calculate a defendant's base-offense level under U.S.S.G.
6 § 2S1.1(a)(1). Specifically, in United States v. Chao Fan Xu, the
7 Ninth Circuit "decline[d] to create the complexities that the
8 inclusion of foreign crimes in the base offense level calculation
9 would generate." 706 F.3d 965, 992-93 (9th Cir. 2013) (holding that
10 the base-offense level for defendants' money-laundering convictions
11 with a foreign bank-fraud predicate should be calculated using
12 § 2S1.1(a)(2)). As the Ninth Circuit cautioned, "[t]o permit foreign
13 crimes to figure in fixing the base offense level would require
14 courts to perform a careful comparative analysis of foreign and
15 domestic law in such instances," which is "highly problematic for
16 sentencing purposes." Chao Fan Xu, 706 F.3d at 992-93; see also
17 United States v. Azeem, 946 F.2d 13, 17 (2d Cir. 1991) (holding that
18 defendant's drug activities in Egypt should not be considered in
19 calculating his base-offense level for money laundering).²

20 Because the specified unlawful activity underlying defendant's
21 money-laundering conviction was a foreign offense, his base-offense
22 level should be calculated under § 2S1.1(a)(2), which sets it at 8

24 ² The government notes that if U.S.S.G. § 2S1.1(a)(1) and §
25 2C1.1 were applied in this case and all \$1 million in bribes received
26 by defendant were used, defendant's adjusted offense level would be
27 34, yielding a Guidelines range of 151-188 months, which is
28 substantially higher than the government's Guidelines calculation.
While the government does not believe that this calculation is
appropriate, the government does believe that this high range
underscores the severity of defendant's conduct and can be taken into
account when considering the factors under 18 U.S.C. § 3553(a),
including the nature and seriousness of the offense.

1 plus the number of offense levels corresponding to the value of
2 laundered funds in the Loss Table in § 2B1.1.

3 **IV. THE PSR DOES NOT ACCOUNT FOR THE VALUE OF ALL LAUNDERED FUNDS**

4 Under § 2S1.1(a)(2), defendant's base-offense level should be
5 calculated with reference to the number of offense levels from the
6 Loss Table in § 2B1.1 "corresponding to the value of the laundered
7 funds." As the Application Notes explain, the term "laundered funds"
8 means "the property, funds, or monetary instrument involved in the
9 transaction, financial transaction, monetary transaction,
10 transportation, transfer, or transmission in violation of 18 U.S.C. §
11 1956 or § 1957." U.S.S.G. § 2S1.1, App. N. 1. The PSR determined
12 that only \$56,000 constituted the proceeds of illegal activity and
13 thus increased the base-offense level by only 6 levels pursuant to
14 § 2B1.1. As set forth below, the government submits that the value
15 of the laundered funds was in excess of \$550,000 and less than \$1.5
16 million, requiring a 14-level increase.

17 The evidence at trial showed that, from 2009 to 2015, Guralp and
18 Kinometrics paid defendant \$1,044,690 in bribes into his California
19 Bank of America account and that 99% of the funds in that account
20 came from these two companies; the remaining 1% (or \$10,962.71) was
21 comprised of the beginning balance and other credits to the account.
22 (Kaminska Decl., Exh. E (Gov't Trial Exh. 34).) As detailed above,
23 each of these payments from Guralp and Kinometrics represented
24 bribes, and defendant's receipt of those funds violated Article 129
25 of South Korea's Criminal Code. It is defendant's movement of the
26 funds from his California bank account that constituted the violation
27 of 18 U.S.C. § 1957, and defendant's count of conviction involved a
28 \$56,000 check drawn on his California bank account and deposited into

1 his New York account. However, all of defendant's relevant conduct
2 should be considered here.

3 U.S.S.G. § 1B1.3(a)(2) defines relevant conduct as "all such
4 acts and omissions that were part of the same course of conduct or
5 common scheme or plan as the offense of conviction." A common scheme
6 or plan is established by offenses that are "substantially connected
7 to each other by at least one common factor, such as common victims,
8 common accomplices, common purpose, or similar modus operandi."

9 U.S.S.G. § 1B1.3, App. N. 5(B). Here, over an extended period,
10 defendant consistently directed bribe payments from Guralp and
11 Kinometrics into the same bank account in California and then
12 repeatedly conducted monetary transactions with those funds.
13 Accordingly, all of the funds with which defendant transacted from
14 his Bank of America account constitute relevant conduct, including
15 the counts on which the Court declared a mistrial, as well as
16 uncharged conduct. Cf. United States v. Watts, 519 U.S. 148, 157
17 (1997) ("a jury's verdict of acquittal does not prevent the
18 sentencing court from considering conduct underlying the acquitted
19 charge, so long as that conduct has been proved by a preponderance of
20 the evidence"); see, e.g., United States v. Rose, 20 F.3d 367 (9th
21 Cir. 1994) (holding that uncharged acts of fraud could be used in
22 calculating the value of laundered funds).

23 At trial, the government admitted into evidence charts
24 demonstrating defendant's use of funds from the California account
25 into which he received the bribes. (Kaminska Decl., Exhs. D & E.)
26 These charts show that, subtracting the beginning balance and credits
27 in defendant's account, defendant spent over \$1 million in these
28 bribe payments. (Id.) More specifically, defendant wrote \$521,000

1 in checks drawn on his Bank of America account to his Merrill Lynch
2 account. (Id.) In addition, defendant also laundered \$46,000 in
3 bribes by writing other checks from the same Bank of America account.
4 (Id.; Kaminska Decl., Exh. F (Gov't Trial Exh. 33).) Defendant also
5 spent the illicit funds using his Bank of America check card, both in
6 the United States and in South Korea. Indeed, defendant's spending
7 in Korea amounted to \$378,750.28, and defendant spent another
8 \$106,251.63 in other ways. (Kaminska Decl., Exh. D.) Thus, the
9 amount of laundered funds, including all relevant conduct,
10 undoubtedly exceeds \$550,000 and is less than \$1.5 million.
11 Accordingly, a 14-level enhancement is appropriate. See U.S.S.G.
12 § 2B1.1.

13 The USPO included only \$56,000 as laundered funds based on the
14 determination that it could not distinguish between "bribes versus
15 income legitimately earned by Chi." (PSR ¶ 15, n.1). However, no
16 such distinction exists. As the evidence demonstrated at trial, all
17 of the funds defendant received from Guralp and Kinometrics into his
18 California bank account were paid to him in violation of Article 129
19 of South Korea's Criminal Code, i.e., in exchange for performing an
20 act within his official duties, whether such act included
21 "monitoring," "troubleshooting," "technical support," or otherwise
22 (id. at ¶ 14). At bottom, none of these payments was "legitimately
23 earned." Defendant understood as much, given the numerous emails
24 spanning the relevant time period in which he asked that the paper
25 trail underlying his "advice fees" be deleted and that his payments
26 be kept secret from KIGAM. Accordingly, the government submits that
27 it has proven, by a preponderance of the evidence, that the laundered
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1 funds totaled approximately \$1 million and, thus, a 14-level
2 enhancement pursuant to § 2B1.1 is appropriate.

3 **V. AN ABUSE-OF-TRUST ENHANCEMENT APPLIES**

4 Finally, a two-level enhancement for abuse of trust pursuant to
5 U.S.S.G. § 3B1.3 should be applied. Such an enhancement is
6 appropriate where "the defendant abused a position of public or
7 private trust, or used a special skill, in a manner that
8 significantly facilitated the commission or concealment of the
9 offense." U.S.S.G. § 3B1.3. "Public or private trust" refers to "a
10 position of public or private trust characterized by professional or
11 managerial discretion (i.e., substantial discretionary judgment that
12 is ordinarily given considerable deference)." U.S.S.G. § 3B1.3, App.
13 N. 1. "Persons holding such positions ordinarily are subject to
14 significantly less supervision than employees whose responsibilities
15 are primarily non-discretionary in nature," and "[f]or this
16 adjustment to apply, the position of public or private trust must
17 have contributed in some significant way to facilitating the
18 commission or concealment of the offense (e.g., by making the
19 detection of the offense or the defendant's responsibility for the
20 offense more difficult)." Id.

21 In light of his credentials, expertise, and experience,
22 defendant served at KIGAM for over two decades in senior-level
23 positions. (Kaminska Decl., Exh. G (Gov't Trial Exh. 1A).) As the
24 PSR recognized, "[a]s a public official, Chi had authority and/or
25 considerable influence over decisions made by KIGAM," and "[h]e used
26 this influence to create advantages for Kinometrics and Guralp."

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1 (PSR ¶ 25.)³ In defendant's positions as director and principal
2 researcher at KIGAM, defendant oversaw public-works projects
3 involving seismic activity across South Korea, including earthquakes
4 and nuclear weapons tests in neighboring North Korea, and he thus
5 held a position of enormous public trust. In his positions at KIGAM,
6 defendant had access to sensitive inside information, including about
7 public and private bidding and equipment certifications, and he
8 liaised with and advised important figures in the worlds of politics
9 and science, including senior South Korean government officials and
10 members of official committees on which he served in connection with
11 his role at KIGAM. Among defendant's responsibilities was also
12 serving as a delegate of South Korea to the Working Group B of the
13 Comprehensive Nuclear Test Ban Treaty Organization in Vienna. His
14 position, knowledge, and status enabled defendant to steer business
15 in favor of Guralp and Kinometrics to the detriment of their
16 competitors. And in so doing, defendant abused this position of
17 public trust by utilizing the knowledge he gained from his position
18 in order to perpetrate his bribery scheme over an extended period.
19 Accordingly, the abuse-of-trust enhancement should apply here.

20 **VI. THE GOVERNMENT'S GUIDELINES CALCULATION**

21 Based on the government's arguments set forth above, the
22 government respectfully submits that the following is the correct
23 adjusted offense level for defendant's bribery scheme:
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27 ³ The USPO appears not to have considered an enhancement
28 pursuant to § 3B1.3 because such an enhancement is inapplicable when
§ 2C1.1 is used to calculate the base-offense level. See U.S.S.G.
§ 2C1.1, App. N. 6.

1	Base-Offense Level	8	[U.S.S.G. § 2S1.1(a)(2)]
2	Value of Laundered Funds	+14	[U.S.S.G. § 2S1.1(a)(2);
3	over \$550,000 but less		U.S.S.G. § 2B1.1(b)(1)(H)]
4	than \$1.5 million		
5	Conviction Under 18	+1	[U.S.S.G. § 2S1.1(b)(2)(A)]
6	U.S.C. § 1957		
7	Abuse of Position of	+2	[U.S.S.G. § 3B1.3]
8	Trust		
9	Total Offense Level	25	

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For Criminal History Category I, this results in a Guidelines range of 57-71 months.

VII. CONCLUSION

For the foregoing reasons, the government respectfully requests that the Court sustain the government's objections to the PSR.