UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v. Case No. 10-CR-6

SUJATA SACHDEVA,

Defendant.

MEMORANDUM IN SUPPORT OF SENTENCING

The Hon. Lynn Adelman
United States District Court
U.S. Courthouse
517 East Wisconsin Avenue
Milwaukee, WI 53202

A.U.S.A. Matthew L. Jacobs
U.S. Department of Justice
U.S. Courthouse, 5th Floor
517 East Wisconsin Avenue
Milwaukee, WI 53202

Defendant Sujata Sachdeva (Sachdeva), by her attorneys Brian Kinstler and Michael F. Hart, respectfully submits her memorandum in support of sentencing to assist the Court in crafting an appropriate and just sentence.

At the outset, Sue Sachdeva fully acknowledges that she has committed serious crimes; that she has betrayed the trust placed in her by the Koss Corporation, its directors and officers, and especially members of the Koss family; and that substantial financial losses have been suffered as a result of her actions.

Since her arrest on December 21, 2010, Sachdeva has fully accepted responsibility for her actions. Within days of her arrest, Sachdeva assisted the Koss Corporation, its accountants, and the government in determining the amount of the loss and the means by which it occurred. She has cooperated with all requests by the government, and done everything within her power to identify, preserve, and recover assets available for restitution.

Sachdeva has been vilified in the press to an unusual degree, and has endured the shame and suffering that her actions have brought on her family. She has already lost her career, her status, her worldly possessions, her home, and her marriage. She will lose her freedom. Even worse, she will be unable to watch over her two children as they move from the middle of their childhood to become teenagers, then young adults.

Sachdeva seeks a sentence that is rational and proportionate in light of the facts and circumstances of her case. Sachdeva respectfully submits that a below-the-guidelines sentence comports with reason, sound public policy, and the purposes of 18 U.S.C. § 3553(a),[1] and recommends that the Court (1)

[1] The government and PSR agree with the following Guidelines calculation:

Base Offense Level -- § 2B1.1(a)(l)	7
Loss of more than $20,000,000 -- § 2B1.1(b)(l)(L)	22
Offense involving sophisticated means -- § 2B1.1(b)(9)	2
Defendant substantially endangered the solvency or financial security of a publicly-traded corporation -- § 2B1.1(b)(14)(B)(ii)	4
Defendant was an organizer or leader -- § 3B1.1(c)	2
Defendant abused a position of trust -- § 3B1.3	2
Acceptance of Responsibility -- § 3E1.l(a) and (b)	-3
Total Offense Level	36

adjust the final offense level downward by six levels to account for the disproportionate impact of the loss amount enhancement, and (2) reduce the sentence a further 30% based upon the mitigating factor of Sachdeva's mental health issues, which take this offense out of the "heartland" of similar offenses. Such a sentence takes full account of the complete range of traditional sentencing factors, not the least of which is the seriousness of her conduct. However, the resulting sentencing range also takes into account two significant factors that are relevant to the Court's consideration under § 3553(a): (1) Sachdeva's psychiatric illness, which was a substantial contributing factor in her misconduct, and (2) the disproportionate impact of the loss amount on the Guidelines calculation.

I. Sachdeva's Mental Health Diagnosis Is a Substantial Mitigating Factor That Justifies a Downward Departure from the Guidelines Sentencing Range

Sachdeva has provided to the Court a mental health evaluation by one of the world's leading experts on bipolar disorder and related impulse control disorders. It is the expert's opinion, to a reasonable degree of professional certainty, that Sachdeva suffers a number of related mental illnesses, most notably (1) bipolar disorder, not otherwise specified, (2) impulse control disorder – specifically, compulsive shopping (or "oniomania"), and (3) panic

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PSR at ¶ 46-59. With no criminal history, the resulting guidelines sentencing range is 188-235 months.

disorder with agoraphobia. Although none of these conditions was diagnosed until after her arrest, they are not the convenient invention of a creative defense counsel; the diagnoses are the result of careful clinical evaluation by a world-class expert.

As explained in greater detail in the reports submitted by counsel, Sachdeva's longstanding mental health issues eventually led to her engaging in extravagant buying sprees. Compulsive shopping is classified in the DSM-IV-TR as an Impulse-Control Disorder NOS, the essential feature of which is "the failure to resist an impulse, drive, or temptation to perform an act that is harmful to the person or to others." As in the present case, compulsive shopping frequently co-occurs with bipolar disorder and other mood and anxiety disorders. Typical compulsive shoppers experience shopping as exciting and mood-enhancing, even experiencing a substantial narcotic-like "high," then experience severe remorse, regret, and depression immediately afterwards.

It is true that Sachdeva is not being prosecuted for compulsive buying. However, there are several factors in this case that directly link Sachdeva's compulsive buying behavior to the offense at hand. First, it is difficult to find anything rational about the purchases made by Sachdeva. The vast majority of her purchases consisted of expensive clothing, jewelry, and accessories that she never wore. Indeed, when federal law enforcement collected the

purchases, *most clothing still had the price tags on them*. Hundreds of thousands of dollars worth of items were never even picked up from the store, and millions of dollars worth of clothing simply went into storage facilities because she had no room left in her home. This was not selfishness; it was hoarding. Despite what some might say, her buying behavior was driven not by sheer greed, but rather by compulsion.

Second, the impulse control disorder that led to her purchases did not simply disappear when she arrived at work. As addressed above, Sachdeva found herself depressed, remorseful, and generally in a panic about how to pay the exorbitant costs of these buying binges. It was under these conditions that she took Koss funds, hoping to keep her panic under control and promising herself that she would eventually repay the money to the company. Over time, her shopping became more frenzied, and as her unpaid bills mounted her mood swings and periods of rapid cycling intensified, increasing her drive to buy still more. She had all of her personal bills sent to the office, and just opening the bills would cause her to gag, break into a heavy sweat and have trouble breathing. The frequent phone calls from merchants and vendors demanding payment or partial payment of her huge bills caused more panic attacks. Sue's irrational response was to continue to pay the bills with Koss funds, increasing her already severe anxiety. She would then plunge into a binge of shopping again—seeking relief and release,

but also driving up her account balances, her anxiety and her guilt in an ever-increasing spiral.

The cycle continued for several years, and at each stage, her guilt, anxiety, and depression became more profound. From 2004 through the time of her arrest, Sachdeva literally expected her embezzlement to be discovered at any time; she would have panic attacks frequently, especially when Michael Koss would call her into his office – an event that took place several times a day. When the time for the annual audit came, she was paralyzed by fear, and incapable of covering up her theft on her own. By 2009, she was prescribed Prozac, the pharmaceutical equivalent of putting out a fire with gasoline, and her compulsive behaviors increased exponentially. When she was arrested in December 2009, it came as a genuine relief.

The facts of this offense take it outside the "heartland" of embezzlement cases as contemplated by the Guidelines. The vast majority of embezzlements are the product of careful planning and calculated means – the planned removal of funds for the sake of financial profit. Here, there was nothing of the sort. Sachdeva's theft was an after-the-fact attempt at paying for irrational, compulsive spending that she could no longer control, and which in turn led to even greater spending. The impetus to commit her crimes was the product of an undiagnosed, untreated, and increasingly severe mental disorder. This is not to say that Sachdeva was incapable of

appreciating the wrongfulness of her actions. But her capacity to control her own conduct was severely compromised, as was her ability to exercise judgment and insight.

This is the essence of mitigating circumstances, and justifies a significant downward departure. Sachdeva respectfully requests that the Court consider a reduction of 30% from the Guidelines range, after consideration of her objections to the PSR and the recommended adjustment to the loss amount enhancement detailed below.

II. The Enhancement for Amount of Loss Under U.S.S.G. § 2B1.1(b)(l) Has a Disproportionate Impact on Sentencing Ranges in High-Loss Amount Cases.

As this Court is well aware, the Guidelines are no longer the sole determining factor in federal sentencing determinations. In United States v. Booker, 543 U.S. 220, 259 (2005), the Supreme Court held that the Guidelines violate the Sixth Amendment's guarantee to a jury trial and struck down the statutory provision that made the Guidelines mandatory. In Rita v. United States, 551 U.S. 338 (2007), the Supreme Court held that 18 U.S.C. § 3553(a) is the lodestar for sentencing courts, and that in ordinary cases, the United States Sentencing Guidelines will in "reflect a rough approximation of sentences that might achieve § 3553(a)'s objectives." Rita, 551 U.S. at 350. Thus, a district court's decision to vary from the advisory Guidelines may attract greatest respect when the sentencing judge finds a

particular case " 'outside the 'heartland' to which the Commission intends individual Guidelines to apply." Rita at 351. In Gall v. United States, 552 U.S. 38 (2007), the Supreme Court further clarified that the Guidelines are only one of many factors a district court must consider when imposing a sentence, and that the sentencing judge is "in a superior position to find facts and judge their import under § 3553(a) in each particular case." Gall, 552 U.S. at 49-50. Finally, in Kimbrough v. United States, 552 U.S. 85 (2007), the Supreme Court held that a sentencing court's policy disagreement with the Sentencing Commission can form the basis for a non-Guidelines sentence which is reasonable and consonant with § 3553(a).

In light of Booker, Rita, Gall, and Kimbrough, Sachdeva asks this Court to find that the loss amount enhancement – here, representing a 22-level increase – has a disproportionate impact on the Guidelines sentencing range, resulting in a guidelines calculation that is not the product of common sense, logic, or experience, and is not supported by empirical data or congressional directive. It is, at best, an arbitrary calculus that is not a rational starting point for a district court's sentencing discretion.

It goes without saying that the Guidelines should take the amount of loss into account in so-called white-collar offenses. However, the impact of high loss amount enhancements under U.S.S.G. § 2B1.1 dwarf that of any other guideline sentencing provision, and have a disproportionate influence

on the resulting sentence. Whether the Court adopts Sachdeva's guideline calculation or that of the government, the final offense level will be dominated by the 22-level increase for amount of loss under U.S.S.G. § 2B1.1 (b)(1)(L). This is more than three times the base offense level. No other Guidelines enhancement comes close to the 22 levels added under Section 2B1.1 (b)(1) in this case; the same holds true in Section 2A, which deals with violent crime. Indeed, only six other double-digit enhancements exist in the whole of the Guidelines; these range from 12 to16 levels.[2]

The loss amount enhancement under U.S.S.G. § 2B1.1 is therefore unique among guidelines provisions. As other federal district courts have recognized, the disproportionate impact of loss amount on the calculation effectively renders the Guidelines meaningless in many white collar cases. See United States v. Adelson, 441 F. Supp. 2d 506, 512 (S.D.N.Y. 2006) (describing "the utter travesty of justice that sometimes results from the guidelines' fetish with abstract arithmetic, as well as the harm that guideline

[2] Aside from the loss amount enhancements in U.S.S.G. § 2B1.1, the largest enhancements contained in the Guidelines are as follows:

Enhancement	Offense Level Increase
Obstruction of justice related to terrorism (2J1.2(b)(l)(C))	12
Felony involving or intending to promote terrorism (3A1.3(a))	12
Willfully boarding an aircraft with a dangerous weapon or material without regard for the safety of human life (2K1.5(b)(1))	15
Trafficking, receiving or possessing a portable rocket, missile, or launcher (2K2.1(b)(3)(A))	15
Unlawfully entering or remaining in the United States after being convicted of certain major felonies (2L1.2(b)(1)(A))	16
Bid-rigging or price-fixing, if commerce volume exceeds $1,500,000,000 (2R1.1 (b)(2)(H))	16

calculations can visit on human beings if not cabined by common sense."); see also United States v. Parris, 573 F. Supp. 2d 744,745,754 (E.D.N.Y. 2008) (describing "the Sentencing Guidelines for white-collar crimes" as "a black stain on common sense").

Like the guidelines governing the crack/powder cocaine distinction at issue in Kimbrough, the loss amount enhancements contained in U.S.S.G. § 2B1.1 did not arise out of Sentencing Commission's exercise of its institutional role in assessing empirical data and nationwide judicial experience. Rather, § 2B1.1 was the result of "a combination of the Commission's policy determinations, reaction to public sentiment, and a desire to implement congressional policy." Derick Vollrath, Note, Losing the Loss Calculation: Toward a More Just Sentencing Regime in White-Collar Criminal Cases, 2010 Duke Law Journal 1001, 1032 (2010). Similarly, the Commission did not create the white-collar guidelines in general – or the loss-amount enhancement in particular – in response to an explicit congressional directive; these were authorized by nothing more specific than the 1984 Comprehensive Crime Control Act. Id. at 1034-35. Simply put, the loss amount guidelines are no more privileged than those involving the crack/powder distinction; both are, and should be, subject to a reasonable exercise of this Court's post-Kimbrough discretion.

This is precisely the position taken by Judge Rakoff in United States v. Adelson, 441 F.Supp.2d 506 (S.D.N.Y.,2006); *aff'd* mem., 301 Fed.Appx. 93 (2d Cir.2008). Judge Rakoff first addresses the loss amount enhancement contained in U.S.S.G. § 2B1.1(b)(1):

> What drove the Government's calculation in this case, more than any other single factor, was the inordinate emphasis that the Sentencing Guidelines place in fraud cases on the amount of actual or intended financial loss. As many have noted, the Sentencing Guidelines, because of their arithmetic approach and also in an effort to appear "objective," tend to place great weight on putatively measurable quantities, such as the weight of drugs in narcotics cases or the amount of financial loss in fraud cases, without, however, explaining why it is appropriate to accord such huge weight to such factors. Specifically, under § 2B1.1 of the guidelines, a defendant who violates the federal anti-fraud laws starts with a base offense level of either 6 or 7 (depending on the date of the offense), to which is added, e.g., 16 points if the loss is more than $1 million, or 24 points if the loss is more than $50 million, or 28 points if the loss is more than $200 million. United States Sentencing Guidelines

Adelson, 441 F.Supp.2d at 509 (S.D.N.Y.,2006). Next, the district court considered the multiple other enhancements that are frequently applied in white-collar prosecutions.

> While one might theorize as to why the Sentencing Commission promulgated each of these additions, "the [Sentencing] Commission has never explained the rationale underlying any of its identified specific offense characteristics, why it has elected to identify certain characteristics and not others, or the weights it has chosen to assign to each identified characteristic." Here, their combined effect – an added 20 points under the Government's approach – ill-fits the situation of someone like Adelson. It represents, instead, the kind of "piling-on" of points for which the guidelines have frequently been criticized. Nonetheless, a district court is obligated to add such points where, on a preponderance standard, they are supported by the evidence; and, in the end, the Court found that each of the aforementioned additions except the 2-point adjustment for endangering the financial security of a publicly-traded company and the 2-point adjustment for obstruction of justice were sufficiently supported by the evidence to require their addition.

Adelson, 441 F.Supp.2d at 510-11 (quoting Kate Stith & José A. Cabranes, Fear of Judging: Sentencing Guidelines in the Federal Courts 69 (1998)). By adding loss amount enhancements to other nearly-obligatory enhancements from §2B1.1, the result in this case is a range of 188 – 235 months, or approximately 15 to 20 years. Notably, it is almost unnecessary to address the "other" axis of the Guidelines Sentencing Table – Criminal History Category – because the vast majority of white-collar defendants (like Sachdeva) come to the sentencing court no criminal record at all.

These offense level calculations stand in stark contrast to the original goals of the white-collar offense guidelines, which specifically contemplated a need for "short but definite" sentences. "One significant goal of the Sentencing Guidelines was to create a system in which white collar offenders received 'short but definite periods of confinement' and moving away from sentences that did not include at least some term of imprisonment. They were largely successful in that regard ..." Peter J. Henning, White Collar Crime Sentences After Booker: Was the Sentencing of Bernie Ebbers Too Harsh?, 37 McGeorge L. Rev. 757, 781 (2006); see also United States Sentencing Commission, Fifteen Years of Guidelines Sentencing 56 (2004) (stating "that the Sentencing Guidelines were written, in part, to 'ensure a short but definite period of confinement for a larger proportion of these 'white collar' cases, both to ensure proportionate punishment and to achieve deterrence.' ");

See also Justice Stephen Breyer, The Federal Sentencing Guidelines and the Key Compromises Upon Which They Rest, 17 Hofstra L. Rev. I, 22 (1988) (stating that "the Commission believed that a short but definite period of confinement might deter future [white collar] crime more effectively than sentences with no confinement condition.").

In sum, the Guidelines calculation – which should function as the rational starting point for a sentencing determination – cannot and should not be based on loss amount enhancements that are disproportionate in relation to any other Guidelines enhancement.

However, the Court need not disregard the Guidelines entirely. Sachdeva suggests the following solution: rather than completely disregard the Guidelines, as other courts[3] have felt compelled to do, the Court should take the opportunity to adjust the loss amount enhancement in § 2B 1.1 to bring it into line with all the other double-digit Guidelines enhancements by setting it at 16 levels instead of 22. The enhancement would still be as large as the most severe existing Guidelines provision, but would put it closer in line to the "short but definite" sentences originally envisioned by the Sentencing Commission, and would prevent loss amount from overwhelming

[3] See Adelson at 509 (stating, in white collar case, that where "the calculations under the guidelines have so run amok that they are patently absurd on their face, a Court is forced to place greater reliance on the more general considerations set forth in section 3553(a)"); see also Parris, 573 F. Supp. 2d at 751 ("My search for more relevant guidance, therefore, had to proceed in other directions, although I would have much preferred a sensible guidelines range to give me some semblance of real guidance.").

all other sentencing factors in what is fundamentally a non-violent property crime.[4]

III. Application of the 3553(a) Factors

In imposing sentence, the district court must consider the factors set forth in § 3553(a):

> (1) the nature and circumstances of the offense and the history and characteristics of the defendant;
> (2) the need for the sentence imposed-
> (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
> (B) to afford adequate deterrence to criminal conduct;
> (C) to protect the public from further crimes of the defendant; and
> (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;
> (3) the kinds of sentences available;
> (4) the advisory guideline range;
> (5) any pertinent policy statements issued by the Sentencing Commission;
> (6) the need to avoid unwarranted sentence disparities; and
> (7) the need to provide restitution to any victims of the offense.

18 U.S.C. § 3553(a). After considering these factors, the Court must impose a sentence that is "sufficient but not greater than necessary" to comply with the purposes of sentencing-punishment, deterrence, protection of the public, and rehabilitation of the defendant. The court should give respectful consideration to the guidelines recommendation in making this determination, see Gall v. United States, 552 U.S. 38, 46, 49 (2007), but it

[4] As noted in the commentary to Guidelines § 2B1.1, "[t]here may be cases in which the offense level determined under this guideline substantially overstates the seriousness of the offense."

may not presume that a guideline sentence is the correct one, Nelson v. United States, 129 S.Ct. 890, 892 (2009); Rita v. United States, 551 U.S. 338, 351 (2007), or place any "thumb on the scale" favoring a guideline term, United States v. Sachsenmaier, 491 F.3d 680, 685 (7th Cir. 2007). Rather, the court must make an independent determination, taking into account the types of sentences available, the other relevant § 3553(a) factors, and the arguments of the parties, see Gall, 552 U.S. at 49-50, and keeping in mind that the parsimony provision quoted above represents the "overarching" command of the statute, see Kimbrough v. United States, 552 U.S. 85, 101 (2007).

1. The Nature and Circumstances of the Offense and the History and Characteristics of the Defendant

a. The Offense Conduct

It is undisputed that Sachdeva took in excess of $34 million from the Koss Corporation during the period from 2004 to December 2009. The government characterizes this as a sophisticated embezzlement, and implies – but does not say outright – that Sachdeva took vast sums of money in a cold and calculated manner, then spent the money on extravagances for herself. While this may be the more common pattern in an embezzlement case, it misstates the circumstances under which the funds were taken here, and Sachdeva roundly rejects this mischaracterization. Virtually without exception, Sachdeva charged her irrational, extravagant purchases to her

American Express credit card, or purchased items directly from retailers on account. As the bills for these purchases came due, Sachdeva would make payments by using funds drawn from Koss' Park Bank account in Milwaukee. Funds were first withdrawn in the form of cashier's checks, then, beginning in 2008, in the form of wire transfers. In simple terms, she made the purchases first, then used Koss funds to pay for them in a "catch-as-catch-can" manner. The cashier's checks and wire transfers were sent directly to American Express or other merchants, and were never disguised or laundered through fictitious entities or accounts.

Sachdeva did not keep track of the amount she spent compulsively shopping and spending, nor did she keep an accounting of the cashier's checks or wire transfers she used to pay American Express or other merchants. Sachdeva's efforts to avoid discovery by auditors took place toward the end of each fiscal year, under conditions of extreme panic. In May of each year – a few weeks prior to scheduled visits from outside auditors – Sachdeva would review the amount of cash in the company's ledgers, compare it with the amount of cash in the company's bank accounts, then determine the difference between the two. Sachdeva would presume that the cash shortfall figure was equal to her theft of company funds. She would then call Julie Mulvaney into her office in a panic, and tell Mulvaney that cash was "off" by a certain amount. Mulvaney would respond by saying "let

me look at everything and get back to you and don't worry." Mulvaney would then alter figures in the ledgers. As stated in paragraph 31, the changes consisted primarily of understating payments received from Koss vendors to match the amount of the cash shortfall.

During these pre-audit periods, Mulvaney would work independently and without direct supervision to reconcile the company's ledgers with the available cash, and only minimally shared her methods with Sachdeva. Sachdeva, who was preoccupied with the fear of being discovered and too emotionally distraught to manage the fraudulent entries, would constantly ask Mulvaney at work if everything had been "fixed," and would frantically call Mulvaney at home, sometimes late at night, to see if the cash had been reconciled. Mulvaney would have to constantly reassure Sachdeva that everything would be alright. Eventually, Mulvaney would give Sachdeva an adding machine tape containing a list of receivables that had been fraudulently "held back," with the total amount matching the cash shortfall. Sachdeva, knowing that the shortfall had been "covered," would then throw the adding machine tape away. This was how the main ledger was temporarily balanced in advance of the audit at the end of each fiscal year.

However, after the annual audit, Mulvaney would re-apply vendor payments to the Koss ledger, which put the cash accounting problem back to square one. In order to eliminate the missing cash, Mulvaney – without

supervision or specific direction from Sachdeva – performed a series of fraudulent revisions to Koss' computerized ledgers over the course of several months. These revisions to Koss' books consisted primarily of "debit/credit wipes" (see PSR at ¶ 40), by which Mulvaney revised the ledgers to overstate expenses and costs, and understate sales, until Koss' ledgers matched the amount of cash remaining on the books. Although Sachdeva was generally aware that Mulvaney was altering the numbers to match the amount of cash on hand, she was not involved in either selecting or entering specific figures. In particular, Sachdeva denies knowledge that Mulvaney kept track of these changes in the so-called "red ledger" that was later recovered by investigators.

The government takes the position that Sachdeva, "in order to avoid detection," would not take money from Koss accounts at Park Bank in the month of June, a month which was reviewed by outside auditors. This gives the impression that Sachdeva's conduct was either planned or strategic. In fact, it was neither. Simply put, Sachdeva would avoid taking money from Koss accounts while she knew that outside auditors were essentially looking directly over her shoulder at such transactions.

By June 2009, Sachdeva's compulsive buying – fueled to new and dangerous levels by misprescribed Prozac – was completely beyond her control, and funds were taken from Koss' accounts indiscriminately, including

during the end-of-fiscal year audit period. It remains an unanswered question how the 2009 audit failed to take notice of these transactions.

b. History and Characteristics of the Defendant

The Presentence Investigation Report by the Probation Office, in combination with the materials supplied to the Court by Sachdeva, provide a fair and complete picture of Sue Sachdeva's background and personal history. What follows is a brief summary of those materials.

Sachdeva was born and raised in Burma (now known as Myanmar), to a prominent Indian family. Her father was a civil engineer who worked for the independent Burmese government; her mother was an English teacher. Both parents had close personal and family ties to the Burmese leadership. From the time the military seized power in 1962 until they escaped the country in 1977, the family lived in a state of detention and privation. Although her father was permitted to work as a civil engineer, the family remained under constant surveillance by the military dictatorship because of her family's ties to the deposed democratic leadership.

Throughout the years of living under martial law, Sachdeva and her family witnessed and experienced what can only be termed atrocities committed at the hands violent and heavily-armed government soldiers. The memories of these events haunt Sachdeva to this day.

In 1977, when Sachdeva was 13 years old, her family was able to escape Burma with little more then the clothes on their backs. After some initial hardship, Sachdeva integrated well to the life of a high school student on Long Island. She worked during the school year and during summers, and graduated at age 16. She attended college on Long Island, and graduated from Stony Brook University in 1985 with a degree in finance.

In 1986, Sue met and became engaged to Ramesh Sachdeva, a young and talented doctor from a prominent and successful family. For the next year, she remained in New York, working in the real estate division of Smith Barney, and Ramesh began his residency in Detroit. By 1989, the couple was married and living in Milwaukee. While Ramesh undertook a fellowship at Children's Hospital, Sue began as a temporary worker for Koss. Within six months, she was named Vice-President of Finance. She was 27 years old. When Ramesh moved to Texas to complete an M.B.A. and Ph.D., Sue moved with him, and continued her work by means of telecommuting. Their first child, Shiva, was born in 1998. The couple returned to Milwaukee in 1999, and Sue gave birth to a daughter, Simran, in 2000.

Over the next decade, Sue Sachdeva maintained her position at Koss, and was active as a board member and fundraiser for a number of local organizations, including Big Brothers and Big Sisters of Metro Milwaukee; Boys and Girls Clubs of Greater Milwaukee, Friends of the Milwaukee Public

Museum, Cardinal Stritch University, Skylight Opera Theatre, Childrens' Service Society of Wisconsin, American Heart Association, and Meta House. In a January 2010 article printed in the Milwaukee Journal-Sentinel, a prominent Milwaukee philanthropy executive estimated that Sue Sachdeva was responsible for raising a million and a half dollars a year for charitable organizations.

From the day she was arrested, Sachdeva has done everything possible to start to make amends for her crimes and mitigate their impact. She admitted to her theft when first confronted by the FBI at her home on December 21, before she was even taken into custody. On January 8 and 9, 2010, Sachdeva and Attorney Michael Hart met for several hours with auditors and attorneys for Koss, and disclosed as complete a picture of the embezzlement as she was capable of providing. At that time, a representative of Jefferson Wells told Sachdeva and her counsel that her explanation had saved them a great amount of time by explaining how the transactions were executed, which allowed Koss to revise their financial statements, and to resume trading as scheduled. The majority of Sachdeva's embezzlement was ascertainable after the first several hours of Sue's "debrief" with Koss and their accountants.

Sachdeva pleaded guilty well in advance of trial, cooperated with the government in the collection of assets, and agreed without objection to forfeit

all of her personal assets. In her continuing efforts to cooperate with Koss, she has made herself available for civil depositions and will continue to do so to even after sentencing.[5]

2. Specific and General Deterrence; Protection of the Community; Rehabilitative Needs.

The sentence recommended here – and the many collateral consequences of this prosecution – are more than sufficient to deter Sachdeva from engaging in illegal conduct. Aside from the present charges, she has led an otherwise law-abiding and pro-social life, and has never spent a single day in custody. The punishment of several years of prison, separation from her children, the high burden of restitution, and the stigma of a highly public felony conviction will always serve as a substantial reminder of the consequences of her actions. It is unlikely that Sachdeva will ever be in a position to commit such a crime again, and there is no reason to believe that she is predisposed to commit any other form of criminal conduct.

As for general deterrence, "there is considerable evidence that even relatively short sentences can have a strong deterrent effect on prospective

[5] All of these actions should weigh in favor of leniency under Section 3553(a). See United States v. Milne, 384 F. Supp. 2d 1309, 1312 (E.D. Wis. 2005) ("Where appropriate, courts may grant additional consideration to defendants who demonstrate acceptance beyond that necessary to obtain a two or three level reduction under § 3E1.1. This is so because such conduct bears directly on their character, and on how severe a sentence is necessary to provide deterrence and punishment. Further, courts should encourage offenders to mitigate their misconduct voluntarily.") (internal citations omitted). See also United States v. Haversat, 22 F.3d 790, 795 (8th Cir. 1994) (noting that assistance in settling related civil lawsuit is relevant to acceptance of responsibility and comparing such assistance to "voluntary assistance to authorities in the recovery of the fruits and instrumentalities of the offense").

'white collar' offenders." See Adelson, 441 F. Supp. 2d at 514 (citing Richard Frase, Punishment Purposes, 58 Stanford L. Rev. 67, 80 (2005), and Elizabeth Szockyj, Imprisoning White Collar Criminals, 23 S. III.U.L.J. 485, 492 (1998)).

As for protection of the community, there would appear to be no real concern that the community at large needs to be protected from Sachdeva, whose non-violent offense was largely the result of an undiagnosed mental health condition and the exceptional access to large amounts of corporate funds without internal significant oversight.

As for her rehabilitative needs, Sachdeva has come a very long way since the date of her arrest. She has received proper diagnosis and treatment for the first time in her entire life. Although continued counseling, medication, and treatment may continue indefinitely, there is no particular need for it to take place in a confined setting, nor is there any particular benefit to doing so.

3. The Need to Avoid Unwarranted Sentence Disparities

As discussed above, the last decade of high-profile, high loss amount fraud prosecutions has raised significant questions regarding the validity and reasonableness of U.S.S.G. 2B1.1. As a result, many federal district courts have expressed frustration with the current regime, and have increasingly abandoned reliance on the Guidelines as a starting point for reasonable

sentencing decision. By resorting to common sense and § 3553(a) to provide guidance in crafting sentences in such cases, these courts have sacrificed *guidelines uniformity* in favor of simple reasonableness. Placing this offence in line with other serious but non-violent property crimes does more to promote uniformity than adherence to Guidelines regime that produces "uniform" but unreasonable sentences.

4. The Need to Provide Restitution to Any Victims

Given the amount of loss in this case, it is highly unlikely that Sachdeva will ever be able to fully repay restitution. However, a sentence consistent with the PSR's calculated Guidelines range of 188 to 235 months would effectively preclude Sachdeva from becoming a productive, income-earning citizen until age 60. A sentence in the range requested here would permit at least the possibility of gainful employment and partial repayment. Despite her misconduct and the burdens of her diagnoses, Sue Sachdeva is an intelligent and energetic woman who was able to hold positions of substantial financial responsibility long before she succumbed to compulsion and embezzlement. With proper treatment, there is no reason to assume that she will be incapable of doing so in the future, so long as she receives a sentence that does not effectively incapacitate her as an income earner.

CONCLUSION

For the foregoing reasons set forth above, we respectfully request that the Court, after determining the applicable guidelines range, (1) adjust the final offense level downward by six levels to account for the disproportionate impact of the loss amount enhancement, and (2) reduce the sentence a further 30% based upon the mitigating factor of Sachdeva's mental health issues, which take this offense out of the "heartland" of similar offenses. It is respectfully suggested that such a sentence would be "sufficient, but not greater than necessary" to fulfill the requirements of sentencing.

Dated at Milwaukee, Wisconsin this 16th day of November, 2010.

Respectfully submitted,

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