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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 OAKLAND DIVISION

12 UNITED STATES OF AMERICA,
13 Plaintiff,
14 v.
15 GREGORY CASORSO,
16 Defendant.

No. CR 4:14-00580 PJH (DMR)

**DEFENDANT GREG CASORSO'S
RESPONSE TO GOVERNMENT'S
SENTENCING MEMORANDUM;
REQUEST FOR EVIDENTIARY
HEARING**

Date: November 15, 2017
Time: 2:30 p.m.
Court: 3, Chief Judge Hamilton

19
20 **I. Introduction**

21 The government has not carried its burden of proving the facts necessary to justify the
22 volume of commerce adjustment it asks the Court to impose to enhance Mr. Casorso's sentence.
23 Indeed, defendant submits the factual record is so unclear that the court should find the
24 government has not proven a volume of commerce over minimum \$1 million dollar threshold
25 necessary to apply a volume of commerce adjustment. If the court agrees with the defense that
26 the government has not proven the required \$1 million threshold as to Mr. Casorso, then he is
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1 prepared to proceed with sentencing. If the court disagrees, defendant requests an evidentiary
2 hearing at which the government must meet its factual burden.

3 The government should also not be heard to request an obstruction of justice
4 enhancement when Mr. Casorso repeatedly admitted before, during and after trial to entering
5 agreements to stop bidding at the public auctions in order to participate in a round afterwards.
6 That is what he was charged with, and that is what he was convicted of. His pretrial statements
7 and on-the-stand admission of guilt in no way obstructed justice.
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9 Indeed, this is the unusual case where he should receive credit for acceptance of
10 responsibility even though he went to trial.

11 **II. NO VOLUME OF COMMERCE ADJUSTMENT SHOULD BE IMPOSED**

12 **A. Legal Standards**

13 The government bears the burden of establishing the base offense level, and, hence, here,
14 the amount of [volume of commerce], by a preponderance of the evidence." United States v.
15 Montano, 250 F.3d 709, 713 (9th Cir. 2001) (citation omitted). "Under the preponderance of the
16 evidence standard, the relevant facts must be shown to be more likely true than not." *Id.* Under
17 the Sentencing Guidelines, when the government seeks an upward adjustment of the offense
18 level is also bears the burden of proving the facts justifying it by a preponderance of the
19 evidence. United States v. Joetzki, 952 F.2d 1090, 1096 (9th Cir. 1991). As in fraud and other
20 types of cases, a volume of commerce adjustment must not be based on mere speculation.
21 See U.S.S.G. § 2F1.1, comment. (n.8)
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24 **B. The Government Has Not Met Its Burden of Proving The Volume of 25 Commerce Exceeds The \$1 Million Threshold**

26 The government provided the Probation Office and defense with a list of properties it
27 believed supported a volume of commerce enhancement. For the listed properties,
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1 \$16,046,503.01 was paid to banks at the public auction. An additional \$1,012,000.00 was paid
2 following rounds for those properties. The Probation Office has adopted the Government
3 suggestion that the two numbers should be combined to calculate the total volume of commerce.

4 As argued in Defendant Sentencing Memorandum, defendant submits the volume of
5 commerce should be calculated based solely on the additional amount defendants' agreed to pay
6 in rounds. That is the "pecuniary loss" in this case and therefore the volume of commerce
7 actually "affected" by the defendant's agreement to stop bidding on these properties.
8

9 The round payments as to which the government asks this Court to impose a 4 level
10 volume of commerce adjustment are only \$12,000 over the \$1 million minimum. And given the
11 evidence submitted by the government, it appears the government erroneously seeks to hold Mr.
12 Casorso accountable for at least \$12,000 in round payments for which he is not actually
13 responsible, bringing the volume of commerce below the amount necessary to trigger the
14 enhancement.
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16 Preliminarily, defense counsel cautions that he has not been able to access all of the
17 documents the government cites as factual support for the alleged volume of commerce amounts.
18 The court will recall that the prosecution provided the defense with discovery in a format that
19 was only searchable when loaded into a summation database. The court authorized, at no small
20 expense, the defendants to have the discovery loaded into a database so that it would be
21 searchable. However, after trial was concluded, the database was discontinued to save costs.
22 At this point defendant cannot "search" the discovery to locate all of the documents cited by the
23 government. Defense counsel contacted the prosecution to request a copy of the exhibits it cites
24 in support of its requested volume of commerce enhancement. However, the government said
25 that it did not have the documents readily available to make a copy for the defense.
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1 Accordingly, the only documents counsel was able to review are those that were actually
2 government trial exhibits. Having reviewed the trial exhibits, defendant submits that it is far
3 from clear that the government's number is reliable. It appears to the defense that there are a
4 number of properties for which defendant should not be held accountable. If the court deducts
5 those properties from the list, the total round payments as to Mr. Casorso would be less than \$1
6 million.
7

8 The questionable reliability of the government's list is shown by the factual issues
9 flagged below (and this list is not exhaustive, only illustrative, because counsel was not able to
10 review all of the documents cited by the government.
11

12 · The first is the auction of 2716 78th Ave, Oakland on April 2, 2009. Mr. Casorso was
13 not the winning bidder in the round. The round sheet cited by the government (Gov. Trial
14 Exhibit 186), shows that Mr. Casorso was a bidder, but not the winning bidder. Rather, the
15 winner is listed as "Marr" and the total round payment was \$16,800. It is unknown to the
16 defense who the government believes was "Marr" (i.e., Victor Marr, Javier Sanchez, Wes Barta,
17 or another representative of Mr. Marr). But in any event, if Mr. Casorso is not responsible for
18 that \$16,800 round payment, the total round payments would be reduced to less than \$1 million,
19 and no volume of commerce adjustment would be appropriate.
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21 · Similarly, the government cites the auction of 2115 99th Ave., Oakland on April 14,
22 2009. But the round sheet (Gov Exh. 75-001) shows that although Mr. Casorso was again a
23 round participant, he was not the winning bidder. The note says "Marr/Javier" was the winner
24 and agreed to pay \$5,400 in round payments to the other participants.
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26 · The round notes for the property at 3318 Maple Ave., Oakland sold on June 11, 2009,
27 raise additional questions. Gov Trial Ex. 206. The notes show that "Ray" (likely Yeganeh) was
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1 the winner. But then there is a handwritten note saying that Ray got the property “dropped” on
2 him then “backed out” and spoke with Marr to “work it out.” The reliability of the multiple
3 hearsay is not clear.

4 · Then, on October 26, 2009, the property at 2808 Seadrift, Hayward was auctioned then
5 rounded. Gov. Trial Ex. 305. According to the round note cited by the government, although
6 “Greg” participated in the round, the winner of the round for \$14,000 was someone named
7 “Chuck.” It is totally unclear why Mr. Casorso should be held responsible for this property.
8

9 · On November 2, 2009, the property and 1019 33d St., Oakland was sold. At the
10 subsequent round, the note provided by the government shows “Greg” as a participant, but the
11 winner of the round appears to have been “Memo.” Again, it is totally unclear why Mr. Casorso
12 should be held responsible for this property.
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14 · Again, on November, 10, 2009, after the property at 2196 Harrington, Oakland was
15 sold, Mr. Casorso participated in a round where “Memo” was the winner and agreed to pay an
16 additional \$32,600 for the property.
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18 · On December 7, 2009, Mr. Casorso participated in a round for the property at 294
19 Thrasher Ave, Livermore. But the winner of the round, for \$35, 200, was “Jessica,” not Mr.
20 Casorso.
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22 · The round note for 2963 68th Ave., Oakland on February 8, 2010 (Gov Ex. 50-03),
23 shows that Mr. Casorso was again a participant, but further shows that “Francisco” won the
24 round for \$12,400, not Mr. Casorso.
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1 · The round note for 17269 Roberto St., Castro Valley on July 29, 2010 shows that
2 though Mr. Casorso was a participant, he dropped out at “MM” was the winner of the round for
3 \$4,400, although Mr. Casorso later signed the receipt of funds (Gov. Ex. 1959).

4 · On August 16, 2010 a round for 4673 Canary Dr. Pleasanton was held (Gov Ex. 800).
5
6 Greg Casorso’s name does not appear on the round note cited by the government. The winning
7 bidder was, again, “MM” for \$16,800. Apparently the government believes “MM” was Greg
8 Casorso because Mr. Casorso later signed the receipt of funds.

9
10 Given the debatable factual accuracy of the government’s numbers, defendant requests
11 that the Court find the government has not met its burden of proving the volume of commerce
12 and apply no adjustment. If the court intends to apply an adjustment, then defendant requests
13 that (1) he be provided a copy of all documents the government believes support the volume of
14 commerce adjustment, then (2) an evidentiary hearing at which the parties can litigate the
15 pertinent amount.
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17 **III. NO UPWARD ADJUSTMENT FOR OBSTRUCTION IS**
18 **WARRANTED**

19 Defendant spent 9 hours with the FBI back in 2011 explaining exactly what he
20 did. On the stand he explained it (to the extent he was allowed) to the jury. From day
21 one he has admitted to agreeing to stop bidding at the public auctions so that a round could
22 be held later. The government relied on Mr. Casorso’s own trial testimony extensively
23 in its closing argument to reinforce its case. Mr. Casorso has always disputed that his
24 participation in the rounds was “unreasonable.” But that was not a legal defense he was
25 allowed to litigate. Given his admission of the essential elements of the crime, no
26 obstruction enhancement is justified.
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1 **CONCLUSION**

2 There were really 3 categories of people who participated in the rounds. First were those
3 who were trying to buy property for themselves to own or resell. Second, there were people
4 who weren't really interested in buying property but were interested in trying to make money by
5 getting into rounds and getting payouts for their participation. Finally, there were those like
6 Mr. Casorso---those who were mere hourly or salaried employees whose pay was not related to
7 the rounds. Defendant submits that the last category is the least culpable, and Mr. Casorso
8 clearly falls into the last category.

9 For the forgoing reasons and based on the record herein, Mr. Casorso requests a sentence
10 of no more than 12 months imprisonment served on electronic house arrest.

11 Dated: November 12, 2017

12 /s/Erik Babcock
13 ERIK BABCOCK

14 Attorney for GREG CASORSO