

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE JAMES DONATO, JUDGE

UNITED STATES OF)
AMERICA,

PLAINTIFF,

VS.

NO. CR16-365JD

ELNA CO., LTD.,)

SAN FRANCISCO,
CALIFORNIA

DEFENDANT.

WEDNESDAY
JANUARY 31, 2018
10:00 O'CLOCK A.M.

TRANSCRIPT OF PROCEEDINGS

APPEARANCES :

FOR PLAINTIFF:

U.S. DEPARTMENT OF JUSTICE
ANTITRUST DIVISION
450 GOLDEN GATE AVENUE
ROOM 10-0101
SAN FRANCISCO, CALIFORNIA 94102

BY: HOWARD J. PARKER

JACKIE LEM

**ALEX SHEPARD, ASSISTANT UNITED STATES
ATTORNEYS**

FOR DEFENDANT:

WILMER, CUTLER, PICKERING, HALE & DORR, LLP
950 PAGE MILL ROAD
PALO ALTO, CALIFORNIA 94304

BY: HEATHER S. TEWKSBURY, ATTORNEY AT LAW

FURTHER APPEARANCES ON NEXT PAGE

REPORTED BY: KATHERINE WYATT, CSR 9866, RMR, RPR

1 FURTHER APPEARANCES:

2 AND

3 **WILMER, CUTLER, PICKERING, HALE & DORR, LLP**

4 1875 PENNSYLVANIA AVENUE, NW

5 WASHINGTON, DC 20006

6 **BY: THOMAS MUELLER, ESQUIRE**

7
8 **FOR DIRECT PURCHASER VICTIMS:**

9 **JOSEPH SAVERI LAW FIRM**

10 555 MONTGOMERY STREET, SUITE 1210

11 SAN FRANCISCO, CALIFORNIA 94111

12 **BY: JIAMIE CHEN, ATTORNEY AT LAW**

13
14 **ALSO PRESENT:**

15 **DELOITTE TOHMATSU FINANCIAL ADVISORY LLC**

16 SHIN TOKYO BUILDING

17 3-3-1 MARUNOUCHI

18 CHIYODA-KU, TOKYO 100-0004

19 JAPAN

20 **BY: KENTARO NAKAMICHI, PARTNER**

21
22
23
24 **FURTHER ALSO PRESENT APPEARANCES ON NEXT PAGE**

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FURTHER APPEARANCES

ELNA CO., LTD.

KENICHIRO MURATA, DIRECTOR AND SENIOR EXECUTIVE

OFFICER, GENERAL MANAGER, CORPORATE PLANNING DIVISION

3-8-1-1 SHIN-YOKOHAMA, KOHOKU-KU

222-0033 JAPAN

INTERPRETER: ERI MINOURA

JANUARY 31, 2018

10:00 O'CLOCK A.M.

P R O C E E D I N G S

THE CLERK: CALLING CRIMINAL 16-365, UNITED STATES OF AMERICA VERSUS ELNA COMPANY.

COUNSEL.

MR. PARKER: GOOD MORNING, YOUR HONOR. HOWARD PARKER ON BEHALF OF THE UNITED STATES, HERE TODAY WITH MY COLLEAGUES JACKIE LEM AND ALEX SHEPARD.

MR. MUELLER: GOOD MORNING. THOMAS MUELLER FOR DEFENDANT ELNA. I'M HERE WITH MY COLLEAGUE HEATHER TEWKSBURY. WITH ME IS CORPORATE REPRESENTATIVE MR. MURATA.

WE ALSO HAVE MR. NAKAMICHI, WHO IS THE EXPERT IN THE CASE, IF NECESSARY.

MS. CHEN: GOOD MORNING, YOUR HONOR. JIAMIE CHEN ON BEHALF THE DIRECT PURCHASER VICTIMS.

THE COURT: WHO IS MR. NAKAMICHI?

MR. MUELLER: MR. NAKAMICHI IS FROM DELOITTE. HE'S THE AUTHOR OF THE REPORT WE SUBMITTED TO THE COURT.

THE COURT: OKAY.

MR. MUELLER: IF YOUR HONOR HAS QUESTIONS ABOUT THE REPORT.

THE COURT: OKAY.

THE CLERK: OKAY. AND THE PROBATION OFFICER.

THE COURT: YES.

1 **PROBATION OFFICER:** GOOD MORNING, YOUR HONOR.

2 **THE COURT:** YOU CAN SIT DOWN MR. NAKAMICHI. THAT
3 WOULD BE FINE. AND WE HAVE A TRANSLATOR, AS WELL. HAS SHE
4 BEEN SWORN IN?

5 **THE CLERK:** YES, SHE HAS, YOUR HONOR.

6 **THE COURT:** OKAY.

7 AND PROBATION.

8 **PROBATION OFFICER:** GOOD MORNING, YOUR HONOR. AAKASH
9 RAJU, U.S. PROBATION.

10 **THE COURT:** OKAY. THANK YOU.

11 BY THE WAY, MR. RAJU, I THOUGHT THAT THE PRESENTENCE
12 REPORT WAS QUITE HELPFUL. THANK YOU FOR PUTTING THAT TOGETHER.

13 **PROBATION OFFICER:** THANK YOU, YOUR HONOR.

14 **THE COURT:** OKAY. WE'RE HERE FOR THE DISPOSITION OF
15 SENTENCE FOR CORPORATE DEFENDANT ELNA COMPANY, LIMITED.

16 I HAVE RECEIVED AND CONSIDERED THE PRESENTENCE
17 REPORT, UNITED STATES' VARIOUS MEMORANDUMS, IN RELATION TO THE
18 REPORT AND TO SENTENCING. I THINK A MOTION -- YOU CALLED IT A
19 MOTION FOR DEPARTURE; IS THAT RIGHT?

20 **MR. PARKER:** YES, YOUR HONOR. WE MOVED FOR A
21 DOWNWARD DEPARTURE FOR COOPERATION.

22 **THE COURT:** ALL RIGHT. I'VE ALSO RECEIVED THE
23 MATERIALS FROM THE DEFENDANT, AND INCLUDING THE DELOITTE REPORT
24 AND EVERYTHING ELSE THE DEFENDANT HAS PRODUCED, AND THE
25 DEPARTMENT OF JUSTICE'S REPORT FROM DR. ZUEL (PHONETIC) ON THE

1 DEFENDANT'S ABILITY TO PAY, ALONG WITH THE PLEA AGREEMENT AND
2 THE VICTIMS' STATEMENTS, AND THE DEFENDANT'S RESPONSE TO THE
3 VICTIMS STATEMENTS. SO I THINK THAT'S IT FOR THE DOCUMENTS.

4 ANYTHING I'M MISSING, MR. PARKER?

5 **MR. PARKER:** THAT SOUNDS RIGHT TO ME, YOUR HONOR.

6 **THE COURT:** MR. MUELLER?

7 **MR. MUELLER:** YES.

8 **THE COURT:** ANYTHING I'M MISSING?

9 **MR. MUELLER:** I DON'T THINK SO.

10 **THE COURT:** OKAY. ALL RIGHT. OKAY. LET'S START WITH
11 THE ADVISORY GUIDELINES CALCULATION. I DO FIND THAT THE TOTAL
12 OFFENSE LEVEL IS 17 UNDER GUIDELINE SECTION 2R1.1. THAT
13 CONSISTS OF A BASE OFFENSE LEVEL OF 12, WITH A PLUS ONE AND
14 PLUS FOUR INCREASE, AS DETAILED IN THE PRESENTENCE REPORT ON
15 PAGE 15.

16 I FIND THAT THE BASE FINE LEVEL SHOULD BE \$4.3
17 MILLION UNDER GUIDELINE SECTION 8C2.4 (A). AND I ALSO FIND
18 THERE'S A TOTAL CULPABILITY SCORE OF SIX UNDER GUIDELINE
19 SECTION 8C2.5, ALL OF WHICH YIELDS A GUIDELINES FINE RANGE OF
20 5.16 MILLION TO 10.32 MILLION UNDER SECTION 8C2.7.

21 ARE YOU WITH ME SO FAR, MR. PARKER?

22 **MR. PARKER:** YES, YOUR HONOR.

23 **THE COURT:** MR. MUELLER?

24 **MR. MUELLER:** YES, I AM.

25 **THE COURT:** OKAY. ALL RIGHT. NOW, THE PSR

1 RECOMMENDS NO RESTITUTION, A \$4.3 MILLION FINE, WHICH THE
2 PROBATION OFFICE SAYS DOES NOT TAKE INTO ACCOUNT THE
3 DEFENDANT'S LEVEL OF COOPERATION, AND THE FINE TO BE PAID ON AN
4 INSTALLMENT SCHEDULE DETERMINED BY THE COURT.

5 IT ALSO RECOMMENDED A \$400 SPECIAL ASSESSMENT AND A
6 TERM OF PROBATION OF FIVE YEARS. GOVERNMENT'S SEEKING A
7 DOWNWARD DEPARTURE UNDER GUIDELINE SECTION 8C4.1(A), BASED ON
8 THE DEFENDANT'S SUBSTANTIAL ASSISTANCE, IN THE GOVERNMENT'S
9 PERSPECTIVE.

10 AND THE GOVERNMENT ALSO RECOMMENDS A FINE OF \$3.825
11 MILLION TO BE PAID OVER FIVE YEARS WITHOUT INTEREST IN SIX
12 INSTALLMENTS, STARTING AT \$200,000 AND ENDING AT \$900,000.

13 GOVERNMENT ALSO RECOMMENDS A TERM OF PROBATION OF
14 FIVE YEARS, NO RESTITUTION AND A \$400 SPECIAL ASSESSMENT.

15 THE DEFENDANT JOINS IN THE GOVERNMENT'S REQUEST AND
16 FOR VARIOUS REASONS RELATING TO COOPERATION AND THE STATED
17 INABILITY TO PAY, AS WELL AS THE DESIRE TO RETAIN THE ABILITY
18 TO MAKE RESTITUTION TO CIVIL PLAINTIFFS AND AVOID SENTENCING
19 DISPARITIES.

20 AND THE GOVERNMENT AND THE DEFENDANT AGREE THAT THE
21 VOLUME OF COMMERCE AFFECTED BY ELNA'S PARTICIPATION IN THE
22 CHARGED CONSPIRACY SHOULD BE SET AT \$21.5 MILLION.

23 ALL GOOD, MR. PARKER?

24 **MR. PARKER:** YES, YOUR HONOR.

25 **THE COURT:** MR. MUELLER?

1 **MR. MUELLER:** ALSO.

2 **THE COURT:** OKAY. NOW, THE COURT HAS EFFECTIVELY
3 INVITED THE VICTIMS ON THE DIRECT PURCHASER SIDE -- ACTUALLY,
4 ALL THE VICTIMS. BUT THE ONLY PEOPLE THAT RESPONDED ARE THE
5 DIRECT PURCHASERS.

6 AND THE DIRECT PURCHASER VICTIMS PROPOSE THAT ELNA
7 RECEIVE A CRIMINAL FINE AND PAY RESTITUTION IN AN AMOUNT EQUAL
8 TO OR GREATER THAN THE AMOUNT OF THE CRIMINAL FINE IMPOSED.

9 AND ELNA HAS SAID NO IN RESPONSE, BASED ON THE
10 INABILITY-TO-PAY GROUNDS.

11 OKAY, MS. CHEN, TELL ME ABOUT RESTITUTION.

12 **MS. CHEN:** YES, YOUR HONOR. I THINK THAT THE
13 SENTENCING GUIDELINES THEMSELVES ACTUALLY SPEAK QUITE CLEARLY
14 ON THIS. IF I MAY DIRECT YOUR HONOR'S ATTENTION TO CHAPTER 8
15 OF THE SENTENCING GUIDELINES, SPECIFICALLY THE SECTION DEALING
16 WITH REDUCTION OF THE FINE BASED ON INABILITY TO PAY.

17 THE GUIDELINES MAKE CLEAR, YOUR HONOR, THAT IN
18 SENTENCING AN ORGANIZATION, THE ORDER OF PRIORITY SHOULD BE
19 RESTITUTION TO THE VICTIMS, AND THEN CRIMINAL FINE, AND THEN
20 FURTHER DOWN SHOULD THE COURT ELECT TO MAKE IT A CONSIDERATION,
21 THE BUSINESS INTERESTS OF THE DEFENDANT.

22 SO I DIRECT THE COURT'S ATTENTION TO SECTION 8C3.3 OF
23 THE GUIDELINES, REDUCTION OF FINE BASED ON INABILITY TO PAY.

24 THE GUIDELINES PROVIDE THAT THE COURT SHALL REDUCE
25 THE FINE BELOW WHAT IS OTHERWISE REQUIRED BY THE GUIDELINES TO

1 THE EXTENT THAT THE IMPOSITION OF SUCH FINE WOULD IMPAIR THE
2 DEFENDANT'S ABILITY TO MAKE RESTITUTION TO THE VICTIMS.

3 AND IN THE COMMENTARY SECTION IT CLARIFIES THAT
4 SUBSECTION (A) CARRIES OUT THE REQUIREMENTS OF CHAPTER 18
5 U.S.C. SECTION 3572 (B) THAT THE COURT IMPOSE A FINE OR OTHER
6 MONETARY PENALTY ONLY TO THE EXTENT THAT SUCH FINE OR PENALTY
7 WILL NOT IMPAIR THE ABILITY OF THE ORGANIZATION TO MAKE
8 RESTITUTION FOR THE OFFENSE.

9 I ALSO BRIEFLY DIRECT THE COURT'S ATTENTION TO
10 SENTENCING GUIDELINE SECTION 8B1.1, AS TO RESTITUTION AGAINST
11 ORGANIZATIONS. SUBSECTION (C) STATES IF A DEFENDANT IS ORDERED
12 TO MAKE RESTITUTION TO AN IDENTIFIABLE VICTIM AND TO PAY A
13 FINE, THE COURT SHALL ORDER THAT ANY MONEY PAID BY THE
14 DEFENDANT SHALL FIRST BE APPLIED TO SATISFY RESTITUTION.

15 SO I THINK IT'S PRETTY CLEAR THAT, AT LEAST IN A
16 SENTENCING GUIDELINES WITH REGARD TO ORGANIZATIONS, REDRESS TO
17 VICTIMS IS THE FIRST CONCERN, THEN THE CRIMINAL FINE, THEN --

18 **THE COURT:** LET ME DID YOU THIS: HOW MUCH RESTITUTION
19 IS GOING TO BE ENOUGH?

20 **MS. CHEN:** YOUR HONOR, THIS IS A DEFENDANT THAT HAS
21 ENGAGED IN AN 11-PLUS YEAR CONSPIRACY TO FIX PRICES. AND BY
22 ITS OWN ADMISSION SOLD TO THE AMERICAN CONSUMER VICTIMS OVER
23 \$111 MILLION OF PRICE-FIXED CAPACITORS.

24 NOW, THE EXACT DAMAGES CALCULATION AS TO HOW MUCH IS
25 DIRECTLY ATTRIBUTABLE SPECIFICALLY TO ACTIONS OF ELNA, THAT'S

1 SOMETHING THAT OUR EXPERTS ON THE CIVIL SIDE ARE STILL WORKING
2 ON. BUT --

3 **THE COURT:** WHEN WILL YOU KNOW THAT?

4 **MS. CHEN:** I'M SORRY?

5 **THE COURT:** WHEN WILL YOU KNOW THAT? WHEN WILL YOUR
6 EXPERTS TELL YOU THAT?

7 **MS. CHEN:** I WOULD THINK THAT AT THE VERY LATEST THEY
8 WOULD BE ABLE TO CALCULATE THAT BY THE END OF THE EXPERT REPORT
9 DEADLINE.

10 **THE COURT:** AND WHEN IS THAT?

11 **MS. CHEN:** I'M SORRY. I DON'T HAVE THAT SCHEDULE
12 CLEARLY IN FRONT OF ME. BUT THAT IS, I BELIEVE, SOMETHING THAT
13 IS UNDER NEGOTIATION.

14 **THE COURT:** WILL YOU KNOW IN THE NEXT 90 DAYS.

15 **MS. CHEN:** I'M SORRY?

16 **THE COURT:** WILL YOU KNOW IN THE NEXT 90 DAYS?

17 **MS. CHEN:** WE WILL DO HOUR BEST? AND WE WILL SUBMIT
18 TO THE COURT SOMETHING WITHIN THAT TIME PERIOD.

19 **THE COURT:** AND SO YOU'RE GOING TO WAIT FOR YOUR
20 EXPERTS TO TELL YOU ROUGHLY HOW MUCH THEY BELIEVE ELNA OWES IN
21 RESTITUTION, OR HAS TAKEN FROM THE VICTIMS. AND YOU'RE GOING
22 TO BE ABLE TO IDENTIFY THE VICTIMS? DO YOU KNOW WHO?

23 LET'S SAY WE DID RESTITUTION. HOW DO YOU KNOW WHO
24 GETS THE CHECK?

25 **MS. CHEN:** IT WILL BE DISBURSED, I WOULD IMAGINE, IN

1 MUCH THE SAME WAY THAT --

2 **THE COURT:** DON'T IMAGINE. JUST TELL ME WHAT YOU ARE
3 GOING TO DO.

4 **MS. CHEN:** IT WILL BE DISBURSED IN THE SAME WAY THAT
5 A SETTLEMENT PAYMENT TO THE CLASS WOULD BE DISBURSED OR CIVIL
6 JUDGMENT TO THE CLASS WOULD BE DISBURSED.

7 AND, AGAIN, WE CAN SUBMIT SOMETHING ON THE PAPERS,
8 YOUR HONOR.

9 **THE COURT:** WELL, BUT IT'S RESTITUTION SO IT HAS TO
10 GO TO IDENTIFIABLE VICTIMS. IT'S NOT JUST A POOL OF MONEY. SO
11 ARE YOU ABLE TO IDENTIFY WITH A REASONABLE DEGREE OF CERTAINTY
12 WHO THE ELNA VICTIMS WOULD BE?

13 **MS. CHEN:** I BELIEVE WE CAN. AND WE CAN CONFIRM THAT
14 WITH YOUR HONOR IN A FOLLOW-UP SUBMISSION TO THE COURT.

15 **THE COURT:** BUT WHAT DO YOU THINK THE FINE SHOULD BE
16 REDUCED TO?

17 **MS. CHEN:** I THINK WE ARE OPERATING WITHIN CERTAIN
18 LIMITATIONS HERE BASED ON THE REPRESENTATIONS OF ELNA'S OWN
19 EXPERT REPORTS. IT APPEARS THAT IF ELNA WERE TO REMAIN SOLVENT
20 THEIR POOL OF MONEY IS NOT INFINITE. THE POOL OF MONEY WOULD
21 BE SOMEWHERE AROUND \$11.6 MILLION OVER THE NEXT FOUR FISCAL
22 YEARS AS FOUND BY ELNA'S OWN EXPERT.

23 OF THAT 11.6 MILLION, THERE'S ALREADY A FINE IMPOSED
24 BY TAIWAN OF WHICH 1.5 MILLION IS OUTSTANDING, WHICH LEAVES
25 ABOUT 10.1 MILLION AVAILABLE TO US.

1 SO BASED ON THAT, I WOULD SUBMIT THAT SOMETHING
2 WITHIN THAT 10.1 MILLION AMOUNT WOULD BE, GIVEN THESE
3 CONDITIONS, WOULD BE ADEQUATE RESTITUTION. AND WE ARE --

4 **THE COURT:** WELL, THAT WOULD -- LET ME JUST JUMP IN.
5 THAT WOULD ELIMINATE ANY CRIMINAL FINE, SO THE QUESTION WAS:
6 HOW MUCH SHOULD THE CRIMINAL FINE -- LET'S SAY THE CRIMINAL
7 FINE IS 4.3 MILLION. ARE YOU SUGGESTING THAT FINE AND THE
8 RESTITUTION BE ON TOP OF THAT, OR DO YOU THINK THE 4.3 MILLION
9 SHOULD BE REDUCED AND MORE MONEY PROVIDED FOR ON THE
10 RESTITUTION SIDE? AND IF SO, HOW MUCH FOR THAT REDUCTION?

11 **MS. CHEN:** SURE. WITH RESPECT TO THE 4.3 MILLION
12 CALCULATION AND RECOMMENDATION FROM THE PSR, WE DON'T
13 INHERENTLY HAVE ANY OBJECTION TO THAT IF THE REMAINDER OF THAT
14 10.1 IS USED FOR RESTITUTION. AND OUR REASON FOR THAT IS
15 BECAUSE WE DO HAVE THE CIVIL ACTION PENDING AGAINST ELNA.

16 TO THE EXTENT THAT THERE IS HARM THAT WAS INFLICTED
17 TO THE VICTIMS ABOVE AND BEYOND WHAT THEY ARE ABLE TO PAY IN
18 RESTITUTION FROM THAT 10.6 MILLION, WE CAN TRY TO GET THAT
19 THROUGH THE CIVIL MEANS. AND IF THEY NEED TO ALTER THEIR
20 BUSINESS MODEL IN SOME WAY TO MAKE ADDITIONAL CASH FLOW
21 AVAILABLE, WE BELIEVE THEY WILL BE ABLE TO DO THAT.

22 **THE COURT:** MR. MUELLER?

23 **MR. MUELLER:** THANK YOU, YOUR HONOR. LET ME TRY AND
24 ADDRESS THE ISSUES AROUND RESTITUTION I THINK THE COURT IS
25 FOCUSED ON.

1 **THE COURT:** YES.

2 **MR. MUELLER:** THE QUESTION IS WHETHER THIS COURT
3 SHOULD ORDER RESTITUTION. AND THIS SORT OF REQUEST BY
4 PLAINTIFF'S COUNSEL IS QUITE COMMON. IT'S OFTEN USED BECAUSE
5 THE REJECTION OF IT HELPS FORTIFY A REQUEST FOR CLASS
6 CERTIFICATION. BUT I KNOW OF NO INSTANCE IN WHICH A COURT HAS
7 THE ORDERED RESTITUTION IN A COMPLEX ANTITRUST CASE.

8 JUDGE ILLSTON LOOKED AT THIS IN THE LCD CASE. JUDGE
9 ALSUP LOOKED AT IT IN THE CRT CASE. AND A JUDGE IN THE EASTERN
10 DISTRICT OF NEW YORK DEALING WITH HIS AIR CARGO CASE REJECTED
11 RESTITUTION EVEN WHERE BANKRUPTCY FORECLOSED RECOVERY.

12 **THE COURT:** WHAT'S WRONG WITH RESTITUTION? IT'S
13 PROVIDED FOR IN THE LAW.

14 **MR. MUELLER:** THE PROBLEM IS, YOUR HONOR, MOST
15 RESTITUTION THAT'S ORDERED IN ALL THE CASES THAT DPP'S HAVE
16 CITED, THE VICTIM AND THE QUANTUM OF HARM ARE EASILY
17 IDENTIFIABLE. AND THAT'S SIMPLY NOT THE CASE HERE.

18 IN THIS RESTITUTION MUST BE PROVEN TO A PREPONDERANCE
19 OF THE EVIDENCE. THE BURDEN IS ON THE GOVERNMENT. IT WOULD
20 INVOLVE TRYING ESSENTIALLY THE CIVIL CASE ALL BEFORE PROBATION
21 AND BEFORE YOUR HONOR, WHEN YOU HAVE A SIMULTANEOUSLY PERFECTLY
22 FUNCTIONING CIVIL LITIGATION PROCESS IN PLACE. AND THAT'S WHY
23 IT'S NOT APPROPRIATE.

24 IT WOULD ALSO REQUIRE THE DEFENDANT TO PUT IN, FOR
25 INSTANCE, AFFIDAVITS AS TO EXACTLY WHAT WAS AGREED, WHO IT

1 THINKS THE VICTIMS ARE? AND THESE WOULD BE AFFIDAVITS OF THE
2 SAME WITNESSES WHO HAVE NOT BEEN ALLOWED TO BE DEPOSED PURSUANT
3 TO YOUR COURT'S AND YOUR HONOR'S LAST ORDER.

4 AND SO IT WOULD REALLY CREATE QUITE A SIDESHOW, I
5 WOULD SAY, WITHOUT MUCH BENEFIT. THE OTHER PIECE OF THIS IS
6 THAT AT LEAST AT THIS POINT YOUR HONOR DOESN'T HAVE, ACCORDING
7 TO THE STATUTE, ENOUGH BEFORE IT TO ORDER RESTITUTION.

8 **THE COURT:** WELL, LET ME JUST JUMP IN. IF I WOULD
9 SET A RESTITUTION -- THAT'S WHY I ASKED ABOUT 90 DAYS -- I CAN
10 DEFER AN ACTUAL HEARING FOR 90 DAYS FROM TODAY UNDER 18 U.S.C.
11 3664. AND THAT'S WHAT I'M INCLINED TO DO.

12 I DON'T ACCEPT THE IDEA THAT JUST BECAUSE IT HASN'T
13 HAPPENED BEFORE IT SHOULDN'T HAPPEN HERE. THAT DOESN'T FLY
14 WITH ME. AND AS MUCH AS I EMBRACE MY BROTHERS AND SISTERS ON
15 THE BENCH, IT HAS NO BEARING ON MY DECISION IN THIS CASE.

16 SO I HAVE -- I'M OPEN TO THE IDEA A RESTITUTION IS A
17 POSSIBILITY, ALTHOUGH I CAN SEE AND HAVE ALREADY IDENTIFIED IN
18 MY OWN MIND SOME OF THE COMPLICATIONS ON THE EVIDENCE SIDE THAT
19 YOU HAVE RAISED.

20 SO WHAT WE'RE GOING TO DO IS I'M GOING TO LEAVE
21 RESTITUTION AS AN OPEN ISSUE. AND I'M GOING TO SET A HEARING
22 ON THE POSSIBILITY AND PROPRIETY OF ORDERING RESTITUTION IN THE
23 CASE. I'LL PROBABLY SET IT FOR ABOUT 60 DAYS FROM RIGHT NOW FOR
24 TWO REASONS.

25 ONE, I AM BOOKED FAIRLY SOLIDLY BETWEEN NOW AND THEN.

1 I ALSO WANT THE DPP EXPERTS TO HAVE TIME, SHOULD THEY CHOOSE TO
2 DO IT, TO COME UP WITH SOME PROPOSALS ON BUILDING AN EASY TO
3 UNDERSTAND LINK BETWEEN ELNA'S CONSPIRACY CONDUCT AND WHAT THEY
4 BELIEVE TO BE A QUANTIFIABLE HARM TO IDENTIFIABLE VICTIMS.

5 SO WHAT I'M GOING TO BE INTERESTED IN HEARING FROM
6 BOTH OF YOU -- AND WE'LL SET A BRIEFING SCHEDULE ON THIS --
7 IS, AMONG OTHER ISSUES -- THIS IS IN NO PARTICULAR ORDER -- HOW
8 WOULD THE VICTIMS BE IDENTIFIED WITH A REASONABLE DEGREE OF
9 CERTAINTY?

10 HOW WOULD THE AMOUNT DUE TO EACH VICTIM BE IDENTIFIED
11 WITH A REASONABLE DEGREE OF CERTAINTY? THIS IS ALL ON A
12 PREPONDERANCE BASIS. HOW THE PAYMENTS WOULD ACTUALLY BE MADE.
13 IN OTHER WORDS, IS THERE, YOU KNOW, IS THERE A POOL OF MONEY, A
14 LUMP SUM, SOME OTHER APPROACH?

15 AND THEN, ANY EVIDENTIARY ISSUES OR ISSUES RELATED TO
16 THE STAY OR OTHER PROCEDURAL ISSUES THAT ANYBODY WANTS TO
17 RAISE. I ACTUALLY THINK I'VE DONE THIS IN OTHER CASES. I AM NOT
18 OVERLY CONCERNED THAT THIS IS GOING TO STEP ON THE CRIMINAL
19 CASE OR ON THE CIVIL CASE. I THINK THIS CAN BE DONE AS A
20 DISCRETE PROCEEDING. BUT IF THERE ARE THINGS THAT MAKE THAT
21 MORE COMPLICATED THAT WILL BE YOUR TIME TO RAISE IT. OKAY?

22 SO I THINK WHAT WE'LL DO IS WE'LL PROBABLY DO
23 SIMULTANEOUS BRIEFS AND THEN YOU CAN BOTH HAVE AN OPPORTUNITY
24 TO RESPOND TO EACH OTHER, AND A SHORT STATEMENT AFTER THAT.
25 OKAY?

1 BUT I'LL SET THOSE TO SOMEWHERE BETWEEN 50 AND 60
2 DAYS FROM TODAY SO WE HAVE TIME TO HAVE A HEARING IN THE EVENT
3 I DECIDE TO GO FORWARD WITH RESTITUTION. ALL RIGHT?

4 **MS. CHEN:** THANK YOU, YOUR HONOR.

5 **THE COURT:** ALL RIGHT. YES.

6 **MR. MUELLER:** AND, YOUR HONOR, ON THE REMAINDER OF
7 THE FINE ARE YOU HOLDING THAT IN ABEYANCE AS WELL UNTIL
8 DECIDING THIS ISSUE?

9 **THE COURT:** NO. WE'RE GOING TO GO FORWARD WITH THAT.
10 THE RESTITUTION WILL BE POTENTIALLY IN ADDITION TO THE FINE.

11 ALL RIGHT.

12 OKAY. THANK YOU.

13 **MS. CHEN:** THANK YOU. AND --

14 **THE COURT:** YOU'RE CERTAINLY WELCOME TO STAY BUT YOU
15 DON'T TO HAVE STAND THERE. YES. DO YOU HAVE A QUESTION?

16 **MS. CHEN:** JUST WITH REGARD TO THE ADDITIONAL
17 CONDITION OF PROBATION THAT THE VICTIMS HAVE REQUESTED, IF YOUR
18 HONOR --

19 **THE COURT:** YES, I THINK THAT'S JUST A LITTLE TOO
20 MUCH, SO I'M GOING TO DECLINE THAT REQUEST FOR THE PROBATION
21 CONDITION.

22 OKAY. ALL RIGHT. THAT TAKES CARE OF THE --

23 **MS. CHEN:** THANK YOU, YOUR HONOR.

24 **THE COURT:** -- VICTIMS' STATEMENT.

25 ALL RIGHT. THANK YOU.

1 NOW, OUTLINE THE GUIDELINES SECTIONS. I AM, OF
2 COURSE, CHARGED UNDER -- OH, I'M SORRY, MR. PARKER. YOU HAD A
3 MOTION FOR DOWNWARD DEPARTURE.

4 **MR. PARKER:** YES, YOUR HONOR.

5 **THE COURT:** LET ME MAKE SURE I UNDERSTAND.

6 **MR. PARKER:** YES.

7 **THE COURT:** WHAT IS IT THAT YOU'RE ACTUALLY SEEKING A
8 DOWNWARD DEPARTURE IN, THE OFFENSE LEVEL OR WHAT?

9 **MR. PARKER:** WELL --

10 **THE COURT:** IT SEEMED TO ME YOU'RE REALLY SEEKING A
11 VARIANCE ON THE FINE. YOU UNDERSTAND DEPARTURE. I KNOW YOU
12 UNDERSTAND THAT "DEPARTURE" AND "VARIANCE" ARE TERMS OF ART
13 THAT HAVE VERY DIFFERENT MEANINGS.

14 SO YOU KNOW THE DEPARTURE IS TYPICALLY A REQUEST TO
15 REDUCE THE OFFENSE LEVEL. THAT'S NOT THE WAY I SAW IT
16 PACKAGED. MAYBE THAT'S WHAT YOU WERE TRYING TO DO. WHAT I READ
17 IT TO MEAN WAS YOU WANTED TO SEE THE FINE REDUCED DUE TO THE
18 CIRCUMSTANCES OF COOPERATION AND SOME OTHER THINGS.

19 **MR. PARKER:** THAT'S --

20 **THE COURT:** HELP ME OUT.

21 **MR. PARKER:** THAT'S THE SUBSTANCE OF WHAT WE WANTED,
22 YES.

23 **THE COURT:** ALL RIGHT. SO IT'S REALLY A REQUEST FOR
24 A VARIANCE, THEN.

25 **MR. PARKER:** OKAY.

1 **THE COURT:** ALL RIGHT. BECAUSE IF IT'S A DEPARTURE I
2 HAVE TO MAKE FINDINGS AND DO ALL SORTS OF OTHER THINGS, AND I
3 DON'T THINK YOU'RE ACTUALLY ASKING ME TO DEPART FROM THE
4 OFFENSE LEVEL. RIGHT? YOU'RE ASKING ME JUST TO REDUCE THE
5 FINE.

6 **MR. PARKER:** IT'S A REQUEST TO REDUCE THE FINE BELOW
7 THE FINE RANGE.

8 **THE COURT:** YES.

9 **MR. PARKER:** SO --

10 **THE COURT:** THAT WOULD BE A VARIANCE IN MY OPINION.

11 **MR. PARKER:** THAT WOULD BE A VARIANCE. ALL RIGHT.

12 **THE COURT:** ANY PROBLEM WITH THAT, MR. MUELLER?

13 **MR. MUELLER:** NO.

14 **THE COURT:** NO? NO. OKAY. ALL RIGHT. OKAY. LET'S
15 HEAR YOUR REQUEST.

16 **MR. PARKER:** SO, YOUR HONOR, THE GOVERNMENT'S
17 RESPONSIBILITY HERE IS, IN THIS MATTER, IS TO FIND THE
18 WITNESSES, SELECT THE EXHIBITS AND PREPARE A CASE FOR
19 PROSECUTION AGAINST ANY PARTICIPANT HERE IN THIS CONSPIRACY
20 THAT GOES TO TRIAL. AND WE DO HAVE A TRIAL SCHEDULED AGAINST
21 REALLY THE LARGEST OR ONE OF THE LARGEST COMPANIES IN THE
22 INDUSTRY.

23 ELNA IS ONE OF THE SMALLEST COMPANIES. IT HAS
24 WITNESSES THAT ARE VALUABLE TO US. HAVING WITNESSES FROM
25 SMALLER COMPANIES TESTIFYING IS VALUABLE TO THE GOVERNMENT.

1 AND ELNA HAS BEEN VERY HELPFUL. AND WE'VE SET OUT IN
2 EXCRUCIATING DETAIL THE SPECIFICS IN THE UNDER SEAL PORTION OF
3 OUR SUPPLEMENTAL OR FIRST SUPPLEMENTAL SENTENCING MEMO THE
4 THINGS THEY HAVE DONE.

5 BUT I WANT TO HIGHLIGHT FOR YOUR HONOR THE BIG
6 PICTURE, THAT THEY ARE -- THEY ARE A SMALL COMPANY. THIS IS THE
7 KIND OF EVIDENCE, THE SOURCE OF EVIDENCE THAT WE WANT TO USE TO
8 HOLD ONE OF THE LARGEST COMPANIES ACCOUNTABLE. AND FOR THAT --
9 FOR THAT REASON WE RECOMMEND THEIR COOPERATION TO THE COURT AS
10 A FACTOR IN AN APPROPRIATE SENTENCE.

11 **THE COURT:** OKAY. THANK YOU. SO THE FINE, THE \$4.3
12 MILLION FINE ALREADY FACTORS IN A TREMENDOUSLY LARGE DISCOUNT
13 ON THE VOLUME OF AFFECTED COMMERCE BECAUSE I TOOK TO HEART
14 YOUR -- GOVERNMENT'S REPRESENTATION THAT THERE WERE THREE
15 DEFENDANTS THAT THE GOVERNMENT DIDN'T REALLY HAVE A CASE ON
16 UNTIL ELNA WITNESSES COOPERATED.

17 AND THE VOLUMES OF COMMERCE FOR THOSE THREE NEW
18 DEFENDANTS WERE DEDUCTED FROM WHAT WOULD OTHERWISE BE ELNA'S
19 VOLUME. SO THEY GOT AN ENORMOUS DISCOUNT ALREADY FROM THAT.

20 WHY GO FARTHER THAN THAT? I MEAN, DOESN'T THAT TAKE
21 INTO ACCOUNT THEIR FULL DEGREE OF COOPERATION?

22 **MR. PARKER:** WELL, THEY ARE ENTITLED TO THE 1B1.8
23 CREDIT UNDER THE SENTENCING GUIDELINES. AND THEY WOULD BE
24 ENTITLED TO THAT IN ANY EVENT.

25 **THE COURT:** NO, BUT THE WHOLE POINT OF THAT IS TO

1 REWARD WHAT YOU'RE ASKING ME. THIS SEEMS LIKE A DOUBLE REWARD,
2 SO JUST HELP ME UNDERSTAND WHY IT'S NOT A DOUBLE REWARD. THEY
3 ARE ALREADY GETTING A HUGE CREDIT FOR STEPPING FORWARD AND
4 GIVING YOU THE INFORMATION THAT HAS HELPED YOU PURSUE THESE
5 THREE OTHER COMPANIES AND OTHER CONSPIRATORS.

6 WHY MORE ON TOP OF THAT? WHAT'S THE DELTA THAT SAYS
7 THEY SHOULD EVEN GET A BIGGER SWEETHEART -- EVEN BIGGER
8 INDULGENCE FROM THE COURT?

9 **MR. PARKER:** I WON'T BUY IT'S A SWEETHEART --

10 **THE COURT:** THAT'S WHY I SUBSTITUTED "INDULGENCE."
11 OKAY. GO AHEAD.

12 **MR. PARKER:** WELL, THE WAY -- THE WAY WE APPROACHED
13 IT WAS TO CALCULATE THE VOLUME OF COMMERCE. AND IT'S CORRECT,
14 YOUR HONOR, THAT THEY DID HAVE A BENEFIT IN THE WAY YOU
15 DESCRIBED.

16 OUR FEELING IS -- OUR APPROACH IS THAT WE WANT -- WE
17 WANT TO BE CONSISTENT IN THE WAY WE DEAL WITH ALL OF -- ALL OF
18 THE ELECTROLYTIC CAPACITORS THAT COME BEFORE THE COURT. AND
19 OUR APPROACH IS TO CALCULATE A 1B1.8 CREDIT, AND THEN TO LOOK
20 AT AFTER THAT IF THERE IS SPECIFIC COOPERATION THAT WE SHOULD
21 TAKE ACCOUNT OF. AND SO THAT WAS OUR APPROACH. THAT WAS THE
22 WAY -- THAT IS THE WAY WE DID IT.

23 **THE COURT:** NOW, AS I UNDERSTAND IT, THOUGH, THE IDEA
24 OF GOING DOWN TO 3.85 MILLION IS BASED ENTIRELY ON COOPERATION.
25 RIGHT? NOT INABILITY TO PAY.

1 **MR. PARKER:** YOU CAN SLICE IT VARIOUS WAY, YOUR
2 HONOR. BUT IT DOES -- EVEN IF WE DON'T TAKE ACCOUNT OF ABILITY
3 TO PAY WE COULD GET TO 3.825 MILLION BY CONSIDERING THEIR
4 COOPERATION.

5 **THE COURT:** ALL RIGHT. MR. MUELLER?

6 **MR. MUELLER:** YOUR HONOR, I WAS JUST GOING TO POINT
7 OUT -- AND I THINK THIS IS IN THE GOVERNMENT'S BRIEF AND
8 PRESENT DEFENDANT'S PERSPECTIVE ON THIS -- IS I UNDERSTOOD THE
9 REDUCTION OFF OF THE INABILITY TO PAY AMOUNT WAS DRIVEN BY THE
10 FACT OF THE CONTINUING COOPERATION BEYOND THE POINT WHERE THE
11 GOVERNMENT REALIZED THIS SENTENCE WAS GOING TO BE DRIVEN BY
12 INABILITY TO PAY.

13 AND WITHOUT GOING INTO TOO MUCH DETAIL IN OPEN COURT,
14 THERE WERE -- ELNA UNDERTOOK GREAT EFFORTS TO GET FORMER
15 EMPLOYEES TO COOPERATE WITH THE GOVERNMENT WHICH PROVIDED
16 INSIGHT WHICH IS SEPARATE AND APART FROM THE 1B1.8 CREDIT.
17 IT'S COMPLETELY UNRELATED.

18 AND SO IT FROM OUR PERSPECTIVE WHEN THE GOVERNMENT
19 AGREED TO THIS FURTHER REDUCTION IN RECOMMENDED SENTENCE IT WAS
20 DRIVEN BY THOSE EFFORTS AFTER THE FACT IT HAD BECOME AWARE THAT
21 INABILITY TO PAY WAS GOING TO ESSENTIALLY CREATE A CAP ON THE
22 AMOUNT OF FINE THAT COULD BE COLLECTED.

23 **MR. PARKER:** CAN I SAY --

24 **THE COURT:** YES.

25 **MR. PARKER:** -- AMEN TO THAT? YES, YOUR HONOR.

1 SO ONE WAY OF DOING THE CALCULATION THAT WE DID WAS
2 TO LOOK AT THE \$4.5 MILLION ABILITY TO PAY THAT OUR EXPERT DALE
3 ZUEL CALCULATED AND GIVE A DISCOUNT OF 15 PERCENT OFF OF THAT,
4 TO BECAUSE UNDER THE CIRCUMSTANCES A COMPANY WITH A LIMITED
5 ABILITY TO PAY STILL NEEDS TO HAVE AN INCENTIVE TO BE
6 COOPERATIVE.

7 SO A 15 PERCENT DISCOUNT FROM THAT ABILITY TO PAY
8 NUMBER DOWN TO THE \$3.825 MILLION WAS THE SPECIFIC WAY WE DID
9 THE CALCULATION TO GET TO THAT NUMBER.

10 **THE COURT:** OKAY. WELL, IT TURNS OUT MR. ZUEL DIDN'T
11 HAVE THE BENEFIT OF SOME INFORMATION ABOUT STOCK SALES AND
12 OTHER THINGS THAT THE VICTIMS POINT OUT, THOUGH. RIGHT?

13 **MR. PARKER:** HIS STUDY WAS EARLIER THAN THE DELOITTE
14 REPORT AND THERE WERE SOME EVENTS THAT CAME AFTER HE MADE HIS
15 REPORT.

16 **THE COURT:** OKAY. OKAY. ANY OTHER FINAL COMMENTS
17 BEFORE I SHARE THE DISPOSITION?

18 **MR. PARKER:** NONE FROM THE UNITED STATES.

19 **MR. MUELLER:** NONE, YOUR HONOR.

20 **THE COURT:** OKAY. AND THE CORPORATION HAS NOTHING?
21 THEY DON'T HAVE TO.

22 **MR. MUELLER:** I DON'T THINK ANY FURTHER STATEMENTS --
23 I THINK THIS HAS BEEN BRIEFED.

24 **THE COURT:** ALL RIGHT. I HAVE, AS I MENTIONED
25 EARLIER, CONSIDERED ALL OF THE LARGE VOLUME OF SENTENCING

1 MATERIALS THAT I'VE RECEIVED FROM PROBATION OFFICE, THE
2 GOVERNMENT AND THE DEFENDANT.

3 I AM, OF COURSE, REQUIRED BY CONGRESS UNDER 18 UNITED
4 STATES CODE, SECTION 3553 (A), TO ENSURE THAT I IMPOSE A
5 SENTENCE THAT IS SUFFICIENT, BUT NOT GREATER THAN NECESSARY, TO
6 COMPLY WITH THE PURPOSES OF SENTENCING.

7 THE SENTENCE SHOULD REFLECT THE SERIOUSNESS OF THE
8 CRIME, PROMOTE RESPECT FOR THE LAW AND PROVIDE A JUST
9 PUNISHMENT FOR THE OFFENSE.

10 SENTENCE SHOULD ALSO DETER CRIMINAL CONDUCT, PROTECT
11 THE PUBLIC FROM FUTURE CRIME BY THE DEFENDANT, AND PROMOTE
12 REHABILITATION.

13 NOW, I'VE CONSIDERED THE NATURE AND CIRCUMSTANCE OF
14 THE CHARGED OFFENSE HERE, THE HISTORY AND CHARACTERISTIC OF THE
15 DEFENDANT, CORPORATE DEFENDANT, AND SPECIFICALLY THE VOLUME OF
16 MATERIAL I RECEIVED BOTH ON ITS COOPERATION WITH THE
17 GOVERNMENT'S ENFORCEMENT WORK AND ON THE, AS STATED, INABILITY
18 TO PAY.

19 I'VE ALSO THOUGHT CAREFULLY ABOUT THE NEED TO AVOID
20 SENTENCING DISPARITIES AMONG SIMILARLY SITUATED DEFENDANTS AND
21 THE TYPES OF SENTENCES AVAILABLE TO ME.

22 IN LIGHT OF ALL OF THAT, AND IN LIGHT OF THE FACT
23 THAT I AM GOING TO ENTERTAIN THE POSSIBILITY OF RESTITUTION, IN
24 ADDITION TO THE ONGOING RECOVERY POTENTIAL IN THE CIVIL CASE, I
25 AM GOING TO ACCEPT THE GOVERNMENT'S PROPOSAL OF A FINE OF 3.825

1 MILLION. AND THAT IS REALLY IN LIGHT OF BOTH THE LEVEL OF
2 COOPERATION THAT THE GOVERNMENT HAS GIVEN ME A TREMENDOUS
3 AMOUNT OF DETAIL ON, AND I WANT TO ACKNOWLEDGE THAT. THERE HAS
4 BEEN A HIGH DEGREE OF COOPERATION BY THE DEFENDANT. THERE'S NO
5 QUESTION ON THAT, AND HAS BEEN IMPORTANT TO THE SCOPE OF THE
6 INVESTIGATION.

7 AND IT'S GOING TO CONTINUE, RIGHT, MR. PARKER, FOR
8 EXAMPLE --

9 **MR. PARKER:** YES.

10 **THE COURT:** -- THE TAP'S NOT GOING TO BE TURNED OFF
11 BETWEEN NOW AND THE TRIAL.

12 **MR. PARKER:** THAT'S MY EXPECTATION, YOUR HONOR.

13 **THE COURT:** IS THAT RIGHT, MR. MUELLER?

14 **MR. MUELLER:** THAT'S CORRECT.

15 **THE COURT:** I DON'T FIND THE DEFENDANT HAS PROVEN AN
16 INABILITY TO PAY. THE EVIDENCE IS, AT BEST, MIXED AND
17 INCONSISTENT. I DON'T THINK THE DEFENDANT HAS CARRIED HIS
18 BURDEN OF SHOWING THAT IT COULD NOT PAY A HIGHER FINE. SO THE
19 3.825 MILLION IS BASED ENTIRELY ON THE GOVERNMENT'S REQUEST TO
20 DEPART DOWNWARD OR VARY DOWNWARD -- WE'LL JUST USE BOTH TERMS
21 FOR THE SAKE OF CONVENIENCE -- FROM THE \$4.3 MILLION LEVEL IN
22 LIGHT OF THE DEFENDANT'S COOPERATION. BECAUSE I DON'T FIND
23 THAT THERE HAS BEEN A DEMONSTRATED INABILITY TO PAY, I AM NOT
24 GOING TO ACCEPT THE PROPOSED PAYMENT SCHEDULE. THE \$3.825
25 MILLION WILL BE PAID IN EQUAL INSTALLMENTS OVER FOUR YEARS.

1 PAYMENT OF THAT CRIMINAL MONETARY PENALTY WILL BE
2 MADE TO THE CLERK OF THE UNITED STATES COURT, DISTRICT COURT,
3 450 GOLDEN GATE AVENUE, BOX 36060, SAN FRANCISCO, CALIFORNIA,
4 94102.

5 DEFENDANTS ARE ALSO ORDERED TO PAY A SPECIAL
6 ASSESSMENT IN THE AMOUNT OF \$400, WHICH IS DUE IMMEDIATELY TO
7 THE CLERK OF THE COURT. I'M IMPOSING A FIVE-YEAR TERM OF
8 PROBATION WITH THESE CONDITIONS:

9 WHILE ON PROBATION, ELNA WILL NOT COMMIT ANOTHER
10 FEDERAL, STATE OR LOCAL CRIME. AND I'M GOING TO ASK THE
11 PARTIES TO SUBMIT A COMPLIANCE AND ETHICS PROGRAM THAT'S
12 CONSISTENT WITH GUIDELINE SECTION 8B2.1, AND THAT INCORPORATES
13 THE CONDITIONS THAT ARE STATED IN PARAGRAPH 9D, AS IN DAVID, OF
14 THE PLEA AGREEMENT.

15 SO I'LL SET A DATE FOR THAT. BUT I'M GOING TO LOOK
16 AT THAT AND I MAY FIDDLE WITH IT A LITTLE BIT. BUT I AM GOING
17 TO IMPOSE A COMPLIANCE AND ETHICS PROGRAM AFTER I GET THE
18 PARTIES' SUBMISSIONS.

19 AND AS ANOTHER CONDITION ELNA WILL NOTIFY THE COURT
20 AND THE PROBATION OFFICE IMMEDIATELY UPON LEARNING OF, ONE:
21 ANY MATERIAL ADVERSE CHANGE IN ITS BUSINESS OR FINANCIAL
22 CONDITION OR PROSPECTS OR, TWO: THE COMMENCEMENT OF ANY
23 BANKRUPTCY PROCEEDING, MAJOR CIVIL LITIGATION, CRIMINAL
24 PROSECUTION, OR ADMINISTRATIVE PROCEEDING AGAINST THE COMPANY,
25 OR ANY INVESTIGATION OR FORMAL INQUIRY BY ANY GOVERNMENT

1 AUTHORITY WITH RESPECT TO THE CORPORATION.

2 AND IF I GET INDICATIONS THAT THERE'S SOME KIND OF
3 FINANCIAL PROBLEM I MAY ACCELERATE THE PAYMENT SCHEDULE OR TAKE
4 SOME OTHER MEASURES TO MAKE SURE THAT THE FINE IS PROPERLY
5 PAID. ALL RIGHT?

6 SO THAT'S GOING TO BE THE DISPOSITION.

7 ELNA HAS WAIVED ALL OF ITS RIGHTS TO APPEAL, EXCEPT
8 AS STATED IN PARAGRAPH TWO OF THE PLEA AGREEMENT. ANY NOTICE
9 OF APPEAL PURSUANT TO THE RESERVED RIGHTS IN PARAGRAPH TWO OF
10 THE PLEA AGREEMENT MUST BE FILED WITHIN 14 DAYS OF ENTRY OF
11 JUDGMENT OR WITHIN 14 DAYS OF THE FILING OF A NOTICE OF APPEAL
12 BY THE GOVERNMENT.

13 SO HOW LONG DO YOU WANT TO HAVE FOR THE COMPLIANCE
14 PROPOSAL, THREE WEEKS?

15 **MR. PARKER:** WE CAN DO THAT, YES.

16 **THE COURT:** MR. MUELLER?

17 **MR. MUELLER:** I THINK THAT'S WORKABLE.

18 **THE COURT:** OKAY. WHY DON'T YOU MAKE A JOINT
19 SUBMISSION, AND I'LL TAKE THAT? SO THAT WILL BE DUE THREE
20 WEEKS FROM TODAY. AND I WILL SET A SPECIFIC DATE FOR THE
21 RESTITUTION BRIEFING WE TALKED ABOUT EARLIER IN THE MINUTES.
22 OKAY?

23 **MR. PARKER:** YOUR HONOR, THE EQUAL PAYMENTS, ARE
24 THOSE WITH INTEREST OR WITHOUT INTEREST?

25 **THE COURT:** WELL, WHAT DOES THE GOVERNMENT THINK

1 ABOUT INTEREST?

2 **MR. PARKER:** THE GOVERNMENT THINKS THAT UNDER THE
3 CIRCUMSTANCES WITHOUT INTEREST WOULD BE IN THE INTEREST OF
4 JUSTICE.

5 **THE COURT:** ALL RIGHT. MR. MUELLER?

6 **MR. MUELLER:** I CERTAINLY AGREE.

7 **THE COURT:** THAT'S FINE. I'M FINDING THAT NOT BECAUSE
8 OF AN INABILITY TO PAY, BUT AT THE GOVERNMENT'S REQUEST AND THE
9 ENDS OF JUSTICE. I WANT TO BE CLEAR ABOUT THAT. OKAY?

10 ALL RIGHT. ANYTHING ELSE?

11 **MR. MUELLER:** YOUR HONOR, THE FIRST PAYMENT IS 30
12 DAYS?

13 **THE COURT:** YES.

14 **PROBATION OFFICER:** ONE QUESTION, YOUR HONOR.

15 **THE COURT:** YES.

16 **PROBATION OFFICER:** DO YOU WANT THE PROBATION
17 DEPARTMENT TO DRAFT THE JUDGMENT FOR THIS CASE?

18 **THE COURT:** WHAT'S THAT?

19 **PROBATION OFFICER:** DO YOU WANT THE PROBATION
20 DEPARTMENT --

21 **THE COURT:** YES, THAT WOULD BE GREAT. THAT WOULD BE
22 TERRIFIC.

23 **PROBATION OFFICER:** OKAY. THANK YOU.

24 **THE COURT:** ANYTHING ELSE, MR. PARKER?

25 **MR. PARKER:** NO, YOUR HONOR.

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THE COURT: ANYTHING ELSE, MR. MUELLER?

MR. MUELLER: NO, YOUR HONOR.

THE COURT: OKAY. THANK YOU.

(THEREUPON, THIS HEARING WAS CONCLUDED.)

STENOGRAPHY CERTIFICATION

"I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT
FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER."
FEBRUARY 2, 2018
/S/ KATHERINE WYATT
