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 7

8 IN THE UNITED STATES DISTRICT COURT  
 9 FOR THE EASTERN DISTRICT OF CALIFORNIA  
 10

11 UNITED STATES OF AMERICA,	)	CASE NO. 2:10-CR-144 WBS
	)	
12 Plaintiff,	)	<b>UNITED STATES' RESPONSE TO THE PSR</b>
	)	
13 v.	)	
	)	
14 ANTHONY B. GHIO,	)	DATE: September 12, 2016
	)	TIME: 9:00 a.m.
	)	COURT: Hon. William B. Shubb
	)	
16 Defendant.	)	
	)	
17 _____)		

18  
 19 The United States responds to the following paragraphs in the presentence report ("PSR") filed  
 20 on August 22, 2016:

21 A. Offense Level

22 Paragraph 54 of the PSR uses a volume of commerce figure of \$11.9 million to add 4 additional  
 23 levels. Ghio's plea agreement was based on a volume of commerce figure of \$5.9 million based on the  
 24 information known at the time. The resulting §2R1.1 Guidelines calculation adds 2 additional levels for  
 25 volume of commerce for an offense level 15. The government intends to stand by the volume of  
 26 commerce amount contained in the plea agreement.

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1 B. Role in the Offense

2 Paragraph 56 of the PSR applies a 4-level role in the offense adjustment. In the plea agreement,  
3 the parties agreed that there should be a 2-level adjustment for Ghio's aggravating role in the offense,  
4 and the parties will continue to recommend that as the appropriate upward adjustment.

5 C. Total Offense Level

6 In paragraph 62, the PSR calculates the total offense level as 18. In the plea agreement, the  
7 parties agree that the total offense level is 17 before any acceptance of responsibility. The parties will  
8 continue to recommend that resulting offense level.

9 D. Fine

10 In paragraph 108, the PSR states that the fine range is \$6,000 to \$1,000,000 and on pages 23 and  
11 24, the PSR recommends a fine of \$297,913. The special instruction in §2R1.1(c)(1) relied upon in the  
12 PSR, states that for an individual, the fine range shall be from one to five percent of the volume of  
13 commerce, but not less than \$20,000. So, based on a volume of commerce of \$5.9 million attributed in  
14 the plea agreement to Ghio, his fine range should be \$59,000 to \$295,000. In the plea agreement, the  
15 parties calculated a fine range under §2R1.1(c)(1) from one to five percent of volume of commerce of  
16 \$5.9 million and agreed to the Sherman Act minimum fine of \$20,000. The government intends to stand  
17 by that recommendation.

18  
19 Dated: August 29, 2016

Respectfully submitted,

20  
21 /s/ Kelsey Linnett

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