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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13 UNITED STATES OF AMERICA,)

14 Plaintiff,)

15 v.)

16 ALY MOHSEN,)

17 Defendant.)

No. CR 03-0095 WBS

UNITED STATES' SENTENCING
MEMORANDUM RE: DEFENDANT
ALY MOHSEN

Hrg. Date: December 8, 2006
Time: 10:30 a.m.
Court: Hon. William B. Shubb
Courtroom D, 15th Floor

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18 On January 24, 2006, the defendant Aly Mohsen entered open pleas of guilty to
19 Counts One, Five through Nine, and Nineteen of the pending Superseding Indictment.
20 Sentencing is scheduled before this Court for December 8, 2006 at 10:00 a.m. The
21 United States submits the following Sentencing Memorandum in order to address the
22 offense conduct and the calculation of the Sentencing Guidelines, as well as to advise the
23 Court of its sentencing recommendation.

24 As set forth in more detail below, the United States concurs in the Probation
25 Officer's calculation of the Guidelines and, further, recommends that the Court sentence
26 Aly Mohsen to a term of imprisonment of 21 months, to be followed by a three-year term
27 of supervised release. The United States also requests that the Court order the defendant
28 Aly Mohsen to pay restitution to the victim Cadence Design Systems, Inc.

1 DISCUSSION

2 A. Offense Conduct.

3 In the Presentence Report ("PSR), the Probation Officer provides an accurate and
4 detailed description of the offense conduct in this case. As set forth in more detail in the
5 PSR, the co-defendant Amr Mohsen, through his company Aptix, was involved in patent
6 litigation with QuickTurn Design Systems, Inc. ("QuickTurn") in federal court in the
7 Northern District of California. In essence, Aptix alleged that QuickTurn was improperly
8 using technology disclosed in Aptix's '069 patent, the patent application for which had
9 been filed by Amr Mohsen in 1989. During the course of the *Aptix v. QuickTurn*
10 litigation, Amr Mohsen provided attorneys for Aptix with an engineering notebook
11 represented to have been started in July 1988 (hereafter "1988 Notebook"). Aptix then
12 produced in discovery a copy of this 1988 Notebook in support of its claim of a July 1988
13 date of invention with respect to the technology disclosed in the '069 patent.

14 The 1988 Notebook was witnessed by Amr Mohsen's brother, the defendant Aly
15 Mohsen. Aly Mohsen's signatures were ostensibly added to the 1988 Notebook on
16 various dates through the latter half of 1988 and the first half of 1989. Whether the 1988
17 Notebook was actually completed on the dates represented therein was material to the
18 patent case between QuickTurn and Aptix because one issue in that case was that of
19 invalidating "prior art," *i.e.*, whether QuickTurn could invalidate Aptix's '069 patent by
20 relying on an August 1988 invention by one of its own employees (Butts).

21 It is now undisputed that the 1988 Notebook was "a complete fraud from bark to
22 core" (as the district court put it in its June 2000 Order, see *Aptix Corp. v. QuickTurn*
23 *Design Systems, Inc.*, 2000 WL 852813, at *24 (N.D. Cal. June 14,2000)). In truth, it
24 appears that Amr Mohsen fabricated the 1988 Notebook either shortly before or shortly
25 after Aptix brought its lawsuit against QuickTurn in early 1998. Apparently, he then
26 asked his brother Aly Mohsen to sign and date the 1988 Notebook in numerous places,
27 which Amr had indicated with penciled notations (in Arabic).

28 Despite knowing that he had, in fact, witnessed the 1988 Notebook in early 1998,

1 Aly Mohsen testified at a May 25, 1999 pre-trial discovery deposition — and, almost a
2 year later, at a May 10, 2000 in-court evidentiary hearing — that he had indeed placed his
3 signatures in the 1988 Notebook on the dates indicated therein.

4 After a May 10, 2000 evidentiary hearing held with respect to QuickTurn's motion
5 for terminating sanctions, the assigned judge — The Honorable William H. Alsup —
6 dismissed Aptix's case against QuickTurn based on a finding of litigation misconduct.

7 **B. Calculation of the Sentencing Guidelines.**

8 There is no dispute that U.S.S.G. §§ 2J1.2(a)/2J1.3(a) are the applicable
9 Guidelines provisions in this case. However, the parties disagree as to whether:

- 10 1. there should be an enhancement under U.S.S.G. § 2J1.2(b)(2) for
11 substantial interference with the administration of justice;
- 12 2. Counts Five through Eight (on the one hand) and Count Nine (on the
13 other hand) should be placed in different "groups" for purposes of
14 calculating the appropriate offense level;
- 15 3. there should be an enhancement for obstruction of justice under
16 U.S.S.G. § 3C1.1; and
- 17 4. there should be a reduction in Aly Mohsen's offense level based on
18 his **minor/minimal** role.

17 The United States addresses each of these issues in more detail below.

18 1. *Substantial Interference with the Administration of Justice.*

19 Section 2J1.2(b)(2) of the Guidelines provides for a three-point increase in the
20 offense level where the defendant's perjury resulted in "substantial interference with the
21 administration of justice." The application notes to the Guideline section state that

22 "[s]ubstantial interference with the administration of justice" includes a
23 premature or improper termination of a felony **investigation**; an indictment,
24 verdict, or any judicial determination based upon **perjury**, false testimony,
or other false evidence; or the unnecessary **expenditure** of substantial
governmental or court resources.

25 U.S.S.G. § 251.2, n.1.

26 As an initial matter, it is clear that the application note is not intended to set out an
27 exhaustive list of situations that constitute a "substantial interference with the
28 administration of justice." See U.S.S.G. § 1B1.1, n.2 ("[t]he term 'includes' is not

1 exhaustive"); *see also United States v. Cox*, 74 F.3d 189, 190 (9th Cir. 1996) ("We do note
2 that the Guidelines themselves instruct us that when they use the term 'includes' they do
3 not mean to be exhaustive.") (citation omitted); *accord United States v. Amer*, 110 F.3d
4 873,885 (2d Cir. 1997) ("The term 'includes' [in U.S.S.G. § 251.2, n.1] clearly indicates
5 that the subsequent listing of acts warranting this enhancement is not exclusive, and that
6 other acts — if similarly or even more disruptive of the administration of justice — could
7 serve as bases for the section 2J1.2(b)(2) enhancement."). Accordingly, this Court may
8 find that Aly Mohsen's actions constituted a substantial interference with the
9 administration of justice so long as those actions were "similarly or even more disruptive"
10 than the examples set out in the application note to U.S.S.G. § 2J1.2(b)(2).

11 Here, the defendant's actions clearly satisfy that requirement: The defendant Aly
12 Mohsen originally went along with his brother's request at the inception of the *Aptix v.*
13 *QuickTurn* case and placed his backdated signature on numerous pages of the 1988
14 Notebook. Then, **after** being summonsed to give truthful testimony in a discovery
15 deposition, Aly unblinkingly told numerous bald-faced lies. Then, after he had nearly a
16 year to contemplate his illegal conduct, he told the same lies in an evidentiary hearing
17 held before the court. The defendant Aly Mohsen's conduct in this regard spanned more
18 than two years. If at any time he had simply done the right thing and told the truth, the
19 civil case between *QuickTurn* and *Aptix* would have focused on the *legitimate* issues
20 between the parties. Instead, the parties, their numerous attorneys, the Court, and the civil
21 case in general were taken on a long side trip by the Mohsen brothers. For all of these
22 reasons, and setting aside the non-exhaustive list set forth in the application note to
23 U.S.S.G. § 251.2, Aly Mohsen's egregious conduct in this case clearly constituted a
24 substantial interference with the administration of justice. *See Amer*, 110 F.3d at 885
25 (holding that defendant's actions in "taking matters completely outside the purview of the
26 administration of justice" and in "wholly ignor[ing] the lawful process" supported
27 enhancement for substantial interference).

28 In any event, the facts of this case also support a finding that Aly Mohsen's actions

1 contributed to the "unnecessary expenditure of substantial . . . court resources." U.S.S.G.
2 § 2J1.2, n.1. As noted above, had Aly come forward and simply told the truth either prior
3 to his May 1999 deposition or prior to the May 2000 evidentiary hearing, the Mohsen
4 brothers' fraudulent activity would have been utterly exposed and a large part of the
5 significant resources that the court expended on the *Aptix v. QuickTurn* litigation could
6 have been directed elsewhere — either to the legitimate issues in that case, or to other
7 pending cases. Other courts have found "substantial interference with the administration
8 of justice" under similar facts. *See United States v. Tackett*, 193 F.3d 880, 888 (6th Cir.
9 1999) (holding that investigation lasting several days constituted substantial expenditure)
10 (citing cases); *United States v. O'Neill*, 116 F.3d 245,250 (7th Cir. 1997) (holding that
11 false statements to grand jury that caused authorities to spend additional resources to
12 confirm witness's story constituted substantial expenditure); *United States v. Sinclair*, 109
13 F.3d 1527 (10th Cir. 1997) (upholding "substantial interference" enhancement where
14 defendant's perjured testimony "constituted the 'cornerstone' of the defense"); *United*
15 *States v. Voss*, 82 F.3d 1521, 1533 (10th Cir. 1996) (upholding "substantial interference"
16 enhancement where defendants' initial failure to respond to subpoenas resulted in
17 issuance of additional subpoenas, conducting of additional court proceedings, and
18 issuance of court orders requiring production of subject documents).

19 Setting aside the numerous criminal cases they hear, the federal courts are asked to
20 handle a large number of civil actions similar in complexity to the *Aptix* case. Unlike
21 criminal cases — which are rarely resolved by court rulings — federal courts' pre-trial
22 rulings in civil cases often are case-dispositive, *e.g.*, either because the court grants a
23 party's motion to dismiss or motion for summary judgment, or, as in patent cases, because
24 the court construes the patent claims in such a way as to make one party's case stronger
25 than the other's. Here, Judge Alsup spent a large amount of time finding facts and
26 making conclusions of law with respect to the fraudulent 1988 Notebook. *See, e.g., Aptix*
27 *Corp. v. QuickTurn Design Systems, Inc.*, 2000 WL 852813 (N.D. Cal. June 14,2000).
28 This certainly constituted an "unnecessary expenditure of substantial . . . court resources."

1 For all of the reasons set forth above, the PSR correctly enhances the offense level
2 of each group of counts by three (3) points, based on the fact that Aly Mohsen's conduct
3 constituted a "substantial interference with the administration of justice." *See* PSR, ¶ 67.

4 2. ***Placement of Counts Five–Eight in a Different Group than Count Nine.***

5 The government agrees with the Probation Officer that Aly Mohsen's perjured
6 testimony in the evidentiary hearing on May 10, 2000 (as alleged in Count Nine of the
7 Superseding Indictment) cannot be grouped with the perjured testimony that he gave in
8 his May 25, 1999 deposition (as alleged in Counts Five through Eight). This is so
9 because of U.S.S.G. § 251.3's admonition that "[i]n the case of counts of perjury. . .
10 arising from testimony given . . . in *separate proceedings*, do not group the counts
11 together under § 3D1.2." (Emphasis added). The Guidelines define "separate
12 proceedings" in this context as including "different proceedings in the same case or
13 matter (*e.g.*, a grand jury proceeding and a trial, or a trial and retrial)," as well as
14 "proceedings in separate cases or matters." U.S.S.G. § 251.3 n.5.

15 The defendant has disagreed with the PSR's decision *not* to group Counts Five
16 through Eight with Count Nine, arguing that Aly's deposition was not a "separate
17 proceeding" from the evidentiary hearing convened by Judge Alsup. There are few
18 reported cases addressing the "separate proceedings" aspect of § 251.3. *See United States*
19 *v. Bradach*, 949 F.2d 1461, 1465 n.5 (7th Cir. 1991) (recognizing that "separate
20 proceedings" language would require higher Guideline calculation in that case but for *ex*
21 *post facto* concerns); *United States v. Weissman*, 22 F. Supp.2d 187 (S.D.N.Y. 1998)
22 (holding that defendant's deposition testimony before Senate subcommittee counsel in
23 matter under Senate investigation was not given in "separate proceeding" from
24 defendant's testimony before actual Senate subcommittee only eight days later). The
25 United States believes that the plain language of the Guideline requires that Counts Five
26 through Eight *not* be grouped with Count Nine. The United States believes that the
27 testimony at issue here was clearly given in "separate proceedings," based on the fact that
28 Aly Mohsen's May 25, 1999 testimony occurred in an (a) *out-of-court* (b) *deposition* (c)

1 taken for the purposes of discovery, while his May 10, 2000 testimony was given at an (x)
2 in-court (y) evidentiary hearing (z) convened for the purpose of ruling on *QuickTurn's*
3 motion for terminating sanctions. Further, the distinctions set out in the application note
4 (i.e., grand jury proceeding v. trial, trial v. retrial) are analogous to the proceedings here
5 (i.e., out-of-court discovery deposition v. in-court evidentiary hearing).

6 The *Weissman* decision is inapposite. The district court's ruling in that case
7 carries, at best, persuasive authority. In any event, the facts of *Weissman* are
8 distinguishable from the facts here. In that case, the deposition testimony at issue was
9 taken only eight days before the later Senate testimony. Further, the deposition testimony
10 in *Weissman* was preparatory for the Senate testimony to be given a few days later. This
11 temporal proximity at least arguably supports a conclusion that *Weissman's* testimony
12 was given in the same proceeding. In this case, however, Aly Mohsen's deposition
13 testimony occurred nearly a year before his testimony at the evidentiary hearing.
14 Moreover, that deposition testimony was not given in preparation for or in anticipation of
15 the later evidentiary hearing testimony. On the contrary, the evidentiary hearing
16 testimony came about in part *because of* the prior perjured testimony by Aly Mohsen.

17 Because Counts Five through Eight cannot be grouped with Count Nine, each set
18 of counts must be placed in a separate group and an offense level calculated for that
19 group. Here, each group has an adjusted offense level of 15.¹ Based on these
20 calculations, the PSR correctly increases the offense level by two (2) points pursuant to
21 U.S.S.G. § 3D1.4(a) to arrive at a combine adjusted offense level of 17. See PSR, ¶ 78.

22 3. *Obstruction of Justice.*

23 As reported in the PSR, after the defendant Amr Mohsen was remanded into
24 custody in March 2004, the defendant Aly Mohsen visited him at Santa Rita jail on one
25 occasion and spoke on the telephone with him on several other occasions. Setting aside
26

27 ¹*I.e.*, base offense level 12 plus three (3) points for substantial interference with the
28 administration of justice, see Section B.1, *supra*.

1 the question of whether these contacts violated any of Judge Alsup's directives, Aly
 2 Mohsen's statements during his June 7, 2004 telephone conversation with his brother
 3 clearly warrant an enhancement for obstruction of justice under U.S.S.G. § 3C1.1. As set
 4 forth in more detail in the PSR, during that telephone call Aly advised Amr that he
 5 "need[ed] to buy time to fire" his lawyers and that, to do that, he needed to "[b]e admitted
 6 to the hospital" so that Amr's new lawyers could "catch up with the case." *See* Ex. 1, at
 7 Bates 007001. Because feigning incompetency warrants an enhancement under U.S.S.G.
 8 § 3C1.1, advising a co-defendant to feign competency should also warrant such an
 9 enhancement. *See United States v. Patti*, 337 F.3d 1317, 1325 (11th Cir. 2003) (upholding
 10 application of obstruction enhancement to defendant who "willfully feign[ed]
 11 incompetency in order to avoid trial and punishment"); *United States v. Greer*, 158 F.3d
 12 228,237 (5th Cir. 1998) (same); *cf. United States v. Fontenot*, 14 F.3d 1364, 1372 (9th Cir.
 13 1994) (holding that defendant claiming diminished capacity who refused to submit to
 14 court-ordered psychiatric evaluation so that prosecution could respond to his defense
 15 obstructed justice under U.S.S.G. § 3C1.1).

16 In his sentencing memorandum, the defendant may argue that, as a medical doctor,
 17 he was simply giving medical advice to his brother. Aly's actions during the June 7, 2004
 18 telephone conversation, however, clearly suggest differently. For example, when the
 19 brothers are speaking about Amr's symptoms and why it is important that Amr go to the
 20 hospital, Aly tells his brother that there is "an important thing that I can't say to you"
 21 because "[t]his thing is watching us," presumably referring to the fact that the brothers'
 22 telephone conversation was being recorded. *See* Ex. 1, at Bates US007011. If Aly were
 23 merely providing medical advice to his brother, there would simply have been no need for
 24 him to be wary of what he told his brother.'

25
 26 ²The defendant may also argue in his sentencing memorandum that this Court should not
 27 increase his offense level based on his obstructive conduct because the defendant was never
 28 charged by indictment with obstruction of justice. However, the fact that the government has not
 sought to bring additional criminal charges related to Aly's obstruction of justice does not mean

1 For all of these reasons, the PSR correctly increases Aly's combined adjusted
2 offense level by two (2) points pursuant to U.S.S.G. § 3C1.1, resulting in an offense level
3 of 19. *See* PSR, ¶¶ 59 & 79.

4 **4. Minor/Minimal Role.**

5 It is likely that the defendant Aly Mohsen will also argue that he is entitled to a
6 minor/minimal role adjustment pursuant to U.S.S.G. § 3B1.2. The United States
7 understands that this argument may be based on Aly Mohsen's contention that he was
8 "duped" by his brother into committing the offense conduct.

9 The United States disagrees that a minor/minimal role adjustment is proper under
10 the facts of this case. Aly Mohsen was integral to the criminal activity in this matter: he
11 signed the fraudulent 1988 Notebook and offered false sworn testimony regarding his
12 witnessing of the 1988 Notebook on two occasions. Indeed, after his brother staged the
13 theft of the 1988 Notebook, Aly Mohsen produced copies of the 1988 Notebook that he
14 had allegedly made at the time he witnessed it in the 1980s. Amr Mohsen's criminal
15 activities would have been thwarted if, at any time, Aly Mohsen had simply refused to go
16 along with his brother's wishes and told the truth. He chose to do the opposite. By being
17 a willing compatriot in his brother's crimes, Aly Mohsen perpetrated a significant
18 obstruction of justice.

19 For these reasons, a minimal or minor role adjustment is not appropriate in this
20 case. Section 3B1.2 of the Guidelines provides for a downward adjustment where a
21 defendant's role "in committing the offense . . . makes him substantially less culpable
22 than the average participant." U.S.S.G. § 3B1.2, n.3(A). "The defendant bears the
23 burden of proving that he is entitled to a downward adjustment based on his role in the
24 offense." *United States v. Awad*, 371 F.3d 583, 591 (9th Cir. 2004). A defendant is a
25 "*minimal* participant" when his "lack of knowledge or understanding of the scope and
26

27 that Aly's Guideline calculation may not reflect such conduct under the preponderance standard
28 that applies after *Booker*.

1 structure of the enterprise and of the activities of others" indicates that he is "plainly
2 among the least culpable of those involved in the conduct of a group." U.S.S.G. § 3B1.2,
3 n.4. A defendant is a "*minor* participant" if he "is less culpable than most other
4 participants, but [his] role could not be described as minimal." *Id.* at n.5. Such
5 determinations are "heavily dependent upon the facts of a particular case." U.S.S.G.
6 § 3B1.2, n.3(C). The Ninth Circuit has emphasized that the downward adjustment for
7 minimal or minor participants is to be used *infrequently* and only in *exceptional*
8 *circumstances*. *See, e.g., United States v. Davis*, 36 F.3d 1424, 1436 (9th Cir. 1994)
9 (emphasis added) (citing cases).

10 Under the facts of this case, it would be inappropriate to provide the defendant Aly
11 Mohsen with the benefit of either a minimal or minor role adjustment. As set forth above,
12 Aly Mohsen was an active participant in the falsification of the fraudulent 1988
13 Notebook, and subsequently provided sworn testimony on two occasions in order to
14 perpetuate the fraud. The fact that Amr Mohsen may have been the mastermind does not
15 mean that Aly Mohsen was a minor participant. *See United States v. Pinkney*, 15 F.3d
16 825, 828 (9th Cir. 1994) (holding that fact that defendant "did not mastermind the robbery
17 does not automatically make him a minor participant"); *accord United States v. Van*
18 *Brocklin*, 115 F.3d 587,601 (8th Cir. 1997) (upholding district court's decision not to
19 apply minor role adjustment, where defendant "was a high-ranking bank officer and a
20 member of the board, knew of the scheme, and concealed [a co-defendant's] conduct
21 from the board"); *United States v. Strang*, 80 F.3d 1214, 1218 (7th Cir. 1996) (upholding
22 district court's decision not to apply minor role adjustment, even though defendant was
23 less culpable than another conspirator, where defendant was president of company formed
24 to facilitate investment scheme, was aware that investors' funds were being diverted to
25 conspirator's personal use, and had diverted funds for his and conspirator's personal use).

26 Even though Aly Mohsen may have been less culpable than Amr Mohsen in this
27 case, that fact does not automatically entitle Aly to a reduction for a minimal or minor
28 role. As the Ninth Circuit noted in *Davis*, 36 F.3d at 1436–37, "[j]ust because a

1 defendant may be less culpable than other participants in an offense, he is not necessarily
2 entitled to a minimal or minor role adjustment." *See also United States v. Benitez*, 34
3 F.3d 1489, 1498 (9th Cir. 1994) ("Even if a defendant is less culpable than his
4 co-participants, however, he is not automatically entitled to a reduction for minor
5 participant status. Rather, to merit a reduction the defendant should be 'substantially' less
6 culpable than his co-participants.") (citations omitted). Under the facts of the instant
7 case, Aly Mohsen's willing involvement in the fraudulent and criminal conduct that
8 spanned several years cuts strongly against application of a minimal or minor role
9 adjustment. *Cf. United States v. Garcia*, 909 F.2d 1346, 1349 (9th Cir. 1990) ("Under the
10 Guidelines, a defendant convicted of conspiracy may be sentenced not only on the basis
11 of his own conduct, but also on the basis of the 'conduct of others in furtherance of the
12 execution of the jointly-undertaken criminal activity that was reasonably foreseeable by
13 the defendant.") (quoting U.S.S.G. § 1B1.3). The government also notes that Amr could
14 not have perpetrated this fraud without Aly Mohsen's involvement. As was established in
15 the government's case-in-chief, the corroboration requirements in patent cases commonly
16 necessitate that an inventor have someone witness engineering notebook entries that
17 document the inventive process. Aly's willingness to participate in creating the phony
18 1988 Notebook and to falsely testify on two separate occasions about the genesis of that
19 notebook were integral, not incidental, to this entire fraud. In sum, because the facts of
20 this case show that Aly Mohsen is *not* "substantially" less culpable than his co-defendant,
21 he is not entitled to a minimal or minor role adjustment.

22 **5. Final Offense Level and Adjustment for Acceptance of Responsibility.**

23 The base offense level for each group of counts is level 12. The offense level for
24 each group should be increased by three (3) levels because the offenses resulted in a
25 substantial interference with the administration of justice. Accordingly, each group of
26 counts has an adjusted offense level of 15. Because the adjusted offense level for the first
27 group of counts is equally serious as the adjusted offense level for the other group of
28 counts, the groups together amount to two Units under U.S.S.G. § 3D1.4(a). That

1 Guideline section provides that "[t]he combined offense level is determined by taking the
2 offense level applicable to the Group with the highest offense level and increasing that
3 offense level by the amount indicated" in the table set out in that Guideline section.

4 See U.S.S.G. § 3D1.4. Based on the § 3D1.4 table, therefore, two (2) points should be
5 added to the adjusted offense level for the first group, resulting in an offense level of 17.
6 Based on Aly Mohsen's obstructive conduct, two (2) additional points are added pursuant
7 to U.S.S.G. § 3C1.1, increasing the offense level to *level 19*.

8 The government agrees that the defendant has met the requirements of U.S.S.G.
9 § 3E1.1 regarding acceptance of responsibility and that the offense level therefore should
10 be reduced by three (3) levels to *level 16*. Accordingly, the applicable Guidelines range is
11 21 to **27** months' imprisonment.

12 **C. Restitution.**

13 As an initial matter, the Mandatory Victim Restitution Act does *not* appear to
14 apply here because Aly Mohsen's crimes of conviction do not fall within the scope of that
15 statute. See 18 U.S.C. § 3663A(c)(1)(A). Nevertheless, restitution to Cadence is
16 discretionary under 18 U.S.C. § 3663. That statute provides that a "court, when
17 sentencing a defendant convicted of an offense under [Title 18] . . . may order, in addition
18 to . . . any other penalty authorized by law, that the defendant make restitution to any
19 victim of such offense" Here, Cadence clearly qualifies as a "victim" because it was
20 "directly and proximately harmed as a result of the commission of [the] offense." 18
21 U.S.C. § 3663(a)(2).

22 An order of restitution is permissible in this case even though a civil judgment has
23 already been entered against Aptix. As noted in the PSR, only 2.9 million dollars of that
24 4.6 million dollar judgment have been recovered by the victim. See PSR, ¶ 58. Further,
25 the fact that a judgment has already been entered in the civil context does not prevent this
26 Court from entering an appropriate order of restitution. Indeed, federal law specifically
27 takes account of situations in which the victim has otherwise been compensated and
28 directs that corresponding orders of restitution be reduced accordingly. See 18 U.S.C.

1 § 3664(j)(2) (“[a]ny amount paid to a victim under an order of restitution shall be reduced
2 by any amount later recovered as compensatory damages for the same loss by the victim
3 [] in any [] civil proceeding”); *see* also 18 U.S.C. § 3663(f)(1)(B).

4 For these reasons and based on all of the facts set forth herein, the United States
5 believes that a restitution order is appropriate in this case. The United States does *not*
6 believe, however, that this Court should order Aly Mohsen to pay restitution for the full
7 amount of attorneys' fees and suggests that an amount equal to the fees expended to
8 depose and question Aly Mohsen would be more appropriate because such an amount is a
9 “direct[] and proximate[]” result of Aly Mohsen's crimes. *See* 18 U.S.C. § 3663(a)(2).
10 The United States intends to provide the Court with a more specific recommendation
11 regarding an appropriate restitution amount prior to the sentencing hearing.'

12 **D. United States' Sentencing Recommendation.**

13 The United States respectfully recommends that this Court sentence the defendant
14 Aly Mohsen to the low end of the Guidelines range, *i.e.*, 21 months' imprisonment, to be
15 followed by a three-year term of supervised release. The United States also recommends
16 that the Court order Aly Mohsen to pay restitution to Cadence, a \$5,000 fine, and a \$700
17 special assessment.

18
19
20 The United States has asked Cadence to provide a reasonable calculation of the costs
21 incurred with respect to the questioning of Aly Mohsen at his deposition and at the evidentiary
22 hearing. Unfortunately, Cadence has not yet been able to provide such a calculation. However,
23 federal law provides that,

24 [i]f the victim's losses are not ascertainable by the date that is 10 days prior to
25 sentencing, the attorney for the Government or the probation officer shall so
26 inform the court, and the court shall set a date for the final determination of the
27 victim's losses, not to exceed 90 days **after** sentencing.
28 18 U.S.C. § 3664(d)(5). Accordingly, the United States may request additional time after
sentencing for final determination of the restitution amount. The United States regrets the delay
in proposing a specific amount to the Court and counsel. The government does not wish to delay
proceedings and notes that 18 U.S.C. § 3663(a)(B)(ii) provides that “[t]o the extent that the court
determines that the complication and prolongation of the sentencing process resulting from the
fashioning of an order of restitution . . . outweighs the need to provide restitution to any victims,
the court may decline to make such an order.”

1 The United States believes that this sentence appropriately punishes the defendant
2 for his crimes, taking into account the Guidelines calculation and the factors set out in 18
3 U.S.C. § 3553(a). As noted above and in the PSR, Aly Mohsen agreed to help create the
4 fraudulent 1988 Notebook sometime in early 1998. Thereafter, he testified falsely in two
5 separate proceedings regarding the authenticity of his signatures in the 1988 Notebook.
6 His actions resulted in a substantial interference with the administration of justice.
7 Further, after his indictment, he engaged in obstructive conduct by encouraging his
8 brother to feign mental incompetency in order to delay the trial of this matter.

9 A sentence of 21 months' imprisonment is appropriate not only because it falls
10 within the applicable Guidelines range, but also because a sentence within that range
11 necessarily further the goal of sentencing specified in 18 U.S.C. § 3553(a). Because the
12 Guidelines reflect nationwide sentencing practices — including identifying and assigning
13 weights to the factors, both aggravating and mitigating, that judges traditionally used in
14 determining an appropriate sentence — a sentence within the correctly calculated
15 Guidelines range reflects the federal courts' collective sentencing expertise accumulated
16 over the past two decades.

17 In this case, a sentence of 21 months' imprisonment would (a) take into account
18 the nature and circumstances of the offenses and the history and characteristics of the
19 defendant, *see* 18 U.S.C. § 3553(a)(1); (b) give appropriate weight to the need for the
20 sentence imposed to reflect the seriousness of the offense, to promote respect for the law,
21 and to provide just punishment, *see id.* § 3553(a)(2)(A); and (c) afford adequate
22 deterrence to criminal conduct and protect the public from further crimes of the
23 defendant, *see id.* §§ 3553(a)(2)(B), (C).⁴ In particular, the United States notes that a 21-
24 month sentence would take into account the two-year, two-proceeding course of conduct
25 engaged in by the defendant here. Such a sentence of imprisonment would also send a

26
27 ⁴Moreover, a Guidelines sentence here will provide a means for the Court to avoid
28 unwarranted sentencing disparities among defendants with similar records who have been found
guilty of similar conduct. *See* 18 U.S.C. § 3553(a)(6).

1 strong message to litigants and witnesses in civil cases that perjured testimony *can* and
2 does have consequences.


3 **CONCLUSION**

4 Based on the Guidelines calculations set out above and in the PSR, the nature and
5 circumstances of the offense conduct, and all of the factors set out in 18 U.S.C. § 3553(a),
6 the United States recommends a sentence of 21 months' imprisonment, a three-year term
7 of supervised release, a \$5,000 fine, and a \$700 special assessment. The United States
8 also requests that the Court order the defendant Aly Mohsen to pay restitution to Cadence
9 Design Systems, Inc.

10 DATED: December 1, 2006

Respectfully submitted,

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13 
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