

1 KEVIN V. RYAN (CSBN 118321)  
United States Attorney  
2  
3 MARK KROTOSKI (CSBN 138549)  
Chief, Criminal Division  
4 ROBIN L. HARRIS (CSBN 123364)  
KYLE F. WALDINGER (ILSB 6238304)  
5 Assistant United States Attorneys

6 450 Golden Gate Avenue, Box 36055  
San Francisco, California 94102  
7 Telephone: (415) 436-7016/6830  
8 Facsimile: (415) 436-7234

9 Attorneys for the United States of America

10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12 SAN FRANCISCO DIVISION  
13

14 UNITED STATES OF AMERICA, )  
15 Plaintiff, )  
16 v. )  
17 AMR MOHSEN, )  
18 Defendant. )

No. CR 03-0095 WBS

**UNITED STATES' SENTENCING  
MEMORANDUM (AMR MOHSEN)**

Date: December 8, 2006  
Time: 10:30 a.m.  
Courtroom D

19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 KEVIN V. RYAN (CSBN 118321)  
United States Attorney  
2  
3 MARK KROTOSKI (CSBN 138549)  
Chief, Criminal Division  
4 ROBIN L. HARRIS (CSBN 123364)  
KYLE F. WALDINGER (ILSB 6238304)  
5 Assistant United States Attorneys

6 450 Golden Gate Avenue, Box 36055  
San Francisco, California 94102  
7 Telephone: (415) 436-7016/6830  
8 Facsimile: (415) 436-7234

9 Attorneys for the United States of America

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

13 UNITED STATES OF AMERICA, ) No. CR 03-0095 WBS  
14 Plaintiff, )  
15 v. ) **UNITED STATES' SENTENCING**  
16 AMR MOHSEN, ) **MEMORANDUM (AMR MOHSEN)**  
17 Defendant. )  
Date: December 8, 2006  
Time: 10:30 a.m.  
Courtroom D

18  
19 **INTRODUCTION**

20 This case represents one of the most disturbing criminal matters that the government has  
21 prosecuted in this district for many years. Defendant Amr Mohsen was convicted by a jury of 17  
22 criminal offenses which took place during an unprecedented six-year crime spree. Mohsen's  
23 crime wave began in February 1998 with the filing of a multi-million dollar civil lawsuit which  
24 he supported with perjury and fabricated documents and culminated in June 2004 when, while  
25 incarcerated, Mohsen attempted to tamper with witnesses in his criminal trial and solicited an  
26 arson of a government witness' car. Along the way, Amr Mohsen also committed contempt of  
27 court by applying for an Egyptian passport; attempted to flee the country to avoid his trial;  
28 consumed government and court time and resources by feigning incompetency and/or insanity,



1 contempt was committed while Mohsen was on pre-trial release. *See* 18 U.S.C. § 3147.

2 **A. Government Objections**

3 *1. Mohsen Used Sophisticated Means To Cover Up His Crimes*

4 The United States respectfully submits that Amr Mohsen should be assessed a two-level  
5 enhancement under 2F1.1(6)(C) because the offenses of conviction (specifically the mail fraud  
6 counts) involved sophisticated means. Our basis for seeking this enhancement is *not* predicated  
7 upon Mohsen’s criminal conduct insofar as Mohsen fabricated and backdated the 1988 Notebook  
8 and added embellishments to the 1989 Notebook. Rather the government seeks an enhancement  
9 for the extraordinary activities Mohsen took to conceal his fraud from being detected by his own  
10 attorneys, the attorneys for QuickTurn, and the district court.

11 The sophisticated means enhancement applies when a defendant uses “especially  
12 complex or especially intricate offense conduct” to *conceal* his crimes. *See United States v.*  
13 *Harvey*, 413 F.3d 850, 853 (8<sup>th</sup> Cir. 2005). Here, Mohsen hand-delivered his bogus 1988  
14 Notebook to a secret ink chemist in Wisconsin and a secret document examiner in Sacramento  
15 *after* he had already perpetrated the fraud by producing the bogus Notebook to QuickTurn in the  
16 litigation. Mohsen arranged for extensive testing to be performed on the Notebook in order to  
17 further his scheme and to avoid detection by his adversary (QuickTurn). Beyond the testing that  
18 Mohsen had his secret experts perform on the Notebooks, he also vetted additional bogus  
19 documents through both experts (including the Keith Lobo notes, which Mohsen later produced  
20 in the civil litigation to try and exponentially increase Aptix’s damages in the lawsuit) in order to  
21 make the counterfeit documents appear genuine and to insulate himself from having his scheme  
22 discovered. Mohsen also staged a break-in to his car after learning that the secret testing he had  
23 his shadow experts perform on the documents would, if QuickTurn were permitted to perform  
24 the same testing, reveal Mohsen’s fraud. Once Mohsen knew from his secret experts about all of  
25 the flaws in his bogus Notebook, he was able to mail himself back scraps from the 1988  
26 Notebook (via the phony anonymous “FL” mailing). Those scraps specifically omitted any of the  
27 telltale signs of fraud that his experts had already briefed Mohsen about. These actions, even  
28 when considered individually, provide strong evidence of extensive planning and a complex web

1 to prevent detection of Mohsen's fraudulent scheme. When Mohsen's actions are taken as a  
2 whole, they convincingly demonstrate an elaborate and prolonged effort to prevent detection of  
3 the fraudulent or altered documents he had already produced (the 1988 and 1989 Notebooks) and  
4 to manufacture additional counterfeit documents to perpetuate and further the scheme to defraud  
5 QuickTurn. *See, United States v. Edelmann*, 458 F.3d 791, 816 (8<sup>th</sup> Cir. 2006) (defendant's  
6 creation and use of multiple false documents over multiple years supported an enhancement for  
7 sophisticated means). Accordingly, the government respectfully requests the Court to impose a  
8 two-level enhancement under U.S.S.G. § 2F1.1(6)(c) for Mohsen's use of a sophisticated means  
9 to conceal his fraud.

10 *2. The Sentence On Count 20 Must Be Served Consecutively To The Fraud*  
11 *Sentence*

12 The PSR has grouped all counts of conviction from Phase One (counts 1-20) of the trial  
13 together. The Probation Office has also recommended a low-end sentence of 108 months for all  
14 counts of conviction in Phase One. The 108-month recommendation is the low-end of the  
15 guideline range *without* a two-level enhancement for Mohsen's use of a sophisticated means.  
16 Most important, however, the PSR's 108-month recommendation does not require Mohsen to  
17 serve any portion of his sentence on count 20 (contempt) consecutive to the other counts of  
18 conviction in Phase One. The Court is required under 18 U.S.C. § 3147 to impose a consecutive  
19 sentence for Mohsen's conviction on count 20 because Mohsen's contempt of court (applying for  
20 an Egyptian passport in violation of the terms of his pre-trial release bond) occurred while  
21 Mohsen was on release pending trial on counts 1-19 of the indictment. Accordingly, even if the  
22 Court declines to impose a two level enhancement for sophisticated means, the government  
23 respectfully submits that the Court should impose a consecutive sentence on count 20 which  
24 would require a sentence in excess of the 108-month sentence recommended by the Probation  
25 Office.

26 **B. Anticipated Defense Objections To PSR**

27 *1. Mohsen Intended QuickTurn's Loss To Be \$70,000,000*

28 The PSR has correctly concluded that the intended loss is approximately \$70,000,000.

1 Mohsen objects to the PSR's conclusion that the intended loss is \$70,000,000. According to  
2 Mohsen there was no actual or intended loss. Alternatively, Mohsen claims that the loss should  
3 be limited to the amount of legal fees QuickTurn spent defending itself (\$4.2 million) in the civil  
4 patent case offset by any amount that Aptix has already paid to QuickTurn pursuant to Judge  
5 Alsup's order of judgment in the civil case.

6 Mohsen's basis for claiming that there is no intended loss is predicated on his continued  
7 insistence that he would have won the civil case. This is absurd. As this Court knows from  
8 presiding over the criminal trial, the civil case never went to trial. Mohsen's fraud and perjury  
9 were intended to stack the deck in the civil case to ensure that Aptix *would* win the lawsuit *if* the  
10 case went to trial (regardless of the true merits of Aptix's claims) *and* to exponentially increase  
11 the damages if Aptix did win. The government proved through documents introduced at trial,  
12 specifically Exhibit 29 (Amr's phony notes of a supposed August 19, 1996 meeting with  
13 QuickTurn's President Keith Lobo) that Mohsen, who personally authored the bogus notes,  
14 intended to falsely claim that Mohsen had put QuickTurn, via Keith Lobo, on notice of  
15 QuickTurn's alleged infringement. Trial testimony established that Exhibit 29 (Mohsen's phony  
16 Lobo notes) was intended by Mohsen (the creator of Exhibit 29) to support Aptix's request for  
17 treble damages and to support a damages award against QuickTurn of \$70,000,000. Government  
18 witness Jeff Miller, who represented QuickTurn in the underlying civil lawsuit, testified at trial:

19 Q: What is willful infringement?

20 A: Willful infringement is when you receive notice and then continue to infringe and  
21 don't do anything to stop infringing or to determine that you don't infringe.

22 Q: And how much can a plaintiff, in an infringement lawsuit get if he can prove that the  
23 defendant, in this case QuickTurn, willfully infringed?

24 A: They [Aptix] would have been able to triple the damage award, so it would have been  
25 over \$70 million or somewhere in there.

26 Q: Was there any claim by Aptix that QuickTurn had willfully infringed on the patent?

27 A: My recollection is that they were alleging willful infringement, yes.

28 Q: Drawing your attention to Government's Exhibit 29 [Mohsen's phony Keith Lobo  
notes],...what amount would Aptix have been able to recover if they had been able to  
prove that on August 19, 1996, Amr Mohsen gave Keith Lobo, the president of  
QuickTurn, notice of infringement?

1 A: If we could not establish that we did something to stop ourselves from infringing or  
2 determine that we didn't infringe, it would have been over \$70 million.

3 2/6/06 RT 167:7-168:4.

4 The trial testimony of Jeff Miller, Exhibit 29 and the trial testimony of government patent  
5 law expert Jay Kesan (*see* RT 551:2-18) all establish by clear and convincing evidence that  
6 Mohsen intended QuickTurn's loss to be approximately \$70,000,000. *See, e.g., United States v.*  
7 *Flores-Seda*, 423 F.3d 17, 21 (1<sup>st</sup> Cir. 2005) (Testimony from attorney for the defrauded  
8 insurance companies established loss to victim). We also note that there is no merit to Mohsen's  
9 argument that the \$70,000,000 loss figure (which was based, in part, upon Aptix's own damages  
10 expert report) was intended as some type of civil litigation strong-arm tactic for settlement  
11 purposes rather than a realistic damages figure. The guidelines permit courts to use intended loss  
12 in calculating a defendant's sentence, even if this exceeds the amount of loss actually possible, or  
13 likely to occur, as a result of the defendant's conduct. *United States v. Miller*, 316 F.3d 495,  
14 501-503 (4<sup>th</sup> Cir. 2003).

15 Mohsen's argument that the loss in this case should be limited to the attorneys' fees  
16 QuickTurn spent defending itself in the civil case is completely inconsistent with the guidelines'  
17 principle of matching punishment with culpability. Mohsen clearly intended for Aptix's  
18 damages in the patent lawsuit to be trebled which is the sole reason Mohsen produced the  
19 counterfeit Lobo notes during the civil discovery process. Beyond Exhibit 29, however, this  
20 Court is also familiar with the extensive deposition testimony Mohsen gave (and which was  
21 played for the jury at trial) concerning Mohsen's claims that he gave Keith Lobo (QuickTurn's  
22 President at the time in question) notice of Mohsen's allegation of infringement on August 19,  
23 1996. Mohsen's fraud was not intended simply to cause QuickTurn to expend legal fees in order  
24 to discover the fraud. Rather, Mohsen embarked on a systematic campaign of lies and falsified  
25 documents in order to maximize his intended recovery of damages from QuickTurn. The  
26 government proved at trial beyond a reasonable doubt that Mohsen's master plan was to  
27 exponentially increase the financial harm to QuickTurn by manufacturing false evidence--Exhibit  
28 29 and Mohsen's sworn deposition testimony regarding Mohsen's supposed August 19, 1996

1 meeting with Keith Lobo--to support a claim of “willfulness.”

2 On June 17, 1999, Mohsen testified on deposition that in August 1996, immediately after  
3 the 069 patent issued, he gave a copy of the patent to Keith Lobo. When Mohsen was confronted  
4 about the fact that he had not given anyone at QuickTurn written notice of infringement—which is  
5 the customary manner of communicating notice of infringement and which starts the clock  
6 running for damages (*see* RT 550:13-551:4 “once notice is given, unless they [the alleged  
7 infringer] have some other reason, you can set up the stage for willful infringement...so you can  
8 get a multiplier of the compensatory damages...”)—Mohsen later produced a completely fabricated  
9 document, Exhibit 29, to support his false claim that he personally gave notice of infringement to  
10 QuickTurn’s CEO. Mohsen also used the fabricated notes to bolster his false testimony in an  
11 effort to establish willfulness and to artificially start the damages clock running against  
12 QuickTurn. Mohsen gave the following sworn deposition testimony on June 17, 1999.

13 Q: At the time you brought—at the time you say you brought it to QuickTurn’s attention,  
14 did you do it in writing.

15 A: I presented it personally to the CEO of QuickTurn.

16 Q: So the answer is no, you didn’t

17 A: And gave him the copy of the patent.

18 Q: So there’s no writing that accuses them [QuickTurn] of infringement; you say you  
19 simply delivered a copy of the patent to whom, sir?

20 A: To the CEO of QuickTurn.

21 Q: Could you use that gentleman’s name?

22 A: Keith Lobo.

23 6/17/99 Amr Mohsen Deposition, pg. 575.

24 Q: Where was that meeting?

25 A: It was at a restaurant in Santa Clara.

26 Q: Was anybody else present?

27 A: No.

28 Q: **Did you have any written record of that meeting?**

A: **Yes.**

1 Q: What?

2 A: **I think prior and after that meeting I took notes.**

3 *Id.* at pg. 576. Emphasis supplied.

4 Of course, as the government proved at trial through the testimony of Mohsen’s secret  
5 expert Robert Kuranz, Mohsen did not make any written record of this supposed meeting until  
6 sometime after January 1999 after Mohsen vetted a draft through Kuranz to make sure that the  
7 ink Mohsen was using to craft the counterfeit notes was available as of August 1996—the date  
8 Mohsen selected for the phony notice of infringement. On June 18, 1999, the day after Mohsen’s  
9 deposition in which he claimed to have given notice of infringement to Keith Lobo and claimed  
10 to have “notes” memorializing that meeting, Mohsen faxed the phony Keith Lobo notes to his  
11 attorneys. On July 6, 1999, Mohsen testified as follows:

12 Q: You remember I discussed that meeting with you briefly at your deposition?

13 A: Yes.

14 Q: ...And I think that deposition was on the 17<sup>th</sup> of June; right?

15 A: Yes.

16 Q: This [the phony Lobo notes] is faxed at 8:00 the next morning. I’m asking you if  
17 there was some relationship between those two facts, that is, the fact that I discussed this  
18 meeting that you say you had in deposition on the 17<sup>th</sup> of June and then the next morning  
19 you faxed these notes to your lawyers. Is there a connection between the two?

19 A: Yes, because after the meeting I asked the lawyers of Howrey Simon, you know, how  
20 come those [notes] were not produced, because you implied like you have not seen them.  
21 And so I think shortly after that I received a voice mail that they have looked through the  
22 material and could not find it. So that prompted me to look through some of my own  
23 files and I found it [the phony notes] and faxed it to them.

22 Mohsen 7/6/99 Depo. 648-649. Later on July 6, 1999, Mohsen testified about his phony  
23 notes as follows.

24 Q: When did you make these notes.

25 A: Those notes were made the same day I met with Keith Lobo.

26 *Id.* at 650.

27 Q: Do you customarily make notes of your meetings in this format?

28 A: Important meetings, yes.

1 Q: And how do you define important for purposes of this custom of yours.

2 A: Well, this is a very important meeting [the alleged August 19, 1996 meeting between  
3 Mohsen and QuickTurn's CEO] because it was an arbitration process stuck with  
4 QuickTurn. There was a letter of—from QuickTurn threatening infringement. It was—the  
5 arbitration period was going to expire in a few days. **And in addition to we just had  
6 received that patent 069 that we believed that QuickTurn infringed.** So its very  
7 important to communicate all this information and get some resolution with QuickTurn as  
8 it relates to the extension of the period.

6 *Id.* at 657. Emphasis supplied.

7 The foregoing sworn colloquy from Mohsen's various depositions convincingly proves  
8 that Mohsen fully intended to backdate his alleged notice of infringement to August 19, 1996  
9 which would have artificially started the damages clock running almost two years before Aptix  
10 actually filed the infringement lawsuit against QuickTurn. Mohsen's phony notes and false  
11 testimony concerning whether and when he first put anyone at QuickTurn on notice of alleged  
12 infringement of the 069 patent are further proof that Mohsen intended QuickTurn's loss to  
13 include treble damages.

14 Government Exhibit 33A was a copy of *Aptix's* expert report in the civil litigation.  
15 Aptix's own damages expert (Michael J. Wagner) calculated the *compensatory* damages from  
16 QuickTurn's alleged infringement of the 069 patent to be between \$22.7 and \$24.6 million  
17 dollars depending on whether either (1) reasonable royalty or (2) lost profits were used to  
18 measure the damages.<sup>1</sup> Mohsen intended to have either number (\$22.7 or \$24.6 million) trebled,  
19 which is why Mohsen secretly employed ink expert Robert Kuranz to analyze the phony Keith  
20 Lobo notes (Govt. Ex. 29) in the first place. After Mohsen got the "green light" from Kuranz  
21 that there was no indication that the ink Mohsen used to craft the bogus notes was *not*  
22 commercially available in 1989 (the date Mohsen falsely used on the iteration of the Lobo notes  
23 he mailed to Kuranz, *see* RT 281-282), Mohsen produced a new version of the phony notes (Ex  
24

---

25 <sup>1</sup>There is absolutely no merit to Mohsen's suggestion that he cannot be held responsible  
26 for an intended loss that is, in part, based upon Aptix's own damages expert because Exhibit 33A  
27 is marked "For Attorney's Eyes Only." Exhibit 33A was prepared by using Aptix's intellectual  
28 property which Aptix intended to shield from QuickTurn's employees "eyes" not vice versa.  
Mohsen also testified in his deposition (excerpts were played for the jury at trial) that he was the  
Aptix employee most directly involved in monitoring the day to day litigation for Aptix.

1 29) and falsely dated those notes August 19, 1996.

2 Finally, there is no need for the Court to hold an evidentiary hearing on the amount of the  
3 intended loss. The government proved at trial that (1) Aptix's own damages expert, Michael  
4 Wagner, calculated the *compensatory* damages at between \$22.7 and \$24.6 million; (2) the  
5 Michael Wagner report was produced by Aptix to QuickTurn during the civil litigation as proof  
6 of Aptix's alleged loss (*see* RT 165-166 Q: "What amount did Aptix claim it was entitled to as a  
7 result of QuickTurn's alleged infringement of the 069 patent? A: "They had two different  
8 damages theories. But both were in the 24 to 25 million range. And you can see that on page 3  
9 of this exhibit [exhibit 33A]" *Id.* at 166:3-7); (3) Mohsen sought to falsely start the damages  
10 clock running on August 19, 1996—as opposed to February 26, 1998, when Aptix filed the  
11 lawsuit against QuickTurn *see* RT 47 and Ex. 1)—by creating the "Keith Lobo" notes out of  
12 whole cloth and producing those notes in the civil litigation; and (4) the phony Keith Lobo notes  
13 were a basis for Aptix's claim that QuickTurn had willfully infringed the 069 product which  
14 would entitle Aptix to triple the \$22.7 or \$24.6 million compensatory damages. *See* RT 167:16-  
15 168:4. All of the evidence of the approximately \$70,000,000 intended loss was presented by the  
16 government at trial and subject to cross-examination by Mohsen. The Court, defendant and the  
17 jury were presented with the government's proof of the loss Mohsen intended to cause to  
18 QuickTurn by his fraud. There is no basis now, nor any need for a second mini-trial on the  
19 amount of damages, nearly a year after the government presented its proof on this very issue.

20 *2. Mohsen's Role In The Offense Was Otherwise Extensive*

21 The PSR has properly assessed a four-level enhancement to Mohsen's base offense level  
22 under U.S.S.G. § 3B1.1 for Mohsen's "otherwise extensive" role in the offense. Application  
23 Note 3 to U.S.S.G. § 3B1.1 (2000 ed.) states: "In assessing whether an organization is 'otherwise  
24 extensive,' *all persons* involved during the course of the entire offense are to be considered.  
25 Thus, a fraud that involved only three participants but used the unknowing services of many  
26 outsiders could be considered extensive." Emphasis supplied.

27 In this case, the government presented evidence at trial that, Amr recruited the *knowing*  
28 services of (1) Aly Mohsen, and the *unknowing* services of (2) secret ink expert Robert Kuranz;

1 (3) secret forensic document examiner David Moore; (3) San Jose Police Dispatcher Alma  
2 Carrillo, to whom Mohsen made 2 false police reports concerning the “theft” of his notebooks;  
3 (4) the lawyers at Howrey & Simon to whom Mohsen provided numerous false  
4 documents—including the bogus 1988 Notebook, the altered 1989 Notebook, and the phony Keith  
5 Lobo notes—which, in turn, produced the false documents to QuickTurn in unknowing  
6 furtherance of Mohsen’s scheme to defraud QuickTurn. The unknowing services of these many  
7 outsiders coupled with Mohsen’s recruitment of the knowing services of co-defendant Aly  
8 Mohsen clearly warrant a four-level enhancement for Mohsen’s “otherwise extensive” role in the  
9 offense.

### 10 **C. Government’s Sentencing Recommendation**

#### 11 *1. The Law Post-Booker*

12 The Ninth Circuit reviews post-*Booker* criminal sentences by using a two-step process.  
13 First, the Court determines whether the district court properly calculated the applicable range  
14 under the advisory sentencing guidelines. *United States v. Cantrell*, 433 F.3d 1269, 1279 (9<sup>th</sup>  
15 Cir. 2006). The district court’s factual findings are reviewed for clear error and its interpretation  
16 of the guidelines is reviewed *de novo*. *Id.* Second, regardless of whether the district court  
17 imposes a sentence inside or outside the applicable advisory guideline range, the Ninth Circuit  
18 reviews the sentence to determine whether it is reasonable. *United States v. Mohamed*, 459 F.3d  
19 979, 986-87 (9<sup>th</sup> Cir. 2006).

20 The government submits that a sentence of 228 months imprisonment, followed by a 5-  
21 year term of supervised release, is a reasonable sentence based upon the considerations set forth  
22 in 18 U.S.C. § 3553(a). If the Court imposes a two-level enhancement for Mohsen’s use of  
23 sophisticated means, which for reasons discussed elsewhere in this memorandum is warranted  
24 based upon the facts presented at trial, Mohsen’s adjusted offense level for his convictions in  
25 Phase One of the trial (counts 1-20) will be a level 33 and will result in a guideline range of 135-  
26 168 months, which will be served in addition to a consecutive 60 months for Mohsen’s  
27 conviction on count 22. Pursuant to 18 U.S.C. § 3147, the Court’s sentence for count 20  
28 (contempt of court) *must* be served consecutive to the Court’s sentence on counts 1-19.

1 Accordingly, the government recommends a sentence of 168 months on counts 1-20, with 156  
2 months attributed to Mohsen's convictions on counts 1-19 and 12 months attributed to Mohsen's  
3 conviction on count 20. The government further recommends that the 168-month sentence be  
4 followed by the consecutive 60-month sentence for count 22 for a total sentence of 228 months.

5 *2. An Upward Departure Is Warranted*

6 If the Court does not add a two-level enhancement to the base offense level for Mohsen's  
7 use of sophisticated means, the government respectfully requests the Court to depart upward two  
8 levels to a level 33 based upon the many factors enumerated in Section 5K of the sentencing  
9 guidelines and the considerations of 18 U.S.C. § 3553(a). An exercise of this Court's discretion  
10 to sentence Mohsen outside of the advisory guidelines will be reviewed, just like a sentence  
11 inside the advisory range, for reasonableness. *See, e.g. United States v. Williamson*, 939 F.3d  
12 1125, 1140-41 (9<sup>th</sup> Cir. 2006). The factors set forth below, among others, reasonably support this  
13 Court exercising its discretion to sentence Mohsen on counts 1-21 to a guideline range within a  
14 level 33 (135-168 months) rather than to a sentence within a level 31 (108-135 months).

15 First, we note that Mohsen's conviction for attempted witness tampering (count 21) is not  
16 fully taken into account by an adjusted offense level of 31, which is the calculation in the PSR.  
17 The witness tampering took place in May and June of 2004, while the mail fraud counts occurred  
18 from 1998-2000. Nevertheless, the grouping rules of the guidelines resulted in Mohsen  
19 essentially receiving a "free pass" for his witness tampering and Mohsen's concomitant attempt  
20 to derail his criminal trial because the level 31 is based on Mohsen's mail fraud convictions.  
21 Thus, the PSR has calculated Mohsen's adjusted offense level as 31, which was reached with  
22 only a two-level enhancement to Mohsen's base offense level for the witness tampering, even  
23 though (1) Mohsen's witness tampering was completely separate criminal conduct four years  
24 later when Mohsen attempted to intimidate witnesses who were scheduled to testify against him  
25 in his criminal trial (count 21) and (2) Mohsen's effort to solicit a break-in to Tom Huang's car  
26 to support his bogus "mistaken car identity" defense was also encompassed in the conduct  
27 supporting a two-level enhancement for obstruction of justice. *See* ¶PSR 72. The witness  
28 tampering conviction should be fully taken into account in Mohsen's sentencing guideline range

1 in order to “reflect the seriousness of the offense, to promote respect for the law, and to provide  
2 just punishment for the offense.” *See* 18 U.S.C. § 3553(a)(1)(A). *See also*, U.S.S.G. § 5K2.21  
3 (2000 ed.) “The court may increase the sentence above the guideline range to reflect the actual  
4 seriousness of the offense based on conduct...that did not enter into the applicable guideline  
5 range.”

6 Second, Mohsen’s multi-year crime spree which interfered with the administration of  
7 both the federal criminal and civil justice system is far outside the heartland of mail fraud cases.  
8 The factors which render this case far outside the heartland of more typical mail fraud cases  
9 include the fact that Mohsen: (1) evinced further cynicism and disregard for the federal judiciary  
10 by lying to Judge Alsup about whether he had applied for an Egyptian passport (2) attempted to  
11 flee to the Cayman Islands immediately before his scheduled March 31, 2004 criminal trial  
12 before Judge Alsup; (3) engaged in serious new criminal behavior while incarcerated at the Santa  
13 Rita jail, including attempted witness tampering which is not fully accounted for with an adjusted  
14 offense level 31; (4) attempted to feign incompetency and/or insanity which resulted in further  
15 unnecessary expenditure of court and government resources; (5) embroiled his family members  
16 and friends in his further criminal schemes, including his daughter Shereen whom he co-opted  
17 into assisting him with his phony insanity symptoms, his sister Magda and his friend Mohammad  
18 Ali Moussa whom Mohsen used as the “go-between” to deliver \$5000 for the arson to  
19 undercover FBI agent “Kimo.” Yet, none of the aforementioned factors are taken into account by  
20 the guideline calculations in the PSR.

21 Third, the level 31 in the PSR does not account for Mohsen’s abuse of his position of  
22 trust to the shareholders at Aptix. Mohsen caused incalculable damage to Aptix by abusing his  
23 position as President and CEO by, among other things, (1) sponsoring false documents in support  
24 of Aptix’s lawsuit; (2) using his position as President and CEO of Aptix to verify false  
25 interrogatory answers (*see* Govt. Ex. 9), and (3) subjecting his company to a civil judgment of  
26 \$4.2 million—the amount of attorneys’ fees Judge Alsup ordered Aptix to repay QuickTurn—based  
27 upon Mohsen’s litigation misconduct in the civil case.

28 Fourth, 18 U.S.C. § 3553(a)(1)(C) requires the Court to consider the need “to protect the

1 public from further crimes of the defendant.” Mohsen has shown over and over again in this very  
2 case that he is an unrepentant recidivist criminal who is willing to game the system at any cost.  
3 Mohsen’s criminal conduct continued even after he was incarcerated at Santa Rita jail and even  
4 after the public was supposedly protected from his criminal activity. In view of Mohsen’s  
5 escalating pattern of criminal conduct which occurred over many years in both the civil and  
6 criminal arena, a level 33 *not* a level 31 will best protect the public from Mohsen’s extremely  
7 high likelihood of recidivism.

8 Finally, and most importantly, Mohsen manipulated and attempted to undermine one of  
9 the most fundamental institutions of a free society: our judicial system and the rule of law. This  
10 is a case that cries out for adequate deterrence and a strong message to be sent that those who  
11 seek to destroy the rule of law will be harshly punished. Regardless of Mohsen’s repeated  
12 insistence that he was “entitled” to prevail in the civil patent case, that determination was  
13 supposed to have been the exclusive function of the civil fact-finder. Civil litigants, criminal  
14 prosecutors and defendants, witnesses, our courts and our juries are entirely dependent on the  
15 honesty and integrity of those who avail themselves of our criminal and civil justice system. All  
16 of Mohsen’s many crimes struck at the heart of our justice system. If Mohsen is not  
17 appropriately punished, his conduct could result in lasting harm to the integrity of and public  
18 confidence in our courts and the adversary process.

19 *3. Restitution Should Be Ordered And Paid To Cadence*

20 The government contends that Mohsen’s mail fraud convictions trigger the mandatory  
21 restitution provisions of 18 U.S.C. § 3663A(c)(1)(ii). An order of restitution is permissible,  
22 indeed mandatory, in this case even though a civil judgment has already been entered against  
23 Aptix. As noted in the PSR, only 2.9 million dollars of that 4.6 million dollar judgment have  
24 been recovered by the victim. *See* PSR, ¶ 58. Further, the fact that a judgment has already been  
25 entered in the civil context does not prevent this Court from entering an appropriate order of  
26 restitution. Indeed, federal law specifically takes account of situations in which the victim has  
27 otherwise been compensated and directs that corresponding orders of restitution be reduced  
28 accordingly. *See* 18 U.S.C. § 3664(j)(2) (“[a]ny amount paid to a victim under an order of

1 restitution shall be reduced by any amount later recovered as compensatory damages for the same  
2 loss by the victim [] in any [] civil proceeding”); *see also* 18 U.S.C. § 3663(f)(1)(B). For these  
3 reasons and based on all of the facts set forth herein, the United States believes that a restitution  
4 order is appropriate in this case.

5 **CONCLUSION**

6 We respectfully request the Court to impose a sentence of 228 months. This sentence is  
7 the result of an adjusted offense level 33 on counts 1-20 which produces a guideline range of  
8 135-168 months. The government recommends that the Court impose a sentence of 156 months  
9 for counts 1-19 and 12 months for count 20 (contempt) which must be served consecutively to  
10 the 156 months on counts 1-19. The sentence of 168 months on counts 1-20 should then be  
11 followed by a sentence of 60 consecutive months for count 22, for a total sentence of 228 months  
12 imprisonment. The government also recommends a 5-year term of supervised release and a  
13 \$1700 special assessment. The recommended sentence addresses all of the factors in 18 U.S.C. §  
14 3553(a) and is entirely reasonable based upon the unique totality of the circumstances in this  
15 case. The United States also requests that the Court order the defendant Amr Mohsen to pay  
16 restitution to the victim Cadence Design Systems, Inc. for the amount that remains unpaid to  
17 Cadence for the legal fees it spent defending itself in the civil patent case.

18  
19 Dated: December 1, 2006

Respectfully Submitted,

20 KEVIN V. RYAN  
21 United States Attorney

22 /S/ Robin L. Harris  
23 ROBIN L. HARRIS  
24 KYLE F. WALDINGER  
25 Assistant United States Attorneys  
26  
27  
28

**TABLE OF CONTENTS**

1

2 INTRODUCTION ..... -1-

3 GUIDELINE CALCULATIONS ..... -2-

4     A. Government Objections ..... -3-

5         1. Mohsen Used Sophisticated Means To Cover Up His Crimes ..... -3-

6         2. The Sentence On Count 20 Must Be Served Consecutively To The Fraud

7             Sentence ..... -4-

8     B. Anticipated Defense Objections To PSR ..... -4-

9         1. Mohsen Intended QuickTurn’s Loss To Be \$70,000,000 ..... -4-

10         2. Mohsen’s Role In The Offense Was Otherwise Extensive ..... -10-

11     C. Government’s Sentencing Recommendation ..... -11-

12         1. The Law Post-Booker ..... -11-

13         2. An Upward Departure Is Warranted ..... -12-

14         3. Restitution Should Be Ordered And Paid To Cadence ..... -14-

15 CONCLUSION ..... -15-

16

17

18

19

20

21

22

23

24

25

26

27

28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**TABLE OF AUTHORITIES**

**FEDERAL CASES**

*United States v. Cantrell*, 433 F.3d 1269 (9th Cir. 2006) ..... 11

*United States v. Edelmann*, 458 F.3d 791 (8th Cir. 2006) ..... 4

*United States v. Flores-Seda*, 423 F.3d 17 (1st Cir. 2005) ..... 6

*United States v. Harvey*, 413 F.3d 850 (8th Cir. 2005) ..... 3

*United States v. Miller*, 316 F.3d 495 (4th Cir. 2003) ..... 6, 8

*United States v. Mohamed*, 459 F.3d 979 (9th Cir. 2006) ..... 11

*United States v. Williamson*, 939 F.3d 1125 (9th Cir. 2006) ..... 12

**FEDERAL STATUTES**

18 U.S.C. § 3147 ..... 3, 4, 11

18 U.S.C. § 3553(a) ..... 11, 12, 13, 15

18 U.S.C. § 3663A(c)(1) ..... 14

18 U.S.C. § 3663(f)(1) ..... 15

18 U.S.C. § 3664(j)(2) ..... 14

U.S.S.G. § 2F1.1(6) ..... 4

U.S.S.G. § 3B1.1 ..... 10

U.S.S.G. § 5K2.21 (2000 ed.) ..... 13