

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA	:	
	:	
- v. -	:	S1 11 Cr. 907 (JSR)
	:	
RAJAT K. GUPTA,	:	
	:	
Defendant.	:	
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GOVERNMENT’S SENTENCING MEMORANDUM

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I. INTRODUCTION

The Government submits this memorandum in connection with the sentencing of Rajat Gupta. Gupta was convicted after trial of one count of conspiracy to commit securities fraud and three counts of securities fraud in connection with an insider trading scheme in which Gupta provided material nonpublic information to Raj Rajaratnam in violation of Gupta's fiduciary and other duties of confidentiality so that Rajaratnam could use the information for trading purposes.

Gupta's position on the Boards of Directors of Goldman Sachs and Procter & Gamble ("P&G") gave him privileged access to sensitive and confidential information. Rather than use that information solely to serve the interests of the shareholders, as he was obligated to do, Gupta violated boardroom confidences and used the information he learned as a Director to help Rajaratnam and others at Galleon make millions of dollars in illegal profits. For the reasons discussed below, a significant term of imprisonment is necessary to reflect the seriousness of Gupta's crimes and to deter other corporate insiders in similar positions of trust from stealing corporate secrets and engaging in a crime that has become far too common. The Government respectfully submits that a sentence within the applicable Guidelines range of 97 to 121 months' imprisonment is appropriate.

II. OFFENSE CONDUCT

On June 15, 2012, the jury returned a verdict of guilty on four of the six counts in Indictment S1 11 Cr. 907 (JSR) against Gupta. The evidence at trial established that Gupta, a member of the Boards of Directors of Goldman Sachs and P&G, conspired with Raj Rajaratnam, the head of Galleon Group ("Galleon"), and others to provide material, nonpublic information ("Inside Information") to Rajaratnam in violation of Gupta's duties to Goldman Sachs, P&G, and

the shareholders of these public companies, so that Rajaratnam could trade securities on the basis of the Inside Information. Moreover, the evidence established that on multiple occasions between March 2007 and January 2009, Gupta tipped Rajaratnam with specific Inside Information that Rajaratnam and others at Galleon then used to execute trades.¹

The evidence at trial demonstrated that Gupta knew what he was doing was improper and unlawful. Indeed, Gupta had spent much of his career in a profession built on protecting the confidences of clients. He understood as well as anyone the important responsibility that comes with being in a position of trust. Moreover, as a member of the Boards of Goldman Sachs and P&G, Gupta personally participated in approving the internal policies at these companies that prohibited the disclosure of confidential information.

Gupta tipped Rajaratnam because of their longstanding personal and professional relationships. Gupta himself described Rajaratnam as a “very close friend.” (GX 1922). In addition, Gupta’s interests often were aligned with those of Rajaratnam and Galleon such that Gupta stood to benefit if Galleon was successful. Gupta benefitted and expected to benefit from the following professional associations with Rajaratnam:

- From 2005 through 2008, Gupta had invested \$10 million in and owned a twenty percent ownership stake in a highly-leveraged investment fund called Voyager. Rajaratnam controlled and managed the Voyager assets and invested some of those assets in Galleon funds.

¹ The jury convicted Gupta of substantive securities fraud counts relating to two tips: (1) Gupta’s tip on September 23, 2008 regarding the \$5 billion capital infusion by Berkshire Hathaway and (2) Gupta’s tip on October 23, 2008 regarding Goldman Sachs’s negative interim financial results. The evidence at trial also established tips by Gupta on several other occasions, as set forth more fully in the Presentence Report prepared by the Probation Office.

- In 2006, Gupta and Rajaratnam served as founding partners of a private equity fund called New Silk Route, or NSR, and Gupta became the Chairman of the fund with a large ownership stake. Rajaratnam's status as a founding partner, his \$50 million commitment to the fund, and his participation on the investment committee helped Gupta and the other partners raise money from investors. Indeed, in the fall of 2007, Gupta solicited investments in NSR from numerous friends and business associates, including members of the Boards of Goldman Sachs and P&G, by specifically identifying Rajaratnam as one of the founding partners with a \$50 million capital commitment.
- In or about early 2008, Rajaratnam appointed Gupta Chairman of Galleon International, a billion-dollar Galleon fund, and Gupta believed that he was going to receive a portion of the fund's performance fees. In connection with Gupta's financial interest in Galleon International, Gupta met with potential Galleon investors abroad and in the United States to solicit investments in Galleon.
- In or about early 2008, Rajaratnam awarded Gupta an ownership stake in another Galleon fund called the Galleon Special Opportunities Fund.

Furthermore, in late 2008, after the Voyager investment declined in value following the bankruptcy of Lehman Brothers, Gupta hoped that Rajaratnam would make Gupta whole from the losses that Gupta had suffered in Voyager.

The July 29, 2008 telephone conversation between Gupta and Rajaratnam intercepted pursuant to a Court-authorized wiretap provides an extraordinary window into Gupta's state of mind and willingness to breach his duties to please Rajaratnam. After being asked by Rajaratnam about a rumor concerning Goldman's strategic plans, Gupta casually and without any hesitation or reservation disclosed to Rajaratnam the deliberations of the Goldman Board. During that same conversation, Rajaratnam referenced the millions of dollars that he had been paying Anil Kumar offshore, in cash, for several years. Remarkably, Gupta did not even flinch upon hearing that Kumar, who was a senior official at McKinsey and had been Gupta's protégé, had this secret and almost certainly illicit arrangement with Rajaratnam. The conversation also

reflected that Gupta was motivated to assist Rajaratnam and others at Galleon because of his relationship with Rajaratnam and his direct, personal financial interest in Galleon International.

III. THE PRESENTENCE REPORT AND GUIDELINES CALCULATION

The Probation Office calculated Gupta's Guidelines range as follows:

1. Pursuant to U.S.S.G. § 2B1.4, which is the applicable Guideline for insider trading, the base offense level is 8.

2. Pursuant to U.S.S.G. §§ 2B1.4(b) and 2B1.1(b)(1)(K), as demonstrated at trial and as set forth in the Presentence Report, the gain from the defendant's offenses is more than \$7 million but less than \$20 million and thus Gupta's offense level is increased by 20 levels. The base offense level for insider trading is increased by the "gain resulting from the offense" from the table in § 2B1.1(b)(1). The "gain" is "the total increase in value realized through trading in securities by the defendant and persons acting in concert with the defendant or to whom the defendant provided inside information" U.S.S.G. §2B1.4. cmt. This Court need only make "a reasonable estimate" of the gain. U.S.S.G. § 2B1.1 cmt. n.3(c); *United States v. Rutkoske*, 506 F.3d 170, 178 (2d Cir. 2007).

3. Pursuant to U.S.S.G. § 3B1.3, because the defendant abused a position of public or private trust (and, in this case, both), in a manner that significantly facilitated the commission of the offense, the offense level is increased by 2 levels.

As a result, with a total offense level of 30, and Criminal History Category I, the Guidelines range for Gupta is 97 to 121 months' imprisonment.

IV. ANALYSIS

For the reasons discussed below, Gupta's illegal conduct warrants a significant term of imprisonment.

A. The Nature and Circumstances of Gupta's Criminal Offenses

Gupta's crimes are shocking. Gupta had achieved extraordinary personal and professional success and was at the pinnacle of a profession built on protecting client confidences. As a member of the Boards of Goldman Sachs and P&G, Gupta held positions of extraordinary privilege and prestige. He understood as well as anyone the special responsibility that came with being in such an extraordinary position of trust. He knew that he had a clear and unequivocal duty to protect the interests of the shareholders of these public companies and to protect the secrets that he learned as a member of these Boards. Yet, time and time again, over the span of nearly two years, Gupta flouted the law and abused his position of trust. Rather than serve the interests of the shareholders, as was his obligation as a Director, Gupta used the confidential information he learned as a Board member to help Rajaratnam and others at Galleon make millions of dollars in illegal profits, at the expense of the public.

Gupta's crimes are extraordinarily serious and damaging to the capital markets. Insider trading causes harm in many forms, including undermining confidence in the integrity of the financial markets, disadvantaging ordinary investors who follow the rules, and violating confidences of companies whose secret information is stolen. In this case, the conduct carries an added layer of harm because of Gupta's status as a member of the Board of Directors. Any time a company insider discloses corporate secrets so that a friend or business associate can use those secrets at the expense of the investing public, it undermines the public's confidence in the

integrity of the financial markets. But when that individual is someone of Gupta's stature and position, the resulting damage is magnified. It understandably fuels cynicism among the investing public that Wall Street is rigged and that Wall Street professionals unfairly exploit privileged access to information. This is particularly troubling at a time when there is widespread concern about corruption, greed, and recklessness at the highest levels of the financial services industry.

Although Gupta's criminal conduct appears to represent a deviation from an otherwise law-abiding life, Gupta's crimes were not an isolated occurrence or a momentary lapse in judgment. Indeed, the opposite is true. Gupta repeatedly tipped Rajaratnam with corporate secrets for nearly two years. And the ease with which he disclosed confidential information to Rajaratnam in the July 29, 2008 wiretapped conversation reflects the total disregard he showed for his fiduciary duties and the callousness with which he handled confidential information.

Perhaps the most appalling example, though, was Gupta's illegal tip to Rajaratnam on September 23, 2008 regarding Warren Buffett's \$5 billion infusion of capital to Goldman Sachs. On that occasion, Gupta learned Inside Information about Buffett's investment during a special meeting of the Goldman Sachs Board that ended just minutes before the market closed for the day. Because the news was going to be made public shortly thereafter, Gupta knew that the window of opportunity for Rajaratnam to illegally profit on the information was very small. Gupta knew that he would have to act fast, and that is precisely what he did. Gupta's first call after the Board meeting ended, made within approximately one minute of the conclusion of that Board meeting, was to Rajaratnam. When Rajaratnam's secretary answered, Gupta told her it was urgent that he speak to Rajaratnam. Gupta then provided the Inside Information to

Rajaratnam, enabling him to purchase hundreds of thousands of shares of Goldman Sachs stock in the final two minutes before the market closed for the day at the expense of other investors. Later that evening, just minutes after receiving an email from Goldman Sachs with the press release announcing Buffett's investment, Gupta eagerly reached out to Rajaratnam again, making three consecutive attempts to reach him at three different numbers in the span of about 60 seconds. At a time when the financial markets were unstable and the public's confidence in the market already rattled, Gupta put personal interests above those of the public, Goldman Sachs's shareholders, and others.

Furthermore, Gupta's insider trading conduct represented a far greater threat to our capital markets than the typical case, not only because of Gupta's status as a Board member but because Gupta knowingly gave material nonpublic information to someone who managed billions of dollars in assets and whose sole business was to buy and sell stocks. Gupta was acutely aware of the size and scope of Galleon's trading operation. Gupta had personally invested in Galleon funds; frequently visited the Galleon office; and in 2008, met with potential investors abroad and in the United States to solicit investments on behalf of Galleon. Gupta fully understood how his illegal tips would be exploited to great financial gain. In that sense, this case is distinguishable from that of a tipper who does not fully appreciate the magnitude of the trading activity that follows. Here, the profits his tips could generate were not only foreseeable, they were an intended and known consequence of his actions.

B. History and Characteristics of the Defendant

On the one hand, trial evidence and the many letters submitted by Gupta to the Court show that Gupta had an incredibly successful career, participated actively in a number of

charitable organizations, and was a loving and responsible family man to his wife, children, and other relatives. The Court can and, of course, should take that good conduct into account in fashioning an appropriate sentence.

On the other hand, Gupta took advantage of the trusted relationships that he had built from a lifetime of good conduct to violate the law at the expense of the public and the companies he was supposed to serve. Gupta was deceptive and dishonest with the other members of the Boards of Goldman Sachs and P&G, the management and employees of Goldman Sachs and P&G, and the shareholders of Goldman Sachs and P&G. His repeated conduct over nearly two years demonstrated an utter lack of respect for the law. In committing his crimes, Gupta displayed an above-the-law arrogance and never expressed any concern about the harm he was causing to Goldman Sachs, P&G, the markets, or other investors.

C. The Need To Afford Adequate Deterrence

As this Court has recognized in the context of insider trading cases, one of the most important factors the Court must consider under Section 3553(a) is the need for the sentence to afford adequate deterrence. *See United States v. Fleishman*, 11 Cr. 32 (JSR), 12/21/2011 Sentencing Transcript, at 38-39. Given the inherent difficulties in detecting and prosecuting illegal insider trading crimes and the evidence of rampant insider trading during the last several years, a substantial term of imprisonment is necessary and, indeed, essential to achieve the goals of general deterrence. *See id.*

Because insider trading schemes are difficult to detect and can be highly lucrative, significant punishment is necessary to deter others from similar conduct. *See, e.g., id.* (discussing need for general deterrence given that “[t]he ability to get access to inside

information, the ability to see its potential in the marketplace, the ability to trade on it, is so easy; [and] the ability of the government to detect these activities is so difficult”); *United States v. Jiau*, 11 Cr. 161 (JSR), 9/21/2011 Sentencing Transcript, at 40 (discussing need for general deterrence because “by its very nature [insider trading] is hard to detect but easy to commit and so the temptation is great and the chances of getting away with it, so to speak, are great.”); *United States v. Naseem*, 07 Cr. 610 (RPP), 5/30/2008 Sentencing Transcript, at 70 (“I’m not sure the guideline offense [level for insider trading] is great enough. This kind of conduct has been prosecuted before and it doesn’t seem to deter people very much. So that is a strong reason to adhere to the guideline calculation.”); *see also United States v. Kurland*, 718 F. Supp. 2d 316, 321 (S.D.N.Y. 2010) (Marrero, J.) (“The Court gives significant weight here to the principle of general deterrence, and the importance of serious enforcement of the securities laws, particularly in cases such as this, where an individual with great influence in the securities field flouts the law. Mr. Kurland built his life off of the integrity of the stock markets, and it is this Court’s view that he therefore had a special responsibility to safeguard the integrity of those markets, and to set an example: that insider trading is serious criminal behavior, and not simply an unwritten part of the job description.”); *United States v. Koulouroudis*, 09 CR 440 (PGG), 4/9/2010 Sentencing Transcript, at 27-28 (“Given the enormous financial awards as a result of this kind of fraud and the difficulties of detecting it, it is my belief that a term of imprisonment is often appropriate in this type of case to serve certain objectives and general deterrence and respect for the law.”); *United States v. Heffernan*, 43 F.3d 1144, 1149 (7th Cir. 1994) (Posner, J.) (“Considerations of (general) deterrence argue for punishing more heavily those offenses that either are lucrative or are difficult to detect and punish, since both attributes go to increase the expected benefits of a

crime and hence the punishment required to deter it.”).

Imposing a significant sentence for insider trading to deter others from participating in this kind of conduct is particularly appropriate in this case for several reasons. First, Gupta’s prominence in the business community means that the Court’s sentence has the potential for a greater deterrent impact than a similar sentence in the average case. Second, a significant sentence will send a clear message to Board members and other high-level corporate insiders – the very people who have the most access to material nonpublic information – that insider trading will not be tolerated or punished lightly, regardless of the status of the offender. Gupta’s counsel argued to the jury in this case that Gupta’s conduct had none of the indicia of “real insider trading,” such as “secret payments” or “cash changing hands.” (Tr. at 3244). It may very well have been that type of thinking that contributed to Gupta’s callousness and above-the-law arrogance. This Court should send an unmistakable and unambiguous message that tipping by a Board member or corporate executive *is* insider trading, whether or not there are secret cash payments; and insider trading will be punished severely not only when committed by a low-level employee who receives secret cash payments, but also when committed by a Board member or senior executive who tips a friend or business associate from the confines of an executive suite or corporate boardroom. Third, a sentence that is not commensurate with the sentences imposed on other recent insider trading defendants who held lower-level positions and were not as successful, prominent, or well-connected as Gupta also runs a serious risk of undermining public confidence in the criminal justice system.

V. RESTITUTION AND FORFEITURE

The Government may obtain a money judgment against the defendant to recover the amount of the crime proceeds. *See United States v. Contorinis*, 692 F.3d 136 (2d Cir. 2012). In the context of insider trading violations, the definition of “proceeds” is “the amount of money acquired through the illegal transactions resulting in the forfeiture, less the direct costs incurred in providing the goods or services.” *Id.* (quoting 18 U.S.C. § 981(a)(2)(B)). As set forth in the Presentence Report, the trading gains resulting from Gupta’s illegal tips to Rajaratnam were approximately \$11,550,000 (excluding losses avoided). A reasonable and conservative estimate of the portion of those profits that Rajaratnam himself realized (as opposed to investors of Galleon) is 10%, or \$1,150,000.² The Court should order forfeiture in that amount.

In addition, the Mandatory Victims Restitution Act of 1996 (“MVRA”) “provides for mandatory restitution in all sentencing proceedings for convictions of any offense that is, *inter alia*, an offense against property under Title 18 in which an identifiable victim or victims has suffered pecuniary loss.” *United States v. Bengis*, 631 F.3d 33, 38-39 (2d Cir. 2011) (citing 18 U.S.C. §§ 3663A(C)(1)(ii)-(c)(1)(B)). Because Gupta was convicted of conspiracy to commit securities fraud, in violation of Title 18, United States Code, Section 371, he is obligated to make restitution under the MVRA. *See United States v. Skowron*, 839 F. Supp. 2d 740, 744 (S.D.N.Y. 2012). Goldman Sachs, an identifiable victim of Gupta’s criminal conduct, is seeking restitution in the amount of \$6,780,369.34, which Goldman Sachs has advised the Government consists of

² This is based on an estimate that Rajaratnam received approximately 50% of Galleon’s performance fee, which was equal to 20% of the profits less Galleon’s 2% management fee. Rajaratnam also had a personal interest in Galleon funds as a direct investor and pursuant to a deferred compensation plan. The size of those interests varied by fund and over time.

(1) the legal fees and related costs Goldman Sachs incurred in the course of investigations and legal proceedings arising from Gupta's conduct and (2) a portion (namely, 25%) of the compensation that Goldman Sachs paid to Gupta as a Director.

VI. CONCLUSION

The Government respectfully requests that the Court impose a sentence that is commensurate with the significance and gravity of Gupta's criminal conduct and consistent with the need to deter others in positions of trust from succumbing to the same temptation that has landed Gupta in the position he is in today. For the reasons described above, the Government respectfully submits that a sentence within the Guidelines range of 97-121 months' imprisonment is appropriate.

Dated: New York, New York
October 17, 2012

Respectfully submitted,

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SOUTHERN DISTRICT OF NEW YORK

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SENTENCING MEMORANDUM OF RAJAT K. GUPTA

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I. PRELIMINARY STATEMENT

The convictions in this case represent an utter aberration in the life of the man before the Court – a man whose “personal history and characteristics” are dramatically different from those routinely presented to sentencing courts in white collar cases. Rajat Gupta’s life story does not merely include a record of charitable giving, or of caring for others and having a loving family. It is, instead, a life defined by helping others and one fundamentally at odds with the events of this case. That is, the events of this case are *uncharacteristic* in the most literal sense, inconsistent with the true character of the man.

As the more than 400 letters submitted to the Court describe in great detail, Rajat Gupta has lived an exemplary life of uncommon accomplishment, compassion, and generosity. Letters have been submitted by his four daughters, wife and extended family; childhood friends and classmates at every level; McKinsey clients and colleagues; business and philanthropic leaders; a wide array of persons engaged in global health, education and other humanitarian endeavors; and numerous people to whom he has provided career or personal advice – young and old, rich and poor, here and abroad. Those who have worked with Rajat extensively and directly attest that he adhered to the highest level of probity in his business career, including by strictly protecting the confidences of his clients and institutions he served. The letters speak forcefully of the kindness Rajat has shown to all, and to the broad reservoir of trust and respect he has earned. They reveal a strong and unselfish commitment to the public good, centered in landmark work for global health and education. They show a loving and loved husband, father and grandfather. And the letters show Rajat’s generosity to his extended family, to his friends and even to many whom he knew less well but readily supported – generosity of time, counsel and spiritual and emotional assistance, as well as financial support. Writer after writer speaks of his good deeds – dozens

and dozens are described – routinely and regularly done, unsolicited, large and small, without expectation of anything in return. It is astonishing that someone so actively engaged in a demanding and high profile career could have accomplished so many acts of kindness involving his personal time and attention. In sum, the letters illuminate for the Court a man of extraordinary decency, who believes – and acts on the belief – that every individual is entitled to help in reaching his full potential, allowing that individual to give his best to the world in turn.

Importantly, unlike many who, in the words of Harvard Professor Amartya Sen, are “morally moved” but never “actually [do] anything in the real world . . . [Rajat] actually went on to give practical shape to his insightful social dedication.” His efforts to improve global health and education – through his leadership of The Global Fund to Fight AIDS, Tuberculosis and Malaria; his founding of the Public Health Foundation of India and Indian School of Business; and his leadership of the American India Foundation and many other organizations – have helped to save countless lives. Throughout, he acted selflessly, not to enhance his image or status, nor with any expectation of recognition or benefit.

In sharp contrast to this record of regard for others, and of a long life lived exceptionally well, stands the conduct of which Mr. Gupta was convicted. The jury found him guilty of conspiracy and the substantive counts which charged tipping on two occasions in a one-month period, but acquitted him of the two other substantive charges. Mr. Gupta did not trade for his own account or receive any financial benefit in exchange for information. He received no financial gain at all. As we describe in detail below, the offense conduct in this case is comparable to that of defendants who received sentences under 18 U.S.C. § 3553(a) well below the Advisory Guidelines range in this case, including defendants sentenced to probation.

The allegations, trial and jury verdict against Rajat Gupta have deprived him of the dearest aspects of his life, causing him to sever relationships with the many humanitarian organizations so important to him and to which he planned to dedicate much of his time and energy. A career of uncommon accomplishment that made him the role model and mentor of so many, and a reputation built over six decades, have been destroyed. Most damaging for Rajat has been the effect on his family, which has been rocked by sadness, frustration, and disbelief. Yet “[e]ven as he has lost nearly everything that was important to him . . . [Rajat has focused] on how to take care of [his wife and daughters] and to provide for [them] and the network of people who depend on him” (Geetanjali Gupta). In short, Mr. Gupta has already been punished severely.

As this Court has often noted, it is the whole of an individual’s life that is at issue at sentencing. Accepting the jury’s verdict for purposes of sentencing, we respectfully submit that, weighed against Mr. Gupta’s entire life and the punishment he has already suffered, a custodial sentence is greater than necessary to achieve the sentencing purposes of section 3553(a), including the need to achieve general deterrence and to recognize the seriousness of the offense. Instead, a sentence of probation with a condition of rigorous, full-time community service would fully satisfy those sentencing objectives.

II. MR. GUPTA’S PERSONAL BACKGROUND AND CHARACTER

A. Personal History, Education, and Career

1. Early Life

Rajat Gupta was born in Kolkata, India on December 2, 1948, the son of Ashwini Kumar Gupta, a freedom fighter and journalist, and Pran Kumari Gupta, an educator who taught and served as a principal of a Montessori school. Rajat has one older sister, Rajashree, and a younger

sister, Jayashree, and brother, Kanchan. As a teenager, he attended the Modern School in New Delhi, where he was one of six exemplary students nominated prefect. Classmate Nawal Kant Sethi, remembers that “[Rajat] had no ego and was always willing to help others. In fact he spent long hours coaching, nurturing, helping other class fellows who were slow/weak in studies or low on confidence.”

While Rajat was attending the Modern School, his father, Ashwini, died. A disciple of Gandhi, the elder Gupta had been jailed for long periods by the British for his efforts to achieve Indian independence. He was permanently injured by beatings and other mistreatment and died of complications from these injuries. Classmate Harishwar Dayal remembers that when Rajat’s father died, Rajat helped his mother, “a teacher in a Montessori school with meager wages, run the home, [and he] cut down on personal expenses to ensure that his siblings . . . were emotionally and financially cushioned from the loss.” Rajashree Sen, Rajat’s elder sister, recalls that her brother “took on the role of the man of the house, comforting my mother in her extreme grief and supporting her physically, mentally and emotionally. . . . Rajat . . . fulfilled the dual roles of the responsible and dutiful son to our mother as well as the ideal father to his two younger siblings. His young age and relative lack of experience did not detract from his putting the welfare and desires of his younger siblings ahead of his own.” He was especially determined to see that his younger brother and sister excelled in school, taking “a keen interest in [their] academic progress . . . and [keeping] track of the kind of grades they were getting.” (Karuna Kumar).

Three years after his father’s death, Rajat’s mother died of a heart attack.

The tragic early deaths of his parents were a devastating blow. “In India[,] where family ties and support are such a strong cementing factor[,] . . . losing one’s parents . . . practically amount[s] to being a rudderless ship in a vast ocean.” (Nawal Kant Sethi). But “Rajat never let any of this pull him down,” writes Sethi. These experiences of his youth shaped Rajat and, early on, revealed traits that blossomed fully in adulthood.

2. Indian Institute of Technology

Despite these difficult personal circumstances, Rajat scored 15th in the nation on the entrance exam for admission to the highly selective Indian Institutes of Technology (“IIT”), and was honored with the Rudra Award, given to “the student with the most outstanding qualities of ‘head and heart.’” (Jayashree Chowdhury). As he moved forward in his life, Rajat made a point of honoring the example of his parents. His sister Rajashree explains, “Rajat honors our mother’s memory and the lessons he learned from her through his passionate involvement with ‘PRATHAM’ (i.e. ‘beginning’ [in Hindi]), an organization dedicated to providing early childhood education to disadvantaged children in India.”

Rajat excelled at IIT Delhi, while at the same time continuing to work to keep his family intact. In addition, as fellow student Akhil Gupta recounts, Rajat was “a leader at IIT [Delhi]. He was President of [the] Students Association . . . , the highest Student’s office.” According to lifelong friend Anil Sood, an IIT classmate and a character witness at trial, “the rest of us were willing for him to be our leader . . . because Rajat inspired trust and confidence. He was able to bring us together based on the strength of his character. . . . I knew that Rajat could be counted on to do what was right, to stand by and fight for what was right.” And in fact, Rajat’s tenure as student body president came at a particularly contentious time in the school’s history, with disagreements between students and faculty over pedagogy and other aspects of IIT education

resulting in disruptions and threatening “a very large breakdown.” (Ash Gupta). Rajat’s skills in principled diplomacy were crucial to reaching a resolution. Classmate Rajive Johri remembers Rajat “working [tirelessly] to avoid a major hardship to 2000+ students at our institute without compromising any individual or principles.”

3. Harvard Business School

Upon graduation from IIT Dehli in 1971, Rajat received a scholarship to Harvard Business School. He had by then met his future wife, Anita, who is herself described by those who know her as a person of “wise demeanor, simplicity and generosity.” (Shyma Dar). Anita remembers Rajat “agoniz[ing]” over whether to accept admission in light of a job offer in India and his concern that “he would not be there to look after his siblings, especially his younger brother, about whom he worried a lot. After a lot of soul searching and advice from friends and family he decided it was an opportunity he could not afford to miss.” He headed to Cambridge, Massachusetts “with practically no money” (Jayashree Chowdhury), awaking “at 5 a.m. every morning to deliver newspapers to the other students to help pay for his education.” (Ravi Mehta). But Rajat did not leave his family behind. He wrote to his younger brother Kanchan “two or three times a week and called whenever feasible” in a time when “international telephone calls were very expensive.” (Kanchan Gupta). Later, when Rajat was working and more financially secure, “[h]is younger brother, and often his younger sister, would spend nearly every summer with Rajat in the U.S” for many years. (Karuna Kumar).

Some of his IIT classmates worried that Rajat would change once he went overseas. “When Rajat was admitted straight from our college to Harvard Business School, the first student to earn this honor, we teased him about his plans for his well-worn sandals,” wondering whether he would lose his humility and “consign his native *Kurta and pajama* [to] the nearest

dustbin when he landed at Boston's Logan airport.” (Rakesh Kaul). But to Harbinder S. Gill, who had also attended IIT and emigrated to Buffalo, New York at the same time Rajat emigrated to Boston, “[i]f anything, [Rajat] appeared even wiser, not much interested in our campus parties, and now deeply committed to his future wife Anita back in India.”

Anita remembers, “I was very proud of the decision he took [to attend HBS] as I thought it was the best for him as well as his siblings, but in all honesty when Rajat left for HBS I thought that was the last I would see of him. People change when they go to America[,] I was told by well meaning friends. But he wrote long letters to me everyday and in the summer of 1973, when I graduated from IIT and he from HBS, he came home and we got married.” Over the next thirty-nine years of marriage, Rajat and Anita built a family. They have four daughters, Geetanjali, Megha, Aditi and Deepali, and twin two-year old granddaughters, Meera and Nisa.¹

¹ Characteristically, Rajat has been active in giving back to both IIT and Harvard.

He was instrumental in the 2002 founding of “PANIIT,” the alumni organization that brings together all graduates of the Indian Institutes of Technology with the goal, among others, of giving back to India through nation building efforts that benefit the underprivileged. As fellow IIT graduate Rakesh Kaul puts it, “We had been the recipients of an extraordinary gift from our college and it made eminent sense to give back. While this is a commonplace action in the U.S., doing so was unknown in India until recent times.” According to Arjun Malhotra, founder of Hindustan Computers Limited (HCL) and a former Chair of PANIIT, “Rajat was the automatic choice as Chairman of [PANIIT at its beginning in 2001] as his image, his actions and his reputation were an inspiration for all the alumni.” In addition to setting the organization's horizons as the Chair of its Board, Rajat headed the organization's “WHEELS” initiative – an effort to bring technological solutions to problems shared by India and the U.S. in the areas of water, health, energy, education, rural lifestyles and security – one “that has the potential to result in significant trade opportunities while also benefitting the underprivileged in India and the U.S.A.,” writes former PANIIT President Suresh Shenoy.

Rajat also served as Chair of the Harvard Business School Advisory Board where, in the words of Board member Leonard Blavatnik, his “vision and leadership . . . enriched the university and the professional and, ultimately, civic lives of HBS students.” Blavatnik notes Rajat's commitment to increasing diversity at HBS, as well as his guiding conviction “that

4. McKinsey

After excelling at Harvard Business School, Rajat applied for a position at McKinsey but was turned down for lack of business experience. After a professor personally intervened with the then head of McKinsey, Ron Daniel, Rajat joined McKinsey's New York office in 1973. In just over twenty years, he rose to the position of global head of the company, becoming the first ever Indian-born CEO of a United States international corporation.

At McKinsey Rajat honed the skills that would make him so valuable to the non-profits he would subsequently lead, and developed a network of clients, colleagues and others who trusted and respected him deeply and later supported his founding of the Indian School of Business and the Public Health Foundation of India. As Global Managing Director, he oversaw his firm's increasing involvement in consulting for non-profits, including a significant amount of pro bono work at his direction. And McKinsey's increasing involvement in the non-profit world sometimes served as a springboard for Rajat's personal engagement. Patty Stonesifer, former President and CEO of the Gates Foundation, states that she

turned to McKinsey's west coast office for assistance with key [Gates Foundation] projects – and unexpectedly got the benefit of the passion and interest of McKinsey's most senior executive, Rajat Gupta, who soon contacted me to offer any personal assistance he could – independent of any business relationship we had with McKinsey. Rajat just wanted to see this new philanthropic endeavor succeed and volunteered to be a sounding board and guide throughout my leadership term.

Notably, even after the events of the past two years, a number of senior McKinsey executives who worked with Rajat have written to the Court to express their appreciation for his

students fortunate enough to receive a university education should do their utmost to set and accomplish important goals to benefit society as a whole.”

contributions to McKinsey, to affirm the integrity with which he conducted himself over decades, and to reaffirm their respect and admiration for him today. Ian Davis, Rajat's successor as McKinsey's Global Managing Director, states that "[t]he events of the last two years have come as a total shock to me, as to so many [and they] do not reflect at all my experience and observations of his character and integrity, and of his desire to serve others." Similarly, 32-year McKinsey veteran and former Director Herb Henzler, states that Rajat "always impressed me [as] a person of integrity" and that McKinsey management "benefited immensely from his strong ethical foundation." Former Director Anupam P. Puri, who spent 30 years at the firm, writes that Rajat's conduct "has been nothing but exemplary and inspirational" and that his leadership of McKinsey was "always guided by a sense of mission about doing the right thing whether in regard to individuals, clients or the Firm itself, even when that was the harder thing to do." So, too, former Director Alistair M. Hanna (23 years at McKinsey) writes to the Court that, in forty years he has "never known him to do or say anything that was anything other than honorable and the truth." Edward G. Krubasik, also a former Director (more than 20 years), states that Rajat "always embodied strong ethics and integrity." And current McKinsey Partner Prashanth Vasu writes that "Rajat's integrity was beyond question in my books. When I worked with him, there was not an iota of impurity in his intent."

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Rajat was recognized as a leader and team builder early on at McKinsey. He was the youngest serving manager when he headed its Scandinavian office at the age of 33, shortly after being elected Principal in 1980; was elevated to Director in 1984; and became head of the Chicago office in 1989.

Rajat's election to Global Managing Director of McKinsey at age 45 in 1994 was a testament to the high regard colleagues had for his integrity, approachability and leadership capacity. In a process that forbids electioneering or even declaring oneself a candidate for the top job, the hundreds of McKinsey Directors around the world who participated in the secret ballot voting chose Rajat as their leader. Above all, his election was a tribute to the fact that he always conducted himself ethically, professionally, and honestly with co-workers and clients alike. According to Edward G. Krubasik, "[Rajat] was elected based on his sincere personality and everyone's trust in his strong professional values. Rajat had stellar competition among the candidates as McKinsey had many great professionals at the top, but Rajat fit very well into McKinsey's value-oriented leadership role." McKinsey Director Michael Muth (30 years with the firm) concurs: "Adherence to the values of the Firm, i.e. putting client interests above the interests of the Firm or self-interests, matters more than economic considerations as criteria for the election of a candidate."

Rajat's election was an inspiration to many young Indians, for he had broken through the "glass ceiling" that had kept Indians from the highest posts in large U.S. multinational corporations. Madhav Dhar, a successful financier who began his career at Morgan Stanley a generation after Rajat, explains that "Rajat's life story and career [were] inspirational and represented a gold standard of excellence and achievement. . . . Rajat had risen through the ranks of the most competitive, professional, ethical and intellectual firm in the world – and that was truly special, unique. And that he had done it with charm, self-deprecation, balance and an elegant reserve and comportment made it even more so." In addition to serving as an inspiration to many looking on from afar, both before and after his election to Global Managing Director, Rajat would serve as a trailblazing mentor and advisor for a great number of aspiring

businessmen and women (many of whom have submitted letters) who benefitted from the patience, engagement and wisdom Rajat offered to them even though his existing professional and family responsibilities were, to say the least, significant.

Rajat remained at the helm of McKinsey for three terms totaling nine years, until he stepped down in 2003, having instituted term limits that he applied to himself. During his tenure, as some of the firm's partners and employees left to participate in the late 1990's internet boom, a number of those remaining wanted to institute structural changes that would have been very profitable for partners, but could also have resulted in a deviation from the longstanding ethic of putting client interests first. Former McKinsey Director John Stuckey remembers that there were "quite a few senior and influential partners who were urging the Shareholders Council to sanction, even encourage, the firm to focus on e-commerce consulting and take equity in dot com start-ups in lieu of conventional cash fees." Rajat declined,

gently [making] it clear that his own judgment was that [McKinsey] should not depart significantly from [its] traditional values and strategy. The crux of this was not to be drawn [in] by the monetary gains apparently on offer, but instead stick by what was in the best long-term interests of the firm. In the end this view prevailed [and if] it had not McKinsey would, in my opinion, have never recovered fully. It would have been changed, for the worse, forever.

Former Director Herb Henzler remembers Rajat as "a man who stood by his principles for the true professional approach. 'Do what is right' was one of his typical comments and 'let us preserve the integrity of the Firm.'"

Rajat's steadfast adherence to the firm's principles became one of the selling points for McKinsey. Manoj Singh of Deloitte Touche Tohmatsu, a McKinsey competitor, explains:

"McKinsey under Rajat was a beacon for excellence, quality, forthrightness and integrity. . . .

Consulting is a profession in which one is successful only if ‘you are doing the right thing even when no one is looking.’ Clients are very astute in their assessment of the behavior of consultants and the core values they embrace. It is no coincidence that these very senior leaders in the corporate world saw in Rajat a person who was well-grounded, sincere, and trustworthy – someone who had earned their confidence.” Abbott Laboratories Chairman and CEO Miles D. White, who began his career at McKinsey, concurs: “His reputation was always the foundation of Rajat’s great success; and that reputation was well deserved and hard earned, through decades of unimpeachable behavior.” For Paul Fribourg, CEO of Continental Grain Company, a firm that has long worked with McKinsey, “Rajat and McKinsey were always one and the same. They/he represent the highest standards of professional integrity. . . . McKinsey is the best professional services firm we’ve ever worked with. Rajat was McKinsey.” And James M. Kilts, former Chairman and CEO of The Gillette Company, recalls that

[even after] Rajat became more involved in managing [McKinsey] rather than doing specific project work for me, I always valued him as a confidant and senior advisor on many difficult and important situations in managing my businesses. He was always helpful, insightful and maintained confidentiality in all my dealings with him. . . . During the time period that Gillette was in [merger] negotiations with P&G, Rajat was an invaluable confidant and advisor. The deal was a little unusual in that both myself and A. G. Lafley decided to negotiate the deal without any bankers or lawyers. It was just us, because it was a deal based on trust, respect, and honesty. In connection with these negotiations, particularly when they broke down completely, there was only one person who A. G. and I trusted enough to call on; that person was Rajat.

Rajat’s tenure as McKinsey’s Global Managing Director was also marked by the firm’s extension into emerging markets to complete the global footprint of the firm; the initiation of a technology practice; the creation of a Governance Task Force that fostered McKinsey’s next generation of leaders and led to the creation of an approach to governance better suited to the much larger firm McKinsey had become, and which is still in place today; and his leadership of a

“concerted effort to expand McKinsey’s service to nonprofit organizations and to contribute, in particular, to efforts to improve global public health.” (Anil Soni). Rajat involved McKinsey in a number of pro bono projects for humanitarian organizations and encouraged an ethos of public service within the firm. In approximately 2001, “McKinsey . . . set up a Non-Profit Practice, to be a center of expertise and practice for non-profit work,” recalls David Salinas, a consultant at McKinsey from 1999-2004 and a Global Fund Senior Manager thereafter. Rajat spoke at one of the first Non-Profit Practice conferences, “a strong and important gesture by the most senior and undoubtedly busiest person in the firm – and a gesture that I know many a McKinsey partner at the time would not have been inclined to make,” recalls Salinas. “[H]e encouraged . . . the Practice to move forward boldly [and] I believe that his presence and talk on that day did much to inspire the early generation of non-profit leaders at McKinsey, at a time when they were facing a difficult uphill battle, to build and sustain a strong Practice and to be proud of doing non-profit work at McKinsey.”

B. Family

Those who have spent time with the Gupta family describe “the warm-hearted and loving environment in Rajat and Anita’s home.” (Veena B. Mendiratta). His sister-in-law, Mala Gupta, remembers that in his early days “[a]s a consultant [with] McKinsey, [Rajat] had grueling work hours and international travel. Yet, as soon as he came home, he would seamlessly transition into a model father and be perfectly at home changing diapers or feeding his toddlers.” Anita Gupta concurs:

A consultant’s life is not easy, [a] lot of travel and unpredictable work hours. [Rajat] still found time to change diapers, give baths and walk colicky babies up and down all hours of the night. As [the children] grew older, he loved playing games with them. They graduated from chutes and ladders and go fish to monopoly,

scrabble and bridge. He loved working on math problems with them and looked really woebegone when he realized our oldest daughter had moved on to a math level he could no longer help with.

After “[t]hirty nine years and four daughters and two granddaughters,” Anita says, “whenever I try to picture my husband in my mind, I see him tired and jet lagged sleeping on the family room couch with a baby sleeping on his chest. That was always his favorite thing to do and his girls have always been the most important things in his life.”

Despite his grueling work schedule, Rajat’s third daughter, Aditi, says that he “was more engaged and more ‘present’” as a father than he would have been “simply [being] around on a day to day basis In a family of constant book readers,” Aditi says, “my dad was the one urging us to put the books down, and pushing for more joint activities – card games, family breakfasts, even team room cleaning. He wanted to spend the time he had with us, not merely around us.” Geetanjali Gupta recalls that, during times when his job required him to travel extensively, “[r]ather than being apart from us for too long, our father would take us on trips around the world with him as he worked I lost my first tooth biting into an apple in Paris, spent my eleventh birthday in London, and helped afflict a poor restaurant full of people with endless rounds of ‘Old McDonald’ as my family tried to keep my littlest sister entertained over dinner in St. Petersburg.”

As his daughters entered adulthood, Rajat parented according to the philosophy illustrated by advice he gave to his daughter Aditi when she was struggling to find her way after losing her job in consulting:

He counseled me to do what I loved, because otherwise success would always prove out of reach. He counseled me to think past the financial rewards, because no amount of money would make

up for days, weeks and months passing by in frustration. Most importantly he showed me that if you are lucky enough to find something that you love, which you are truly great at, you can find a way to use your skills to make an amazing amount of positive difference in the world.

Consistent with this philosophy, Megha Gupta, “a visual artist, a painter and printmaker,” writes that her calling has “at times . . . been difficult for my parents to understand, as self-described ‘math people’ . . . [but] though I chose a career very different from [theirs], I never worried that I would lack [their] support.” Rather, her father, through his own example, has taught her “that you should find what you love to do, work as hard as you possibly can, and trust that your work will have value.” And Geetanjali recalls that, “[d]uring my junior year of college, I decided to suspend my studies. I ended up going to cooking school for a semester and then doing non-profit legal work for a semester. Rather than getting upset or angry, my father was completely supportive, even helping me research cooking programs.”

“[Rajat] has always been incredibly patient with [his daughters], letting them try and find their own passions and paths in life,” explains Anita. “He [has] always listened, gently guided and encouraged[,] and [been] there for them.” The various paths that their daughters have taken in life are an emblem of Rajat and Anita’s belief that their daughters can best serve the world by realizing their full potential, wherever it may be found.

Rajat has supported his daughters by being their confidant, advisor, and champion. Aditi explains:

I rely on him for guidance and support in things both big and small. There are many people who have come to depend on my father, but none more so than my sisters and me.

. . .

There are many people who can be empathetic, and many others who can think practically about a problem, but I think it is rare to find someone who has both the compassion to soothe you in times of stress, and the ability to execute on the things that will help you move past a problem. My dad has always been able to do both, which is probably why I, and so many others, turn to him first with any kind of problem.

He also shares in his daughters' triumphs, cheering at their graduations and tearing-up with pride at his daughter Geetanjali's wedding. "In the Gupta household each person's trials or triumphs become those of everyone else. Plays, recitals, and birthday parties [are] attended by all family members who [can] attend. Those who [cannot are] sure to call and convey their congratulations and regrets. College acceptances, school graduations and awards achieved [are] celebrated by all family members." (Meka Nwanze).

Now that Rajat is also a grandfather, his eldest daughter, Geetanjali, writes that, "[a]s wonderful of a father as he has been to me and my sisters, he is an even more dedicated and doting grandfather." Visitors during Meera and Nisa's infancy recount that Rajat was constantly "holding at least one of the babies and sometimes two" (Liz Raun Schlesinger), or "chang[ing] diaper after diaper with affection." (Ling Hu-Kramer). Rajat's son-in-law, Meka Nwanze, notes:

The Guptas moved into our house for the first two months of the twins' lives, to help us out with the tremendous job of taking care of two newborns. Very often the Guptas would take over the care of the kids to enable Geetanjali and me to sleep. Life would have been unspeakably miserable without the[ir] help Since then, the Guptas have remained extremely involved in the lives of their grandchildren. On many occasions they have made the over three hour drive from Connecticut to Boston to babysit their grandchildren. Meera and Nisa absolutely dote on their grandparents and constantly express the desire to go to Nani's (grandmother in Hindi) house.

Since the untimely death of his parents, Rajat has been viewed by his extended family members as their leader and supporter – “a position that he has held with distinction for almost 50 years.” (Kanchan Gupta). In this, Anita and Rajat share a sad bond – the untimely passing of their parents. Anita’s mother passed away when she was 15 years old. Her father would pass away after Rajat and Anita were married, creating obligations for Anita, the eldest of four, to her younger siblings that paralleled Rajat’s obligations to his and that the two of them together have carried out.

In the words of his niece, Nandita Gupta, Rajat has acted as the “patriarch” of his extended family, a term that encompasses being an advisor, model, supporter (financial and otherwise), and force for stability in the lives of many others both in India and the United States. Rajat “generously opens his home to [the] entire clan [of extended family], and whomever we bring along . . . puts others’ needs before his own . . . maintains equanimity in the face of great loss – including his own – comforting others . . . [and] serves as a trusted advisor to each member of [the] family.” Even now, in the face of the stresses of the past two years, as Geetanjali writes: “Throughout it all, my father has been amazingly strong, and his selflessness in the face of personal tragedy has made him even more of a role model for how I want to live my life.”

Rajat’s second daughter, Megha, explains that Rajat and Anita have many “‘adopted children’ I have seen many people drop ‘Rajat’ and begin calling my father ‘Baba.’ My father has the ability to make people feel that it is natural and right to depend on him.” And in a very real way, the Guptas *have* adopted children, taking on the responsibility not just of looking after Rajat’s brother and sisters, but also for “educat[ing], provid[ing] for and mentor[ing]

Anita's siblings To this day, Rajat continues to father Anita's siblings, supervising them in their professional careers and acting as a mentor in every way." (Rajashree Sen)

The story of Rajat and Anita's selfless care for Anita's younger siblings, Arvind and Aninda Matoo, began even before Anita's father died in 1984. Arvind had begun spending his summers with Rajat and Anita even before that time, when Arvind was twelve. As he recalls,

I remember Rajat taking us to New York City, Six Flags in New Jersey, Washington DC, and Disneyworld. I also remember us playing with the train set that he bought me as a birthday present. But of all the fond memories I have of sightseeing and experiencing the U.S., I most remember his willingness to look after others. [One] summer, I happened to get very sick with malaria and Rajat looked after me like his own child – watching over me in bed with a 106 degree fever, cleaning up my vomit, and literally carrying me to the doctor's office.

Arvind, who was just 16 when his father died, remembers that at the time, "Rajat took charge of getting things set-up [financially]. . . . He spent his entire vacation in India making sure that all the appropriate arrangements were in place before he went back to Denmark." Anita stood to inherit when her father died, but "she voluntarily chose to gift her inheritance to her younger siblings, as she felt that some of her siblings were still in school and college and needed the money more than her. Rajat supported her decision wholeheartedly." (Shyma Dar). In addition, "Going forward," Arvind writes, "I continued to visit Rajat and Anita both in Denmark and in Chicago during my summer and winter vacations. Their home practically became my home, and it was similar to any college kid who goes home during break."

Anita's younger sister, Aninda Matoo, who was in college when her father died, remembers there being "a lot of social pressure" to get married in accordance with Indian social norms that deemed her a burden to her older siblings once her father passed. But "Rajat didn't

agree with the prevalent social norms and suggested I go to the USA for my MBA so as not to get pressur[ed] into marriage. He helped me choose the schools, guided me through the laborious application process, and also lent me the money to help pay for my school.”

C. Compassion, Kindness and Generosity

These letters from extended family members reveal Rajat’s interest in others’ dreams as opposed to his own accomplishments, and his readiness to offer help to a person in need. But these characteristics were not only reserved for family. They extended to Rajat’s interactions with friends, colleagues and acquaintances alike. Anita Gupta explains that Rajat’s “helping and caring doesn’t stop at our immediate families or even our extended families. Rajat is always there for anybody who needs a helping hand. He gives career advice to any young or not so young people who ask him, business advice or angel investments to any entrepreneurs starting out, financial aid to students stuck for lack of funds, help with doctors and money for anybody with a health problem and so on.” In the words of Rohit Bhandari, who met Rajat for the first time when they discussed, for the “better part of an hour,” Mr. Bhandari’s career plans at age 22: “It was difficult for me to believe that a man that humble, down-to-earth and friendly was the leader of one of the most well-respected and storied companies in the world.” Tibby Heno, who observed Rajat daily as his McKinsey secretary during his final term as Managing Director, writes, “[Rajat] has never been one of those business leaders who are arrogant and domineering. In fact, he is quite the opposite.”

As with his approach to supporting his daughters’ various pursuits, Rajat’s generous support of others is rooted in a philosophy that holds we are all entitled to realize our full potential, and that it is in the interests of all of us that obstacles to that effort are removed. It is also rooted in Rajat’s recognition that his love for his family should be the experience of every

family. Suprotik Basu, a character witness at trial and current Managing Director of the office of the UN Secretary General's Special Envoy for Malaria, writes that it "became clear" to him through his interactions with Rajat "that [Rajat's] love for his own family was arguably the greatest driver for him to save other families – who deserved equal happiness and love." As detailed below in Section II(D), this drive animated Rajat's humanitarian efforts on behalf of those who "did not deserve to be sentenced to a life of poverty simply because they . . . were born in Africa or, for that matter, parts of America." (Suprotik Basu).

Following are excerpts from just a small fraction of the letters attesting to Rajat's empathy and generosity. There are many more, each telling a unique story of how Rajat touched the writer's life during times of illness or financial or emotional need, through hours of mentorship; a word of kindness, consolation or advice; or an unexpected favor without the expectation of return or any benefit.

1. Compassion and Support

Rajat has over and over again assisted his extended family and friends – and others beyond – in times of greatest need. He and Anita provided not just financial help, but also their time, physical presence and emotional support.

- A number of letters recount Rajat's compassion and support during the illness and death of his nephew Sanjay, also known as Partho. Rajat's sister Jayshree recalls when her "elder sister's only son was diagnosed with [acute myelogenous leukemia, a terminal] cancer when he was only 21. . . . [W]e were shattered [but] . . . Rajat in his calm [and] composed manner took charge of the situation" by ensuring his family had the necessary supports. Rajat's sister and Partho's mother, Rajashree Sen, writes that "[Rajat] and Anita . . . devoted their every spare minute to providing moral, emotional and physical support to my son throughout his devastating illness and even more horrible treatment. Whenever Partho was out of the hospital he would stay at Rajat's home. His frequent blood transfusions were set up at Rajat and Anita's house, around which he carried his chemo bag and pump" (Rajashree Sen), and Rajat "took it upon

himself” to obtain a potentially useful drug for Partho when a physician was unable. (Prabir Sen).

When Partho “had to have a bone marrow transplant in Seattle far away from his native Chicago where his parents, friends and extended family lived . . . Rajat quietly arranged tickets for [Partho’s] friends [and] family to visit him in Seattle from time to time so that they could cheer [Partho] up and spend time with him when he was undergoing treatment.” (Jayashree Chowdhury). And Rajat himself “found the time to come to Seattle as often as he could to be with his very sick nephew.” (Rajashree Sen). As Partho’s health deteriorated, “[t]o fulfill some of Partho’s last wishes,” remembers Rajashree, “Rajat took us all for private helicopter rides and whale watching . . . My husband and I will never forget how we were able to fulfill some of our son’s last wishes thanks to Rajat’s limitless generosity of time, effort, money and anything else that he had to give.” Manjusri Majumdar, a friend of Rajashree’s, poignantly writes of the “last day of [Partho’s] life at Northwestern Memorial Hospital after five years of battle with [his] disease. Rajat came running from the airport and stood by [his nephew’s] bedside, touching his chest and reciting Slokas from Bhagavat Gita.”

- Rajkumari Devi, Rajat’s aunt, writes that in addition to supporting her financially since her husband’s death in 1987, Rajat also provided “moral support” without which she would “[not be] alive. . . . He always visited [my] rented flat whenever he visited India. . . . Sometimes he would be nowhere near my apartment, and yet he would fly across the country to visit me. . . . After my husband’s death[,] I had to go to [a] nursing home twice. I also had my eye operation within these years. Today[] I feel proud to admit it would not be possible without his financial help.”
- Dr. Anjana Bhan, Anita’s cousin, recounts the nightmare of being “diagnosed with kidney cancer [requiring] urgent surgery and subsequent chemotherapy” to save her life. “Gathering all his resources, [Rajat] immediately sent me a sponsorship letter to travel to [the] U.S.A. and took it upon himself to make arrangements for my appointments with doctors at Memorial Sloan Kettering in New York. Never for a moment did he hesitate to oversee all the arrangements. He could easily have distanced himself from the whole issue or even delegated the work to someone else, but he did not do so.”

Dr. Bhan remembers that, in addition to providing financial assistance, “Rajat and Anita drove down numerous times from Connecticut to Washington DC, where I was in hospital, bruised and battered by a battery of scans, procedures, surgeries and chemotherapy. . . . Rajat and Anita would visit me in the hospital, hold my hand, comfort and encourage me not to give up my fight against this deadly disease.” She says she will “never forget, how these two people, who led extremely busy lives and had numerous business, social and personal commitments, would take time off from work and home . . . and drive over 300 miles, often taking turns at the wheel, to reach Washington, stay with me to provide short breaks for my parents and husband while they kept vigil over me.”

- Anita's sister Aninda Matoo recalls that years ago, when she suffered physical injuries and later suffered from "severe depression," Rajat and Anita visited her in Seattle – where Rajat was often meeting with the Gates Foundation – whenever in the area. "I remember Rajat pushing my wheelchair in the grocery store, making me cups of tea and playing cards with me endlessly," she writes. "After they left, many a night I couldn't sleep due to severe anxiety and would often find myself reaching for the phone calling Rajat. He would calm me down and repeatedly tell me that I was not alone and he and Anita were there to take care of me and my family. It didn't matter how important a meeting Rajat had the next day, he would wake up and take my call. If it were not for his support, I don't know how I would have gotten through this challenging phase in my life."
- Friend J.L. Matu recalls a time when Rajat was at his house in Denmark to play bridge. "During the evening hours, my wife got very sick and it began snowing very heavily. I told all my friends, including Rajat, to go as all roads [would] be closed soon. We called the doctor, who came to our home and prescribed some medicines. My wife needed to get the medicine soon, though, otherwise her high fever could cause damage to her brain. Just before the doctor left, Rajat appeared. I asked him why he hadn't left; it was now impossible to take any form of transportation, with icy and perilous conditions on the road. Without making it a big issue, Rajat took the prescription from the doctor and ran out to his car to go to the pharmacy. I tried to stop him and requested him to stay with my wife and kids, so that I could drive in the dangerous weather. He smiled and in a firm yet polite manner said 'Let me go before it gets worse.' He came back with the medicine after a few hours."
- Rajib Mehra, Rajat's cousin, writes that he is "personally grateful to [Rajat for] when my father Raj K. Mehrah . . . fell ill in the year 1996 and doctors advised . . . a critical urological surgery [that] was too expensive for us. As soon as [Rajat] heard the news he voluntarily sent money before I asked for it[,] anticipating our financial condition in those days." And Rajat's aunt, Smriti Mehrah, states that after paying for her husband's medical procedures, Rajat "extended his help well beyond the post surgery and rehabilitation period. When my husband died in 2001, he asked me to come down to [the] U.S. for [a] few months to stay with him . . . I [was not] able to do that immediately. But he was very keen about that and I was finally in [the] U.S. in 2003 through his sponsorship for a couple of months to meet him and my other relatives over there."
- Krishna Gooptu, Rajat's cousin, remembers the years when his "father was bedridden with acute arthritis. . . . Rajat played a very important role in supporting my father through these years, both emotionally and sometimes financially. No matter how busy he was, Rajat would specially take time out to come to Calcutta and meet him, whenever he came to India. At other times, he would call from the U.S. and speak to him at length, offering advice and understanding. While I don't know all of the details of how Rajat helped my father, I do know that [my] father received comfort and solace from Rajat in many ways."

- Deepa Kaul, sister of Rajat's sister-in-law, recalls that when his father died, "Rajat made it a point to visit my mother and console her just like any close relative and his listening ability, humility and respect for all human beings came across so distinctly. He sat with everyone, listened to everyone and knew all the details of my father's last days."
- Rajat's bother-in-law, Mrinal Chowdhury, remembers, "My house help had serious heart problems and needed two valve replacements in his heart. I was trying my best to raise money from various sources as it is an expensive operation. [W]hen Rajat heard about this he immediately gave the balance money so that this boy could have his operation."
- Saket Khanna, son of a family friend, remembers when his "father fell gravely ill from a hospital infection after a heart surgery in India [and] [t]he doctors said that a medicine available in the United States could be a hope for saving my father's life." Rajat "was traveling to India from the U.S.A. at the time . . . [and] bought these exorbitantly expensive medicines for my father," refusing to accept repayment in return.
- Anita's aunt, Shyma Dar, recalls "when, in Chicago, [Rajat's] children's nanny, Barbara, was diagnosed with breast cancer. He took over the responsibility of her treatment as if she were his own family."

2. Financial Support

Rajat routinely, and without being asked, provided financial support for the education and other needs of both family and friends. In addition to exemplifying generosity, the many stories of Rajat enabling others to pursue educational opportunities are emblematic of his belief that every individual should have the opportunity to reach his or her full potential.

- Rajat's sister Jayashree recalls, "As soon as he got a job with McKinsey & Co. [in 1973] he worked extremely hard and saved money to send to India so that we could build a family home as we had nowhere decent to live. . . . Rajat saved every penny he made and denied himself even many ordinary pleasures. . . . Within a year, he sent enough money, in installments, so that we could build our own house and escape the threatening insults of our former landlord. While he could easily have built the family home and registered it in his own name, since he was providing the money, he chose to give all the siblings an equal share in the property."
- Rajat's sister Jayshree tells of her dream of sending her sons to an American university. However, "I knew that I would never be able to realize this dream as I did not have enough economic means for such an expensive education. Rajat did not hesitate to put forward this money for both of my sons to continue their higher

education in the U.S. as soon as they secured admission.” Jayashree’s son Rahul writes, “When I did not have the funds to pay for my graduate studies, he, without hesitation, lent me USD 75,000 and never asked about when he would be paid back. . . . Had it not been for him guaranteeing my fees and paying upfront, I would not have [had] the opportunity to study at Kellogg.”

- Rajat’s sister-in-law, Mala Gupta, writes, “through the years I have witnessed large acts of generosity, as well as, small acts of thoughtfulness.” In her own life, she remembers “[w]hen we miscarried our first pregnancy, [Rajat] sent us plane tickets to travel to Denmark, where [the Guptas] lived, for a ‘change of scene’ and for me to take the ECFMG, a grueling 6-hour-qualifying exam, given only to foreign medical graduates.” When Mala and Rajat’s brother Kanchan were back in New Delhi living on “meager government stipends as [medical] residents [and] could not afford a car . . . [Rajat] promptly bought us a bright red ‘Maruti’ – the first ever foreign automobile in India.” When Mala and Kanchan moved to the U.S. with their two children, “[Rajat] was a huge support during [the] relocation. . . . We moved to Chicago to live with him as we were trying to secure residencies. . . . We did not have enough money at the time and he helped us financially to set ourselves up and also helped with our expenses as [we] were traveling for job interviews etc.” (Kanchan Gupta).
- Anita’s eldest brother, Avinash Matoo, recounts how, “[w]hen both of our sons were young and my wife was alone with them in Dehradun while I was posted at Uttarakashi, Rajat learned of the troubles my wife was having with our old broken down car. To help us out, Rajat presented us with a new car, for which we were incredibly grateful.” Years later when it “became very hard to support my family on [the] government salary I was drawing . . . Rajat came forward and supported me both emotionally and financially for four years, during which he counseled me and helped me look for a more financially rewarding job. I eventually was able to secure a job with Motorola. When I suffered a stroke, Rajat was by my side, helping and supporting me through each medical procedure I had to undergo.”
- Cousin Raju Mehra writes that Rajat “used to provide me financial aid” whenever his salary was inadequate, adding that “it was Rajat who provided . . . financial assistance to my son [so that he could go] to a good school.”
- Harishwar Dayal, who grew up with Rajat and stayed close to him, tells of Rajat spending time with his handicapped relatives in their youth, and “creat[ing] Trusts for these same relatives from [which] they are receiving medical treatment and continuous financial succor for their lifetime.” Likewise, Rajat’s nephew Rohit Chowdhury writes that “Rajat has never forgotten his elderly aunts and uncles in India, many of whom are in their late 80s, ailing, and in need of emotional and financial support. Rajat keeps in touch with them via phone, letters and visits in-person whenever he can. He has also provided financial support to many of these relatives”
- Aditya Deb Gooptu, Rajat’s nephew, remembers that his “aunt had a troubled marriage and was separated from her American husband who later passed away in

France. When the news of his death reached us, my aunt and her invalid[] father (my grandfather) were actually in dire financial straits and not in any position to go to France or take care of any of the legal proceedings. Rajat Gupta took up the entire responsibility of ensuring that my aunt received the money that her husband had left her. He hired lawyers at his own expense and pursued this matter tirelessly from across the Atlantic. After some months or years he managed to get the bequest settled and this went a long way in ensuring financial relief for my aunt and grandfather.”

- Friend J.L. Matu recalls that when he revealed to Rajat that he was experiencing major financial difficulties that would force him to sell his family’s home. Rajat “brought peace to [Matu’s] soul” by speaking with him about his finances and reciting verses from the Bhagavat Gita, and “[a]fter a few days, without making it obvious, [Rajat] loaned [Matu] a considerable amount of money” without expectation of repayment.
- Bikram Singh, the son of an IIT classmate of Rajat’s, describes how he “arrived in America in the fall of 1993, at the age of seventeen, to attend school in Chicago. At the time, my family had just enough money to pay for my airfare and first semester of tuition. Despite my boundless sense of optimism, it did not take me long to realize that I could not make ends meet. . . . Through sheer luck I learned that Mr. Gupta . . . had been a classmate of my father’s at IIT Dehli. My father initiated an introductory phone call and within a week I found myself invited to visit the Gupta family residence. . . . Destitute and feeling desperate, I was acutely self-aware and promised myself to not exhibit any such emotions during my visit.

“I was met by Mr. And Mrs. Gupta, who greeted me warmly and introduced me to their family. Within an hour I found myself feasting at the Gupta home . . . [and] [t]he conversation shifted to how I was doing in college and it was at this moment that the emotional floodgates opened up; I could not stop myself from sharing my feelings of despair with Mr. Gupta. I was mid-sentence when he put his arm around me and told me to not worry about the finances and instead to focus on doing well in school. I was not sure what he meant considering that only money would solve my immediate problems. Before I knew it, Mr. Gupta was offering to underwrite my education expenses.”

- Julie August, who lived and worked on the Guptas’ Colorado ranch, remembers of Rajat: “If we ever needed extra money to fix a broken down vehicle, or to replace one of our appliances, he never hesitated in giving it to us. He even gifted me with a plane ticket to Virginia to go to my cousin’s wedding in 1994, after he learned that I hadn’t seen my cousin for several years. It was a very special occasion. Without Rajat’s help, I wouldn’t have been able to go on a trip like that.

“In 1995, my brother was killed while responding to an emergency as a volunteer fireman on the Brush Fire Department in Brush, Colorado. Rajat immediately sent a memorial contribution to my brother’s widow and two young sons, and condolences to all of my family. A year later, Rajat provided me with a plane ticket to the national Fallen Firefighters Memorial Weekend held in Emmitsburg, Maryland, where my

brother was honored along with all of the other firefighters that had passed away in 1995. . . . I am so grateful to Rajat that I could attend such a meaningful ceremony.”

- Meka Nwanze, now Rajat’s son-in-law, remembers first meeting Rajat when he was dating Geetanjali Gupta. “I was warmly accepted by the Gupta family. Their home quickly became my home-away-from-home [in Nigeria]. I spent my vacations with the Gupta family. When my apartment in New Haven was over-run by rats, I took shelter at the Gupta residence.

“[And] Rajat [made] my being an ophthalmologist possible. [W]hen I was in medical school, I was on a student visa, and was thus ineligible for federal educational loans. My family had limited financial resources, because my father was a Nigerian civil servant – and was paid accordingly – and my mother was a homemaker. I had to seek private loans to finance my medical education. Rajat initially co-signed my loans, and when these proved inadequate, he provided me with zero percent interest, pay-when-you-can-afford-to-do-so, loans to finance my medical education. Although the argument could be made that Mr. Gupta financed my medical education because he saw me as his future son-in-law, I do not believe this to be the case. In fact I know several other people, unrelated to Rajat, whose educations were financed with Rajat’s assistance.

“Rajat believes in human potential and feels that it is the duty of anyone who can to nurture and support it.”

3. Acts of Kindness

As numerous letters attest, Rajat regularly went out of his way to offer a kind word or helping hand, in ways both large and small, that deeply touched the recipient. These acts of kindness were performed as a matter of course, and without expectation of anything in return.

- Sudha Rani, who knew Rajat during his boyhood in India, “remember[s] very well the support he provided me when [my] younger daughter was born, while my husband was away, like brin[g]ing medicines from the chemists and items of use from home. Rajat visited me every day, without fail. I so looked forward to these daily visits. One such day, when he did not come over and I enquired, he told me that while on his way to our place, he saw a man who had met with an accident and decided to take him to the hospital.”
- Gopi Mathur Sharma, who came to know Rajat and Anita in Denmark, writes that “at the time that I met Rajat I was living in a very tumultuous marriage. During one particularly bad fight, my now ex-husband threatened to throw me and my one year old son out of the house. Some friends informed Rajat and requested him to intervene. At that time, Rajat was travelling, but upon his return he drove straight from the airport to help us – ignoring his own exhaustion and desire to get home and

see his family. He came to guide us, to counsel us and to find a way forward. In response to my ex-husband's statement that he gets violent because I aggravate him, I remember Rajat clearly saying that there is no excuse at all for violence. . . . Rajat's intervention helped in calming [my then-husband] down and us working towards a less volatile environment in the home. Rajat fairly and lovingly counseled us many times and when I had nowhere to go or anyone to reach out to, having no family of my own in town, his home was always open to me and my child. " Neel Mukund Kaul, son of Ms. Sharma and now a student at the Indian School of Business, remembers that "through [Rajat's] solid advice, I could see, even as a young child, how much more peacefully my parents could live. He has always been a tempering hand, and even in this, was able to help two very different individuals bring about a peace that two children (my sister and I) could palpably feel."

Ms. Sharma continues: "Rajat always encouraged me to be fearless and to find and live my truth. He gave me a sense of self worth which I had totally lost in my marriage. Rajat did all this for no other reason than his perpetual need for making this world a better place to live in, contributing in any way he could, without any thought of personal gain"

- Harishwar Dayal, who grew up with Rajat in India, writes, "When my elder sister died in a road accident in 1995, and my mother passed away in 1996 – on both occasions, Rajat flew from the U.S. to be with us, always deeply concerned and giving immense comfort."
- Atul Kanagat, who worked with Rajat at McKinsey in Chicago, recalls "an accident that shook [him] to the core" in 1995. "While returning home from the Post Office with my daughter one morning, we were entering our neighborhood when an 8-year-old boy darted from behind a bush on his tricycle right in front of my car. Unable to stop in time, I hit the child with the car and knocked him unconscious. The next few hours were excruciating as the police investigated the incident and submitted its report clearing me of any fault The child was in the hospital, his condition uncertain. During the tormented hours that followed, Rajat was the one person who dropped whatever he was doing and spent the rest of the day in my company as we waited for the report from the hospital. He didn't really do anything other than simply sit with me; it was the most generous and caring thing that anyone had done for me in a long time. Once the incident was over, the boy miraculously recovered with a few broken bones and bruises. Rajat left after making sure I was OK and never mentioned the incident or his role again."
- Jody Cohen Robbins, who befriended Anita after working together at the book store of their children's school and "learn[ing] that Jewish mothers and Indian mothers are cut from the same cloth," writes that "[i]t was a year or so after we had become friends when Anita and I were having coffee and my husband called extremely distraught after leaving his dying father's bedside. Without hesitation, Anita invited us over for dinner, insisting that a table full of chatting and friends was exactly the cushion needed against the realities of an impending loss."

“We arrived at dinner the same time Rajat did, looking weary from his work travels, but welcoming us in nonetheless. Through dinner it was Rajat who talked with my husband, keeping him laughing and busy. After dinner I drove home, but Rajat insisted that my husband stay. Rajat spent the long hours of the night handing my husband several glasses of scotch and allowing him to even beat him once or twice at scrabble, before finally driving him home at 2 a.m. Rajat had not known my husband long, but that did not matter. He saw that my husband was struggling with the impending loss of his father, and Rajat sympathized. . . . Rajat didn’t need anything from my husband, he had no ulterior motives. He didn’t have to stay up talking and comforting, but he did.”

- Karuna Kumar, a lifelong friend of Rajat’s sister Jayashree, writes, “After I got married and moved away from New Delhi, I lost touch with Rajat for several years. Even so, in 2004, when my daughter went to the U.S.A. for her undergraduate studies, Rajat and his family recognized that she was new to the U.S. and didn’t have any family around her. They made it a point to get in touch with her and invite her to their family home for her first Thanksgiving in the U.S.A. Rajat had never even seen my daughter before but he welcomed her into their home, spent time on getting to know her and made her feel like she too had family in the U.S.”
- Neighbor Robert Browne writes, “One time, as Rajat and I were looking at pictures of my family in my hallway, we talked about my brother, Roscoe, who died of AIDS in 1985. I told Rajat how I miss my brother every day and also about the many, many other people that I have lost to AIDS. Rajat then shared with me the losses he experienced, specifically friends who died of AIDS while he was at Harvard Business School. Rajat talked about how much their loss affected him and how he so very much missed those people. Rajat’s compassion and experience of the same was so comforting to me.”
- John P. Sorin, a friend from the Chicago area, remembers “the kindness and loyalty that the Guptas showed to me and my wife [at the time of] the untimely death of our son. Rajat and Anita could tell how much pain we were in so they wanted to take us away from our loss by offering to have us stay with them in their home in Colorado. We cannot forget such loyalty and generosity.”
- Nidhi Reddy, then a student at the Indian School of Business (ISB), tells of having met Rajat just once before the “next time I met him . . . at the graduation ceremony of the Class of 2006. This was the class I would have graduated with but unfortunately I was forced to take a leave of absence due to a diagnosis of Leukemia earlier that year. I . . . was there to cheer my friends and classmates during the convocation. Rajat saw me sitting in the audience, remembered me, and sought me out once the ceremony was over. . . . Not only did Rajat know my name and recollect our previous conversation, but also was genuinely concerned about why a student hadn’t graduated on time. I was extremely surprised that a person of his stature would be bothered about one student. On knowing my medical condition, he didn’t offer any platitudes, but asked me if there was anything he could help with, and told me that I had to come

back and complete the course once I felt better. ‘Be an inspiration to others’ he said, and I have never since forgotten that.”

- Rakesh Bhan, “cousin” by marriage, remembers the “moral support and comfort” offered by Rajat and Anita after Rakesh suffered a stroke. “Even while travelling on business, he would call my wife to inquire about my well-being.”
- Friend Vinod Gupta writes that “[w]hen my son Benjamin passed away at the age of 28 on December 19, 2011, [Rajat] and his wife were the first to call me and fly out to help our family cope with our grief.” Similarly, Uday Khemka, writing on behalf of the Khemka family and its philanthropic Foundation, offers that “[i]t is a tribute to Rajat that even in the midst of his own recent challenges he has never lost focus [on] what is important ethically in his relationship with others. Even through these last weeks he has consistently communicated with our family to ask after the health of my mother who is suffering from heart related medical issues.”

4. Mentoring, Guidance and Support

Rajat has mentored, guided and supported countless individuals, helping them to reach their full potential, and has deeply touched and influenced their lives in the process. By way of example:

- Garfield R. Beckstead, who worked with Rajat at McKinsey, writes that Rajat “mentored many younger colleagues and set a strong positive example for them as they progressed in their business careers. For me personally both when I was with McKinsey and as I developed my own private businesses, Rajat was consistently the positive benchmark that I used for myself whenever ethical questions arose and when I was required to make business decisions involving difficult principles of confidentiality, fairness, and honest dealing. He was always the example that I looked to and asked myself ‘what would Rajat do in a situation like this.’ That belief in Rajat’s fundamental integrity and honesty continues through to today.”
- Friend Anjan Chatterjee, who has known Rajat since they attended secondary school together, recalls his skepticism as to his own likelihood of being accepted into a top business school. “Rajat counseled me over the next year and a half, hours at a stretch about how to position my candidacy, helped tighten up my essays and would give me the occasional pep talk when he saw my motivation and intensity level flagging. I did make it to Stanford Business School[,] an event that transformed my life

“I shall never forget how I felt when during my first year, Rajat flew me out from California to spend Christmas with [him and Anita] in NJ because they sensed I was lonely and needed a boost.”

And when Chatterjee decided he wanted to work at McKinsey, “[h]ere again, Rajat spent hours coaching me about the interview process – we even did mock interviews – [and] gave me the confidence to believe that I was good enough[;] all in all it seemed like a repeat of the work we did in getting me to go to business school”

- Salil S. Pitroda remembers that his “personal relationship with Rajat began in 2001 when I was trying to decide whether to apply to business school. Despite his busy schedule as the CEO of McKinsey, Rajat spent an hour speaking with me and getting to know me as a person while offering me his perspective on the risks and benefits of pursuing business school versus continuing to work.

“Over the years we developed a deep relationship

“Rajat was one of the only people who supported me . . . through the most difficult personal and professional period of my life [when I lost my financial services job after the Lehman collapse].

“What I remember most about that time period are the conversations in which Rajat helped me to break out of judging myself by the constraining and myopic value system of Wall Street. He taught me that money was not the way to keep score but that the values of integrity, honesty, teamwork and respect for others are what matter most. Rajat gave me a grounded perspective on what is important in life and how to create a fulfilling career that makes a difference in the world, in essence saving me.”

- Pramath Raj Sinha, Founding Dean of the Indian School of Business, writes that Rajat “was the first to offer financial help when I started my current entrepreneurial venture – putting in the seed funding that attracted many others, connecting me to others who would help build the business. In all this he has never even bothered to ask how his investment is doing or push me for quick returns as many investors tend to do.”
- Dr. Rajan Shanti Sadanandam, Director of Global Health Innovations at Dubai Heart Centre in Dubai, United Arab Emirates, writes that Rajat “has been an inspiration to doctors like me. . . . [D]uring one of our conversations on the choices we make that impact on the largest public good, he shared with me his singular belief that we as gifted individuals must channelize our energies, our talents, our contacts towards agendas that improve the health of families, communities and countries. He was a sincere a strong believer in the great words of the father of our nation Mahatma Gandhi that we must become the change we hope to see in the world.”
- Pavan Ahluwalia, who in 2006 was being recruited to return to McKinsey from graduate school, writes that “[a]t the insistence of [a] McKinsey partner, I had a telephone conversation with Rajat, expecting to have to defend my reasons for not returning to the firm. To my considerable surprise, he listened intently, understood why I was making the decision I was making [not to return], and told me that he objectively thought it was the correct decision for me. Rather than try to ‘sell’ his

firm, or score a point in the recruiting process . . . he was able to put my own concerns front and center and evaluate the decision from my perspective.

“Over the years that followed . . . I found him to be and incredibly generous and wise mentor. . . . [H]e went out of his way to introduce me to people, and when I decided to start my own investment firm, he became one of my first investors, as he had been for several young McKinsey alumni starting off on their own.

“Rajat never once mentioned money or wealth creation while discussing either his own involvement in principal investing or my career choices.”

- Vaughn Crowe tells the story of his father being “diagnosed with kidney failure [when Vaughn was fifteen], and as a result he was no longer able to work and provide for our family. . . . This unfortunate occurrence placed me on a path that was focused entirely on financial success, which I desperately desired.”

Having joined Ray Chambers’ MCJ Amelior Foundation after spending some time in the insurance industry, Crowe “traveled to South Africa to assist Ray with the launch of The Elders . . . , an independent group of global leaders who work together for peace and human rights . . . brought together by Nelson Mandela. Rajat served as a key advisor . . . and also brought senior professionals from McKinsey & Co. to assist with establishing the infrastructure of the organization.”

Crowe writes, “I managed to spend some individual quality time with Rajat, where I explained my story. His advice changed my life. . . . I told him about my plans to go to business school, and he asked the magical question, ‘why’? I responded ‘to transition from insurance and non-profit work to investment banking and begin making tons of money.’ Rajat looked at me, closed his eyes, and shook his head. He said there is more to life than making money; you have to make a difference in the world. Since that day, his words have been cemented in the forefront of my mind, and I consider those words in my entire professional decision making.

“After my discussion with Rajat, I decided to remain with The MCJ Amelior Foundation and have worked tirelessly to improve the lives and the quality of life for the most underserved in Newark, NJ.”

- Vincent C. Nwanze, father of Rajat’s son-in-law Meka, is blind. He writes that during the first meeting between himself and his wife Rosemary with Rajat and Anita, “[o]ne morning . . . Rajat took me for a long walk along the beach in Westport. What he tried to do was something that has stayed in my memory ever since. He had observed, I believe, that I did not go anywhere, even indoors, without the assistance of Rosemary. During that long walk, Rajat was on a mission, trying, with gentleness, purpose, astuteness and cordiality to get me to walk independently. He would put a guiding arm around me, then let me go for a while and ask me to navigate the path unaided but always a few steps behind, directing me to go left, right or straight. In issuing his direction, Rajat was so gentle and caring, but so determined that I simply had to take in everything with both gratitude and humility. He advised that I get a

cane. With discreet and gentle persuasion, Rajat convinced me to start the process of seeing without vision, of gaining confidence in my ability to navigate the world on my own terms. I will never forget this.”

A universal quality of these interactions is that Rajat had nothing to gain from them, a fact of which many writers make note. For example, Peter Dolan, the former CEO of Bristol-Myers Squibb, who left the company because of a pending regulatory inquiry (in which he was not charged), writes to the Court that, at the time of his

unplanned exit from Bristol-Myers Squibb . . . [m]any business associates I had known for decades were surprisingly invisible. . . . [M]aybe a little jaundiced by what was happening . . . I wondered why [Rajat reached out to help]. He clearly was at the peak of his game [as then Global Managing Director of McKinsey], I hadn’t known him that long and I clearly was not going to be hiring McKinsey to begin a series of profitable consulting assignments.

But when Rajat sat down with Dolan to discuss the future, Dolan remembers that Rajat

was totally non-judgmental, not particularly interested in what had happened at Bristol-Myers Squibb and very much treated me as an equal. He clearly had no agenda other than to be helpful.

Rajat followed up a year later to learn about Dolan’s new projects and to offer assistance, “again [with] no other agenda than to be helpful.” Revisiting his initial skepticism today, Dolan asks:

So why do I think Rajat was one of very few individuals who made the effort to connect when he clearly didn’t need to and I did not really expect him to do so? All of my interactions with him suggest he is a person of unusual substance, character and integrity who thought he could be helpful to me and needed no more rationale than that.

This generosity is a core character trait, an essential part of who Rajat Gupta is.

D. Humanitarianism

During his years as McKinsey's Global Managing Director, Rajat devoted increasing amounts of his time to large-scale humanitarian causes. Right from the outset of his tenure as Global Managing Director in the mid-1990s, it was clear to those who knew him that Rajat

cared so very deeply for those in poverty . . . in India and elsewhere, how he had a compelling and caring vision of what to try to do about it and how he wanted to use his position of influence to make that change happen. [He] shared with us his vision that, if you wanted to raise millions out of poverty, you needed to create strategic change and that that could only happen through the establishment of world class institutions in India that could have great multiplier effects. He wanted to do this in multiple domains touching education, healthcare and philanthropy. He believed he could rally people of power and influence who might ordinarily focus on self-serving goals but who[] he believed could be inspired to do the right thing and to come together to make real change happen for no other reason than to improve the lives of many.

(Uday Khemka). His efforts continued and grew after he voluntarily stepped down from the Managing Director position, leading to improvement of countless lives, and making him a major figure in the world of public health, international education, and philanthropy. While those immersed in the world of philanthropy know of Rajat's involvement – thus, for example, Barry R. Bloom, former Dean and current Distinguished Service Professor at the Harvard School of Public Health, who has “worked in global health for 40 years,” writes to the Court that “with the sole exception of Bill Gates, no leader of the private sector or corporate world has invested so much of his time, energy and personal credit to do so much for the poorest people of the poorest countries than Rajat Gupta” – his work is largely unrecognized by the general public. This is because, in the words of Suprotik Basu, Rajat did not engage in “the spotlight seeking philanthropy we so often see today. [He] is a man who feels he is most effective out of the spotlight, allowing him to give credit to others, and who believes that solving complicated issues requires absolute immersion in the topic at hand.” Raymond Chambers, the UN Secretary

General's Special Envoy for Malaria, Founding Chairman of the Points of Light Foundation and Co-Founder of America's Promise, agrees, explaining that in the course of "my philanthropic life . . . [n]ot only is [Rajat] the most strategic and clearest thinker I have come across, but his shunning of publicity and desire to fully immerse himself into any problem is unparalleled."

A number of influences, general and particular, have driven Rajat's humanitarian contributions. At the most general level, in the words of Raymond Chambers, "philanthropy and humanitarianism [are] a core part of his belief system and spirituality." Rajat holds it as a matter of faith that part of living a good life is making a positive difference in the world, and he has found inspiration in the Bhagavad Gita and its message of "selfless action" and the performance of duty without reward. Berkshire Hathaway's Ajit Jain, who the Court will recall was a witness at trial via videotape, writes that Rajat "customarily chided me during our social meetings to become more active [in] philanthropic causes, as he viewed such activity to be the obligation of those who have been particularly fortunate in life."

His devotion of a great deal of his energy to improving the lot of India and its poorest citizens in particular grows out of his desire to give back to the people and the country that have given him so much – his IIT education among other things – but where so many are less fortunate. Rajat's work for India's poorest is also a tribute to the memory, and a continuation of the legacy, of his father who fought and died for the country's independence and prosperity.

Of his reasons for involvement in the fight against AIDS, Tuberculosis and Malaria, Dianne Stewart of the International AIDS Vaccine Initiative remembers a dinner prior to a Global Fund Board meeting at which Rajat

spoke passionately about his college roommate, a dear friend and fellow student with whom he had bonded as an undergraduate and with whom he had stayed close friends. The later death of that friend from HIV-related causes had been a personal tragedy, he explained, and it was this experience most especially that drove his determination to contribute to significant change in the way the world responds to devastating diseases such as HIV. He spoke also of the poverty in India, noting that the burden of disease there and in Africa contributed to the cycles of poverty and early death that needed to be broken.

When his friend Ash Gupta asked Rajat why he was involved with the Global Fund, Rajat answered, “If I live my life feeling that I saved the life of just one human being, I would feel the life was worth living.”

Letters from those who worked with Rajat on various humanitarian projects repeatedly note that he did nothing for the sake of personal recognition, aggrandizement or benefit. Rather, those who worked with him remember that Rajat was refreshingly free of any hidden agenda in devoting his time, thought, and energy to moving his home country forward and helping the world’s disenfranchised. In founding and leading educational and humanitarian organizations, Rajat unswervingly sought to do what he believed was best for the people to be served, not for himself, and not for the parochial interests of any constituency that had lost sight of the greater good. In a number of institutional contexts, he steadfastly defended merit-based decisionmaking, which was not always immediately popular, rather than bowing to pressure to reward class, caste, wealth, name, influence or power.

1. The Global Fund to Fight AIDS, TB and Malaria

We recently celebrated the Global Fund’s 10th anniversary, but I believe that might never have come to pass if it had not been for Rajat’s strong leadership and advocacy in the Global Fund’s early days.

Bill Gates, Microsoft co-founder and
the creator of the Bill & Melinda
Gates Foundation

Rajat has a right to be proud of his work at the Global Fund, and
millions of people are alive today because of his leadership.

Kofi Annan, former Secretary
General of the United Nations

In 2002 Rajat became a Member of the Board of the Global Fund to Fight AIDS, TB and Malaria, an organization whose mission is to increase resources devoted to fighting those diseases and to direct resources to areas of greatest need. In the ten years since, the Global Fund has “saved 7 million lives and improved the wellbeing of hundreds of millions of people,” and is a rightly celebrated institution. (Sir Richard Feachem). Characteristically, Rajat’s involvement in the Global Fund was principled, selfless and not without risk. As lifetime HIV/AIDS activist and Executive Director of International Civil Society Support, D. Peter van Rooijen, remembers:

Rajat was there from (almost) the beginning of the Global Fund and this actually required courage – the private sector was at the time not yet per se in favor of such a public acknowledgement of . . . corporate social responsibility – without any rewards. There were no financial gains, and not even gains in terms of credibility or respectability. In many ways the Global Fund was an experiment and ‘risky business’ due to its innovative approach in global health, and Rajat actually did not gain – I would argue: on the contrary, he actually ‘brought’ credibility to the Fund.

And he brought far more than his credibility to the Fund during his tenure, attests Sir Richard Feachem, a character witness during trial and the Founding Executive Director of the Global Fund and former Under Secretary General of the United Nations:

Rajat made substantial and invaluable contributions in two ways. First, he was an exceptionally dedicated member of the Board, leading the private sector delegation. He was a regular, well-briefed and well-informed participant at the three meetings per year of the Board, and at Board Committees and other Board

events. This must have consumed several weeks of his time each year. And, as the global managing partner of McKinsey at the time, his time was very valuable.

Rajat played an invaluable role as wise counsel and mentor to me, assisting me to navigate the stormy waters of the first five years of the Global Fund. I relied heavily on Rajat's business acumen and consulting expertise, which he always readily provided. In those five years, with Rajat's assistance, the Global Fund grew from scratch (no money, no office, no employees) to have assets of US\$12 billion, supporting hundreds of programs in 140 countries and saving millions of lives.

In 2007 Rajat was elected the Chair of the Board of the Global Fund, a "historically remarkable" achievement, explains Sir Richard, because Rajat headed the private sector delegation while "[t]he Board is primarily composed of representative[s] of governments." Sir Richard attributes the Board members' willingness to elect Rajat to "their respect for him, their awareness of his dedication, and their confidence in his competence," and adds that

[t]his decision to appoint Rajat as Chair is the strongest possible testament to his character. It was not taken lightly or naively. It was taken by numerous senior government officials, from the U.S.A. and many other countries, after serious consideration and close examination of Rajat's personal and professional qualities.

John E. Tedstrom, President and CEO of GBCHealth (formerly the Global Business Coalition on HIV/AIDS), adds that "[Rajat] didn't seek this 'promotion,' and didn't run for it. To the contrary, he was urged by the Global Fund's many constituencies to take the role."

Rajat's tenure as Chair was pivotal in the Global Fund's short history. Board member van Rooijen notes at least "three substantial changes that [R]ajat brought to the Global Fund that subsequently have contributed to saving the lives of at least thousands of people and [brought] change to the lives of millions of people." He lists the Global Fund's transition to independence from the World Health Organization, the transformation of the Global Fund from a financier into

a strategic entity, and the coordination of a global response to malaria as highlights. Todd Summers, a character witness at trial and a former representative of the Bill & Melinda Gates Foundation on the Global Fund's Board, credits Rajat with bringing to the Global Fund a new approach that "involved rigorous technical review of funding proposals" for their capacity to save lives, as well as an accountability-based grant management system. Rajat increased the "strategic discipline" of the Fund, writes Summers, which has "meant more effective use of Global Fund grants, and that translates – quite literally – into lives saved." Oliver Sabot, Chair of the Global Fund's Market Dynamics Committee and Executive Vice President for Global Programs at the Clinton Health Access Initiative, adds that Rajat

created, despite the initial resistance of more traditional Board members, a committee of the Board focused exclusively on getting better value for the more than \$7 billion the institution was investing in the purchase of health products. . . . [He] saw that . . . negotiating on behalf of the pooled purchasing power of the institution could improve the value the Global Fund was getting from the funds and his vision has already led to new strategies that will save the organization nearly \$1 billion over five years – money that can now be used to reach millions more people with life-saving drugs and other products.

Speaking generally of Rajat's leadership tenure, John Tedstrom writes that

[a]t the end of his term the Global Fund's prestige was raised, its budget grew and its effectiveness was enhanced. It became more transparent and accountable to the public. . . . [Rajat] dedicated an extraordinary amount of time and energy to this cause and did so selflessly and with a commitment to saving the lives of millions of people who will never know his name.

Ambassador Mark R. Dybul, the former United States Global AIDS Coordinator, adds that

[Rajat's] strong character and impeccable integrity in the service of others were major factors in creating a much stronger Board, bolstering the organization overall. [He] gave freely of his own

valuable time and committed countless hours to the betterment of the Global Fund becoming by far the most active Chair it had.

A number of letters speak specifically to Rajat's efforts in the fight against malaria, with Melanie Renshaw, Chief Technical Advisor for ALMA (African Leaders Malaria Alliance) and Senior Health Advisor at UNICEF, offering that "Rajat is one of the few people in the world who can honestly say he has saved the lives of one million children." D. Peter van Rooijen concurs, explaining that the joint plan to combat malaria that Rajat shepherded "has directly led to a tripling of the level of investments [above] the start of [Rajat's] tenure, a changed architecture in terms of planning and delivery and – most importantly – thousands of infections being prevented and illness due to malaria being cured, and thousands of lives being saved – there are estimates circulating that to date near to a million lives of children have been saved since [Rajat] changed the way of doing business in malaria."

Steven Phillips, a member of the Board of Malaria No More (a nonprofit organization dedicated to ending malaria in Africa by 2015) and an advisor to the UN Special Envoy for Malaria, tells of a particularly important contribution: Rajat's advocacy on behalf of the "Malaria Scorecard." The Malaria Scorecard is a simple but innovative approach to ensuring accountability of aid donors, recipient countries and program-executing NGOs to each other with the goal of decreasing waste and increasing the number of lives saved by humanitarian efforts. Phillips remembers seeking guidance from Rajat on how to get difficult-to-penetrate institutions such as the World Bank, USAID, and the Gates Foundation to adopt the Malaria Scorecard, expecting a "cool, detached, imperious reception." Instead, as he describes for the Court:

I got a careful and sympathetic hearing, lots of incisive questions, thoughtful strategic advice, and most significantly a personal commitment to help. Over the next months and years Rajat became a campaigner for "The Malaria Scorecard." It has now

been adopted by nearly four dozen African heads of state and most big development players [and] is now broadly seen as the catalyst to a new way of doing business in the foreign aid arena. This would not have happened without Rajat's heartfelt hands-on involvement.

Similarly, Dr. Renshaw recalls that Rajat, as Chair of the Global Fund, laid the groundwork for her organization to fill a major funding gap and "scale up life-saving malaria control interventions throughout Africa." She writes that studies are "documenting significant declines in malaria in Africa, in fact a 33% reduction, and this can be traced back directly to the Global Fund's financing secured when Rajat was chair of the board, and when, thanks to him, we secured more resources to control malaria than ever before." Olayemi Sofola, a Nigerian doctor who was Director of his country's National Malaria Control Programme until 2009, details Rajat's engagement in securing funding for aggressive anti-malaria efforts and adds that "it goes without saying that Rajat Gupta has, in no small measure, contributed to Nigeria protecting her people from malaria and becoming healthier and happier people."

2. The Public Health Foundation of India

Rajat's most remarkable achievement was to establish the Public Health Foundation of India (PHFI), which does work of extraordinary reach and effectiveness in enhancing the medical and health care opportunities of Indians, particularly from the bottom layers of the society. Rajat conceived of the idea of having such a foundation, devoted a great deal of time to planning it in a way that would make it efficacious, helped it with its charitable contributions, and led it in its formative years as the Chair of its Board.

Amartya Sen, Harvard University's
Thomas W. Lamont University
Professor, Professor of Economics
and Philosophy, Nobel Prize Winner
in Economics (1998), and PHFI
Board member

Rajat is also considered the “principal architect” of the Public Health Foundation of India (PHFI), a public-private partnership he founded and chaired that has brought together governments, NGOs, academia, and the private sector to address health and nutrition in India among other challenges. (Kiran Mazumdar-Shaw). PHFI’s signal accomplishment has been the establishment of Institutes of Public Health throughout India. These Institutes endeavor to provide education and research relevant in the context of India, while attaining standards comparable with the finest public health institutions in the world. As explained by PHFI supporter Bill Gates, “Today, there are institutes in Delhi, Gandhiagar, Hyderabad and Bhubaneswar that provide graduate degrees, diploma programs, training courses and certifications that are fundamentally improving the well-being of India’s poorest people, while promoting best practices and effective programs throughout the country.” PHFI is active in communicating evidence-based healthcare options to communities and increasing “health literacy” throughout Indian society. For example, Mukesh D. Ambani, Chairman and Managing Director of Reliance Industries Limited, notes that Rajat has developed plans for “model districts” of healthcare delivery redesign in collaboration with Ambani’s Reliance Foundation. Ultimately PHFI’s goal is to help create a public health infrastructure that will support the Indian nation.

In founding PHFI, Rajat was the “intellectual and persuasive catalyst for a massive new approach to public health training and research in a nation with well over a billion people and dual epidemics of infectious diseases and chronic diseases,” writes James W. Curran, a public health expert at Emory University and founding member of the PHFI Board. Sunali Rohra, the former head of McKinsey-India’s external relations who worked with Rajat on the launch of PHFI in 2006, likewise considers the organization “the outcome of [Rajat’s] vision and tireless

persuasion of the political class, the bureaucracy, businesses, civil society and academia globally and in India.” He notes in particular that Rajat acted as “the glue that stuck all of [the] various objectives [of stakeholders] together to achieve tangible results.” And, as described by Gautam Kumra, who worked closely with Rajat on the launch of PHFI and is currently a McKinsey Senior Partner:

When Rajat initially tested the idea [of PHFI] with the Indian government, it met with a lot of skepticism. However[,] that didn’t deter Rajat. Rather, he persisted in his efforts to mobilize broader support for this initiative across different constituents in the government, academia, civil society and the private sector. . . . Rajat poured his heart and soul into evangelizing the idea across all concerned stakeholders [in the Indian government] He eventually managed to convince the Government of India not only to give major financial assistance to the initiative, but also to give it the independence and autonomy to flourish despite being a public-private partnership.

Prashanth Vasu, a McKinsey Partner who worked with Rajat at PHFI’s inception, also credits Rajat with “shap[ing] the expansive future of PHFI with his oft repeated . . . statement ‘One school could be *excellent but it will be irrelevant*. What we need is excellence at scale.’” Vasu explains:

[Rajat] was not satisfied with a paltry idea of setting up a school; he wanted to set-up a network of over 10-12 schools of global preeminence that educated over 10,000 professionals annually who could subsequently have genuine impact on the public health landscape of the country. Rajat never deviated from this aspiration throughout the over 3-5 year journey that it took to give birth to PHFI.

R.A. Mashelkar, former Director General of India’s Council of Scientific & Industrial Research and a member of PHFI’s first Board of Governors, also credits Rajat for his firm defense of the fledgling organization from pernicious influences. “With politics and politicians around, . . . Rajat’s integrity, his adherence [to] the rules of good [g]overnance, his ability to

stand [up] to pressure [of] unreasonable demands from some influential quarters with vested interests, etc. was tested. And I must say that I would give Rajat 100 out of 100 for the way he came [out] good [on] all these tests. He always took a principled stand.”

Rajat’s dedication to the organization spanned beyond its founding. Prafulla C. Gupta, a PHFI volunteer in 2009-10, remembers that at that time,

[d]espite his numerous commitments around the world, Rajat spent a week every quarter in India – and was always available for guidance and counsel[,] . . . raised more than \$150 million and made numerous personal financial gifts to help endow the Foundation[,] . . . led the search for Faculty[,] . . . [and t]hrough his chairmanship of the Global Fund . . . helped PHFI secure further research funding, access to international faculty and to the best methodologies for promoting public health.

Amartya Sen echoes the sentiments of a number of writers with knowledge of Rajat’s humanitarian contributions when he remembers there being “a great sense of loss when Rajat decided to withdraw from his leadership role of the Foundation when he was formally charged . . . (he did not want the PHFI to suffer from the bad image he was personally going to get in the process of the trial).” Indeed in the view of Bill Gates, “[PHFI] would not exist, had it not been for Rajat’s commitment to the poor of India, and his generous support, encouragement and leadership.”

3. Indian School of Business

Rajat played a seminal role in establishing this now globally renowned institution. Rajat’s vision was to create a leading world class business school in Asia, a goal that quickly materialized.

. . .

Innovation holds the key to inclusive economic development in a country like India in solving the monumental challenges in

education, healthcare and poverty alleviation. ISB will, no doubt, be an integral part of this national innovation”

Kiran Mazumdar-Shaw, Chairperson & Managing Director of Biocon, an Indian pharmaceutical firm focused on reducing the therapy costs of chronic diseases, and a member of the Board of the Indian School of Business

Rajat’s first major philanthropic effort was his co-founding of the Indian School of Business (ISB) in Hyderabad, India in 2001, and his service as its Chairman of the Board. Dean Emeritus of the Kellogg School of Management at Northwestern University Donald P. Jacobs remembers when Rajat, who sat on the Board of Kellogg at the time,

had the inspired idea to create the Indian School of Business . . . in Hyderabad and first told me about it during a breakfast session at one of our Kellogg executive programs. He told me that he wanted to do something of significant benefit for the country of his birth, which had helped him achieve so much professionally. He wanted others to enjoy similar opportunities and saw education as the key to success. In his vision for ISB, Rajat said that he took inspiration from Kellogg and wanted to develop an ambitious program that would emulate Kellogg and include our school as a partner.

According to ISB’s founding Dean, Pramath Raj Sinha, Rajat’s ISB “was an audacious dream powered by his passion and purpose to enable Indian students to experience world-class management education.” And a decade after its founding, the ISB truly is world class – consistently having been rated among the top twenty business schools in the world by the *Financial Times* – and it has brought a U.S.-style MBA education to thousands in Asia at a fraction of the (prohibitive) cost of attending a U.S. institution. Ultimately ISB teamed with associate schools including Kellogg (Northwestern University), Wharton (University of

Pennsylvania), London Business School, MIT Sloan, and Fletcher (Tufts University). It has close to 5,000 alumni and graduates nearly 800 MBA students yearly.

In envisioning ISB, Rajat also “felt that the changing Indian economy needed a business school that produced world class managers with global outlook” (Kumara Guru), and an institution that would do “research relevant to the society [it] operated in.” (Nidhi Reddy). Ajit Rangnekar, ISB’s current Dean, reports that in addition to educating Asia’s future leaders, “with [Rajat’s] active encouragement, the ISB now has a Mission to focus on researching the major societal issues facing Emerging Economies, and to find viable, working solutions to these larger problems.”

In the words of former Kellogg Dean Donald Jacobs, “Rajat was the person who made this exceptional institution possible.” Soo Chuen Tan, a former McKinsey business analyst who worked on the ISB launch under Rajat, writes to the Court that he

could see that the founding of this school was a labor of love for Rajat. Rajat . . . was running a global management consulting firm, and had many competing demands on his attention, but he gave a significant amount of his time and energy, and used up a substantial amount of personal and professional capital, in order to get the school successfully launched.

ISB Board member Kiran Mazumdar-Shaw credits Rajat with “encourag[ing] and convince[ing] Indian corporations to invest in ISB at a time when such philanthropic endeavors were quite uncommon in the Indian corporate sector. Doing so is not only a testament to how strongly Rajat believed in ISB, but also in how strongly others believe in Rajat.” Uday Khemka, whose family’s Khemka Foundation was an early supporter of ISB, explains that

[m]ost philanthropic projects in India are done in an individualistic and old fashioned way. A wealthy individual, family or business, creates a

project to honor itself or burnish its own personal good name or brand. Examples of such actors collaborating together to create an institution for the common good without any link to a personal brand are very limited. Rajat achieved this: he persuaded the country's elite to come together to create a great educational institution with no personal agenda, no personal benefit, collaboratively.

Many letters note that in the face of significant obstacles, Rajat insisted that ISB operate above-board at all times, which "helped to establish the vein of integrity in the ISB and has set the tone for the values the School embodies." (Keki B. Dadiseth).

Former President and CEO of General Electric India Scott R. Bayman summarizes some of Rajat's particular contributions to ISB's founding and growth:

As a member of the [ISB] Governing Board, I witnessed first hand, Rajat's passion for building a world-class business school in India. He contributed his own funds, raised early money, seconded a key McKinsey partner to be the first dean and chaired the board. He committed a significant amount of his personal time and resources to the success of the school.

Neeraj Bharadwaj, who was part of the McKinsey team that formulated a plan for founding ISB, adds that Rajat recruited Board members, established relationships with partner schools, chaired Board meetings, and worked to ensure placement of early graduates. Mazumdar-Shaw notes Rajat's deep involvement in developing ISB's curriculum and code of conduct, both of which "emphasized the importance of acting professionally and with honesty and integrity at all times."

4. American India Foundation

Today AIF is the leading Indian Diaspora collective [p]hilanthropy. . . . In its [eleven] years of existence, AIF has directly touched and benefited the lives of 1.5 million . . . marginalized people in India.

Rajat provided crucial leadership to AIF . . . donat[ing] his personal funds but more importantly giv[ing] his very valuable time, mind . . . and connectivity to benefit AIF enormously.

Pradeep Kashyap, Founding
Executive Director of AIF and
current Vice Chair of the AIF Board

In January 2001, a massive earthquake hit Gujarat, India, killing approximately 20,000 people, injuring hundreds of thousands, and destroying hundreds of thousands of homes. In response, Rajat worked with former U.S. President Bill Clinton and Victor Menezes, former Senior Vice Chair of Citigroup, to found the American India Foundation (AIF). Under their leadership, within its first year AIF raised millions of dollars to support earthquake relief efforts, sent a team of physicians to aid victims, and began a program for matching the skills of volunteers from around the world with Indian NGOs in need of them. Rajat organized a McKinsey team to assist AIF *pro bono*. Over time the Foundation extended its efforts beyond Gujarat, reaching into the areas of primary education, healthcare and employment opportunity for the country's neediest. AIF estimates that its work has benefitted 1.5 million people since the organization's inception.

Co-founder Menezes attests that "AIF was built with Rajat's personal commitment, time, energy and wise guidance." Among other things, he participated in nationwide fundraising efforts, helped decide which projects would receive AIF funds, and reviewed projects on-the-ground through yearly monitoring trips to India. Vimal C. Bahuguna, an AIF Board member and President of Drona Group, writes that "the Board Members[] could always count on Rajat's deep engagement, and indefatigable energy, while deliberating on our agenda to surface the most effective outcomes for AIF's social investments."

One of AIF's investments was in Vikram Akula's SKS Microfinance, "which provides small loans to millions of poor women in India so they can earn income and help get their

families out of poverty.” Akula remembers when he converted SKS Microfinance into a for-profit business

[in] order to be able to scale our work more widely. However, the idea of a for-profit social enterprise was new at that time, making it very difficult to find funders who had the sophistication to understand that a commercial entity could make a tremendous social impact in typically charitable realms. Rajat was one of the few who saw the potential, and the American India Foundation, which he co-founded and co-chaired, took a chance on SKS and provided funding. With that funding, SKS was able to complete its conversion to a for-profit and eventually provided billions of dollars in loans to more than 7 million poor women across India.

Bahuguna also offers a small but telling example of Rajat’s contribution to AIF’s success, remembering that when he (Bahuguna) was first entrusted with starting AIF’s Midwest chapter, he “was more than a little cynical about the support I’d likely receive from Rajat to get the endeavor going, in large part because of the fact that Rajat’s time carried a huge economic premium.” But, writes Bahuguna, “[t]o say that Rajat was generous with his time [is] an understatement. He spent countless hours with me in making the AIF’s case to various corporate leaders in the Chicago area. . . . In six short years since its inception, AIF-Chicago has become a highly exemplary charity in Chicago.”

5. The United Nations

When I became Secretary General, I undertook an ambitious effort to bring about reforms in the management and administration of the United Nations. These proposed reforms were radical and far-reaching.

As my advisor, Rajat worked with leaders of the NGO community, with UN ambassadors and top UN officials to forge alliances and create the momentum needed to accomplish reform. Rajat was superb. As a result of his efforts, we achieved much of what we set out to do.

Kofi Annan, former Secretary
General of the United Nations

In 2004 then United Nations Secretary General Kofi Annan and the United Nations Foundation (UNF) joined in asking Rajat to lead a McKinsey team with the goal of proposing reforms to modernize and streamline the UN operations. Secretary General Annan remembers asking Rajat to be his “advisor for Management Reform . . . for three reasons: (1) Rajat had expertise in management, and we needed that; (2) While serving as Chairman of the United Nations Association of America, he got to know the United Nations, and we needed that; and (3) This task required an individual who would work hard and whose integrity was unquestioned. Rajat was that kind of person.”

Of Rajat’s involvement, former U.S. Senator and current UNF President Timothy E. Wirth recalls that Rajat

was extremely forthcoming and helpful . . . volunteer[ing] his own services, and promis[ing] a small team of senior experts [from McKinsey] at a very low price.

The project lasted for about two years during 2005-2006 and consumed a great deal of [Rajat’s] personal schedule, and that of his senior team.

When the project was over, he was again very generous with his time, explaining conclusions and recommendations to many of the internal and external constituencies that make up the UN.

Senator Wirth credits Rajat with “real progress on issues like transparency, audit control and disclosure, and human resources,” and with “provid[ing] the base for further efforts in the ongoing quest to modernize and streamline the UN.” As a result, he “emerged from the process with continuing respect and affection for Mr. Gupta. His generosity, good humor and

professionalism were extremely helpful, and his persistence helped us over some major stumbling blocks.”

Looking back on the two years they worked together on behalf of the UN, Secretary General Annan writes that he and Rajat “had many conversations, and we developed a friendship. I found that Rajat was engaged in this work for all the right reasons. He wanted to make the United Nations a stronger and more powerful force in the world, not only to advance its humanitarian missions but to advance the cause of peace. Rajat was determined to make a difference, and I was grateful for his assistance.”

6. Other Humanitarian Efforts

Rajat would be rightly considered a humanitarian of the highest order based solely upon his critical contributions to any one of the Global Fund, the Public Health Foundation of India, the Indian School of Business, the American India Foundation, and the United Nations, let alone his combined work at all of them. In addition, and by way of summary:

- Rajat served as an advisor to the executive leadership of the Bill and Melinda Gates Foundation and chaired that organization’s first Global Development Advisory Board, where, in the words of Bill Gates, “he was instrumental in pulling together the inaugural group of experts to advise us on this newest category of our giving – supporting economic development.”
- Rajat also chaired the Gates Foundation’s India AIDS initiative, Avahan. In the words of Julio Frenk, Dean of the Harvard School of Public Health, Avahan “has three primary objectives: to build an HIV prevention model at scale in India; to catalyze others to take over and replicate the model; and to foster and disseminate lessons learned within India and worldwide. It provides funding and support to targeted HIV prevention programs and has helped to significantly expand access to HIV prevention services.” Avahan reaches hundreds of thousands of people in India with prevention services each month.
- Helene D. Gayle, current President and CEO of the poverty-fighting organization CARE USA and formerly of the Gates Foundation, also credits Rajat with early assistance to the Gates Foundation when that organization engaged McKinsey for

help in launching Avahan: “His advice and guidance was crucial in helping us develop a sound strategy and most importantly in finding the right director for the program He also was vital in helping us work through some of the initial very difficult political hurdles necessary [to overcome] to have a successful start to that program.”

- Rajat was on the Board of the Pratham Education Foundation, the largest non-governmental organization working for the provision of high quality education to India’s underprivileged. Pratham’s programs are designed to increase enrollment, attendance, and learning in schools, with a focus on replicating working models for large scale impact. The organization “reaches over 3 million children in India every year in order to improve their basic literacy and numeracy.” (Madhav Chavan). Pratham CEO-President Madhav Chavan credits Rajat with “perceptive and quiet support” that was “critical in helping [him] to take the organization to where it is today.”
- Rajat served on the Board of Millennium Promise, an organization that mobilizes resources and develops strategies to eliminate global poverty by empowering communities. To Jeffrey C. Walker, former Chairman of the Millennium Promise Board, “Rajat was one of the most important board members we had because of his deep experience in the global health world through his work at McKinsey and subsequently as head of the Global Fund. He was a member of the executive committee of the Board and was a very active member of the board overall. . . . Through his involvement in Millennium Promise, Malaria No More and the Global Fund . . . a million more people are alive in the world than would have been without him”
- From 2006 to 2011 Rajat was a trustee of the Rockefeller Foundation. As a trustee he helped set Foundation policy, reviewed the performance of senior officers, and monitored the Foundation’s budget and investments. Foundation Chairman David Rockefeller Jr. writes that Rajat was “an exemplary Trustee . . . contribut[ing] to discussions in a wise, respectful and very useful manner. . . . It was a true loss when Mr. Gupta decided to resign” for the good of the organization in light of the allegations against him.

Judith Rodin, current President of the Rockefeller Foundation and former President of the University of Pennsylvania, writes to the Court that she “so admired Mr. Gupta’s contributions to the eradication of poverty and pursuit of more effective global health that I asked him to join the Rockefeller Foundation Board while I was President,” and notes his “outstanding contributions [in] helping to elevate a strategic approach to the work and the financial support we give to institutions and efforts around the world.” Ms. Rodin shares with the Court her “impress[ion of Mr. Gupta] as someone who dedicated a large portion of his personal time and professional career to serving the world’s poorest and most disadvantaged people and did so with enormous conviction and caring. While others could have taken the personal resources and comfort level that they earned from professional success, Rajat seems more restless and more driven to work on behalf of those who often were the most voiceless as he increased

in personal wealth and power. . . . I have seen him in multiple venues, advocating relentlessly for improved health and poverty reduction, and adding his analytic skills to make sure that the expenditure of funds and the delivery of effort achieved the highest impact.”

- Rajat, then McKinsey’s Global Managing Director, was “personally involved” in a McKinsey project “to assist the [World Economic Forum (WEF)] to build its global membership and better engage the private sector in its mission-oriented efforts.” (Kevin Steinberg). The WEF is a “Swiss-based non-profit foundation focused on improving the state of the world by fostering interaction and collaboration between the private sector, government and civil society.” *Id.* According to Kevin Steinberg, who was leading the McKinsey project, Rajat “provid[ed] overall stewardship and advice, and ensur[ed] resources were made available on a pro-bono basis. He took great interest in the organization, actively providing suggestions to further its strategies, and making introductions on its behalf. Ultimately, in acknowledgement of his efforts and contributions he was invited to join the [WEF] Foundation Board.”

On the Board he was – according to Kathryn Taylor, formerly responsible for the global health program at the WEF and now a fellow of Ormond College at the University of Melbourne – “a revered figure . . . , one whose [counsel] was sought and respected, especially on matters of integrity. I know that he devoted a significant amount of time and attention, challenging the WEF to find ways to better deliver on its mission ‘to improve the state of the world’ and that this in turn sparked broader debates that carried across to changes in WEF companies.” Maurice Levy, Chair and CEO of the Publicis Groupe, adds that “[he] had many occasions to work with Rajat in this context, and saw how tirelessly and selflessly he worked to establish the long-term direction and objectives of the WEF.” When Kevin Steinberg – who had been seconded to the WEF by McKinsey for an extended period with Rajat’s support – returned from Switzerland to found WEF USA, the North American Affiliate of the Swiss foundation, Rajat agreed to serve on its Board.

- In 2005, Rajat joined the Board of EMRI, the Emergency Management and Research Institute, an ambulance and health care service private-public partnership in India. The organization operates the equivalent of a 911 service, free of charge, that has handled 12 million emergencies in the last six years, with more than 70% of the beneficiaries being underprivileged. Former CEO Venkat Changavalli notes Rajat’s “professionalism, dedication, hard work [and] involvement” in service to EMRI, especially his critical work seeing the organization through the crisis of losing its founder. Rajat guided Changavalli “three times a week for half-an-hour each time to find a new funder and continue the operations without any break.”
- From 2005 to 2008, Rajat served on the Board of the International Partnership for Microbicides, a women’s health organization. CEO Zeda Rosenberg, who sought Rajat’s participation on the Board, notes that Rajat was “generous with his time in advising the organization and provided thoughtful, sound input.”

- Rajat served on and ultimately chaired the Board of the International Chamber of Commerce (ICC), an organization that works to strengthen commercial ties between nations to improve the standard of living throughout the world and promote peace. ICC Executive Board member Manfred Gentz writes to the Court that beginning in 2006, Rajat and a McKinsey team “advis[ed] the ICC Board, primarily on a pro bono basis, about how to better structure the ICC and how to make its work more efficient. This work involved a lot of research and went on for several years – all under Rajat’s leadership. . . . Rajat’s broad personal experience combined with McKinsey’s analytical research helped us implement changes in our by-laws and greatly improve efficiency. . . . In 2008, Rajat was elected Vice Chairman . . . [and] in 2010, he was elected Chairman. He started . . . new initiatives and was seen by all of us as a highly intelligent, energetic, honest and moral person. . . . [His] initiatives helped raise the profile and strengthen the financial standing of the ICC.”
- In 1997 Rajat agreed to serve as President of Chicago’s fledgling TiE (The Indus Entrepreneurs) branch. TiE, in the words of Board member and chapter founder Navneet S. Chugh, is “an organization that connects business people of the Indian origin,” with the mission “[of] foster[ing] entrepreneurship globally through mentoring, networking, and education. . . . TiE’s focus is on generating a nurturing our next generation of entrepreneurs.” Chugh remembers that when Rajat agreed to lead the Chicago branch, “[i]t legitimized TiE in everyone’s mind. Rajat was highly regarded by everyone in the South Asian community, and his endorsement of TiE was pivotal in the launch and success of TiE worldwide.” When TiE decided to form TiE Global to be the parent of nascent TiE chapters, “once again, Rajat agreed to lead that endeavor.”
- K.P. Singh, Chair of India’s largest real estate developer, DLF Limited, writes that Rajat “was able to achieve what nobody else could previously when he persuaded the Indian government to invest 200 crores of rupees, with a matching amount from the private sector, to set up an Urban Development Institute which will go into all aspects of examining [Indian] urban policies.” In India, explains Singh, “almost 60% of [the] population in our urban areas are still living mostly in slums deprived of even basic human living requirements of drainage, sewerage and drinking water facilities. [The] Urban Development Institute was planned to make the government change its present policies and thus ensure that people[s]’ living conditions improve in the urban areas of the country.” Fallout from Rajat’s recent legal battles, the “project is presently at a standstill,” explains Singh, “because of the fact that the main initiator, namely, Rajat is not here to steer it through.”
- Rajat has also served universities (the Brown University President’s Advisory Council on India, University of Chicago Board of Trustees, Yale University President’s Council), business schools (Wharton’s Lauder Institute Board of Governors, Skolkovos Advisory Board, Kellogg School of Management Advisory Board, Sloan School of Management Dean’s Advisory Council, Tsinghua University School of Economics and Management Dean’s Advisory Board), and medical schools (Weill Cornell Medical College Board of Overseers, Harvard School of Public Health

Dean's Council), as well as additional public health and business organizations (Chair, US-India Business Council).

This catalogues only Rajat's formal affiliations. He has helped many other organizations and causes with which he has no official connection, such as the Indo-American Center, an organization assisting immigrants in adjusting to American life; the End Polio Now campaign, an organization for which Rajat helped raise funds in America and India; and the Arpana Group of Trusts, which helps Indian villages establish essential services including childhood education, adult literacy, health and sanitation services. As Harishwar Dayal, the head of Arpana, remembers, "[i]n the 1990's, we at Arpana decided to try to expand our donor base to the United States. . . . We were welcomed with open arms to Rajat and Anita's home. Every resource they had was at our disposal. We in fact set up our mini office at Rajat's home. He spent countless hours strategizing with us, connecting us to everyone who could be a potential supporter."

Individuals, organizations and governments have over and over again invested their trust in Rajat. Ashok Alexander, a character witness at trial who knows Rajat well from business (they were McKinsey colleagues for nearly twenty years) and philanthropy (Alexander is the former director of Avahan and of the Gates Foundation's India office), says the reason for this is that "Rajat stands for integrity. People are attracted to him and his works not only because of his vision, but because he has such an acute sense of what is right and wrong." And as the letters make clear, this trust was not misplaced. Indeed, so deep is the reservoir of trust built by Rajat over his lifetime, that even after acknowledging his recent conviction, writer after writer expresses reaffirms his or her abiding trust in Rajat and in his potential for doing future good works.

III. ADVISORY GUIDELINES CALCULATION

Since the Supreme Court's decision in *Booker*, the Guidelines are merely advisory, freeing courts to "tailor the appropriate punishment to each offense in light of other concerns." *United States v. Cavera*, 550 F.3d 180, 187 (2d Cir. 2008) (*en banc*). Although the Court must make a finding regarding the correct Guidelines range, "[a] district court may not presume that a Guidelines sentence is reasonable; it must instead conduct its own independent review of the sentencing factors, aided by the arguments of the prosecution and defense." *Id.* at 189. As demonstrated below, a Guidelines sentence would not be reasonable in this case, and a probationary sentence accompanied by a substantial and rigorous condition of community service (described in more detail below) is warranted.

The Presentence Investigation Report ("PSR") calculates an advisory Guidelines range of 97-121 months, based on an offense level of 30. (PSR ¶ 77).² This calculation depends on a base offense level of 8 for insider trading, plus an enhancement of 2 levels for abuse of a position of trust, and of 20 levels based on a calculated gain of \$15,355,409. (PSR ¶¶ 68-73). However, this gain calculation is flawed in several respects.

- First, the PSR calculation is based on the value realized by the Galleon funds as a whole. This assessment of gain overstates the seriousness of the offense because the value actually realized by co-conspirator Rajaratnam is far less than the value realized by the funds themselves. Instead, the calculation should include only the gain to, and loss avoided by, Rajaratnam, as described more fully below.
- Second, in calculating the losses avoided by Rajaratnam's October 24, 2008 sales of Goldman Sachs stock, the PSR both (i) relies on an unsupported and unrealistic assumption that, in the absence of the tip, Rajaratnam would have held these shares until December 17, 2008, following the earnings release, and (ii) ignores the fact that the stock price was surely affected by market events in the intervening two month period.

² Mr. Gupta's objections to the PSR were submitted to the Probation Office and to the government on October 12 and are included as Exh. A hereto.

- Third, the PSR includes both counts of which Mr. Gupta was acquitted and overt acts that were not the subject of substantive charges and which, we respectfully submit, were not proven to the jury's satisfaction. The gain calculation should therefore be based on only the September 2008 and October 2008 transactions.
- Finally, the gain amounts employed in the PSR are, like the October 2008 loss avoided calculation, likely overstated, because they do not limit the "gain" to that which is causally related to the inside information allegedly disclosed, as opposed to gain resulting from other, unrelated market forces.

For all of these reasons, and as set forth below, we respectfully submit that the proper Guidelines calculation in this case results in an offense level of at most 22, which in turn yields a sentencing range of 41-51 months.

A. Gain Should be Calculated Based on the "Value" Actually Realized by Rajaratnam

Under § 2B1.4 of the Sentencing Guidelines, the offense level is increased based on the amount of "gain resulting from the offense." The term "gain" is defined as "the total increase in value realized through trading in securities by the defendant and persons acting in concert with the defendant or to whom the defendant provided inside information." U.S.S.G. § 2B1.4 cmt. background. In sentencing Rajaratnam, Judge Holwell found that "[t]he phrase is not a model of clarity and unfortunately no court appears to have addressed its meaning." *United States v. Rajaratnam*, 09 Cr. 1184 (RJH), 2012 WL 362031, at *14 (S.D.N.Y. Jan. 31, 2012). To the extent the definition of gain is ambiguous, the most logical interpretation, and the one best calculated to accomplish the stated purpose of the Guidelines, is that the gain resulting from the offense is the total increase in value realized by the defendant and the defendant's co-schemers or tippees, where that total increase in value is "realized through trading in securities." In other words, the clause "by the defendant and [his co-conspirators and tippees]" modifies "the total increase in value realized," thereby excluding from "gain" the value realized by other parties not referenced in the clause.

The Guidelines mandate the use of gain in insider trading cases, not victim losses, which is the measurement used in other fraud cases pursuant to the Theft Offenses Guideline. *See, e.g., United States v. Nacchio*, 573 F.3d 1062, 1079 (10th Cir. 2009) (“The insider trading guideline commentary expressly rejects victim loss as a metric of culpability.”); *United States v. Mooney*, 425 F.3d 1093, 1100 (8th Cir. 2005) (“In explaining what is meant by the defendant's gain and why it is used for sentencing inside trading offenses, the commentary specifically rejects using victim losses in the calculation.”).³ Therefore, section 2B1.4 should be interpreted with an eye toward finding a proper measure of the defendant’s gain. The commentary expands the gain beyond any gain received by the defendant – here, none – to include gain realized by those whom the defendant tipped and his co-conspirators, because, in assessing the defendant’s culpability, it might be argued that it is appropriate to charge him with gains made by culpable parties engaged with him in a common scheme. What is not appropriate or warranted is an extension of this unambiguous commentary to include gains made by innocent third parties, here the funds’ investors. As such, the gain calculation should be limited to value realized by the culpable persons identified in the commentary itself – namely the defendant and any co-conspirators or tippees.

This understanding of “gain” is further supported by the Second Circuit’s recent decision in *United States v. Contorinis*, No. 11-3-cr, 2012 WL 3538270 (2d Cir. Aug. 17, 2012). Like Rajaratnam, Contorinis was a hedge fund portfolio manager convicted of insider trading. The district court issued a forfeiture order in the total amount of profits made by the fund Contorinis managed. Finding that these profits were made (“acquired” in the language of the forfeiture

³ The explanatory commentary in the Guidelines “is authoritative unless it violates the Constitution or a federal statute, or is inconsistent with, or a plainly erroneous reading of, that guideline.” *Stinson v. United States*, 508 U.S. 36, 38 (1993).

statute) by the fund and not by Contorinis, the Second Circuit vacated the forfeiture order, holding that “the district court erred in ordering [Contorinis] to forfeit funds that were never possessed or controlled by himself or others acting in concert with him.” *Id.* at *9. Although criminal forfeiture focuses on the surrender by a defendant of his ill-gotten gains, it is punitive, not remedial, serving the same purpose as the Guidelines’ gain calculation. *See id.* at *7-8 (noting that forfeiture is a penalty, and as stated by the Supreme Court, “serves no remedial purpose, is designed to punish the offender, and cannot be imposed on innocent owners”). Just as criminal forfeiture of “any profits that the offender realized from his illegal activity,” *United States v. Webber*, 536 F.3d 584, 603 (7th Cir. 2008), is a just and proportionate punishment, so, too, is using the value realized by the defendant (and his co-schemers) in the Guidelines calculation. In both cases, it is the gain – the “value realized” by the defendant – that is meant to roughly measure the defendant’s culpability. Accordingly, the gain calculation here should measure the “value realized” by the defendant and tippee Rajaratnam, but not by Galleon’s limited partner investors.⁴

On this basis, the gain should be calculated as follows:

- According to the Declaration of former Galleon employee George Lau submitted to Judge Holwell, Rajaratnam’s equity share of the Galleon technology funds was 6.96% as of November 2008. (Lau Decl., Attach. A, *United States v. Rajaratnam*, 09

⁴ Judge Holwell concluded that “by the defendant . . .” should be read to modify “trading in securities,” based on his concern that the reading we are contending applies would somehow result in tippers escaping all responsibility for the gain made through trading by their tippees. *Rajaratnam*, 2012 WL 362031, at *4 (“Rajaratnam’s construction would render the enhancement entirely inapplicable to a defendant convicted of tipping rather than insider trading”). But this concern was unfounded, given that the defendant tipper (including Mr. Gupta here) is chargeable with the “value realized by” his co-conspirators and tippees, pursuant to the express language of the Comment.

Cr. 1184 (RJH), Exh. B (“Lau Decl.”).⁵ In our view, the total increase in value realized by the funds, that is, profits made on the September 2008 purchases and losses avoided in October 2008, equals \$2,066,055.⁶ Multiplying that figure by Rajaratnam’s share (6.96%) yields Rajaratnam’s share in the value realized, \$143,797.43.⁷

- Under the “2 and 20” fee structure, commonly used by hedge funds, the Galleon advisory entity, Galleon Management, LP (“Galleon Management”), generally charged each fund an annual management fee of 2% of the total assets under management in that fund, and if it made a profit for the fund on an annual basis, it also generally charged a fee of 20% of the profit realized by the fund. (Lau Decl. ¶ 8). But Rajaratnam, as a part owner of Galleon Management, did not actually receive those amounts. According to Lau, the 2% management fee winds up covering Galleon Management’s expenses. (Lau Decl. ¶ 9). As Lau also states, the Galleon funds did not earn a profit in 2008, and therefore Galleon Management did not receive any performance fees. (Lau Decl. ¶ 12). Nevertheless, in order to be conservative, Lau still credited Rajaratnam, as the portfolio manager of these funds, with half of the 20% performance fee. (*Id.*). Accordingly, multiplying the gain (September trades) and losses avoided (October trades) by 20% yields the management fee realized by Galleon Management, which is then multiplied by 50% to calculate Rajaratnam’s share: $(\$2,066,055) \times (20\%) \times (50\%) = \$206,605.50$.

Based on Mr. Lau’s calculations, the “gain” realized under section 2B1.4 would be the total of Rajaratnam’s share of the gain based on his direct investment in the funds (\$143,797.43), plus his deemed share in Galleon Management’s hypothetical performance fee (\$206,605.50),

⁵ As Lau explains, where he did not have the relevant figures for the month in which the transactions at issue occurred, he used the approximate percentage representing Rajaratnam’s interest in the month that was closest in time to the transactions at issue. (Lau Decl. ¶ 15). For both the September 2008 and October 2008 trades, that month was November 2008.

⁶ This figure is based upon the use of our proffered loss avoidance calculation for October 2008, that is, using October 31, 2008 as the likely date by which Rajaratnam would have sold his Goldman stock, rather than mechanistically using the date of the earnings release many weeks later on December 17, 2008. *See* Section III(B) *infra*.

⁷ Further, although Voyager, in which Mr. Gupta invested, in turn invested in certain Galleon funds, the government has never suggested that Mr. Gupta actually realized any gain through this investment (which fell to zero during the financial crisis). Moreover, even if Mr. Gupta’s hypothetical share is included, the amount, based on Mr. Gupta’s 20% ownership interest in Voyager’s modest interest in the Galleon tech funds’ profits, is *de minimis* and should not change the advisory Guidelines range.

which brings the total gain to \$350,402.93.⁸ But even this number overstates the actual gain, as Rajaratnam did not in fact realize any performance fees for 2008. (Lau. Decl. ¶ 12).

B. Proper Calculation of Losses Avoided for the October 2008 Trades

In calculating the “gain resulting from the offense” for the October 2008 Goldman Sachs trades, the PSR points to losses Rajaratnam avoided by selling 150,000 shares of Goldman Sachs stock (still for a loss) on October 24, 2008. (PSR ¶ 45). The \$3,800,565 in losses avoided presented in the PSR represents the difference between the price at which Rajaratnam sold the stock and the stock price at the opening of the market on December 17, 2008, the morning after Goldman Sachs reported its quarterly revenue and earnings. (*See* GX 60). However, this calculation is based on an assumption – a guess, really – that had he not been given material nonpublic information on October 23, Rajaratnam, who was a short term, in and out trader (Tr. 457-59), would have held his Goldman shares for almost *two months*, even in the face of increasingly negative analyst reports and other news and Goldman’s falling stock price during that time. This assumption, in addition to being contrary to common sense, is purely speculative, as FBI agent Barnacle conceded:

Q. That calculation depends, does it not, on the assumption that Galleon would have held the stock had it not allegedly learned the inside information?

A. Yes.

⁸ This figure relies on the use of our proffered loss avoidance calculation for October 2008, explained in Section III(B) *infra*. If the PSR’s loss avoidance number for October is used instead (PSR ¶ 45), the total gain becomes \$787,207.73.

The calculation also does not include the \$390,640 profit in the Galleon fund managed by Gary Rosenbach, which the PSR does incorporate in its calculation of gain for the September 2008 Goldman Sachs trades. (PSR ¶ 41). We do not believe the trades independently made by Rosenbach in the funds he ran should be included.

Q. You have no personal knowledge regarding what Galleon would have done in the intervening period; that is simply an assumption in the calculation, correct?

A. The calculation is simply the opening price the day following the announcement versus the proceeds from the sale on October I believe it was 24th. *That's it, there is nothing more to it.*

(Tr. 2456 (emphasis added)).

The government has not produced any evidence to support the contention that Rajaratnam, an experienced and professional money manager, would have ignored Goldman Sachs's falling stock price and the many negative public reports involving Goldman Sachs during that time. Furthermore, the PSR's calculation overstates the value realized by Rajaratnam by including gain beyond that which "result[ed] from the offense," contrary to the instructions in U.S.S.G. § 2B1.4. As the Tenth Circuit explained in *United States v. Nacchio*, the "offense" here is not trading itself but "trading *on the basis of insider information*." 573 F.3d 1062, 1072 (10th Cir. 2009) (emphasis in original). Therefore, the *Nacchio* court reasoned, the gain computation should be "based upon the gain resulting from that deception" and should not include any effect on the value of the security not related to the inside information. *Id.*⁹ Instead of restricting the calculation to the gain resulting from the insider trading, the PSR just compares the sale price on October 24 to the price on December 17, and ignores the inevitable impact of numerous independent market forces and events affecting the price of the security over almost a two month

⁹ Judge Holwell declined to follow the *Nacchio* court's reasoning in Rajaratnam's case. He believed that *Nacchio* mistakenly "assumes that a single trade can be divided into 'trading with insider knowledge' and trading on the basis of public information." *Rajaratnam*, 2012 WL 362031, at *7. But *Nacchio* does not address the basis upon which the trader made the decision to trade, but instead simply makes the point that the price appreciation (and, thereby, the "gain") specifically "resulting" from the insider trading offense is the gain resulting from the inside information and not that attributable to unrelated market factors. 573 F.3d at 1074.

period. This calculation overstates the gain resulting from the offense. *See id.* at 1074 (remanding where district court failed to exclude market factors unrelated to the offense from its calculation of gain).¹⁰

Instead of using the opening price on December 17, 2008 for the calculation, we respectfully request that the Court make a reasoned assessment of when Rajaratnam would likely have sold on the basis of public information, in effect, on the basis of a public disclosure of comparable information. On October 31, 2008, UBS analyst Glenn Schorr was the first sell-side analyst to forecast a fourth quarter loss for Goldman Sachs. Reporting on this assessment, a Reuters article stated that Goldman “could post its first ever quarterly loss as a public company in December, as market turmoil weighs on revenue for investment banking businesses and forces asset writedowns.” (“Goldman May Be Set to Post First Quarterly Loss,” Exh. C). Using the closing price on October 31 (\$92.50) as a comparison instead of the opening price on December 17, the losses avoided by Galleon funds becomes \$1,225,065 instead of \$3,800,565. This is a more accurate approximation of the losses avoided, as it more realistically approximates when Goldman Sachs’s expected fourth quarter losses were disclosed, and ultimately provides a more realistic approximation of when Rajaratnam therefore would have sold the shares.¹¹

¹⁰ For this reason, should the Court adopt the gain methodology advanced by the PSR, it should include only gains that can be shown to result from use of the alleged inside information.

¹¹ The fact that the loss avoided calculation is based upon what is essentially a guess at when Rajaratnam would have sold his shares highlights the weakness of the entire exercise, and of the Guidelines’ focus on dollar amounts. Here, depending on the chosen date, the loss avoided that is deemed the “gain” amount may vary by millions of dollars. Surely such a speculative number, masquerading as arithmetic precision, should not be the basis for determining the extent of a defendant’s loss of liberty, particularly because Mr. Gupta himself realized no gain. For this reason, among many, we respectfully submit that the Court should disregard the Advisory Guidelines range and impose sentence solely on the basis of the statutory factors, discussed

C. Expressly Acquitted Conduct Should Not Be Included in the Gain Calculation

Although the Supreme Court has held that acquitted conduct *may* be included in the Guidelines calculation as “relevant conduct,” it need not be. *See United States v. Watts*, 519 U.S. 148, 149 (1997) (holding that under the “relevant conduct” Guideline, a sentencing court may consider any wrongdoing proved by a preponderance of the evidence, even if the subject of an acquittal). Numerous courts have declined to consider such conduct post-*Booker*. Thus, for example, in *United States v. Carvajal*, 04 Cr. 222 (AKH), 2005 WL 476125, at *5 (S.D.N.Y. Feb. 22, 2005), where the jury had acquitted on some charges, the Court sentenced the defendant to a term less than the applicable Guidelines range in order to “accord the jury’s [not guilty] findings proper respect.” In *United States v. Pimental*, 367 F. Supp. 2d 143 (D. Mass. 2005), Judge Gertner declined to consider acquitted conduct in determining the applicable sentence, explaining that though *Watts* may not have been technically undermined by *Booker*, considering acquitted conduct in the post-Guidelines era “trivializes ‘legal guilt’ or ‘legal innocence’ – which is what a jury decides – in a way that is inconsistent with the tenor of recent case law.” *Id.* at 152. Although it may have been appropriate to consider acquitted conduct in sentencing prior to the advent of the Guidelines, at a time when “the trial sphere was rule-bound and sentencing was comparatively rule-less,” in the post-*Booker* hybrid regime “rules still matter, and certain facts have important, if not dispositive, consequences.” *Id.* at 152-53. As Judge Gertner concluded, “[t]o tout the importance of the jury in deciding facts, even traditional sentencing facts, and then to ignore the fruits of its efforts makes no sense – as a matter of law or logic.” *Id.* at 153.¹²

below. Because the Court is required to conduct a Guidelines analysis, we urge the Court to use the closing price of October 31, 2008 to determine the avoided losses/“gain”.

¹² *See also United States v. Vaughn*, 430 F.3d 518, 527 (2d Cir. 2005) (holding that “while district courts may take into account acquitted conduct in calculating a defendant’s Guidelines

In a pre-*Booker* opinion, Judge Newman well described why acquitted conduct should not be considered as part of the Guidelines calculation. He explains that the flaw in the Guidelines is not that the “Relevant Conduct” provision was included, but that such conduct is measured on the “same scale of severity” that applies to the actual offense of conviction. *United States v. Concepcion*, 983 F.2d 369, 395 (2d Cir. 1992) (Newman, J., concurring) (noting that this leads to the “astonishing” result that defendants face virtually the same sentence even when acquitted of some charges). And while acquitted conduct was permitted to be “considered” by sentencing judges before implementation of the Guidelines, this did not mean either that it was required to be taken into account, nor that it was to be given equal weight. *Id.* In order for the jury’s not guilty verdict to have meaning and be afforded proper weight, there should be some distinction “between an allegation of conduct resulting in a conviction and an allegation of conduct resulting in an acquittal.” *Id.* at 396.

range, they are not required to do so. Rather, district courts should consider the jury’s acquittal when assessing the weight and quality of the evidence . . . and determining a reasonable sentence.”); *United States v. Wendelsdorf*, 423 F. Supp. 2d 927, 935 (N.D. Iowa 2006) (noting that “nothing in *Watts* mandates consideration of acquitted conduct,” and declining to consider such conduct); *United States v. Baldwin*, 389 F. Supp. 2d 1, 2 (D.D.C. 2005) (applying reasonable doubt standard as opposed to preponderance of the evidence standard to acquitted conduct), *aff’d*, 563 F.3d 490 (D.C. Cir. 2009); *United States v. Huerta-Rodriguez*, 355 F. Supp. 2d 1019, 1028 (D. Neb. 2005) (court chose to “err on the side of caution in protecting a criminal defendant’s constitutional rights”), *aff’d*, 158 F. App’x 754 (8th Cir. 2005); *United States v. Coleman*, 370 F. Supp. 2d 661, 668-73 (S.D. Ohio 2005) (refusing to consider acquitted conduct); *United States v. Gray*, 362 F. Supp. 2d 714, 721-22 (S.D. W.Va. 2005) (noting that *Booker* called the holding of *Watts* into significant question), *aff’d*, 491 F.3d 138 (4th Cir. 2007). Interestingly, in a survey of United States district judges conducted in early 2010 by the Sentencing Commission, only 16% of the 639 judges who responded (and who sentenced 116,183, or 79%, of the 146,511 individual federal criminal defendants in FY 2008 and 2009) believed that acquitted conduct should be considered “relevant conduct” for purposes of sentencing. U.S. Sentencing Commission, *Results of Survey of United States District Judges January 2010 through March 2010* (June 2010), available at http://www.ussc.gov/Research/Research_Projects/Surveys/20100608_Judge_Survey.pdf.

D. Tips Charged Only as Overt Acts Should Not Be Included in the Gain Calculation

The trial record strongly suggests that the jury also rejected the other alleged tips included in the conspiracy count and the December 2008 P&G trading that was not included as an overt act, but which was the subject of evidence offered by the government at trial.¹³ In the absence of a special verdict form, there is no way to know for sure whether the jury found the conspiracy included any transactions other than the September and October 2008 Goldman Sachs trades. But the Court can make an informed judgment regarding the jury's reasoning underlying the acquittals. Whereas in some cases there is no readily apparent explanation for a split verdict, this jury provided the starkest and clearest such explanation for acquitting on two counts (March 2007 Goldman and January 2009 P&G). The jury declined to convict on the counts that were based only on circumstantial evidence and without wiretaps, and did so, as well, in the face of live accomplice testimony. The reasonable conclusion to be drawn is that with respect to the overt acts, which the government chose not to include as substantive counts – presumably because it understood they were premised on even weaker circumstantial evidence – the jury would have reached the same result and acquitted. The jurors' request for an instruction on “what would describe an over[t] act to further the conspiracy (Jury Note 2) – and the Court's supplemental charge that an act of any kind toward effectuating the conspiracy in any respect could constitute an overt act – further suggests they did not base the conspiracy conviction on overt acts other than the September and October 2008 Goldman trades. (Tr. 3385, 3388-90).

¹³ The overt acts not included as substantive charges were (a) the September 2007 Goldman Sachs trades (Superseding Ind. ¶ 33(b)); (b) the June 2008 Smuckers trades (Superseding Ind. ¶ 33(c)); and (c) the June 2008 Goldman Sachs trades (Superseding Ind. ¶¶ 33(d) – (k)). However, as the June 2008 Smuckers trades did not result in any gain, these need not be discussed. (See Tr. 2403; PSR ¶ 49).

Like the January 2009 P&G trades of which Mr. Gupta was acquitted, the December 2008 P&G trades turned on the discredited testimony of Cardillo. The government recognized the importance of Cardillo's testimony to the P&G allegations in its summation: "Mr. Naftalis will surely ask you to discredit Mr. Cardillo's testimony . . . because that testimony is devastating to the defendant, devastating. Ask yourself when you're evaluating that testimony did it make sense? Did it fit with the other evidence, the calls, the trading records, the IM's." (Tr. 3233). If the jury did not find that Cardillo's testimony "made sense" as to the January 2009 tip, surely it rejected, as well, the other alleged P&G tip, for which the government presented even weaker circumstantial evidence.¹⁴

With respect to the alleged September 2007 and June 2008 Goldman Sachs tips, the government offered in evidence only circumstantial evidence of trades by Galleon in Goldman Sachs after phone calls that may or may not have been between Mr. Gupta and Rajaratnam, with no evidence that the two spoke and no evidence regarding what was said. Moreover, for September 2007, the call pointed to was four days after Mr. Gupta received the Goldman Sachs earnings information – and for June 2008, the government had to rely on inferential evidence that Mr. Gupta even had any information about Goldman Sachs' upcoming earnings release. (Tr. 2630-33; DX 7). This sparse circumstantial evidence, with no corroboration, is not enough to show insider trading by Mr. Gupta – as evidenced by the jury's refusal to convict on the March 2007 Goldman Sachs trades.

¹⁴ The government introduced close to no evidence relating to those trades – trades Cardillo had no recollection of executing – whereas Mr. Gupta provided evidence of both internal Galleon reports and external analyst reports showing that P&G was expected to miss its organic growth projections. (Tr. 1222; DX 1045; DX 1051).

In sum, the most reasonable reading of the jury's verdict – and the one we submit the Court should adopt – is that Mr. Gupta's tipping of Rajaratnam did not go beyond the September 2008 and October 2008 Goldman Sachs tips. In this respect, this Court's interpretation of the jury verdict in *United States v. Adelson* is instructive. There, the defendant was found guilty of three counts of false filings, but was acquitted on seven counts of false filings that were all dated earlier than the three for which Adelson was convicted. This Court found that the “most likely reading of the jury's verdict – and one that the Court accepted at sentencing – was that Adelson only joined the conspiracy toward its end.” 441 F. Supp. 2d 506, 507 (S.D.N.Y. 2006); *cf.* *United States v. Pimental*, 367 F. Supp. 2d 143, 152 (D. Mass. 2005) (Gertner, J.) (sentencing based upon alleged misconduct not expressly found by the jury would “trivialize ‘legal guilt’ or ‘legal innocence’ – which is what a jury decides”). This reasoning applies equally here.

IV. A NON-GUIDELINES SENTENCE OF PROBATION WITH A CONDITION OF RIGOROUS, FULL-TIME COMMUNITY SERVICE IS APPROPRIATE

Although calculating the applicable Guidelines range is the required first step in the sentencing process, following *Booker* the Guidelines are advisory only and district judges are directed to “craft an appropriate sentence taking full account of ‘the history and characteristics of the defendants.’” *United States v. Preacely*, 628 F.3d 72, 84 (2d Cir. 2010) (Lynch, J., concurring) (quoting 18 U.S.C. § 3553(a)(1)). Put differently, the mechanistic approach of the Guidelines no longer controls sentencing outcomes, and district judges may once again exercise discretion in fitting sentences to a defendant's individual circumstances, *United States v. Crosby*, 397 F.3d 103, 114 (2d Cir. 2005), giving “consideration [to] the judge's own sense of what is fair and a just sentence under all the circumstances.” *United States v. Jones*, 460 F.3d 191, 195 (2d Cir. 2006).

In exercising this discretion, judges are guided by 18 U.S.C. § 3553(a), which directs them to impose a sentence that is “sufficient, but not greater than necessary” to, among other considerations, “reflect the seriousness of the offense, . . . promote respect for the law, and provide just punishment for the offense,” and to “afford adequate deterrence to criminal conduct.”¹⁵ 18 U.S.C. § 3553(a)(2). The statute also directs courts to consider, among other things, “the nature and circumstances of the offense and the history and characteristics of the defendant,” 18 U.S.C. § 3553(a)(1), as well as “the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct,” 18 U.S.C. § 3553(a)(6).

We respectfully submit that a sentence within the Guidelines range in this case is far greater than necessary to satisfy the purposes set forth in section 3553(a).

A. The Guidelines Place Undue Reliance on Gain in Insider Trading Cases

As this Court stated in *Adelson*, in financial fraud cases the Sentencing Guidelines place an “inordinate emphasis” on “putatively measurable quantities, such as the weight of the drugs in narcotics cases or the amount of financial loss in fraud cases, without, however, explaining why it is appropriate to accord such huge weight to such factors.” 441 F. Supp. 2d at 509 (citing Kate Stitch & Jose A. Cabranes, *Fear of Judging: Sentencing Guidelines in the Federal Courts* 69 (1998) (concluding that the Sentencing Commission has never presented empirical evidence or

¹⁵ We respectfully submit that, in the circumstances of this case, the other enumerated statutory considerations (“protect[ing] the public from further crimes by the defendant,” and “provid[ing] the defendant with needed educational or vocational training medical care, or other correctional treatment in the most effective manner”) do not apply.

substantial argument to support the proposition that its rules achieve, even imperfectly, any of the four well-established possible objectives of criminal sentencing)).¹⁶

The overemphasis upon “putatively measurable quantities” is particularly ill suited to insider trading cases, especially one like this in which the defendant received no financial benefit. The Insider Trading Guideline (U.S.S.G. § 2B1.4) directs the use of gain in the calculation, employing the loss table used in calculating the Theft Guideline (U.S.S.G. § 2B1.1). In connection with a theft or embezzlement, the loss resulting directly from these types of fraud – for example, the amount of money embezzled from a defendant’s employer, or the amount swindled directly from a victim in a one-on-one transaction – can perhaps be defended as a useful rough measure of culpability, because “loss” (whether actual or intended) may be a directly contemplated, and is likely to be a calculable, harm to an identifiable victim. In such a case, there is at least some rough logic to the notion that thefts of greater sums are generally worthy of greater punishment. But in insider trading cases, the Guidelines mandate that a gain calculation be used instead of any attempt to approximate victims’ losses, because “the victims and their losses are difficult if not impossible to identify.” U.S.S.G. § 2B1.4 cmt. background. In other words, the loss table started as an attempt to measure the seriousness of a theft-type fraud by the extent of the harm, but in insider trading cases it has led to using gain even though it may have no relationship to the harm at all – much less an equivalency. As this Court has explained, “[i]n the insider trading case . . . it is more attenuated, a more complex analysis.”

¹⁶ Here, the gain calculation we believe should apply increases Mr. Gupta’s Guidelines sentencing range five-fold, from 6-12 months (based on an offense level of 10) to 41-51 months (based on an offense level of 22). The PSR calculation increases the range by a factor of as much as *sixteen* (from 6 months to 97 months, at the low end).

Sentencing Tr. at 9, *United States v. Jiau*, 11 Cr. 161 (JSR), Exh. D.¹⁷ In such cases, although the dollars and cents calculation is not irrelevant, it is not “central to the evaluation of all the factors under Section 3553(a).” *Id.* at 38; *see also* Sentencing Tr. at 4, *United States v. Rosen*, 11 Cr. 300 (JSR) (Guidelines loss calculation “plays an overwhelming role that is contrary to . . . elementary notions of justice or even common sense”), Exh. E.

And in fact, there is reason to conclude that trading gain is not a rational indicator of degree of culpability.

First, in virtually all cases, the tipper has no control over either the scope of the trading by the tippee or the gain realized by the trading. Here, there was no evidence that Mr. Gupta had any knowledge, either before or after the fact, of any details of Rajaratnam’s trading or the extent to which the Galleon funds did or did not profit from that trading. And, indeed, there was no evidence he realized any profits at all from the trading. As Judge Lynch noted in a different context, the gain amount is thus a “relatively weak indicator of the moral seriousness of the offense.” *United States v. Emmenegger*, 329 F. Supp. 2d 416, 427-28 (S.D.N.Y. 2004).

Similarly, in testimony before the Sentencing Commission, Circuit Judge Jon O. Newman explained how the Guidelines’ reliance on an incremental approach to culpability based on dollar amounts makes “no penological sense” in any context, since the amount of loss often has little to do with the actions or motivations of the defendant. *U.S. Sentencing Commission Public Hearing Testimony and Transcripts* (July 9, 2009) (Statement of Judge Jon O. Newman), *available at*

¹⁷ Where we have cited to a sentencing transcript, we are attaching as an exhibit the relevant excerpt, rather than the complete transcript. Should the Court wish to see any of these sentencing transcripts in their entirety, we will of course provide them.

http://www.ussc.gov/Legislative_and_Public_Affairs/Public_Hearings_and_Meetings/20090709-10/Newman_testimony.pdf.¹⁸

Second, the undue emphasis on the tippee's trading gain in the Guidelines calculation ignores the specifics of the defendant tipper's conduct, including the presence or absence of financial benefit. A tipper who was paid in cash in exchange for information, cash he stored in shoeboxes in his closet, or engaged in extensive trading of his own in off-shore accounts, is treated the same as a tipper who received nothing more than an intangible relationship benefit barely satisfying the legal requirement of *Dirks v. S.E.C.*, 463 U.S. 646 (1983). Mr. Gupta did not engage in or control any trading, was not in charge of running the scheme, and did not share in any proceeds of the trading. Indeed, Mr. Gupta did not profit at all from Rajaratnam's trading in September and October 2008, and there was no evidence of any quid pro quo, or of any financial benefit received by Mr. Gupta; there was not even evidence of some measurable contemplated benefit that just happened not to pan out – only an attenuated (at best) inference of a potential business or relationship benefit. Under analogous circumstances in a pre-*Booker* case, this Court has found a downward departure was warranted. *See United States v. Oakford Corp.*, 98 Cr. 144 (JSR), 1999 WL 1201725, at *10 (S.D.N.Y. Dec. 13, 1999) (downward

¹⁸ “[N]o criminal wakes up in the morning and decides that he is going to steal \$4,000 dollars but not \$6,000 dollars. He might make a conscious decision to rob a convenience store rather than a bank, but once inside the convenience store, he opens the till and takes what is there. The fortuity of whether the till contains \$4,000 or \$6,000 dollars should not result in added punishment.” As Judge Newman further noted, the incremental approach of the loss table “create[s] an illusion of precision,” when “in reality there are so many variables in determining losses and so many problems in gathering evidence” that these numbers are speculative at best, and completely arbitrary at worst. *Id.* at 7. This is an especially serious methodological flaw given that, as this Court has recognized, adopting different calculation methods may change the gain calculation by millions of dollars. *See Sentencing Tr.* at 7, *United States v. Smith*, 11 Cr. 79 (JSR) (probation officer calculated a gain of \$25 million, whereas the government and defendant agreed the gain was approximately \$3.8 million, “illustrat[ing] just once more the absurdity of the guidelines”), Exh. F.

departure warranted where the offense level for each defendant was increased based on a \$15 million gain calculation, but where “each of the defendants personally realized only a small portion of the overall gain or profits”).

Finally, and in violation of the mandate of section 3553(a), the Guidelines’ single minded focus on trading gain leads to disparate sentencing results for similarly situated defendants. To cite just one, directly relevant example, in the Galleon cases, the defendant whose offense is most closely comparable to that of Mr. Gupta is Robert Moffat. Moffat – whom we discuss further at pp. 76-77, *infra* – was a well-compensated, senior executive at IBM, privy to high level corporate secrets, who tipped hedge fund manager Danielle Chiesi on at least three stocks not for money but as part of an extramarital relationship. Yet simply because Chiesi’s trades turned out to be unsuccessful, Moffat’s Advisory Guidelines sentencing range was only 0-6 months. That is, the fortuity that the market turned against Chiesi led to a dramatically different Guidelines range for similar misconduct.

B. A Non-Custodial Sentence is Warranted Under Section 3553(a)

1. An Individualized Assessment of Mr. Gupta’s Personal History and Characteristics, and the Nature of his Conduct, Warrant a Non-Custodial Sentence

We respectfully submit that, as described above and in the hundreds of letters presented to the Court, Mr. Gupta is very different from most defendants appearing before this Court for sentencing. His commitment to helping others, both individual human beings and the larger global community, is plainly a core expression of who he is – indeed, who he has always been, from childhood through professional maturity and success, and into his retirement years. Mr. Gupta’s role in helping to create, and his lifelong involvement in, organizations devoted to global

health and other causes is extraordinary. The conduct for which he was convicted represents an isolated aberration and a stark departure from this personal history.

(a) Lifetime of Good Works

Many white collar defendants can point to charitable contributions of some kind and in some degree. But in imposing sentences pursuant to § 3553(a), courts have recognized the separate, and much smaller, category of defendants who have shown a “truly extraordinary” charitable record. Where the convicted conduct is dramatically at odds with the defendant’s life and character, especially where he has devoted significant time to civic and charitable contributions, courts have found the defendant deserving of a non-Guidelines sentence substantially below the Advisory range, including noncustodial sentences. We do not believe any of these individuals presented a record of contributions to the community matching, in scope or duration, that of Mr. Gupta. We have not found any case comparable to this one, in which the defendant can point not only to a significant expenditure of time and effort, but further, that he or she was involved in founding and helping to sustain major initiatives improving and in some cases saving millions of lives.

For example, in *United States v. Holzer*, 09 Cr. 470 (VM), the district judge did not follow the Advisory Guidelines range of 12-18 months, but instead imposed a sentence under section 3553(a) of five years probation with nine months to be spent in a halfway house. In imposing this sentence, the Court agreed with the Probation Office’s characterization of Mr. Holzer as a “good person who made a terrible mistake,” and cited Mr. Holzer’s “commendable community service and his pro bono work with various not-for profit organizations” as reasons for imposing a non-custodial sentence and not an Advisory Guidelines sentence. *Holzer Sentencing Tr.* at 17, Exh. G.

Similarly, in *United States v. Peterson*, 11 Cr. 665 (RPP) – a directly comparable, and as discussed below at p. 80 in some respects more egregious, case involving an outside director of a public company who disclosed its not yet announced merger – the Court declined to sentence within the Advisory Guidelines range of 12-18 months and instead imposed a sentence of two years of probation and three months of home confinement, stating:

I'm making that determination based on the content of the presentence report, which shows that he engaged in a number of civic activities not as a figurehead, but as a participant, a person who gave of himself, not just of his wallet, and engaged in community activities to help his community. And that's significant.

Peterson Sentencing Tr. at 19, Exh. H. Yet Peterson's admirable civic contributions (described as serving on various boards, instilling a culture of giving back to the community while he was a Managing Partner at Arthur Andersen, and supporting friends' causes) fall dramatically short of Mr. Gupta's extraordinary, decades-long dedication to community service.¹⁹

¹⁹ Courts in other Circuits as well have found that where the defendant's past good works indicate that the offense conduct was aberrational, a non-Guidelines sentence well below the Advisory Guidelines range is appropriate and just. *See United States v. Howe*, 543 F.3d 128, 132 (3d Cir. 2008) (affirming sentence of probation with three months home confinement for wire fraud where Advisory Guidelines range was 18-24 months because defendant made an "isolated mistake" in the context of his entire life, which was otherwise outstanding and included devotion to family, community and church); *United States v. Thurston*, 544 F.3d 22, 26 (1st Cir. 2008) (affirming 3 month sentence for Medicare fraud conspiracy of more than \$5 million based on, among other things, defendant's charitable work, community service, generosity with his time and support and assistance of others).

Even in pre-*Booker* cases, in recognition of "truly extraordinary" charitable and community service, courts imposed sentences well below the then mandatory Guidelines. *See, e.g., United States v. Greene*, 249 F. Supp. 2d 262, 264 (S.D.N.Y. 2003) (in tax fraud case, court found the defendant was entitled to a seven level downward departure because he had donated his time, not merely money, by adopting six "hard to place" orphaned children); *United States v. Canova*, 412 F.3d 331, 358-59 (2d Cir. 2005) (affirming downward departure based on defendant's volunteer service with Marine Corps and as volunteer firefighter, as well as three recent acts of good samaritanism); *United States v. Shuster*, 331 F.3d 294, 296 (2d Cir. 2003)

(b) Aberrational Conduct

Recognizing that the jury has rendered its verdict, we respectfully submit that whatever the Court's view of the evidence, it is clear that Mr. Gupta's conviction reflects an aberration in the long life he has led with honesty, impeccable character, and a commitment to the well-being of others – and a deviation from that life record as to which, we submit, the underlying motivation was never adequately explained. As described in Section III above, based on the fairest reading of the jury's verdict, it was a brief aberration, covering just a one month period in September-October 2008.²⁰

2. A Non-Custodial Sentence is Appropriate in Order to Avoid Unwarranted Disparities With Closely Comparable Cases

In determining the correct sentence, the Court must consider “the need to avoid unwarranted sentenc[ing] disparities among defendants with similar records who have been found guilty of similar conduct.” 18 U.S.C. § 3553(a)(6). Even without regard to the exceptional nature of his character and life history, Mr. Gupta compares favorably with other insider trading defendants who received sentences well below the Guidelines range here.

(upholding departure based on, among other factors, the defendant's charitable works); *United States v. Serafini*, 233 F.3d 758, 773 (3d Cir. 2000) (downward departure upheld based on support letters referring to defendant's “assistance, in time and money, to individuals and local organizations”); *United States v. Crouse*, 145 F.3d 786, 790 (6th Cir. 1998) (“exceptional” record of community service was a proper basis for a downward departure); *United States v. Cooper*, 394 F.3d 172, 177 (3d Cir. 2005) (finding charitable contributions relevant to sentencing where the contributions exceeded mere financial support).

²⁰ Even were the Court to consider the other alleged tips in fashioning an appropriate sentence – which we believe Your Honor should not, for reasons stated at pp. 63-67 – the record would still reflect a small number of such events, without trading by Mr. Gupta or trading profits, involving his dealings with just one other person, and in stark opposition to the overwhelming evidence of how he otherwise lived his life.

First, Mr. Gupta's is an anomalous case in several respects, and unlike any of the others arising from the Rajaratnam investigation. Mr. Gupta cannot be compared to Rajaratnam, in any respect. Rajaratnam was convicted of regular and systematic course of insider trading over a period of years. He had numerous sources, many of whom were paid large sums for passing material nonpublic information to him, and some of whom he assisted in hiding the receipt of those funds. At sentencing, Judge Holwell found that he obstructed justice by lying to the SEC. *United States v. Rajaratnam*, 09 Cr. 1184 (RJH), 2012 WL 362031, at *20 (S.D.N.Y. Jan. 31, 2012). In sharp contrast, Mr. Gupta was convicted of two instances of tipping in a one month period and, importantly, did not profit from the trading, nor did he engage in any trading of his own. And, although a relationship-based benefit suffices under the law, what that has generally meant is at least an identifiable such benefit – providing information in exchange for sexual favors or as part of an extramarital relationship, or providing information to a family member. Here, the only evidence of “benefit” was the vague and amorphous evidence relating to the ongoing business relationship and prospective arrangements between the two men. As the Court instructed, the jury had only to find “*some* personal benefit,” that need not be financial or “tangible in nature,” and could include as little as “maintaining a good relationship with a frequent business partner.” (Tr. 3371 (emphasis added)). Whatever benefit the jury found met the government's burden on that element was, we respectfully submit, the slenderest possible such benefit. For this reason as well, the Advisory Guidelines sentencing range resulting from the profits of others is a wholly inappropriate touchstone for sentencing.

As noted above, in the Galleon-related cases, it is Robert Moffat whose sentence most appropriately should serve as a benchmark. Mr. Moffat was a highly compensated IBM senior executive who was paid millions of dollars each year (as much as \$11.2 million in 2009), and

who was privy to significant corporate developments, which he illegally disclosed to Chiesi.²¹ Chiesi then used the information to trade on behalf of the hedge fund which, although not quite as large as Galleon, had \$1 billion under management. Mr. Moffat's tips covered securities of three major public companies, IBM, Lenovo, and AMD, making his conduct even more severe than Mr. Gupta's conviction on two tips relating to a single stock. Further, unlike Mr. Gupta, Mr. Moffat received an important and tangible benefit, albeit a romantic and not a financial one, directly in return for his tips. And, like Mr. Gupta, Mr. Moffat was recognizably less culpable than the tippees, including not only Chiesi but also her supervisor, Mark Kurland. In sentencing Kurland to 27 months, as opposed to Mr. Moffat's 6 months, the Court explained the difference as justified because "Mr. Moffat, though he breached his duty to his employer, did not provide information in exchange for money, and did not stand to make any monetary gains from his transgression." *United States v. Kurland*, 718 F. Supp. 2d 316, 321 (S.D.N.Y. 2010). Neither Moffat nor Kurland presented to the sentencing court anything remotely like Mr. Gupta's exceptional history of good works, justifying a sentence lower than either of them received under § 3553(a). Finally, although Mr. Moffat pled guilty, he did not cooperate with the government, while Mr. Gupta went to trial. As this Court has repeatedly recognized, the fact that Mr. Gupta exercised his constitutional right to put the government to its proof may not be used to penalize him further in sentencing. *E.g.*, Sentencing Tr. at 55-56, *United States v. Jiau*, 11 Cr. 161 (JSR) ("We don't want to place such a premium on that aspect that we discourage people from exercising their constitutional rights.").²²

²¹ As set forth in the government's sentencing memorandum in *United States v. Moffat*, 10 Cr. 270 (DAB), Exh. I.

²² As noted, the fact that Moffat's Guidelines calculation is lower than Mr. Gupta's is the result of the fortuity that Chiesi's trading was unsuccessful.

Mr. Gupta also compares favorably with Galleon-related defendants Anil Kumar, Rajiv Goel and Adam Smith, even taking into account their cooperation with the government (the importance of which we of course recognize). Clearly, the fact that these men cooperated in the government's investigation was a significant factor in the determination of their sentences. But their cooperation (meaningfully late in coming in the case of Smith, as we describe below) cannot be the sole determinant and must be weighed alongside (i) their graver misconduct, and (ii) Mr. Gupta's extraordinary personal history and characteristics, in order to avoid an unwarranted disparity between them.

Anil Kumar, who received a non-custodial sentence, is an appropriate comparator. Their personal backgrounds are similar. Like Mr. Gupta, Mr. Kumar attended IIT in Delhi before business school in the United States and later working at McKinsey. At sentencing, Mr. Kumar was given credit by Judge Chin for his "[m]any charitable deeds both here and in India" – deeds that are admirable but represent a small fraction of the amount of time and energy Mr. Gupta has committed to giving back to others around the world. In terms of the offense conduct, Mr. Kumar provided Rajaratnam with inside information regarding a number of McKinsey clients in exchange for substantial cash payments – \$2.1 million (*Rajaratnam* Trial Tr. 243-44, excerpts included as Exh. J hereto) – which they took pains to disguise and on which Kumar paid no taxes. (*Rajaratnam* Trial Tr. 246).²³

Rajiv Goel's recent sentencing provides another appropriate Galleon-related point of comparison as well. He pled guilty to providing Rajaratnam with inside information he learned

²³ Rajaratnam's payments to Mr. Kumar in exchange for information were first made to a bank account in Switzerland held by a shell company, and then the cash was transferred to an off-shore account in the name of Mr. Kumar's house-keeper. (*Rajaratnam* Trial Tr. 266-67).

as a managing director at Intel. For two years, from 2007 to 2009, he tipped Rajaratnam on multiple occasions regarding Intel's quarterly results and Intel's investment in Clearwire Corporation. Goel was a close friend of Rajaratnam's, but as with Kumar, the benefit Goel received in exchange for inside information went beyond just cementing the relationship. Rajaratnam "loaned" Goel \$100,000 in 2005 (money that was never repaid), and he gave him a gift of \$500,000 in 2006 – money that Goel avoided paying taxes on by moving it into foreign bank accounts. As further incentive for providing inside information, Rajaratnam also executed trades in Goel's Charles Schwab account, earning over \$700,000 on his behalf. Although the government noted that "Mr. Rajaratnam was able to cajole and seduce insiders like Mr. Goel into providing information," he did receive upwards of \$1.3 million from Rajaratnam, whereas Mr. Gupta did not receive any financial benefit. Sentencing Tr. at 11, *United States v. Goel*, 10 Cr. 90 (BSJ), Exh. K. Like Kumar, Goel received a sentence of probation.

Smith was one of Rajaratnam's closest colleagues. He repeatedly obtained and misused inside information throughout his time at Galleon, a seven year period from 2002 when he joined as an analyst until Rajaratnam's arrest and the collapse of the firm in late 2009. As he admitted in his testimony in the Rajaratnam trial, Smith both traded illegally on the basis of the information and provided it to others at Galleon who traded. (*Rajaratnam* Trial Tr. 2444-45). After having been confronted by the FBI in late 2009 (and having declined to answer any questions, as was his right), he continued to violate the law. He opened his own firm, and embarked on a further course of insider trading there. (*Id.* at 2445-46). He also attempted to cover up his crimes, by discarding an incriminating notebook and destroying his laptop computer, later falsely claiming to his employer that he had "lost it." (*Id.* at 2660-61, 2722). Although Smith did eventually plead guilty and provide important information to the

government, for which he deserves and has received credit, he did not do so until more than a year after Rajaratnam's arrest.

In sum, Kumar, Goel and Smith (appropriately) received credit for cooperating with the government, whereas Mr. Gupta exercised his right to test the government's proof at trial. But the entirety of Mr. Gupta's circumstances assessed under § 3553(a), including but not limited to the crime of which he was convicted, measured against the totality of the circumstances of Messrs. Kumar, Smith and Goel, justifies for Mr. Gupta, no less than for them, a probationary sentence.

Moving from Galleon-related matters, a case directly comparable to Mr. Gupta's is that of H. Clayton Peterson, an outside director of publicly traded Mariner Energy Inc., who pled guilty to tipping his son that Mariner was about to be acquired by Apache Corp. Peterson's breach of duty was intended unambiguously to confer financial benefit on his family, and did – he directed his son to buy Mariner stock in a family member's account in advance of public disclosure of the merger. Like Moffat, Peterson pled guilty but did not cooperate. In light of Peterson's otherwise unblemished record and history of good works – not even remotely comparable to that of Mr. Gupta – the Court imposed a non-Guidelines sentence of two years' probation with three months of home confinement. Sentencing Tr. at 21, *United States v. Peterson*, 11 Cr. 665 (RPP).

Other non-Galleon cases worthy of the Court's consideration here, because they involve similarly situated defendants and are thus important in avoiding "unwarranted disparities," include *United States v. Gansman* (08 Cr. 471 (MGC)); *United States v. McDermott* (00 Cr. 161) (KMW); *United States v. Collotta* (07 Cr. 143 (VM)); and *United States v. Goehring* (05 Cr. 209

(JES)). These cases involve defendants with access to inside information who were convicted of tipping others, all of whom are more culpable than Mr. Gupta.

- In *Gansman*, the defendant was a partner at Ernst & Young, accused of tipping his mistress, on numerous occasions, regarding a number of not yet announced mergers and acquisitions transactions involving Ernst & Young clients. Like Mr. Gupta, he went to trial. He was convicted of tipping on five different occasions, covering multiple Ernst & Young clients. Like Mr. Gupta, he did not receive a financial benefit of any kind; as here, the gain calculation was based on his tippee's profits.

Yet Gansman's misconduct was plainly more serious than Mr. Gupta's. He tipped on numerous occasions, breaching the trust of his employer and a number of its clients, in exchange for a tangible (non-monetary) benefit of importance to him. Yet in sentencing Gansman to a below-Guideline sentence of a year and a day, Judge Cedarbaum concluded that "some consideration must be given to the nature and circumstances of this crime to the fact that the defendant did not personally gain." *Gansman* Sentencing Tr. at 17, Exh. L. Moreover, there is no indication in the record that Gansman offered to the sentencing court anything like the personal history of good works presented here.

- *McDermott* is also an appropriate comparison case under section 3553(a)(6), involving a defendant "with a similar record[] who ha[s] been found guilty of similar conduct" – but, once again, it is a comparison that favors Mr. Gupta. McDermott was the CEO of a major Wall Street firm providing investment advice and analysis in the banking sector. He repeatedly provided material nonpublic merger and other information regarding stocks of six different public companies to his mistress, who had no investment experience and who he knew was going to trade based on the information. Facing a sentencing range of 24-30 months under the then-mandatory Guidelines, McDermott was sentenced to eight months imprisonment. Thus, like Mr. Gupta, McDermott was a senior insider who was convicted of tipping, but not trading on his own behalf or receiving any financial *quid pro quo*. And, unlike Mr. Gupta, McDermott's benefit was clear and substantial – as the government argued, the tips allowed him to continue his affair with the tippee, and her profit from those tips "took the place of additional cash payments from him to her." Government's Sentencing Mem., *United States v. McDermott*, 00 Cr. 61 (KMW), 2000 WL 35515558 (S.D.N.Y. July 19, 2000).
- Randi Collotta was a Morgan Stanley lawyer who, like Gansman, provided information regarding clients' upcoming transactions. She tipped her husband, who in turn shared the information with a friend (who made \$40,000 in trading profits) and others from whom he received \$9,000 in kickbacks. In addition, Randi Collotta's tips were then shared with a second level of tippees, who collectively made additional profits of \$550,000. She was sentenced to 60 days in jail and four years of probation, with Judge Marrero noting that just because Collotta was an insider did not make her the most culpable participant: "the Court notes that in the present case Ms. Collotta

did not conceive of the scheme and she profited from it only to a modest extent compared to the individuals with whom she disclosed the information.” *Collotta* Sentencing Tr. at 11, Exh. M.

- In *Goehring*, the defendant, who was Gerber’s director of communications, tipped a “close friend” ahead of two material Gerber announcements. Though his calculated Guidelines range was 10-16 months, he was sentenced to 2 years of probation, including 5 months home confinement. Goehring is comparable to Mr. Gupta in that there were only two tips, and the alleged benefit to him was enhanced friendship. Unlike Mr. Gupta, however, Goehring also financially profited by trading for his own account on the basis of the inside information.

As the sentences in these cases reflect, in carrying out the mandate of section 3553(a), a non-custodial sentence is appropriate in order to avoid unwarranted disparities.

3. A Non-Custodial Sentence is Sufficient to Deter Others

In analyzing the § 3553(a) factors, this Court has pointed to both the need for general deterrence and the importance of assessing that need in relation to “the full measure of the human being who is before the Court.” Sentencing Tr. at 39, *United States v. Fleishman*, 11 Cr. 32 (JSR), Exh. N. For the reasons set forth below, we respectfully submit that a sentence of probation with the condition that Mr. Gupta undertake a lengthy and rigorous program of community service, is sufficient to effectuate the general deterrence objective.

As the Court considers general deterrence, it makes sense to think with precision about who is the target of the message, that is, which class of potential insider traders is sought to be deterred. It is not simply the business community writ large, but rather directors and other very senior persons with access to sensitive information. And, we respectfully submit, a person in that position is likely to think long and hard about whether to risk the fate that has been Mr. Gupta’s even before imposition of any sentence (along with the requirement, should the Court impose it, that at the age of 64 he spend a lengthy period of time engaged in full time, difficult and rigorous community service). His once sterling reputation, built over decades, has been

irreparably shattered, and his business and philanthropic accomplishments tainted. He has had to sever his association with the numerous humanitarian organizations to which he has been devoting the lion's share of his time since his retirement from McKinsey, leaving him with little to do and jeopardizing his ability to continue to serve the causes to which he has dedicated his life – eradicating global health problems like malaria and AIDs, and strengthening India and its educational opportunities, to name a few. So, too, he was required to step down in disgrace from a number of public company boards. The amount of press and reporting on the trial has been relentless and inescapable. This is the quintessential case of a monumental fall that is, in and of itself, severe punishment.²⁴

Mr. Gupta's family, too, has suffered under the glare of relentless media attention since it was first reported in the media that he was being investigated in April of 2010. Anita remains in awe of the "strength and grace" her husband maintains for the sake of her and her daughters. Nevertheless, she recognizes that her "girls put up a brave face but I see the pain and fear in their eyes and don't know how to comfort them. I know how hard it is for them because they believe so strongly in their father and the generous, good and honest man he has always been." The daughters' letters reveal that their father's trial has indeed been their tribulation as well. Youngest daughter Deepali, who graduated from college while her father was on trial, writes:

This past year has been the most difficult that I have ever experienced – I was unsure how to treat the situation while at school, found it hard to engage with my classes, and at times felt incredibly guilty for even being there while my family was going through such a difficult time at home. My father told me repeatedly not to worry, that I should be strong, that he would be fine if I was

²⁴ In addition to the fact that potential similarly situated offenders will likely be deterred by the extent to which Mr. Gupta has already been punished, the need for a custodial sentence in order to achieve general deterrence is further lessened by the recent highly publicized insider trading prosecutions in this district.

fine and that the best thing for me to do would be to take comfort in my every day life – class, work, friends, and family. He said this to me countless times throughout this year, and it was the first thing he said to me after the jury delivered [its] verdict. I am trying to look forward to this year, to building a life and a career for myself, but I can't help worrying about what the immediate future holds. I worry for myself, my nieces, my sisters, and my mother, because I can't imagine every day life for any of us without my father.

Daughter Aditi “worr[ies] about what it would be like to lose my father to a prison sentence,” but says the “truth of the matter is that much of what I depended on I have lost already.” Having so often relied on her father's care and counsel in the past, now, she writes, “[w]hen I see my father quiet or stressed the last thing I feel that I can do is ask him for help or advice. Knowing that his greatest priority is for me to be happy, I hesitate to ever tell him that I'm not. These lies of omission have escalated over time, as I've waited for a 'better time' to burden him with my problems, and that 'better time' has not come.” The impact of the allegations against Mr. Gupta will also be felt by a network of extended family members who have come to rely on his presence in their lives. “Only now,” writes eldest daughter Geetanjali, “as we contemplate the possibility of losing him, have I realized how many people my father has helped, comforted, cared for, and supported.”²⁵

Respectfully, what Mr. Gupta has undergone during the last two-plus years, and impact on his professional and charitable endeavors going forward represents extensive punishment. *See United States v. Stewart*, 590 F.3d 93, 141 (2d Cir. 2009) (the “need for further deterrence and protection of the public is lessened because the conviction itself already visits substantial

²⁵ We recognize, of course, that the collateral impact on the defendant's family is not uncommon. We cite it here only as part of the deterrence analysis, i.e., as having a deterrent effect on the type of potential wrongdoer considering Mr. Gupta's situation and assessing whether to risk acting illegally.

punishment on the defendant”); *United States v. Coughlin*, No. 06-20005, 2008 U.S. Dist. LEXIS 11263, at *27 (W.D. Ark. Feb. 1, 2008) (in sentencing Thomas Coughlin, the former Chief Operating Officer of Wal-Mart, the Court found that a sentence of probation and home detention was “capable of deterring corporate executives like Coughlin, who cherish their freedom of movement and right to privacy, from engaging in conduct similar to Coughlin’s”).²⁶

V. A SENTENCE OF PROBATION WITH A CONDITION OF RIGOROUS, FULL-TIME COMMUNITY SERVICE IS SUFFICIENT TO ACHIEVE THE GOALS OF SENTENCING

Courts have recognized that in an appropriate case, and if used wisely, probation is sufficiently serious punishment to satisfy the statutory mandate that the sentence reflect the seriousness of the offense and provide just punishment. *See United States v. Brady*, 02 Cr. 1043 (JG), 2004 WL 86414, at *8-9 (E.D.N.Y. Jan. 20, 2004) (probation “may be used as an alternative to incarceration, provided that the terms and conditions of probation can be fashioned so as to meet fully the statutory purposes of sentencing, including promoting respect for the law, providing just punishment for the offense, achieving general deterrence, and protecting the public from further crimes by the defendant.”) (quoting U.S.S.G. Manual ch. 5, pt. B, introductory cmt.); *Coughlin*, 2008 U.S. Dist. LEXIS 11263 at *20-22 (“Home detention and probation can be severe punishments, hugely restrictive of liberty, highly effective in the determent of crime and amply retributive.” Recognizing that white-collar offenses are “gravely

²⁶ Notably, despite the important role assigned to deterrence in criminal sentencing, “we do not have very solid and credible empirical evidence that deterrence through the imposition of criminal sanctions works very well.” Raymond Paternoster, *Crimes and Punishment: How Much Do We Really Know About Criminal Deterrence?*, 100 J. Crim. L. & Criminology 765, 766 (2010). Further, there is considerable evidence that general deterrence of white collar defendants is achieved by the imposition of any punishment, regardless of severity. *United States v. Adelson*, 441 F. Supp. 2d 506, 514 (S.D.N.Y. 2006) (“even relatively short sentences can have a strong deterrent effect on ‘white collar ‘ offenders”) (citing Richard Frase, *Punishment Purposes*, 58 Stan. L. Rev. 67, 80 (2005); Elizabeth Szockyj, *Imprisoning White-Collar Criminals?*, 23 S. Ill. U. L. J. 485, 492 (1998)).

serious and demanding of considerable punishment,” the court found that probation and home detention could accomplish the goals of punishment “more effectively than imprisonment” and that “[n]ot all defendants must be sentenced to imprisonment to be duly punished.”).

We ask the Court to impose a probationary sentence, with the condition that Mr. Gupta perform, for a significant period, a rigorous, full-time program of community service. Below, we detail for the Court’s consideration two such potential programs of community service. At the Court’s direction, Mr. Gupta would, of course, be prepared to undertake any community service the Court concluded was appropriate. We first describe a proposed course of service, with Covenant House, which provides emergency shelter and other services for homeless, runaway and at risk youth. Mr. Gupta would provide direct services to these children at Covenant House’s New York site, including working as part of the intake team at the Crisis Center, and assisting participants in the transitional living program known as “Rights of Passage” and in job training. In addition, he would assist Covenant House in developing a plan to implement a set of strategic initiatives for the organization.

Separately, we set forth a less orthodox but innovative proposal pursuant to which Mr. Gupta, under the direction and the supervision of the government of Rwanda, along with CARE USA, a leading humanitarian and development organization with operations in Rwanda, would live and work with government officials in rural districts there, helping to implement the country’s initiative to improve delivery of health care (with a particular focus on HIV/AIDS and malaria) and agricultural development. We recognize this is an unusual community service proposal, but one that could potentially provide great benefits to large numbers of Rwandans desperately in need of help, and which Mr. Gupta is uniquely situated to perform. Moreover, it would require Mr. Gupta to confront significant hardships and would thus constitute punishment

commensurate with the seriousness of the offense, as Mr. Gupta would be thousands of miles from his family and friends, and would be living in basic accommodations in rural areas of the country.

1. Covenant House

Since 1972, Covenant House has provided emergency shelter and other services for homeless, runaway and at risk youth. It is the largest privately funded agency fulfilling this critical need in the United States, Canada and Latin America, operating programs in 23 cities and serving more than 50,000 young people each year. As set forth in greater detail in the enclosed letter to the Court from Kevin Ryan, the President and CEO of Covenant House International, the parent organization, the actual need, particularly in the current difficult economic environment, is far greater. (Exh. O).

Mr. Ryan and other representatives of Covenant House have met with Mr. Gupta and discussed how his talents might best be utilized by the organization. The proposed plan, formulated as a result of these discussions and consisting of two parts, is described in Mr. Ryan's letter.

First, with the Court's approval, it is anticipated that Mr. Gupta would provide direct services in three components of Covenant House's work with homeless children:

- **Crisis Care.** The Crisis Centers, including one on Manhattan's West Side, where Mr. Gupta would work, are the facilities the children see first. He would be part of the intake team, which takes care of the child's immediate needs (food, shower, clean clothing, a safe bed and environment and establishing trust, a medical evaluation), and develops a case plan tailored to the individual child.
- **The transitional living program known as "Rights of Passage."** This program addresses the long term needs of the children and provides young adults (18-21 years old) with a stable home for up to 18 months. They learn to live independently and

develop basic life skills. Mr. Gupta would assist the participants in the Rights of Passage program with, among other things, resume writing, basic financial skills, interviewing skills, job coaching, and other interpersonal skills.

- **Job Training.** As noted in Mr. Ryan's letter, Mr. Gupta would be expected to spend a portion of each day in the Covenant House job training center, helping the young adults understand and make their way through the job search process.

Second, Mr. Gupta would assist in Covenant House's ongoing effort to develop strategic initiatives to enable the organization to expand its services to greater numbers of homeless young people, to improve the quality of services delivered and outcomes obtained, and to put the organization on a stronger financial footing. As set forth in Mr. Ryan's letter, he would work on revenue diversification, measurement of impact of Covenant House programs, expansion of services to meet the current acute need, and organizing and defining the roles of and relationship between the parent organization, Covenant House International, and the individual sites. (Exh. O at 2-4). As noted by Mr. Ryan, "if Covenant House had the resources to engage someone to assist in these initiatives, Mr. Gupta would be an ideal fit. For us to receive his services as part of his sentencing would truly be a blessing, at a crucial time in our history." (Exh. O at 4).

As described in Mr. Ryan's letter, it is anticipated that Mr. Gupta would work from 8:00-10:00 a.m. and from 3:00-7:00 p.m. in the direct services portion of the proposed community service, with the intervening hours devoted to developing and implementing strategic initiatives. Mr. Gupta would be supervised in these two areas by James White, Executive Director of the Covenant House program in New York (direct services) and John Ducoff, Senior Vice President of Strategic Planning and General Counsel (strategic initiatives), with regular reporting as directed by the Court.²⁷

²⁷ In addition to this proposed program of service with Covenant House, Mr. Gupta would be able, on weekends and nights, to continue his assistance to a number of the organizations badly

2. Rwanda

Since the genocide of 1994, the United States has invested heavily in Rwanda, including in the health and well-being of the Rwandan people. Among other such investments, President Obama created the Global Health Initiative (“GHI”) in 2009, incorporating the President’s Emergency Plan for AIDS Relief and other similar programs into a six year, \$63 billion initiative to develop a comprehensive U.S. government strategy for global health. Rwanda was named one of the first eight “GHI Plus” countries, which are to receive special consideration and funding. *See, e.g.,* Kaiser Family Foundation Report, *US Global Health Policy: The U.S. Global Health Initiative, A Country Analysis* (Feb. 2011), www.kff.org/globalhealth/upload/8140.pdf. Aiding in the development of Rwanda, and improving the health of its people, is a U.S. foreign policy priority.

At the request of four leading figures in the fight against disease and poverty in developing countries, and following consultations, the Rwandan government has expressed support for a program of service in which Mr. Gupta would “work with rural districts to ensure that the needs to end HIV, malaria, extreme poverty, and food security, are implemented.”

(Letter to President Paul Kagame, and Response from the Minister of Justice/Attorney General, Tharcisse Karugarama, Exhs. P and Q). The Minister further advises the Court that the Rwandan

in need of his expertise and assistance. Along with the humanitarian work we have described in this memorandum, he was also in the process of developing new initiatives such as the Urban Institute of India – an effort to bring the private sector, academia, and the Indian government together to address accelerating migration to India’s cities, which are unprepared for the challenge – but he has not been able to see through their growth. Notably, as described in a letter of Indian lawyer Rajiv K. Luthra, “were Mr. Gupta to receive a prison sentence, his charitable and humanitarian initiatives [in India, including the fledgling Urban Institute] would be substantially impaired.” (Exh. R). This is because imprisonment, while available under the criminal code in India for “white collar” offenses, is in practice “generally reserved for violent offenders posing a grave threat to society and for political corruption cases.” For this reason, “[m]any business, education and government leaders and organisations involved in [Mr. Gupta’s charitable] endeavours, will be likely to and/or unwilling to work with him.”

government would accept “responsibility for crafting a [specific] program of work, for the terms imposed on Mr. Gupta being carried out, and to ensure that regular reports are provided to the appropriate authorities in the United States by the Ministry of Justice/Attorney General’s office.” (Exh. Q at 2). In addition, the Rwandan government expects to join with a U.S. based organization already working in the country to ensure effective supervision of Mr. Gupta’s service. (*Id.* at 4) Helene Gayle, the President and CEO of CARE USA, which operates programs in food, livelihood, health and education in Rwanda, writes to the Court that CARE, is prepared to partner with the Rwandan government in the supervision of Mr. Gupta, and to provide such periodic reports on his work and outcomes, as the Court directs. (Exh. S).

As the Justice Minister/Attorney General states:

Mr. Gupta, and his contributions to Rwanda and other developing countries, are well known to us. We believe he can make a significant difference in helping us to accomplish the aforementioned objectives [*i.e.*, ending HIV, malaria and extreme poverty and ensuring food security].

The challenges facing Rwanda require not just subject matter expertise, but management expertise. Mr. Gupta’s organizational and management acumen is directly relevant to the challenges, including (i) prioritization and efficient deployment of resources given scarcity; Mr. Gupta has spent his entire career working with the private sector, governments, and United the Nations to this end; and (ii) capacity building, that is, helping Rwanda in the creation of institutions that can train the next generation of leaders, as well as “on-the-job” training for the government officials in the rural districts to help ensure that the gains made would be sustained over time.

As mentioned above and noted in the Minister’s letter, Mr. Gupta would live in the rural districts, helping directly to improve outcomes where the need is most acute. Significantly, he

would experience a measure of real sacrifice, thousands of miles from his family and living in spare, rural accommodations – that is, it would be punishment reflecting the seriousness of the offense of which he was convicted, satisfying section 3553(a), while at the same time enabling him to give back to society and employ his talents in a country, and in a manner, consistent with U.S. interests.

VI. CONCLUSION

For the foregoing reasons, we respectfully request that the Court impose a sentence of probation with the condition that Mr. Gupta perform a rigorous full-time program of community service.

Dated: October 17, 2012

Respectfully submitted,

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EXHIBIT A

Pursuant to Federal Rule of Criminal Procedure 32, Mr. Gupta sets forth below his objections to the PSR. Although several of these objections will be asserted in his Sentencing Memorandum (the "Memorandum"), Mr. Gupta is asserting them here as well in order to ensure they are preserved.

In addition to the specific objections noted below, Mr. Gupta asserts the following general objection to the PSR: Although Mr. Gupta accepts, and is prepared to be sentenced in accordance with the the jury verdict convicting him of Counts One and Three through Five of the Superseding Indictment, Mr. Gupta respectfully disagrees with the verdict and submits that he is not guilty of the charged offenses. Accordingly, Mr. Gupta objects to the description of the Offense in paragraphs 1-58.

Page 1 (Release Status) and Paragraph 61: Mr. Gupta notes that he self-surrendered on October 26, 2011.

Paragraph 5: Mr. Gupta notes that he was acquitted by the jury of Counts Two and Six.

Paragraph 19: For the reasons to be set forth in the Memorandum, Mr. Gupta respectfully objects to the assertion that Rajaratnam and Galleon realized a gain or avoided losses of \$15 million.

Paragraph 21(d): Mr. Gupta objects to this paragraph to the extent it suggests he in fact became the Chairman of Galleon International.

Paragraphs 25, 29, 34, 41, 45, 54, and 58: For the reasons to be set forth in the Memorandum, Mr. Gupta respectfully objects to all profit and loss avoided calculations included in the PSR.

Paragraph 28: Mr. Gupta notes that the Wall Street EPS estimate presented by the government at trial was \$4.35 per share (GX 70).

Paragraph 29: Mr. Gupta respectfully objects to the inclusion of profits allegedly resulting from the purchase of Goldman Sachs options in September 2007, as no evidence was presented at trial of any profits resulting from trading in such options.

Paragraph 31: Mr. Gupta respectfully objects to this paragraph in its entirety, as the government failed to provide any evidence supporting these allegations.

Paragraph 33: Mr. Gupta notes that the Wall Street EPS estimate presented by the government at trial was \$3.42 per share (GX 73).

Paragraphs 35-36: Mr. Gupta respectfully objects to these paragraphs to the extent they imply that the information stated in the July 29, 2008 call was material nonpublic information, or that Mr. Gupta believed Rajaratnam had any intention of trading on the basis of the information.

Paragraph 41: Mr. Gupta respectfully objects to the inclusion of profits made in the Galleon fund that Gary Rosenbach managed, as no evidence was presented at trial that Rosenbach was in possession of any inside information at the time of these trades.

Paragraph 45: For the reasons to be set forth in the Memorandum, Mr. Gupta respectfully objects to the method used to calculate losses avoided.

Paragraph 47: With respect to the phrase, “. . . an unassigned number at the McKinsey office in Stamford, Connecticut where GUPTA worked was used to call Rajaratnam . . .,” Mr.

Gupta respectfully notes that the number called was that of Rajaratnam's assistant, Caryn Eisenberg, not that of Rajaratnam.

Paragraph 69 and 77: For the reasons set forth in the Memorandum, Mr. Gupta respectfully objects to the PSR's calculation of the levels added based on the gain resulting from the offense, as well as to the total advisory Guidelines range.

Paragraph 123: With respect to the Equifax credit report, Mr. Gupta notes that the referenced real estate mortgage relates to a property that is owned by an irrevocable trust, and not by him personally. The auto lease relates to a car that is leased by New Silk Route; Mr. Gupta pays for his personal use of the car.

EXHIBIT B

Defendant.

1

5. In particular, I have been informed that experts retained by Mr. Rajaratnam have calculated that the portion of the proceeds of those transactions attributable to alleged inside information totaled \$41,710,839. While I further understand that there may be a dispute about that figure, I have used that figure for the purpose of making the calculations below.

6. In calculating Mr. Rajaratnam's individual gains, there are two components to be considered. First, Mr. Rajaratnam, as a portfolio manager and an owner of Galleon Management, was entitled to a portion of the fees paid to Galleon Management to manage those funds. Second, Mr. Rajaratnam had direct investments, as well as an indirect interest through his deferred compensation, in both the Galleon Diversified and Galleon Technology Funds, and thus was entitled to a *pro rata* portion of any profits generated by trading in those funds.

7. The calculations of Mr. Rajaratnam's approximate individual interest in the transactions at issue are set forth in Attachment A to this declaration on a stock-by-stock basis.¹ An explanation of the manner in which these calculations were performed is set forth below.

Mr. Rajaratnam's Interest in Management and Performance Fees

8. Galleon Management received both management and performance fees. Management fees equaled an industry-standard 1% to 2% of assets under management on an annual basis. Performance fees generally equaled an industry-standard 20% of profits

¹ I have been informed that the \$41,710,839 figure calculated by the experts retained by Mr. Rajaratnam includes alleged profits in a Charles Schwab account belonging to Rajiv Goel. Those alleged profits are reflected in Attachment A to the extent they are included in the experts' \$41,710,839 figure, but as the trades occurred outside Galleon Management they are not relevant to my calculations. Please note that I have also calculated, as reflected in Attachment A and Paragraph 20 herein, the estimated gain to Mr. Rajaratnam based on an alternative overall gain figure calculated by the experts retained by Mr. Rajaratnam that excludes any "losses avoided."

(calculated after deducting the management fee) on an annual basis.² These management and performance fees constituted the revenues of Galleon Management.³

9. Before determining the portion of those fees that went to Mr. Rajaratnam, Galleon Management's expenses must be deducted. Those expenses include salaries, bonuses, rent, utilities, equipment, and other ordinary business expenses. Although the figures varied over time and between funds, I believe it is reasonable to estimate that Galleon Management's expenses were roughly equivalent to its management fees plus approximately 12.5% of its performance fees.

10. Portfolio managers like Mr. Rajaratnam received an amount equivalent to 50% of the performance fees with respect to funds they managed, so I have attributed 50% of the performance fees on the transactions at issue to Mr. Rajaratnam.

11. With respect to the remaining approximately 37.5% of the performance fees, for the years 2005 to 2007 I believe it is reasonable to estimate that Mr. Rajaratnam, as an owner of Galleon Management, received a portion roughly equivalent to his ownership interest (40% in 2005 to 2007), or 15%. In total, for the years 2005 to 2007, I believe that it is thus reasonable to estimate that Mr. Rajaratnam received an amount roughly equivalent to 65% of Galleon Management's performance fees.

12. For the year 2008, the Diversified Fund and the Technology Fund both lost money. As a result, Galleon Management did not in fact receive any performance fees associated with those funds in 2008. Nonetheless, as with 2005 to 2007, I have attributed to Mr.

² With respect to Mr. Rajaratnam's deferred compensation and direct investments, however, he (like other employees) was charged reduced fees. In particular, he was charged no management fees in 2005 to 2007, and a 1% management fee in 2008; he was charged no performance fees in 2005, a 10% performance fee in 2006 and 2007, and a 20% performance fee in 2008. I have taken into account those reduced fees in calculating Galleon Management's fees on the transactions at issue.

³ While the funds incurred expenses such as trading commissions, fund counsel and fund administrator fees that are deducted prior to the application of Galleon Management's fees, to be conservative I have not applied a reduction for expenses to the alleged insider trading gains before calculating Galleon Management's fees.

Rajaratnam a 50% interest in Galleon Management's hypothetical performance fees on the transactions at issue. However, I have not attributed to Mr. Rajaratnam an additional interest in fees because, after paying other obligations, Galleon Management had no remaining money to distribute to the owners of Galleon Management in 2008.

13. In sum, I believe it is reasonable to attribute 65% of Galleon Management's performance fees to Mr. Rajaratnam with respect to 2005 to 2007 transactions, and 50% with respect to 2008 transactions. Based on those percentages, Mr. Rajaratnam's pre-tax gain on Galleon Management's fees for the transactions at issue totaled approximately \$4,832,520. See Attachment A, p. 4.

Mr. Rajaratnam's Other Interests in the Galleon Diversified and Technology Funds

14. Throughout the period at issue in this matter, Mr. Rajaratnam had an additional interest in the Galleon Diversified and Galleon Technology Funds. His interest was in two forms. First, pursuant to a deferred compensation plan, Galleon Management deferred the receipt of fees and earmarked those amounts to individual employees and partners, including Mr. Rajaratnam. While deferred, those fees were held in various Galleon funds, including in the Galleon Diversified and Galleon Technology Funds, where they would share in the gains and losses of those funds. Second, Mr. Rajaratnam was a direct investor in both the Galleon Diversified and Galleon Technology Funds (I have included within Mr. Rajaratnam's investments those in the name of his wife and children).

15. To calculate Mr. Rajaratnam's *pro rata* share of alleged insider trading profits through his deferred compensation and direct investments, I first determined an approximate percentage of the Galleon Diversified and Galleon Technology Funds in which Mr. Rajaratnam had a deferred fee or investment interest at or around the time of the transactions at issue. Because Mr. Rajaratnam's interest in the funds fluctuated frequently based on the size of his own deferrals and investments and the size of the overall assets under management, Mr.

Rajaratnam's interest in each fund changed throughout the year. Generally, where I had the relevant figures for the month in which transactions at issue occurred, I used the approximate percentage for that month. Where I did not have figures for that month, I used the approximate percentage in the month that was closest in time to the transactions at issue.

16. Once I determined Mr. Rajaratnam's approximate percentage interest in the fund at or around the time of the transactions at issue, I applied that percentage to the alleged insider trading profits at issue. I then deducted the reduced management and performance fees to which Mr. Rajaratnam was subject as an employee of Galleon Management.

17. In total, based on the above calculations, Mr. Rajaratnam's net pre-tax gain from his deferred compensation and direct investments based on his percentage interest in the Galleon Diversified and Galleon Technology Funds was approximately \$3,703,316. See Attachment A, p. 4.

Total Gain to Mr. Rajaratnam

18. In total, based on the above calculations and assuming total proceeds from the trading at issue of \$41,710,839, Mr. Rajaratnam's pre-tax gain from that trading based on his share of fees earned by Galleon Management and his deferred fees and investments in the Galleon Diversified and Galleon Technology Funds was approximately \$8,535,836. See Attachment A, p. 4.

19. I understand that Mr. Rajaratnam paid taxes on these gains, as required, either in the year earned or when the deferral program was terminated in 2010. Assuming Mr. Rajaratnam's tax bracket required him to pay approximately 50% of these gains in taxes, Mr. Rajaratnam would have realized about one-half of the figure noted in the prior paragraph, or \$4,267,918.

20. As reflected in Attachment A hereto, I have also estimated Mr. Rajaratnam's gain assuming an alternative total proceeds figure of \$36,156,782, which I

understand excludes "losses avoided" as determined by the experts retained by Mr. Rajaratnam. Based on that figure, and applying the same methodology employed above, Mr. Rajaratnam's pre-tax gain would be \$7,460,633, or \$3,730,317 after taxes assuming that Mr. Rajaratnam's tax bracket would require him to pay 50% of these gains in taxes.

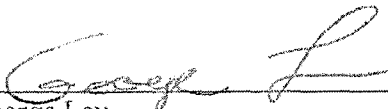
Calculation Using the Gain Figure Calculated by the Government

21. As noted, I have used as the basis for my calculations above the proceeds figures calculated by experts retained by Mr. Rajaratnam.

22. I have been informed, however, that the proceeds figure calculated by the Government for the same stocks is \$63,581,584.

23. Applying the same methodology employed above, Mr. Rajaratnam's pre-tax gain based on the Government's figure would be approximately \$13,371,053. Again, assuming Mr. Rajaratnam's tax bracket required him to pay approximately 50% of these gains in taxes, Mr. Rajaratnam would have realized about one-half of that, or \$6,685,526.

Executed on: 7/11/11


George Lau

ATTACHMENT A

Company	Gain from Alleged Insider Transactions Calculated by Professor Gregg Jarrell	Raj Rajaratnam Interest in Gain	Raj Rajaratnam Interest in Gain (Excluding "Losses Avoided")
Akamai	\$4,066,874 (Tech)	11.57% (Tech – July 2008) ¹ = \$372,665.56 Fees ² = \$399,024.19 Total = \$771,689.75	11.57% (Tech – July 2008) ³ = \$372,665.56 Fees ⁴ = \$399,024.19 Total = \$771,689.75
Akamai (\$25 August Put Option)	\$261,196 (Tech)	11.57% (Tech – July 2008) = \$23,934.54 Fees = \$25,627.43 Total = \$49,561.97	11.57% (Tech – July 2008) = \$23,934.54 Fees = \$25,627.43 Total = \$49,561.97
AMD	N/A	N/A	N/A
ATI	Total = \$15,423,132 \$12,705,400 (Tech) \$2,717,733 (DIV)	8.92% (Tech – June 2006) = \$1,019,989.51 17.86% (DIV – June 2006) = \$436,848.40 Fees = \$1,880,394.44 Total = \$3,337,232.36	8.92% (Tech – June 2006) = \$1,019,989.51 17.86% (DIV – June 2006) = \$436,848.40 Fees = \$1,880,394.44 Total = \$3,337,232.36
ATI (\$15 August Call Option)	\$600,000 (DIV)	17.86% (DIV – June 2006) = \$96,444.00 Fees = \$70,073.56 Total = \$166,517.56	17.86% (DIV – June 2006) = \$96,444.00 Fees = \$70,073.56 Total = \$166,517.56
Clearwire	\$410,795 (Tech)	12.38% (Tech – February 2008) = \$40,278.29 Fees = \$40,308.77 Total = \$80,587.05	12.38% (Tech – February 2008) = \$40,278.29 Fees = \$40,308.77 Total = \$80,587.05

¹ Mr. Rajaratnam's interest in a particular fund (Tech = Technology Fund; DIV = Diversified Fund) through his deferred compensation and direct investments is expressed as a percentage interest as of the noted month.

² "Fees" are Mr. Rajaratnam's individual interest in Galleon Management, L.P.'s performance fees earned through its management of the Galleon Diversified and Technology Funds.

³ Mr. Rajaratnam's interest in a particular fund (Tech = Technology Fund; DIV = Diversified Fund) through his deferred compensation and direct investments is expressed as a percentage interest as of the noted month.

⁴ "Fees" are Mr. Rajaratnam's individual interest in Galleon Management, L.P.'s performance fees earned through its management of the Galleon Diversified and Technology Funds.

ATTACHMENT A

eBay	\$52,746 (Tech)	6.96% (Tech – November 2008) = \$2,907.53 Fees = \$5,172.78 Total = \$8,080.31	6.96% (Tech – November 2008) = \$2,907.53 Fees = \$5,172.78 Total = \$8,080.31
Goldman Sachs (equity infusion)	\$2,352,709 (Tech)	6.96% (Tech – November 2008) = \$129,688.85 Fees = \$230,729.23 Total = \$360,418.08	6.96% (Tech – November 2008) = \$129,688.85 Fees = \$230,729.23 Total = \$360,418.08
Goldman Sachs (Q4 '08 earnings) (Losses Avoided)	\$1,937,185 (Tech)	6.96% (Tech – November 2008) = \$106,783.84 Fees = \$189,978.96 Total = \$296,762.79	N/A
Google	Total = \$3,546,941 \$2,687,077 (Tech) \$859,865 (DIV)	11.61% (Tech - April 2007) = \$280,772.68 17.83% (DIV - April 2007) = \$137,982.54 Fees = \$422,846.71 Total = \$841,601.93	11.61% (Tech - April 2007) = \$280,772.68 17.83% (DIV - April 2007) = \$137,982.54 Fees = \$422,846.71 Total = \$841,601.93
Google (Put Options)	\$1,241,374 (Tech)	11.61% (Tech – April 2007) = \$129,711.17 Fees = \$149,157.74 Total = \$278,868.91	11.61% (Tech – April 2007) = \$129,711.17 Fees = \$149,157.74 Total = \$278,868.91
Google (Losses Avoided)	Total = \$2,902,043 \$2,687,077 (Tech) \$214,966 (DIV)	11.61% (Tech – April 2007) = \$280,772.68 17.83% (DIV – April 2007) = \$34,495.59 Fees = \$347,861.67 Total = \$663,129.95	N/A
Hilton	\$3,182,227 (Tech) \$59,667 (Goel) ⁵	11.61% (Tech - April 2007) = \$332,516.12 Fees = \$382,367.64 Total = \$714,883.76	11.61% (Tech - April 2007) = \$332,516.12 Fees = \$382,367.64 Total = \$714,883.76

⁵ The Hilton gains attributable to "(Goel)" are associated with transactions in Rajiv Goel's Charles Schwab account, and thus no interest was calculated for Mr. Rajaratnam.

ATTACHMENT A

ICST	\$2,275,932 (Tech)	1.05% (Tech – July 2005) = \$23,897.29 Fees = \$289,836.87 Total = \$313,734.15	1.05% (Tech – July 2005) = \$23,897.29 Fees = \$289,836.87 Total = \$313,734.15
IDTI	\$535,927 (Tech)	1.05% (Tech – July 2005) = \$5,627.23 Fees = \$68,249.58 Total = \$73,876.81	1.05% (Tech – July 2005) = \$5,627.23 Fees = \$68,249.58 Total = \$73,876.81
Intel	Total = \$883,339 \$771,752 (Tech) \$111,587 (DIV)	11.61% (Tech – April 2007) = \$80,640.37 17.83% (DIV – April 2007) = \$17,906.37 Fees = \$105,704.82 Total = \$204,251.55	11.61% (Tech – April 2007) = \$80,640.37 17.83% (DIV – April 2007) = \$17,906.37 Fees = \$105,704.82 Total = \$204,251.55
Intel (Losses Avoided)	\$513,298 (Tech)	11.61% (Tech – April 2007) = \$53,634.51 Fees = \$61,675.51 Total = \$115,310.01	N/A
Polycom	\$449,950 (Tech)	6.91% (Tech – January 2006) = \$27,982.39 Fees = \$55,928.03 Total = \$83,910.42	6.91% (Tech – January 2006) = \$27,982.39 Fees = \$55,928.03 Total = \$83,910.42
Xilinx	Total = \$873,588 \$790,389 (Tech) \$83,199 (DIV)	8.21% (Tech – January 2007) = \$58,401.84 12.6% (DIV – January 2007) = \$9,434.77 Fees = \$107,582.18 Total = \$175,418.80	8.21% (Tech – January 2007) = \$58,401.84 12.6% (DIV – January 2007) = \$9,434.77 Fees = \$107,582.18 Total = \$175,418.80
PeopleSupport (takeover)	\$76,380 (Goel)	N/A ⁶	N/A
PeopleSupport (closing)	\$65,537 (Goel)	N/A	N/A

⁶ The gains in PeopleSupport are associated with transactions in Rajiv Goel's Charles Schwab account, and thus no interest was calculated for Mr. Rajaratnam.

ATTACHMENT A

TOTALS	\$41,710,839	Investment Total = \$3,703,316.05	Investment Total = \$3,227,629.43
		Fees Total = \$4,832,520.12	Fees Total = \$4,233,003.97
		Grand Total = \$8,535,836.16	Grand Total = \$7,460,633.41

EXHIBIT C

» Print

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Goldman may be set to post first quarterly loss

Fri, Oct 31 2008

By Dan Wilchins - Analysis

NEW YORK (Reuters) - Goldman Sachs Group Inc (GS.N: Quote, Profile, Research) could post its first ever quarterly loss as a public company in December, as market turmoil weighs on revenue for investment banking businesses and forces asset writedowns.

One Wall Street analyst, Glenn Schorr at UBS, predicted a loss for the bank on Friday. The potential for a quarterly loss, combined with the generally weaker environment for financial institutions, has some investors wondering if Goldman Sachs really deserves to trade at a higher valuation than Morgan Stanley, (MS.N: Quote, Profile, Research) the other major independent investment bank that is now a commercial bank.

Goldman's shares trade at about 1.1 times their tangible book value, while Morgan Stanley's shares trade at less than half their tangible book value. A spokesman for Goldman declined to comment.

Goldman Sachs is legendary for its risk management expertise. In early 2007, it saw the storm clouds gathering above the subprime mortgage market and positioned itself to profit from the expected home loan downturn.

The company posted record net income in the fourth quarter of 2007, even as less nimble competitors like Merrill Lynch & Co Inc MER.N were already recording massive losses.

But the duration and intensity of this credit crunch has surprised many of the savviest investors. After having already fallen 21 percent in the first nine months of the year, the Standard & Poor's 500's .SPX fell 17 percent in October.

Many bond sectors have weakened in recent weeks, the dollar has unexpectedly surged against the euro and other currencies, and the price of oil has plummeted.

Meanwhile merger activity has ground to a halt globally, and hedge funds, some of Goldman's best trading customers, are cratering.

"The business conditions are horrendous for these guys now," said Anton Schutz, chief investment officer at Mendon Capital Advisors in Rochester, New York.

The conditions will likely pressure Goldman's net revenue, which was typically at least \$10 billion a quarter in 2007 and dropped to about \$6 billion last quarter. With so many business lines looking weaker, Goldman's revenue in the fourth quarter could be closer to about \$5 billion, although the average estimate among Wall Street analysts is \$6.3 billion, according to Reuters Estimates.

Meanwhile, Goldman faces significant potential writedowns.

The bank's investment in Industrial and Commercial Bank of China Ltd (601398.SS: Quote, Profile, Research) (1398.HK: Quote, Profile, Research), worth \$2.6 billion in its fiscal third quarter ended August 29, is worth about \$900 million less after a broad rout in Chinese stocks. The bank's principal investments, including private assets, public assets and real estate, worth about \$17.1 billion at the end of last quarter, could now be worth \$3.4 billion less.

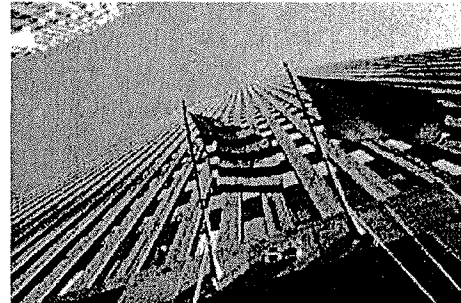
Goldman's \$14.6 billion of commercial real estate could be worth \$700 million less, assuming the firm was able to hedge all but 5 percent of the potential declines. The same assumption for Goldman's \$7.6 billion of residential mortgage exposure yields another \$380 million of write downs.

Add up those numbers, and the writedowns could total \$5 billion. Throw in another \$2 billion of non-personnel related expenses, which is about what Goldman averages every quarter, and the fourth quarter could be ugly.

"We think the firm's principal investments could suffer meaningful mark downs in the quarter and lead to a loss," wrote UBS analyst Glenn Schorr on Friday. Schorr is the first Wall Street sellside analyst to forecast a quarterly loss for Goldman Sachs -- he cut his estimate to a loss of 40 cents a share from his prior estimate of earnings of \$1.40 a share. The Wall Street average estimate is for earnings of \$2.40 a share before items.

To be sure, a fourth-quarter loss is not a sure thing for Goldman Sachs. The company still has another month left in its fiscal fourth quarter, and markets may recover then, particularly as credit markets show signs of thawing, said Mendon's Schutz.

And Goldman can set aside much less money for compensation in the fourth quarter than it has in prior quarters, which would reduce its costs.



But amid all the difficulties facing the investment banking business, some investors wonder if Goldman Sachs deserves to trade at a higher valuation than Morgan Stanley.

Morgan Stanley is facing problems of its own, some analysts note. It has lost hedge fund customers in its prime brokerage business to other banks. Its efforts to collect deposits could end up being quite costly.

But even with these challenges for Morgan Stanley, some investors wonder if Goldman deserves such a large premium valuation over its competitor.

"Is Goldman that much of a better business than Morgan Stanley now?" one hedge fund manager asked.

(Editing by Leslie Gevirtz)

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EXHIBIT D

9/21/2011 Sentencing

1 UNITED STATES DISTRICT COURT
1 SOUTHERN DISTRICT OF NEW YORK
2 -----x

2
3 UNITED STATES OF AMERICA,

4 v.

11 Cr 161 (JSR)

5 WINIFRED JIAU,

6 Defendant.
7 -----x

8
9 September 21, 2011
4:26 p.m.
10

11 Before:

12 HON. JED S. RAKOFF,

13 District Judge

14 APPEARANCES

15 PREET BHARARA

16 United States Attorney for the
Southern District of New York

17 BY: DAVID LEIBOWITZ
AVI WEITZMAN

18 Assistant United States Attorneys

19 MORGAN, LEWIS & BOCKIUS, LLP
Attorneys for Defendant

20 BY: JOANNA C. HENDON
DAVID LUTTINGER

21 ALSO PRESENT: MICHAEL BROWN, Special Agent FBI
22
23
24
25

9/21/2011 Sentencing

1 MS. HENDON: I think that this is an interesting
2 question and for this case it is an academic question because
3 we have a trial record here and we have a record of trades that
4 took place and didn't take place and when they took place and
5 it makes it very hard work for all of us to parse through it.
6 But, we do have a record here and I would like to address both
7 the Sonar trades and the Barai Capital trades and I will say
8 before I do that, your Honor --

9 THE COURT: But I will say one last thing and then we
10 will move on because I agree with you that if I can calculate
11 actual loss, I should, but it is one more reason that I don't
12 know how much I should give to that factor because when
13 Ms. Jiau passed on this information she didn't know exactly how
14 much or maybe even generally how much any of the people she was
15 passing information on to would -- that the people who
16 ultimately would trade on the basis of her inside information,
17 whether it was going to be a ton of trades or a few trades.
18 The reason in the guidelines is that this shows the injury to
19 the victim, so to speak, and that makes perfect sense if you
20 are talking about a case involving, say, embezzlement from a
21 company or a theft of so many individuals' money or something
22 like that. In the insider trading case I think it is more
23 attenuated, a more complex analysis.

24 But, having said all of that, we do need to calculate,
25 if we can, the loss, so go ahead.

9/21/2011 Sentencing

1 remarkable that she received a trial in such a short period and
2 heightened period of time and she shouldn't now be heard to
3 complain that after having received that trial she had to bear
4 through life in jail.

5 The simple fact is it was her lack of acceptance of
6 responsibility, her lack of remorse in this case that has been
7 the driving force for all of this.

8 She, to this day, will not acknowledge that she
9 breached any duty to any employer -- not to Nvidia, not to West
10 Valley Staffing Group. She refuses to acknowledge it even in
11 the sentencing. She refuses to acknowledge that anybody relied
12 on her information or that her information was in any way
13 material or that anybody received any legally cognizable
14 benefit.

15 THE COURT: Let me just interrupt you because you are
16 making many valid points but there is a problem I have with the
17 argument you are now making even though it has a certain common
18 sense appeal.

19 Every American has the right to put the government to
20 its burden of proof and even if you are completely guilty, you
21 can plead not guilty as a matter of law and require the
22 government to establish its proof as in this case you did. And
23 while, of course, we want to give credit for acceptance of
24 responsibility, it is one of the few areas where this Court and
25 the guidelines are in total agreement. We don't want to place

9/21/2011 Sentencing

1 such a premium on that aspect of it that we discourage people
2 from exercising their constitutional rights.

3 Now, once you have exercised your constitutional right
4 and put the government to its proof but you have been found
5 guilty, you then think about your appeal. How can you
6 possibly -- I mean, you are going to go up on appeal and say
7 that there was a failure in the government's proof saying and
8 by the way, Judges of the Court of Appeals, disregard the fact
9 that at sentencing I said I was guilty as sin and accepted
10 responsibility. Well, theoretically you could go down that
11 path because your appeal is because of errors, I don't see as a
12 practical matter how you could ever do that. And what would
13 happen if you won an appeal and the case then comes back
14 for retrial and there you are on record saying now the trial is
15 over, here at sentencing I just want to acknowledge that I am
16 guilty and feel terrible remorse.

17 That's an impossible position to take.

18 So, she didn't get credit for acceptance of
19 responsibility but I think it is something else to say that we
20 should in any way, shape, or form hold against her -- and I
21 know you weren't saying that but I just want to make the record
22 clear -- that her failure as you put even now to express
23 remorse, once she goes down --

24 MS. HENDON: She hasn't spoken yet.

25 THE COURT: Pardon?

9/21/2011 Sentencing

1 MS. HENDON: I want to point out my client hasn't yet
2 been asked to speak.

3 THE COURT: That's true, and maybe it will be
4 something different than what I am anticipating, but my only
5 point is, as a practical matter, yes, we should and must give
6 acceptance of responsibility credit. That says something about
7 the human beings who have accepted responsibility but, no, we
8 should never expect or draw negative inference from the failure
9 to accept responsibility at sentencing. I think that is to put
10 a defendant in an impossible position.

11 Now, this defendant, based on what counsel just said,
12 may get up two minutes from now and say she accepts
13 responsibility. I know. But I'm just -- I just want the
14 record to be clear that I don't think that is -- if someone
15 stands up at sentencing after conviction and says: I assert my
16 rights and I'm going up on appeal, I don't think that should
17 ever be held against a person in any way, shape or form for the
18 practical reasons I have just suggested.

19 MR. WEITZMAN: Nor was I suggesting that, your Honor.

20 THE COURT: Okay.

21 MR. WEITZMAN: But I would highlight that her lack of
22 acceptance of responsibility and the fact she did not plead
23 guilty pretrial which she was allowed not to do, distinguishes
24 her case from 95 percent of the cases that she cited in exhibit
25 A.

9/21/2011 Sentencing

1 THE COURT: Certainly, though, what weighed heavily in
2 any Court's determination in a guilty plea is what that says
3 positively about the person who is accepting responsibility and
4 that surely gets translated into less of a sentence than would
5 otherwise be imposed. I think that's self-evident.

6 MR. WEITZMAN: Yes, it is, your Honor. And the three
7 examples she cited in the heartland Danielle Chiesi, Mark
8 Kurland and Donald Longueuil are each defendants who accepted
9 responsibility, owned up to their conduct, apologized for their
10 conduct, and pled guilty pursuant to a plea agreement.

11 Let me go through very quickly, your Honor, the
12 three --

13 THE COURT: I will just add one last thing to that.

14 It will never be the policy of this Court -- I know
15 judges vary -- it will never be the policy of this Court to
16 make a huge difference in sentence between those who exercised
17 their right to go to trial and those who plead guilty, because
18 at that point I think it becomes no longer a recognition of the
19 credit that should justly be given for acceptance of
20 responsibility, it becomes a veiled price of going to trial.
21 There should be no price on going to trial.

22 MR. WEITZMAN: While I agree with that, your Honor, I
23 do think that acceptance of responsibility goes to the issue of
24 specific deterrence. I think when a defendant stands up and
25 says I committed a crime, I feel bad for it, I wronged people,

9/21/2011 Sentencing

1 I wronged society, I wronged the government, they are less
2 likely to engage in that criminal conduct again and I think
3 that the guidelines has a presumption in that regard.

4 THE COURT: That may be true. That may not be true.
5 I'm not sure. If I had a dollar for every defendant who tells
6 me at the time of sentence that they'll never do it again and
7 then comes back six months later on a probation violation, I
8 would be a very wealthy fella. But, we are getting, I think, a
9 little -- I think the point you made initially is one that does
10 register with me which is it's not so clear to me that Ms. Jiau
11 just walked away from it in the sense that defense counsel was
12 suggesting. I think that is an important and relevant matter
13 to be considered.

14 MR. WEITZMAN: And I will go through this very
15 quickly, your Honor, but there are three cases on the
16 defendant's chart that are defendants who did not accept
17 responsibility and let me just highlight their sentences:
18 Hafiz Nasim went to trial, Judge Patterson imposed a 10-year
19 sentence against him; Joseph Contorinis went to trial, Judge
20 Sullivan imposed a 72-month sentence against him where the
21 guidelines range was 97 to 121 months. You learned today that
22 Zvi Goffer went to trial, Judge Sullivan imposed a 120-month
23 sentence against him, and there is a fourth person on this
24 chart who was James Gansman and Judge Cedarbaum imposed a
25 12-month and one day prison sentence which is far below the

9/21/2011 Sentencing

1 guidelines based on serious family circumstances. And the fact
2 that --

3 THE COURT: Those are all of course relevant, but I'm
4 reminded of the statement repeatedly made by the greatest Judge
5 ever to sit in the Southern District of New York, Edward
6 Weinfeld, which is he would never impose any different sentence
7 from -- between the person who pled guilty and the person who
8 went to trial. Now, I'm not in total agreement with that, I
9 think some modest credit is appropriate, but I -- that's about
10 as far as I think that goes.

11 MR. WEITZMAN: Your Honor, I think that brings me to
12 what distinguishes the defendant from a lot of the people on
13 this chart. What distinguishes the defendant is her
14 background, as your Honor noted. She not only was smart, she
15 not only is savvy, she not only comes from a good family, I
16 think her father had a very high position in government. She's
17 someone who is clearly very resourceful and savvy and
18 intelligent and it is unfortunate that she decided to use that
19 savvy -- savviness and intelligence to break the law and not
20 just once but repeatedly, so many times over the course of
21 approximately two years, all in the name of her own greed. I
22 think it is blind to suggest that she did not act with any
23 deceit, guile, or manipulation. She clearly did so and the
24 trial established that. She extracted greater and greater
25 payments from the hedge funds claiming that she needed to pay

EXHIBIT E

C57AROSSps

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

11 CR 300 (JSR)

5 DAVID ROSEN,

6 Defendant.

7 -----x

8 New York, N.Y.

9 May 7, 2012

3:45 p.m.

10 Before:

11 HON. JED S. RAKOFF

12 District Judge

13 APPEARANCES

14 PREET BHARARA

15 United States Attorney for the
16 Southern District of New York

BY: ~~GLEN MCGORTY, ESQ.~~

17 MICHAEL BOSWORTH, ESQ.
18 Assistant United States Attorneys

19 MORVILLO, ABRAMOWITZ, GRAND,
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Attorneys for Defendant

BY: ELKAN ABRAMOWITZ, ESQ.

21 SCOTT MORVILLO, ESQ.
22 ROBERT CRAIG MORVILLO, ESQ.
23 ELLEN MARIE MURPHY, ESQ.

C57AROSSps

1 THE COURT: So the first of the remaining objections
2 is that paragraph 37 of the PSR refers to certain acts that
3 William Boyland undertook that the defense says are really not
4 MediSys-related. What is the government's view of that?

5 MR. MCGORTY: Your Honor, I believe it specifically
6 and exclusively refers to the \$22,000 in state grants to Urban
7 Strategies, which is line 4 of paragraph 37. And as to that we
8 agree with the defense.

9 THE COURT: All right. So we will ask the Probation
10 Office to correct that. The second one is that the PSR asserts
11 that MediSys received \$400,000 from the funds Carl Kruger
12 awarded to Brooklyn and Jamaica Hospitals, whereas according to
13 the defense, no MediSys-related entity received those funds.
14 What is the government's view of that?

15 MR. MCGORTY: The grants were requested, but the
16 defendant is correct; those funds were never ultimately

17 received by MediSys. So we won't object.

18 THE COURT: We will correct that and we will have the
19 Probation Office correct that as well.

20 Any objections to the report from the government?

21 MR. MCGORTY: No, your Honor.

22 THE COURT: All right. Let's first turn to the least
23 important part of this sentence, which is the calculation of
24 the guidelines, which I am required to do, regretfully, even
25 though this is just the latest example of the guidelines'

C57AROSSps

1 totally hollow and bizarre efforts to determine a sentence
2 chiefly by reference to the amount of money involved, which
3 surely is not irrelevant, but under the guidelines plays an
4 overwhelming role that is contrary to those elementary notions
5 of justice or even common sense. The guidelines, for example,
6 seem to be of the view that if some swindler, such as one that
7 I once prosecuted many years ago, swindles, in that case I'm
8 thinking of, three widows out of every last penny they have
9 been left by their late husbands, but the total amount that he
10 obtains is only a few hundred thousand dollars, he should be
11 given under the guidelines a much lower sentence than someone
12 who commits, say, an accounting fraud that cheats every
13 shareholder in a company out of 50 cents but because there are
14 a million shareholders amounts to a much greater loss. This is
15 a morally repugnant view of sentencing that this Court will not
16 give more than the modest efforts it is due.

17 But I am required to calculate the guidelines, and it
18 all turns on the amount involved. The Probation Office says it
19 is a total offense level of 36 and a criminal history of
20 category I. There is a secondary issue about abuse of trust,
21 but getting first to the amount involved, the defense says it
22 should be calculated as between \$400,000 and a million. The
23 Probation Office and the government says more than a million.

24 So let me hear first from the defense and from the
25 government at that point.

EXHIBIT F

1

C6QPSMIS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

UNITED STATES OF AMERICA,

v.

11 CR 079 (JSR)

ADAM SMITH,

Defendant.

-----x

New York, N.Y.
June 26, 2012
4:41 p.m.

Before:

HON. JED S. RAKOFF,

District Judge

APPEARANCES

PREET BHARARA,

United States Attorney for the
Southern District of New York

REED M. BRODSKY

RICHARD TARLOWE

Assistant United States Attorney

ALLEN & OVERY, LLP

Attorneys for Defendant

MICHAEL FELDBERG

JULIE WITHERS

ALSO PRESENT: ANDREA ESTOK, Special Agent FBI
JEMMARD THOMAS, Probation Department

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C6QPSMIS

1 determine exactly what the law states and much more exacting
2 fashion than I can on the papers presented here.

3 What's the defendant's choice?

4 MR. FELDBERG: Your Honor, we have no interest in a
5 Fatico hearing. We have had a number of conversations with
6 counsel for the government since they've become available
7 post-Gupta trial, and I don't want to put words in
8 Mr. Brodsky's mouth, but I think we have between us a common
9 view as to what an appropriate calculation would be.

10 THE COURT: Okay. And that is?

11 MR. FELDBERG: That is, with all respect to the
12 calculation of the probation report, we would come out to a
13 guideline of 23, arrived at with a base offense level of eight,
14 adding 18 for a figure in excess of two-and-a-half million
15 dollars of loss, subtracting three for acceptance of
16 responsibility, and not adding the two points that were
17 attributed for a special skill as a licensed stockbroker.

18 THE COURT: Oh, I don't agree with that, the last
19 part. I don't care what you've agreed on, I'm not -- In my
20 view, he gets the increase for a special skill. At least I'll
21 hear you on that, if you want to add anything to your papers,
22 but there's no way I'm not going to add special skill, unless
23 you have something utterly new to add to what you previously
24 said.

25 But let me go over now the rest of it. You want to go

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1 through that one more time?

2 MR. FELDBERG: Sure. Eight for the initial base
3 level, insider trading under Section 2(b)(1.1).

4 THE COURT: Right.

5 MR. FELDBERG: Adding 18 under 2(b)(1.1).

6 THE COURT: Yes. So how do you get two and a half
7 then?

8 MR. FELDBERG: We get to two-and-a-half million by
9 a -- It's between two-and-a-half million and the next one up,
10 which is seven, a loss of about \$2.8 million attributable to
11 gains by Mr. Rajaratnam in his fund, trading securities of
12 Advanced Micro Devices and ATYT -- ICST, excuse me. These were
13 as a result of tips from Mr. Smith.

14 Mr. Smith, himself, did not trade, but the gain we are
15 told, and we have no basis to challenge, was about \$2.8
16 million, and in addition, a gain of approximately \$970,000 in a
17 portfolio that Mr. Smith ran as a result of trading in ATYT
18 gets us up over two-and-a-half million dollars. And, as a
19 result, we would suggest that the appropriate calculation is
20 eight plus 18, then minus three for acceptance of
21 responsibility.

22 THE COURT: And I'm going to add two for special
23 skill. So that would be 25, right?

24 MR. FELDBERG: That would, yes, your Honor.

25 THE COURT: So forget about special skill just for one
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1 moment. I'll come back to you in a minute. Let me hear from
2 the government on this 2.5 million.

3 If the probation office, although they had not,
4 according to the report that I received, heard from you yet on
5 this dispute, said that the materials you had provided led them
6 to a calculation of 25 million, that's arguably different from
7 2.5 million.

8 MR. BRODSKY: Your Honor, I think the disconnect here
9 is that the government didn't provide Mr. Thomas with the
10 complete information regarding the ATYT-AMD transaction. As
11 your Honor I think knows, Anil Kumar was the principal source
12 of Mr. Rajaratnam's information regarding AMD's acquisition of
13 ATYT. And from a period of time from late 2005 through July of
14 2006, when the deal was announced, Mr. Kumar was providing
15 constant updates to Mr. Rajaratnam regarding the transaction.

16 At some point in 2006, before the July 2006
17 transaction was announced, Mr. Smith learned from his
18 investment banker source, Mr. Kamal Ahmed, as it came out
19 during the Rajaratnam trial, who is a Morgan Stanley banker who
20 Mr. Smith knew at the past, having worked at Morgan Stanley.

21 Mr. Ahmed told him that AMD was going to acquire ATYT.
22 Mr. Smith provided that information to Mr. Rajaratnam, but
23 Mr. Rajaratnam had already purchased stocks in ATYT based on
24 Mr. Kumar's information and continued to purchase stock, based
25 on what the government believes, largely on Mr. Kumar's

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1 information.

2 What Mr. Smith did, based on Mr. Ahmed's information,
3 not Mr. Kumar's information, buy ATYT stock in the portfolio
4 communications fund and Polaris account, I believe, that he
5 managed at Gallagher. So the \$971,000 of gain that the
6 government attributes, with the consent of the defense -- the
7 agreement of the defense to Mr. Smith relating to AMD's
8 acquisition of ATYT is based on trading Mr. Smith did based on
9 Mr. Ahmed's tip, and excludes the gains Mr. Rajaratnam made,
10 which was over \$20 million, as a result of ATYT trading by
11 Mr. Rajaratnam, which we attribute principally to Mr. Kumar.

12 THE COURT: So, I mean this is very helpful. It also
13 illustrates just once more the absurdity of the guidelines.

14 So what you're telling me is that one way of looking
15 at certain of these transactions, \$20 million worth of
16 transaction or \$20 million worth of gain, is that unbeknownst
17 to Mr. Smith, who was providing information relative to the
18 underlying events? Mr. Rajaratnam already had the information
19 and relied on the information from Mr. Kumar and, therefore,
20 looking at it from a kind of proximate cause point of view, the
21 gain should be attributed to Mr. Kumar's information, not to
22 Mr. Smith's information. That's a fair way of looking at it.

23 An equally fair way to look at it, perhaps, might be
24 that in terms of culpability, since Mr. Smith didn't know that
25 Mr. Kumar was providing this information, Mr. Smith was acting

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1 in just as crooked a way as would have been the case if, in
2 fact, it was his information that was relied on rather than
3 Mr. Kumar's; so the -- and, yet, the difference in guidelines
4 is many, many months. Let's see what it is. If the
5 guideline --

6 MR. BRODSKY: Four levels up.

7 THE COURT: -- range is as I just calculated, adding
8 the two points for special skill, it's 57 to 71 months, and if
9 it were as the probation officer added it, it is 87 to 108
10 months. Actually, that's not even it. It's a difference in
11 terms of adjustment of seven points; is that right?

12 MR. BRODSKY: I believe it's four levels, your Honor.

13 THE COURT: Four levels. So 87 to 108 months. So
14 it's like double the -- but it's the same facts. The facts are
15 no different whether we calculated it the way that you all now
16 are suggesting or the way that the probation officer
17 calculated. This all in the name of consistency, reason? Give
18 me a break.

19 However, as I say, I have probably spent too many
20 moments in too many sentences commenting upon the absurdity of
21 the guidelines. What's much more important here is what
22 Mr. Smith did, what he has done since he was caught, and what
23 is a fair and reasonable sentence under all the factors under
24 Section 3553(a).

25 Now, did defense counsel want to be heard any further
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EXHIBIT G

99T8HOLS

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK.

3 UNITED STATES OF AMERICA,

4 v.

09 Cr. 470 (VM)

5 ERIC HOLZER,

6 Defendant.

7 -----x
8
9 Before:

September 29, 2009
4:00 p.m.

10
11 HON. VICTOR MARRERO

District Judge

12 APPEARANCES

13 PREET BHARARA

14 United States Attorney for the
Southern District of New York

15 JOAN LOUGHNANE

Assistant United States Attorney

16 PAUL SHECHTMAN

17 Attorney for Defendant
18
19
20
21
22
23
24
25

99T8HOLS

1 filled with love, faith and strong moral values. I have tried
2 to help people in the community to give back because of all I
3 was fortunate enough to receive. As one of my friends wrote, I
4 am always the person who looks to raise people's spirits, to
5 always find the silver lining no matter how dark the cloud.
6 For me now there is no silver lining. I have embarrassed
7 myself, my friends, my family, and my colleagues, which I
8 apologize sincerely. I have destroyed everything I have worked
9 for throughout my life. My law degree, I practiced law, my CPA
10 license, my reputation, my career, and my financial stability.
11 I know there is life ahead of me, but one which is very
12 different than the one I envisioned a while ago.

13 Your Honor, I take full responsibility for my actions.
14 I make no excuses. I understand that you have to take all of
15 the circumstances into account for my sentencing, but I want
16 you to know, I need you to know, that the person standing in
17 front of you is ashamed and that you will never find Eric
18 Holzer in a situation like this again. I pray for your
19 leniency.

20 Thank you.

21 THE COURT: In accordance with the decision by the
22 United States Supreme Court in United States v. Booker, while
23 the United States sentencing guidelines are not mandatory, the
24 Court nonetheless must consult those guidelines and take them
25 into account when sentencing. Therefore, the Court has

99T8HOLS

1 considered the findings of facts stated in the presentence
2 report, as well as the guidelines analysis and the
3 recommendations contained therein. The Court has weighed this
4 information along with the factors listed in 18 U.S.C., Section
5 3553(a) in coming to its final sentencing decision in this
6 case.

7 The Court adopts the factual recitation in the
8 presentence investigation report. Therefore, the Court finds
9 that under the guidelines, Mr. Holzer's offense level amounts
10 to 13 and his criminal history category falls into category I.
11 The recommended range of imprisonment for this offense level
12 and criminal history category is 12 to 18 months.

13 Mr. Holzer allocuted to one count of conspiracy to
14 commit securities fraud and to one count of securities fraud.
15 He used information that he knew was material and nonpublic in
16 connection with the purchase of shares of at least two stocks,
17 Eon Labs and Abgenix, and on at least one occasion he
18 compensated the provider of this inside information with cash.
19 The government and the defendant agree that the loss amount
20 attributable to the information he obtained by illegal means is
21 \$119,351.

22 Subsection (a)(1) of 18 U.S.C., Section 3553(a)
23 requires that courts take into consideration the nature and
24 circumstances of the offense and the history and
25 characteristics of the defendant. The Court is aware of Mr.

99T8HOLS

1 Holzer's commendable community service and his pro bono work
2 with various not-for-profit organizations. The Court is also
3 aware that Mr. Holzer has no criminal history, and that the
4 probation office's characterization of Mr. Holzer is that "his
5 life outside of this case demonstrates that he is a good person
6 who made a terrible mistake." However, despite Mr. Holzer's
7 assessment by the probation office, he knowingly traded on
8 material, nonpublic information for his own personal gain, and
9 according to the PSR, he agreed to stop receiving those tips
10 only after he became aware that his name appeared on a watch
11 list. In addition, Mr. Holzer committed these acts while a
12 member of the state bar and working as a tax attorney.

13 Subsection (a)(2) of 18 U.S.C., Section 3553 requires
14 that the Court consider the need for the sentence to promote
15 certain objectives of the criminal justice system, namely,
16 punishment, specific and general deterrence, and
17 rehabilitation.

18 Pursuant to Section 3553(a)(6), the Court is also
19 directed to consider the need to avoid sentencing disparities
20 among defendants with similar records and similar offenses in
21 other cases, as well as in connection with the case at hand.

22 On September 16, 2009, in a case related to this one,
23 Judge Daniels sentenced Frederick Bowers to a term of three
24 years of probation, a \$15,000 fine, and 2,000 hours of
25 community service. There are some similarities between the

99T8HOLS

1 circumstances of Mr. Bowers and Mr. Holzer. Most notably, the
2 total offense level for both is 13, resulting in the same
3 sentencing guidelines range of 12 to 18 months. In addition,
4 both are considered by the probation office to be good people
5 who made terrible mistakes.

6 However, there are also important differences between
7 the two cases. Mr. Bowers did not trade on the insider
8 information that he received. Rather, he assisted in providing
9 the information to others, for which he was compensated a total
10 of approximately \$12,000. Mr. Holzer, however, did trade on
11 the insider information on multiple occasions, in accounts
12 under both his name and his relatives' names, and he received
13 in excess of \$119,000 in profits from those acts --
14 significantly more than Mr. Bowers received. In addition, the
15 probation office recommended a term of probation for
16 Mr. Bowers. In this case, however, the probation office
17 recommends a sentence of 12 months and one day for Mr. Holzer.

18 Mr. Holzer, please rise.

19 Taking into account the nature and circumstances of
20 the offense and the history and characteristics of the
21 defendant, and considering all of the factors listed in 18
22 U.S.C., Section 3553(a), the Court finds that a sentence of
23 five years of probation is appropriate and that it is
24 reasonable in these circumstances.

25 The term of probation shall be conditioned upon your

EXHIBIT H

labzpets

Sentence

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----X

3 UNITED STATES OF AMERICA,

New York, N.Y.

4 v.

11 CR 665 (RPP)

5 H. CLAYTON PETERSON,

6 Defendant.

7 -----X

8 October 11, 2011

9 4:15 p.m.

10 Before:

11 HON. ROBERT P. PATTERSON, JR.,

12 District Judge

13 APPEARANCES

14 PREET BHARARA

15 United States Attorney for the
16 Southern District of New York

17 BY: MICHAEL LEVY

ANTONIA APPS

Assistant United States Attorneys

18 SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLC

19 Attorneys for Defendant

20 BY: STEVEN R. GLASER

GARY PHILLIPS

labzpets

Sentence

1 as a private, and did my time and came back, and was 33 years
2 with Arthur Andersen, starting at the bottom, and going to the
3 top, managing partner for my last 13 years, and bringing people
4 in and developing them, mentoring them and making them
5 successful.

6 I apologize for the hurt that I caused my family, my
7 friends, and my business associates. I had no intention of
8 doing that. My life and reputation will never be the same as a
9 result. At 66 years old I will live with this stigma for the
10 rest of my life. And that's all I can say. I will accept
11 whatever penalties you put upon me, and I thank you for your
12 time and consideration.

13 THE COURT: Thank you, Mr. Peterson.

14 Let me make the necessary findings under the
15 guidelines.

16 THE COURT: This is a charge of conspiracy to commit
17 securities fraud under 18 United States Code Section 371 and 15
18 United States Code Section 78(j)(b) and 78(f)(f), and then a
19 second count of the security fraud under 15 United States Code,
20 Section 78(j)(b) and 78(f)(f).

21 The events in question took place between April 8th
22 and April 15th, in which Mr. Peterson, having inside knowledge
23 as a director of a company about to be acquired, advised his
24 son to purchase stock in the company for his daughter.

25 The base offense level -- I should say the guideline,

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Sentence

1 proper guideline is found under 2B1.4(a) of the guidelines
2 applicable to a violation of 15 United States Code, Section 78
3 (j)(b), and that base offense level under that guideline is
4 eight.

5 Because the amount in question was more than 30,000,
6 but less than 70,000, six levels are added pursuant to
7 guideline 2B1.4(b), and 2B1.1(b)(1)(D). That makes a total of
8 14 levels. And because the defendant abused a position of
9 trust in a manner that facilitated the commission of the
10 offense, two levels are added under guideline two -- excuse me
11 3B1.3, making a total adjusted offense level of 16, from which
12 three points are deducted under guideline 3E1.1(a) and (b)
13 because he has admitted his responsibility for the crime in
14 a timely manner. That leaves an adjusted offense level of 13.

15 Defendant has no prior juvenile adjudications or adult
16 criminal convictions, other than a number of convictions for
17 driving under the influence, which do not result in any
18 criminal history category points, and were committed sometime
19 ago.

20 Accordingly, the criminal history category, number of
21 points is zero and the criminal history category is one, for a
22 total offense level of 13 and a criminal history category of I,
23 the guidelines call for a sentence of 12 to 18 months, and
24 supervised release for two to three years, a fine of 3,000 to
25 \$5 million, and forfeiture, which the government is seeking as

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Sentence

1 I understand it in this case, and special assessment of \$100 on
2 each count, for a total of \$200, which is mandatory.

3 The presentence report recommends no imprisonment and
4 a term of two years of probation, with three months served in
5 home confinement.

6 There are no suggested departures under the
7 guidelines, but the Court, although it must consider the
8 guidelines, also has to consider Title 18 and Section 3553(a)
9 in order to fashion a sentence which is sufficient, but not
10 greater than necessary to achieve the purposes set forth in
11 paragraph two of Section 3553(a).

12 Paragraph two requires that the court, in addition to
13 considering the nature and circumstances of the offense, and
14 the history and characteristics of the defendant, to also
15 consider the need for the sentence imposed to reflect the
16 seriousness of the offense, to promote respect for the law, and
17 to provide just punishment for the offense; second, to afford
18 adequate deterrence to criminal conduct. That's under the law,
19 it is to deter other people from committing the same crime and,
20 C, to protect the public from further crimes of the defendant.
21 That provision deals with the deterring of this defendant from
22 similar conduct in the future; and, D, to provide the defendant
23 with needed educational and vocational training, medical care
24 or other correctional treatment in the most effective manner.

25 Well, I think that the presentence report -- I agree

labzpets

Sentence

1 with the presentence report with respect to this defendant.
2 The penalty they suggest is sufficient but not greater than
3 necessary to protect the public from further crimes of the
4 defendant. And then I'm making that determination based on the
5 content of the presentence report, which shows that he engaged
6 in a number of civic activities not as a figurehead, but as a
7 participant, a person who gave of himself, not just of his
8 wallet, and engaged in community activities to help his
9 community. And that's significant. The record is -- and he's
10 done that throughout his life from what I gather.

11 The difficulty is that this is a serious crime. And
12 the reason it is serious is because the greed in this society
13 has become something that is really obscene. And,
14 unfortunately, as we've seen in the numerous prosecutions in
15 this Court the last few years, that inside trading has been
16 rife. Now, you can't punish people for other people's crimes,
17 but you are supposed to take into account some deterrence.
18 And, as I said earlier, one of the difficulties is that these
19 people come from well educated background. They've got college
20 degrees in business administration, and business school
21 degrees, lawyers, and it's very troubling what's going on in
22 our society. Recently, you may have heard a former lawyer -- I
23 guess he is still a lawyer -- but he also appears on television
24 and other programs, is saying that he thinks that lying has
25 become something that is not considered particularly wrong any

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Sentence

1 more. And I think he uses as the example the case involving
2 Edward Washington case, in which the members in government were
3 involved. But that's just as an example.

4 But these crimes show that -- that are being
5 prosecuted, that it is a serious problem about people having a
6 sense of honesty and integrity. And I don't know whether, and
7 I think in the normal insider trading case, this Judge I think
8 considers deterrence the main, main thing that the courts have
9 got to keep in mind, and particularly since they come from --
10 they're people who have had advantages in life, and so that's
11 difficult.

12 So I'm going to follow the presentence report, but I'm
13 going to impose a fine that is greater than they recommend,
14 because I think that, one, I think there should be a penalty
15 that -- greater than three months home confinement and
16 probation for two years. I think the -- well, that this man
17 will have to forfeit somewhere between 60 and \$70,000, the gain
18 that was ultimately obtained on behalf of the people who
19 traded.

20 But now the difficult thing is, well, what is a fair
21 fine and not retribution, which I don't believe is a proper
22 sentencing concept.

23 See, the difficulty is that these people, maybe
24 deterrence doesn't, isn't -- shouldn't be paramount. That's
25 how I was thinking of this. I'm not sure it should be.

labzpets

Sentence

1 Because this case is different than the other cases or the
2 other cases being currently prosecuted, because it doesn't
3 involve scheming with other people to, in the trade to benefit
4 by inside information, but rather is a one time event,
5 otherwise exemplary life except for the driving under the
6 influence.

7 So I'm going to sentence the defendant to probation
8 with two years, with three months to be served in home
9 confinement. And there will be special assessment of \$200, and
10 the defendant forfeit to the United States, pursuant to 18
11 United States Code, Section 981(a)(1)(C), and 28 United States
12 Code 2461, all property, real and personal, that constitutes --
13 is derived from proceeds traceable to the commission of either
14 of the offenses. And I'm not -- and I'm concerned, however,
15 Mr. Levy, that this the forfeiture won't be something that is
16 derived from the proceeds traceable to the commission of any of
17 the offenses. If he will have -- that he has any property that
18 constitutes or is derived from the proceeds traceable to the
19 commission of the offenses, isn't there another section that
20 you're relying on that the presentence report doesn't reflect?

21 MR. LEVY: I think it may be the substitute assets
22 provision, your Honor.

23 THE COURT: I'm sorry?

24 MR. LEVY: I think it's the substitute assets
25 provision. I'm certainly no forfeiture expert, but my

EXHIBIT I

10 Cr. 270 (DAB)

- Of Counsel -

In advance of the Court's sentencing of the defendant Robbert Moffat, Jr., the Government respectfully submits this memorandum and asks the Court to sentence Moffat to a term of imprisonment of 6 months. The Probation Department also recommends a sentence of 6 months. *See* PSR at 30. As a senior executive at IBM, Moffat repeatedly defrauded his employer and its shareholders by breaching his fiduciary and other duties of trust and confidence and disclosing material nonpublic information ("Inside Information") to Danielle Chiesi, a portfolio manager at a hedge fund with approximately \$1 billion in assets under management during that time. As a non-voting board member of Lenovo, Moffat defrauded Lenovo and its shareholders by breaching his duties and disclosing Inside Information about Lenovo to Chiesi. Given Moffat's senior positions at IBM and Lenovo, his clear duties and responsibilities, his repeated participation in schemes to defraud IBM and Lenovo, and the importance of sending a message to others in similar positions of trust and confidence, Moffat's crimes warrant a substantial sentence. Accordingly, the Government believes that a 6-month term of imprisonment is sufficient but not greater than necessary to comply with the factors and purposes set forth in Title 18, United States Code, Section 3553(a).

The nature and circumstances of Moffat's offenses and his executive positions at public companies warrant a substantial prison sentence. As set forth in the Pre-Sentence Investigation Report ("PSR"), during the fraudulent schemes, Moffat held positions of significant responsibility and privilege. By July 2008, Moffat was a senior vice president and group executive in IBM's Systems and Technology Group. PSR ¶ 13. He was also a non-voting member of the Board of Directors of Lenovo. PSR ¶ 60. Both IBM and Lenovo are public companies with shareholders who rely on their employees, including their executives, to act in the best interests of the shareholders and not abuse employment positions and access to Inside Information at their expense for personal reasons. Indeed, Moffat was paid enormous sums of money—approximately \$3.5 million in 2006, \$5.8 million in 2007, \$7.7 million in 2008, and \$11.2 million in 2009—by IBM's shareholders. PSR ¶ 98.

Moffat repeatedly violated his fiduciary duties of trust and confidence. Both IBM and Lenovo prohibited their employees from using and disclosing confidential company information for non-business reasons. As Moffat admitted during his plea allocution, he learned Inside Information about IBM, AMD, and Lenovo, but disclosed that information to Chiesi knowing that the information was helpful to her in executing securities trades. Moffat's fraudulent schemes with Chiesi were captured¹ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

¹ The Government has redacted all references to the contents of wire communications in its public filing, and submitted an unredacted copy to the Court under seal.

[REDACTED]

In Exhibit A, the Government attaches under seal summary line sheets of the important telephone conversations [REDACTED]. In Exhibit B, the Government attaches under seal a disk containing the actual recordings of those conversations.

A substantial sentence of 6 months' imprisonment is warranted in this case because this Court should send a loud and clear message to executives and other employees at public companies who have access to Inside Information: Violating duties of trust and confidence for purposes of giving an illegal edge of Inside Information to friends and others in the securities industry so that they can benefit at the expense of everyone else who has money invested in the stock market undermines society's confidence in the integrity of the markets and destroys the

fairness of our public markets. Indeed, the crime of illegal insider trading would not be committed but for insiders like Moffat who were willing to place their personal interests above their professional responsibilities. Here, despite his status as one of the most senior executives at IBM and a member of Lenovo's Board of Directors, Moffat violated his duties and disclosed Inside Information to Chiesi knowing full well that she was going to execute securities trades based on that information and thus receive an advantage over every other participant in the capital markets, including shareholders of IBM, AMD, and Lenovo.

A sentence of 6 months imprisonment is consistent with Moffat's plea agreement which reflects a Sentencing Guidelines range of 0 to 6 months, and the Probation Department's recommendation. In Exhibit C, the Government attaches a copy of the opinion issued by the Honorable Victor Marrero in connection with the sentencing of Chiesi's supervisor, Mark Kurland, to 27 months' imprisonment. Kurland's crimes arose, in part, as a result of Moffat's illegal tips to Chiesi who shared the information with Kurland. Judge Marrero correctly found that Moffat was only one of Chiesi's and Kurland's sources of information, that Moffat did not provide Inside Information in exchange for money and did not stand to make money from his crimes, and that Moffat (unlike Kurland) did not have hundreds of millions of dollars under management to invest. A six-month term of imprisonment is entirely consistent with Judge Marrero's conclusion that Kurland warranted a much higher sentence.

Moffat's crimes were surely committed out of arrogance and a misguided belief that he could never be caught. As far as the Government has determined, his motive was to help a woman with whom he was having an intimate, personal relationship. As someone who was paid millions and millions of dollars by IBM for his work, Moffat committed his crimes despite the

money that IBM and its shareholders paid him to be a loyal, trusted employee. Moffat put IBM's business, IBM's reputation, Lenovo's business, and Lenovo's reputation at risk, and he put his personal interests above his job. Of all people, as a senior executive and Board member, Moffat knew what he was doing was wrong and illegal. Nevertheless, he repeatedly engaged in his fraudulent schemes with Chiesi, knowing full well that she was going to execute securities trades for a hedge fund—one that had approximately \$1 billion under management and whose trades could certainly move the market and have a substantial effect on the integrity of the stock market.

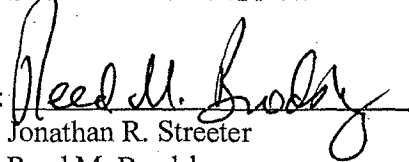
Accordingly, for the foregoing reasons, the Government respectfully submits that the Court should sentence Moffat to a term of imprisonment of 6 months.

Dated: New York, New York
August 16, 2010

Respectfully submitted,

PREET BHARARA
United States Attorney
Southern District of New York

By:



Jonathan R. Streeter
Reed M. Brodsky
Assistant United States Attorney
Andrew Z. Michaelson
Special Assistant United States Attorney
(212) 637-2272/2492/2348

EXHIBIT J

114

13a5raj1

1 UNITED STATES DISTRICT COURT
1 SOUTHERN DISTRICT OF NEW YORK

2 -----X

3 UNITED STATES OF AMERICA,

4 v.

09 CR 1184 (RJH)

5 RAJ RAJARATNAM,

6 Defendant.

6 -----X

7
8 New York, N.Y.
8 March 10, 2011
9 9:40 a.m.

10 Before:

11 HON. RICHARD J. HOLWELL

12 District Judge

13
14 APPEARANCES

15 PREET BHARARA

15 United States Attorney for the
16 Southern District of New York

16 JONATHAN R. STREETER

17 REED M. BRODSKY

17 ANDREW MICHAELSON

18 Assistant United States Attorneys

18
19 AKIN GUMP STRAUSS HAUER & FELD LLP

19 Attorneys for Defendant

20 JOHN M. DOWD

20 TERENCE J. LYNAM

21
22 ALSO PRESENT: B.J. KANG, FBI

23
24
25 SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

243

13a5raj5 Kumar - direct

- 1 Q. And the agreement that you had with the government, what
2 did it require you to do?
3 A. To be truthful in all my discussions with the government,
4 to be available to the government for further discussions as
5 and when necessary, and to forfeit the amounts of money that
6 had been paid to me by Mr. Rajaratnam and the Galleon Group.
7 Q. Are you testifying here as part of that agreement?
8 A. Yes.
9 Q. Are you obligated under that agreement to testify in court?
10 A. I believe so.
11 Q. What is the maximum sentence that you face on the
12 conspiracy charge that you pled guilty to?
13 A. Five years in prison.
14 Q. And what is the maximum sentence on the securities fraud
15 charge that you pled guilty to?
16 A. 20 years in prison.
17 Q. And what is the minimum sentence that you can get for the
18 charges?
19 A. I don't know. I think that's left to the judge to decide.
20 I'm not sure I know how to --
21 Q. You mentioned that one of the things that you have to do
22 under your agreement with the government is forfeit some money.
23 What is your understanding of what that means?
24 A. It means that when I'm sentenced the Judge decides -- I had
25 to forfeit all the money that had been given to me by

244

13a5raj5 Kumar - direct

- 1 Mr. Rajaratnam and any gains on that and that was the sum of
- 2 money, \$2.7 million, that I had to forfeit which I understood
- 3 to mean return it to the government.
- 4 Q. And this \$2.7 million you said consists of, it sounds like
- 5 two parts. What are the two parts that make up that \$2.7
- 6 million?
- 7 A. I was paid about \$2.1 million by Mr. Rajaratnam, around
- 8 that, and with the profits from it was \$2.7 million. So, those
- 9 are the two parts, the amount I had been paid and the monies
- 10 were invested, a large portion of them at Galleon, and they
- 11 grew a little at Galleon and that's how it reached that number.
- 12 Q. And where is that money currently?
- 13 A. It is in an escrow account with my lawyers.
- 14 Q. And why haven't you actually sent the money to the
- 15 government yet?
- 16 A. I was told that the government might, when my Judge
- 17 sentences me, he will tell the exact number and it will then be
- 18 sent to -- it would then go to the government. So, it is with
- 19 my lawyers.
- 20 Q. Do you have access to the money right now?
- 21 A. Not at all.
- 22 Q. Has forfeiture -- have you been sentenced yet?
- 23 A. No.
- 24 Q. Have you an idea how much sentence fine will be?
- 25 A. Not from the sentencing.

245

13a5raj5 Kumar - direct

- 1 Q. Do you anticipate that it will be?
- 2 A. Yes, sir.
- 3 Q. Do you have any contention of contesting that?
- 4 A. Not at all.
- 5 Q. With respect to your agreement with the government what, if
- 6 anything, does your agreement with the government, require you
- 7 to do with respect to meeting with the government, reviewing
- 8 documents, and the like?
- 9 A. I took away that the most important thing was that I have
- 10 to say the truth, nothing but the truth and the whole truth;
- 11 that I would be available to the government in any questions
- 12 they have about what had transpired in my interactions with
- 13 Mr. Rajaratnam.
- 14 Q. What, if anything, does the agreement require you to do
- 15 with respect to your taxes?
- 16 A. The agreement required me to pay re --
- 17 Q. Actually, let me ask this question first. The money, the
- 18 \$2.6 million, the \$2.1 million you actually received the and
- 19 the approximately \$600,000 that was gains on that, when you
- 20 received that money did you pay taxes on it at the time?
- 21 A. No.
- 22 Q. Did you declare it on your income tax returns at time?
- 23 A. No. It was paid offshore.
- 24 Q. And what does your agreement require you to do with respect
- 25 to that?

246

13a5raj5 Kumar - direct

- 1 A. The agreement requires me to go back all the way and
- 2 re-file my taxes from 2004 onwards.
- 3 Q. And have you done that?
- 4 A. Yes, sir.
- 5 Q. And with respect to those re-filed taxes, those re-filed
- 6 returns, did you then describe for the IRS the money that you
- 7 received, this \$2.6 million?
- 8 A. Yes, sir.
- 9 Q. And what have you done with respect to paying any taxes
- 10 that might be owing on that?
- 11 A. I, on the recommendation of my lawyers, I got an expert
- 12 accounting firm that deals with these matters in New York and
- 13 they calculated what I owed the IRS and they asked me to send
- 14 that money to the IRS. And that's \$1 million.
- 15 Q. And the calculation that was performed, does that
- 16 include -- what are the components of that million dollars?
- 17 A. There is the tax that would normally have been paid each
- 18 year had that money been paid to me in the U.S. and my income,
- 19 and some form of a calculation of penalty or fine on top of it.
- 20 Q. And that million dollars, what did you do with the million
- 21 dollars?
- 22 A. It is now with the IRS.
- 23 Q. And has the IRS made a determination about what taxes, if
- 24 any, you owe on that?
- 25 A. Not yet. I sent the money last year and I believe this is

266

13a5raj5 Kumar - direct

1 A. He then suggested -- he knew I was -- I had lived in India
2 for many years with McKinsey so he said find someone in India
3 who can accept the money and who can then reinvest it in
4 Galleon.

5 Q. What did you say to that?

6 A. I said I don't think Indian regulations allow that so
7 that's not going to be possible.

8 Q. And what did he say to that?

9 A. He said then find someone somewhere else or set up an
10 offshore company. Lots of people set up offshore companies. I
11 can even tell you how to do that.

12 Q. And what did he tell you about how to do that?

13 A. Oh, he said -- I didn't pursue it. I was not particularly
14 keen on setting up an offshore company.

15 Q. So, what did you do?

16 A. I then tried to speak with friends of mine who lived in
17 Europe and I found one gentleman who agreed to sign a
18 consulting agreement with Mr. Rajaratnam for \$500,000 a year.

19 Q. And was such a consulting agreement eventually signed?

20 A. I believe so.

21 Q. And was there an entity that was designated to receive the
22 money?

23 A. Yes.

24 Q. What was the name of that entity?

25 A. Pecos Trading Company.

267

13a5raj5 Kumar - direct

- 1 Q. Was there an account set up to receive the money?
- 2 A. Yes. The money would go straight to Pecos Trading
- 3 Company's bank account in Switzerland.
- 4 Q. And, did you make those arrangements?
- 5 A. Mr. Rajaratnam delegated the procedural work to
- 6 Mr. Yogakurmar Jogalligan who worked at Galleon who then
- 7 figured out how all of this should work out.
- 8 Q. With respect to the account at Pecos and the bank account
- 9 in Switzerland, was your name directly associated with either
- 10 of them?
- 11 A. Not at all.
- 12 Q. And, the part of the arrangement involving investing in
- 13 Galleon, what did Mr. Rajaratnam say to you about that?
- 14 A. He knew that I had an Indian housekeeper living with us.
- 15 Our son was actually quite unwell and so we were able to get a
- 16 visa for an Indian housekeeper who worked with us in India to
- 17 move with us to California. And so, he said does she have an
- 18 Indian passport? And I said yes. And he said, well, you can
- 19 just open an account in her name.
- 20 Q. And that account was to be opened where in her name?
- 21 A. At the Galleon Group. And he said that should be an
- 22 offshore account so that it is all kept away from McKinsey.
- 23 Q. And how did he know who this person was? How did he know
- 24 of this person?
- 25 A. Had he come to our house, he had met her. He had been in

2406

13TFRAJ1 Trial

1 UNITED STATES DISTRICT COURT

2 SOUTHERN DISTRICT OF NEW YORK

2 -----x

3 UNITED STATES OF AMERICA,

4 v. 09 CR 1184 (RJH)

5 RAJ RAJARATNAM,

6 Defendant.

7 -----x

8 New York, N.Y.

9 March 29, 2011

9 9:20 a.m.

10
10
11 Before:

11
12 HON. RICHARD J. HOLWELL

13 District Judge

14 APPEARANCES

15 PREET BHARARA

16 United States Attorney for the

16 Southern District of New York

17 JONATHAN R. STREETER

17 REED M. BRODSKY

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20 Attorneys for Defendant

20 JOHN M. DOWD

21 TERENCE J. LYNAM

22 MICHAEL STARR

23 MICHAEL STARR

24 ALSO PRESENT: B.J. KANG, FBI

25 SOUTHERN DISTRICT REPORTERS, P.C.

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2444

13T8RAJ2 Smith - direct

1 those two jobs?

2 A. OK. An analyst is responsible for covering a collection of
3 companies and essentially giving a recommendation to the
4 portfolio managers about whether to buy or sell those specific
5 companies that they are following. The portfolio manager's job
6 is to decide what companies to actually buy or sell, how to
7 invest the money that they are responsible for, and create the
8 portfolio and produce a return.

9 Q. In general, do the analysts have authority to buy or sell
10 stock?

11 A. No.

12 Q. But the portfolio managers do?

13 A. Yes.

14 Q. When you became a portfolio manager, about how much money
15 were you given to manage?

16 A. Approximately, \$100 million.

17 Q. During the course of your time at Galleon, whether as an
18 analyst or as a portfolio manager, did you violate any laws?

19 A. Yes.

20 Q. What generally did you do?

21 A. I violated the securities law by trading on nonpublic
22 information that was material.

23 Q. Insider trading?

24 A. Yes.

25 Q. What did you do with the inside information you obtained?

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2445

13T8RAJ2 Smith - direct

- 1 A. At times I traded on it for my own portfolio, and also
2 shared that information with others at Galleon.
3 Q. Did there come a time when you left Galleon?
4 A. Yes.
5 Q. About when did you leave Galleon?
6 A. Approximately, November 2010 -- sorry, 2009.
7 Q. After you left Galleon, what did you do next?
8 A. Some months following my departure, when the firm basically
9 dissolved, I started essentially my own business managing money
10 for someone else.
11 Q. So can you describe what you were doing?
12 A. I set up a small firm, basically, which contracted with
13 another investor, and my responsibilities essentially were the
14 same as they were at Galleon. I was managing money for
15 somebody else, investing money on their behalf to try and
16 increase the value.
17 Q. There came a time when you left Galleon and became a
18 portfolio manager for some other fund effectively?
19 A. That's correct.
20 Q. During that time period, did you obtain any confidential
21 information about public companies?
22 A. I did.
23 Q. Who did you obtain that information from?
24 A. From a buy-side analyst located in Taiwan.
25 Q. You say a buy-side analyst. What does that mean?

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2446

13T8RAJ2 Smith - direct

- 1 A. In general, we refer in the stock market to the buy side
2 and the sell side. The buy side would be, for instance, a
3 hedge fund or a mutual fund, whose job is to make the decision
4 to actually buy or sell stocks. The sell side, which an
5 example would be an investment bank, his job is to sell,
6 research or other services to the buy side.
7 So the sell side, for instance, Goldman Sachs or
8 Morgan Stanley, has a number of analysts, who essentially have
9 the same job, to research the stocks, as the buy-side analyst.
10 But the buy-side analyst works for the firm and basically makes
11 recommendations to directly participate in the stock market,
12 whereas the sell-side analyst does not.
13 Q. Which analyst, again, did you obtain the confidential
14 information from in about 2010 after you left Galleon?
15 A. The buy side.
16 Q. What did you do with that information?
17 A. I traded on it.
18 Q. Did there come a time thereafter when you met with the
19 government?
20 A. Yes.
21 Q. Approximately when did that start?
22 A. December of 2010.
23 Q. After several meetings with the government, did you sign an
24 agreement with the government?
25 A. I did.

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2635

13U8RAJ1

1 UNITED STATES DISTRICT COURT
1 SOUTHERN DISTRICT OF NEW YORK

2 -----X

2
3 UNITED STATES OF AMERICA,

4 v.

09 CR 1184 (RJH)

4
5 RAJ RAJARATNAM,

5
6 Defendant.

6
7 -----X

8 New York, N.Y.

8 March 30, 2011

9 9:40 a.m.

10
10 Before:

11
11 HON. RICHARD J. HOLWELL

12 District Judge

13
14 APPEARANCES

15 PREET BHARARA

15 United States Attorney for the
16 Southern District of New York

16 JONATHAN R. STREETER

17 REED M. BRODSKY

17 ANDREW MICHAELSON

18 Assistant United States Attorneys

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19 AKIN GUMP STRAUSS HAUER & FELD LLP

19 Attorneys for Defendant

20 JOHN M. DOWD

20 TERENCE J. LYNAM

21
22 ALSO PRESENT: B.J. KANG, FBI

23
24
25 SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

2660

13U8RAJ1 Smith - direct

1 arrested?

2 A. Yes.

3 Q. Approximately when?

4 A. October 16, 2009.

5 Q. Where were you that day?

6 A. In the office.

7 Q. Did you have any handwritten notes about stocks in your

8 office?

9 A. Yes.

10 Q. What were those notes in?

11 A. I kept small notepads that I would fill with notes

12 following meetings with companies or discussions with analysts

13 or others.

14 Q. What, if anything, did you do with those notebooks after

15 Mr. Rajaratnam's arrest?

16 A. Following Mr. Rajaratnam's arrest, I had a notebook that

17 had been completed, it was full but it was sitting on my desk,

18 and I put it in the trash.

19 Q. You had another notebook as well?

20 A. I did.

21 Q. What happened to that notebook?

22 A. I left it on my desk.

23 Q. Did you have a laptop computer in your office with you on

24 the day of Mr. Rajaratnam's arrest?

25 A. Yes.

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2661

13U8RAJ1 Smith - direct

- 1 Q. What happened to the laptop?
- 2 A. That evening I brought it home with me, and upon arrival, I
- 3 threw it away.
- 4 Q. Where did you throw it away?
- 5 A. In my trash.
- 6 Q. At your home?
- 7 A. Correct.
- 8 Q. Did there come a time after Mr. Rajaratnam's arrest that
- 9 Mr. Rajaratnam handed you a fax?
- 10 A. Yes.
- 11 Q. What happened?
- 12 A. He brought the fax to my office the following week or so
- 13 after his arrest and put it on my desk and said that he hoped I
- 14 could take care of this.
- 15 Q. What did you do with the fax?
- 16 A. I put it in the trash.
- 17 Q. What was the fax?
- 18 A. The fax was research notes that had been sent to him from
- 19 our new analyst in Taiwan.
- 20 Q. Had you seen that fax before or was it the first time?
- 21 A. I had seen it before.
- 22 Q. What generally did it contain?
- 23 A. It generally contained our research analyst's thoughts
- 24 about several companies that he had done work on.
- 25 Q. What was the name of this analyst?

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2721

13U8RAJ3 Smith - cross

1 from 2003 to 2009, as charged in Counts One and Two of the
2 criminal information that you are pleading guilty to, right?

3 A. Right.

4 Q. In other words, you will not be further prosecuted for
5 anything else that happened during that six-year period, right?

6 A. Aside from the two counts that I pled guilty to, yes,
7 that's my understanding.

8 Q. And in paragraph (b) it says you will not be prosecuted for
9 securities fraud and conspiracy to commit securities fraud, in
10 or about 2010, in connection with the accounts managed by Smith
11 in New York. Do you see that?

12 A. I do.

13 Q. Now, that is a promise by the government that you would not
14 be prosecuted for anything that you did after you left Galleon
15 in 2010, right, related to securities fraud, right?

16 A. My understanding of what the government is saying they will
17 do is, if I provide truthful testimony, that they won't further
18 prosecute me for activities between '03 and '09, as well as
19 activities in 2010, other than the two counts that I pled
20 guilty to.

21 Q. And the two counts you pled guilty to did not relate to
22 2010, do they?

23 A. No, they don't.

24 Q. The third item is in paragraph (c), you will not be
25 prosecuted for deleting, discarding or destroying computer

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2722

13U8RAJ3 Smith - cross

1 records and documents in or about October and November 2009,
2 after the arrest of Raj Rajaratnam, right?

3 A. Correct.

4 Q. Now, you testified that you -- let me back up.

5 In November 2009, shortly after Mr. Rajaratnam's
6 arrest, you told Galleon that you had lost your laptop
7 computer, right?

8 A. Correct.

9 Q. That was a lie, right?

10 A. Correct.

11 Q. You actually now say you destroyed it, right?

12 A. I did.

13 Q. At that time, Galleon's lawyers were trying to collect and
14 gather and preserve Galleon's files, right?

15 A. An IT guy asked me for my notebook back, and I said that I
16 had lost it.

17 Q. That was a lie because you actually destroyed it?

18 A. Correct.

19 Q. Now, what happened was, after you found out Mr. Rajaratnam
20 had been charged, you took your laptop up to your second home
21 up in New York State and threw it out up there?

22 A. It's my only home, but yeah, that's where I threw it away.

23 Q. Your home up in New York State?

24 A. Yes.

25 Q. That's in a rural area?

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2723

13U8RAJ3

Smith - cross

- 1 A. It is.
- 2 Q. Galleon didn't know about you doing that, right, you never
- 3 told them that, right?
- 4 A. No.
- 5 Q. And you thought no one else would know about until you told
- 6 the government about it, right?
- 7 A. I told the government about it, yes.
- 8 Q. You understood you could have been charged with obstruction
- 9 of justice for destroying that evidence?
- 10 A. As part of signing this agreement, I agreed to disclose all
- 11 activities that were relevant and potentially criminal, so that
- 12 was one of the things I disclosed to them.
- 13 Q. You could have been charged with obstruction of justice,
- 14 which is why your plea agreement specifies that you will not be
- 15 charged for any crimes relating to deleting or destroying your
- 16 computer, right?
- 17 A. I suppose that is the case, yeah.
- 18 Q. That's what it says, doesn't it, Mr. Smith?
- 19 A. That is what it says.
- 20 Q. You are not going to be prosecuted for deleting and
- 21 destroying computer records in October, November 2009, right?
- 22 A. Yes.
- 23 Q. So you got a pass on that, right?
- 24 A. I am pleading guilty to two criminal offenses.
- 25 Q. You're not pleading guilty to obstruction of justice, are

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EXHIBIT K

1

C905goeS sentence

1 UNITED STATES DISTRICT COURT
1 SOUTHERN DISTRICT OF NEW YORK

2 -----X

3 UNITED STATES OF AMERICA,

4 v.

10 Cr. 90 (BSJ)

5 RAJIV GOEL,

6 Defendant.

7 -----X

8 September 24, 2012
9 3:30 p.m.

10 Before:

11 HON. BARBARA S. JONES,

12 District Judge

13
14 APPEARANCES

15 PREET BHARARA

15 United States Attorney for the
16 Southern District of New York

16 BY: REED BRODSKY

17 Assistant United States Attorney

18 SKADDEN, ARPS, SLATE, MEAGHER & FLOM, LLP
18 Attorneys for Defendant

19 BY: DAVID M. ZORNOW

19 LAWRENCE S. SPIEGEL

20 ALSO PRESENT: RAY BILDERBECK

21 MICHAEL BROWN, Special Agent, FBI

22
23
24
25 SOUTHERN DISTRICT REPORTERS, P.C.
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C905goes sentence

1 community.

2 We have asked the Court to exercise its discretion and
3 sentence Mr. Goel to a term of probation. I firmly believe
4 that with another chance he will undoubtedly rebuild and
5 contribute positively to society again and I can assure you he
6 will never again be before this Court or any other Court.

7 Thank you, your Honor.

8 THE COURT: Thank you, Mr. Zornow.

9 Mr. Brodsky, do you wish to make your motion now?

10 MR. BRODSKY: Yes, your Honor.

11 We move, pursuant to 5K1.1, that Mr. Goel be sentenced
12 appropriately for having provided substantial assistance to the
13 government.

14 Very briefly, your Honor. I know our letter
15 extensively sets forth Mr. Goel's cooperation. It is worth
16 mentioning, your Honor, that in Mr. Goel's case he was very
17 important, very timely, and very helpful cooperation. Mr. Goel
18 did come in very early to the government. It was a very
19 significant prosecution for the government. Mr. Rajaratnam had
20 extensive resources to fight the government through trial, as
21 was his right, and Mr. Goel's testimony and truthful, credible
22 direct testimony was, in part, the basis for six of the 14
23 counts that were against Mr. Rajaratnam and that was more than
24 any other cooperator who testified. We had three cooperators
25 testify at the trial, Mr. Goel was on the stand for a long

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11

C905goeS sentence

1 period of time and he did directly answer all questions. He
2 didn't hesitate in providing cooperation to the government and
3 to always being there for the government when the government
4 asked to meet with him. He lived in California so at times
5 Mr. Goel had to drop everything to come to New York and didn't
6 complain about it. He met with us for many hours to go through
7 events that occurred many years before and reviewing documents
8 to try to refresh his recollection and to try to give us every
9 piece of information about this close relationship with
10 Mr. Rajaratnam.

11 Mr. Zornow is correct that Mr. Rajaratnam was able to
12 cajole and seduce insiders like Mr. Goel into providing
13 information. He abused their friendship. Mr. Goel did
14 knowingly breach his duty and give the information to
15 Mr. Rajaratnam for a variety of reasons and Mr. Goel did
16 everything he could, after being arrested, to make up for that,
17 to provide the government with all information, to provide us
18 with these bank account statements in Switzerland that we were
19 not sure we would be able to attain but for his cooperation
20 which served as powerful evidence at the trial, and there is
21 nothing like an insider trading trial having the insider
22 provide that very persuasive, very clear evidence of having
23 breached a duty and pointing and directing the jury to the
24 individual to whom he provided that information and explaining
25 the entire course of conduct. And it was very powerful and

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12

C905goes sentence

1 without that testimony the government's case would have been
2 far less persuasive. We certainly believe we would have
3 convicted Mr. Rajaratnam but Mr. Goel's testimony was critical
4 in a number of ways. And, since the conviction Mr. Goel hasn't
5 hesitated to provide us with additional information or continue
6 to serve to cooperate with us and so I -- it is worth, your
7 Honor, mentioning all of that.

8 THE COURT: All right.

9 Thank you, Mr. Brodsky.

10 MR. BRODSKY: Thank you, your Honor.

11 THE COURT: Mr. Goel, would you like to say anything
12 on your own behalf before I sentence you?

13 THE DEFENDANT: Your Honor, I stand before you --

14 Your Honor, I am not standing before you anymore but I
15 am before you and for my family I am deeply ashamed for the
16 mistakes that I have made. I apologize to everybody I that I
17 hurt through my actions and, in particular, my wife and
18 children who have been devastated by the trauma and the grief
19 my actions have caused them.

20 I had a serious lapse in judgment and good sense and
21 deeply apologize once again, and I hope that I am given another
22 chance to repair the harm that I have caused. I sincerely mean
23 that.

24 THE COURT: All right.

25 I intend to sentence the defendant to probation in
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EXHIBIT L

1

028AAGANS Sentence

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

UNITED STATES OF AMERICA,

v.

08 CR 471 (MGC)

JAMES GANSMAN,

Defendant.

-----x

New York, N.Y.
February 8, 2010
11:00 \

Before:

HON. MIRIAM GOLDMAN CEDARBAUM,

District Judge

APPEARANCES

PREET BHARARA

United States Attorney for the
Southern District of New York

JONATHAN STREET

Assistant United States Attorney

BARRY BOHRER

Attorney for Defendant Gansman

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028AAGANS Sentence

1 result of that dollar amount is a rough approximation of the
2 seriousness of the offense.

3 THE COURT: Well, I think the fact that there was five
4 trades itself makes it a serious offense.

5 MR. STREETER: Your Honor, all I am saying is the
6 government's position is that the guidelines calculation is
7 accurate, that it doesn't overstate the seriousness. Your
8 Honor should go ahead and announce your guidelines finding and
9 do anything else that your Honor thinks is appropriate under
10 3553(A).

11 I am just saying that the Court should go ahead and I
12 understand, your Honor, and correct me if I am wrong, to be
13 saying that you are adopting the guidelines calculation the
14 probation department did but you are subtracting the two level
15 enhancement for abuse of trust. That's what I am hearing your
16 Honor saying so that we then move on to the 3553(A) factors.
17 Am I correct in that?

18 THE COURT: Yes.

19 MR. STREETER: Thank you, your Honor.

20 THE COURT: Under the 3553 factors I find that result
21 does not comply with the factors I am to consider and,
22 specifically, the nature and circumstances of the offense in
23 this case, the fact that the defendant is a first offender is
24 under-reflected in the guideline calculation.

25 I have examined the seriousness of the offense which I
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028AAGANS

Sentence

1 think does require prison time but not as much prison time as
2 the guideline calculation would result in and I think a much
3 lesser prison time will protect the public from further crimes
4 of the defendant and prison time will reflect the seriousness
5 of the offense and promote respect for the law. I think for
6 deterrent effect for crimes of this nature some prison time is
7 required for specific and general deterrence.

8 I think some consideration must be given to the nature
9 and circumstances of this crime to the fact that the defendant
10 did not personally gain, make a financial gain in this case but
11 this was a very serious offense and to prevent others from
12 being so tempted some prison time is required.

13 Now, if there is anything the defendant wants to tell
14 me before I set sentence I will be glad to hear it or anything
15 that counsel wants to tell me in connection with an appropriate
16 sentence setting out the factors that I have just described.

17 MR. BOHRER: Yes, your Honor.

18 THE COURT: And I place particular emphasis on
19 affording adequate deterrence to similar criminal conduct.

20 MR. BOHRER: I understand that, your Honor. May I
21 proceed?

22 THE COURT: Yes. Do I take it that your client
23 doesn't want to say anything?

24 MR. BOHRER: I think he does but I would like to say
25 something first.

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EXHIBIT M

1

7a4rrrcols

1 UNITED STATES DISTRICT COURT
1 SOUTHERN DISTRICT OF NEW YORK

2 -----x

3 UNITED STATES OF AMERICA

4 v.

07 Cr. 143

5 RANDI COLLOTTA,

Sentence

6 Defendant.

6 -----x

7
8 New York, N.Y.
8 October 4, 2007
9 3:10 p.m.
9

10 Before:

11 HON. VICTOR MARRERO

12 District Judge
12
13
13

14 APPEARANCES

15 MICHAEL J. GARCIA

16 United States Attorney for the
16 Southern District of New York

17 One St. Andrews Plaza

17 New York, New York 10007

18 ANDREW L. FISH

18 Assistant United States Attorney
19
19

20 KENNETH M. BREEN, ESQ.

20 Attorney for Defendant

21 Paul, Hastings, Janovsky & Walker LLP

21 75 East 55th Street

22 New York, New York 10022-3205

22 (212) 318-6344
23
23

24 MARTHA BERDOTE

24 DAVID MAKOL

25 Special Agents - FBI

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7a4rrcols Sentence

1 securities fraud and one count of securities fraud. The
2 probation office has recommended a sentence of 1 year and 1
3 day's imprisonment.

4 Subsection (a) of 18 U.S.C. section 3553 requires that
5 courts take into consideration, among other things, the nature
6 and circumstances of the offense, the history and
7 characteristics of the defendant, and the need for the sentence
8 to promote certain objectives of criminal justice system,
9 namely, punishment, specific and general deterrence, and
10 rehabilitation.

11 The court emphasizes that trading on insider
12 information or disclosing insider information is a serious
13 offense and that a substantial punishment is needed to deter
14 such activities. However, the Court notes that in the present
15 case Ms. Collotta did not conceive of the scheme and she
16 profited from it only to a modest extent compared to the
17 individuals with whom she disclosed the information.

18 Furthermore, section 3553(a) directs the Court to
19 consider the need to avoid unwarranted sentencing disparities
20 among defendants with similar records who have been found
21 guilty of similar conduct. In this case the Court has already
22 sentenced Ms. Collotta's husband, Christopher Collotta, to a
23 sentence of probation with a period of home confinement, and
24 the Court is aware that other members of the conspiracy have
25 cooperated with the authorities and are likely to receive

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7a4rrcols Sentence

1 relatively lighter sentence as a result.

2 This is one of those cases in which, unfortunately,
3 the defendants before the Court are at the bottom of the food
4 chain and those who were primarily responsible for the offense
5 in the first instance have cooperated with the government,
6 leaving those at the end of the process to bear the brunt of
7 the punishment.

8 In coming to its determination of an appropriate
9 sentence, for Ms. Collotta, the Court has also considered the
10 history and characteristics of the defendant. An examination
11 of Ms. Collotta's background suggests that her offense conduct
12 was an aberration from an otherwise law-abiding life and it is
13 unlikely that she will repeat her unlawful conduct in the
14 future. Indeed, the Court notes that Ms. Collotta will soon
15 lose her license to practice law or to work in the securities
16 industry.

17 Finally, section 3553(a) requires that the Court
18 consider any pertinent policy statement issued by the
19 sentencing commission. In this regard the court has considered
20 section 5H1.6 of the sentencing guidelines, which indicates
21 that in extraordinary circumstances a sentencing court may take
22 into consideration a defendant's family ties and
23 responsibilities.

24 In this case, as detailed by the Court in its
25 sentencing of Mr. Christopher Collotta, Ms. Collotta's husband

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7a4rrrcols Sentence

1 suffers from a number of severe heart conditions, and she
2 evidently plays an important role in providing financial and
3 emotional support for her husband and has helped him through
4 previous surgeries. Additionally, it appears that Ms.
5 Collotta's employment is the source of the medical insurance
6 that covers her husband's treatments.

7 Taking into account the nature and circumstances of
8 the offense and the history and characteristics of the
9 defendant and considering all the factors listed in 18 U.S.C.
10 section 3553(a), the Court finds that a 4-year sentence of
11 probation with a special condition of 6 months' home
12 confinement is reasonable and appropriate and that such a term
13 is sufficient but not greater than necessary to promote proper
14 objectives of sentencing.

15 It shall also be a condition of your probation, Ms.
16 Collotta, pursuant to 18 U.S.C. section 3563(b)(10) and
17 3563(b)(22), that you remain in the custody of the Bureau of
18 Prisons during nights, weekends, or other periods of time to
19 which you and the Bureau of Prisons mutually agree and which
20 will allow you to maintain employment, for a period of 60 days
21 during some portion of your term of proceedings probation.

22 Additionally, the Court imposes a fine of \$3,000 as
23 well as a special assessment of \$200, both of which shall be
24 due immediately.

25 You must comply with the standard conditions 1 through
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EXHIBIT N

1

1CLKFLES SENTENCE

1 UNITED STATES DISTRICT COURT

1 SOUTHERN DISTRICT OF NEW YORK

2 -----x

3 UNITED STATES OF AMERICA,

4 v.

11 CR 32 (JSR)

5 JAMES FLEISHMAN,

6 Defendant.

7 -----x

8 New York, N.Y.

8 December 21, 2011

9 11:43 a.m.

10 Before:

11 HON. JED S. RAKOFF,

12 District Judge

13 APPEARANCES

14 PREET BHARARA,

15 United States Attorney for the

16 Southern District of New York

17 DAVID S. LEIBOWITZ

17 ANTONIA APPS

18 Assistant United States Attorney

19 COLEMAN & BALOGH LLP

19 Attorneys for Defendant

20 ETHAN ATTICUS BALOGH

21 SOUTHERN DISTRICT REPORTERS, P.C.

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1 CLKFLES SENTENCE

1 presides over trials, that's the person that determines
2 judgment, not commissions, not appellate judges, the ones who
3 sentence people every day. District judges are professional
4 sentencers. I think this Court has seen the spectrum and can
5 see that Mr. Fleishman stands on one end of it in many ways and
6 merits the sentence we recommend. We humbly ask the Court to
7 impose it.

8 THE COURT: All right, thank you very much. Let me
9 hear from the defendant if he wishes to be heard.

10 MR. BALOGH: I have instructed my defendant to stand
11 mute, and he's going to rely on my advice.

12 THE COURT: OK.

13 MR. BALOGH: Thank you, your Honor.

14 THE COURT: The Court has carefully considered all the
15 factors under Section 3553(a), but the one that always leaps
16 out when we're dealing with this kind of crime is the need for
17 general deterrence. Insider trading has been the subject of
18 prosecutions in the Southern District of New York and elsewhere
19 for at least the last 30 to 40 years, and yet the prosecutions
20 have not done enough to deter this serious and sophisticated
21 crime. The ability to get access to inside information, the
22 ability to see its potential in the marketplace, the ability to
23 trade on it, is so easy; the ability of the government to
24 detect these activities is so difficult, that all the evidence
25 suggests that trading on inside information has, if anything,

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1CLKFLES

SENTENCE

1 increased rather than decreased. Undoubtedly it would have
2 increased even more were it not for the efforts of the U.S.
3 Attorney's Office, but clearly, greater deterrence measures are
4 required.

5 While I agree with defense counsel that the U.S.
6 Attorney's Office in this district has made a major advance in
7 prosecuting these kinds of cases in the last year or so, and
8 that collectively this will hopefully send the message, the
9 message is not sent if there is not appreciation of the need
10 for deterrence in each and every case.

11 Having said that, there are many other aspects to the
12 analysis. If, for example, one is a minor bit player, which in
13 effect Mr. Chu was, for example, you cannot sacrifice the life
14 of a bit player in the name of general deterrence; that would
15 not be just. But Mr. Fleishman is no bit player. The scope of
16 his activities was considerable. To compare him with Mr. Chu,
17 for example, is to compare a pebble with a bolder; they're both
18 made of rock but that's the only similarity.

19 It is important, however, to take the full measure of
20 the human being who is before the Court. It's so easy to talk
21 about abstractions like general deterrence, and much more
22 difficult to grapple with the fact that the Court is being
23 called upon to determine the immediate future, in very real
24 terms, of another human being, a human being who, like all of
25 us, has his strengths and his frailties.

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1CLKFLES

SENTENCE

1 I therefore think Section 3553(a) -- which in this
2 Court's view, is as fine a statute as Congress has passed; it
3 stands, in the Court's view, in very distinct contrast to the
4 nonsense of the guidelines -- it is the mandate of Section
5 3553(a) that the sentence be sufficient but no greater than
6 necessary to carry out the various functions expressed therein,
7 like general deterrence, like specific deterrence, et cetera.

8 If you look at Mr. Fleishman as a human being overall,
9 he has, for example, no record of the almost pathological
10 manipulativeness that characterized Ms. Jiau. And as counsel
11 points out, he did not engage in the obstruction that was
12 typical of Mr. Longueuil. On the other hand, I think I am
13 persuaded by the government that in the broader picture, his
14 misconduct was greater than that of Mr. Longueuil,
15 notwithstanding that he didn't make as much money out of it.

16 So putting all those things together, it seems to me
17 that a sentence of two and a half years is the right sentence
18 in this case, for reasons that are much more specific to the
19 facts of this case and this individual than similar sentences I
20 have imposed on other people. It would be an
21 apples-and-oranges comparison even if it comes to the same
22 amount.

23 So the sentence of the Court is that the defendant is
24 sentenced to 30 months' imprisonment jointly on both counts, to
25 be followed by two years of supervised release on terms I will

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EXHIBIT O



Covenant House
International
5 Penn Plaza
New York, NY 10001
(212) 727-4173
www.covenanthouse.org

Anchorage

Atlanta

October 5, 2012

Atlantic City

Detroit

Fort Lauderdale The Honorable Jed S. Rakoff
United States District Court for the
Southern District of New York
Guatemala Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
Honduras New York, New York 10007

Houston **RE: COMMUNITY SERVICE PROPOSAL FOR RAJAT GUPTA**

Los Angeles Dear Judge Rakoff:

Mexico I understand that Rajat Gupta will appear before Your Honor for sentencing on October 17,
2012. I am writing to respectfully request that the Court consider allowing Mr. Gupta to be
placed in a multi-year, full-time community service position at Covenant House. Given his
Newark professional background and life history, I believe Mr. Gupta would make a substantial and
meaningful contribution to our mission and to the children we serve, in two respects, first,
New Orleans working directly with the children in our facility in Manhattan, and, second, working with
us to develop a plan to implement a set of strategic initiatives, a role that is particularly
suited to his professional background and skill set, and which would otherwise be
New York unavailable to us and which comes at a critical time in Covenant House's effort to expand
the reach and impact of our work on behalf of homeless, exploited and trafficked youth.
Nicaragua Both of these aspects of the proposal are described in more detail below.

Oakland **Our Mission, Programs, Leadership**

Orlando Since 1972, Covenant House has provided emergency shelter and other services for
homeless, runaway, and at-risk youth. We are the largest privately-funded agency serving
Philadelphia this population in the Americas, having grown from humble beginnings - sheltering six
homeless teenagers in the East Village during a snow storm - to operating programs in 23
U.S., Canadian, and Latin American cities and serving more than 50,000 young people each
St. Louis year. Yet even this barely begins to meet the need for such services. Although little
reliable data exists on the numbers of runaway and homeless youth in this country (because
Toronto this population is, unfortunately, largely invisible), it is estimated that this population is in

Vancouver

The Honorable Jed S. Rakoff
October 5, 2012
Page 2

the millions. We are the largest provider of services to these youth, but even what we are able to provide truly pales in comparison to the need.

Our goal is to empower young people to work towards economic independence and to break the cycle of homelessness. We are guided by five principles integral to our mission and programs: immediacy, sanctuary, value communication, structure, and choice. Our services include health care, mental health/psychiatric services, mother and child residential programs, nursery and day care, street outreach, drop-in center, substance abuse prevention, GED classes, college scholarships, vocational training programs, legal services, mentoring, and pastoral services.

As President and CEO of Covenant House International, I oversee all Covenant House facilities and the programs we offer in the U.S., Latin America and Canada. Prior to re-joining Covenant House in 2009 - after spending the first decade of my career here - I served as the Commissioner of the New Jersey Department of Children and Families and the State's first Child Advocate¹. James White, the Executive Director of our Covenant House program in New York, has worked with Covenant House for 30 years and was part of the development team that began the transitional living program Rights of Passage (ROP), described more fully below. He leads Covenant House New York, our first, largest, and flagship program serving runaway and homeless youth in New York City. A third member of our leadership team, John Ducoff, serves as our Senior Vice President of Strategic Planning and General Counsel, and was previously the Deputy Commissioner for Child Welfare Reform at the New Jersey Department of Children and Families and in private practice at Latham and Watkins LLP.

Our Programs and Mr. Gupta's Proposed Work Plan

With the Court's approval, we would envision Mr. Gupta providing direct services in three components of our work with homeless children: Crisis Care, our transitional living program "Rights of Passage," and Job Training. Although our services are available at all hours of the day and night, the busiest times are in the morning and late afternoon and evening. Accordingly, we would propose that Mr. Gupta work from 8:00-10:00 a.m. and from 3:00-7:00 p.m. in these areas of direct services to the children, with middle of the day devoted to his assistance in developing strategic initiatives (as more fully described below).

The Crisis Centers are the facilities which our children see first. We have an open intake policy - no child is ever turned away. The first step of intake is to address the child's immediate needs: food, shower, clean clothes, sleeping in a bed, providing safety, and building trust. Every child visits the in-house clinic for a medical evaluation. Because a large percentage of the children who come to us struggle with serious mental health problems, this initial medical visit and our preliminary work with them allow us to begin to assess those needs and develop a plan to provide the youth with the behavioral health services they often urgently need. As part of the intake process, each child is evaluated for, among other things, job readiness, educational achievement, and possible need for legal assistance. For each child who elects to stay, Covenant House staff develop an individual case plan tailored to the child's needs. Mr. Gupta would act as a member of the intake team, supporting the youth's transition from the street to our Crisis

¹ A copy of my website biography page is attached to this letter as Exhibit A.

The Honorable Jed S. Rakoff
October 5, 2012
Page 3

Center, and would also work on a Crisis Center floor, developing case plans and working with the youth to support them as they strive toward their case goals.

Mr. Gupta would also assist in our transitional living program, Rights of Passage. The ROP program addresses the long-term needs of at-risk youth who come to Covenant House in crisis and provides young adults (18-21 years old) with a stable home for up to 18 months. Through this program they learn to live independently and acquire basic life skills, with which most have had little or no experience: caring for themselves, keeping a job, paying bills, and saving money. These skills will assist them in becoming productive young adults, able to move toward having a fulfilling and happy adult life. We anticipate that Mr. Gupta would assist the young adults in the ROP program in at least the following specific respects: resume writing, basic financial skills, interviewing, job coaching, and other interpersonal skills.

Finally, we anticipate that Mr. Gupta would spend a portion of each day in our job training and readiness programs, helping the kids navigate their way through the job search, assisting with resume writing, interview preparation, providing job coaching, and the like.

Strategic Initiatives

Like other nonprofit service organizations, Covenant House has felt acutely the effects of the financial downturn that began in 2008. In this recessionary environment, we have been forced to make significant cuts in services to our youth at the time they needed us most. Recently, we have begun an effort to develop a strategic plan that would enable Covenant House to fulfill its mission by serving more at-risk homeless young people and improving the services we provide for them. In addition, as the largest national provider of these services, we believe Covenant House is the only one with the history, scale and know-how to provide leadership on best practices to other, similarly-situated organizations. To these ends, we have identified a number of initiatives, the development of which would profit immeasurably from Mr. Gupta's long history of successfully counseling and assisting organizations in this fashion:

- Revenue diversification. Recognizing that we have been overly-dependent upon a single source of revenue, direct marketing, Covenant House needs to develop other revenue channels, such as corporate partnerships, neighborhood initiatives, online fundraising, peer-to-peer fundraising, and the like. The goal is to reduce the share of revenues represented by direct marketing and thereby significantly mitigate risk.
- Measurement of impact. We believe that an overall framework for outcome measurement including health, education, stable housing, employment and other metrics needs to be developed. Particularly in a resource-constrained environment, this initiative is crucial to ensuring that we are serving our youth well. In addition, it can form the basis of expanded and successful fundraising.
- Expansion of services. As noted, there is an acute shortage of the services Covenant House provides. In New York, we perceive that there is significant potential for expanding our capacity, and a specific plan needs to be developed.

The Honorable Jed S. Rakoff
October 5, 2012
Page 4

- Covenant House International and its members. Organizing and defining the roles of and relationship between the parent organization, Covenant House International, and the individual sites, in order to provide leadership, quality control and financial support.

Supervision

The direct services component of the proposed plan of service would be supervised by James White, and Mr. Gupta's work on assisting in the development of strategic initiatives by John Ducoff. Covenant House would adhere to any reporting requirements imposed by the Court regarding Mr. Gupta's attendance, tasks assigned, and the impact of his work. To this end, there will be regular contact between Mr. Gupta and Messrs. Ducoff and White, and monthly reports prepared (for submission to Probation or otherwise as directed by the Court), addressing each of those measures of his conduct.

Conclusion

Given Mr. Gupta's background and experience, I believe he can make an enormous contribution in both aspects of the proposed plan of service. His own life history provides him with the empathy, credibility, and knowledge to counsel our youth and serve as a role model. His business experience and success will enable him to provide critical leadership, oversight, and consultancy to an organization embarking on a much-needed set of strategic initiatives. Particularly in these difficult economic times, and with growing numbers of at-risk youth, Mr. Gupta could make a powerful impact on the future of Covenant House. Put simply, if Covenant House had the resources to engage someone to assist in these initiatives, Mr. Gupta would be an ideal fit. For us to receive his services as part of his sentencing would truly be a blessing, at a crucial time in our history.

On behalf of Covenant House and the homeless at-risk youth we serve, I want to thank the Court for its consideration of this request. Should Your Honor have any questions, I would of course be pleased to address them.

Respectfully,

A handwritten signature in cursive script, appearing to read "Kevin Ryan".

Kevin Ryan

The Honorable Jed S. Rakoff
October 5, 2012
Page 5

Exhibit A

Kevin Ryan
President and CEO
Covenant House International

Kevin Ryan has dedicated his life to helping homeless, abused and trafficked kids. He serves as the President and CEO of Covenant House International, traveling across the Americas to help the suffering children of the streets.

Since his graduation from Georgetown University Law Center in 1992, Kevin has been serving and protecting homeless kids on the frontlines in some of the poorest cities in the United States.

As the first person appointed by a New Jersey governor to serve as State Child Advocate, he exposed the illegal detention of hundreds of kids in overcrowded centers and the abuse of children in a state psychiatric hospital.

He went on to lead a sustained reform of the child welfare system in New Jersey was the state's first Commissioner of Children and Families and was subsequently appointed by UN Envoy Raymond G. Chambers to coordinate the launch of the United Nations' first office dedicated to eradicating deaths - mostly children's - due to malaria.

His groundbreaking work has led to front page stories in *The New York Times*, *Star Ledger* and *Philadelphia Inquirer* and to guest appearances on *60 Minutes*, *The Today Show*, *Good Morning America*, *CNN*, *Fox* and *MSNBC*.

As our international leader, Kevin is charged with overseeing all Covenant House locations and the many vital programs we offer in the United States, Latin America and Canada.

He is the co-author with former *New York Times* reporter Tina Kelley of *Almost Home*, published by John Wiley and Sons. Three years in the making, the book chronicles the extraordinary true journey of six formerly homeless teenagers in the United States and Canada as they overcome abuse, violence, and heartbreak to achieve their dreams. Kevin's blog on the fight against human trafficking and the global effort to shelter and protect children is a staple of the *Huffington Post's* Impact Section.

Looking toward the future, his ultimate hope is that the work we do at Covenant House will one day not be necessary. But for now, Kevin makes sure that Covenant House continues to play a key role in solving the problem of youth homelessness - by looking at where our kids need us, and responding to them with open arms, minds, and hearts.

In April 2012, Kevin was awarded the James Cardinal Gibbons Medal from The Catholic University of America recognizing his lifelong efforts as both a national and international child advocate. The award is given to an individual for "distinguished and meritorious service" and is the highest honor that the association confers. Past winners include Rev. Fulton J. Sheen, John F.

The Honorable Jed S. Rakoff
October 5, 2012
Page 6

Kennedy, Peace Corps founder Sargent Shriver, actor Danny Thomas, actress Helen Hayes, First Lady Nancy Reagan, vocalists Aaron Neville and Ronan Tynan, and best-selling *Dead Man Walking* author Sister Helen Prejean.

The Vatican Mission to the United Nations presented Kevin with its 2010 Path to Peace Award, recognizing his efforts to save thousands of desperate and abandoned kids from the streets.

Kevin is the recipient of Harvard Law School's Wasserstein Fellowship, the Skadden Fellowship, and several honorary degrees, including one from Georgian Court University, where he delivered the commencement address more than 80 years after his paternal grandmother graduated valedictorian in the university's first campus graduation including women.

Kevin is a graduate of the Catholic University of America (B.A.), Georgetown Law Center (J.D.), and New York University Law School (LL.M.). He and his wife Clare have six children.

EXHIBIT P

September 29, 2012

H.E. President Paul Kagame
President
Republic of Rwanda
Urugwiro Village
Kigali - Rwanda

Excellency,

We are writing to you today to follow-up on our conversation about a request that could be made to the US Courts asking that consideration be given to the possibility of Rajat Gupta, because of his unique abilities and experience, serving his upcoming sentence in the developing country of Rwanda, helping to mitigate Rwanda's challenges of poverty, malaria, HIV AIDS, maternal and child mortality and other burdens.

Despite the horrific genocide just 18 years ago, the world has recognized what an outstanding leadership job you have done to reunite the peoples of your country, bring about economic growth and political stability, and improve the quality and availability of health care and education. Yet, like other developing countries, Rwanda still faces many barriers over which it must progress. With a very low life expectancy, the majority of the population deriving their livelihoods from agriculture, and malaria, HIV, diarrhea, and other childhood diseases claiming so many lives, significant work remains to be done.

We know that you join us in the belief that Mr. Gupta, because of his skills and talents in dealing with the specific problems from which Rwanda and Rwandans are suffering, can make a significant difference working under your direction in Rwanda. His work as Board Chairman of the Global Fund to Fight AIDS, TB and Malaria has resulted in millions of lives saved in Rwanda, and across sub-Saharan Africa. Mr. Gupta's vast experience at McKinsey and Company could also be very helpful to you in designing and organizing the most effective strategies and programs necessary to lift the Rwandan people out of poverty.

We know that the US, and many others around the world, let you and the 800,000 Rwandans who perished down when we chose not to intervene in 1994. We know that Mr. Gupta would be of immense assistance to you, and perhaps you could come up with a program of work that uses his unique skills set, allowing him to continue the work to which he has been dedicated for years, and yet responds to the terms of his sentence.

It would be most helpful to understand your point of view regarding this unique suggestion regarding Mr. Gupta.

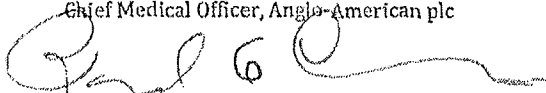
We look forward to your reply.

Please accept, Excellency, the assurance of our highest consideration.

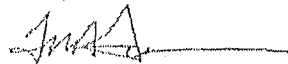
Sincerely



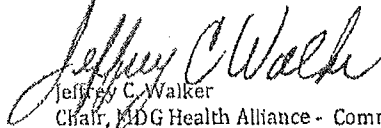
Brian Brink, MBBCh
Chief Medical Officer, Anglo-American plc



Raymond G. Chambers
Chair, MDG Health Alliance



Todd Summers
Chair, Strategy Investment and Impact Committee of the Global Fund to Fight AIDS, TB, and
Malaria



Jeffrey C. Walker
Chair, MDG Health Alliance - Community Health Worker Pillar

EXHIBIT Q

1

REPUBLIC OF RWANDA



Kigali. 05/10/12
N° 50/PA/12

MINISTRY OF JUSTICE

- Brian Brink, MD Medical Director, Anglo-American Mining;
- Raymond G. Chambers Chair, MDG Health Alliance;
- Todd Summers Chair, Strategy Investment and Impact Committee of the Global Fund to Fight AIDS, TB, and Malaria;
- Jeffrey C. Walker Chair, MDG Health Alliance- Community Health Worker Pillar.

RE: Your letter to President Paul KAGAME.

Dear Sirs,

Please refer to the above letter dated September 29th 2012 which we have carefully reviewed and wish to make the following observations:

We would like first of all to thank you for the letter, the proposal and the spirit in which it was written. What you suggest is unique, but we feel that it fits the manner in which we have handled far more difficult situations in Rwanda.

While we have made significant progress under the leadership of President Kagame in the last 18 years, much additional work has to be done to lift our people out of poverty and provide for them the lives they deserve. We have many challenging topics to confront, including an end to HIV transmission, malaria deaths and food security for all.

Mr Gupta, and his contributions to Rwanda and other developing countries, are well known to us. We believe he can make a significant difference in helping us to accomplish the aforementioned objectives. The world must remember that the most horrific genocide happened in Rwanda just eighteen years ago.

We feel confident that we can demonstrate to the US Courts our ability to properly execute their orders if we are fortunate to receive the benefits of Mr. Gupta's services. We have long-standing experience with such matters, and are prepared to provide that. Supervision standards in Rwanda are among the strictest in the world and Rwanda has been selected as a place where even criminals convicted by Tribunals such as the International Criminal Tribunal for Rwanda (ICTR) and UN Special Court for Sierra Leone (UN SCSL) can serve their sentences in Rwanda. The International Criminal Tribunal for Rwanda (ICTR), The Supreme Court of Sweden, The Supreme Court of Norway, the Supreme Court of Canada, the Court of Appeal in France and the European Court of Human Rights, to mention but a few, have all in different judgments ruled that the judicial and other legal structures in Rwanda meet international standards. That is why we already have International prisoners serving their sentences in Rwanda.

Given the importance of this request, and the unique circumstances, The Government of Rwanda would agree to take responsibility for crafting a program of work, for the terms imposed on Mr. Gupta being carried out, and to ensure that regular reports are provided to the appropriate authorities in the United States by the Ministry of Justice/Attorney General's office.

Within Government, Mr Gupta would work closely under the supervision of the appropriate line Ministries, as well as the Ministry of Justice/Attorney General's office. We would propose that a significant portion of Mr Gupta's time be spent in rural villages in Rwanda. While the setting may be challenging for Mr Gupta, particularly living 6000 miles from home, we feel that only by living in and understanding the field realities will Mr Gupta be able to advise how we might improve. Serving his sentence here would not be a holiday for him nor would it be a denial of his rights to live and work in dignity. In Rwanda, we have

“performance based contracts” at different levels and between different State actors and stakeholders.

A core part of Mr Gupta’s proposed work would be to work with rural districts to ensure that the needs to end HIV, malaria, extreme poverty, and food security, are implemented.

In Rwanda we have a tradition of “Inkiko Gacaca” – Gacaca, or Community Courts – which aim to be participatory and reconciliatory in carrying out justice. Those who are convicted are indeed punished, but we strive to ensure that even the guilty give back to Rwandan society, rather than simply sit incarcerated. Just this past June 18th, we closed the Gacaca Courts after they accomplished their mission. These courts tried nearly two million dossiers representing nearly 1.2 million individuals in a period of about 10 years. Although nearly 30% were acquitted many were also convicted, but their punishment was carried out in a manner that attempted to balance the punitive aspects with reconciliation. We are proud of these courts and what they have accomplished, and it is in this spirit that we accept what you have also proposed.

As President Kagame said at the closing ceremony of Gacaca Courts:

"...We had three choices [following the genocide]: first was the most dangerous path of revenge, or secondly, grant general amnesty, both of which would have led to further anarchy and destruction. But we chose the third and more difficult course of dealing with the matter decisively and restoring the unity and integrity of the nation....".

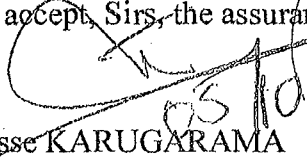
Article 20 of our penal code states: ".....A foreign criminal judgment which has become final may be enforced in Rwanda with regard to penalties". It is therefore possible under the Rwandan law for foreign convicts to serve their sentences in Rwanda under the terms and conditions set by the foreign judge who has convicted a person and ordered the sentence to be executed in Rwanda.


We would be pleased to outline at the appropriate time, and in consultation with the Court if needed, how precisely Mr Gupta would be supervised given our experience with such matters and, as you suggest, would be in accord with partnering with a US-based entity to assist. There are numerous US - based International Organizations such as William J Clinton Health Access Initiative (CHAI)...working in Rwanda that we would partner with to ensure effective execution of the Judge's orders. I should note that the field conditions where Mr Gupta would be spending the majority of his time living and working would be difficult but would match the need to punish but at the same time give the convict the opportunity to reflect and recant.

Finally it is our belief that this kind of arrangement would be a rare, unique but very important example of international legal cooperation and that it might provide future precedent to other situations of similar nature and that this would be good for international justice.

Please consider that the arrangement would benefit millions of Rwandans but also advance the course of Justice and International legal cooperation and therefore it has our full support.

Please accept, Sirs, the assurances of my highest consideration


Tharcisse KARUGARAMA
Minister of Justice/ Attorney General



CC:

- H.E The President of the Republic of Rwanda

EXHIBIT R



Luthra & Luthra
Law Offices
New Delhi

October 3, 2012

Honorable Justice Jed S. Rakoff,
U.S. District Judge,
Southern District of New York,
500 Pearl Street,
New York, New York 10007,
UNITED STATES OF AMERICA

Honorable Mr. Justice Rakoff,

By way of introduction, I am the Founder & Managing Partner of Luthra & Luthra Law Offices, which I founded in 1990. We have offices in New Delhi, Mumbai and Bangalore.

I started my law career in 1978, advising clients on taxation and related matters and over a period of time, my practice expanded to include, regulatory and compliance matters.

Luthra & Luthra is one of the few firms in India with a full scale criminal law practice, specializing in corporate offenses and "white collar" crimes.

I have been asked to share with the Court, my understanding and observations regarding the impact in India of a prison sentence being imposed in such a case and I have the following to state:

Although the legislation in India prescribes prison sentence for insider trading and other white collar crimes, in practice, imprisonment is generally reserved for violent offenders posing a grave threat to society and for political corruption cases. As a result, the stigma of incarceration, even for a brief period, is enormous and goes well beyond the stigma associated with having been convicted.

In my considered view, were Mr. Gupta to receive a prison sentence, his charitable and humanitarian initiatives would be substantially impaired. Many business, education and government leaders and organisations involved in these endeavours, will be likely to and/or unwilling to work with him. This could be because of restrictions in their own internal regulations, or for fear of public (and media) outcry.

Respectfully submitted,

Rajiv K. Luthra



EXHIBIT S



Helene D. Gayle, M.D., M.P.H. CARE USA

President and CEO

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USA

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fax 404.589.2604

e-mail hgayle@care.org

www.care.org

October 16, 2012

Honorable Jed S. Rakoff
U.S. District Judge
Southern District of New York
500 Pearl Street
New York, New York

Re: Rajat Gupta

Dear Judge Rakoff:

I am writing in connection with the upcoming sentencing of Rajat Gupta. I am the President and CEO of CARE USA, a leading humanitarian and development organization. CARE operates in over 80 countries global and has programs in food, livelihoods, health and education in Rwanda.

I understand the Court has been presented with a sentencing proposal whereby Mr. Gupta would engage in community service work in Rwanda, in which he would work in rural districts on efforts to end HIV transmission, malaria deaths and to ensure food security. I am further informed that the Government of Rwanda has stated a willingness to take responsibility for ensuring that the terms of this community service work ordered by the Court are carried out, and that regular reports so reflecting are provided to the appropriate authorities in the United States, again as directed by the Court. I understand that, in this regard, the Government of Rwanda has indicated it could carry out supervision and reporting in conjunction with a United States based international organization working in Rwanda. CARE is willing to consider this request to act in this capacity and to adhere to any reporting requirements imposed by the Court, including reporting on the specific tasks assigned, Mr. Gupta's carrying out of those tasks, and the outcomes obtained.

I would be pleased to provide any further information the Court requires.

Sincerely,

Helene D. Gayle, MD, MPH
President and CEO, CARE USA