GEORGE S. CARDONA 1 Acting United States Attorney 2 CHRISTINE C. EWELL Assistant United States Attorney Chief, Criminal Division 3 BRUCE H. SEARBY (SBN 183267) 4 Assistant United States Attorney Major Frauds Section 5 1100 United States Courthouse 312 North Spring Street 6 Los Angeles, California 90012 Telephone: (213) 894-5423 7 Facsimile: (213) 894-6269 bruce.searby@usdoj.gov 8 Attorneys for Plaintiff 9 UNITED STATES OF AMERICA 10 UNITED STATES DISTRICT COURT 11 FOR THE CENTRAL DISTRICT OF CALIFORNIA 12 UNITED STATES OF AMERICA, ) CR No. 08-59(B)-GW 13 Plaintiff, ) <u>GOVERNMENT'S RESPONSE AND</u> ) OBJECTIONS TO PRE-SENTENCE REPORT 14 ) AS TO DEFENDANT GERALD GREEN v. 15 GERALD GREEN and ) Sent. Date: January 21, 2010 ) Sent. Time: 8:30 a.m. PATRICIA GREEN, 16 Defendants. 17

19 Plaintiff United States of America, through its counsel of 20 record, the United States Attorney's Office for the Central 21 District of California, hereby submits its attached response and 22 objections as to the Pre-Sentence Report ("PSR") for defendant 23 GERALD GREEN, disclosed on November 30, 2009.

18

The government understands the Court is being asked to depart or otherwise adopt a variance from the Federal Sentencing Guidelines. The government submits the following objections in order to ensure an appropriate guidelines analysis as an initial matter. At the time for filing of its main sentencing position

1	memorandum, the government will address the separate sentenci	ng
2	recommendation letter of the United States Probation Officer	who
3	prepared the PSR.	
4	Moreover, the government respectfully requests the	
5	opportunity to supplement its response and objections as may	
6	become necessary, including upon the disclosure of any addend	a to
7	the PSR.	
8	DATED: December 14, 2009 Respectfully submitted,	
9	Acting United States Attorney	
10	CHRISTINE C. EWELL	
11 12	Chief, Criminal Division	У
12		
13	BRUCE H. SEARBY	_
14		Y
15	UNITED STATES OF AMERICA	
10		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

## GOVERNMENT'S RESPONSE AND OBJECTIONS TO PRE-SENTENCE REPORT

#### FOR DEFENDANT GERALD GREEN

### 3 Paragraph 11 (Bond)

1

2

The PSR indicates that defendant GERALD GREEN's bond did not require posting of collateral. (PSR ¶ 11.) In fact, one of the conditions of his bond was the security of a \$500,000 deed of trust to real property (defendants' home), which was posted on January 2, 2008.<sup>1</sup> See Docket No. 27.

# 9 Paragraph 22 (Victim Impact)

10 The PSR's characterization of the government's position 11 regarding the monetary loss to the Kingdom of Thailand (PSR ¶ 22) 12 requires correction, as follows: The \$1,822,494 in bribes defendants paid were not only for "film festival contracts" with 13 the Tourism Authority of Thailand ("TAT") but also for unrelated 14 15 contracts for the development of the Thai Privilege Card project, 16 and for a website, book, video, calendars, and public relations 17 services for the TAT. As set forth in Government's Exhibit 1238, 18 admitted into evidence at trial, these non-BKKIFF contracts 19 resulted in nearly \$800,000 of the bribes paid.

20 <u>Grounds for Additional Enhancement for Obstruction of Justice</u>

21 The government submits that applying a two-level enhancement 22 for obstruction of justice to defendant GERALD GREEN under 23 U.S.S.G. § 3C1.1 is appropriate for a reason not discussed in the

1

28

24

<sup>26 &</sup>lt;sup>1</sup> When defendant GERALD GREEN's bond was raised in April 2008 by an additional \$200,000, that additional amount was covered solely by an affidavit of surety with no justification.

PSR,<sup>2</sup> namely, that defendant GERALD GREEN repeatedly and blatantly perjured himself under oath during his testimony over three days of trial in this matter. The government will supply the United States Probation Officer with the transcripts of defendant GERALD GREEN's trial testimony on September 8-10, 2009.

In his direct examination, not only did defendant GERALD
GREEN deny the allegations of bribery against him,<sup>3</sup> but also he
fabricated elaborate explanations for the payments he directed
defendant PATRICIA GREEN and Susan Shore to make to accounts held
in the name of the Governor's Daughter, Jittisopa Siriwan, and
the Governor's Friend, Kitti Chambundabongse.

12 These explanations contradicted the evidence (including both 13 witness testimony and documentary evidence) in the case, and were 14 further discredited upon defendant GERALD GREEN's cross-15 examination.

16 As demonstrated by the guilty verdicts against him, the jury17 disbelieved and rejected defendant GERALD GREEN's explanations.

- 18 /// 19 ///
- 20 ///

21

22

23

The PSR noted the government's dismissal of the count of obstruction of justice under 18 U.S.C. § 1519 (on which the jury deadlocked after a day of deliberation), and cited to the complaint affidavit regarding one of the events that formed the evidentiary basis of that count. (PSR ¶¶ 25-26.)

<sup>3</sup> A defendant's simple denial of the charges, without 27 more, may be insufficient to apply the obstruction enhancement.

### 1 Paragraph 39 (Role Adjustment)

The government objects to the PSR's finding that defendant GERALD GREEN was no more culpable than any other participant, and therefore does not merit an aggravating role adjustment. The government contends that a four-level aggravating role adjustment is appropriate for being "an organizer or leader of criminal activity that involved five or more participants <u>or was otherwise</u> <u>extensive</u>." U.S.S.G. § 3B1.1(a) (emphasis added).

9 This "otherwise extensive" ground for leader/organizer role 10 adjustment is applicable to defendant GERALD GREEN because of the 11 large amount of loss, the extensive duration of the bribery 12 scheme, its international scope, the number of witting and 13 unwitting participants, and defendant GERALD GREEN's role in directing defendant PATRICIA GREEN and others employed at 14 15 defendants' several companies (including Susan Shore) and at the various prime contractors and subcontractors in executing the 16 17 details of the scheme.

18 The PSR's discussion of role exclusively analyzes the 19 applicability of § 3B1.1(c), which only counts criminally 20 culpable participants managed or supervised by the defendant. 21 The government does not argue that this particular role 22 adjustment applies.

- 23 ///
- 24 ///
- 25 ///
- 26
- 27
- 28

1	Paragraph	117	(Guideline	Provisions	for	Custody)
						-

2	The PSR calculates defendant GERALD GREEN's Total Offense					
3	Level as 38, his Criminal History Category as I, and his					
4	sentencing range as 235-293 months. With the inclusion of the					
5	additional role and obstruction enhancements recommended above,					
6	his Total Offense Level would be 44 and his sentencing range					
7	would be life in prison.					
8	DATED: December 14, 2009 Respectfully submitted,					
9 10	GEORGE S. CARDONA Acting United States Attorney					
11	CHRISTINE C. EWELL Assistant United States Attorney					
12	Chief, Criminal Division					
13	/s/					
14	BRUCE H. SEARBY Assistant United States Attorney					
15	Attorneys for Plaintiff					
16	UNITED STATES OF AMERICA					
17						
18						
19						
20						
21						
22						
23						
24						
25						
26						
27						
28	4					