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UNITED STATES OF AMERICA

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

CARRIE L. TOLSTEDT,

Defendant.

No. CR 23-115-JLS

GOVERNMENT'S SENTENCING POSITION
FOR DEFENDANT CARRIE L. TOLSTEDT

Hearing Date: September 15, 2023
Hearing Time: 9:30 a.m.
Location: Courtroom of the
Hon. Josephine L.
Staton

Plaintiff United States of America, by and through its counsel of record, the Attorney for the United States Acting Under Authority Conferred by 28 U.S.C. § 515, Assistant United States Attorneys Alexander B. Schwab and Carolyn S. Small, and Special Attorney Benjamin S. Kingsley, hereby files its sentencing position for defendant Carrie L. Tolstedt.

This sentencing position is based upon the attached memorandum of points and authorities; the files and records in this case,

1 including the Presentence Investigation Report (ECF 32 ("PSR")) and
2 the plea agreement (ECF 7 ("Plea Agreement")); and such further
3 evidence and argument as the Court may permit.

4 Dated: September 1, 2023

Respectfully submitted,

5 JOSEPH T. MCNALLY
6 Attorney for the United States
7 Acting Under Authority Conferred by
8 28 U.S.C. § 515

9 MACK E. JENKINS
10 Assistant United States Attorney
11 Chief, Criminal Division

12 /s/

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Defendant was a high-level executive at Wells Fargo who, for
4 years, ran what Wells Fargo called the "Community Bank" -- a banking
5 division that covered essentially all retail banking commonly
6 conducted at bank branches. Defendant oversaw the Community Bank,
7 including the sales goals for bank branch employees. Many employees
8 found these goals to be unrealistically high, and they began cheating
9 to meet the goals. The result is now a well-known scandal: Wells
10 Fargo opened millions of often unused accounts as employees tried to
11 game the system.

12 Eventually, reports of the scandal broke, prompting inquiries by
13 the Office of the Comptroller of the Currency (the "OCC"), which
14 regulates banks. As head of the Community Bank, defendant was best
15 equipped to assist the OCC in rooting out the problems at Wells
16 Fargo. Instead, she prepared a memo that she knew the bank would
17 provide the OCC and corruptly withheld key information. In
18 particular, she withheld data on the number of employees who were
19 terminated or resigned pending investigation for sales-related
20 misconduct, and the fact that, of the many employees flagged by the
21 bank's own metrics for potential sales-related misconduct, only a
22 tiny percentage were investigated.

23 In connection with her efforts to mislead the OCC, and as part
24 of a binding plea agreement, defendant pleaded guilty to obstruction
25 of a bank examination, in violation of 18 U.S.C. § 1517. Consistent
26 with the Plea Agreement and PSR, the government agrees that the total
27 offense level is 12, defendant is in criminal history category I, and
28 the applicable Guidelines range is 10 to 16 months' imprisonment.

1 Consistent with the plea agreement, defendant should be
2 sentenced to twelve-months' imprisonment to be followed by one year
3 of supervised release. The United States Probation Office ("USPO"),
4 by contrast, recommends a three-year term of probation. Such a
5 sentence may reflect the fact that defendant poses no further danger
6 to society, but it does not account for the other statutory
7 sentencing factors. The sentence must reflect the seriousness of the
8 crime: defendant attempted to conceal from regulators one of the
9 biggest banking scandals in modern history. The sentence must afford
10 adequate deterrence: corporate wrongdoers must be sent a clear
11 message that maintaining a lucrative position through criminal
12 behavior is not worth the risk. And the sentence must promote
13 respect for the law: when top corporate executives commit crimes,
14 they should not be able to avoid prison because they are not at risk
15 of recidivism. A one-year custodial sentence strikes the right
16 balance.

17 **II. STATEMENT OF FACTS**

18 For years, Wells Fargo's Community Bank was plagued by
19 widespread employee misconduct. To meet onerous sales goals,
20 thousands of Wells Fargo employees engaged in unlawful or unethical
21 conduct. (PSR ¶ 14.) The misconduct varied widely. Some employees
22 would use customers' personal information without consent to open
23 accounts. Others would persuade customers to open accounts or other
24 financial products that employees knew were of no or little value to
25 the customer. (Id.) Employees would, for instance, open accounts
26 for friends and family members or encourage customers to open
27 duplicate checking or savings accounts or credit or debit cards.

1 (Id.) Between 2002 and 2016, millions of secondary accounts and
2 products were opened, many never used by customers. (Id.) Between
3 2011 and 2016, the Community Bank referred more than 23,000 employees
4 for investigation into potential sales-related misconduct and
5 terminated over 5,300 for customer-facing sales misconduct,
6 including, in many cases, for falsifying bank records. (Plea
7 Agreement ¶ 10.)

8 Defendant was the head of the Community Bank for nearly a decade
9 while this sales misconduct was occurring. (PSR ¶ 13.) She knew for
10 years there was sales-related misconduct within the Community Bank
11 and that employees were terminated each year for engaging in such
12 misconduct. (PSR ¶ 16.) She also knew employee terminations were
13 consistently increasing over time, that the misconduct was linked in
14 part to the Community Bank's sales goals, and that the termination
15 numbers likely underestimated the scope of the problem. (Id.; Plea
16 Agreement ¶ 10.)

17 In response to media coverage of the sales-related misconduct
18 occurring at Wells Fargo, the Community Bank created the Sales and
19 Service Conduct Oversight Team (the "Oversight Team") for, among
20 other reasons, the purported purpose of proactively identifying sales
21 misconduct. (Plea Agreement ¶ 10.) But the thresholds the Oversight
22 Team set for identifying sales misconduct was such that only the most
23 egregious conduct was flagged as potential misconduct warranting an
24 investigation. (Id.) Indeed, as of July 2014, the thresholds
25 established by the Oversight Team meant that the team investigated
26 only the top .01 to .05 percent of employees engaging in activity
27 considered a "red flag" for sales-related misconduct. (Id.)

1 Eventually, the OCC -- the U.S. agency tasked with ensuring that
2 banks operate in a safe and sound manner, among other things -- began
3 examining the Community Bank. But rather than aiding the OCC in its
4 examination by providing it with all the relevant information,
5 defendant obstructed the examination by seeking to minimize the scope
6 of the misconduct. (Plea Agreement ¶ 10.) In particular, defendant
7 prepared a memorandum she knew Wells Fargo would provide to the OCC.
8 (Id.) In it, she corruptly withheld statistics on the number of
9 employees who were terminated or resigned pending investigation for
10 sales-related misconduct. (Id.) She also failed to disclose that
11 the Oversight Team investigated an infinitesimal percentage of the
12 employees whose behavior raised red flags for sales practices
13 misconduct. (Id.)

14 In connection with her obstruction of the OCC's examination of
15 Wells Fargo and its sales-misconduct issues, defendant has pleaded
16 guilty pursuant to a plea agreement to obstructing a bank examination
17 in violation of 18 U.S.C. § 1517. The parties entered into the plea
18 agreement pursuant to Rule 11(c)(1)(C) of the Federal Rules of
19 Criminal Procedure. (Plea Agreement ¶ 2.) The parties' agreed-upon
20 sentence, set forth in paragraph 14 of the Plea Agreement, is that
21 "an appropriate disposition of this case is that the Court impose a
22 sentence no higher than 16 months' imprisonment; up to three years'
23 supervised release with conditions to be fixed by the Court; a fine
24 of \$100,000; and a \$100 special assessment." (Plea Agreement ¶ 14.)

25 **III. SENTENCING GUIDELINES**

26 The government agrees with the offense-level computation set
27 forth in the PSR, which is consistent with the Plea Agreement. (PSR
28

¶¶ 39-50; Plea Agreement ¶ 12.) In particular, the government agrees that the total offense level is 12 based on a base offense level of 14 under USSG § 2J1.2(a) and a two-level decrease for acceptance of responsibility under USSG § 3E1.1(a).

The government also agrees that defendant is in criminal history category I. An offense level of 12 and a criminal history category of I results in a Sentencing Guidelines range of 10 to 16 months' imprisonment.

IV. ARGUMENT

If the sole consideration at sentencing were whether a custodial sentence is necessary "to protect the public" from defendant's "further crimes," the government would be joining the USPO in recommending probation. 18 U.S.C. § 3553(a)(2)(C). Defendant is a retired bank executive subject to a lifetime ban from the industry; the government does not dispute that defendant poses no real risk of recidivism. But that is not the only sentencing factor at play. Not only must the sentence "reflect the seriousness of the offense," it must also "promote respect for the law" and "afford adequate deterrence." Id. § 3553(a)(2)(A), (B). The government stands by the plea agreement, including its agreement that an appropriate disposition is a sentence no higher than 16 months' imprisonment. But a probationary sentence is not appropriate. A custodial sentence of twelve months' imprisonment is.

A. The Seriousness of the Offense

Defendant attempted to hide from the OCC Wells Fargo's failure to police the widespread misconduct that occurred under her watch. And she did so as a highly compensated executive at one of the

1 world's largest financial institutions. In a vacuum, submitting a
2 misleading memo to regulators may not appear to be the most egregious
3 offense. But taken in context, it is a serious offense, one intended
4 to cover up the scope of one of the most significant banking scandals
5 of the century.

6 Large financial institutions like Wells Fargo are bedrocks of
7 the American economy. The OCC provides critical oversight and
8 supervision to ensure that they comply with applicable laws and
9 regulations to protect both customers and the economy as a whole.
10 Given the corporate structure and sprawling nature of a bank like
11 Wells Fargo, the OCC's ability to do its job depends on high-ranking
12 executives like defendant to be transparent and cooperative.
13 Corporations are notoriously difficult to investigate given their
14 compartmentalization, size, and involvement of corporate counsel.
15 See U.S. Justice Dep't, Justice Manual § 9-28.700 (2023). Absent the
16 candor and good faith of corporate insiders, misconduct can be very
17 difficult to uncover.

18 By the time the OCC got involved in this case, sales practices
19 misconduct under defendant was already widespread. As head of the
20 Community Bank, defendant was uniquely positioned to enable the OCC
21 to do its job. She did the opposite. Defendant minimized the scope
22 of the misconduct, falsely characterizing it as the isolated
23 misbehavior of a few bad apples.

24 In an effort to downplay the severity of defendant's conduct,
25 her counsel pointed to the fact that lawyers were involved in
26 defendant's preparation of the memorandum to the OCC that omitted
27 critical information and that the "OCC had access to virtually any
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1 internal Bank information it wanted, including . . . the information
2 omitted from the memorandum.” (PSR ¶ 33.) Neither of these facts
3 diminishes defendant’s culpability. As the leader of the Community
4 Bank, defendant was both most familiar with the facts and responsible
5 for conveying that information truthfully to lawyers. And she admits
6 that she intentionally omitted information in an effort to “minimize
7 the scope of the sales practices misconduct issue.” (Plea Agreement
8 ¶ 10.) The imprimatur of attorneys who had an incomplete picture is
9 not a mitigating factor. Nor does the OCC’s access to internal bank
10 documents render defendant’s offense any less serious. Regulators
11 and other investigators should be able to rely on information that
12 executives prepare and/or present to them without having to resort to
13 combing through tens of millions of documents to ensure they are
14 getting the full story. If anything, the peripheral involvement of
15 lawyers and the difficulty in reviewing innumerable records is simply
16 a reminder of how insidious corporate wrongdoing often is.

17 Historically, Congress has been particularly concerned with the
18 fact that “white collar offenders . . . frequently do not receive
19 sentences that reflect the seriousness of their offenses.” S. Rep.
20 No. 98-255, at 77 (1983), reprinted in 1984 U.S.C.C.A.N. 3182, 3260.
21 This is a common refrain over the course of decades. In the 1980s,
22 Congress sought to correct “historical patterns” for “white collar
23 offenses for which plainly inadequate sentences have been imposed in
24 the past.” Id. at 116. In 2002, when debating the Sarbanes-Oxley
25 Act, one senator discussed the need for “strong disciplinary action
26 against executives who break the law” and argued that “executives who
27 destroy the dreams of investors by irresponsible and unethical

1 behavior will be given the severe punishment they deserve." 148
2 Cong. Rec. S7350-04, S7355 (July 25, 2002) (statement of Sen. Mike
3 Enzi) (mentioning). Part of Sarbanes-Oxley even directed the
4 Sentencing Commission to enhance "fraud and obstruction of justice
5 sentences" to ensure that the sentencing guidelines for "obstruction
6 of justice are sufficient to deter and punish that activity."
7 Sarbanes-Oxley Act of 2002, § 805(a), Pub. L. No. 107-204, 116 Stat.
8 745 (2002). In light of this legislative history, it is clear that
9 Congress viewed non-custodial sentences as inadequate in cases like
10 this one involving obstruction.

11 Nor is this a case where defendant's dishonesty had no real-
12 world consequence. It mattered. The Los Angeles Times was reporting
13 on sales misconduct at Wells Fargo by the fall of 2013 (PSR ¶ 17),
14 but the scandal was not fully brought to light until several years
15 later in September 2016, when several settlements made public the
16 full scope of the sales practices misconduct within the Community
17 Bank. Aside from the settlements themselves, which included a \$3
18 billion payment as part of its deferred prosecution agreement with
19 the government (PSR ¶ 9 n.1.), Wells Fargo had to deal with the
20 public fallout among politicians and investors. Had defendant been
21 diligent in investigating the misconduct and forthright with
22 regulators, the result for Wells Fargo and its shareholders may have
23 been less severe.

B. Ensuring General Deterrence and Promoting Respect for the Law

Defendant's crime must also be met with a sentence sufficient to offer general deterrence and promote respect for the law. Defendant had strong economic incentives to protect her job by concealing the wrongdoing that occurred on her watch. As the PSR makes clear, defendant was highly compensated. Upon retirement, she left Wells Fargo with roughly \$125 million in stock, options, and restricted shares, though more than half of that money was subsequently clawed back. (PSR ¶¶ 19, 36.) This figure does not include the millions of dollars in cash compensation defendant was paid each year as head of the Community Bank. (PSR ¶ 104.) Faced with an OCC investigation into the sales misconduct scandal, defendant prioritized keeping her lucrative position over candor and transparency. It is understandable that executives want to do what it takes to keep their jobs and protect their reputations. But the penalty for this type of criminal conduct must be sufficient to overcome that impulse even when the stakes are high.

Many corporate executives, like defendant, who are compensated millions of dollars a year may be tempted to deceive regulators or skirt the truth with their boards of directors in an effort to keep their high-paying jobs -- whether to cover up deficiencies in their own performance or to hide malfeasance that occurred on their watch. If probation is viewed as the likely outcome, executives may decide that obstructing an investigation is worth the risk if it means potentially maintaining their lucrative roles. In fact, in drafting § 3553, Congress was in part addressing the concern that "[m]ajor

1 white collar criminals often are sentenced to . . . little or no
2 imprisonment," which the offenders disregard as "a cost of doing
3 business." S. Rep. No. 98-255 at 76, 1984 U.S.C.C.A.N. at 3259. A
4 prison sentence best serves the goal of general deterrence. See
5 "Penalties for White Collar Offenses: Hearing Before the Subcomm. on
6 Crime and Drugs of the S. Comm. on the Judiciary," 107th Cong. 104
7 (2002) (statement of James B. Comey, Jr., United States Attorney for
8 the Southern District of New York) ("We begin with the principle that
9 the certainty of real and significant punishment best serves the
10 purposes of deterring white collar criminals [I]f it is
11 unmistakable that the automatic consequence for one committing a
12 significant white collar offense is prison, then many will be
13 deterred.").

14 Nor is deterring corporate crime simply a matter of
15 counteracting the massive financial rewards corporate wrongdoers
16 seek. For a punishment to afford adequate deterrence, it must
17 account not only for those incentives, but also the likelihood a
18 defendant will be caught. See, e.g., Gary S. Becker, "Crime and
19 Punishment: An Economic Approach," 76 J. Pol. Econ. 169, 184 (1968).
20 Given the difficulty in uncovering corporate wrongdoing, particularly
21 given the layers of insulation enjoyed by the upper echelons of a
22 major publicly traded company, the need for a guideline sentence is
23 all the greater. A custodial sentence ensures the expected value of
24 the prospective punishment outweighs the lucrative payoffs future
25 wrongdoers would hope to obtain even when discounted by the odds of
26 being caught.

1 Public trust in the criminal justice system requires that
2 corporate executives face appropriate consequences for their actions.
3 The perception that white-collar criminals, particularly well-paid,
4 well-educated executives like defendant, often get no more than a
5 "slap on the wrist" is corrosive to the system's legitimacy. A
6 twelve-month term of imprisonment in this case would promote respect
7 for the law. Such a sentence would send the message that highly
8 compensated corporate executives -- particularly those, like
9 defendant, who are responsible for overseeing and operating a
10 federally insured bank -- are held accountable for their actions as
11 much as any other member of society. Again, in enacting § 3553(a),
12 Congress was worried that "a category of major white collar criminals
13 too frequently was sentenced to probation or too short a term of
14 imprisonment because judges using the old rehabilitation theory of
15 sentencing, did not believe such offenders needed to be rehabilitated
16 and, therefore, saw no need for incarceration." S. Rep. No. 98-255,
17 at 177, 1984 U.S.C.C.A.N. at 3360. As Third Circuit Judge Stephanos
18 Bibas has reflected, "Although economists may focus on ex ante
19 deterrence, judges may prefer to look ex post at the sympathetic,
20 white, educated offender who reminds judges of themselves and seems
21 to pose no danger." Stephanos Bibas, "White-Collar Plea Bargaining
22 and Sentencing After Booker," 47 Wm. & Mary L. Rev. 721, 724 (2005).
23 "Allowing these offenders to escape imprisonment, however, is
24 inequitable and undercuts the law's deterrent and moral message
25 condemning white-collar crime." Id.

26 Finally, while the disclosed recommendation letter correctly
27 evaluates defendant's risk of recidivism and need for rehabilitation,

1 it misapplies some of the remaining sentencing factors. In
2 particular, the letter references defendant's respect for the law and
3 the need to deter her future crimes. (CR 31, at 3, 5.) But neither
4 of these factors are solely or even principally concerned with the
5 individual defendant. Indeed, as Congress explained in connection
6 with § 3553(a), "to deter others from committing the offense . . . is
7 particularly important in the area of white collar crime." S. Rep.
8 No. 98-255 at 76, 1984 U.S.C.C.A.N. at 3259 (emphasis added). When
9 considering all the sentencing factors together, a non-custodial
10 sentence is simply inappropriate.

11 **C. Defendant's Risk of Recidivism and Mitigating Factors**

12 As stated earlier, there is no dispute that defendant poses a
13 minimal risk of recidivism, and a lengthy prison sentence is not
14 necessary to protect society. The Sentencing Commission has recently
15 proposed amending the Sentencing Guidelines to reduce the guideline
16 sentences for "zero-point offenders," i.e., defendants who did not
17 receive any criminal history points and meet various other criteria.
18 U.S. Sentencing Commission, Amendments to the Sentencing Guidelines
19 (Preliminary) (Apr. 5, 2023), § 4C1.1(a), available at
20 [https://www.ussc.gov/sites/default/files/pdf/amendment-](https://www.ussc.gov/sites/default/files/pdf/amendment-process/reader-friendly-amendments/20230405_prelim-RF.pdf)
21 [process/reader-friendly-amendments/20230405_prelim-RF.pdf](https://www.ussc.gov/sites/default/files/pdf/amendment-process/reader-friendly-amendments/20230405_prelim-RF.pdf). In
22 proposing this amendment, the Commission was explicit in its
23 reasoning: "offenders with zero criminal history points . . . have
24 considerably lower recidivism rates than other offenders." Id.
25 Although this guideline is not expected to be in effect by the time
26 of defendant's sentencing -- and, in any event, the parties agreed in
27 the binding Plea Agreement not to argue that any other departures be
28

1 imposed beyond what is already in the Plea Agreement -- the Court can
2 consider this factor under § 3553(a). If the proposed amendment were
3 applicable, defendant's guideline range would be six to twelve
4 months' imprisonment. The government's proposed sentence of twelve-
5 months' imprisonment accounts for the fact that defendant is a "zero-
6 point offender" and the reduced guideline range that would apply if
7 USSG § 4C1.1 were in effect.¹

8 Additionally, defendant has been the subject of civil sanctions
9 as well as the criminal ones she now faces. Wells Fargo clawed back
10 over \$65 million in stock options. Defendant has agreed to
11 settlements with the OCC and the SEC involving collective civil
12 penalties of more than \$21 million. And she is barred, per the terms
13 of her OCC settlement from working again in the banking sector. (PSR
14 ¶ 36.) These civil remedies themselves provide some deterrence
15 independent of the criminal penalty in this case and further support
16 the conclusion that a sentence higher than twelve months is not
17 required here.

18 Defendant's background offers other mitigating factors. She
19 suffers from some health issues, for example, and has a long history
20 of giving back to her community. Mitigating factors such as these
21 explain in part why the government agrees an above-guideline sentence
22 is excessive and further confirm that she poses no real risk of
23 recidivism.

24
25
26 ¹ Barring intervention from Congress, it is the government's
27 understanding that the Sentencing Commission intends to make this
28 two-level reduction retroactive. Accordingly, to the extent the
Court considers the proposed amendment in sentencing defendant, the
government requests that it do so explicitly on the record.

1 **V. CONCLUSION**

2 A twelve-month term of imprisonment strikes the correct balance.
3 Such a sentence reflects the seriousness of defendant's conduct,
4 promotes respect for the law, provides just punishment, and affords
5 general deterrence to other executives who might find themselves
6 tempted to skirt the truth. At the same time, it acknowledges that
7 defendant has accepted responsibility for her offense and does not
8 pose a continuing danger to the public. And it does so while
9 avoiding unwarranted sentencing disparities the guidelines were
10 designed to avoid. See Gall v. United States, 552 U.S. 38, 54
11 (2007).

12 For the foregoing reasons, the government respectfully requests
13 that this Court sentence defendant to twelve months' imprisonment;
14 one year of supervised release under the terms and conditions the
15 USPO set forth in conditions one and four through eight in its
16 recommendation letter (ECF 31 at 1-2); a fine of \$100,000; and a \$100
17 special assessment.

CERTIFICATE OF SERVICE

I, Carolyn Small, declare:

That I am a citizen of the United States and a resident of or employed in Los Angeles County, California; that my business address is the Office of United States Attorney, 312 North Spring Street, Los Angeles, California 90012; that I am over the age of 18; and that I am not a party to the above-titled action.

I further declare that on September 1, 2023, I served a copy of the Government's Sentencing Position for Defendant Carrie L. Tolstedt on the assigned United States Probation Officer, Leslie Crews, by substitute service, through electronic mail at Leslie_Crews@cacp.uscourts.gov.

This certificate of service is executed on September 1, 2023, in Los Angeles, California. I certify under penalty of perjury that the foregoing is true and correct.



CAROLYN S. SMALL