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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. ADAM MICHAEL WEBBER, Defendant.	Case No. 2:14CR00443-DB **SENTENCING MEMORANDUM OF THE UNITED STATES OF AMERICA** Judge Dee Benson

The United States of America, by and through its undersigned counsel, hereby files this Sentencing Memorandum for the Court's consideration in determining the appropriate sentence for Defendant Adam Webber. This memorandum is based on the attached points and authorities, exhibits attached hereto, evidence admitted at trial, and such other matters as the Court wishes to consider.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

"Integrity is the lifeblood of democracy. Deceit is a poison in its veins."

- Senator Edward M. Kennedy.

At a jury trial in September 2016, the United States proved that the Defendant's outward manifestation as an American entrepreneur selling gun parts from his basement home to provide

for his family was merely a guise; the truth proven at trial is that the Defendant is a sophisticated illegal firearms dealer, who cleverly implemented a scheme to conceal his illicit activities and the massive income he generated from injecting illegal firearm sales into his gun parts online business. The United States proved that the Defendant chose to combine his forbidden firearms profit and business profits and purchase a family home for $670,000 - in cash. The United States proved that the Defendant chose to further shelter his home purchase with a sham limited liability company and the charade of a promissory note and mortgage worth less in reality than the paper upon which they were printed. The United States proved that the Defendant signed off on a flimsy employment agreement with Midnight Labs to cover his illegal firearms activity. The United States proved that the Defendant amassed a substantial number of firearms for sale in direct contravention to his promise to the United States to never engage in the sale of firearms. The United States proved that the Defendant willfully and woefully underreported the substantial money he took in as gross receipts from both his illegal and legal sales. In sum, the United States proved beyond a reasonable doubt that the Defendant engaged in long-term substantial tax fraud and illegal firearms sales.

Driven from firearms sales as a direct result of his unlicensed firearm feats, the Defendant turned to selling firearms and firearm parts. He did so without a federal firearms license. He did so on the internet. His potential customer base was the world. Not satisfied with just the profit from his illegal gun sales that were hidden behind the federal firearms license of Midnight Labs, the Defendant continued his deceit of his government on his tax returns. Armed with the knowledge that his bank account was healthy enough to purchase a luxury home with cash – a luxury unknown to the average American taxpayer, and knowing his business was operating in the millions whenever he sought credit from other businesses, the Defendant chose

to further exploit the American system of voluntary tax reporting and woefully underreport his gross receipts. He abandoned integrity and embraced deceit with his illegal gun sales and fraudulent tax returns.

In the face of this deceit, the Defendant's position since the first day of trial has been that he is "almost incapable of hiding anything." (Sept. 13, 2016 Trial Tr. p. 19) The evidence sharply contrasted that assertion. To benefit himself and to benefit his beloved business of firearms and firearm parts, the Defendant did employ deceit and concealment. He benefited substantially from his illicit endeavors, escaping taxation, fraudulently obtaining refunds and tax credits, and violating licensing requirements. Those licensing requirements serve the dual purpose of protecting Americans' Second Amendment Rights while also insuring the safety of this country and its citizens. This case is more than a regulatory violation. Furthermore, the financial benefit he derived from his deceit is the reason he was able to pay the taxes, penalty and interest prior to sentencing. His inflated net worth from his criminal conduct left him able to pay his original debt without hardship. His payment of what he owed is not a hallmark of his integrity. Fulfilling a duty after criminal conviction is beneath what the Defendant's fellow citizens expect of one another.

Adam Michael Webber stands convicted of these crimes after a trial and a plea agreement with its corresponding admission of guilt.

It is time that his personal enrichment and greed end, and that he receive a worthy punishment. The illegal sale of firearms in a commercial parking lot and the stockpiling of assets to reach a net worth of millions while claiming tax credits for the indigent must cease with this sentence. Deceit married to financial greed and firearms fraud ought never to be rewarded.

II. FACTUAL BACKGROUND

A sentence commensurate with the Defendant's crimes is one that encompasses the full set of facts and deceit. We must begin at the beginning when the Defendant first traded integrity for deceit. After termination of other employment, the Defendant turned to the sale of firearms and firearm parts. His endeavors took form in HK Parts and hkparts.net. In June and October of 2005 the Bureau of Alcohol, Tobacco Firearms and Explosives [hereinafter "ATF"] entered the Defendant's life when agents first seized a firearm in Texas and then more firearms from Mark Layton Productions and Vector Arms. (Trial Exh. 1.17). As proven at trial, Vector Arms was a firearms vendor for the Defendant's business. (Trial Exh. 4.2). The Defendant, along with his big brother and key defense witness Benjamin Webber, petitioned the government for the return of several of these weapons, including Ben's machineguns. (Trial Exh. 1.17). The Court is well aware of the resultant civil settlement agreement.

On June 20, 2007, with the advice of counsel, the Defendant and his brother Ben agreed to not only dismiss their claims for the firearms at issue, but also promised and agreed:

> never to apply for a Federal firearms license or be a responsible person for any Federal firearms licensee or business, and further agree that they will not engage in the business of manufacturing, importing, or dealing in firearms.

(Trial Exh. 1.17). Furthermore, in what now must be seen as a foreboding prediction, the brothers:

> acknowledge[d] that being "engaged in the business" as an importer, manufacturer, or dealer in firearms, as that term is defined by Title 18, United States Code, Section 921(a)(21), without a Federal license may subject them to criminal penalties under Title 18, United States Code, Sections 922(1)(1) and 924(a)(1)(D).

(Trial Exh. 1.17). From the moment the Defendant signed the settlement agreement, he was prohibited from becoming a Federal Firearms Licensee [hereinafter "FFL"] and from engaging in

the business of manufacturing, importing, or dealing in firearms.

Shortly thereafter, in 2007 and 2008, the Defendant chose to engage in the very conduct barred under the Settlement Agreement. He did not have an FFL. His conduct was prohibited under the law. 18 U.S.C. § 922(a)(1)(A). In the words of his own brother, the Defendant was the "FFL guy." (Trial Tr. p. 986 :8-9). When he filed a false tax return for the 2007 year in April of 2008, the Defendant added tax fraud to his illicit conduct as well. From 2007, the Defendant ran a largely online business hocking firearm parts. The website he operated was hkparts.net. The Defendant brought in trusted partners to his plan, Joshua Shirley, Bryan Croft, and another brother Tim Webber. The website specialized in the Defendant's favorite gun brand, German manufacturer Heckler and Koch, also commonly known as HK. These men were not equal partners. Only the Defendant basked in the enormous wealth of his endeavors. At the end of 2007, the Defendant's bank balance was $172,458.93. By 2010, the Defendant's bank balance was $1,264,508.99. That 2010 end of year bank balance was after paying $670,000 cash for the first of two Draper homes. The Defendant utilized the prohibited sale of firearms to continue to drive web sales of gun parts at tremendous untaxed profit.

Fueled with the illegal sale of firearms, the Defendant's business grew exponentially. His gross receipts in 2007 were just over a million dollars. In 2008, sales more than doubled, and he achieved gross receipts of over $2.5 million dollars. In 2009, the Defendant generated over a million dollars in sales in the beginning of the year. He made the sophisticated decision to incorporate HK Parts as an S corporation in April 2009. For the remainder of 2009, the newly formed S corporation generated over $2 million dollars in gross receipts. In 2010, the business hit another high note generating almost $4 million dollars in gross receipts or $3,627,471.

The Defendant was well aware of the volume of his business. His business physically

consumed his residence and mentally consumed his waking hours. He knew the bills for vendors, he knew the burgeoning amounts in his checking accounts, and he had monthly statements from his credit card processing company as reminders of his burgeoning wealth. Elavon sent the Defendant sales statements every month. Credit card sales alone were staggering. The sales numbers were close to half a million dollars in 2007 and climbed to over three million dollars in 2010. The Internal Revenue Service did not need to generate any documents to reach a gross receipts figure for each of the years, 2007, 2008, 2009 and 2010. The numbers were in the Defendant's own documents. The numbers were at his fingertips.

The Defendant feigned ignorance of his business' gross receipts. He claimed "April amnesia," every year from 2008 through 2011 when tax time came. His willful ignorance caused him to list farfetched low figures on his tax returns. When the Defendant's newfound wealth and increasing gross receipts would reap him a benefit, he easily grasped the concept of gross receipts and knew the figure. In 2007, he claimed only $23,185 in gross receipts on his tax return, but filed a credit application listing $120,000 in annual sales. In 2008, he claimed only $22,039 in gross receipts, but had two credit applications claiming one million dollars and $2.4 million dollars in sales. In 2009, he claimed an actual loss on his return despite millions in sales. In 2010, the Defendant reported only $87,749 in gross receipts to the IRS, but reported annual sales of $2.5 and $3 million dollars to non-government sources. He knew the amounts in his bank accounts in order to pay cash for two homes, one in 2010 and one in 2012. The search warrant uncovered a hefty silver bar as well as silver coins and approximately $80,000 in cash in the Defendant's home in 2012. The Defendant's wealth was not a secret to himself.

Before he claimed to have spoken with accountants about his tax returns, the Defendant first went to a financial advisor. Personal wealth over personal responsibility. The Defendant

also set up a limited liability company and hid assets in its name and in his wife's name, to conceal his increasing wealth. It is impossible to extricate the wealth the Defendant generated from the illegal sale of firearms from the false underreporting of gross receipts. The Defendant's criminal activity greatly enriched his wallet on all fronts.

Before trial, the Defendant's financial advisor placed the Defendant's net worth at $11,866,772.00. To the Probation Officer tasked with preparing the Presentence Investigation Report in this case, the same financial advisor now claims the Defendant's net worth is only $7,540,643.00. Either figure is staggering.

III. LEGAL ARGUMENTS

A. The Sentencing Guideline Range Should Begin With An Offense Level Twenty-One (21).

The United States concurs with the base offense levels contained in the Presentence Investigation Report. Pursuant to the plea agreement between the parties, the United States' position is that the appropriate offense level is 21. The tax loss amount is $800,818.00, not including penalty and interest. This is a conservative tax figure calculated from the Defendant's own records, newly filed returns, and the evidence admitted at trial. The United States understands that the Defendant agrees with this amount, which he has pre-paid along with interest and penalty in late October 2017.

Count 1: 18 U.S.C. § 922(a)(1)(A)		
USSG § 2K2.1(a)(7)	Base Offense Level	12
USSG § 2K2.1(b)(1)(E)	Over 200 firearms	+10
		22
Counts 2-5,7: 26 U.S.C. § 7206(1)		
USSG § 2T1.1(a)(1)/ 2T4.1	Base Offense Level	20
Greater of the Adjusted Offense Levels		22
Increase in Offense Level		+2
Combined Adjusted Offense Level		24

Reduction for Acceptance of Responsibility for Firearms Count USSG § 3E1.1		-3
Total Offense Level		21

The adjustment pursuant to USSG § 2K2.1(b)(1)(E) for over 200 firearms is proper in that the evidence at trial overwhelmingly proved that the Defendant sold well over 200 firearms. Indeed, at the time the search warrant was executed on May 23, 2012, 369 firearms were seized from a warehouse at 13200 South, 79 firearms were seized from Bryan Croft's residence and 11 firearms were seized from the Defendant's residence. The uncontroverted evidence at trial was that the Defendant acquired over two thousand firearms for sale in his business over the 2008 through May 2012 period. The firearms need only be involved in the offense. Proof of sale is not required. USSG § 2K2.1(b)(1).

Pursuant to the plea agreement, the Defendant is only entitled to a three level adjustment downward for acceptance of responsibility for the firearms count. It is only in "rare circumstances" that a defendant, who has exercised his right to a trial, may be given credit for acceptance of responsibility. *United States v. Bailey*, 327 F. 3d 1131, 1148 (10th Cir. 2003) citing *United States v. Quarrell*, 310 F.3d 664, 682 (10th Cir. 2002). As the Tenth Circuit noted in *Bailey*:

> We agree with the district court's assessment that "the overall tenor of this case at trial was that, although defendant committed the acts, he actively denied any intent to defraud." [cite omitted] Bailey repeatedly asserted he may have made some mistakes, failed to keep accurate records, perhaps was sloppy, and continued to claim that at least some of his partners actually encouraged him to invest in futures. Bailey never admitted that he had any intent to defraud, nor did he acknowledge that his actions were criminal. We affirm the district court's finding that "there is absolutely no indication here that defendant accepted responsibility for any criminal conduct prior to trial, or after, for that matter."

Id. Webber, like Bailey, denied any willful intent and argued that:

> **Mr. Webber is absolutely, positively not guilty because he did not act with any intent to disobey the law.**

(Trial Tr. p. 1155)(emphasis added). Not only was there no evidence to support the position that the Defendant did not understand, but this is not an acceptance of criminal responsibility for willfully filing fraudulent returns. He also argued that:

> **Those are messy, incomplete returns, and they show definitively that Mr. Webber did not understand how to report business income line items like his gross receipts. He just didn't know. He didn't know what he was doing, ladies and gentlemen.**

(Trial Tr. p. 1164)(emphasis added). Even after a jury convicted the Defendant of every count, he maintained his innocence and moved for a new trial, which this Court granted as to the firearms count alone. (Doc. 236). Defendant subsequently plead guilty to the firearms count.

> **Mr. Webber's sole defense of the tax counts was that he did not act willfully.**

Id. at p. 5 (emphasis added).

> **Mr. Webber *was* authorized by Midnight Labs and its owner Bryan Croft to purchase firearms for Midnight Labs, to sell those firearms on Mr. Webber's website, and to maintain the profits from the sale as compensation.**

Id. at p. 11 (bold emphasis added).

> **Mr. Diaz's testimony was critical to the defense's explanation that Mr. Webber purchased and sold PTR-91 *parts* kits and that Michael's Machines, a licensed firearms dealer, sold the controlled receivers.**

Id. at p. 21 (bold emphasis added). It is inapposite for the defense to hold out these arguments to the Court while arguing that the Defendant should receive credit for acceptance of responsibility as to the tax counts. The Defendant's course of conduct is the opposite of acceptance of responsibility.

B. The Total Tax Loss Amount For The Defendant's Crimes Is $800,818.00, not including interest and penalty.

To determine the appropriate offense level for the five tax counts, the tax loss, exclusive of interest and penalty, is the starting point. The gross receipts figures that the Internal Revenue Service utilized to calculate the amounts came from the Defendant's own bank statements and credit card statements. Although the Defendant did not claim related deductions and credits, the IRS has nevertheless given him credit for numerous potential business expenses. The $800,818.00 figure is conservative.

> In determining the tax loss, the court should account for the standard deduction and personal and dependent exemptions to which the defendant was entitled. In addition, the court should account for any unclaimed credit, deduction, or exemption that is needed to ensure a reasonable estimate of the tax loss, but only to the extent that (A) the credit, deduction, or exemption was related to the tax offense and could have been claimed at the time the tax offense was committed; (B) the credit, deduction, or exemption is reasonably and practicably ascertainable; and (C) the defendant presents information to support the credit, deduction, or exemption sufficiently in advance of sentencing to provide an adequate opportunity to evaluate whether it has sufficient indicia of reliability to support its probable accuracy.

USSG § 2T1.1, cmt. (n. 3). The Defendant has recently filed tax returns for 2007, 2008, 2009 and 2010. Unfortunately, the returns were not filed as amended returns. The IRS encountered difficulties processing the returns and mistakenly refunded the Defendant's corresponding tax payments. The Defendant returned the refund checks. The IRS now has the tax returns and the tax, penalty and interest. The IRS is attempting to process the payments based upon the new returns. The Court should adopt the Government's tax loss figure of $800,818. The chart below sets forth the applicable amounts of tax, penalty and interest:

Webber Tax Due, Payments, Penalties, & Interest								
Year	Tax Return	Tax Due	Webber Payment	Total Tax Due	Penalties	Interest (10/31/17)	Total Due	2009 Returns Combined Total
2007	1040	$70,586.00	($65,291.00)	$5,295.00	$52,939.50	$51,485.17	**$109,719.67**	
2008	1040	$197,297.00	($195,673.00)	$1,624.00	$147,972.75	$118,156.55	**$267,753.30**	
2009	1040	$36,091.00	($107,421.00)	($71,330.00)	$27,068.25	$18,290.25	**($25,971.50)**	
2009	1120	$117,088.00	$0.00	$117,088.00	$93,670.40	$61,786.09	**$272,544.49**	**$246,572.99**
2010	1040	$379,756.00	($375,830.00)	$3,926.00	$284,817.00	$160,883.09	**$449,626.09**	
Totals		**$800,818.00**	**($744,215.00)**	**$56,603.00**	**$606,467.90**	**$410,601.15**	**$1,073,672.05**	

Based upon the evidence admitted at trial, the chart, and the Defendant's payments, the Court should adopt the tax loss figure of $800,818.00.

C. Pursuant To The 3553 Factors, Adam Webber Should Be Sentenced To A Guidelines Sentence.

The United States acknowledges that the Sentencing Guidelines are advisory rather than statutorily mandated. *United States v. Booker*, 543 U.S. 220 (2005). However, when imposing a sentence, the Court is not only required to consider the guidelines, but it must fashion a sentence that "is sufficient but not greater than necessary" to comply with the factors detailed in 18 U.S.C. § 3553(a). This requires the Court to consider the following:

> (1) the nature and circumstances of the offense and the history and characteristics of the defendant;
> (2) the need for the sentence imposed
> > (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
> > (B) to afford adequate deterrence to criminal conduct;
> > (C) to protect the public from further crimes of the defendant; and
> > (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.

18 U.S.C. § 3553(a)(1)-(2). Here, after proper consideration of all of the § 3553(a) factors, the only proper sentence for Webber is a guidelines sentence. A sentence of 37 months in custody, which is an offense level 21 with a Criminal History Category of I, is appropriate. In addition, the United States requests that the Court order a criminal fine of $250,000.00. USSG § 5E1.2.

1. Nature and Circumstances of the Offenses

Although the Court has heard the evidence at trial, the seriousness of the Defendant's illicit conduct demands highlighting. The Defendant did not enter into the courtroom a stranger either to firearms regulations or to the United States. His history with both stretches back to at least 2005 when firearms were seized from a pawnshop in Texas and then from Vector Arms. (Tr. Exh. 1.17) Vector Arms remained a factor in the Defendant's business. Vector Arms firearms appeared in the Midnight Labs A&D book. (Trial Tr. p. 889; Tr. Exh. 4.2) In fact, history repeated itself here as two of the seized firearms from the May 2012 search warrant were from Vector Arms. (Tr. Exh. 22.2) Eleven years later, once again, the Defendant's firearms from Vector Arms are the subject of forfeiture. As a direct result of the first forfeiture action of the United States, the Defendant forfeited the firearms in dispute and agreed to: 1) "never to apply for a Federal firearms license or be a responsible person for any Federal firearms licensee or business" and 2) "not engage in the business of manufacturing, importing, or dealing in firearms." (Tr. Exh. 1.17 p. 4). Although this case is not about the civil settlement agreement, the agreement is important to show the Defendant's knowledge and willfulness. When the Defendant chose to violate the terms of the civil settlement agreement and chose to violate 18 U.S.C. § 922(a)(1)(A) by dealing in firearms without a license, he knew better and had been adequately warned. The fact that the Defendant ignored his prior "brush with the law," and his agreement should be forefront in considering a just punishment now.

The Defendant began his crime of dealing in firearms without a license not as a novice, but having been through civil forfeiture over firearms and having agreed – whether he had a license or not – to never engage in the business of dealing in firearms. The defense's bold position in opening statement was that "he did not even need a license." (Trial Tr. p. 4). That

assertion, like the assertion that the Defendant was incapable of hiding anything, was simply untrue. The law requires the possession of a federal firearms license in order to legally engage in the business of dealing firearms. The Defendant's self-professed "love of guns" was not thwarted by a civil settlement agreement. No, the Defendant's own position was that HK Parts "started not with a business intent […] [i]t started with a love of guns and an interest in guns." (Trial Tr. p. 7). The Defendant's love of guns and his disregard for the law led him into the business of selling firearms illegally. His love of guns greatly surpassed his respect for the law. His actions were more than a mere mistake. Any assertion to the contrary is not based on facts.

Thus, after signing the civil settlement agreement on June 20, 2007, the Defendant immediately launched into the purchase of PTR receivers in 2007 and the firearms and firearm parts business of HK Parts. (Tr. Exh. 1.17 p. 7). HK Parts may have taken advantage of the technological expertise of Joshua Shirley, the labor of Tim Webber and the federal firearms license of Bryan Croft's Midnight Labs, but HK Parts was essentially a one-man shop. The one man, the FFL man, was the Defendant.

> MR. TIM WEBBER: I don't know, you can talk to our FFL guy. I don't know, he'll probably tell you the same thing, but I'm the shipping guy back here, so --
>
> SA HOPKINS: You're the shipping guy?
>
> MR. TIM WEBBER: I'm the shipping guy, yeah.
>
> SA HOPKINS: Okay. Who's Adam? I saw Adam's name on the web page.
>
> MR. TIM WEBBER: He's the owner and he's also the guy who does all the FFL related things, so I can have you talk with him.
> […]
>
> SA HOPKINS: Can you do an in-state sale for me though?
>
> MR. ADAM WEBBER: We can, yes. I mean we can definitely do it. It would just be - - it would be a standard 4473. It can be done, it would just have to be in like some parking lot or something off the freeway or something, but yeah, we just

don't deal with storefront stuff at all.

SA HOPKINS: Okay. Well, I'd be willing - - I mean like I said, I've got to be down in Lehi in the morning, and I'd be more willing to meet you someplace or wherever, so - -

MR. ADAM WEBBER: You like the nickel piece [inaudible]?

SA HOPKINS: Yeah.
MR. ADAM WEBBER: Yeah, I mean it's cash only, cash and carry obviously and we'd need your - - you have a CCW permit?

(Trial Exh. 2.9 pp. 4-6). The Defendant determined the guns needed for inventory, the prices of the guns, the shipping of the guns, ordered Croft to list the guns in the Acquisitions and Dispositions book [hereinafter "A&D book"], collected the proceeds from the sale of the guns, and built up his home and business from the guns. On his website, the Defendant showed firearms as "Our Products":

(Tr. Exh. 1.21). The Defendant stated on his website: "We are a licensed FFL/SOT (07/02)." (Tr. Exh. 1.6) The statement was false. HK Parts has never held an FFL. Rather, the Defendant reimbursed Midnight Labs and Bryan Croft for the cost of Midnight Labs' FFL. Customers, such as government witnesses Terry Rainey, Jerry Goodson, and Richard Chelvan, dealt directly with Webber; Midnight Labs was an unknown entity to them. Mr. Chelvan's wife wrote a check for a

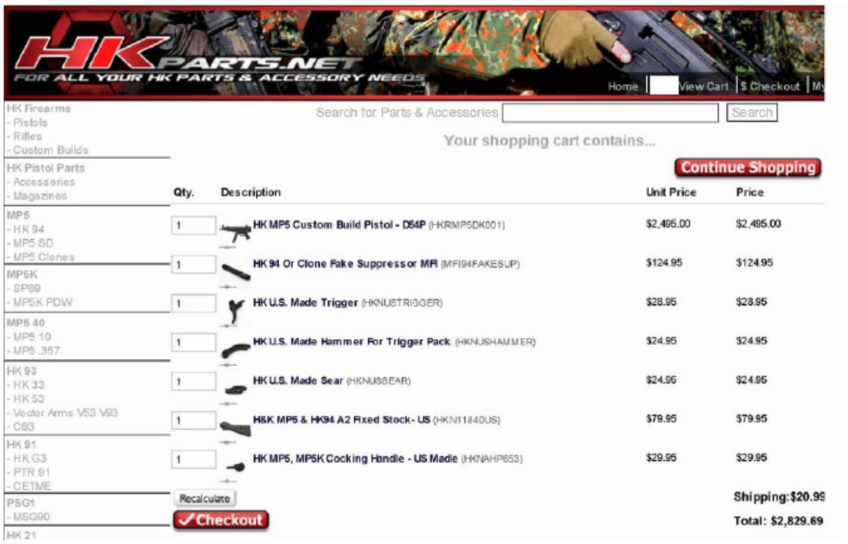
Heckler and Koch P7 premium firearm directly to Adam Webber. (Trial Tr. p. 536; Tr. Exh. 12.31 p. 518). Mr. Chelvan dealt directly with the Defendant via e-mail. (Trial Tr. p. 538; Tr. Exh. 30.2). Mr. Chelvan had no knowledge of Midnight Labs:

> Q. BY MR. YEATES: Mr. Chelvan, are you familiar with an LLC by the name of Midnight Labs?
>
> A. Midnight what?
>
> Q. Are you familiar with a business by the name of Midnight Labs?
>
> A. No I can't recall.

(Trial Tr. p. 540:3-8). Indeed, the Defendant was the FFL guy without an FFL.

The firearms crime is of utmost concern. Although this country values the right of its citizens to bear arms, of equal import is the security and safety of its citizens and of the country itself. The Defendant's conduct directly and egregiously risked the security and safety of both the country and its citizens. The nature and circumstances of the crime demonstrate that the Defendant did not innocently venture into this criminal endeavor. He did more than just sell firearms without a license. He sold firearms in a dangerous manner. The defense focuses on the meticulous nature of the Midnight Labs A&D book. However, Midnight Labs did not sell the firearms. Moreover, there was no HK Parts A&D book. There was no HK Parts FFL, even though the Defendant's website claimed it had an FFL. The Defendant sold firearms both before and after Midnight Labs acquired an FFL. The Defendant was the FFL guy. What of the pre-Midnight Labs sales? Whose A&D book are those sales listed in?

The Defendant did not have a storefront from which he sold guns. He sold them over the internet to potential foreign and domestic customers.



(Tr. Exh. 1.18) With a few clicks, a customer anywhere the internet reached could order a pistol and even a suppressor from the Defendant. The Defendant would meet a stranger, even an undercover ATF agent, in a commercial parking lot to sell a gun. The Defendant did so with his young children in the car. It is unlikely that any of the shopping center's customers in that same parking lot were aware of the gun sale going down in their presence. The parking lot was not the ATF authorized location of Midnight Labs. The Defendant offered as a meeting place "some parking lot or something off the freeway." (Trial Exh. 2.9 p. 6). The Defendant made such sales "cash and carry." (Trial Exh. 2.9 p. 6). Cash gun sales to strangers in parking lots with children in minivans is not "above board." This conduct is riddled with deceit and risk.

Undoubtedly, the Defendant will direct the Court's attention to his family and young children for leniency at sentencing. The United States in turn asks that the Court consider the non-financial impact of the Defendant's firearms and firearm parts business on his children. From being carted along for gun sales in public parking lots to the machine guns and pistols and rifles and ammunition and gun parts riddled throughout the Defendant's home. (Tr. Exh.s 2.6-010, -022, -0124). Even the defense admits that the children's home was overrun with the business. (Trial Tr. p. 1184). The children's home was not overrun with a magazine sales

business, but with a firearm magazines and firearms business. The children's home, overridden with firearms and firearm parts, was nestled in a nice suburban neighborhood in Draper. The Defendant's disregard of the safety of his family and neighbors does not square with an image of a family man and upstanding member of the community. The United States asks the Court to consider carefully the reality of the Defendant's conduct when listening to arguments for leniency based on any self-ascribed characteristics.

Inside the Defendant's home, located in a residential area, he not only exposed his family to his gun business, but also concealed within a luxury home a lively firearms business. The nature and circumstances of the Defendant's business were to hide. When the Defendant wanted to circumvent the civil settlement agreement, he drafted an employment contract with Midnight Labs to further cover his tracks. (Tr. Exh. 1.10) The Defendant was a master at deceit.

The defense may argue that the Defendant's criminal conduct never caused any real harm. While the defense may argue that Midnight Labs and the A&D book were meticulously kept, Midnight Labs surrendered its FFL. Midnight Labs' purported stellar record was a mere charade. (See Trial Tr. p. 20).

The Defendant's tax crimes are typical of white collar crimes. Such crimes appear on their face to be victimless. This is not a fair depiction. The United States – and its citizens – are the victims of tax fraud. The Defendant has proffered a number of "defenses" to his false tax returns. His counsel attempted to argue that the Defendant believed that gross receipts equated taxable income. (Trial Tr. pp. 796-797). Then, the Defendant attempted to argue "only money that he expended on himself and his family would constitute his taxable income." (Trial Tr. pp. 798-799). Neither of those arguments were made to the jury. No evidence supported them. In opening statements, the Defendant argued that he "had no idea what he was doing when he

submitted those tax returns." (Trial Tr. p. 22). Defense claimed that "[t]he evidence will show that he did indeed have no idea what he was doing on those forms." (Trial Tr. p. 22). However, again, there was never any evidence to support this argument. Rather, the evidence showed that the Defendant knew exactly what he was doing. Looking at the 2005 tax return, the Defendant was capable of following the procedure to complete the tax form. (Trial Exh. 18.3).

Not satisfied with his "April amnesia" defense, the Defendant even tried to shift blame onto the IRS, claiming, "it does not take a genius at the I.R.S. to realize that you have got an enormous amount of money in the bank. If you have all this money in the bank, how could all these other numbers on your tax form be right? That could not be right. Everyone would be able to figure that out." (Trial Tr. p. 25). It should have been even more obvious to the Defendant than to the IRS. The IRS does not have daily access to the bank records of every taxpayer. The United States demonstrated through Turbo Tax witness Joy Shaw the ease that TurboTax software afforded its customers in filling out gross receipts on tax returns. The false gross receipts were the easiest number for him to report. The only consistent explanation for the Defendant's conduct regarding his returns is greed, not the IRS.

During closing argument, the Defendant argued that he "didn't know what he was doing." (Trial Tr. p. 1164). Then, astoundingly, the Defendant argued in closing "Ben Webber told you that Mr. Webber amended his returns and that he fixed them, but because of this investigation and case, the IRS would not accept them." (Trial Tr. p. 1178). As stated in the United States' response to the Defendant's Motion for a New Trial, this argument directly contradicts the Defendant's prior statements to the Court and the United States. Three days before trial, the Defendant argued that:

> Contrary to the government's assertion, the draft amended returns were *not* prepared for filing and are covered by the attorney-client privilege. The

> accounting firm Cook Martin was engaged by Mr. Webber's then-attorney Paul Savage, Esq., to prepare draft amended returns, *not* for tax filing purposes, but in anticipation of litigation.

(Doc. 201 p. 1). The ever changing and unsupported defenses to the tax convictions demonstrate not only an utter failure to accept responsibility, but also an overly fluid explanation for his criminal conduct. Indeed, even after the Defendant filed tax returns to satisfy his plea agreement, those returns were not amended returns. It is unclear at this time if amended returns ever existed. Certainly, the United States has never seen amended returns marked as such.

The true nature of the Defendant's conduct is that he knew what his gross receipts were, he knew what his sales were, he knew what his bank account balances were, and he chose when and to whom to disclose the true figures. He received monthly statements from Elavon that succinctly and clearly gave him gross receipts figures from credit card sales. (Tr. Exh.s 9.12, 9.13, 9.14). The Defendant filed credit applications reporting realistic gross sales and receipts. (Tr. Exh.s 9.1, 9.6, 9.7, 9.10, 9.11, 9.15). The Defendant transferred $650,000 to his wife to purchase a luxury home in cash. (Tr. Exh. 16.9) He had to know that he had that amount of cash sitting in his account before he began his home search let alone before closing on the property. Furthermore, if his defense that he only reported what he expended held any weight, the Defendant should have reported $650,000 in gross receipts in 2010. He did not. (Tr. Exh. 18.22) The Defendant used his spouse and a limited liability company for the transaction. He was not unsophisticated in his financial dealings, nor was he unaware of his balance sheet. His concern for his wealth over his taxes is best summed up by his decision to visit a financial advisor for tax planning prior to visiting an accountant for tax returns. According to Mickelson's notes, the Defendant had no debt as of September 8, 2011, a home worth $750,000, $1,000,000 in the bank, a collection of firearms worth $300,000, precious metals worth $200,000, Pawley's Canyon land

worth $50,000, and a home rental worth $125,000. (Tr. Exh. 9.16) Unlike ordinary American taxpayers, the Defendant did not even have to sell his first home to buy his second – and third – homes. The Defendant's biggest concern that he brought to the financial advisor – tax. (Tr. Exh. 9.17) Mickelson's notes indicate his other concern – wealth preservation. (Tr. Exh. 9.17).

The Defendant filled the courtroom with apparent friends and family during closing argument. He will likely fill it again for sentencing. While those friends and family members may be supportive, they are also part of the collective whole that the Defendant directly put at risk.

2. Need For Sentence to Reflect Seriousness Of The Offense, Promote Respect For The Law, And Provide just Punishment

Rather than file true returns, the Defendant chose to first visit a financial advisor and squirrel his assets away in a captive insurance company, real estate, and trusts and hide assets under a limited liability company with a fake mortgage. The Defendant has no respect for the law. His violation of his civil settlement agreement demonstrates that he knows the law and yet calculates ways around the law. A just punishment here is 37 months of incarceration. The Defendant utilized financial structures and knew how to seek professional help for his business. Rather than run an honest firearm parts business that paid its taxes, he chose to run a firearms parts business infused with illegal firearms sales and capital diverted from the United States Treasury. The Defendant reinvested the diverted funds into the business and his personal comfort with neither the knowledge nor consent of the rest of American taxpayers. Rather than pay taxes, he chose to buy homes, luxurious homes, with cash. The purchase of one's dream home for cash may be an ultimate American dream, but here it was a dream fueled by deceit and greed, not American values. The Defendant even adulterated tax credits used to bolster the lives of

America's impoverished. He claimed the earned income credit and make work pay credit while making millions. Those credits are for the poor, not millionaires. His family and supporters boast of his charitable nature. Unfortunately, his charity rises from his acts of deceit and greed. Incarceration will be just.

3. Afford Adequate Deterrence

This case is the Defendant's "second bite of the apple." His punishment must be of sufficient strength to dissuade him from returning to the apple tree a third time. In 2007, the United States reached an agreement with the Defendant in which he promised to never engage in the business of selling firearms. Rather than abide by his word, the Defendant concocted a scheme to attempt to avoid detection. He hid beneath the FFL of Midnight Labs. He openly sold firearm parts to law enforcement agencies, but never firearms. Not only did the Defendant violate his agreement with his country, but also he did so in a reckless manner, displaying a total disregard for the law and the safety of the country. The Defendant sold firearms to complete strangers in parking lots far removed from any Midnight Labs or HK Parts location. The Defendant sold firearm parts over the internet to foreigners with no regard for the national security of the United States of America. Words, particularly the words of the Defendant, are inadequate to deter. Indeed, words are inadequate to protect as well.

The Defendant may argue that his freedom is necessary to carry on the business. Such argument should not hold any sway with the Court. This is not a business that needs to continue. The Defendant has made sufficient profit to live comfortably for the remainder of his years. Whatever void falls onto the firearm parts and firearms business world can be filled with a new tax paying and law abiding business.

The Defendant is a prominent figure within the firearms world. His convictions have

generated interest in the media and online. If his punishment permits him to retain his financial gains, freedom, and business, the prosecution of the Defendant will never deter like-minded individuals. Those who have complied with the laws regulating firearm sales and taxation will continue to bear the financial and security burdens of this nation. The Defendant's conduct must be deterred. He has demonstrated that only confinement will deter him. Words and promises, the very structure of probation, are inadequate. The Defendant's criminal activity occurred over a lengthy period of years. A lengthy prison sentence is the appropriate punishment. The Defendant's behavior endangered others even if no actual harm occurred.

IV. CONCLUSION

For the foregoing reasons, the tax loss amount applicable in this case is $800,818.00. Based on the loss amount and the serious firearms violation, the Court should adopt the sentencing recommendation of the United States and sentence Webber to a term of thirty-seven (37) months in prison followed by a term of supervised release. The United States asks that the Court impose a $250,000 fine.

Respectfully submitted December 4, 2017.

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