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10 *National Distribution, Inc.*

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

NATIONAL DISTRIBUTION, INC., et
al.

Defendant.

Case No. 5:18-00114-VAP

Case No. 5:21-00170-VAP

**DEFENDANTS CARL BRADLEY
JOHANSSON'S AND NATIONAL
DISTRIBUTION, INC.'S. POSITION
WITH RESPECT TO SENTENCING;
EXHIBITS IN SUPPORT; EXHIBIT
A UNDER SEAL**

DATE: November 28, 2022

TIME: 10:00 a.m.

Courtroom of the
Honorable Virginia A. Phillips

Defendants Carl Bradley Johansson and National Distribution, Inc., by and
through their attorneys of record Edward M. Robinson and Brian Robinson, hereby file
their position with respect to sentencing.

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INTRODUCTION

Mr. Johansson takes issue with the government's description of him and his conduct as set forth in the introduction to its Objections to the Presentence Report and Sentencing Memorandum. (Doc. 345) As set forth in Mr. Johansson's motion to withdraw his guilty plea to counts 1 and 2 in case no. 18-cr-00114-VAP, (hereinafter referred to as "case 114"), Mr. Johansson asserts his innocence as to the conduct involving the "R" stamp, failure to purge, and obstructive behavior. He also asserts his innocence as to his knowledge and responsibility for the explosion that occurred at the business in September 2012. He objects to the government's claim that he refused to buy basic safety equipment, and most importantly, he objects to the claim that he ordered his two welders on May 6, 2014, to conduct welding on a tanker without having purged the tank of the flammable materials inside. (See Motion to Withdraw Plea.)

It is these allegations as well as the claim that Mr. Johansson obstructed the investigation concerning the cause of these explosions that primarily drive the government's request for a significant upward variance from the advisory sentencing guideline range to a term of 10 years in prison. A ten-year sentence, given the nature and circumstances of the offense, and more critically Mr. Johansson's personal history and characteristics, is significantly greater than necessary to protect the public from future crimes of Mr. Johansson, to specifically deter him from future criminal activity, to reflect the seriousness of his conduct, and to provide for just punishment.

For these reasons, as set forth herein, Mr. Johansson asks that this Court sentence him to a term of 57 months based on a total offense level of 24, criminal history category II. (PSR ¶¶ 90-123.)

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ADVISORY GUIDELINE CALCULATION

Mr. Johansson agrees with the advisory guideline calculations set forth in the Presentence Report at paragraphs 90 to 123.

Mr. Johansson opposes the government's request for a 9-level upward adjustment under U.S.S.G. § 2Q1.2(b)(2). Mr. Johansson's opposition to the government's request is tied directly to his assertion of innocence with respect to counts 1 and 2 in case no. 18-cr-00114-VAP. For the reasons set forth in his motion to withdraw his plea as to those counts, Mr. Johansson takes the position that he did not order any welding to be done on a tanker that had not been purged and that the "R" stamp conduct was not done at his direction and, despite that, may not have been the type of work that required an "R" stamp.

Mr. Johansson also objects to the government's request for a 4-level upward role adjustment for his involvement in the "PPP fraud." Specifically, Mr. Johansson objects to the government's use of organizational defendants Western Distribution and Agri-Comm as participants for the purpose of calculating an upward role adjustment. Clearly the government believes that these two entities were alter egos of Mr. Johansson. The same applies to "C.S.J.", Mr. Johansson's son, and Mr. Johansson's wife. As the government bears the burden of establishing that these co-participants were organized or led by Mr. Johansson, which they cannot be by their status as mere straw entities, the government cannot claim that they should be counted as a "participant" for the purpose of the application of U.S.S.G. § 3B1.1(a).

18 U.S.C. § 3553 FACTORS

As the Court is well aware, 18 U.S.C. §3553(a) sets forth the congressional mandate that a sentencing court "shall impose a sentence sufficient, but not greater than necessary" to promote the factors of sentencing set forth in the statute. It is against the backdrop of the nature and circumstances of the offense and the personal history and characteristics that the court is to determine what type of sentence of incarceration is necessary to protect the public, promote respect for the law, provide just punishment,

1 reflect the seriousness of the offense, and provide both general and individual
2 deterrence. The most important factor of sentencing that a court must consider is how
3 much prison time is necessary to protect the public. Concomitant with that factor is the
4 question of how much time in custody is necessary to deter Mr. Johansson from
5 reoffending, i.e., creating further danger.

6 In cases where physical and mental illness are part of a defendant's personal
7 history and characteristics and have an effect on the nature and circumstances of the
8 offense, the court is required to consider the most effective means of treating those
9 defects and whether it is more effective to treat the defendant in an out of custody
10 setting as opposed to a prison. (18 U.S.C. § 3553(a)(2)(D).)

11 The government in their position paints Mr. Johansson as a dangerous recidivist
12 who did not care about the safety of his employees. As set forth in this position paper,
13 and more explicitly the motion to withdraw the pleas to counts 1 and 2, Mr. Johansson
14 vigorously objects to the government's position. Not only did Mr. Johansson and the
15 businesses have safety protocols in place and safety equipment made available to
16 employees, their safety record over 30-years, despite the anecdotal position of the
17 government, was consistent with and surpassed some of the more well-known carriers
18 of hazardous materials. (See Exhibit B.)

19 The government takes the position that because Mr. Johansson did not pay his
20 personal income tax and that he used his income to rent a house for his family and pay
21 tuition for his children, he is overtly indifferent to his social responsibility and the
22 plight of the less fortunate. Mr. Johansson is not seeking to withdraw his plea of guilty
23 to the tax violation or to the bank fraud. While those two classes of crimes can be
24 considered as categorical evidence of an intent to steal and an indifference towards
25 others, Mr. Johansson respectfully requests that this court consider his personal history
26 and characteristics as it relates to his mental and physical health.

27 Mr. Johansson's psychological condition coupled with his age and his significant
28 decline in physical health make it highly unlikely, if not impossible, that he will ever

engage in this type of business again. Mr. Johansson has absolutely no desire to do so as well. With that in mind, Mr. Johansson asks this Court to consider his mental illness, his physical illness, and the nature of his incarceration during this pandemic. He has suffered greatly in his incarceration, and he has been punished significantly already. He is certainly not asking for an immediate release; he recognizes that additional incarceration is warranted. Counsel for Mr. Johansson asks that this Court invoke the parsimony clause of 3553 and determine that a sentence of 57-months is sufficient, but not greater than necessary, to protect the public, to deter Mr. Johansson, to provide just punishment, and promote respect for the law. What Mr. Johansson really needs is a long term of supervision so that he can be monitored by the Probation Department and pursuant to this Court's order, be the beneficiary of intensive supervision which includes treatment for his psychological condition in the most effective way.

I. Personal History and Characteristics

Dr. Paul Lane met with Mr. Johansson in MDCLA on three separate occasions to conduct a psychological evaluation of Mr. Johansson. On October 31, Dr. Lane produced his report. (Attached hereto as Exhibit A).¹ Dr. Lane's report provides vital insight into Mr. Johansson's personal history and characteristics.

After conducting the clinical assessment and interviews of Mr. Johansson, Dr. Lane concluded that Mr. Johansson "likely has a history of Bipolar II Disorder, hypomanic type, as well as a Phobic Disorder (claustrophobia) with post-traumatic sequelae and intermittent alcohol abuse." (*Id.* at p. 16.) Dr. Lane also concluded that Mr. Johansson is currently "suffering from a Bipolar II Disorder, depressed type, along with claustrophobia and associated high levels of anxiety with intermittent panic attacks." (*Id.* at p. 17.) It is Dr. Lanes opinion that Mr. Johansson's "psychological condition played a role in his poor judgment and criminal behavior in the past." (*Id.*)

¹ Exhibit A is filed under seal.

1 Mr. Johansson's undiagnosed psychological conditions are "quite treatable" if
2 Mr. Johansson is able to receive the appropriate treatment, i.e., "psychotropic
3 medication and evidence-based cognitive behavioral psychological treatment." (*Id.*) If
4 Mr. Johansson is able to receive such treatment, "the likelihood of recidivism will be
5 significantly reduced[.]" (*Id.*) Most notably, after conducting multiple tests to
6 determine whether Mr. Johansson was malingering, Dr. Lane concluded that Mr.
7 Johansson was not. (*Id.*)

8 **II. Just Punishment and Deterrence**

9 The requirement that a sentence promote respect for the law and provide just
10 punishment is tied directly to who Mr. Johansson is per the mandate of 18 U.S.C. §
11 3553(a)(1). As the United States Supreme Court said in *Gall v. United States*, 552 U.S.
12 38, 54 (2007), "a sentence of imprisonment may work to promote not respect but
13 derision of the law if the law is viewed as merely a means to dispense harsh punishment
14 without taking into account the real conduct and circumstances involved in sentencing."

15 Here, as set forth in more detail in Mr. Johansson and National's Motion to
16 Withdraw Guilty Pleas, the government's request for a 120-month sentence is premised
17 on an exaggerated and, at times, false characterization of Mr. Johansson and the offense
18 conduct. As such, to sentence Mr. Johansson to a term longer than 57-months would be
19 unjustifiably and unreasonably harsh.

20 18 U.S.C. § 3553(a)(2)(B) requires the Court to consider the need for the
21 sentence imposed to afford adequate deterrence to criminal conduct. While this Court
22 must consider both general and individual deterrence, two very important examinations
23 of the concepts of deterrence must be considered. First, the anecdotal notion that longer
24 sentences have a greater general deterrent effect is belied by empirical and academic
25 findings. In a study involving federal white-collar defendants, there was no difference
26 in deterrence found between sentences of probation and imprisonment. See David
27 Weisburd et. al., Specific Deterrence in a Sample of Offenders Convicted of White-
28 Collar Crimes, 33 *Criminology* 587 (1995). Second, and most importantly, the United

1 States Sentencing Commission has found that “[t]here is no correlation between
2 recidivism and Guidelines’ offense level. Whether an offender has a low or high
3 Guideline offense level, recidivism rates are similar. While surprising at first glance,
4 this finding should be expected. The Guidelines’ offense level is not intended or
5 designed to predict recidivism.” See U.S. SENTENCING COMM’N, MEASURING
6 RECIDIVISM: THE CRIMINAL HISTORY COMPUTATION OF THE FEDERAL
7 SENTENCING GUIDELINES, at 15 (2004). To sentence Mr. Johansson to a term of
8 imprisonment greater than 57-months to deter the community is unnecessary and
9 wrong.

10 18 U.S.C. § 3553(a)(2)(C) requires this Court to consider the need for the
11 sentence imposed to protect the public from further crimes of Mr. Johansson. The need
12 to protect the public from further crimes of Mr. Johansson is easily measured. The
13 Sentencing Commission has engaged in empirical studies concerning what factors
14 affect recidivism generally. These factors include, among other things, age,
15 employment, education, family support, abstinence from drug and alcohol use, and the
16 nonviolent nature of the offense. See U.S. SENTENCING COMM’N, MEASURING
17 RECIDIVISM: THE CRIMINAL HISTORY COMPUTATION OF THE FEDERAL
18 SENTENCING GUIDELINES (May 2004). The Commission in its study found that
19 “recidivism rates decline relatively consistently as age increases [and defendants] over
20 the age of 40 ... exhibit markedly lower rates of recidivism in comparison to younger
21 defendants.”

22 Mr. Johansson is a 64-year-old, highly educated man who has maintained steady
23 employment since his childhood, has strong support from his friends and family, has no
24 history of drug abuse, and this is a non-violent offense. (See Exhibit A.) Moreover, due
25 to Mr. Johansson’s age, declining mental and physical health, and tarnished reputation,
26 he will never work in this industry again. As set forth in Dr. Lane’s report, if Mr.
27 Johansson “receives appropriate treatment in the future, the likelihood of recidivism
28 will be significantly reduced[.]” (*Id.*, p. 17.)

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2 **III. Most Effective Form of Treatment**

3 18 U.S.C. § 3553(a)(2)(D) requires this Court to consider the need for the
4 sentence imposed to provide Mr. Johansson with the needed medical care in the most
5 effective manner. This section provides the rehabilitative function of the sentencing
6 statute. *Tapia v. United States*, 564 U.S. 319, 325 (2011). Mr. Johansson has significant
7 physical and mental health problems, as set forth in the Presentence Report and in Dr.
8 Lane's report. (PSR ¶¶ 149-156; see also Exhibit A.) Mr. Johansson clearly needs
9 psychological treatment. His claustrophobia, anxiety, and depression can be tied
10 directly to the trauma he suffered from his abusive uncle. In the case of *United States v.*
11 *Collington*, 461 F.3d 805 (6th Cir. 2006), the Circuit upheld a significant variance
12 based upon the defendant's need for psychological treatment due to the fact that the
13 defendant's father was murdered when the defendant was nine and his mother died two
14 years later. In addition to his mental health problems, Mr. Johansson suffers from
15 severe physical ailments including asthma, chronic obstructive pulmonary disease,
16 diplopia, migraine headaches, vertigo, high blood pressure and high cholesterol, and
17 atrial fibrillation. (Exhibit A at p. 7.) Incarcerating Mr. Johansson beyond 57-months
18 will deprive him of the medical and psychological treatment that he needs which can be
19 provided in the most effective manner through intense supervision with stringent
20 mental health treatment conditions.

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1 **CONCLUSION**

2 If this Court is not inclined to grant Mr. Johansson and National's pending
3 Motion to Withdraw Guilty Pleas, Mr. Johansson requests that he be sentenced to a
4 term of 57-months in prison with intensive supervision to follow including treatment
5 for his mental illness. Counsel for National requests that this Court impose the sentence
6 recommended by the Probation Office in Doc. #.

7 If this Court is inclined to grant Mr. Johansson and National's Motion to
8 Withdraw Guilty Pleas, Mr. Johansson requests that sentencing on the remaining counts
9 be continued to a date set by the Court.

10 Respectfully submitted,
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14 DATED: November 4, 2022

By */s/ Edward M. Robinson*

15 Edward M. Robinson

Brian A. Robinson

16 Attorneys for Defendant
17 *Carl Bradley Johansson*
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