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

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UNITED STATES OF AMERICA,	:	Case No.: 1:07-CR-19 DS
Plaintiff,	:	GOVERNMENT'S POSITION
	:	WITH REGARD TO
vs.	:	DEFENDANTS' CONDITIONS OF
	:	PROBATION
SCOTT BANKS, KAREN BANKS, DAN	:	
WAKEFIELD, COLEEN BARTLETT, and	:	Judge David Sam
KARALEE THORNOCK,	:	
Defendants.	:	

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The United States, by and through the undersigned Assistant United States Attorney, submits the Government's Position with regard to Defendants' Conditions of Probation.

On February 28, 2007, the defendants were charged in an indictment for their conduct related to a fraudulent adoption scheme. At its core, the indictment alleged that

Defendants improperly facilitated the adoption of children from Samoa to the United States. Indeed, as articulated in the indictment, children were placed into an international adoption program by their birth parents, who did not fully appreciate the nature of the “adoption.” Birth parents expected continued contact with their children and believed that their children would one day return to Samoa. On the other side of the equation, adoptive families in the United States were left in the dark with regard to the birth families beliefs and desires; in fact, the adoptive families were instructed by the defendants that the adoptions were to be closed, meaning that communication with birth families was forbidden.

During their change-of-plea hearings on January 6, 2009, the defendants took responsibility for a portion of their respective roles in improperly facilitating the adoption scheme, specifically, they admitted that they knew or acted with deliberate ignorance to the fact that several Samoan children were not properly orphaned prior to being adopted by families in the United States. They ultimately pleaded guilty to a representative sample of Misdemeanor Informations. As a result of this plea negotiation, they pleaded guilty to lesser charges and the United States recommended that the defendants be sentenced to a five-year term of probation. In addition, the parties agreed that one of the conditions of probation be monetary contribution into a court-ordered trust established for the benefit of the adopted children impacted by this case. The primary purpose of this

trust has always been to facilitate the communication of adoptive families and birth families. The primary justification for this plea negotiation, from the government's perspective, was driven by the importance of assisting the birth families and adoptive families communication as that was one of the most significant injuries that resulted from the defendants' illegal conduct.

On February 25, 2009, and March 10, 2009, the Court sentenced the defendants. The Court thoughtfully addressed the complex issues raised in this case and sentenced the defendants consistent with the plea agreement; each defendant was sentenced to a term of five (5) years probation, with two specific terms, (1) that they are banned for life from participating in the adoption business, and (2) that they make monthly contributions into a trust established for the benefit of the adopted children affected by this case. The remaining issue was to determine the amount of contribution required by each defendant, which this memorandum is meant to address.

### **Federal Sentencing Law with Regard to Probation**

As a form of criminal punishment, a term and conditions of probation should meet the general purposes of criminal punishment, which are deterrence, incapacitation, just punishment, and rehabilitation. *See* U.S.S.G. Ch.1 Pt.A 1.2. Accordingly, pursuant to 18 U.S.C. § 3562, when a district court imposes a term of probation it must consider the § 3553(a) factors, to the extent applicable, in determining the appropriate length and

conditions of such probation. The Court is familiar with the § 3553(a) factors and the United States submits that the most pertinent factors for the Court's consideration are:

- (1) the nature and circumstances of the offense and the history and characteristics of the defendant[s];
- (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;
  - ...
- (3) the kinds of sentences available;
- (4) the kinds of sentence and the sentencing range established for—
  - (A) the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines—
  - ...
- (5) any pertinent policy statement
- ...
- (6) the need to avoid unwanted sentencing disparities among defendants with similar records who have been found guilty of similar conduct; and
- (7) the need to provide restitution to any victims of the offense.

18 U.S.C. § 3553.

In addition, the following policy statements from the Sentencing Guidelines are instructive:

**§ 5G1.5 Employment Record (Policy Statement)**

Employment record may be relevant in determining the conditions of probation or supervised release.

**§ 5H1.7 Role in the Offense (Policy Statement)**

A defendant's role in the offense is relevant in determining the applicable guideline range . . . .

### **Conditions of Probation**

As noted above, the parties agreed that the appropriate sentence in this case should be five (5) years probation with specific terms of probation being that (1) the defendants never participate in the adoption business again, and (2) the defendants contribute to a trust established for the benefit of the children impacted by the defendants actions. In order for this probationary sentence to be just, these conditions must deter the defendants from future criminal activity, and actually punish the defendants.<sup>1</sup> *See* U.S.S.G. Ch.1 Pt.A 1.2.

A federal criminal conviction carries with it a stigma of immoral and improper conduct. However, in light of the fact that the defendants did not receive a term of imprisonment as a consequence of their actions, it may appear to the public and the families impacted by this case that the defendants "got off light." However, that clearly was not the Court's intention when it sentenced the defendants.

On February 25, 2009, and March 10, 2009, the Court sentenced the defendants and ordered each of them to serve a five (5) year term of probation. During the

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<sup>1</sup>An additional consideration/goal of sentencing in the federal system is to promote rehabilitation. Although an issue to some degree in each case, that issue is materially resolved with the lifetime ban on participation in the adoption business the Court imposed and the defendants agreed to.

sentencing hearing, the Court also ordered the establishment of a trust, which was to be set up for the benefit of the children adopted out of Samoa by the defendants. As part of the defendants' punishment in this case, the Court ordered that they were required to make contributions to the trust.

The goal of the Court's sentence was to effect a form of restorative justice. To be effective, however, it is critical that the trust be adequately funded. In addition, to be consistent with the traditional goals of sentencing, this sentence should adequately punish the defendants for their unlawful actions. As noted by the policy statements in the Sentencing Guidelines, individual circumstances of the respective defendants and their role in the offense ought to be considered in determining the individual contributions to the trust. Therefore, the United States' position as to each defendant will be taken in turn.

Amount of Contribution Defendants are to Make to the Trust

As a preliminary matter, it should be noted that the defendants played varying roles in this offense. Ordinarily, when a defendant takes a managerial role in an offense, that defendant's punishment/sentence is more harsh. *See* U.S.S.G. § 3B1.1 (noting that a defendant's criminal history score increases as the significance of a defendant's role in the overall criminal operation increases). The organization responsible for facilitating the adoptions in the case was Focus on Children<sup>2</sup> ("FOC"). FOC charged adoptive parents

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<sup>2</sup>As a consequence of pleading guilty to Count 1 of the Indictment, a violation of 18

thousands of dollars to facilitate the adoption of a Samoan child. Scores of children were adopted from Samoa as part of FOC's operation, which impacted approximately 50 US families and over 25 Samoan families.

FOC was a Utah-based business entity that was effectively run and managed by Scott and Karen Banks out of their Wellsville, Utah office. Dan Wakefield lived in Samoa during the relevant time of the case and during that time he was responsible for the Samoan side of the business, including the oversight of dozens of adoptions. Coleen Bartlett and Karalee Thornock were employed by FOC and worked in the Utah office and assisted in several adoptions from Samoa. Given their responsibilities with FOC, the Banks are the most culpable parties given the fact that they are ultimately responsible for all of the actions of FOC's employees. Mr. Wakefield is, however, more culpable than the remaining defendants as he oversaw the Samoan adoption program in Samoa and had direct contact with birth families. Ms. Bartlett and Ms. Thornock had various responsibilities with regard to Samoan adoptions facilitated by FOC, but Ms. Bartlett had more responsibilities and assisted with more adoptions and therefore is more culpable from the government's perspective than Ms. Thornock.

In addition to the different levels of responsibility, each defendant is in a different

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U.S.C. § 371 (Conspiracy to Commit Alien Smuggling and Visa Fraud), FOC has been ordered by the Court to dissolve.

financial position with regard to their ability to make monetary contributions to the trust.

*Scott & Karen Banks*

With the scores of adoptions that were facilitated by FOC that cost adoptive families thousands of dollars, Scott and Karen Banks (“the Banks”) presumably made money from that business operation. That said, the Presentence Report (“PSR”) shows their current financial status is bleak as evidenced by their self-reported monthly cash flow. However, the sum of the Banks financial status is not as bad as one thinks once the details are delved into:

Monthly Cash Flow

Income	\$5,833
Expenses	<u>\$9,197</u>
<b>TOTAL</b>	<b>-\$3,364</b>

Net Worth

Cash	\$3,000
Total Unencumbered Assets	\$45,800
Equity in Home	\$272,953
Unsecured Debt	<u>\$94,498</u>
<b>TOTAL</b>	<b>\$227,255</b>

Much can be said of the Banks’ financial status. Importantly, it should be noted that their

monthly hardship with regard to cash flow is caused by their own choices. Ninety-five thousand dollars of consumer debt is evidence of poor financial decisions and not a reason why the Banks should not have to contribute a large sum of money to the trust.

In addition, the home equity noted above is for a \$449,000 home that is currently for sale, in which they do not even live. (A photograph of this home is attached as Exhibit "1.") The Banks' currently live rent free in a home provided by Scott Banks' current employer. (A photograph of this home is attached as Exhibit "2.") Both homes are upper middle class and demonstrate that the Banks have room to make financial sacrifices as a consequence of their criminal actions. Indeed, had this case proceeded to trial on the original indictment and assuming a trial victory for the government, the United States would have sought forfeiture of the home. Instead, the United States is requesting that a substantial portion of the Banks' assets be directed to the trust as a way to both punish the defendants and assist the adopted children hurt by their actions.

*Dan Wakefield*

Given Dan Wakefield's age, 72, and employment history, it is not surprising that he reports that his only source of income is Social Security benefits of \$888 per month. In addition, Mr. Wakefield indicated that he has personal debts that he owes to a variety of people and institutions and it does not appear that he has any significant assets. However, Mr. Wakefield benefitted financially for his efforts when he worked as the

Samoan adoption facilitator for FOC.

*Coleen Bartlett*

Coleen Bartlett's financial situation is similar to the Banks in that, despite her negative monthly cash flow, she has a decent amount of assets.

Monthly Cash Flow

Income	\$2,649 <sup>3</sup>
Expenses	<u>\$3,728</u>
<b>TOTAL</b>	<b>-\$1,079</b>

Net Worth

Cash	\$5,100
Total Unencumbered Assets	\$8,661
Equity	\$9,297
Unsecured Debts	<u>\$18,908</u>
<b>TOTAL</b>	<b>\$4,150</b>

*Karalee Thornock*

Ms. Thornock's financial status is also admittedly bleak as evidenced by her reported monthly cash flow and net worth:

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<sup>3</sup>The bulk of Ms. Bartlett's reported income is earned by her husband.

Monthly Cash Flow

Income	\$3,876
Expenses	<u>\$3,758</u>
<b>TOTAL</b>	<b>\$118</b>

Net Worth

Cash	\$1,700
Unencumbered Assets	\$7,000
Equity	\$4,005
Unsecured Debts	<u>\$44,769</u>
<b>TOTAL</b>	<b>-\$32,064</b>

**Recommendation**

Based on the above factors, namely the role of the respective defendants in the criminal organization, and their ability to pay, the government recommends to the Court that the following contributions to the trust are reasonable:

<u>Defendant</u>	<u>Total Contribution</u>	<u>Monthly Payment</u>
The Banks	\$60,000-\$100,000	\$1,000-\$1,667
Mr. Wakefield	\$24,000	\$400
Ms. Bartlett	\$15,000	\$250
Ms. Thornock	\$9,000	\$150

The government submits that the above amounts are “sufficient but not greater than necessary” to meet the goals of federal sentencing. *See* 18 U.S.C. § 3553(a). It is true that the defendants would have to make adjustments to their current way of life in order to make the above monthly payments, but a federal sentence is supposed to incapacitate the defendants. *See* U.S.S.G. Ch.1 Pt.A 1.2. Most of the defendants can get a job, which happens to be a standard condition of probation. Neither Ms. Banks or Dan Wakefield are currently employed. With them maintaining full-time employment, it should not be too difficult for either of them to fulfill the financial obligation imposed by the above recommendation. The defendants can also make certain changes in their lifestyle to make room for the additional financial obligation. For example, they all can also restructure their current debts, do away with some of the extra amenities, the Banks can sell their home and move into a smaller home, etc. Certainly the defendants can and should be required to sacrifice as part of their punishment in this case, which has the added benefit of providing a way for adopted children to begin or maintain communication with their birth families, many of whom currently have no way to do so.

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**Conclusion**

For the above reasons, the government recommends that the Court order the defendants to make the above contributions to the trust as a specific condition of probation.

Respectfully submitted this \_\_21st\_\_ day of May, 2009.

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/s/ Brett Parkinson

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