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IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs .

THOMAS E. MOWER,
LESLIE D. MOWER, and
JAMES THOMPSON,

Defendants.

MEMORANDUM OF DEFENDANT
LESLIE D. MOWER IN AID OF
SENTENCING

Case No. 2:02CR 787 DAK

Judge Dale A. Kimball

Defendant Leslie D. Mower, by and through her counsel, submits the following Memorandum in Aid of Sentencing. Ms. Mower's sentencing is currently scheduled for Wednesday, September 13, 2006, at 3:00 p.m. The information submitted herein, along with the Presentence Report prepared by the United States Probation Office, is provided to assist the Court in reaching the most important decision in Ms. Mower's life, and the lives of her family members.

INTRODUCTION

Ms. Mower appears before the Court for sentencing based on her conviction, after a jury trial, of one count of conspiracy to defraud the United States, i.e. the Internal Revenue Service, and six counts of attempted tax evasion involving joint individual tax returns for the years 1992-1997. The Court is very familiar with this case, and, therefore, this memorandum will not address in detail the underlying facts. Rather, recognizing that the Court has broad discretion in fashioning an appropriate sentence, this memorandum focuses on Dee Mower's personal history and characteristics, which demonstrate her respect for the law and her decades of humanitarian service and charitable giving.¹

MS. MOWER'S PERSONAL HISTORY AND CHARACTERISTICS

I. Dee Mower's Dedicated Commitment to Helping Others, Individually and Through Her Stewardship of Neways, Is a Substantial Mitigating Factor.

For Dee Mower to appear before the Court for sentencing is the most humbling, humiliating and devastating experience in her life. This case represents an extreme aberration in a life otherwise exemplified by honesty, trustworthiness, trust in others, compassion, humanitarian service, and charitable giving. The fact that she is a convicted felon is itself a severe punishment to Dee Mower. In addition, she has lost the right to vote and to thereby have a voice in government. She has also lost the ability to hunt—an activity she has enjoyed and

¹The memorandum will also necessarily address some of the technical aspects of the sentencing guidelines.

engaged in avidly over her lifetime. Many who know Dee find it incomprehensible that she was convicted for failing to pay her taxes. Dee Mower, however, accepts and respects the jury's verdict and understands the Court's important role in fashioning a fair and appropriate sentence in her case.²

Dee Mower is 60 years old, and has worked hard her entire life. As a child, she worked in the family produce business. She left high school after the 11th grade to raise her first child. She raised five sons, helped raise two stepchildren, and is now a grandmother of 18 and a great-grandmother of 3.

In addition to her traditional family, Dee Mower has another family-- that of Neways and its employees and distributors. Dee and her then husband, Tom Mower, built the Neways business over many years. From simple beginnings at their kitchen table, through their hard work, it has now grown into one of the most successful multi-level marketing businesses in the world.

Dee Mower's care and compassion for others contributed greatly to the success of Neways and has continued to be a hallmark of her life. Her good works have extended beyond her immediate family to her Neways family, to those in her local community, and as far as to people she has never met, and will never meet, who live across the globe. For decades, she has

² Consistent with 18 U.S.C. §3553, the Court should impose the least restrictive sentence necessary when considering the factors set forth therein, including the history and characteristics of the particular defendant.

directly and individually donated hundreds of hours of her time and hundreds of thousands of dollars to humanitarian projects. Through her stewardship of Neways, she has been responsible for the donation of millions of dollars, as well as additional millions of dollars worth of Neways products, to charitable and needy causes.³ Her humanitarian service includes long-standing commitments, as set forth below, to education, to youth athletics, to the welfare of children, and to providing crisis relief to those in need around the world.

A. The Leslie DeeAnn Asian Center at Utah Valley State College.

Dee Mower created the Leslie DeeAnn Asian Center at Utah Valley State College (“UVSC”) with a personal gift of several hundred thousand dollars. The Center focuses on programs and events of significance to Asia and the United States. In his letter, R.E. “Rusty” Butler, the Associate Vice President of International Affairs for UVSC, acknowledges Dee’s decades of service to the students of UVSC:

Utah Valley State College, its students and faculty, as well as the youth of Utah are greatly indebted to Mrs. Mower for her longstanding, consistent generosity, vision and compassion. For over a decade she has contributed significantly and selflessly to international understanding and good will, student and faculty development, and given Utah youth a new perspective of the world, all the while expecting nothing in return.

See letter of R.E. “Rusty” Butler dated August 24, 2006.

Over the years, the Leslie DeeAnn Asian Center has hosted dozens of foreign ambassadors from Washington, D.C., as well as the U.N. Ambassadors of Afghanistan, India and

³ Neways is one hundred percent owned by Dee Mower and Tom Mower.

Palestine. Ministers of Foreign Affairs and other Ministers of foreign countries have come to Utah and UVSC through the Center. The President of Iceland (also president of NATO) and the President and First Lady of the Kyrgyz Republic were similarly hosted. The visit of the Kyrgyz head-of-state was of extreme interest to U.S. State and Defense Departments because Kyrgystan hosts America's forward-supply airbase for the war in Afghanistan. Perhaps the most high profile visitor to UVSC, under the auspices of the Leslie DeeAnn Asian Center, was his High Holiness the Dali Lama. Nearly 8,000 people heard his lecture in the McKay Events Center.

In the Spring of 2007, the Center will be hosting a conference on the challenges and problems that face women and children in the world's underdeveloped mountain regions. Over 20 countries will be represented by their ambassadors. The other key sponsor for this upcoming event is the United Nations.

The Leslie DeeAnn Asian Center provided the exclusive funding for four important works dealing with and addressing the problems of the former Soviet Union. These works were published by Global Scholarly Publications in New York City.

In addition, the Center provides support for UVSC's successful China Study Abroad program which has benefitted scores of students. Ms. Mower has also generously funded individual scholarships to several worthy, needy foreign students from Asia and former Soviet Republics.

In a separate gift, Ms. Mower gave \$100,000 to UVSC to hire an Asian ambassador to the U.S. as UVSC's "Distinguished International Professor." The current professor in this position teaches diplomacy and political science.

B. The Moscow-Utah Youth Games.

In addition to her personal long-term humanitarian work, Dee Mower has also committed Newways' resources to further good causes. One such example is Newways' sponsorship of the Moscow-Utah Youth games, hosted by the State of Utah. Because of a funding crisis, the games could not have been held without Dee Mower's very significant participation. As former Governor Olene Walker writes:

In October 2002, Governor Leavitt and Moscow Mayor Luzhkov met in Moscow and signed a memorandum of cooperation, which included holding the Moscow-Utah Youth games. In July 2003, Moscow hosted approximately 300 Utah youth athletes in the Olympic-style summer games. It was well known that they spent over five million dollar in hosting these games. Because of tight budget years, no public money had been allocated to fund the Winter Games in Utah which were scheduled for February 2004. I found out when I became governor the first part of November 2003, that no money had been raised in support of the games....Dee Mower and Newways stepped up and were the major contributors that funded those games. They also produced both the opening and closing ceremonies. The games were extremely successful and the state developed many friendly relationships with Russia as a result. I can assure you that the games would not have happened if it had not been for Dee Mower and the State of Utah would have been in a very embarrassing position.

See letter of Former Governor Olene Walker dated August 28, 2006.

C. Other Youth Athletics.

Dee Mower has been the personal financial force behind the very successful UVSC Wolverines ice hockey team. She has borne the costs of the uniforms, ice time, travel, and related expenses of this team in the approximate amount of \$100,000. Her individual contributions have allowed outstanding young men to compete against the nation's top ice hockey teams. The career of one young hockey player, an amputee, has been "adopted" by Dee Mower, enabling him to compete at the national level for amputees. He is an inspiration to his other teammates when the going gets tough.

Due to Dee Mower's commitment, Neways has become a major sponsor of Brigham Young University's Olympic sports (e.g. baseball, volleyball, etc.) programs. These less visible sports frequently struggle in the shadow of major sports programs, such as football and basketball, at large universities like BYU. Neways is also a major sponsor of the Utah Sports Commission, Junior Jazz, the Intermountain Volleyball Association, the Utah Summer Games, and the Orem Owlz.

D. The Welfare of Children,

Dee Mower's concern for the welfare of children directly led to the partnership of 49 governors, select corporations, the United States Department of Justice and the Federal Bureau of Investigation in battling internet pornography. The "I Keep Safe" program educates parents and children regarding the dangers of dealing on the internet. In particular, the cat character of Faux Paw helps children understand internet safety.

Through KBYU, Neways supports PBS's Ready to Learn, a literacy workshop program used to help thousands of Utah children. Neways also contributes generously to "Friday's Kids Respite" (where parents of mentally challenged children can drop off their children and have a night out), Utah Foster Care, Kids on the Move, and the Boys and Girls Club of Provo.

In addition, Neways sponsors a leadership conference for high school students, held annually at UVSC, which introduces approximately 5,000 top high school students to the best leaders and business minds in the nation.

E. The Arts.

Ms. Mower, individually, has been the primary financial sponsor of important cultural exchanges with former Soviet countries, such as the Stanislavky Ballet of Moscow (second only to the Bolshoi Ballet) performing in Utah, the "Yarmarka" folk song and dance group coming to Utah, the "Pioneer Legacy" pageant being performed in Moscow next month, and Nikolai Tolstoy (the grandson of Leo Tolstoy), lecturing at UVSC.

Also, Neways sponsors the Summer Concert Series, a family-oriented series of concerts in Utah County. Neways further contributes substantially to the Springville Art Museum, the Scera complex in Orem, the Provo Theatre Co., the Utah High School Art Competition, the Heritage School's theatre program, as well as to other community arts programs.

F. Crisis Relief.

Neways provides substantial crisis aid and relief on an on-going basis. It donated significant monies to the Salvation Army of Australia to aid with relief for Cyclone Larry.

Neways also has a continuing relationship with Globus, a nonprofit organization which solicits donations of supplies (and the cash to ship those supplies) to impoverished parts of the world. To ease the devastation caused by Hurricane Katrina, Neways made a substantial donation of both money and Neways products. Neways is a continuing partner of the Mountain Valley Chapter of the American Red Cross, giving thousands of dollars every year to aid in disaster relief.

G. Community Recognition and Appreciation.

Given the magnitude of its community involvement, it is not surprising that Neways has received numerous awards in recognition of its charitable, educational and humanitarian activities. These include the prestigious 5 star “ESGR” (Employee Support of the Guard Reserve) award, which is given to only 10% of all corporations nationwide. Neways also received the Outstanding Business Education Partnership Award from the Provo/Orem Chamber of Commerce, honoring Neways for its commitment to education. The Springville Chamber of Commerce similarly honored Neways for its consistent contributions to the community.

II. Dee Mower Is a Positive Influence on Her Family and Community.

In her daily life, Dee has long been notable for the way she personally reaches out to others to comfort and assist them. Because of this, countless numbers of people have contacted Dee Mower’s attorneys, wanting to write letters to express their support for her and their strong belief in her. We have chosen only a few excerpts from people who know her well. Her husband, Ken Dolezsar, has known Dee for almost 20 years. He writes that:

In all of those years I've never known of any individual to be more caring, compassionate, kind, generous, and giving in the whole entire world... Leslie DeeAnn is always there for anyone in need. She will find the time to sit patiently and listen to anyone who needs to speak with her about their problems and she will support them with advice, compassion and financial support because 'the individual' is what is important, not 'the money' and certainly not 'material things.' This is not only her nature, but also her gift.

See letter from Kenneth G. Dolezsar dated August 20, 2006.

One of Dee Mower's most trusted assistants for over 16 years, LaDonna Davis, recalls a typical example of Dee's compassion toward others:

While in Australia a few years ago, we were riding in a taxi to our airport, and she started to talk to the driver as she is very sociable with everyone. He told her about his family and the trials they were going through. As she got out of the cab, she placed several hundred dollar bills in his hand. The cab driver was very overtaken by her giving heart. I could tell of many times this sort of kindness has happened as she meets so many people.

See letter from LaDonna Davis dated August 31, 2006.

A nephew of Dee's, Curtis Guest, who lived with her while he was weathering a rough period in his life, states:

As a young and troubled teenager, she took me in and provided me with the stability I needed. She encouraged me to make the most of my life by giving me the opportunity to establish a strong work ethic. It was through her example and her encouragement that I was able to instill this into my individual life. I have successfully established myself in the community. I hope to someday return the same privilege in the life of another individual.

See letter from Curtis Guest dated August 31, 2006. As these letters convey, Dee Mower unfailingly demonstrates her commitment to the welfare of others by generously giving of herself and her resources.

III. Dee Mower Respects Her Obligation to Pay Taxes.

Dee Mower has demonstrated respect for the Internal Revenue Service, and for her individual obligation to pay taxes. As the Court will recall from the testimony and evidence at trial, when Dee Mower learned there was a problem, she acted on the advice of the Neways professionals and outside independent accountants and ordered all taxes paid on the unreported foreign corporate commission income before she had any inkling that, years later, she could be a target of a criminal investigation. Further, she has tendered full payment to the Internal Revenue Service for all taxes, penalties, and interest based on the tax loss calculation found by the Court for the years 1992 through 1977. And, for the years 1998 through 2004, Dee Mower has paid over \$14.4 million in federal and state income taxes.

IV. Dee Mower Is the Source of Stability for Her Disabled Son

Dee's biggest family responsibility continues to be her youngest child, J.J., who is mentally disabled and still lives with her. Even though he is now 30 years old, he requires close supervision, and struggles with simple tasks. Despite his age and physical stature, he is not an adult either mentally or emotionally. Dee, his mother, has always taken care of him and is the source of stability in his life. There is no substitute for her consistent involvement and calming influence. If Dee is absent for more than a few days, J.J. becomes depressed and starts to regress, by not showing up for "work" at Neways, or by refusing to leave his bedroom or to attend to his personal hygiene. Because of this dependency, Dee takes J.J. traveling with her about half of the time, on her longer trips. She simply is unable to leave him for longer than a week without her

absence seriously and negatively impacting his ability to remain functional. In sentencing Dee Mower, we urge the Court to consider the critical role she plays in the well-being of her disabled son.

SENTENCING GUIDELINES

_____ While the sentencing guidelines are only one factor to be considered in the Court's sentencing determination, we respectfully disagree with the Presentence Report's guidelines calculation.⁴

I. The 1997 Guidelines Should Be Used, Not the 2005 Guidelines.

The criminal tax loss for Dee Mower is \$89,112, based on the Court's calculation of unreported domestic commission income (which the Mowers accepted), as well as some foreign corporate commission income which the Court concluded could have been diverted or used by the Mowers personally. Based on a tax loss calculation of \$89,112, the draft Presentence Report relied upon the 1997 edition of the United States Sentencing Guidelines manual to compute the base offense level for Ms. Mower at 14. See draft Presentence Report at 12, ¶39. The final Presentence Report uses the 2005 edition of the guidelines manual, apparently deferring to the government's argument that the last overt act of the conspiracy occurred on January 11, 2002, after the November 1, 2001, amendments to the sentencing guidelines. Therefore, according to the government, the 2005 guidelines manual should be applied as it is the manual in effect at the

⁴ Following the United States Supreme Court decision, United States v. Booker, 543 U.S. 220 (2005), the sentencing guidelines became advisory.

time of sentencing, and the applicable tax provisions have not changed since 2002. See Government's Sentencing Memorandum at 22-23. Under §2T4.1 in both the 2002 guidelines manual and the 2005 manual, an \$89,112.00 tax loss results in a base offense level of 16. By contrast, under the 1997 guidelines manual, the base offense level for that same tax loss is a level 14.

Use of the January 2002 date (and, thus, the 2005 guidelines manual) requires acceptance of the government's flawed theory that the Neways' amended corporate tax returns, filed in January 2002, misrepresented foreign commission income as corporate income when, according to the government, it was really the Mowers' personal income. Of course, pursuant to §1B1.11, it is for the Court to determine the controlling date for guidelines purposes, not the government. See §1B1.11, comment. n. 2. In that regard, neither the jury nor the Court found that the Mowers misrepresented personal income as corporate income in the January 2002 amended Neways tax returns. To convict, the jury had only to find a single overt act committed by a co-conspirator in furtherance of the conspiracy on or after December 18, 1996. See Jury Instruction No. 26. Thus, no finding with regard to January 2002 was necessary for the jury's verdict. Nor was any such finding made by the Court in its tax loss ruling. In fact, the Court's finding that some corporate income was diverted to the Mowers' personal use is not a finding that the foreign commission income was not, in the first instance, corporate income. Rather, it is a finding that, to the extent the Mowers diverted some corporate income to their personal use, they needed to pay (but had avoided paying) personal income taxes on any such diverted corporate monies.

For these reasons, the correct guidelines manual to use in this case is the 1997 guidelines manual. The latest Form 1040 joint individual tax return, for the 1997 calendar year, was filed by the Mowers in September 1998. See Superceding Indictment, ¶102. This 1998 filing was the last act with regard to the failure to report personal income. Under §1B1.11, the guidelines manual in effect at the time of sentencing should be used, unless the penalties have been increased since the latest date that the offenses of conviction were committed. Clearly, in this case the penalties have increased, as the base offense level, under §2T4.1, increased in the 2001 guidelines manual from a level 14 to a level 16. This increase constitutionally mandates use of the earlier 1997 guidelines manual in effect in September 1998 in order to avoid an *ex post facto* violation. We accordingly request that the Court hold that the 1997 guidelines manual is the proper guidelines manual to be used in this case.

II. The Sophisticated Means Enhancement Is Not Appropriate for Dee Mower.

With regard to the proposed 2 level upward adjustment for sophisticated means, Ms. Mower adopts and incorporates by reference her previous arguments set forth in her Position with Respect to Sentencing Factors. See Position of Defendant Leslie D. Mower With Respect to Sentencing Factors. The application of the sophisticated means enhancement is incorrect in this case. The facts hardly demonstrate sophistication in either the commission or concealment of the offense. The failure to include all domestic commission income was random rather than systematic, and the domestic downline sources were not concealed by Ms. Mower. In fact, these sources were specifically disclosed by her to the Mowers' tax preparer, Karin Lane. At trial,

Lane testified that Dee Mower was not sophisticated in financial or tax matters. Lane further testified that Ms. Mower gave her all account information, and specifically disclosed to her, by payee name, the sources of potential domestic commission income, including MP Enterprises, Base of the Tree, Revenol, Employee Purchases, BP Sales, BW Enterprises and MP Enterprises. Tr. 465-67. These were the same payees relied upon by the government in showing that the Mowers cashed certain of those payees' checks, but failed to report them as income. See Ex. 100-1. Further, many of the omitted domestic commission checks were "M.P. Trust" checks, listed under Thomas Mower's social security number in the Neways computer system, and thus directly traceable to the Mowers. Accordingly, in this case, there was no sophisticated means employed by Dee Mower in failing to report all domestic income.

III. Dee Mower has Accepted Responsibility for Her Offense.

A 2 level reduction for acceptance of responsibility should be given to Dee Mower. Ms. Mower adopts and incorporates by reference her previous arguments set forth in her Position with Respect to Sentencing Factors. See Position of Defendant Leslie D. Mower With Respect to Sentencing Factors. A trial does not automatically preclude the application of this downward adjustment. Rather, the issue is whether the defendant has accepted responsibility for the crime. The Tenth Circuit case of United States v. Gauvin, 173 F.3d 798 (10th Cir. 1999), is instructive. Defendant Gauvin was charged with, and convicted by a jury of, assault with a dangerous weapon and assault on a federal officer. The underlying facts were that Gauvin was driving while drunk, and that, as federal officers tried to get him to pull over, Gauvin's vehicle and a

police vehicle collided and flipped into a ditch. The defendant subsequently went to trial to contest the legal element of intent, disputing “whether his acknowledged factual state of mind met the legal criteria of intent to harm or cause apprehension.” Id. at 806. The jury convicted Gauvin, and the trial court found that he had accepted responsibility, notwithstanding his decision to go to trial. On appeal, the Tenth Circuit Court of Appeals upheld the trial court’s reduction for acceptance of responsibility, holding that “while a jury disagreed with Mr. Gauvin’s defense that he lacked the requisite intent to commit the crime, that does not undermine the good faith in which the district court found this defense was asserted.” Id. Recognizing the deference afforded the sentencing judge on this issue, the Tenth Circuit affirmed the district court’s granting of a downward adjustment for acceptance of responsibility.

A reduction for acceptance of responsibility is also appropriate in this case, despite the fact that Ms. Mower went to trial. As the Court is aware, the government’s theory of prosecution has been that every penny of foreign commission income was personal income to the Mowers, and that it was therefore personal income tax evasion not to report these monies on their personal tax returns. The Mowers’ defense to that assertion was that the foreign commission income belonged to the corporations, and was not their personal income. In light of this good faith defense, which relates to the legal character of the monies received, Ms. Mower qualifies for a 2 level reduction in her offense level for acceptance of responsibility.

IV. Under the 1997 Guidelines, the Sentencing Calculation for Ms. Mower Is Level 12.

In summary, with regard to the guidelines calculation, the 1997 guidelines manual is the correct manual to be used in this case. Using the Court's previously determined tax loss calculation of \$89,112, the resulting base offense level, under §2T4.1, is level 14. With no upward adjustment, and a 2 level reduction for acceptance of responsibility, we urge the Court to adopt a sentencing guidelines calculation of level 12.

SENTENCING RECOMMENDATION

_____ Because of Dee Mower's decades of humanitarian service, both personally and through Neways, and in recognition of the significant and unique needs of J.J., Dee Mower's adult disabled son who lives with her, we submit that leniency would not offend justice. Consistent with the factors set forth in 18 U.S.C. §3553(a), and considering all of the mitigating information, we respectfully request that the Court temper justice with mercy in sentencing Dee Mower to a period of probation. Such a probationary term could include direct personal community service by Ms. Mower, as well as other conditions deemed appropriate by the Court under the circumstances.

Respectfully submitted this 6th day of September, 2006.

CLYDE, SNOW, SESSIONS & SWENSON

Neil A. Kaplan

Anneli R. Smith

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I electronically filed the foregoing document

MEMORANDUM OF DEFENDANT LESLIE D. MOWER IN AID OF SENTENCING with
the Clerk of the Court using the CM/ECF system which will send notification to the following:

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I also caused hard copies of personal letters in support of the defendant to be mailed to the parties listed above, and hand-delivered to the Court's Chambers.