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11 IN THE UNITED STATES DISTRICT COURT
12 DISTRICT OF ARIZONA

13 United States of America,
14 Plaintiff,

15 vs.

16 Thomas Mario Costanzo,
17 Defendant

No. CR-17-0585-01-PHX-GMS

**SENTENCING MEMORANDUM &
REQUEST FOR DOWNWARD
DEPARTURE OR VARIANCE**

18 Undersigned counsel, on behalf of Thomas Mario Costanzo, respectfully requests
19 this Court sustain his objections to the Presentence Investigation Report (PSR) and/or
20 grant his request for downward departures and/or variances to arrive at a sentence of credit
21 for time served (approximately 466 days, or 15 months, 11 days), to be followed by a 2-
22 year term of supervised release. In support of this request, Mr. Costanzo presents this
23 court with the following additional information.

**Avoiding unwarranted sentencing disparities, Part I:
Peer-to-peer bitcoin traders targeted in money laundering stings.**

24 In determining the appropriate sentence in a criminal case, the Court must be sure
25 to “avoid unwarranted sentencing disparities among defendants with similar records who
26 have been found guilty of similar conduct.” 18 U.S.C. § 3553(a)(6).
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1 Cases involving facts similar to those in the instant case have been identified
2 and are provided here for this Court’s review. Specifically, the selected federal cases
3 involve:

- 4 (1) Defendants identified by federal agents as peer-to-peer bitcoin
5 exchangers, who
- 6 (2) Subsequently engaged in a bitcoin exchanges with undercover agents;
- 7 (3) Notwithstanding representations made by those agents that the property
8 presented for exchange was the proceeds of illegal drug trafficking.

9 Defendants in these cases were typically sentenced to terms less than the
10 amount of time Mr. Costanzo will have already served as of the date set for
11 sentencing in this case.

12 **A. Theresa Lynn Tetley, a/k/a Bitcoin Maven—former stockbroker and**
13 **LocalBitcoins trader who DOJ says laundered \$6M-\$9.5M—sentenced**
14 **on July 9, 2018 to 366 days BOP and 3 years’ supervised release in the**
Central District of California.

15 There are significant similarities between the Tetley case and the case at bar:

16 **PEER-TO-PEER TRADER:** Tetley was identified by law enforcement through the
17 website LocalBitcoins.com. *See Exhibit A, LocalBitcoins trader “Bitcoin Maven”*
18 *Sentenced to Year in Prison.*

19 **GOVERNMENT STING:** The federal investigation involved a sting operation with
20 UCAs posing as drug traffickers. *See Exhibit B, Woman who once brought \$300,000*
21 *cash in paper bags sent to prison.*

22 **NEXUS TO AN ACTUAL DRUG TRAFFICKER:** One of her customers was
23 identified and arrested for his alleged involvement in narcotics trafficking, though it
24 appeared her knowledge of his illicit ventures was—like Mr. Costanzo’s knowledge
25 of the government informant’s business—very limited. Exhibit B; *see also United*
26 *States v. William James Farber*, CR17-188-LJO-SKO-1 (E.D. Cal.).

1 **FEDERAL CHARGES:** Tetley was charged with operating an unlicensed money
2 transmitting business and money laundering. *See* Exhibit C, Tetley Information,
3 CR17-738-R (C.D. Cal.).

4 The differences between these two cases are just as significant:

5 **RELATIVE EXPERIENCE IN FINANCE:** As a former stockbroker, Tetley had
6 professional training and experience regarding the relevant statutes and regulations
7 at issue in her case. Mr. Costanzo, a salesman and bitcoin enthusiast, had a
8 comparatively informal and limited understanding of the world of finance in which
9 he had immersed himself as a bitcoin trader. *See, e.g.,* Exhibit A.

10 **PROSECUTORIAL DISCRETION:** Despite the fact that the government
11 estimated that Tetley had laundered between \$6 million and \$9.5 million between
12 2014 and 2017, *see* Exhibit D, *Woman Sentenced for Laundering \$6M-\$9.5M in*
13 *Cash for Bitcoin*, and that she conducted a single \$300,000 exchange with a federal
14 agent during the course of the investigation, Exhibit B, the charging document
15 alleged only a single money laundering count involving just under \$70,000. Exhibit
16 C. As compared to Mr. Costanzo, Tetley faced far less serious charges and much
17 greater potential exposure based on at least \$300K, and up to millions of dollars of in
18 uncharged conduct. Exhibits A-E.

19 **AMOUNT LAUNDERED:** Notwithstanding the millions of dollars the government
20 estimated Tetley laundered, the single \$300,000 exchange she engaged in with
21 federal agents exceeds all of Mr. Costanzo's trades with UCAs and the informant's
22 estimate, combined.

23 **WORSE BAD GUY:** The drug trafficker identified in the Tetley case is believed to
24 have been behind a major darknet drug ring. Exhibit B; *see also United States v.*
25 *William James Farber*, CR17-188-LJO-SKO-1 (E.D. Cal.). That is, Farber appears
26 to be a bigger fish operating on a much larger scale than the cooperating informant
27 identified by the government in the instant case. *Id.*

1 **DISPARATE PROFITS:** Tetley clearly was quite successful and had significant
2 assets, as demonstrated by the more than \$500K in currency and precious metals
3 seized and forfeited from her by federal agents, Exhibits A, B, D, as well as her
4 ability to retain private counsel in her federal criminal case. *Id.* By contrast, Mr.
5 Costanzo’s lifestyle was modest, the assets seized when his home was searched were
6 nominal by comparison. He could not afford to retain counsel. His profits from
7 exchanges were not impressive—he charged higher rates for lesser amounts (e.g.,
8 Mr. Costanzo mentioned to a UCA he charged 20% on a \$200 exchange; which
9 would result in a \$40 profit to Costanzo; in the \$30,000 exchange, he charged 7%,
10 which he explained to the UCA accounted for the 5% charged by the individual who
11 fronted him the bitcoin—Dr. Steinmetz—plus 2% for himself, resulting in a profit to
12 Steinmetz of \$1,500 and a profit to Costanzo of \$600.).

13 Tetley pleaded guilty to money laundering and operation of an unlicensed
14 money transmitting business; she was sentenced on July 9, 2018 to 12 months and 1
15 day in the Bureau of Prisons, to be followed by a 3-year term of supervised release.
16 *See* Exhibit E, Tetley Judgment and Conviction. The sentence imposed by the
17 district court was significantly below the 30-month sentence requested by the United
18 States Attorney’s Office. *See* Exhibits A, B, D.

19 **B. Louis Ong—Canadian national charged with laundering nearly**
20 **\$300K—sentenced on May 11, 2018 to 20 days BOP and 3 years’**
21 **supervised release in the Western District of Washington.**

22 There are also significant similarities between the Ong case and the case at
23 bar:

24 **PEER-TO-PEER TRADER:** Ong was identified by law enforcement as a peer-to-
25 peer bitcoin trader through an online advertisement he had placed. *See* Exhibit F,
26 *Unlicensed B.C. bitcoin trader jailed in U.S. after federal sting.*
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28

1 **GOVERNMENT STING:** The federal investigation involved a sting operation with
2 UCAs posing as drug traffickers; Ong traveled from Canada to Seattle, Washington
3 to conduct the exchanges. *Id.*

4 **STATEMENTS TO UCAs:** Like Mr. Costanzo, Ong repeatedly stated he did not
5 want to know his clients' business. *Id.* at page 2 (“ ‘I didn’t hear that,’ Ong explained
6 to one agent. ‘So there is one thing I tell people is I don’t care what...they use
7 bitcoin for...it’s better that I don’t actually know. ‘Cause then I can have plausible
8 deniability.’”). This and other statements by Ong are very similar to statements made
9 by Mr. Costanzo to UCAs and played for the jury at his trial. *Id.* at page 3 (Ong
10 explained in a recorded meeting with a UCA: “I am charging...higher than a lot of
11 people, but because...I get the job done, people come to me.”).

12 **COMMISSION CHARGED:** Ong reportedly charged a 9% -9.99% fee for
13 conducting his peer-to-peer bitcoin exchanges. Exhibit F at page 3.

14 **FEDERAL CHARGES:** Ong was charged with a single count of operating an
15 unlicensed money transmitting business and five counts of money laundering. *See*
16 Exhibit G, Ong Indictment, CR17-191-RSL (W.D. Wash.).

17 The differences between these two cases are just as significant:

18 **AMOUNT LAUNDERED:** The Indictment charged Ong with laundering nearly
19 \$300,000 over a 5-month period. *Id.* By comparison, the charges of conviction in the
20 instant case total a little more than half that amount, \$164,700, over a 23-month
21 period. The single \$200,000 exchange charged in Count 5 of the Ong Indictment
22 exceeds all of Mr. Costanzo’s trades with UCAs, combined. *Id.*

23 **RELATIVE SUCCESS/DISPARATE PROFITS:** Ong was clearly quite
24 successful and had significant assets, as demonstrated by his ability to retain private
25 counsel in his federal criminal case and assets forfeited, valued at approximately
26 \$1.1 million. Exhibits F & G. By contrast, Mr. Costanzo’s lifestyle was modest, the
27 assets seized when his home was searched were nominal by comparison.
28

1 **SOPHISTICATION:** While both Ong and Costanzo favored meeting in restaurants
2 and cafes to conduct exchanges, Ong came equipped with a money counter, an
3 indication that Ong consistently dealt in larger amounts.

4 Ong pleaded guilty to operation of an unlicensed money transmitting business
5 and was sentenced on May 11, 2018 to 20 days in the Bureau of Prisons, to be
6 followed by a 3-year term of supervised release. See Exhibit H, Ong Judgment and
7 Conviction.

8 **C. Jason Klein—Missouri resident targeted in IRS sting--sentenced on**
9 **September 6, 2017 to 5 years' probation in the Western District of**
10 **Missouri.**

11 There are basic similarities between the Klein case and the case at bar:

12 **PEER-TO-PEER TRADER:** Klein was identified by law enforcement through the
13 website LocalBitcoins.com. See Exhibit I, *Inside an Undercover Bitcoin Sting*.

14 **GOVERNMENT STING:** The federal investigation involved a sting operation with
15 UCAs posing as drug traffickers. *Id.* at pages 3-5.

16 **AMOUNT LAUNDERED:** Klein was not a regular bitcoin trader and the amounts
17 he was charged with having transmitted in violation of the law reflect that: \$29,240
18 over a 17-month period. . *Id.*; see also Exhibit J, Klein Information, CR17-3056-
19 MDH (W.D. Mo.). This is on par with exchanges conducted during the course of the
20 IRS portion of the investigation of Mr. Costanzo, before the ratcheting up of
21 exchange amounts during the DEA portion of the investigation in 2017.

22 **COMMISSION CHARGED:** Klein reportedly charged a 10% fee in his peer-to-
23 peer bitcoin exchanges. Exhibit I at page 3.

24 The differences between these two cases are also significant:

25 **FEDERAL CHARGES/PROSECUTORIAL DISCRETION:** While Klein
26 engaged in exchanges with UCAs posing as drug traffickers, he was ultimately
27 charged only with operating an unlicensed money transmitting business. *Id.*; see also
28

1 Exhibit J. Like Tetley, he faced exposure for uncharged money laundering conduct
2 that may well have influenced his decision to plead to the § 1960 charge.

3 Klein pleaded guilty to operation of an unlicensed money transmitting
4 business; he was sentenced on September 6, 2017 to 5 years' probation. *See* Exhibit
5 K, Klein Judgment and Conviction.

6 **D. Randall and Michael Lord—a Louisiana father and son bitcoin**
7 **exchanging team targeted in a government sting that uncovered an**
8 ***actual* drug conspiracy.**

9 Among cases reviewed where available facts show defendants were the
10 targets of a money laundering sting set into motion by the government, the Lord case
11 is an outlier. This is because the federal investigation of the Lords uncovered an
12 *actual* drug trafficking conspiracy.

13 The differences between the Lord case and the instant matter are particularly
14 significant:

15 **SOPHISTICATION:** The Lord case, as charged, truly involved sophisticated
16 measures taken to obscure or conceal the source and/or ownership of property
17 beyond simply using bitcoin. *See* Exhibit L, Lord Indictment, CR15-240-SMH
18 (W.D. La.). In particular, the Lords allegedly used numerous businesses and
19 accounts to transfer funds and otherwise misrepresent their business activities in
20 order to purchase bitcoin for exchange. *Id.* at Counts 9-14. This level of
21 sophistication led to additional counts of wire fraud in the Indictment . *Id.*

22 **ACTUAL DRUG CONSPIRACY UNCOVERED:** Michael Lord, co-defendant
23 and son of Randall Lord, was discovered to be involved in an ongoing drug
24 trafficking conspiracy involving the listed substance Alprazolam, a/k/a Xanax. *Id.* at
25 Count 15. *See also* Exhibit M, Lord Memorandum Ruling, at pages 3, 4 (detailing
26 discovery by federal agents of the ongoing drug conspiracy involving Michael Lord).

27 **AMOUNT LAUNDERED:** The Lords were both charged with six separate crimes
28 arising from two bitcoin exchanges conducted with UCAs or CIs claiming to be drug

1 traffickers in February of 2015. Exhibit L at Counts 3-8. In just twenty days, the
2 Lords exchanged \$33,000 worth of alleged drug proceeds. *Id.* This amount exceeds
3 that of exchanges conducted during the course of the IRS portion of the investigation
4 of Mr. Costanzo, before the ratcheting up of exchange amounts during the DEA
5 portion of the investigation in 2017.

6 Both Lords pleaded guilty to one count of operation of an unlicensed money
7 transmitting business; Michael Lord also pleaded guilty to the drug conspiracy. *See*
8 Exhibit N, Lord Sentencing Minutes. On May 24, 2017, father and son were
9 sentenced: Randall Lord to 46 months BOP and 1 year of supervised release.
10 Michael Lord to a total of 106 months BOP (46 months for the unlicensed money
11 transmitting and 60 months for the drug conspiracy, consecutive) and a 3-year term
12 of supervised release. *Id.*

13 There are also certain similarities between the Lord case and the case at bar:
14 **PEER-TO-PEER TRADER:** The Lords were identified by law enforcement as
15 peer-to-peer bitcoin traders through LocalBitcoins.com. *See* Exhibit M at page 2.
16 **GOVERNMENT STING:** The federal investigation involved a sting operation with
17 UCAs or CIs posing as drug traffickers. Exhibit L at Counts 3, 4, 6, & 7.

18 The aggravating circumstances at play in the Lord case—in particular the high
19 level of sophistication and subterfuge involved in the money services business and
20 the drug conspiracy discovered—explain the relative severity of the sentences
21 imposed against both father and son as compares to other money laundering sting
22 cases arising from federal investigations of peer-to-peer traders.

23
24 **Avoiding unwarranted sentencing disparities, Part II:**
25 **Bitcoin traders prosecuted for actual money laundering.**

26 Defendants Charlie Shrem and Robert Faiella were prosecuted for their
27 involvement in the infamous Silk Road darknet web market. *See United States v.*
28

1 *Faiella, et al*, CR145-243-JSR (S.D.N.Y.) Their case did not involve a government
2 sting but rather actual money laundering charges in connection with actual narcotics
3 purchases through the Silk Road site that had to be fulfilled via bitcoin. *See* Exhibit
4 O, *Faiella, et al* Complaint. Both men ultimately pleaded guilty to § 1960 charges;
5 Shrem, who pleaded to aiding and abetting *Faiella*, was sentenced to 2 years BOP
6 and 3 years supervised release. *See* Exhibit P, *Shrem* Judgment and Commitment.
7 *Faiella* received 4 years BOP and 3 years supervised release. *See* Exhibit Q, *Faiella*
8 Judgment and Conviction.

9 Shrem and *Faiella* admitted to having actually been involved in a vast illegal
10 enterprise—the Silk Road—through which all manner of contraband could be
11 bought or sold. Their role as providers of bitcoin to those endeavoring to be
12 consumers and/or retailers on the Silk Road, that mother-of-all-dark-nets, sealed
13 their culpability, and yet each received a sentence significantly less severe than the
14 97 months the government asks this court to impose against Mr. Costanzo.

15
16 **Avoiding unwarranted sentencing disparities, Part III:**
17 **Bitcoin traders prosecuted for unlicensed money transmitting.**

18 Undersigned counsel identified three additional cases where federal agents
19 investigated and charged peer-to-peer bitcoin traders with operating unlicensed
20 money transmitting businesses. The available records and news articles reviewed by
21 counsel do not indicate whether or not these cases, like the *Klein* matter, were ones
22 where the defendant was targeted in a money laundering scheme but charges were
23 not brought. These three cases are briefly included below to more fully apprise the
24 court of the treatment accorded bitcoin traders by sentencing courts.

- 25
- 26 • *United States v. Eldon Ross, CR17-160-NIQA (E.D. Pa.)*. Pleaded guilty to
27 operation of an unlicensed money transmitting business. *Ross* was sentenced on
28 March 1, 2018 to 366 days BOP and 3 years' supervised release. Of particular

1 note, Ross admitted to committing the offense of conviction while still
2 incarcerated in connection with his 2014 state conviction for heroin trafficking.
3 *See Exhibit R, Bitcoin crime nets prison time for Pa. heroin trafficker.* Ross
4 reportedly “illegally sold \$1.5 million in bitcoin to undercover federal agents and
5 others.” *Id.*

- 6 • *United States v. Sal Mansy, CR15-198-CZS (D. Me.)*. Pleaded guilty to
7 operation of an unlicensed money transmitting business. Mansy was sentenced
8 on December 4, 2017 to 366 days BOP and 3 years’ supervised release.
- 9 • *United States v. Richard Petix, CR15-227-A (W.D.N.Y.)*. Pleaded guilty to
10 false statement and operation of an unlicensed money transmitting business.
11 Petix was sentenced on November 1, 2017 to credit for time served on both
12 counts, concurrent, and 3 years’ supervised release.

13 **Acceptance of responsibility / remorse / rehabilitation.**

14
15 The defense reserves and does not waive possible appellate issues regarding
16 the applicability of the statute of conviction to Mr. Costanzo’s conduct (i.e., whether
17 it is indeed possible to act with intent “to conceal or disguise the nature, location,
18 source, ownership or control of property” when one is simply using a preexisting
19 system—the blockchain accounting system on which bitcoin relies).

20 Mr. Costanzo has made it known to this Court that he recognizes and regrets
21 the moral wrongfulness of his actions—specifically that he proceeded in bitcoin
22 exchanges with UCAs despite the UCAs’ claims of involvement in anti-social
23 endeavors (i.e., drug trafficking). *See Sentencing Letter of Thomas Costanzo,*
24 submitted under separate cover (“...I didn’t realize how angry I was at the
25 system...[a]t the same time I was so enthusiastic about bitcoin. As a result I made
26 major judgment errors in transacting with Government agents who claimed the
27 source of the funds was illegal...I have no one to blame but myself. Needless to say
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1 I won't be making that mistake again...I realize now there is a reason for these laws
2 and because I disagree with these laws I am part of society and I need to obey those
3 laws.”).

4 The fact that Mr. Costanzo's realizations about the values of our federal
5 justice system and the reality of the mistakes he made came about in the context of
6 exercising his constitutional right to a jury trial does not obviate his clear contrition
7 and acceptance of responsibility. As recently as this very month—July 2018—the
8 Ninth Circuit, again reiterated this principle:

9 Enhancing a sentence solely because a defendant chooses to go to trial risks
10 chilling future criminal defendants from exercising their constitutional rights.
11 And imposing a penalty for asserting a constitutional right heightens the risk
12 that future defendants will plead guilty not to accept responsibility, but to
escape the sentencing court's wrath.

13 Although most federal criminal cases result in guilty pleas, the Sixth
14 Amendment right to trial remains an important safeguard to defendants who
15 insist on their innocence. Permitting courts to impose harsher sentences on
16 those few defendants who do go to trial could in practice restrict the exercise
of the right to those with unusual risk tolerance—or uncommon courage.

17 *United States v. Hernandez*, No. 13-10428, 2018 WL 3352608, at *6 (9th Cir. July
18 10, 2018)(remanding for resentencing where district court appeared to have
19 increased defendant's sentence or withheld reduction for acceptance of responsibility
20 based on defendant's assertion of protected trial rights under Sixth Amendment.).

21 CONCLUSION

22 The appropriate sentence in the instant case is a term of credit for time served
23 (approximately 466 days) to be followed by a 2-year term of supervised release. The
24 government's harsh and unreasoned recommendation of 97 months is out of step
25 with sentences that have been handed down across the country in similar cases and
26 should be rejected. In summary:

1 **First**, Mr. Costanzo’s conduct mirrored that of Tetley and Ong, and was quite
2 similar in scale to that of Klein. In particular, Ong’s incriminating statements to
3 UCAs were nearly identical to incriminating statements made by Mr. Costanzo to
4 UCAs. A key difference—Tetley and Ong were clearly better equipped to engage in
5 “wholesale trading” and did so: engaging in more and larger trades than Mr.
6 Costanzo ever did. There is thus no rational explanation for why Mr. Costanzo
7 deserves a sentence so much harsher than sentences received by defendants Tetley,
8 Ong, and Klein, all of whom engaged in similar conduct.

9 **Second**, with respect to the instant case generally, the government seems to
10 have lost the plot. Compare this case to the nationwide undercover operation recently
11 publicized by the Department of Justice. *See* Exhibit S, DOJ Targets Darknet
12 Vendors, June 26, 2018. In that operation, undercover agents posing as money
13 launderers were able to identify darknet vendors of illicit goods. *Id.* In just 12
14 months, the operation netted 35 individuals selling contraband on the darknet and
15 seized more than more than \$23.6 million and over 100 firearms and destructive
16 devices. *Id.*

17 In the instant case, the government spent twice the time sending multiple
18 UCAs posing as drug traffickers to catch a single bitcoin trader...who had no
19 darknet connections. Most stunningly, the government opted to catch and release
20 without penalty the only true drug trafficker associated with the investigation: its
21 cooperating informant/witness. Mr. Farber, whose case is still pending in the Eastern
22 District of California, does not appear to have been offered a similar opportunity.

23 **Third**, the government fails to justify the harsh penalty it advocates for by
24 referring to Mr. Costanzo’s criminal history. His most serious conviction—from the
25 1980s—is remote, stale, and altogether unlike the case at bar. Moreover, his more
26 recent law enforcement contacts pale in comparison to the aforementioned recent
27
28

1 and serious heroin trafficking conviction of Mr. Ross, who was nonetheless afforded
2 lenient treatment in his federal case.

3 **Fourth**, Mr. Costanzo’s political views—in particular his distrust of the
4 government—were often alluded to in the course of the federal investigation against
5 him. However, one’s political views—protected by the First Amendment—cannot be
6 used to impose a greater punishment.

7 **Finally**, the government’s recommendation exponentially exceeds not just the
8 sentences of those who engaged in similar conduct to Mr. Costanzo (i.e., Tetley,
9 Ong, and Klein), and even those defendants who were *actually* involved in non-sting
10 money laundering (i.e., Shrem and Faiella). The sentences imposed for all the
11 financial crime convictions presented here reflect an important circumstance: bitcoin
12 traders are not principals; they are just middlemen. They may be exploited by, or
13 complicit with, underworld figures who present themselves as clients, but these
14 exchangers are ultimately low-level. Cases prosecuted in federal jurisdictions across
15 this country reflect this fact—so should the sentence in this case. Mr. Costanzo has
16 learned his lesson. His requested sentence of credit for time served is sufficient but
17 not greater than necessary to effect the purposes of sentencing.

18 Excludable delay under 18 U.S.C. § 3161(h)(1)(D) may result from this motion
19 or from an order based thereon.

20 Respectfully submitted: July 20, 2018.

21 JON M. SANDS
22 Federal Public Defender

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1 Copy of the foregoing transmitted by ECF for filing July 20, 2018, to:

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