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15 UNITED STATES DISTRICT COURT  
 16 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
 17

18	UNITED STATES OF AMERICA,	)	CR-11-00297(B)-PA
		)	
19	Plaintiff,	)	<u>GOVERNMENT'S POSITION WITH</u>
	v.	)	<u>RESPECT TO SENTENCING</u>
20		)	
	CHAU-SHING LIN	)	
21		)	Date: February 6, 2012
	Defendant.	)	Time: 8:30 a.m.
22	_____	)	

23 Plaintiff United States of America, by and through  
 24 undersigned counsel, hereby submits its Position With Respect to  
 25 Sentencing.  
 26  
 27  
 28

I.

**INTRODUCTION**

Defendants were key players in a multi-year, sophisticated transnational scheme to falsely label seafood for the purpose of maximizing profits. Defendant's false labeling defrauded consumers and fish dealers, harmed both the environment and U.S. fishermen, and resulted in evasion of millions of dollars in anti-dumping duties. The violations to which defendants pled guilty are the tip of the iceberg that is the overall scheme in which they were involved.

Defendant Seafood Solutions, Inc., should receive the statutory maximum sentence as stipulated to in its plea agreement. Defendant Lin should receive the statutory maximum sentence as provided pursuant to the applicable Sentencing Guidelines. Defendant Ragone should receive the statutory maximum sentence pursuant to the factors set forth at 18 U.S.C. § 3553.

II.

**BACKGROUND**

Defendant Chau-Shing Lin, aka "Duke Lin" ("Lin") is the president and part owner of Ocean Duke Corporation ("Ocean Duke"), a closely held corporation headquartered out of Torrance, California. Lin's son, Roger Lin, is the vice president and the majority owner of Ocean Duke. Lin's wife is the chief financial officer and a part owner of Ocean Duke; she is also the president of defendant Seafood Solutions, Inc., a California corporation registered to do business in Florida.

Ocean Duke imports seafood primarily from Asia, particularly

1 Vietnam. Relatives of the Lins operate companies in Vietnam,  
2 China and elsewhere that supply products to Ocean Duke  
3 Corporation. See Attachment 1, Bates number ODC4-204 ("The Yelin  
4 group" graphic). Defendant Lin was one of two named partners in  
5 one of these overseas companies, a Chinese partnership business  
6 called Yelin Enterprise Company Hong Kong ("Yelin"). See  
7 Attachment 2, Bates number OD016322 ("Ocean Duke Corporation &  
8 Yelin Enterprise Co., Hong Kong"). Yelin is a wholesaler of  
9 seafood, including particularly shrimp and frozen fillets of  
10 *Pangasius hypophthalmus* for Ocean Duke. The general manager of  
11 Yelin's Hong Kong office, and Lin's partner, was Peter To, also  
12 believed to be known as Keung Kam To. *Id.* Yelin also had a  
13 representative office in Vietnam managed by Truong Trieu Truong  
14 ("Truong") and was an affiliate of a number of other companies  
15 controlled by members of the Lin family. See Attachment 1  
16 (corporation chart). Yelin, To and Truong were integral to the  
17 supply chain for frozen fish fillets and shrimp for Ocean Duke.  
18 In short, defendant Lin through Ocean Duke, is part of a  
19 sophisticated, multinational, vertically-integrated seafood  
20 operation.

21 Defendant Christopher Scott Ragone ("Ragone") is one of the,  
22 if not the, top salesmen for Ocean Duke. He is also a repeat  
23 criminal offender (Criminal History category II). Both Lin and  
24 Ragone are well educated and come from strong family and economic  
25 backgrounds. They were not under financial or social duress to  
26 commit the criminal violations at issue nor were they ignorant.

27 At various times the United States has placed anti-dumping  
28 duties on certain seafood products that are imported into the

1 United States in order to protect U.S. producers from unfair  
2 competition practices. Relevant to this case, the United States  
3 placed such duties on species of *Pangasius*, a fish in the catfish  
4 family, from Vietnam and on shrimp from Vietnam and several other  
5 countries. The duties ranged up to 68 and even 100 percent.  
6 Ocean Duke sourced *Pangasius hypophthalmus* and shrimp from  
7 Vietnam. These same species of seafood from other countries of  
8 origin, including China and Cambodia, were not subject to such  
9 anti-dumping duties. Also, different species of seafood from  
10 Vietnam, including grouper, were not subject to such anti-dumping  
11 duties. Thus, when confronted with such duties, Ocean Duke would  
12 find ways to evade them, including falsely labeling the product  
13 as to country of origin and/or species.

14 Specifically, as to *Pangasius hypophthalmus* from Vietnam,  
15 Ocean Duke re-routed the fish through China and had it labeled  
16 for shipment, falsely, as product of China and/or misleadingly  
17 and falsely as "grouper" and/or "ponga." See below. The  
18 misleading label indicating that the fish was grouper was  
19 developed by defendants Lin and Ragone, and by Roger Lin. The  
20 illegally labeled fish would not only evade anti-dumping duties,  
21 it would be passed off, as defendants knew it would and had been,  
22 as a higher quality (and price) fish than it really was (grouper  
23 rather than a type of a catfish). Thus, they profited both by  
24 evading the duties and by increasing its marketability. This  
25 type of false and misleading labeling: (1) defrauds consumers who  
26 paid higher prices for what they believed to be grouper, (2)  
27 leads those with religious convictions that prohibit the  
28 ingestion of bottom feeding animals, to violate the tenets of

1 their beliefs; (3) causes U.S. fisherman to be undercut and to  
2 then over harvest U.S. grouper stocks to make up the income; and  
3 (4) presents medical risks for those with food allergies.

4 As to shrimp from countries subject to anti-dumping duties,  
5 particularly Vietnam, Ocean Duke transhipped the shrimp through  
6 Cambodia and labeled it, falsely, as product of Cambodia (thus  
7 not subject to anti-dumping duties). After the imposition of the  
8 anti-dumping duties on shrimp in 2004, between May 2004 and July  
9 2005 Ocean Duke imported as product of Cambodia over 15 million  
10 pounds of aquacultured, or farmed shrimp, with a declared value  
11 of over \$42 million. However, during all of 2004 and 2005,  
12 Cambodia produced only an estimated 385,000 pounds of  
13 aquacultured shrimp. Internal emails and statements of former  
14 employees confirm the transshipment of shrimp from Vietnam through  
15 Cambodia, thus making possible the export of 15 million pounds.

16 In short, Ocean Duke was a highly profitable company because  
17 it, through Lin and Ragone and others, would falsely label  
18 product as to species or country of origin to gain market  
19 advantage without regard to consumer, economic or environmental  
20 impacts.

21 The government entered into a plea agreement with defendants  
22 which significantly restricts their penalty exposure for such  
23 conduct, to preserve government resources, and in recognition of  
24 the adequacy, pursuant to the factors set forth at 18 USC § 3553,  
25 of 24-month individual sentences that would be available pursuant  
26 to the plea agreements. Pursuant to the plea agreements, on July  
27 25, 2011, Seafood Solutions, Lin and Ragone all entered pleas of  
28 guilty in the above-captioned case to violations arising from the

1 false labeling of frozen fillets of fish. Specifically, Seafood  
2 Solutions pled guilty to one felony count (Count One of the  
3 Second Superseding Indictment) of trafficking in illegally  
4 transported and sold fish in violation of the Lacey Act, 16  
5 U.S.C. § 3372(a)(1), 3373(d)(1)(B), and one misdemeanor count  
6 (Count Three) of knowing misbranding in violation of the Food,  
7 Drug and Cosmetic Act ("FDCA"), 21 U.S.C. §§ 331(a) & (c) and  
8 333(a)(1). Lin pled guilty to one misdemeanor count (Count Two)  
9 of trafficking in illegally transported and sold fish in  
10 violation of the Lacey Act, and one misdemeanor count (Count  
11 Three) of knowing misbranding in violation of the FDCA, 21 U.S.C.  
12 §§ 331(a) & (c) and 333(a)(1). Ragone pled guilty to two  
13 misdemeanor counts (Counts Three and Four) of knowing misbranding  
14 in violation of the FDCA, 21 U.S.C. §§ 331(a) & (c) and  
15 333(a)(1).

16 **III.**

17 **SENTENCING RECOMMENDATIONS**

18 As to defendant Seafood Solutions, Inc., the government  
19 recommends, pursuant to the stipulated terms of the plea  
20 agreement and in accord with the pre-sentence report, a guideline  
21 sentence of the statutory maximum fine of \$700,000 and five years  
22 probation, with conditions of probation as set forth in the plea  
23 agreement.

24 As to defendant Lin, the government recommends, commensurate  
25 with the jointly recommended statutory maximum sentence for  
26 Seafood Solutions, Inc., in consideration of the appropriate  
27 sentencing guidelines and the sentencing factors enumerated under  
28 18 U.S.C. § 3553, and pursuant to the terms of Lin's plea

1 agreement, a statutory maximum sentence of 24 months in prison  
 2 and a fine of \$200,000. Based on the facts set forth below, the  
 3 Sentencing Guidelines result in an adjusted guideline calculation  
 4 for Lin of offense level **32**, which is calculated as follows:

5	Base offense level [2Q2.1(a)]	<b>6</b>
6	Specific Offense Characteristic Commercial Purpose and Pattern [2Q2.1(b)(1)]	<b>+2</b>
7	Specific Offense Characteristic Fair market value over \$50 million [2Q2.1(b)(3)(A)]	<b>+24</b>
8	Adjustment for Role in the Offense Manager or Supervisor [3B1.1(c)]	<b>+3</b>
9	Acceptance of Responsibility	<b>-3</b>
10	<b>TOTAL</b>	<b>32</b>

11 The government believes that Lin is in Criminal History Category  
 12 I. Sentencing range at offense level 32 and Criminal History  
 13 Category I is 121-151 months (Zone D). Lin's sentence is  
 14 statutorily capped pursuant to his plea agreement at 24 months  
 15 and the fine amount under both the guidelines and the statutory  
 16 maximum is capped at \$200,000. Even were Lin held responsible  
 17 only for the fish involved in the counts of conviction, and not  
 18 given any enhancement for role in the offense, his guideline  
 19 range would still place him at 30-37 months, again resulting in a  
 20 sentence at the statutory maximum of 24 months.  
 21

22 As to Ragone, the government recommends, commensurate with  
 23 the jointly recommended sentence for Seafood Solutions, Inc. and  
 24 the government's recommended and guideline sentence for Lin, and  
 25 in consideration of the sentencing factors enumerated under 18  
 26  
 27  
 28

1 U.S.C. § 3553 and the terms of Ragone’s plea agreement, a  
 2 statutory maximum sentence of 24 months in prison and a fine of  
 3 \$200,000. Based on the facts and guidelines set forth below, the  
 4 Sentencing Guidelines result in a guideline calculation for  
 5 Ragone of an adjusted offense level 7, which is calculated as  
 6 follows:

7	Base offense level	6
	[2N2.1(a)]	
8	Adjustment for Role in the Offense	+3
9	Manager or Supervisor	
	[3B1.1(c)]	
10	Acceptance of Responsibility	-2
11	<b>TOTAL</b>	<u>7</u>

12 Ragone is in Criminal History Category II. Sentencing range  
 13 at offense level 7 and Criminal History Category II is 2-8 months  
 14 (Zone B). However, Ragone, pursuant to 18 U.S.C. § 3553, as  
 15 further explained below, should be sentenced to the statutory  
 16 maximum of 24 months in prison and a statutory maximum fine of  
 17 \$200,000, commensurate with co-defendant Lin.

18 **IV.**

19 **SENTENCING ISSUES**

20 Defendant Seafood Solutions, Inc.: The parties agree to the  
 21 recommended sentence for defendant Seafood Solutions, Inc.

22 Defendant Lin: Sentencing as to defendant Lin is fully  
 23 contested, the following issues of dispute remaining between the  
 24 parties:

25 (1) Applicable Guideline: The government’s position is that  
 26 the applicable sentencing guideline for Count Two is U.S.S.G.  
 27 § 2Q2.1 while defendant Lin seeks to have U.S.S.G. § 2N1.1  
 28

1 applied;

2 (2) Role in the Offense: The government's position is that  
3 at least three levels should be added for role in the offense,  
4 while defendant Lin seeks to have no such increase;

5 (3) Relevant Conduct: The government's position is that Lin  
6 is responsible for relevant conduct involving fish or wildlife  
7 valued at over \$50 million, while defendant Lin seeks to be held  
8 accountable for just the \$411,000 worth of fish;

9 (4) Departures: The government's position is that Lin should  
10 be sentenced, pursuant to the guidelines as capped by the  
11 statutory maximum limits, to 24 months in prison and a fine of  
12 \$200,000, while defendant Lin seeks downward departures up to 121  
13 months and a probationary sentence.

14 Defendant Ragone: Sentencing as to defendant Ragone is fully  
15 contested, the following issues of dispute remaining between the  
16 parties:

17 (1) Role in the Offense: The government's position is that  
18 at least three levels should be added for role in the offense  
19 while defendant Ragone seeks to have no such increase;

20 (2) Sentence: The government's position is that under the  
21 factors set forth at 18 U.S.S.G. § 3553, Ragone should be given a  
22 sentence comparable to Lin's and other prior defendants in  
23 analogous seafood false labeling cases, that is, 24 months and a  
24 fine of \$200,000, while defendant Ragone seeks a probationary  
25 sentence.

26 //

27 //

28 //

1 **A. Defendant Chau-Shing Lin**

2 **1. Applicable Sentencing Guideline for Count Two**

3 Defendant Lin pled guilty pursuant to Count Two of the  
4 Information to a violation of the Lacey Act, 16 U.S.C.  
5 §§ 3372(a)(1), 3373(d)(2). Pursuant to the Sentencing  
6 Guidelines, the applicable guideline for violations of the Lacey  
7 Act is U.S.S.G. § 2Q2.1. See Appendix A to the Sentencing  
8 Guidelines; U.S.S.G. § 2Q2.1 ("Statutory Provisions: 16 U.S.C. §§  
9 . . . 3373(d) . . ."; "Background: This section applies to  
10 violations of . . . the Lacey Act . . ."). Chapter 2Q of the  
11 Guidelines deals with offenses involving the environment. Part 1  
12 addresses "environment," including record keeping violations and  
13 health related issues such as tampering with public water  
14 systems. Part 2 addresses "conservation and wildlife" broadly  
15 applying to all violations of the Lacey Act, including marking  
16 and labeling violations. Specifically, U.S.S.G. § 2Q2.1 applies  
17 to offenses "involving fish. . . ." *Id.* The elements of Count  
18 Two to which defendant Lin has pled guilty include: (1) knowingly  
19 trafficking in *fish* or wildlife (in this case fish) when in the  
20 exercise of due care defendant should have know that; (2) the  
21 *fish* or wildlife had been transported or sold in violation of a  
22 law of the United States (in this case the Lacey Act marking and  
23 false labeling prohibitions as well as related regulatory  
24 provisions). The Lacey Act defines "law" to include laws that  
25 regulate the taking, possession, importation, exportation,  
26 transportation or sale of *fish* (such as the Lacey Act itself that  
27 requires accurate labeling of fish). 16 U.S.C. § 3371(d)  
28 (emphasis added). Fish is defined under the Lacey Act to include

1 all parts and products thereof, whether alive or dead. See 16  
2 U.S.C. § 3371(a).

3 Accordingly, U.S.S.G. § 2Q2.1 has been duly applied in the  
4 sentencing of various individuals convicted, as in this case, of  
5 Lacey Act violations related to the false labeling of *fish*.  
6 These cases include: (1) *United States v. Du Sa Ngo*, No. 2:08-CR-  
7 01049-PSG-1 (C.D. Ca 2008); (2) *United States v. David S. Wong*,  
8 No. 2:07-CR-00449-PSG-12 (C.D. Ca 2009); (3) *United States v.*  
9 *Joseph Xie*, No. 1:08-CR-00191-RMC-1 (D. D.C. 2009); (4) *United*  
10 *States v. John Popa*, No. 1:10-CR-00011-CG (S.D. Al. 2011); (5)  
11 *United States v. Stephen C. Delaney, Jr.*, No. 1:09-CR-10312-RGS  
12 (D. Ma. 2011); and, directly related to defendant Lin's  
13 violations, (6) *United States v. Thomas Katz*, No. 1:10-CR-10120-  
14 WGY-1 (D. Ma. 2011).

15 Defendant Lin would prefer this Court to contort the  
16 Guidelines to somehow find instead that U.S.S.G. § 2N2.1 applies  
17 because it results in a lower offense level. This is analogous  
18 to asking the Court to find that the government should have  
19 charged him, or he should have pled to, a different violation.  
20 The Supreme Court has long held that it is within the  
21 government's discretion to select the offenses to be charged even  
22 where the same conduct violates two different statutes with very  
23 different penalties. See *United States v. Batchelder*, 442 U.S.  
24 114 (1979). In this instance not only did the United States  
25 elect the charge with the higher applicable guideline range,  
26 defendant knowingly elected to plead guilty to that charge.

27 In any event, § 2N2.1 does not apply. Pursuant to the  
28 Sentencing Guidelines, § 2N2.1 applies to certain violations of

1 Title 7 of the United States Code (Agriculture), Title 21 (Food  
2 and Drugs), and in one instance, a violation of Title 42 (Public  
3 Health and Welfare), none of which are charged in Count Two.  
4 Section 2N2.1 applies to violations dealing with any food, drug,  
5 biological product, device, cosmetic, agricultural product, or  
6 consumer product. Defendant Lin will likely suggest that because  
7 fish involved in the Lacey Act violation was meant to be eaten by  
8 a consumer, 2N2.1 should apply rather than the guideline  
9 specifically to be applied to Lacey Act violations. Since most  
10 fish and wildlife are edible (venison, lobsters, bluefin tuna,  
11 etc.) and/or used in consumer products, such reasoning would  
12 render 2Q2.1 largely inapplicable to the core of Lacey Act cases  
13 for which it is specifically proscribed. Major Lacey Act cases  
14 have involved lobster, ginseng, bear bile, even bushmeat  
15 including monkey meat, all intended for consumption. *See United*  
16 *States v. Mamie Manneh*, No. 1:06-CR-00248-RJD-1 (E.D.N.Y. 2009)  
17 (importation of monkey meat for consumption; *United States v.*  
18 *Bengis*, No. 03-CR-308 (LAK) (S.D.N.Y. 2004) (illegal importation  
19 of rock lobster and toothfish aka Chilean seabass intended for  
20 consumption); *United States v. McNab*, No. 00-00079-CR-1-RV (S.D.  
21 Ala. 2003)) (illegal importation and sale of spiny lobster  
22 intended for consumption); *United States v. Howard William*  
23 *Ledford*, No. 1:09mj66 (W.D. N.C.) (sale of ginseng); *United*  
24 *States v. Clement Calhoun*, No. 2:09mj19 (W.D. N.C. 2009)(sale of  
25 bear gall bladders intended for bile consumption). *See also*,  
26 *e.g.*, *United States v. GEM Manufacturing*, No. 2011-19 (D. Virgin  
27 Islands) (Lacey Act false labeling violations of coral involved  
28 in coral jewelry).

1 Defendant Lin is expected to suggested that 2Q2.1 does not  
2 apply because the violations do not involve harm to the  
3 environment. He is mistaken. False labeling in the seafood  
4 industry masks the actual state of the fisheries, leading the  
5 public, and even regulators, to erroneously think all is well,  
6 resulting in a failure to address environmental issues. For  
7 example, let's say over fishing or pollution leads to a dearth in  
8 a popular fishery, as happened with grouper. Demand outstrips  
9 supply, normally causing prices to increase and consumers and  
10 others to become aware of the problem in the fishery. Awareness  
11 leads to steps being taken to correct the problem and, with luck,  
12 restoration of the fishery. However, where, as with grouper,  
13 prices rise and supply is lacking, dishonest dealers will see the  
14 opportunity to make high profits at low risk to them (compared to  
15 drug dealing, for example) and false labeling abounds. All  
16 consumers then see in the grocery store and local restaurants is  
17 a continued plentiful supply of what they believe to be grouper  
18 at a consistent, or possibly reduced, price. No action is  
19 consequently undertaken to protect or restore the grouper  
20 fishery. Moreover, the falsely labeled fish keeps the prices for  
21 real grouper lower, harming the domestic fishermen who rely on  
22 that market for their livelihood and causing them to increase the  
23 fishing pressure on grouper in an attempt to catch and sell more  
24 to make the same income despite the depressed market price. See  
25 Attachment 3 (Letter to Judge Anderson from the Shrimp Alliance)

26 Moreover, passing off species of seafood for other species  
27 can present a very real hazard to public health both through  
28 issues with food allergies and through the masking of risks

1 associated with particular species or countries of origin. See  
2 Attachments 3 and 4 (articles discussing such risks).

3 Defendant Lin may argue that he should receive the same  
4 sentence as defendant Ragone, a point with which the government  
5 largely agrees.<sup>1</sup> However, as explained below, the answer is not  
6 to contort the Sentencing Guidelines to avoid a meaningful  
7 penalty for defendant Lin, but rather to reasonably calculate the  
8 applicable guidelines, the differences in conduct, and then with  
9 reference to all of the factors under 18 U.S.C. § 3553, including  
10 consideration of comparable sentences in other cases, determine  
11 whether those factors call for a sentence different from the  
12 guidelines range. Under this correct legal analysis, it is  
13 Ragone's sentence that, under Section 3553 factors, should be  
14 made commensurate with Lin's guideline sentence, not the other  
15 way around. See Ragone, 2. 18 U.S.C. § 3553 Sentence, below.

16 **2. Enhancement for Role In The Offense**

17 An enhancement for role in the offense is appropriate under  
18 U.S.S.G. § 3B1.1 and provides for an increase based on role in  
19 the offense where the defendant was a manager or supervisor and

20 \_\_\_\_\_  
21 <sup>1</sup>Defendant Lin also may assert that the government agreed in  
22 the plea agreement that the fraud table was not applicable to Mr.  
23 Lin's offense conduct. The government did not do so. The  
24 government agreed only that under a 2N2.1 calculation (Count  
25 Three), a cross reference to the fraud table would not be made.  
26 In fact, it was Defendant Lin who expressly agreed in the plea  
27 agreement that under a 2Q2.1 calculation (Count Two) the fraud  
28 table, used as a table for fair market retail value as specified  
under 2Q2.1, *would apply*.

1 the criminal activity involved five or more participants or was  
2 otherwise extensive. Application Note 3 to U.S.S.G. § 3B1.1  
3 expressly addresses this type of circumstance, providing that:

4 In assessing whether an organization is "otherwise  
5 extensive," all persons involved during the course of  
6 the entire offense are to be considered. Thus, a fraud  
7 that involved only three participants but used the  
8 unknowing services of many outsiders could be  
9 considered extensive.

10 Lin was the hands-on president of Ocean Duke which imported,  
11 sold, re-acquired and re-sold all of the illegally labeled  
12 seafood in question. Lin managed and supervised the charged  
13 criminal activity, including the actions of all of those who  
14 carried out his criminal enterprise, from the suppliers in  
15 Vietnam and the shippers in China and Cambodia, including To and  
16 Truong at Yelin who falsely labeled and transported the product  
17 pursuant to Lin's direction and authorization, to Ocean Duke  
18 office personnel who assisted with the labeling arrangements at  
19 Lin's direction and thereafter arranged for the storage, shipment  
20 and billing for the mislabeled fish. Some of those Lin managed  
21 or supervised have criminal liability as either knowing  
22 participants (e.g., Christopher Ragone) or as persons who, in the  
23 exercise of due care, should have known that the product was  
24 falsely or misleadingly labeled. Lin supervised or managed at  
25 least 5 key players with sufficient scienter, including but not  
26 limited to Ragone, Seafood Solutions, Roger Lin, and at least two  
27 key overseas personnel, Peter To and Truong Trieu Truong.

28 Even if the court were somehow to determine that some of

1 these participants lacked sufficient scienter, Lin's role still  
2 requires a 3 level enhancement due to the "otherwise extensive"  
3 nature of the enterprise as described in Application Note 3  
4 above. Lin managed and supervised the services of many to  
5 perpetuate these crimes, from overseas workers and shippers to  
6 import brokers, Ocean Duke office staff, re-labelers and cold  
7 storage warehouse facilities. The 3 level increase for role in  
8 the offense as a supervisor or manager should apply; at the very  
9 least a two level enhancement is appropriate for an "organizer,  
10 leader, manager or supervisor in any criminal activity."  
11 U.S.S.G. § 3B1.1 (omitting requirement for a minimum number of  
12 criminal participants or otherwise extensive activity).

### 13 **3. Relevant Conduct**

#### 14 **a. Fish**

15 *Pangasius* is a genus in the Order of catfishes. There are  
16 two main species of *Pangasius* that have been commercially traded  
17 in the United States: *Pangasius hypophthalmus* and *Pangasius*  
18 *bocourti*. "Ponga" is an FDA-authorized United States market name  
19 for *Pangasius pangasius*, a species not commercially traded in the  
20 United States. *Pangasius* is a very different fish from grouper;  
21 the names are in no way synonymous.

22 Defendant Lin pled guilty to dealing in \$411,000 worth of  
23 illegally labeled *Pangasius hypophthalmus*. Specifically, the  
24 fish was labeled prominently as "Paradise Grouper" or "Falcon  
25 Baie Grouper," and elsewhere, in smaller lettering, on the label  
26 was the word "ponga." Buyers were misled into believing that  
27 they were buying grouper, a significantly more valuable, more  
28 desired, and less available species. The product was returned

1 when the buyers realized it was not grouper, and then resold by  
2 Seafood Solutions per decisions of defendant Lin.

3 Relevant conduct includes, of course, all acts and omissions  
4 "that were part of the same course of conduct or common scheme or  
5 plan as the offense of conviction." U.S.S.G. § 1B1.3(a)(2).

6 "For two or more offenses to constitute part of a common scheme  
7 or plan, they must be substantially connected to each other by at  
8 least one common factor, such as common victims, common  
9 accomplices, common purpose, or similar *modus operandi*." *Id.*,  
10 Application Note 9. Offenses that do not qualify as part of a  
11 common scheme or plan may nonetheless be included as relevant  
12 conduct "if they are sufficiently connected or related to each  
13 other as to warrant the conclusion that they are part of a single  
14 episode, spree, or ongoing series of offenses." *Id.* Factors to  
15 consider include "degree of similarity of the offense, the  
16 regularity (repetitions) of the offenses, and the time interval  
17 between the offenses." *Id.*

18 Rather than rely on such technical  
19 distinctions between offenses that are part  
20 of a pattern, the Guidelines' approach is to  
21 rely on "the full range of related conduct."  
*Id.* [USSG § 1B1.3] The commentary indicates  
this approach is important in dealing with "a  
pattern of small thefts." *Id.*

22 *United States v. Newbert*, 952 F2d 281 (9<sup>th</sup> Cir. 1991) (finding  
23 that related violations of state law constitute relevant conduct  
24 under U.S.S.G. § 1B1.3).

25 Defendant Lin's involvement in purchases, imports,  
26 transports and sale of additional containers and boxes of  
27 illegally labeled frozen fillets of *Pangasius hypophthalmus*  
28 before, during, and after the offenses of conviction is classic

1 relevant conduct. (See below at Sub-Section 4 for a full  
2 description of this knowing involvement). At a minimum, the  
3 sales to which defendant Ragone has pled guilty constitute  
4 relevant conduct for defendant Lin. Defendant Ragone pled guilty  
5 to selling an additional \$2 million worth of *Pangasius*  
6 *hypophthalmus*, labeled in exactly the same, illegal way. He sold  
7 this product in his capacity as salesman for, and for the primary  
8 benefit of, Ocean Duke, between February and April of 2006.  
9 Defendant Lin knew of the continued dealings of his salesman in  
10 this product. These sales occurred AFTER the time when Lin has  
11 admitted that he knew the labels were illegal; even Lin's  
12 acquisition of the product that was then sold by Ragone largely  
13 occurred during the time when he has admitted he should have  
14 known that the label was misleading.

15 Defendant Ragone was not Ocean Duke's sole salesperson.  
16 Review of Customs records establishes that between approximately  
17 July 31, 2004 and April 2006, Ocean Duke imported through the  
18 Central District of California and elsewhere, from Yelin and  
19 other affiliates, approximately 120 shipments containing a total  
20 of approximately 3,291,200 pounds of *Pangasius* with a declared  
21 value of approximately \$6,086,500.00 that was falsely and  
22 misleadingly labeled, invoiced and otherwise claimed to be  
23 "ponga," country of origin China, and declared under the tariff  
24 code for "other frozen fish fillets," 0304206096. See Attachment  
25 12, ODS000144 - ODS000145; Attachments 9, 10, 11.

26 Thus, when the relevant conduct of the dealings in  
27 additional illegally labeled fish is taken into account, the  
28 specific offense characteristic of fair market value, even when

1 calculated based on wholesale value for ease of calculation,  
2 increases from 14 to 18.

3 **b. Shrimp**

4 At the same time the defendant Lin was busy violating Lacey  
5 Act false labeling prohibitions in passing off a type of farmed  
6 catfish as grouper, he was also busy violating the labeling  
7 prohibitions in passing off shrimp from Vietnam and elsewhere as  
8 product of Cambodia. This conduct is relevant conduct under the  
9 guidelines as it involved common accomplices, common victims, a  
10 common purpose, and the same *modus operandi*.

11 Beginning in late 2004 and early 2005, NOAA Office of  
12 Enforcement (NOAA) and ICE began joint investigations of several  
13 companies allegedly importing *Pangasius hypophthalmus* (a species  
14 in the catfish family) from Vietnam into the United States in  
15 boxes labeled as "sole," "grouper," "carp," "channa," and other  
16 species.

17 Ultimately, the investigation revealed that the defendants  
18 in this immediate case, among others, participated in a scheme to  
19 falsely and misleadingly label, identify, describe and declare  
20 seafood products, including not just frozen fillets of *Pangasius*,  
21 but also frozen shrimp, as to, among other things, species and/or  
22 country of origin.<sup>2</sup> The scheme was undertaken in order to obtain  
23 market advantage by appearing to meet customer requirements or  
24 preferences as to species and country of origin, escape anti-

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26 <sup>2</sup> Results from other cases resulting from these joint  
27 investigations are set forth in Attachment 13 ("Catfish  
28 Sentencing Results").

1 dumping duties and/or scrutiny of possible circumvention of anti-  
2 dumping duties, and in some instances obtain higher market prices  
3 for a low-priced species. The two counts of conviction deal with  
4 just some of the *Pangasius hypophthalmus* that was part of this  
5 overall scheme.

6 In addition to the rest of the *Pangasius* involved, described  
7 above, shrimp was similarly falsely labeled. The evidence of  
8 this aspect of the false labeling scheme is as follows:

9 U.S. Customs records establish that in 2002 and 2003, Ocean  
10 Duke imported shrimp from Vietnam, Thailand, China, and  
11 occasionally Indonesia; but not Cambodia. See Attachments 7 and  
12 8. Then, on January 27, 2004, the Commerce Department published  
13 a notice of the initiation of an anti-dumping investigation  
14 pursuant to a petition that alleged that certain frozen and  
15 canned warm water shrimp from Thailand, China, and Vietnam, (but  
16 not Cambodia), were being sold in the United States at less than  
17 fair market value. See 69 Fed. Reg. 42654 (July 16, 2004); 69  
18 Fed. Reg. 42672 (July 16, 2004).

19 U.S. Customs records establish that in May 2004 Ocean Duke  
20 stopped importing shrimp from Vietnam, reduced imports from China  
21 by approximately two thirds (and of that remaining third, began  
22 to declare much of it as a particular type of shrimp product not  
23 subject to the anti-dumping duties), and simultaneously began  
24 importing shrimp significant quantities of shrimp from Cambodia.  
25 See Attachment 10. Specifically, between May and December 2003,  
26 Ocean Duke imported 52 shipments of shrimp from Vietnam and 613  
27 from China, but none from Cambodia; during the same time period  
28 in 2004, Ocean Duke imported no shrimp from Vietnam, 213

1 shipments from China, and 327 shipments from Cambodia. See  
2 Attachments 9 and 10.

3 In July 2004 the Commerce Department published preliminary  
4 orders imposing an anti-dumping duty of over 93% on shrimp from  
5 Vietnam and over 98% on shrimp from China specifically from Ocean  
6 Duke's supplier, Yelin Enterprises. In December 2004, the final  
7 anti-dumping duty was set at over 25% for Vietnam and over 82%  
8 for Yelin Enterprises in China. Also in 2004, anti-dumping  
9 duties were imposed on shrimp from Thailand. See 69 Fed. Reg.  
10 42654 (July 16, 2004); 69 Fed. Reg. 42672 (July 16, 2004); 69  
11 Fed. Reg. 71005 (December 8, 2004); 69 Fed. Reg. 76918 (December  
12 23, 2004).

13 Often importers will claim that sudden shifts in supply  
14 patterns related to an anti-dumping ruling will simply reflect  
15 good business decisions to pursue alternative legal supplies.  
16 However, Ocean Duke had not suddenly, and perhaps alone among its  
17 competitors, identified an untapped source of millions of pounds  
18 of aquacultured shrimp in Cambodia. Lin's company was  
19 transshipping from its existing sources, particularly Vietnam, and  
20 illegally labeling the product as product of Cambodia. Both the  
21 production data from Cambodia, and communications within Ocean  
22 Duke, reflect the illegal transshipment scheme.

23 First, an email dated May 13, 2004, right at the outset of  
24 the scheme, from a Yelin employee in Vietnam to an Ocean Duke  
25 employee, who forwarded the email to Lin's son, states in part  
26 "We are shipping some *containers of* [shrimp] . . . from VN to  
27 Cambodia for repacking. We really want to reuse all white  
28 cartons of Vietnam and stick MC [master carton] labels in

1 Cambodia." See Attachment 14 (emphasis added). Lin has asserted  
2 to the government in the past that some strained reading of this  
3 email allows him to argue that this refers to a shipment of  
4 cartons alone without the shrimp. The plain language of the  
5 email is that "containers" of shrimp are being shipped "for  
6 repacking." *Id.*

7 Second, U.S. Customs records show specifically that between  
8 May 2004 and July 2005, Ocean Duke imported over 15 million  
9 pounds of shrimp declared country of origin Cambodia with a  
10 declared import value of over \$42 million. See Attachment 18.  
11 Moreover, due to restrictions imposed under the Endangered  
12 Species Act to protect sea turtles, the only way for shrimp from  
13 Cambodia to be entered into the United States is if it is  
14 certified to be aquacultured rather than wild harvested. 16  
15 U.S.C. § 1537, note 16; 64 Fed. Reg. 36949 (July 8, 1999).  
16 Consequently, Ocean Duke submitted records for shrimp imports  
17 from Cambodia declaring that the shrimp was aquacultured in  
18 Cambodia. See Attachment 16.

19 However, while Ocean Duke was declaring imports of 15  
20 millions pounds of aquacultured shrimp, United Nations official  
21 "yearbook" statistics show that Cambodia reported to the United  
22 Nations for the whole of 2004 and 2005 a total national  
23 production of aquacultured shrimp (including both that which was  
24 exported and that which was domestically consumed) of  
25 approximately 385,808 pounds. Attachment 17. This approximate  
26 amount has been confirmed by Dr. Nao Thuok, Director General of  
27 the Cambodian Fisheries Administration, who stated in an  
28 interview that the total aquacultured shrimp production of

1 Cambodia for 2004 was approximately 155,000 pounds and for 2005  
2 an estimated 242,000 pounds. See Attachment 18 (Report of  
3 Interview of March 5, 2010, with attached letter dated February  
4 12, 2010).<sup>3</sup> Even if these figures were off by half, it comes  
5 nowhere close to the 15 million pounds Ocean Duke declared to be  
6 aquacultured Cambodian shrimp from just May 2004 to July 2005.

7 Lin was well aware of Cambodia's limited capacities. While  
8 Lin's company was declaring the shrimp to be aquacultured in  
9 Cambodia, Lin was working on a plan with To at Yelin, to  
10 establish a modern shrimp processing plant in Cambodia. The  
11 project was still in the planning stages in early 2005 and  
12 reflected their understanding of the limited scope of existing  
13 aquaculture capacities. An email dated February 17, 2005, from  
14 Peter To to Lin regarding the development of a processing plant  
15 and shrimp farming in Cambodia, shows that the plant will be  
16 available mid July 2005 and that the farming to supply the plant  
17 may take longer to start. See Attachment 19. Consequently, To  
18 wrote that he had discussed with Truong [Yelin's Vietnam

19 \_\_\_\_\_  
20 <sup>3</sup> During the interview Dr. Thuok stated that Cambodian  
21 shrimp aquaculture facilities are regulated and numbers of  
22 production are reported annually. At the end of each year, each  
23 province submits those numbers to his office. Dr. Thuok  
24 indicated that the production statistics Cambodia reports to the  
25 United Nations are based on these production reports, NOT on  
26 export forms. Dr. Thuok said the shrimp export declaration forms  
27 are filled out by the exporter and that government staff check  
28 only that the amount of product on the form matches with the  
amount of product in the shipment. He stated that his staff has  
no actual information on where the shrimp being declared was  
harvested and the numbers on the export forms are not compared to  
the production reports from the Provinces. In other words,  
official production numbers are based on actual production  
records. Export numbers are based solely on what the exporter  
elects to put in a form with no verification or cross reference  
to actual production capacities. *Id.*

1 representative] getting raw material from shrimp suppliers from  
2 Vietnam to "send some raw material through the border in order to  
3 let the factory have something to do after grand open in July."  
4 See *id.* In short, Lin was well aware that there was not  
5 sufficient aquaculture in Cambodia during the time (May 2004 to  
6 July 2005) when Ocean Duke was declaring its imported shrimp as  
7 product of Cambodia, to support the operation of a large  
8 processing plant in that country.

9 Further reflecting Lin's understanding of the illicit nature  
10 of the product coming out of Cambodia starting in 2004, are  
11 directions Lin gave to To to keep the paperwork for the  
12 transshipped shrimp structured so as to insulate Yelin and Ocean  
13 Duke from the actual sourcing of the raw shrimp materials outside  
14 Cambodia. Specifically, in an email dated July 14, 2004, from  
15 Lin to To in Hong Kong, regarding "Supply from Cambodia" Lin  
16 wrote in part "Please be careful about following 1. Please set  
17 up PO [purchase order] to Cambodia Factory. 2. You need pay to  
18 factory direct! 3. Cambodia Factory need set up PO to their  
19 Supplier also direct wire to their supplier, Yelin H K cannot  
20 have any involve or any paper related!" See Attachment 20.  
21 These directions reflect Ocean Duke's need for its supplier Yelin  
22 not to create a paper trail reflecting that the shrimp being  
23 purchased for Ocean Duke are in fact being bought from a supplier  
24 in Vietnam before being sent to a factory in Cambodia. Thus, the  
25 Cambodia factory, Lian Heng, was to be the entity directly  
26 purchasing from or paying the supplier, not Yelin.

27 This same Cambodia factory, Lian Heng, was even at the time,  
28 as Lin knew, under investigation for its illegal transshipment

1 activities to avoid anti-dumping duties, albeit with regard to  
2 Vietnamese catfish rather than shrimp. See 71 Fed. Reg. 9086  
3 (February 22, 2006) and 71 Fed. Reg. 38608 (July 7, 2006).

4 Further reflecting knowledge of the state of shrimp  
5 production in Cambodia by Ocean Duke management, a former  
6 employee of Ocean Duke (as a salesman for Seafood Solutions),  
7 stated that Roger Lin discussed with him how Ocean Duke had been  
8 importing shrimp from Cambodia at a time when Cambodia produced  
9 less than ½ million pounds of shrimp per year. See Attachment  
10 21.

11 Another former employee who is currently a salesman for a  
12 large seafood company that specializes in shrimp from Asia,  
13 stated that he has never seen shrimp from Cambodia except from  
14 Ocean Duke back in 2004, and that Cambodia is not among the  
15 countries that produce thousands of tons of shrimp per year. See  
16 Attachment 22.

17 The conduct underlying Counts Two and Three and were merely  
18 part of what became the "end game" of a multi-year common scheme  
19 or plan to mislabel imported seafood to avoid anti-dumping  
20 duties, and to make the product more marketable and/or valuable  
21 (that is, more profitable) when it was sold in the United States.  
22 All of the conduct involved common victims (seafood consumers,  
23 from wholesalers to retailers to the diner in the restaurant),  
24 common accomplices (Lin's son, his salespeople, including  
25 particularly Ragone, and his overseas suppliers including To and  
26 Truong), a common purpose (mislabel frozen seafood to avoid anti-  
27 dumping duties and increase marketability and profitability), and  
28 a similar *modus operandi* (product would be transhipped from

1 Vietnam to a country without anti-dumping duties (China,  
2 Cambodia) and falsely labeled prior to import; brokers would be  
3 mislead into falsely declaring the product on the customs import  
4 paperwork; salesmen would conceal the true origin and/or species  
5 of the product, completing invoices according to how it was  
6 imported rather than what the product actually was). When  
7 determining whether the necessary nexus exists for relevant  
8 conduct, "courts are not required to throw good judgment, human  
9 experience, and common sense to the winds." See *United States v.*  
10 *Sklar*, 920 F.2d 107 (1<sup>st</sup> Cir. 1990). The total conduct involving  
11 illegally labeled fish and illegally labeled shrimp is relevant  
12 conduct for defendant Lin.

13 **4. No Departures Are Warranted**

14 Defendant Lin should be sentenced to a guideline sentence,  
15 as capped by the statutory maximum pursuant to the plea  
16 agreement, of 24 months. Without the benefit of the plea  
17 agreement, had Lin gone to trial and been convicted on related  
18 felony charges, he would have faced a guideline sentence of a  
19 minimum of over ten years in prison. Given the benefit already  
20 gained through the plea, and the lack of extenuating  
21 circumstances, and consideration of the factors set forth at 18  
22 U.S.C. § 3553(a)(1), (2), (4) and (6), a sentence below the  
23 guideline range should not be considered.

24 //

25 **a. 18 U.S.C. § 3553(a)(1)**

26 Both the nature and circumstances of the offense and the  
27 history and characteristics of the defendant support a 24 month  
28 sentence.

1 First, defendants will seek to cast their fish false  
2 labeling violations as a mere attempt to make consumers realize  
3 that *Pangasius hypophthalmus* has similar qualities to grouper and  
4 should be considered as a good substitute or even an equivalent.  
5 In other words, *Pangasius hypophthalmus* was hard to market in the  
6 United States as a bottom-feeding fish farmed in the Mekong  
7 River, let alone cost-effectively imported after the imposition  
8 of anti-dumping duties. There were good reasons for the  
9 difficulty in marketing the fish. Marketing challenges and  
10 diminished profits do not justify illegal labeling.

11 It is anticipated that defendant Lin will claim further that  
12 he consulted with experts regarding the legality of the label and  
13 was told by the paid consultants that the label met technical  
14 legal requirements. Defendant will likely take the position that  
15 he is merely a good businessman who was trying to find a  
16 competitive edge even if that meant skating close to the line,  
17 but that he had not thought he went over that line. All of this  
18 is belied by defendant's actions, history, and the basic facts of  
19 this case.

20 First, defendant's company, Ocean Duke, has a prior history  
21 with anti-dumping violations. See Attachment 23 (ICE report  
22 reflecting 1999 violations). In addition to the 1999 violation,  
23 defendant Lin has engaged in a long history of falsely labeling  
24 *Pangasius hypophthalmus*.

25 First, since at least 2001, Lin's company, Ocean Duke,  
26 imported and declaring its *Pangasius hypophthalmus* from Vietnam  
27 but passing it off at times as grouper. Customs records show  
28 that for at least 2001-2002, Ocean Duke was importing product

1 declared as frozen catfish fillets from Vietnam (but not China).

2 See Attachments 6 and 7. Ocean Duke business records show that  
3 it sold this product as either basa catfish or as grouper.

4 This first variation of the scheme worked well for marketing  
5 *Pangasius hypophthalmus* as grouper. But then in January 2003,  
6 the preliminary anti-dumping duty order placing duties on  
7 *Pangasius* from Vietnam was announced. The scheme needed to be  
8 modified to keep profits high. Thus, as of approximately  
9 February 11, 2003, following the January 31, 2003, issuance of  
10 the preliminary anti-dumping order relating to *Pangasius* from  
11 Vietnam, Ocean Duke abruptly ceased importing *Pangasius* product  
12 declared as "freshwater catfish fillets" from Vietnam and began  
13 importing the same product declared as product of China and/or  
14 Hong Kong. See Attachment 9. There were no anti-dumping duties  
15 for *Pangasius* that was product of China. A Yelin employee in  
16 Vietnam confirmed that Yelin was exporting "catfish" from Vietnam  
17 to Hong Kong where it was transshipped to the United States.  
18 Attachment 24 at 4.

19 Defendant Lin was fully aware that he was passing off  
20 *Pangasius* as grouper all along and was now transshipping through  
21 China. This is reflected in his efforts to prevent confusion  
22 between the Vietnamese *Pangasius* now being brought in from China  
23 as grouper and real grouper Ocean Duke apparently could sometimes  
24 obtain through that country. For example, on or about February  
25 26, 2003, Lin sent an email to his son, stating in part "We have  
26 three PO is Really Grouper Fillet from China To prevent Mix up  
27 Species with Vietnam Grouper *reprocess* in China. Please set up  
28 one new Item Code to identify those two Species. . . ." [sic]

1 See Attachment 25 (emphasis added). Lin received a response,  
2 suggesting, "How about #7325 for REAL and #2272 for basa?" *Id.*  
3 Lin in turn responded stating, "Please don't mark any about Basa  
4 Fish! Just Real use #7325." *Id.* Finally, Lin sent an email on  
5 which he copied Ragone, stating in part, "Real grouper from China  
6 will have #7325 as the grade in the product description. Regular  
7 grouper will remain the same." *Id.*

8 Further demonstrating that the Paradise Grouper from China  
9 was known to Lin to be Vietnamese *Pangasius*, is the fact that  
10 Truong, Yelin's Vietnam representative, was continuing to  
11 purchase "Vietnamese catfish" under the name of grouper fillet  
12 "Paradise Brand." Specifically, although Ocean Duke after 2002  
13 stopped declaring the importation of any type of "catfish" from  
14 Vietnam, in October 2003 Truong (Yelin's Vietnam representative)  
15 entered into a contract with Vinh Long Aqua Produce Product  
16 Processing ("VAPP"), a factory that provided "catfish" to Yelin  
17 in 2002 and 2003. See Attachment 26, at 2-3. The 2003 contract  
18 reflects that Truong ordered frozen "catfish" fillets from VAPP  
19 under the name of grouper fillet "Paradise Brand" and "Falcon  
20 Baie Brand." *Id.* These are brands used by Ocean Duke and its  
21 customer Universal Group, Inc. The contract specifies that VAPP  
22 must pack and label the shipments of "catfish" under the  
23 commercial name(s) as specified by the buyer. *Id.*

24 Lin's knowledge is further evidenced by an email he sent,  
25 dated March 4, 2004, to the "Sales Department," captioned, "New  
26 PO for Basa/Grouper Fillet. . .," stating in part "Please noted I  
27 just booking for two containers of Basa (Or *call* Grouper) Fillet.  
28 . . ." See Attachment 27 (emphasis added).

1 Thus, from 2003 until the spring of 2004, Ocean Duke was  
2 importing *Pangasius hypophthalmus* farmed in Vietnam, but labeling  
3 it as grouper and packing it and shipping it to the United States  
4 from China, declaring it as product of China to avoid anti-  
5 dumping duties. Then in early 2004 Customs began cracking down  
6 on the grouper false labeling scheme. Ocean Duke was aware of  
7 the increased scrutiny. On March 31, 2004, defendant Ragone  
8 responded to an email from a client forwarding a news article on  
9 the Customs crackdown on imports of seafood from Vietnam, noting,  
10 "Looks like things are heating up!" See Attachment 28.

11 At the same time, one of Lin's own employees complained that  
12 Ocean Duke was mislabeling the fish. On May 5, 2004, Lin  
13 received an email from an employee, Matt Hidrogo, expressing  
14 serious concerns about working for Ocean Duke and explaining his  
15 reasons. First, he wrote about an incident earlier in 2004 in  
16 which a purchaser who believed the product he had received was  
17 not grouper but "basa." See Attachment 29. Hidrogo explained  
18 that grouper is not a recognized name for *Pangasius* and wrote  
19 that, "I feel at the very minimum that this is mislabeling of  
20 product." *Id.* Hidrogo also wrote of products being short weight  
21 (as low as 80% of listed net weight). *Id.* Hidrogo noted that,  
22 "to date I have not discussed these issues with any customers or  
23 potential customers, nor have I reported them to any US  
24 Government agencies." *Id.* Hidrogo then requested a severance  
25 package which he was provided.

26 Instead of mending his ways, Lin began to look for a new  
27 angle.

28 Together with, and even at the urging of, defendant Ragone

1 who had a lucrative grouper client that he wished to maintain,  
2 Lin developed a new label for the *Pangasius* product. After  
3 considering other options, including "White Grouper" and "Frozen  
4 Bocourti Fish Fillets," Lin and Ragone settled on a label,  
5 identifying the product as "Falcon Baie Grouper" (Falcon Baie  
6 being a trade name used by Katz) or "Paradise Grouper" (Paradise  
7 being a trade name used by Ocean Duke), with the word "ponga"  
8 (ponga being an FDA-approved, but heretofore largely unused,  
9 trade name for *Pangasius pangasius* but not *Pangasius*  
10 *hypophthalmus*) in smaller letters toward the bottom of the label.  
11 See Attachment 30. On July 15, 2004, an employee of Yelin at a  
12 Vietnam email address sent an email to an Ocean Duke employee  
13 asking her to send the revised designs for "Falcon Baie" asking,  
14 "it is now grouper fillet, not Basa fillet, right? We must  
15 change the designs, right?" To which the Ocean Duke employee  
16 responded on July 17, 2004, that she had uploaded the design into  
17 a folder named in part "Falcon Baie Grouper Ponga." See  
18 Attachment 31.

19 As of approximately late July 2004, Ocean Duke ceased  
20 importing any frozen fillets declared as grouper and began to  
21 import frozen fillets declared as "ponga" product of China. See  
22 Attachment 10. Ocean Duke employees were informed, when they had  
23 to respond to client calls complaining that the client had  
24 ordered grouper and received ponga, that grouper and ponga were  
25 one and the same. See Attachment 32, Memorandum of Interview of  
26 Veronica Gonzalez; Attachment 33, Memorandum of Interview of  
27 Sherri Reed. In this same period, a senior Ocean Duke employee  
28 told other employees, some of whom had received inquiries from

1 customers, that ponga was the same thing as grouper and that the  
2 name was changed to ponga to make it easier to clear through the  
3 port. See Attachment 32.

4 The fish was not only misleadingly labeled as to species,  
5 but also falsely labeled as to country of origin as Ocean Duke  
6 continued to tranship the fish through China where, as late as  
7 March 2005, Lin knew there were no *Pangasius*. For example, on  
8 March 9, 2005, To sent an email to Lin in response to an inquiry  
9 from Lin about getting a plant in China certified and approved to  
10 pack *Pangasius* for a particular purchaser that read in part, "I  
11 think it is difficult to get . . . [purchaser's] approval because  
12 there are no Ponga fish in China. The . . . [purchaser's]  
13 inspector must go to see the farming area & actual processing of  
14 those fish fillet." See Attachment 34 (emphasis added). And, as  
15 noted above, according to an employee at Yelin in Vietnam, until  
16 December 2005, Yelin continued to export catfish (as grouper and  
17 then ponga) from Vietnam to Hong Kong and then transship it to  
18 the United States. See Attachment 24 at 4.

19 Further evidencing the continued transshipment, as well as  
20 Lin's understanding of the use of the misleading species label,  
21 on October 5, 2004, Lin sent an email to To, stating in part "4.  
22 Breaded Grouper Fillet I am talking about use Ponga Fillet to  
23 produces Please let me know the situation!" See Attachment 35.  
24 To responded the same day, stating in part "If using Ponga to  
25 process Fully fry breaded grouper fillet US\$1.75/lb." See  
26 Attachment 36. On October 20, 2004, To sent an email to Lin  
27 stating in part, "4. We have imported to China some Ponga fish  
28 fillet and can use to process fully fry breaded grouper one

1 container at US\$1.70 lb. Total we have applied import of raw  
2 material which can process about 11 containers of breaded  
3 products." See Attachment 37.

4 As late as June 2005, China still was not the source of the  
5 *Pangasius*; on or about June 9, 2005, To sent an email to Lin that  
6 read in part "I checked with Catfish packer and he said the cat  
7 fish season coming from August. He will offer in Aug. Now most  
8 China export cat fish fillet are imported from Vietnam and then  
9 re-packing." See Attachment 38.

10 Between approximately July 31, 2004 and April 2006, Ocean  
11 Duke imported through the Central District of California and  
12 elsewhere, from Yelin and other affiliates, approximately 120 sea  
13 cargo shipments containing a total of approximately 3,291,200  
14 pounds of *Pangasius* with a declared value of approximately  
15 \$6,086,500.00 that was falsely and misleadingly labeled, invoiced  
16 and otherwise claimed to be "ponga," country of origin China, and  
17 declared under the tariff code for "other frozen fish fillets,"  
18 0304206096. See Attachments 9-12.

19 These actions were not a matter of clever marketing intended  
20 to educate, but not deceive, consumers as defendant Lin might try  
21 to suggest. Lin was well aware that customers were being  
22 intentionally misled. For example, in August 2004, Lin's son  
23 arranged via email to have a Yelin affiliate (Ever Hope) create a  
24 letter to Beaver Street Fisheries, a purchaser who had recently  
25 been contacted by a customer complaining that the Paradise  
26 Grouper the purchaser had bought from Ocean Duke in late July  
27 2004 for approximately \$89,000, was not, in fact, grouper. See  
28 Attachment 39, Memorandum of Interview of Carlos Sanchez and Mike

1 Gvozdich. The letter stated in part,

2 Thank you for your inquiry on possible issues regarding  
3 the Paradise-brand grouper fillets from China. \* \* \*  
4 Due to high volume productions and large number of  
5 species handled by the packers, it is theoretically  
6 possible that a small quantity of products may have  
7 been inadvertently packed in incorrect cartons.  
8 Although we believe any such incident would be  
9 extremely minor, we nevertheless are committed to  
10 ensuring our customers are completely satisfied with  
11 our product quality and service. Therefore, in  
12 response to your inquiry, we are initiating a  
13 voluntary, general recall of all Paradise-brand grouper  
14 fillets that originates from China.

15 See Attachment 40. No such general recall was instituted nor  
16 were any "inadvertent" mistakes resulting in the labeling of  
17 *Pangasius* as "Paradise Grouper;" all of Ocean Duke's *Pangasius*  
18 was thus labeled pursuant to its directions. On or about August  
19 27, 2004, Ragone sent an email to Lin advising that a letter had  
20 been sent to the purchaser's customer "denying that the product  
21 is Basa." The email further stated that the purchaser's customer  
22 was told the product had been tested and was not "Basa" and that  
23 there are over 400 species of Groupers throughout the world and  
24 that it is impossible to verify all of the species. See  
25 Attachment 41.

26 Further reflecting Lin's understanding of exactly how the  
27 product was being marketed as grouper and not as a type of  
28 *Pangasius*, on or about March 17, 2005, Lin sent an email to To  
that read in part, "Regarding Ponga Fish Fillet, Paradise Grouper  
Brand Please hold back the production Seems A lot of buyer back  
up this item Because Government Start check *they use this fish to*  
*sales as Grouper Fillet*, I think Market will have problem from  
now on!" See Attachment 42 (emphasis added). Thus, Lin was  
aware that his customers, or buyers, were selling the fish as

1 *Grouper*, just as the label was intended to facilitate.

2       The conduct was deliberate and pervasive. For example, in  
3 May 2005, another fish dealer, Cheney Brothers, Inc., sent a  
4 purchase order to Ocean Duke for "Grouper fillet Vietnam." See  
5 Attachment 43. Defendant Ragone filled the order with "Paradise  
6 Grouper" "China Ponga." *Id.* at Bates stamp # OD057787. Cheney  
7 Brothers continued to order grouper from Ocean Duke and Ocean  
8 Duke continued to fill those orders with *Pangasius hypophthalmus*  
9 labeled as "Paradise Grouper" even after the return of such fish  
10 for being misleadingly labeled that underlies the Counts of  
11 conviction. Then in March 2006 a restaurant chain that purchased  
12 this product from Cheney Brothers complained that the grouper  
13 they received was not grouper. Cheney Brothers' Director of  
14 Safety and Risk Services explained during an interview in August  
15 2006 that this product was ordered as Paradise brand grouper, and  
16 it was known it was a product of Vietnam. However, Ocean Duke  
17 invoiced the product as China "ponga" when the invoices were sent  
18 to Cheney Brother's account receivables division. The sales  
19 division did not see those invoices and relied on the purchase  
20 orders to check inventory records to verify the orders were  
21 received from Ocean Duke. See Attachment 44, Memorandum of  
22 Interview of Kevin Mosely. Thus, the fact that the fish was not  
23 grouper as ordered was not discerned by the buyers until the  
24 restaurant chain notified them after the chain was inspected by  
25 Florida officials. Cheney brothers recalled the product in April  
26 2006.

27       In short, for years Ocean Duke imported *Pangasius*  
28 *hypophthalmus* from Vietnam as grouper, without any apparent

1 consultation with experts about the legality of labeling a  
2 *Pangasius* as a grouper, or the inclusion of the word "ponga" on  
3 the label. Once that scheme appeared under too much scrutiny at  
4 the point of import, and then with the added complication for  
5 Ocean Duke of the anti-dumping duty, Lin and his cohorts came up  
6 with the scheme of the too-cute by half labels of "Paradise  
7 Grouper" and "Falcon Baie Grouper" with the mysterious ingredient  
8 "ponga," and brought the product through China. This had the  
9 dual benefits of decreasing scrutiny at the point of import as  
10 well as facilitating the continued trade of the product as  
11 grouper. If paid consultants told Ocean Duke what it wanted to  
12 hear, that the use of "Paradise Grouper" and "Falcon Baie  
13 Grouper," provided it also said that the ingredient was ponga,  
14 was somehow neither false nor misleading, shame on them and shame  
15 on Ocean Duke for trying to use that cover. One wonders if the  
16 consultants were advised of the details of the actual downstream  
17 uses of the label or had noted or been aware even that the word  
18 ponga in fact described a different species of fish than was in  
19 the boxes or that there was "no Ponga fish in China." See  
20 Attachment 34.

21 In any event, even defendant Lin has admitted that he, in  
22 fact, knew that the label was at least misleading, and thus  
23 illegal, by the time that the fish was returned by TGIFridays in  
24 the summer of 2005 (see Counts Two and Three). Yet, through his  
25 salesmen and his company, Lin continued to import to sell the  
26 fish with the exact same label on it. It is telling to note that  
27 at this very same time, Ocean Duke's website list of fish  
28 products included "basa" (*Pangasius bocourti*) and "grouper" but

1 did not even list "ponga." See Attachment 45.

2 At the same time, as described above, Lin was immersed in  
3 similarly false labeling shrimp.

4 The massive false labeling by Ocean Duke of fish and shrimp  
5 was deliberate and motivated solely by greed. Defendant Lin,  
6 through Ocean Duke, has previously been caught and made to pay  
7 evaded duties before; yet here he is again. The nature and  
8 circumstances of the offense and the history and characteristics  
9 of the defendant support the 24 month prison sentence.

10 **b. 18 U.S.C. § 3553(a)(2)**

11 The need for the sentence imposed to serve the purposes of  
12 deterrence and to provide just punishment reflecting the  
13 seriousness of the offense also support a 24 month prison  
14 sentence. The financial benefits of such schemes are great, as  
15 is the detriment to the consumer, U.S. fishermen, and the  
16 environment. The likelihood of being caught and convicted are  
17 slim. In the totality of the circumstances, probation alone  
18 would not be an adequate deterrent, nor an adequate penalty.

19 **c. 18 U.S.C. § 3553(a)(4)**

20 Due consideration of the sentencing range as set forth under  
21 the United States Sentencing Guidelines strongly militates in  
22 favor of a 24 month sentence. Defendant Lin's guideline sentence  
23 would be a minimum of 121 months. He is statutorily capped at 24  
24 months. A sentence of less than 24 months would fail to reflect  
25 the factor of the applicable guideline range at all.

26 **d. 18 U.S.C. § 3553(a)(6)**

27 The need to avoid unwanted sentence disparities also  
28 supports the 24 month guideline and statutory sentence.

1 Comparisons to sentences imposed in similar cases involving the  
2 false labeling and sale of imported Vietnamese catfish (none with  
3 the additional factor of other types of seafood), strongly  
4 support the recommended two year sentence. See Attachment 13,  
5 Catfish Sentencing Results. Consider the case of Danny Nguyen.  
6 He entered into a guilty plea to conspiring to import falsely  
7 labeled *Pangasius* with a declared value of \$807,941.00, and  
8 conspiring to commit money laundering. He received credit for  
9 acceptance of responsibility and for substantial assistance.  
10 Nguyen nonetheless was sentenced to 51 months in prison, 3 years  
11 of supervised release, restitution in the amount of \$1,139,275.20  
12 and forfeited his truck and the fish that was seized during the  
13 investigation.

14 Another instructional case is that of Thomas George. George  
15 owned and operated Sterling Seafood, just as Lin owns and  
16 operates Ocean Duke. George brought Vietnamese *Pangasius* into  
17 the United States falsely labeled as grouper to evade anti-  
18 dumping duties; he also purchased a smaller amount of Vietnamese  
19 *Pangasius* imported by another company (Virginia Star Seafood  
20 Corporation) falsely labeled as grouper or sole. The combined  
21 total wholesale value of the frozen fish however was  
22 approximately \$17 million, considerably less than the \$50+  
23 million attributable to Lin (the loss calculation for sentencing  
24 purposes for George, however, on \$17 million came to between \$50  
25 and \$100 million of lost anti-dumping duties; we have not run  
26 this calculation as to Lin but could if desired). George, like  
27 Lin, declined to cooperate but entered into a plea agreement that  
28 statutorily capped his exposure at two years. George was

1 sentenced to 22 months in prison, 1 year of supervised release  
2 with a condition of making a community service payment of  
3 \$50,000, and over \$64 million in restitution.

4 A sentence for Lin of two years in prison, a fine of  
5 \$200,000 and 1 year of supervised release with a condition of  
6 making a community service payment of \$70,000 to the National  
7 Fish and Wildlife Foundation to be used for the same purposes as  
8 that stipulated to by Seafood Solutions, Inc., is fully warranted  
9 in light of the relevant conduct and circumstances of the  
10 offense, the guideline calculation, the terms of the plea  
11 agreement, and all of the factors set forth under Section 3553.

12 **B. Defendant Christopher Ragone**

13 **1. Enhancement for Role In The Offense**

14 Defendant Ragone, like defendant Lin, should receive a three  
15 level enhancement for role in the offense under U.S.S.G. § 3B1.1  
16 given his central role in this extensive criminal activity.  
17 While defendant Ragone was supervised by Lin, Ragone effectively  
18 managed all those who facilitated his sales - the office  
19 employees who worked with the cold storage warehouses and  
20 transportation vendors and the purchasers to deliver the product,  
21 and obtain payment for the product, that Ragone had sold.  
22 Moreover, the "otherwise extensive" nature of the criminal  
23 activity in which he was involved is described above.

24 At the very least Ragone should receive the two level  
25 enhancement for his role in the offense.

26 **2. 18 U.S.C. § 3553 Sentence**

27 Pursuant to the factors set forth at 18 U.S.C. § 3553,  
28 Ragone should receive a sentence commensurate with that of his

1 cohort, defendant Lin.

2 **a. 18 U.S.C. § 3553(a)(1)**

3 Both the nature and circumstances of the offense and the  
4 history and characteristics of the defendant support a 24 month  
5 sentence.

6 Ragone's role in the continued illegal labeling at Ocean  
7 Duke, described above, was pivotal. Ragone knowingly sold more  
8 illegally labeled *Pangasius hypophthalmus* than anyone else at  
9 Ocean Duke, starting back when it was falsely labeled as simply  
10 grouper. He realized significant financial benefits as a result.  
11 See Attachment 46 (\$65,000 and \$66,000 cash bonuses 6 months  
12 apart back in 2000-20001). So, when it became untenable to  
13 continue calling it simply grouper, Ragone was anxious to find a  
14 way to continue selling to his lucrative grouper clients. He was  
15 instrumental in creating the "ponga" label that allowed him to  
16 continue supplying buyers with the cheap "grouper" that they were  
17 ordering. Moreover, when this scheme was not developed and  
18 implemented quickly enough to service one ongoing significant  
19 customer, Universal Group, Inc., he facilitated an interim fix  
20 for them that allowed the product to enter the United States  
21 correctly labeled, but be boxed to make relabeling (as grouper)  
22 as easy as possible. Specifically on August 6, 2004, defendant  
23 Lin sent an email to defendant Ragone on the subject "Ponga Fish  
24 No Print mark on Inner Box" identifying purchase orders 98013-  
25 98016 as "Ponga Fish Fillet." See Attachment 47. The fish  
26 filling these purchase orders had been imported as basa and  
27 properly declared under the tariff code for *Pangasius*. The fish  
28 was destined for Ragone's grouper customer, Universal Group and

1 was thus labeled with Universal Group's "Falcon Baie" brand name.  
2 On or about August 6, 2004, Ragone sent an email copied to Lin,  
3 stating in part that as to these four purchase orders, "The  
4 Falcon Baie was Basa and they specifically asked for no marking  
5 on the inners [cartons]." *Id.* Universal intended to use this  
6 product to fill TGIF orders for grouper. Since the product was  
7 being sold and imported as basa (a type of *Pangasius*), leaving  
8 the inner cartons of the large boxes unlabeled would facilitate  
9 placing grouper labels on those cartons; the inner cartons could  
10 be broken out and labeled prior to shipment to TGIF's agent.  
11 Universal Group pled guilty to a charge based on that false  
12 labeling.

13 Ragone's focus was on continuing to pass off *Pangasius* as  
14 grouper, no matter the risk as long as he continued to profit.  
15 In fact, while defendant Lin began to send emails insisting on at  
16 least having documents reflect the carefully constructed ponga  
17 subterfuge rather than lapsing into the grouper terminology,  
18 Ragone continued to send emails referring to the fish as grouper.  
19 See Attachment 49. This fraudulent conduct comports fully with  
20 his performance evaluations even at Ocean Duke. See Attachment  
21 50 (Ragone "mis-informed customer" "lied about" "made secret deal  
22 with").

23 Ragone was a full participant in the development of the  
24 Paradise Grouper and Falcon Baie Grouper labels. He was directly  
25 and knowingly responsible for sales of over \$ 2 million of  
26 falsely and misleadingly labeled *Pangasius*, in just the 3 month  
27 period from February to April 2006. He had been selling the  
28 product for years before that, falsely labeled as grouper. And

1 he considered it all just entertainment.

2 In September of 2009, Ragone discussed, in a recorded  
3 telephone conversation with Katz, some of what occurred back in  
4 2005. Ragone acknowledged that "hypophthalmus was the bulk of  
5 the product." He laughed that "the irony was" that he'd get in  
6 grouper and he'd have customers reject it as being too fishy;  
7 that made sense to him because ocean run grouper is very fishy.  
8 See Attachment 48, Transcript of Recorded Telephone Conversation  
9 between Katz and Ragone. He also laughed that his wife thought  
10 it was his fault when she was served *Pangasius* at a restaurant in  
11 2009 when she had ordered sole.

12 The nature and circumstances of the offense and the history  
13 and characteristics of the defendant support the 24 month prison  
14 sentence.

15 **b. 18 U.S.C. § 3553(a)(2)**

16 The need for the sentence imposed to serve the purposes of  
17 deterrence and to provide just punishment reflecting the  
18 seriousness of the offense also support a 24 month prison  
19 sentence. The financial benefits of such schemes are great, as  
20 is the detriment to the consumer, U.S. fishermen, and the  
21 environment. The likelihood of being caught and convicted are  
22 slim. In the totality of the circumstances, probation alone  
23 would not be an adequate deterrent, nor an adequate penalty.

24 **c. 18 U.S.C. § 3553(a)(4)**

25 The sentencing guideline range for the category of offense  
26 committed by Ragone also supports a 24 month sentence. The very  
27 same conduct charged under a slightly different statute (Lacey  
28 Act) results in a guideline calculation of well over 24 months,

1 which would be capped statutorily at 24 months. Given  
2 particularly the seriousness and scope of the offense and the  
3 sentences issued already for analogous conduct charged under  
4 different statutes, the court should consider the fact that the  
5 same conduct results for many others in a much greater sentence.  
6 Even the guideline range under the statute of conviction calls  
7 for up to 8 months in prison.

8 **d. 18 U.S.C. § 3553(a)(6)**

9 The need to avoid unwanted sentence disparities also  
10 supports the 24 month guideline and statutory sentence.  
11 Comparisons to sentences imposed in similar cases involving the  
12 false labeling and sale of imported Vietnamese catfish (none with  
13 the additional factor of other types of seafood), strongly  
14 support the recommended two year sentence. See Attachment 13,  
15 Catfish Sentencing Results.

16 Others engaged in the same type of conduct, including  
17 defendant Lin, have been charged, and convicted, of similar  
18 offenses under slightly different statutes. The difference in  
19 statutory charge should not result in an unwarranted sentence  
20 disparity among defendants with similar records who have been  
21 found guilty of similar conduct. In this instance, comparable  
22 Central District of California defendants would include David  
23 Wong and Peter Lam.<sup>4</sup> Each was a salesman, like Ragone, working  
24 for someone else. Wong entered a plea agreement, like Ragone, to  
25 two misdemeanor violations based on trafficking in falsely  
26 labeled fish. Wong was involved in just seven commercial

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27  
28 <sup>4</sup> Sentenced by the Honorable Phillip S. Gutierrez.

1 transactions in product already falsely labeled by another  
2 entity, for a total value of \$223,870.50. Wong was sentenced to  
3 a year and a day in prison, a year of supervised release and a  
4 fine of \$25,000.

5 Lam also was a salesman, but he decided to go to trial. Lam  
6 was involved in sales of *Pangasius* as sole and grouper for  
7 approximately a single year. Upon conviction, he was sentenced  
8 to 63 months in jail, 3 years of supervised release and \$12.6  
9 million in forfeitures.<sup>5</sup>

10 A sentence for Ragone of two years in prison, a fine of  
11 \$200,000 and 1 year of supervised release with a condition of  
12 making a community service payment of \$70,000 to the National  
13 Fish and Wildlife Foundation to be used for the same purposes as  
14 that stipulated to by Seafood Solutions, Inc., is fully warranted  
15 in light of the relevant conduct and circumstances of the  
16 offense, the guideline calculation, the terms of the plea  
17 agreement, and all of the factors set forth under Section 3553,  
18 including the need to avoid unwarranted sentencing disparities.

19 DATED: January 23, 2012.

20  
21 Respectfully submitted,

22 \_\_\_\_\_  
23 <sup>5</sup> Co-defendant Yavelberg was convicted of a single  
24 misdemeanor conspiracy count of violating the Food, Drug and  
25 Cosmetic Act but without intent or even knowledge. Yavelberg,  
26 who had sales of approximately \$1.7 million was sentenced to just  
27 a year probation and the fine was waived. By contrast, Ragone  
28 had plead guilty to two *knowing* misdemeanors and is far from  
judgment proof.

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5 \_\_\_\_\_  
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