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 11 UNITED STATES OF AMERICA

12 UNITED STATES DISTRICT COURT

13 FOR THE CENTRAL DISTRICT OF CALIFORNIA

14 UNITED STATES OF AMERICA,
 15 Plaintiff,
 16 v.
 17 WAYNE ANTHONY MORAN,
 18 Defendant.

No. CR 18-200(A)-DMG

GOVERNMENT'S SENTENCING POSITION
 AND OBJECTIONS TO THE PRESENTENCE
 INVESTIGATION REPORT FOR DEFENDANT
 WAYNE ANTHONY MORAN

Hearing Date: September 6, 2022
 Hearing Time: 10:00 a.m.
 Location: Courtroom of the
 Hon. Dolly M. Gee

21 Plaintiff United States of America, by and through its counsel
 22 of record, the Acting United States Attorney for the Central District
 23 of California and Assistant United States Attorneys Dennis Mitchell
 24 and Heather C. Gorman, hereby files the Government's Sentencing
 25 Position and Objections to the Presentence Investigation Report for
 26 Defendant Wayne Anthony Moran.

27 This Government's Sentencing Position and Objections to the
 28 Presentence Investigation Report for Defendant Wayne Anthony Moran is

1 based upon the attached memorandum of points and authorities, the
2 files and records in this case, the Presentence Investigation Report,
3 and such further evidence and argument as the Court may permit.

4 Dated: August 16, 2022

Respectfully submitted,

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8 Chief, Criminal Division

9 /s/

10

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

On June 15, 2018, defendant Wayne Anthony Moran ("defendant") pleaded guilty, pursuant to an Amended Plea Agreement filed the same day (the "Plea Agreement") to count one of the First Superseding Information (the "information") in United States v. Wayne Anthony Moran, CR 18-200(A)-DMG. Count one of the information charged defendant with conspiracy to import goods, namely naltrexone pellets, into the United States, contrary to law, in violation of 18 U.S.C. § 371. As discussed further below, the Food, Drug, and Cosmetic Act ("FDCA"), namely, 21 U.S.C. §§ 331(d), 355(a), and 333(a), prohibited the naltrexone pellets from being introduced into interstate or foreign commerce. Consequently, the importation of the naltrexone pellets was contrary to the FDCA.

On August 2, 2022, the United States Probation and Pretrial Services Office (the "Probation Office") disclosed its Presentence Investigation Report ("PSR"). The Probation Office calculated defendant's total offense level as 12 and his criminal history category as I, resulting in a Guidelines range of 10 to 16 months of imprisonment. The Probation Office also filed a letter recommending that defendant be sentenced to a 10-month term of imprisonment followed by a two-year term of supervised release.

For the reasons set forth below and consistent with the Plea Agreement, the government objects to the Probation Office's Guidelines calculation and recommends that the Court sentence defendant to a 24-month term of imprisonment followed by a two-year period of supervised release.

1 **II. STATEMENT OF FACTS**

2 For many years, continuing to at least April 2018, defendant was
3 a medical doctor in Hong Kong who, among other things, obtained
4 implantable naltrexone pellets from the United States and elsewhere,
5 stored naltrexone pellets in Hong Kong, and caused the naltrexone
6 pellets to be imported and brought to the United States. (Plea
7 Agreement ¶ 13; PSR ¶ 17.) A naltrexone pellet was a drug used to
8 treat opioid addiction. (Plea Agreement ¶ 13; PSR ¶ 18.) At all
9 times relevant to the information, the naltrexone pellet sold and
10 imported into the United States by defendant constituted a new drug
11 under the FDCA. (Id.) The United States Food and Drug
12 Administration ("FDA") has never approved a New Drug Application or
13 an Abbreviated New Drug Application for the naltrexone pellet;
14 accordingly, at all times, the naltrexone pellet also constituted an
15 unapproved new drug under the FDCA. Accordingly, at all times
16 relevant to the information, the FDCA prohibited the introduction
17 into interstate commerce of the naltrexone pellets. 21 U.S.C.
18 §§ 331(d), 355(a), and 333(a). Interstate commerce included
19 "commerce between any State or Territory and any place outside
20 thereof"; accordingly, the FDCA prohibited selling and shipping the
21 naltrexone pellets between Hong Kong and the United States. See 21
22 U.S.C. § 321(b).

23 One of defendant's sources of naltrexone pellets was Dr. Lance
24 Gooberman ("Gooberman"), a doctor located in New Jersey, who
25 manufactured naltrexone pellets. (Plea Agreement ¶ 13; PSR ¶ 20.)
26 Prior to 2014, defendant entered into an agreement with Gooberman and
27 his office manager and assistant, Susan Tickner ("Tickner"). (Id.)
28 Pursuant to that arrangement, Gooberman and Tickner would supply

1 naltrexone pellets to defendant, defendant would sell the naltrexone
2 pellets to customers located in the United States, and defendant
3 would pay Gooberman and Tickner a specified amount for all naltrexone
4 pellets received from Gooberman and Tickner that he sold. (Id.)
5 Defendant used United Mailorder Ltd. ("UMO"), a business located in
6 Hong Kong, to store the naltrexone pellets that defendant received
7 from Gooberman and Tickner and to ship the naltrexone pellets to
8 defendant's customers. (Plea Agreement ¶ 13; PSR ¶ 22.)

9 Between January 2014 and May 2017, Gooberman referred surgery
10 centers and addiction treatment centers located in the United States
11 (collectively, "Customer Clinics" and individually, "Customer
12 Clinic") that were interested in purchasing naltrexone pellets to
13 defendant, and defendant corresponded with those Customer Clinics
14 regarding the purchase and use of naltrexone pellets. (Plea Agreement
15 ¶ 13; PSR ¶ 23.) Once a Customer Clinic placed an order, Moran
16 instructed employees of UMO to ship the order. (Id.) At defendant's
17 direction, employees of UMO would identify the naltrexone pellets as
18 "Plastic Beads in Plastic Tubes" on shipping documents to avoid
19 detection by U.S. authorities. (Plea Agreement ¶ 13; PSR ¶¶ 23-25.)

20 Between July 2014 and June 2017, defendant received
21 approximately \$259,699.60 from four Customer Clinics as payment for
22 naltrexone pellets. (See PSR ¶ 26.)

23 **III. THE PRESENTENCE REPORT AND THE GOVERNMENT'S OBJECTIONS**

24 **A. Guidelines Calculation**

25 The government objects to the Probation Office's United States
26 Sentencing Guidelines ("U.S.S.G." or "Guidelines") calculation and
27 recommends that the Court adopt the Guidelines calculations agreed to
28 by the parties in the Plea Agreement.

1 1. The Presentence Report

2 The Probation Office determined defendant's Guidelines range
3 using U.S.S.G. § 2T3.1: Evading Import Duties or Restrictions
4 (Smuggling).¹ Applying U.S.S.G. § 2T3.1, the Probation Office
5 calculated defendant's total offense level as 12, based on a base
6 offense level of six (U.S.S.G. § 2T3.1(a)(3)), a six-level increase
7 because the offense involved sophisticated means (U.S.S.G.
8 § 2T3.1(b)(1)), a two-level increase because defendant was a leader
9 or organizer (U.S.S.G. § 3B1.1(c)), and a two-level reduction for
10 acceptance of responsibility (U.S.S.G. § 3E1.1). (PSR ¶¶ 33-45.)

11 The Probation Office calculated defendant's criminal history
12 category as I, based on the conclusion that defendant had no criminal
13 history points. (PSR ¶¶ 50-51.) Based on a total offense level of
14 12 and criminal history category of I, the Probation Office
15 determined that defendant's Guidelines range was 10 to 16 months of
16 imprisonment. (PSR ¶ 89.)

17 2. The Government's Objection

18 In the Plea Agreement, the parties agreed to Guidelines factors
19 by applying U.S.S.G. § 2B1.1. Specifically, the parties agreed to a
20 base offense level of six (U.S.S.G. § 2B1.1(a)(2)), a 12-level
21 increase for gain more than \$250,000 (U.S.S.G. § 2B1.1(b)(1)(G),
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25 ¹ The PSR noted that the guideline for a violation of 18 U.S.C.
26 § 371 is U.S.S.G. § 2X1.1, which states that the base offense level
27 is taken from the guideline for the substantive offense, here, 18
28 U.S.C. § 545. The Guidelines Statutory Index found in Appendix A
provides three guidelines for violations of 18 U.S.C. § 545: U.S.S.G.
§ 2B1.5 (Unlawful Sale, Purchase, Exchange, Transportation, or
Receipt of Cultural Heritage Resources or Paleontological Resources),
U.S.S.G. § 2Q2.1 (Offenses Involving Fish, Wildlife, and Plants), and
U.S.S.G. § 2T3.1 (noted above). (See PSR ¶ 33.)

1 commentary note 3(B)), and a two-level increase because defendant was
2 a leader or organizer (U.S.S.G. § 3B1.1(c)). (Plea Agreement ¶ 15.)
3 The government also agreed to recommend a two-level or, if available,
4 three-level reduction for acceptance of responsibility under U.S.S.G.
5 § 3E1.1.² Consistent with the Plea Agreement and the facts in this
6 case, the government recommends that the Court apply U.S.S.G. § 2B1.1
7 to calculate defendant's Guidelines range.

8 The government acknowledges that U.S.S.G. § 2B1.1 is not listed
9 in the Statutory Index of the Guidelines for a violation of 18 U.S.C.
10 § 545 (i.e., the applicable substantive offense and the object of the
11 charged conspiracy). Notwithstanding, the government submits that
12 applying U.S.S.G. § 2B1.1 is appropriate in this case. More
13 specifically, the government submits that U.S.S.G. § 2N2.1, which
14 applies to violations of statutes and regulations dealing with any
15 food, drug, and other items, and which cross references U.S.S.G.
16 § 2B1.1, is appropriate and reasonable.

17 A violation of 18 U.S.C. § 545 requires that goods be imported
18 into the United States contrary to law. Here, the naltrexone pellets
19 were imported into the United States in violation of the FDCA, which
20 prohibited the introduction into interstate and foreign commerce of
21 unapproved new drugs. See 21 U.S.C. §§ 331(d), 355(a), 333(a), and
22 321(b). Because the offense conduct involves violations of statutes
23 dealing with drugs, U.S.S.G. § 2N2.1 (which is the applicable
24 guideline for violations of 21 U.S.C. § 331) is a better fit for the
25 conduct in this case than U.S.S.G. § 2T3.1, which applies to cases
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28 ² Should the Court adopt the parties' agreed upon Guidelines factors, the government moves for a one-level reduction pursuant to U.S.S.G. § 3E1.1(b).

1 involving the evasion of import duties. At issue in this case was
2 not that defendant wrongfully avoided paying taxes on the naltrexone
3 pellets, but that he wrongfully brought them into the United States
4 in the first place.

5 Applying U.S.S.G. § 2N2.1, with the cross reference to U.S.S.G.
6 § 2B1.1, results in a total offense level of 17 after the three-level
7 reduction for acceptance of responsibility. The government does not
8 disagree with the Probation Office's determination that defendant is
9 in criminal history category I. Accordingly, the government believes
10 the appropriate Guidelines range should be 24 to 30 months of
11 imprisonment.

12 **B. Fine**

13 The PSR reflects a statutory maximum fine of up to \$250,000, and
14 a Guidelines fine range of \$5,500 to \$55,000. (PSR ¶¶ 96, 98.) The
15 PSR indicates that defendant does not have the ability to make an
16 immediate fine payment. (PSR ¶ 85.) The government does not
17 dispute the Probation Office's findings regarding the allowable fine
18 in this case or defendant's financial condition.

19 However, the government notes that, in the Plea Agreement,
20 defendant agreed that the appropriate fine in this case is \$60,000,
21 and defendant agreed to recommend that the Court impose such a fine.
22 (Plea Agreement ¶¶ 2(h), 16.) Defendant further agreed to pay \$6,000
23 within seven days of the sentencing hearing and the remaining \$54,000
24 during the period of probation or supervised release. (Plea
25 Agreement ¶ 16.)

26 Counsel for defendant has previously indicated to the government
27 that defendant was attempting to sell a boat, which was expected to
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1 generate revenue that defendant may be able to use to pay any fine
2 imposed.

3 **C. Factual Corrections**

4 Paragraph 17 of the PSR states that defendant owned and
5 operated, among other business entities, "12121 Ltd." The government
6 understands that the name of defendant's business was 1212 Ltd.

7 Paragraph 18 refers to "DPI," which was likely intended to refer
8 to "API."

9 Paragraphs 24 and 25 refer to "C3," which was likely intended to
10 refer to "UMO."

11 **IV. GOVERNMENT'S POSITION REGARDING DEFENDANT'S COOPERATION**

12 In the Plea Agreement, the government agreed that, if the
13 government determined that defendant had complied with his
14 obligations under the Plea Agreement and provided substantial
15 assistance to law enforcement in the prosecution or investigation of
16 another ("substantial assistance"), the government would move the
17 Court pursuant to U.S.S.G. § 5K1.1 to fix an offense level and
18 corresponding Guidelines range below that otherwise dictated by the
19 Guidelines and to recommend a term of imprisonment within the reduced
20 range. (Plea Agreement ¶ 6(d). Although the government does not
21 move for a reduced Guidelines range pursuant to U.S.S.G. § 5K1.1 for
22 the reasons described below, the government brings to the Court's
23 attention those actions undertaken by defendant in an effort to
24 provide substantial assistance the government.

25 Defendant met with the government to provide information about
26 his role in the offense and others involved on at least five
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1 occasions.³ In addition, defendant corresponded with the case agent
2 on various occasions to provide information regarding customer orders
3 for naltrexone pellets. Defendant sent emails at the case agent's
4 direction to individuals who had previously purchased naltrexone
5 pellets. Defendant engaged in two undercover sales of naltrexone
6 pellets to a Customer Clinic in the United States, at the direction
7 of law enforcement. Although defendant remitted the proceeds he
8 received from one of the undercover transactions, defendant failed to
9 turn over \$24,745.07 that he received from the another undercover
10 transaction, as he was required to do. Defendant also participated
11 in at least three recorded telephone calls with individuals related
12 to naltrexone pellets at the direction of law enforcement. Finally,
13 defendant testified as a witness called by the government over the
14 course of two days at trial in United States v. Lance L. Goberman,
15 CR 20-125-JFW.

16 Notwithstanding defendant's cooperation activities, the
17 government does not recommend a reduced Guidelines range pursuant to
18 U.S.S.G § 5K1.1 for two primary reasons: (1) defendant failed to
19 comply with the express instructions of law enforcement while acting
20 in an undercover capacity (i.e., to remit the proceeds of the
21 undercover sale of naltrexone pellets), which resulted in defendant
22 profiting from activity that would have otherwise been illegal; and
23 (2) defendant testified untruthfully at trial when stated that he had
24 a conversation with the government in which the government indicated
25 that defendant's daughter would not be interviewed if he cooperated.

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28 ³ Two of defendant's meetings with the government took place
prior to entering into the Plea Agreement.

1 **V. THE GOVERNMENT'S RECOMMENDATION**

2 For the reasons set forth below, the government respectfully
3 recommends that the Court impose the following sentence: (a) 24-month
4 term of imprisonment; (b) a two-year term of supervised release;⁴ and
5 (c) a special assessment of \$100.

6 **A. Analysis Under the Sentencing Guidelines**

7 As discussed above, and based on the parties' agreements in the
8 Plea Agreement, the government submits that defendant's total offense
9 level is 17. With a criminal history category of I, this results in
10 a Guidelines range of 24 to 30 months. For the reasons discussed
11 below, the government believes that a sentence at the low end of the
12 Guidelines range is reasonable and appropriate given defendant's
13 history and characteristics.

14 **B. Analysis Under 18 U.S.C. § 3553(a)**

15 The sentence recommended by the government is reasonable within
16 the meaning of Title 18, United States Code, Section 3553(a). United
17 States v. Booker requires the Court to consider the factors
18 identified in Section 3553(a) when imposing sentence. 543 U.S. 220
19 (2005). Among the factors to be considered are the nature and
20 circumstances of the offense; the history and characteristics of the
21 defendant; and the need to reflect the seriousness of the offense,
22 promote respect for the law, provide just punishment, deter future
23 criminal conduct, and protect the public from further crimes. 18
24 U.S.C. § 3553(a).

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⁴ The government respectfully requests that the Court adopt any terms and conditions of supervised release recommended by the Probation Office.

1 1. The Need for the Sentence to Reflect the Seriousness
2 of the Offense, Promote Respect for the Law, Provide
3 Just Punishment, and Provide General Deterrence
4 Warrant a 24-month Term of Imprisonment

5 Sections 3553(a) (2) (A) and (2) (B) require the Court to consider
6 the need for the sentence imposed to reflect the seriousness of the
7 offense, to promote respect for the law, to provide just punishment,
8 and to afford adequate deterrence.

9 Conspiring to import unapproved new drugs, in violation of the
10 FDCA, constitutes a serious offense. Pursuing FDA-approval of a new
11 drug application is a rigorous process designed to ensure the safety
12 and efficacy of drugs distributed in the marketplace. The process
13 provides some comfort to patients who receive the new drugs, knowing
14 that the drugs have been diligently studied and their results closely
15 examined. Drugs that have not been subject to the required testing
16 and analysis of the new drug application process and that do not meet
17 strict labeling requirements do not have the same safeguards that
18 they can and will be safely and effectively used.

19 Defendant understood that the naltrexone pellets could not
20 lawfully be imported into the United States and that if they were
21 detected by United States authorities, they would be seized. In
22 order to avoid detection and to ensure that defendant's business with
23 United States customers remained intact, defendant instructed his co-
24 conspirators to use product descriptions that did not identify the
25 naltrexone pellets as drugs or medications.

26 Defendant's conduct enabled hundreds of naltrexone pellets to be
27 imported into the United States for use in addiction clinics and
28 medical practices. Consequently, numerous individuals received drugs
 without the imprimatur of the FDA's new drug application process.

1 Moreover, those individuals may have never known that fact. In
2 addition, because the naltrexone products the defendant imported into
3 the United States did not reflect the manufacturers of the drug
4 products, defendant's customers - or patients of customers - with
5 concerns about the naltrexone products would have no way to address
6 those concerns with the manufacturers.

7 In light of the foregoing, the government submits that a 24
8 months of imprisonment is necessary and sufficient to reflect the
9 seriousness of the offense, to promote respect for the law, to
10 provide just punishment for defendant's offense, and to provide
11 general deterrence.

12 2. The History and Characteristics of Defendant and the
13 Need to Protect the Public from Further Crimes Warrant
a 24-month Term of Imprisonment

14 Section 3553 requires the Court to consider the history and
15 characteristics of the defendant and the need to protect the public
16 from further crimes by defendant in imposing sentence. 18 U.S.C.
17 §§ 3553(a)(1), (2)(C).

18 When defendant agreed to cooperate with the government's
19 investigation, the government trusted that defendant would honor the
20 commitments and agreements that he made. Although defendant
21 conducted several cooperation activities, as discussed above,
22 defendant did not follow the express instructions of law enforcement
23 authorities when acting in an undercover capacity and did not testify
24 truthfully at trial. Defendant's failure to live up to his promises
25 compromised the government's investigation and pursuit of justice.

26 On the other hand, the government is not aware of any prior
27 criminal history for defendant. In addition, defendant is 70 years
28 old and has indicated that he does not ship naltrexone pellets into

1 the United States. Considering the facts in this case and the
2 history and characteristics of defendant, the government believes
3 that a 24-month term of imprisonment is sufficient to protect the
4 public from further crimes by defendant.

5 **VI. CONCLUSION**

6 For the foregoing reasons, the government recommends that the
7 Court sentence defendant to a 24-month term of imprisonment, and a
8 two-year term of supervised release.

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