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8 TIMOTHY JAMES HUNT

9 UNITED STATES DISTRICT COURT
10 FOR THE CENTRAL DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,)	
)	NO. CR 17-742-JLS
12 Plaintiff,)	
13 v.)	DEFENDANT’S POSITION RE:
)	SENTENCING FACTORS; EXHIBITS
14 TIMOTHY JAMES HUNT,)	
)	<u>UNDER SEAL</u>
15 Defendant.)	

16 -----
17 Defendant Timothy James Hunt, by and through his counsel, Elizabeth Carpenter, hereby
18 files the attached memorandum of points and authorities and exhibits regarding the application of
19 18 U.S.C. § 3553(a) to the above-captioned case.

20 DATED: September 14, 2019

Respectfully submitted,

21
22 Elizabeth Carpenter
23 Elizabeth Carpenter
24 Attorney for Defendant
25 Timothy James Hunt
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.

3 INTRODUCTION

4 Timothy James Hunt comes before the Court seeking mercy for his past conduct and
5 consideration for his life of good works and service, his cooperation with the government, and
6 his genuine remorse. As he explains in his own words in his letter to the Court, Dr. Hunt accepts
7 full responsibility for his actions and hopes that the Court will take the circumstances of his life
8 into account when imposing sentence. For the reasons set forth below, Dr. Hunt submits that
9 based on a consideration of the factors set forth in 18 U.S.C. § 3553(a)(1) and U.S.S.G. §5K1.1,
10 a sentence of three years' probation, forfeiture in the amount of \$3,000,000, and a \$100 special
11 assessment will satisfy the statutory purposes of sentencing, is sufficient but no greater than
12 necessary to achieve those purposes, and is therefore appropriate in this case.
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14 II.

15 SENTENCING FACTORS

16 A. Applicable Law

17 In determining the appropriate sentence, the Court must consider all of the statutory
18 sentencing factors set forth in 18 U.S.C. § 3553, including, among others, the nature and
19 circumstances of the offense; the history and characteristics of the offender; the need to reflect
20 the seriousness of the offense, promote respect for the law, provide just punishment, and afford
21 adequate deterrence; the need to provide the defendant with needed education, vocational
22 training, medical care or other correctional treatment; the applicable sentencing range under the
23 advisory sentencing guidelines; and the need to avoid unwarranted sentencing disparities. 18
24 U.S.C. § 3553(a); United States v. Booker, 543 U.S. 220 (2005). The Supreme Court has held
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1 that a district court may not employ a presumption that the advisory guideline range is the
2 reasonable or appropriate sentence. United States v. Gall, 128 S.Ct. 586, 596-97
3 (2007)(emphasis added); see also United States v. Rita, 127 S.Ct. 2456, 2465 (2007). Instead,
4 the guidelines are but one of many factors for the Court to consider when imposing sentence, and
5 “3553(a)(3) directs the judge to consider sentences other than imprisonment.” Gall at 602. The
6 task for the Court is to impose a reasonable sentence, based on the individual defendant and the
7 facts and circumstances of the particular case at hand, that is “sufficient, but not greater than
8 necessary,” to achieve the statutory purposes of sentencing. 18 U.S.C. § 3553(a).
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11 B. Relevant Factors in this Case

12 1. Nature and Circumstances of the Offense

13 While serious, the nature and circumstances of the offense are more complicated than
14 they first appear. As set forth in detail by Dr. Hunt in his letter to the Court, he was persuaded to
15 accept what appeared to be an option contract to buy his practice at a time when he had no other
16 option to hold onto his medical practice due to financial extortion by his late father’s 4th wife.
17 He was induced to participate in this arrangement by sophisticated parties, Tino Bernadett and
18 Michael Drobot, the owners of Pacific Hospital, and their counsel, who assured Dr. Hunt that the
19 arrangement was legal. Bernadett and Drobot even gave Dr. Hunt a legal contract memorializing
20 the option agreement that he took to his lawyer, who approved it (although the lawyer was not
21 privy to all the details of the actual arrangement.) Because of these facts and circumstances, it is
22 understandable – though not excusable - that Dr. Hunt got involved in something he should have
23 realized was clearly illegal and deliberately turned a blind eye to the obvious problems with
24 Bernadett’s and Drobot’s proposal. Unlike Drobot and Bernadett, who were the masterminds of
25 this large conspiracy, Dr. Hunt is not a nefarious character who was trying to bilk the system. In
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1 fact, Dr. Hunt did not change his actions based on the payments he received or steer patients he
2 otherwise would not have towards Pacific Hospital: Dr. Hunt had always referred his spine
3 patients to Dr. Dan Capen for surgery based on his professional opinion of Dr. Capen as an
4 excellent spine surgeon, and Dr. Capen (who it turns out was also receiving illegal kickbacks)
5 performed his surgeries at Pacific Hospital. No patient received substandard or unnecessary
6 care based on Dr. Hunt's referrals to Dr. Capen, nor has the government so alleged, as reflected
7 in the last sentence of the factual basis in Dr. Hunt's plea agreement.
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10 2. History and Characteristics of the Offender

11 As eloquently set forth in the letters attached to this sentencing memorandum by family
12 members, patients, medical colleagues, and friends, Dr. Hunt has led an extraordinary life of
13 service to his family, friends, local and church communities, and the field of orthopedics.
14 (Letters attached hereto as Exhibit A.) His actions are not the contrition of a man trying to
15 redeem himself, as is so often the case when people find themselves in legal trouble; rather, his
16 actions speak to his deep and abiding good character. Going back to when he was a child and his
17 father divorced his mother, Dr. Hunt stepped up for his sisters and mother. He lived with his
18 grandfather while in medical school, not something the average young man would have done.
19 He worked hard for years to pursue his dream of being a surgeon like his father. He has been a
20 steadfast and faithful husband and father for nearly 30 years. He has volunteered with the
21 homeless. He has lent his expertise to medical publications and to teaching his skills as a
22 volunteer faculty member at great cost to his own time and leisure. The letters are full of times
23 Dr. Hunt went out of his way to be there for his friends and family in big and small ways,
24 whether going to extraordinary lengths to attend a funeral, to giving up his place in a boat so
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1 others could enjoy a trip, to visiting those who are sick and infirm, to attending his children's
2 sports games – all of these despite his demanding surgery career.

3 Dr. Hunt's good character is further displayed in the fact that he fully cooperated with the
4 government. Indeed, the government informed Dr. Hunt and defense counsel that the
5 government would not have been able to make a case against Dr. Faustino Bernadett without Dr.
6 Hunt's cooperation. Lastly, Dr. Hunt's upstanding character is revealed by his decision to
7 personally tell all of the people who are important to him what he had done and to take full
8 responsibility for the consequences of his actions. He has not tried to shirk from his obligation to
9 face up to what he has done. The offense conduct here is an aberration in a long and productive
10 life of service and should be judged as such. Indeed, the Probation Office recognized that Dr.
11 Hunt is extraordinary by recommending a four-level departure, even without considering Dr.
12 Hunt's immediate and full cooperation with the government.

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16 3. Need to Avoid Unwarranted Sentencing Disparity

17 A sentence of 3 years' probation would be consistent with sentences the Court has
18 imposed in related cases United States v. Canedo, CR 15-77-JLS, and United States v. Ivar, CR
19 15-147-JLS. Additionally, it would put Dr. Hunt's sentence in proportion to the sentence that
20 will likely be imposed on Faustino Bernadett in the case of United States v. Bernadett, CR 19-
21 121-JLS, in which the government has agreed to recommend a sentence of 27 months'
22 imprisonment, despite the fact that Bernadett did not cooperate with the government and was one
23 of the masterminds of the scheme who induced Dr. Hunt to participate.

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25 4. Just Punishment, Deterrence, Protection of the Public

26 The purposes of sentencing will be more than satisfied by the proposed sentence. Dr.
27 Hunt has already been punished by losing the ability to work in the field in which he labored
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1 so long in his 50's, when it would be very difficult to pursue another line of work. Dr. Hunt
2 has been permanently deterred from ever committing another crime. He has everything to
3 lose and nothing to gain by reoffending. In addition, the purposes of general deterrence
4 would be satisfied by the proposed sentence in that any medical professional would be
5 dissuaded to accept kickbacks by the prospect of a felony conviction, loss of all financial
6 resources, and their ability to practice medicine.
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8 III.

9 CONCLUSION

10 For the foregoing reasons, Dr. Hunt submits that a sentence of three years' probation, a
11 personal money judgment in the amount of \$3,000,000, and a \$100 special assessment, will
12 satisfy the statutory purposes of sentencing, is sufficient but no greater than necessary to achieve
13 those purposes, and is therefore appropriate in this case.
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15 DATED: September 14, 2019

16 Respectfully submitted,

17
18 _____ *Elizabeth Carpenter* _____
19 Elizabeth Carpenter
20 Attorney for Defendant
21 Timothy James Hunt
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