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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION

13 UNITED STATES OF AMERICA,) CR 12-0662 CRB
14 Plaintiff,)
15 v.) UNITED STATES' SENTENCING
16 MARY NOLAN,) MEMORANDUM
17 Defendant.)
18)
19)

20 I. INTRODUCTION

21 Defendant Mary Nolan pleaded guilty on September 27, 2013, to four counts of tax evasion in
22 violation of 26 U.S.C. § 7201, and one count of unlawful interception of communications in violation of
23 18 U.S.C. § 2511(1)(a). Her sentencing is scheduled for February 5, 2014 at 10:00 a.m. The United
24 States submits this Sentencing Memorandum to address the offense conduct and sentencing guidelines
25 calculation, as well as to advise the Court of its sentencing recommendation: 33 months' imprisonment,
26 \$468,918.01 in restitution, three years' supervised release, and a \$500 special assessment.

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28 U.S. SENTENCING MEM.
CR 12-662 (CRB)

1 **II. DISCUSSION**

2 **A. Offense Conduct Admitted by Defendant in Plea Agreement**

3 The plea agreement summarizes Nolan’s conduct underlying her offenses of conviction.

4 1. Tax Evasion

5 Nolan owned and operated a family law and divorce practice, The Law Offices of Mary Nolan,
6 located in San Ramon, California. She willfully attempted to evade a large part of her income tax due
7 and owing to the United States for the calendar years 2005 through 2008 by causing to be prepared and
8 signing or causing another to sign fraudulent U.S. Individual Income Tax Returns, Forms 1040, which
9 were filed with the Internal Revenue Service (IRS).

10 Specifically, on October 16, 2006, she knowingly and falsely stated in her income tax return that
11 her taxable income for the 2005 calendar year was \$21,395, and that the amount of tax due and owing
12 was \$9,310. On October 4, 2007, she knowingly and falsely stated that her taxable income for the 2006
13 calendar year was \$12,472, and that the amount of tax due and owing was \$10,882. On October 13,
14 2008, she knowingly and falsely stated that her taxable income for the 2007 calendar year was \$53,934,
15 and that the amount of tax due and owing was \$4,583. On October 12, 2009, she knowingly and falsely
16 stated that her taxable income for the 2008 calendar year was \$48,146, and that the amount of tax due
17 and owing was \$6,032.

18 In fact, for each of these years, Nolan knew that her taxable income for the calendar year
19 exceeded these amounts and that she owe a substantial tax to the United States. As part of her plea,
20 Nolan agreed that the total tax owing to United States for these tax years exceeded \$400,000.

21 2. Obstruction of Justice

22 Nolan admitted in her plea that she obstructed justice with regard to her tax evasion counts. In
23 particular, after learning in the fall of 2009 that the IRS was auditing her 2007 taxes, Nolan asked two of
24 her employees to sign independent contractor agreements, which were backdated to 2006. Nolan caused
25 these false agreements to be sent to the IRS auditor, and falsely advised the auditor that these
26 agreements had been signed in 2006.

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3. Unlawful Interception of Communications

Beginning sometime in August 2007 and continuing through at least September 9, 2007, Nolan knowingly and intentionally procured another person to intercept a wire, oral, or electronic communication. Specifically, Nolan agreed, between August 9 and at least September 9, 2007, her staff accessed a listening device, installed by private investigator Christopher Butler in a vehicle used by N.F., on multiple occasions for the purpose of eavesdropping on conversations.

B. Relevant Conduct

Nolan engaged in other obstructive conduct, beyond that to which she admitted in her plea. She falsely told the IRS that certain financial records had been lost or destroyed, when in fact she had concealed them by removing them from her office. She lied to the IRS about the types of records that she maintained on QuickBooks. She falsely claimed that she deposited all client receipts into her business account and falsely denied commingling business and personal funds. She told her employees not to speak with the IRS and gave them the day off so that the agent would not meet or question them.

As for her unlawful interception of communications, Nolan used private investigator Chris Butler to install eavesdropping devices in cars used by her clients' spouses for use in their divorce proceedings. "N.F." was one such spouse. When N.F. confronted Nolan about the listening device, Nolan falsely told him and his attorney that she knew nothing about the device. In fact, her client, her employees, and her phone records all establish that Nolan had accessed the listening device and instructed her employees to do so numerous times.

C. Calculation of the Sentencing Guidelines

The government concurs with the Sentencing Guidelines calculations set forth in the PSR, which reflect those set forth in the Plea Agreement:

Group 1 (Tax Evasion)

- a. Base Offense Level:

Tax Loss > \$400,000, U.S.S.G. § 2T1.1(a)(1)/2T4.1(H)	20
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- b. Specific Offense Characteristics: none

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1	c.	Adjustments:	
2		Obstruction of justice, U.S.S.G. § 3C1.1	+2
3	d.	Adjusted Offense Level:	22
4		<u>Group 2 (Unlawful Listening Device)</u>	
5	a.	Base Offense Level, U.S.S.G. § 2H3.1(a)(1)	9
6	b.	Specific Offense Characteristics:	none
7	c.	Adjustments:	none
8	d.	Adjusted Offense Level:	9
9	e.	Grouped Offense Level, U.S.S.G. § 3D1.4	22
10	f.	Acceptance of Responsibility, U.S.S.G. § 3E1.1	-3
11	g.	Adjusted Offense Level:	19

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The resulting guideline range is 30 to 37 months imprisonment.

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14 **D. 18 U.S.C. § 3553(a) Factors**

15 Title 18, United States Code, Section 3553(a) requires the court to “impose a sentence sufficient,
16 but not greater than necessary” after considering “the nature and circumstances of the offense and the
17 history and characteristics of the defendant”; the need for the sentence to reflect the seriousness of the
18 offense, promote respect for the law, provide just punishment, afford adequate deterrence, protect the
19 public, and provide the defendant with training, medical care, or other correctional treatment; the
20 Sentencing Guidelines; and the need to avoid unwarranted sentencing disparity between similarly
21 situated defendants.

22 This is not a run of the mill tax case. The defendant is an attorney who evaded taxes by brazenly
23 declaring negative taxable income for four years, when her true net worth was approximately \$3 million.
24 She is an attorney who obstructed the IRS’s audit of her law practice by hiding documents, lying about
25 the existence and scope of her financial records, and falsifying independent contractor agreements.
26 Importantly, with the exception of acknowledging that she backdated the independent contractor
27 agreements, Nolan still appears to refuse responsibility for her obstructive conduct. PSR Addendum ¶ 6.

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1 Moreover, this defendant is an attorney who orchestrated the installation of unlawful listening devices in
2 her clients' spouses' cars for the purpose of obtaining information to use in her clients' divorce
3 proceedings, and lied about it to boot.

4 There do not appear to be any extraordinary occurrences in Nolan's history. She went to law
5 school and then practiced as an attorney for approximately 34 years. Nolan's conduct is all the more
6 serious given her training and profession as a lawyer. She resigned her bar license, in accordance with
7 her Plea Agreement, in September 2013. Her resignation of her bar license, however, does not mitigate
8 her culpability.

9 Nolan purports to have virtually no net worth at this time. After her indictment in September
10 2012, she advised Probation, she borrowed \$350,000 from her boyfriend and sold him her house as
11 payment. PSR ¶ 65. (The government questions whether this was an arms' length transaction, given
12 that Nolan and her boyfriend live together and "would have been married by now if it had not been for"
13 this case. PSR ¶ 57.) Nolan also sold two of her other properties shortly after her indictment. She paid
14 the \$468,918.01 in restitution to which she agreed in the terms of her plea.

15 **E. Government's Sentencing Recommendation**

16 The serious nature of these offenses and the circumstances surrounding them demands an
17 appropriately serious sentence, one that will promote this defendant's respect for the law and provide
18 just punishment. The government believes that a sentence of 33 months imprisonment – in the middle
19 of the advisory Guideline range – appropriately meets these needs, while adequately taking into account
20 Nolan's history and characteristics. Whereas a low-end sentence might otherwise have been
21 appropriate, the extent of Nolan's obstructive conduct, well beyond the backdated independent
22 contractor agreements, warrants a more serious sentence. The government agrees with Probation that a
23 three year term of supervised release is appropriate in light of the guidelines and § 3553(a) factors, and
24 does not object to foregoing imposition of a fine.

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III. CONCLUSION

For the foregoing reasons, the United States asks the Court to sentence the defendant, Mary Nolan, to an imprisonment term of 33 months; a supervised release term of three years; \$468,918.01 in restitution; and \$500 in special assessments.

Dated: January 29, 2014

Respectfully submitted,

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/s/

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