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9 IN THE DISTRICT COURT OF THE UNITED STATES
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION

12 UNITED STATES OF AMERICA,

No. CR 12-662 CRB

13 Plaintiff,

DEFENDANT MARY NOLAN'S
SENTENCING MEMORANDUM
AND OBJECTIONS TO THE
PRE-SENTENCE REPORT

14 vs.

Mary Nolan,

DATED: February 5, 2014
TIME: 10:00 a.m.

15 Defendant.

Court: Hon. Charles R. Breyer

16 _____/

17 **I. INTRODUCTION**

18 Mary Nolan comes before the Court for sentencing, having pleaded guilty
19 to four counts of tax evasion (26 U.S.C. § 7201) and one count of eavesdropping (18
20 U.S.C. § 2511(1)(a)). The parties and probation are in agreement that under the United
21 States Sentencing Guidelines the Total Offense Level is 19, with a sentencing range of
22 30 to 37 months. (PSR ¶¶ 3, 41 and 70.) However, finding significant mitigating factors
23 under § 3553(a), the probation officer concludes that a “below guideline sentence can
24 be sufficient but not greater than necessary to achieve the statutory purposes of
25 sentencing, including punishment, general deterrence and protection of the community.”
26 (PSR, Sentencing Recommendation, p. 2.) The PSR recommends a sentence of 18

1 months imprisonment.

2 We agree that a downward adjustment is appropriate for several reasons.
3 Among these are (1) Ms. Nolan's previous unblemished life and low likelihood of re-
4 offense; (2) her significant contributions to the lives of others in both her personal and
5 professional life; (3) her exceptional post-offense rehabilitation and acceptance of
6 responsibility, including the fact that she has made restitution in its entirety; (4) the
7 severe collateral consequences that she has already suffered; (5) her undiagnosed
8 condition of Post Traumatic Stress Disorder that arose from a devastating series of
9 tragic personal losses that Ms. Nolan suffered in her youth and that contributed to a
10 pattern of self-destructive behavior; and (6) the avoidance of sentencing disparity. For
11 these and the additional reasons set forth below, we will ask the Court to impose a
12 sentence below the guideline range.

13 **II. Personal Background**

14 Ms. Nolan is 62 years old. For almost 30 years, she practiced law and
15 eventually developed a successful solo practice in family law. Ms. Nolan specialized in
16 representing women in acrimonious divorce proceedings. Her cases frequently involved
17 intensely contested child custody battles, allegations that husbands were hiding assets
18 and/or secretly keeping other women, and concerns that her clients would be left
19 impoverished. Earning a reputation as a devoted advocate, Ms. Nolan fought zealously
20 for her clients. There is no doubt that her profound commitment to her clients' causes
21 derived in part from her own personal experience as a woman overcoming adversity –
22 including a difficult childhood and youth, years as a single professional mother, and
23 perseverance to emerge as a successful, self-made, female attorney.

24 **A. Early Years**

25 Ms. Nolan grew up in an extremely dysfunctional family, although she is
26 apparently the last to know it. Her father, the only family member to whom she felt

1 close, was a professional singer who performed on radio and television. (Ms. Nolan's
2 Autobiographical Statement, at 1.) He was also a chronic alcoholic. Ms. Nolan
3 remembers that he adored her, apparently in contrast to his feelings about her three
4 siblings. (Neuropsychological Assessment by Elea Bernou, Psy.D., "Bernou Report,"
5 at 4.) But he also left the family for extended periods – once when Ms. Nolan was
6 seven years old to work in Oregon for a few months, and again during her teenage
7 years when her parents twice separated. Throughout her high school years, Ms.
8 Nolan's father developed increasingly serious health conditions, probably related to his
9 alcoholism.

10 Sadly, Ms. Nolan was not close to anyone else in her immediate family.
11 She experienced her mother as distant and aloof. Her mother spent little time with Ms.
12 Nolan, even when she was still quite young. Nor did Ms. Nolan have positive
13 relationships with her three siblings. Ms. Nolan believes that they were jealous of the
14 attention she received from their father. Each was more than five years older than she.
15 None was living at home during Ms. Nolan's high school years. Ms. Nolan grew up
16 essentially as an only child with an unsupportive mother and a father who was
17 increasingly absent.

18 Ms. Nolan liked school. She did well and has fond memories of socializing
19 with her friends. But her teenage years were stamped with profound tragedy that
20 shaped her perception of and relationship to the world. While quite young, both of her
21 maternal grandparents were killed in an automobile accident. During her high school
22 years, Ms. Nolan's father continued to decline. He died during Ms. Nolan's sophomore
23 year of college. This was a severe blow. Within months, Ms. Nolan's mother also
24 passed away more unexpectedly. Although she and her mother had not been close,
25 Ms. Nolan again experienced the loss that comes with a parent's death, intensified and
26 complicated this time by their estrangement. Her mother's death also meant that Ms.

1 Nolan was orphaned while in college – a significance that was driven home to Ms.
2 Nolan over the following months when her siblings’ behavior confirmed that she had no
3 relationship with them at all. In fact, Ms. Nolan has had no contact with any of her
4 siblings for decades.

5 **B. Adulthood**

6 By the age of 20, Ms. Nolan emerged from this series of tragedies having
7 absorbed an indelible life lesson: she was alone in this world and could rely on no one
8 but herself. As Dr. Elea Bernou explains:

9 Ms. Nolan’s early experiences with repeated traumatic death
10 and loss left her unable to trust the world. The amount of
11 death and loss she has experienced is unusual and quite
12 tragic. For Ms. Nolan, the world is a dangerous, arbitrary and
13 capricious place - where the people you love and the things
14 you most care about can be snatched away from you, with no
15 warning or reason. The frequency and severity of her losses
16 have left her suffering from Chronic Posttraumatic Stress
17 Disorder. This has made it very hard for her to trust in and
18 build close, sustained relationships, and know whom to trust.

15 (Bernou Report at 2.) Ms. Nolan put herself through college. Then she moved to
16 Sacramento, essentially following a boyfriend to law school. Although Ms. Nolan
17 became close with the boyfriend and his family, she sabotaged the relationship with an
18 affair. There followed a series of frustrating romantic relationships, including a
19 marriage, to which Ms. Nolan never fully committed and which she often ended
20 precipitously rather than wait for what the inevitable betrayal that she always
21 anticipated. Again, from Dr. Bernou:

22 Ms. Nolan had an affair with another man and eventually broke
23 up with her boyfriend. She had to move out of her boyfriend’s
24 parents’ home - although she cared for them a great deal and
25 suffered from the loss of those “family” relationships. It
26 became a pattern for her to get involved in relationships -
where she struggled with intimacy - and then have an affair,
which then ended her primary relationship at the time. This
pattern of behavior highlights how Ms. Nolan’s history of
trauma around death and loss in her family had created a fear

1 of attachment and loss in her love relationships; she
2 unconsciously “took control”, destroying the relationships
3 before they could hurt her. Having control became very
4 important to her in all of her relationships.

5 (Bernou Report at 6.)

6 After graduating from law school, Ms. Nolan taught at a community college
7 for several years. In 1982, after passing the bar exam, she took a job with a
8 Sacramento law firm. Three years later, she moved to a small San Francisco firm
9 where she pursued a broad-ranging civil practice and even dabbled in criminal law. In
10 1989, Ms. Nolan married Alan Vida and moved to San Leandro. Ms. Nolan’s son Jason
11 was born that year. But the marriage was short-lived, and Mr. Vida never contributed
12 significantly to the family financial picture, before or after the divorce. (Autobiographical
13 Statement at 2 - 3.) Ms. Nolan’s son describes her as a “caring” mother, as well as his
14 “sole provider and care giver.” (See Letter of Jason Vida, Exhibit A.) Ms. Nolan “went
15 out of her way to ensure that I spent as much time with my father as possible” so that
16 Jason would have a male presence and guidance in his life. (*Id.*)

17 In 1990, Ms. Nolan entered into a law partnership with an attorney in San
18 Ramon. It turned out that she was more adept at bringing in business, so she left the
19 administrative responsibilities, including the partnership’s financials, to her partner. This
20 turned out to be a mistake, and by 1995 the partners were deeply in debt and dissolved
21 the relationship. Ms. Nolan, the more successful of the two, ended up paying off
22 virtually all of the debt by herself.

23 Meanwhile, Ms. Nolan strove to balance her responsibilities as a single
24 mother and practicing attorney. She describes this period of her life as follows:

25 My routine was to get up very early, review a case file if I had
26 court in the morning, do a little house work, make breakfast for
my son, take him to school and go to work. Around 5 p.m. I
kicked into my second job picking up my son from school or
sports practice, making dinner, helping him with his homework,

1 reading to him and then doing more legal work until 11 p.m. or
2 midnight. The next day I would do it all over again.

3 (Autobiographical Statement at 3.) Ms. Nolan's devotion to Jason was conspicuous:

4 Mary has been a single mother who has raised her son Jason.
5 Mary took great care to teach Jason valuable lessons in life,
6 such as hard work, integrity, and perseverance. Mary
7 encouraged him to play tennis and soccer, and allowed him to
8 travel with his team in Europe. She was there for all his
9 sporting events, cheering him *on*, while reinforcing and
10 inspiring him academically. Mary advocated for Jason
11 relentlessly and succeeded in getting him specialized medical
12 treatment, which changed his life. Jason recently graduated
13 from college with honors. She is so proud of Jason.

14 (Exhibit A, Letter of Karin T. MacDonald.) As a teenager, Jason was a late bloomer,
15 strikingly smaller than his peers. Mary was concerned, advocated aggressively for her
16 son and did everything possible to safeguard his health and self-esteem. Jason
17 appreciates his mother's commitment and sacrifice:

18 As an adolescent I was diagnosed with short stature which
19 became problematic for me; especially by the time I reached
20 my freshman year in high school. My mother decided to meet
21 with some specialists from Stanford who were developing a
22 new growth hormone to combat this particular problem. In
23 addition to paying tens of thousands of dollars for this drug
24 treatment my mother had to sign a letter accepting the fact that
25 this treatment may have no effect whatsoever. My mother was
26 willing to risk everything she had for an unknown result based
solely on my happiness. I am truly grateful for the sacrifices
my mother has made to enable me to have the best chance at
a normal future as an average size adult male.

(Exhibit A, Letter of Jason Vida.) Ms. Nolan spent more than \$150,000 for Jason's
hormone treatment. Over the last four years, Ms. Nolan was solely responsible for
Jason's financial support and tuition at the University of Oregon.

In recent years, Ms. Nolan has become a central figure in Rich Guadagni's
(her domestic partner's) family as well. His sister and son confirm Ms. Nolan's positive
characteristics – "kind and considerate," "one of the sweetest and kindest ladies," a

1 “loving mother,” etc. (Exhibit A, Letters of Steven and Marie Guadagni.) Ms. Nolan had
2 been there for each of them when they needed support; and Mr. Guadagni’s sister
3 describes the care that Ms. Nolan has shown for their elderly mother:

4 She also has supported my family during a horrible year in
5 2010 when my father passed away suddenly and left my
6 mother who has advanced dementia. My father had been
7 caring for our mother over the years and was exhausted from
8 the constant care and attention. I decided to take my mother
9 in my home and care for her when my father passed away and,
10 Mary has taken, my mother on almost every weekend since my
11 father passed away and has cared for her with loving devotion.
12 Even close family member refuse to take my mother for the
13 weekends. For anyone who has cared for someone with
14 dementia it takes a lot of patience and attention. Mary has
15 shown my mother kindness and a great sense of humor that
16 my mother enjoys.

17 (Exhibit A, Letter of Marie Guadagni.)

18 **C. Family Law Career**

19 After her law partnership dissolved, Ms. Nolan’s practice evolved into the
20 more specialized field of divorce law. Her clientele consisted primarily of women who found
21 themselves emerging from a failed marriage with dependent children and often confronting
22 the prospect of financial ruin. Many of her clients were victims of abuse (physical or
23 otherwise) with husbands who had cheated with other women and/or were now hiding
24 assets. Ms. Nolan identified with these women and championed their cause.

25 I was totally committed to my clients. I saw so many women in
26 the worst moments of their lives, and I helped many of them
pull through. I fought hard for them so that even when the
result was not what they hoped for, they knew that I had done
everything I could for their cause. Having experienced a failed
marriage and then raising a son by myself, I know that I
identified with my clients’ plight.

(Autobiographical Statement at 3.) She earned an excellent reputation for her integrity
and zealous advocacy. Tasha DeCosta, a law enforcement officer, writes:

Mary Nolan has always displayed a high degree of integrity,
quality work, and ethical guidance as my lawyer. During the
height of my divorce case in 2009, Ms. Nolan provided sound

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advice that helped to keep me focused on the case rather than the emotions these matters frequently evoke. She encouraged me to work together with opposing counsel to come to agreements, and was honest about possible outcomes and expenses that may not be favorable to me. Mary Nolan did not walk me down a road of hope in order to make a buck from me; rather she saved me from making mistakes a less honest lawyer may have purposely allowed for their financial gain. For this reason I am so very thankful for her guidance and honesty during my difficult time.

(Exhibit A, Letter of Tasha DeCosta.) Similarly, Marsha Holfelz remembers:

We had numerous court hearings in Contra Costa County they all seem blurred, but on one occasion, Mary was involved in a car accident before one particular 8:30AM hearing where her car was totaled and she was injured. Most attorneys would just call it a day and go home and get some rest but Mary still managed to attend the hearing on time in a borrowed vehicle with all of our file boxes needed for the appearance. I was so impressed by this and knew at that moment that she took my case seriously and I was not another divorce file on her desk.

(Exhibit A, Letter of Marsha Holfelz.) And an attorney who referred cases to Ms. Nolan was impressed not only by her professionalism but also by her extraordinary commitment to her clients:

I was particularly impressed with Ms. Nolan when she agreed to represent my friend. As a result of various issues with prior counsel, Ms. Nolan was this woman's 4th attorney. Given the facts and history of the case, I believe most attorneys would have turned her away at perhaps the lowest point of her lifetime. Considering some of the tactics demonstrated by opposing counsel, Ms. Nolan showed courage and a commitment to seeking justice for this client by agreeing to represent her. Since I represented this client in some business dealings, it was necessary that Ms. Nolan and I coordinate efforts and strategy. Not once did I ever believe or intuit that Ms. Nolan was acting unethically or underhandedly. Throughout my dealings with her she showed compassion and transparency. During the proceedings, this client was living outside of California which required, at tremendous personal financial expense, that she travel to California for each hearing. Showing tremendous empathy, Ms. Nolan offered a room in her home to this client in an effort to ease some of her expenses. What attorney does that? To this client Ms. Nolan had become much more than her attorney, she had become her friend.

1 (Exhibit A, Letter of Troy T. Wilson.)

2 Ms. Nolan often saw that the playing field was not level for her female clients,
3 and she was determined to help them overcome that disadvantage. Ms. Nolan always
4 fought for her clients with intense zeal.

5 **III. Objections to the PSR**

6 Regarding ¶ 9 of the PSR, the last sentence of this paragraph should be
7 stricken. Ms. Nolan denies T.M. and M.Y.'s allegations that Ms. Nolan inflated client
8 invoices, failed to return retainers, etc. The allegations are false. In this regard, we note
9 that T.M. and M.Y. are disgruntled former employees and that in June 2010, Ms. Nolan
10 reported T.M. to the State Bar for unethical behavior, including improper accessing of Ms.
11 Nolan's computer and improper solicitation of Ms. Nolan's clients. PSR ¶ 16. (Copies of
12 the June 29, 2010 letter, with Exhibits, and of the State Bar's confirmation of receipt are
13 attached as Exhibit B.) The allegations are also irrelevant to the charges and prejudicial
14 to Ms. Nolan. They should be excluded from the report.

15 Regarding ¶ 10 of the PSR, it should be stricken in its entirety. Mercado's
16 and Yago's allegation that Ms. Nolan told them she would deny to the IRS auditor "that any
17 QuickBooks record existed" is demonstrably false. To the contrary, Ms. Nolan told the
18 auditor that her office had QuickBooks during both the December 28, 2009 and May 12,
19 2010 interviews. (See, e.g., December 28, 2009, Initial Interview Summary, p. 125-2.2.)
20 Similarly, Ms. Nolan denies the allegations that she took business records home to avoid
21 their discovery by the IRS, told Mercado and Yago not to be present when the auditor came
22 to the office, and told Yago to take the "QuickBooks computer home." There is no evidence
23 that any computer containing the QuickBooks records was ever removed from Ms. Nolan's
24 office; and in fact that never occurred. Mercado's and Yago's allegations are false,
25 unsubstantiated and irrelevant.

26 Regarding ¶ 19 of the PSR, the last five paragraphs – alleging a second basis

1 for a finding of obstruction of justice – should be deleted.¹ Contrary to the government’s
 2 allegations, in October 2010, Ms. Nolan made no attempt to obstruct justice with regard to
 3 Ms. Nolan’s 2007 and 2008 tax records. As reflected in the PSR, months before Ms. Nolan
 4 learned that there was a criminal investigation, she hired Mary Rae Fouts, a Certified
 5 Financial Planner and tax specialist, to help her straighten out her taxes. PSR ¶ 12. After
 6 the I.R.S. served search warrants at her home and office in October 2010, Ms. Nolan
 7 retained Jay Weill as her criminal tax attorney and caused her financial information to be
 8 transferred from Fouts to him at his express request. As Mr. Weill recently explained:

9 I was retained by Mary Nolan on October 15, 2010. The IRS
 10 had executed search warrants on her residence, office and car
 11 on October 13, 2010. Mary Nolan had previously delivered her
 12 2007-2009 business and personal records to CPA Mary Fouts
 13 to prepare her 2009 tax return and to prepare amended tax
 14 returns for the years 2007 and 2008. Mary Nolan was under
 15 civil audit by the IRS for the years 2007 and 2008 and had
 16 agreed and paid additional taxes of \$65,000 for the year 2007
 17 of the tax liability proposed by the revenue gent.

18 After I was retained on October 15th I requested that the
 19 records in the possession of Mary Nolan be delivered to me.
 20 The records were delivered to me on October 18, 2010. I then
 21 caused the records to be delivered to a forensic accountant for
 22 a preliminary evaluation of her tax liability. At some point, the
 23 forensic accountant informed me that he recommended that
 24 the best way to determine Ms. Nolan's tax liability was a net
 25 worth evaluation. Before that evaluation commenced, the
 26 forensic accountant communicated with Mary Fouts and
 informed her that he was in possession of Ms. Nolan's records.
 At my request, the forensic accountant then returned Ms.
 Nolan's records to my firm at my direction. The accountant
 ceased work on Ms. Nolan's matter at that time.

(November 6, 2013, Letter of Jay Weill, Exhibit C. See *a/so* Declaration of Jay R. Weill, ¶¶
 5-8, Exhibit D.) In a contemporaneous communication with Ms. Nolan, Fouts
 acknowledged her awareness of this process and voiced no concern: “Please let me know

¹These five sentences were not included in the draft PSR. They were included in the Final PSR, apparently in response to the government’s written objections.

1 if you would like me to fax copies [of your 2007 and 2008 returns] to you and/or the
2 individual you are meeting with tomorrow.” (October 14, 2010, facsimile to Mr. Rich
3 Guadagni, Exhibit E.) Similarly, in an October 27, 2010 email to an IRS agent, Fouts
4 described her interactions with Ms. Nolan innocently: “[W]hen Mr. Gaudagni picked up
5 Mary Nolan’s 2007 and 2008 tax documents boxes the afternoon of October 13, he
6 informed me that he had scheduled an appointment for Mary with someone in San
7 Francisco on Friday October 15 for advice how to handle the IRS matters.” (October 27,
8 2010, excerpt from email to Pahnke, Mark C., p. 2, Exhibit F.) Thus, at the time of the
9 relevant events, Fouts correctly attributed no nefarious motives to this process.

10 As Mr. Weill clearly understood, as of October 18, 2010, Ms. Nolan was under
11 no affirmative obligation to produce her tax records for 2007 and 2008 to the government.
12 More importantly, Ms Nolan’s actions and intentions were beyond reproach – she intended
13 to determine and pay over her tax liability. (Exhibit C.) For these reasons, the incident
14 does not support a finding of obstruction and should be stricken from ¶ 19.

15 **IV. Post-Offense Rehabilitation**

16 In September 2009, the I.R.S. opened an audit of Ms. Nolan for the 2007 tax
17 year. On March 31, 2010, Ms. Nolan accepted the auditor’s conclusion that the tax
18 deficiency for 2007 exceeded \$80,000. The auditor also told Ms. Nolan that she might
19 have to open an audit for the 2008 tax year. On April 14, 2010, Ms. Nolan’s representative
20 told the auditor that he had reviewed Ms. Nolan’s bank records for 2008 and thought that
21 her “understatement [of income for 2008] may be the same [as] for 2007.” On May 14,
22 2010, Ms. Nolan asked the auditor “again” to close the audit of 2007, because she was
23 concerned about accruing interest. The auditor declined. Thereafter, unbeknowst to Ms.
24 Nolan, the criminal investigation was initiated. As a result, all communication between the
25 auditor and Ms. Nolan ceased.
26

1 On August 5, 2010, Ms. Nolan hired Ms. Fouts to help clean up her I.R.S.
2 problems. Ms. Nolan informed Ms. Fouts that the I.R.S. was auditing her for the tax years
3 2007 and 2008 and asked Fouts to clean up the situation by filing an accurate return for
4 2009 and then preparing amended returns for 2007 and 2008. To facilitate that process,
5 Ms. Nolan provided Ms. Fouts all of her records for 2009, 2008 and 2007. On September
6 19, 2010, Ms. Nolan mailed a check to the I.R.S. in the amount of \$65,000 as partial
7 payment of her tax deficiency for the 2007 tax year. (Exhibit G.) On October 12, 2010, Ms.
8 Fouts completed her work on the 2009 return. Ms. Nolan signed it the next day. Also that
9 day, the I.R.S. executed search warrants at Ms. Nolan's office and home. Ms. Nolan then
10 retained attorney Jay Weill at Sideman & Bancroft and Ms. Nolan promptly arranged for her
11 tax documents to be transferred from Ms. Fouts to Mr. Weill.

12 On October 27, 2010, the I.R.S. issued an administrative summons to
13 Sideman & Bancroft for the tax documents now in their possession. Mr. Weill
14 "recommended to Ms. Nolan that we refuse to produce any document in response to the
15 summons on the basis that their production would violate Nolan's Fifth Amendment rights
16 and the attorney-client privilege." Exhibit C. Over the next two years, the parties litigated
17 whether the summons was enforceable; the litigation eventually ended up in the Ninth
18 Circuit Court of Appeals. Exhibit C. Mary Nolan was indicted on September 6, 2012, but
19 the matter remained sealed. On September 13, 2012, the Ninth Circuit heard oral
20 argument on the summons case. Exhibit C. Mary Nolan was arrested on September 18,
21 2012. Ms. Nolan and Mr. Weill had "no knowledge prior to her arrest on September 18,
22 2012 that the matter had been referred by the IRS to the Department of Justice for
23 prosecution." Exhibit C.

24 In early September 2013, after lengthy negotiations, Ms. Nolan agreed to
25 enter into a plea agreement. Ms. Nolan agreed to plead guilty to both the tax and
26 eavesdropping offenses, to relinquish her license to practice law and make restitution in the

1 amount of \$468,918.01 before sentencing. On September 23, 2013, several days before
2 she entered her guilty pleas, Ms. Nolan voluntarily resigned from the State Bar. (Exhibit
3 H.) In order to pay the restitution, Ms. Nolan was compelled to sell her home at a
4 disadvantageous price. After the sale, Ms. Nolan transferred sufficient funds to
5 undersigned counsel's trust account to pay the restitution. A check in the amount of
6 \$468,918.01 was mailed to the I.R.S. on October 9, 2013. (Exhibit I.)

7 The forced sale of Ms. Nolan's home and her resignation from the Bar were
8 difficult pills to swallow. She loved them both very much. The practice of the law was a
9 true passion, and she excelled at it. In addition to the stigma and opprobrium that her
10 convictions bring, Ms. Nolan has already incurred these devastating collateral
11 consequences. Age 62, her career and life are in tatters. (Bernou Report at 8.) However,
12 Ms. Nolan knows that she alone is to blame for plight and takes responsibility for her
13 misconduct:

14 Regarding my offenses, I know that I lost my way and made
15 terrible decisions. I did not attend to my finances – I hate that
16 process – and used my distaste for it as a convenient excuse
17 to under report my income. But there is no excuse. I know
18 that. It was wrong. And I know that I should never have been
19 involved in the eavesdropping. I rationalized that it was a way
of helping my client and that I got carried away in my zeal. But
that sounds ridiculous even as I write it. I know it was wrong,
and I apologize for my misconduct in both the tax and
eavesdropping offenses. I know that I have only myself to
blame.

20 (Autobiographical Statement at 4.) The sincerity of Ms. Nolan's contrition is documented
21 by Dr. Bernou and others:

22 Regarding her offenses, Ms. Nolan acknowledges that she is
23 guilty. Even so, she is confused and distressed by the
24 dissonance between her self-image and her misconduct. She
25 knows that she is responsible for her legal jeopardy and is
26 striving to gain insight to understand how and why she
behaved so recklessly and inappropriately.

1 (Bernou Report at 8.) And her domestic partner, Rich Guadagni, is uniquely positioned to
2 know the depth of Ms. Nolan's remorse:

3 Mary was a tremendous lawyer with an unblemished record.
4 In spite of her financial ruin and the humiliation levied on her by
5 a three year prosecution, Mary frequently expresses to me her
6 sincere remorse for her actions which led to criminal
7 prosecution. While she is very remorseful for her conduct she
8 also feels the loss of her reputation as an outstanding
9 advocate.

10 (Exhibit A, Letter of Richard Guadagni.)

11 V. ARGUMENT

12 A. The Sentencing Guidelines

13 The Sentencing Guidelines are no longer mandatory, but instead establish
14 a "starting point" for the district court's sentencing determination. *Gall v. United States*, 552
15 U.S. 38, 57 (2007); accord *Cunningham v. California*, 549 U.S. 270, 286-87 (2007). District
16 courts must consider the Guidelines, but should "tailor the sentence in light of other
17 statutory concerns, as well." *Kimbrough v. United States*, 552 U.S. 85, 101 (2007).
18 Specifically, courts must determine the appropriate sentence by considering all of the
19 factors set forth in 18 U.S.C. § 3553(a). *Gall*, 552 U.S. at 49-50.

20 Section 3553(a) makes clear that the appropriate sentence is one that is
21 "sufficient, but not greater than necessary, to comply with the purposes set forth in
22 paragraph 2" of Section 3553(a). These purposes include: the nature and circumstances
23 of the offense; the history and characteristics of the defendant; the need for the sentence
24 imposed to reflect the seriousness of the offense, promote respect for the law, and to
25 provide just punishment for the offense; the need for the sentence imposed to protect the
26 public from further crimes of the defendant; and the kinds of sentences available. 18
U.S.C. § 3553(a)(2).

The plea agreement includes the following guideline calculations: an Adjusted
Offense Level of 22 for the Tax Offenses; an Adjusted Offense Level of 9 for the

1 Eavesdropping charge; zero additional points after grouping; a 3 point downward
2 adjustment for Acceptance of Responsibility; and a Total Offense Level of 19. With criminal
3 history category I, this results in a guideline sentencing range of 30 to 37 months. PSR at
4 ¶¶ 41 and 70. The government recommends a mid-range sentence of 33 months.
5 Probation, by contrast, recommends a below guideline sentence of 18 months. These are
6 the starting points for the Court's determination of a sentence that is "sufficient, but not
7 greater than necessary" accomplish the statutory objectives.

8 **VI. Section 3553(a) Factors**

9 Finding several factors that warrant a downward variance, the PSR
10 recommends a sentence of 18 months. PSR ¶ 89 and Sentencing Recommendation, p.
11 1. We believe that there are several factors that warrant a sentence even further below the
12 Sentencing Guidelines range.

13 **A. Aberrant Behavior – An Otherwise Blameless Life**

14 Ms. Nolan was an attorney in good standing with the State Bar. Now Sixty-
15 two years of age, she has no previous convictions and only one youthful contact with law
16 enforcement. Numerous letters attest to her record of honesty, integrity and
17 professionalism. (Exhibit A.) Nothing in her personal history could have predicted that she
18 would ever run afoul of the law. She shows no evidence of a mental disorder predictive of anti-
19 social behavior. (Bernou Report at 3, 16-17.) She is a loving mother, in a devoted long-term
20 romantic relationship and, despite her current legal problems, enjoys the continuing support
21 of numerous friends and former clients. Thus, the arc of Ms. Nolan's life demonstrates that
22 there is little "likelihood that the defendant will commit other crimes." U.S.S.G. § 4A1.3(b)(1).
23 These factors support a downward variance. See *United States v. Pauley*, 511 F.3d 468 (4th
24 Cir. 2007) (re-offense unlikely); *United States v. Beach*, 275 Fed. Appx. 529, 533-534 (6th Cir.
25 2008) (unpublished) (defendant was a better candidate for rehabilitation than the typical
26

1 offender); *United States v. Stall*, 81 F.3d 276, 279 (6th Cir. 2009) (court found defendant less
2 likely to re-offend than typical defendant).

3 **B. Post-Offense Rehabilitation and Exceptional** 4 **Acceptance of Responsibility**

5 The Supreme Court recently recognized that post-offense rehabilitation “may,
6 in appropriate cases, support a downward variance from the now-advisory Federal
7 Sentencing Guidelines range.” *Pepper v. United States*, ___ U.S. ___, 131 S. Ct. 1229, 1236
8 (2011) (considering post-sentencing rehabilitation). Although the *Pepper* Court’s holding
9 related to post-sentencing rehabilitation, the principles upon which the Court relied plainly
10 hold as well in the context of post-offense, pre-sentencing rehabilitation. *See, e.g., United*
11 *States v. Robertson*, 662 F.3d 871, 878 (7th Cir. 2011); *United States v. Stewart*, No.
12 8:09CR282, 2011 U.S. Dist. LEXIS 89767 at *6-8 (D. Neb. Aug. 11, 2011); *see also United*
13 *States v. Shy*, 538 F.3d 933, 938 (8th Cir. 2008) (affirming a variance to probation for
14 extraordinary post-arrest rehabilitation, noting that rehabilitation was genuine and the
15 defendant was a positive contributor to society).

16 We have set forth above the facts demonstrating Ms. Nolan’s sincere
17 contrition and affirmative efforts to atone for her offenses – efforts that began long before
18 her indictment. These facts support a downward variance.

19 **C. Psychological Condition Contributed to the Offense**

20 There is no doubt that Ms. Nolan’s early experiences with loss and tragedy
21 shaped her relationship to others and, more generally, to the world at large. Throughout
22 her lifetime and until her recent relationship with Mr. Guadagni, Ms. Nolan has trusted no
23 one and nothing. She expects everything that she loves or cherishes to be taken from her.
24 She believes that she does not deserve happiness or success. In fact, Ms. Nolan so
25 distrusts success – whether it be in relationships or career – that she often acts
26 precipitously and recklessly to undermine her own position. She has developed a pattern

1 of self-defeating behaviors that ensure that others cannot hurt her, because she has
2 already inflicted the damage herself.

3 As noted previously, it is Dr. Bernou's opinion that these profound trauma
4 caused Ms. Nolan to develop chronic Post Traumatic Stress Disorder and related
5 complications. (Bernou Report at 2.) The test data support this diagnosis. (Bernou Report
6 at 14, 17.) As Dr. Bernou explains, Ms. Nolan adopted dangerously self-defeating coping
7 mechanisms:

8 She learned to use hard work as a way to feel in-control and
9 safe in the world. Her losses have also created a sense of
10 fatalism in her expectations, as well as significant survivor's
11 guilt. As a whole, these factors have led Ms Nolan to behave
12 in reckless and self-defeating ways that undermine her. In this
13 case, her behaviors have destroyed her life.

14 (Bernou Report at 2.)

15 Sadly, Ms. Nolan's PTSD and related conditions were undiagnosed and
16 untreated. In Dr. Bernou's opinion, they made Ms. Nolan vulnerable to the impulsive
17 and ill-advised decisions that bring her before the Court:

18 A life of traumatic loss and disappointment often leads people
19 to repress those experiences, or avoid thinking about or
20 processing the overall "picture" of those experiences, in their
21 understandable efforts to "be strong" and function well.
22 However, the underlying turmoil and lack of self-understanding
23 makes these people vulnerable to impulsive, ill-advised and
24 self destructive actions. In addition to the impact of untreated
25 chronic PTSD on her dependency needs and ability to build
26 trust in relationships, Ms Nolan' s success in her career has
brought up unresolved "survivor guilt." Survivor guilt also often
leads to self-defeating behaviors and these behaviors often
worsen as an individual 's success increases. Ms Nolan never
trusted in her success, nor did she ever believe that she
deserved it. In fact, she has unconsciously believed that her
success was only an illusion- and that it would eventually come
crashing down without warning. The "pull" toward self-
destruction was very deeply felt - albeit unconsciously.

Self-destruction came in a step-wise form, as is typical when
an individual has not worked through the emotional impact of
her history, and has poor self-insight. Her misconduct arose in

1 the context of a single, middle-aged fatalistic woman who
2 expected disaster, and had intense insecurity about finances.
3 She expected the same disasters and losses that had occurred
4 with great regularity throughout her life - and that created her
5 chronic PTSD... She is fully aware of her errors at this time
6 and takes full responsibility for tax evasion and eavesdropping.

7 (Bernou Report at 15-16.) Ms. Nolan's conditions, together with her amenability to
8 treatment, support Dr. Bernou's conclusion that she "poses no threat of re-offense."

9 (Bernou Report at 17.) These considerations also support a downward variance. See
10 *e.g. United States v. Pauley*, 511 F.3d 468 (4th Cir. 2007) (defendant's participation in
11 counseling made re-offense unlikely).

12 **D. Proportionality in Sentencing**

13 Section 3553(a)(6) expressly exhorts the Courts "to avoid unwarranted
14 sentence disparities among defendants with similar records who have been found guilty
15 of similar conduct." We have found numerous cases, almost all of which involved a tax
16 loss exceeding or matching the loss at issue here (and frequently involving obstructive
17 conduct) in which the sentencing Court imposed probation and/or a sentence below the
18 applicable Guideline range. Among these are:

- 19 • *United States v. H. Ty Warner*, No. 13-731 (N.D.Ill.). The defendant, age
20 69, pled guilty to tax evasion and admitted concealing his assets in foreign
21 bank accounts, and failing to report \$24,498,912 of his income with a tax
22 loss of \$5,594,877. The total offense level was 23, with a sentencing
23 range of 46 - 57 months. Prior to sentencing, the defendant paid back
24 taxes and civil FBAR penalties. The court imposed a sentence of two
25 years of probation with 500 hours of community service.
- 26 • *U.S. v. Leonid Zaltsberg*, Case No. 10-CR-437 (D.N.J.). Mr. Zaltsberg
pled guilty to filing a false tax return, arising from his concealment of
income in foreign bank accounts. The tax loss was between \$30,000 and

1 one foreign bank. The tax loss was \$467,336. The Offense Level was 17,
2 with a sentencing range of 24 - 30 months. Before sentencing, Mr. Jiang
3 made restitution. The government recommended a sentence of 24
4 months. Mr Jiang was sentenced to 16 months.

- 5 • *U.S. v. Jack Nissim*, Case No. 11-CR-213 SI (N.D. Cal.). Mr. Nissim, age
6 67, pled guilty to filing a false tax return. The tax loss was \$240,445,
7 resulting in a total offense level of 15 and sentencing range of 18 - 24
8 months. Mr. Nissim apparently paid restitution before sentencing [???].
9 The government recommended 18 months imprisonment. The court
10 imposed a sentence of six months in prison and six months of home
11 detention.
- 12 • *U.S. v. Purlantov*, Case No. 11-CR-371 SBA (N.D. Cal.). Mr. Purlantov
13 was a 35 year-old attorney who embezzled over \$1,175,000 from a family
14 friend and then failed to pay taxes on it. The tax loss was \$293,048. The
15 probation department found the Total Offense Level to be 22 and
16 recommended 41 months in prison. Mr. Purlantov paid all of the
17 restitution before sentencing. Pursuant to a Rule 11(c)(1)© plea
18 agreement, the court imposed a sentence of 24 months.

19 These cases teach that where as here the defendant affirmatively accepts responsibility
20 for her offense conduct and makes restitution, a sentence below the Guideline range is
21 the norm.

22 **E. Collateral Consequences**

23 Ms. Nolan comes before the Court already stripped of her most prized
24 possessions: her reputation, law degree and ability to earn a living. She has endured
25 devastating financial setbacks, including the sale of her beloved home, in order to make
26 timely restitution in full. At age 62, Ms. Nolan's prospects as a felon are truly daunting.

1 Regardless the sentence ultimately imposed by the Court, Ms. Nolan has already been
2 punished severely for her misconduct.

3 **VII. Conclusion**

4 For all of the foregoing reasons, we assert that there are § 3553(a) factors
5 that support a downward variance from the sentencing guideline range.

6 Dated: January 29, 2014

7 _____
8 /s/
9 Ted W. Cassman,
10 Arguedas, Cassman & Headley, LLP
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