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 UNITED STATES OF AMERICA

11 UNITED STATES DISTRICT COURT

12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 UNITED STATES OF AMERICA,  
 14 Plaintiff,  
 15 v.  
 16 WENDELL MARK STREET,  
 17 Defendant.

No. CR 5:18-00047-GW

GOVERNMENT'S SENTENCING POSITION

Hearing Date: August 20, 2020  
 Hearing Time: 8:00 a.m.  
 Location: Courtroom of the  
 Hon. George Wu

19  
 20 Plaintiff United States of America, by and through its counsel  
 21 of record, the United States Attorney for the Central District of  
 22 California and Assistant United States Attorney Bryant Y. Yang,  
 23 hereby files its sentencing position with respect to defendant  
 24 WENDELL MARK STREET ("defendant").

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1           This sentencing position is based upon the attached memorandum  
2 of points and authorities, the files and records in this case, and  
3 such further evidence and argument as the Court may permit.  
4

5 Dated: August 10, 2020

Respectfully submitted,

6           NICOLA T. HANNA  
7           United States Attorney

8           BRANDON D. FOX  
9           Assistant United States Attorney  
10           Chief, Criminal Division

11           /S/ Bryant Yang  
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15           UNITED STATES OF AMERICA  
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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

On August 8, 2019, defendant WENDELL MARK STREET ("defendant") pleaded guilty to counts one and two of the indictment in United States v. Wendell Mark Street, CR No. 5:18-00047, which charge defendant with knowingly and intentionally prescribing and distributing, and willfully causing to be prescribed and distributed, oxycodone in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(C) and 18 U.S.C. § 2(b).

On November 1, 2019, the United States Probation and Pretrial Services Office ("PPSO") filed its Presentence Investigation Report ("PSR") and disclosed its recommendation letter in this matter. The PPSO determined that the total applicable offense level is 31 and that defendant's criminal history is category I, which results in a United States Sentencing Guidelines ("U.S.S.G." or "guidelines") range of 108 to 135 months' imprisonment. The PPSO, however, recommends that the Court sentence defendant to 24 months' imprisonment - which represents a downward variance of 14 levels - followed by 3 years of supervised release.

For the reasons set forth below, the government does not object to the PPSO's calculations of defendant's offense level or criminal history category. The government recommends that the Court grant a five-level downward variance and sentence defendant to 63 months' imprisonment, followed by a three-year term of supervised release.

1 **II. STATEMENT OF FACTS**

2 **A. Defendant Managed And Supervised A Medical Office, From**  
3 **Where He Prescribed and Distributed Controlled Substances**  
4 **Without Any Legitimate Medical Need**

5 Defendant was a California licensed medical doctor, who  
6 unlawfully prescribed and distributed, and caused to be prescribed  
7 and distributed, oxycodone and alprazolam from about November 4,  
8 2012, to November 4, 2013. (PSR ¶¶ 10-24.) He prescribed and  
9 distributed controlled substances to individuals without a legitimate  
10 medical need at an office located in Victorville, CA. (See id.  
11 ¶ 95.) He managed and supervised a security guard and at least two  
12 office assistants, who helped prescribe and distribute oxycodone and  
13 alprazolam for defendant. (See id. ¶¶ 13, 26.) Defendant prescribed  
14 and distributed controlled substances to individuals who resided in  
15 California, Nevada, and Colorado. (Id. ¶ 26.)

16 **B. On August 1, 2013, Defendant Sold Prescriptions For**  
17 **Oxycodone And Alprazolam To A Confidential Informant And**  
18 **Undercover Investigators**

19 On August 1, 2013, defendant met with three individuals at his  
20 medical office in Victorville. (PSR ¶ 12.) He believed they were  
21 drug purchasers, but they were, in fact, a confidential informant  
22 ("CI") and two undercover investigators from the Medical Board of  
23 California ("UCs"). (Id.) He sold them the following prescriptions:  
24 150 pills containing 30 mg of oxycodone each and 90 pills containing  
25 2mg of alprazolam each to the CI for \$300; 150 pills containing 30 mg  
26 of oxycodone each and 60 pills containing 2mg of alprazolam each to  
27 UC-1 for \$300; and 150 pills containing 30 mg of oxycodone each and  
28 60 pills containing 2mg of alprazolam each to UC-2 for \$300. (Id.  
¶¶ 13-15.) He wrote these prescriptions outside the usual course of  
professional practice, including by failing to conduct a physical

1 examination, establish diagnostic testing in the file, provide a  
2 treatment plan, and create documentation to establish a medication  
3 indication for the prescriptions. (Id. ¶ 16.) Defendant directed a  
4 co-conspirator to provide the prescription to the CI. (Id. ¶ 13.)

5 **C. On August 29, 2013, At The Direction Of Defendant, A Co-**  
6 **Conspirator Sold Prescriptions For Oxycodone To The**  
7 **Undercover Investigators**

8 On August 29, 2013, the UCs returned to defendant's medical  
9 office. (PSR ¶ 17.) There, at the direction of defendant, a co-  
10 conspirator sold them the following prescriptions: 150 pills  
11 containing 30 mg of oxycodone each and 60 pills containing 2mg of  
12 alprazolam each to UC-1 for \$200; and 150 pills containing 30 mg of  
13 oxycodone each and 60 pills containing 2mg of alprazolam each to UC-2  
14 for \$200. (Id.) The UCs received their prescriptions without ever  
15 meeting defendant, explaining their reasons for wanting the  
16 prescriptions, or having to document their requests. (Id.)

17 **D. The Medical Board Of California Identified Additional**  
18 **Prescriptions That Were Written Without A Medical Purpose**

19 The Medical Board of California identified additional illegal  
20 prescriptions for controlled substances, including 189 grams of  
21 oxycodone, between September 2, 2011, and April 17, 2014. (PSR ¶  
22 19.) Defendant sold these prescriptions to five individuals, one of  
23 whom was the CI. (Id. ¶¶ 20-24.) Defendant agreed that the Medical  
24 Board had established a factual basis for gross negligence related to  
25 these prescriptions. (Id. ¶ 19.)

26 **E. Defendant Pleaded Guilty**

27 On April 13, 2016, Street surrendered his California medical  
28 license. (PSR ¶ 28.) On February 9, 2018, a federal grand jury  
returned a 10-count Indictment against defendant based on his

1 unlawful prescriptions to the CI and UCs. On August 8, 2019,  
2 defendant pleaded guilty to counts one and two, which charge  
3 defendant with knowingly and intentionally prescribing and  
4 distributing, and willfully causing to be prescribed and distributed,  
5 oxycodone in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(C) and 18  
6 U.S.C. § 2(b).

7 **III. THE PRESENTENCE INVESTIGATION REPORT**

8 Based on the above facts, the PPSO calculated defendant's  
9 offense level for counts one and two to be 31. Specifically, the PSR  
10 applied the following guidelines factors:

11 Base Offense Level:

12 Converted drug weight between 30 U.S.S.G. §§ 2D1.1(a)(5),  
13 1,000 kilograms and 3,000 kilograms (c)(5)

14 Adjustment for Role: Manager +2 U.S.S.G. § 3B1.1(c)  
15 or Supervisor

16 Adjustment for Role: Abuse of +2 U.S.S.G. § 3B1.3  
17 position of trust

18 Acceptance of Responsibility -3 U.S.S.G. § 3E1.1

19 (PSR ¶¶ 38-50.) The PPSO calculated defendant's criminal history  
20 category as I, based on 1 criminal history point. (Id. ¶¶ 52-58.)  
21 Applying an offense level of 31 and criminal history category I, the  
22 PPSO determined that the applicable guidelines range is 108 to 135  
23 months' imprisonment, three years' supervised release, and a \$15,000  
24 to \$2,000,000 fine. (Id. ¶¶ 110, 112, 117.)

25 The government does not object to the PPSO's calculations of  
26 defendant's offense level or criminal history category. It, however,  
27 disagrees with the PPSO's recommendation of 24 months' imprisonment,  
28 which would represent a 14-level downward variance. Instead, the  
government recommends that defendant receive a five-level downward

1 variance in offense level based on the factors listed in 18 U.S.C.  
2 § 3553(a). With the variance, defendant's offense level is 26 and  
3 his guidelines range is 63 to 78 months' custody.

4 **IV. THE GOVERNMENT'S SENTENCING POSITION**

5 The government recommends a sentence of 63 months' imprisonment,  
6 to be followed by a three-year term of supervised release. The  
7 government's recommended sentence is sufficient, but not greater than  
8 necessary, to achieve the purposes set forth in 18 U.S.C. § 3553(a).

9 **A. The PPSO Correctly Applied A Two-Level Enhancement For**  
10 **Defendant's Role As A Manger Or Supervisor.**

11 The PPSO appropriately applied a two-level enhancement under  
12 U.S.S.G. § 3B1.1(c) for defendant's role as a manager or supervisor.  
13 (PSR ¶ 44.)

14 "The Guidelines provide for an increase in a defendant's base  
15 offense level by two levels if the defendant was an organizer,  
16 leader, manager, or supervisor in any criminal activity. An increase  
17 of offense level for an aggravating role is appropriate if there is  
18 sufficient evidence to support a finding that the defendant occupied  
19 one of the four specified roles." United States v. Maldonado, 215  
20 F.3d 1046, 1050 (9th Cir. 2000) (quotation marks and citation  
21 omitted). "When a defendant supervises other participants, she or he  
22 need exercise authority over only one of the other participants to  
23 merit the adjustment. A single incident of persons acting under a  
24 defendant's direction is sufficient evidence to support a two-level  
25 role enhancement." Id. (citations omitted).

26 Here, defendant managed and supervised employees and others at  
27 his Victorville clinic, including a security guard and at least two  
28 office assistants, who helped defendant meet patients and prescribe

1 oxycodone and alprazolam. (See PSR ¶¶ 13, 26.) Indeed, defendant  
2 admitted that, on August 1, 2013, a co-conspirator - at his direction  
3 - collected money from the CI and provided the CI with a prescription  
4 in defendant's name. On August 29, 2013, this same co-conspirator,  
5 under defendant's supervision, collected money from the UCs and  
6 provided prescriptions in defendant's name. See United States v.  
7 Atabay, 415 F. App'x 772, 773 (9th Cir. 2011) (affirming enhancement  
8 for defendant's role because "she owned and managed the clinic where  
9 the [criminal conduct] occurred"); United States v. Egge, 223 F.3d  
10 1128, 1132 (9th Cir.2000) (three-level adjustment was proper where  
11 defendant used others to help him sell drugs).

12 Accordingly, the Court should find that defendant was a manager  
13 or supervisor and apply a two-level enhancement under U.S.S.G.  
14 § 3B1.1(c).

15 **B. Defendant Used A Special Skill To Perpetrate The Crimes Or,**  
16 **In The Alternative, Abused A Position Of Trust.**

17 Similarly, the PPSO correctly concluded that defendant used a  
18 special skill in a manner that significantly facilitated the  
19 commission of the offense. (PSR ¶ 45.) Alternatively, defendant  
20 abused a position of trust. As such, the PPSO appropriately applied  
21 a two-level enhancement pursuant to U.S.S.G. § 3B1.3.

22 U.S.S.G. § 3B1.3 "provides that the district court may enhance  
23 the defendant's offense level if he abused a position of public or  
24 private trust, or used a special skill, in a manner that  
25 significantly facilitated the commission or concealment of the  
26 offense." United States v. Petersen, 98 F.3d 502, 506 (9th Cir.  
27 1996) (quotation marks and citation omitted). "The phrase special  
28 skill is defined as a skill not possessed by members of the general



1 public and usually requiring substantial education, training or  
2 licensing. Examples would include pilots, lawyers, doctors,  
3 accountants, chemists, and demolition experts.” Id. (quotation marks  
4 omitted). “The adjustment applies to persons who abuse their  
5 positions of trust or their special skills to facilitate  
6 significantly the commission or concealment of a crime. Such persons  
7 generally are viewed as more culpable.” Id. (quotation marks  
8 omitted).

9 Defendant, as a doctor, possessed education, training, and  
10 licensing that members of the public lack. He used that education,  
11 training, and licensing to write prescriptions for controlled  
12 substances without any legitimate medical purpose for his patients.  
13 Without his license, he could not have written those prescriptions  
14 and caused controlled substances to be distributed. See United  
15 States v. Volkman, 797 F.3d 377, 399 (6th Cir. 2015) (holding that  
16 “[t]he fact that a defendant is a doctor . . . and his victim a  
17 patient” is “sufficient for applying the special-skill enhancement,  
18 especially in light of the fact that [the defendant] would not have  
19 been in a position to abuse his prescription power without his  
20 medical license.”).

21 Alternatively, defendant abused a position of trust when he  
22 distributed controlled substances to patients without any medical  
23 need. A doctor holds a position of trust over his patients and with  
24 the government, which grants him the authority to write prescriptions  
25 for controlled substances for the medical needs of his patients.  
26 Defendant violated his position of trust by selling prescription,  
27 thereby placing the lives of his patients at risk. See United States  
28 v. Rutgard, 116 F.3d 1270, 1293 (9th Cir. 1997) (“That he took

1 advantage of vulnerable victims and abused trust was established  
2 because, in a professional medical practice, trust between patient  
3 and physician is essential and because the government . . . depends  
4 upon the honesty of the doctor and is easily taken advantage of if  
5 the doctor is not honest.").

6 Because defendant used a special skill in a manner that  
7 significantly facilitated the commission of the offense and because  
8 he abused a position of trust, the Court should apply a two-level  
9 enhancement under U.S.S.G. § 3B1.3.

10 **C. The Recommended Sentence Is Warranted**

11 Pursuant to 18 U.S.C. § 3553(a), the Court should pronounce a  
12 sentence of 63 months' imprisonment, followed by a three-year term of  
13 supervised release. The government's recommended sentence is  
14 reasonable based on the nature and circumstances of the offense, the  
15 seriousness of defendant's crime, the need to deter similar criminal  
16 conduct and to promote respect for the law, and the policy goal of  
17 preventing sentencing disparities.

18 The government's recommended sentence reflects the nature and  
19 circumstances of the offenses and the seriousness of defendant's  
20 crime. Defendant "breached the trust given to him as a physician by  
21 selling prescriptions to the most vulnerable in our population for  
22 his own profit." See United States v. Haj-Hamed, 549 F.3d 1020, 1025  
23 (6th Cir. 2008) (quotation marks and citations omitted). His  
24 willingness to violate that trust and to risk the lives of so many  
25 others over the course of a year weigh in favor of imprisonment. Id.

26 The government's recommended sentence is also needed to deter  
27 similar criminal conduct and to promote respect for the law. "It is  
28 undeniably in the public interest for doctors not to recklessly

1 overprescribe opioids. Defendant's sentence sends a cautionary  
2 message of deterrence to other doctors who may feel tempted by the  
3 illicit profit of unnecessary prescriptions." United States v. Rand,  
4 No. 3:16-CR-00029, 2020 WL 2733949, at \*5-6 (D. Nev. May 26, 2020)  
5 (denying motion for compassionate release based on 18 U.S.C.  
6 § 3553(a) sentencing factors).

7 Moreover, 18 U.S.C. § 3553(a)(6) requires the Court to minimize  
8 sentencing disparities among similarly-situated defendants. One way  
9 of doing so is to correctly calculate the guidelines range and apply  
10 a sentence within that range. See Gall v. United States, 552 U.S.  
11 38, 54 (2007) ("Since the District Judge correctly calculated and  
12 carefully reviewed the Guidelines range, he necessarily gave  
13 significant weight and consideration to the need to avoid unwarranted  
14 disparities."); United States v. Treadwell, 593 F.3d 990, 1011 (9th  
15 Cir. 2010) ("Because the Guidelines range was correctly calculated,  
16 the district court was entitled to rely on the Guidelines range in  
17 determining that there was no 'unwarranted disparity' between [the  
18 defendant] and other offenders convicted of similar [crimes]."),  
19 overruled on other grounds by United States v. Miller, No. 17-50338,  
20 2020 WL 1317275 (9th Cir. Mar. 20, 2020). Under the guidelines,  
21 other defendants in the same circumstances as defendant, with an  
22 offense level of 31 and a criminal history category of I, could  
23 expect to serve between 108 to 135 months in custody. Accordingly,  
24 the government believes that its recommended sentence will avoid  
25 unwarranted sentencing disparities with other similarly-situated  
26 defendants.

27

28

1           **D.     The Government Recommends a Five-Level Downward Variance**

2           Lastly, the government's recommended sentence of 63 months'  
3 custody reflects a five-level downward variance pursuant to 18 U.S.C.  
4 § 3553(a). Defendant's history and characteristics support a  
5 downward variance. He is 77 years old and has been diagnosed with  
6 diabetes, essential hypertension, anemia, chronic kidney disease, and  
7 three aneurysms of the thoracic and abdominal aorta. Defendant  
8 voluntarily turned in his medical license in April 2016.  
9 Furthermore, he served for 17 years in the U.S. Navy Reserve and was  
10 honorably discharged.

11           **V.     CONCLUSION**

12           For the foregoing reasons, a sentence of 63 months' custody,  
13 followed by a three-year term of supervised release, and a \$200  
14 special assessment are sufficient, but not greater than necessary, to  
15 comply with the purposes of 18 U.S.C. § 3553(a). The government  
16 respectfully requests that the Court sentence defendant accordingly.

**CERTIFICATE OF SERVICE**

I, REGINA AUTREY, declare:

That I am a citizen of the United States and a resident of or employed in Los Angeles County, California; that my business address is the Office of United States Attorney, 312 North Spring Street, Los Angeles, California 90012; that I am over the age of 18; and that I am not a party to the above-titled action;

That I am employed by the United States Attorney for the Central District of California, who is a member of the Bar of the United States District Court for the Central District of California, at whose direction I served a copy of: **GOVERNMENT’S SENTENCING POSITION**

Placed in a closed envelope for collection and inter-office delivery addressed as follows:

Placed in a sealed envelope for collection and mailing via United States Mail, addressed as follows:

By hand delivery addressed as follows:

By facsimile as follows:

By messenger as follows:

By Federal Express as follows:

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This Certificate is executed on **August 10, 2020**, at Los Angeles, California. I certify under penalty of perjury that the foregoing is true and correct.

/s/  
REGINA AUTREY  
Legal Assistant