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 UNITED STATES OF AMERICA

9 UNITED STATES DISTRICT COURT

10 FOR THE CENTRAL DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 v.

14 MARC EDWARD MANI,

15 Defendant.

No. CR 17-322-RGK

GOVERNMENT'S POSITION RE:  
SENTENCING OF DEFENDANT

Hearing Date: September 17, 2018  
 Hearing Time: 10:00 a.m.

Courtroom: Courtroom 850  
 Roybal Federal Building  
 and U.S. Courthouse 255  
 E. Temple Street  
 Los Angeles, CA 90012

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 20 Plaintiff, the United States of America, by and through its  
 21 counsel of record, the United States Attorney for the Central  
 22 District of California, files the government's sentencing position  
 23 for defendant MARC EDWARD MANI.  
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1 The government's sentencing position is based upon the attached  
2 memorandum of points and authorities, the files and records in this  
3 case, the Presentence Report, and such further evidence and argument  
4 as the Court may permit.

5 Dated: September 4, 2018

Respectfully submitted,

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10 \_\_\_\_\_ /s/

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. INTRODUCTION**

3 Defendant Marc Edward Mani ("defendant") is a 50 year old  
4 plastic surgeon practicing in Beverly Hills, California. Over the  
5 years, defendant's work has brought him substantial commercial  
6 success and public renown, making defendant and his medical practice  
7 the subject of television programs and magazine articles. (ECF No.  
8 24 at ¶ 57). Beginning in 2011, defendant expanded his practice to  
9 the United Arab Emirate of Dubai ("Dubai"), performing surgeries for  
10 a foreign medical center. (Id. at ¶ 12). As part of his  
11 international expansion, defendant opened a foreign bank account with  
12 Mashreq Bank in Dubai, where he deposited a portion of his foreign  
13 earned income (the "Dubai Account"). (Id. at ¶ 15). Defendant  
14 subsequently liquidated the Dubai Account in 2013, but continued to  
15 receive income from performing surgeries in Dubai. (Id.) In total,  
16 between 2012 and 2014, defendant earned over \$1,280,000 in surgical  
17 fees from his foreign practice. (Id. at ¶ 20). Unfortunately,  
18 despite repeated warnings from various tax professionals, defendant  
19 failed to report the vast majority of this income on his individual  
20 federal income tax returns. (Id. at ¶¶ 18, 20). Additionally,  
21 defendant willfully failed to file FBAR forms disclosing his interest  
22 in the Dubai Account during the 2012 and 2013 calendar years. (Id.  
23 at ¶ 24).

24 On July 24, 2017, defendant pleaded guilty, pursuant to a  
25 cooperation plea agreement (ECF No. 8), to an Information filed on  
26 May 30, 2017 (ECF No. 1). The Information charged defendant with  
27 willfully failing to file a report of foreign bank and financial  
28 accounts ("FBAR form"), in violation of 31 U.S.C. §§ 5314 and 5322(a)

1 and 31 C.F.R. §§ 1010.306(c), and 1010.306(d). Under the terms of  
2 his plea agreement, defendant acknowledged that he had failed to  
3 correctly report his foreign income on his 2012-2014 tax returns, and  
4 that he had willfully failed to file FBAR forms disclosing his  
5 ownership and control of the Dubai Account in 2012 and 2013. (ECF No.  
6 8, Attachment A at ¶¶ 12-17). Defendant agreed to enter into closing  
7 agreements with the IRS resolving his civil tax liabilities for the  
8 2012, 2013, and 2014 taxable years, and agreed to pay the resulting  
9 liabilities prior to sentencing. (ECF No. 8 at ¶ 5(b)). Defendant  
10 further agreed to pay penalties of \$100,000 per year, prior to  
11 sentencing, for the years 2012 and 2013, based on his failure to file  
12 FBAR forms. (Id. at ¶¶ 5(f), 5(g)). Finally, defendant agreed that  
13 if he did not make the abovementioned payments prior to sentencing,  
14 restitution should be ordered against defendant in the amount of  
15 \$637,878. (Id. at ¶ 11).

16 The United States Probation Office issued its Presentence  
17 Report ("PSR") on July 30, 2018. (ECF No. 24). In the PSR, the  
18 Probation Office calculated a total offense level of 15 and a  
19 Criminal History Category of I, resulting in a guidelines range of  
20 18-24 months. (Id. at ¶¶ 29-40). This calculation was based on the  
21 total loss amount agreed to in the plea agreement of \$437,878. (Id.  
22 at ¶ 31). The Probation Office also determined that restitution  
23 should be ordered against defendant in the amount of \$637,878. (Id.  
24 at ¶ 92).

25 The government agrees with the offense level calculation  
26 contained in the PSR, but disagrees with the amount of restitution  
27 recommended by probation. The government believes that restitution  
28

1 should be set at \$283,887.92. This lower amount takes account of  
2 partial payments made by defendant against his tax liabilities.

3 The government also moves pursuant to paragraph 7(d) of the plea  
4 agreement (ECF No. 8) for a two-level downward departure pursuant to  
5 United States Sentencing Guidelines ("U.S.S.G.") § 5K1.1, which brings  
6 the total offense level to 13. Based on an adjusted total offense  
7 level of 13 and a Criminal History Category of I, the resulting  
8 Guidelines sentencing range is 12-18 months imprisonment and a 1 to 3  
9 year term of supervised release.

10 Bearing the abovementioned factors in mind, the government  
11 requests the Court impose a fourteen-month custodial sentence, to be  
12 followed by three years of supervised release, a restitution order in  
13 the amount of \$336,525, and a \$100 special assessment.

14 **II. OFFENSE CONDUCT**

15 In 2011, defendant began traveling to Dubai to perform plastic  
16 surgery for a foreign medical center. (ECF No. 8, Attachment A ¶ 4).  
17 Subsequently, in November of that same year, defendant's previous  
18 accountant, Accountant 1, informed defendant that he would need to  
19 report any foreign income he earned on his U.S. federal income tax  
20 returns, and that defendant would also need to report to the IRS any  
21 foreign bank or financial accounts held under his ownership or  
22 control. (Id. at ¶ 5). Ultimately, defendant reported \$52,620 of  
23 foreign-sourced income on his 2011 federal income tax return. (Id.  
24 at ¶ 6). Defendant subsequently ended his relationship with  
25 Accountant 1, and did not use Accountant 1 for the preparation of  
26 defendant's 2012 federal income tax return.

27 During the 2012, 2013, and 2014 calendar years, defendant  
28 continued to earn income by performing surgeries in Dubai. However,

1 defendant failed to fully report this income on his individual  
2 federal income tax returns. In total, defendant omitted from his  
3 federal income tax returns the vast majority of the \$1,280,000 in  
4 surgical fees that he earned, between 2012 and 2014, performing  
5 surgeries in Dubai. (Id. at ¶ 12).

6 In addition to omitting foreign income from his tax returns,  
7 defendant also failed to make required financial disclosures  
8 regarding his foreign assets. In 2012, defendant opened a foreign  
9 bank account ("the Dubai Account") with Mashreq Bank, a foreign  
10 financial institution based in Dubai, where he began depositing his  
11 foreign-earned income. (Id. at ¶ 7). By February 2013, defendant's  
12 Dubai Account held over \$400,000 in foreign currency. (Id.)  
13 Defendant subsequently liquidated the Dubai Account in 2013, and used  
14 the funds as part of the purchase price of a Beverly Hills residence.  
15 (ECF No. 24 at ¶ 15). Despite being aware that he was required to  
16 disclose his interest in the Dubai Account, defendant willfully  
17 failed to file FBAR forms for the 2012 and 2013 calendar years. (Id.  
18 at ¶ 24).

19 Defendant's concealment of his foreign income and assets was  
20 facilitated by his collaboration with accountant JB. In 2013,  
21 defendant hired JB to prepare his 2012 federal income tax return.  
22 (ECF No. 8, Attachment A at ¶ 9). Prior to hiring JB, defendant met  
23 with other accountants who each informed defendant that he was  
24 required to correctly report his foreign income and foreign financial  
25 assets. (Id. at ¶ 10). Defendant disregarded this advice, and  
26 subsequently used JB to prepare defendant's 2012, 2013, and 2014  
27 federal tax returns. (Id. at ¶¶ 10-11). Returns which, as defendant  
28

1 well knew, substantially understated his foreign-earned income. (Id.  
2 at ¶ 11).

3 In total, defendant's underreporting of his foreign income  
4 resulted in tax losses to the United States of approximately  
5 \$437,878. (ECF No. 24 at ¶ 21).

6 **III. MOTION PURSUANT TO U.S.S.G. § 5K1.1**

7 **A. Applicable Law and Analysis**

8 Pursuant to the plea agreement, the government moves for a two-  
9 level downward departure under Section 5K1.1 of the Sentencing  
10 Guidelines based on defendant's provision of substantial assistance  
11 to the government. (ECF No. 8 at ¶ 7(d)). Under Section 5K1.1, the  
12 government may make a motion for a departure from the Guidelines  
13 range when "the defendant has provided substantial assistance in the  
14 investigation or prosecution of another person who has committed an  
15 offense." U.S.S.G. § 5K1.1. In determining the appropriate  
16 reduction, the Court may consider (1) the significance and usefulness  
17 of the defendant's assistance; (2) the truthfulness, completeness,  
18 and reliability of any information or testimony provided by  
19 defendant; (3) the nature and extent of the assistance; (4) any risks  
20 defendant incurred in providing the assistance; and (5) the  
21 timeliness of the assistance. Id.

22 Defendant's assistance warrants a two-level departure under  
23 Section 5K1.1. Defendant conducted two proffers with the United  
24 States in furtherance of his efforts to cooperate. During these  
25 proffers, defendant provided the United States with information  
26 regarding his various interactions with his accountants. Notably,  
27 defendant provided information indicating that his previous  
28



1 accountant, JB, was aware of defendant's unreported income for the  
2 years 2012 through 2014.

3 The government has no information that this cooperation put  
4 defendant in any danger.

5 For the reasons described above, pursuant to the Section 5K1.1  
6 analysis above, and based on defendant's substantial assistance,  
7 defendant's assistance warrants a two-level downward departure. With  
8 this two-level downward departure, defendant's total offense level  
9 falls from 15 to 13.

10 **IV. APPROPRIATE GUIDELINE SENTENCING RANGE**

11 In accordance and agreement with the calculations of both the  
12 plea agreement (ECF No. 8 at ¶ 24) and the PSR (ECF No. 24 at ¶¶ 29-  
13 40), the government believes that defendant should be sentenced  
14 within a sentencing range determined as follows, using the November  
15 1, 2016 Guidelines Manual in effect on the date of defendant's  
16 scheduled September 17, 2018 sentencing:

17 Base Offense Level: 18 [U.S.S.G. §§ 2T2.1, 2T4.1]  
18 (Loss > \$250,000)

19 Acceptance of Responsibility -3 [U.S.S.G. § 3E1.1.1]

20  
21 5K1.1 Departure based on  
22 substantial assistance: -2

23 Post-5K1.1 Offense Level: 13

24 Criminal History Category (per PSR): I

25 =====  
26 Sentencing Range: 12-18 months imprisonment  
27 1-3 years supervised release

28 Based on a total adjusted offense level of 13, and a Criminal History  
Category of I, the applicable Guidelines sentencing range in this  
case is 12-18 months imprisonment. Bearing in mind this calculation,

1 and the terms of the plea agreement, the government believes a  
2 sentence of 14-months imprisonment should be imposed on defendant.

3 **V. RESTITUTION**

4 In the presentence report, the Probation Office recommended that  
5 the Court should order restitution against defendant in the amount of  
6 \$637,878. (ECF NO. 24 at ¶ 92). The government believes that  
7 restitution should be limited to \$283,887.92, in order to take  
8 account of partial tax payments made by defendant prior to the time  
9 of sentencing. In the event defendant makes additional tax payments  
10 prior to the sentencing date in this case, the government will revise  
11 its restitution request accordingly.

12 **VI. SENTENCING RECOMMENDATION OF THE UNITED STATES OF AMERICA**

13 18 U.S.C. § 3553(a)(1) requires the Court to consider the nature  
14 and circumstances of the offense and the history and characteristics  
15 of defendant. The provisions of this section further instruct that  
16 federal sentences should reflect the seriousness of the crime,  
17 promote respect for the law, and deter others from committing the  
18 same crime. 18 U.S.C. § 3553(a). Consideration of these factors  
19 together weighs in favor of a substantial term of incarceration for  
20 defendant. The government believes that a sentence of fourteen-  
21 months incarceration comports with these objectives.

22 Defendant's conduct is precisely the type of greed-motivated  
23 financial offense that warrants incarceration. Defendant earned  
24 hundreds of thousands of dollars in income working in a foreign  
25 country, and deposited a large portion of this income in a foreign  
26 bank account. Defendant had a clear duty to report this income on his  
27 tax returns, and disclose his foreign bank account on an FBAR form.  
28 Indeed, defendant was explicitly warned, on multiple occasions and by

1 multiple individuals, that he had a legal duty to correctly report  
2 his foreign income and adequately disclose his foreign bank accounts.  
3 Defendant willfully ignored this obligation, filing false tax returns  
4 with the IRS and failing to file FBAR forms disclosing his Mashreq  
5 Account. As a result, the United States suffered substantial tax  
6 losses. Such blatant disregard for the nation's financial laws and  
7 regulations requires significant punishment.

8 In addition, the government notes that a substantial term of  
9 incarceration is supported by pertinent policy statements stressing  
10 the need for deterrence in the arena of criminal tax prosecutions.  
11 Specifically, the introductory commentary to section 2T1.1. of the  
12 Sentencing Guidelines provides as follows:

13 The criminal tax laws are designed to protect the public  
14 interest in preserving the integrity of the nation's tax  
15 system. Criminal tax prosecutions serve to punish the  
16 violator and promote respect for the tax laws. Because of  
17 the limited number of criminal tax prosecutions relative to  
18 the estimated incidence of such violations, deterring  
others from violating the tax laws is a primary  
consideration underlying these guidelines. Recognition that  
the sentence for a criminal tax case will be commensurate  
with the gravity of the offense should act as a deterrent  
to would-be violators.

19 U.S.S.G. 2T1.1 Introductory Commentary, November 2016. This policy  
20 has in turn been upheld by the Ninth Circuit. United States v.  
21 Orlando, 553 F.3d 1235 (9th Cir. 2009) (affirming an upward variance  
22 in a tax evasion case because it found that the guideline range  
23 "failed to capture tax crimes particular sensitivity to  
24 deterrence."); United States v. Bragg, 582 F.3d 965 (9th Cir.  
25 2009) (Remanding to the district court a probationary sentence in a  
26 tax-crime case where the district court expressed doubt that  
27 deterrence works in tax cases and noting that "Congress, in enacting  
28

1 the law, and the Sentencing Commission, in prescribing prison for tax  
2 offenses, set out a policy.”)

3 While the offense to which defendant has pleaded guilty is not a  
4 tax offense, defendant has admitted, as part of his plea agreement,  
5 to filing false returns for the years 2012, 2013, and 2014. These  
6 returns omitted income that defendant earned in a foreign country,  
7 and thus believed was beyond the notice of the IRS. Accordingly, the  
8 abovementioned policy statements are clearly applicable to the  
9 current circumstances confronted by the Court.

10 Moreover, policy statements stressing the need for deterrence,  
11 apply with particular force in the context of foreign-earned income.  
12 Income generated outside of the United States frequently escapes the  
13 information reporting processes typically employed by the IRS to  
14 identify underreporting. Foreign third-party payors may not generate  
15 information returns (W-2, 1099, etc.) or be subject to the  
16 information gathering tools employed by the IRS. Accordingly,  
17 voluntary self-reporting of foreign income by United States taxpayers  
18 is particularly crucial, given the limited ability of the IRS to  
19 identify omitted income. Where, as here, a taxpayer makes the  
20 conscious decision to underreport his foreign income under the  
21 mistaken belief that such income may escape the notice of the IRS,  
22 and is subsequently discovered, it is crucial that the Court impose a  
23 sentence sufficient to deter others from engaging in similar criminal  
24 conduct. A significant sentence of imprisonment is imperative to this  
25 objective.

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1 **VII. CONCLUSION**

2 For all the foregoing reasons, the government respectfully  
3 requests that the Court depart downward two levels with respect to  
4 defendant's offense level, based on defendant's cooperation, and  
5 respectfully submits that the factors set forth in 18 U.S.C. §  
6 3553(a) support the imposition of a sentence that includes a 14-month  
7 term of imprisonment, a three-year period of supervised release,  
8 payment of a \$100 special assessment, and payment of restitution to  
9 the United States of America in the amount of \$283,887.92.

10 Dated: September 4, 2018      Respectfully submitted,

11                                      NICOLA T. HANNA  
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