

1 E. MARTIN ESTRADA
 United States Attorney
 2 MACK E. JENKINS
 Assistant United States Attorney
 3 Chief, Criminal Division
 MARK AVEIS (Cal. Bar No. 107881)
 4 ALI MOGHADDAS (Cal. Bar No. 305654)
 Assistant United States Attorneys
 5 Major Frauds Section
 1100 United States Courthouse
 6 312 North Spring Street
 Los Angeles, California 90012
 7 Telephone: (213) 894-4477/1786
 Facsimile: (213) 894-6269
 8 E-mail: mark.aveis@usdoj.gov
 ali.moghaddas@usdoj.gov

9 Attorneys for Plaintiff
 10 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 SANDY MAI TRANG NGUYEN,

17 Defendant.

No. SA CR 19-195-ODW-3

GOVERNMENT'S SENTENCING POSITION
FOR DEFENDANT SANDY MAI TRANG
NGUYEN

Date: April 3, 2023
 Time: 11:00 a.m.

19 Plaintiff United States of America, by and through its counsel
 20 of record, the United States Attorney for the Central District of
 21 California and Assistant United States Attorneys Mark Aveis and Ali
 22 Moghaddas, hereby files its Sentencing Position.

23 //

24 //

25 //

26 //

27 //

28

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

5 Dated: March 24, 2023

Respectfully submitted,

6 E. MARTIN ESTRADA
7 United States Attorney

8 MACK E. JENKINS
9 Assistant United States Attorney
 Chief, Criminal Division

10 /s/
11 _____
 MARK AVEIS
 ALI MOGHADDAS
 Assistant United States Attorneys

12 Attorneys for Plaintiff
13 UNITED STATES OF AMERICA

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

On November 22, 2022, after a five-day trial, defendant Sandy Mai Trang Nguyen was convicted of 21 counts of health care fraud, in violation of 18 U.S.C. § 1347, and one count of obstructing a federal audit, in violation of 18 U.S.C. § 1516. The United States Probation and Pretrial Services Office ("USPO") disclosed its Presentence Investigation Report ("PSR") on February 21, 2023. (Dkt. 302.) The PSR provides for a total offense level of 36, a criminal history category of I, and, accordingly, a Guidelines imprisonment range of 188 to 235 months. (PSR ¶ 101.) The USPO also filed its recommendation letter in which it recommends a sentence of 180 months' imprisonment, which represents a downward variance from the advisory Guidelines range. (Dkt. 301.)

The government concurs in the factual findings and advisory Sentencing Guidelines calculations in the PSR. While the USPO's recommended sentence of 180 months' imprisonment is undoubtedly significant, the government believes a significant custodial term is warranted in this case and necessary given defendant's abuse of her position and the substantial loss to TRICARE under her watch. Finally, the government also concurs in the Probation Officer's recommendation that all fines be waived, and that restitution be ordered in the amount of \$11,098,755.83 to TRICARE.

II. STATEMENT OF FACTS

The Court is well aware of the facts of this case having sat through the five-day trial. In 2012, Marc Hoang opened what became Irvine Wellness Pharmacy ("IWP") in Irvine, California. Defendant was the pharmacist-in-charge at IWP under Mr. Hoang and assisted him

1 with all the necessary paperwork required to run the pharmacy.
2 However, despite Mr. Hoang's efforts, IWP was not profitable and in
3 2013 Hoang listed it for sale. Leslie Ezidore offered to buy IWP
4 through a nominee, his ex-wife. Mr. Hoang and defendant knew that
5 Ezidore would not be able to obtain a license to operate the
6 pharmacy. Nonetheless, with material assistance from defendant,
7 Hoang and Ezidore concealed the transfer of IWP from the regulator --
8 California Board of Pharmacy ("CBOP") -- by having Hoang continue to
9 hold himself out to CBOP as the owner of IWP and to execute CBOP
10 license renewals as if he had not transferred IWP. As proven at
11 trial, defendant prepared and submitted these renewals, sometimes
12 even forging Hoang's signature prior to submission.

13 Under new ownership, IWP had only one goal: fill as many
14 "compounded" medication prescriptions as possible to fleece TRICARE
15 and other insurance companies that would pay the thousands of dollars
16 per prescription. Defendant and Ezidore knew that TRICARE, the U.S.
17 military's health care plan, was paying large reimbursements for
18 these compounded prescriptions -- as much as \$15,000 per
19 prescription. To generate as many of these fraudulent prescriptions
20 as possible, IWP enlisted dozens of illegal "marketers" to obtain
21 hundreds of compounded prescriptions. IWP would then kick back
22 millions of dollars to these marketers in violation of the law. All
23 of the foregoing activity occurred under the supervision of
24 defendant, a licensed pharmacist and the statutory "pharmacist-in-
25 charge" of IWP.

26 At defendant's trial, the government proved that defendant knew
27 that IWP was, essentially, a fraud factory that was churning out
28 prescriptions solely to make a fast buck. She routinely ignored the

1 numerous red flags that indicated that the prescriptions were
2 fraudulent including, among other red flags, the prescriptions were
3 generated by marketers who received kickbacks; that substantially all
4 of the prescriptions appeared to be written by out-of-state doctors
5 for patients in different states; that the prescriptions were part of
6 check-the-box prescription forms for compounds that were rarely, like
7 all compounds, ever prescribed, and where the prescription forms
8 typically called for multiple prescriptions for a single patient
9 that, no less, got the same medications as a patient in a different
10 state and patient demographic; and that all of the prescriptions were
11 billed against TRICARE with no effort to collect required copayments
12 in the hundreds of dollars. Indeed, at trial, the evidence even
13 showed that defendant roped her own 90-year old grandmother, a
14 beneficiary of TRICARE, into the scheme.

15 Moreover, at trial the government established that defendant
16 furthered the scheme to defraud TRICARE by concealing it from
17 regulatory authorities and auditors. For example, defendant
18 facilitated the renewal of IWP's annual pharmacy license that
19 concealed the transfer of IWP, that she well knew, had occurred from
20 Hoang to Ezidore. Additionally, in December 2015, defendant
21 obstructed an audit conducted on behalf of TRICARE by providing bogus
22 prescriptions and information needed to fool the auditors.

23 All told, during the relevant time period between about January
24 and May 2015, under defendant's watch, IWP filled over 900 fraudulent
25 prescriptions for reimbursement of more than \$11 million from
26 TRICARE.

27
28

III. THE PRESENTENCE REPORT AND RECOMMENDATION LETTER

The PSR calculated defendant's base offense level as 6 under U.S.S.G. § 2B1.1(a)(2). (PSR ¶ 32.) It then applied a 20 level increase under § 2B1.1(b)(1)(K) given the amount of *actual* loss, to wit, \$11,098,755.83 to TRICARE. (Id. at ¶ 35.) Pursuant to § 2B1.1(b)(7), a further three levels were added since defendant was convicted of Counts 1 through 21, which are federal health care offenses and TRICARE is a government health care program. (Id. at ¶ 37.) Next, three levels were added for defendant's role in the scheme by virtue of her acting as a manager (§ 3B1.1(b)), and another two levels for use of a special skill given her role as the pharmacist-in-charge (§ 3B1.3). (Id. at ¶¶ 40-42.) Last, two levels were added based on defendant's conviction for obstructing a federal audit pursuant to § 3C1.1. (Id. at ¶ 45.) Accordingly, defendant's adjusted offense level was properly calculated as 36. (Id. at ¶ 46.)

Additionally, the PSR also correctly calculated defendant's criminal history category as I given her lack of any prior criminal convictions. (PSR ¶ 54.) Accordingly, the PSR correctly indicates that defendant's Sentencing Guidelines range is between 188 and 235 months. (PSR ¶ 101.) In its Recommendation Letter, the USPO recommended that the Court impose a sentence of 180 months' imprisonment, which represents a downward variance, followed by a two-year period of supervised release, and a mandatory special assessment of \$2,200. (Dkt. 301.)

IV. § 3553(a) FACTORS

The government believes that the USPO's recommended sentence of 180 months, which represents a downward variance from the advisory Guidelines, or a similarly significant sentence under § 3553(a), is

1 appropriate and warranted in this case. Specifically, after
2 consideration of the 3553(a) factors, namely, the nature and
3 circumstances of the offenses, the history and characteristics of
4 defendant, and the need for the sentence to reflect the seriousness
5 of the offense and to afford adequate deterrence to criminal conduct,
6 the Court should impose a weighty custodial term to appropriately
7 penalize defendant's offenses.

8 First, the nature and circumstances of defendant's offense is
9 serious. See 18 U.S.C. § 3553(a)(1). It was undisputed that TRICARE
10 was a taxpayer-funded health insurance program for members of the
11 U.S. military and their families and that, during a short period of
12 time while defendant was the pharmacist-in-charge, defendant and her
13 co-schemers focused substantially all of their efforts toward filling
14 prescriptions to submit to TRICARE. The scheme could not have worked
15 unless defendant was involved because, unlike the other participants
16 of this criminal scheme, defendant was a licensed pharmacist who was
17 entrusted with abiding by the law. As the Court heard during
18 defendant's trial, this position was mandated by law and imposed on
19 defendant the responsibility of ensuring that all prescriptions were
20 legally compliant. Notwithstanding this heightened role and
21 responsibility, defendant disregarded her duties and, under her
22 watch, nearly one thousand TRICARE prescriptions were filled and
23 submitted for payment. Moreover, despite her direct testimony that
24 she was unaware of the volume of prescriptions or their associated
25 revenue, defendant's own text messages made clear that she was
26 keeping a close eye on the daily profits and touting the pharmacy's
27 exorbitant illicit profits. To add insult to injury, defendant
28 intentionally obstructed audits by insurance carriers, including a

1 federal audit conducted on behalf of TRICARE, which formed the basis
2 for Count 49. The foregoing no doubt establishes the seriousness of
3 the instant offense.

4 Second, as to defendant's history and characteristics, while
5 defendant does not have any known prior criminal convictions, her
6 abuse of her position is deeply concerning. As noted above,
7 defendant was licensed by the State of California and entrusted with
8 a privilege none of her other codefendants had. Indeed, the fraud
9 wheel could not have turned without defendant's active participation
10 and authorization. Worse yet, at trial, rather than accept
11 responsibility for her criminal acts, defendant chose to try and sell
12 the jury a story that was contrary to substantially all of the
13 evidence introduced in the case. However, notwithstanding the
14 government's serious concern about the veracity of defendant's
15 testimony at trial, it is not presently seeking another obstruction
16 enhancement.

17 Third, a significant sentence is also necessary to address the
18 seriousness of the offense, promote respect for the law, provide just
19 punishment, afford adequate deterrence, and protect the public from
20 further crimes of defendant. See 18 U.S.C. § 3553(a)(2). Given the
21 seriousness of defendant's offense, a significant term of
22 imprisonment is necessary to protect the public from further crimes
23 of defendant and to deter defendant from engaging in future criminal
24 conduct. It is also necessary to deter others from engaging in
25 similar conduct.

26 Finally, the Court should impose a two-year term of supervised
27 release. A two-year term of supervised release, which is also
28 recommended by the USPO (Dkt. 301), will provide supervision to help

1 prevent defendant from committing further crimes once she is
2 released. The government also concurs in the Probation Officer's
3 recommendation that all fines be waived, and that restitution be
4 ordered in the amount of \$11,098,755.83 to TRICARE.

5 Dated: March 24, 2023

E. MARTIN ESTRADA
United States Attorney

7 MACK E. JENKINS
8 Assistant United States Attorney
Chief, Criminal Division

9 _____
/s/

10 MARK AVEIS
11 ALI MOGHADDAS
Assistant United States Attorneys

12 Attorneys for Plaintiff
13 UNITED STATES OF AMERICA
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28