

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA :
 :
 v. : Crim. No. 3:18CR193 (JCH)
 :
 LOUIS GOLDBERG : November 21, 2018

GOVERNMENT'S SENTENCING MEMORANDUM

The United States files this short memorandum in aid of sentencing. The defendant's sentencing is scheduled for November 29, 2018 at 4 pm. The parties and Probation Office agree that the defendant is subject to a guidelines imprisonment range of 10-16 months incarceration, a restitution obligation of \$40,490, a fine of \$30,000 to \$40,000 and a special assessment of \$100. The defendant has before sentencing satisfied his civil obligation and restitution, which constituted a payment of approximately \$105,000 to the IRS comprising the principal amount of \$40,490.44 and additional interest and penalties. The parties are in further agreement that the defendant is entitled to a downward departure for "substantial assistance" in this case. The Government will orally move at sentencing for a motion pursuant to Section 5K1.1 of the United States Sentencing Guidelines for a downward departure and requests the Court grant this motion, which, as the Court well knows, authorizes the Court to impose a sentence below the defendant's applicable guideline range for "substantial assistance" to the Government in the investigation and prosecution of another person who committed a criminal offense. The nature, extent, and significance of the defendant's cooperation, as well as additional information regarding sentencing, are detailed in this memorandum.

A. The Offense Conduct

The facts of the defendant's offense conduct and other relevant sentencing information are fully set forth the PSR and will not be included here except to note the following. Goldberg, as the Owner of Good Copy Printing Center Inc. (GCP), *for ten years*, from 2003 through 2012, knew his nephew was submitting certain *personal* expenses to GCP for reimbursement with the attendant tax consequences. At Malkin's request, GCP improperly reduced Malkin's earned commissions by the amount of personal expenses paid by GCP. This net figure was then used as Malkin's earned commission income reported to the IRS, rather than using his actual commissions that were substantially greater. By reporting lower commissions paid, GCP improperly reduced its applicable reported Medicare Payroll Taxes on the quarterly-filed Forms 941.

GCP, with Goldberg's knowledge and assent, also underreported Malkin's wage income by improperly reducing Malkin's commission income by certain unrelated postage expenses incurred by GCP. GCP handled printing jobs for Comcast, which included GCP mailing out flyers and paying the relevant postage expense with the expectation that GCP would subsequently be reimbursed by Comcast for that expense. Malkin, who handled the Comcast account, would have GCP cut checks to pay the postage expense for the Comcast mailings. From 2009 through 2012, GCP, with Goldberg's knowledge, reduced Malkin's earned commissions by the amount of postage paid by GCP for the Comcast mailings. As a result, during the relevant times, GCP reported to the IRS that Malkin had earned substantially less commission income than Malkin had, in fact, earned. Again, by reporting lower income paid, GCP improperly reduced its applicable Medicare Payroll Taxes on the quarterly-filed Forms 941, including the Form 941 for the quarter ending December 31, 2011, which was the return used for

the charged count of conviction as one example of the years of misconduct. The parties have agreed that GCP and Goldberg underreported Medicare taxes for ten years follows, resulting in the relevant sentencing guidelines loss of \$40,490:

<u>Form</u>	<u>Year</u>	<u>Additional Tax Due and Owing</u>
941 (4 Quarters)	2003	\$1,748.52
941 (4 Quarters)	2004	\$2,753.36
941 (4 Quarters)	2005	\$4,352.52
941 (4 Quarters)	2006	\$2,469.96
941 (4 Quarters)	2007	\$2,510.08
941 (4 Quarters)	2008	\$4,024.60
941 (4 Quarters)	2009	\$7,497.52
941 (4 Quarters)	2010	\$5,568.52
941 (4 Quarters)	2011	\$8,852.92
941 (4 Quarters)	2012	\$712.44
	TOTAL	\$40,490.44

Thus, Goldberg repeatedly chose to have his Company lie to the IRS with the filing of at least *forty* false Form 941 returns over the ten years at issue.

B. The Defendant's Guidelines Calculation

The Presentence Report (PSR) calculates the defendant's total offense level as discussed above, including a period of incarceration of 10-16 months.

C. Downward Departure for Substantial Assistance

The defendant does not appear to argue for a downward departure other than that sought by the government for "substantial assistance," although the defendant has requested a variance and submitted a number of letters attesting to good works done by the defendant over the years. The government does not take issue with the defendant's good works, but does note that the defendant's altruistic efforts, however honorable, do not make the defendant's case different from a typical white collar defendant with the background and means to assist his community. Nor does the background explain or excuse the defendant's decision year after year, quarter after

quarter, to falsify the Company filings with the IRS. Nonetheless, as discussed in the sections below, the government submits that the defendant has earned a downward departure for “substantial assistance.” In keeping with the terms of the cooperation agreement, the Government will not recommend a specific sentence, but will outline the scope of the cooperation to allow the Court to assess the appropriate sentence.¹

1. A 5K1.1 Departure – the Law

Section 5K1.1 of the Sentencing Guidelines permits the Court to depart from a defendant’s applicable Sentencing Guideline range “[u]pon motion of the government stating that the defendant has provided substantial assistance in the investigation or prosecution of another person who has committed an offense” U.S.S.G. § 5K1.1. The decision whether to file a motion for downward departure “is expressly lodged in the prosecutor’s discretion.” U.S.S.G. § 5K1.1; *United States v. Garcia*, 926 F.2d 125, 128 (2d Cir. 1991) (quoting *United States v. Rexach*, 896 F.2d 710, 713 (2d Cir. 1990)); *United States v. Huerta*, 878 F.2d 89 (2d Cir. 1989). The *Huerta* court observed that the question of “substantial assistance” is “self-evidently a question that the prosecution is uniquely fit to resolve.” *Huerta*, 878 F.2d at 93. *See also United States v. Scarpa*, 861 F.3d 59, 67-68 (2d Cir. 2017) (examining substantial-assistance criteria under Fed. R. Crim. P. 35(b), which is “construed similarly” to § 3553(e) and U.S.S.G. § 5K1.1).

¹ The defendant notes in his sentencing memorandum that “[i]t is notable that the government is not requesting a period of incarceration.” Def. Mem. at 13. To the extent the defendant’s comments create the inference that the government is requesting a sentence that does not include jail time, the memorandum is misleading. Again, the government is not recommending a specific sentence – it is neither requesting probation nor a period of incarceration – instead it is outlining the cooperation and leaving it to the Court to determine the appropriate sentence which may or may not include period of incarceration.

Section 5K1.1(a) of the Guidelines provides that upon the filing of a motion for downward departure, the appropriate reduction shall be determined by the Court based upon, but not limited to, the following considerations:

- (1) the court's evaluation of the significance and usefulness of the defendant's assistance, taking into consideration the government's evaluation of the assistance rendered;
- (2) the truthfulness, completeness, and reliability of any information or testimony provided by the defendant;
- (3) the nature and extent of the defendant's assistance;
- (4) any injury suffered, or any danger or risk of injury to the defendant or his family resulting from his assistance; and
- (5) the timeliness of the defendant's assistance.

U.S.S.G. § 5K1.1. Application Note 3 to the commentary of Section 5K1.1 provides that “[s]ubstantial weight should be given to the government’s evaluation of the extent of the defendant’s assistance, particularly where the extent and value of the assistance are difficult to ascertain.” *See also Rexach*, 896 F.2d at 713.

a. Nature and Extent of the Defendant’s Assistance

As noted in the defendant’s memorandum, from the beginning of his contact with the government, the defendant took the appropriate steps. He assisted investigators during the initial search, including providing information that made conducting the search more efficient and productive in developing inculpatory evidence. Thereafter the defendant talked openly with investigators, making admissions and implicating himself and others in potential wrongdoing. The defendant subsequently met with the government and provided additional information regarding his nephew Ira Malkin. As a result of this meeting and the fact of the defendant’s agreed-upon cooperation, the government was able to discuss with Malkin’s counsel Goldberg’s

anticipated testimony and outline how that testimony would be significant evidence against Malkin. Upon learning of Goldberg's cooperation and its scope, Malkin decided to plead guilty.

Just prior to Malkin's sentencing, Malkin took the position that no period of incarceration was appropriate as his continued uninterrupted employment by GCP was essential to the Company remaining in business and being able to retain its major client. Goldberg made himself available for further questioning by the government and explained that certain statements by Malkin's counsel were overstated and that GCP would seek to retain and might well be able to keep its major client, even if Malkin was incarcerated.

b. Significance and Usefulness of the Defendant's Assistance

The government believes that the defendant's agreement to cooperate and his cooperation was an extremely important component of Malkin choosing to plead guilty. Before Goldberg's agreement, it was the government's impression that Malkin intended to seek to explain and fight the charges at trial. After defense counsel was informed of Goldberg's position and the nature of any testimony, the tenor of discussions with Malkin's counsel changed markedly, and Malkin made the decision to plead guilty. Further, as noted in the above subsection, the defendant provided additional assistance regarding sentencing.

c. Truthfulness, Completeness, and Reliability of the Defendant's Information and Testimony

The government believed that the defendant provided truthful, complete, and reliable information; did not minimize the criminal conduct; and his information was corroborated by the records seized from the business and from several witness employees.

d. Timeliness of the Defendant's Assistance

As noted above, the defendant provided information and assistance that subsequently turned into formal cooperation as soon as confronted by investigators with the investigation.

e. Injury to the Defendant Resulting from His Assistance

It is not anticipated that the defendant was or would be subject to threats or harm as a result of his cooperation. In fact, the government believes that his assistance and the resulting resolution of the case might have taken a small step in speeding up healing family rifts that may have been occasioned by a drawn-out criminal investigation and prosecution.

CONCLUSION

The government believes that the nature and extent of the assistance provided by the defendant warrant a substantial assistance motion. Accordingly, the government respectfully requests that the Court grant the motion, depart from the applicable guidelines range and impose an appropriate sentence.

Respectfully submitted,

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/s/

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