UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- x

UNITED STATES OF AMERICA, :

- v. - : **16 Cr. 194 (AT)**

MORRIS E. ZUKERMAN, :

Defendant. :

- x

GOVERNMENT'S SENTENCING MEMORANDUM
REGARDING DEFENDANT MORRIS E. ZUKERMAN

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The United States respectfully submits this memorandum for the Court's consideration in connection with the sentencing of defendant Morris E. Zukerman ("Zukerman" or "the defendant"), which is scheduled for March 21, 2017, at 11:00 a.m. Through this memorandum, we (1) detail the extensive offense conduct and "relevant conduct" of the defendant; (2) compute and discuss the applicable Sentencing Guidelines; (3) respond to certain arguments and facts set forth by Zukerman in his sentencing memorandum ("Mem."), and (4) explain the Government's position regarding the appropriate sentence.

Preliminary Statement

Defendant Morris Zukerman devised, implemented, and reaped tens of millions of dollars from an elaborate, multi-year corporate and individual tax fraud spree that resulted in staggering losses to at least three taxing authorities: the Internal Revenue Service ("IRS"); the New York State Department of Taxation and Finance ("New York State"); and the City of New York ("NYC").

Contrary to the picture he paints of himself as an otherwise upstanding member of his community, Zukerman brazenly and methodically orchestrated a series of highly complex frauds designed to squeeze every last dollar from federal, state, and city taxing authorities for many years until he was finally caught. While Zukerman asks the Court to consider the collateral effects that his conviction will have on his reputation, family, and business interests, Zukerman in fact used his vast wealth, sophistication, and access to skilled legal and financial professionals in order to carry out and conceal his crimes. And while Zukerman baselessly suggests that his crimes were motivated in some measure by a good-faith desire to achieve "tax planning and savings," there is in reality just a single, straightforward reason why Zukerman committed this crime: greed.

Zukerman does not mention it anywhere in his sentencing submission, but his tax fraud spree, which was at its height when the Government's investigation began, resulted in more than $40 million in actual losses to the United States Treasury, New York State, and NYC – losses Zukerman has only recently begun paying back, and only on the eve of a criminal indictment and after four years of contesting civil and criminal investigations. It is plain from the Probation Department's Presentence Investigation Report ("PSR") that Zukerman did not commit his crimes out of any financial need, and he used his criminal proceeds in substantial part to fund his own extravagant lifestyle.

For the reasons spelled out below and in the PSR, we submit that Zukerman's multi-year role as the sole architect and principal financial beneficiary of the tax evasion schemes to which he had pleaded guilty, his corrupt endeavors to obstruct three separate IRS civil investigations, as well as his substantial other criminal conduct (dating back to 1999) call for a prison sentence

within the Sentencing Guidelines range stipulated to by the parties in the plea agreement ("the Stipulated Range"). A sentence below the Stipulated Range would fail to serve the essential sentencing goals of general deterrence, specific deterrence, and the promotion of respect for the rule of law.

I. RELEVANT FACTS[1]

A. Overview of the Defendant's Criminal Conduct

Zukerman, a graduate of Harvard College and its business school, and a former Managing Director at Morgan Stanley & Co., is a private investor specializing in acquisitions and investments in the energy sector. PSR ¶¶ 139-40, 142-43. Since at least the late 1990's, Zukerman has carried out his investment business through a group of companies, including Manhattan-based parent company M.E. Zukerman & Co., Inc. ("MEZCO"), of which Zukerman is the controlling officer. *Id.* ¶ 142.

The criminal investigation of Zukerman originally centered on the tax reporting of a corporate transaction that occurred in January 2008. In that transaction, described below, Zukerman caused a MEZCO subsidiary named M.E. Zukerman Specialty Oil Corporation ("SOC") to sell SOC's partnership interest in a company known as Penreco for approximately $110 million. Through the creation of phony documents and numerous lies told to his accountants, Zukerman orchestrated the evasion of the taxes due on that gain by causing SOC and MEZCO to fail to report to the IRS the $110 million in sales proceeds, thereby resulting in the evasion of over $28 million in corporate income taxes due and owing to the IRS by SOC for

[1] The facts described in this section are based on, among other things, the PSR, the defendant's guilty plea, documents gathered by the Government during its investigation, and Government interviews of numerous witnesses.

the 2008 tax year (hereinafter the "the 2008 SOC Evasion"). *Id*. ¶ 10.

In addition to orchestrating the 2008 SOC Evasion, Zukerman planned and carried out dozens of other tax crimes between 2007 and 2014, including the following: (i) causing SOC to evade millions of dollars of taxes due for the 2007 tax year (the year preceding the Penreco sale), during which SOC failed to report to the IRS over $9.7 million of operating income received from Penreco ("the 2007 SOC Evasion"); (ii) causing the preparation and filing with the IRS of tax returns for the 2008-2013 tax years for himself and his wife that claimed millions of dollars of false deductions and expenses; (iii) causing the preparation and filing with the IRS of tax returns for the 2008-2013 tax years for [redacted] that claimed hundreds of thousands of dollars of false deductions and expenses; (iv) paying hundreds of thousands of dollars of unreported cash wages to domestic employees working out of Zukerman's homes in New York City and Maine, and evading employment taxes due to the IRS as a result of falsely omitting the reporting of those cash wages to the IRS; (v) diverting from his corporate entities, and failing to report to the IRS as personal income, tens of thousands of dollars used to pay bonuses to his domestic employees, as well as health care insurance premiums for one of his domestic employees; (vi) diverting hundreds of thousands of dollars from his companies to pay fee income to [redacted] despite the fact that they performed little if any work for the fees; (vii) failing to file with the IRS tax returns, for the tax years 2007-2010 and 2012, for the Zukerman Family Trust ("ZFT"), a family trust that Zukerman controlled and of which he served as sole trustee; and (viii) providing false and misleading information to the IRS during three separate IRS audits, in a corrupt effort to defend

false tax reporting on tax returns that had been previously filed by him or family members. *Id.* ¶ 11.

All of the above-described conduct – carried out by Zukerman while surrounded by numerous accountants and lawyers whom he either kept in the dark or made false statements to in order to further his elaborate frauds – served as the predicate for Zukerman's guilty plea to Count One (corruptly endeavoring to obstruct the due administration of the IRS) and Count Two (tax evasion by various taxpayers for various tax years). *Id.*

In addition to the aforementioned "offense conduct," Zukerman engaged in significant "relevant conduct" – that is, criminal conduct that, while not part of the formal counts to which Zukerman pleaded guilty, the Court should consider at sentencing – that resulted in the evasion of millions of additional income taxes, as well as NYS sales and use taxes. Zukerman's relevant conduct, described in detail below, consisted of the following: (i) orchestrating a scheme to evade over $4.6 million of sales and use taxes due to New York State as part of the purchase, between 2007 and 2014, of over $50 million worth of "Old Master" paintings, as well as jewelry; (ii) orchestrating a scheme to evade over $233,000 in sales and use tax due to New York State in connection with the purchase, between 1999 and 2002, of over $2.8 million in Old Master paintings; (iii) in connection with the personal and corporate tax evasion activities described as part of the "offense conduct" – which served to defraud the IRS – Zukerman contemporaneously defrauded New York State and NYC by filing state tax returns that contained the same falsities as those contained on his federal returns; (iv) orchestrating, between 2008 and 2014, a scheme to defraud MEZCO's health care insurers by falsely listing his domestic employee (who worked out of Zukerman's homes) as a full-time employee of his companies; (v) orchestrating, between

2007 and 2015, a scheme to defraud the insurance company that provided coverage for his five family automobiles by falsely telling his insurer, in order to get a lower car insurance rate, that the five vehicles were garaged in Westchester County when, in truth, the vehicles were garaged in Manhattan; and (vi) making false statements to an Upper East Side co-op board in March 2009, as part of his efforts to [redacted] obtain approval to purchase a [redacted] otherwise lacked the financial wherewithal to purchase on [redacted] own. PSR ¶¶ 50-63, 66-72.

Contrary to the suggestions made by Zukerman – who attempts to diminish the significance of, or deny responsibility for, his extensive "relevant conduct" (Mem. 30-32) – the facts surrounding Zukerman's other misconduct are highly relevant to sentencing Morris Zukerman the man and not simply the crimes to which Zukerman pleaded guilty. Indeed, just as Zukerman has devoted most of his sentencing submission to facts outside the four corners of the PSR in order to have this Court consider his positive character traits, the fact that Zukerman has engaged in significant additional criminal and otherwise fraudulent or disreputable conduct sheds "new light upon the defendant's 'life, health, habits, conduct, and mental and moral propensities,'" *United States* v. *Hansen*, 701 F.2d 1078, 1082 (2d Cir. 1983) (quoting *North Carolina* v. *Pearce*, 395 U.S. 711, 723 (1969) (other citation omitted)) – and is thus an entirely appropriate consideration for sentencing. *See United States* v. *Ochs*, 548 F. Supp. 502, 507 (S.D.N.Y. 1982) ("Indispensable [to sentencing] is a thorough search for all details having even the slightest bearing on a defendant's character, past and present. Often such an inquiry proves rewarding, for it supplies insights into strengths and weaknesses not theretofore revealed and furnishes enlightenment as to how best to write the sentence prescription. This approach is

imperative and has long been encouraged and approved").

B. Particulars of the Offense Conduct

1. The 2007 and 2008 SOC Evasions

a. The Purchase and Sale of Penreco

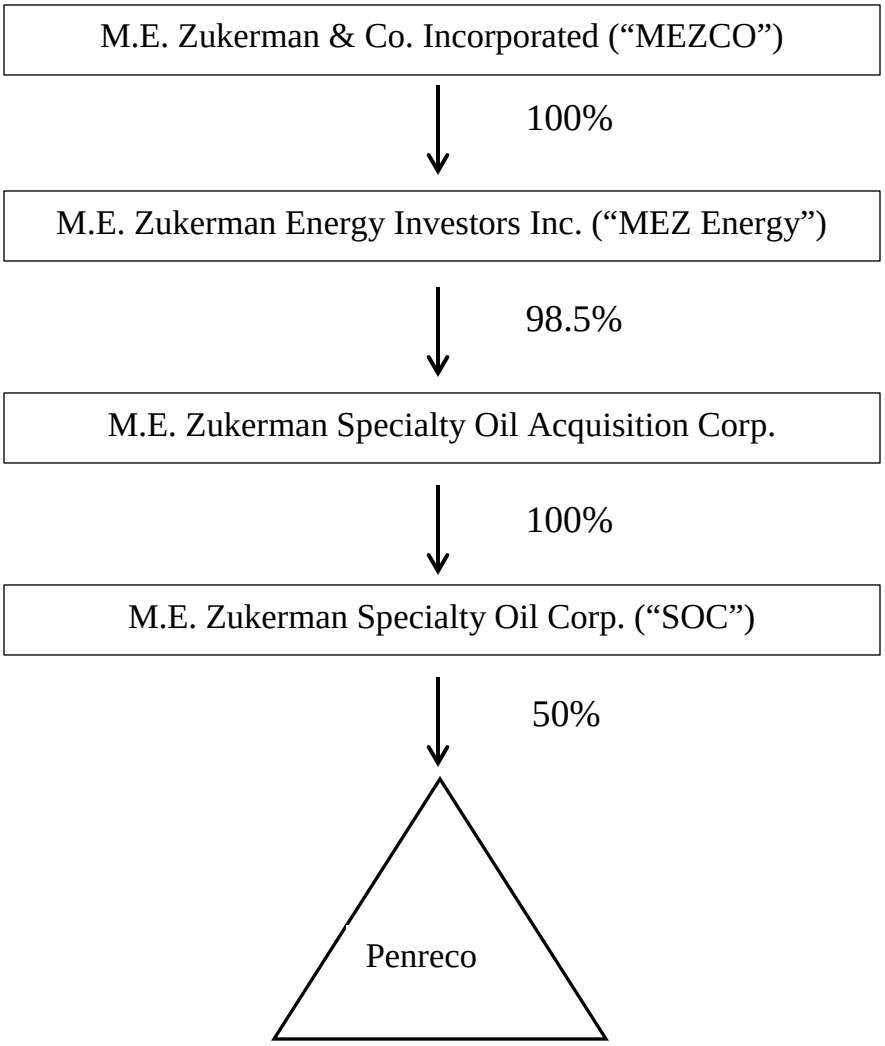
Penreco was a Texas general partnership that, in the late 1990's, had been owned 50/50 by Pennzoil Products Company and Conoco, Inc. (later "ConocoPhillips"). In February 2001, Zukerman, through SOC, purchased Pennzoil's 50% interest in Penreco, thereby becoming 50/50 owners of Penreco with ConocoPhillips. PSR ¶¶ 14.

In July 2007, SOC and ConocoPhillips agreed to sell their respective 50% shares of Penreco to Calumet Specialty Products Partners ("Calumet") for a total of approximately $275 million. Two days after the January 1, 2008 closing of the transactions, SOC's bank account at J.P. Morgan Chase in New York received approximately $110,000,000, representing SOC's net proceeds of its sale of its 50% interest in Penreco. PSR ¶ 15.

b. The Zukerman Corporate Structure and Tax Reporting Responsibilities

SOC's 50% interest in the Penreco partnership was the sole asset of SOC, a Delaware-registered C corporation that was wholly owned by MEZCO through two intermediary companies – M.E. Zukerman Specialty Oil Acquisition Corp. ("MEZ Acquisition") and M.E. Zukerman Energy Investors Inc. ("MEZ Energy"). PSR ¶ 16.

The foregoing corporate structure of MEZCO, in place between 2001 and at least 2007, is demonstrated by the following schematic:


M.E. Zukerman & Co. Incorporated ("MEZCO")
100%
M.E. Zukerman Energy Investors Inc. ("MEZ Energy")
98.5%
M.E. Zukerman Specialty Oil Acquisition Corp.
100%
M.E. Zukerman Specialty Oil Corp. ("SOC")
50%
Penreco

The four C corporations in the foregoing diagram (SOC, MEZ Acquisition, MEZ Energy, and MEZCO)[2] were part of a single consolidated group for tax reporting purposes. Thus, for the tax years 2001 through 2006, a single U.S. Corporation Income Tax Return, Form 1120, was filed for MEZCO, which reported the tax activities of all the entities in the consolidated group, including SOC. PSR ¶ 17.

Zukerman chose not to employ an in-house CPA or trained accountant. Instead, in order to prevent a single experienced accounting professional from obtaining a comprehensive understanding of all his tax affairs, Zukerman divided his accounting and tax preparation work among four external firms or individuals for different tax reporting tasks: (1) a small accounting firm in New Jersey ("the NJ Accounting Firm"), headed by CPA David DeBellis, handled the tax reporting for MEZCO and many of its subsidiaries, save for those located in California; (2) a central California accounting firm handled the tax reporting for Zukerman's California-based agricultural companies; (3) a Long Island accounting firm ("the Long Island Accounting Firm"), headed by CPA long involved in Zukerman's personal tax reporting, handled Zukerman's personal tax returns and gift-tax returns; and (4) Richard Witt – a semi-retired, Long Island-based sole-practitioner accountant whom Zukerman paid in cash and who prepared certain corporate tax returns by hand – handled tax reporting and accounting functions for certain largely dormant entities, including a Subchapter C corporation named Bodley Investment Company ("Bodley"). Zukerman also used an in-house employee, Tahir Rashid, who had little or no bookkeeping, accounting, or tax preparation training, to handle certain tasks, such as the

[2] MEZCO, the parent company of the group, was a Delaware-registered C corporation co-owned by Zukerman and the Zukerman Family Trust. MEZ Acquisition was 98.5% owned by MEZ Energy, with .8% and .7% interests owned, respectively, by long-time Zukerman employees John Luke and William Johnson.

QuickBooks entries for the C corporations in the MEZCO consolidated group. Zukerman also directed Rashid to prepare individual tax returns, Forms 1040, for [redacted] until 2012, when Zukerman directed that [redacted] tax preparation work be handled by the Long Island Accounting Firm. PSR ¶¶ 18-19.

c. The False and Fraudulent Information Provided by Zukerman to his Accountants Concerning Penreco

In mid-2008, months after the January 1, 2008 sale by SOC of its interest in Penreco (which Zukerman hid from his outside accountants), CPA David DeBellis began working on the MEZCO 2007 consolidated tax return, an initial draft of which reported significant taxable income, attributable principally to over $9 million of operating income received by SOC during 2007 from Penreco. When DeBellis informed Zukerman of the likely tax liability for the consolidated group, Zukerman asked DeBellis to identify the entity or entities in the group responsible for generating the taxable income. After DeBellis indicated that the tax liability was attributable largely to SOC's operating income from Penreco, Zukerman decided not to disclose the Penreco sale to DeBellis. Instead, Zukerman schemed to hide that sale by concocting an elaborately false story to evade the tax reporting of the sale of Penreco to Calumet.

More specifically, Zukerman falsely told DeBellis that DeBellis's tax calculations concerning SOC's 2007 income were mistaken because SOC (the owner of 50% of Penreco at the time) had been sold to the Zukerman Family Trust in early 2007 (hereinafter "the internal sale"). The net tax reporting effect of this false information (that is, a transfer of SOC to the Zukerman Family Trust) would be that, separate and apart from the Form 1120 to be filed by MEZCO, SOC would be removed from the consolidated tax return and thus obligated to file its own Form 1120 tax return starting in the tax year 2007.

Not only did the internal sale never actually occur, but DeBellis was hired only to prepare the MEZCO consolidated tax return, and Zukerman – the president of MEZCO and trustee of the Zukerman Family Trust – chose not to hire *anyone* to prepare SOC's separate returns for 2007 or 2008. PSR ¶ 20. Zukerman also elected not to hire anyone to file a trust tax return for the Zukerman Family Trust 2007, the year it became – according to Zukerman's story – the owner of SOC.

When DeBellis – who had not previously been informed of the purported sale of SOC to the Zukerman Family Trust – asked Zukerman for the particulars of this transaction, Zukerman first falsely told DeBellis that the sales price had been $48 million. In support of that false sales figure, Zukerman sent to DeBellis via fax, on September 12, 2008, a bogus promissory note (the "$48 Million Note") pursuant to which the Zukerman Family Trust purportedly promised to pay $48 million to MEZ Acquisition, SOC's corporate parent, for SOC. Although that note bore a January 1, 2007 date and Zukerman's signature, it was, in reality, a newly-minted fabrication by Zukerman, created as part of the evasion scheme: Zukerman created it on the MEZCO computer system in early September 2008, in response to DeBellis's request for documents. Also created at the same time at Zukerman's direction was another false document designed to aid his evasion scheme: a fraudulent resolution of the board of directors of MEZ Acquisition, bearing Zukerman's signature and the date January 1, 2007, which purported to "resolve" that all the shares of SOC held by MEZ Acquisition be sold to the Zukerman Family Trust for $48 million and that the "consideration" for the purchase would be the $48 Million Note. PSR ¶ 21.

Upon being informed by Zukerman of the $48 million sales price, DeBellis told Zukerman that use of that sales price figure would still result in significant taxable income

because, according to DeBellis's records, SOC's adjusted tax basis was approximately $24 million, resulting in an approximate net taxable gain of $24 million. After hearing of the significant tax liability based on the alleged $48 million sales price, Zukerman revised the sales price information (in effect, piling one lie on top of a previous lie), telling DeBellis that the sales price agreed to be paid by the Zukerman Family Trust for SOC had actually been $25 million and not $48 million, resulting in an approximate net gain to MEZ Acquisition of less than $1 million. Zukerman further informed DeBellis that, as evidence of the $25 million sales price, the Zukerman Family Trust had provided a $25 million promissory note (the "$25 Million Note") to MEZ Acquisition. PSR ¶ 22.

As a result of the revised (and demonstrably false) information provided to DeBellis by Zukerman, DeBellis asked Zukerman in November and December 2008 for the documents relating to the sale of SOC to the Zukerman Family Trust. DeBellis made this request because he would have to report the $25 million internal sale of SOC to the Zukerman Family Trust on the 2007 MEZCO consolidated tax return, and he wanted documentary support for the oral information Zukerman had provided. In response, Zukerman created another document to aid the evasion scheme: a bogus $25 Million Note, which Zukerman caused to be faxed to DeBellis in or about July 2010 (after numerous requests by DeBellis, beginning in 2008). Like the $48 Million Note and the Board Resolution, the $25 Million Note bore a January 1, 2007 date and the signature of Zukerman, but it was another recent fabrication by Zukerman, having been created on the MEZCO computer system in September 2008 – over 20 months after the purported execution date and over eight months after SOC had sold Penreco. PSR ¶ 23. At no time did Zukerman ever tell DeBellis about the $110 million in proceeds SOC received.

Based on the false representation by Zukerman that SOC had been sold by MEZ Acquisition to the Zukerman Family Trust for $25 million, the 2007 MEZCO consolidated corporate tax return, Form 1120, falsely and fraudulently reported the January 1, 2007 sale of SOC by MEZ Acquisition for a sales price of $25 million and an adjusted basis of $24,501,577, resulting in a capital gain of $498,423. The MEZCO return also failed to report the $110 million Penreco sale. Zukerman signed the false 2007 Form 1120 for MEZCO under penalty of perjury and caused it to be filed with the IRS in late September 2008. PSR ¶ 24.

The false stories and documents created by Zukerman served to accomplish his goal: to evade the taxes due on the $110 million sale of Penreco, as well as the taxes due by MEZCO for the 2007 tax year. Indeed, by removing SOC from MEZCO's consolidated reporting during 2008 and not telling any tax accountant about SOC's need to file a 2007 tax return, Zukerman caused SOC to fail to file a Form 1120 with, and pay income taxes to, the IRS for the 2007 tax year. Zukerman's web of false information also caused SOC to fail to file a Form 1120 with, and pay income taxes to, the IRS, for the 2008 tax year – the year in which SOC received $110 million in net sales proceeds as a result of its sale of Penreco. What is more, Zukerman failed to file a trust tax return, IRS Form 1041, with the IRS for the Zukerman Family Trust for the tax years 2007 and 2008, when the trust was, according to Zukerman's false narrative, the owner of SOC. PSR ¶ 25.

For the tax years 2007 and 2008, SOC received income in the approximate amounts and types set forth below, resulting in tax liabilities to the IRS in the approximate amounts set forth below, which Zukerman caused SOC to evade:

TAX YEAR	APPROXIMATE AMOUNT OF TAXABLE INCOME	NATURE OF TAXABLE INCOME	APROXIMATE TAX DUE AND OWING
2007	$9,700,000	Partnership income received as a result of ownership of 50% of Penreco	$3,395,000
2008	$80,000,000	Income from the sale of 50% interest in Penreco	$28,000,000

What did Zukerman do with the untaxed monies received as a result of the sale of Penreco? Between 2008 and 2013, Zukerman, through a dizzying series of bank transfers, caused the $110 million in net sales proceeds to be transferred, without consideration, from SOC's bank account to the accounts of various entities he controlled, including his personal bank accounts, the Zukerman Family Trust, MEZ Energy, and an affiliated company known as M.E. Zukerman Investments, Ltd. ("MEZIL").[3] Zukerman thereafter used those proceeds for various corporate and personal purposes, including the purchase, through MEZIL, of over $50 million of Old Master paintings that Zukerman used to decorate his Manhattan apartment and the apartments of his [redacted] PSR ¶¶ 26-27.

d. The False Reporting on the Bodley Tax Return of the <u>Purchase and Sale of an Ownership Interest in Penreco</u>

By the end of 2008, Zukerman was still fully aware that substantial taxes were due to the IRS as a result of the sale of Penreco. Indeed, when John Luke, a former senior MEZCO employee who had a "carried interest" ownership interest in Penreco, contacted Zukerman in late

[3] The transfers are detailed in a summary, attached hereto as Exhibit A, compiled by Zukerman's secretary, who effectuated the transfers at Zukerman's direction.

2008 seeking to be paid as a result of SOC's sale of Penreco, Zukerman personally undertook extensive calculations of the amount of tax owed to the IRS as a result of 2007 Penreco income, as well as the amount due and owing by Zukerman to Luke as a result of Luke's ownership interest. *See* Zukerman E-mail dated December 31, 2008 (attached hereto as Exhibit B).[4]

Notwithstanding Zukerman's involvement in these additional communications that served as a reminder of the outstanding Penreco-related tax obligations, Zukerman continued to hide the true facts of the Penreco sale from DeBellis throughout the early months of 2009, and otherwise failed to take steps to report the 2007 and 2008 income to the IRS. In the Fall of 2009, Zukerman decided that, rather than come clean and report fully the income received in 2007 and 2008, he would take further steps to hide and disguise the facts relating to Penreco. More particularly, despite the fact that (as detailed above) SOC had sold its complete interest in Penreco to Calumet on January 1, 2008 for over $130 million in gross sales proceeds, Zukerman provided false information to accountant Richard Witt to make it appear that another company Zukerman owned – Bodley – had purchased a 10% interest in Penreco from SOC in 2008, and that Bodley had subsequently sold that 10% interest to the third party during 2008. As a result of this false information, Witt prepared a U.S. Corporation Income Tax Return, Form 1120, for the 2008 tax year for Bodley that falsely reported to the IRS that Bodley had income from the "sale"

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[4] Zukerman's involvement in, and awareness of, all aspects of MEZCO's corporate finances and accounting is demonstrated by his personal involvement in the year-end banking transactions in order to make a year-end payment to Luke, based on the elaborate calculations Zukerman conducted. *See* Exhibit B. [redacted]

of its interest in Penreco. PSR ¶ 28.

As Zukerman was aware, no such purchase or sale had occurred. Zukerman nonetheless orchestrated this false tax reporting for three reasons: (i) to attempt to make use of unrelated capital losses Bodley had recognized during the 2008 year, which would eliminate completely any potential tax liability stemming from the false reporting of a Penreco-related capital gain on the Bodley "10% interest"; (ii) to provide bogus support for the below-market $25 million price he attached to the sale of SOC to the Zukerman Family Trust; and (iii) to make it appear that a portion of Penreco sale was being reported to the IRS. *Id*.

To effectuate the false tax reporting by Bodley, Zukerman provided certain written and other information to Witt in or about July 2009, causing Bodley to claim on its 2008 Form 1120 that it had acquired a 10% interest in Penreco from SOC on January 2, 2008 in exchange for a $2.5 million note (one-tenth of the false $25 million sale price of SOC to the Trust), and sold that interest on December 31, 2008, for $11,100,500, resulting in a capital gain of approximately $8.6 million. As intended by Zukerman, however, the reporting of the sale of the Bodley interest in Penreco resulted in no tax liability to Bodley because of the unrelated capital losses Bodley had recognized in 2008. Zukerman signed the false Bodley 2008 Form 1120 under penalty of perjury and caused it to be filed with the IRS in or about September 2009. PSR ¶ 29. In the wake of this false tax reporting, Zukerman took no steps to report the 2007 Penreco income or 2008 sale of Penreco. Zukerman did, however, use millions of dollars of sales proceeds to purchase Old Master art. PSR ¶ 56 (detailing purchases between 2009 and 2012, among other periods).

e. The IRS's Audit of Bodley and the False Statements Made by Zukerman to the IRS in the Tax Protest Letter

Bodley's 2008 Form 1120 was selected for random audit by the IRS, which resulted in

the IRS contacting Zukerman in or about early 2012. Zukerman initially enlisted DeBellis – who had nothing to do with the preparation of the Bodley tax return – to represent Bodley in connection with the IRS audit. As part of that representation, DeBellis specifically requested that Zukerman provide documents and information to DeBellis relating to Bodley's tax reporting, including its purported purchase and sale of the 10% interest in Penreco during 2008 (which, as detailed above, was false). PSR ¶ 30.

Rather than disclosing to DeBellis that the Bodley tax reporting for 2008 was false, Zukerman simply disregarded DeBellis's request for documents pertaining to Bodley's tax reporting concerning its purported interest in Penreco. Consequently, DeBellis could not produce those documents to the IRS, which led the IRS to conclude its audit of Bodley by disallowing the claim on the 2008 Bodley Form 1120 that it had purchased a 10% interest in Penreco on January 2, 2008 for $2,500,000. In connection with this determination, the IRS noted, in an explanation of its decision dated May 24, 2012, that DeBellis had acknowledged to the IRS that the CPA did not believe that Bodley had even owned an interest in Penreco. PSR ¶ 31.

Undeterred by the IRS's disallowance of his (false) Bodley tax reporting, Zukerman decided to continue the evasion scheme by challenging that disallowance. In order to do so, Zukerman retained James Bruton and James Fuller of Williams & Connolly ("W&C"), who, unaware of Zukerman's elaborate fraud, decided to prepare and submit to the IRS Appeals Office a tax protest letter, which is a letter designed to influence the IRS Appeals Officer assigned to review the factual and legal conclusions reached by the IRS agent who conducted the

Bodley audit.[5] PSR ¶ 32. As set forth below, Zukerman knowingly deceived his own lawyers in order to perpetrate and conceal his fraud.

In order to gather the facts to be included in the protest letter, Bruton and Fuller conducted a telephonic interview of Zukerman on June 1, 2012. Zukerman was thus faced, yet again, with a choice: disclose his long-running evasion scheme and make good with the IRS, or continue to hide his evasion of the Penreco gains. Despite his retention of Fuller and Bruton (two of the most experienced tax lawyers in the country), Zukerman not only chose the latter course, but decided to double down on his scheme by telling more elaborate lies concerning Bodley's tax reporting relating to Penreco. More specifically, in his discussions with Bruton and Fuller, Zukerman made the following false representations to Bruton and Fuller concerning Bodley's tax reporting relating to the Penreco sale, which Zukerman knew would be passed on to the IRS:[6] (i) Bodley and a London-based Zukerman entity ("M.E. Zukerman Investments plc")

[5] An IRS audit determination, known as a "30-day letter," typically sets forth the amount of the IRS's proposed adjustments to a taxpayer's liability, as determined by the agent conducting the audit. Typically included with the 30-day letter is a revenue agent's report explaining in detail the agent's findings and basis for the proposed adjustments. Following receipt of a 30-day letter, a taxpayer has three options: pay the proposed liability; do nothing and wait to receive a statutory notice of deficiency, also known as a "90-day letter," which allows the taxpayer 90 days to file a petition with the Tax Court to re-determine the amount of the proposed liability; or contest the findings in the 30-day letter with the Appeals Division of the IRS, a group that, after considering a taxpayer's legal, factual, and other arguments, has the authority to reach a settlement agreement with the taxpayer.

[6] [redacted]

were the owners of Penreco at the time of the Penreco sale to Calumet in 2008; (ii) Bodley and M.E. Zukerman Investments plc had previously acquired their interests in Penreco by purchasing them from a MEZCO "affiliate"; (iii) Bodley had exchanged a $2.5 million note in order to acquire a 10% interest in Penreco; and (iv) Bodley's exchange of a $2.5 million note for its 10% stake in Penreco was based on a $25 million valuation placed by an investment banking firm on the full equity stake held by Zukerman in Penreco.[7] PSR ¶ 33.

On June 8, 2012, Fuller sent an e-mail and a memorandum to Zukerman requesting that Zukerman provide, for preparation of the tax protest letter, documents to support the oral representations made by Zukerman on June 1, 2012 concerning Bodley's acquisition and sale of its interest in Penreco. Among other things, Fuller requested that Zukerman provide, "[d]ocumentation of Bodley's acquisition of partnership interest, and note of $2.5 million," as well as "[d]ocumentation of sale in 2008 and payment of $2.5 million note," so that W&C could utilize the documents in the preparation of the tax protest letter. In response to Fuller's requests, Zukerman again decided not to come clean. Instead, through an e-mail dated June 13, 2012, he

[7] The factual representations were false because, among other reasons, all the operative documents relating to the Penreco sale demonstrate that Penreco was owned by SOC at the time it was sold to Calumet on January 1, 2008, and Calumet has enjoyed uninterrupted ownership of Penreco until this day. The representation with respect to the purported "$2.5 million note" was equally false, as the IRS's audit and the criminal investigation revealed no documents (such as a sale or transfer records, or a signed promissory note) or other contemporaneous evidence supporting the contention that Bodley gave a $2.5 million note to acquire a 10% interest in Penreco. [redacted] No signed version of this document has been turned over by Zukerman or Bodley, or otherwise revealed during the criminal investigation.

told Fuller that he "will locate . . . and fax" the documents relating to the acquisition, and "definitely . . . provide" the documents relating to the sale and payment of the note, which Zukerman claimed were in storage. PSR ¶ 34.

By June 22, 2012, the date on which the tax protest letter was scheduled to be sent to the IRS, Zukerman had failed to provide Fuller & Bruton with the documentation they requested with respect to Bodley's interest in Penreco. Despite Zukerman's failure to provide any documentary support, the final version of the tax protest letter, sent by Fuller and Bruton to the IRS on June 22, 2012 and signed by Zukerman under penalty of perjury, contained the false factual representations described above. Those factual assertions, known by Zukerman to be false, were intended by Zukerman to lead the IRS Appeals officer handling his tax protest to reverse the determinations made in the Bodley audit. Between June 2012 and 2014, when the IRS's consideration of the tax protest was halted (as a result of the commencement of the criminal investigation), Fuller made at least four additional written requests of Zukerman for documents supporting Zukerman's claim that Bodley has acquired and sold, during 2008, an interest in Penreco. Zukerman, however, failed to comply with each of Fuller's requests for documents. PSR ¶ 35-36.

f. <u>Summary of Penreco/SOC/Bodley Facts</u>

As detailed above, Zukerman's evasion scheme relating to Penreco was, by design, long-running and elaborate. Nonetheless, to summarize the core aspects of the fraud: MEZCO subsidiary SOC bought its 50% partnership interest in Penreco in 2001 and sold that interest to Calumet on January 1, 2008, receiving approximately $110 million in its New York bank account in exchange. In mid-2008, Zukerman falsely told DeBellis, the accountant preparing the

2007 MEZCO consolidated group tax return, that SOC had been sold to the ZFT for $25 million on January 1, 2007. Zukerman fabricated a bogus promissory note for that purchase in September 2008. Zukerman thereafter caused MEZCO to falsely claim on its 2007 (consolidated) Form 1120 the sale of SOC (and its sole asset, Penreco) for $25 million, resulting in virtually no tax to MEZCO and the consolidated group because of, among other things, the $24 million adjusted basis in Penreco. Zukerman caused SOC not to file a return after the 2007 tax year (when it last filed as part of the MEZCO group), and none of the $110 million in proceeds was ever reported to the IRS, save for the $11 million of proceeds falsely reported by Zukerman on the 2008 Bodley tax return. When Bodley came under audit in 2012, Zukerman made the calculated decision not to disclose his evasion scheme. Instead, he enlisted accountant DeBellis to deal with the IRS, but DeBellis recognized that the Penreco sale reported on the Bodley return was incorrect, and went so far as to mention to the IRS auditor that he did not believe that Bodley was the owner of Penreco in 2008. After the IRS audited Bodley and disallowed the Penreco-related reporting, Zukerman corruptly caused the W&C attorneys to advance a false set of facts to the IRS Appeals Officer concerning Bodley's purchase and subsequent sale of an interest in Penreco. PSR ¶ 37.

2. The False U.S. Individual Income Tax Returns Filed by Zukerman and Those He Caused to be Filed by Family Members

At the same time Zukerman was carrying out the elaborate evasion scheme relating to the corporate taxes owed in connection with the ownership and sale of Penreco, Zukerman was executing a calculated, continuous evasion scheme relating to his personal tax liabilities and those of [redacted] Towards that end, for the tax years 2008 through and including 2013, Zukerman annually provided false information to various tax return preparers who were

involved in the preparation of U.S. Individual Income Tax Returns, Forms 1040, for Zukerman and his wife, [redacted] The reason Zukerman provided that false information each and every year was straightforward: to cheat the IRS (and New York State) by using millions of dollars of fraudulent deductions and expenses to reduce the taxable income on those returns. The deductions and expenses, some of which are detailed below, included Schedule A charitable contributions; Schedule C legal, professional, and advisory fee expenses; and Schedule A investment interest expenses. Significantly, the false information provided by Zukerman to his tax preparers was based, in significant measure, on an elaborate and meticulously executed series of financial transactions staged by Zukerman using his foreign and California-based corporate entities and custodial bank accounts he maintained on behalf of [redacted] PSR ¶ 37; Ind. ¶¶ 49-57.

In addition to signing and causing the preparation of Forms 1040 containing fraudulent deductions and expenses, Zukerman signed and caused to be filed with the IRS tax returns for himself and his wife for the 2008-2013 tax years that falsely omitted significant amounts of income. The omitted income included funds diverted by Zukerman from companies he owned or controlled in order to pay compensation to two household employees (his longtime housekeeper (the "Housekeeper") and her nephew (the "Nephew")), and to pay for health care insurance for the Housekeeper and [redacted] PSR ¶ 44.

The following two charts detail some of the false items contained on the tax returns of Zukerman (and his wife), as well those of [redacted] Zukerman personally orchestrated all the falsities (PSR ¶ 40):

a. Details of the Falsities Created by Zukerman for the U.S. Individual Income Tax Returns He Filed with the IRS

TAX YEAR	APPROX FILING DATE	NATURE OF FALSE, FRAUDULENT, AND OMITTED MATTERS	APPROXIMATE AMOUNTS OF FALSE, FRAUDULENT, AND OMITTED MATTERS
2008	10/15/09	Schedule C Professional & Advisory Fee Expenses	$425,000
2009	10/15/10	Schedule A Investment Interest Expense Schedule A Gifts to Charity Schedule C Legal Fees Household Employment Taxes	$500,000 $105,162 $17,688 $2,448
2010	10/15/11	Schedule A Investment Interest Expense Mortgage Interest Household Employment Taxes	$250,000 $55,000 $5,171
2011	10/15/12	Schedule A Gifts to Charity Mortgage Interest Household Employment Taxes	$900,000 $55,000 $5,186
2012	03/16/13	Schedule A Investment Interest Mortgage Interest Household Employment Taxes	$222,768 $64,000 $8,777
2013	10/07/14	Household Employment Taxes	$9,501

b. Details of the Falsities Created by Zukerman for the U.S. Individual Income Tax Returns Filed by Zukerman's [redacted]

TAXPAYER	TAX YEAR	APPROX. FILING DATES	NATURE OF FALSE AND FRAUDULENT ITEMS	APPROX. AMOUNTS OF FALSE AND FRAUDULENT ITEMS
[redacted]	2009	04/01/10	Schedule C "Other Expenses"	$50,600

TAXPAYER	TAX YEAR	APPROX. FILING DATES	NATURE OF FALSE AND FRAUDULENT ITEMS	APPROX. AMOUNTS OF FALSE AND FRAUDULENT ITEMS
[redacted]	2010	04/10/11	Schedule C Legal & Professional Expenses Schedule A Investment Interest Expense	$60,400 $25,811
[redacted]	2011	10/15/12	Schedule A Investment Interest Expense	$24,020
[redacted]	2012	01/15/13	Schedule C Legal & Professional Expenses Schedule A Investment Interest Expense	$63,700 $24,020
[redacted]	2010	04/10/11	Schedule C Legal & Professional Expenses Schedule A Investment Interest Expense	$60,400 $25,811
[redacted]	2011	05/08/12	Schedule C Legal & Professional Expenses Schedule A Investment Interest Expense	$60,412 $25,811
[redacted]	2012	03/13/13	Schedule C Legal & Professional Expenses Schedule A Investment Interest Expense	$60,790 $24,021
[redacted]	2009	03/08/10	Schedule C "Other Expenses"	$50,500
[redacted]	2010	04/11/11	Schedule C Legal & Professional Expenses Schedule A Investment Interest Expense	$60,400 $25,811
[redacted]	2011	02/18/12	Schedule C Legal & Professional Expenses Schedule A Investment Interest Expense	$60,200 $24,020

TAXPAYER	TAX YEAR	APPROX. FILING DATES	NATURE OF FALSE AND FRAUDULENT ITEMS	APPROX. AMOUNTS OF FALSE AND FRAUDULENT ITEMS
[redacted]	2012	03/16/13	Schedule C Legal & Professional Expenses Schedule A Investment Interest Expenses	$60,400 $49,831

The factual details relating to certain of the false deductions are as follows:

c. The False Charitable Contribution Deductions Created By Zukerman for the 2009 & 2011 Tax Years

In 2008 and 2009, Zukerman, engaged in a series of discussions with a Maine-based land conservation entity, the Maine Coast Heritage Trust ("MCHT"), that was seeking to purchase, for conservation purposes, approximately 240 acres of property located on Black Island, a small island located off the coast of Mount Desert Island in Maine, close to Zukerman's home on a nearby island. Although Zukerman discussed with representatives of the MCHT various methods by which Zukerman might participate in the land purchase, including through a potential charitable gift to the MCHT, Zukerman ultimately decided not to make a charitable contribution. Instead, he decided to purchase the land as the outright owner, for the benefit of himself and his family. Zukerman's decision was confirmed in an e-mail sent to Zukerman on September 21, 2009, in which a senior official of the MCHT outlined the agreed-to "transaction structure," which involved "straight land purchases [by Zukerman] without charitable donations or deductions." Ind. ¶ 37.

On September 22, 2009, Zukerman advised his wife and three daughters via e-mail of the structure of the agreement reached with MCHT, observing that "[t]here will be little tax advantage to the family under this structure." Zukerman also observed, however, that pursuant

to the agreement, the family "will own in fee the approx[imately] 250 acres" on the north and east sides of Black Island. Ind. ¶ 38.

Consistent with the September 2009 discussions with the representative of the MCHT, on December 15, 2009, Zukerman signed a written contact agreeing to pay $1,000,000 to a newly-formed entity, Conservation Land Development ("CLD"), set up by the MCHT for the purpose of the land transfer, in exchange for which Zukerman was to become owner of the 240 acres on Black Island. The contract specifically provided that Zukerman was to make a $100,000 down payment upon execution of the contract, with the $900,000 balance to be paid at closing. Ind. ¶ 39.

Pursuant to the terms of the contract, on December 18, 2009, Zukerman caused $100,000 to be wire-transferred from a New York bank account maintained in his own name to the Maine-based bank account of the attorneys for CLD, as the down payment. On December 23, 2009, a senior official of the MCHT sent an e-mail ("the Acknowledgment E-mail") to Zukerman acknowledging the receipt of the funds and stating that the down payment would allow the MCHT to complete an initial step of the transaction that would ultimately result in the closing of the land purchase by Zukerman. The official also thanked Zukerman for "working with MCHT to finalize the purchase and sale contract for the acreage on Black Island." Ind. ¶ 40.

On February 16, 2010, in connection with the closing of the land purchase, Zukerman caused $900,000 to be wired from the New York bank account of MEZIL to the bank account of the MCHT. As a result of the closing, on February 18, 2010, Zukerman became owner of the 240 acres on Black Island, through a single-member limited liability company he established for the land purchase, named Redentore LLC, of which Zukerman was the sole member. Ind. ¶ 41.

Notwithstanding Zukerman's decision not to make a charitable contribution to MCHT in connection with the Black Island land purchase, Zukerman falsely told his tax return preparer that the $1,000,000 he spent to purchase the land for himself and his family (over two tax years, 2009 and 2010) constituted charitable contributions to the MCHT. In particular, in October 2010 and October 2011, Zukerman falsely represented to the Long Island Accounting Firm, in writing, that the $100,000 payment in 2009 and the $900,000 payment in 2010 should be claimed on his tax returns as charitable contributions. After his tax preparers inserted those false claims on Zukerman's Forms 1040 for 2009 and 2011, Zukerman signed those false returns under penalty of perjury and filed them with the IRS.[8] Ind. ¶¶ 42-45.

d. <u>Zukerman's Creation of False Deductions Relating to Arkriver</u>

The lengths to which Zukerman would go to create fraudulent tax deductions for him and family members were demonstrated vividly through his use of the bank accounts of Arkriver Pty,[9] a dormant Australia-registered private company that Zukerman controlled, together with bank accounts he maintained for himself and his family members. Specifically, Zukerman used Arkriver to make it appear that "financial advisory fee" checks and "interest payment" checks Zukerman drafted and made payable to Arkriver, and later deposited by him into Arkriver's New York bank accounts, were for legitimate advisory services performed by Arkriver and loan

[8] The $900,000 payment also appears to have been improperly claimed as a deduction on Zukerman's 2011 Form 1040 rather than his 2010 tax return, even though the payment was made in 2010. This was done when Zukerman instructed his tax preparer that the deduction should be moved to the 2011 tax year.

[9] "Pty" is a shorthand reference to "proprietary" company, a designation used in Australia to refer to privately held corporate entities. Zukerman's reference to "Arkriver Property" (Mem. 27) appears to be a reference to the same company but using the incorrect formulation of the name employed by Morris Zukerman when he opened a bank account for Arkriver in New York.

payments due and owing to Arkriver. In truth, Arkriver, which had no employees, engaged in no activities, and filed no tax returns for the period 1995-2014, did not provide any genuine advisory services or loans to Zukerman and his family members during the period 2007-2012. Moreover, Zukerman caused deposits into Arkriver's bank account in New York, via checks payable to Arkriver and drawn on the accounts of Zukerman and his family members, to be returned, or "round-tripped," back to bank accounts of Zukerman and his family members. Ind. ¶ 49.

One example of the elaborate falsification, by Zukerman, of purported Arkriver advisory fee and investment interest expenses through "round-tripping," occurred in 2010-11, when Zukerman orchestrated the following elaborate sequence of events: (i) in late 2010 or early 2011, Zukerman caused the preparation and signing by his wife of two checks drawn on the custodial bank accounts of each of [redacted] – one in the amount of $60,400 with "Financial Advisory Fee 2010" noted in the memo portion, and the other in the amount of $25,811.11, with a memo entry noting it represented "interest" due on a note; (ii) Zukerman caused all six of those checks, which bore a December 31, 2010 date, to be deposited in Arkriver's New York bank account on February 10, 2011; (iii) on February 22, 2011, Zukerman, through a letter of authorization sent to Arkriver's New York bank, caused $86,211.02 (the aggregate of the two checks for each of the family members, less nine cents) to be routed from the Arkriver account back to the personal bank accounts of each of the family members. Thereafter, despite the fact that each of the family members received back into their respective bank accounts the $86,211 purportedly paid to Arkriver, Zukerman personally provided information to tax preparer Tahir Rashid that caused $86,211 to be falsely claimed on each of the family member's Forms 1040

for 2010, as purported Schedule C ($60,400) and Schedule A ($25,811) expenses and deductions relating to Arkriver. Zukerman thereafter caused [redacted] to sign and file with the IRS the false and fraudulent Forms 1040 for 2010. Ind. ¶ 51.

Similarly, in late 2012 and early 2013, Zukerman orchestrated the following: (i) on December 31, 2012, Zukerman caused the preparation and signing by his wife of checks in the amount of $60,400 drawn on each of the custodial bank accounts of [redacted] all of which were made payable to Arkriver and contained "Advisory Fee 2012" in the memo portion; (ii) Zukerman caused all three checks, which bore a December 31, 2012 date, to be deposited in Arkriver's New York bank account on January 3, 2013, together with a check in the amount of $250,000, drawn on Zukerman's personal account and payable to Arkriver; (iii) on January 4, 2013, Zukerman caused $431,200 (the total of the three $60,400 checks drawn on the family member's accounts, plus the $250,000 check drawn on his own account) to be routed from the Arkriver bank account back to a personal account of Zukerman; and (iv) in or about March 2013, Zukerman caused the Long Island Accounting Firm CPA to prepare Forms 1040 for [redacted] for 2012 that falsely claimed $60,400 of Schedule C expenses relating to Arkriver. Zukerman thereafter caused [redacted] – who had no knowledge of the Arkriver checks, let alone anyone from Arkriver providing services to their respective Schedule C businesses – to sign and file with the IRS the false and fraudulent Forms 1040 for 2012. Ind. ¶ 52.

In addition to the foregoing, in connection with the preparation of his Forms 1040 for the 2010-2012 tax years, Zukerman falsely represented to the Long Island Accounting Firm CPA that he personally had paid mortgage interest to Arkriver in the amounts set forth below during

the tax years set forth below. That false information led the CPA to prepare, and Zukerman to sign and file with the IRS, Forms 1040 that falsely claimed bogus mortgage interest deductions, as follows: $55,000 (2010); $55,000 (2011); and $64,400 (2012). Ind. ¶ 53.

e. Zukerman's Creation of False Interest Expense Deductions Relating to the Agricultural Loans

Zukerman went to similar lengths to create fraudulent "interest expense" deductions for his personal tax returns and those of his family members by using San Ysidro Vineyards ("SYV") and United California Citrus ("UCC"), two California-based companies that Zukerman owned and controlled, which were involved in the planting, harvesting, and sale of grapes and citrus. Each was owned or controlled by parent company San Ysidro Corporation, and each was a party to separate multi-million dollar agricultural loans ("the Agricultural Loans") from an insurance company that helped to fund operations and/or growth. Ind. ¶ 54.

The Agricultural Loans with the insurance company required the payment by SYV and UCC of principal and interest during various tax years, including 2011 and 2012. As a result of the accrual of its interest obligations during 2011 and 2012, San Ysidro Corporation deducted on its consolidated Form 1120 for 2011 and 2012 the full amount of interest due to be paid on the Agricultural Loans with the Insurance Company.[10] *Id*.

For the 2011 and 2012 tax years, Zukerman schemed to create fraudulent investment interest deductions for himself and three family members based on payments made by Zukerman and those family members to the Insurance Company to satisfy certain interest obligations owed by SYV and UCC on the agricultural loans, which came due during the 2011 and 2012 tax years.

[10] On their tax returns, accrual-based taxpayers are permitted to deduct expenses – such as loan interest expenses – as they "accrue," or come due, even if not actually paid. By contrast, cash-based taxpayers are generally permitted to deduct only those expenses actually paid.

The deductions were fraudulent for at least three reasons: (i) neither Zukerman nor [redacted] were parties to or guarantors of the Agricultural Loans, and thus were prohibited from deducting, the loan interest payments on their Forms 1040; (ii) San Ysidro Corporation, as parent to SYV and UCC, claimed on its consolidated Form 1120 the full amount of interest accrued on the agricultural loans for 2011 and 2012, thus rendering the deductions claimed by Zukerman and [redacted] improper "double" deductions; and (iii) because Zukerman and [redacted] were reimbursed by San Ysidro Corporation for the interest payments they made on the agricultural loans, neither Zukerman nor [redacted] were out-of-pocket for any of the payments made from their accounts. Ind. ¶ 55.

To generate the fraudulent deductions for [redacted] for the 2011 tax year, Zukerman took the following steps: (i) between late December 2011 and mid-April 2012, Zukerman caused the issuance by his wife of checks in the amount of $24,020.63 drawn on the custodial bank accounts of [redacted] and payable to the Insurance Company, with each of the checks referencing "Interest on Loan" and "Loan #172019" in the memo section; (ii) Zukerman caused each of the $24,020 checks to be sent to the Insurance Company, which deposited the checks on May 1, 2012; (iii) on May 4, 2012, Zukerman caused $24,020 to be routed from San Ysidro Corporation's New York bank account back to each of the family member's custodial bank accounts, thereby reimbursing each for making the $24,020 payments; (iv) between February and October 2012, Zukerman caused the MEZCO bookkeeper and the Long Island Accounting Firm CPA to prepare Forms 1040 for [redacted] that falsely claimed the $24,020 payments to the Insurance Company as Schedule A investment interest expenses for [redacted]; and (v) Zukerman caused [redacted] to sign the false 2011

Forms 1040, which were thereafter filed with the IRS. Ind. ¶ 56.

In a virtually identical fraudulent fashion, Zukerman orchestrated the following series of events to generate false deductions for Zukerman and [redacted] for the 2012 tax year: (i) on July 1, 2012, Zukerman issued from his personal bank account a check in the amount of $222,768 payable to the Insurance Company and containing "Loan 176947" in the memo section; (ii) Zukerman caused the $222,768 check to be sent to the Insurance Company, which deposited the check on or about July 9, 2012; (iii) on July 30, 2012, Zukerman caused $224,768 to be routed from San Ysidro Corporation's New York bank account back to Zukerman's personal account, thereby reimbursing him for making the $224,768 payment; (iv) on November 1, 2012, Zukerman caused the issuance by his wife of checks in the amount of $24,020.63 drawn on each of [redacted] custodial bank accounts and payable to the Insurance Company, with each of the checks referencing "Loan #172019" in the memo section; (v) Zukerman caused each of the $24,020 checks to be sent to the Insurance Company, which deposited the checks on November 1, 2012; (vi) on November 6, 2012, Zukerman caused $24,020 to be routed from San Ysidro Corporation's New York bank account (which Zukerman controlled) back to [redacted] custodial bank accounts, thereby reimbursing each for making the $24,020 payments; (vii) in March 2013, Zukerman caused the Long Island Accounting Firm CPA to prepare Forms 1040 for [redacted] falsely reporting the $24,020 payments to the Insurance Company as Schedule A investment interest expenses for [redacted]; (viii) Zukerman caused [redacted] to sign the false 2012 Forms 1040, which were thereafter filed with the IRS; (ix) pursuant to an email sent by Zukerman on October 7, 2013, Zukerman caused the Long Island CPA to prepare a Form 1040 for himself and his wife that falsely claimed the $222,768 payment

to the Insurance Company as a Schedule A investment interest expense for Zukerman and his wife; and (x) Zukerman signed the false 2012 Form 1040 and caused it to be filed with the IRS on October 15, 2013. Ind. ¶ 57.

f. The Unreported Cash Wages Paid by Zukerman to His Domestic Employees

As if the massive tax fraud described above was not enough, Zukerman found even more ways to squeeze every penny from federal and state tax authorities. Between the late 1980's and 2015, Zukerman paid his principal domestic employee tens of thousands of dollars of cash wages that neither Zukerman nor the Housekeeper reported to the IRS. At the outset of her employment with Zukerman (principally as a nanny to his daughters), the Housekeeper was paid by Zukerman totally in cash, none of which was reported to the IRS. Once the Housekeeper attained residency status in the 1990's, Zukerman [redacted] began reporting a portion of her wages to the IRS, but continued to pay the Housekeeper a material portion of her wages in cash that was not reported to the IRS by Zukerman or the Housekeeper. A significant portion of unreported income stemmed from the bonuses paid to Housekeeper at the end of each summer, as a result of the work performed by for the Zukerman family at their Maine residence, to which the Housekeeper traveled in order to perform full-time domestic duties during the summer months. Ind. ¶ 41.

Zukerman's practice of paying unreported cash wages to the Housekeeper, which continued until in or about 2015, resulted in false tax reporting by Zukerman [redacted] who falsely under-reported on the Schedule H to their Forms 1040 the amount of wages paid to domestic employees. This, in turn, resulted in a false under-reporting by Zukerman of employment taxes. The practice also resulted in false tax reporting by the Housekeeper, who

(having not received an accurate W-2 from Zukerman [redacted] failed to report to the IRS the proper amounts of income. Ind. ¶ 42.

In addition to paying the Housekeeper in cash, Zukerman also paid cash wages to the Housekeeper's Nephew, who began working in the Zukerman home in 2008 and worked there until 2016. The Nephew's wages, paid for duties performed out of Zukerman's homes in New York and Maine such as dog-walking, cleaning, handyman, and assistant to the Housekeeper, began at approximately $250 per week and grew to approximately $800 week in 2014. The Nephew's wages have never been reported to the IRS by either Zukerman or the Nephew. Ind. ¶ 43.

g. Zukerman's Diversion of Corporate Funds to Pay Wages to His Domestic Employees and Monies to [redacted]

During the period 2008-14, Zukerman carried out yet a different species of tax fraud: he diverted significant amounts of funds from the companies he controlled in order to pay for personal items, such as bonus compensation to his domestic employees, and health care coverage for the Housekeeper and his [redacted] In order to effectuate some of these corporate diversions, Zukerman would issue the checks from corporate entities he controlled, such as Anglo American Agriculture, and have those checks delivered to the Housekeeper. In other instances, Zukerman would cause his company to make payment for personal items such as the Housekeeper's health care insurance coverage. Zukerman would then fail to report these personal payments or diverted funds as income, even though they were taken by him from a corporate bank account in order to pay for personal items. Ind. ¶ 44.

In addition to the foregoing diversions, between 2007 and 2013, Zukerman used

corporate entities he controlled to make hundreds of thousands of dollars of annual payments to [redacted] even though [redacted] performed little or no services for the companies. The payments, between $80,000 and approximately $150,000 to each of [redacted] annually between 2007 and 2013, were deducted by Zukerman's companies as business expenses. In reality, [redacted] were either largely employed during those years by other employers (or pursuing other careers), or were full time graduate students at colleges. Accordingly, although each of [redacted] performed marginal services for certain Zukerman companies at various points between 2007 and 2013, none of them performed services justifying the payments by Zukerman's companies. Ind. ¶ 45.

3. The Audit Fraud

a. <u>Zukerman's Fraud During the 2011 IRS Audit</u>

In December 2011, the IRS commenced a random audit of Zukerman's 2009 Form 1040 – the same return on which he claimed the false charitable contribution related to the Black Island purchase. That audit included an examination of the Schedule A charitable contributions and Schedule C expenses claimed thereon by Zukerman. In response to the audit, on December 12, 2011, Zukerman enlisted the Long Island Accounting Firm CPA to represent him in his dealings with the Manhattan-based IRS auditor. This CPA requested that Zukerman provide documentary support for the charitable contributions and Schedule C business expenses claimed on his 2009 tax return. In response, Zukerman falsely claimed to the CPA that the $100,000 sent by him in December 2009 as the down payment for his personal purchase of the Black Island real estate was part of a charitable contribution to the MCHT. In support of that false claim, Zukerman sent to the CPA a copy of the Acknowledgment E-mail, which Zukerman falsely

portrayed as an acknowledgment of a charitable gift to the MCHT, when, in truth, it was an acknowledgement only of Zukerman's transmission of the $100,000 down payment. Ind. ¶ 46.

In addition to the foregoing, Zukerman falsely claimed that three legal fee payments made by him to attorneys during 2009 were legitimate Schedule C business expenses. In truth, the legal fee payments, totaling $17,688, were not legitimate Schedule C expenses for him. Rather, the legal fees were for legal work performed by the real estate attorney [redacted] in connection with [redacted] personal purchase of a [redacted] in Manhattan ($9,775) and Zukerman's purchase, for himself, of the Black Island real estate ($7,913). Ind. ¶ 47.

On February 12, 2012, the Long Island CPA sent to the IRS auditor various documents that Zukerman had provided as purported support for the charitable contributions and Schedule C expenses claimed on Zukerman's 2009 tax return. Included among the documents were the Acknowledgment E-mail and the checks issued to the attorneys for the real estate purchases. As a result of the submission of the misleading documents supplied by Zukerman, the IRS was misled into concluding that all of the claimed charitable contributions and Schedule C expenses were valid. Ind. ¶ 48.

b. <u>Zukerman's Fraud During the 2014 IRS Audit</u>

In or about 2014, the IRS commenced an audit of [redacted] 2012 Form 1040. During that audit, the IRS requested [redacted] to provide various documents "to verify expenses claimed" on [redacted] Schedule C for 2012, which included a purported expense for $63,700 for "legal and professional expenses." [redacted] who was personally unaware of the basis for any such expense, turned to [redacted] for answers. When contacted by [redacted]

however, Zukerman decided not to tell the truth and concede that no valid legal and professional expense existed. Instead, Zukerman provided false support for the expense by giving [redacted] the $60,400 check drawn on [redacted] custodial bank account (and payable to Zukerman's dormant company, Arkriver), which, as noted above, Zukerman caused to be issued in 2012 to provide false substantiation of the Schedule C expense. This check was provided by Zukerman to [redacted] in order to pass on to [redacted] accountant, who – to Zukerman's knowledge – was going to pass it on to the IRS auditor in an attempt to substantiate the bogus Schedule C expense. [redacted] accountant mailed the check to the IRS auditor on August 1, 2014 together with a cover letter and certain other documents. It was only as a result of the commencement of the criminal investigation that the auditor was halted from making any audit determination. PSR ¶ 49.

4. Zukerman's Failure to File Tax Returns for the Zukerman Family Trust

As noted above, Zukerman was the trustee of the Zukerman Family Trust, which Zukerman caused to be formed in or about 1992 and which Zukerman controlled throughout its existence. Pursuant to the Internal Revenue Code and associated regulations, the trust was required to file a U.S. Income Tax Return for Estates and Trusts, Form 1041, for each year in which the trust has either (i) taxable income or (ii) gross income of $600 or more, irrespective of whether it has taxable income.

Despite the fact that the Zukerman Family Trust received significant income during the years set forth below, Zukerman failed to file a return on behalf of the trust for each of those years. More specifically, Zukerman failed to file with the IRS a Form 1041, stating the items of income for the trust and any deductions to which the Trust was entitled, despite the fact that the

trust had gross income in the amounts below, based principally on interest and other income from investments, which Zukerman oversaw:

TAX YEAR	TAX RETURN DUE DATE	APPROXIMATE GROSS INCOME
2008	4/15/2009	$23,852
2009	4/15/2010	$20,410
2010	4/15/2011	$18,718
2012	4/15/2013	$608,904

C. Particulars of the Relevant Conduct

1. The 2008-2014 Sales and Use Tax Fraud Scheme

Between 2008 and 2014, Zukerman bought a significant number of Old Master paintings from galleries in New York and Europe, largely using the untaxed funds generated by the Penreco sale. Not content with the accumulation of approximately $30 million in federal tax fraud proceeds, Zukerman executed a multi-step scheme to cheat New York State out of the sales and use taxes that were due in connection with the art purchases.

To understand how Zukerman executed the scheme, it is necessary to understand certain basics regarding New York's sales and use tax regime. New York's sales tax is a "destination" tax – that is, New York imposes a sales tax on the sale of tangible personal property where the tangible personal property is sold by a New York vendor and provided to the purchaser at the point of sale in New York or delivered to the purchaser in New York. When tangible personal property is purchased from a New York vendor but shipped by the vendor to the purchaser at an out-of-state location, no sales tax need be collected by the vendor, as the purchase and delivery

of the property is deemed to occur out-of-state. PSR ¶ 50.

New York also imposes a "use tax" on businesses that conduct business in New York and individual New York residents who purchase tangible personal property outside of New York or have a purchase from a New York vendor sent to an out-of-state location, but later bring the property into New York and use it in New York. The "use tax" in such a case is required to be paid (at the New York sales tax rate) by the purchaser who brings the tangible personal property back into, and uses the property within, New York, with credit under certain circumstances given for taxes remitted to another state's taxing authority. PSR ¶ 51.

New York also imposes on New York residents and businesses conducting business in New York a "use tax" on sales of tangible personal property by vendors located outside the United States, where those foreign vendors do not collect and remit New York sales taxes in connection with the purchases. The "use tax" in such a case is required to be paid (at the New York sales tax rate) by the purchaser who receives the tangible personal property via delivery in New York, or brings the tangible personal property into New York, and thereafter uses the property within New York. PSR ¶ 52.

To evade the foregoing tax requirements (which, as noted below, Zukerman was fully aware of), Zukerman, acting principally through his MEZIL subsidiary, caused certain Old Master paintings to be purchased by Zukerman and MEZIL from certain galleries and auction houses located in New York. As part of the purchases, Zukerman directed the New York galleries and auction houses to ship those paintings in MEZIL's name to New Jersey and Delaware, despite the fact that MEZIL had no physical presence in those states, thereby causing the galleries and auction houses to collect no New York sales taxes in connection with the

purchases. Soon after the paintings arrived in Delaware and New Jersey, Zukerman either personally transported, or had others transport, the paintings back to Manhattan, for hanging on the walls of his apartment or in the residence of [redacted] on the Upper East Side of Manhattan. PSR ¶¶ 53-54.

In connection with the purchase of certain paintings from the New York galleries, Zukerman was permitted by the galleries to borrow or "test drive" the paintings on the walls of Zukerman's Upper East Side apartment. Upon making the decision to purchase certain of the "test driven" paintings, Zukerman notified the New York gallery owners of his decision and then, rather than paying for the paintings at that time, directed the galleries to pick up the paintings from his apartment and thereafter ship them by common carrier to Zukerman corporate addresses in Delaware and New Jersey. Within hours or minutes after the paintings arrived at the Delaware and New Jersey addresses, Zukerman either personally transported the paintings back to his apartment in New York or caused various relatives [redacted] a shipping company, or a Zukerman corporate employee to transport the paintings back to Zukerman's cooperative apartment in New York. Ind. ¶ 68.

Zukerman also caused certain paintings to be purchased by Zukerman and MEZIL from certain galleries and auction houses located in Europe. As part of those international purchases, Zukerman caused the galleries and auction houses to ship those paintings to MEZIL at addresses in New Jersey and Delaware. Soon after the paintings arrived in Delaware and New Jersey, Zukerman transported or caused the transportation of the paintings back to New York, for hanging on the walls of his apartment or in the residence of [redacted] in Manhattan, or subsequent transportation to the residence of [redacted].

In connection with certain of the purchases of paintings from galleries in Europe, Zukerman caused the galleries or shippers to address the sales invoice to MEZIL using New Jersey or Delaware addresses, despite the fact that the paintings had been delivered to Zukerman's apartment in Manhattan. Ind. ¶ 70.

Despite being aware of the obligation to pay use taxes upon bringing back into New York, and using therein, the above-described paintings on which no New York sales tax had been collected in connection with the purchases, Zukerman caused MEZIL to evade its use tax obligations by failing to report the use tax obligations to New York State and failing to pay to New York the appropriate use tax thereon, Ind. ¶ 71, as detailed below:

YEAR	NUMBER OF PAINTINGS	TOTAL SALES PRICE PAID	TOTAL USE TAXES EVADED	DELIVERY ADDRESSES PER INVOICE	ULTIMATE DESTINATIONS
2008	6	$6,532,325	$547,082	New York; Delaware	MORRIS E. ZUKERMAN Apt.
2009	16	$10,666,375	$898,725	New Jersey; Delaware	MORRIS E. ZUKERMAN Apt. [redacted]
2010	10	$7,138,027	$633,499	New Jersey	MORRIS E. ZUKERMAN Apt. [redacted]
2011	14	$8,633,472	$766,220	New Jersey; Delaware	MORRIS E. ZUKERMAN Apt. [redacted]
2012	10	$2,804,621	$248,910	New Jersey	MORRIS E. ZUKERMAN Apt. [redacted]
2013	17	$16,583,316	$1,471,680	New Jersey	MORRIS E. ZUKERMAN Apt. [redacted]
TOTAL	**73**	**$52,357,528**	**$4,566,119**		

In addition to the artwork, Zukerman orchestrated the evasion of New York State sales and use tax in connection with the purchase of $645,000 pair of eight-carat diamond earrings (the

"earrings"). Zukerman executed this part of the evasion scheme by choreographing the following sequence of events: (i) on March 15, 2012, Zukerman met a New York-based employee of the diamond merchant (the "New York employee") at an art fair in Maastricht, Netherlands, and informed the employee that he decided to purchase the earrings from the merchant's London location; (ii) on March 23, 2012, the New York employee e-mailed Zukerman from Europe, congratulating Zukerman on his choice of the earrings; informing Zukerman that he intended personally to carry the earrings back to New York; and asking Zukerman to provide an address "since [the merchant] most likely will deliver to Maine or Out of State"; (iii) on March 23, 2012, Zukerman informed the New York employee via e-mail that the address to be used was that of MEZIL, "c/o" another Zukerman entity in Parsippany, New Jersey; (iv) on March 30, 2012, the New York employee informed Zukerman via e-mail that the earrings had arrived at the merchant's New York location, had been adjusted, and were "ready to be tried on"; (v) on March 31, 2012, Zukerman informed the New York employee that a family member would "come by early next week to try on the earrings . . . ."; (vi) on April 21, 2012, Zukerman caused a family member to pick up the earrings from the New York location of the diamond merchant, signing a receipt that indicated a price of $645,000 but did not reflect any sales tax; (vii) on April 23, 2012, Zukerman provided the New York diamond merchant with a personal credit card number to bill $145,000 of the purchase price for the earrings; (viii) on May 4, 2012, Zukerman caused the $500,000 balance to be wire transferred from his New York bank account to the diamond merchant's bank account; (ix) on June 22, 2012, as a result of the information provided by Zukerman, the London office of the diamond merchant issued an invoice in connection with the sale of the earrings noting the sale to Zukerman but listing as

Zukerman's address the Parsippany, New Jersey address of one of Zukerman's companies. Neither Zukerman nor MEZIL paid the approximate $57,000 of New York sales or use taxes due. PSR ¶ 57.

The foregoing fraud on New York State was charged as Count Three in the superseding indictment. Although Zukerman was not required to plead guilty to Count Three, he agreed to make restitution to New York State in his plea agreement, pursuant to 18 U.S.C. § 3663(a)(3). PSR ¶ 58.

2. The 1999-2002 Sales and Use Tax Fraud Scheme

Zukerman's involvement in the Count Three conduct was not the first time he engaged in significant criminal evasion of New York State sales and use taxes. Between 1999 and 2002, Zukerman purchased over $2.8 million of Old Master paintings from various New York gallery owners and schemed to evade sales and use taxes during that period by conspiring with the gallery owners to make it appear that the paintings were delivered to locations outside New York when, in reality, Zukerman took delivery of the paintings in New York City. As part of this scheme, the gallery owners delivered the paintings to Zukerman in Manhattan but created false billing and delivery information to make it appear that the paintings were delivered to locations outside New York. One or more of the galleries even went so far as to have empty shipping crates sent to Zukerman's out-of-state locations, including his house in Maine. PSR ¶ 70.

When the New York County District Attorney's Office began investigating the sales tax evasion scheme in or about 2002, the prosecutors focused on making cases against the galleries. *See* "New York Art Inquiry Snares Dealers, Others for Tax Avoidance," Wall Street Journal, October 23, 2003 (attached hereto as Exhibit C). As part of that focus, the prosecutors sought to

enlist as witnesses those customers, like Zukerman, who had colluded criminally with the galleries. Thus, after being contacted by criminal investigators, Zukerman, accompanied by criminal defense counsel, was interviewed in May 2003 by the Manhattan prosecutors concerning his involvement in the scheme. During that interview, Zukerman admitted he schemed with various gallery owners to evade New York sales tax – and that he knew such conduct was wrongful. Zukerman also acknowledged that he became familiar with "use tax" obligations in connection with the District Attorney's focus on Zukerman's evasion of use taxes by having untaxed paintings sent to him by foreign gallery owners, after which Zukerman paid no sales or use taxes to New York State. PSR ¶ 71.

As part of his resolution of the District Attorney's investigation, Zukerman was not required to plead guilty. Zukerman did, however, make a filing with New York tax authorities in or about 2003, pursuant to which Zukerman paid over $233,000 in sales and use taxes that he had evaded in connection with the $2.8 million of art purchases Zukerman structured between 1999 and 2001. PSR ¶ 72.

3. The Health Care Fraud Scheme

Between 2006 and 2013, Zukerman caused certain of MEZCO's subsidiary and affiliated companies ("the Affiliates") located in New Jersey to procure health care insurance coverage for employees of the Affiliates, as well as MEZCO's employees in New York. Pursuant to those procurement efforts, health care insurance coverage was obtained for the period 2007 through 2014 from a series of health care providers, including Oxford Health Plans ("OHP") and Horizon Healthcare Services ("Horizon"). The policies for each of the health care providers contained certain eligibility requirements, including that those eligible for coverage must be full-time

employees working a minimum of thirty-five hours per week.

Between in or about 2007 and 2014, Zukerman executed a scheme to defraud certain health care benefit providers, including OHP and Horizon, in connection with the delivery of and payment for health care benefits, items, and services. As part of the scheme, Zukerman, aware that eligibility under the OHP and Horizon policies was available only for full-time MEZCO employees working a minimum of thirty-five hours per week, caused his domestic employee, and [redacted] to be listed as covered employees, despite the fact that neither was a full-time employee of MEZCO or the affiliated companies. Zukerman directed his corporate employees to falsely list the Housekeeper and [redacted] as covered insureds despite being informed by a MEZCO human resource employee that it would constitute "health care fraud" if MEZCO's health insurer were to learn that his Housekeeper and [redacted] were listed as eligible employees if, in fact, they were not full-time employees. PSR ¶ 60-61.

4. The New York State Personal Income Tax Evasion

As described in the "offense conduct" section above, Zukerman schemed to evade over $32 million of income taxes due to the IRS as a result of the evasion schemes involving the preparation and filing with the IRS of the numerous false U.S. Individual Income Tax Returns, Forms 1040, for Zukerman and [redacted]. That same conduct resulted in the evasion of significant amounts of New York State income taxes, because the false personal returns filed by Zukerman with the IRS were prepared at the same time as almost identically false returns filed by Zukerman with New York State. PSR ¶ 63.

5. The Auto Insurance Fraud

No form of fraud was too small for Zukerman, as illustrated by his scheme to defraud

Chubb, his car insurance company. That scheme was simple: in order to get less expensive insurance coverage for his five vehicles, Zukerman told the company that those vehicles were garaged in Westchester County when, in reality, the cars were garaged in Manhattan. This false information caused Chubb to rate, or price, Zukerman's car insurance based on a lower risk rate applicable to Westchester County. Zukerman repeated this false story even when Chubb's broker specifically inquired about the precise vehicle location, leading Zukerman to provide a phony address in Mamaroneck. PSR ¶ 67-68.

6. The False Statements to [redacted]

In March 2009, Zukerman was assisting [redacted], in the purchase of a [redacted] apartment at [redacted] in Manhattan. Because [redacted] employment at [redacted] brought [redacted] less than [redacted] a year in income, there was a question whether [redacted] financial profile would lead to [redacted] In order to remedy this issue, Zukerman transferred [redacted] (part of the Penreco sales proceeds) from one of his corporate bank accounts to [redacted] bank account at [redacted] on or about [redacted] Zukerman then took a computer screenshot of the balance in the account after making the transfer, which was sent to [redacted] in order to support the false claim on financial statements provided to [redacted] claiming that [redacted] had liquid assets in excess of [redacted] Zukerman also contacted his personal banker [redacted] and, after pointing the banker to [redacted] account "balance" of [redacted] convinced the banker to write a reference letter to [redacted] on [redacted] behalf, vouching for the notion that [redacted] possessed [redacted] in liquid assets in [redacted] Within days after the [redacted] letter containing the falsities was signed

and sent to [redacted] (resulting in the approval of [redacted] as a purchaser), Zukerman returned the [redacted] to his corporate account – demonstrating that the funds were not [redacted] to begin with. PSR ¶ 69.

II. The Plea Agreement and the PSR

In connection with Zukerman's sentencing, the Probation Office prepared a PSR that, among other things, calculated the defendant's Sentencing Guidelines offense levels. As calculated by Probation (and consistent with the parties' plea agreement), the final offense level for Zukerman is 27, broken down as follows:

- A base offense level of 28, pursuant to U.S.S.G. §§ 2T1.1 and 2T4.1(L) (tax table), based on a total tax loss greater than $25,000,000 but not more than $65,000,000. PSR ¶ 6.
- An increase of 2 levels pursuant to U.S.S.G. § 2T1.1(b)(2) because the offense involved sophisticated means. PSR ¶ 6.
- A 3-level reduction pursuant to U.S.S.G. § 3E1.1(a) and (b), assuming the defendant clearly demonstrates acceptance of responsibility, to the satisfaction of the Government, through his allocution and subsequent conduct prior to the imposition of sentence.

Zukerman has no criminal history points. Thus, with a final offense level of 27, Zukerman's Guidelines offense level, according to the PSR and the parties' plea agreement, yields a final advisory Guidelines range of 70-87 months in prison. (PSR ¶ 6). The statutory maximum is 8 years' imprisonment.

The advisory Guidelines fine range, pursuant to the parties' plea agreement, is $25,000 to $250,000. *Id*.

Pursuant to 18 U.S.C. § 3663(a)(3), Zukerman agreed to pay restitution in the full amount of loss suffered by the IRS, as well as the losses suffered by New York State as a result of

Zukerman's involvement in the scheme to evade New York sales and use taxes.

III. SENTENCING LEGAL PRINCIPLES

We are thoroughly aware of the Court's familiarity and facility with the Sentencing Guidelines and the law of sentencing, particularly in this post-*Booker* age. We nonetheless think it helpful to review briefly the governing legal principles in this area.

While the Sentencing Guidelines are no longer mandatory, they nevertheless continue to play a critical role in trying to achieve the "basic aim" that Congress tried to meet in enacting the Sentencing Reform Act, namely, "ensuring similar sentences for those who have committed similar crimes in similar ways." *United States* v. *Booker*, 543 U.S. 220, 252 (2005); *see United States* v. *Crosby*, 397 F.3d 103, 113 (2d Cir. 2005) ("[I]t is important to bear in mind that *Booker/Fanfan* and section 3553(a) do more than render the Guidelines a body of casual advice, to be consulted or overlooked at the whim of a sentencing judge."). The applicable Sentencing Guidelines range "will be a benchmark or a point of reference or departure" when considering a particular sentence to impose. *United States* v. *Rubenstein*, 403 F.3d 93, 98-99 (2d Cir. 2005). In furtherance of that goal, a sentencing court is required to "consider the Guidelines 'sentencing range established for . . . the applicable category of offense committed by the applicable category of defendant,' the pertinent Sentencing Commission policy statements, the need to avoid unwarranted sentencing disparities, and the need to provide restitution to victims." *Booker*, *id*. at 260 (citations omitted); *see also id.* at 264 ("The district courts, while not bound to apply the Guidelines, must consult those Guidelines and take them into account when sentencing.").

Apart from the Sentencing Guidelines, as the Court is well aware, the other factors set forth in Title 18, Section 3553(a), must be considered. Section 3553(a) directs the Court to impose a

sentence "sufficient, but not greater than necessary" to comply with the purposes set forth in paragraph two. That sub-paragraph sets forth the purposes as:

> (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
>
> (B) to afford adequate deterrence to criminal conduct;
>
> (C) to protect the public from further crimes of the defendant; and
>
> (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner . . . .

Section 3553(a) further directs the Court "in determining the particular sentence to impose" to consider: (1) the nature and circumstances of the offense and the history and characteristics of the defendant; (2) the statutory purposes noted above; (3) the kinds of sentences available; (4) the kinds of sentence and the sentencing range as set forth in the Sentencing Guidelines; (5) the Sentencing Guidelines policy statements; (6) the need to avoid unwarranted sentencing disparities; and (7) the need to provide restitution to any victims of the offense. See 18 U.S.C. § 3553(a).

In light of *Booker*, the Second Circuit has instructed that district courts should engage in a three-step sentencing procedure. *See Crosby*, 397 F.3d at 103. First, the Court must determine the applicable Sentencing Guidelines range, and in so doing, "the sentencing judge will be entitled to find all of the facts that the Guidelines make relevant to the determination of a Guidelines sentence and all of the facts relevant to the determination of a non-Guidelines sentence." *Id*. at 112; *see also United States* v. *Corsey*, 723 F.3d 366, 375 (2d Cir. 2013) ("Even in cases where courts depart or impose a non-Guidelines sentence, the Guidelines range sets an important benchmark against which to measure an appropriate sentence."). Second, the Court

must consider whether a departure from that Guidelines range is appropriate. *Id*. Third, the Court must consider the Guidelines range, "along with all of the factors listed in section 3553(a)," and determine the sentence to impose. *Id.* at 113. In so doing, it is entirely proper for a judge to take into consideration his or her own sense of what is a fair and just sentence under all the circumstances. *United States* v. *Jones*, 460 F.3d 191, 195 (2d Cir. 2006).

III. Section 3553(a) Analysis

Although the Guidelines, as set forth above, are no longer binding, they reflect the seriousness of the offenses of conviction and the particular aggravating factors relating to Zukerman's conduct. We respectfully submit that a term of incarceration within the Stipulated Guidelines range is imperative in order to emphatically promote general deterrence, specific deterrence, and respect for the law.

A. The Nature and Circumstances of the Offenses

The crimes to which Zukerman pleaded guilty were vast and produced Guidelines losses at the upper end of the Sentencing Guidelines table, resulting in significant financial harm to the United States Treasury and other taxing authorities – harm that has still not been fully remedied despite the defendant's financial ability to do so. In particular, Zukerman's crimes spanned several years and involved the falsification by Zukerman of over 50 tax returns for at least ten different taxpayers. That criminal activity created over $45 million of Guidelines tax loss, and actual losses to the IRS, NYS, and NYC in excess of $40 million. Given the foregoing, there can be no dispute that Zukerman's breathtaking crimes were among the most serious ever presented in any personal income tax evasion case.

Contrary to Zukerman's audacious suggestion to Probation and this Court (PSR ¶ 142

(Zukerman statement to Probation that not all of his criminal activity involved premeditation), ¶ 88 (arguing that Zukerman acted out of "panic" in orchestrating the SOC Evasions); Mem. 27 (similar)), there was no part of his criminal conduct that lacked premeditation. Indeed, when CPA David DeBellis contacted Zukerman in mid-2008 about the preparation of the 2007 MEZCO return, the deadline for the filing of the 2007 MEZCO and SOC tax returns had not even passed. Thus, even if the Court were to credit Zukerman's claim that he had considered in 2007, but failed to implement, a transaction designed to mitigate the gain from the sale of Penreco, Zukerman still had the opportunity by September 2008 to file a timely and accurate corporate return for the 2007 tax year (reporting the Penreco operating income), and similarly had the opportunity to file an accurate corporate return in September 2009, when the sale of Penreco was due to be reported. Rather than doing so, however, Zukerman made the conscious decision to fabricate documents, lie repeatedly to his accountants, and cheat the IRS.

This was not "panic," as Zukerman claims. PSR ¶ 88. It was, instead, calculated premeditation animated by pure greed. Indeed, the only "panic" that Zukerman faced stemmed from the cold realization that he was obligated to pay taxes on the $120 million in income received collectively from Penreco in 2007 and 2008, which Zukerman and his companies were fully capable of paying. Zukerman's conscious decision to prevaricate rather than pay makes him an avatar of premeditation.

In addition to the activities undertaken by Zukerman in 2008 and 2009, it is important to consider that Zukerman compounded the SOC evasions by engaging in an elaborate audit fraud designed to hoodwink the IRS. That fraud, again involving elaborate premeditation, consisted of the use of his accountants and attorneys to advance the false story that Bodley had purchased and

sold an interest in Penreco. Plainly, the meticulous efforts undertaken by Zukerman to defend his earlier fraudulent tax reporting – actions that were largely replicated by him in the 2011 and 2014 audit frauds – is deserving of rigorous condemnation at sentencing.

The audit fraud carried out by Zukerman also serves to amplify the fact that, although Zukerman pleaded guilty to two federal offenses, his offense conduct consists, in reality, of dozens of acts of dishonesty and fraud. For instance, Zukerman provided oral and written information on an annual basis to tax preparers and accountants that led to the preparation of false federal and state income tax returns for him and his wife for each year between 2008 and 2013 – conduct that Zukerman does not even address, save for the aspect involving his false charitable deductions. Similarly, Zukerman provided information to tax preparers and accountants that led to the preparation of false federal and state tax returns for [redacted] for each year between 2008 and 2013. During each of those years, Zukerman also diverted tens of thousands of dollars from his companies and paid cash salaries to his Housekeeper and the Nephew, leading the Housekeeper to file false tax returns for multiple years as well, and leading the Nephew to file no returns at all.[11]

[11] Zukerman vaguely suggests (Mem. 31) that the salary payments made to the Nephew went unreported because of his status as an "undocumented alien." But that status did not prevent the accurate reporting of wages, as even those without residency status can obtain an identification number from the IRS allowing the reporting of wages and filing of returns. *See* "General ITIN Information," found at https://www.irs.gov/individuals/general-itin-information (describing IRS's issuance of Individual Tax Identification Numbers to undocumented aliens to aid wage reporting). The Nephew, in fact, had such a number. In addition, Zukerman's argument that the funds given to the Housekeeper and the Nephew were "gifts" founders on both factual and legal shoals. The funds given to both (aside from certain loans that were called such) were paid in exchange for services, according to both the Housekeeper and the Nephew. In any event, since both were employees, the Internal Revenue Code treats all transfers from their employers as income. *See* 26 U.S.C. § 102(c)(1) (treating "any amount" transferred by employer to employee as "not excluded from gross income"). The two 1960's cases cited by Zukerman in support of

And the vast harm caused by Zukerman's actions was not limited to the financial losses suffered by the taxing authorities he cheated. Instead, the harm extended to those family members and others on whose behalf Zukerman caused the filing of dozens of false tax returns. To the extent they have not done so already, each of those taxpayers will have to prepare and file amended tax returns and pay back taxes, likely with significant penalties.

Zukerman also harmed those family members and co-workers by thrusting them smack in the middle of the criminal investigation, where the Government was required, through prolonged grand jury examinations and the subpoenaing of numerous documents, to get to the bottom of Zukerman's myriad frauds. This deplorable behavior by Zukerman, designed to delay (or even avoid) his day of reckoning, should also be given thorough consideration by the Court at sentencing.

Zukerman's attempt to cast blame on the Government for conducting a meticulous and thorough investigation (Mem. 21-22) – which included the execution of a court-authorized search at his Park Avenue duplex and consent searches at [redacted] – is nothing more than a white collar defendant's spin on the argument made by the defendant convicted of parricide who seeks mercy from the court at sentencing because he is an orphan. Like the orphan, Zukerman has nobody but himself to blame for the sordid predicament he created.

It was Zukerman, after all, who decided to: (1) prepare false tax returns for [redacted]

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his "gift" argument (Mem. 31-32) are valueless as precedent because they predated the 1986 amendment to Section 102 that created subsection (c)(1), *see* PL 99-514 (Oct. 22, 1986). *See Williams* v. *Comm'r*, 2005 WL 165444, at **4 (10th Cir. 2005) (section 102(c)(1) mandated that transfers from employer to employee be treated as compensation and not gifts, irrespective of close nature of relationship)

[redacted] for multiple tax years, claiming expenses they knew nothing about and saddling them with tax deficiencies; (2) hang on the walls of his duplex tens of millions of dollars of the untaxed art, which he delivered to Delaware and New Jersey pursuant to his scheme and then brought back into New York State; (3) have millions of dollars of untaxed art transferred to the apartments of [redacted] (4) fight the IRS audit of [redacted] tax return by giving her a bogus document to try to mislead the IRS; (5) fight the Bodley audit by providing his attorneys with false information to pass on to the IRS (thus making grand jury witnesses of those attorneys); (6) enlist his brother and nephew to unwittingly assist in an aspect of his frauds;[12] and (7) enlist his wife in the payment of cash wages to household employees and the signing of false tax returns. More fundamentally, it was Zukerman who decided at the outset of the grand jury investigation in 2014 that, rather than come clean, acknowledge his fraudulent schemes, and pay the amounts due to the IRS and New York (and thus spare his family and others from having to share how Zukerman ensnared them in those schemes), he would hunker down and force the Government to compel testimony from dozens of witnesses in order to learn the breathtaking

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12 [redacted]

scope of the tax crimes he committed. Only after that two-year process, and after learning that the Tax Division had authorized numerous tax fraud charges related to him, and more limited charges [redacted] did Zukerman finally indicate he was prepared to acknowledge his guilt.[13] Given this history, there can be little dispute that Zukerman – and Zukerman alone – is responsible for the lengthy and comprehensive nature of the Government's investigation and any collateral effects on family members.

Zukerman's argument that the Guidelines calculation is unfairly skewed because the tax loss figure is driven largely by the "Penreco transaction" (Mem. 28) is unconvincing. While it is true that over $30 million in tax loss emanates from one species of Zukerman's tax fraud schemes (that is, corporate tax evasions), it is highly inaccurate to label the source of that loss figure as a singular "transaction." Rather, as demonstrated above, it was a long-running and meticulously executed *scheme* that started in mid-2008 (with the lies to DeBellis and the fabrication of the first group of documents) and continued through the filing of the 2008 Bodley tax return (involving more false documents, signed in mid-2009) and ended with the 2012 Bodley audit and Tax Protest (even more false statements and documents). Viewed through this more accurate prism, the $30 million of SOC Evasion losses work no unfairness in the Guidelines calculation because they were the by-product of an elaborate fraud scheme that spanned over four years and, more to the point, was specifically designed by Zukerman to bring

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13 [redacted]

about the $30 million loss. In sum, Zukerman cannot convincingly challenge an aspect of the loss calculation that he specifically intended to bring about through concerted activity that spanned years.

Zukerman advances the related argument (Mem. 28) that the tax loss from the SOC evasions is "arbitrary" because the tax rate for corporate capital gains (applicable to the Penreco sale) is 35% while the individual capital gains rate (which would have been applicable if Zukerman had owned Penreco personally) is 15%. This argument is nonsensical. Indeed, it is akin to saying that the tax loss figure is arbitrary because if Penreco had been owned by a company incorporated in Monaco or the Cayman Islands – countries with no income taxes – Zukerman would owe absolutely no taxes on the Penreco sale! But Penreco was not owned by a company incorporated in Monaco, or by Zukerman in his individual capacity. On the contrary, Zukerman *chose* to structure his ownership of Penreco through a Delaware corporation, which brought him not only a higher capital gains rate but all the protections and advantages – including others in the internal revenue code – of operating through the corporate form. Accordingly, because Zukerman elected to own Penreco through a corporate structure, and therefore knew and expected to be subject to corporate capital gains rates, there is nothing arbitrary or unfair about the SOC loss figure

In conclusion, the seriousness of Zukerman's conduct – made manifest through the nature, length, and harm caused by Zukerman's schemes – supports a prison sentence within the Stipulated Guidelines range. Put simply, the defendant, motivated solely by greed, acted without regard to his responsibilities – as a citizen, businessman, employer, and father – to adhere to the tax laws of this country. For that conduct, justice requires that he be held to account.

B. History and Characteristics of the Defendant

Although Zukerman has no formal criminal history points under the Sentencing Guidelines, the term "first time offender" does not comfortably fit him. In fact, as the "relevant conduct" narrative above makes clear, Zukerman was caught red-handed in the Manhattan D.A.'s criminal tax probe in 2002, leading him to retain a criminal defense attorney, admit his criminal culpability, and pay over $230,000 in evaded taxes to New York State.

Given that involvement, Zukerman had an opportunity to take the honest path of tax reporting, and adhere punctiliously to all the requirements of the law, both state and federal. Astoundingly, only a handful of years after escaping criminal charges in New York State, Zukerman involved himself in the very same criminal conduct – that is, the sales and use tax evasion – which continued until 2014.[14] That conduct was carried on at the very same time he was carrying out the 2007 and 2008 SOC Evasions, and the evasion of his own taxes and those of family members, which continued through the civil IRS audits and stopped only upon commencement of the grand jury investigation. Zukerman's course of action in this regard – essentially making him a recidivist – should be weighed heavily by the Court when considering the "history and characteristics" of the defendant. Similarly, the defendant's involvement in the other "relevant conduct" – including the health insurance fraud, the false statements to his

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14 The fact that Zukerman resumed his criminal conduct was not lost on art dealer [redacted] one of the gallery owners who conspired with Zukerman in the 1999-2002 period by selling art to Zukerman in New York, delivering it to his apartment there, and sending empty crates to Maine to make it falsely appear that the art had been shipped out of state. [redacted]

insurance company, and the false statements to [redacted] – paints a picture of a man that is entirely consistent with the man who engaged in the offense conduct. Simply put, Zukerman was prepared to scheme and lie to fraudulently and unlawfully obtain financial advantages, both big and small.[15]

Unlike many of the defendants who appear before this Court, Zukerman has enjoyed significant financial advantages and material comfort, yet committed these serious crimes in spite of those advantages. It is evident from the PSR and Zukerman's background and personal circumstances that he did not commit these crimes out of any financial need whatsoever. By Zukerman's own account, he is highly educated, a successful businessman, and enjoys status and reputation in his community and the support of his family and friends. In sum, Zukerman has enjoyed a life of deep personal and financial stability, filled with benefits that many people can never hope to receive. But that was not enough for him. Motivated by greed and contempt for the due administration of justice, Zukerman perpetrated this brazen scheme for years in order to enrich himself.

In his sentencing submission, Zukerman highlights his charitable giving. But Zukerman overlooks the fact that his ability to make the charitable contributions and engage in other good works resulted in some measure from the wealth that he accumulated as a result of the tax fraud

[15] Zukerman accuses the Government of "piling on" (Mem. 30-31) for detailing the "relevant conduct" in the PSR, arguing that the Court's focus should be on the conduct to which Zukerman pleaded guilty. That comment is a curious one, coming from one who spends less than four pages of his memo ((Mem. 26-30) discussing that offense conduct, and fails even to address hundreds of thousands of dollars of false "investment interest" and "Professional fee" deductions he included on his own tax returns. In any event, the relevant conduct, some of which Zukerman fails even to acknowledge as criminal, is highly relevant to understanding Morris Zukerman the man. Put simply, the Court must decide whether Zukerman's years-long, multi-faceted offense conduct was aberrational or whether, as the multiple instances of relevant conduct suggest, it was part of the defendant's standard operating procedure.

schemes he devised. That a significant component of Zukerman's charitable giving occurred in the immediate wake of the lucrative Penreco-related tax evasion underscores the conclusion that his criminal proceeds fueled his charitable giving and may have been inspired by a desire to seek leniency once he was ultimately held accountable for his crimes. *E.g.*, Zukerman Exh. 37, at 2 (letter from Harvard classmate indicating $5 million endowment gift by Zukerman was made around 2011).

In any event, the law is clear that a defendant's acts of charity cannot compensate for a defendant's criminal conduct, particularly conduct as lengthy, harmful, and brazen as Zukerman's. As the Seventh Circuit succinctly observed: "Wealthy people commonly make gifts to charity. They are to be commended for doing so but should not be allowed to treat charity as a get-out-of-jail card." *United States* v. *Vrdolyak*, 593 F.3d 676, 682 (7th Cir. 2010).

In *Vrdolyak*, the court reversed a probation-only sentence for a white-collar criminal who defrauded his large institutional victim of $1.5 million.[16] The court of appeals found it error for the district court to give "enormous weight" to the charitable acts of the defendant "while virtually ignoring the evidence that tugged the other way." 593 F.3d at 682. The court explained that charitable contributions "must be exceptional before they will support a more-lenient sentence" because "it is usual and ordinary, in the prosecution of similar white-collar crimes involving high-ranking corporate executives, to find that a defendant was involved as a leader in

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[16] The issue before the court in *Vrdolyak* was procedural unreasonableness, since the government appealed only on that ground. *See* 593 F.3d at 684. *See also* Brief of the United States, *United States* v. *Vrdolyak*, No. 09-1891 (7th Cir. filed July 17, 2009), *available at* 2009 WL 2251149. But the court's reasoning applies equally to an analysis of substantive unreasonableness, and in particular to whether a sentence gives unreasonable weight to a defendant's charitable contributions and letters from the recipients of his patronage.

community charities, civic organizations, and church efforts." *Id*. (quoting *United States* v. *Repking*, 467 F.3d 1091, 1095 (7th Cir. 2006)). The court continued:

> To allow any affluent offender to point to the good his money has performed and to receive a downward departure from the calculated offense level on that basis is to make a mockery of the Guidelines. Such accommodation suggests that a successful criminal defendant need only write out a few checks to charities and then indignantly demand that his sentence be reduced. The very idea of such purchases of lower sentences is unsavory, and suggests that society can always be bought off, even by those whose criminal misconduct has shown contempt for its well-being.

Id. (quoting *United States* v. *McHan*, 920 F.2d 244, 248 (4th Cir. 1990)).

Likewise, in *Repking*, the Seventh Circuit rejected an (effectively) probationary sentence for a white-collar criminal, vacating as substantively unreasonable a one-day sentence of imprisonment in a million-dollar bank-fraud case — notwithstanding the defendant's restitution to his victim, his negligible chance of recidivism, his charitable works in the community, and even his cooperation with the government's criminal investigation. *See* 467 F.3d at 1094-95. Noting the Guidelines' policy statement that a defendant's charitable contributions are "not ordinarily relevant," *see* U.S.S.G. § 5H1.11, the court held that consideration of a defendant's charitable works "is not specifically prohibited, especially in a post-*Booker* world." *Id*. at 1095. The court found substantively unreasonable the district court's ultimate conclusion that the defendant's "charitable works were so extraordinary that they should be given weight despite the contrary view of the Sentencing Commission," stating:

> [W]e leave open the possibility that a one-day sentence of imprisonment might be justifiable for a defendant who rivals Robin Hood; but Repking, a millionaire who stole for himself and his friends, is not that defendant.

Id. at 1096. *See also United States* v. *Crouse*, 145 F.3d 786, 792 (6th Cir. 1998) (defendant's civic contributions, not atypical for prominent businessman, did not support nine-level

downward departure); *United States* v. *Morken*, 133 F.3d 628, 630 (8th Cir. 1998) (defendant's charitable and other good works did not justify departure from Guidelines); *United States* v. *Haversat*, 22 F.3d 790, 796 (8th Cir. 1994) (defendant's charitable and volunteer activities did not make him atypical).

Zukerman has submitted other letters attesting to his good character and expressing shock and surprise at his arrest and guilty plea. It is, of course, entirely appropriate for the Court to take these letters into account in connection with sentencing. However, the Government asks that, in so doing, the Court also consider the following three points. First, the many attestations to Zukerman's good character do not distinguish him from the typical white collar defendant. Instead, as Judge Marerro astutely observed, this collection of letters:

> falls into a pattern advanced by a subset of the white collar criminal. This category encompasses a select class: distinguished, reputable, highly esteemed model citizens such as this defendant. The list of their achievements and virtues is long and impressive. Let us count the ways. At home, they are good family men and women, caring spouses, loving parents, loyal and reliable to friends. At work, they are looked up to as outstanding professionals and business partners. To their community's charities and public causes they are generous patrons and sponsors.

United States v. *Regensberg*, 635 F. Supp. 2d 306 (S.D.N.Y. 2009), *aff'd*, 381 F. App'x 60 (2d Cir. 2010); *see also United States* v. *McClatchey*, 316 F.3d 1122, 1135 (10th Cir. 2003) ("excellent character references are not out of the ordinary for an executive who commits white-collar crime; one would be surprised to see a person rise to an elevated position in business if people did not think highly of him or her"). In other words, the letters proffered by Zukerman are in many ways typical of the letters submitted by white collar criminals, and do not set Zukerman apart from other similarly-situated defendants.

Second, to the extent that the letter writers and Zukerman contend that the humiliation

and loss of social standing suffered by him as a result of his guilty should be given paramount consideration, that claim should be rejected. "It is impermissible for a court to impose a lighter sentence on white-collar defendants than on blue-collar defendants because it reasons that white-collar offenders suffer greater reputational harm or have more to lose by conviction." *United States* v. *Prosperi*, 686 F.3d 32, 47 (1st Cir. 2012). Similarly, the loss of his professional licenses or standing, the legal fees he has incurred, and the felony convictions associated with his name are not factors this Court should take into account. "None of these things are his sentence. Nor are they consequences of his sentence; a diminished sentence based on these considerations does not reflect the seriousness of his offense or effect just punishment." *United States* v. *Musgrave*, 761 F.3d 602, 608 (6th Cir. 2014) (quotations omitted); *see also United States* v. *Kuhlman*, 711 F.3d 1321, 1329 (11th Cir. 2013) ("The Sentencing Guidelines authorize no special sentencing discounts on account of economic or social status."). And, as the Seventh Circuit has observed:

> [N]o "middle class" sentencing discounts are authorized. Business criminals are not to be treated more leniently than members of the "criminal class" just by virtue of being regularly employed or otherwise productively engaged in lawful economic activity. It is natural for judges, drawn as they (as we) are from the middle or upper-middle class, to sympathize with criminals drawn from the same class. But in this instance we must fight our nature. Criminals who have the education and training that enables people to make a decent living without resorting to crime are more rather than less culpable than their desperately poor and deprived brethren in crime.

United States v. *Stefonek*, 179 F.3d 1030, 1038 (7th Cir. 1999).

Finally, while there certainly are cases where it can be said that a defendant's offense conduct was in some way wildly aberrant or representative of so brief and isolated a lapse in judgment that it is appropriate to give significant weight to an otherwise blameless life, this

demonstrably is not such a case. For years, the defendant participated in multi-faceted tax fraud designed to cheat the IRS and other taxing authorities. That cheating involved dozens of false statements made under oath, on both tax returns and other documents. He lied repeatedly to his accountants and to the lawyers representing him in this very case, who were used by Zukerman as pawns in an attempt to hide his fraud. What is more, the counts of conviction do not represent the full range of the defendant's criminal activities, as the facts in the PSR and those outlined above make plain that he engaged in a virtually identical fraud scheme between 1999 and 2002.

Accordingly, even crediting any testimonials he has submitted in connection with sentencing – and we do not in any way question the sincerity of those testimonials – the defendant, through his prolonged and greed-driven criminal conduct, has shown that he is not someone who deserves any benefit of the doubt with respect to this Court's judgment of his character.

In short, Zukerman's good works and devotion to friends and family are simply overwhelmed by the shocking enormity of his criminal conduct.

C. The Need to Afford Adequate Deterrence

One of the paramount factors the Court must consider in imposing sentence under Section 3553(a) is the need for the sentence to "afford adequate deterrence to criminal conduct." 18 U.S.C. § 3553(a)(2)(B). We respectfully submit that a substantial term of imprisonment – that is, within the Stipulated Range – is essential to achieve the goals of general and specific deterrence, especially given nature and history of this defendant and the nature of the tax fraud schemes involved.

As a result of the significant resources required to mount a criminal tax prosecution, criminal tax prosecutions are relatively rare. As the Sentencing Commission explained:

> The criminal tax laws are designed to protect the public interest in preserving the integrity of the nation's tax system. Criminal tax prosecutions serve to punish the violator and promote respect for the tax laws. Because of the limited number of criminal tax prosecutions relative to 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.

U.S.S.G. ch 2, pt. T, introductory cmt. Where the incidence of prosecution is lower, the level of punishment must be higher to obtain the same level of deterrence. *See generally*, Louis Kaplow and Steven Shavell, "Fairness Versus Welfare," 114 Harv. L. Rev. 961, 1225-1303 (2001).

Furthermore, the need for general deterrence is most compelling in those cases involving particularly lucrative schemes and difficult-to-detect criminal activity, such as schemes that utilize offshore companies. *See United States v. Heffernan*, 43 F.3d 1144, 1149 (7th Cir. 1994) ("Considerations of (general) deterrence argue for punishing more heavily those offenses that either are lucrative or are difficult to detect and punish, since both attributes go to increase the expected benefits of a crime and hence the punishment required to deter it."); *see also United States v. Hassebrock*, 663 F.3d 906, 922 (7th Cir. 2011) (affirming as reasonable a within-Guidelines 32 month sentence for a tax evader when the district court explained that "a sentence of probation would not promote respect for the law, but encourage people to flaunt it"). Thus, in order to provide adequate general deterrence, the sentence in long-running tax crimes with complex components, such as the one committed by Zukerman, must be significant. The punishment must also be more significant where, as here, the financial benefits to those committing the crimes – that is, the proceeds of the offense – are more significant. The sentence

recommended by the Guidelines is significant enough to deter would-be tax cheats who might otherwise choose to gamble that if they orchestrate and execute tax frauds through use of multiple corporate entities they will not be caught.

General deterrence is an essential means of minimizing the ever-increasing amount of money estimated to be lost each year through tax fraud. The United States tax system relies on voluntary compliance. *See United States* v. *Ture*, 450 F.3d 352, 357 (8th Cir. 2006) ("The criminal tax laws are designed to protect the public interest in preserving the integrity of the nation's tax system"). The IRS's most recent study of tax compliance estimates that only 83.1% of individuals are compliant, leaving a yearly tax gap of over $458 billion dollars in unreported and uncollected taxes. *See* "Tax Gap Estimates for Tax Years 2008-2010," April 2016 (attached hereto as Exhibit E). "Studies have shown that salient examples of tax-enforcement actions against specific taxpayers, especially those that involve criminal sanctions, have a significant and positive deterrent effect." Joshua D. Blank, *In Defense of Individual Tax Privacy*, 61 Emory L.J. 265, 321 (2011-2012).

These studies emphasize the impact that noncompliance with the tax code has on the United States Treasury and the deterrent impact prison sentences have on other potential tax scofflaws. Hundreds of billions of dollars are lost annually because people like Zukerman – who otherwise takes full advantage of all that taxes bring, such as schools, paved roads, transit systems, and Government buildings – choose to shirk their responsibilities as American taxpayers. Widespread noncompliance with the Internal Revenue Code is an ongoing problem that merits every court's consideration when sentencing defendants for committing tax offenses. Meaningful sentences – that is, ones that, through their terms, speak loudly – must be given in

cases such as this so that others are forewarned of the consequences for engaging in such complex, long-running tax crimes.

The Fourth Circuit has explicitly endorsed the vital importance of incarcerating tax scofflaws as a means of general deterrence:

> Given the nature and number of tax evasion offenses as compared to the relatively infrequent prosecution of those offenses, we believe that the Commission's focus on incarceration as a means of third-party deterrence is wise. The vast majority of such crimes go unpunished, if not undetected. Without a real possibility of imprisonment, there would be little incentive for a wavering would-be evader to choose the straight-and-narrow over the wayward path.

United States v. *Engle*, 592 F.3d 495, 502 (4th 2010). Similarly, Judge Edward Weinfeld, one of the great Judges of this Court, aptly articulated, in a pre-Guidelines setting, the need for incarceration as a result of the tax evader's violation of the basic compact under which all American income-earners live:

> This court has long had the view that income tax evasion cases where defendants are found guilty, whether upon their pleas of guilty or after jury verdict, require a term of imprisonment. The income tax laws of our country in effect reflect an honor system under which the citizens are required to cooperate with the government, to file true and accurate returns. I have been of the view that unless a citizen lives up to his responsibility there must follow, barring an extraordinary situation, a term of imprisonment as an example to other people in the community.

United States v. *Tana*, 85 Cr. 1119 (EJW) (June 17, 1986; Tr. at 12-13); *see also United States* v. *Trupin*, 475 F.3d 71, 76 (2d Cir. 2007) (seven-month prison sentence for multi-year tax evasion scheme with a tax loss of $1.2 million failed to reflect seriousness of offense, observing that a tax evader, in effect, "steal[s] from his fellow taxpayers through his deceptions"). In a recent case involving a defendant who utilized an undeclared Swiss bank, which resulted in hundreds of thousands of dollars of tax loss and a Sentencing Guidelines range of 24-30 months (facts that

are different from those present here), Judge Gardephe echoed Judge Weinfeld's sentiments in a manner applicable to this case:

> Our tax system is, at bottom, a voluntary one. Those who use sophisticated means of tax evasion, the sorts of sophisticated means seen here, when their activities come to light they must be punished in a manner that will discourage others from engaging in similar conduct. I believe in the views of Judge Weinfeld, for whom I have the greatest respect, and specifically his views as expressed in the case of United States versus Tana, that absent extraordinary circumstances, cases of significant tax evasion often call for a sentence of imprisonment. There's nothing about the facts here that suggest to me that a different outcome is appropriate.

United States v. *Werdiger*, 10 Cr. 325 (PGG) (November 9, 2011; Tr. at 49-50). *See also United States* v. *Mullahy*, 10 Cr. 554 (WHP) (November 23, 2010; Tr. 10) ("Looking at the 3553(a) factors in this case, the Court agrees with the Government that tax crimes are not prosecuted frequently and, therefore, there is a need for deterrence.").

In sum, the Government cannot ensure compliance with the Internal Revenue Code if the general public believes there are no meaningful repercussions for failing to comply with tax laws and regulations. That is particularly true with respect to repeat offenders like Zukerman, who was previously involved in criminal activity yet managed to avoid being charged. Sentencing Zukerman to a significant term of incarceration will convey the message to others that systematic and repeated efforts to cheat on one's taxes, combined with repeated efforts to obstruct the IRS's investigation of that cheating, will be met with harsh punishment.

D. The Need to Avoid Unwarranted Sentence Disparities

The Sentencing Guidelines were promulgated, in significant measure, to minimize disparities in federal sentences. Although those Guidelines are no longer mandatory, the importance of eliminating sentencing disparities remains an important factor which the Court

must separately consider pursuant to 18 U.S.C. § 3553(a)(7). We attach for the Court's consideration a chart of sentences in other tax cases (or cases that had a significant tax component), including ones with comparable loss amounts. *See* Exhibit G (the "Sentencing Chart"). The Sentencing Chart breaks out the sentences imposed and various other sentencing data in a broad variety or criminal tax contexts.

Although we believe that there is significant utility in having Your Honor consider what has happened in other cases, we hasten to note our acute awareness that, at best, such guidance can get the Court only so far. Every case is unique; every individual defendant is unique. We do not mean to suggest otherwise. The reasons for referencing the other sentences are straightforward: first, while we fully recognize that the recommendations made by Probation and the Government herein call for a substantial sentences, similar sentences have been meted out in cases involving comparable overall conduct and tax losses; second, it is not uncommon for defendants who are less criminally culpable than Zukerman to receive and serve lengthy sentences of incarceration; and third, Courts have not refrained from imposing significant periods of incarceration in cases involving sexa- and septuagenarian defendants, particularly where, as here, the criminal conduct is long-running and results in significant losses.

IV. Zukerman's Arguments

Zukerman raises a host of issues relating to his health and age. [redacted] We address these issues in turn.

A. Health and Age

In the face of an advisory Guidelines sentencing range of 70 to 87 months' imprisonment,

Zukerman suggests that a sentence of probation would be sufficient in light of his age and medical issues. (Mem. 37-38). Although the Supreme Court has rejected "the use of a rigid mathematical formula that uses the percentage of a departure as the standard for determining the strength of the justifications required for a specific sentence," it has made clear, nonetheless, that the "extent of the deviation and ensure that the justification is sufficiently compelling to support the degree of the variance." *Gall*, 552 U.S. at 50. Zukerman's requested sentence represents a 100% departure from the advisory Guidelines range, which is patently unreasonable.

Part H of the Sentencing Guidelines provide that departures based upon a defendant's age, medical health, and mental status "may be relevant" in imposing a sentence, but only when those characteristics "are present to an unusual degree and distinguish the case from the typical cases covered by the guidelines." U.S.S.G. §§ 5H1.2, 1.3, 1.4. The Guidelines note that in the case of a seriously infirm and/or elderly defendant, home confinement may be as efficient as, and less costly than, imprisonment. §§ 5H1.2, 1.4. However, those statements "suggest[] only that home confinement may be a cost-effective alternative to imprisonment for seriously infirm defendants. It does not suggest that imprisonment is never appropriate for infirm defendants or that a judge abuses his discretion if he sentences a defendant with serious health problems to prison." *United States* v. *Poetz*, 582, F.3d 835, 838 (7th Cir. 2009). In *Poetz*, the defendant, who pleaded guilty to stealing approximately $300,000 from the U.S. Forestry Service, *id*. at 836, suffered from various gastrointestinal disorders, seizure disorder, several upper respiratory diseases, arthritis, and early onset diabetes. *Id*. In affirming the custodial sentence, the Seventh Circuit noted that the sentencing judge "explained that despite Poetz's medical issues, a period of incarceration was 'fundamentally required' to promote respect for the law, provide for

deterrence, and hold Poetz accountable for her breach of the trust placed in stewards of public funds." *Id*. at 838.

Zukerman argues (Mem. 42) that, due to his age, the likelihood of recidivism is low and therefore incarceration is unnecessary. The defendant's argument misses the mark. A sentence of imprisonment in essential in a case like this principally because, as the *Poetz* court noted, there is an overriding interest in promoting respect for the law, providing adequate deterrence to other highly educated tax cheats, and, most importantly, to hold the defendant accountable for his crimes. In addition, given Zukerman's admitted involvement in the 1999-2002 sales tax scheme, it is less than clear that Zukerman will not repeat some form of criminal conduct.

Zukerman also argues that a lengthy prison term for a man his age – 74 years – would amount to a life sentence. (Mem. 39). But Courts have routinely rejected such arguments in cases, like this one, involving sustained criminal conduct that results in significant harm. In *United States* v. *Seijan*, 547 F.3d 993, 998 (9th Cir. 2008), for instance, the district court sentenced an 87-year old defendant to 240 months' imprisonment, which was 22 months lower than the low end of the Guidelines range. Affirming the district court, the Ninth Circuit noted:

> Seljan argues that the district court did not adequately consider his advanced age. This argument is meritless. The district court acknowledged that Seljan's age and health reduced the likelihood of recidivism, and it addressed Seljan's concern that the 20-year sentence at age 87 was tantamount to life imprisonment. The district court even considered the sentence that a defendant without a prior conviction would receive. Indeed, the sentence imposed by the district court was 22 months below the low end of the Guidelines range. Seljan argues only that the reduction should have been even greater. On this record, however, the district court's sentence was reasonable.

547 F.3d 993. *See also United States* v. *Lewis*, 594 F.3d 1270, 1276-77 (10th Cir. 2010) (affirming 330-year sentence for fraud offenses and upholding district court's rejection of a 72-year old defendant's request for a variance based upon age and health); *United States* v. *Dowd*,

451 F.3d 1244, 1256-57 (11th Cir. 2006) (rejecting the defendant's argument that his 305-month sentence was unreasonable because he was 65 years' old); *United States* v. *Kerns*, 2009 WL 1956258 at *1-*2 (11th Cir. July 9, 2009) (unpublished) (rejecting the defendant's argument that his 240 month sentence for fraud offenses, which was already a departure, was a *de facto* life sentence and noting that "the district court weighed Kerns's advanced age against the seriousness of his offense and the need to protect the public from fraud"). In *United States* v. *Moses*, 2009 WL 1935930, *1 - *2 (6th Cir. July 6, 2009), the district court sentenced a 71-year old defendant to 210 months on conviction for a fraud that involved, *inter alia*, a $15 million loss, the use of false statements and documents, and the use of shell companies to conceal the fraud. Similar to the arguments Zukerman advances in his sentencing memo, the defendant in *Moses* contended "that it is substantively unreasonable to sentence an elderly, ill woman to such a harsh prison term for nonviolent, economic crimes." *Id*. at *7.[17] Affirming the sentence, the Sixth Circuit noted that the district court had found that the defendant's fraud was the "most extensive" it had seen, and noted that "[w]hile a district court *may* sentence infirm defendants to a non-prison sentence, it need not do so. *Id*. (emphasis in original) (internal citation omitted).

As Judge Kaplan recently observed in rejecting a requested downward variance for a 73-year-old, infirm white-collar defendant:

> With people in this age bracket, it is a very small number, really, from this social and economic bracket of society who can't make a medical case for avoiding incarceration of some level of persuasiveness or another. Sentences in cases like

[17] Moses's ailments included coronary artery disease, removal of her colon, loss of feeling in her legs due to nerve damage, atrial fibrillation, frail kidneys, and an auto-immune disorder which can cause fatigue, joint pain, and problems with vital organs and the nervous system. Ex. S-34, Defendant's Sentencing Memorandum in *United States* v. *Moses*, 2:96-cr-80274, Rec. Doc. No. 417 (E.D.Mich.) filed 7/16/07.

> this, therefore, have to be cognizant of the need for people in general who, were they informed of the circumstances, to say well, this individual is going to pay a price for the crime, maybe not the same price that the individual would pay if he was a healthy 48-year old, but a serious price. There has got to be a perception that justice is done, that people get their just desserts, and that requires judges to impose sentences in some cases that if the sentences were considered only from the perspective of the defendant being sentenced might be harsher, more severe than might seem appropriate.

United States v. *Emanuel Cohen*, 15 Cr. 396 (LAK), Sept. 9, 2016 sentencing tr., at 21-22. Likewise, in *United States* v. *Murphy*, 11-CR-137 (C.D. Cal.), Judge David Carter explained the vital importance of deterrence, and the perception of equal justice, when imposing a 97-month sentence on a 70-year old white collar defendant who had carried out a $2.9 million investment fraud scheme:

> I don't think a Court can allow you or somebody in a similar position to walk away from a sentencing, literally taking a round figure of 8, 9, 10, 11, 12 years, whatever that sentence is, and multiply that into a $3 million loss and, basically, make $300,000 a year on fraudulent activities. There, the government has a huge argument that I think the Courts need to pay attention to; and that is, not only you, but what's the deterrent value for people reading, hearing, or taking into account this kind of conduct?
>
> Is it that because we're older we can go out and commit these crimes, but somebody in the 40's gets 10 years? Somebody in their 70's get 41 months? I don't think so. I think you're just as accountable as a person who's 40 or 50. And maybe the argument could be made, with our life experiences – because I'm in the same age range as you – maybe just as accountable for our conduct after a lifetime of living and learning what's appropriate, ethical and right.
>
> So you do present a problem. And the problem is, on one hand, I'm tremendously sympathetic about your age. I don't think, regardless of what some victims have said or felt, that anybody wants you to die. This isn't a death warrant. By the same token, I cannot condone and I don't think it would be appropriate to let you walk out of this court with anything other than a very strong message about this conduct.

United States v. *Murphy*, 05/28/13 sentencing tr., at 85-86 (attached hereto as Exhibit H).

Like the defendants in *Cohen* and *Murphy*, the defendant persisted in his tax crimes for many years, and contested the civil and criminal repercussions for his conduct for years more – all while in his 60's and into his 70's. Having chosen to continue his criminal conduct in that advanced age, Zukerman should not be able now to claim age as a significant mitigating factor.

With respect to health, neither a downward departure pursuant to USSG §§ 5H1.1 or 5H1.4, nor a variance pursuant to section 3553 is warranted on the grounds of health because the defendant's specific physical health – which he concedes is "stable" (Mem. 38) – does not involve any grave or serious infirmity. In an almost identical case, a court sentenced a defendant on charges of fraud and bribery to imprisonment and denied a downward departure pursuant to USSG § 5H1.4 based upon age and infirmity. *United States* v. *Turner*, 531 F. Supp.2d 123, 124-125, 127-128 (D.D.C 2008). At the time of the defendant's sentencing in *Turner*, the defendant had the following issues:

> [A]sthma requiring treatment with steroids and inhalers; sleep apnea requiring the use of a continuous positive airway pressure ("CPAP") device and oxygen at night; post-traumatic stress disorder resulting in headaches and seizures; congestive heart failure; gout and degenerative joint disease occasionally requiring treatment with narcotics; diabetes, which was treated by medication but not fully controlled; severe peripheral neuropathy; renal failure; temporary spells of blindness; and a possible autoimmune disease such as lupus.

Id. at 127. In denying the defendant's motion for downward departure, the court noted that the defendant's conditions were chronic rather than acute, and that the Bureau of Prisons could provide care for the defendant. *Id*. In *United States* v. *Tucker*, 986 F.2d 278, 280 (8th Cir. 1993) the Eighth Circuit reversed a district court's decision to depart downward for a defendant who suffered from stress associated with prosecution, degeneration of the jaw bone, dizziness, eye trouble, frequent colds, tooth problems, shortness of breath, heart palpitation, arthritis, cramps in

her legs, a painful shoulder, knee problems, pressure in her chest, and who had clinically died for 4 minutes during a surgery. The Eighth Circuit noted that the Guidelines indicate that "departures were intended to be quite rare, and thus should be restricted to situations in which substantial atypicalities are found to exist." *Tucker*, 986 F.2d at 280. *See also United States* v. *Kurland*, 718 F. Supp.2d 316, 318 (S.D.N.Y. 2010) (imposing a custodial sentence and finding that medical issues of defendant convicted of securities fraud including hyperlipidemia, diabetes mellitus, and prostate cancer in remission did not warrant a downward departure). The defendant's medical issues, detailed in his sentencing memorandum, are not unusual for someone his age and do not constitute a case outside of the typical tax fraud case in which the defendant is aging. The cases cited herein involve defendants with similar health problems, none of which warranted a non-custodial sentence. Moreover, many of the tax defendant's cited in the Government's sentencing chart were in their 60's and 70's and nonetheless appropriately received significant periods of incarceration based on the serious nature of the conduct.

For all of the foregoing reasons, no departure or variance is warranted based on the defendant's health or age.

B. Family Considerations

Zukerman advances a host of arguments predicated on the [redacted] We submit that the Court should be mindful of the following facts when weighing this issue. [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

Finally, incarceration of Morris Zukerman will not [redacted]

C. Additional Issues

Two additional points advanced by Zukerman require only the briefest of responses. First, to the extent that Zukerman contends that his "incompeten[ce]" at "record-keeping and paperwork" – rather than his willfulness – is responsible for his wrongdoing (Br. 27), that suggestion should be swiftly rejected. The factual narrative above, including Zukerman's involvement in meticulously planned financial transactions involving multiple bank accounts and entities (like those used in the Arkriver and SYV and UCC-related fraudulent deductions) demonstrates that Zukerman was adept at record-keeping when it came to the creations of false tax returns. Indeed, Zukerman's "record-keeping" involved the creation from whole cloth of bogus documents to aid the corporate evasion scheme. In any event, Zukerman was able to carry out the tax fraud for as long as he did by specifically choosing not to hire an experienced in-house accountant to oversee all his financial and tax accounting. Such a person, it stands to reason, would have stood in the way of Zukerman's schemes. Zukerman should therefore not be able to rely on, as a mitigating factor, a state of affairs he maintained to effectuate his elaborate frauds.

Second, Zukerman's suggestion that his involvement in the sales and use tax fraud was innocent or part of some legitimate tax planning (Br. 32-33) is belied by the facts and common sense. Zukerman admitted to criminal investigators from the Manhattan D.A.'s Office that he knew what he was doing was wrong and that he became aware of the "use tax" rules during that 2002-03 investigation. Zukerman thereafter knowingly violated those rules during the period 2008-2014 when he caused dozens of his recently purchased paintings to be shipped to Delaware and New Jersey and brought them back moments or hours later – actions that he hid from his accountants and attorneys. Moreover, the well-publicized prosecution in 2002 of Tyco executive Dennis Koslowski for engaging in sale and use tax evasion in connection with art purchases served to put Zukerman on notice that individuals stood to be prosecuted for such conduct. In sum, Zukerman plainly knew his conduct was unlawful and that it could expose him – and not just the galleries – to criminal prosecution.

To the extent that Zukerman persists in challenging the facts concerning the sales and use tax fraud, and any aspect of the relevant conduct, the Government requests that a hearing be held so the Government can prove Zukerman's criminal involvement in those episodes.

V. The Appropriate Sentence

A. Financial Penalties

At the time of the defendant's guilty plea, the Court indicated that it wished to hear about the types of financial penalties that have been imposed in cases of this sort – involving significant losses to the Government and gains by the defendant. In response to that directive, we provide the following information.

1. Permissible Penalties

Any penalties imposed by the Court are limited, of course, by the statutes of conviction as well as the fine and restitution statutes. With respect to a fine, the PSR correctly notes that the general fine provision contained in 18 U.S.C. § 3571(d) allows the Court to impose a fine in an amount equaling twice the gross gain enjoyed by Zukerman or twice the loss suffered by Zukerman's victims, the latter of which the PSR calculated as $90 million. Although the precise final loss figure with respect to the offenses of conviction has not yet been determined, because Zukerman has not yet filed his amended tax returns (or original returns for SOC), that figure is expected to be in excess of $40 million. (This figure does not take into account the New York States sales tax losses, as those are not captured by the Counts of conviction.)

The Court also must order restitution, as Zukerman specifically agreed in his plea agreement to pay restitution for all the losses flowing from the evasions carried out by Zukerman through SOC, as well as the evasion of his personal income tax obligations and those of [redacted] *See* Plea Agreement, at 2 (agreeing, pursuant to 18 U.S.C. § 3663(a)(3), to pay restitution for various corporate and individual taxpayers). Zukerman also agreed to pay restitution to New York State based on the sales and use tax fraud charged in Count Three. *Id*.

In imposing restitution, the law is clear that the Court may include both prejudgment and post-judgment interest. *See United States* v. *Perry*, 714 F.3d 570, 577 (8th Cir. 2013) (affirming inclusion of interest in restitution to IRS because the full loss to the victim included the time value of money); *United States* v. *Jimenez*, 513 F.3d 62, 87 (3d Cir. 2008); *United States* v. *Gordon*, 393 F.3d 1044, 1058-59 (9th Cir. 2004) (prejudgment interest is necessary to make the victim whole, interpreting MVRA); *Virgin Islands* v. *Davis*, 43 F.3d 41, 47 (3d Cir. 1994)

(prejudgment interest is an aspect of victim's actual loss); *United States* v. *Patty*, 992 F.2d 1045, 1049 (10th Cir. 1993) (prejudgment interest reflects the victim's loss due to his inability to use the money for a productive purpose and is necessary to make the victim whole); *United States* v. *Kress*, 944 F.2d 155, 160 (3d Cir. 1991) (post-judgment interest may be included in restitution order).

Prior to sentencing, the Government will submit a proposed restitution order that includes both the amounts of tax due and owing, as well as the interest due thereon, calculated to the date of sentencing.

2. Tax Cases Involving Substantial Financial Penalties

The large-scale criminal tax cases involving substantial financial penalties imposed at sentencing fall into two basic categories. One category involves substantial restitution and forfeiture amounts imposed on defendants as a result of the aggregate harm caused. *See, e.g.*, *United States* v. *Ohle*, 441 F. App'x. 798, 2011 WL 4978442 (Oct. 20, 2011) (defendant convicted of tax/bank fraud conspiracy as well as tax evasion sentenced to 60 months in jail, restitution of $5,553,680, and forfeiture of $2,954,334); *United States* v. *Daugerdas*, 837 F.3d 212 (2d Cir. 2016) (defendant convicted of tax fraud conspiracy, tax evasion, IRS obstruction, and mail fraud sentenced to 180 months in jail, restitution of $371,006,397, and forfeiture of $164,737,500). The financial profiles presented by the defendants in these cases, however, indicated that they lacked the financial wherewithal to make full restitution, which led the sentencing courts not to impose fines.

The second category involves the relatively unusual large-scale criminal tax case where the defendant's financial picture makes clear that, in addition to full restitution, a fine could be

paid as well. *See United States* v. *Helmsley*, 941 F.3d 71 (2d Cir. 1991) (defendant convicted of tax fraud conspiracy, subscribing to false returns, assisting in the preparation of false returns, and mail fraud sentenced to four years in prison, restitution of $1,691,200, and a fine of $7,152,000).

In this case, Zukerman plainly falls into the latter category. Although Zukerman has caused over $37 million to be paid towards his restitution obligation, it is important to consider that the funds he used to make those payments originated from the defendant's companies, as a result of holdings maintained in the defendant's corporate structure or those of the Zukerman Family Trust. The critical point is that the funds did not come from the defendant's own pocket, nor will the interest and penalties due on the corporate aspects of the taxes due and owing (that is, from the SOC evasions). Accordingly, given the defendant's substantial assets, he is fully capable of paying a substantial fine, which, like in the *Helmsley* case, is entirely appropriate as a form of punishment.

Zukerman's contention (Mem. 49-50) that no fine is appropriate because he will be required to pay the outstanding taxes and interest (and perhaps penalties) rings hollow. His payment of back taxes simply makes the IRS whole with respect to liabilities that should have been satisfied on a timely basis. Likewise, the interest he must pay is simply a payment to the IRS of the time value of the monies Zukerman unlawfully kept in his pockets for years.

Finally, the fact that 90% of the offenders sharing a loss amount similar to Zukerman paid no fine at all (Mem. 49) is irrelevant. That statistic, standing alone, is hardly dispositive, as it says nothing about what percentage of those offenders had the ability to pay a substantial fine (as Zukerman clearly does). The statistic also says nothing about how many offenders were having over 95% of their restitution obligation satisfied by their corporate entities (as Zukerman

is doing here). In sum, Zukerman can pay a substantial fine and should be ordered to do so – through a substantial variance from the $25,000 to $250,000 Guidelines range. Zukerman should also be directed to pay the Bureau of Prisons for the full costs attendant to a period of incarceration.

B. The Appropriate Period of Incarceration

The Government submits that a sentence within the Stipulated Range will best serve the ends of justice pursuant to 18 U.S.C. § 3553(a). Such a sentence is also commensurate with others charged with the most serious and sustained tax and complex financial crimes.

Any argument or suggestion that the defendant has been punished enough by the loss of his reputation or occupational standing should be rejected. According to this logic, abundantly credentialed and well-heeled business executives should not be sent to jail for committing the same crime that would justify a sentence of imprisonment for a less well-heeled and well-educated defendant or one who enjoys a smaller standing in the community. We respectfully suggest that the Court should reject the notion that the professionally educated should be sentenced more lightly than the poor or powerless or less-effectively-represented because, for the former, the humiliation and shame of conviction alone is more devastating than it would be for those who have enjoyed fewer advantages in life.

We also respectfully submit that a substantial term of imprisonment is warranted for both general and specific deterrence reasons, would reflect the seriousness of Zukerman's fraudulent conduct, and would promote respect for the law. A professional contemplating the potential fruits of massive fraudulent conduct should see and know that a significant jail term is its likely consequence. A sentence like that suggested by Zukerman, on the other hand, would rightly be

perceived as a slap on the wrist and would serve to deter no one.

CONCLUSION

The orderly financial functioning of this country depends largely upon voluntary compliance with the internal revenue laws by all citizens, regardless of wealth or status. That system of voluntary compliance would crumble if businessmen who engage in sustained tax fraud schemes, through their corporate entities and otherwise, believed they could cheat with impunity or that the most severe sanctions that they would face when caught were merely the payment of financial penalties and community service – which Zukerman requests here.

Moreover, a meaningful term of imprisonment is indispensable in a case like this one, lest the massive fraud perpetrated by the defendant breed skepticism among honest taxpayers and lead them to ask, "Why follow the law if there are no meaningful consequences for flouting it?"

On the unique facts of this case – involving a defendant who engaged, while in his 60's and 70's, in a vast variety of tax fraud borne not of necessity but unmitigated greed – a sentence within the Stipulated Guidelines range is entirely appropriate and eminently just. In the parlance of the Guidelines, such a sentence would be sufficient but not greater than necessary to comply with the statutory imperatives of the sentencing statutes.

Dated: New York, New York
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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that this document, filed through ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and that paper copies will be sent to those indicated as non-registered participants on the above date.

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