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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH

STATE OF OREGON,)	
)	Trial Court
Plaintiff,)	Case No. 19CR33784
)	
vs.)	DA Case No. 2392923-1
)	
LORI E. DEVENY,)	DEFENDANT’S SENTENCING
)	MEMORANDUM
Defendant.)	

I. Summary of Defendant’s Position

Defendant, by her attorney, Wayne Mackeson, P.C., respectfully submits that the Court should impose a sentence essentially the same length as, and concurrent with, the sentence imposed on January 9, 2023, by the Honorable Michael W. Mosman in the case of *United States v. Lori E. Deveny*, United States District Court Case No. 3:19-cr-00183-MO.

II. The Federal Case

On June 27, 2022, Defendant pleaded guilty to Mail Fraud, Wire Fraud, Aggravated Identity Theft, Bank Fraud, Engaging in Monetary Transaction with Property Derived from Unspecified Unlawful Activity, and Filing a False Income Tax Return for the Calendar Year 2021, as charged in counts 1, 11, 13, 14, 15, 16, and 19 of the Indictment dated May 7, 2019.

On January 9, 2023, a sentencing hearing was held in the federal case and Defendant was committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total sentence of **101 months**.

The federal case encompasses *all* of the conduct that is the subject of the state case.

1 The federal Indictment alleges that “in or about April 2011, and continuing through
2 the date of this Indictment [i.e., May 7, 2019], Defendant “defrauded many of her clients by
3 systematically stealing funds from her IOLTA account ... that she held in trust for her clients.”
4 (Indictment, at page 3).

5 It is alleged, and Defendant has admitted, that she “used the funds she embezzled from
6 her clients to pay for the following: personal credit card and loan payments; numerous big
7 game hunting trips to Africa; taxidermy expenses for big game hunting trophies; numerous
8 other vacation trips; her husband’s photography business; remodeling her home; expensive
9 cigars; and other expenses associated with her¹ lavish lifestyle.” (Indictment, at page 5).

10 The parties have stipulated that the restitution ordered in the federal case includes all
11 the restitution that could otherwise have been ordered in the state case. Therefore, there is no
12 need to determine the amount of restitution or to order restitution in the state case.

13 In arriving at his sentence, Judge Mosman was required to consider the factors
14 specifically identified in 18 USC § 3553(a), to depart above or below the Federal Sentencing
15 Guidelines range if appropriate, *United States v. Christiansen*, 828 F3d 763, 815, 819 (9th Cir
16 2015), and to “impose a sentence sufficient, but not greater than necessary, to comply with the
17 purposes set forth” in the statute. *United States v. Rosales-Gonzales*, 801 F3d 1177, 1184 (9th
18 Cir 2015). Judge Mosman had broad authority to depart from the Federal Sentencing
19 Guidelines, provided that the sentence imposed was reasonable. *United States v. Christiansen*,
20 828 F3d at 819; *United States v. Mitchell*, 624 F3d 1023, 1030 (9th Cir 2010). Judge Mosman
21 was *not* bound by the parties’ sentencing recommendations or the Presentence Investigation
22 Report [hereinafter “PSR”]. (Government’s Sentencing Memorandum, pages 27-28.)

24 ¹ Defendant does take exception to the allegation that the stolen funds were used to pay for “expenses
25 associated with *her* lavish lifestyle.” (Emphasis added.) The evidence suggests that lifestyle supported by the stolen
26 funds was primarily that of her husband, Robert Deveny.

1 Essentially, in fashioning the sentence of 101 months, Judge Mosman considered the
2 nature and circumstances of the offenses as well as the Defendant’s history and characteristics,
3 taking into account the following factors:

- 4 – The seriousness of the offenses;
- 5 – Respect for the law;
- 6 – Just punishment for the offenses;
- 7 – Adequate deterrence to criminal conduct;
- 8 – Protection of the public from further crimes by the Defendant;
- 9 – Providing Defendant with needed training, care, and correctional treatment.

10 (Government’s Sentencing Memorandum, pages 30-31; Defendant’s Sentencing Memorandum,
11 page 2; *United States v. Carty*, 520 F3d 984, 991 (9th Cir 2008); 18 USC § 3553(a)(2).)

12 “It has been uniform and constant in the federal judicial tradition for the sentencing
13 judge to consider every convicted person as an individual and every case as a unique study in
14 the human failings that sometimes mitigate, sometimes magnify, the crime and the punishment
15 to ensure.” *Koon v. United States*, 518 US 81, 113, 116 SCt 2035, 135 LEd2d 392 (1996);
16 accord *Gall v. United States*, 552 US 38, 52, 128 SCt 586, 169 LEd2d 445 (2007).

17 18 USC § 3553(a) “contains an overarching provision instructing district courts to
18 ‘impose a sentence sufficient, but not greater than necessary,’ to accomplish the goals of
19 sentencing,” including the seriousness of the offense, respect for the law, just punishment,
20 deterrence, and the protection of the public. *Kimbrough v. United States*, 552 US 85, 101, 128
21 SCt 558, 169 LEd2d (2007). Accord *United States v. Booker*, 543 US 220, 245-46, 125 SCt
22 738, 160 LEd2d 621 (2005); *United States v. Nichols*, 464 F3d 1117, 1124-25 (9th Cir 2006).

23 “[T]he Supreme Court has consistently instructed that ‘the punishment should fit the
24 offender not merely the crime,’ and thus judges should use ‘the fullest information possible
25

1 concerning the defendant’s life and characteristics’ to determine the appropriate sentence.”
2 *United States v. Trujillo*, 713 F3d 1003, 1009-10 (9th Cir 2013) (citing *Pepper v. United States*,
3 562 US 476, 131 SCt 1229, 1235, 1240, 179 LEd2d 196 (2011) (quoting *Williams v. New York*,
4 337 US 241, 246-47, 69 SCt 1079, 93 LEd2d 1337 (1949))).

5 In the federal case, the Government recommended a prison sentence of 111 months.
6 (Government’s Sentencing Memorandum, page 30-31). Pursuant to the Federal Sentencing
7 Guidelines, the Government’s recommendation took into account the following factors:

- 8 – The Base Offense Level;
- 9 – Loss More than \$1,500,000;
- 10 – Ten or More Victims;
- 11 – Sophisticated Means;
- 12 – Money Laundering;
- 13 – Vulnerable Victim;
- 14 – Large Number of Vulnerable Victims
- 15 – Abuse of Position of Trust; and
- 16 – Defendant’s Acceptance of Responsibility.

17 (Government’s Sentencing Memorandum, pages 27-31; PSR, section 19.)

18 In the federal case, the defense recommended a prison sentence of 60 months.
19 (Defendant’s Sentencing Memorandum, page 3). In support thereof, the defense drew the
20 Court’s attention to the abuse Defendant suffered at the hands of Robert Deveny (which Judge
21 Mosman referred to as Defendant’s “life circumstances”) as well as to the sentences imposed in
22 other comparable cases. (*Id.*, pages 3-10; Transcript of Sentencing Hearing, pages 4, 9).

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Judge Mosman ruled as follows:

THE COURT: ... As I said, I have a guideline range in this case that is designed to produce roughly the kind of sentence a case like this should get compared to cases like it nationally. And so to come down from that, I need a reason to do so. I'm sure as I go through this analysis, there isn't any sentence that will make everybody happy. I am grateful for the testimony of the victims today, and I appreciate their input.

...

It's important but it's not a system where we just get to hear from the most wounded and hurt people in the room and impose that sentence. I have to look at what the -- what cases like this get nationally as one factor among several to think about. And I'm sure you appreciate that even what you want, you can't get it all. The victims want, for example, as I've heard, the maximum sentence possible and she pay back every dime. Those two don't go together very well, because the maximum sentence possible has her coming out when there's not much ability to pay back every dime. So I have to try to balance all those factors.

There are, as I've said, two reasons to think about a lower sentence than the one the government is asking for. One are these [comparable] cases. I mean, there's also a problem with local [comparables] since the guidelines are supposed to produce national averages, not local averages. We have a system of local averages, and then there's a word for that, 'non-uniform.' But they're important because in the District of Oregon, we've got to try to give the same kinds of people the same kinds of sentences for the same kinds of crimes whenever possible.

In my view, the [comparables] are not close enough to anchor me to those sentences. They're useful in a small way, but they certainly don't require a sentence in this case like those sentences, because there are significant differences, starting with the number of victims and the length of time the crime was being committed.

There is also then this life circumstance. That's probably not the right word. There's Ms. Deveny's marriage and its contribution to her committing this crime. I'll say at the outset that the story Ms. Deveny tells about this terrible marriage and the fact that it has her, as the psychological evaluation suggests, put her in the position, mental position common among abused women is well documented; it's not a made-up story. There are both psychological evaluations, eyewitness testimony, hospital records

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and the like backing up what is described here as a sort of thing that would make – well, that has historically across time made many women submit to things they otherwise wouldn't have done or submitted to. So I accept that.

There is a problem, however. Whenever there's a – whenever there's a mitigating fact, to say this fact justifies a lower sentence, I look for a tight connection between the harm that's being described, the problem that's being described and the commission of the crime. If the mitigating fact is poverty and the crime is theft, then you can see a tight connection between the poverty and the theft, the problem driving the crime. If the mitigating factor is poverty and the crime is, you know, murder, then there's less of a connection. You don't – the poverty is not driving the murder necessarily in many cases. So the one I most commonly see, for example, is addiction, and if the problem is addiction and the crime is drug use, then there's a tight connection.

Typically what we see from what I'll call the battered wife syndrome is a total retreat into isolation and the suffering of abuse, and it's the answer to the question why didn't she just leave. In other words, the harm is the battering. It's not a crime, but the result is staying around, putting up with things that you wouldn't otherwise in your healthiest version put up with. And that, of course, is true here. You ended up, Ms. Deveny, doing things that your healthiest self hated, you never would have done, and submitting to them repeatedly across time, on the idea that you had to to save the marriage, I guess.

My question today is is there a tight connection between that recitation of this terrible marriage and defrauding these people. And in my view, the connection is not there in much strength. It's not a very good -- it's a very good explanation for many things that went wrong in your life. It's not a very good explanation for defrauding these folks, for several reasons. One is that my own review of this record shows that your own behavior with these folks was more predatory than desperate. You may have been desperate to get you to this point, but by lying and cajoling and glad-handing and deceit, you were -- it was more calculating and predatory than desperate, in my own view, as I look at what happened here.

The second is that you were a more powerful woman than many who suffer what you suffered. It's true that this sort of abuse cuts across all personality profiles and socioeconomic classes, and it's true that you can be up to and including a very talented and powerful trial lawyer and still suffer these things, but you did

1 have more personal power to engage in confrontation and to
2 handle conflict and to chart a path to make different choices than
most people I'm familiar with who would get in your position.

3 The third we've discussed, and that is that this behavior
4 continued for a short period of time after your husband's death.
5 Now, I'm with Mr. Ahlemeyer, this story is just a simple
6 morality tale. It's not just an evil woman doing evil things
7 because she's evil, not at all. It's a complicated life story, and
the story of why you kept going with some of this after your
8 husband's death is bound up in all the reasons you did it before
9 his death, but it is important and telling to me that after his death,
10 you engaged in more of the same behavior.

11 The last I guess has to do with -- let me -- I want to try to explain
12 myself this way, that part of what we're saying is that when you
13 get in a relationship like this, the nature of the relationship causes
14 you to do things that you wouldn't otherwise do. The relationship
15 drives you to do things that you don't really want to do. But that
16 has a stopping point. I'm sure, as much as I can be, that if your
17 husband had come to you one day and said, 'Thank you for
stealing from these people; now I want you to torture a puppy in
18 my presence for my amusement,' something in you would have
19 said that's too far. Something still in you would have said, no,
20 I'm not going to cross that line.

21 What I'm trying to show by that hypothetical is that this
22 relationship drives us to cross lines, but the bigger the line, the
23 more our own power kind of rises up and the less we're forced to
24 do things we don't want to do. He could have got you -- he was
25 able to get you to defraud people. He couldn't have persuaded
you to murder somebody. What happens here is a long way from
murder, a very long way.

26 Here's my point. For all trial lawyers, stealing this money is a
very big line. It's a huge line driven into our heads from the very
beginning. So he didn't get you to cross a little line. He didn't
get you to shoplift or break traffic laws or violate your own
childhood upbringing by engaging in intimate activities that you
hated. Those were other lines. But this line, this was huge. This
was, like, okay, all of us know if you cross this line, you're going
to get disbarred and probably go to jail. So he drove you to cross
a bigger line, and your inner psyche had the capacity to rebel at
that.

The fifth reason I don't think this explanation reduces your
sentence by much is that it's been reduced somewhat already for
these very same things. I'm not denying any reduction, because
some has already been given.

1 In my own estimation, however, I think a modest reduction is
2 required by the nature of this relationship that turned Ms. Deveny
3 inside out, and so at least some of the moral responsibility for
4 this, her capacity to think that way was, on the record I have in
5 front of me, reduced to some degree by these things.

6 ...

7 THE COURT: I've considered the advisory guideline range and
8 these factors under Section 3553(a). I've selected a sentence that
9 addresses the nature and circumstances of this offense and your
10 own personal circumstances as best I can.

11 You shall pay restitution to the victims identified in the
12 presentence report in the total amount of \$4,558,889.28. Because
13 this amount is so large and your ability to earn it will be reduced
14 by the loss of your law degree, I will waive interest on it.

15 As to Counts 1, 11, 14, 16, and 19, the defendant is committed to
16 the Bureau of Prisons for confinement for a period of 77 months
17 on each count, but with the sentences on each count to be served
18 concurrently to each other.

19 As to Count 13, the defendant is committed to the Bureau of
20 Prisons for confinement for a period of 24 months, with a
21 sentence to be consecutive to the one I just imposed in the other
22 counts.

23 As to Count 15, you're committed to the Bureau of Prisons for
24 confinement for a period of 24 months, that sentence to be
25 concurrent with the sentences I've otherwise just imposed.
26 Concurrent, in other words, to Count 13.

Upon release from confinement, you'll serve a three-year term of
supervised release on Counts 1, 11, 14, 16, and 19, and a
one-year term of supervised release on Counts 13 and 15.

(Transcript of Sentencing Hearing, pages 20-27).

In sum, Judge Mosman had free rein to impose a sentence that was just and fair, taking into account the Federal Sentencing Guidelines, the factors identified in 18 USC § 3553(a), and the accompanying case law. After a thoughtful analysis of the facts and the applicable law, Judge Mosman determined that a prison sentence of 101 months was the appropriate sentence.

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Page 8 - DEFENDANT'S SENTENCING MEMORANDUM

1 **III. The State Case**

2 **A. Introduction**

3 The criminal conduct which formed the basis for the sentence imposed in the federal
4 case is the same as the conduct for which Defendant is being sentenced in the state case.
5 Indeed, the scope of the conduct in the federal case is broader than the conduct for which
6 Defendant is being sentenced in the state case inasmuch the federal case includes tax crimes.

7 Defendant has submitted for the Court's consideration the materials relating to the
8 federal case including the indictment, the plea petition, the sentencing memorandums, a partial
9 transcript of the sentencing hearing, and the judgment. The purpose for so doing is to inform
10 the Court of the full scope of all that was considered by Judge Mosman in imposing sentence.

11 **B. Defendant's Custodial Status**

12 Defendant appears before the Court already in federal custody. In other words,
13 Defendant has already begun to serve the federal sentence.

14 **C. The Agreement of the Parties**

15 The parties have agreed to jointly recommend that the Court should order that whatever
16 sentence imposed by the Court in the state case be served in federal custody, concurrently with
17 the sentence imposed by Judge Mosman in the federal case.

18 **D. Issue**

19 If the Court follows the recommendation of the parties, then the issue is:

20 Is there any fair, just and reasonable basis for ordering a sentence *longer* than that
21 imposed by Judge Mosman in the federal case? In other words, is there any fair, just, and
22 reasonable basis for ordering Defendant to serve additional time in State's custody after she
23 completes the service of her federal sentence?

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26 Page 9 - DEFENDANT'S SENTENCING MEMORANDUM

1 **E. Oregon Sentencing Principles**

2 Defendant respectfully submits that there is no appreciable difference between the law
3 that applies in a federal sentencing and that which applies in a state court proceeding. In other
4 words, for all practical purposes, the applicable principles are the same.

5 “Laws for the punishment of crime shall be founded on these principles: protection of
6 society, personal responsibility, accountability for one’s actions and reformation.” Oregon
7 Constitution, Article I, §15.

8 The Oregon Criminal Code, accordingly, is intended to secure “public safety by
9 preventing the commission of offenses through the *deterrent influence* of the sentences
10 authorized, the *correction and rehabilitation* of those convicted, and their confinement when
11 required in the interests of *public protection*.” ORS 161.025(1)(a) (emphasis added).

12 The penalties that the Code prescribes are to be “proportionate to the seriousness of
13 offenses” and to “permit recognition of differences in rehabilitation possibilities among
14 individual offenders,” while “safeguard[ing] offenders against excessive, disproportionate or
15 arbitrary punishment.” ORS 161.025(1)(f); ORS 161.025(1)(g).

16 “Inherent in the sound exercise of sentencing discretion is a trial court’s consideration
17 of the deterrent and rehabilitative effects of the sentence imposed for a particular offense and
18 offender.” *State v. Hval*, 174 Or App 164, 174, 25 P3d 958, *rev den*, 332 Or 559 (2001).

19 **F. Background**

20 Defendant is 57 years of age.

21 She was born in Redwood City, California. Defendant’s mother, who is retired and
22 lives in Arizona, was a nurse; her father, who passed away 12 years ago, ran an ice cream shop.
23 Defendant is an only child.

24 The family moved to the Springfield/Eugene area when Defendant was 7 years of age.

25 The family regularly attended the Nazarene Church.

1 In 1983, Defendant graduated from high school. She excelled at speech and debate.
2 She was the valedictorian of her class.

3 Defendant went to Northwest Nazarene College in Nampa, Idaho, graduating in 3 years.

4 In 1986, Defendant started at Willamette University College of Law. While there, she
5 met another student, Robert Deveny, who was 16 years her senior. At the time, he was in the
6 midst of a divorce, and had two daughters as a result of that marriage.

7 As described in greater detail in the psychological evaluations prepared by
8 C. Chyrelle Martin, PsyD, and Jennifer C. Johnson, PhD, Defendant viewed herself as
9 overweight and unattractive. She was never in a serious relationship prior to meeting Robert
10 Deveny. She had never been in a sexual relationship. Instead, Defendant had always focused
11 solely on academics and church activities.

12 Defendant was flattered by the attention Robert Deveny paid to her. She perceived him
13 as someone who was “out of her league.” He made her feel valued and special. She loved and
14 admired him. At the same, Robert Deveny was less than monogamous, shall we say, and
15 Defendant was insecure in her relationship with him. He began laying the foundation of what
16 would become constant manipulation of Defendant’s insecurities and emotions, and control
17 over her conduct. According to *Robert Deveny’s psychologist*, Constance Pederson, PhD, who
18 is referenced at pages 19-21 of Dr. Martin’s report, Robert Deveny “began the relationship with
19 [Defendant] because he could control her and enjoyed being a ‘teacher’ to a naive and sexually
20 inexperienced woman.” (*Id.* a 19.) Dr. Pederson “believed [Robert Deveny] ultimately stayed
21 in the relationship because [Defendant] financially (and otherwise) supported him.” (*Id.*)

22 In 1989, Robert Deveny and Defendant both graduated from law school and were both
23 admitted to the Oregon State Bar. They moved in together.

24 Between 1990 and 1992, Defendant worked as a public defender.

25 Between 1992 and 1997, Defendant worked for a civil law firm, representing plaintiffs

1 in personal injury lawsuits.

2 During this time, in 1993, Robert Deveny and Defendant got married.

3 In 1997, Defendant opened her own law practice, specializing in personal injury claims.

4 Between 1997 and 2002, Robert Deveny began exhibiting symptoms of a debilitating
5 depression that eventually led to his early retirement in approximately 2004, when he was
6 approximately 55 years of age. Whereupon, Robert Deveny took up various kinds of expensive
7 hobbies such as yearly big game hunting trips to Africa and began engaging in compulsive
8 behaviors such as buying photography equipment, ham radio gear, Rolex watches, cigars,
9 alcohol, comic books, radio control cars, stamps, cowboy boots, and firearms and ammunition.

10 After he stopped working, Robert Deveny isolated himself at home. "He displayed
11 memory problems as well as deeply suspicious thought process and behavior. He purchased
12 many guns and hid them around the house," as referenced at page 13 of Dr. Martin's report.

13 Robert Deveny "also began to spend increasing amounts of money," as referenced at
14 page 14 of Dr. Martin's report.

15 At pages 6 and 21-25 of the Government's Sentencing Memorandum, the government
16 makes reference to a number of activities in support of its "lavish lifestyle" argument such once
17 or twice yearly big game hunting safaris taken over a 17-year period of time to Africa and an
18 \$18,000 fishing trip to Wollaston Lake Lodge. It is noteworthy that Defendant went on only
19 five of the trips to Africa and that she did not go at all on the trip to Wollaston Lake Lodge;
20 nor did she go on any Princess cruises. Robert Deveny would go, often for weeks at a time, to
21 the "Palm Springs luxury nudist resort"; Defendant went on occasion and found it distasteful.

22 Regarding the \$125,000 home renovation referenced at page 22 of the Government's
23 Sentencing Memorandum, most of that money was spent on the addition of a cigar room.

24 According to paragraph 109a of the PSR, Defendant's residence has a relatively modest current
25 property value of \$534,470 (and a mortgage balance of \$351,499).

26 Page 12 - DEFENDANT'S SENTENCING MEMORANDUM

1 The bulk of the expenditures – safaris, nudist camps, travel, taxidermy expenses,
2 photography studio, fishing trips, cigars, guns, etc. – related to Robert Deveny’s proclivities.

3 As reflected at pages 15-16 of Dr. Johnson’s report, for a long time, Defendant drove
4 the same car, a Saturn, before buying and making payments on a used 2016 Cadillac SRX,
5 valued at \$20,466. (PSR, section 109a.) The RV referenced at page 22 of the Government’s
6 Sentencing Memorandum was exclusively used by Robert Deveny, as was a Jaguar automobile
7 not referenced in the Government’s memorandum.

8 It was an abusive relationship. Indeed, as described in greater detail in the psychological
9 evaluations prepared by Dr. Martin and Dr. Johnson, “much of their relationship was rape,”
10 although Defendant did not recognize Robert Deveny’s actions as such,” as referenced at pages
11 12 and 20 of Dr. Martin’s report. Physical injuries to Defendant caused by Robert Deveny
12 required multiple hospitalizations, as referenced at pages 12-13 and 16-18 of Dr. Martin’s
13 report. According to Dr. Martin,

14 “[Defendant’s] account is consistent with accounts I hear in years
15 of work with women survivors of domestic violence. It was also
16 consistent with her therapist’s report. It is possible, of course,
17 that she exaggerated stories of abuse in the hope that she would
18 gain sympathy and leniency in her legal situation. If that is the
19 case, her therapist’s concurrence with her account would be
20 surprising. Dr. Pederson, more so than [Defendant] herself,
21 painted [Robert] Deveny as an odious, selfish, and manipulative
22 individual who abused [Defendant] and used her in unpleasant
23 and repugnant ways.” (Report, at page 22).

24 The remaining question is to what degree, if any, does the abusive relationship explain
25 Defendant’s conduct? (Report, at page 22). To Judge Mosman’s way of thinking, “the
26 connection is not there in much strength.” (Transcript of Sentencing Hearing, page 23). In
27 Judge Mosman’s estimation, however, “a modest reduction [was] required by the nature of this
28 relationship that turned [Defendant] inside out, and so at least some of the moral responsibility
29 for this, her capacity to think that way was ... reduced to some degree by these things.”

30 Page 13 - DEFENDANT’S SENTENCING MEMORANDUM

1 (Transcript of Sentencing Hearing, page 25).

2 In Dr. Johnson's opinion, the types of psychological abuse as were inflicted on
3 Defendant by Robert Deveny "often serve as a way to diminish self-agency on the part of the
4 intended target, increasing their reliance on the partner and increasing control or the power
5 differential." (Report of Dr. Johnson, page 17.)

6 In Dr. Johnson's opinion,

7 "With regard to the allegation and behaviors related to the index
8 offenses, it is evident [Defendant] exhibited impulsive,
9 emotionally driven poor decision-making and shortsighted
10 problem-solving skills. It is entirely likely that [Defendant's]
11 behaviors were motivated by a desire to avoid being further
12 punished or targeted by her husband. She explained a belief that
13 the use of client funds would only be temporary, basing this on a
14 seemingly unlikely and naive hope or expectation that her
15 husband would eventually be satisfied. However, his spending
16 escalated and her behaviors of misappropriating funds to support
17 him and protect herself only escalated along with it. She
18 explained that she did not target specific clients or choose some
19 over others, and she hoped her clients would never endure
20 negative consequences as a result of her actions. More
21 specifically, she stated she expected to be able to make up the
22 funds before the funds were ever to be distributed, and her clients
23 would never know. Throughout her description of events, it was
24 clear [Defendant] avoided confronting her husband, avoided
25 ceasing her illegal behaviors, and avoided informing the police or
26 the Oregon State Bar about her behaviors. Therefore,
[Defendant's] descriptions of avoidance appear key in multiple
aspects related to the allegations. It is common of abuse victims
to experience avoidance or suppression as a primary coping
mechanism. More specifically, she explained that she began
misappropriating funds as a way to manage their finances so as to
avoid the negative over-reactions from her husband. She said it
would keep him happy and him from verbally or sexually
punishing her when she kept the money flowing for their
personal financial endeavors. [Defendant] also engaged in
avoidance in terms of not recognizing the extent of her financial
misappropriation (i.e., the amount of money she was
misappropriating) and the misuse of funds. Per her statements
both directly and indirectly, it appears that [Defendant] was
unaware of the extent of her misappropriation until well after her
husband's death. In her words, she was 'one foot in front of the
other' during the time period of the alleged illegal activities
without paying greater attention to the whole. This lack of

1 attention to detail and lack of recognition regarding the extent of
2 her behaviors in order to appease her husband is not surprising,
3 given her tendency to use avoidance as both a coping and
4 protective strategy. She wanted to deal with the funds as little as
5 possible, and by balancing the books or keeping track, she would
6 have to recognize the extent of the damage and confront the
7 illicit behaviors in which she had engaged.” (Report, pages 18-
8 19).

9 Defendant knew at the time that her conduct was improper and unethical, as referenced
10 at page 22 of Dr. Martin’s report and page 16 of Dr. Johnson’s report. She convinced herself
11 that she would be able to replenish the lawyer trust account with money earned in future cases,
12 but eventually it all overwhelmed her. She did not target individual clients. It is noteworthy
13 that while Defendant told numerous falsehoods to keep her clients at bay, she made no effort to
14 hide the financial transactions themselves, as reflected at page 15 of Dr. Johnson’s report.

15 Defendant now recognizes the extent of the damage she caused and she accepted full
16 and complete responsibility for her criminal conduct.

17 On May 24, 2018, Defendant submitted a Form B Resignation from the Bar.

18 On July 26, 2018, the Oregon Supreme Court accepted Defendant’s resignation.

19 On June 27, 2022, pursuant to a written plea agreement, Defendant entered pleas of
20 guilty to multiple crimes in the federal case.

21 On August 16, 2022, Defendant entered pleas of guilty to multiple crimes in the above-
22 entitled case.

23 Defendant has stipulated to total restitution in the sum of \$4,558,889.28 which includes
24 approximately \$3.885 million taken from clients. (Government’s Sentencing Memorandum,
25 pages 21-22, 26-27; PSR, sections 62-66).

26 **G. Argument**

The Court should impose a sentence essentially the same length as, and concurrent
with, the 101 month prison sentence imposed on January 9, 2023, by Judge Mosman in the case

1 of *United States v. Lori E. Deveny*, United States District Court Case No. 3:19-cr-00183-MO.

2 The sentence is substantially longer than the 60-month prison sentence for which the
3 defense argued. (Defendant’s Sentencing Memorandum, page 10.) The sentence is 10 months
4 shy of the 111-month prison sentence for which the government argued. (Government’s
5 Sentencing Memorandum, page 30.)

6 It is fair to say that the 10-month reduction from the government’s recommended
7 sentence represents the “modest reduction” of the sentence required, in Judge Mosman’s mind,
8 by the nature of the relationship between Defendant and her husband. (Transcript of
9 Sentencing Hearing, page 25).

10 It is noteworthy that the 101-month prison sentence imposed by Judge Mosman is
11 substantially *longer* than the sentences imposed in the two “comparable” cases cited by the
12 defense, *United States v. Nathan Wheeler*, Case No. 3:18-cr-00161-IM (51-month prison
13 sentence for a CPA who stole over \$4 million), and *United States v. Pamela Hediger*,
14 Case No. 3:18-cr-00459-BR (46-month prison sentence for a PI lawyer who stole \$1.9 million).
15 (Defendant’s Sentencing Memorandum, pages 8-9.)

16 In Judge Mosman’s mind, those two cases were “not close enough to anchor [the Court]
17 to those sentences. They’re useful in a small way, but they certainly don’t require a sentence in
18 this case like those sentences, because there are significant differences, starting with the
19 number of victims and the length of time the crime was being committed.” (Transcript of
20 Sentencing Hearing, page 21).

21 There is a third comparable case, one not cited by the defense, but equally analogous,
22 *United States v. Bryan Gruetter*, Case No. 6:13-cr-521-MC (63-month prison sentence for PI
23 lawyer who stole \$1.1 million from vulnerable client over 4-year period of time.)

24 In sum, given that the federal case includes, but is not limited to, all of the criminal at
25 issue in the state case, Defendants asks the Court to adopt Judge Mosman’s reasoning and to

1 impose a sentence essentially the same length as, and concurrent with, the 101 month prison
2 sentence imposed in the federal case.

3 **H. Comparable Cases**

4 The defense and the State have worked together to gather other Oregon cases that are,
5 to varying degree, analogous to the above-entitled case. Together, the parties assembled an
6 initial global list of 38 potentially relevant precedents. The parties then narrowed the list to the
7 20 that seemed best to track the case at hand, *i.e.*, a case involving multiple counts of theft by a
8 defendant with no (as here), or at least little, criminal history.² For those cases, the parties
9 collected and analyzed the accompanying police reports.

10 A sentence of 101 months places Defendant's punishment well beyond the upper end of
11 the sentences imposed upon the most closely analogous Oregon offenders.

12 According to the PSR, sections 62-66, investigators identified a total of 131 individual
13 victims (which includes the 36 victims identified in the above-entitled case) who suffered
14 losses totaling \$3,885,131. There was an additional \$52,620 owed in restitution to Wells Fargo
15 Bank and an additional \$621,137 owed to the IRS. Defendant stipulated to total restitution in
16 the sum of \$4,558,889.

17 The State contends that Defendant deserves a sentence harsher than that imposed by
18 Judge Mosman for a number of reasons, among them: Defendant abused a position of trust;
19 there are a large number of victims who were especially vulnerable; Defendant lived a "lavish
20 lifestyle"; and Defendant engaged in a course of criminal conduct over a number of years.

21
22 ² Where the parties diverged on the relevance of precedents, they attempted to find compromise: The state,
23 for instance, advocated for the inclusion of the *State v. Radmacher* and *State v. Culbertson*, despite the fact that both
24 involved defendants (unlike here) with substantial criminal histories. The defense agreed to the inclusion of these cases
25 in the set for analysis, but requested the inclusion as well of several Multnomah-specific precedents that in the defense
view case helpful light on Multnomah's approach to high-count aggravated thefts, even though they involved dollar
totals lower than in the instant offense. While the resultant list thus represents the outcome of an effort to compile for
the court a helpful cross-section of precedents, it can make no claim to perfection.

1 Defendant respectfully submits that, in imposing a prison sentence of **101 months**,
2 Judge Mosman took all of those factors into account. The sentence is *substantially* longer than
3 the sentences imposed in the three most analogous cases discussed *supra*.

4 Again, those three cases, all resolved by way of pleas of guilty, are as follows:

- 5 • ***State v. Hediger*** (Benton County, case no. 18CR52141) and ***United States v.***
6 ***Hediger*** (District of Oregon, case no. 3:18-cr-459). Personal-injury attorney
7 Pamela Hediger stole approximately \$2 million from vulnerable clients and
8 from her firm in a string of criminal activity spanning the years 2011 to 2017.
9 The State's charges included Aggravated Theft in the First Degree, Theft in the
10 First Degree, and Identity Theft. Hediger had spent the money on, *inter alia*,
11 luxury vacations and plastic surgery. She received a sentence of **46 months** in
12 her federal case, with 24 months in the state case to be served concurrently.
- 13 • ***United States v. Gruetter*** (D Or, case no. 6:13-cr-521). Personal-injury attorney
14 Bryan Gruetter stole approximately \$1.1 million from vulnerable clients over
15 the period spanning from 2008 to 2012. He received a sentence of **63 months** in
16 his federal case. While the Deschutes County District Attorney was involved in
17 the investigation, no state charges were filed.
- 18 • ***United States v. Wheeler*** (D Or, case no. 3:18-cr-161). CPA Nathan Wheeler
19 stole more than \$4.4 million from clients between 2010 to 2015. His victims
20 included two minor children who had recently lost their father, and who sought
21 access to their money to cover routine expenses like braces. Many others of his
22 victims were retirees, who entrusted to him the entirety of their life savings. He
23 had spent the stolen money at strip clubs, at restaurants, and on expenses for his
24 marijuana grow operation. He received a sentence of **51 months** in his federal
25 case. It appears that no state charges were filed.

1 The three cases described above are the closest analogies to the instant prosecution that
2 the defense has identified: in each, the defendant was an Oregon professional who abused a
3 position of trust to misappropriate over the course of multiple years more than a million dollars
4 in client funds entrusted to his or her safekeeping; in each, the thefts totaled over a million
5 dollars (and in Wheeler's case, far over); in each, the clients were vulnerable, reliant on the
6 defendant's honesty and fair dealing; and in none did the defendant have a prior criminal
7 history. In two of the three prosecutions, the state actively joined the federal government in
8 investigating the offenses, thus having the opportunity to ensure that the outcome satisfied
9 Oregon's sentencing priorities. In all, sentences ranging from 46 to 63 months, and subject to
10 good-time-credit reductions, were deemed sufficient punishment for the criminal conduct.

11 If one were to cast a wider net over Oregon multi-count aggravated theft cases, the
12 analysis remains similar. A survey of Oregon state prosecutions yielding ten or more convicted
13 counts of aggravated theft³ necessarily draws in cases that diverge from this one: defendants in

14 ³ The selection of ten counts of aggravated-theft conviction as a threshold is admittedly arbitrary; but the hope
15 was to identify therein a set of cases in which other sentencing courts have answered a question similar to that posed
16 here, to wit: faced with a continuing course of serious thefts, and thus licensed to impose a potentially enormous prison
term of consecutive sentences, what is the appropriate sentencing range?

17 To identify these cases, the defense reached out to the records department at the Oregon Department of
18 Corrections, requesting a search for offenders that are or have been in DOC custody on such convictions. (Note that
19 this approach misses pre-Measure-57 cases in which a sentence of probation was imposed; and indeed, it inadvertently
20 captured one such case—that of Deanna Freauff, in Multnomah County—only because a prison term was imposed on
21 probation revocation.) On receipt of DOC's response, the defense then screened out instances in which counts of
22 aggravated theft conviction reached ten only via DOC's aggregation of separate prosecutions involving a single
23 offender; and for consistency, the defense likewise screened out two instances in which DOC's records reflected the
24 requisite ten counts but further inquiry via OJCIN revealed the actual number to have been just nine.

25 The state likewise made an effort to collect data that might shed light on an appropriate sentence, in light of
26 past sentencing decisions. The criteria that the state included in its query to the Criminal Justice Commission are
unknown to the defense. That query, however, returned a list of some 22 cases, of which 8 also appeared on the
defense's spreadsheet. On further inquiry, the defense found that the remaining 14 state cases involved fewer counts
of aggravated theft conviction—indeed some just one, two, or three counts. As those cases are thus less clearly
analogous to the instant matter, they remain excluded from the defense's Exhibit B.

That said, it is worth note that an analysis of the combined state and defense lists reveals that of 36 cases

1 positions of lesser trust; victims who suffered dissimilar losses. All are alike, however, in the
2 respect that in each, the defendant engaged in a protracted course of serious thefts, distinct
3 from one another yet sufficiently similar to merit joinder in a single prosecution; and that in
4 each, the state accordingly charged and won convictions on a large number of aggravated theft
5 counts. With that likeness in mind, it is instructive that in 14 of 18 such cases that the defense
6 has identified, the as-served sentences⁴ of these prolific offenders fell under eight years (96
7 months)—in many instances, far under. Their median sentence is **56.9 months** and their mean
8 is **68.8 months**. The cases are summarized in Exhibit B.⁵

9 A sentence of 101 months puts this case in the heartland of sentences meted out to
10 similarly situated Oregonians. In terms of the actual time served, approximately 81 months,
11 it would be well above both the median and mean sentences summarized on Exhibit B. Indeed,
12 the actual amount of time to be served by Defendant in the federal system is longer, i.e.,
13 approximately 88 months.

14 **IV. Conclusion**

15 For all of the foregoing reasons, defense counsel respectfully submits that a sentence
16 of 101 months, concurrent with the federal sentence, and with eligibility for good-time credit,
17 would be a sentence that is sufficient, but not greater than necessary, to accomplish the goals of

18 _____
19 identified, just six had as-served sentences in excess of 96 months; and of these six, three involved defendants with
20 substantial property-offense criminal histories. Moreover, taking a purely mathematical approach, the median as-served
sentence of the combined set of cases is 73 months; the mean is 78 months.

21 ⁴ In the state system, an inmate can earn up to a 20% reduction of the sentence imposed by the Court.
22 ORS 421.121(2); OAR 291-097-0200. In the federal system, an inmate can earn a reduction of up to 54 days per year.
23 Under 18 U.S.C. § 3624, federal prisoners can earn good time credit for “good behavior” in prison, defined as
24 “exemplary compliance with” BOP rules. Inasmuch as the potential 54-day reduction is calculated at the end of each
year of imprisonment, the reduction actually works out to be a maximum of 47 days of good time for each year of the
sentence imposed by the Court. On a sentence of 101 months, *roughly calculated*, Defendant will serve approximately
88 months in federal custody

25 ⁵ Exhibit A has been deleted.

26 Page 20 - DEFENDANT’S SENTENCING MEMORANDUM

1 sentencing, including the gravity and seriousness of the offenses, respect for the law, just
2 punishment, deterrence, and the protection of the public. It would take into account not only
3 the nature and circumstances of the offenses, but also Defendant's unique history and personal
4 life circumstances. It would be in the heartland of the sentences imposed upon other similarly-
5 situated defendants.

6 With a vengeance, the State has pursued this case for one reason, and one reason only:
7 Punishment. In the State's view, Judge Mosman got it wrong. In its view, Defendant deserves
8 more punishment than 8 years, 5 months, in prison. In its view, when Defendant comes out of
9 federal prison, at 65 years of age, she should be required to come back and serve more prison
10 time in the state system. In our view, Judge Mosman carefully considered all of the competing
11 factors in arriving at a just, fair, and reasonable sentence.

12 DATED this 18th day of January, 2023.

13 WAYNE MACKESON, P.C.
14 Attorneys at Law

15 

16 _____
17 Wayne Mackeson
18 OSB No. 823269
19 Attorney for Defendant
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CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing DEFENDANT’S SENTENCING MEMORANDUM on Mr. Healy via e-mail and e-filing:

SCOTT P. HEALY
First Assistant District Attorney
Office of the Clackamas County District Attorney
Clackamas County Courthouse
807 Main Street, Room 7
Oregon City, OR 97045
scotthea@clackamas.us

DATED this 18th day of January, 2023.

WAYNE MACKESON, P.C.
Attorneys at Law



Wayne Mackeson
OSB No. 823269
Attorney for Defendant

Sentencing Analogues

Oregon State-Court Convictions on Ten or More Counts of Aggravated Theft

County	Judge	Defendant	Case No.	Sentence Served	Sentence Imposed	Agg Theft Counts Convicted	Total Counts Convicted	Total Counts Charged	Crim History	Restitution	Notes
Lane	Carp	Jones, Leanna	200019407	12.6	13.0	12	12	24	unknown	\$ 30,000.00	
Multnomah	McShane	Freauff, Deana	090632308	24.0	Probation	14	15	17	none	\$ 269,748.74	Employee embezzlement; probation revoked after new 2014 Clatsop agg theft convictions
Multnomah	You	Powers-Martine, Sarenda	110833435	30.0	38.0	11	11	11	G	\$ 179,779.76	
Linn	McHill	Gray, Randy	11081487	36.0	36.0	16	16	33	none	\$ 2,782,225.77	Investment advisor. deceiving vulnerable investors; new trial pending following defense appeal
Multnomah	Bloch	Slover, Julie	100833071	42.2	48.0	10	10	10	none	\$ 421,110.84	
Clackamas	Jones	Radcliff-Drall, Deborah	CR0900350	45.4	57.0	11	11	11	none	\$ 238,724.73	Former Rite-Aid fleet manager and his wife scam Ride-Aid out of more the \$400,000 over nine years
Multnomah	Baldwin	Alex, Dorothy	060331338	55.8	unknown	27	27	27	E	\$ 318,128.03	

Sentencing Analogues

Oregon State-Court Convictions on Ten or More Counts of Aggravated Theft

County	Judge	Defendant	Case No.	Sentence Served	Sentence Imposed	Agg Theft Counts Convicted	Total Counts Convicted	Total Counts Charged	Crim History	Restitution	Notes
Clackamas	Jones	Dralle, Ricky	CR0900351	55.9	72.0	11	11	11	none	\$ 238,724.73	Former Rite-Aid fleet manager and his wife scam Ride-Aid out of more the \$400,000 over nine years
Washington	Kohl	Spencer-Wolff, Daniel	C040533CR	56.8	57.0	10	10	20	unknown	\$ 286,000.00	
Multnomah	You	Sundquist, Lisa	110531991	57.0	57.0	13	13	13	none	\$ 250,502.50	Employee embezzlement at a medical practice
Union	West	Weise, Pauline	F17705	58.3	82.0	13	34	34	unknown	\$ 232,000.00	
Washington	Kohl	Savastano, Tiffany	C081586CR	60.8	76.0	10	16	16	none	\$ 229,804.00	Total of \$450,000 embezzled from winery: second case in Deschutes (2 cts agg theft) also in 2008
Clackamas	Maurer	Magkamit, Elma	CR0600683	73.6	101.0	52	57	114	none	\$ 1,867,385.00	57 acts of embezzlement while in position of trust as West Linn's finance director
Clackamas	Rastetter	Rowley Butcher, Pamela	CR0701559	93.6	126.0	10	11	65	none	\$ 1,686,749.25	915 acts of theft totaling \$1.9M while in position of trust as Estacada Rural Fire District CFO

Sentencing Analogues

Oregon State-Court Convictions on Ten or More Counts of Aggravated Theft

County	Judge	Defendant	Case No.	Sentence Served	Sentence Imposed	Agg Theft Counts Convicted	Total Counts Convicted	Total Counts Charged	Crim History	Restitution	Notes
Lane	Rasmussen	Harris, Doris	201019444	121.8	180.0	57	68	68	none	\$ 1,276,843.37	Bookkeeper embezzles \$1.5M over six yrs from her employer of four decades
Lane	Rasmussen	Thaut, Dennis	200909024	129.8	180.0	17	17	17	none	\$ 2,693,620.75	Financial advisor constructs Ponzi scheme, deceiving mostly elderly clients from 1993 (perhaps back to 1988)
Lane	Rasmussen	Nissen, Shannon	200111064	136.8	168.0	17	17	22	none	\$ 1,050,000.00	
Lane	Vogt	Monfore, Victoria	200926159	147.2	184.0	53	84	88	none	\$ 1,563,153.22	Bookkeeper embezzles over many yrs. putting 85 people out of work; resentenced from 24 to 15 yrs after PCR