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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION
12

13 UNITED STATES OF AMERICA,) CASE NO. CR 18-533 RS
14 Plaintiff,)
15 v.) GOVERNMENT’S SENTENCING
16 HAKOB KOJOYAN,) MEMORANDUM
17 Defendant.)
18

19 Americans living with serious illnesses trust that the medications keeping them alive are safe.
20 Modern pharmaceutical science has delivered near-miraculous treatments, which is demonstrated every
21 day as new vaccines are rolled out to end a grueling pandemic. In order to ensure the safety of
22 prescription medications, statutory enactments like the Prescription Drug Marketing Act and the Drug
23 Supply Chain Security Act establish a variety of safeguards that ensure patients receive authentic,
24 effective, and well-maintained prescription medications. Among other things, Congress required that
25 prescription drug wholesale distributors be licensed by the state in which they operate, which in turn
26 subjects those distributors to further supervision by state regulators. Congress also required that
27 participants in the supply chain provide their customers with accurate documentation proving the
28

1 legitimate origin of their supply.¹ These requirements help deter the development of a black market for
2 prescription drugs, in which medications of unknown provenance and efficacy are sold as legitimate,
3 highly regulated medications.

4 Defendant Kojoyan and his co-defendants evaded these requirements and placed untold numbers
5 of sick Americans at risk. As outlined in the Presentence Report and the plea agreement, Kojoyan and
6 others sold black-market prescription drugs to unsuspecting customers. He and the other defendants
7 “borrowed” the identity of a licensed prescription drug wholesaler and used that identity to launder
8 millions of dollars’ worth of purported brand name pharmaceuticals, all of which were untraceable and
9 of unknown efficacy. Kojoyan also assisted in establishing a misleading set of financial records to
10 corroborate the scam, in which bank accounts were opened under the apparent name of the “borrowed”
11 distributor, and the conspiracy’s profits were routed through those accounts to create the appearance of a
12 legitimate supply chain.

13 Based on the risk of harm to patients, combined with the profits generated by the scheme and
14 accounted for in the Guidelines, the government recommends a sentence of 33 months in custody, which
15 is roughly in the middle of the applicable range.

16 I. FACTS

17 For more than a year, Defendant Kojoyan participated in a large-scale scheme to distribute
18 illegally obtained prescription drugs to unsuspecting purchasers. Plea Agreement ¶ 2. Kojoyan and co-
19 defendant Ovasapyan used a Pennsylvania limited liability company called Mainspring Distribution
20 LLC (“Mainspring”) as cover for the scheme. *Id.* While Mainspring was licensed by Pennsylvania as a
21 prescription drug wholesaler, it obtained its prescription drugs from unlicensed sources in California and
22 lied to its customers about the origin of its products. *Id.*; Presentence Report (“PSR”) ¶¶ 13-14. Indeed,
23 Kojoyan himself supplied prescription drugs to the enterprise, even though he was not licensed to do so.

25 ¹ In order to combat prescription drug diversion, Congress has mandated that wholesalers
26 provide their customers with detailed information about the drugs they sell, including the transaction
27 history tracing the drugs back to the manufacturer. For example, 21 U.S.C. § 360eee-1(c)(1)(A)
28 provides that “[a] wholesale distributor shall not accept ownership of a product unless the previous
owner prior to, or at the time of, the transaction provides the transaction history, transaction information,
and a transaction statement for the product.” Definitions for the required documentation can be found at
21 U.S.C. §§ 360eee(25) to 360eee(27).

1 Plea Agreement ¶ 2. Kojoyan knew at the time that it was illegal to sell such drugs without a license,
2 and he knew that the drugs he provided would be resold to other customers. *Id.* Kojoyan and his co-
3 defendants did not deal in low-cost generic drugs, but rather specialized in name-brand prescription
4 drugs used to treat HIV, such as Atripla. Plea Agreement, ¶ 2. Publicly available records indicate that
5 bottles of Atripla retail for between two and three thousand dollars, and other brand-name HIV
6 medications are similarly expensive.²

7 Kojoyan and his co-defendants were aware of the relevant federal regulations—regulations
8 designed to protect vulnerable patients—and they worked assiduously to evade them. As detailed in the
9 plea agreement, the defendants stole the identity of a licensed supplier and prepared false paperwork
10 suggesting that their drugs came from that licensed source. Plea Agreement ¶ 2. In order to corroborate
11 this lie, Kojoyan and others opened bank accounts in names misleadingly similar to the licensed
12 supplier, and they routed the proceeds from the fraud through those accounts in order to mimic the
13 appearance of a legitimate supply chain. *See* PSR ¶¶ 11, 20, 23. The defendants also created a dummy
14 website and email domain that were misleadingly similar to the name of the licensed supplier in order to
15 further corroborate the lie that their drugs were legitimate. *Id.* ¶ 14. Kojoyan and his confederates were
16 so diligent in maintaining this illusion that they monitored the licensure status of the licensed supplier,
17 knowing that if that license lapsed their supply might be questioned. *Id.* ¶¶ 25-27.

18 Bank accounts under the control of Defendant Kojoyan received approximately \$2.2 million
19 from accounts associated with Mainspring. PSR ¶ 38. Much of that money was then laundered and
20 returned to the co-conspirators as proceeds. Some of Kojoyan’s earnings from the scheme were invested
21 in property, which he has agreed to forfeit and which is the subject of a pending Application for a final
22 order of forfeiture. *See* Docket No. 155.

23 **II. SENTENCING GUIDELINES**

24 The government concurs with Probation’s calculation of the Guidelines. The government agrees
25 that the Total Offense Level is 19, with a Criminal History Category of I, yielding a range of 30-37
26 months.

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28 ² Rachel Nall, *The Cost of HIV Treatment*, HEALTHLINE (April 24, 2020),
<https://www.healthline.com/health/hiv-aids/cost-of-treatment#current-drug-costs>.

1 III. SENTENCING FACTORS UNDER SECTION 3553(a)

2 The Court must impose a sentence sufficient, but not greater than necessary, to reflect the
3 seriousness of the offense, deter others from committing similar crimes, protect the public from the
4 defendant, and rehabilitate the defendant. 18 U.S.C. § 3553(a)(2); *United States v. Carty*, 520 F.3d 984,
5 991 (9th Cir. 2008). The statute sets forth several factors that the Court must consider in determining a
6 just sentence: (1) the nature and circumstances of the offense and the defendant’s history and
7 characteristics; (2) the purposes of sentencing; (3) the kinds of sentences available; (4) the Guidelines
8 range for sentences; (5) any pertinent policy statements; (6) the need to avoid unwarranted sentencing
9 disparities and the need to provide restitution to any victims of the offense. 18 U.S.C. § 3553(a); *Carty*,
10 520 F.3d at 991. The Guidelines should be the starting point and the initial benchmark. *Gall v. United*
11 *States*, 552 U.S. 38, 49 (2007). Though the guidelines are not binding, they “reflect a rough
12 approximation of sentences that might achieve section 3553(a)’s objectives.” *Rita v. United States*, 551
13 U.S. 338, 350 (2007).

14 IV. SENTENCING RECOMMENDATION

15 Defendant Kojoyan and his co-conspirators gambled with the health of sick Americans. While
16 the Guidelines in this case are driving by the money flowing through certain bank accounts, the risk
17 posed by the crime is not quantifiable in dollars and cents. Sick patients filled prescriptions intended to
18 keep them alive—prescriptions that in some instances cost thousands of dollars to fulfill—and nobody
19 knows what was in those bottles. That is because Defendant’s crime evaded the tracking system put in
20 place by Congress to bring confidence into the prescription drug supply chain. Congress has mandated
21 that drug wholesalers provide documentation tracing the prescription drugs back to the manufacturer.
22 While Defendant made some effort to confirm the contents of the bottles he supplied by weighing them,
23 *see* PSR ¶ 17, he was aware that the black market gave cover for suppliers to re-label bottles of drugs for
24 something more expensive, and that a bottle acquired on the black market might contain “candy” instead
25 of drugs, *see id.*

26 Prescription drug diversion is a tempting crime precisely because the profit margins are
27 potentially enormous. Drugs can be purchased from street dealers, closed-door pharmacies, corrupt
28 hospital employees, and others for pennies on the dollar. If the drugs can then be re-sold into the

1 regulated marketplace at the market price, the potential profit is enormous. This is particularly true for
2 name-brand, patented HIV medications. As noted above, these life-saving medications often cost
3 thousands of dollars *per bottle*. The crime causes two distinct societal harms:

4 *First*, Congress's efforts to ensure a safe and reliable prescription drug supply are undermined.
5 Diverted drugs come from sources unknown to regulators, and requirements that drugs be protected
6 from tampering, stored properly, and traceable back to the manufacturer cannot be enforced. Tampering
7 is an enormous concern, because the available profit gives an incentive to repackage or re-label pills to
8 make them more valuable. Expired prescription drugs can be relabeled and made to appear current. A
9 bottle of HIV drugs with a list price of \$1000 a bottle can be refilled with over-the-counter allergy
10 medicine. In a diverted marketplace, there is no regulator on the scene to combat these efforts.
11 Companies like Mainspring are established in order to provide an outlet for this underground market,
12 and the ultimate victims are the patients. Patients trust that the medications they purchase are legitimate
13 and subject to oversight. A typical patient does not think to question that drugs she purchases are, in
14 fact, the drugs listed on the label. Kojoyan exploited that trust for profit.

15 *Second*, a likely source of at least a portion of the diverted drug supply is some form of fraud.
16 The prescription drug marketplace is highly regulated and prices are inelastic. The profit motive that
17 sustains drug diversion requires that the drugs be purchased at prices dramatically lower than wholesale
18 cost, which is only possible if the source is not charging list price. One way this happens is insurance
19 fraud, in which a pharmacy bills an insurance company (or a government-funded program) for
20 dispensing a drug, while in reality selling the drug out the backdoor of the pharmacy, in effect getting
21 paid twice for the same supply.

22 To be clear, Defendant Kojoyan has not been accused of repackaging pill bottles himself, but his
23 conduct sustained and encouraged the misconduct of others. The marketplace for diverted
24 pharmaceuticals is premised on such misconduct. Just as Kojoyan did not provide accurate transaction
25 histories to his customers, he was unlikely to require them of his suppliers. The drugs he trafficked in
26 are untraceable and patients would have no way of ensuring their safety.

27 In light of these harms and the scale and sophistication of Kojoyan's operation, the government

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