

1 E. MARTIN ESTRADA
 United States Attorney
 2 MACK E. JENKINS
 Assistant United States Attorney
 3 Chief, Criminal Division
 SCOTT PAETTY (Cal. Bar No. 274719)
 4 Assistant United States Attorney
 Deputy Chief, Major Frauds Section
 5 ALI MOGHADDAS (Cal. Bar No. 305654)
 Assistant United States Attorney
 6 Major Frauds Section
 1100 United States Courthouse
 7 312 North Spring Street
 Los Angeles, California 90012
 8 Telephone: (213) 894-6527/1786
 Facsimile: (213) 894-6269
 9 E-mail: scott.paetty/ali.moghaddas@usdoj.gov

10 Attorneys for Plaintiff
 UNITED STATES OF AMERICA

11 UNITED STATES DISTRICT COURT
 12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 UNITED STATES OF AMERICA,
 14 Plaintiff,
 15 v.
 16 THOMAS VINCENT GIRARDI, and
 17 CHRISTOPHER KAZUO KAMON,
 18 Defendants.

No. CR 23-00047-JLS-1
GOVERNMENT'S OPPOSITION TO
DEFENDANT THOMAS VINCENT GIRARDI'S
MOTION FOR ORDER FINDING
INCOMPETENCY; EXHIBITS 1-28
 Hearing Date: August 23, 2023
 Hearing Time: 8:30 a.m.
 Location: Courtroom of the
 Honorable Josephine L. Staton

21 Plaintiff United States of America, by and through its counsel
 22 of record, the United States Attorney for the Central District of
 23 California and Assistant United States Attorneys Scott Paetty and Ali
 24 Moghaddas, hereby files its opposition to defendant Thomas Vincent
 25 Girardi's motion for order finding incompetency.

26 //
 27 //
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

After decades of lying to clients and misappropriating millions of dollars from Girardi Keese ("GK") trust accounts, defendant Thomas Vincent Girardi's house of cards came crashing down at the end of 2020 when he and others at GK were sued by several clients alleging the theft of millions of dollars from their settlement funds. When news broke, other creditors, including additional clients who had likewise not received their settlements, also filed suit. As the pressure mounted from these multiple civil lawsuits, GK was forced into involuntary bankruptcy by mid-December 2020. Facing an avalanche of civil liability and potential criminal exposure, defendant's response shifted from the facts of his alleged wrongdoing to his purported diminished mental state. Less than one month after the bankruptcy proceedings were initiated, and criminal and State Bar referrals were made by federal and state judges, defendant's brother filed a petition in Los Angeles Superior Court to have a conservator appointed, alleging that defendant could no longer care for himself or his estate. Without the benefit of any adversarial testing, the petition was subsequently granted mere months later.

Now, after being criminally indicted for his yearslong scheme, defendant attempts to avoid being held to account for his conduct by petitioning this Court to find him incompetent to stand trial. However, despite defendant's asserted incompetence, evidence of his normal routine immediately leading up to the demise of GK -- years after defendant claims his purported mental competency issues began -- demonstrates that his instant "symptoms" are exaggerated - an

1 artfully constructed self-serving portrait of a figure purportedly
2 so diminished as to be beyond the legal system's reach. Indeed, in
3 the months leading up to defendant's conservatorship, he went to his
4 law firm nearly every day and worked on multiple cases, negotiated
5 loans to keep GK afloat, sat for multiple depositions and
6 interviews, and even moderated a panel discussion with other
7 attorneys sponsored by the Consumer Attorneys of California. Only
8 after defendant's creditors started closing in, when an escape hatch
9 was needed most, was the issue of defendant's mental competency
10 first raised.

11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]

21 [REDACTED] His purposeful manipulation of
22 these proceedings to avoid the consequences of a trial in this
23 matter directly demonstrate how cunning and capable he truly is.

24 Based on evidence contained in the expert reports filed by both
25 parties in this matter, and evidence and testimony adduced at the
26

27 _____
28 ¹ [REDACTED]

1 forthcoming competency hearing, the government will show, by a
2 preponderance of the evidence, that defendant is presently competent
3 to stand trial.

4 **II. FACTUAL AND PROCEDURAL BACKGROUND**

5 **A. Relevant Facts**

6 1. GK's Financial Decline in 2019-2020

7 Before its downfall, GK was one of the preeminent plaintiff's
8 law firms in the country. With defendant at its helm, the firm
9 secured numerous verdicts and settlements worth hundreds of millions
10 of dollars. Defendant held out himself and the law firm he
11 captained as successful and first-rate. In fact, defendant and
12 others at GK were secretly stealing millions from client trust
13 accounts and lying to clients thereafter to cover it up. While
14 defendant's thefts of client settlement funds spanned decades, he
15 was able to conceal his fraud and lull his client-victims through
16 Ponzi-like payments from other money streaming into the firm.
17 However, in 2019 and 2020, GK's bank accounts began to dry up as
18 settlements substantially slowed. By March 2019, GK had less than
19 \$200,000 in one of its two operating accounts, and a negative
20 balance in the other. Worse yet, clients who were not receiving
21 funds from their settlements began to threaten defendant with
22 lawsuits and/or reporting him to the State Bar. To hold them at
23 bay, beginning in 2019 defendant began selling off his personal
24 assets, including tens of millions of dollars in his investment
25 accounts and his \$10 million ownership stake in a local casino.
26 (See Exhibits 1 and 2 attached hereto.)² But that was not enough to
27

28 ² "Exhibit" refers to exhibits attached to this opposition.
"Ex." refers to exhibits attached to defendant's motion.

1 satisfy his creditors or prevent further legal action against
2 defendant and GK.

3 2. COVID-19 Pandemic and Lion Air Lawsuit

4 Once the COVID-19 pandemic shut down the courts and effectively
5 halted all litigation, including settlements, the spigot of incoming
6 cash was virtually shut off. During the pandemic, defendant came
7 into the office every day and urged his staff to do the same.
8 Acutely aware of his mounting financial troubles, in a September
9 2020 memo, defendant told his staff:

10 Unfortunately, the "working at home" is not working. Our
11 income has been reduced by 90%. Therefore, you have to
12 come back to work in the office. . . .

13 We have to come back to the office and start settling all
14 of the smaller cases (up to \$200,000.00). The larger cases
15 will have to wait for the courts to reopen.

16 (Exhibit 3.) The next month, defendant circulated another
17 memo, telling staff how "devastating" the pandemic was to the firm's
18 finances, reducing income from \$45-55 million the previous year to
19 less than \$3.5 million. (Exhibit 4.) "Obviously, this has been a
20 massively difficult time for me if you are going to continue to work
21 from home." (Id.) Nevertheless, defendant's problems continued to
22 mount.

23 By December 2020, after months of empty promises, co-counsel in
24 the Lion Air plane crash case, Edelson PC, publicly filed a civil
25 RICO lawsuit against defendant and others at GK. The lawsuit, and
26 subsequent criminal indictment in the Northern District of Illinois,
27 alleges that in early 2020, GK successfully negotiated approximately
28 \$11 million in settlements for the families of victims killed in the
Lion Air plane crash. Edelson PC v. Girardi et al., Case No. 20-CV-

1 7115 (N.D. Ill.), Dkt 1; United States v. Girardi, et al., Case No.
2 23-CR-54 (N.D. Ill.), Dkt. 1. As alleged in the lawsuit and
3 indictment, after GK received the settlement funds directly into its
4 trust account, defendant immediately began to misappropriate the
5 money for improper purposes including paying firm expenses and AMEX
6 charges and paying other clients whose monies had been previously
7 misappropriated, including victims underlying the allegations in the
8 instant criminal matter. (Id. at 5.)

9 As further alleged, in order to lull the Lion Air victims and
10 keep them from reporting defendant's misconduct, defendant made
11 numerous false misrepresentations to buy himself more time. For
12 example, in May 2020 -- after GK had already received all of the
13 settlement funds -- defendant authored a letter in which he falsely
14 told a victim that Boeing had given him "special authorization to
15 distribute 50%" and that the "balance will be done within 30 days."
16 (Exhibit 5.) A month later, in June 2020, defendant wrote to
17 another Lion Air victim that "[t]here are some serious issues" and
18 that he "need[s] two more weeks. I will insist that, at least, we
19 get the interest in two weeks if I cannot resolve it." (Exhibit 6.)

20 Two days after the Lion Air victims and Edelson PC filed their
21 lawsuit demanding disgorgement of all monies due and owing to the
22 clients in the Lion Air matter, defendant called [REDACTED] and
23 left a voicemail stating: "I saw your fraudulent allegations here.
24 This is really terrible. I think we got clearance to send money out
25 today. Do you want to call me?" (Exhibit 7.) Weeks later,
26 defendant left another voicemail for [REDACTED] stating: "I think
27 there's been some miscommunication here. I think that we weren't
28 supposed to distribute until all the money was in so people would

1 get paid at the same time. . . . The money's in trust. . . . Th[ere]
2 was some negligence here, it's obviously, since I'm the head of the
3 firm, it's my fault. Let's work everything out in a nice way,
4 please." (Exhibit 8.)

5 Defendant's lulling letters and lies to clients, and even other
6 attorneys, were not unique to the Lion Air matter. During this time
7 period, defendant was fielding angry calls from dozens of clients
8 and attorneys demanding their money. For example, in July 2020,
9 defendant wrote to Client 3 in this case, falsely claiming, among
10 other things, that he was "trying desperately to get everything
11 figured out" and that "[s]ince there's a Bankruptcy Trustee, we have
12 to get an understanding of how much goes to the Trustee and how much
13 goes to you." (Exhibit 9.) As defendant then knew, Client 3 was
14 actually involved in bankruptcy proceedings and defendant and Client
15 3's bankruptcy trustee had already negotiated the apportionment of
16 Client 3's settlement funds (Exhibit 10 at 18 signed by defendant),
17 which the bankruptcy court had approved earlier that year (Exhibit
18 11).

19 3. Divorce, Civil Contempt, Criminal Referral, and
20 Defendant's and GK's Involuntary Bankruptcy

21 Despite defendant's attempts to raise additional money either
22 through the sale of his personal assets or through additional loans,
23 by December 2020, GK did not have enough money left in its operating
24 account to pay back all of the money stolen from clients or borrowed
25 from lenders. Immediately following the Edelson lawsuit, the
26 Honorable Thomas M. Durkin, the district court judge presiding over
27 the Lion Air civil case, ordered a hearing. In re: Lion Air Flight
28

1 JT 610 Crash, Case No. 18-CV-7686 (N.D. Ill.), Dkt. 843.³ At a
2 December 14, 2020, telephonic hearing, which defendant attended,
3 defendant's then-counsel, criminal defense attorney Evan Jenness,
4 told the court that she "advised him to decline" to answer the
5 Court's questions about the allegations. (Dkt. 852 at 16.) When
6 asked whether defendant had the ability to pay the approximately \$2
7 million owed to the Lion Air victims, Ms. Jenness advised that
8 defendant "does not have the immediate ability to pay. He's
9 involved in a divorce proceeding and he and the firm have
10 substantial outstanding legal obligations and debts." (Id.)
11 Finally, when Judge Durkin asked why civil sanctions should not be
12 ordered against defendant, Ms. Jenness -- for the first time --
13 claimed that defendant was unable "to understand the nature of the
14 proceedings or to provide [her] with useful information." (Id. at
15 23-24.) At the end of the hearing, the court held defendant in
16 civil contempt and made a criminal referral to the U.S. Attorney's
17 Office. (Id. at 19; see also Dkt. 848.)

18 In addition to the criminal referral and civil contempt
19 proceedings, by December 10, 2020, defendant had also received a
20 letter from the California State Bar's Office of the Chief Trial
21 Counsel, informing him that he was under investigation. Five days
22 later, Los Angeles Superior Court Judge Holly Fujie issued a
23 separate order to show cause why defendant "should not be reported
24 to the California State Bar for misconduct and violation of the
25

26
27 ³ This civil action is the underlying product liability/wrongful
28 death case based on the Lion Air crash that ultimately gave rise to
the dispute between Edelson PC and Tom Girardi over defendant's
misappropriation of funds related to that case. (See Edelson PC v.
Girardi et al., Case No. 20-CV-7115 (N.D. Ill.).)

1 Rules of Professional Conduct for withholding settlement funds" in
2 another matter. Ruigomez et al. v. Girardi et al., LASC Case No.
3 19STCV22296 (Dec. 15, 2020 OSC). By December 18, 2020, following
4 the foregoing allegations of fraud and theft of client funds,
5 certain creditors of GK commenced an involuntary petition for
6 bankruptcy, which was subsequently granted. In re Girardi Keese,
7 Case No. 20-bk-21022 (C.D. Cal.), Dkt. 1.

8 4. Defendant's Brother Files for Conservatorship

9 In January 2021, weeks after allegations of defendant's
10 criminal conduct were made public, defendant's brother filed a
11 petition for conservatorship in the Los Angeles Superior Court.
12 (Exhibit 12.) In support of his request, Dr. Nathan Lavid, a
13 psychiatrist retained by defendant's criminal defense lawyer,
14 submitted a declaration claiming defendant "suffers Alzheimer's
15 disease with late onset." (Lavid at 4, available at Ex. 20 to
16 Defendant's Motion.) Despite requests by interested parties,
17 including the State Bar, for an independent evaluation, the probate
18 judge ordered a conservatorship over defendant's person and estate
19 based on defendant's purported "major neurocognitive disorder"
20 without any independent evaluation. (See Ex. 21 to Defendant's
21 Motion.)

22 In April 2021, Ms. Jenness asserted, in a letter to the U.S.
23 Attorney's Office in the Northern District of Illinois, that her
24 client [REDACTED] an
25 insufficient present ability to consult with defense counsel with a
26 reasonable degree of rational understanding." (Exhibit 13 at 1.)
27 She further quoted Dr. Lavid's report, which claimed that defendant
28 "has almost no short-term memory," and concluded that "[t]hus, he is

1 incapable of understanding his current legal situation[.]” (Id. at
2 2.) Additionally, according to Ms. Jenness, as of April 2021,
3 defendant still believed GK was operational, with 43 employees on
4 its payroll. (Id. at 5.) Ms. Jenness also claimed that defendant
5 had no memory of the December 2020 proceedings and, after being
6 reminded, “then completely forgets the conversation such that the
7 cycle begins afresh when he’s next told about what occurred.” (Id.
8 at 3.)

9 Up through this time, defendant was still living by himself.
10 (Exhibit 12 at 6.) Although defendant’s brother claimed that
11 defendant “c[ould] not care for himself,” (id.), defendant continued
12 living alone in his 10,000+ square foot Pasadena mansion for nearly
13 nine months, from November 2020, when his wife filed for divorce,
14 until August 9, 2021, when his home was listed “for sale as a part
15 of the ongoing bankruptcy proceedings.” (Exhibit 14 at 3.) During
16 this time, defendant entertained guests, kept his home in order, and
17 even warded off an intruder. Indeed, according to defendant’s
18 longtime secretary, ██████████, in approximately April 2021, during a
19 social visit at his home, defendant told ██████████ and others about a
20 break-in that had occurred several months earlier in January 2021
21 and even showed ██████████ the broken window. (Exhibit 15 at 2.) In
22 fact, notwithstanding defendant’s claims of late onset dementia and
23 “almost no short-term memory,” defendant’s account of the burglary
24 was corroborated by authorities who confirmed signs of forced entry
25 through a broken window.⁴ ██████████ further described a subsequent
26

27 ⁴ Brandon Lowrey, Girardi Pasadena Mansion Burglarized, Police
28 Say, Law360, Feb. 3, 2021, available at
<https://www.law360.com/articles/1351805/girardi-s-pasadena-mansion-burglarized-police-say>.

1 social visit to defendant's home months later, this time accompanied
2 by another group of former GK employees. (Id.) During this social
3 visit, defendant and his former employees enjoyed several bottles of
4 wine that defendant served them while they all had lunch. (Id.)
5 Shortly after this, in August 2021, defendant moved into a senior
6 living facility.

7 **B. Medical Experts Determine that Defendant is Competent to**
8 **Stand Trial**

9 On February 3, 2023, prior to defendant's initial appearance in
10 this case, defendant filed for a determination of competency
11 pursuant to 18 U.S.C. § 4241(a), which the Honorable Karen L.
12 Stevenson, Chief Magistrate Judge, ordered. (Dkt. 20.) In
13 compliance with this Court's order regarding competency (Dkt. 54),
14 the parties each retained a neuropsychologist and a neurologist to
15 evaluate defendant and issue a report. The court in the Northern
16 District of Illinois likewise ordered a competency determination to
17 be based on the expert evaluations and reports completed in this
18 case. United States v. Girardi, et al., Case No. 23-CR-54 (N.D.
19 Ill.), Dkt. 47, 56.

20 [REDACTED]
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1. [REDACTED]

[REDACTED]

⁷ In his filing related to the government's motion to exclude defense expert Kate Corrigan, defendant criticized Dr. Goldstein for not interviewing defense counsel regarding their interactions with defendant. (See Dkt. 74 at 8.) However, those interactions

[REDACTED]

1 [REDACTED]
2 [REDACTED]
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1 **III. LEGAL STANDARD**

2 A defendant is competent to stand trial if “he understands the
3 proceedings and is able to assist counsel in his defense.” Hoffman
4 v. Arave, 455 F.3d 926, 937 (9th Cir. 2006) (citing Dusky v. United
5 States, 362 U.S. 402 (1960) (overruled on other grounds, Arave v.
6 Hoffman, 522 U.S. 117 (2008)). The burden is on the government to
7 prove competence by a preponderance of the evidence. United States
8 v. Hoskie, 950 F.2d 1388, 1392 (9th Cir 1991).

9 The standard for the court to use in assessing competence is
10 whether defendant has “sufficient present ability to consult with his
11 lawyer with a reasonable degree of rational understanding – and
12 whether he has a rational as well as factual understanding of the
13 proceedings against him.” Dusky v. United States, 362 U.S. 402, 402
14 (1960). Mental deficiencies alone do not render an individual
15 incompetent to stand trial. Hoffman, 455 F.3d at 938 (“The standard
16 for competency to stand trial is lower than the standard for capacity
17 to commit a crime.”). In fact, the Ninth Circuit has upheld a
18 district court’s determination that a defendant was competent to
19 stand trial despite suffering brain damage due to head trauma,
20 borderline retardation, and dementia combined with partial paralysis.
21 See United States v. Timbana, 222 F.3d 688, 701 (9th Cir. 2000).
22 Other circuits have similarly held that evidence of mental disease,
23 disorder, or defect does not, in and of itself, mean a defendant is
24 incompetent. Smith v. Armontrout, 812 F.2d 1050, 1057 (8th Cir. 1987
25 (noting that it is possible that a defendant may have a mental
26 disease, disorder, or defect, but may still be competent); Mata v.
27 Johnson, 210 F.3d 324, 329 n.2 (5th Cir. 2000) (stating that presence
28 or absence of mental illness or brain disorder is not dispositive);

1 United States v. Mackovich, 209 F.3d 1227, 1233 (10th Cir. 2000)
2 (noting that the Tenth Circuit Court of Appeals has long recognized
3 that a defendant is not necessarily incompetent simply because he
4 suffers from a mental disease or defect). Thus, not every
5 manifestation of cognitive impairment demonstrates incompetency to
6 stand trial. United States v. Turner, 644 F.3d 713, 725 (8th Cir.
7 2011).

8 Neither low intelligence nor mental deficiency compels a finding
9 of incompetency to stand trial. Vogt v. United States, 88 F.3d 587,
10 591 (8th Cir. 1996); United States v. DeCoteau, 630 F.3d 1091, 1095-
11 96 (8th Cir. 2011) (finding defendant competent to stand trial
12 notwithstanding low IQ scores of 55 to 57 that placed defendant in
13 the "mild mental retardation range"). Although defense counsel's
14 observations are probative, the Court need not accept a lawyer's
15 representations concerning a client's competence. Drope v. Missouri,
16 420 U.S. 162, 177 n.13 (1975).

17 A district court's finding that a defendant is competent to
18 stand trial is a question of fact which is reviewed for clear error.
19 United States v. Hoskie, 950 F.2d 1388, 1392 (9th Cir. 1991).
20 Evidence supporting a district court's finding of competence is
21 reviewed in the light most favorable to the government, United States
22 v. Frank, 956 F.2d 872, 874 (9th Cir. 1991), and the court has the
23 discretion to assign whatever weight it deems appropriate to the
24 findings of the experts produced by the parties, United States v.
25 Lindley, 774 F.2d 993, 993 (9th Cir. 1985).

1 **IV. ARGUMENT**

2 Qualified experts have concluded that defendant is competent to
3 stand trial based on thorough evaluations. Although defendant shows
4 [REDACTED], his claims of legal incompetence are exaggerated and
5 fail in the face of concrete evidence of malingering and [REDACTED]

6 [REDACTED]
7 **A. Defendant Is Malingering and Exaggerating His Symptoms To**
8 **Avoid a Possible Trial or Imprisonment**

9 In the years leading up to December 2020, defendant juggled
10 hundreds of cases at GK, made numerous court appearances on complex
11 matters, negotiated millions in loans from litigation lenders, and,
12 most importantly, continued to successfully keep his ongoing
13 fraudulent scheme a secret from the public. Defendant's experts
14 completely ignore the context in which defendant's purported [REDACTED]
15 arose -- that is, only after his legal problems and financial debts
16 were threatening to ruin him. Their failure to address this
17 suspicious timing and the fact that legal incompetence conveniently
18 provides a way for defendant to evade accountability is a significant
19 flaw in their analysis. Defendant's experts also ignore the
20 precipitous -- and, thus, incredible -- rate at which [REDACTED]
21 [REDACTED] developed. Defendant's public
22 interactions both at work and socially do not support his claimed
23 incompetency in 2020 or any steep decline resulting in incompetence
24 today. To the contrary, [REDACTED]
25 [REDACTED]
26 support the conclusion that defendant is exaggerating the effect of
27 any [REDACTED]

1 1. Defendant's Public Interactions Before and After His
2 Conservatorship in January 2021 are Inconsistent with
3 His Claimed Symptoms and Show Malingering

4 Defendant's motion repeatedly cites his 2017 accident as the
5 impetus of his [REDACTED]. However, in the years
6 following 2017 and leading up to defendant's conservatorship in
7 early 2021, defendant was acutely aware of his outstanding debts to
8 both clients and creditors. He continued to create excuses for
9 delays, including through lulling letters and lulling payments that
10 he directed his staff to send.

11 For example, as alleged in the indictment, defendant lulled
12 Client 1 with nominal payments, including a \$100,000 check in 2017,
13 and letters containing calculated lies. In a 2017 letter from
14 defendant to Client 1, defendant claimed that "the only way we were
15 able to settle this case was a commitment by me that I would make
16 sure that the funds were used properly. [Justice Panelli] indicated
17 that he knew many young men who got a large amount of money and it
18 ended up in a total disaster." (Exhibit 20.) Defendant's reference
19 to retired California Justice Edward Panelli, who was in fact the
20 mediator used in Client 1's case, was a common tactic he used to
21 dissuade suspecting clients of any foul play. Later, in 2018,
22 defendant successfully negotiated a settlement of Client 3's lawsuit
23 related to injuries caused by a defective medical device. (Dkt. 1,
24 Indictment at 11.) Like many medical malpractice lawsuits, this case
25 was complicated and involved sophisticated defense counsel, yet
26 defendant effectively navigated complicated settlement discussions
27 and successfully settled claims for 25 GK clients, including Client
28 3. Indeed, as referenced supra Section II.A.2, that defendant was

1 able to invent a lie specific to Client 3, who was actually involved
2 in a personal bankruptcy, demonstrates his mental acuity.

3 Then in 2020, defendant was also attempting to assuage the Lion
4 Air victims and co-counsel, who were growing exceedingly suspicious
5 that their settlement funds had been stolen. In multiple letters,
6 defendant continued to lie about delays in payments, notwithstanding
7 GK's full receipt of the settlement funds, by inventing detailed
8 false excuses. (See, e.g., Exhibit 5 ("We made an agreement with
9 Boeing that all of the cases would be resolved. They gave us special
10 authorization to distribute 50%. I feel fairly confident the balance
11 will be done within 30 days."); Exhibit 6 ("There are some serious
12 issues. I have been back east four times to get everything resolved.
13 I think I need two more weeks. I will insist that, at least, we get
14 the interest . . .").) Again, defendant's ability to juggle the
15 dozens of angry clients who were calling him on a near daily basis,
16 and to build upon the previous lies he had told them no less,
17 demonstrates how high-functioning defendant was. (See, e.g., Exhibit
18 16 (voicemail from defendant in August 2020 falsely claiming that a
19 payment was delayed by court closure), Exhibit 17 (voicemail from
20 defendant in November 2020 falsely claiming that a payment was
21 delayed by a purported tax issue), Exhibit 18 (letter from defendant
22 in October 2020 re: same).)

23 Defendant's capabilities during this time period are also
24 confirmed by witness accounts, including people who had frequent
25 interactions with him. For example, [REDACTED], a longtime
26 business partner of defendant who loaned defendant and GK millions of
27 dollars, stated that over the course of their relationship, he never
28 had any odd interactions or suspicions, where he thought defendant

1 was cognitively impaired. (Exhibit 21 at 4.) Rather, he has always
2 found defendant to be "very sharp and cunning." (Id.) [REDACTED]
3 also interacted with defendant immediately after his 2017 accident,
4 even getting lunch with him while he was still in a wheelchair
5 recovering from his leg injury. (Id.) Again, neither then nor at
6 subsequent meetings after the accident did defendant show any signs
7 of mental impairment. (Id.; see also Exhibit 19 (voicemail from
8 defendant in March 2020 requesting additional funding from another
9 litigation lender.) Moreover, attorneys and staff at GK, including
10 [REDACTED] who worked closely with defendant until December 2020,
11 denied ever having concerns about defendant being mentally impaired.¹⁰
12 (Goldstein at 62.) [REDACTED] never observed him experience confusion,
13 difficulty in tracking conversations, or losing his train of thought.
14 (Id.) And while she stated that defendant occasionally needed a
15 reminder regarding certain case details, she did not find that to be
16 remarkable given how many cases he oversaw. (Id.) Additionally,
17 defendant's longtime secretary, [REDACTED] who also worked closely
18 with defendant until GK closed, confirmed that defendant oversaw
19 hundreds of cases and that despite occasional forgetfulness,
20 defendant still handled his busy schedule, and she never questioned
21 his mental fitness as a lawyer or the head of the firm.¹¹ (See id.)
22
23

24 ¹⁰ [REDACTED] worked as a paralegal in the United States
25 Attorney's Office from January 2011 to March 2015. She has had no
26 interaction with the agents or prosecutors on this matter other than
27 in interviews conducted pursuant to this investigation.

28 ¹¹ [REDACTED]

1 The foregoing is corroborated by video footage of defendant
2 himself, including footage from 2019 and 2020, [REDACTED]

3 [REDACTED] For example, in behind-the-scenes
4 footage of defendant in October 2019, defendant is seen regaling his
5 ex-wife and her friends with stories of his trials and his encounters
6 with celebrities. (Exhibit 22.) Other stories defendant cogently
7 told and topics he cogently discussed during this one-hour video
8 include:

- 9 • His thoughts about challenges women have faced and
10 statistics of women in his graduating law school class
11 (starting at 2:00 and again at 12:10);
- 12 • His appointment to the Library of Congress and
13 interactions with Senator Harry Reid (starting at 8:55);
- 14 • His experiences as a trial lawyer (starting at 15:00 and
15 again at 27:10);
- 16 • His interactions with John Wayne (starting at 22:40);
- 17 • Stories about Sammy Davis Jr., Frank Sinatra, and Don
18 Rickles (starting at 42:30); and
- 19 • Upcoming plans for a settlement conference and Las Vegas
20 trip (starting at 47:15).

21 Defendant's stable cognitive functioning and comprehension
22 continued into late 2020, when defendant sat for two depositions
23 related to Client 1's settlement funds. During the depositions, one
24 of which was videotaped, defendant clearly tracked his testimony,
25 making accurate reference to inquiries and responses from previous
26 points in the examination. (See Exhibits 23 and 24; Goldstein at 54-
27 55.) The following month, defendant also participated in a one-hour
28 interview on a podcast where he described various trial strategies in

1 detail, (Exhibit 25), and in November 2020, just two months before
2 defendant's petition for conservatorship, defendant moderated a 90-
3 minute virtual panel with prominent plaintiff lawyers discussing
4 various aspects of trials, (Exhibit 26). Again, during these
5 conversations he tracked the questions and topics without difficulty,
6 making relevant comments and references to past points of the
7 discussion. He even made jokes and told his favorite trial stories.

8 During the entirety of this period, defendant was also living
9 alone in his 10,000+ square foot estate without any need for
10 assistance with his activities of daily living, e.g., using the
11 bathroom, showering, eating, or dressing. However, notwithstanding
12 defendant's completely independent lifestyle, and continued
13 management of the legal and financial affairs of GK, immediately
14 following the bombshell allegations of defendant's theft, the
15 criminal referral, and the involuntary bankruptcy proceedings, in
16 December 2020, defendant's criminal defense attorney claimed that he
17 was incompetent and had no appreciation for the state of his affairs.
18 Defense-led evaluations followed and mere months later, by March
19 2021, defendant's retained expert concluded that defendant had
20 "almost no short-term memory." Nevertheless, the very next month, in
21 April 2021, during a social visit from defendant's former secretary,
22 defendant provided a detailed account of a break-in that occurred
23 months earlier. Indeed, the record is replete with examples of
24 defendant's ability to access his short-term memory when he thinks
25 evaluators are not paying attention. [REDACTED]

26 [REDACTED]

27 [REDACTED]

28 [REDACTED]

1 [REDACTED] In fact, his wife was traveling to
2 Spain as part of her role on her reality TV series. This clearly
3 demonstrated defendant's ability to refer back to prior
4 conversations and ability to access such short-term memories.

5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
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16 [REDACTED]
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19 [REDACTED]
20 [REDACTED]

21 Defendant's ability to retain information, including the
22 allegations against him, is also clearly demonstrated in his December
23 2020 and January 2021 voicemails to [REDACTED]. During this time,
24 defendant's criminal defense attorney claimed that he had no
25 appreciation for the nature of the proceedings, yet two days after
26 the civil lawsuit was filed, defendant called [REDACTED] stating that he
27 "saw [the] fraudulent allegations." (Exhibit 7.) A few weeks later
28 he left another voicemail acknowledging his liability, stating that

1 there "was some negligence here, it's obviously, since I'm the head
2 of the firm, it's my fault." (Exhibit 8.) These voicemails make
3 clear that defendant's short-term memory, and his general
4 appreciation of outstanding legal matters, are intact.

5 Meanwhile, defendant's criminal defense attorney engaged medical
6 experts to evaluate his competency. The defense's experts deemed him
7 mentally incompetent although they reached this conclusion without
8 the benefit of defendant's full medical records or, any consideration
9 of the chronology of events leading up to the closure of GK.

10 Instead, they simply took defendant at his word, did not conduct any
11 performance validity testing, and did not question the veracity of
12 his claimed symptoms at all. Their failure to consider malingering,
13 via validity tests, and to consider the relevant chronology casts
14 doubts on their conclusions. Indeed, the scale and speed at which
15 defendant's purported cognitive decline occurred from late 2020 to
16 early 2021 is a radical departure from the normal trajectory of any
17 progressive neurological disease, be it MCI or dementia. [REDACTED]

18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

26 Simply put, there is no plausible basis upon which to assert that
27 defendant's mental condition deteriorated that fast.

28

1 The explanation for defendant's claimed extraordinary decline
2 from late 2020 to now is clear: defendant is exaggerating the extent
3 of any mental decline he may be actually experiencing as an
4 octogenarian. And, as discussed infra Section IV.C., regardless of
5 defendant's precise diagnosis, he has sufficient mental acuity to be
6 found competent to stand trial. This conclusion comports with
7 precedent, both in this circuit and others, that a mental impairment
8 alone does not equal incompetence. See e.g., Timbana, 222 F.3d at
9 701 (defendant competent to stand trial despite suffering brain
10 damage, borderline retardation, partial paralysis, and dementia);
11 Smith, 812 F.2d at 1057 (a defendant may have a mental disease,
12 disorder, or defect, but may still be competent); Mata, 210 F.3d at
13 329 n.2 (presence or absence of mental illness or brain disorder is
14 not dispositive in determining competence); Mackovich, 209 F.3d 1227
15 at 1233 (a defendant is not necessarily incompetent simply because he
16 suffers from a mental disease or defect).

17 While defendant may argue that his conduct described above took
18 place in late 2020 and early 2021 and his cognitive abilities have
19 since radically declined, [REDACTED]

20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
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11 [REDACTED]

12 [REDACTED] Additionally, the overwhelming documentary and
13 testimonial evidence from 2017 to the present makes clear that
14 defendant was able to adequately function for years before his
15 claimed incompetency despite his [REDACTED]. Indeed, as
16 demonstrated above, from at least 2017 defendant was coherent and
17 capable, if not high-functioning, and continued to manage and
18 conduct GK business until the conservatorship proceedings (which,
19 given their timing, are suspect in any case). For defendant to have
20 become so impaired by 2021 or even now as to be legally incompetent
21 would require an unusually precipitous decline in mental functions
22 -- so unusual that it is not plausible.

23 2. [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

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[REDACTED]

Indeed, Dr. Lavid's prior opinions have been called into question by several courts evaluating the reliability of his findings. See, e.g., Sherwood v. Neotti, No. ED 11-CV-1728-CJC, 2020 WL 2572459, at *3 (C.D. Cal. May 21, 2020), aff'd, No. 20-55636, 2021 WL 4948930 (9th Cir. Oct. 25, 2021) (faulting Dr. Lavid's opinion of incompetence and noting his opinion of incompetence was "at odds with the [direct] evidence"); Jones v. Covello, No. 13-CV-7792-JWH, 2021 WL 4222699, at *11, 20 (C.D. Cal. May 6, 2021) (criticizing Dr. Lavid's opinions, including his opinion that defendant was not malingering despite reports of malingering in the record).

[REDACTED]

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4 [REDACTED]

5 **B. Defendant Has the Present Ability to Understand the**
6 **Proceedings Against Him and to Assist in His Defense**

7 Defendant has the present ability to understand the proceedings
8 against him and aid in his defense. [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 While the government does not dispute that defendant, an 84-
21 year-old man, [REDACTED] that
22 alone does not meet the standard for legal incompetency. Rather, a
23 defendant need only be able to understand the proceedings against him
24 and to assist in his defense in order to be found competent to stand
25 trial. Hoffman, 455 F.3d at 927. And while defendant has attempted
26 to obscure his true abilities, his unprompted responses to the
27 evaluators and other inadvertent tells demonstrate his "reasonable
28 degree of rational understanding," including his factual

1 understanding of the proceedings against him. Dusky, 362 U.S. at
2 402. [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

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6 C. [REDACTED] t is Competent [REDACTED]
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21 In light of the evidence of malingering, defendant's [REDACTED]
22 impairment is less significant than the impairments, including
23 Alzheimer's and dementia, that numerous courts have recognized do not
24 prevent a defendant from possessing a rational and factual
25 understanding of the proceedings against them and having the ability
26 to consult with counsel with a reasonable degree of rational
27 understanding. See, e.g., United States v. Brockman, No. 21-CR-9,
28 ECF 263, (S.D. Tex. filed May 23, 2022) (finding an 80-year old

1 defendant with Parkinson's disease and cognitive impairment to be
2 competent due to malingering); United States v. Dreyer, No. 08-41-
3 VAP, ECF 279 (C.D. Cal. filed Apr. 19, 2014) (finding a defendant
4 with a brain hemorrhage and previous dementia diagnosis competent);
5 United States v. Kight, No. 16-99-AT-LTW, ECF 118 (N.D. Ga. filed
6 Feb. 2, 2018) (same); United States v. Bradley, No. 05-CR-59-JRH-CLR,
7 ECF 349 (S.D. Ga. filed Jan. 24, 2006) (defendant with dementia and
8 memory issues found competent); United States v. Benson, No. 12-CR-
9 00480-YGR-1, 2015 WL 1869476 (N.D. Cal. Apr. 22, 2015) (defendant
10 with alleged dementia and evidence of malingering found competent);
11 United States v. Patel, 524 F. Supp. 2d 107 (D. Mass. 2007)
12 (defendant with memory issues, alleged dementia, and evidence of
13 malingering found competent); United States v. Chun, No. 17-CR-
14 204510-VAR-MKM, ECF 87 (E.D. Mich. filed Dec. 6, 2019) (finding a
15 malingering defendant with MCI competent); United States v. Kasim,
16 No. 07-CR-56-PPS-APR, 2010 WL 339084 (D. Ind. Jan. 21, 2010) (finding
17 a likely malingering defendant competent after previous order found
18 defendant incompetent with dementia); see also United States v.
19 Vallone, 698 F.3d 416, 508-511 (7th Cir. 2012) (finding defendant
20 with Alzheimer's and dementia competent).

21 Defendant cites two cases in support of his argument for a
22 finding of incompetency. (Mot. at 34-37.) These cases present
23 different facts and procedural postures than are present here and are
24 not persuasive. In United States v. Brown, 147 F. Supp. 3d 312, 325
25 (E.D. Pa. 2015), there was no dispute that the defendant had dementia
26 due to Alzheimer's. Experts retained by both the government and
27 defense agreed that defendant was not competent. Id. at 326.
28 Moreover, the government further agreed that the defendant would not

1 be competent to stand trial in the future. Id. And, notably, the
2 issue was brought before the court via an unopposed motion by the
3 government to dismiss the superseding indictment in that case. Id.
4 Such is not the case here where, as discussed above, competency is
5 disputed, and the evidence strongly suggests defendant is
6 malingering.

7 The same is true of United States v. Buckingham, 2020 WL 7238273
8 (N.D. Ala. Dec. 9, 2020), where the only two experts who evaluated
9 Buckingham both agreed that he suffered from dementia that rendered
10 him incompetent. Id. at *2-3. And, unlike the instant facts, the
11 court in both Brown and Buckingham agreed that the defendants were
12 not malingering. United States v. Brown, 147 F. Supp. 3d 312, 325
13 (E.D. Pa. 2015) ("During the course of Defendant's extensive testing,
14 malingering measures and embedded measures sensitive to malingering
15 did not support the conclusion that Defendant is feigning her memory
16 impairment."); United States v. Buckingham, No. 2:18-CR-376-RDP-SGC-
17 2, 2020 WL 7238273, at *2 (N.D. Ala. Dec. 9, 2020) ("Defendant's
18 cognitive deficiencies were not the result of malingering or any
19 other disorder.").

20 Thus, regardless of whether defendant has [REDACTED]
21 [REDACTED] based on the evidence before this Court, defendant's
22 true capabilities reveal that he has a rational and factual
23 understanding of the charges he faces and the relevant proceedings to
24 come, and is able to consult meaningfully and rationally with his
25 counsel if he so chooses. [REDACTED] His feigned denial of
26 his current legal and financial troubles is willful and deliberate.
27 This Court should find him competent.

28

1 **D. Commitment is Mandatory if Defendant is Found Incompetent**

2 Notwithstanding defendant's request to forego commitment if he
3 is found incompetent, pursuant to 18 U.S.C. § 4241(d), commitment is
4 mandatory. "If, after the hearing, the court finds by a
5 preponderance of the evidence that the defendant is presently
6 suffering from a mental disease or defect rendering him mentally
7 incompetent to the extent that he is unable to understand the nature
8 and consequences of the proceedings against him or assist properly in
9 his defense, the court shall commit the defendant to the custody of
10 the Attorney General." § 4241(d). The Attorney General shall
11 hospitalize the defendant for treatment in a suitable facility for
12 such a reasonable time, not to exceed four months, as is necessary to
13 determine whether there is substantial probability that in the
14 foreseeable future, he will attain the capacity to permit the
15 proceedings to go forward. Id.

16 **V. CONCLUSION**

17 For the reasons set forth above, after conducting the competency
18 hearing and upon review of the evidence, the United States requests
19 the Court find that defendant competent to stand trial.
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