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 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,

17 Defendant.

No. CR 23-00047-JLS-1

GOVERNMENT'S POST-HEARING BRIEF
FOR ORDER FINDING DEFENDANT THOMAS
V. GIRARDI COMPETENT TO STAND
TRIAL

19 Plaintiff United States of America, by and through its counsel
 20 of record, the United States Attorney for the Central District of
 21 California and Assistant United States Attorneys Scott Paetty and Ali
 22 Moghaddas, hereby files its post-hearing brief for order finding
 23 defendant Thomas Vincent Girardi competent to stand trial. The
 24 government files this brief after having received final transcripts
 25 from the competency hearing (Dkt. Nos. 139, 141, 143) in compliance
 26 with the Court's order (Dkt. 128).

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Defendant Thomas Vincent Girardi is competent to stand trial.
4 Unrebutted evidence presented during the three-day competency hearing
5 confirmed the information provided in the pre-hearing briefing, both
6 demonstrating that in the months and weeks leading up to his
7 precipitous purported decline, defendant was continuing to practice
8 law, communicate with clients, negotiate with lenders, and manage his
9 law firm, which handled hundreds of active matters that he oversaw.
10 Although the Court heard lay witness testimony about defendant's
11 occasional forgetfulness and disorientation, and the government's own
12 expert diagnosed him with mild cognitive impairment, mere cognitive
13 decline is not the standard in determining whether defendant is
14 presently competent to stand trial. Rather the Court need only
15 determine, by a preponderance of the evidence, whether he currently
16 has a rational and factual understanding of the proceedings against
17 him and is able to consult with his counsel with a reasonable degree
18 of rational understanding. The government has met that standard; the
19 testimony at the evidentiary hearing not only failed to undercut the
20 government's showing, it often supported it.

21 The government presented testimony from two experts, Dr. Diana
22 Goldstein and Dr. Ryan Darby, who each opined that defendant was
23 presently competent. Their opinions were based, in part, on
24 defendant's medical records, neurocognitive testing, collateral
25 interviews, and, importantly, their own interactions and observations
26 of defendant. Each opined that defendant was exaggerating the extent
27 of his condition and each identified material inconsistencies in his
28 clinical presentation. Far from an unawareness of this case or an

1 inability to form new memories, defendant tracked the allegations
2 against him, offered a variety of excuses for his criminal conduct,
3 and discussed matters that only recently transpired. He further
4 described, rationally and specifically, how he would defend himself
5 against such allegations. Defense counsel, on the other hand,
6 proffered only one expert, Dr. Stacey Wood, who claimed that
7 defendant was incompetent. However, Dr. Wood admitted that she
8 failed to consider contemporaneous evidence of defendant's cognitive
9 functioning leading up to his claimed incompetency -- evidence that
10 directly contradicts the trajectory of his claimed impairment.

11 Throughout these proceedings, defendant has exhibited an
12 understanding of the criminal charges in this case and the ability to
13 confer meaningfully confer with his counsel, if he so chooses.
14 Accordingly, the Court should find defendant competent.

15 **II. ARGUMENT**

16 **A. Defendant Has Been Malingering Since Late 2020**

17 The question of defendant's competency in large part hinges on
18 whether he is feigning and/or exaggerating the extent of his
19 condition. Any purposeful effort by defendant to manipulate these
20 proceedings and make himself look more impaired than he truly is
21 would certainly demonstrate his appreciation of this criminal matter
22 and its potential consequences and exceed the low threshold for
23 establishing competency. Accordingly, as defendant's own expert
24 conceded, when tasked with evaluating an individual's competence one
25 must be critical of the claimed symptoms and scrutinize them. (See
26 Dkt. 141 at 69:16-70:6.) This is especially true in criminal cases
27 where defendants are incentivized to feign the extent of their
28 impairment. (Id.) Nevertheless, neither defense expert critically

1 examined defendant's purported symptoms. As an initial matter, Dr.
2 Chui readily conceded that she was not asked to conduct a competency
3 evaluation, nor does she have any expertise in that field. (Dkt. 139
4 at 86:14-87:14.) She further admitted that she has never conducted a
5 forensic evaluation before, nor does she have any forensic evaluation
6 training. (Id. at 88:13-17.) And while Dr. Wood purportedly
7 conducted a forensic evaluation, she conceded during cross
8 examination, that she both failed to consider relevant evidence of
9 defendant's malingering and, in some cases, failed to adequately
10 explain or even acknowledge his inconsistent presentation.

11 Evidence of defendant's intentional malingering from December
12 2020 -- when he first claimed incompetency in connection with the
13 Lion Air civil matter -- is relevant to an evaluation of defendant's
14 current competence. That is, if defendant were exaggerating his
15 impairments in 2020 by claiming, among other things, that he did not
16 appreciate the allegations against him, then his identical claims in
17 2023 may likewise be exaggerated. However, when repeatedly asked
18 whether she considered defendant's previous claims of incompetence,
19 Dr. Wood claimed they were not relevant to her evaluation. (Dkt. 141
20 at 98:10-99:3.) She did not ask for any evidence of defendant's
21 capabilities in 2020, because she believed it was not relevant to her
22 "focus [] on his current cognitive abilities." (See id. at 93:7-21.)
23 But Dr. Wood's failure to review and analyze the timing and context
24 of defendant's initial claims of incompetency undercuts the
25 reliability of her opinion. For example, when presented with
26 defendant's voicemails and letters from 2020, Dr. Wood conceded that
27 defendant's capabilities at that time were inconsistent with his
28 claims of incompetence. (See id. at 74:4-8 re: Ex. 7 ("Q: . . . Is

1 that significant to you? Does that tend to contradict that claim? A:
2 Um, yes, potentially.”), 74:23-75:2 re: Ex. 8 (“Would you agree that
3 that is inconsistent with that claim? A: It does seem to be.”),
4 92:14-93:2 re: Ex. 3 (same); 101:9-17 (same).) Although omitted from
5 her report, Dr. Wood admitted during cross-examination that defendant
6 was probably not incompetent in 2020 and that he was likely suffering
7 from MCI rather than dementia. (See id. at 86:18-88:2 re: Ex. 9.)
8 Dr. Wood’s failure to consider this relevant evidence of malingering
9 undercuts the accuracy and reliability of her opinion.

10 Dr. Wood further failed to acknowledge defendant’s inconsistent
11 clinical presentation both in her expert report and during her
12 testimony. When confronted with defendant’s purported lack of memory
13 that he had a third wife and his incongruous statements about past
14 United States wars and presidents, Dr. Wood refused to consider that
15 they may represent efforts to intentionally manipulate the
16 proceedings. For example, Dr. Wood blamed such inconsistent
17 presentation on frontal lobe atrophy; however, she acknowledged that
18 defendant’s most recent brain scans place him in the 70th percentile
19 for frontal lobe volume -- well above average. (Id. at 119:4-121:23,
20 see also Def. Ex. 54.) Dr. Wood further admitted that despite
21 defendant’s incongruous answers regarding historical facts, such as
22 incorrect statements regarding past presidents and wars, these facts
23 are not short-term memories that are typically affected in beginning
24 stages of dementia. (Id. at 125:19-126:20.) She ultimately conceded
25 that his responses were “unusual.” (Id. at 123:7-10.)

26 Furthermore, Dr. Chui admitted that she did not conduct any
27 tests for malingering when she evaluated defendant. (Dkt. 139 at
28 115:24-116:12.) She likewise did not consider defendant’s

1 capabilities in late 2020 (for example, his role as a moderator at a
2 live-streamed, panel discussion regarding the law at which he was a
3 featured guest but admitted that such information would be relevant
4 to a determination of defendant's mental abilities at the time he
5 first raised a claim of incompetence. (Id. at 122:23-123:6.) Dr.
6 Chui also failed to consider the suspicious timing of defendant's
7 claims of incompetence starting in December 2020. Indeed, her role
8 as defendant's treating physician presented a conflict with her
9 instant assignment. As a treating physician, she took an oath to
10 help her patients and act in their best interests, which she readily
11 conceded was different from a forensic evaluation. (Id. at 84:16-
12 85:8.) Her lack of any effort to determine whether defendant was
13 feigning or exaggerating symptoms of cognitive dysfunction, or indeed
14 to question whether defendant could be exaggerating or feigning
15 impairment, thus casts doubt on the reliability and accuracy of her
16 opinion. Both Drs. Wood and Chui also put significant weight on
17 collateral interviews rife with incomplete information. For example,
18 Dr. Chui relied on defendant's daughter, Jennifer Crane, who was
19 estranged from her father for many years prior to his conservatorship
20 in 2021. (See Dkt. 64, Ex. B.) Dr. Chui testified that a reliable
21 collateral informant is someone who "knows the patient well, and is
22 familiar with symptoms and the context in which they're occurring."
23 (Dkt. 139 at 40:2-5.) Despite alleging that defendant's purported
24 memory decline began in 2017, by her own admission Ms. Crane had not
25 seen defendant in over 14 years and only reconnected with him two
26 months prior, at which time defendant's legal troubles had already
27 surfaced. (Dkt. 64, Ex. B at 3.) Moreover, in reaching their
28 dementia diagnosis, which requires consideration of defendant's

1 present abilities to perform certain activities of daily living, or
2 ADLs, Drs. Chui and Wood based their opinion solely on the defense
3 investigator's report of her interview with Margarita Munoz - the
4 program coordinator at Sunrise, defendant's senior living facility.
5 However, as established during Ms. Munoz' testimony, much was omitted
6 from that initial interview. For example, Ms. Munoz testified that
7 neither she nor her staff spend that much time with defendant. In
8 fact, Ms. Munoz only sees him occasionally when he stops by her
9 office, and his care manager spends maybe about an hour a day with
10 him. (Dkt. 141 at 257:25-259:22.) Moreover, Ms. Munoz testified
11 that staff from defendant's previous senior living facility were
12 confused about why his family was escalating his level of care given
13 his independence. (Id. at 253:7-254:6.) Indeed, for the past two
14 years defendant has been at the lowest care level at Sunrise (level
15 one out of five), which reflects near total independence with need
16 for minimal reminders, a fact that Dr. Chui conceded is
17 "significant." (See id. at 254:7-255:6; Dkt. 139 at 155:9-13.) As
18 for defendant's recent drastic decline, Ms. Munoz testified this
19 began shortly after his indictment in this matter (Dkt. 141_at 255:7-
20 22) - timing that is both highly suspect and inconsistent with Dr.
21 Chui's opinion that defendant's illness is slowly progressing.

22 In sum, the evidence presented during the competency hearing
23 demonstrates that defendant has been intentionally exaggerating his
24 impairments since 2020. His claims of being unaware of his criminal
25 and civil exposure, which have persisted until present day, are
26 demonstrably false and evince his cunningness and, thus, his
27 competency to proceed.

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1 **B. Defendant Understands the Nature of These Proceedings and**
2 **Can Aid in His Defense**

3 Neither party disputes that defendant, an 84-year old, exhibits
4 some form of cognitive impairment. However, the "mere presence of a
5 mental disease or defect is not sufficient to render a defendant
6 incompetent." United States v. Giraldo, No. 9-85, 2011 WL 7946037,
7 at *2 (M.D. Fla. Oct. 24, 2011) (citations and internal marks
8 omitted), adopted by 2012 WL 1890508, at *1 (M.D. Fla. May 23, 2012).
9 "Incompetency to stand trial is not defined in terms of mental
10 illness" and "a defendant can be competent to stand trial despite
11 being mentally ill and similarly a defendant can be found incompetent
12 to stand trial without being mentally ill." Id.

13 Each of defendant's clinical interviews in connection with this
14 proceeding demonstrated his understanding of the charges against him.
15 During interviews with government's experts, defendant accurately
16 recalled that he was accused of not paying clients, a fact discussed
17 earlier in the meeting, and then related, at several points over the
18 three-day examination, without prompting that he did nothing wrong,
19 and did not steal from clients. (Goldstein 66.) Likewise, in his
20 interview with Dr. Darby, despite disclaiming knowledge of the
21 indictment, defendant frequently told Dr. Darby that he did not steal
22 anything (echoing his comments to Dr. Goldstein) while acknowledging
23 that Girardi Keese clients may not have received all the funds to
24 which they were entitled. (Darby 22.) Even the defense expert, Dr.
25 Wood, conceded that notwithstanding defendant's claims to the
26 contrary, she believed he actually does have an appreciation of the
27 criminal charges against him. (Dkt. 141 at 94:9-25.)

1 Defendant also has the capacity to consult meaningfully and
2 rationally with his counsel if he chooses to do so. (Goldstein at
3 71.) Indeed, defendant outlined his defense strategies for the
4 experts -- strategies that Dr. Wood conceded were rational and sound.
5 (Id. at 135:21-137:12.) The Court further observed defendant's
6 ability to process information firsthand when he hurled an expletive
7 under his breath at the prosecutor. (Id. at 78:7-18.) Such examples
8 highlight defendant's true ability to track and process information
9 in real time and understand the significance of that information.
10 Other evidence further corroborated this assessment of defendant's
11 cognitive abilities. For example, Dr. Wood conceded that except for
12 some facets of memory, defendant's remaining cognitive domains were
13 relatively normal and, in some cases, above average. (See id. at
14 118:4-22.) This includes his attention, processing speed, executive
15 functioning, and even working memory, which was a relative strength.
16 (Id.) And while defendant's brain scans show abnormal hippocampal
17 atrophy, the defense experts agree his atrophy dates back to at least
18 2017 and thus, during the time when the atrophy was present,
19 defendant still functioned normally up until late 2020 when
20 allegations of his misappropriation were made public. (Id. at 73:2-
21 77:4; Dkt. 139 at 127:8-128:19.) Accordingly, the evidence presented
22 at the competency hearing demonstrated that defendant clearly has a
23 rational and factual understanding of the charges against him, and
24 that he has the capacity to consult meaningfully with his attorneys,
25 if he so chooses. His insistence on being unaware of his legal
26 situation is willful and deliberate. He can opt to participate
27 meaningfully in these proceedings at any time.

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1 **III. CONCLUSION**

2 For the foregoing reasons, the government respectfully requests
3 that this Court find defendant competent and set this matter for
4 trial.

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