

1 E. MARTIN ESTRADA  
 United States Attorney  
 2 MACK E. JENKINS  
 Assistant United States Attorney  
 3 Chief, Criminal Division  
 VALERIE L. MAKAREWICZ (Cal. Bar No. 229637)  
 4 Assistant United States Attorney  
 Major Frauds Section  
 5 1100 United States Courthouse  
 312 North Spring Street  
 6 Los Angeles, California 90012  
 Telephone: (213) 894-0756  
 7 Facsimile: (213) 894-6265  
 E-mail: Valerie.Makarewicz@usdoj.gov  
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Attorneys for Plaintiff  
 9 UNITED STATES OF AMERICA

10 UNITED STATES DISTRICT COURT

11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,

No. 2:23-cr-00124-MCS

13 Plaintiff,

SENTENCING POSITION OF THE UNITED  
 STATES OF AMERICA

14 v.

15 FOSTER S. LAWYER,

16 Defendant.

17  
 18 Plaintiff United States of America, by and through its counsel  
 19 of record, the United States Attorney for the Central District of  
 20 California and Assistant United States Attorney Valerie L.  
 21 Makarewicz, hereby files its sentencing position.

22 This sentencing position is based upon the attached memorandum  
 23 of points and authorities, the Presentence Report, the files and  
 24 records in this case, and such further evidence and argument as the  
 25 Court may permit.

26 The United States of America respectfully requests the  
 27 opportunity to supplement its sentencing position or otherwise  
 28 respond to defendant as may become necessary.



**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

The United States of America submits the following sentencing recommendation in advance of defendant's September 11, 2023 sentencing.

Over a consistent number of years, defendant TODD TIMOTHY LORENZEN ("defendant") failed to report \$2,510,483.72 of wages he paid to his businesses' employees, and ultimately, according to the government's calculations, failed to pay \$1,011,725 in employment tax. Docket No. 25 ("Plea Agreement"), pp. 8-11. Had the IRS not intervened, defendant would have continued his pattern of cashing checks from his business' clients for services rendered and continue to underpay hundreds of thousands in employment taxes. As seen below, defendant's tax crime was exceptionally damaging to the United States and its system of taxation.

**II. SUMMARY OF THE UNITED STATES' SENTENCE RECOMMENDATION**

The United States of America has received the Presentence Report ("PSR") and has no objection to the PSR's charge and conviction discussion, offense conduct discussion, the offense level computation, the calculation of defendant's criminal history, sentencing options discussion, or the discussion regarding factors that may warrant departure or sentence outside the advisory guideline system. Docket No. 20.

Consistent with the PSR and the government's obligations pursuant to the Plea Agreement and the Addendum filed on August 28, 2023, the United States recommends that the Court find that defendant's total offense level is 15, criminal history as category I, and that the advisory guideline range is 18 to 24 months

1 imprisonment. The United States respectfully recommends that the  
2 Court impose a sentence of 18 months of incarceration, followed by a  
3 one-year term of supervised release, and enter a restitution order  
4 that defendant pay to the IRS the amount of \$1,011,725.

5 **III. PLEA AGREEMENT**

6 On March 17, 2023, the parties filed a plea agreement with  
7 respect to this case. See Docket No. 6. Defendant agreed to plead  
8 guilty to a single-count Information which charged defendant with a  
9 violation of aiding and assisting in the preparation of a false tax  
10 return in violation of 26 U.S.C. § 7206(2), pertaining to an IRS Form  
11 941 for the 4th Quarter of 2016 (October 1 through December 31, 2016)  
12 for Mulligan's Painters, defendant's business, with the IRS. See  
13 Docket No. 1.

14 In addition, defendant and the United States agreed to a base  
15 offense level of 20. See Plea Agreement, p. 12. The parties agreed  
16 that the employment tax loss for 2014 through 2017 is at least  
17 \$600,198 but not higher than \$1,011,725.

18 The United States agreed to a two-level downward adjustment for  
19 acceptance of responsibility under U.S.S.G. §3E1.1, and herein, moves  
20 the court for an additional one-level downward adjustment under  
21 U.S.S.G. § 3E1.1(b), as to date, defendant has complied with the  
22 terms set forth in the Plea Agreement, p. 13.

23 The parties did not agree as to defendant's criminal history or  
24 criminal history category. Id., p. 10.

25 **IV. RULE 11 HEARING**

26 On April 19, 2023, defendant pled guilty to count one of the  
27 Information. Docket No. 19.

28 **V. SENTENCING GUIDELINES CALCULATION**

On August 28, 2023, the parties filed an addendum to the plea

1 agreement. Docket No. 25. On or around November 1, 2023, an  
2 amendment to the United States Sentencing Commission's Sentencing  
3 Guidelines, U.S.S.G. § 4C1.1, will take effect pertaining to  
4 defendants with zero criminal history points meeting certain  
5 criteria. Defendant meets the criteria under the amendment for a  
6 two-level decrease to his Sentencing Guidelines calculation. Id.

7 Pursuant to the plea agreement and the addendum in this case,  
8 the parties agreed that for purposes of calculating the base offense  
9 level, the total amount of tax due and owing from defendant was  
10 between \$600,198 but not higher than \$1,011,725. Plea Agreement, p.  
11 12. Since the tax loss caused by defendant's criminal conduct was  
12 more than \$550,000 but less than \$1,550,000, defendant's base offense  
13 level is 20. U.S.S.G. §§ 2T1.4(a)1) and 2T4.1(H); Plea Agreement, p.  
14 12. After allowing for a three-level reduction for the acceptance of  
15 responsibly pursuant to U.S.S.G. § 3E1.1 and a two-level reduction  
16 pursuant to the new U.S.S.G. § 4C1.1, defendant's total offense level  
17 is 15. Id. An offense level of 15 falls within Zone D of the  
18 Sentencing Guidelines, and results in a range of 18 to 24 months  
19 imprisonment.

20 In the PSR, without taking into consideration USSG § 4C1.1, the  
21 United States Pretrial and Probation Office agreed that the  
22 guidelines imprisonment range for a level 17 is 24 to 30 months.  
23 PSR, p. 3. The Probation Office did not identify any factors that  
24 would warrant a departure or variance from the advisory guideline  
25 range. PSR, ¶¶ 112, 113.

## 26 **VI. ARGUMENT**

27 The United States of America finds that the nature and  
28 circumstances of the offense committed by defendant, and defendant's  
personal history and characteristics are reasons for a low-end

1 sentencing under the Sentencing Guidelines. Under the factors  
2 enumerated in 18 U.S.C. § 3553, the Court should sentence defendant  
3 to 18 months incarceration. Based on the facts and circumstances of  
4 this case, and based on the characteristics of this individual  
5 defendant, a Guidelines sentence is necessary to satisfy the mandate  
6 of section 3553(a) that the sentence "reflect the seriousness of the  
7 offense," "promote respect for the law," "provide just punishment for  
8 the offense," "afford adequate deterrence to criminal conduct,"  
9 "protect the public from further crimes of the defendant," and "avoid  
10 unwarranted sentencing disparities among defendants with similar  
11 records who have been found guilty of similar conduct." 18 U.S.C. §  
12 3553(a).

13 **A. Nature and Circumstances of the Offense**

14 Section 3553(a)(1) charges the Court to consider the nature and  
15 circumstances of the offense and the history and characteristics of  
16 the defendant, both which weigh in favor of a sentence of  
17 imprisonment for 18 months.

18 The level of tax loss in this matter, between \$600,198 but not  
19 higher than \$1,011,725, and its relationship to the appropriate  
20 punishment of 18 months, is reflected in the advisory Sentencing  
21 Guidelines, which use tax loss as the measure for the appropriate  
22 sentence. As the background to Section 2T1.1 of the Sentencing  
23 Guidelines notes, as the potential benefit from the tax offense  
24 increases, the sanctions necessary to deter also increases.  
25 Defendant's failure to correctly report the amount of wages paid to  
26 his employees, coupled with his failure to pay the resulting taxes  
27 owed to the IRS, does not harm a faceless bureaucracy, but all the  
28 honest and hardworking American citizens and residents who go to work  
each day, file their tax returns, and pay their fair share of taxes

1 as the law requires of them.

2 While the parties agreed that defendant used the money received  
3 by cashing checks from his clients to pay his employees under the  
4 table, such act does not justify his actions. That defendant had  
5 business expenses like the wages he paid in cash, but did not use the  
6 money to enrich himself, does not validate his poor business  
7 accounting and misses the point of the crime for which defendant was  
8 charged and plead guilty.

9 As the Court is aware, 26 U.S.C. § 7206(2) is a crime of perjury  
10 and lying on a tax return, as opposed to 26 U.S.C. § 7201, tax  
11 evasion, which requires that the defendant have the intent to evade  
12 taxes. In an attempt to deflect and mitigate, in the plea's factual  
13 basis, defendant contended that all of his employees received cash  
14 wages in addition to their payroll checks, effectively arguing that  
15 that the money he failed to report was not used for personal benefit,  
16 but rather, to pay his business's expenses (of wage labor). While  
17 the defendant may not have had the specific intent to evade taxes  
18 when he failed to report all of the wages paid to his employees,  
19 certainly, every 90 days, when defendant filed his quarterly  
20 employment tax returns, defendant knew that not all of the wages paid  
21 to his employees was reported, and therefore, he would owe far less  
22 in employment taxes to the IRS had he reported wages truthfully. The  
23 tax law requires every individual and corporation to correctly report  
24 wages paid to employees and does not permit for taxpayers to pick and  
25 choose what to report on their tax returns. Defendant's decision to  
26 not correctly file his employment tax return and thereafter, pay the  
27 corresponding employment taxes, was not because he was destitute or  
28 lacked the financial means to pay, rather, he made repeated and  
conscious decisions to cash checks outside of his business back  
accounts, not report the correct amount of wages paid, repeatedly lie

1 to his tax return preparers, and spend the money owed to the United  
2 States as he saw fit.

3 **B. Goals of the Criminal Justice System**

4 Defendant's sentence should reflect the seriousness of the  
5 offense, promote respect for the law, and provide just punishment for  
6 the offense.

7 Defendant has pleaded guilty to tax offenses from which he has  
8 derived pecuniary benefits. Particularly in tax cases, respect for  
9 the law is a crucial consideration. Every member of our society is  
10 affected directly by the tax laws. In addition to promoting the  
11 general public's respect for the law, it is also important to promote  
12 this defendant's respect for the law.

13 The Court should consider what constitutes just punishment for  
14 the defendant's offenses, which at the core, equate to total  
15 disregard for tax law and requirements undertaken by the citizens of  
16 the United States of America. A sentence of 18 months imprisonment  
is just.

17 **C. Adequate Deterrence to Criminal Conduct**

18 Defendant's sentence must provide adequate deterrence to  
19 criminal conduct, both to deter the defendant from committing future  
20 crimes, and also deter others who made by disposed to commit similar  
21 offenses.

22 "Taxes are the lifeblood of government, and their prompt and  
23 certain availability an impervious need." Bull v. United States, 295  
24 U.S. 247, 259 (1935). The criminal tax laws are designed to protect  
25 the integrity of the nation's tax system and to obtain and preserve  
26 funds needed for public services. Criminal tax prosecutions serve  
27 not only to punish the violators, but also to promote respect for the  
28 tax laws. Strong enforcement is necessary to encourage all taxpayers

1 to abide by the rules and pay their fair share of taxes, as well as  
2 to allow the public to have confidence in the fact that everybody  
3 plays by the same rules.

4 Defendant's sentence must provide adequate deterrence to  
5 criminal conduct, both to deter the defendant from committing future  
6 crimes, and also deter others who made by disposed to commit similar  
7 offenses. Sentencing defendant to a prison term, combined with  
8 restitution, will send a message that failing to file correct tax  
9 returns comes at a large cost, and is certainly not worth the risk.

10 **D. Kinds of Sentences Available**

11 The Court must consider the kinds of sentences available under  
12 the relevant statutes. Based on the level of loss in issue, and that  
13 the offense level falls within Zone D of the Sentencing Guidelines  
14 sentencing table, and sentence of 18 months imprisonment is  
15 appropriate.

16 **E. Relevant Policy Statements**

17 The Sentencing Guidelines contains persuasive guidance about the  
18 appropriate sentences for offenses involving taxation. As the  
19 U.S.S.G. states:

20 The criminal tax laws are designed to protect the public  
21 interest in preserving the integrity of the nation's tax  
22 system. Criminal tax prosecutions serve to punish the  
23 violator and promote respect for the tax laws. Because of  
24 the limited number of criminal tax prosecutions relative to  
25 the estimated incidence of such violations, deterring  
26 others from violating the tax laws is a primary  
27 consideration underlying these guidelines. Recognition  
28 that the sentence for a criminal tax case will be  
commensurate with the gravity of the offense should act as  
a deterrent to would-be violators.

U.S.S.G. Part T, Introductory Commentary (November 1, 2021). This  
policy has been affirmed by the Ninth Circuit. United States v.  
Orlando, 553 F.3d 1235 (9th Cir. 2009) (affirming an upward variance

1 in tax evasion case because it found that the guideline range "failed  
2 to capture tax crimes particular sensitivity to deterrence."); United  
3 States v. Bragg, 582 F.3d 965, 969-70 (9th Cir. 2012) (remanding to  
4 the district court a probationary sentence in a tax crime case where  
5 the district court expressed doubts that deterrence works in tax  
6 cases and noting that "Congress, in enacting the law, and the  
7 Sentencing Commission, in prescribing prison for tax offenses, set  
8 out a policy."). The Sentencing Guidelines recognize that tax  
9 offenses, in and of themselves, are serious offenses and that the  
10 amount of the tax loss should be the main focus at sentencing.  
11 U.S.S.G. § 2T1.1, Background Comment. Because a greater tax loss is  
12 obviously more harmful to the Treasury and more serious than a  
13 smaller one, the Sentencing Guidelines recognize that the sanction  
14 necessary to deter future tax crimes should increase as the potential  
15 benefit from the offense increases. Id.

16 Such commentary is supported in this case by several factors,  
17 including but not limited to the fact that: (1) the statutory maximum  
18 sentence under 26 U.S.C. § 7206(1) is three years per count; (2) the  
19 guideline range provides an advisory sentence which weighs in favor  
20 of a sentence of incarceration (18-24 months); (3) defendant's  
21 failure to correctly report his gross receipts on TLCC's tax returns  
22 occurred over a number of years, and was not aberrant behavior, but  
23 rather, ongoing conduct.

24 The United States recommends that a sentence of 18 months of  
25 incarceration is appropriate in this case. Eighteen months of  
26 incarceration is no more than is necessary to accomplish the goals of  
27 section 3553(a). The factors enumerated in 18 U.S.C. § 3553(a), in  
28 combination with the recommended advisory guidelines, call for the  
imposition of a sentence of incarceration as both appropriate and  
necessary. A sentence of incarceration that is within the Sentencing

1 Guidelines and is supported by the section 3553(a) factors would  
2 reflect the seriousness of the offense, promote respect for the law,  
3 provide just punishment, afford adequate deterrence, and protect the  
4 public from future crimes of the defendant.

5 **VII. RESTITUTION**

6 Where the parties diverge is not with the offense conduct or  
7 even guidelines calculation, but rather the computation of one  
8 portion of the tax computation—the amount of withholding tax  
9 applicable in this case, which influences the amount of restitution  
10 owed by defendant.

11 When an employer employs an employee, the IRS requires the  
12 employer to obtain a Form W-4 from the employee. Form W-4 tells the  
13 employer the employee's filing status (such as single, married filing  
14 joint, etc.), amount of deductions, and any additional amount to  
15 withhold from each paycheck to use to compute the amount of federal  
16 income tax to deduct and withhold from the employee's pay. When an  
17 employer pays the employee, the employer will withhold a certain  
18 amount of taxes from an employee's paycheck in trust and then,  
19 typically bi-weekly, or by law by at least the end of the quarter,  
20 pay over that amount to the IRS for the employee. Therefore,  
21 "withholding" is the amount of federal income tax withheld from your  
22 paycheck. The amount of income tax an employer withholds from your  
23 regular pay depends on two things, the amount an employee earns, and  
24 the information given to employer on Form W-4.

25 When an employer does not get a Form W-4 from an employee, the  
26 employer has no way of knowing how much withholding to withhold from  
27 the employee's paycheck. That's what occurred here. As seen in the  
28 factual basis, defendant would receive payment from his clients by

1 check and would go to a check cashing store to cash the check.  
2 Typically, an employer would deposit the check into an operating  
3 account and/or keep track of how much was paid by the job so at the  
4 end of the year, an employer would know how much the business made -  
5 its gross income. However, defendant failed to keep records of the  
6 income his business earned and when/how much of the cashed check he  
7 would use to pay some of his employees their wages. Some employees  
8 had given defendant a Form W-4 and when these employees were paid by  
9 payroll check, defendant withheld in accordance with the amounts  
10 requested by the employee on the Form W-4. Sometimes, defendant paid  
11 the same employee not by check with the accurate amount of  
12 withholding paid over to the IRS, but by cash. He would not withhold  
13 any taxes from the cash he paid these employees, regardless of  
14 whether the employee had given defendant a Form W-4. Other employees  
15 he never obtained a Form W-4, paid these employees only cash, and  
16 never withheld or paid over any amount of tax to the government.

17 The IRS has regulations that require an employer to withhold  
18 from the wages of an employee if they never receive a Form W-4 from  
19 the employee, so that the employer can remain compliant with the law  
20 to withhold taxes from an employees paycheck. In situation where  
21 defendant wanted to pay cash to his employees without the employee  
22 submitting a Form W-4, the employer would use the "supplemental  
23 withholding rate," where a flat rate is applied to amounts that are  
24 considered to be supplemental wages. Supplemental wages are  
25 compensation paid in addition to an employee's regular wages. They  
26 include, but are not limited to, bonuses, commissions, overtime pay,  
27 payments made for accumulated sick leave, severance pay, awards,  
28 prizes, back pay, fringe benefits and expense allowances paid under a

1 non-accountable plan. The authority for supplemental withholding can  
2 be found in Treas. Reg. § 31.3402(g)-1, and one can also find more  
3 information in IRS Publication 15. The supplemental withholding rate  
4 for 2003 through 2017 was 25%.

5 In this situation, since defendant did not receive any Forms W-4  
6 from his employees who he paid under the table (whether it was in  
7 addition to their wages he paid via check, or always paid cash),  
8 under the law, defendant should have withheld the default 25% of  
9 withholding from those employees and paid it over to the IRS for  
10 their benefit. Defendant failed to include certain payments in wages  
11 for a group of employees. The employee could have taken himself out  
12 of the supplemental withholding situation and obtained a lower  
13 withholding rate if the employee provided the Form W-4 information to  
14 defendant, which would allow defendant to apply the actual  
15 withholding rate. Since defendant did not obtain Forms W-4, the  
16 restitution amount based on the supplemental withholding rate will be  
17 difficult to overcome by defendant.

18 Defendant shared with the government his own calculation of what  
19 he believes the withholding rate should be, which is much lower than  
20 the required 25% rate, but such estimated calculation is not  
21 permitted by Application Note 3 in U.S.S.G. § 2T1.1. In the first  
22 part of the application note, the Sentencing Commission gave guidance  
23 on the allowance of automatic and standard deductions, credits, or  
24 deductions to "ensure a reasonable estimate of the tax loss."  
25 However, the Sentencing Commission was clear that a defendant cannot  
26 get the benefit of any estimate at sentencing when payments are made  
27 to third parties in a manner that encourages or facilitated a  
28 separate violation of law (e.g., "under the table" payments to

1 employees..."), which is the case here.

2 The IRS was able to obtain the checks defendant cashed from  
3 copies of checks received from the check cashier. The IRS was able  
4 to calculate the total amount as follows as noted on page 11 of the  
5 plea:

6 <b>Year</b>	7 <b>Total amount cashed checks</b>	8 <b>Amount Cashed Divided Per Quarter</b>	9 <b>25% Supplemental Withholding Rate Per Quarter</b>	10 <b>Total amount per year required to be withheld under 25% Supplemental Withholding rate</b>
11 <b>2014</b>	\$617,053.88	\$154,263.47	\$38,565.87	\$154,263.47
12 <b>2015</b>	\$407,549.84	\$101,887.46	\$25,471.87	\$101,887.46
13 <b>2016</b>	\$745,31	\$186,328	\$46,582	\$186,328
14 <b>2017</b>	\$740,568	\$185,142	\$28,326.73	\$185,142
15 <b>Total</b>	<b>\$2,510,483.72</b>			<b>\$627,620.93</b>

16 Then, the IRS divided the total amount of checks by four, for  
17 each quarter for each year. The IRS then took 25% of each quarter of  
18 the checks cashed to determine the supplemental withholding rate. The  
19 total amount of withholding that defendant should have taken from the  
20 cash he paid his employees (\$2,510,483.72) under the supplemental  
21 rate for 2014-2017 is \$627,620.93. The parties have agreed to the  
22 calculation of social security and Medicare taxes (which also should  
23 have been taken out of the employees' paychecks), as seen on page 11  
24 of the plea. Therefore, as calculated by the government, below is a  
25 summary table of the total amount of employment taxes defendant owes  
26 the IRS:  
27  
28

<b>Year</b>	<b>Social Security &amp; Medicare Taxes</b>	<b>25% Withholding</b>	<b>Total Employment Tax per year</b>
2014	\$94,409.24	\$154,263.47	\$248,672.71
2015	\$62,355.16	\$101,887.46	\$164,242.62
2016	\$114,032.72	\$186,328	\$300,360.72
2017	\$113,306.92	\$185,142	\$298,448.92
Grand Total	\$384,104.04	\$627,620.93	\$1,011,724.97

Restitution should be sent to IRS - RACS, Attn: Mail Stop 6261, Restitution, 333 W. Pershing Ave. Kansas City, MO 64108.

In the restitution order, the IRS requests that the court delineate the amount of tax owed per quarter, so the IRS can properly credit any restitution. Below is a chart delineating those amounts:

<b>Year</b>	<b>Amount of Employment Tax Owed per quarter</b>
Q1-2014	\$62,168.18
Q2-2014	\$62,168.18
Q3-2014	\$62,168.18
Q4-2014	\$62,168.18
Q1-2015	\$41,060.66
Q2-2015	\$41,060.66
Q3-2015	\$41,060.66
Q4-2015	\$41,060.66
Q1-2016	\$75,090.18
Q2-2016	\$75,090.18
Q3-2016	\$75,090.18
Q4-2016	\$75,090.18
Q1-2017	\$74,612.23
Q2-2017	\$74,612.23

Q3-2017	\$74,612.23
Q4-2017	\$74,612.23

**VIII. CONCLUSION**

Based upon the above, the United States respectfully recommends that after giving consideration to the advisory guideline range as amended, the positions set forth in the PSR, the United States' position herein and in the Plea Agreement, and 18 U.S.C. § 3553(a), defendant be sentenced as follows:

1. A sentence of 18 months of incarceration;
2. A term of 1 year supervised release;
3. A restitution order should be entered in the total amount of \$492,050 to be paid to the Internal Revenue Service and applied in accordance with 26 U.S.C. § 6201(a)(4);
4. Conditions imposed as enumerated in the PSR.

Respectfully submitted,

E. MARTIN ESTRADA  
United States Attorney  
MACK E. JENKINS  
Assistant United States Attorney  
Chief, Criminal Division

DATED: 8/29/23

/s/\_\_\_\_\_  
VALERIE L. MAKAREWICZ  
Assistant United States Attorneys  
Attorneys for the United States