

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

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UNITED STATES OF AMERICA	:	<u>FILED UNDER SEAL</u>
	:	
- v -	:	3:12CR152(JCH)
	:	
CHARLES LESSER,	:	July 1, 2015
	:	
Defendant.	:	
-----	:	

DEFENDANT'S MEMORANDUM IN AID OF SENTENCING

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PRELIMINARY STATEMENT

On behalf of defendant, Charles Lesser, undersigned counsel respectfully submits this memorandum to assist the Court in advance of Mr. Lesser's sentencing. Mr. Lesser is deeply ashamed of his wrongdoing, and he acknowledges that he is guilty of a serious crime. On his behalf, however, we respectfully request that the Court temper the need for punishment with compassion, and impose a sentence no more severe than necessary.

Leniency is appropriate in this case in light of Mr. Lesser's [REDACTED], [REDACTED], thorough rehabilitation, significant life-long civic engagement and good works, and his deep and essential involvement in the care, support and upbringing of his large, young family, among the other considerations discussed below. We respectfully submit that, given these considerations, the Court should impose a sentence that is lighter than the sentences imposed on the other defendants in this matter, and should give serious consideration to imposition of a noncustodial sentence with a term of home confinement.

I. BACKGROUND

As the PSR reports, Mr. Lesser engaged in fraud, repeatedly, across many months, for his own self-serving purposes. He acknowledges the conduct described in the PSR. ¶¶ 5-13. He is remorseful and profoundly regrets his unlawful conduct.

Notwithstanding his offense, however, there is much in the personal circumstances, history and character of this man, and his efforts to make amends for his wrongdoing, that the Court should consider in weighing the punishment to be imposed.

A. Difficulty and Compassion Among Humble Beginnings

Mr. Lesser was born in Brooklyn in 1981 to a large Orthodox Jewish family of humble means. He was the fifth of seven children. His father struggled as a self-employed jewelry salesman; he never achieved a great deal of success in his business pursuits. His mother, motivated in part by the disabilities of some of her own children, eventually obtained a degree in speech pathology and went to work in that field, frequently working multiple jobs in an attempt to make ends meet. PSR §§ 33-35. Indeed, Mr. Lesser has held an early, stinging memory of his father's financial struggles. Dr. Koerner Rpt. 6/8/15.¹ All the children in the family, which was immersed in Orthodox life and culture, attended private religious schools. PSR §§ 33-35. The family's financial resources were sparse, and care of the two handicapped children proved expensive. R. Jungreis Ltr. Although Mr. Lesser's grandmother, a survivor of the Holocaust, helped out financially, the family was poor. PSR §§ 33-35. Mr. Lesser's older brother notes the particular challenges that these circumstances posed for Charles:

Charles is the fifth of seven children in our family. From a young age this presented him with challenges that were different than the rest of us. Much of his formative years came at a time that our family was going through substantial turmoil. Our father came upon some very difficult times financially. There was a lot of doing without and doing with less. Our mother went back to work full time while going to school in the evenings. The two younger siblings were born with severe hearing loss and demanded what little was left of our parents energy. To a certain extent it would be fair to say that Charles was left to fend for himself at a very young age.

Efraim Lesser Ltr.

¹ The reports of Dr. Koerner, as well as the letters referenced in our memorandum, are being provided separately to the Court, with copies to the U.S. Probation Officer and to the prosecution.

Moreover, and perhaps as a result of these conditions, from an early age, Mr. Lesser has struggled with shyness and social awkwardness. As his wife states, from a young age, “[h]e was different from most . . . other people.” E. Lesser Ltr. He “was a quiet guy and . . . kept to himself . . .” *Id.* The author of the PSR has noted this same deportment: “Mr. Lesser . . . seemed socially inhibited, or awkward in his interactions with the probation officer.” PSR § 87. As his therapist notes, “He described himself as on the shy side, and he, in fact, gives the impression of being slightly socially inhibited, with a muted, understated presentation. At times . . . this c[omes] across as somewhat guarded and/or socially awkward.” Dr. Koerner Rpt. 9/9/14.

Interwoven with this character, however, was a very positive attribute – an intense, and active, sense of compassion. As his older brother puts it, “Since his earliest childhood, Charles has always been an especially sweet and good natured person. He has always tried to please, and to help other people in every way possible.” D. Lesser Ltr.; R. Jungreis Ltr. His mother echoes this view: “Charles has always demonstrated a selfless and giving nature. He is always ready to help others, whether it’s family, friends, neighbors or community members or community institutions.” A. Lesser Ltr. For example, with his parents busy, Mr. Lesser, while still a child himself, took on responsibility, along with his other siblings, for the care of his handicapped younger siblings, without complaint, and with grace and kindness. *Id.*; A. Lesser Ltr.

He showed this trait even more conspicuously as a teenager, when, during his summer vacations, he had an opportunity to be independent of his family and to perhaps pursue recreation and fun, but instead devoted his time to working in a camp for low-functioning special needs children, *id.* – “children with cognitive and physical, social and

emotional, language and learning disabilities.” A. Rubin Ltr. These children required full-time, very close attention for all their daily needs. A. Lesser Ltr. In the words of another counselor, “Charles was a phenomenal caregiver,” and he gave of himself deeply in order to help his campers:

Charles’s responsibilities included dressing his camper with Autism, brushing his teeth, bathing his camper daily or an many time per day as were necessary, feeding his camper multiple times per day, as his camper was not self-sufficient, swimming with his camper, helping his camper in his daily Early Childhood Development Program and assisting him in achieving his OT, PT and Speech goals.... Just to name a few. He also had to change the diapers of his growing caper as was needed, and it was needed often! When Charles’s camper would abruptly sprint and head straight towards camp vehicles, with which he was always amused, Charles constantly had to be a step ahead – and he always was. But to Charles . . . these were acts of free love. . . . He made it a dream come true for Sammy. It was the summer of Sammy’s life! He grew to understand that every time he’d run after a vehicle, Charles would be running after. That every time he looked at Charles with is chin down to his chest, uttering, “tickle, tickle,” he would receive his favorite tickling response from his favorite counselor. That every time he gave Charles a fork it would be returned with food. That every time he soiled himself he would be cleaned and cared for and restored to dignity. And that every time Sammy opened his empty arms with his precious smile, they would be filled with a devoted hug and endless caring love.

A. Rubin Ltr. As noted by the woman who would later become his wife, Mr. Lesser was “sincere and selflessly devoted to his campers, which was very refreshing” E. Lesser Ltr.

As his wife also remarks, this active compassion remained prominently on display in other contexts, too:

Throughout our dating life there were so many instances when I saw Charles go above and beyond to help people he knows and even strangers. There were many times when he would call me up to tell me he was running late because he needed to give someone a ride to a location two hours out of his way. On one of our dates we were at a traffic light in New York City and a man knocked on the door and asked for some money to get gas. Instead of ignoring him, like most of my other dates would

have done, Charles gave the guy twenty dollars, which I thought was a lot of money for a college student.

E. Lesser Ltr. This desire to help others was an impulse that would only increase as he continued to mature.

B. Religious Education, Beginning Work, and Putting Down Roots in Waterbury

Mr. Lesser was smart and hard-working, and he did well in school. Like his older brothers, he went to a religious-based boarding school, or yeshiva. He attended the Rabbi Jacob Joseph School in Edison, New Jersey, studying long hours in a curriculum that covered both religious topics such as Jewish law, practice and the sacred texts, and a certain degree of secular learning. PSR § 36. As in every other phase of his life, the young Mr. Lesser distinguished himself through his concern for others and his commitment to help them.

His care and compassion were exemplified in his treatment of those who were most needy. For instance, Mr. Lesser supported a classmate who was in distress following the indictment, conviction, and imprisonment of that student's father on federal fraud charges. Acknowledging the seemingly impossible circumstances, and Mr. Lesser's compassionate nature, that student recalls:

When I was 11 years old, my father, who was a pillar of our community and successful attorney, was indicted on charges of perpetrating a Ponzi-like scheme. . . . Throughout the period between indictment in 1996, sentencing in 2003, and his ultimate incarceration, Charles was there for me to offer support and advice or just to lend an ear to listen. I had only known him for a few months when my world was suddenly overturned and chaos, anger and other emotions overtook me. Yet Charles[,] 3 years my senior, realizing how fragile I was and how much I needed a friend, took me under his wings and was there by my side[,] helping me to deal with my emotions and learn to deal with the difficult challenges life presented me with.

Daniel Schick, Esq. Ltr.

In early adulthood, Mr. Lesser not only sought to improve the lives of those around him; he also displayed another characteristic he would carry into adulthood, a desire and ability to better himself. One colleague, who met Mr. Lesser in high school, was impressed with his ability to change and to seek to make himself a better person:

Our relationship began when Charles was a junior in high school. I am several years older than Charles and was pursuing my post high-school education at the time. At the time, Charles was struggling with many of the regular challenges that teenagers and their peers deal with from time to time. I had the privilege of becoming his mentor and together we were able to overcome much of the adversity that came his way. Indeed, one of the many remarkable characteristics of Charles is his ability to change.

Rabbi Ephraim Blumenkrantz Ltr.

Upon graduation from high school, Mr. Lesser continued his religious studies for a year in Israel, at the Mir Yeshiva and another institution known as Lev Avraham. The curriculum was rigorous, beginning at 7:30 in the morning and continuing to 10:00 or later at night, and immersed Mr. Lesser in a traditional yeshiva education. PSR § 36, 59. He did well in this environment, *id.*, and, once again, impressed his colleagues with not only his intelligence, but also his generosity and desire to help those around him. One of Mr. Lesser's long-time friends recalled the days they both spent in Israel:

He and I met nearly 16 years ago, when we attended the same post-high school yeshiva in Israel. This is generally a time of self-discovery for young men and women in the Jewish Orthodox community, as young students are dropped in a strange land with strange people with a strange language and expected to thrive. While the formula generally works, it is a rather scary time for many. Although Charles was my peer, he was instantly someone I looked up to. Someone who seemed to have been there, even though he was as new to this as the rest of us. His encouragement and confidence helped me handle those initial fears and we did truly mature as individuals and in our studies. It was only years later that I realized he was just being selfless as usual, placing his own trepidation aside to help me overcome mine.

He was 17 at this time. A reflection of an early maturity that likely came from necessity, as Charles was brought up in a large family with modest means where the children were both loved but also expected to fend for themselves. In my own opinion, this dynamic shaped much of who Charles became as an adult – a kind, selfless, family-oriented man with an incredible work ethic. Someone who would do anything, whether asked or not, for family, friend or community.

Steve Hornung Ltr.

Mr. Lesser returned to the United States in 2000. He decided to pursue further studies at what was then a new yeshiva that was opening in Waterbury, Connecticut, the Yeshiva Gedolah of Waterbury. He undertook rabbinical studies there, from 2001 to 2004. PSR § 37.

As at every stage of his life, Mr. Lesser distinguished himself through his involvement with his community and his commitment to helping others. As noted by the long-time Executive Director of Yeshiva Gedolah, whose job the young Mr. Lesser helped to secure:

I met Charles Lesser 16 years ago when I moved onto the block where he lived. At the time he was a student at the Yeshiva Gedolah of Waterbury[,] a new School in it[']s first year of existence. Shortly['] after had gotten to know him he recommended that I apply for the Executive Director position in his school. I thanked him for his vote of confidence and told him that there was no way they would consider me for the position considering my lack of experience. Less than 24 hours later he called[.] He had spoken to the Dean about me and the Dean was interested. This was when I first began to appreciate how involved he was in communal and institutional needs. Even as a young student he was involved enough in the institution he attended that the Dean appreciated and respected his recommendation.

For close to 10 years as Executive Director of the Yeshiva Gedolah of Waterbury I had the occasion to watch Charles mature and grow. There was no area of need that he couldn't be counted on to give his time, efforts and energy. The [D]ean needed to be driven somewhere, Call Charles. The campaign to write a Torah Scroll is foundering and stalled, Call Charles. Working on advocacy and need someone to coordinate and

ensure success of the fundraiser for Joe Lieberman, Call Charles. Charles was the obvious choice for the Federation Communal Leadership honor.

It wasn't only when we reached out to him. On countless occasions Charles would come to us with a concern about another student['s] needs or about a community family in crisis. What can we do? [H]ow can we help? Never with fanfare, never looking for recognition or payment.

Rephael Max Ltr. Other friends who knew him during his studies at the Yeshiva Gedolah confirmed Mr. Lesser's exemplary care for the less fortunate:

- As he pursued his post high-school education he began to flourish. Charles excelled in his studies and was beginning to develop into a true "mentch". One area that constantly stood out was his caring for the less fortunate and the way he went about helping. Always in a quiet way; Charles was effective, compassionate, generous, and brought a positive "you can do it" attitude to so many different situations. It didn't make a difference where the person needing help came from and what their situation was. When Charles saw someone in need, he took action. There were times when Charles noticed the parents of special needs children needed a break. Charles volunteered to step in and care for their 11 year old son with autism –feeding, bathing, and diapering- so that the parents could get a break for a week.
- Charles and I were first introduced in Waterbury, Connecticut at a post-high school Talmudic Academy (hereinafter referred to as "TA") thirteen years ago, in August 2001. Charles was the older roommate of a contemporary, and eventually went on to become one of my closest friends. At the time of our 2001 introduction, I was 18, and Charles was 20 years of age.

Charles comes from modest means, and learned to provide for himself at a relatively early age. When I met him at age 20, he was holding down several jobs to pay his way through college, pay the TA tuition, and pay for his own car and personal expenses. I got to know him well because he made an effort to befriend and mentor many of the younger TA students, despite a heavy workload and busy schedule. Charles was well-known to be charitable with his time and resources (a harbinger of things to come). For example, he often allowed younger students like myself, who were without cell phones, to use the personal landline he paid to have installed in his dorm room. He could also be relied upon for rides to the grocery store, dry cleaners, and train station when necessary. Even as he held down several jobs to pay his own expenses and tuition obligations, he still chose to spend his summers as a counselor at a summer camp dedicated to working with special needs children. It was at this camp where he met and

ultimately married a fellow counselor, who is now his wife of eleven years.

Rabbi Ephraim Blumenkrantz & Aaron Balken Ltrs., respectively.

During this same time, Mr. Lesser became the first male in his family to pursue a college education. *See* Efraim Lesser Ltr. While studying at the Yeshiva Gedolah of Waterbury, he also took classes at the University of Connecticut, Naugatuck Community College, and Touro College. He later transferred his higher education credits to the Rabbi Jacob Joseph School (which had seminary accreditation recognized by the State of New Jersey) and received a Bachelor of Arts degree in Rabbinic and Talmudic Studies in 2011. PSR §§ 37, 59.

Mr. Lesser began to work in 2004 at the Skirball Institute, a medical research institution at New York University. PSR § 38. His work focused on assisting with grant administration. PSR § 38.

In July 2004, Mr. Lesser changed jobs, going to work for First Financial Equities in New Jersey. PSR § 38. He worked in secondary marketing of mortgage loans, assisting with due diligence in regard to secondary sales of mortgages, and, eventually, becoming more generally responsible for such sales. However, Mr. Lesser had come to think of Waterbury as his home, and he achieved a work arrangement that allowed him, and his new bride, Erica (or Chavi) Lesser, to relocate to Waterbury. PSR § 38. He opened a Waterbury branch office of First Financial Equities later in 2004, and began to focus on originating mortgage loans, as a loan officer. In looking for office space in Waterbury, he met Jeff Weisman, who had an active business as a real estate closing attorney. Mr. Lesser arranged the sublet of office space from Mr. Weisman. His work for First Financial continued until about May 2005, at which time he began working as

the Waterbury-based branch manager for another mortgage-lending and brokerage institution, First Meridian Mortgage. PSR § 63. This position continued until approximately 2009. PSR § 63. He also worked briefly in the 2007-2008 period with Sterling Empire Funding, another institution doing similar work.

C. **Family and Further Commitment to His Community and to Helping Others**

Mr. Lesser and Erica Herskovits, the young woman he had met at the camp for special needs children, married in 2003. In 2005, the couple moved from Brooklyn to Waterbury with the intention of building their family while helping to build the community there. They now have five young children. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] PSR §§ 39-42.

1. *Mr. Lesser's Essential Role in His Family*

By all accounts, since the start of his family, Mr. Lesser has been a very involved and dedicated father. See PSR §§ 42-43. Indeed, his day-to-day care-giving has only increased, to the point that he is now the predominant care-giver to his five young children.

His wife's work day begins early, and on most days she has to leave the house sometime around 6:30 a.m., leaving Mr. Lesser in charge of the morning shift with respect to caring for all five children. This means getting them up, dressed, fed, and ready for their day. There are lunches to be made, babies to feed, backpacks to be packed, emotions to be soothed and managed, carpools and deliveries to be completed, and in

general assuring they have their needs for the day met. In the early evening, Mr. Lesser is typically also on duty with child care – managing the baby and the other children, getting them bathed and ready for bed, and helping with the homework of the three older ones, as his wife takes a break after her long work day and afternoon caregiving.

Based on his observations and his interview of Mrs. Lesser, the author of the PSR agreed with Mrs. Lesser’s characterization of her husband’s role in the family: “Mr. Lesser truly seems to be a ‘pillar’ within his household.” PSR § 87. As his mother describes, “He is a loving husband and doting father. His life revolves around his family. Charles is always there for them.” Anna Lesser Ltr. His mother-in-law echoes this observation:

Every time I come for the weekend, I watch Chaim sit with his kids at the table, and discuss what they learned in school and I see how he questions them, using thought provoking questions. I watch him as he sings with them and plays with them, and makes each one feel special in their own right. He is a very loving, warm man who clearly loves his wife and children dearly.

Brina D. Herskovits Ltr. Indeed, everyone who knows the Lessers knows of Mr. Lesser’s close relationship with his children and his integral involvement in their care. The letters in support of Mr. Lesser submitted with this brief are replete with praise for his love, attention and essential care for his family. A few examples follow:

- Charles is the center strength of his family. He is an extremely present, loving, and caring family man. Charles is a hands-on father and is involved in his family’s daily routine. Charles helps get his family ready for their day, does the morning carpool, and doesn’t miss attending school science fairs or similar events. . . . He has a beautiful relationship with his children and they adore him. Charles has built mini-construction projects with his sons, and has even taken his daughter to have her ears pierced. He is a father quite involved with his children’s education and religious studies.

Mendy & Rivka Elin Ltr.

- Charles is a loving family man. His strong bond with his children provides them with a blissful childhood. He devotes time to study with them daily; he takes them on trips; he plays sports with them. If Mrs. Lesser is not around due to work obligations or because she just needs a break, it is not unusual to see Charles take care of his five children like a champion, making them breakfast, lunch, and dinner, taking them to school and extra-curricular activities, and tending to the individual needs of each child.

He is a loving husband. He treats his wife with honor and respect and goes out of his way to please her, and she does the same in return. His primary efforts as a father and husband are aimed at creating a happy home, one that everyone wants to live in, which is by far his greatest success. This happiness is not the result of entertainment from television, as he does not own one. Rather, it is the product of Charles' endless efforts to give each individual the time and attention necessary to grow spiritually and emotionally.

Being the wonderful father that he is, his presence at home is imperative to the success and stability of the family.

Rabbi Ben Kaniel Ltr.

- On a personal level, I see how Charles interacts with his wife and children. He is a family man who is a caring husband and loving father. From dressing the kids in the morning, to homework in the evening, Charles is involved in the day to day running of his household. Charles spends many non-school days with his 3 boys [REDACTED] enjoying activities such as hiking, biking, visiting zoos and aquariums, and much more. His one and a half year old daughter adores him, and her eyes light up whenever he returns home.

Yerachmiel Karr Ltr.

- Charles is a loving husband and father He is the quintessential father figure. . . . When Charles speaks to his children, his tone and demeanor strike the perfect mix of confidence, affection, intelligence, and humor to be the ideal parent. Charles puts a lot of thought, time and effort into his time and interactions with his children. Because raising healthy, educated children with good values is a top priority to Charles, he regularly studies with his children, and actively engages his children whenever possible. For example, at the many family meals I attended at his home on the Sabbath and Holidays, Charles centered much of the conversation around his children's school and social lives by actively involving them in the conversation. . . . Having had the opportunity to observe Charles' parenting skills in person, and seen the impressive results they have

yielded, Charles is someone whom I've modeled some of my own parenting practices after.

Aaron Balken Ltr.

- The characteristics that make him such a good friend and community advocate, has made Charles a wonderful and loving husband and father of five children. He is devoted completely to them. He has patience and warmth, and instills confidence, humor and intelligence in how he interacts with them. Charles studies with his children for hours on end, knowing how important it is for them to be well-educated, loved and imbued with strong family values. This extends to every facet of Charles's parenting, such as his conversations at the dinner table which revolve around the children's schooling and friends, not idle chatter.

Steve Hornung Ltr.

Mrs. Lesser herself writes emphatically of his essential role in the lives of the children:

Our children [REDACTED] . . . all are extremely close to their father and rely on his support and assistance in so many different ways (i.e. studying, hanging out, bathing, feeding). Our older children are extremely self sufficient and do not need help studying for tests or doing daily homework, however, every night each one of the children asks Charles to help them go over their homework, or to study for a test. Although the younger one actually need the help, I think the older ones do this just in order to spend time with their father, even if they do not need his help. Whenever something exciting happens in the children's lives, the first person they need to tell is Charles. They can sit and talk to Charles about anything and Charles is really their sounding board. They love going places with him or even just going outside to play some ball together. Charles is a not only a father to them, but . . . also a mentor and a close friend.

Erica Lesser Ltr.

2. Mr. Lesser's Remarkable Involvement in His Community

In addition to nurturing his own family, in Waterbury Mr. Lesser has displayed his long-standing devotion to helping his community, consistently devoting many hours – 20-40 hours in a typical week – to community and charitable work. For instance, he served for almost 10 years as a trustee of Bnai Shalom Synagogue, starting in 2006 –

[REDACTED]

[REDACTED]. From the beginning, he was involved in all aspects of running the synagogue: he paid the bills, managed the property and assets, fundraised, ran the annual dinner, handled all sorts of emergency issues, and at times served the food and cleaned the toilets. But he was much more than an active director of the institution. He was a bastion of calm and reliable reserve of strength, energy and leadership amidst a time of tumult. As the rabbi of the synagogue states:

Charles served as a member of the Board of Directors of our synagogue for approximately ten years. These ten years were, perhaps, the most tumultuous years in the history of our synagogue. Charles was a mainstay and anchor, maintaining a steady balance and demonstrating fortitude and optimism in times of uncertainty. . . . [I]n reality Charles was available for anything at all that needed to be done, from preparing food to setting up chairs for events and cleaning up when the event was over.

Rabbi Yosef Sonnenschein Ltr. The administrator of the synagogue notes that “Mr. Lesser is . . . indispensable to the daily function of the synagogue.” Ruben Poupko Ltr. He writes that Mr. Lesser “is the person people look to when responsibility and reliability are of the essence. Furthermore, Charles is a team player par excellence. He has the wisdom to delegate community tasks, but continues to be involved in an essential way.” Ruben Poupko Ltr. His wife observes that, “[o]ver the years he has kept our community synagogue afloat during difficult times by volunteering to do whatever it is that is necessary to be done, from bills to cleaning the floor.” Erica Lesser Ltr. Of particular importance to Mr. Lesser is that as his children grew older, they – in particular his oldest – would accompany their father to the synagogue early Shabbat morning to set up and prepare for the day. Mr. Lesser’s service to the synagogue, thus, served the secondary goal of instilling in his children good values and caring for others – something that Mr. Lesser and his wife have worked hard to promote. *See* Erica Lesser Ltr.

Mr. Lesser has also provided extensive service to the primary school serving the Orthodox community in Waterbury, the Yeshiva K'Tana of Waterbury ("YKW"). His involvement began several years ago, when he was approached by the administration and asked to assist with writing a grant for them. They were aware of his grant writing experience at NYU's Skirball Institute of Biomolecular Medicine where he successfully assisted in the writing and application of grants to the National Institute of Health, The Brain Cancer Society and others. He agreed, and over the years he has written and submitted grant applications and proposals on a broad range of topics on behalf of YKW (for music education, including the funding of equipment, software, and a music teacher's salary; homeland security; educational programming; building expansion and repair; and most recently, a grant providing funding to enhance the resource room- most significantly to allow the students to receive speech therapy, occupational therapy, and mental health counseling- there are currently over 90 children receiving these services). He has also been engaged heavily in general hands-on help at the school, such as chaperoning trips and supervising dismissal. The chief administrator of the school confirms:

In the capacity of administrator of the local day school I have asked Charles on many occasions to help out. He was always willing to do whatever needed to be done to benefit the school. Over the years he has written proposals for numerous grants to benefit the children of Yeshiva K'tana. One of my favorite grants was one that enabled the children to learn how to read musical notes. The music program was unique in that it taught the kids over a computer the fundamentals of something most children never have the opportunity to learn.

Yerachmiel Karr Ltr. And, as stated by the principal of the school:

For the past 12 years I have been employed as the principal of Yeshiva K'tana of Waterbury. Throughout my tenure here I have seen several

different school administrations come and go. One constant from the beginning has been the support and assistance of Charles Lesser.

Over the years there have been many projects that Charles has taken upon himself on behalf of the school and the nearly 400 children enrolled here. When our enrollment doubled and we needed desks and chairs for additional students, Charles was there to raise the money necessary. This was not a onetime occurrence but something that happened almost regularly as the school grew from an enrollment of less than 50 children to the nearly 400 children enrolled today.

In 2010 our school's 75 year old building was in a state of disrepair. Charles spearheaded a campaign to replace the roof of our building that raised tens of thousands of dollars. Charles was the force behind this successful project

In 2008 the school began to host an annual reception which is our primary fundraiser. Charles took an active role on the committee Charles personally raised funds from outside sources and would hold nightly calling sessions in his offices.

Yehuda Brecher Ltr. As a participant in these latter efforts observes, Charles undertook this work in a quiet way, without fanfare, and with a great deal of effort:

I remember spending nights with him in the school office as he took part in the thankless task of making phone calls for the annual fundraiser. [And a]s with the synagogue, I have subsequently been made aware of other behind the scenes efforts that Charles spearheaded which were integral to getting important programs off the ground, including the school lunch program.

Edward Shtern Ltr.

Mr. Lesser has also been heavily involved in the Mikva T'Charna of Waterbury, which serves the ritual needs of the approximately 200 orthodox women of the Waterbury community. The Mikva was built in 2006; Mr. Lesser served on the committee that was formed to undertake this venture. It began operation in 2007 and since that time he has voluntarily stocked and supplied the Mikva. The organization's

president is fulsome in his praise of Charles' commitment and generosity, which, he points out, are offered with virtual anonymity:

Mr. Lesser's involvement in our organization has been crucial to our success. Since the Mikva's opening in 2009, Mr. Lesser has donated all the supplies the mikva has needed. Mr. Lesser never asked to be reimbursed or recognized for his efforts. This is not only a magnanimous donation, but a heavy commitment of time to our cause. [And t]here are many other worthy causes that Mr. Lesser has volunteered his time and resources to over the years.

Rabbi Chaim Bernstein Ltr. Similarly, a colleague states:

When it came to the ritual bath [like so many other communal needs], Charles was there. . . . [H]e recruited me to serve on it[']s board. It goes without saying that with little fanfare and no compensation Charles remains actively involved there behind the scenes purchasing and stocking the facility and with so little fanfare that I doubt if more th[a]n 5 of the over 200 regular members know about it.

Rephael Max Ltr. The colleague sums up, "There is no better partner in communal efforts th[a]n Charles. Whether it's helping individuals, families, the elementary school, the ritual bath[,] the synagogue etc. Charles is there in his low key way with his only interest to help and make things better." Rephael Max Ltr.

Perhaps most impressively, Mr. Lesser has also served as a volunteer since 2006 for the area's *Chevra Kadisha*, or Jewish Burial Society, an organization dedicated to the preparation of the bodies of the deceased for burial according to Jewish tradition and their protection from desecration until burial. The work involves the ritual cleansing of the body, its dressing for burial, its close guarding until interment, and, in some instances, the burial itself. At times, the work involves the restoration to dignity of bodies broken by trauma or other labors under grotesque circumstances. As one of his colleagues in this work reports, "Mr. Lesser was only concerned that th[e] individual, whether an affiliated Jew or not, received his religious rite to a proper Jewish burial." Sean A. D'Amico Ltr.

The need for service can arise at any hour, and can take a large amount of time, sometimes many hours. The work is often outside of Waterbury – sometimes an hour or more away. A typical month has four or more calls; some months have had about 15 calls. Mr. Lesser’s commitment to this cause has involved the successful recruitment of about half a dozen other people to participate, as well. One of his acquaintances describes the remarkable fortitude and commitment required for this work:

Charles and I both volunteer at our local Jewish Burial Society, *Chevra Kadisha*. According to Jewish Law the dead must undergo a series of rituals before being buried. One of the main responsibilities of the Jewish Burial Society is to ensure that the dead are treated with the utmost respect. This includes even the most grotesque of situations. Moreover, according to Jewish Law a corpse should be dealt with at once and should be buried as soon as feasible. This means being called to volunteer at any hour of the day or night. Only a very special type of person would lend his time for such a cause.

Yisroel Weinreb Ltr. This is service of pure charity and giving, devoid of self-serving motives: the recipients cannot return the favor, and the work is virtually entirely out of the view of the community. It is characteristic of Mr. Lesser.

3. *Mr. Lesser’s Remarkable Care & Assistance for Individuals in Need*

Mr. Lesser’s good deeds have not been limited to communal or civic activities. He is driven to help out individuals or families struggling with difficulty, on a personal basis, as well. As the rabbi of his synagogue comments, “Charles cares for others. The plight of someone in need touches him deeply and he is prepared to invest time and resources in order to provide relief for others in difficult situations.” Rabbi Yosef Sonnenschein Ltr. Or, as his brother-in-law puts it, “Charles Lesser is one of the most remarkable and charitable individuals I have ever met.” Rabbi B. Kaniel Ltr. The letters in support of Mr. Lesser submitted with this brief attest to his remarkable record of

personal kindness, support and generosity for those in his family or community in need of help.

For the convenience of the Court, a few examples are marshaled below. The remarkable nature of his support and the significant impact that he has had warrant some extended quotations. For example, his brother-in-law (among others) writes at length of Mr. Lesser's generosity and his concern for and desire to help others – both within and outside of his family:

I was privileged to join his family in 2009 when I married Maya Herskovits, his wife's sister. At the time Maya was finishing college, and she had a remaining tuition balance of approximately \$3,000, which needed to be paid in order for her to graduate. As a young couple, each holding a part-time job, this balance was not easy for us to pay. On one occasion, Charles came to visit us in our apartment, and during our conversation, the subject of the remaining tuition came up. Before he left our home, he gave us a check for \$3,000. That was my first insight to whom Charles really is, a man, who with no questions asked, will do whatever it takes to help his family and friends. We were so thankful because he removed a tremendous burden off our shoulders.

Maya's younger brother had serious learning disabilities in school. Getting into college and maintaining good grades was an extremely difficult task for him. In order for him to succeed and graduate college, he needed personal guidance for most of his studies, which was quite costly. Charles paid for years of tutoring and personal assistance, which ultimately helped him graduate college. Today, my brother-in-law is married and holds a position in a reputable institution. Charles' support and guidance have undoubtedly propelled my brother-in-law forward in all aspects of his life.

On one of the happiest days of my life, when our first daughter was born, Charles came to the hospital to congratulate us. Seeing that I was overjoyed and focusing on the occasion, he snapped me back into reality when he expressed his concern for Maya. He was afraid that once we returned home, it would be overwhelming for her to care for the baby by herself, while I would be away for most of the day. In light of this, he offered to pay for a nurse to assist Maya at home for her first few weeks as a new mother. At that point, I came to realize that Charles was the older brother I never had, the one who would always look out for me and my family.

Charles devotes a great amount of time to helping out our in-laws. On many occasions, he has traveled alone from Waterbury, CT to East Brunswick, NJ in order to help them rearrange their house, clear out their basement, and do anything else that requires extra man-power. Often enough, that drive could take up to three hours or more in both directions. He dedicates his time to financially plan their future with them to ensure that it will be a secure one. In what is a bit of a role reversal, at times my in-laws were financially stuck with no one to turn to until Charles came along and respectfully bailed them out, allowing them to maintain their dignity. I am truly humbled by the incredible amount of love, honor, and respect he shows our in-laws. . . .

In years past, when things were different for Charles financially, word of his generosity was widespread. People travelled from as far as New York City and abroad to knock on the door of his humble home in Waterbury, CT, assured that their pleas will be met with benevolence. Those seeking financial assistance towards medical bills, tuition, and many other types of debt all approach Charles for help. I have personally seen Charles address these people with empathy and give them sizable sums of money. Often enough, he will welcome them into his home and listen at length to the life stories of people he has never met before just to help them out. These heartwarming deeds bring tears to my eyes every time I reflect on them.

Rabbi B. Kaniel Ltr.

Another brother-in-law writes of Charles guidance, and his anonymous financial help:

I owe Charles (Chaim) a great deal. He essentially saved my life (metaphorically) and put me on the right track in life. . . .

When I began post high school Yeshiva in Israel, as well as later in Waterbury, Connecticut, I began struggling in school and I made some bad choices. I did not tell my parents; however Chaim saw what was happening and intervened. Besides talking to me and counseling me for hours, and personally sitting and learning with me, Chaim also hired a daily tutor to help me in my studies. At the time I thought the tutor had volunteered to help me. I did not know until later that Chaim quietly paid him, asking nothing in return. (All this while dedicating himself to his family, and helping others in need as well.) In addition to Jewish studies, he encouraged me to go to Post University, where I earned a degree in business. Were it not for Chaim, I don't know where I would be today. He really helped me turn my life around . . . Chaim has had a profound [e]ffect in shaping who I am today. With his assistance and encouragement I went from being a young adult on

a wild path to a settled, responsible, married and gainfully employed adult.

Manfred (Eli) Herskovits Ltr.

A community rabbi writes at length of how Charles' "humble and modest manner" disguises an intense compassion for those in need of help; the rabbi offers the example of Charles' extended assistance to a young family in the throes of a long-term crisis:

I will give one example, and please note that I am not exaggerating in the slightest. There is a family in town – of which both parents are quite emotionally wounded. The dysfunction in the home was quite severe – depression, anxiety, and an overall unhealthy atmosphere. The husband lost his job and began to be somewhat of a recluse. He would not leave his house, nor partake of community and even family activities.

Charles stepped in, guided him out of the slump, gave him a job, and took him into his home for over three months while he was receiving therapy and counseling by professionals. I must point out, that at this stage of this fellow[']s life, he was not a very pleasant person to deal with and have in one[']s home – as was evident from the fact that his wife had him leave their home.

At the same time, Charles was a very strong anchor for this fellow's wife and family during that trying time. The time and money invested was significant – Including phone calls in the middle of the night, to intervene in a sudden crisis, and dropping everything to help them and others. Even more impressive is the fact that he looked for no recognition for this and deflected any praise to others.

After many years of this . . . , this now stable couple has a wonderful relationship with each other, as well as their children. The father and husband has held his job and h[a]s himself begun to, in a very quiet [and] modest way, help others who are not in a position to help themselves. Charles does not even know of his "student's" deeds, because, as in the case with Charles, they are done quietly and without fanfare.

This is just one of the many examples of the kindness and generosity of Charles Lesser. I reiterate that I am not at all exaggerating.

Rabbi Arnold Farkas Ltr.

Other specific examples of his generosity and kind and sensitive (often anonymous) support for individuals in difficulty are legion in the letters written to the Court:

- His mother-in-law observes that “He is one of the most charitable people that I know, and he gives and does in a very quiet way. He does not like hoopla,” and she notes how she herself has benefitted from his kindness:

So many times, I witnessed how Chaim was contacted by others who sought advice or help and he always did his best to help them; whether it was by inviting them for meals at his home, or by employing them, or just by lending an ear, Chaim generously gave of himself. And still does. . . . This generosity extended to me as well, when I had a personal emergency and Chaim came to my rescue.”

B. Herskovits Ltr.

- His brother David notes his generosity and support of others, in general, and of David’s own family, in specific:

Over the past ten years we have often spent holidays together, and I am constantly amazed at how Charles will seek out those who are in need, and . . . offer meals and encouragement to those who are less fortunate. . . . My wife Miriam works as a therapist, and recently her car died, and we could not afford to buy a new one. Charles gave her his own vehicle as a gift, enabling her to continue working and to provide for our family.

D. Lesser Ltr.

- Mr. Lesser’s sister-in-law notes his support despite the fact that her secular lifestyle takes her outside Mr. Lesser’s belief system and community:

I am not a religious person and I do not value the religious life . . . but despite our religious differences I feel that my choices are always respected by Charles. . . . His personal beliefs do not influence how he treats other human beings who may have a different perspective In the twelve years that I have known Charles, he has helped me countless times. Providing emotional support by helping me to decide if I should leave my counseling job where the company was mistreating me, with financial support by helping me to make my rent one month when I was short during graduate school, and even physical support by helping me to carry an air conditioner into my apartment in

the crippling summer heat. Whenever I have asked for help, Charles has never said no.

Julia Herskovits Ltr.

- A long-time friend writes of Charles' discrete, sensitive rendering of financial help:

I too, have been fortunate to build a beautiful family and am a proud father of seven children. Being employed in the non-profit world was tough[,] particularly with the fluctuation of the economy. There were times I struggled and life became very challenging. Although I maintain many friends and Charles and I live a far distance from each other, it was he that was always there, lending his financial assistance, moral support and a relentless pursuit of a viable solution. I particularly recall one instance when my wife required emergency dental surgery. The bill was thousands of dollars and I had nowhere to turn. Charles was there for me – again in his quiet way, without seeking recognition, and most importantly caring to ensure that my own dignity was intact.

Rabbi Ephraim Blumenkrantz Ltr.

- Another friend writes similarly:

His friendship and guidance helped me stay strong throughout those very trying times. Charles urged me to continue my education and motivated me to pursue my dreams of becoming an attorney, overcoming the stigma of being the son of a disbarred attorney. He helped me financially when I needed money for books during law school and supported me at every juncture. It wasn't just that he helped me financially, it was how he did it, with respect, kindness, and consideration for my feelings.

Daniel Schick, Esq. Ltr.

- The father of a troubled young man whom Mr. Lesser helped relates as follows:

I am personally aware of Charles' outstanding generosity of spirit. . . . [M]y son, Paul, was a young man to whom school was a challenge. As a student of the Waterbury Yeshiva, he was advised that his ability to succeed would be significantly enhanced by having the structure and responsibility of a part-time job. Although Charles Lesser did not have a need in his business operations for a part-time, untrained, and only moderately-motivated employee, he agreed to hire, train, and

supervise Paul. He did so with intelligence and compassion and helped significantly in Paul's development into a mature and responsible young man.

Ephraim M. Brecher Ltr.

- Another friend describes Charles' hosting of the friend's entire family for days during the aftermath of Hurricane Sandy, despite already having a home full of relatives seeking shelter:

Charles is someone who expects little from others, but has tons to give. Only a few years ago, I experienced his warmth and giving nature in a major way, once again. It was Hurricane Sandy and my town lost power with no expected return for 4-5 days. With three young children in the middle of the winter, we were scared of how to survive without heat. My first call was to Charles. I asked if I could I come with my wife and three kids and stay with him until power was restored. Without hesitation, or questioning how long I thought it would be, Charles happily agreed and made me feel like I was doing him the favor. When we arrived, I found out that Charles' in-laws were also staying at his house for the same reason. Yet in spite of an already overfull house, he welcomed us, gave us a place to stay and fed my whole family for days.

Noah Kaminer Ltr.

- Numerous letters note Mr. and Mrs. Lesser's warm and generous hosting of students and other community members for Sabbath meals and holidays. As parents states in a thank you letter included among the letters submitted to the Court:

There truly are no words to express the hakaros hatov [gratitude] my husband and I have for [the Lessers'] generosity and hospitality. As parents who send their young son to an out-of-town yeshiva, we were concerned that he should find good homes and families to spend Shabbos meals with.

Knowing that anytime he needed he was able to participate in meals at [the Lessers'] home, enjoying an uplifting Shabbos, meant the world to us.

Rubinstein Ltr.

The rabbi of his synagogue comments that Mr. Lesser has even helped families to stay out of foreclosure, in multiple ways – all typically understated:

A few times, families that were facing an impending foreclosure approached him for help. He made himself available for whatever was needed, from coaching the family in question in the grueling process of preparing mounds of paperwork, to paying legal counsel so that they should get all the assistance that they needed. It is safe to say that there are families in Waterbury who are safely ensconced in their homes thanks to Charles Lesser. All this is done quietly, without fanfare and without asking for or expecting any type of recognition.

Rabbi Yosef Sonnenschein Ltr. Indeed, an attorney who lives in Waterbury relates that Mr. Lesser has discretely paid the legal fees of families caught up in foreclosure: “On numerous occasions, I have witnessed Mr. Lesser’s generous character and concern for others. He has referred families in foreclosure to me with the utmost discretion and paid their legal fees in full without any slight to their dignity and without their request. . . . Due to this generosity, we successfully had the foreclosures withdrawn and the mortgages modified.” Raphael Deutsch Ltr.

In light of this impulse to help those in need, Rabbi Sonnenschein describes him as an embodiment of community service:

His concern for less fortunate people is inspiring and his willingness to get involved and even assist financially is something that I have come to depend on. Watching him reach out to others, communicate effectively and compassionately, and accept communal as well as personal responsibilities, is a living example of what community service really means.

Rabbi Yosef Sonnenschein Ltr. Rabbi Farkas summarizes simply, “In all of my years in public service, rarely have I come across someone as dedicated, caring and generous as Charles.” Rabbi Arnold Farkas Ltr.

D. Offense Conduct

During this same period that Mr. Lesser was establishing his family in Waterbury and helping the community to develop through his charitable and civic works, Mr. Lesser

was also working at establishing himself as a businessman. Unfortunately, in this arena Mr. Lesser's decisions were not all positive. As the real estate market heated up, his work as a mortgage broker and loan officer was developing nicely, and he found his success as a businessman in the community deeply satisfying.

Regrettably, and to his deep shame now, a shame that will never go away, he went far astray in this regard. In an effort to make money faster, grow his business, increase his influence, and consolidate connections that he felt would be valuable, he engaged repeatedly in fraud across numerous months – criminal conduct that he will regret the rest of his life. He acknowledges the conduct described in the PSR. Through Jeff Weisman, he had met Joseph Levitin, and learned of the steady flow of real estate transactions in New Haven associated with Mr. Levitin, Mr. Hutchison, Mr. Weisman and the other attorneys and borrowers involved with them. When the group turned to him to seek his assistance in securing fraudulent loans to facilitate the transactions associated with Mr. Levitin, Mr. Lesser obliged. As charged by the Government, in one transaction after another, from approximately March 2007 through mid-2008, Mr. Lesser knowingly and actively assisted in obtaining mortgage loans based on fraudulent documentation, including false documentation that he himself prepared [REDACTED]

[REDACTED] He is appalled by what he has done. He recognizes his wrongdoing, and he has done what he can to make amends.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

² Mr. Lesser around this same time walked away from his career in the mortgage industry. In 2008, he had begun work with a new lending institution, GFI Mortgage Bankers. That position continued until 2010, when he commenced similar work for American Home Bank, and in 2011, when his supervisor became affiliated with Plains Capital, Mr. Lesser did as well. He resigned in 2012, and ended his work in the mortgage industry, for good.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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G. The Toll on Mr. Lesser and His Family

Mr. Lesser and his family, unsurprisingly, have paid an enormous price already for his offense. As noted, he and his family have been subjected to harsh stigmatization; as one of his close rabbinical counselors explains, “[M]any . . . people within our larger community have unfortunately chosen to react by shunning and defacto ostracizing Charles and his family from many areas of their personal and communal lives. At times, tragically, this behavior has been exhibited from among those that have benefitted immensely from Charles’ myriad activities and service on behalf of our community.”

Rabbi Chaim Cohen Ltr.

His family have also paid a price financially. In approximately 2007, Mr. Lesser had begun a real estate management business, under the name of Chief Management. He continued this work – eventually expanding services to include environmental abatement work – under a different trade name, Taylor Blue, until the recent wind-down

of that business. [REDACTED]

[REDACTED] and we understand that he has now surrendered his abatement licenses. His family's financial prospects have been severely impacted. Erica Lesser Ltr.

But the financial impact pales in comparison to the personal impact. The effect on his mental and physical health has been profound, and the impact has been exacerbated by the long pendency of this matter [REDACTED]. The PSR, Dr. Koerner's report and numerous letters from friends and family note the toll that the ordeal has taken on Mr. Lesser. *See* PSR §§ 48-58. Dr. Koerner reports, "the profound anxiety which plagued Mr. Lesser," his "great difficulty sleeping," and his "ruminat[ion] constantly over what he had done and what would happen to him – and to his relationship with his wife and children as a consequence." Koerner Rpt. 9/9/14. Dr. Koerner has noted more recently that "Mr. Lesser has become increasingly anxious and depressed." Koerner Rpt. 6/8/15. Mrs. Lesser's letter also attests to the impact that the stress of the matter has had on Mr. Lesser, as well as herself and the children:

From the time we found out that there was a case against Charles, three years ago, just two days after we found out that we were pregnant with our fourth child, Charles has become a different person. He has tried very hard not to inflict any of the stresses he is going through on the children and/or myself, but it is extremely difficult for anyone to be under so much stress and to hide it all. He is often up all night worrying about what is going to happen with the family, not only in terms of financial support, but also emotional. He is always tired and on-edge, never looks happy, even at really momentous and exciting times in our lives (i.e. birth of a baby, birthdays for our children, holidays, and children's school plays). For a while he began to drink at night in order to help him sleep, but it didn't always help him to sleep better and some days he looked like a truck ran him over. His emotional state has made for some uneasy situations throughout our daily life, even though he is trying his hardest to stay strong and to pretend to be okay. The situation we are in is not something that can be ignored or forgotten about, so regardless of how much effort

Charles puts into making sure this doesn't impact the children and myself, it is nearly impossible to do so.

Erica Lesser Ltr. Mrs. Lesser adds that, "When he suddenly found himself in a terrible situation, it threatened to consume him entirely- and nearly did. There was nothing to do but pay the price, and how he paid- how he suffered. I cannot describe to you the pain on his face day after day- but suffice it to say he was a broken man." *Id.*

His shame, remorse, pain and penitent attitude are apparent to all who have known him:

- "Since this saga began Charles has become a shell of his former self. He walks with shame and regret, embarrassed to show his face in public." Mendy & Rivka Elin Ltr.
- "Chaim has become a much more somber, stressed, and introspective individual who deeply regrets his actions and is extremely repentant." Brina D. Herskovits Ltr.
- "He is extremely repentant as well as despondent over what he has done that I am truly worried about him." Manfred (Eli) Herskovits Ltr.
- "Frankly, I've seen him suffer quietly over these last few years, [REDACTED] It has been incredibly hard on him, yet he's only mentioned his wife and children when asked about it. . . . Again quintessential Charles, thinking of others before himself." Steve Hornung Ltr.

One long-time friend recalls the pain, self-disgust and fear as Mr. Lesser, driven to acknowledge his wrong-doing in order to begin the process of repentance, sat down and explained what he had done:


I remember the evening, around 10 pm, that I received a call from Charles, whom I had not seen or heard from in quite some time as we live three hours apart and both have families and responsibilities. He asked if it would be alright for him to come to my house, he had something he wanted to discuss and it had to be in person. When he arrived, I could see that he was broken. He sat with me for more than an hour and explained the events that led up to the case that Your Honor will be presiding over. He had to keep pausing. I could see the shame and embarrassment in

his eyes, but he kept going. I was almost in tears myself. With the possibility of incarceration looming, what would happen to his wife? His little children? Who would take care of them, financially, emotionally? How would he keep himself and his family together through this ordeal? I have since replayed that night in my mind and thought about why he came. But, the answer is obvious, to one who knows Charles. He understood that in order to begin the process of repenting for the past to himself, his family, his friends and all the people in his life whose opinions he valued, he needed to share with each one a personal level, what had occurred. . . . [Later] I got to speak to Charles more about his situation. He displayed true regret for his actions and I could really sense how his disappointing himself and those close to him weighed on him as much as the unknowns of his future.

Noah Kaminer Ltr. And his sister has seen the same shame, regret self-disgust and mental health impact:

Charles’s regret over his wrongdoings is deep. He is well aware that his conduct was irreconcilable with the values with which he was raised. Th[is] . . . has deeply affected Charles’s relationships with his family and community. It has also severely affected his self-image and mental health. Not only is he suffering the shame of the legal proceeding, he is also saddled with worry and grief over how his family and community would grapple with his absence if he were sentenced to prison time.

Rivka Jungreis Ltr.

 his family and loved ones have witnessed Charles endure what his brother refers to as “the most difficult period we could ever have imagined for him.” Efraim Lesser Ltr. “We watched Charles teeter at the edge of the abyss, fall at times, and it appeared that there was just no hope.” *Id.* He has paid a tremendous price, and at times it seemed that he was broken and would never bounce back. Yet, drawing on his boundless compassion and desire to help others, he has found the strength to revitalize his positive engagement with the world.

H. Mr. Lesser's Renewed Commitment to Doing Good Deeds

"[S]omehow," as noted by his brother, "from the depths of despair, Charles started to build again, ever so slowly. He made commitments to himself to serve his family, community, and others by being a better person and to strive for moral and ethical betterment." *Id.* As his therapist states, he has struggled against his depression, and "made successful efforts to become less isolative." Dr. Koerner Rpt. 6/8/15.

"For example," Dr. Koerner notes, he has taken classes to become an EMT, which he hopes will allow him to serve on Waterbury's Hatzalah (which means "rescue," in Hebrew) ambulance squad, and he has also added to his communal efforts volunteer work with Meals on Wheels in Southbury. *Id.*; *see also* Joan Neuman Ltrs. (noting that he has devoted more than 140 hours of service to this program since early 2013, and that "[h]e is reliable and works well both independently and as a team member. It is a pleasure to have him in our . . . program"). Dr. Koerner reports that Mr. Lesser has sincerely undertaken these efforts "to see if he could make a 'positive contribution' to society." Dr. Koerner Rpt. 6/8/15.

His efforts have not stopped there. As one of his close rabbinical counselors states, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

I have spent countless hours over the past three years interacting with and counseling Mr. Charles Lesser amid the seemingly endless storm and chaos that has engulfed him and his family on all fronts – physically, financially, legally, and maybe most of all emotionally. Sad and dreadful as are [Mr. Lesser's] unfortunate circumstances, what is most compelling is Charles' deep determination to accept full responsibility for his mistakes

and their aftermath.

Amazingly, these trying times have not only not deterred or diminished Charles's activities, but they have rather, through challenge and adversity, impelled him to redouble his efforts on behalf of the least fortunate in our community. . . . These unceasing efforts of his are a personal penance and a shred of dignity to an otherwise shattered and extremely remorseful man.

Rabbi Chaim Cohen Ltr. In his letter, Rabbi Cohen describes the breadth of Mr. Lesser's community service, providing a "partial list" of Mr. Lesser's activities at this stage, including "Meals on Wheels, devising and implementing a school lunch program for needy students, hospital visitation under the auspices of Bikur Cholim of Waterbury, end-of-life hospice and [continued] free burial society participation, and chairing the scholarship committee of our [Yeshiva Gedolah of Waterbury] alumni organization." *Id.*

Just his current service to the day school, alone, would be remarkable. For instance, starting in January 2013, he agreed to spearhead the effort to have the school enrolled in the National School Lunch Program, which provides free and low cost meals to qualifying students. He successfully undertook this very demanding task, and continues today in administering the program, which is generally a full-time job for a school serving approximately 600 meals a day. As described by the administrator of the school:

When the idea of introducing a school lunch program came up, I knew it was a huge undertaking and that I would require a lot of assistance to execute such a program. I approached Charles, and he enthusiastically embraced the offer to volunteer, an undertaking that is generally a full time job. Charles spent hours researching and learning the ropes of the National School Lunch Program. With that knowledge, and the desire to help those in need, he successfully enrolled the school in the NSLP. Through these efforts, thousands of meals have been served to students

free of charge or at a reduced rate. Once the program was up and running, Charles remained actively involved, ensuring that the program would run smoothly. His professionalism and efforts paid off, and when the school was audited, it passed with flying colors.

Yerachmiel Karr Ltr. The rabbi who serves as the school's principal emphasizes this same recent undertaking, and others, and notes how Mr. Lesser's tremendous and successful service has, now, been undertaken in an even more subdued manner than used to be the case:

Of all of the accomplishments and assistance that we have received from Charles, perhaps the most significant has been his work as the Food Service Director here at Yeshiva K'Tana. Almost single handedly, Charles has successfully enrolled our school in the National School Lunch Program. This has been a momentous task that required, and still requires, hours of work and preparation. He did the program under the radar without any of the parents knowing who was the driving force behind it. The program provides nutritionally balanced, low-cost or free breakfast and lunches to hundreds of needy children each school day. I can testify that thanks to the food program, the level of learning has increased tremendously. We are even able to give out extra healthy snacks a few times during the day.

Charles continues to work on behalf of our school. Most recently Charles has successfully set up a program that will allow us to provide Speech Therapy services at our school. . . .

From the beginning of this difficult time, we at Yeshiva K'tana have been amazed at how Charles has gone about his way. Always quiet and unassuming by nature, this is even more so the case now. His sense of shame and embarrassment over the actions that have brought him here today is evident. Yet he continues to put his utmost forth on behalf of our school determined to make a difference. . . .

Rabbi Yehuda Brecher Ltr. To Rabbi Brecher, Mr. Lesser's increased service to the school is part of his effort to emerge from his ordeal as a better person: "With much shame and embarrassment he has acknowledged his responsibility and a willingness to accept the consequences of his actions. I have witnessed his efforts to continue to make a

difference to the community and to emerge from this episode a better person.” Rabbi Yehuda Brecher Ltr.

In addition, in the years after his plea, Mr. Lesser’s work for Bnai Shalom only became more involved. As the rabbi and the administrator of the synagogue report, starting in 2012, he became the only functioning board member of the synagogue, due to paralysis cause by disinterest and distrust among different factions; in that role, he effectively filled the role of president, treasurer, secretary, fundraiser, and reviser of the bylaws:

- In fact, approximately two years ago, due to various events outside of our control, Charles was the only functioning member of the Board left, and he singlehandedly managed all of the synagogue’s affairs with skill, honesty and transparency. I often noticed him in the synagogue, burning the midnight oil, making sure that all the necessary tasks were accomplished.
- The administration was paralyzed by bureaucracy, incompetency, neglect, and a plague of distrust between the old and the young. I recall that when the situation came to a head, Charles was the one who valiantly and singlehandedly led the synagogue to the state of unity it enjoys today. I can personally attest to the fact that Mr. Lesser was the catalyst that unified the community.

Rabbi Yosef Sonnenschein Ltr.; Ruben Poupko Ltr., respectively. In the weeks after his plea, he effectively took over all aspects of lay leadership of an institution that was not meeting its monthly obligations, unable to make any decisions, and although usage was up, membership was dwindling. When he was asked to resign in 2014, after a tremendous effort and untold hours of work, it was cash flow positive and had even further increased membership and a much greater sense of communal unity.

He and his wife have also recently started a Sunday baseball league for 50 children, grades 2-6. They do this to provide “the children with a healthy, structured and supervised outlet which was much needed.” Erica Lesser Ltr.; *see also* Mendy & Rivka

Elin Ltr. (“This past year Charles and his wife organized a weekend softball league for over 50 children.”) Once again, he saw a community need, and jumped in: “Charles was there to coach, organize, encourage, and implement what turned into a wonderful experience for so many of the communit[y’s] children.” Mendy & Rivka Elin Ltr.

As stated by his good friend, in reaction to his “tremendous regret [for] what he has done, [n]ot only has he worked to correct the things he’s done wrong in business but has looked to help others as a way to better himself.” Yisroel Weinreb Ltr.

Moreover, Mr. Lesser’s involvement with his family’s support and care has also changed, and increased, in the time since his plea. This has largely been a function of the family’s financial challenges stemming from his conviction. To help with stabilizing the family’s finances, his wife, who works as a speech therapist, started an agency that provides therapy in local schools, serving approximately 50 children each week, and employing multiple therapists. This is a tremendous undertaking for a mother of five children ranging in age from a few months to 11 years, and Charles has lent indispensable support through administrative work with the group, and, most importantly, through a significantly increased role in caring for the children, to the point where he is now the primary caregiver.

Mrs. Lesser describes the new business, and Charles’s vital role in supporting it, as follows:

Our financial position has been decimated and to a certain extent it is likely that we will never fully recover. Yet, we realized that we had to take every step we could to provide for our young family. Despite our despair over our current state of affairs, we started building again, ever so slowly. In mid-2014, we formed Dynamic Therapy Group. It is an agency that provides multidisciplinary therapies across a broad range of demographics. We have slowly built this business into an entity that services over 50 clients a week and employs three therapists. Charles

handles all the administrative functions while I perform therapy. Our prospects of continuing this business should Charles be unavailable for an extended period are bleak and it is likely that we would have to close. I do not know how we would provide for our five children if this should happen.

Erica Lesser Ltr. Moreover, she adds that Mr. Lesser's taking over the predominant role of caring for the children is particularly crucial because, "[i]n many ways we as a family are alone. Here in Waterbury, we are well over a hundred miles away from our family. As much as our family would like to help, the distance and logistical issues make it impractical. They all have large families, jobs, and lives of their own":

Charles is so present as a father and we rely on him for so much. I am out of the house very early to get to work and come home completely wiped out from my day. I rely on Charles to care for our children in the morning and to help with all their many needs in the evening.

Erica Lesser Ltr. Once again, Mr. Lesser has stepped forward to meet the need – this time in his very own, immediate family.

II. SENTENCING CONSIDERATIONS

As the Court knows, it is required to fashion a sentence that is “sufficient, but not greater than necessary,” to satisfy the goals of sentencing. 18 U.S.C. § 3553(a). In fulfilling that mandate, the Court should aim for “individualized justice,” *United States v. Crosby*, 397 F.3d 103, 114 (2d Cir. 2005), based upon “its own view of the ‘nature and circumstances of the offense and the history and characteristics of the defendant,’” *United States v. Cavera*, 550 F.3d 180, 188-899 (2d Cir. 2008) (en banc), *cert. denied*, 129 S. Ct. 2735 (2009) (quoting 18 U.S.C. § 3553(a)), along with individualized consideration of “the need to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for that offense,” “the need to afford adequate deterrence to criminal conduct” and to protect the public from any further crimes of the

defendant, the “the need to avoid unwarranted sentence disparities” among similarly situated defendants, the kinds of sentences available, and the provision of restitution. 18 U.S.C. § 3553(a). While the Court must calculate and *consider* the advisory sentencing Guidelines range, § 3553(a), “it is now . . . emphatically clear that the Guidelines are guidelines – that is, they are truly advisory. A district court . . . must . . . conduct its own independent review of the sentencing factors,” *Cavera*, 550 F.3d at 189, and may not only conclude that a formal departure to a lower Guidelines level is appropriate on the basis of one or more factors, or a combination of factors, *United States v. Rioux*, 97 F.3d 648, 662-63 (2d Cir. 1996), but may exercise its discretion to impose a sentence higher or lower than whatever the final Guidelines range may be, irrespective of any departure. *Cavera*, 550 F.3d at 189. We respectfully submit that based upon an individualized consideration of all the circumstances of this case, a sentence far lower than the Guidelines’ recommended range, and lighter than the sentences imposed upon the other defendants, would be sufficient to satisfy the goals of sentencing; indeed, under all the applicable circumstances, the Court should give serious consideration to imposition of a noncustodial sentence with a term of home confinement.

A. Mr. Lesser Does Not Contest the Advisory Sentencing Guidelines Range.

Mr. Lesser does not contest the initial advisory Guidelines calculation in the PSR, which is in accordance with the parties’ plea agreement. Under the Guidelines edition currently in place, given that the \$2,808,700 loss, PSR §§ 10-11, is between \$2.5 million and \$7,000,000, and given the role adjustment (for abuse of a position of trust) to which Mr. Lesser has stipulated, and given the three level reduction expected for Mr. Lesser’s early acceptance of responsibility, he agrees with the PSR’s adjusted offense level

calculation of 24 under U.S.S.G. §§ 2X1.1, 2B1.1, 3B1.3, and 3E1.1. PSR ¶¶ 16-26. Defendant agrees that he has zero criminal history points, and therefore has a criminal history category of I, as calculated by the PSR. PSR ¶¶ 27-28. Under the Guidelines, a total offense level of 24 and a criminal history category of I yield an initial Guidelines recommended imprisonment range of 51-63 months and a fine range of \$10,000 to twice the loss amount. PSR ¶¶ 71, 76.

Mr. Lesser raises no objection to these Guidelines calculations. However, under the circumstances of this case, a sentence much lower than this initial range is appropriate, as explained further below. A “district court may not presume that a Guidelines sentence is reasonable,” *Cavera*, 550 F.3d at 189, and here, we respectfully submit, a sentence significantly below the initial Guidelines range would be appropriate – and, indeed, the Court should give serious consideration to a noncustodial sentence – in light of the Court’s own analysis of all applicable information under 18 U.S.C. § 3553(a).

The Court noted in the sentencing of Mr. Constantinou that it has given a lower-than-Guidelines sentence to virtually every defendant associated with the instant matter. *United States v. Constantinou*, 11CR192(JCH), Tr. 12/16/14 (sentencing), at 90, Exhibit B hereto.³ The Court has explained on the record its view that under the Guidelines, the loss enhancement “tends to drive . . . the guidelines high,” and “can often distort what an appropriate and fair sentence is.” *Id.* at 89-90. And the Court has indicated in the sentencing of another related defendant that “[t]he problem . . . in the guidelines” is that

³ To the knowledge of the undersigned, only Defendant Nkrumah, who had a criminal history that placed him in Category III, received a sentence within the Guidelines range. 11CR192(JCH) & 13CR65(JCH). Nkrumah’s sentence of 48 months’ imprisonment fell within the applicable 46-57 month Guidelines range after the Court departed downward pursuant to *United States v. Fernandez*, in light of the parties’ plea agreement, from total offense level 23 to offense level 21. See *United States v. Nkrumah*, 11CR192(JCH) & 13CR65(JCH), Tr. 9/12/13 (sentencing), at 19-20, Exhibit C hereto.

they do not sufficiently “consider enough . . . of the differences between and among people who happen to come before the Court.” *United States v. Hutchison*, 11CR192(JCH), Tr. 2/9/15 (sentencing), at 40-41, Exhibit D hereto. The defense is also cognizant that the Court has explained its views in other cases regarding what it considers to be the problematic development of U.S.S.G. § 2B1.1, the drawbacks that the Court sees in applying it, its preference for an individualized approach looking at all of the specific circumstances of the case before it and the applicable statutory sentencing factors, and its view that such an approach is more likely to produce an appropriate sentence. *See, e.g., United States v. Litvak*, 13CR19(JCH), Tr. 7/23/14 (sentencing), at 37-41, 79-81, 107-08, 118-19, 132-137, Exhibit E hereto.

Given that the Court has made clear its view that reliance upon the Guidelines calculation in a case of this sort is not necessarily warranted due to the current structure and the history of the Guidelines, the defendant will not belabor the point. We would simply note that, as a result of the various increases to the fraud Guidelines since the adoption of the Guidelines manual in 1987, Mr. Lesser has a Guidelines range that is essentially double the prior past practice. Whereas Mr. Lesser’s Guideline range is 51-63 months, before the adoption of the Guidelines, first offenders convicted after trial of even sophisticated fraud involving the highest loss amounts who were sentenced to prison served, on average, just 18-24 months, and 18% of such defendants received no jail time. *See U.S. Sent’g Comm’n, Supplementary Report on the Initial Sentencing Guidelines and Policy Statements* 33 (1987) (“*Supplementary Report*”). Offenders who pleaded guilty, such as Mr. Lesser, typically received sentences that were significantly lower. *Id.* at 24. In its initial version of the Guidelines, the Sentencing Commission decided to require

some form of confinement for all but the least serious cases, and adopted a fraud Guideline requiring no less than 0-6 months, but no more than 30-37 months for even the most serious fraud defendants in Criminal History Category I. *See* U.S.S.G. § 2F1.1 (1987). Under this initial version of the Guidelines, even though it increased the range of punishment compared to historical practice, Mr. Lesser would still have an initial Guidelines range of only 27-33 months, based upon the following calculation:

<u>Guidelines Calculation Under 1987 Guidelines</u>	
2F1.1(a) – base offense level	6
2F1.1(b)(1) – amount of loss over \$2,000,000	10
2F1.1(b)(2) – more than minimal planning and/or multiple victims	2
3B1.3 – abuse of position of trust	2
<u>3E1.1 – acceptance of responsibility</u>	<u>-2</u>
TOTAL OFFENSE LEVEL	18
GUIDELINE RANGE for CHC I:	27-33 months.

That range – essentially half of what the Guidelines call for today – would apply [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

We also note for the Court that the existing Guidelines are the subject of a pending amendment that will become effective on November 1, 2015 (assuming no contrary Congressional action). The revision adjusts the loss enhancement table at U.S.S.G. § 2B1.1(b)(1) to account for inflation. *See* http://www.ussc.gov/sites/default/files/pdf/amendment-process/reader-friendly-amendments/20150430_RF_Amendments.pdf, at ii, 13. The effect here would be that Mr. Lesser’s loss number of \$2,808,700 would no longer qualify for an 18-level enhancement under § 2B1.1(b)(1)(J), but rather a 16-level enhancement under § 2B1.1(b)(1)(K). That change would drop the

applicable Total Offense Level to 22 from 24, which equates to a reduced imprisonment range of 41-51 months. We respectfully submit that this range, too, is not helpful to the Court in terms of directly informing its final sentencing determination: this Guidelines calculation would still be too high because of the loss enhancement, in our view.

Moreover, we recognize that the Court has not applied this revised Guidelines in its sentencing of the other defendants in this matter to date. However, as explained further below, we offer the Court the alternative Guidelines calculations of Mr. Lesser, together with all of the other defendants, because that additional information may assist the Court in drawing comparisons between Mr. Lesser and other defendants and determining where Mr. Lesser fits in relative to them. *See* Table of Comparative Sentencing Information, Exhibit A hereto, and additional discussion below.

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C. Mr. Lesser's Family Circumstances Justify a Significant Mitigation of His Sentence.

Mr. Lesser's family circumstances also justify a significant mitigation of his sentence. Although we are seeking only an accommodation under the Court's discretionary statutory sentencing authority, and not a formal Guidelines departure, as the Court is aware, the Second Circuit has found that, even within the framework of Guidelines authority, mitigation is warranted where there are family circumstances that go beyond the ordinary.⁴ The PSR and the letters submitted to the Court establish clearly the basis for such mitigation here insofar as Mr. Lesser has an essential and extraordinary family role as the primary caregiver for his five young children. As the PSR states, Mr. Lesser is "truly . . . a 'pillar' within his household." PSR § 87, *see also*

⁴ *See, e.g., United States v. Galante*, 111 F.3d 1029, 1035 (2d Cir. 1997) (upholding a downward departure and imposition of supervised release with home confinement, after time served of eight days, on account of extraordinary family circumstances, where defendant was sole support of two children and wife, and parents were likely to require both physical and financial assistance in near future); *see also United States v. Johnson*, 964 F.2d 124, 129-130 (2d Cir. 1992) (downward departure warranted where defendant sole support of several young children), and *United States v. Alba*, 933 F.2d 1117, 1122 (2d Cir. 1991) (downward departure justified where defendant supported wife, two children, paternal grandfather, and disabled father who depended on defendant to get him in and out of wheel chair); *see also United States v. Martin*, 520 F.3d 87 (1st Cir. 2008) (although policy statements incorporated within Sentencing Guidelines, such as U.S.S.G. § 5H1.6, generally discourage consideration of family circumstances in sentencing decision, district court may take unusual family circumstances into account in fashioning sentence); *United States v. Leon*, 341 F.3d 928 (9th Cir. 2003) (upholding departure granted for defendant who was sole caregiver of suicidal wife who also suffered from renal failure); *United States v. Bortnick*, No. Crim.A. 03-CR-0414, 2006 WL 680544 (E.D. Pa. Mar. 15, 2006) (unpublished) (imposing fine, restitution, seven-day term of incarceration and term of supervised release in \$8 million fraud case for which Guidelines advised 51-63 months, in part because defendant's son born with handicap needed attention and taking non-violent defendant with no criminal history out of family environment for protracted time would serve no social or penal purpose); *United States v. Colp*, 249 F. Supp. 2d 740 (E.D. Va. 2003) (granting departure from 10 months to probation in tax evasion case because defendant was sole caretaker for husband disabled by brain injury).

id. at §§ 42, 44, and discussion of numerous letters attesting to Mr. Lesser's vital role in his family, *supra*.

The propriety of such an adjustment is accentuated by the fact that there is no feasible substitution for his vital familial role, especially now, with an infant and toddler to care for and his wife working more than full time in the management of her therapy agency, in an effort to stabilize the family's finances. As Erica, Mr. Lesser's wife, states:

In many ways we as a family are alone. Here in Waterbury, we are well over a hundred miles away from our family. As much as our family would like to help, the distance and logistical issues make it impractical. They all have large families, jobs, and lives of their own. Charles is so present as a father and we rely on him for so much. I am out of the house very early to get to work and come home completely wiped out from my day. I rely on Charles to care for our children in the morning and to help with all their many needs in the evening. If he were not around, aside from the administrative functions that he handles for our business, I don't know practically how I could continue to work and know that our children are cared for. Leaving aside the financial expense of household help, and even assuming our children could overcome all the negative that can come about from their father being replaced with hired help, as a practical matter it is difficult to hire household help for these hours. Charles is up early to get them out to school and is there for me and them in the evening to help with dinner, homework, bedtime, and everything that needs to be done in a household of seven people. My children are young, rambunctious and need the care of their parents. The strain of running such a large household as well as working full time as a therapist has taxed my strength and frayed my nerves. Thank God, Charles has always been nearby to help out, restore calm in our home, and give me the emotional support that keeps me going. I simply do not know how we would be able to continue to function.

Erica Lesser Ltr.

The letters from Mr. and Mrs. Lesser's extended family confirm that, due to geography, compounded by their own commitments and limitations, the extended family will be unable to fill void if Mr. Lesser is unavailable to provide for his family. As his brother avows:

Charles and Chavi . . . live about 100 miles from their nearest family. While we questioned their decision in the beginning we only have to look at their beautiful, healthy, and well-adjusted children to see that they made the right choice [to live in Waterbury]. All of the siblings and our parents would like nothing more than to be able to be there for them every step of the way as they go through this process. We love them dearly and tell ourselves that no matter what happens we will be there to help. Yet the reality is that this is impossible. I myself am a parent of 9 children and the rest of my siblings also have large families. Chavi's siblings are also far away and also have families. We just know that despite our best intentions we will simply not be able to be there for them as needed.

It is especially disheartening for us to know that we will not be able to there for him at this time as Charles has always been there for us no matter the circumstance. There is not a single one of us siblings that have not benefitted from Charles' good will and readiness and desire to help. Some of us have borrowed money from Charles when we had nowhere to turn. Some of us have children that have special needs that Charles has been there for. Some of us have just been too overwhelmed at times, and Charles was just there to help- with the kids, with the laundry, with shopping or just to give an overwhelmed parent a break. [Some] of us are disabled and can't shovel snow- Charles is there to help with that too. Now it is our turn to be there for him and his family, and we fear that we will come up short.

Efraim Lesser Ltr. Mrs. Lesser's brother "cannot imagine how she will cope if Chaim isn't there" because "[n]o one in our family lives near her and we all work":

I am scared to death how this will [a]ffect my sister and their children. [REDACTED] idolize their father. . . . Chaim studies with them, plays with them, and is always there for them when needed. Chaim helps Chavi with everything, but with five children, including an infant, four months old, Chavi is barely coping. I cannot imagine how she will cope if Chaim isn't there for her. No one in our family lives near her and we all work. I'm sure that we will all try our best to help her, but I don't think that it will be sufficient.

Manfred (Eli) Herskovits Ltr. Mrs. Lesser's mother reiterates the looming tragedy for the family due to the young Lessers' vulnerability and the inability of the extended family to step into Charles' essential role in their care:

I ask myself daily, how will we be able to help if the need arises? I am a semi-retired teacher, and although my husband works, we have a large amount of debt that we have been paying off; a huge mortgage, equity loan, college loans. We are on a fixed income. In order to keep afloat, I must keep working part time. Although we do and will do, as much as we can to help, we do not have resources to sufficiently help them, and we do not live near them. . . .

Judge Hall, my husband and I are very fearful of what will happen in Chaim's and Chavi's family if he should be sent to prison. How will Chavi be able to manage? What will happen to their children who are very young, vulnerable, and very smart; who adore and respect their father? We are so scared of the emotional and psychological scars it would have on their young souls. Is there any way to avoid the extreme pain and anguish that will surely result from a prison sentence?

Brina D. Herskovits Ltr.

The same indisputable point is established by letter after letter from other members of the family and community leaders and friends.⁵ In the succinct words of the rabbi of the family's congregation, "Charles is an involved family man, and . . . his absence will be devastating for his young children. . . . His wife needs him. His children need[] him." Rabbi Yosef Sonnenschein Ltr.

The scientific literature supports the view that incarceration of Mr. Lesser would cause undue additional suffering for this large, young family that depend on him so heavily for their daily care and emotional and financial support. The literature indicates that imprisonment of a parent creates significant risks of adverse psychological outcomes for the children who rely upon them. *See, e.g.,* Ross D. Parke and Kay Alison Clarke-Stewart, *Effects of Parental Incarceration on Young Children*, from U.S. Department of Health and Human Services Conference "From Prison to Home" (2001), available at <http://aspe.hhs.gov/hsp/prison2home02/parke&stewart.pdf>; *see also* John Hagan and

⁵ As noted, the letters referenced in our memorandum are being provided separately to the Court.

Ronit Dinovitzer, *Collateral Consequences of Imprisonment for Children, Communities, and Prisoners*, 26 *Crime & Just.* 121, 145-47 (1999); Joseph Murray and David P.

Farrington, *The Effects of Parental Imprisonment on Children*, 37 *Crime & Just.* 133, 135 (2008). In this case – considering the closeness of Mr. Lesser’s relationship with his children, the number and ages of the children, his significant if not predominant role in their day-to-day care, his wife’s overextended circumstances due to financial necessity, and the unfeasibility of replacement care-givers – that risk rises to a virtual certainty of significant adverse consequences for multiple children.⁶ And there is no need to incur that harm, in this case. In light of the presence of multiple strong reasons for mitigation – not only the familial circumstances themselves, [REDACTED]

[REDACTED] – the harm to these innocent members of the next generation can be avoided, through a sentence that includes little or no incarceration, without any undue compromise of the purposes of sentencing.

D. Mr. Lesser’s Extraordinary Civic Commitment and Charitable Works Also Warrant Significant Mitigation of His Sentence.

Mr. Lesser’s extraordinary personal history and character also warrant significant mitigation of his sentence. His noteworthy accomplishments have not been flashy, but they deserve considerable weight in the Court’s analysis, nonetheless; indeed, they are all

⁶ We respectfully refer the Court to the letter of Mrs. Lesser for a child-by-child description of the current vulnerabilities of their children to the potential long-term absence of Mr. Lesser. Erica Lesser Ltr. (stating, after the discussion of each child, that “[t]he negative effects of the incarceration of Charles on my 5 young children and myself will be irreversible, and just too much for us to bear. We depend upon Charles and we need him more than I can ever explain in a letter”).

the more remarkable because they are characterized by unassuming hard work, commitment, and kindness.

As the Second Circuit has held, “even [pre-*Booker*], a court was authorized to grant a downward departure” on a grounds such as charitable commitment and good works, ““if the factor is present to an exceptional degree or in some other way makes the case different from the ordinary case where the factor is present.”” *Canova*, 412 F.3d at 358.⁷ As with family circumstances, post-*Booker*, the Court now has discretion to adjust the sentence that it imposes downward based upon the defendants’ good works and charitable involvement, even without a formal departure. *See United States v. Jones*, 460 F.3d 191, 194 (2d Cir. 2006) (“good works” may be considered by sentencing court without a formal departure because “the Guidelines limitations on the use of factors to permit departures are no more binding on sentencing judges than the calculated Guidelines ranges themselves”).

Here, as amply demonstrated above, Mr. Lesser has actively engaged in hands-on work that has directly benefited communal institutions and causes – devoting literally dozens of hours each week to those civic and charitable endeavors, for many years – and in acts of generosity and kindness that have directly improved people’s lives, including those who are most needy. And he has done so without fanfare, and often anonymously. Among many other examples of just his current or recent actions, as described further above:

- Mr. Lesser spearheaded the efforts of the Yeshiva K’tana of Waterbury to qualify for the National School Lunch program, through which hundreds of free or reduced-cost meals are provided to the community’s most needy

⁷Sentencing Guideline 5H1.11 states that, “[m]ilitary, civic, charitable, or public service; employment-related contributions; and similar prior good works are not ordinarily relevant in determining whether a sentence should be outside the applicable guideline range.”

children every day. As a volunteer, he continues to administer the school's participation in that program, which in many institutions would be a full time job.

- He remains actively involved in the area's Jewish Burial Society, through which he cleans and dresses the corpses of the deceased, and renders final rites and proper respect and dignity to their bodies – usually people he has never met, and whose families typically are not even aware of his service.
- He has been instrumental in the leadership of his synagogue. When he first assumed his leadership role, the organization was poorly run and unable to serve all of the needs of its congregants; through his singlehanded efforts and daily dedication of many hours, the synagogue turned around, achieving a stable footing and much more unified membership.
- Mr. Lesser has played a vital role in establishing and sustaining the community's mikva. He continues, without acknowledgment or even reimbursement, to take care of stocking its shelves, as he has done for almost a decade.
- He delivers meals – and his company – each week to the elderly and home-bound in Southbury through the Meals on Wheels program.
- He plays a leadership role in the efforts of the alumni organization of the Yeshiva Gedolah in providing scholarships to needy students.
- He regularly opens his home to students living at the local schools, and, in particular, to at-risk young people, offering them hospitality and, often, non-judgmental support and assistance.
- Over the years, he has regularly provided financial or material help to family or community members in need, always discretely and sensitively, and often anonymously.

Mr. Lesser's tireless efforts throughout his life to improve his community, serve the public and better the lives of individuals in need deserve significant weight in his sentencing.⁸ In the words of Mr. Lesser's brother, "a judgment tempered with mercy and

⁸ Cf. *United States v. Mehta*, 307 F. Supp. 2d 270, 271 (D. Mass. 2004) (notwithstanding fact that charitable work is "discouraged departure," five-level reduction in tax evasion and fraud case justified where defendant dedicated his life to serving an ancient Indian religion through "hands on" activity, given "substantial amounts" of his time and personal attention including facilitating the holding of religious services, publishing Indian literature, and personally

compassion” is appropriate, “for Charles Lesser has always been merciful and compassionate to others.” Efraim Lesser Ltr.

But clemency is warranted not only by his historic track record; his ongoing charitable acts and service to his community further justifies mitigation of his sentence. As noted by one community member, “In addition to his family, his incarceration would affect his community. His assistance and help to various community organizations is significant and noteworthy. His absence would be felt deeply.” Raphael Deutsch Ltr.

Mr. Lesser’s extraordinary record of charitable acts and community service, in conjunction with the other circumstances presented here, warrant a significant mitigation in any term of incarceration.

E. Mitigation Is Also Justified in Light of the Need to Avoid Undue Sentencing Disparities.

Mr. Lesser recognizes that he committed a very serious offense. He committed fraud in order to, ultimately, serve his own ends, and he did so actively and on multiple occasions, across many months. As the Court has observed, the seriousness of it can be seen in the fact that, together with the conduct of the other defendants and the many other people throughout the country who engaged in similar improper behavior during the time at issue, the collective conduct played a role in precipitating some of the broad problems in the real estate market associated with the “great recession” of 2008. *See, e.g., United States v. Constantinou*, 3:11-cr-192(JCH), Tr. 12/16/14 (sentencing) at 91-92, Exhibit B hereto.

ministering the needy members of the community); *United States v. DeShon*, 183 F.3d 888, 889-90 (8th Cir. 1999) (affirming defendant’s sentence of five months’ community confinement, reduced from a range of 30 to 37 months, where defendant exhibited exceptional rehabilitation through commitment to church, community, and employment).

Nevertheless, there is good reason to conclude that he deserves a lighter sentence than the other defendants involved in this conspiracy, substantially lower than some. The defense is aware of the Court's efforts in this matter to formulate a sentence for each defendant that is fair and just relative to others involved in the crime. Such efforts comport with the Second Circuit's instruction to the sentencing court to consider potential similarities or differences among defendants as part of its consideration under § 3553(a)(1) of the relevant context and circumstances. *See United States v. Wills*, 476 F.3d 103, 110 (2d Cir. 2007), *abrogation on other grounds recognized by Cavera*, 550 F.3d 180; *United States v. Rosario*, No. 06-5655-cr (L), 280 Fed. Appx. 78, 80-81, 2008 WL 2235269, *2 (2d Cir. May 30, 2008) (instructing that district court on remand should consider sentencing disparity with respect to co-defendant, citing *Wills*). No two defendants are exactly alike, in either their wrongdoing or in their positive considerations. Nevertheless, we offer the following considerations to help the Court to draw comparisons.

To begin with, Mr. Lesser was not a leader or coordinator of the criminal activity, and he did not initiate or conceive of the conspiracy. To the contrary, he was himself recruited into it after it was well underway. It was only when the group required a new broker that Mr. Lesser was brought into the fold, midstream, by Weisman and Levitin.

In addition, Mr. Lesser's gain from the offense was much lower than many of the other defendants. In total, Mr. Lesser received approximately \$41,000 in fees (which he has fully disgorged through forfeiture). This figure represents just five percent of the compensation of the top money-earner in the scheme, Mr. Levitin, who obtained approximately \$700,000 in illicit profits. *See United States v. Levitin*, 12CR153(JCH),

Tr. 1/16/15 (sentencing), at 57, Exhibit F hereto. Mr. Lesser's earnings were also just a fraction of Mr. Hutchison's: Mr. Hutchison pocketed about seven times as much, approximately \$300,000. *See United States v. Hutchison*, 11CR192(JCH), Tr. 2/9/15 (sentencing), at 38, Exhibit D hereto. In addition, Mr. Nkrumah made almost three times as much as Mr. Lesser, approximately \$113,000, and Mr. Kelly also made substantially more, at least \$56,000 in payments at closings and, according to the Government, an additional approximately \$60,000 from the fraudulent sale of one of the homes he had purchased through the conspiracy. *United States v. Nkrumah*, 11CR192(JCH), Tr. 9/12/13 (sentencing), at 30-31, Exhibit C hereto; *United States v. Kelly*, 11CR192(JCH), Gov. Sent. Br. 7/7/14, at 12, Exhibit G hereto, & Tr. 7/21/14 (Sentencing) at 22-25, Exhibit H hereto; *see* Exhibit A hereto, Table of Comparative Sentencing Information.

Mr. Lesser was involved in the conspiracy for a far shorter period of time (17 months) than Hutchison (27 months), Levitin (26 months), or Weisman (26 months). *See United States v. Hutchison*, 11CR192(JCH), Gov. Sent. Br. 12/29/14, Exhibit I (Table re Relative Sentencing Information); and Exhibit A hereto, Comparative Sentencing Information. His 17 months of involvement was slightly lower than that of Attorney Rieger (19 months) – ██████████ received 24 months' imprisonment. Exhibit A hereto, Comparative Sentencing Information.

In terms of the number of transactions in which he was involved, Mr. Lesser, with 20, again ranks far lower than Levitin (46), Hutchison (49), and Weisman (26), as well as Constantinou (26). In this regard, Mr. Lesser is again most comparable to Rieger, who was involved in 19 transactions. Exhibit A hereto, Comparative Sentencing Information.

His loss number also places him far from the top. Mr. Lesser's loss figure, \$2,808,700, is again far lower than Hutchison (\$7,859,400), Levitin (\$7,179,850), Weisman (\$4,043,250), and Constantinou (\$4,873,600). Exhibit A hereto, Comparative Sentencing Information. Again, in this dimension, he is closest to Rieger (\$2,262,650), as well as Salvatore (\$2,259,200). *Id.*

Consideration of acceptance of responsibility on a comparative basis also reflects relatively well on Mr. Lesser. It is noteworthy that, unlike Kelly and Constantinou, he acknowledged his guilt voluntarily and without the necessity of a trial. Indeed, unlike every defendant except Levitin, Rieger and Weisman, he did so without the necessity of an indictment. He entered his plea before every defendant except Hutchison and Levitin. He also deserves credit for his exceptionally full, forthcoming and candid acknowledgment of his wrongdoing. [REDACTED]

[REDACTED]

[REDACTED]⁹

It may be helpful, in drawing comparisons on an aggregate level, to compare the relative Guidelines offense levels of the various defendants. Based on the total offense levels found by the Court (with the exception of Mr. Weisman, as to whom we use the Government's calculation, because Weisman has not yet been sentenced), and using the

⁹ Mr. Lesser recognizes, to his deep shame, that he engaged repeatedly in actively deceptive conduct, such as creation of false documents submitted in support of mortgage applications, as described above, and that this deserves to be viewed as serious misconduct. He is horrified now by what he has done. [REDACTED]

[REDACTED]

Guidelines edition that will be replaced in November, Mr. Lesser, at offense level 24, ranks far lower than Constantinou (33), Hutchison (28), and Levitin (28). In this ranking Mr. Lesser is just slightly above Kelly (23), as well as Rieger (22), Salvatore (22), Dressler (22), and Nkrumah (23).¹⁰ See Exhibit A hereto, Comparative Sentencing Information. Insofar as Kelly, Rieger, Salvatore and Dressler received prison terms of 15 months, 24 months, 24 months, and 20 months, respectively – [REDACTED] without the other significant mitigating circumstances that Mr. Lesser presents¹¹ – this comparison suggests that it is not unreasonable to consider for Mr. Lesser a sentence that includes little or no prison time.

The comparison using the Guidelines comes into clearer focus under the recently promulgated fraud Guideline, U.S.S.G. § 2B1.1(b)(1), which provides a long-overdue adjustment of the brackets' loss amounts to account for inflation, as noted above, and which is scheduled to go into effect on November 1, 2015. See http://www.uscourts.gov/sites/default/files/pdf/amendment-process/reader-friendly-amendments/20150430_RF_Amendments.pdf, at ii, 13. Applying this revised version to each defendant yields the following offense level ranking:

Constantinou	33
Hutchison	26
Levitin	26
Weisman	24
Kelly	23
Lesser	22
Rieger	22
Salvatore	22

¹⁰ In this ranking, Mr. Lesser is at the same level as Weisman, at 24 – an equation which actually appears to be the product of the Guidelines' lack of precision: as discussed further below, Mr. Lesser should clearly be considered less culpable than Mr. Weisman.

¹¹ In addition, Ms. Salvatore had violated her pretrial release terms, as the Court noted at her sentencing. See *United States v. Salvatore*, 11CR192(JCH), Tr. 4/30/14 (Sentencing) (Doc. No. 529), at 43-44, 49-51.

Nkrumah 21
 Dressler 20.¹²

Under this updated Guideline, Mr. Lesser ranks lower in offense level than not only the three acknowledged leaders, Hutchison, Levitin and Constantiou, but also Weisman and, significantly, Kelly; he is at the same level as Rieger and Salvatore, and just slightly above Dressler.

These comparisons all highlight the propriety of imposing a lenient sentence on Mr. Lesser. For example, under the last listing (looking at the offense levels under the most recent, revised Guidelines regime) – Mr. Kelly has a higher offense level, had a greater gain, [REDACTED] went to trial), lacks Mr. Lesser’s significant family circumstances, has not forfeited his gains, and is without Mr. Lesser’s laudable and extensive record of public service. Insofar as 15 months was the appropriate sentence for him, under those circumstances, it is entirely reasonable to consider giving Mr. Lesser – with a lower Guidelines offense level, [REDACTED], compelling family circumstances, a weighty record of good works, and willing disgorgement of his gains – a noncustodial sentence with a term of home confinement.

Or, to consider the matter slightly differently, in many ways Mr. Lesser ranks at essentially the same level as Mr. Rieger, as reflected in many of the vectors considered above. The Court determined that 24 months’ imprisonment was the appropriate sentence for Mr. Rieger. [REDACTED]

¹² See Exhibit A hereto, Comparative Sentencing Information. The columns containing information regarding the inflation adjusted Guidelines are based on the revised fraud loss Guideline to go into effect in November. http://www.ussc.gov/sites/default/files/pdf/amendment-process/reader-friendly-amendments/20150430_RF_Amendments.pdf, at ii, 13.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Mr. Rieger did not

present the compelling family circumstances that Mr. Lesser has, and he has not devoted himself throughout his life to helping others the way Mr. Lesser has. When these additional mitigating considerations are factored in for Mr. Lesser, clearly it is not unreasonable to consider a sentence without a custodial restriction that would remove him from his home.

Another way to consider the matter is by comparison to the leaders of the conspiracy, in particular Mr. Levitin. The Court has recognized Levitin as a top-level leader of the conspiracy. He was substantially involved in recruiting others, including Mr. Lesser, and he played a large role in directing the conduct of others. He pocketed a very large sum, approximately \$700,000. He was involved in nearly all of the transactions, 46 of them in all – more than double Mr. Lesser’s. His loss number was substantially more than double Mr. Lesser’s – \$7,179,850. He participated in the conspiracy virtually its entire duration, 26 months – nine months longer than Mr. Lesser.

And he engaged in grossly fraudulent conduct on many occasions. His Guidelines range under the current Guidelines edition is 78-96 months, significantly higher than Mr. Lesser's range of 51-63. Under the pending revised Guidelines, adjusted to account for inflation, Mr. Levitin has a Guidelines range of 63-78 months, again significantly higher than Mr. Lesser's range of 41-51 months.

All of these considerations suggest that Levitin's sentence, 22 months' imprisonment, should be significantly higher than the one to be imposed on Mr. Lesser. Moreover, we respectfully submit that Mr. Lesser comes before the Court with more compelling considerations in his history and personal circumstances, insofar as he has consistently displayed an exemplary record of civic contribution and caring for others and has a large, young family for whom he is an essential caregiver. (We understand that Mr. Levitin has not started a family.) [REDACTED]

[REDACTED] Once again, in light of these circumstances, given Levitin's sentence of 22 months' imprisonment, it is reasonable to consider a sentence for Mr. Lesser that consists of little or no incarceration.

Finally, to the extent the Court is concerned in sentencing Mr. Lesser about the relative culpability of Mr. Weisman, it should conclude that Mr. Weisman's comparative culpability is higher. Mr. Weisman was involved in the early days of the conspiracy (unlike Mr. Lesser); Weisman recruited Mr. Lesser; and Weisman caused a loss of \$1,200,000 more (or about 43% more) than Mr. Lesser did. Weisman participated in the conspiracy for far longer a time, he engaged in active fraudulent conduct no less culpable than Mr. Lesser, and Weisman was involved with substantially more transactions.

[REDACTED]

[REDACTED]

[REDACTED] Clearly, Mr. Lesser should be ranked at a lower level than Mr. Weisman.

F. No Imprisonment Is Necessary for Purposes of Deterrence or Incapacitation.

With respect to the sentencing goal of specific deterrence, we respectfully submit that Mr. Lesser needs no further deterrence, and imprisonment is not necessary for purposes of incapacitation. Mr. Lesser recognizes that in the future he cannot, must not, engage further in illegal conduct, and he has worked very hard – [REDACTED]

[REDACTED] – to acknowledge his wrongdoing, make amends and to emerge as a better, wiser person. Through the stigma of his conviction, the anxiety of facing punishment, the shame and self-loathing regarding his conduct, the difficulties that he and his family have been through due to his conviction, and the significant expenses and financial setbacks that he has faced, Mr. Lesser has more than learned his lesson. As stated by one of Mr. Lesser's confidants:

One of the remarkable characteristics of Charles is his ability to . . . learn from his adversity, and use each challenge as an opportunity to grow and become a better person. I have been in close contact with Charles throughout this ordeal and I know that Charles will continue to use this trait to learn and grow from this as well. . . .

I have been in touch with him extensively throughout this ordeal and the emotional impact on him has been devastating. The fear, concern, shame and regret have pushed him to the limit and he has suffered immensely because of it. He has consistently expressed genuine regret and remorse for what he has done and an honest and sincere commitment to mend his ways. . . . I . . . know that there are more great things to come from

Charles in the future. I see a young man that has lea[r]ned a hard lesson but will undoubtedly emerge from this a better person.

Rabbi Ephraim Blumenkrantz Ltr.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]¹³

Nor is a lengthy prison term warranted on the grounds of general deterrence.

The letters submitted to the Court attest to the heavy price already paid by Mr. Lesser, and his whole family. As stated by a close rabbinical counselor, a “seemingly endless storm and chaos . . . has engulfed him and his family on all fronts – physically, financially, legally, and maybe most of all emotionally.” Rabbi Chaim Cohen Ltr.¹⁴ The

¹³ Moreover, statistically-speaking, college educated, married for more than a decade, very involved in raising his children, and with zero criminal history points, Mr. Lesser represents a low risk of recidivism. Offenders who were ever married have a rate of only 9.8%. *See* U.S. Sent’g Comm’n, *Measuring Recidivism: The Criminal History Computation of the Federal Sentencing Guidelines*, at Exh. 9, at 28; Exh. 10, at 29 (May 2004). Offenders convicted of fraud with a category I criminal history present the lowest recidivism rate of any offense category, just 9.3%. *Id.*, Exh. 11, at 30. In determining what is the lowest term of imprisonment sufficient to account for the purposes of sentencing, the Court should consider the statistically low risk of recidivism posed by an individual with Mr. Lesser’s profile. *Cf. United States v. Hamilton*, No. 07-2874-CR, 323 Fed. Appx. 27, 31 (2d Cir. Apr. 14, 2009) (concluding that “the district court abused its discretion in not taking into account policy considerations with regard to age recidivism not included in the Guidelines”).

¹⁴ Furthermore, as for the goal of general deterrence, we would respectfully ask the Court in determining the appropriate sentence for Mr. Lesser to bear in mind that research has consistently shown that while the certainty of being caught and punished has a deterrent effect, “increases in severity of punishments do not yield significant (if any) marginal deterrent effects.” Michael Tonry, *Purposes and Functions of Sentencing*, 34 *Crime & Just.* 1, 28 (2006). Scholars have noted that “every major survey of the evidence” has reached that conclusion, including “[t]hree National Academy of Science panels.” *Id.* Indeed, “there is no decisive evidence to support the conclusion that harsh sentences actually have a general and specific deterrent effect on potential white-collar offenders.” Zvi D. Gabbay, *Exploring the Limits of the Restorative Justice Paradigm: Restorative Justice and White Collar Crime*, 8 *Cardozo J. Conflict Resol.* 421, 448-49 (2007). As one Cambridge University study determined after examining studies of prison rates in the United States and several European countries, while significant correlations exist

tribulations that he has already endured and the significant financial penalties that he faces, especially in conjunction with the punishments already handed down in this case to date, are sufficient to deter others in the mortgage business from similar conduct in the future. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

G. A Noncustodial Sentence Is Among the Available Sentences.

In terms of the Court's required consideration of "the kinds of sentences available," 18 U.S.C. § 3553(a)(3), we note that the Court has discretion to impose on Mr. Lesser a noncustodial sentence, if it wishes to do so. Despite Mr. Lesser's conviction for conspiracy in violation of § 1349, the Court has discretion to sentence him to a noncustodial sentence notwithstanding the mandatory minimum established by 18 U.S.C. § 3561(a)(1) (proscribing probation for Class B felonies). [REDACTED]

[REDACTED]

[REDACTED]

between the certainty of punishment and crime rates, the "correlations between sentence severity and crime rates . . . were not sufficient to achieve statistical significance," and there is no basis in the studies "for inferring that increasing the severity of sentences is capable of enhancing deterrent effects." Andrew von Hirsch *et al.*, *Criminal Deterrence and Sentence Severity: An Analysis of Recent Research* (1999), summary available at <https://www.ncjrs.gov/App/publications/abstract.aspx?ID=182046>, at 1-2. As Professor Tonry concludes, "[t]here is no good evidence that justifies fine-tuning sentences in individual cases for deterrent reasons." Tonry, *supra*, 34 *Crime & Just.* at 16. This general conclusion is true with respect to crimes such as Mr. Lesser's. Studies concerning white collar offenses specifically have found no difference in the deterrent effect of probation versus imprisonment. David Weisburd *et al.*, *Specific Deterrence in a Sample of Offenders Convicted of White Collar Crimes*, 33 *Criminology* 587 (1995); see also E. Podgor, *Throwing Away the Key*, 116 *Yale L.J. Pocket Part* 279, 284 (2007). This research indicates that general deterrence is not a basis for imposing incarceration as part of Mr. Lesser's sentence.

[REDACTED]

[REDACTED], the Court would be acting within its discretion to structure its sentence in a manner that rendered a noncustodial sentence. *See, e.g., United States v. Lahey*, 186 F.3d 272, 274-75 (2d Cir. 1999) (holding that a “sentence of zero months” imprisonment is consistent with the bar on probationary sentences); *accord United States v. Elliott*, 971 F.2d 620, 621-22 (10th Cir. 1992) (holding that sentence of "zero months" was not probation and was permissible under § 3561(a)(1)); *cf. United States v. Khan*, No. 08-CR-67, 2008 WL 2079954, at *1 (E.D.N.Y. May 14, 2008) (citing *Lahey* and sentencing defendant to one-day imprisonment with five year term of supervised release).

15 [REDACTED]

H. Mr. Lesser Does Not Dispute the Government's Figure for Restitution.

We understand that the Government intends to ask the Court for an order of restitution requiring payment totaling \$906,180.20, based on the net losses as to certain properties to be specified in the Government's submission.¹⁶ We do not object to entry of such an order. In light of the size of the restitution amount, we would respectfully request that the Court impose no fine, and that interest on the restitution amount be waived. We would also request that the payment requirements during any term of supervised release or probation total no more than 10% of Mr. Lesser's net income, in light of Mr. Lesser's large family and the financial responsibilities that involves.

I. A Sentence Lighter Than Those of Other Defendants Would Be Consistent with the Goals of Ensuring Just Punishment, Promoting Respect for the Law and Reflecting the Seriousness of the Offense.

Finally, a sentence lighter than those of other defendants in this matter would be consistent with the goals of ensuring just punishment, promoting respect for the law and reflecting the seriousness of the offense. *See* 18 U.S.C. § 3553(a)(2)(A). “[P]unishment must not be draconian; the judge who sentences must be sensitive to both the goals of society reflected by the efforts of the government, and special circumstances of those awaiting sentence. The judge must sentence in a manner that reflects his role as the implementor of society’s search for justice, as reflected by due and timely punishment of those who transgress, without ever being indifferent to a defendant’s plea for compassion, for compassion also is a component of justice.” *United States v. Kloda*, 133 F. Supp.2d 345, 348 (S.D.N.Y. 2001). Or, as Judge O’Malley has stated, “Respect for the law is

¹⁶ We understand that the amounts for each property will be joint and several with any defendants in other cases who are also responsible for restitution as to the particular properties listed.

promoted by punishments that are fair . . . not those that simply punish for punishment's sake. *United States v. Cernick*, No. 07-20215, [2008 WL 2940854, *9,] 2008 U.S. Dist. LEXIS 56462, at *25 (E.D. Mich. July 25, 2008) ('a sentence of imprisonment may work to promote not respect, but derision, of the law if the law is viewed as merely a means to dispense a harsh punishment without taking into account the real conduct and circumstances involved in sentencing')." *United States v. Stern*, 590 F. Supp.2d 945, 957 (N.D. Ohio 2008).

Based upon all the information regarding this matter – including the facts and circumstances of the offense; [REDACTED] Mr. Lesser's essential role in providing care, emotional and financial support, and stability to his children and wife; Mr. Lesser's long, and ongoing, history of remarkable giving to his community; and his complete payment of forfeiture – a just sentence would be one that separates Mr. Lesser from society and from his family for very little or no time.

Conclusion

In light of the foregoing, we respectfully ask that the Court impose a sentence that is no more severe than necessary to accomplish all the goals of sentencing.

Respectfully submitted,

DEFENDANT CHARLES LESSER

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CERTIFICATE OF SERVICE

I hereby certify that on July 1, 2015, a copy of the foregoing redacted version of Defendant's Memorandum In Aid of Sentencing was served by mail and/or e-mail on the following.

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/s/ James Ross Smart
James Ross Smart

EXHIBIT A

United States v. Lesser, 12-CR-152 (JCH), and Related Cases—Comparative Sentencing Information

Defendant and Date of Plea or Verdict	Approx. Duration of Direct Involvement	No. of Fraudulent Transactions In Which Defendant Directly Participated	Approx. Loss Amount & Guidelines Loss Enhancement, §2B1.1(b)(1)	Guidelines Loss Enhancement Under Revised §2B1.1(b)(1) (Effective Nov. 1, 2015)	Approximate Gain	Role in the Offense §3B1.1(a) and §3B1.2(b)	Abuse of Trust/ Use of Special Skill §3B1.3	Violation of Prior Order §2B1.1 (b)(9)(C)	Obstruction of Justice, § 3C1.1	Acceptance of Responsibility §3E1.1	Guideline Calculation at Sentencing	Guidelines Calculation Using Revised §2B1.1(b)(1) (Eff. Nov. 1, 2015)	Sentence
Constantinou 4/18/14	19 mo.	26	\$4,873,600 +18	+18		+4	--	+2	+2	--	CHC I/Offense level 33; 135-168 mo.	CHC I/Offense level 33; 135-168 mo.	60 mo.
Hutchison 1/10/12	27 mo.	49	\$7,859,400; +20	+18	\$300,000	+4	--	--	--	-3	CHC I/Offense level 28; 78-97 mo.	CHC I/Offense level 26; 63-78 mos.	28 mo.
Levitin 7/5/12	26 mo.	46	\$7,179,850; +20	+18	\$700,000	+4	--	--	--	-3	CHC I/Offense level 28; 78-97 mo.	CHC I/Offense level 26; 63-78 mos.	22 mo.
Weisman 7/10/12	26 mo.	26	\$4,043,250; +18	+18	\$28,538.80	Right to argue for minor role (-2)	+2	--	--	-3	CHC I/Offense level 24 (possible 22); 51-63 mo. (41-51 mo.)	CHC I/Offense level 24 (possible 22); 51-63 mos. (41-51 mo.)	
Lesser 7/5/12	17 mo.	20	\$2,808,700; +18	+16	\$41,316.33	--	+2	--	--	-3	CHC I/Offense level 24; 51-63 mo.	CHC I/Offense level 22; 41-51 mos.	
Rieger 7/12/12	19 mo.	19	\$2,262,650; +16	+16	\$21,438.87	--	+2	--	--	-3	CHC I/Offense level 22; 41-51 mo.	CHC I/Offense level 22; 41-51 mo.	24 mo.
Salvatore 11/19/13	2 mo.	13	\$2,259,200; +16	+16	\$19,243.54	--	+2	--	--	-3	CHC I/Offense level 22; 41-51 mo.	CHC I/Offense level 22; 41-51 mo.	24 mo.
Nkrumah 5/14/13	6 mo.	3	\$601,000 + \$605,300 \$1,206,300 ¹ +16	+14	\$113,080.41	+3	--	--	--	-3	CHC III/Offense level 23/21; 57-71/46-57 mo. ²	CHC III/Offense level 21; 46-57 mos.	48 mo.
Dressler 10/3/13	11 mo.	7	\$1,169,913; +16	+14	\$5,100.00	--	+2	--	--	-3	CHC I/Offense level 22; 41-51 mo.	CHC I/Offense level 20; 33-41 mos.	20 mo.
Kelly 4/18/14	9 mo.	10	\$1,848,250; +16	+16	\$56,000 + \$60,000 ³	--	--	--	--	--	CHC I/Offense level 23; 46-57 mo.	CHC I/Offense level 23; 46-57 mo.	15 mo.

¹ \$601,100 was the loss figure for Nkrumah in 11CR192. \$605,300 was the loss figure for Nkrumah in 11CR65.

² The Court calculated Nkrumah's offense level as 23, and departed downward.

³ Mr. Kelly made at least \$56,000 in payments at closings and, according to the Government, \$60,000 more from the fraudulent sale of one of the homes he had purchased through the conspiracy. *United States v. Kelly*, 11CR192(JCH), Gov. Sent. Br. 7/7/14, at 12, & Tr. 7/21/14 (Sentencing) at 22-25.

EXHIBIT B

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UNITED STATES DISTRICT COURT.

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA)
Government.) NO: 3:11CR192 (JCH)
vs.) December 16, 2014
ANDREW CONSTANTINOU)
Defendant)

141 Church Street
New Haven, Connecticut

SENTENCING HEARING

B E F O R E:

THE HONORABLE JANET C. HALL, U.S.D.J.

A P P E A R A N C E S:

For the Government : DAVID HUANG
JOHN McREYNOLDS
U.S. Attorney's Office
157 Church St.
New Haven, CT 06510

For the Defendant :
ANDREW CONSTANTINOU HUBERT J. SANTOS
JESSICA M. SANTOS
Law Offices of Hubert J. Santos
51 Russ St.
Hartford, CT 06106

12:15:44 1 311CR192, the 312CR152 case and 312CR153 case.

12:16:00 2 That leaves me with the issue of a sentence to
12:16:02 3 impose upon you, Mr. Constantinou. I need to discuss the
12:16:08 4 factors that I referred to when I began this morning -- well,
12:16:14 5 not this morning, we're now in the afternoon. But when I
12:16:14 6 began this morning, I mentioned that the law requires me to
12:16:18 7 consider a number of factors. Counsel have referenced those
12:16:22 8 factors, and I intend to go over those before finally
12:16:34 9 deciding upon your sentence.

12:16:34 10 We have already spoken about the sentencing
12:16:36 11 guideline, which, under those guidelines, your sentence -- it
12:16:40 12 would call for a sentence within a 135 to 168 months. My
12:16:48 13 view of those guidelines, informed by study and prior cases,
12:16:56 14 is that to some extent, and it varies really from case to
12:16:58 15 case, but that the use of purely -- or in large measure
12:17:06 16 dollar amounts to drive the guidelines can sometimes result
12:17:10 17 in an overstatement of what an appropriate sentence is. I
12:17:14 18 think that's true in this case, Mr. Constantinou. I don't
12:17:16 19 intend to impose a guideline sentence.

12:17:18 20 Nonetheless, I need to consider it. But, as I say,
12:17:22 21 in your case -- in many cases, the loss amount enhancement is
12:17:28 22 really the enhancement. And there it really distorts -- in
12:17:34 23 my view, can often distort what an appropriate and fair
12:17:38 24 sentence is. In your case, you have a number of other
12:17:40 25 enhancements which tends to dampen, I guess I will say, the

12:17:46 1 effect of the loss enhancement. But nonetheless, I think it
12:17:54 2 unnecessarily drives the guidelines. And, in fact, drives
12:17:58 3 them to too high a level. Too high in my view, being too
12:18:04 4 high after consideration of the other factors, which I'm
12:18:06 5 about to speak to.

12:18:12 6 Obviously, another factor that's been mentioned is
12:18:14 7 the avoidance of unwarranted sentencing disparities. Now the
12:18:20 8 guidelines are a way to do that. I think with only one
12:18:24 9 exception I haven't sentenced anyone within the guidelines in
12:18:26 10 this case. Again, because the loss amount enhancement tends
12:18:32 11 to drive, I thought, the guidelines high. But I have to be
12:18:46 12 mindful, as your Counsel recognizes, it isn't a controlling
12:18:54 13 factor. It isn't going to determine my sentence alone, but I
12:18:56 14 do have to have in mind the fact that your sentence -- I
12:19:02 15 can't sentence someone to the same sentence as another person
12:19:08 16 when their conduct is different. So I need to think about
12:19:08 17 your conduct in relation not only to the defendants in this
12:19:12 18 case and the related cases, but really to defendants
12:19:14 19 generally who commit this type of crime, yours, in
12:19:20 20 particular, being mortgage fraud, but just fraud generally.
12:19:22 21 I will be mindful of it. And I can state on the record that
12:19:28 22 I have looked very carefully at the particular sentences that
12:19:32 23 I have already imposed and the ones that are yet to come in
12:19:36 24 terms of what, at least, the guidelines in those cases likely
12:19:42 25 will be.

12:19:42 1 I also need to consider, Mr. Constantinou, the need
12:19:46 2 for the sentence here. And that is because we think that --
12:19:50 3 in our justice system, that we impose a sentence which we
12:19:54 4 think will serve a purpose, a positive purpose. The first is
12:19:58 5 to reflect the seriousness of your crime. And in that way,
12:20:02 6 to promote respect for the law and only then -- only in that
12:20:08 7 way can the punishment be just. If we punish people the same
12:20:12 8 for murdering someone as we did for stealing a loaf of bread,
12:20:18 9 I think everyone would look at that and say the law is crazy,
12:20:22 10 it's not fair, because we haven't reflected in that judgment
12:20:26 11 of sentence the relative seriousness of the crimes.

12:20:30 12 I always struggle with trying to articulate how
12:20:34 13 serious a crime is. Certainly I would say that your crime is
12:20:42 14 a serious crime. Needless to say, no one suffered a loss of
12:20:48 15 life or serious physical injury. But whenever anyone commits
12:20:54 16 a crime that really rests upon fraud or falsity, it has, it
12:20:58 17 seems to me, two effects. One is it undercuts sort of the
12:21:04 18 soundness of the system in which you were operating. It
12:21:08 19 makes people less trustworthy, less likely to rely upon the
12:21:12 20 institution. In your case, the mortgage companies or the
12:21:16 21 banks. And it also had a consequence here. I don't mean to
12:21:20 22 suggest in any way that you are the cause or this scheme is
12:21:26 23 the cause of the Great Recession. Indeed there were bigger
12:21:34 24 causes, I will say, on Wall Street than the mortgage
12:21:38 25 industry, but there's no question that it took a lot of

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COURT REPORTER'S TRANSCRIPT CERTIFICATE

I hereby certify that the within and foregoing is a true and correct transcript taken from the proceedings in the above-entitled matter.

/s/ Terri Fianza

Terri Fianza, RPR

Official Court Reporter

EXHIBIT C

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UNITED STATES DISTRICT COURT.

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA)	
Government.	)	NO: 3:13CR65 (JCH)
	)	3:11CR192 (JCH)
	)	11:35 a.m.
vs.	)	September 12, 2013
KWAME NKURUMAH,)	
Defendant)	

141 Church Street
New Haven, Connecticut

SENTENCING HEARING

B E F O R E:

THE HONORABLE JANET C. HALL, U.S.D.J.

A P P E A R A N C E S:

For the Government	:	DAVID HUANG
		JOHN W. MCREYNOLDS
		U.S. Attorney's Office
		157 Church St.
		New Haven, CT 06510

For the Defendant	:	ROSS H. GARBER
		MICHAEL CHASE
		Shipman & Goodwin
		One Constitution Plaza 18th
		Floor
		Hartford, CT 06103-1919

Proceedings recorded by mechanical stenography, transcript produced by computer.

1 charge. It seems unfair that he doesn't get the same role
2 enhancement with the substantive charge.

3 THE COURT: I think Ray has taken me to the right
4 analysis. I will award a three-level enhancement in light of
5 Mr. Nkrumah's role in the offense. He did supervise in
6 connection with the conduct of the 3:11-192 case. And it is
7 my judgment that, in effect, is sufficient to justify the
8 role enhancement and that the fact he may have played a minor
9 role with respect to the rest of the, quote, offense, doesn't
10 negate or subtract in the guideline sense from his
11 supervision of someone in the conduct described in the 3:11
12 case. Therefore, the adjusted offense level is 26. Does the
13 government recommend the two level reduction for acceptance
14 and move for the third point?

15 MR. HUANG: Yes, as to both, your Honor.

16 THE COURT: The Court accepts the government's
17 recommendation and awards Mr. Nkrumah the two-level reduction
18 for acceptance of responsibility. Based upon his guilty
19 plea, also the Court grants the government's motion, awards
20 the additional one-level reduction based upon the fact that
21 Mr. Nkrumah pled guilty at a time that allowed the government
22 to put their resources to other investigations and
23 prosecutions. The guidelines offense level therefore is 23.
24 The defendant does have a criminal history, quite a few
25 criminal convictions, many of which do not count. Those that

1 count place him with a criminal score of 4. In addition he
2 committed this offense while on parole. Two levels are
3 added. That's a total of 6. Placing him in a criminal
4 history 3. A 23, 3 on the guidelines is 57 to 71 months.
5 However the parties did stipulate to a guideline range that
6 would be 21 and a 3 which would result in a guideline range
7 of 46 to 57 based on the reduction for role which, as I
8 indicated earlier, while not I think consistent with the
9 guideline concepts and application is a reasonable reflection
10 here of this case, but more importantly, the Court will
11 depart to that 21, 3 guideline range 46 to 57 because of the
12 fact that the parties agreed to it. Under the U.S. versus
13 Fernandez, case I'm entitled to in effect depart on the
14 grounds that the parties had agreed to it, and the defendant
15 had entered his guilty plea based upon the belief that would
16 be the guideline range applied. Finally, as I say, I think
17 it is actually, while it isn't what the guideline writers
18 contemplated, I think a better guideline reflection of the
19 actual offense reflecting the grouping challenge. Grouping
20 the guidelines is always a problem. The guidelines I will be
21 using among all the other factors will be the 46 to 57 months
22 that the parties agree.

23 I note there's a lot of people here in support of
24 Mr. Nkrumah I assume. I apologize because we have now spent
25 40 minutes talking about a lot of numbers and calculations

1 mortgage fraud cases, the defendant is playing a role and
2 playing the same roll over and over again. Mr. Reiger which
3 the court sentenced to 24 months last November was a closing
4 attorney. He did closings. He knew the money wasn't coming
5 from the people. He knew the money wasn't -- he
6 collected the fees and moved to the next transaction and did
7 it over and over again. Because he's a lawyer that's a
8 serious crime because we trust lawyers to protect the public
9 and banks and everyone else involved in the real estate
10 business from these sort of crimes.

11 I would like to emphasize Mr. Nkrumah's crimes as to
12 the 192 conspiracy, these transactions were all a little bit
13 different and they showed some ingenuity. Mr. Nkrumah had to
14 find a house, had to convince the seller to sell the house to
15 him or quitclaim it to his wife. He had to hook up with the
16 co-conspirator to buy the house from him. He came up with
17 false leases, false addendums, and there were fake down
18 payments involved. Why he's certainly not involved in the
19 vast majority in the 192 conspiracies, the degree to which he
20 really drove the bus on these transactions is remarkable and
21 the gain that he got from just these transactions alone is
22 also significant. He got over \$113,000 from these
23 transactions, from three transactions. And so there was a
24 very healthy profit that Mr. Nkrumah got from his
25 participation, and I think it sadly echoes what was written

1 about him in one of the state PSRs after his arson
2 convictions which effectively said Mr. Nkrumah has a long rap
3 sheet. He's here and he seems to be motivated by greed to
4 make easy money. Here we're nearly 20 years later, almost 20
5 years later, the same exact thing could be said about Mr.
6 Nkrumah. He hasn't learned from his past conduct and as much
7 as we would want to believe his good intentions, I have no
8 doubt they are good intentions. Given his demonstrated
9 history, not speculation, not what I think, it is appropriate
10 under 3553(a), a top of the guideline sentence is
11 appropriate.

12 THE COURT: A couple of questions. What, if
13 anything, did he gain in the 13 case?

14 MR. HUANG: The government is not aware of any
15 financial gain he got from that case. That's part of the
16 reason he got a minor role in the government's view.

17 THE COURT: There's a forfeiture order that was
18 agreed to in the Plea Agreement.

19 MR. HUANG: Correct.

20 THE COURT: Of \$113,841.

21 MR. HUANG: I think the agreement was for more than
22 that. There's a mathematical error on our part.

23 THE COURT: There was an agreement greater than that
24 so I can impose this because it has been agreed to in the
25 Plea Agreement. Would you agree even though it is not the

1 it means that you are doing well and enjoying the blessings
2 of your family. We'll stand in recess.

3 (Whereupon, the above hearing adjourned at 12:53
4 p.m.)

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8 COURT REPORTER'S TRANSCRIPT CERTIFICATE

9 I hereby certify that the within and foregoing is a true and
10 correct transcript taken from the proceedings in the
11 above-entitled matter.

12

13 /s/ Terri Fidanza

14 Terri Fidanza, RPR

15 Official Court Reporter

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EXHIBIT D

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UNITED STATES DISTRICT COURT.
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA)	
Government.	)	NO: 3:11CR192 (JCH)
vs.)	
RONALD E. HUTCHISON, JR.	)	February 9, 2015
Defendant)	

141 Church Street
New Haven, Connecticut

SENTENCING HEARING

B E F O R E:

THE HONORABLE JANET C. HALL, U.S.D.J.

A P P E A R A N C E S:

For the Government	:	DAVID HUANG JOHN McREYNOLDS U.S. Attorney's Office 157 Church St. New Haven, CT 06510
--------------------	---	---

For the Defendant	:	IKIESHA T AL-SHABAZZ 274 West 145th St, STE 300A New York, NY 10039
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Proceedings recorded by mechanical stenography, transcript produced by computer.

1 there's no physical injury to anybody. But there are
2 victims. Nonetheless. In this instance, the victims are
3 banks or the United States Government but they are still
4 victims. You took money from people, from banks, from
5 mortgage companies under false presentence by lying to them.
6 And the guidelines measure the seriousness of the offense by
7 the amount of the loss. I'm not persuaded that that's always
8 the best measure, but in your instance, you committed this
9 crime and now I'm also talking about the nature and
10 circumstances of what you did, over more than a two year
11 period. You did it yourself on 15 occasions and you
12 facilitated and introduced people, participated in closings
13 of some of those closings of those people who engaged in
14 additional 25 or more closings. You yourself pocketed
15 approximately \$300,000 and you caused a net loss of more than
16 seven million. I believe the number was about 7.8 million.
17 That's a lot of money. That's a lot of time. That's a lot
18 of transactions. Whether I'm wrong or not, it is usually my
19 judgment and it is my judgment in this serious case that a
20 person who steals. This isn't this case but hypothetically
21 stole seven million dollars on one occasion, absent other
22 factors I would view as less culpable than a person who stole
23 seven million dollars over a serious on occasions. Each time
24 they did the theft, each time they stole, each time they
25 lied. As I suggested to your counsel to me is another

1 who have similar records to you. And some would say the
2 guidelines are a good way to do that. I obviously have not
3 sentenced within the guidelines with many of the defendants
4 in this case because I think sometimes the loss tables --
5 many times the loss tables have overstated the seriousness of
6 the offense and so the guidelines have become less helpful in
7 loss cases because of that. And I would acknowledge even
8 without counsel telling me the name of the case in front of
9 Judge Droney, there are people who committed mortgage fraud
10 who received a probationary sentence. But I know there have
11 been people who have committed mortgage fraud who received
12 sentences of 60 months. I'm fairly certain have received
13 higher sentences in this district, let alone nationwide. I
14 have to say that addressing this fact, the avoidance of
15 unwarranted disparities is probably the hardest that I face
16 in cases like yours where there are multiple defendants.
17 There are related cases. People have different roles that
18 result in different harm, do different things. It is very
19 difficult to try to weigh and measure I guess in a
20 qualitative sense each of those characteristics of that
21 defendant in the offense as well as in the personal
22 characteristics should weigh out to. I use that qualitative
23 sense to determine the sentence in contrast to someone else.
24 That's the problem for me in the guidelines was that it
25 didn't consider enough, enough of the differences between and

1 among people who happen to come before the court. But in
2 some ways that makes my job more difficult because of the
3 fact that there are so many ways in which people differ and
4 my trying to make the best judgment I can between and among
5 the people who come before me as well as being mindful of the
6 sentences given to other people in other cases. The sentence
7 I'm going to impose today I'm going to try to do that. There
8 are many things to consider in your case. Obviously I'm
9 supposed to consider the guideline range. Not supposed to.
10 I will consider the guideline range. I determined it to 78
11 to 97 but there are the other factors to consider and other
12 things as well with the court has become aware of in this
13 case generally.

14 Let me turn to other important factors that I need
15 to consider is your history and characteristics, Mr.
16 Hutchison. I will just note briefly that you had a difficult
17 childhood. Yet you have done a lot of good in your life.
18 You entered our military and served your nation for which I
19 thank you for your service. You then become a correctional
20 officer and served I think 20 years or so in Westchester.
21 Apparently by the letters I received by people who were your
22 co-workers as were your supervisors, you were an outstanding
23 officer. You did a very good job. It is a challenging job.
24 It is one that I think is not credited for the role
25 correctional officers can play. I sometimes see bad conduct

1 to the first point the government made what that means is
2 that if -- there's a filing fee to file a Notice of Appeal.
3 If you don't think you can afford to pay it, you can ask the
4 court to grant you what's a informa pauperis that you don't
5 have the capacity to pay. You are asking to file your notice
6 without the fee. Obviously you are represented by counsel.
7 I would leave it to her to advise you on these things.
8 Anything further?

9 MR. HUANG: No.

10 MS. AL SHABAZZ: No.

11 (Whereupon, the above hearing adjourned at 01:03
12 p.m.)

13

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15 COURT REPORTER'S TRANSCRIPT CERTIFICATE

16 I hereby certify that the within and foregoing is a true and
17 correct transcript taken from the proceedings in the
18 above-entitled matter.

19

20 /s/ Terri Fidanza

21 Terri Fidanza, RPR

22 Official Court Reporter

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EXHIBIT E

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UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

United States of America)	July 23, 2014
Government	)	10:00 a.m.
v.)	
Jesse C. Litvak	)	3:13cr19(JCH)
Defendant.)	

141 Church Street
New Haven, Connecticut

SENTENCING HEARING

B E F O R E:

THE HONORABLE JANET C. HALL, U.S.D.J.

A P P E A R A N C E S:

For The Government : Jonathan N. Francis
Christopher Mattei
U.S. Attorney's Office-NH
157 Church St., 23rd floor
New Haven, CT 06510

For the Defendant : Patrick Smith
John Michael Hillebrecht
DLA Piper US LLP-NY
1251 Avenue of the Americas,
27th Floor
New York, NY 10020-1104

Ross Garber
Shipman & Goodwin
One Constitution Plaza
Hartford, CT 06103-1919

1 that the money actually flowed means that's the measure of
2 the loss. His victim overpaid by that much.

3 Now, Mr. Smith gets agitated when I used the words
4 like overpaid because he thinks I'm referring to some market
5 metric. I am saying had the victim been told the truth, had
6 Mr. Lemin been told the truth, he would have saved his
7 investors 16 ticks. He wouldn't have paid 20 ticks, he would
8 have paid the 4 that Mr. Litvak represented he was paying.
9 That's why you can use the actual loss.

10 THE COURT: Who testified at trial that had they
11 known the truth, the deal would have been done at 59 and not
12 60?

13 MR. FRANCIS: Well, I don't think anyone testified,
14 because we wouldn't have asked that question. And then had
15 we, we would have gotten --

16 THE COURT: In a hypothetical.

17 MR. FRANCIS: Yeah. I don't think anyone can
18 provide you with that, although I believe it is a logical
19 inference. And I think every fraud case presents this
20 scenario.

21 THE COURT: This may be a little bit early for me to
22 raise this, but it's an important issue for me. So I want to
23 be sure I don't forget to ask you about this, Attorney
24 Francis.

25 You represented to the Court at Page 23 of your

1 brief that the fraud guidelines were established after long
2 study and careful conclusion, unlike the crack guidelines in
3 Kimbrough, the loss guidelines, you know, have apparently --
4 the contrast would be that unlike crack, which has no
5 empirical data national experience, the fraud guidelines do.
6 I don't see that in Kimbrough. And I see cases in the Second
7 Circuit, at least in concurring opinions, that say exactly
8 the opposite, that there is not an empirical basis.

9 When I go back and look at Justice Breyer's reason
10 for the loss table, he said if we took the empirical data
11 available to us, everybody would get probation. That is not
12 the right and just result. Therefore, we're going to write a
13 loss table that causes people to get imprisonment sentences.
14 Then Congress, of course, has put its finger on the scale and
15 upped those two or three times. I've got it somewhere. But
16 whatever, it doesn't matter. To where we are now. But I
17 don't know of any empirical data that supports the loss
18 table. Am I mistaken?

19 MR. FRANCIS: My understanding, your Honor, and I
20 can be mistaken about this, but I don't believe I am or I
21 wouldn't have put it in my brief. What I was trying to do
22 was draw a distinction between the crack guidelines where
23 Congress has forced on the commission -- the sentencing
24 commission a certain table as opposed to what's going on in
25 the loss guidelines. Those have been -- although there was a

1 mandate to put them in place, those have been adjusted over
2 time. I'm aware of Justice Breyer's comments. I'm aware of
3 the Second Circuit opinion concurring opinions. I understand
4 that there are people who disagree that the results of the
5 guidelines of 2B1.1's loss table accurately maps where it
6 should go.

7 I think my point -- and maybe I inadvertently
8 overstated it, is that these guidelines were not imposed on
9 the commission. The commission looked at the data in front
10 of them and put these guidelines in place, this loss table in
11 place in order to capture the distinction between different
12 kinds of fraud as measured by the magnitude of the loss.

13 THE COURT: I have two responses to that. That's
14 true, but the table now in place is not the guideline
15 sentencing commission's table.

16 MR. FRANCIS: True.

17 THE COURT: The second point I have is you cited me
18 to 109 of Kimbrough. The only language I can find there is
19 that the court is saying in Kimbrough that the commission
20 fills an important institutional role, it has the capacity
21 courts lack to, quote, base its determination on empirical
22 data and national experience guided by a professional staff
23 with appropriate expertise.

24 I don't see anything in this opinion that tells me
25 the loss tables in Chapter 2 were arrived at that way, the

1 current loss tables, that you want me to apply. Am I wrong?

2 MR. FRANCIS: I don't believe so, Judge. I don't
3 have Kimbrough in front of me. Perhaps that citation is
4 incorrect.

5 THE COURT: Diahann, do you want to give counsel
6 Kimbrough?

7 MR. FRANCIS: Your Honor, I believe that if to the
8 extent my citation is incorrect, obviously, that is
9 inadvertent. But I believe that the point --

10 THE COURT: But you state in your brief, quote, the
11 fraud guidelines were established after long study and
12 careful consideration.

13 MR. FRANCIS: I believe that's accurate with respect
14 to the original form of the guidelines. I understand they've
15 changed over time. But my understanding is that they were
16 originally imposed and they were originally put in place by a
17 sentencing commission in order to -- based on their review of
18 the cases in order to draw the distinction between frauds.

19 THE COURT: So should I apply the '80s loss tables
20 then, the first loss table? Because that's the one you are
21 talking about. But you are writing about it in the brief
22 where that's not the table you are asking me to use. You are
23 asking me to use a table adopted -- well, this one was after
24 -- in '03 or whatever, but -- or later, but it's basically
25 the '02 table as applies to this case. And I don't think you

1 can make the argument that you have made to me.

2 Indeed, I would suggest -- and I'm sure you have
3 read this case, but I guess let me put it this way. I
4 suggest you not make this argument to Judge Underhill because
5 you probably -- maybe you haven't read his concurring opinion
6 in Corsey, but he specifically notes -- and I think he's
7 accurate -- that they could not base it on empirical study.

8 MR. FRANCIS: I have read that decision, Judge. Of
9 course, I don't think that your Honor should apply the old
10 guidelines. I don't think that's appropriate. I don't think
11 that's what the statute calls for.

12 THE COURT: Then why tell me that the table is based
13 on empirical and long study?

14 MR. FRANCIS: I think we were just drawing a
15 distinction between the crack guidelines and the fraud
16 guidelines, where the fraud guidelines didn't come out of
17 some mandate from, you know, external to the sentencing
18 commission. Work has been done on the fraud guidelines.
19 Now, where they've ended up, I understand the people have --
20 including Judge Underhill, have issues with the way that the
21 table ended up. But I think we're talking more about the
22 genesis of the fraud guidelines.

23 THE COURT: Attorney Smith, do you want to address
24 for me the argument you make that the -- I'm going to call
25 them the non-trial losses that the government includes in

1 I can do these things. Might have been the compliance sense
2 and the securities, what the SEC might do sense, be wrong,
3 but I cannot be at the same time committing a federal crime
4 that will land me in prison. So it's the difference between
5 acknowledging the conduct what he said and did and the
6 misrepresentations that were made and what the upshot of that
7 conduct was.

8 I do think that when you think about that point I'm
9 just making and put it back against the character that we now
10 see coming through in terms of all of the submissions, I hope
11 it helps you better understand and put into context what the
12 man was thinking and the fact that there's tremendous
13 goodness in his heart, goodness in his character that will
14 hopefully be a fact that your Honor considers in imposing
15 sentence.

16 THE COURT: I'm going to ask a few questions.
17 Please don't interpret this as -- you know, this is my focus,
18 but these are the questions that come to my mind in response
19 to what you are arguing. Doesn't necessarily mean my
20 reaction to what you are arguing.

21 To the extent you want me to view the guidelines as
22 an inappropriate measure of what happened here, in effect,
23 all of the things in 3553(a), and that the guidelines are off
24 because loss isn't a good measure. You have a lot of, you
25 know, good company for that argument, but the struggle I'm

1 having in this case is that I have in the past expressed that
2 same view in connection with sentencings where loss has --
3 well, in this case it's -- usually I will say the loss is
4 sort of too heavy a factor and the guidelines here, it's like
5 a tsunami. It just overtakes the guideline. 60 percent of
6 the guideline calculation is loss. So I'm sympathetic to the
7 argument that the guidelines are challenged in their ability
8 to help the Court make a judgment here.

9 But the problem I think for your side of the
10 courtroom today on this issue is when I have in the past
11 said, okay, just pure raw numbers are not the way to look at
12 what happened, what the nature of the circumstances is or how
13 serious this is. What I usually then turn to is things like
14 how many times did the defendant do this, how many victims
15 were there, how long did he engage in this conduct. Those
16 kinds of things. My classic example is if you lie to a widow
17 with total assets of a million dollars and you lie and get
18 the million dollars from that widow, and -- or Attorney
19 Francis lies to five widows who have a net value each of
20 \$200,000 and he's able to take the 200,000 from the five
21 victims. Generally, I think I would say I would view
22 Attorney Francis' conduct more seriously than your conduct.
23 It is very comparable. I don't want to split hairs. But I
24 think things like how often you do it and how long you do it
25 are -- can be measures that help us determine seriousness or

1 nature and circumstances when sheer dollar totals maybe lead
2 us astray. The problem here, those factors aren't in
3 Mr. Litvak's favor.

4 MR. SMITH: Well, look, three's -- the number of
5 transactions are -- I think we're either in the 50-ish range
6 or the 75 range for a count purpose over a two or three-year
7 period.

8 THE COURT: Right. So once every week -- no, once
9 every other week. Something like that.

10 MR. SMITH: I think it is less than that. The
11 spectrum that I think would be more helpful to your Honor is
12 in terms of quality of the fraud and what's happening is you
13 could put a Ponzi scheme, a Madoff-type fraud which was made
14 up of many little frauds on the individual victims over a
15 period of time that resulted in devastating out-of-pocket
16 loss and harm to the victim, and then without diminishing the
17 seriousness of what Mr. Litvak was convicted of, which was
18 lying to counterparties in the circumstances that mattered.
19 That was the jury's verdict. But say that is just less
20 serious than a scheme that's designed to steal someone's
21 principal and sell an investment that is worthless or will
22 never have a return. You could substitute boilerroom
23 operation in there. So while there's numerous instances of
24 the conduct, it's numerous instances of conduct that's mild
25 in comparison, or less serious in comparison to heartland

1 conversation, or the consideration, I guess.

2 And I'm still struggling with that.

3 MR. FRANCIS: Well, Judge, if I have given you that
4 impression, either in something I put in the papers or
5 something I've said here today, I respectfully disagree with
6 that and allow me to correct it.

7 We do not stop at the guidelines. We did the
8 guidelines first because that's what your Honor has to do.
9 We may come to a different conclusion on this, but we looked
10 at the statutory factors and we took them very seriously.
11 Even under the --

12 With respect to your question, would we have come
13 out at 108? I think so if we had the benefit of someone like
14 the sentencing commission who had done the work with coming
15 up with a fraud table.

16 THE COURT: They didn't do the work.

17 MR. FRANCIS: I'm sorry?

18 THE COURT: I'm sorry. That's why it was important
19 to me, they didn't do the work. If I'm wrong about that, you
20 need to tell me because I'm going to carry this thought with
21 me, follow it in every loss table case. It's like the crack
22 guidelines.

23 MR. FRANCIS: I misspoke, your Honor, and I don't
24 disagree with you. If we had the benefit of a loss table.

25 THE COURT: Based on empirical data. We don't.

1 MR. FRANCIS: Okay. Under this hypothetical, i'm
2 having a hard time -- I'm not sure what I would have done.
3 But this is a case where every dollar of the 6.3 or the 4.4
4 million in loss that we can agree on, was intended to be
5 lost. It's causally linked, it's directly, causally linked
6 to the lie he told in each and every of the 55 instances.

7 So, yeah, I don't want to be --

8 THE COURT: But how about answering the argument
9 that this is not like a Ponzi scheme or a penny stock fraud
10 or a bait and switch where you sell something, you say it has
11 value and you convince the buyer it has value and, poof, at
12 the end of the day it has no value.

13 MR. FRANCIS: Right. No, that's true. It's not
14 like that case. But it also, to respond to the argument,
15 Mr. Smith said there's loss of principle. That's just wrong.
16 Maybe all the funds made money, but they would have made more
17 money. To say there's no loss of principle, I mean, frankly,
18 that minimizes beyond what the facts would bear. And Mr.
19 Litvak actually did, he stole at least \$4.4 million of
20 investor's money.

21 Now he did it in a culture, at a place where maybe
22 other people were doing it, too. But to equate his conduct
23 and other people's -- and I know Mr. Smith sort of implies
24 that everyone out there is doing it, so we're picking on Mr.
25 Litvak. Frankly, that argument is offensive.

1 first. In this case, it's Mr. Litvak. In this instance,
2 it's Mr. Litvak.

3 THE COURT: I'm moved to ask a question, not because
4 I disagree with what you have just said necessarily, but
5 because what you said leads me to the question. And that is,
6 accepting all of that, what sentence is sufficient for the
7 first person who has been told, no, you really can't go 125
8 in a red Ferrari on the merit. We don't allow that. That
9 violates our concept of free markets, you are playing, you
10 are putting your finger on the scale. All of it's very
11 wrong, and the jury told you that. I don't know that I
12 should -- I mean -- I guess, how much is sufficient?

13 When the guidelines were adopted, Justice Briar
14 wrote remarks about the loss table, which I think are very
15 enlightening. I happen, in some significant, not a small
16 measure, let's put it that way, to agree with him.

17 Judge Cleary, who was a beloved member of this court
18 when I was practicing as a lawyer. Some of the folks in your
19 office will remember him. Probably you could ask John Durham
20 about him. Very, very wise judge. He was a judge long
21 before there was anything known as the guidelines, long
22 before anybody thought about a loss table, empirically based
23 or otherwise.

24 His view was that in every white-collar criminal
25 that came before him, they needed to go to jail. His

1 sentences were -- please don't take this as what I'm
2 thinking -- but three months, six months, nine months. Every
3 other district court in the nation, as reported by the
4 Sentencing Commission and Justice Briar back in the eighties,
5 put those folks on probation. Oh, you know, they look like
6 me. They are good people. They have done lots of good
7 things in their lives which caused tens of people to come
8 forward and stand behind them at sentencing. He doesn't need
9 to go to jail. He's already been punished enough.

10 I think what the Commission said, and rightly so,
11 that's not the right conclusion to reach, that incarceration
12 is a very powerful penalty for white-collar criminals. I
13 think I share the office's comment to me that one of the most
14 powerful things that happened when he did the investigation
15 is the fact that Mr. Litvak understood that had to happen to
16 him. A lot white-collar criminals don't understand that.
17 He's not admitting responsibility. I have a little bit of
18 the same fear you have, that he views himself as a victim.
19 And I'm troubled by that, but that's not fair because I
20 haven't heard him say it, but I'm sort of inferring it.

21 At the end of the day, how much is necessary to
22 accomplish deterrence of others, to accomplish punishment for
23 what was done. I'm still struggling.

24 MR. FRANCIS: I see that, your Honor, and I don't
25 mean to make light of it when I say it's hard to know. And

1 the end of the opinion about the sentence, but I'm mindful of
2 that as well.

3 Ray, your rec is attached to what? Is it attached
4 to the second addendum or the first?

5 THE PROBATION OFFICER: The first. Should be
6 attached to the PSR.

7 MR. SMITH: I have a copy.

8 THE COURT: I may need it. I had it, but I can't
9 find it.

10 THE PROBATION OFFICER: (Handing.)

11 THE COURT: Mr. Litvak, you and I have been in a
12 courtroom for a lot of hours. I have not heard directly from
13 you, which is fine, but now is the time for you to hear
14 directly, I guess, from me.

15 The first thing -- well, as I said at the beginning,
16 what I'm going to do now before I impose sentence upon you
17 and actually finally determine that sentence, is to go
18 through the factors that I mentioned and talked about at the
19 beginning that Congress has required me by law to consider.
20 Their intention in that respect is that if I'm mindful and
21 thoughtful about these factors, that I will, in the process
22 of considering them and weighing them, arrive at what is a
23 fair and just sentence.

24 Among the factors is one we have already talked
25 about and I'm sure that everybody in the audience was puzzled

1 by how can we do arithmetic to decide what is a proper
2 punishment for a crime. But a while ago Congress decided
3 that -- in the '80s -- that this was an appropriate way to
4 determine sentences was by assigning numerical values to
5 certain characteristics of an offense or a person's criminal
6 history. And using a table or a chart, come up with a
7 sentencing range. We have done that.

8 And in this case, based on my findings, your --
9 Congress would say your sentence should fall within 108 to
10 135 months. About five or six years ago, the Supreme Court
11 looked at that scheme and said it would be unconstitutional
12 if we required sentences to be in that range. So the way
13 that they decided to solve it was rather than throwing out
14 everything, they said we can have the scheme, but we will not
15 make it mandatory.

16 So what that means is, I'm required to attempt to
17 determine the guidelines, which I have done. I'm required to
18 consider the guidelines seriously, they are a serious factor
19 to be considered and weighed. But at end of the process of
20 considering all of the factors, it may be that the sentence I
21 impose is within that range because all of the factors drive
22 me to that sentence, but it may just as well be that it's
23 below it or it's above it. It's really a consideration of
24 all of factors that will inform my judgment today and which
25 is what I think is my responsibility is today.

1 Your counsel asked me to depart from the guidelines,
2 the effect of which is really to make the factor a different
3 range, in effect. If I departed, then I would have a new
4 range, and that would be the factor I would consider.

5 I want to state clearly for the record, I think
6 counsel asked me to depart on extraordinary family
7 circumstances and that the loss overstates the seriousness of
8 the offense and otherwise overstates what the sentence should
9 be. I recognize that I have the authority to depart on both
10 of those basis. I could, if I wish to, exercise my
11 discretion to do so, depart. Also recognize that there is a
12 record here that might very well support both of those
13 departures, but I'm not going to depart. I'm going to
14 exercise my discretion not to.

15 And the reason really is that while I think your
16 family circumstances will figure significantly in the
17 sentence I determine, I'm not going to depart from the
18 guidelines on a finding of extraordinary family
19 circumstances. I don't believe that your situation meets the
20 facts of the cases that justify such a departure. And I just
21 don't choose to exercise my discretion to depart.

22 On the loss table, in effect, the loss numbers
23 assigned due to loss overstates the guidelines or drives the
24 guidelines inappropriately up. I'm certainly in agreement
25 with that argument, but, again, I exercise my discretion not

1 to depart to a particular range that I think it overstates.
2 Rather I will consider that argument quite significantly, I
3 think I would say, it would be fair to say, in addressing the
4 nature and circumstances of this offense and the seriousness
5 of the offense and how loss plays a role in that. And also
6 probably by commenting a bit on the loss table and things
7 like deterrence of white-collar crimes, et cetera.

8 So we're still left with the 108 to 135 guideline
9 range. So I will now turn to -- I guess I probably should
10 comment, just because the counsel have addressed it and I
11 need to -- I think I should address it on the record. And
12 this really would probably go to the departure, but also, in
13 some respects, I think I will consider it in nature and
14 circumstances. And that is whether the ABA proposed
15 guideline, the loss table, should be used here, shouldn't be
16 used here, whether it's helpful or not helpful.

17 Obviously, this case demonstrates that just like the
18 loss table in the guidelines, that there's lots of things to
19 be argued in the ABA loss table. Lots of places where people
20 can disagree. People can value certain aspects or
21 characteristics differently. I have gone through the ABA
22 proposal. I have looked at both parties arguments about what
23 they should tell me about what the loss table amount should
24 be or what the sentence should be. Actually, it's not just
25 loss table, I'm sorry, but what the sentence should be, the

1 guideline ranges. And I have to say that I am in complete
2 agreement with the drafters of this proposal, some of whom
3 are very highly regarded judges in this circuit, in which the
4 drafters urge the courts not to focus on things that are
5 easily quantifiable. I agree with that. I think that in
6 this case, obviously loss is easily quantifiable, in my
7 opinion, but that it shouldn't overwhelm or cause me to
8 ignore other important but less easily quantifiable
9 characteristics. Having agreed with that, what I think this
10 case -- it could be Exhibit A to this point, is that -- that
11 the ABA proposal is just as difficult to struggle with
12 because it's trying to put numbers on things. Where I think
13 the ABA proposal is helpful to me in this case is that it
14 articulates ways of thinking about factors and how they may
15 or may not be significant in a particular case. That's
16 really my view of what I need to do here. And that is to
17 take the broad factors that Congress has put upon me to
18 consider and to sort of break them down as they are present
19 in this case.

20 So I'm not going to adopt one or the other of your
21 views of the ABA calculations. I'm very mindful of them. I
22 think, as I say, there's parts of them where what they talk
23 about, like in the culpability area, the things to think
24 about, those are very helpful to me as a sentencing judge.
25 But to try then to decide which box they go in and which,

1 within that box, number I ascribe to them is not particularly
2 helpful, at least to this judge.

3 I will start, Mr. Litvak, with my view of the nature
4 and circumstances of what you did. I think, unlike you, I do
5 not view you as a victim. I don't view you as singled out.
6 I don't view you as somebody who happened to do something
7 that everybody is doing and nobody thought was illegal and,
8 bam, all of the sudden you got caught. You lied. Now maybe
9 that's what people do every day on Wall Street. It still
10 doesn't make it legal. Lots of us lie every day in our
11 lives. Fortunately, most of the time it doesn't have much
12 consequence. It's a white lie. But when it has a
13 consequence, when it's material, which this jury found, it's
14 a crime. If you don't think that -- obviously, you don't
15 think it in the sense that you wish to take an appeal and
16 challenge the convictions, but, in my mind, that's a no
17 brainier. If anybody on Wall Street thinks it's okay to lie,
18 I hope that, to the extent any message gets out from this
19 sentencing, I hope that message gets out.

20 I agree with the government, we want our markets to
21 be open and transparent. And I agree completely with you,
22 that you didn't have to tell this buyer anything. For
23 example, you didn't have to tell them what the price was.
24 When you chose to tell him and you chose to lie about it,
25 that was a crime.

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COURT REPORTER'S TRANSCRIPT CERTIFICATE

I hereby certify that the within and foregoing is a true and correct transcript taken from the proceedings in the above-entitled matter.

/s/ Terri Fidanza

Terri Fidanza, RPR

Official Court Reporter

EXHIBIT F

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UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA)	
Government.	)	NO: 3:12CR153(JCH)
)	
vs.	)	January 16, 2015
MENACHEM YOSEF LEVITIN,)	
Defendant)	
)	
	)	141 Church Street
	)	New Haven, Connecticut

SENTENCING HEARING

B E F O R E:
THE HONORABLE JANET C. HALL, U.S.D.J.

A P P E A R A N C E S:

For the Government	:	DAVID HUANG JOHN McREYNOLDS U.S. Attorney's Office 157 Church St. New Haven, CT 06510
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For the Defendant	:	WILLIAM F. DOW , III Jacobs & Dow, LLC 350 Orange St. New Haven, CT 06503-0606
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1 MR. HUANG: Yes, your Honor. I don't have a
2 specific number. We didn't go through the forensic
3 accounting. My memory was during the course of the trial on
4 cross-examination, he said that he made I think \$700,000 from
5 the conspiracy so his loss is over 7 million so according to
6 Mr. Levitin's own testimony, he made hundreds of thousands of
7 dollars. So I don't think going back to Attorney Dow's
8 argument about loss guidelines, I'm not sure that in this
9 case it is really apples and apples to lawyers where they
10 made a thousand dollars per transaction fee. Mr. Levitin is
11 one of the individuals who profited the most from the
12 conspiracy, more than Mr. Constantinou.

13 THE COURT: Okay. Thank you very much. Is there
14 anything further?

15 MR. DOW: Two things. I don't think I mentioned
16 this earlier, but it was in my papers or the government's or
17 may be both. He located the individual Mr. Nkrumah. The
18 government didn't know where he was. It turned out to be
19 happenstance. He fell upon him and was able to report.

20 With respect to the profit, his profit was 700. By
21 the government's calculation, he forfeited a million six. By
22 ours is two million eight. My sister-in-law says there's no
23 paper so excess answer two sides. There's always a response
24 to everything you put forward. But the other factor -- I
25 think I said this but indulge me if you would. Of the three

1 difficult decision because of the other defendants and your
2 relative role and also your cooperation weighed very heavily
3 on me. Your sentence would have been significantly longer
4 but for your cooperation. I meant it when I said you are
5 much more than the offense that brings you to court here
6 today. I think defendants have trouble with that. I hope
7 that as I said earlier, once you pay your debt to society by
8 serving your term, that you will be able to realize that and
9 to put it behind you and understand that you have a life
10 ahead of you to live and be the person that hopefully is
11 reflected in the rest of your life, not in this period of
12 your life. Unless there's anything further, the court will
13 stand in recess briefly.

14 (Whereupon, the above hearing adjourned.)

15
16
17 COURT REPORTER'S TRANSCRIPT CERTIFICATE

18 I hereby certify that the within and foregoing is a true and
19 correct transcript taken from the proceedings in the
20 above-entitled matter.

21
22 /s/ Terri Fidanza

23 Terri Fidanza, RPR

24 Official Court Reporter

25

EXHIBIT G

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA : Case No. 3:11CR192 (JCH)
 :
 v. :
 :
 JACQUES KELLY : July 7, 2014

GOVERNMENT’S SENTENCING MEMORANDUM

The United States submits this memorandum to aid the Court in the upcoming sentencing of the defendant, Jacques Kelly, which is scheduled for July 21, 2014 at 11:30 AM. On April 18, 2014, following a three-week trial, a jury convicted Kelly of conspiracy to commit mail, wire and bank fraud, in violation of 18 U.S.C. § 1349, wire fraud, in violation of 18 U.S.C. § 1343, and making a false statement, in violation of 18 U.S.C. § 1014.

The reasonably foreseeable loss attributable to Kelly was over \$1.8 million. The defendant’s Guideline range is 46 to 57 months in prison and represents a sentence which is reasonable. However, for the reasons stated herein, the Government is recommending a non-Guidelines sentence of greater than 29 months.

I. Offense Conduct and Relevant Conduct

The Pre-Sentence Report (“PSR”) accurately summarizes the testimony and documentary evidence introduced at trial. *See* PSR ¶¶ 6-19. In summary, from September 2006 through November 2008, the defendant engaged in a conspiracy with Andrew Constantinou, Genevieve Salvatore, Lawrence Dressler, Kwame Nkrumah, Ronald Hutchison, Menachem Levitin, Jeffrey Weisman, Charles Lesser, and Bradford Rieger, to commit mortgage fraud involving the purchase of multi-family homes in New Haven, Connecticut. Kelly fraudulently obtained

Dressler received an actual sentence of 21 months below the low end of the Guidelines. The same reductions for Kelly would result in a sentence of between 25 and 29 months.

Assuming this methodology is sound, there are additional factors that the court may wish to consider in deciding where within this range Kelly's sentence should fall, and whether there are mitigating or aggravating factors which suggest a sentence below or higher than this range. First, it is instructive to view the co-conspirators in light of each co-conspirator's actual and anticipated financial gain. The attorneys' "gain" was merely and solely the receipt of their normal legal fees for their participation in this fraud: Dressler - \$5,600; Salvatore - \$19,243; and Rieger - \$21,438. In contrast Kelly anticipated reaping a much greater windfall than the attorneys from the combination of even more cash back than he actually received, rental income and an ever-rising real estate market. Kelly received over \$56,000 in cash back at the closings of the eight properties he purchased. But, Kelly admitted that he expected to receive \$92,000 cash back at the closings of just four properties if the properties were appraised at certain amounts. Kelly also earned over \$60,000 from the fraudulent sale of 151 Saltonstall to Hutchison. None of the attorneys actually made or expected to make as much as Kelly.

Second, Kelly's continued insistence that he did nothing wrong, calls into question whether he should receive the same kind of variance the attorneys received. Rieger, Salvatore and Dressler were rewarded by the court, at least in part, because of their sincere remorse and contrition. Here, Kelly says "... I'm convicted, and for something I believe I didn't do." PSR ¶ 44. Even before the trial, Kelly knew that four attorneys (Rieger, Salvatore, Dressler and Weisman), a real estate agent (Levitin), a seller and property manager (Nkrumah), one mortgage broker (Lesser) and his best friend and

EXHIBIT H

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UNITED STATES DISTRICT COURT.

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA)	
Government.	)	NO: 3:11CR192 (JCH)
)	
vs.	)	July 21, 2014
JACQUES KELLY,)	
Defendant)	

141 Church Street
New Haven, Connecticut

SENTENCING HEARING

B E F O R E:

THE HONORABLE JANET C. HALL, U.S.D.J.

A P P E A R A N C E S:

For the Government :	DAVID HUANG JOHN McREYNOLDS U.S. Attorney's Office 157 Church St. New Haven, CT 06510
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For the Defendant :	MATTHEW L. CORRENTE 1200 Summer Street Stamford, CT 06905 BRUCE D. KOFFSKY Koffsky & Felsen, LLC 1150 Bedford Street Stamford, CT 06905
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1 MR. KOFFSKY: Covello. Michael Hodges is a
2 straw buyer and a recruiter 120,000 to 200,000, 18
3 months; Jane Soulliere, one million to 2.5 million,
4 21 months; Angela Urena 400,000 to one million, 24
5 months; Alisha Martin just says exceeds \$120,000.
6 And the others are unknown, your Honor.

7 THE COURT: Thank you.

8 MR. KOFFSKY: I'm going to ask Mr. Kelly to
9 address the court. But before I do, I want to ask
10 if the Court has any questions of me. If I left
11 anything out that the Court wants to me to focus on.

12 THE COURT: I will ask the government as
13 well. I have down here that Mr. Kelly was involved
14 in nine transactions. Is that correct? Do you
15 agree?

16 MR. KOFFSKY: I believe it is nine
17 transactions. One transaction that did not go
18 forward.

19 THE COURT: One of the nine or that would
20 make 10?

21 MR. KOFFSKY: Yes, one of the nine.

22 THE COURT: And that he put in his pocket,
23 he walked away from closings with a total of
24 approximately 165,000? I may be double counting.
25 That's why I wanted to be sure.

1 MR. McREYNOLDS: Your Honor, he walked away.
2 We have referred to the cash back at closing in
3 excess of \$56,000. The balance of the number that
4 your Honor referred to probably includes the
5 proceeds from his sale of the house to Ron Hutchison
6 that we also stated is fraud. That's a fraudulent
7 transaction as well.

8 THE COURT: Which property?

9 MR. McREYNOLDS: I believe that's 151
10 Saltonstall.

11 THE COURT: Hutchison sold it to him?

12 MR. McREYNOLDS: Hutchison.

13 THE COURT: Kelly sold to Hutchison?

14 MR. KOFFSKY: If my recollection, I remember
15 the number 58,000 was the number that we focused on,
16 your Honor, at trial.

17 THE COURT: At closings what cash back.

18 MR. KOFFSKY: Right. We argued over what --
19 the government prepared some summary charts and
20 58,000 I believe was the summary chart that the
21 Court allowed in.

22 THE COURT: I'm puzzled now how the
23 government views the Saltonstall transaction.
24 Hutchison benefited but why is that equivalent to
25 the take away from a closing money for Mr. Kelly?

1 He was supposed to have netted \$100,000 and it
2 appears at least in the PSR and nobody objected,
3 that he actually received two checks totaling only
4 60.

5 MR. McREYNOLDS: That transaction was
6 fraudulent because with the knowledge Mr. Kelly had
7 about that transaction. Mr. Hutchison did not come
8 to the table with any down payment or any deposit.

9 THE COURT: Right. It was a fraudulent
10 transaction. I understand. I'm sure the fraud loss
11 caused by the fraud is in the 1.8 million but I'm
12 trying to understand, like I have, you know,
13 Mr. Dressler put \$5100 in his pocket from the
14 closing fees. Davis, the agent, probably profited
15 40,000 by doing these transactions. I have those
16 kinds of numbers, so I was sort of looking for a
17 comparable number for Mr. Kelly. It sounds like the
18 56 is probably the comparable number without any add
19 in from Saltonstall. He didn't walk away with money
20 from Saltonstall. He sold the property and should
21 have been paid for it. It's a fraudulent
22 transaction and he's liable for the fraud in the
23 transaction, but it is not comparable to when I did
24 a fraudulent transaction, I put money in my pocket.
25 I shouldn't --

1 MR. McREYNOLDS: I understand. I agree for
2 the most part, your Honor. One of the things that
3 took place -- this was proven at trial -- all of
4 these transactions were at a sales price that was
5 inflated so.

6 THE COURT: It wasn't worth 350,000?

7 MR. McREYNOLDS: That's correct. It's
8 difficult to put a number on how much additional
9 monies went into Mr. Kelly's pocket in that
10 particular transaction.

11 THE COURT: If it had been a fair market
12 value sales price would he have put 60 in his
13 pocket? Was it really worth \$325,000 that property?

14 MR. McREYNOLDS: Right.

15 THE COURT: But that range, that inflation
16 range is roughly what most of these properties would
17 say inflated at closing to cover the cash down.

18 MR. McREYNOLDS: I think that's fair.

19 THE COURT: I don't see that one as adding.
20 The last thing I've looked at for other defendants
21 is how long he was involved and he was involved
22 about two years, a little bit longer.

23 MR. McREYNOLDS: Yes.

24 THE COURT: No?

25 MR. KOFFSKY: Mr. Kelly was involved in two

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COURT REPORTER'S TRANSCRIPT CERTIFICATE

I hereby certify that the within and foregoing is a true and correct transcript taken from the proceedings in the above-entitled matter.

/s/ Terri Fidanza

Terri Fidanza, RPR
Official Court Reporter

EXHIBIT I

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	
	:	Case No. 3:11CR192 (JCH)
v.	:	
	:	
RONALD HUTCHISON	:	December 29, 2014
	:	

GOVERNMENT’S SENTENCING MEMORANDUM

The United States submits this memorandum to aid the Court in the upcoming sentencing of the defendant, Ronald Hutchison, which is scheduled for January 12, 2015 at 11:30 a.m. Hutchison pleaded guilty before this Court on January 10, 2012, to Count One of a four-count Indictment charging him conspiracy to commit mail and wire fraud, in violation of Title 18, United States Code, § 1349.

I. Offense Conduct and Relevant Conduct

The Pre-Sentence Report (“PSR”) and the stipulation in the parties’ plea agreement accurately summarize the defendant’s offense and relevant conduct. From September 2006 through July 2008, the defendant engaged in a vast mortgage fraud conspiracy with Andrew Constantinou, Genevieve Salvatore, Lawrence Dressler, Kwame Nkrumah, Jacques Kelly, Menachem Levitin, Jeffrey Weisman, Charles Lesser, Bradford Rieger, and Richard Sabrowske to commit mortgage fraud involving the purchase of multi-family homes in New Haven, Connecticut. The conspiracy involved buyers, sellers, loan officers, mortgage brokers, real estate brokers and closing attorneys.

The mortgage fraud that Hutchison and his co-conspirators committed took different forms, but they all involved lying to the lenders about the terms of the transaction. The most basic fraud was Hutchison and others buying homes without making any deposit, down payment

Defendant	No. of Fraudulent Transactions in which Defendant Directly Participated	Approx. Loss Amount	Approx. Duration of Direct Involvement	Role in the Offense	Abuse of Trust/Use of Special Skill	Violation of Prior Order	Obstruction	Acceptance of Responsibility	Guidelines at Sentencing	Sentence
Andrew Constantinou (trial defendant)	26	\$4,873,600; +18	19 months	+4	+2	+2	+2	-	CHC I/Offense level 35; 168-210 months	60 months
Ronald Hutchison*	49	\$7,859,400; +20	27 months	+2, with right to argue for +4	---	-	-	-3	CHC I/Offense level 28 (possible 26); 78-97 (63-78) months	
Joseph Levitin*	46	\$7,179,850; +20	26 months	+2, with right to argue for +4	---	-	-	-3	CHC I/Offense level 28 (possible 26); 78-97 (63-78) months	
Jeffrey Weisman*	26	\$4,043,250; +18	26 months	Right to argue for minor role (-2)	+2	-	-	-3	CHC I/Offense level 24 (possible 22); 51-63 (41-51) months	
Charles Lesser*	20	\$2,808,700; +18	17 months	-	+2	-	-	-3	CHC I/Offense level 24; 51-63 months	
Bradford Rieger	19	\$2,262,550; +16	19 months	-	+2	-	-	-3	CHC I/Offense level 22; 41-51 months	24 months
Genevieve Salvatore	13	\$2,259,200; +16	2 months	-	+2	-	-	-3	CHC I/Offense level 22; 41-51 months	24 months
Kwame Nkrumah**	3	\$601,000; +16**	6 months	+2	-	-	-	-3	CHC III/Offense Level 21; 46-57 months**	48 months**
Lawrence Dressler	7	\$1,169,913; +16	11 months	-	+2	-	-	-3	CHC I/Offense Level 22; 41-51 months	20 months
Jacques Kelly (trial defendant)	10	\$1,848,250; +16	9 months	-	-	-	-	-	CHC I/Offense Level 23; 46-57 months	15 months

* The information contained for these defendants is estimated, as final PSRs have not yet been disclosed.
 ** The information for Mr. Nkrumah is only with respect to his conduct in 3:12CR192. Of course, the Guideline calculation and the sentence imposed was for both 3:12CR192 and 3:13CR65.