

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA

1:23-cr-00004-JHR-2

Plaintiff,

vs.

MENACHEM LIEBERMAN

Defendant.

**SENTENCING MEMORANDUM ON BEHALF OF
DEFENDANT MENACHEM LIEBERMAN**

WEIL, GOTSHAL & MANGES LLP
Daniel L. Stein
Chelsea L. Spence
767 Fifth Avenue
New York, NY 10153
Tel: (212) 310-8000
Fax: (212) 310-8007
Daniel.Stein@weil.com
Chelsea.Spence@weil.com

Counsel for Defendant Menachem Lieberman

Dated: December 20, 2024

TABLE OF CONTENTS

PRELIMINARY STATEMENT	1
PERSONAL BACKGROUND	1
I. Family and Professional Background.....	1
II. Community Involvement & Activism.....	5
A. Hatzoloh EMS	5
B. Hospital and Medical Advocacy	6
C. Prisoner Rights Advocacy and Exoneration of David Ranta	9
D. Advocacy for Orthodox Jewish Community in Quebec	13
E. Advocacy for Jewish Orthodox Education in Montréal.....	15
F. Community Involvement in New York.....	16
OFFENSE CONDUCT AND ADVISORY SENTENCING RANGE	17
I. Conspiracy to Defraud the United States (Count Two)	18
II. Adjustment for Obstruction of Justice.....	22
III. Conspiracy to Commit Wire Fraud (Count One)	25
RELEVANT SENTENCING FACTORS.....	34
I. Legal Standard.....	34
II. A substantial downward variance from the Guidelines range is appropriate because the Guidelines loss amount overstates the seriousness of Max’s offense	35
III. A significant downward variance is warranted in this case because Max acted with good motives with his involvement in PSC and operating the wraparound program ..	39
IV. Max’s personal characteristics — particularly his commitment to his community and his family — justifies a substantial variance from the Guidelines range	43
V. Max will be adequately punished by a non-Guidelines sentence, including a sentence of a significant period of home incarceration.	46
VI. Neither general nor specific deterrence are served by Guidelines sentence in this case.....	49
CONCLUSION	49

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Ciminelli v. United States</i> , 598 U.S. 306 (2023)	37
<i>Dean v. United States</i> , 581 U.S. 62 (2017)	34
<i>Gall v. United States</i> , 552 U.S. 38 (2007)	34
<i>Kousisis v. United States</i> , 144 S. Ct. 2655 (2024)	37
<i>United States v. Burroughs</i> , 691 F. App'x 31 (2d Cir. 2017)	35
<i>United States v. Caldwell</i> , 488 F.2d 287 (5th Cir. 2006)	18
<i>United States v. Carty</i> , 520 F.3d 984 (9th Cir. 2008)	35
<i>United States v. Cavera</i> , 550 F.3d 180 (2d Cir. 2008)	34
<i>United States v. Chastain</i> , 1:22-cr-00305-JMF Dkt. 159 (September 21, 2023)	45
<i>United States v. Corsey</i> , 723 F.3d 366 (2d Cir. 2013) (Underhill, J., concurring)	38
<i>United States v. DiMattina</i> , 885 F. Supp. 2d 572 (E.D.N.Y. 2012)	45
<i>United States v. Gupta</i> , 904 F. Supp. 2d 349 (S.D.N.Y. 2012)	38, 45, 46
<i>United States v. Johnson</i> , 2018 WL 1997975 (E.D.N.Y. 2018)	38
<i>United States v. Keller</i> , 539 F.3d 97 (2d Cir. 2008)	35

<i>United States v. Mendlowitz</i> , 1:17-cr-00248-VSB Dkt. 326 (December 17, 2021)	48
<i>United States v. Mendlowitz</i> , 2021 WL 4892860 (S.D.N.Y. Oct. 20, 2021)	45
<i>United States v. Porat</i> , 76 F.4th 213 (3d Cir. 2023) (J. Krause, concurring)	37
<i>United States v. Ranum</i> , 353 F. Supp. 2d 984 (E.D. Wisc. 2005)	39
<i>United States v. Regent Off. Supply Co.</i> , 421 F.2d 1174 (2d Cir. 1970)	36
Statutes	
18 U.S.C. § 3553(a)	<i>passim</i>
18 U.S.C. § 371	17

PRELIMINARY STATEMENT

Menachem (“Max”) Lieberman is a truly extraordinary man. His life, much of which we relate in the following pages and accompanying materials, is one of genuinely remarkable and enduring charity, civic engagement, and public service. A deeply religious man, it is no exaggeration to say that he has dedicated his entire life to helping others, including, the neediest among us. He is also a devoted husband, doting father of nine children, and a singularly beloved and essential member of his community.

At sentencing, this Court will bear the awesome responsibility of trying to determine a fair and just punishment for the crimes committed by this remarkable person. In this regard, we respectfully submit that the United States Sentencing Guidelines (“U.S.S.G.” or the “Guidelines”) only help to a degree. Rather, as required by law, this Court will need to develop a detailed understanding of the nature and circumstances of the offense, and to place that understanding in the context of the truly extraordinary history and characteristics of the full person before the Court. We respectfully submit this Memorandum to assist the Court with this difficult, but essential task, and request that Max be sentenced to a period of incarceration significantly below the advisory Guidelines range.

PERSONAL BACKGROUND

I. Family and Professional Background

Max Lieberman was born in 1976 to Solomon and Sarah Lieberman, both of whom immigrated to this country shortly after the Holocaust.¹ Along with his six siblings, Max grew up in Brooklyn, New York, in a New York City housing complex for low-income families. Although

¹ See Presentence Investigation Report (“PSR”) ¶¶ 104, 106.

his family struggled financially, Max’s parents fostered a loving and supportive home.² Max’s mother, in particular, instilled in him a deep passion for service to others, without seeking acknowledgement or praise — a teaching by which Max still lives today.

Max married his wife, Bella, who was born and raised in Montréal, Quebec, Canada, in 1994, and they have now been happily married for 30 years.³ Max describes his wife as his “best friend.” The couple settled in Montréal, where they had nine children, five of whom are now married with their own children, giving Max and his wife twelve grandchildren.⁴ Max and Bella’s other four children are minors, the youngest are six-year-old twin girls.⁵ Although Max was surprised when his wife became pregnant with twins in 2017 (at that time, their youngest child was 8 years old and the couple already had three grandchildren), he describes their births as a “special gift from God,” and feels incredibly grateful to be a parent to young children again. He treasures the special time he spends with his twins each morning, taking care of them and playing with them before they go to school.

By the late 1990s, and as discussed in detail below, Max became deeply involved with Hatzoloh EMS, a Jewish volunteer EMS organization, in Montréal.⁶ In connection with this volunteer work, Max purchased equipment from a New York company called Dixie EMS. Over time, Max came to know the owner of Dixie EMS, who asked Max to open a branch of the company in Canada. For several years, Max ran the branch, which involved selling EMS equipment and shipping it from a small warehouse he opened. In 2002, Max decided to purchase

² See *id.* ¶¶ 105, 106.

³ PSR ¶ 107.

⁴ *Id.*

⁵ *Id.*

⁶ Max’s extensive involvement in and contributions to Hatzoloh is discussed *infra* at Personal Background Section (II)(A), and is referenced in a number of letters in support including letters from Chesky Spira (Hatzoloh volunteer), attached hereto as Exhibit 85, and Aron Weber (President of Hatzoloh), attached hereto as Exhibit 92.

the Canadian division of Dixie EMS, and over the next several years, he ran a successful business that earned upwards of \$10 million per year and employed twenty-five people.

In 2008, Max sold his interest in the Dixie EMS business, and, that same year opened his first daycare facility in Montréal.⁷ Max quickly enjoyed great success. He still owns and operates that original facility as well as a second facility in Montréal; together, the two locations now care for roughly 150 children. As this business thrived, Max was pleased to have a steady income to cover his bills, but also felt personally fulfilled to be working in an industry that made a significant positive impact on families' lives and their children's futures.⁸

After six years of successful operations in Montréal, in 2014, a good friend, who lived in New York, told Max that he believed there was a similar need for quality childcare services in Brooklyn.⁹ Although he was initially hesitant — especially because he knew he would have to open the programs in New York while he lived full-time in Montréal — Max was eager to give back to the community in which he was raised and was attracted by the prospect of helping children and families in New York.

Given his success in Montréal, Max thought he could simply “cut and paste” his programs in the United States. As it turned out, however, he had great difficulty re-creating the same kind

⁷ See PSR ¶ 123.

⁸ Many parents who sent their children to Max's daycares in Montréal wrote in support of him for sentencing. *See e.g.*, Letter in Support from Sarah Klein, attached hereto as Exhibit 47 (“The care and concern Mr. Lieberman has shown for the children in his daycare is legendary. The program at the daycare is educationally excellent, culturally sensitive, and completely inclusive.”); Letter in Support from Joel Mittelman, attached hereto as Exhibit 62 (describing Max's program as providing “exceptional care” and stating that “the quality of education was outstanding”); Letter in Support from Moshe Strasser, annexed hereto as Exhibit 88 (noting that his children received excellent care in Max's program); Letter in Support from Boruch Abramovich, attached hereto as Exhibit 3 (“Max treated each child with love and respect, and it was clear that his dedication went beyond just providing care.”).

⁹ See Letter of Joel Mauskopf, attached hereto as Exhibit 61. In his letter, Joel explains that he saw a “desperate need for quality childcare in New York.” Although Max was apprehensive at first, as he wanted to “spend his extra time” involved in the “charitable organizations he founded and community activism” he was involved with in Montréal, Max nevertheless agreed to give it a try in 2014 after Joel loaned him the money to start his first program.

of successful programs in New York. While Max was still able to provide top-notch care, learning the ropes of childcare in New York — particularly the bureaucracy of ACS — proved difficult and, as a result, his New York daycare business operated at a loss in the first few years. He was also surprised to learn that voucher-eligible families in New York City have to go through an intense application process, and even once approved, must complete a yearly recertification process. If a family fails to complete the recertification process, the child loses his or her voucher, forcing the family to start the process again from the beginning (and thereby affecting Max’s ability to continue providing care for the child). In addition to losing money, Max found that he was exhausted traveling from Montréal to New York on a weekly basis (at minimum) to try to salvage his business. In 2021, fed up with having spent so much time away from his family — especially his young twins who were only two years old at this time — Max and Bella made the difficult decision to relocate from Montréal to New York.

Despite the personal and financial difficulties his New York operations caused him, the care that Max’s facilities provided was always highly regarded. Families constantly reached out to him to get their children into his programs, often times applying for his waitlists —which included over 1,000 children at different times — hoping to receive a spot at some point.¹⁰ Indeed, over a dozen parents whose children attended one of his programs have written in support of Max, attesting to the level of care their children received from Max’s programs, both in New York and

¹⁰ Letter in Support from Devorah Braver, attached hereto as Exhibit 109 (noting that she put her child on the waitlist at Simcha Tots when her child was very young and describing the day her child was accepted off the waitlist as her “lucky day.”); Letter in Support from Mrs. Deutsch, attached hereto as Exhibit 15 (stating that Simcha Tots “has set a record for itself as the #1 place where all mothers in our community strive to obtain a slot for their kid”).

Montréal.¹¹ As one parent described it, Max’s program was “the only place” she wanted to send their children.¹²

Max knew that with the right resources and support, he could achieve great success in New York, as he had in Montréal. As discussed further *infra* Offense Conduct Section (I), it was this desire to salvage his business and overcome administrative challenges that led him to engage with Martin Handler and Project Social Care, a decision he now deeply regrets.

II. Community Involvement & Activism

Max’s professional accomplishments, however, pale in comparison to the extraordinary acts of charity and service that Max has provided to his communities over the years. Max’s personal and religious convictions often led him to perform acts of charity anonymously, with no acknowledgement or recognition at all. This memorandum only scratches the surface in describing Max’s good deeds. Max’s service to those in need has included small, individual acts, as well as great achievements in community activism with local groups and organizations.¹³

A. Hatzoloh EMS

Max’s incredible service to his community is demonstrated by his involvement with and founding of Hatzoloh, a volunteer EMS service that began in Brooklyn in 1960 as a way to improve access to emergency medical treatment in Brooklyn. Hatzoloh organizations exist in Jewish

¹¹ Letters in Support from these parents can be found at Exhibits 4, 8, 12, 15, 28, 45, 58, 67, 77, 78, 81, 83, 88, 93, 96, and 109.

¹² Letter in Support from Chaya Braun, attached hereto as Exhibit 12.

¹³ See e.g., Video Testimonial of Israel Sruly Kahan and Simi Wenger in Support attached hereto as Exhibit 2 at 33:18-34:31 (explaining that Max’s charitable acts include anonymously paying for grocery store patrons’ items without even knowing who they are); cf. Letter in Support from the Rabbis of Montréal, Canada, attached hereto as Exhibit 73 (“[Without exaggeration, we can go on and on, pages upon pages, detailing the enormous and monumental impact Menachem Lieberman has had on the entire Orthodox Jewish community in Montréal and our fellow neighbors.”).

communities around the world, but there was no such operation in Montréal when Max moved there in 1995.

When he first arrived in Montréal, Max joined a small group focused on founding Hatzoloh in Montréal. Max trained for six months to receive his EMT certificate. Although over twenty people took and passed the EMT course, no one took the next step of opening the Hatzoloh organization. Max took it upon himself, purely as a volunteer, to do everything needed to get the organization off the ground: he found donors, bought medical equipment, purchased dispatcher telephones and radios, and posted advertisements in synagogues across Montréal, informing the community about the new organization. Hatzoloh Montréal went live in December 1996.

Today, Hatzoloh Montréal has over 100 active volunteers, and while it was originally intended to support the Jewish community, it has served and continues to serve the entire Montréal community, wherever it is needed. It responds daily to an average of 25 emergency calls and has saved countless lives. Hatzoloh Montréal also conducts proactive medical screenings twice per year, in which community members are invited to come to the Hatzoloh center to check their blood pressure and receive blood tests. In addition to founding the organization, Max personally responded to emergency calls at all hours of the day and night for 25 years, and served as the organization's president for 10 years.¹⁴

B. Hospital and Medical Advocacy

As part of his charitable deeds, Max has always visited the sick. In particular, for several years, Max and one of his friends made nightly visits to Jewish General Hospital in Montréal.

¹⁴ See Letter in Support from Joel Klein, attached hereto as Exhibit 46. Joel explains that Max was one of the first responders who attended to his son after he was in a severe car accident. Not only did Max provide life-saving care to the son, “but for the next days and weeks [Max] followed [the son’s] case as his own, making sure he is getting the best medical treatment available, making it easier for the whole family.”

Over time, Max and his friend found that they could help patients, not only with visits and moral support, but also by helping to communicate with medical staff when the patient or the patient's family could not. Max and his friend also realized that the hospital often lacked kosher food, particularly on the weekends during Shabbat.

Seeing a need, Max and his friend began a fundraising drive to buy the hospital a refrigerator, which they personally stocked with kosher food each Thursday night to ensure that patients had access to kosher food over the weekend. Over time, they donated four more refrigerators to two different hospitals. Building on this experience, Max and his friend saw that Montréal had a real need for patient advocacy, particularly in terms of bridging the language and cultural gaps between patients and healthcare providers, and helping patients navigate the Canadian healthcare system. Together with one of the leading rabbis in Montréal, they founded an organization called Refuah V'Chesed,¹⁵ which seeks to ensure that those struggling with medical issues find necessary care and receive access to that care as soon as possible. Max served on the Board of Refuah V'Chesed for several years. Today, the organization has expanded to become a full medical clinic that serves hundreds of patients each day, and it continues to provide services including transportation for patients to and from medical appointments, providing kosher food to hospitals, and providing entertainment to hospital patients and their families to cheer them up during difficult times. During the Covid-19 pandemic, Refuah V'Chesed (as well as the Council of Hasidic Jews of Quebec, discussed *infra* Personal Background Section (II)(D)) partnered with Montréal public health agencies to create a vaccination campaign, and published it in Jewish literature, to encourage the Orthodox Jewish community to get vaccinated. The

¹⁵ More information about Refuah V'Chesed can be found at <https://refuahvchesed.org/>; see also Letters in Support from Aron Friedlander (Senior Medical Liaison, Refuah V'Chesed) and Shmilu Rosenberg (Director, Refuah V'Chesed), attached hereto as Exhibits 23 and 75, respectively.

campaign led the Orthodox Jewish community in Montréal to have a vaccination rate of 80%, compared to 10% for the Orthodox Jewish community in New York.¹⁶

Through his volunteer work in the medical field, Max came into contact with many sick and suffering individuals. Over time, he came to be known in his community as “the man to see” about medical issues. He personally took on a role as an informal, personal advisor and advocate for literally dozens of severely ill people, encouraging them to be positive about their diagnoses, guiding them through their medical procedures, and helping them navigate the Canadian health system. In just one example, Max was contacted about a woman in his community who was severely injured in a bus accident. Max immediately came to her family’s side, taking care of them both financially and emotionally for over two years. As the woman recovered from a traumatic brain injury, Max was there for her, as a pure act of loving kindness, making sure she got exercise each day, and eventually encouraging her to get back to her daily routine. The woman has described Max as her “life saver.”¹⁷

Similarly, when a man in the community (whose wife was 39 weeks pregnant) was diagnosed with a malignant tumor, Max immediately ran to care for him, his family, and his unborn child. The man’s wife, Faigy Friedman, described Max’s support as follows:

Though I’m one of a large and loving family with a set of strong and supportive parents, there was no question where we would direct our unabashed vulnerabilities. Menachem Lieberman, we knew . . . was the address. We didn’t have to spell out the details for him . . . He was the Heavenly sent Angel who took the medical research and responsibilities on himself, leaving us as mere bystanders.¹⁸

¹⁶ For more information about the vaccine drive, and Refuah V’Chesed and the Quebec Council of Hasidic Jews’ involvement with it, please see <https://thecjn.ca/news/hasidic-communities-in-montreal-are-intensifying-the-covid-vaccination-drive/>. See also Letter in Support from Araron Herzog, Chariman of the Covid-19 Jewish Community task force, attached hereto as Exhibit 33 (detailing Max’s critical role in the Covid taskforce and his efforts to share crucial information with the community about Covid).

¹⁷ Video Testimonial of Faigy Rubin, attached hereto as Exhibit 2 at 22:41-45.

¹⁸ Letter in Support from Faigy Friedman, attached hereto as Exhibit 25.

Max truly cared for the entire family, ensuring that Faigy’s husband, Chesky, received the best possible care, and, at the same time, supported Faigy too after she gave birth, ensuring that she “had all that [she] needed to recuperate[.].”¹⁹

Max has also advised families struggling with infertility, particularly through his involvement with Bonei Olam, a non-profit, charitable organization that helps fund fertility treatments. Knowing that fertility treatments can often be cost prohibitive, Max helps raise funds for the organization that go directly to paying for such treatments. Moreover, as is Max’s nature, he does not simply raise money for the struggling families, he also acts as advisors to them, “volunteering hours upon hours of his time” to the families the organization serves.²⁰

Again, amazingly, these are just a few examples of acts of selfless dedication to others that has defined Max’s life. There are many, many more people for whom Max has provided similar support, especially those affected by cancer, as those patients have particularly touched Max’s heart.²¹ It is difficult to put into words the sheer scope and magnitude of Max’s sacrifices and service to the sick and the needy. His life, in this regard, is nothing short of extraordinary — and truly represents the essence of who Max is as a person.

C. Prisoner Rights Advocacy and Exoneration of David Ranta

Max’s extraordinary service to the sick is only one aspect of his commitment to those in need. Max has also demonstrated similar care for incarcerated individuals. After getting to know

¹⁹ *Id.*

²⁰ See Letter in Support from Shloime Bochner, attached hereto as Exhibit 11.

²¹ See e.g., Video Testimonial of Matti Werberger Friendlander and Aron Friendlander, annexed as Exhibit 2 at 36:35- 39:01 (describing the actions Max took to assist her after Matti’s breast cancer diagnosis); Letter in Support from Leiby Feder, attached hereto as Exhibit 18 (noting that Max “provided emotional sustenance, hope, and a sense of security” for her after her Leukemia diagnosis and that Max went “above and beyond the call of duty”); Letter in Support from Blimie Guttman, attached hereto as Exhibit 32 (describing how Max cared for a stranger’s daughter when he learned the girl was diagnosed with cancer, and “thanks to “Max’s relentless efforts” the child is now healthy); Letter in Support from Aaron Schmelczer, attached hereto as Exhibit 80 (describing Max’s actions after he was diagnosed with a debilitating lung condition as a “lifeline that gave [him] strength and the will to fight [his] illness”).

law enforcement in Montréal through his work with Hatzoloh, he became aware of needs in local jails and prisons for rabbis who could translate and provide spiritual counseling to Jewish inmates. Because he was frequently traveling between Montréal and New York for work, Max made it a practice to stop at jails and prisons along the way to meet with inmates, who were often quite far from their loved ones. During these visits, he realized how difficult life was in prison, particularly for Jewish inmates who did not have sufficient access to kosher food. He sat with the inmates he visited, brought them kosher food, and went to see them on the holiest days of the year.²² On three separate occasions, Max not only spent Yom Kippur with inmates, he made arrangements to make sure others would join him, so that the inmates could have a proper quorum, a “minyan,” allowing them to offer appropriate prayers on that most solemn day of the Jewish calendar.²³

These visits with inmates had a profound impact on Max and led him to reflect on a difficult circumstance from his own childhood, namely, his involvement in the tragic case of David Ranta.²⁴ In February 1990, Rabbi Chaskel Werzberger — then a pillar of the Hasidic community in Brooklyn — was shot and killed in Williamsburg. The murder was a huge, public event at the time and for weeks, the New York City Police Department struggled to identify a suspect. With pressure mounting to make an arrest, an NYPD detective, Louis Scarcella, discovered that a group of Hasidic boys had been nearby at the time of the murder and saw an individual fleeing the scene.

²² Max’s involvement with one prison in particular is discussed in the Letter in Support from retired Essex County New York Sheriff Richard Cutting, attached hereto as Exhibit 13. Sheriff Cutting describes that Max “made frequent stops” to the Essex County Correction Facility for “over a decade,” advising the facility on inmates’ sincerely held religious beliefs, and “providing special foods and literature that inmates required as part of their faith.”

²³ See Video Testimonial of Rabbi Itchy Treitl and Shuly Vorhand, attached hereto as Exhibit 2 at 44:54-46:06 (describing Max’s efforts to bring a quorum to the jail “to make one individual feel special, not forgotten, and not lost” on a day of such significance for the incarcerated individual); *see also* Letter in Support from Rabbi Schneur Zalman Rabin, attached hereto as Exhibit 74 (explaining how Max gave up spending the holiest day of the year with his own family, choosing instead to facilitate prayers for the incarcerated individual).

²⁴ More information about Max’s involvement in the case of David Ranta can be found in the letter from Taylor Koss (the prosecutor with whom Max worked to help exonerate Mr. Ranta), attached hereto as Exhibit 48.

Max was one of those boys. At the age of 13, Max was asked to report to the precinct to potentially identify the shooter. As he walked into the lineup, Detective Scarcella told Max to “pick the guy with the big nose.” When Max walked into the lineup, he did not recognize any of the individuals, but Max was just a young boy and had been taught to trust the police. At the time, he believed his memory must have been failing him (as the lineup was approximately six months after the shooting occurred) or that Detective Scarcella was aware of other information that was unknown to Max. He did as he was told by this authority figure, and picked “the guy with the big nose.” On the basis of that identification, and the identifications of the other boys, Mr. Ranta was convicted, and sentenced to 37.5 years in prison.

Around 2012 — twenty years after Mr. Ranta’s conviction — as a result of his work visiting inmates and his reflections on this childhood experience, Max took the extraordinary step of proactively reaching out to the a newly-established unit of the District Attorney’s Office in Kings County called the Conviction Integrity Unit (“CIU”). On his own accord, with no outside pressure (and, in fact, under intense pressure *not* to report the truth at the risk of affecting what was believed by his community to be a just conviction), Max made the painful decision to disclose to the attorney what he experienced as a child. He explained how, as an adult, he questioned what Detective Scarcella had asked of him and his friends all those years ago. Over roughly the next year, Max worked with the District Attorney’s office, giving testimony and information whenever needed, despite the fact that it was deeply unpopular in his community. None of the other boys who provided the eyewitness identification in 1990 would even speak to the District Attorney’s office about what happened, or even answer the Assistant District Attorney’s calls.

In March 2013, Mr. Ranta was exonerated and freed from prison in great part because of Max's bravery.²⁵ Max's courage and commitment to doing the right thing literally freed Ranta from this unjust conviction. The impact of Max's courage extended far beyond David Ranta. Based on Max's testimony, the CIU re-opened all convictions involving Detective Scarcella. As of today, sixteen additional individuals whose cases involved Scarcella have been exonerated. Collectively, those individuals served 410 years in prison for crimes they did not commit, and without Max's bravery, likely would have died in prison. Indeed, the Deputy Chief of the District Attorney's CIU, Taylor Koss, with whom Max worked to free Mr. Ranta, said the following about Max's role:

[The sixteen other exonerated individuals investigated by Detective Scarcella] would have all likely died in jail, but for the bravery of Menachem Lieberman. In fact, Menachem's actions can be viewed as a gift that keep[s] giving, as positive reforms and case reviews are still occurring today, as a result of his actions. It is perfectly clear that, but for Menachem's actions, these matters would have never even been reviewed, let alone resulted in exonerations. These sixteen individuals all owe a debt to gratitude to Menachem. If he had simply remained silent, no one would have ever known what Detective Scarcella had done, and these men would have remained wrongfully convicted.²⁶ Daryl Austin, Robert Hill, Alvena Jannette, Shabaka Shakur, Derrick Hamilton, John Bunn, Rosean Hargarve, Roger Logan, Vanessa Gathers, Vincent Ellerbe, James Irons, Thomas Malik, Sundhe Moses, Jabbar Washington, Shawn Williams, and Ronald Pondexter should all be eternally grateful to Menachem for paving their road to freedom. Sadly, Daryl Austin died in prison and was exonerated posthumously.

The impact of the Ranta exoneration had long lasting effects in the [Kings County District Attorney's Office] and the criminal justice system as a whole. When [the Kings County District Attorney] created the CIU, there were an endless number of skeptics. Many employees simply believed that wrongful convictions were either not real, or not a major issue. I personally observed the impact the Ranta case had on many of the unit's biggest skeptics. In fact, I watched how the Ranta case

²⁵ For more information on Mr. Ranta's exoneration, and Max's involvement in it, please see the following articles: <https://www.nytimes.com/2013/03/21/nyregion/jailed-for-2-decades-david-ranta-is-facing-freedom-with-apprehension.html>; <https://www.cbsnews.com/news/man-did-23-years-for-nyc-murder-he-didnt-commit-gets-64m/>. Max's involvement in Mr. Ranta's exoneration is also discussed at ¶ 106 of the PSR. Mr. Ranta's story is further detailed in a video clip attached hereto as Exhibit 2 at 35:18-37, in which Max appeared on CNN with Anderson Cooper to discuss the case.

²⁶ Letter in Support from Taylor Koss, attached hereto as Exhibit 48.

morphed the CIU's premier Detective from someone who doubted the premise of the unit, to one of its biggest proponents. As a result, that Detective played a key role in many future exonerations. In general, the Ranta case showed the criminal justice system, as a whole, that wrongful convictions were a legitimate plague that needed to be addressed. Since Ranta's exoneration, the CIU, and the subsequent CRU, have exonerated over five hundred (500) individuals. None of this would have been possible without the Ranta exoneration, which was spearheaded by Menachem's brave act.²⁷

D. Advocacy for Orthodox Jewish Community in Quebec

After moving to Montréal, Quebec, Canada, it became immediately clear to Max that there were certain disconnects between the Orthodox Jewish community and the greater Montréal community. Quebec, Canada is a unique, and quite insular community that is proud of its French roots, and Max observed that he and other members of the Orthodox Jewish community often felt marginalized from the greater society and not understood by the non-Jewish community.

The effects of such marginalization had real consequences, which Max worked tirelessly to alleviate. For example, something as routine as crossing the United States/Canada border could be a struggle for members of the Orthodox Jewish community many, of whom traveled frequently from Montréal to New York to visit family and have access to a broader Orthodox community to, for example, buy religious items that were only available in New York. The language and cultural barriers presented major obstacles. Agents at the Canadian border often did not understand the reasons for travel, or how to describe certain religious items that Orthodox Jews brought back to Canada from New York. In response to these issues, Max became a personal advisor to Orthodox Jews traveling to and from Canada and the United States. For example, he often advised young couples who were moving to Montréal after they got married, and thus had to deal with special immigration rules and evaluate routes to citizenship. Similarly, Max advised students and schools

²⁷ *Id.*

on proper procedures to enter either Canada or the United States to study Jewish law. After some time counseling individuals on these issues, Max set up meetings with local authorities near the border and border agents to explain common misconceptions about Orthodox Jewish individuals' travels and declared items, seeking to make travel between the two countries easier.

Additionally, during his travels to and from the border to advise on these issues, Max became aware of a terrible stretch of highway between New York and Montréal which was particularly dangerous, especially in the winter. Over the years, there were many accidents on this highway and a number of Orthodox Jews died in their travels between Montréal and New York. Max started meeting with the sheriffs of the towns surrounding the stretch of highway, both to pursue greater safety initiatives (like better access to cell phone service along the highway)²⁸ and to educate the authorities about religious burial requirements for Orthodox Jews.²⁹ After Max's meetings with the sheriffs, the first responders began trying to follow Jewish law regarding the treatment of a deceased body, and routinely called Max so that he could be personally present at the scene of a death, to ensure compliance with Jewish law. Max estimates that there were many weeks in which he spent roughly 30 hours driving between Montréal and New York to assist in emergencies along the highway and to help advise people at the border.

In 2018, Max and other local Orthodox Jewish activists created an organization called Conseil Juif Hassidic du Quebec ("CJHQ") or, in English, the Hassidic Jewish Council of Quebec, of which Max served as President. The organization's goal was to establish a unified voice for the

²⁸ After one particularly bad accident on this highway (which involved an Orthodox Jewish family), New York state lawmakers, in response to advocacy from Max and others, pushed for legislation calling for the construction of cellphone towers to eliminate the highway's 50-mile zone with no coverage.

²⁹ For more information about the advocacy Max was involved with concerning safety on the highway, see the following link: <https://vinnews.com/2011/02/17/essex-county-ny-officials-meet-with-community-activists-on-traveling-safety-issues-from-ny-to-montreal%e2%80%8f/>.

Orthodox Jewish community in Quebec. In this role, Max continued his advocacy on a number of issues, including, but not limited to immigration, issues at the Canadian and U.S. borders, Covid-19, and regulatory permits (particularly those related to construction of new synagogues). He routinely organized town halls and group meetings between neighbors and local organizations to bring the Orthodox Jewish and the French-Canadian communities together, to help both groups recognize their common values and love for their shared community.³⁰ On one occasion, for example, Max hosted an event called “Parlon Nous!” or Let’s Talk!” in English, which sought to bring non-Jewish community members to a local Orthodox Jewish synagogue. In an advertisement for the program, Max expressed excitement, specifically telling the broader community: “Welcome to our home.”³¹ Max took it upon himself to learn French, and create courses so others in the Orthodox Jewish community could learn French and thereby integrate more easily into the greater Montréal community.

E. Advocacy for Jewish Orthodox Education in Montréal

Max also took a special interest in Orthodox Jewish schools in Montréal and led advocacy projects for the schools for sixteen years before he moved to New York in 2021. Over the last two decades, the Montréal government has sought to reform Orthodox Jewish schools, particularly in enforcing the government’s mandatory hours of secular curriculum offered at a school. After years of negotiations between the Orthodox community and Quebec’s Education Ministry, Max helped

³⁰ See Letter in Support from Yisroel Besser (Editor at Mishpacha Magazine), attached hereto as Exhibit 7 (noting that Max’s advocacy was never focused just on “his own” community but instead he worked to help encourage his community to “show respect and kindness to all”); Letter in Support from Valentina Gaddi (stating that Max “dedicated a great deal of time and energy in order to find concrete solutions for Hasidic people and non-Hasidic people so they might live in harmony in the neighborhood they share”); Letter in Support from Steven Lapidus, attached hereto as Exhibit 54 (noting that Max “worked with many Hasidic and non-Hasidic organizations to improve relations between the two communities” which he witnessed firsthand when Max connected with two of his colleagues to perform a statistical analysis of challenges and successes of Hasidic educational institutions).

³¹ A screenshot of the advertisement, along with a photograph of Max speaking at the event, is attached hereto as Exhibit 104.

broker a deal by which 230 children in the Montréal Orthodox community went to religious school in the mornings and completed secular education in a home-schooling environment in the afternoons, overseen by the Montréal Education Ministry. Max and others formed a Jewish homeschooling organization known as AEJEM — of which he served on the Board — that helped hire education professionals and provided parents with support to conduct secular homeschooling programs for their children. This organization continues providing such support today.³²

F. Community Involvement in New York

Max's move to New York in 2021 was challenging, both because of the cultural differences, as well as challenges with Covid-19, and his struggle to get his daycare programs operational at the level he achieved in Montréal. Despite these challenges, and even after his indictment in this case, Max prioritized becoming involved in his new community and giving back where he could. He offered to visit hospitals with his rabbi in New York, and now, every week, visits sick patients in the hospitals to bring them spiritual guidance and well wishes. Max spends an entire day each week making his rounds, visiting hospitals in Monroe, New York in the morning, and making his way through Manhattan at Columbia, Lenox Hill, Sloan Kettering, and NYU, before finally heading back to Williamsburg in the evening.³³

Upon relocating to New York, Max also quickly became involved in an organization called Mekimi, which is dedicated to enriching the lives of sick children and young adults suffering from

³² See also Letter in Support from leaders of Jewish schools in Montréal, attached hereto as Exhibit 107 (noting that Max was integral in leading efforts to get Jewish schools in compliance with secular legal requirements and that compliance “could not have happened without Menachem”). For more information about the Jewish homeschools, please see the following link: <https://ici.radio-canada.ca/nouvelle/748796/ecole-juive-illegale-scolarisation-maison-outremont>.

³³ See Letter in Support from Rabbi Meir Zwiebel, attached hereto as Exhibit 100 (discussing Max's visits to hospitals and the positive impact he has had on the sick and suffering, and their loved ones).

serious medical conditions.³⁴ Every few months, Max hosts a get-together at his home for roughly fifty sick children and their families. In the summer, he hosts the children at his home in Monsey for a pool party, and in the winter, they do smorgasbord style meal for the children. It brings him great joy to see the children forget about their illnesses for a few hours and simply enjoy each other's company.

OFFENSE CONDUCT AND ADVISORY SENTENCING RANGE

After his January 2023 arrest in this case, Max immediately sought to accept responsibility for his conduct. He authorized the undersigned counsel to try to negotiate a disposition only eight weeks after his arrest. On March 21, 2024, Max pled guilty before this Court to a superseding information charging him with one count of conspiracy to commit wire fraud and one count of conspiracy to defraud the United States, both in violation of Title 18, United States Code, Section 371. In a written plea agreement, Max stipulated that the applicable Sentencing Guidelines Offense Level is 23, and that because he has no criminal history, the resulting advisory Guidelines range is 46 to 57 months' imprisonment. Max also agreed to pay restitution to the New York City Administration for Children's Services ("ACS") in the amount of \$1,854,543.35 and forfeiture to the United States Government in the amount of \$1,774,543.35.

After Max's plea, the parties worked hard to resolve any remaining factual disputes. Notwithstanding these efforts, as reflected in the objections to the PSR, the parties have not been able to reach agreement on all issues. This is not the result of obstinacy on Max's part, or a desire to minimize his conduct, and Max's disagreeing with the Government's interpretation of certain documents is not a failure to accept responsibility. Indeed, it is our view that the remaining

³⁴ Letter in Support from Shimshon Heskel, attached hereto as Exhibit 38. In his letter, Shimshon, the executive director of Mekimi, describes Max's selflessness in bringing these patients into his own and making them "feel like they are his own children[.]" Shimshon notes that the community has a great need for Mr. Lieberman providing such "amazing support for those who so desperately need it."

disagreements between the parties are not, actually, disputes of fact. Rather, those disagreements arise from a difference in perspective as to the inferences one draws from the facts.³⁵ Max fully accepts the facts. We contend nonetheless that viewed in the proper context these facts do not support the severe punishment called for by the advisory Guidelines. In other words, viewed in the proper perspective, the facts show that the Guidelines grossly overstate the seriousness of the offense. *See* 18 U.S.C. § 3553(a) (listing the “nature and circumstances of the offense” as a factor courts must consider in imposing sentence).

I. Conspiracy to Defraud the United States (Count Two)

Project Social Care (“PSC”) was in operation long before Max returned to New York.³⁶ Max became involved with PSC as a potential partner, seeking access for his daycare program to the Childcare Partnership (“CCP”) slots that had been awarded to PSC.³⁷ The fraudulent practices of PSC (including the board’s failure to meet and the creation of fake board minutes), with which this Court is familiar from other proceedings in this matter, long predated Max’s involvement with the organization. After partnering with PSC as a childcare provider, Max saw that PSC’s Executive Director, Harold Schwartz (whom Max only spoke to a handful of times), was an absentee director, who largely left it to others to run the organization.³⁸ Schwartz gave his

³⁵ *See United States v. Caldwell*, 488 F.2d 287, 292 (5th Cir. 2006) (citation omitted) (for purposes of sentencing, “a district court is permitted to draw reasonable inferences from the facts”).

³⁶ From December 2010 through March 2017, Martin Handler, was the executive director of PSC. PSR ¶ 22. Martin Handler resigned as executive director of Project Social Care in March 2017, at which time Harold Schwartz became the executive director. PSR ¶¶ 22, 23.

³⁷ In 2015, The United States Department of Health and Human Services (“HHS”) awarded Project Social Care an initial five-year EHS Childcare Partnership grant (“EHS-CCP Award”), a type of federal award under which the direct recipient of federal funds (*i.e.*, Project Social Care) is expected to partner with other entities who themselves are to provide daycare services that meet Head Start standards, which Simche Kinder clearly did. PSR ¶ 22.

³⁸ Harold Schwartz, the executive director of Project Social Care during the relevant period, worked remotely for most of his tenure. Testimony of Chelsea Zhang, Arie Rangott Trial Transcript (“Tr.”) at 651:14-17. From 2017 through September 2021, Harold Schwartz came to the PSCHS office once per week, and after September 2021, Schwartz came to PSCHS when he “was in the neighborhood,” usually once every two months when he would come to Brooklyn to see his dentist down the street from the office. Testimony of Harold Schwartz, Tr. 1099:4-25 – 1100:1-24. During his tenure, Harold Schwartz “made . . . clear that [he] didn’t have the time” to read emails received by the Project

username and login credentials for his Project Social Care email address and for the Head Start Enterprise System (HSES), a site where Head Start requested grantees to upload relevant emails, to Chaim Adler and others at various points during his tenure.³⁹

Max began operating daycare facilities in New York in 2014 including Simche Kinder, located in Brooklyn, New York. As discussed above, by 2019, Max was struggling to turn a profit with his daycares in New York, largely, in his view, due to administrative challenges dealing with ACS. Because he was looking for a stable source of revenue to cover Simche Kinder's fixed costs, Max sought to be awarded CCP slots, pursuant to PSC's CCP contract. While he believed he was entitled to bid for those slots on the merits, Martin Handler told him that he would only receive those slots if he paid Handler for them. In April 2019, Max paid Handler approximately \$1.5 million, with the understanding Handler would influence PSC to transfer 90 CCP slots from Handler's childcare program to Max's program, Simche Kinder.⁴⁰ Additionally, it was agreed that Max would identify two new individuals to serve on PSC's Board of Directors.⁴¹ Max made the payment to Mr. Handler from his own personal bank account, listed in his own name, making no effort to conceal or disguise the payment.

In connection with this agreement, Max and Martin Handler entered into a religious contract, written in Hebrew, which addressed certain issues of religious law. Though the document

Social Care email address; he delegated that responsibility, at different times to Chaim Adler and others, by providing them with his email login. Testimony of Harold Schwartz, Tr. 1005:14-25 – 1006:1-14. Schwartz sometimes read these emails on his phone but “rarely opened [them] on [his] computer and did anything with it.” *Id.*

³⁹ Testimony of Harold Schwartz, Tr. 1005:14-25 – 1006:1-14; 1009:9-25 – 1010:1-12.

⁴⁰ PSR ¶ 24. For the avoidance of doubt, the EHS Childcare Partnership award (pursuant to which Simche Kinder was a grantee) had no competitive bid requirements or any similar requirements that would have made PSC's decision to award Max the grant improper. PSC was free to award the grant to any party it wanted, so long as the partner could itself provide daycare services that met Head Start standards. PSR ¶ 22.

⁴¹ PSR ¶ 24. The contract also confirmed that Handler would influence Project Social Care to contract with Max so that he could run a wraparound program at its Church Avenue location (as well as at additional locations in the future). Max's involvement with the wraparound program is discussed in more detail *infra* at Offense Conduct Section (III).

included language which, in translation, makes it sound like Max was purchasing Project Social Care from Handler, the truth is that Max never operated as an “owner” of PSC, nor did the religious contract purport to convey ownership to him.⁴² He never had a key to the office, a desk at any PSC facility, or anything else that might suggest he was an “owner” of PSC. He was always treated as a guest in PSC’s office. Indeed, between April 2019 and the summer of 2021, Max had a minimal presence at Project Social Care; he rarely came to Project Social Care and usually did so only to pick up the monthly check he was owed for the operation of the wraparound program, discussed *infra* at Offense Conduct Section (III).⁴³

Notwithstanding his agreement with Handler, between April 2019 and the summer of 2021, PSC failed to provide Simche Kinder approximately one third of the CCP slots Martin Handler had promised. After that, Max faced daily hostility and opposition from certain members of the PSC staff, who Handler effectively turned against Max as a means to try to prevent Max from attempting to enforce his rights to the CCP slots. In August 2021, to finally receive the CCP slots he had been promised two years earlier, and to be free from the hostility of PSC staff who remained loyal to Handler, Max agreed to make a second payment demanded by Handler, this time in the amount of \$3.2 million. At this time, Handler agreed to stop participating in PSC’s affairs and, accordingly, agreed that Max would appoint a new board.⁴⁴ Max’s objective in making this payment was to free PSC from Handler’s malign influence, and as a result, to have an opportunity

⁴² PSR ¶ 28. As discussed in the declaration of the Chief Rabbi of Jerusalem Moshe Shernbuch (submitted in connection with co-defendant Arie Rangott’s case at ECF No. 363), the agreement between Max and Handler was a religious contract which — even when translated to English — do not necessarily correspond to any cognizable civil or commercial agreements. Specifically, Rabbi Sternuch explains that the agreement between Max and Handler “seems to have been drawn up merely because of religious reasons, and the term owner might not have been used to signify an owner in the legal meaning of the word.” ECF No. 363 at 1.

⁴³ Testimony of Chelsea Zhang, Tr. 610:20-25.

⁴⁴ PSR ¶¶ 25, 29.

to grow PSC into a successful organization, like the many successful community organizations Max had developed in the past. Max identified people to serve on that board, whom he believed would operate with integrity and would finally turn things around at PSC. Indeed, he asked the new chairman of the board, Yehuda Zorger, to take control of the organization's bank accounts and to come to the office more frequently, specifically asking him to come in at least once a week to sign checks. At the direction of Martin Handler, Max made the second payment of \$3.2 million to several third parties to whom Handler owed money. As with the 2019 payment, the Government agrees that that it "does not appear" that Max "made any effort to conceal that he was the source" of the two payments.⁴⁵ During this entire period, Max was not working in the day-to-day operations of Project Social Care, either on the educational or fiscal side of the operation.⁴⁶ Even after making the second payment to Handler, Max never had a desk or an office at PSC — he was always a guest at the office, appearing when helpful. By contrast, Handler always had a corner office at PSC. Even when Max's presence at Project Social Care became more frequent in the summer of 2021, he was present at Project Social Care "approximately once a week."⁴⁷

Between 2020 and 2022, Project Social Care paid approximately \$3.7 million of EHS-CCP proceeds to Simche Kinder. The Government does not assert that Simche Kinder failed, in any way, to provide the contracted-for services.⁴⁸

Beginning in 2021 and continuing over roughly a two-year period, Project Social Care also used proceeds of its federal grants to pay companies in which Max had an ownership or less-than-

⁴⁵ PSR ¶ 26.

⁴⁶ Testimony of Chelsea Zhang, Tr. 738:20-25. Zhang also confirmed that Max never gave her direction about how to perform her role at PSC and that she only spoke to him a few times during her tenure with the organization. *Id.* at 739:1-6.

⁴⁷ *Id.* at 611:1-8.

⁴⁸ PSR ¶ 33.

arm's-length interest for services related to busing, catering, teacher recruitment, and advertising. These services included \$388,077.20 to a teacher recruiting company; \$258,814 to a bus company;⁴⁹ \$120,122 to a catering company; and \$30,154.63 to an advertising company. The Government has stated that it lacks sufficient information to assess Max's contention that the services these companies provided to Project Social Care were provided at fair market value.⁵⁰

During all relevant periods of time, the Project Social Care board failed to meet. One of Max's co-defendants prepared fraudulent meeting minutes of the Board, although Max had no role in preparing (or directing the preparation of) any minutes. Nor did he understand the purpose of this practice.⁵¹ Max was aware that the board did not meet and deeply regrets that he did not take further steps to correct the practice of creating false minutes.⁵²

II. Adjustment for Obstruction of Justice

In addition to the two counts to which Max pled guilty, Max also stipulated to a two-point offense level enhancement for Count Two. The Court is well aware of the circumstances — namely the December 2021 letter from PSC to HHS and the subsequent OIG investigation in 2022 — that give rise to this enhancement. Nevertheless, we respectfully submit that Max's conduct with respect to these two episodes is far less blameworthy than the conduct of others from PSC.

On December 7, 2021, HHS sent a complaint to Project Social Care alleging that (a) PSCHS had been engaging in less-than-arm's length transactions with Max; and (b) "[t]he Chief

⁴⁹ The bus company went through a competitive bidding process, which it won after submitting the lowest bid. Moreover, it is important to note that the amount that PSC paid the bus company over the two year period were higher for the relevant period (*i.e.*, after 2021) because, at that time, the bus had to operate two vehicles instead of one due to Covid-19 social distancing requirement.

⁵⁰ PSR ¶ 34.

⁵¹ PSR ¶ 30.

⁵² Max specifically discussed this in his allocution to the Court. *See* Plea Transcript at 36:7-12 ("Again, with great disappointment with myself, I conspired to . . . block or frustrate the HHS oversight over the head start by knowingly that the board was not fully running it on the day-to-day operations.").

Fiscal Officer Sara Neuman resigned in June 2021 and [PSCHS] has not provided the Regional Office [of HHS] with notice.”⁵³ When Max learned of this letter, he was surprised to see that the focus was on him, as he had no formal role with PSC, and (as discussed above) merely stopped by the office periodically, as all CCP partners are encouraged to do.⁵⁴ At the same time, the letter said nothing about the Martin Handler’s involvement in much worse practices. Max became convinced, therefore, that the letter was, in some way, brought upon by the Handler faction at PSC.

Project Social Care submitted a response to HHS’s letter on December 21, 2021, which Max had no role in preparing.⁵⁵ The response letter stated that there were not any “less-than-arms-length third-party agreements or procurements of any kind involving personal or financial conflicts of interest with Max Lieberman or any of his family” and that the fiscal officer had not abruptly resigned.⁵⁶ Project Social Care’s formal response accurately acknowledged Max’s *de facto* ownership of two entities that contracted with Project Social Care, but the Government contends that the letter was false because it did not disclose that Max’s interest in PSC itself. From Max’s perspective, however, he reasonably believed that he had no formal interest in PSC, but rather had made payments to Handler so that Handler would use his influence to have PSC award Max CCP

⁵³ PSR ¶ 36. Importantly, although not reflected in the PSR, the HHS complaint also alleged that the program director (Harold Schwartz) of PSC “transferred daily responsibilities of program operation to Max Lieberman without documentation of approval by the Board, Policy Council, or Regional Office. In its response to HHS, PSC accurately stated that daily responsibilities had *not* been transferred to Max, that Schwartz planned to retire in the coming months, and that the Board was looking for a qualified individual to take his place. The Government acknowledges that this response was correct, and that Max “had no responsibilities” at PSC, and therefore PSC “truthfully denied th[at] allegation.” PSR ¶ 38 n.1.

⁵⁴ See Testimony of Tanesha Peralta, U.S. Health and Human Services, Office of Head Start, Tr. 575:9-22 (Peralta agreeing that there is a “really close relationship” between EHC-CCP grant recipients (like PSC) and their partners (like Simche Kinder) and agreeing that the ECH-CCP relationship anticipates that the grant recipient and partner “share resources, knowledge, and expertise to fulfill the goals of the partnership program”).

⁵⁵ The attorney that helped prepare and submit PSC’s response letter confirmed that Max had no role in preparing the document. Testimony of Phillip Escoriza, Tr. 785-15-786:17 (confirming that a draft of the proposed response to the complaint was not sent by Max, nor was Max included on the correspondence).

⁵⁶ PSR ¶ 38.

slots and for the opportunity to run a wraparound program. The letter also accurately denied Max’s ownership of a teacher-recruitment agency and catering company that provided services to PSC, but failed to disclose that Max had relationships with the owners of those companies.⁵⁷ PSC’s response also stated that, with respect to the fiscal officer’s resignation, the “complaint is not correct” and instead stated that the fiscal officer’s “duties changed in July of 2021 due to unexpected reasons”⁵⁸ However, on June 30, 2021, the fiscal officer submitted a resignation letter, and while the PSR states that Handler notified Max of the resignation the same day, Max has no recollection of this, likely because he found the resignation of a PSC employee to be irrelevant to him.⁵⁹

In the summer of 2022, the HHS Office of the Inspector General (“OIG”) conducted a series of interviews of Project Social Care personnel and requested documents from Project Social Care as part of a whistleblower retaliation investigation.⁶⁰ Prior to the interviews, Max, concerned about the faction of PSC staff that seemed inexplicably hostile to him, met with potential interviewees to explain that the wraparound program was entirely legal.⁶¹ Max was concerned that the faction at PSC would use the OIG investigation to make false statements (whether intentionally or unintentionally) that would affect his wraparound program. Max *never* asked others to make false statements (to the contrary, he tried to explain what the truth about the wraparound program was) nor was he interviewed by OIG. Moreover, while others at PSC recorded certain interviews and shared those recordings with other interviewees, Max did not

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ PSR ¶ 39

⁶¹ After Max was notified that OIG wanted to interview him, he also prepared — with the help of lawyer — to explain to investigators the nature of the wraparound program and its legality.

personally record any interviews.⁶²

At some point, Max learned the identity of the person who had come forward to HHS-OIG, and was stunned to learn that it was a long-time acquaintance from his community. He exchanged a series of voice notes with co-defendant Isidore Handler. For instance, on August 29, 2022, at approximately 5:12 p.m., Max sent a voice message to Isidore Handler stating, in relevant part, “I’m starting to think, if you thought that he didn’t need money just [UI], he does indeed need, now he does need it. Really, I would go with him with a bundle, a bundle of cash so that it gets to him like, I mean, it’s necessary to be very careful now, but, but, but I think the idea of closing one’s eyes is also a problem. We need someone who can go to him and this is what you want, here you have it, a whole pack of you-know. I’m talking about big numbers, show enough [sic], walk away and be happy.”⁶³ Critically, however, this was never done. No cash was ever given to this individual, and no *quid pro quo* was requested. The recorded voice note was simply a passing (and ill-advised) thought. Ultimately, however, the whistleblower withdrew his complaint for unrelated reasons and HHS OIG closed its investigation.⁶⁴

III. Conspiracy to Commit Wire Fraud (Count One)

As part of the initial \$1.5 million payment Max made to Martin Handler in April 2019, Handler agreed that, in addition to the initial CCP slots, Max would also have the opportunity to operate independent daycare programs at PSC’s locations. Project Social Care offered Head Start programs at their facilities. But Head Start programs are entirely distinct from the type of programs that Max ran, which were *not* Head Start programs, and which served families who primarily paid for his services through ACS-funded vouchers. Head Start programs, like Project Social Care, are

⁶² *Id.*

⁶³ PSR ¶ 40

⁶⁴ PSR ¶ 41.

only required to offer six hours per day of federally-funded childcare, which typically occurs from 9 AM to 3 PM. Normally, if a child enrolled in a Head Start program needs childcare services before or after the traditional program hours, and the Head Start program only offered the minimum required hours (like PSC did), the child's parents would have to enroll the child in a different program for the additional hours.⁶⁵ Understanding that there was a great need for childcare beyond the traditional Head Start day, Max sought to partner with Project Social Care to provide separate services (although to the same children enrolled at PSC) before 9 AM and after 3 PM. Because his program would "wrap around" the Head Start program hours, this arrangement is sometimes referred to as a "wraparound program."

Although the two programs are entirely separate from one another, Max had to go through Project Social Care to establish the separate wraparound program. This is because the NYC Department of Health only issues one permit per physical location, even if one program operates from 7 AM to 9 AM and the other operates from 9 AM to 3 PM at the same location, as was contemplated here. Thus, in order for a wraparound program to operate, the main program at a given location (here, Project Social Care) had to apply to ACS to operate a voucher program at their location, even though Project Social Care would not actually operate the program.

Max's first opportunity to operate a wraparound program with Project Social Care was at its Church Avenue location in the East Flatbush neighborhood of Brooklyn, of which he became aware shortly after his initial payment to Handler in April 2019. Throughout the summer of 2019, Max tried to get the wraparound program at Church Avenue up and running, but realized that many of the children enrolled at Project Social Care's Head Start program did not have vouchers, even

⁶⁵ The separate program that parents enroll in is often a wraparound program, as discussed herein. Sometimes, however, parents may have to enroll children in a separate off-site daycare for before and after hour services.

though many, if not all, of those children would have qualified to receive vouchers (sadly, many PSC families lived in shelters).⁶⁶ Whether it was because PSC had trouble communicating with the Church Avenue parents about the voucher program and how to apply, or because parents didn't think it was worth the hassle, parents did not enroll in the voucher program which would have allowed them to participate in the wraparound.

Throughout the remainder of 2019, Max had many conversations with PSC staff about encouraging the Church Avenue parents to seek ACS vouchers. In the midst of these efforts, the pandemic struck, in March 2020. By July 2020 (months after the pandemic first started and just before the arrival of the deadly Delta variant of Covid-19), Max heard that DOH was planning to lift its previous closure order for daycare facilities, and thus felt confident that the wraparound program could finally open in the fall of 2020. In anticipation of opening, on July 10, Max applied to ACS for PSC to provide childcare for families with ACS vouchers at Church Avenue.⁶⁷

The application, which Max sent to ACS (copying Chaim Adler, the *de facto* executive director of PSC) from his personal email address,⁶⁸ correctly stated that Project Social Care wanted the program to begin providing services for the school year beginning in September 2020. Max stated in the email that he had been “asked by project social care to help them set up their new vouchers for one of their locations.”⁶⁹ The application also noted the program's anticipated hours of operation as 7:30 a.m. to 6:00 p.m.; anticipated enrollment of 150 children; and proposed an annual budget of \$2,413,746.⁷⁰ The application further included documentation for six children

⁶⁶ By way of background, for a child to be enrolled in a qualifying ACS program, ACS must first approve the childcare provider. Then, however, the families themselves must (1) apply for and obtain a voucher and (2) enroll the child with their childcare provider of choice.

⁶⁷ PSR ¶ 46.

⁶⁸ PSR ¶ 52.

⁶⁹ PSR ¶ 46.

⁷⁰ PSR ¶ 47.

indicating the children had attended (and paid tuition in order to attend) the Church Avenue location in January 2020.⁷¹ This documentation was intended to be illustrative of the tuition that Max would charge at the Church Avenue location, if the program was approved (assuming the parents paid out of pocket and not through a voucher). Indeed, it had to be illustrative because he was applying to open a new program the Church Avenue location; it was inherent in that application that he had no real, previous payments to submit. Moreover, the ACS rates are established by a market study released by ACS, and is the same for every daycare provider. Max submitted this documentation because he was told by ACS that it was necessary when he submitted applications for his other daycare sites.⁷² It had no impact on the price ACS ultimately paid for students' attendance; it did not establish the rate to be charged; and the submissions were not intended to deceive anyone (nor is there any evidence that ACS was, in any way, deceived by the submission). The application bore a stamped signature from Harold Schwartz, which Max used because Chaim Adler (the *de facto* director of PSC at this time) told him he could, and Max understood this was common practice at PSC.⁷³ On July 31, 2020, ACS approved Project Social Care's application.⁷⁴

At the same time, however, the local Project Social Care staff was fighting the re-opening of the program. Although, around that time, as Max anticipated, DOH issued the order that NYC daycares could re-open with proper Covid protocols, the staff was reluctant to return. In addition to the health risks, the staff had no incentive to return because, although facilities were permitted

⁷¹ *Id.*

⁷² Max had minimal understanding as to why ACS needed this information. It was previously explained to him that the invoices were to confirm to ACS that the program would not charge less for a child who paid cash than it would charge ACS.

⁷³ *Id.*

⁷⁴ PSR ¶ 49.

to open, Head Start issued waivers that permitted staff to be paid so long as the Head Start program was closed due to Covid. Max tried desperately to bring the workforce in, but to no avail; the employees actually tried to unionize to fend off Max's efforts to open the Church Avenue location.

It was clear by September 2020 that the Project Social Care program was not going to fully re-open, at least not in the immediate future. At that time, Max was also under enormous pressure to find a childcare facility for the many children on the waitlists for his other facilities. Many of the families on his waitlists were more comfortable returning from the pandemic hiatus than the families previously at Project Social Care. Moreover, the parents on the waitlist feared that, if they were not admitted to a program in the near future, they would lose their ACS voucher eligibility (as vouchers expired after a period of time if the child was not enrolled) and have to re-apply, a process that can be burdensome for parents. At the same time, with the Church Avenue site practically empty for months, Project Social Care was at risk of losing its Head Start slots, which would effectively end both Project Social Care's program and Max's wraparound program.⁷⁵

It dawned on Max that he could solve both problems (*i.e.*, Project Social Care's under-enrollment and his Williamsburg families' need for childcare) at once by having the Williamsburg parents enroll their children in the Church Avenue location. The children from Williamsburg quickly enrolled in the ACS program, and were happy to attend, but the local PSC staff still fought Max on opening and bringing the children in full-time. The tension worsened as the Delta variant arrived and the pandemic worsened, with many of the local Project Social Care staff perceiving Max and the children he enrolled — many, if not nearly all, of whom were Hasidic — as having a higher risk tolerance for Covid. Still, Max kept the Williamsburg children enrolled at Church

⁷⁵ See Testimony of Tanesha Peralta, U.S. Health and Human Services, Office of Head Start, Tr. 572:4-19 (confirming that under-enrollment was generally an issue for Project Social Care),

Avenue, believing that the day would come where he could open the program at Church Avenue. The parents of those children were excited (indeed, desperate) for the program to open,⁷⁶ and even though it would mean that their children would have to travel from Williamsburg to East Flatbush, the parents were thrilled to attend *any* of Max's programs.⁷⁷

Despite the struggle to open the program, Max was still able to submit ACS-1 forms for the enrolled children, because in March 2020, ACS issued a 30-day "waiver" to its childcare providers, agreeing to pay for all program closures due to Covid-19.⁷⁸ Specifically, the waiver states:

"The City of New York has obtained a waiver from the NYS Office of Children and Family Services to pay for all program closure days due to COVID-19 for 30 days beginning March 16, 2020. The waiver applies to both contract and voucher programs including Day Care Centers, Group Family Day Care, Family Day Care, Legally-Exempt Group Programs and School Age Child Care. Programs must notify their licensing agency (DOHMH or OCFS) of their closure."⁷⁹

Thus, whereas ACS reimbursement had previously revolved around attendance, under the waiver, providers received payment so long as the child was *enrolled* in the program and remained eligible for subsidized childcare. Effectively, the waiver, which was renewed every 30 days and remained in place through March 2022, ensured that childcare providers accepting ACS vouchers were paid

⁷⁶ Letter in Support from Church Avenue Parents, attached hereto as Exhibit 70, (parents explaining that they signed their children up for the Church Avenue program because they were previously on Max's waitlists and excited to finally be admitted to one of Max's programs).

⁷⁷ *Id.*; see also PSR ¶ 50. Moreover, per ACS's own statement in its 2021 Annual Update materials, travel from Williamsburg to East Flatbush would not be an unreasonable distance to travel for assistance recipients to travel for childcare. See Exhibit 101 at 4-5 (stating that a reasonable distance for such travel is "[n]o more than one hour and fifteen minutes travel time, by public transportation or private car between the caretaker's home and the child care provider").

⁷⁸ PSR ¶ 44.

⁷⁹ PSR ¶ 44 n.3. It is important to note that Max was — by far — not the only provider who utilized ACS's waiver. As confirmed by counsel's request to ACS via the New York Freedom of Information Law, the total amount paid under the Covid-19 closure waiver for vouchers was \$154,440,793.19. This amount is inclusive of payments for program closures made from March 1, 2020 through March 31, 2022 (which includes payments made between March 1 and March 15, 2020, during which the waiver was not yet implemented).

for every ACS-enrolled child, even though the program was closed due to Covid-19.⁸⁰ Thus, beginning in September 2020, Max received and filled out the ACS-1 form, accurately reporting that zero children attended the program each month during the pandemic, and was paid by ACS pursuant to the waiver.⁸¹ To be clear, the waiver covered all ACS program providers automatically—there was nothing additional that providers like Max needed to do to be paid.

Once he began operating the program at the Church Avenue location, Max created an email address that he used to communicate with ACS. On September 22, 2020, Max emailed Dara Lynch, the ACS employee, and asked her “Which email do you have for [the Church Avenue location] on file” and explained he was asking “to figure out where the ACS1 forms will get received.”⁸² Lynch responded, in substance, that there was no email currently on file. Within the next four minutes, Max created a new Google email address, Pscheadstart1380@gmail.com, and then responded to Lynch, asking her to use that particular email address when sending ACS1s for the Church Avenue program.⁸³ Max created this email because ACS required each program seeking reimbursement to have its own email address and Max did not have an official PSC email address, since he was not an employee or otherwise affiliated with PSC.

Max used the Pschsheadstart1380@gmail.com email address on a monthly basis to receive ACS1s and forward them to his administrative assistant, who would send them back to Max’s personal email address filled out with claims for payment from ACS.⁸⁴ Max then forwarded the filled-out ACS1s from his personal email address to the PSCheadstart1380 email address, which

⁸⁰ PSR ¶ 44.

⁸¹ PSR ¶ 52.

⁸² PSR ¶ 51.

⁸³ *Id.*

⁸⁴ PSR ¶ 52.

he used to submit the forms for reimbursement. The ACS-1s each bore Harold Schwartz's signature, which Max added to the forms with Schwartz's signature stamp.⁸⁵ PSR ¶ 52.

On August 30, 2021, ACS emailed the Psheadstart1380 email address and noted that Harold Schwartz's signature on recently submitted ACS1s did "not match the one [ACS had] on file." On September 9, 2021, Max used the Psheadstart1380 email address to send an email to ACS stating, "Find attached a notarized letter confirming my signature. Please advise if this is okay to go ahead and process our attendance sheets from June July and August. Thanks, Harold." Attached to the email was a notarized letter bearing Harold Schwartz's signature and stating, in relevant part, "that I the undersigned Harold Schwartz was, and still is, the director of Project Social Care Head Start Inc., and is the authorized person to sign the monthly ACS1 form, maybe my signature looks slightly different over time."

Though Max utilized a stamp of Schwartz's signature, Schwartz was well aware of the program's existence. Indeed, on several occasions, Schwartz himself — the executive director of PSC — signed the checks remitting the remainder of the ACS payment to Max (less the cost of rent to Project Social Care).⁸⁶ Max also consulted Chaim Adler of Project Social Care at every turn, and Chaim (who had much more involvement with Project Social Care and Schwartz) told Max that it was an accepted practice at Project Social Care to use Schwartz's signature in his absence. Additionally, we understand that the Government possesses information indicating that PSC employees, including the fiscal officer Sara Neuman and Harold Schwartz, were aware of the wraparound program and its use of the Covid waiver (and that such use was lawful), as well as

⁸⁵ *Id.*

⁸⁶ PSR ¶ 53.

information indicating that Isidore Handler discussed the wraparound program with lawyers who informed him the program was legal, which he relayed to Schwartz.⁸⁷

Although Max intended to open the Church Avenue program in September 2020, the inability to open Project Social Care continued for the next two years. Project Social Care opened on a few occasions, although always at a minimal capacity but was continuously forced to close due to illnesses and staffing issues. Even so, Max was not permitted by Project Social Care to bring the Williamsburg children in until September 2022. Max continued to collect payment from ACS pursuant to its Covid-19 waiver through March 2022, totaling roughly \$1.8 million.⁸⁸ In March 2022, ACS rescinded the previously-issued Covid-19 waiver. On three occasions between July 18 and August 10, 2022, after the waiver was lifted, Max submitted fraudulent ACS-1 forms that made it appear that children had attended the Church Avenue program, when in fact, those children attended a different location. Max was paid, for those three submissions, a total of \$203,460.60.⁸⁹ Following those three submissions, Max realized that it was wrong to have made those submissions, and deeply regretted his conduct. Thereafter, he never submitted fraudulent submissions again.⁹⁰

⁸⁷ We are aware of these materials through a filing submitted in connection with co-Defendant Arie Rangott's trial at ECF No. 377, in which Rangott refers to certain § 3500 supporting the above statements. This material was not produced to Max, so our understanding of the witnesses' statements is limited to the description of them in the Rangott filing. Separately, around the same time we believe Isidore and others consulted lawyers about the wraparound program, Max also received advice from a lawyer named Belinda Rinker, who, at the time was acted as a Head Start consultant; she advised that the program was permitted as a distinct program independent of PSC.

⁸⁸ See PSR ¶ 56.

⁸⁹ PSR ¶¶ 55, 56.

⁹⁰ Max was also issued two small payments after these submissions, one on January 11, 2023, and one on February 1, 2023. These payments were the result of the fact that reimbursement rates changed for vouchers he submitted through September 2022, which were sent to him retroactively. Every ACS provider in New York City received such retroactive payments due to the rate changes. See PSR ¶ 55. Max did not actually receive this money, as it was after his arrest.

In September 2022, Max was finally permitted to open his program for the Williamsburg kids at Project Social Care. He successfully operated the program for two months (during which time he submitted an accurate ACS-1 form for reimbursement). By the end of October, however, Project Social Care had a new group of children in the East Flatbush neighborhood who were prepared to enroll at Project Social Care. Thus, Max shut down his full-time program for the Williamsburg children, and returned to the plan of operating only the wraparound program for the East Flatbush children at the Church Avenue site.

RELEVANT SENTENCING FACORS

I. Legal Standard

Section 3553(a), Title 18, instructs courts to “‘impose a sentence sufficient, but not greater than necessary, to comply with’ the four identified purposes of sentencing: just punishment, deterrence, protection of the public, and rehabilitation.” *Dean v. United States*, 581 U.S. 62, 67 (2017). In reaching such a sentence, the Court must consider: (1) the nature and circumstances of the offense and the history and characteristics of the defendant; (2) the need for the sentence imposed; (3) the kinds of sentence available to the Court; (4) the sentencing range established by the Advisory Sentencing Guidelines; (5) applicable policy statements by the Sentencing Commission; (6) the need to avoid unwarranted sentencing disparities among similarly situated defendants; and (7) the need for restitution. 18 U.S.C. § 3553(a).

While the Guidelines range is the “starting point and the initial benchmark” in a judge’s consideration, it is “not the only consideration[.]” *Gall v. United States*, 552 U.S. 38, 49 (2007). The court “may not presume that the Guidelines range is reasonable” and must “make an individualized assessment based on the facts presented.” *Id.* at 50. Thus, while the court must “remain cognizant of [the Guidelines range] throughout the sentencing process,” *United States v. Cavera*, 550 F.3d 180, 189 (2d Cir. 2008) (citation omitted), the Guidelines range is just one factor

the Court must consider in fashioning an appropriate sentence, and it should not be given more or less weight than any other factor. *United States v. Carty*, 520 F.3d 984, 991 (9th Cir. 2008). Accordingly, the court may, and often does, impose a sentence that varies greatly from the Guidelines range. Unlike departures, which are part of the Guidelines framework, variances may be used to impose “non-guidelines” sentences under Section 3553(a)’s statutory authority. *See United States v. Keller*, 539 F.3d 97, 99 n.2 (2d Cir. 2008); *accord United States v. Burroughs*, 691 F. App’x 31, 32 n.4 (2d Cir. 2017) (summary order). Variances may help ensure that a defendant’s sentence is “sufficient, but not greater than necessary.” *See* 18 U.S.C. § 3553(a).

II. A substantial downward variance from the Guidelines range is appropriate because the Guidelines loss amount overstates the seriousness of Max’s offense.

As previewed at his plea hearing,⁹¹ although Max stipulated that the Guidelines provide for a loss amount between \$1.5 and \$3.5 million, it is (and consistently has been) our position that such a loss amount grossly overstates the seriousness of Max’s offense.⁹²

First, as discussed, the loss amount in this case reflects the loss caused to ACS by way of its payments to Project Social Care for the operation of the Church Avenue program from September 2020 through September 2022. Max has stipulated that the Guidelines would include this entire amount in calculation of loss. In considering the nature and circumstances of the offense, however, there is a clear and obvious difference between the amounts Max received

⁹¹ *See* Plea Transcript at 32:24-35:5 (Counsel explaining that Max agreed to the Guidelines calculation in the plea agreement because he understood that the ACS payments were the basis for the loss amount but noting that Max intended “to argue at sentencing that the guidelines overstate the seriousness of the offense” for the period of time in question regarding the ACS Covid-19 waiver).

⁹² In the interest of clarity, although Max asserts his right to now argue that the loss amount he accepted for purposes of his plea agreement overstate the nature and seriousness of his offense under 18 U.S.C. § 3553(a), he does not intend to call into question the validity of the plea agreement itself. As Counsel explained at his plea hearing, Max accepted the loss amount proposed by the Government because he understood that the loss amount was premised on the payments he received from ACS for submitting the ACS-1 vouchers for the Church Avenue operation. He understood, and still understands, that he committed a crime by submitting ACS-1 vouchers for the period after which the Covid waiver was rescinded, and he understood that it is the Government’s position that he participated in the conspiracy from July 2020 onwards.

between September 2020 and March 2022 (when the Covid-19 waiver applied and Max accurately reported that no children attended the Church Avenue program), and the amounts he received for the brief period after March 2022 (when Max falsely reported on 3 occasions that children attended the program).⁹³ With respect to the September 2020 through March 2022 period, Max had no intention of breaking the law. Indeed, Max never believed he was acting illegally by submitting those ACS1 forms, because he reasonably believed the Covid-19 waiver applied to “all program closure days due to COVID-19.” This belief was reasonable and to the extent the Guidelines call for a different conclusion (as we have stipulated), such a conclusion is unreasonable under these circumstances. This is particularly so, because loss associated with the post-March 2022 period was \$203,460.60, just over 10% of the total loss figure of \$1,854,543.35.

Second, and in a more conceptual sense, it is unclear what real harm ACS suffered during the period of the Covid-19 waiver. The entire purpose of the Covid-19 waiver was for daycare providers to be paid while programs were closed because of the pandemic, so that they could be prepared to open as soon as it was safe to do so. At the time Max received these payments, nobody knew how long the pandemic would last and Max was preparing to re-open as soon as the public health authorities permitted him to do so (which he in fact did). Under these circumstances, the payments Max received were wholly in line with the purpose of the waiver. ACS, therefore, received the full benefit of its bargain. In other contexts, courts have concluded that a party that received the benefit of its bargain has not suffered a true fraud loss. *See, e.g., United States v. Regent Off. Supply Co.*, 421 F.2d 1174, 1179 (2d Cir. 1970) (holding that it is not fraud for salespeople to secure sales of stationary by making false statements “not directed to the quality,

⁹³ To be clear, however, even when he falsely reported that children attended the Church Avenue program, those children generally attended other programs operated by Max.

adequacy or price of goods to be sold, or otherwise to the nature of the bargain”); *see also United States v. Porat*, 76 F.4th 213, 227 (3d Cir. 2023) (J. Krause, concurring) (quoting *United States v. Takhalov*, 827 F.3d 1307, 1314 (11th Cir. 2016)) (“[E]ven if a defendant lies, and even if the victim made a purchase because of that lie, a wire-fraud case must end in an acquittal if the jury nevertheless believes that the alleged victims ‘received exactly what they paid for.’”).⁹⁴ Here, we understand the Government to contend that Max misled ACS about various details concerning the Church Avenue program. We contend that his statements to ACS were largely accurate, but even where they were not, at least during the waiver period, ACS still received the benefit of its bargain, *i.e.*, it had a daycare program ready to re-open as soon as the public health situation permitted.

To be clear, none of our arguments here concern the accurate computation of loss under the Guidelines, to which Max has stipulated. We nonetheless respectfully submit that in evaluating the nature and circumstances of the offense, the court should consider Max’s reasonable belief that the waiver applied to the Church Avenue program and the purpose of that waiver in fashioning an appropriate sentence pursuant to § 3553(a). *See e.g., United States v. Mendlowitz*, 2021 WL 4892860, at *3, *8 (S.D.N.Y. Oct. 20, 2021) (J. Broderick stating that, at sentencing, he found the loss amount “reasonable” but nonetheless sentenced the defendant “based upon his individual circumstances and did not give great weight to the loss amount”). This individualized analysis is particularly important in a case like Max’s, in which the Guidelines range is increased dramatically due to a single factor — the loss amount. Judges in this Circuit have frequently noted the potential

⁹⁴ *See generally Ciminelli v. United States*, 598 U.S. 306 (2023) (overturning a wire fraud conviction that was based on the theory that a defendant schemed to deprive a victim of potentially valuable economic information necessary to make discretionary economic decisions). Wire fraud convictions based on such “fraudulent inducement” theories of liability are currently questionable as a matter of law. Just this month, in fact, the Supreme Court heard oral argument in *Kousisis v. United States*, a case in which the Justices will consider whether the federal wire fraud statute applies to cases where the defendant uses deception to enter into a transaction that does not harm the victim financially. *See Kousisis v. United States*, 144 S. Ct. 2655 (2024).

for injustice in such cases. Judge Rakoff, for example, has described the particular disparities that can arise in sentences in fraud cases as follows:

It might be argued that the Guidelines still work to minimize disparities. But if the sentences so calculated are the product of placing an overwhelming emphasis on a factor that may be central to some frauds but largely incidental to others, the effect is to create, in the name of promoting uniformity, a sentencing disparity of the most unreasonable kind.

United States v. Gupta, 904 F. Supp. 2d 349, 351 (S.D.N.Y. 2012). Many sentencing judges have found it appropriate to “rely more heavily on the § 3553 factors” where the Guidelines sentence is “overwhelmingly due to the loss enhancement” which “does not result from any reasoned determination of how the punishment can best fit the crime, nor any approximation of the moral seriousness of the crime.” *See United States v. Johnson*, 2018 WL 1997975, at *3–4 (E.D.N.Y. 2018); *see also United States v. Corsey*, 723 F.3d 366, 382 (2d Cir. 2013) (Underhill, J., concurring) (acknowledging that district judges lack “much needed guidance” in applying the “misguided loss guideline” but nevertheless have the “difficult task of weighing all of the section § 3553 factors” to reach an appropriate sentence).

The nature and circumstances of the loss amount is not only relevant in the Court’s analysis of whether a variance from that range is appropriate, it also provides a benchmark for the Court in thinking about what alternative range may be appropriate under the circumstances. Here, if the Court were to find that the real harm to ACS here was the loss of roughly \$200,000 from the post-waiver payments, and everything else remained the same, Max’s offense level would be 17, which carries a significantly lower advisory Guidelines range of 24-30 months. We respectfully submit that such a lower range more accurately captures the nature and circumstances of the loss caused by Max’s offenses.

III. A significant downward variance is warranted in this case because Max acted with good motives with his involvement in PSC and operating the wraparound program.

Aside from the loss amount, we respectfully submit that the advisory Guidelines range still overstates the seriousness of Max's conduct for other reasons. While Max fully acknowledges that he is guilty of the crimes he committed, the Court, in evaluating the § 3553(a) factors, should consider Max's motive and intent in engaging in the conduct underlying his convictions. *See United States v. Ranum*, 353 F. Supp. 2d 984, 990 (E.D. Wisc. 2005) (citing *Wisconsin v. Mitchell*, 508 U.S. 476, 485 (1993)) ("Under § 3553(a) and the decisions of the Supreme Court, a sentencing court may properly consider a defendant's motive."). In *United States v. Ranum*, for example, the Court found it relevant for purposes of sentencing that the defendant, a loan officer convicted of misapplying bank funds, did not intend to defraud the bank (and, in fact, to the contrary, the defendant wanted the bank to succeed). The Court reasoned that the "defendant's culpability was mitigated in that he did not act for personal gain or for improper personal gain of another." *Id.* The Court imposed a sentence of a year and day of incarceration, representing a significant downward variance from the Guidelines range of 37-46 months, in part because the Guidelines range did not "properly account for [the] defendant's absence of interest in personal gain, . . . for defendant's otherwise outstanding character and for the significant benefits to family members resulting from his presence." *Id.* at 991.

Here, we respectfully disagree with the Probation Office's assumption that, because Max had no immediate financial troubles, his crimes were motivated by greed.⁹⁵ Such an assumption fails to account for (1) the complexities of operating a daycare provider for needy families that

⁹⁵ PSR at Page 50 ("[W]e assume that the defendant's involvement in the instant offense was motivated by greed."). Of course, Probation made this assumption without the benefit of any information about Max's significant history of charitable acts and service to non-profit organizations, which, we submit, bear directly on the analysis of what motivated Max's conduct in this case.

rely on childcare subsidies in (2) a diverse community like New York City, (3) during a global pandemic. It also fails to consider Max's genuine desire to provide top quality childcare services to as many needy families as he could in New York, and is wildly inconsistent with the character Max has demonstrated throughout his life of service to others. Max did not commit these crimes to purchase luxury goods or otherwise make his life more comfortable. The severity of Max's crimes is mitigated, substantially in our view, because, like the defendant in *Ranum*, those crimes were not motivated by an interest in personal gain, but by a mistaken belief that efficiency and problem solving was more important than following the law.

Max entered into an agreement with Martin Handler to get involved with Project Social Care in order to receive the CCP slots which he believed were going to save his New York daycare operations by way of providing a consistent income to support his fixed expenses. Indeed, at the time Max contracted with Handler, his business was actually losing money. The mechanics of the partnership with Handler were not foreign to Max, who has significant experience in non-profit organizations like Hatzoloh, Refuah V'Chesed, and Conseil Juif Hassidic du Quebec, to name just a few. Shortly after he became involved with Project Social Care, however, problems arose: Harold Schwartz was entirely absent, infighting at the organization strained his ability to operate his programs, and, ultimately, he was forced to pay an additional \$3.2 million to Handler just to ensure that Handler and the others left him alone. Nevertheless, Max always believed in the mission of his program (as well as the services Project Social Care provided to families) and mistakenly believed that his intent to do good outweighed the need to follow the letter of the law and ensure that the non-profit entity was following all applicable rules and regulations.

This is how the “old Max” (as Max describes it) operated: he saw a problem and, frankly, sometimes without thinking, jumped in to assist.⁹⁶ When Max learned that PSC was under-enrolled and was at risk of losing its DOH permit, he created a plan to fix it by bringing in Williamsburg children (similar to how he sprang into action when he heard about sick and suffering community members in need of assistance, or problems at the border). When Max learned that one of Project Social Care’s locations was in need of kosher food, he called his father to help, and later, provided kosher food from his own kitchen, without making a profit (as he had done with Refuah V’Chesed when he realized hospitals were in need of refrigerators for kosher food). Likewise, when Project Social Care was in need of a vendor to bus students to and from programs, Max’s company immediately bid for the job, coming in at a significantly lower cost than any other company offered (just like he worked to do with Hatzoloh in providing better access to medical transportation). This type of advocacy was not foreign to Max; he has done it his entire life. Max was someone who, for years, “wore ten different hats every day” helping different organizations and individuals.⁹⁷ Each and every day, Max had several (if not dozens) of irons in the fire, aiding the organizations he advised, fundraising for charitable causes, and driving to hospitals and sites of accidents or the border to help those in need (sometimes in the middle of the night) — and, at the same time, he was running multiple daycare centers in both Montreal and New York, raising a family of nine children, and taking care of his wife who, at times, was seriously ill (discussed *infra* at Relevant Sentencing Factors Section V).

⁹⁶ This is who Max was, not only in his professional life and in his civic involvement, but in his personal life too. *See e.g.*, Letter from Hannah Lebovits, attached hereto as Exhibit 56 (“[Max] impulsively stands in where he sees there is no one else brave enough, or there to do the job.”).

⁹⁷ Letter in Support from Sam Muller, attached hereto as Exhibit 63 (describing Max as someone who provides “round-the-clock support” and whose “commitment to the welfare of others . . . drives him”).

Now, Max realizes that, despite his good intentions, no matter how busy he is, and no matter how much good he feels he is providing, it is also critically important to follow proper procedures that are designed to safeguard non-profits like Project Social Care from abuse.⁹⁸ He recognizes that his desire for efficiency and service to others can never outweigh the need conform to the law, in all particulars, especially when coordinating with entities that work with federal and state funds to serve vulnerable populations.⁹⁹ In assessing the nature and circumstances of the conduct involved in Count Two, however, we believe it is essential to consider that Max's intention was not to take advantage of a vulnerable non-profit, but to strengthen it. As he has done his entire life, his intention here was to build an organization that would ultimately provide the most efficient and highest quality services possible to the needy families the programs serve.

The same is true with respect to Max's conduct in Count One. When Max decided to pursue the wraparound program at Church Avenue, he did not set out with the intention of defrauding ACS. To the contrary, Max was acting out of a sincere desire to open the wraparound program, as evidenced by his diligence in working with the program director from 2019 onwards to get the Project Social Care children access to ACS vouchers.¹⁰⁰ Max only submitted the application to ACS in July 2020 after significant collaboration with Project Social Care, which gave him comfort that it could open the program in the fall of 2020. For the next nearly two years,

⁹⁸ Now, Max has hired an attorney at Windels Marx to review any business opportunity he comes across, whether it is consulting work or involvement with non-profit organizations to ensure compliance with the law.

⁹⁹ Since his arrest, however, Max has worked to address the problems associated with "Old Max's" thinking, as discussed *infra* in Relevant Sentencing Factors Section V.

¹⁰⁰ Perhaps even more fundamentally, the fact that Max opened Simche Kinder on July 17, 2020—the very day DOJ allowed daycares to reopen—demonstrates that Max was not seeking to take advantage of the Covid waiver for financial gain. Had that been his intention, there would have been no reason for him to open any of his facilities, as a closed program was as financially beneficial for him as one that was open (if not more given the costs of operation).

Max fought tooth and nail to open the wraparound program, or, while waiting for Project Social Care to re-open, to bring in the Williamsburg children in the meantime.

IV. Max’s personal characteristics — particularly his commitment to his community and his family — justifies a substantial variance from the Guidelines range.

As demonstrated by the over one hundred letters in support and dozens of video testimonials submitted on his behalf in connection with this submission, Max has led a life of profound and meaningful service to everyone he encounters— friends, family, and the community at large.¹⁰¹ For at least the last thirty years, Max has devoted himself time and time again to organizations and projects aimed at benefiting the lives of the most vulnerable members of society, including, as discussed, Hatzoloh, Refuah V’Chesed, and Conseil Juif Hassidic du Quebec, to name a few. Max is not simply a member of charitable organizations; he creates, operates, and strengthens them. His involvement goes beyond merely serving on boards or financially supporting causes dear to him. When he is a part of a project, he serves on the front lines, personally interacting with those in need, taking care of the sick and suffering, visiting with inmates, and personally communicating with community leaders to advocate for change.

While service with a community organization can help many people at once, it is equally compelling to consider Max’s innumerable quiet and unheralded charitable acts, which help only a single person in need. These acts — many of which are described in the letters and video testimonials submitted with this Memorandum — are nothing short of overwhelming, and include accounts of Max helping people financially during hard times, including paying for cancer

¹⁰¹ Letter in Support from Esther Ouaknin, annexed as Exhibit 69 (“It’s important to note that we are not exceptionally close friends with Mr. Lieberman. While we are friendly, the extent of help and kindness he has shown us is not because we are family or close friends. Rather, it is a reflection of his deep care and concern for others.”).

treatments and grocery bills¹⁰² and caring for families during medical tragedies.¹⁰³ Multiple letters refer to Max as “selfless,”¹⁰⁴ and someone who helps others “to literally no end.”¹⁰⁵

We do not suggest that Max’s prior good deeds somehow justify his criminal conduct. We do contend, however, in the strongest possible terms, that in the unique circumstances present here, Max’s “history and characteristics,” § 3553(a), warrant substantial consideration and a significant downward variance from the Guidelines range. Max’s life has been defined by acts of loving kindness for the sick and the needy. He is a credit to his community and will continue to do incalculable good in the world after his sentence.

Many courts have considered a defendant’s charitable contributions and service to the community in granting below-Guidelines variances. For example, in *United States v. Mendlowitz*, 17 CR 248, Judge Broderick imposed a sentence of a year and a day — varying substantially from the Guidelines range of 135 to 168 months — noting that he was particularly struck by the defendant’s charitable work and community involvement. Specifically, the judge said:

Now next I am going to address your history and characteristics. Now, it is clear from the presentence report and submissions I received . . . I haven’t been on the bench that long but probably this is most material both in terms of volume but also in terms of substance that I have received for a defendant. Part of that speaks to you and your community and your loved ones that they were willing to write on your behalf. So, it is clear that your family, friends, and community members and the leaders of organizations with whom you have worked over the years and more recently during the pandemic . . . consider you a loving son, husband, father, friend, and colleague. Many note that you are often there to help those in need. And almost, to a person, they indicate that your involvement in the instant criminal activity is, in their view, out of character for you and an aberration. Now, I am

¹⁰² See Video Testimonial of Israel Sruly Kahan and attached hereto as Exhibit 2 at 33:18-34:31

¹⁰³ See e.g., Video Testimonial of Solomon and Faigy Rubin, and Simi Esther Mermelstein, attached hereto as Exhibit 2 at 17:01-22:59.

¹⁰⁴ See e.g., Letters in Support by Raisie Karmel, Yoel Landau, Hillel Lowy, and Shloime Oberlander attached hereto as Exhibits 41, 53, and 66, respectively.

¹⁰⁵ Video Testimonial of Jacob Karmel, annexed as Exhibit 42.

going to consider their views and your charitable acts in determining what an appropriate sentence is for you.

United States v. Mendlowitz, 1:17-cr-00248-VSB Dkt. 326 (December 17, 2021). Similarly, in *United States v. Chastain*, Judge Furman imposed a sentence of 3 months' incarceration where the recommended Guidelines range was 21 to 27 months. 1:22-cr-00305-JMF Dkt. 159 (September 21, 2023). Judge Furman noted that, after considering the § 3553(a) factors, he did not believe that the amount of jail time that probation requested or the Guidelines range called for was warranted. Specifically, he noted that the letters made clear that the offense was "a one time bad, dumb act in a lifetime of good, smart acts[,] and that the letters describe "someone who is a generous and caring friend, son, brother, talented person, who can do good in the world[.]" Indeed, Judge Furman found it particularly relevant that the defendant in that case would be likely to "use his talents for good, not harm" after his sentence. *See United States v. Chastain*, 1:22-cr-00305-JMF Dkt. 159 (September 21, 2023).

Other judges in this district and others have come to similar conclusions on the same basis. *See e.g., Gupta*, 904 F. Supp. 2d at 354 (imposing a sentence of 24 months where the recommended Guidelines range was 78 to 97 months' imprisonment based, in part, on the Court's finding that "it ha[d] never encountered a defendant whose prior history suggests such an extraordinary devotion, not only to humanity writ large, but also to individual human beings in their times of need"); *United States v. DiMattina*, 885 F. Supp. 2d 572, 582 (E.D.N.Y. 2012) (imposing a variance from the recommended Guidelines range of 41 to 51 months to a year and a day based on the "history and characteristics of the defendant" including, in part, because of the "numerous letters [submitted on his behalf] attesting to his good character and many acts of charity). Here, Max's acts of charity and commitment to serving his community are truly unparalleled and should be considered in fashioning an appropriate sentence for someone who has done so much good in

his community and will continue to do so after his sentence. *See Gupta*, 904 F. Supp. 2d at 355 (taking into account at sentencing that the defendant with demonstrated life-long charitable work would likely continue to devote himself to his community after any prison term).

V. **Max will be adequately punished by a non-Guidelines sentence, including a sentence of a significant period of home incarceration.**

We respectfully submit that the goals of punishment — restitution, retribution, and rehabilitation — are satisfied in this case by the imposition of a sentence substantially below the Guidelines range, including by a sentence that would include a substantial period of strict home confinement.

With respect to restitution, Max has agreed to make a significant restitution payment to ACS in the amount of \$1,854,543.35, and to forfeit \$1,774,543.35. Max need not be sentenced to a lengthy period of incarceration to be adequately punished. In addition to the restitution and forfeiture payments, the stain of a federal conviction will follow him for the rest of his life, as will his shame and guilt for his role in these schemes. In many ways, for a person like Max who is adored in his community for his service to others, it is already a significant punishment that he has lost their trust and will be hampered in his ability to continue serving in the future.

Additionally, Max submits that, if the Court believes that a period of incarceration is warranted in this case, that the goals of punishment are served by the imposition a sentence of home incarceration. As described by the Probation Office for the Southern District of New York, home incarceration “is the most restrictive component” of the Office’s location monitoring program which “requires 24-hour-a-day lock-down except for medical necessities and court

appearances or other activities specifically approved by the court.”¹⁰⁶ Home incarceration is not a light sentence; indeed, it does not contemplate exemptions for employment, education, or religious activities.¹⁰⁷ If a sentence of home incarceration were imposed, Max would not be able to interact with his community, visit his loved ones, attend functions, or even walk down the street.

The only difference between home incarceration and custodial incarceration is that Max would be present in his own home to take care of his own family. Indeed, the only people who would be punished more greatly by a custodial sentence, rather than home incarceration, are the members of Max’s family. Max’s wife, Bella, has described the possibility of Max serving a term of imprisonment as devastating for [her] and [their] children.”¹⁰⁸ She explained that, because their family just recently moved from Montreal — where the couple lived all of their adult lives — Bella does not have a strong support system in New York and would suffer greatly without Max as the head of their household. Moreover, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] We respectfully request that the

Court consider Max’s role in caring for his wife Bella as she struggles [REDACTED]

[REDACTED], Max serves as the primary caretaker not only to Bella

¹⁰⁶ For more information on Location Monitoring, see: <http://probation.nysd.uscourts.gov/location-monitoring-program#:~:text=HOME%20INCARCERATION%20%2D%20is%20the%20most,specifically%20approved%20by%20the%20court.>

¹⁰⁷ *Id.*

¹⁰⁸ PSR ¶ 108.

¹⁰⁹ Letter in Support by Dr. Robert Krausz, Bella’s doctor, annexed as Exhibit 49.

but also their minor children, the youngest of whom are only six years old; if Max were incarcerated [REDACTED], the children would be, effectively, parentless.¹¹⁰

Max's children and grandchildren will also suffer a tremendous loss if Max is incarcerated. All nine of Max's children adore their father. His adult children all describe Max as their biggest supporter and confidant, and as someone to whom they can always turn when needed. As his son Moshe explained, Max has been a role "model of compassion, generosity, and selflessness" for him, and now, as he prepares to become a father soon himself, he looks forward to Max giving the same guidance to his own children.¹¹¹ Of course, it goes without saying that Max's four minor children would be greatly affected by Max's absence too, particularly his twin girls, who Max spends hours with at home each day.

Further, with respect to rehabilitation, Max has engaged in a significant effort to not only atone for his misdeeds but to truly understand the underlying sources of his criminal conduct. From July 2023 through the present, Max has participated in a weekly class sponsored by the Aleph Institute (a non-profit criminal justice reform organization) that is designed to bring individuals charged with crimes together to discuss the root causes of their conduct. A crucial element of the class is the requirement that students reflect on their journey of repentance. In describing his journey and the changes he will make in his life in the future, Max said the following (which is included in the video exhibit, attached hereto as Exhibit 2 to this submission):

I can't go back. My choices that I make are the choices. What I could do, is I could do one thing—is correct the future. That's the only thing I can do to correct this. And that is to live even a larger future life—with the boundaries and the lessons learned of this. And then it will be to say: you know what the lesson for Menachem Lieberman is? Even if you fall, regardless of the reason, by your own choosing or

¹¹⁰ *Id.*

¹¹¹ Letter in Support from Moshe Lieberman, attached hereto as Exhibit 59. Max's other children have expressed similar sentiments. *See* Letters in Support from Esty Steinberg (Max's Daughter) and Joseph and Bentzion Lieberman (Max's sons) attached hereto at Exhibits 86, 106, 107, respectively.

by whatever life brings you. You have to pick yourself up and make sure that you are continuing a positive lifeAnd that is my promise. I fell once. I will not fall again.¹¹²

VI. Neither general nor specific deterrence are served by Guidelines sentence in this case.

Finally, the goals of deterrence do not require a substantial term of incarceration in this case. With respect to specific deterrence, there simply is no basis to believe that Max will ever engage in criminal conduct in the future, particularly in light of his age, his significant family and community support, and the fact that he has no history of criminal activity whatsoever.

The need for general deterrence can also be satisfied by a sentence substantially below the Guidelines range, including a sentence of home incarceration. Such a sentence would still provide meaningful punishment and, coupled with full restitution and forfeiture (which Max is prepared to pay immediately), would serve as a significant deterrent to the public. A lengthy period of custodial incarceration serves as no further deterrence to the public. Max has made great strides, on his own, to promote the goals of general deterrence. On two separate occasions, in May and September 2024, Max stood in front of hundreds of people in Williamsburg and Monsey, New York, and shared his personal story with his community, cautioning them to understand and follow the law. In front of hundreds of members of his community, Max humbly used his own life as a cautionary tale to others. We respectfully submit that Max sharing his story with others — as he plans to continue doing — will serve the interests of deterrence far greater than time in prison.

CONCLUSION

For the foregoing reasons, and in consideration of the § 3553(a) factors, Max respectfully requests that the Court impose a sentence substantially below the Guidelines range or, a sentence of home incarceration, as well as order Max to pay restitution to ACS in the amount of

¹¹² Video Testimonial of Max Lieberman, attached hereto as Exhibit 2 at 48:38-49:19; 49:38-49:54.

\$1,854,543.35 and forfeiture to the United States Government in the amount of \$1,774,543.35. Such a sentence is “sufficient, but not greater than necessary” to satisfy the purposes of federal sentencing. See 18 U.S.C. § 3553(a). Such a sentence is not inconsistent with the data collected by the Judiciary Sentencing Information, attached to the PSR at page 35, which confirms that, for defendants whose primary guideline was §2B1.1, with an Offense Level of 23 and a Criminal History Category of I, after excluding defendants who received a §5K1.1 substantial assistance departure, the average term of imprisonment imposed was 35 months, and the median length of imprisonment imposed was 36 months. This already represents a *significant* downward variance from the recommended Guideline range of 46 to 57 months’ imprisonment, and Probation’s recommendation of 46 months in this particular case.

While we recognize that the sentence that Max requests is extraordinary, we humbly submit that Max is an extraordinary person, and in light of the numerous mitigating factors in this case, a Guidelines sentence would not only be unnecessary to serve the purposes of sentencing, it would be unreasonable and unjust.

Dated: December 20, 2024

/s/ Daniel L. Stein

Daniel L. Stein
 Chelsea L. Spence
WEIL, GOTSHAL & MANGES LLP
 767 Fifth Avenue
 New York, NY 10153
 Telephone: (212) 310-8000
 Fax: (212) 310-8007
 Daniel.Stein@weil.com
 Chelsea.Spence@weil.com

Counsel for Defendant Menachem Lieberman