

1 Jason M. Silver (#016756)
2 jsilver@silverlawplc.com
3 SILVER LAW PLC
4 7033 E. Greenway Parkway, Suite 200
5 Scottsdale, Arizona 85254
6 Telephone: (480) 429-3364
7 Facsimile: (480) 429-3362

8 Attorney for Defendant

9 UNITED STATES DISTRICT COURT
10 DISTRICT OF ARIZONA

11 United States of America,) Case No. CR-21-00264-PHX-JJT
12)
13 Plaintiff,) **SENTENCING MEMORANDUM AND**
14) **REQUEST FOR VARIANCE**
15 v.)
16)
17 James Theodore Polzin,)
18)
19 Defendant.)
20)

21 **I. Preliminary Statement**

22 James Theodore Polzin (“Ted”) pleaded guilty to Counts 1 (18 U.S.C. §1343-Wire
23 Fraud) and 19 (18 U.S.C. 1957-Transactional Money Laundering) of the Indictment. This
24 conviction represents a marked aberration in an otherwise law-abiding life.

25 Ted takes full responsibility for his conduct and understands that he must now face
26 the consequences of his actions. In determining the appropriate sentence, the Court should
27 consider his individual history and characteristics in addition to how other Courts, namely,
28 the Western District of Washington, has sentenced a similarly situated Defendant. See
United States v. Mohan, Case No. 2:21CR00041JCC (U.S. District Court, W.D. of
Washington)(sentenced to 24 months for 18 U.S.C. §§ 1343 and 1957 with restitution of
\$1,786,357, which was the total loss)

1 There are many factors justifying a non-custodial sentence of probation, or
2 alternatively, home confinement with work release, including:

- 3 • Ted accepts responsibility for his conduct and is very remorseful and embarrassed;
- 4 • Ted's action were an aberration;
- 5 • Ted will have served more than 10 months in jail at the time of sentencing;
- 6 • Ted is not a harm to the community or himself.

7 This has been an impact case in Arizona and around the United States and a prison
8 sentence is not necessary in order to achieve the objectives articulated in 18 U.S.C.
9 §3553(a)(2). A strong message to the community has already been sent to Ted and it has
10 been received loud and clear. The goals of both general and specific deterrence have been
11 achieved, and do not require a prison sentence. Ted should be sentenced to probation or
12 alternatively, home confinement with work release.

13 Probation recommends 70 months on Count 1 and 70 months on Count 19, terms to
14 run concurrently; that Ted participate in the Bureau of Prisons Residential Drug Abuse
15 Treatment Program, a \$200 special assessment, no fine, restitution of \$2,211,396.39, based
16 upon the actual and attempted agreed upon loss of more than \$3,500,000 but less than
17 \$9,500,000, in addition to adding two level for sophisticated means and for abuse a position
18 of public trust, or used a special skill. Defendant contests both. Finally, the Probation
19 increased by one level for transactional money laundering, which Defendant does not
20 contest.

21 **Ted's Personal Background and Character**

22 The Probation Officer's Presentence Investigative Report provides a thorough
23 synopsis of Ted's personal and family data, his physical condition, mental and emotional
24 health, substance abuse, education, vocational and special skills, employment record and
25 financial condition. But, Ted asks the Court to note that he has suffered for quite some
26 time from steroid dependency, which forms the Probation Officer's basis for requesting the
27 residential drug and alcohol program.

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II. The Offense Conduct

Ted accepts full responsibility for his conduct. He knows that his conduct was wrong and illegal and he understands that he must now face the consequences of his actions. No matter what his sentence, Ted will be a convicted felon.

III. The Advisory Guidelines Calculation

The Plea Agreement agrees to a loss of more than \$3,500,000 but less than \$9,5000, for an additional 18 levels added to the base level of 7 under U.S.S.G. §2S1.1(a)(1), under 18 U.S.C. §1957(a).

The Plea Agreement also provides that due to Ted’s acceptance of responsibility, he is entitled to a total of 3 levels of departure under U.S.S.G. §3E1.1(b).

There are no stipulations to an additional level increases as requested by Probation.

Probation requests an additional 2-level increase for sophisticated means (2T1.1(b)(2)), stating in in the Presentence Investigation Report that Ted “intentionally engaged in or caused the conduct constituting sophisticated means. Polzin maintained multiple bank account to include offshore accounts. From May 2020 to February 20201, Polzin transferred at least \$440,000 to offshore accounts. He also altered/manipulated bank records to obtain the fraudulent loans. The extent he went to defraud and conceal is considered sophisticated.” PSR par. 31.

U.S.S.G. §2T1.1, Application Notes, par. 9.(B) states that sophisticated means is: “**especially** complex or **especially** intricate offense conduct pertaining to the execution of concealment of an offense. For example, in a telemarketing scheme, locating the main office of the scheme in one jurisdiction but locating soliciting operations in another jurisdiction ordinarily indicates sophisticated means. Conduct such as hiding assets or transactions, or both, through the use of fictitious entities, corporate shells, or offshore financial accounts also ordinarily indicates sophisticated means.” (Bold supplied) Here, Ted provided materially false loan applications, for his companies and other client companies, claiming non-existent employees and revenues for business entities owed and operated by Polzin and others in order to obtain money from the CARES Act that he and/or

1 his business and businesses of others, e.g., CPA Outsource LLC, were not entitled to
2 receive. Some of the loans were approved and disbursed, while others were not, as stated
3 in the PSR at pars. 5 through 23, inclusive. As the PSR stated, the disbursements were to
4 Ted's controlled bank account in the United States, which were in his name or his business
5 name. The fact that Ted transferred \$440,000 to offshore bank accounts does not evidence
6 a sophisticated means to execute or conceal the fraud upon the government. Altering or
7 manipulating bank records is hardly sophisticated. Anyone with a computer can easily
8 manipulate bank records that are ultimately provided to a third party. As such,
9 sophisticated means should not apply.

10 Furthermore, Ted does not believe that there should be a 2-level increase for use of
11 special skill. U.S.S.G. §3B1.3 states that if a defendant used a special skill in a matter that
12 significantly facilitated the commission or concealment of the offense, the based level
13 offense increases by 2 levels. U.S.S.G. §3B1.3 Application Notes 4 states that special skill
14 refers to a skill not possessed by members of the general public and usually requiring
15 substantial education, training or licensing. Examples include pilots, lawyers, doctors,
16 accountants, chemists and demolition experts. The special skill itself is broadly construed
17 and it must be linked to the crime. It is not enough to hold the license or the education,
18 training and experience. In this case, although Ted was once a certified public accountant,
19 those skills were not needed to accomplish this quite simple fraud. Ted merely changed
20 payroll numbers to qualify or increase a CARES Act loan. The PSR states that "Polzin
21 misrepresented himself as a Certified Public Accountant which assisted in providing
22 credibility and knowledge for clientele." Ted requested loans through a few of his clients
23 and through his own entities. Whether or not Ted is a Certified Public Accountant or
24 accountant and his clients relied upon him is irrelevant. For his clients, they knew that the
25 information on the CARES Act loan applications were false and still filed them. Filing
26 false CARES Act loans also does not require any special skill as the U.S. Attorney's Office
27 for the District of Arizona has recently brought numerous Indictments against individuals
28 with no mention in such Indictments of any assistance from a Certified Public Accountant

1 or accountants. (See Case No. 21-00976, 21-00977, 21-00978, 21-00979, 21-00980, 21-
2 00981, 21-00982, and 21-00983, among others filed in this district and other district). It is
3 very simple to change numbers on bank statements and forms and then submit them to the
4 SBA for a loan.

5 Assuming the Court does not find the use of sophisticated means or special skill, the
6 total offense level is 23, Criminal History Category I (46-57 months), which the parties
7 stipulated that the sentence would not exceed the low-end of the range, i.e., 46 months.
8 Plea Agreement par. 3.a.(1). The above offense level is before requested departures under
9 18 U.S.C. §3553(A).

10
11 **IV. A Non-Guidelines Sentence of Probation Is Appropriate Under**
12 **18 U.S.C. § 3553(A)**

13 This Court should carefully consider all of the factors set forth in 18 U.S.C.
14 §3553(a), including “the history and characteristics of the defendant,” and “impose a
15 sentence sufficient, but not greater than necessary.” 18 U.S.C. §3553(a)(1), (2)(A).

16 Additional factors from 18 U.S.C. §3553(a) to be considered include the need for
17 the sentence to “provide just punishment for the offense”, to adequately deter criminal
18 conduct and protect the public from further crimes of the defendant. 18 U.S.C.
19 §3553(a)(2)(A)-(C). Pertinent policy statements issued by the Sentencing Commission
20 should also be considered. 18 U.S.C. §3553(a)(5).

21 As demonstrated by an application of these factors, a Guidelines sentence of
22 incarceration in this case would be “greater than necessary” to satisfy the sentencing goals
23 articulated in 18 U.S.C. §3553(a)(2). Ted’s early plea and cooperation with the
24 government, request to provide information to the government on other possible crimes
25 (which they rejected in each instance), history and characteristics, including his devotion
26 to his friends and family, his contrition and acceptance of responsibility, and the collateral
27 consequences of his conviction warrant a sentence of probation or alternatively, home
28 confinement with work release.

1 **A. Unique Facts and Circumstances that Warrant a Variance From the**
2 **Guidelines**

3 **1. Ted’s Early Plea Saved Tremendous Government**
4 **Resources**

5 After Ted was Indicted, arrested and ultimately detained in Florence, Arizona,
6 undersigned counsel met with him. Ted expressed an interest in resolving the matter as
7 soon as possible by way of a plea agreement. Over the next several months, the parties
8 negotiated the Plea Agreement filed with this Court.

9 **2. Impact Already Suffered**

10 News of Ted’s plea of guilty spread throughout Arizona and the entire United States.
11 Ted is embarrassed by his actions, and will have long-lasting effects upon him in the
12 community of Arizona or wherever he may ultimately reside.

13 In *United States v. Anderson*, 533 F.3d 623, 633-34 (8th Cir. 2008), the court found
14 a sentence “reasonable, appropriate and just” following a downward departure. The court
15 noted as one factor the “atypical punishment” the defendant had suffered, including “loss
16 of his reputation and his company, the ongoing case against him from the Securities and
17 Exchange Commission and the harm visited upon him as a result of the fact that his actions
18 brought his wife and friend into the criminal justice system.” *Id.*

19 **3. Contrition, Acceptance of Responsibility and Collateral**
20 **Consequences**

21 Ted has also accepted responsibility for his actions after he was Indicted and as soon
22 as undersigned counsel and the government could understand the facts and work-out a plea
23 agreement. Moreover, he has expressed extreme remorse to his friends and family. Ted’s
24 contrition and remorse are factors to be considered as a basis for a downward variance
25 under 18 U.S.C. §3553(a). *United States v. Howe*, 543 F.3d 128, 138 (3d Cir. 2008). In
26 *Howe*, the district court found that the defendant “recognize[d] the serious nature of [his]
27 offense and [was] truly remorseful,” sentencing him to probation and home confinement
28 despite a Guidelines range of 18 to 24 months’ imprisonment. *Id.* at 132-34. On appeal,
 the Third Circuit affirmed, holding that the defendant’s “remorse at sentencing [was] a

1 factor that [could] distinguish him from the universe of [other] white-collar offenders.” *Id.*
2 at 138.

3 Courts have similarly granted downward variances when the defendant suffered
4 collateral consequences as a result of his conviction. *See, e.g., United States v. Pauley*, 511
5 F.3d 468, 470, 474-75 (4th Cir. 2007) (holding that consideration of collateral
6 consequences of conviction is “consistent with §3553(a)’s directive that the sentence
7 reflect the need for ‘just punishment’ and ‘adequate deterrence’”). A non-custodial
8 sentence is therefore more than sufficient to specifically deter any future criminal conduct
9 by Ted and is also sufficient to generally deter similar conduct by other would-be offenders.
10 *See United States v. Coughlin*, No. 06-200005, 2008 WL 313099, at *5-6 (W.D. Ark. Feb.
11 1, 2008) (holding that home confinement and probation are capable of deterring white
12 collar criminals “who cherish their freedom of movement and right of privacy”).

13 4. Other Jurisdiction’s Sentencing

14 The Mohan, *infra*, case was a base level offense 7 with an additional 16 levels based
15 upon the loss, which is two levels less than this matter, plus an additional point based upon
16 18 U.S.C. §1957, which we agree applies. The parties in Mohan did stipulate to a 2 level
17 increase for sophisticated means, but not for special skill. Since neither the Mohan plea
18 agreement nor the Judgment state what the sophisticated means were, we can only accept
19 the fact that they existed in that matter. In the Plea Agreement for this case, the parties did
20 not stipulate to any increases in levels for sophisticated means or special skill. Mohan’s
21 total offense level, after acceptance of responsibility, was a level 23, which is 46-57 months
22 under the Advisory Sentencing Guidelines.

23 Although we do not know all the particulars of Mohan’s case, we do know that he
24 was a level 23 and was sentenced to 24 months incarceration. In this case, I request the
25 Court to sentence Ted to a sentence similar to Mohan.

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1 **COPY** emailed to:
2 U.S. Pretrial Services
3 Rebecca I. Tieche
4 Sandra Day O'Connor Courthouse
5 401 W. Washington, Suite 260
6 Phoenix, Arizona 85003
7 Rebecca_tieche@azd.uscourts.gov

8 U.S. Probation
9 Rochelle M. Collins, Probation Officer
10 Sandra Day O'Connor Courthouse
11 401 W. Washington, Suite 160
12 Phoenix, Arizona 85003
13 Rochelle_Collins@azd.uscourts.gov

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/s/ L. Chapman