

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 21-CR-60020-WPD

UNITED STATES OF AMERICA

v.

JONATHAN MARKOVICH,

Defendant.

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**DEFENDANT JONATHAN MARKOVICH' AMENDED SENTENCING  
MEMORANDUM SEEKING A DOWNWARD VARIANCE OR DEPARTURE**

Defendant Jonathan Dov Markovich (“J. Markovich” or “Jonathan”), by and through undersigned counsel and pursuant to U.S.S.G. 6A1.2-3, p.s., Fed. R. Crim. P. 32(d), (e)(2) and (f), and the Fifth Amendment to the United States Constitution, respectfully submits this memorandum in aid of his upcoming sentencing hearing. J. Markovich requests that the Court consider, in accordance with the Section 3553(a) factors, a substantial downward departure or variance from the sentencing guideline range to achieve a fair, just and appropriate sentence.

**INTRODUCTION**

J. Markovich faces serious jeopardy. Though he is not violent, has no criminal history, has three very young children (ages 1, 3, and 5), and is described by many, including former Compass Detox (“Compass”) and We Are Recovery (“WAR”) patients, as compassionate, caring and empathic, he faces the highest possible sentence available in the federal criminal justice system barring death – life in prison. (Docket Entry (“D.E.”) 576: Presentence Investigation Report (“PSI”).)<sup>1</sup> Even by the Department of Justice’s (“DOJ’s”) view, this sentence is one reserved for

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<sup>1</sup> The revised and final PSI for J. Markovich was disclosed on 3/15/2022 at 3:50 p.m. EST. The government’s filing to address the PSI’s loss amount calculation was submitted on 03/15/2022 at 11:05 p.m. EST (D.E. 579).

the “worst of the worst” criminal offenders<sup>2</sup> – and not for persons like Jonathan.

In fact, in 2015 the United States Sentencing Commission (“USSC”) issued a report examining federal life sentences and the offenders on whom this punishment is imposed.<sup>3</sup> The report notes that life sentences in the federal criminal justice system are “rare” and that, “The Commission specifically provides for a life imprisonment sentence in *only four* of the more than 150 guidelines contained in the Guidelines Manual, and then *only for certain acts or certain classes of offenders*. These guidelines involve murder, treason, certain drug trafficking offenses, and certain firearms offenses committed by career offenders.” (*Id.* at p. 5 (emphasis added).)

Notwithstanding such DOJ and USSC guidelines, Jonathan finds himself in this rare category. His sentencing guideline calculation is driven by three main factors – (1) the total loss amount calculation proffered by the government – \$83,469,528.70; (2) the total number of “victims” claimed by the government and their “vulnerability” status; and (3) other “enhancements” that the government seeks for Jonathan’s alleged role – such increases to the base offense level for obstructing justice and being a so-called “leader” of the conspiracy.<sup>4</sup> Though the PSI correctly acknowledges that a downward variance may be warranted here (PSI, at ¶ 126), it still fails to account for what this case is really about: did J. Markovich intentionally harm patients at Compass and WAR and do so to such a degree that he deserves being stripped his life, liberty

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Accordingly, J. Markovich is filing this sentencing memorandum on 3/16/2022. This amended version of the sentencing memorandum supplants D.E. 580 and 581 to adjust for docketing errors in the filings.

<sup>2</sup> See, e.g., “Transnational sex offender sentenced to Life in Federal Prison,” DOJ Press Release, Feb. 8, 2019, available at <https://www.justice.gov/usao-sdin/pr/transnational-sex-offender-sentenced-life-federal-prison>; “Samuel Velasco Gurrola Sentenced to Life in Federal Prison for Murder-For-Hire Plot Involving His Wife, Her Father and Her Sister,” DOJ Press Release, Mar. 24, 2017, available at <https://www.justice.gov/usao-wdtx/pr/samuel-velasco-gurrola-sentenced-life-federal-prison-murder-hire-plot-involving-his> (both articles last visited on March 12, 2022).

<sup>3</sup> **Exhibit A**, also available at <https://www.ussc.gov/research/research-publications/life-sentences-federal-criminal-justice-system> (last visited on March 10, 2022).

<sup>4</sup> J. Markovich objects to the loss calculation, the victim calculation, and several enhancements to the base offense level. His objections to the PSI are outlined in D.E.s 548 and 576-1 and incorporated by reference herein.

and freedom forevermore? After all, DOJ has long stated that healthcare fraud and sober homes cases are not simply about the “money” and “loss,” but about the patients impacted and the need to curb abuse within the industry. But the government is not accounting for those patients’ views in its sentencing recommendation. Indeed, as discussed below, many of the “core” patients at the center of the government’s case do not agree with the government’s position here – and strongly advocate for Jonathan’s release from incarceration (*see Exhibit B*).<sup>5</sup>

Moreover, the PSI does not acknowledge the “why” or motive for Jonathan’s actions – did J. Markovich really enter the substance abuse industry to harm – or help – addicts? Again, as explained below, trial testimony and witnesses’ statements establish that Jonathan sought to help addicts and build a clean and comfortable facility that could do just that. Compass and WAR were not places of rampant drug use, promiscuity, and unruliness that the government portrays.

While the PSI does not account for these considerations in a fair and just manner, this Court can and should. We ask you to do that and, pursuant to Section 3553(a), vary or depart from the sentencing guideline range in sentencing Jonathan. We ask for a sentence that is on par with the facts of this case, the trial in the cause, the sentencing recommendations for codefendants, the “core” patients’ wishes, and an understanding who J. Markovich is. We ask for a merciful sentence of no more than is necessary and punitive than it should be. We respectfully submit that sentence should be *no more than 84 months’ imprisonment*.

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<sup>5</sup> Several former patients have written letters and provided video testimonials in support of Jonathan’s release from prison and a lenient sentence. They are part of the “core” group of patients the government focused on at trial: B.H., L.L., C.C., A.N., B.O., T.B., P.D., M.W., A.N., D.S., and D.W. The former patients’ letters are redacted and attached to this filing at **Exhibit B**. The un-redacted letters will be sent to counsel for the government and Court directly, via e-mail. The former patients’ video testimonials are being provided to the government and Court via a link and on a CD/thumb drive. Since the videos contain personal information protected under HIPAA and the protective order in this case, the Markoviches’ counsel will move to keep them under seal. Many of these former patients also corresponded with J. Markovich via iMessaging while they were patients. Those messages are being submitted to the Court, also under seal. Last, many patients sent thank you letters and cards to Compass and Jonathan over the years. Some of those letters and cards will also be filed under seal.

**SECTION 3553(a) ANALYSIS FAVORS A DOWNWARD VARIANCE**

**I. Section 3553(a): Overview and Factors**

We will not burden the Court with a lengthy discussion of the law relating to *United States v. Booker*, 543 U.S. 220 (2005), of which the Court is well aware. Instead, we focus on the Section 3553(a) factors and the issues important for the sentencing in this case. We briefly note that in considering the § 3553(a) factors, the sentencing guidelines are to be given no more or less weight than any other factor. *See United States v. Jaber*, 362 F. Supp. 2d 365, 370-76 (D. Mass. 2005) (providing comprehensive analysis of why sentencing guidelines do not reflect statutory purposes of punishment); *United States v. Ranum*, 353 F. Supp. 2d 984, 987 (E.D. Wis. 2005); *see also United States v. Hunt*, 459 F.3d 1180, 1184 (11th Cir. 2006) (“if *Booker* is to mean anything, it must be that the district courts are obligated to impose a reasonable sentence, regardless of the guidelines range, so long as the guidelines have been considered.”).

More important, however, is that *Booker* establishes an independent limit on the sentence that may be imposed. The primary sentencing mandate of § 3553(a) states that the courts must impose the *minimally sufficient sentence* to achieve the statutory purposes of *punishment/justice, deterrence, incapacitation, and rehabilitation*. 18 U.S.C. § 3553(a). This so-called “parsimony provision” is not simply a factor to be considered in determining sentence; it represents a cap above which the court is statutorily prohibited from sentencing—even where a greater sentence is described by application of the sentencing guidelines. *See United States v. Denardi*, 892 F.2d 269, 276-77 (3d Cir. 1989) (Becker, J., concurring in part, dissenting in part).

To that end, Title 18 U.S.C. § 3553(a) contains the seven (7) factors that this Court must critically consider before imposing a sentence, and provides as follows:

The court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed shall consider —

- (1) the nature and circumstances of the offense and the history and characteristics of the defendant;
- (2) the need for the sentence imposed —
  - (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
  - (B) to afford adequate deterrence to criminal conduct;
  - (C) to protect the public from further crimes of the defendant; and
  - (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;
- (3) the kinds of sentences available;
- (4) the kinds of sentence and the sentencing range established for —
  - (A) the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines . . . .
- (5) any pertinent policy statement . . . ;
- (6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and
- (7) the need to provide restitution to any victims of the offense.<sup>6</sup>

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<sup>6</sup> The Markoviches will file a restitution memorandum before sentencing, in light of the government’s filing last night (D.E. 579). The government alleges, on the eve of sentencing, that the restitution amount in this case is ~ \$21,000,000. It claims that amount stems from loss that the insurance companies, as the “victims” in this case, incurred. That is an improper restitution analysis. The government must provide evidence from the insurance providers to support this calculation and it has not done so. As stated repeatedly during the trial, the Markoviches do not have access to the insurance records for patients in this case – only the government does under statutory law. As such, the government bears the burden of providing the relevant data for its loss calculation to the Markoviches. Moreover, restitution is typically jointly and severally attributed to defendants – but all of them must be present at a restitution hearing to be heard on this matter.

Moreover, the government’s calculation seems to ignore that three former patients have asserted a claim to restitution. (See D.E.s 408, 426, 471.) Under Section 3771(e), to identify a victim under the Crime Victims’ Rights Act, the Court must: (1) identify the behavior constituting commission of a federal offense; (2) identify the direct and proximate effects of that behavior on parties other than the United States; and (3) determine whether the criminal behavior causes a party direct and proximate harmful effects. 18 U.S.C.A. § 3771(e); *also see, e.g., In re Wellcare Health Plans, Inc.*, 754 F.3d 1234 (11th Cir. 2014). A direct link between damages sought and the offense conduct ***must*** be established in order for a victim to be granted restitution. *See, e.g., United States v. Sanders*, 52 F. Supp. 3d 1329, 1341 (N.D. Ga. 2014).

Restitution packages have ***not*** been provided to J. Markovich by the government or these former patients outlining (a) the alleged harm, loss or damages incurred by the former patient; (b) an evidentiary basis supporting such alleged harm, loss or damages; or, most importantly, (c) a correlation or direct/proximate nexus or cause between the former patient’s treatment at Compass or WAR and such alleged harm or loss. For example, former patient J.T. is deceased and her estate/parents allege that the Facilities, under the ownership and management of J. Markovich,

*Id.*

Below is a discussion of how these factors relate to Jonathan and why the Court should consider varying from the sentencing guideline range in sentencing him.

## **II. The Nature and Circumstances of the Offense Conduct**

J. Markovich was the owner and a founder of Compass and WAR (collectively, the “Facilities”). Having presided over the trial in this case, the Court is aware that Compass is a substance abuse treatment center in Pembroke Pines that provides detoxification (“detox”) and residential treatment services for drug and alcohol addicts. Compass became operational in April 2017 and has served over a thousand patients in its detox and residential treatment programs since then. WAR, Compass’ sister entity located less than ten miles away, became operational in February 2019. WAR provides partial hospitalization, intensive outpatient, and outpatient services to addicts. The Florida Department of Children and Families (“DCF”) licenses the Facilities for service and their ongoing operations are regulated and overseen by various state entities. J. Markovich served as the CEO of Compass from April 2017 to October 2019.<sup>7</sup>

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contributed to her death. However, no such evidence has been presented or established. Unfortunately, opioid and heroin addicts have high relapse, overdose, and death rates. Quite often, this is not a byproduct of treatment at any one substance abuse treatment center, but rather, the nature of addiction. As such, there is no *per se* proximate cause or direct nexus between the deaths of these former patients and the offense conduct. Notably, J.T. died *after* completing treatment at Compass and WAR and not while a patient there; *while dating* codefendant and cooperator Mario Kustura, who provided her with the drugs she overdosed on; and *after* J. Markovich was in federal custody, having been arrested and criminally charged in this matter. J. Markovich is no more responsible for J.T.’s death than he is responsible for Mr. Kustura’s death. Mr. Kustura, as the Court is aware, unfortunately overdosed in a hotel room in South Florida on 02/27/2022, as he awaited testifying as a witness in Dr. Santeiro’s ongoing trial.

Without knowing what evidence or materials the government or these former patients will present regarding the requisite § 3771(e) elements, J. Markovich submits that the restitution hearing in this case should be continued by ninety (90) days, as provided for in 18 U.S.C. § 3664(d)(5). The government and third parties seeking restitution should be ordered to provide the defense with such restitution materials by May 1, 2022 so that all defendants and their counsel can adequately and effectively respond to these significant claims. The government previously stated that they do not oppose continuing the restitution hearing, so that the parties can handle the restitution claims with the care they deserve.

<sup>7</sup> Both Facilities remain operational to this date and are owned and managed by J. Markovich’s youngest sister, Tamar Markovich. Patients continue to be treated at both Compass and WAR, which are still reimbursed by insurance companies for patient stays. Many of the staff at Compass and WAR have been working in the addiction

In January 2021, a federal grand jury returned an indictment charging Jonathan and others with healthcare fraud, paying kickbacks to patients, and money laundering related to his role and management of the Facilities between 2017 and 2020. After a nearly twenty-day long trial, on November 4, 2021, a jury found Jonathan guilty of all charges. The heart of the government's case against Jonathan was that he committed healthcare fraud by intentionally falsely billing insurance companies for services that the Facilities, under his oversight, did not provide, were not medically necessary, or were otherwise procured through illicit means (such as having patient recruiters pay kickbacks or give incentives to patients to attend the Facilities).

Two key witnesses testified at trial for the government – codefendants and cooperators Christopher Garnto and Mario Kustura. In short, Mr. Garnto testified that J. Markovich instructed him, as lead marketer and patient recruiter, to “fill the beds” at Compass and permitted, encouraged, and facilitated patients to attend treatment at the facility beginning in 2018. Mr. Garnto stated that the monies for the kickbacks paid to patients came from J. Markovich and Mr. Wasserstein, largely in cash form. There was no evidence at trial that frequent or large cash withdrawals were made from any of J. Markovich's bank accounts, or that Compass or WAR were cash businesses. Indeed, the government's forensic analyst Jennifer Mila testified that no cash withdrawals with any frequency were made from J. Markovich's bank accounts:

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treatment industry for years and remain employed at the Facilities despite this case, such as Magie Stanley, Lori Van Valkenburg, Joseph DeSimone, Paul Buteau, Brooks Vanderbrush, and Samantha Moreno. As well, the Facilities have consistently maintained their amenities, such as outings and nail and salon care, and the “comfort drink,” now termed the “wellness drink,” is still in use at Compass.

Q. I'm talking about the other way. Did you see anything coming out of a Jonathan Markovich account in cash, in the amounts of 2,000 to \$5,000 a week that he was giving to somebody?

A. No.

Q. Okay. And if you tried to add up all the cash from the Jonathan Markovich accounts that came out, did you see anything, like, 200 or \$300,000 in cash going to any one person?

A. A one-time withdrawal for \$200,000?

Q. No. Even -- 200 or \$300,000 in cash going to one person?

A. No.

(Trial Testimony of Ms. Mila, 10/21/21, 121:1-12.)

Mr. Kustura essentially testified to the same as Mr. Garnto, but acknowledged that he (Mr. Kustura) received monies to pay patients from Mr. Garnto, not J. Markovich, and that he also gave patients drugs to test positive for illicit drugs upon admission at Compass.

The government concedes that Jonathan did not engage in such conduct with regard to all patients. Rather, the so-called "Florida shufflers" are the basis of the government's charges. Neither Mr. Garnto nor Mr. Kustura could recall which particular patients were paid to come to Compass or WAR for treatment, but both testified that a small group of repeat patients was the ones paid – not the majority of the patient population. (*See, e.g.*, Trial Testimony of Mr. Kustura, 9/23/21 at 141:17-19.) Indeed, even the government's expert, Dr. Kelly Clark, only focused on twelve (12) patient files – less than 1% of the patient population that the Facilities served – in drawing opinions as to the quality of care at the Facilities. (Trial Testimony of Dr. Clark, 10/4/2022, 199:14-20.)

Dr. Clark, not surprisingly, focused on the patients that attended Compass numerous times – and whose insurance policies were thus billed the most. According to Dr. Clark, while these twelve patients were a small percentage of the total patient population, they comprised the bulk of

patient admissions and attendance at the Facilities. Some of these twelve patients, whose names Dr. Clark could recall, are L.L., B.H., R.C., N.D. (sibling of P.D.), A.N.1, E.F., W.J., T.R., and T.F. (Trial Testimony of Dr. Clark, 10/4/21, 207:21 – 208:21.) Dr. Clark conceded that she did not know whether these patients actually became sober (in whole, in part, or at all because of Compass or WAR):

**Q. Did you ask the prosecutors for any patient files of patients who, in fact, are clean and sober today?**  
**A. No.**

(Trial Testimony of Dr. Clark, 10/4/21, 225:13-20.)

Mr. Kustura could only recall the following patients receiving money to attend treatment at Compass or WAR or given drugs prior to admission: patients Z.F., A.N.2, D.S., N. (LNU), T.B., A.N.3, A.M., H.L., B.O., and A. (LNU). (Trial Testimony of Mr. Kustura, 9/23/21, 20:21 – 21:9, 24:21-25, 44:9-16, 63:9-21.) These patients were the same ones Mr. Kustura identified as repeat patients who attended treatment at Compass and WAR multiple times. Mr. Garnto specifically stated that the following patients did ***not*** receive payments to come to Compass for treatment: patients T.R., A.N.1, E.F., N.D., T.F., A.E., and L.L. (Trial Testimony of Mr. Garnto, 10/14/21, pp. 17 – 24.) Six of these seven patients were part of the twelve patients that Dr. Clark focused on for her opinions. Dr. Clark testified that these patients did not receive adequate care and specifically faulted the physicians at Compass – Dr. Liebermann and Dr. Santeiro – for such inadequate treatment. (Trial Testimony of Dr. Clark, 10/4/21, 223:13-19.) Though not knowing J. Markovich’s role and responsibilities at Compass or WAR, Dr. Clark stated that he was liable for such care simply because he was the owner of the Facilities. (*E.g.*, Trial Testimony of Dr. Clark, 10/4/21, 16:11-19.)

Further, additional trial evidence confirmed that these repeat patients did not comprise the bulk of the Facilities’ populations. In fact, over 700 of the 1,000 patients admitted to Compass during the time period at issue were only admitted once or twice to the facility:

**Analysis of Compass Patient Admissions  
# of Patients per Admission Category**

# of Admissions into Compass	# of Patients Per Admission Category
1	561
2	175
3	99
4	46
5	32
6	32
7	10
8	6
9	6
10	1
12	3
16	1
19	1
<b>Total Number of Patients</b>	<b>973</b>

Note: 412 patients had 2 or more admissions into Compass

(DEX 583.)

As well, the majority of the population were over the age of 30 (specifically, born between 1971 and 1991) and not carried on their guardians’ insurance policies. (*Id.*)

At trial, only two patients testified for the government – patients A.S. and P.S. Both attended treatment in 2018. Patient A.S. was a “scholarship” patient, who did not carry healthcare insurance. (*See Trial Testimony of A.S., 9/24/21, pp. 126-255.*) Her boyfriend, patient J.R. (who also went by the name S.H.) carried health insurance. Patient A.S. and J.R. were well into the Florida “shuffle” before coming to Compass, having attended treatment at Serenity Ranch and learning of Compass through Mr. Kustura, a former patient and marketer for Serenity Ranch. A.S. testified that she never went to therapy at Compass, despite being confronted with and admitting to personal therapy notes about her life, and that she and J.R. got paid to attend Compass for treatment, despite having no proof or evidence of any such payment. Notably, A.S. never met J. Markovich.

Patient P.S. also was a “scholarship” at Compass for most of her stays there. (*See* Trial Testimony of P.S., 9/17/21, pp. 32 – 175.) Similar to other patients, P.S. came to Compass for other reasons, not for kickbacks or other incentives. She came to the facility with her ex-boyfriend, patient J.J., because she did not want to be separated from him. During her time there, despite her stays not being covered by health insurance, P.S. went to therapy and spoke to therapists about her drug use, emotional health, and codependency/personal relationships, and received expensive medications aimed at curbing future drug use (such as Vivitrol). Therapists at Compass even encouraged P.S. to attend a women’s only PHP after detox, to separate from J.J. (Trial testimony of P.S., 09/17/21, 132:11 – 20 and 143:23 – 145:6.) Patient P.S. also never met J. Markovich.

When Mr. Garnto was asked about paying patient P.S. or her ex-boyfriend to attend treatment at Compass, he stated that he thought the money given to P.S.’s boyfriend, J.J., may have been for cigarettes, diapers or baby formula. Mr. Garnto was not certain why he paid certain patients money: “Well, as I stated before, also, not every single dollar that went to a client was for treatment ... there were times where clients would ask to borrow money. They wanted to buy vapes. [J.J.], in particular, was very big on, like, the electronic cigarettes. I believe there’s a \$200 payment ... for baby formula for his son ... not all of these payments were to go to treatment.” (Trial Testimony of Mr. Garnto, 10/20/21, 31:17-25.)

Patients A.S. and P.S., as well as Mr. Garnto and Mr. Kustura, testified that Compass was pristine and one of the nicest facilities they had ever been to. Even Messrs. Garnto and Kustura conceded that Compass, being as nice as it was, marketed itself to patients and that kickbacks and incentives were not needed to get patients in the door. (Testimony of Mr. Kustura, 9/23/21, 253:20-23.) The evidence at trial also established that J. Markovich did not rely solely on patient recruiters for admissions to the Facilities. Rather, he spent millions of dollars to open and manage

a call center and marketing department for patient admissions. (*See* Trial Testimony of Brooks Vanderbrush, 10/26/21, pp. 233 – 265.)

In addition to these two cooperators, two former patients, and Dr. Clark, at trial the government presented evidence from a DCF representative (“rep”), two health insurance reps, and two financial analysts/experts. The DCF rep discussed the process by which the Facilities were approved for operation, the requirements/standards they must meet to operate, and the oversight that DCF provides to ensure proper and quality care provided. In sum, the insurance reps testified about the patient approval process for treatment at Compass and WAR; the amounts billed to insurance companies, and collected on, by Compass and WAR; and the auditing process for insurance approvals. Importantly, the insurance reps testified that they function as a gatekeeper to care in the addiction industry:

<p>Q. And you'd agree you guys function as gatekeepers, if you will, to prevent fraud?</p> <p>A. Yes, that is our job.</p>
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(Trial Testimony of Katherine Gallagher, 9/15/21, 61:9-11.)

The government asserts, and presented the testimony of Stephanie Peiffer and Mr. Garnto to claim, that Compass and WAR submitted doctored or fraudulent claims to the insurance companies to receive reimbursements. However, no evidence or proof of any such claim submissions were presented at trial from the insurance companies’ records. The same insurance companies mentioned in the trial continue to work with Compass and WAR and approve patient stays at the Facilities. Moreover, the government does not assert – and has presented no evidence to show – that any such alleged doctored records were the basis for claims paid out by the insurance companies.

Last, the government’s financial analysts testified about Jonathan’s bank accounts and the flow of money from Compass and WAR to those accounts. The accounts were not in others’ names, offshore, or hidden, and the money flow was traceable and identifiable. (*See* Trial Testimony of Ms. Mila, 10/21/21, 137:20–138:13.) While large amounts of money were involved, the flow of money was not necessarily “sophisticated” by any means. Moreover, the majority of Jonathan’s bank accounts were setup by Mr. Wasserstein or his associates and Mr. Wasserstein was on most of the accounts as a shared/joint holder.

### **III. The History and Characteristics of Jonathan Markovich**

#### **A. Jonathan’s Significant Family Ties**

While no particular factor under Section 3553(a) should necessarily be given greater weight than the others, considering the character of a defendant is important to potentially understand why the offense conduct occurred. To reach an appropriate, fair, and just sentence here, we submit that the Court must appreciate who Jonathan is – especially his family dynamics – as it helps to explain how it is Jonathan finds himself in this situation.

Jonathan, age 37, was born on July 18, 1984 in Metairie, Louisiana. He is the eldest son of Samuel Markovich and Susan Lozenik, who have six (6) children together. His younger brother, Daniel, age 33, is his co-defendant in this case, as his brother-in-law, Richard Wasserstein, who is married to Jonathan’s older sister, Debbie. Jonathan is married to Jasmine Zino, age 30, and they have three children together – Anel, age 4; Eliana, age 3; and Judah, age 2. Jonathan was the primary breadwinner for the family, and Jasmine has continued, post-conviction, to stay at home and care for their very young children.

To say that Jonathan is “close to” his family is an understatement. The family is of Orthodox Jewish faith and to ensure that they can spend Sabbath together, mainly live within a five-mile radius of each other. Everything they do in life – from professional to personal

undertakings – they do as a family. As the Court witnessed, Jonathan’s parents, most of his siblings, and his wife attended every single day of the trial proceedings. Their love and support for Jonathan is unwavering and continues post-conviction. Jonathan, in turn, has always been supportive of his family. Indeed, Jonathan was incredibly supportive of Debbie’s decision to marry Mr. Wasserstein, who is nearly twenty years her senior and was not the family’s idea choice for her spouse. Despite this significant age gap, as well as the fact that Mr. Wasserstein is a divorcee with other children, Jonathan supported his sister’s marital choice because he saw how happy and in love she was.

As the Court learned during the trial, Jonathan is a licensed attorney, admitted to the Louisiana and Florida bars. His legal experience is limited in practice to working for real estate attorneys and firms, both in New Orleans and Miami. Jonathan’s true passion, however, has never been the legal profession. Rather, as the oldest son in a traditional family, his goal has always been to follow his father’s example and start his own business. Indeed, Jonathan’s two role models in life are his father and Mr. Wasserstein, both self-made entrepreneurs. Jonathan has always wanted to live up to their success and provide for his family in the same manner.

To that end, Jonathan exited the legal profession in 2016, when Mr. Wasserstein approached him about a business plan. Mr. Wasserstein explained to Jonathan that he and a few investors planned to open an addiction treatment center and that if the plan was successful, hoped Jonathan would join as the CEO of the company. Mr. Wasserstein, a well-known real estate mogul in Miami Beach, further explained that since 2015, he had been searching for prospective real estate properties zoned for such a center and that he was on the cusp of securing the property. Recently obtained e-mail and text messages involving Mr. Wasserstein confirm the same, and we plan to present those during Jonathan’s sentencing hearing to refute Mr. Wasserstein’s claims to the contrary. These e-mail messages show that it was Mr. Wasserstein who spearheaded the opening

of Compass. For example, in 2015, it was Mr. Waserstein communicating with Harris Cohen and others regarding potential investment in an addiction treatment center:

----- Forwarded Message -----

To: Clau Bernal <[claudia@closings.com](mailto:claudia@closings.com)>; Harris Cohen <[Harris.Cohen@regenxmd.com](mailto:Harris.Cohen@regenxmd.com)>; Sam Lupowitz <[samlupowitz@aol.com](mailto:samlupowitz@aol.com)>  
Cc: Lorenzo Venezuela <[Sanjoaquin3355@gmail.com](mailto:Sanjoaquin3355@gmail.com)>  
Sent: Wednesday, December 2, 2015, 01:45:19 PM EST  
Subject: Fwd: Corporate Filing - [500279484185](#)

Sent from my iPhone

Begin forwarded message:

**From:** <[limitedonline@dos.state.fl.us](mailto:limitedonline@dos.state.fl.us)>  
**Date:** December 2, 2015 at 12:25:34 PM EST  
**To:** <[WAS913@AOL.COM](mailto:WAS913@AOL.COM)>  
**Subject:** Corporate Filing - [500279484185](#)

The Articles of Organization for SECOND CHANCE DETOX, LLC were filed electronically on November 25, 2015, effective November 24, 2015, as verified by this email and authentication number shown below and were assigned document number L15000198753. Please refer to this number whenever corresponding with this office.

Electronic filing and certification is provided for in section 15.16, Florida Statutes and has the same legal effect as any other filing or certificate.

----- Forwarded Message -----

**From:** Harris Cohen <[harris.cohen@regenxmd.com](mailto:harris.cohen@regenxmd.com)>  
**To:** Richard <[was913@aol.com](mailto:was913@aol.com)>  
**Sent:** Monday, December 7, 2015, 08:59:45 AM EST  
**Subject:** Re: Favorites

G good morning Richard I'll be coming by later in the day please have your girl write a check for 1000 to Jefflynn so we can use him in the near future also I receive those documents you sent those are some of the DCF documents that you need when you are requesting Diffie DCF licensing

At the time of these correspondences, Jonathan was still living in Louisiana. Nonetheless, when Mr. Waserstein asked Jonathan to come on board and join him, he willingly agreed. Jonathan deeply trusted Mr. Waserstein, not only because he is his eldest brother-in-law (and nearly 30 years his senior) but because he is incredibly successful and wealthy. Moreover, Jonathan had a desire to do more than contracts law – as a social person, he wanted to be in a business where he was connecting with people. Jonathan had also long wanted to understand drug addiction more, as his

first cousin (character witness Fraydee Lozenik's son) struggles with drug addiction. The family has tried to help him, financially and emotionally, but have never fully understood why he continues to use drugs.

As a testament to these facts and Jonathan's family and community ties and character, attached hereto at **Exhibit C** are letters from colleagues (including current Compass and WAR employees) and Jasmine Markovich on Jonathan Markovich's behalf. Other letters from community members, including rabbis and Jonathan's former employer in Louisiana, were already submitted directly to the Court. The sentiments in these letters are consistent and strong: Jonathan may be guilty of serious crimes, but he is not a bad or evil person. He is a devoted father, husband, son, brother, family member, and friend. Within the community, he is respected, trusted, and admired.

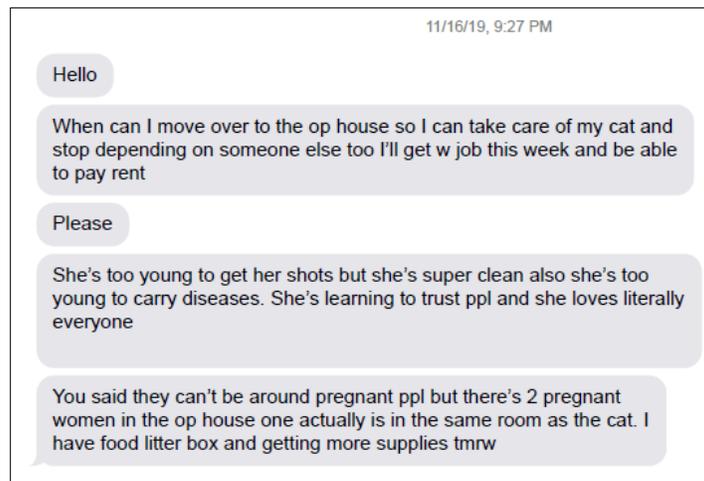
**B. Jonathan Markovich is Deeply Loved and Respected – Even by the Patients of Compass and WAR.**

More importantly, former patients of Compass and WAR consider Jonathan kind, compassionate, and charitable. These are not just former patients who came to the Facilities once, twice, or even a handful of times. Rather, the patients that hold this view of Jonathan are part of the very "core" group of former patients that the government has based their prosecution on. Referenced earlier in footnote 5, attached at **Exhibit B** are letters from the following so-called "Florida shufflers" that the government alleges are "victims" of Jonathan's acts: B.H., T.B., B.O., P.D., and A.N.2. Notably, all of these former patients were supportive of Jonathan during the trial, but could not testify due to drug use/relapse, outstanding state warrants related to their drug use, or other concerns (such as pregnancy, newborns, etc.). In addition to these letters, we interviewed

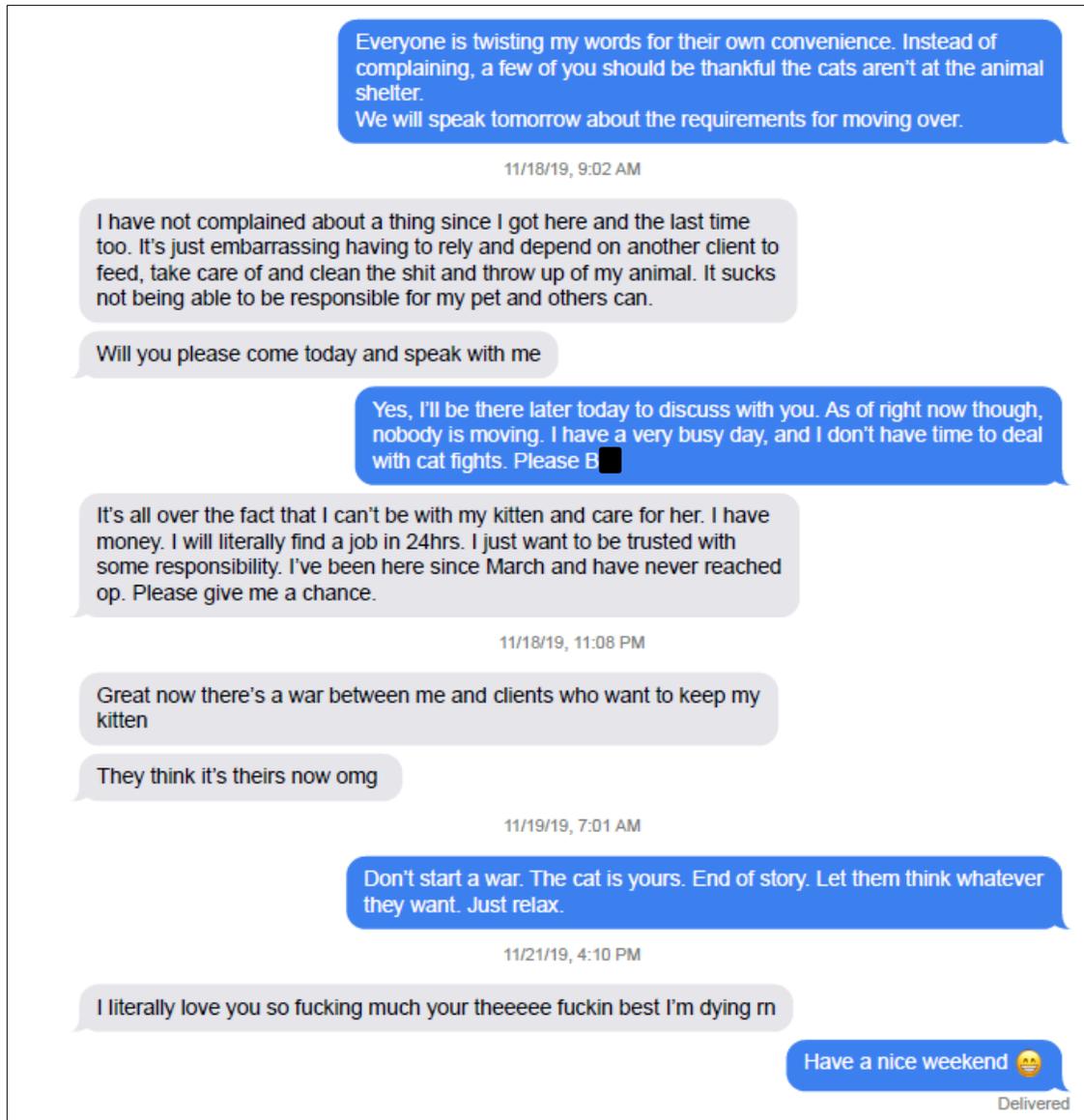
several former patients who fear testifying in-person in Court, but wanted their stories heard at sentencing: patients L.L., C.C., D.W., D.S., and A.N.3.<sup>8</sup>

Also, text message exchanges between J. Markovich and some of these former patients – while they were at WAR or after completing treatment – are being submitted to the Court and government under seal. These messages provide perspective on the type of business owner Jonathan was. Indeed, in her letter supporting Jonathan, former patient B.H. mentioned that Jonathan permitted her to keep a cat at WAR, which no other facility would. She acknowledges the seemingly triviality of this, but explains that the cat was part of her recovery and sobriety. The cat is still her pet and accompanies her on her sobriety journey.

In her text messages with Jonathan, B.H. indeed communicated with him about this cat, which shows the truth about Jonathan’s kind character and the environment he was managing at the Facilities (*in gray, on the left, are patient B.H.’s text messages and in blue, on the right, are Jonathan’s*):



<sup>8</sup> The patients supporting Jonathan are the ones that the government mentioned the most, by far, during the trial. A review of the trial transcripts show that B.H. was mentioned at least 96 times; L.L. was mentioned at least 160 times; T.B. was mentioned at least 30 times; B.O. was mentioned at least 25 times; P.D. (or his sister patient N.D.) were mentioned at least 20 times; A.N.2 was mentioned at least 25 times; A.N.3 was mentioned at least 30 times; D.S. was mentioned at least 15 times; M.W. (or her brother patient R.W.) was mentioned at least 20 times; and D.W. was mentioned at least 20 times. Moreover, GEX 702 is the government’s chart of “top billed patients” and lists B.H., L.L., T.B., A.N.3, and M.W. The government relies on this chart towards its loss determination.



Because such messages contain hearsay, they were not presented/admitted at trial. But contrary to the “sampling” of WhatsApp chats that the government presented at trial, these iMessages tell the real story of the dynamics between Jonathan and many of the “core” patients. For instance, below is a snippet of Jonathan’s conversations with L.L., who was, by far, the most mentioned patient in the trial (*in gray, on the left, are patient L.L.’s text messages and in blue, on the right, are Jonathan’s*):

I just wish there was something I could do like even call center wise in the mean time until I come down there so I could start saving now

I can understand why you would think that, especially being down here for so long, but we actually care about you, client or not - always did and always will.

We've had several conversations on how great life can be once you decide to be serious about your recovery. And although I always knew you wouldn't listen, I had to keep giving you those speeches :)

But I'll speak to Daniel tomorrow and figure something out for you. He's usually more skeptical because I always want to help everyone, and it usually ends up with him saying "I told you so." But in this case, we both believe you can do great given the right opportunity. You deserve a shot, so I'll let you know!

I wish I had the answer for your dad's behavior, but I don't. Hopefully one day he'll come around...

1/6/20, 10:07 AM

Well I'm happy you did give me those speeches because every time I got one it would go to the back of my mind each time and I used those while getting clean this time. I've never had more than a couple weeks clean. Now I have six months and can't even imagine going back. Thank you guys so much for believing in me. I know that I can do it. Especially having been at compass so many time I know what to expect and what to mirror.

And yeah maybe, but I don't want to be here to wait around hoping that one day he does.

And I don't remember if I said this but you've always been there for me and gave me chance after chance and I'll never be able to thank you enough for that.

1/6/20, 3:11 PM

This is what I wrote:

It's my pleasure.

And let me just say, I know you can't guarantee sobriety forever, things sometimes happen, it's life.

All I ask is that you let me know if you ever feel too stressed from work, or life, or whatever it is, so we can tackle the issues together.

As you know, I've put my name on the line for several people in the past, and 99% of them have failed, and I look like a fool.

It doesn't mean I'm going to stop, because everyone deserves a chance at a better life, but I'm much more selective, and not involved in Compass and WAR like I used to be. I had to separate myself from the clients because it was too emotionally exhausting for me trying to save everyone.

Bottom line, just do your best, and know that no matter the situation, you can always reach out for advice and emotional support.

Also, patient T.B.'s messages with Jonathan show that the Markoviches did not permit illegal drug use at Compass or WAR (*in gray, on the left, are patient T.B.'s text messages and in blue, on the right, are Jonathan's*):

6/30/19, 8:21 PM

Hey are you gonna be at the center tomorrow?

I will be, yes ma'am.

Good cause I'm really not tryna lose my shit right now

Put yourself in a box. Focus only on yourself for the night.  
#stayawayfromdrama

I'm trying to but [REDACTED] and [REDACTED] keep making comments indirectly , I'll be outside with the techs and they come out sit right by me to say something

Just smile...you've gotten too far to have a blow up. And remember, just a little while ago you were part of that immature group making stupid comments. Congrats for being on the other side!  
We're cleaning out house again these next few days...just be patient and keep doing the right thing.

I know trust me I'm really trying to keep it together, everyone getting High and still being here is just a lot to take in and I just don't like having to look over my shoulder. And knowing people are faking uas I just don't wanna end up doing something stupid cause I almost did when Mario asked me if I wanted too and now it's happening all over again

[REDACTED] your future is in your hands. You're the only one that controls whether you're going to do something stupid or not. Today it's drugs, tomorrow it'll be something else. What type of life do you want?  
  
People can try to fake UAs and believe they're getting away with it, but as you should realize, I don't make impulsive decisions. I strategize, I execute, and I catch everyone - with proof so there can be no defense or excuse.  
  
The truth will ALWAYS come out! And you know damn well we're not sitting around allowing it to happen.

I'm not worried about getting high im worried about the people who are doing good . With all the tension I wouldn't be surprised if [REDACTED] swung on me to try to get me out. I want the best life believe that I'm trying to do everything different this time. And your right I forgot you do it that way. I'm tryna to stay out of anything possible

Please do so, because we actually have your back this time around since we value all the info you share with us to help keep the community a clean.  
It will be handled. Stay away from all of them.

Thank you I really appreciate that I'm doing what I can and I will

Similarly, patient letters or cards sent to Compass or WAR from former patients between 2017 and 2020 were not admitted at trial, but will also be filed and submitted under seal for consideration at the Markoviches' sentencings. They are equally telling about the Markoviches' character and type of Facilities that Compass and WAR are.

There is one consistent thread throughout these letters and video recordings in support of Jonathan: these former patients do not consider themselves victims of any harm by Compass, WAR, or J. Markovich. Rather, many, such as T.B., B.H., A.N.2, P.D., D.W., and N.S. state that Compass and WAR saved their lives – and that Jonathan played a big role in personally saving them. This is an important sentencing consideration because the government has gone to great lengths to attempt to show that Jonathan did not care about the patients at the Facilities. According to the government, Jonathan was simply a greedy man, ambivalent to the plight and pain of addicts. But the evidence at trial did not show that Jonathan was a cavalier and heartless man who abused patients – and the words of the patients themselves do not support that theory. Former Compass case manager and government witness Stephanie Peiffer even recalled that Jonathan went out of his way to help patients get jobs upon leaving treatment, even having his family's home get robbed by a former patient (N.W.) that they employed. (Trial Testimony of Ms. Peiffer, 9/30/21, 167:17-168:25.)

Moreover, these patients do not even realize that their lives, addiction history and treatment at Compass and WAR were so heavily discussed at trial. Counsel for Jonathan and Daniel Markovich have communicated with these former patients since the summer of 2021 and they are shocked that the government has relied on their medical records to tell a story about them that many find largely untrue. Many do not even realize that they are the current subject of the trial against Dr. Santeiro. (*See* Trial Testimony of Dr. Liebermann, 3/14/2022.) As Dr. Clark herself testified, a patients' ZenCharts file does not tell the full story of their experiences. (Trial

Testimony of Dr. Clark, 10/4/21, 200:19-202:22.) It is only a part of their medical history – not necessarily the truth of their addiction, relapse, and recovery journeys, as the letters and videos attached hereto attest. These former patients do not see Jonathan as the pariah that the government paints him out to be; instead, many see him and Compass as their savior.

#### **IV. Rehabilitation, Deterrence and Recidivism**

The risk of Jonathan Markovich reoffending is highly unlikely. Specifically, the Sentencing Commission’s report, “Measuring Recidivism,” offers a statistical analysis of the type of person most likely and least likely to re-offend. Jonathan poses no risk to re-offend and he is not in need of rehabilitation. Jonathan has already lost so much since November 4, 2021 – his reputation; his ability to work and provide for his family; most likely, his professional legal/bar licenses; and most importantly, the ability to see and be with his very young children, Eliana, Adel and Judah. As his wife Jasmine states in her letter, Jonathan made it home every night, albeit very late, to put his children to sleep. They now constantly ask for their father and are confused why he has been gone away for so long. The impact on these children from a loss of a father is catastrophic. (**Exhibit D:** DOJ report on the impact of parental incarceration on children, <https://nij.ojp.gov/topics/articles/hidden-consequences-impact-incarceration-dependent-children>.)

Jonathan knows this and, frankly, it is tearing him apart. Given the upbringing he had, and the familial and parental support he has received throughout his life, for Jonathan to be absent from his children’s rearing is the greatest tragedy and punishment of all. Jonathan and his children have already suffered shattering consequences, such that a lengthy sentence is unnecessary and will not provide further specific deterrence. Jonathan has learned hard lessons from this case, and will not risk jeopardizing his family life ever again.

Moreover, with respect to general deterrence, as patient D.W. stated in his video testimonial, the federal healthcare fraud and sober homes cases brought in South Florida have already done their job here: the sober homes businesses are now shifting to other states, such as Texas (and still, California), where federal prosecutions lack. A sentence exceeding 84 months is a harsh punishment – and one that is sufficient to deter criminal conduct and send a clear message in our community. To go beyond that provides no more general deterrence for the offense conduct at hand.

#### **V. The Minimally Sufficient Sentence**

Section 3553(a)(2) identifies four purposes a sentence should serve. The sentence imposed should reflect the seriousness of the crime; promote respect for the law; provide just punishment; afford adequate deterrence to criminal conduct; protect the public from further crimes of the defendant; and provide the defendant with needed educational training, medical care, or treatment in the most effective manner. Given these considerations, we respectfully submit that a sentence of no more than 84 months is appropriate and adequately fulfills the purposes of sentencing.

As noted, Jonathan presents no risk of recidivism. He has a strong family, is educated, and can reenter society without concern of reoffending. There are no facts showing that he would reoffend. General and specific deterrence is amply served by the already severe impositions as well as the many consequences Jonathan has faced. *See, e.g., United States v. Speed Joyeros, S.A.*, 204 F. Supp. 2d 412, 439-40; *United States v. Redemann*, 295 F.Supp.2d 887, 894-97 (E.D. Wis. 2003); *United States v. Gaind*, 829 F. Supp. 669, 670-71 (S.D.N.Y. 1993).

#### **VI. The Need to Avoid Disparate Sentences for Similar Conduct**

There should be proportionality among the sentences and/or punishment of similar defendants for similar conduct. The statutory mandate that punishment be just and promote respect for the law incorporates the principle that “punishment should correlate with culpability . . . .”

This means that in appropriate cases, a court has discretion to “align codefendants’ sentences somewhat in order to reflect comparable degrees of culpability.” *United States v. Martin*, 520 F.3d 87, 95 (1st Cir. 2008). In addition, courts are directed to consider the need to avoid unwarranted sentence disparities among defendants found guilty of similar conduct in other cases. Nationally, the average federal sentence for healthcare fraud is 30 months and for money laundering, 67 months. (See **Exhibits E and F**.)

We are mindful that not all healthcare fraud and money laundering cases are similarly situated. Yet, we do not need to look far to find similar cases to this one. South Florida is the hotbed of DOJ healthcare fraud and sober homes prosecutions. Importantly, other defendants who have been sentenced in our District for the same charges – but for far egregious and abusive conduct – have received sentences steeply lower than what Jonathan faces. The same FBI task force and DOJ prosecutorial team here prosecuted many of these defendants. Below is a summary of three of those cases, the offense conduct involved, and the sentences that the defendants received. Notably, unlike the situation here, the defendants in the below cases did not have throngs of patients supporting them at their sentencing hearings. Moreover, unlike J. Markovich, in none of these cases did the owners spend millions to upkeep the facilities, provide additional amenities for patients, or build a call center/marketing department aimed towards reducing the use of patient recruiters. What Compass and WAR are, and who Jonathan is, stands in stark contrast to these cases.

- **Serenity Ranch Treatment Center case - 19-cr-60200-Moreno(Cohn)**

The Court heard a great deal of testimony in J. Markovich’s trial about “Serenity Ranch.” In fact, the term “Serenity Ranch” was mentioned over 100 times in the Markoviches’ trial. Serenity Ranch was a treatment center owned and operated by Sebastian Ahmed (CEO) and his brother Al (COO), who were both federally charged with various healthcare fraud and money

laundering violations. As the trial evidence established, by all accounts, Serenity Ranch was the place an addict went to for kickbacks and drugs – not for treatment. Patients recalled that Al provided money and illicit drugs to patients and had sexual relations with them, even fathering a child with a former patient. Despite Serenity Ranch’s terrible treatment of patients, Sebastian, who profited the most from the scheme, received a sentence of seventeen (17) years’ imprisonment following his conviction after a six-week jury trial. (*See* DOJ Press Release, “CEO, CFO, President, and Owner of Sober Homes Network ‘Serenity Ranch Recovery’ Sentenced Following Conviction at Trial,” 10/30/2020, available at <https://www.justice.gov/usao-sdfl/pr/ceo-cfo-president-and-owner-sober-homes-network-serenity-ranch-recovery-sentenced> (last visited on March 14, 2022).) Al Ahmed, the defendant who gave nearly all patients money and illegal drugs and had sex with female patients, received a sentence of ten (10) years of imprisonment.

- **Reflections Treatment Center case - 17-cr-80013-Middlebrooks**

Kenny Chatman, the president of Reflections and a prior felon, was federally charged with healthcare fraud as well as sex trafficking for his operation of sober homes facilities in Palm Beach County. On the sex trafficking charges alone, Mr. Chatman could have received a life sentence. In fact, at his sentencing hearing, the government stated that Mr. Chatman operated the “most dangerous” sober homes in South Florida. From start to finish, Mr. Chatman was never interested in helping addicts. Indeed, Mr. Chatman and his wife concealed Mr. Chatman’s felony conviction in order to operate the sober homes. Once opened, the sober homes openly paid kickbacks to induce patients to attend treatment, provided no treatment services whatsoever, converted patients into prostitutes, failed to report overdoses that occurred in the homes, and provided urine samples to be billed to insurers that were not patient samples (but rather, at Mr. Chatman’s direction, employees’ urine samples).

By all accounts, Mr. Chatman's sober homes were drug-infested flophouses and the female addicts were forced into prostitution. If the females did not want to comply, Mr. Chatman would withhold their illicit drugs, which he openly provided to them. Despite this deeply offensive and harmful conduct, Mr. Chatman was not sentenced to life, but 27 years' imprisonment. His wife and fellow owner were sentenced to three (3) years' imprisonment. (See DOJ Press Release, "Owner Sentenced to 27 Years in Prison for Multi-Million Dollar Health Care Fraud and Money Laundering Scheme Involving Sober Homes and Alcohol and Drug Addiction Treatment Centers, Wife and Fellow Owner Sentenced to 3 Years in Prison," May 17, 2017, available at <https://www.justice.gov/usao-sdfl/pr/owner-sentenced-more-27-years-prison-multi-million-dollar-health-care-fraud-and-money> (last visited on March 14, 2022).)

- **Real Life Recovery Treatment Center case - 18-cr-80111-Rosenberg**

Eric Snyder, the owner, manager, and mastermind of these sober homes facilities and scheme, was sentenced to ten (10) years' imprisonment after facing federal healthcare fraud and money laundering charges. Two patient recruiters working for Snyder were sentenced to 18 months and two (2) years. Similar to Jonathan, Mr. Snyder was in his 30's and a father to a young child at his time of sentencing, which the Court strongly considered in varying downward. At that sentencing hearing, the government (represented by Mr. Hayes) stated that the defendants in the case were "a scourge in the community" because they were former drug addicts themselves. As such, they knew how to lure patients in and what weaknesses addicts held. Indeed, one of Snyder's codefendants was described as a "junkie hunter," who trolled AA meetings and "crack" motels to find patients.

In addition to potential sentencing disparities with other defendants sentenced in federal sober homes prosecutions, there is a concern in this case that inequitable and disparate sentences will result among Jonathan and his codefendants. While Jonathan faces a life sentence, the

government has agreed to the following sentences for his codefendants: Mr. Waserstein – 41 months, plus the ability to cooperate; Mr. Garnto – a capped loss amount of \$9,000,000 and the ability to cooperate, likely resulting in a sentence lower than five years’ imprisonment; and Mr. Liebermann – 9 years’ imprisonment. None of these sentences are on par with what the government is recommending for Jonathan. Though the government will likely argue that Jonathan is the main culprit in the scheme, that is simply and utterly not true.

Rather, the person who put this entire scheme into motion and profited the most from it is Mr. Waserstein. Mr. Waserstein and his friends, including co-defendant Drew Liebermann (who is Mr. Waserstein’s cousin), comprised the group of core financial investors for Compass. Jonathan had no way of securing such financial backing – and was never even asked to. From the beginning, Compass was all Mr. Waserstein’s idea. Indeed, Mr. Waserstein had connections to others in the addiction treatment industry, such as Harris Cohen, Dennis Sarveigo, and Adam Adler, and orchestrated all of the introductory meetings and plans for the business.

Mr. Waserstein also drew up all of the financial contracts involved. In addition being a successful real estate entrepreneur, Mr. Waserstein is a highly successful and experienced real estate attorney. He runs his legal practice out of Bal Harbor and owns significant real property in Miami. At no point in this process did Jonathan question Mr. Waserstein’s judgment or decisions. In fact, even when he became the CEO of Compass, Jonathan never questioned Mr. Waserstein and allowed him to make all of the legal and financial decisions for the company. Given the family dynamics and the nature of their relationship, Jonathan did not even think it was within his right to question Mr. Waserstein. For Jonathan, he thought this was a great business opportunity and a chance to prove to his family that he was successful. For this first time in his life, he was what his father and brother-in-law expected he would be: a successful entrepreneur.

Although Mr. Wasserstein, as part of his recent and ongoing cooperation with the government, claims that Jonathan knew more about the operation of the Facilities and the crimes involved than he (Mr. Wasserstein) did, that is also not true. Mr. Wasserstein located the real estate for an addiction center years in advance of Jonathan even being in South Florida. For a long time, Mr. Wasserstein had his eye on opening a substance abuse treatment center, knowing that it was a highly profitable industry. When Compass and WAR opened, Mr. Wasserstein constantly checked on the Facilities' "bed count," promoted ideas to "keep" patients around (such as giving them iPhones and iPads, which Jonathan and Daniel refused to do), and came up with the idea of taking patients out on the yacht, which he purchased and financed. For example, the government produced the call logs and text messages between Mr. Wasserstein and Baron LeBourgeois, the former information technology manager at Compass and WAR, as part of the case discovery. Those text messages show that Mr. Wasserstein constantly texted Mr. LeBourgeois to know what the headcount was at the Facilities, as well as other information about patient care and the Facilities' operations, as seen below:

Apr 4, 2017, 10:09:13 AM Central Time: rikarz: Baron good morning.  
 Apr 4, 2017, 10:09:21 AM Central Time: rikarz: Any new patients today ?  
 Apr 4, 2017, 10:10:20 AM Central Time: Me: i know one came in around 1AM im not sure about recently  
 Apr 6, 2017, 1:32:26 PM Central Time: Me: u have an email from yougotmail@compass i need u to open it and click the verification link and press ok  
 Apr 6, 2017, 6:32:47 PM Central Time: rikarz: Ok  
 Apr 6, 2017, 6:32:55 PM Central Time: rikarz: What's that for ?  
 Apr 6, 2017, 6:33:01 PM Central Time: rikarz: Any more patients  
 Apr 6, 2017, 6:33:21 PM Central Time: Me: none yet, thats so i can forward mail to u on aol  
 Apr 6, 2017, 6:33:39 PM Central Time: Me: just got a msg from chris about someone  
 Apr 6, 2017, 6:36:53 PM Central Time: rikarz: Ok  
 Apr 6, 2017, 6:36:58 PM Central Time: rikarz: Let me find it  
 Apr 6, 2017, 6:36:59 PM Central Time: rikarz: Thanks  
 Apr 6, 2017, 6:41:42 PM Central Time: rikarz: Done

Labels: [Text](#), [Inbox](#)  
 User Deleted: False

Apr 8, 2017, 11:13:00 AM Central Time: rikarz: Hey baron  
Apr 8, 2017, 11:13:06 AM Central Time: rikarz: Any new patients  
Apr 8, 2017, 11:13:07 AM Central Time: rikarz: ?  
Apr 8, 2017, 12:16:00 PM Central Time: Me: yes

Labels: [Text](#), [Inbox](#)  
User Deleted: False

Oct 7, 2017, 7:40:11 AM Central Time: Me: Richard Denny's hasn't been paid in like 2 weeks I'm trying to run a 3 Grand bill and it's not going through  
Oct 7, 2017, 7:40:31 AM Central Time: Me: I can't get in touch with anybody who is supposed to be paying this can you ask Debbie  
Oct 7, 2017, 9:09:06 AM Central Time: rikarz: Debbie is  
Oct 7, 2017, 9:09:31 AM Central Time: rikarz: According to eli the Manager of the store the payment is due the 16th  
Oct 7, 2017, 9:10:00 AM Central Time: rikarz: Who is telling you this  
Oct 7, 2017, 1:03:35 PM Central Time: Me: The old guy at Denny's said we were supposed to pay and haven't  
Oct 7, 2017, 1:08:43 PM Central Time: Me: He rang me up for 3000 and said it would cover up to the 15th

Labels: [Text](#), [Inbox](#)  
User Deleted: False

Mr. Wasserstein, more than anyone involved in this scheme, was all about the money. Contrary to Jonathan, that is all has ever cared about. To this end, Mr. Wasserstein ensured he would make the most profit from the Facilities – and he did. He guaranteed this outcome by drafting the contracts governing investor payouts and ownership fees. Mr. Wasserstein arranged to be paid the same monthly ownership and management fee as Jonathan, in addition to his large and frequent investor payouts. Further, Mr. Wasserstein did not lend his yacht to the Facilities for patient outings out of the goodness of his heart, but profited from these outings by charging the Facilities at least \$3,000 to rent the boat for four (4) hours. There is no doubt that Mr. Wasserstein was this actively involved in the Facilities' operations because he had the most incentive to do so – to ensure that the investors, mostly his friends, would be satisfied with the Facilities and receive high returns year-after-year.

Jonathan submits that the government's willingness to sentence Mr. Wasserstein to a 41-month sentence should be considered as this Court sentences him. Jonathan does not deserve a life sentence – or a sentence beyond 84 months' imprisonment – when the government has agreed

to a sentence of three (3) years for Mr. Wasserstein, given all that Mr. Wasserstein did to set the offense conduct in motion. Such a sentencing disparity would be a grave injustice.

Moreover, this proposed sentence is reasonable given the joint sentence recommendation that the government has agreed to for Dr. Liebermann. Dr. Liebermann ran the medical department at Compass and was single-handedly responsible for the alleged over-prescription of medications. Indeed, the government's own expert, Dr. Clark, stated the following with respect to Dr. Liebermann's role in the scheme:

Q. So it's fair to say you're offended by what Dr. Lieberman did in his practice.

A. That is an offensive practice, yes.

Q. And likely offended by what Dr. Santeiro did in his practice.

A. Yes, giving these kinds of medicines to patients without monitoring them.

Q. You know that Jonathan Markovich is not a doctor, correct?

A. Yes. Correct, I know that.

Q. You know that Jonathan Markovich has no medical training whatsoever, actually.

A. Yes, I know that.

Q. Okay. Now, not just the comfort drinks, but all the medications -- doctors are the ones responsible for prescribing that, yes?

A. Yes.

Q. And doctors are the ones for implement -- responsible for, excuse me, implementing a treatment plan, correct?

A. For developing it and -- yes.

Q. And monitoring it too, yes?

A. They're one of the folks that monitor it, yes.

(Trial Testimony of Dr. Clark, 10/4/21, 220:3-23.)

Clearly, without Dr. Liebermann's approval, patients at Compass and WAR would not have received the medications that the government alleges they did. The "compass drink" was in fact the brainchild of Dr. Liebermann, who touted it as an amazing idea for a long time:

14	BY MS. DE BOER:
15	Q. Dr. Lieberman, I'm showing you previously admitted
16	Government Exhibit 802B. What's this?
17	A. This is something that I created, something called the
18	"comfort drink".
19	Q. Who invented?
20	A. I did.

(Trial Testimony of Dr. Liebermann, 03/14/2022, 3:15-20.)

Jonathan should not receive a sentence higher than Dr. Liebermann's when he was not the medical professional approving patient stays, signing patient charts, or prescribing patient medications. Jonathan is not a doctor, let alone a board-certified anesthesiologist. Dr. Liebermann should be held to much higher standards of care and treatment than Jonathan.

### **CONSIDERATIONS SUPPORTING A DOWNWARD DEPARTURE**

As explained above, a consideration of Section 3553(a) factors yields numerous general grounds supporting a "guidelines variance." These include:

1. Jonathan's unblemished history of lawful behavior. *See, e.g. United States v. Lam*, 20 F.3d 999, 1003-05 (9th Cir. 1994).
2. Jonathan's family considerations, particularly his role as a father to three very young children. *See, e.g. United States v. Leon*, 341 F.3d 928 (9th Cir. 2003).
3. The fact that prison time affects a person like Jonathan (*i.e.* a first time offender) more significantly.
4. That imprisonment is inappropriate for first-time offenders like Jonathan where the crime is non-violent.
5. Jonathan's otherwise outstanding character and the absence of risk of recidivism. *See, e.g., United States v. Nellum*, 2005 WL 300073 (N.D. Ind. Feb 3, 2005).

6. The sentencing disparities between the sentencing Jonathan is facing, and what the government is recommending, versus the sentences other defendants in similar cases have received (and the sentences that the government is advocating for Jonathan's codefendants).
7. The fact that the "core" patients in this case do not support Jonathan being incarcerated and do not see themselves as victims of any harm.

In addition to these general considerations for a downward variance, the court should also consider a downward departure. Whether to depart from the sentencing guidelines is a decision that requires a district court to make both factual and legal findings. Under 18 U.S.C. § 3553(b), a district court may depart from the applicable guideline range if "the court finds that there exists an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence different from that described." Thus, to depart from the sentencing guidelines, a district court must make two fundamental determinations: (1) what, if any, factor makes the case "atypical" (*i.e.*, unlike the typical case found under the applicable sentencing guideline), and (2) should that factor result in a different sentence. *Koon v. United States*, 518 U.S. 81, 91 (1996). The first of these determinations is factual in nature, *id.* at 97, while the second involves both legal and factual considerations, *id.* at 98.

**I. Jonathan is Situated Differently from Other Sober Homes Owners and Offenders.**

Throughout the trial, one of the government's themes was that Compass and WAR were just like other sham detox and addiction treatment facilities in that the owners of such facilities simply want to make money off a plaguing opioid crisis and vulnerable population. The government frequently cited Serenity Ranch as a reference in this regard and made comparisons, throughout the trial, between Compass and Serenity Ranch. Serenity Ranch, as stated above, was mentioned over 100 times during the Markoviches' trial. (*See, e.g.*, Trial Transcripts, 9/23/21,

125:6-9, 125:21-126:22, 148:25-149:8, 210:1-212:6 and 9/24/21, 92:19-93:13, 98:7-15, 102:21-103:19, 138:2-11, 170:7-16, 174:9-175:17, 193:19-195:7, and 215:20-217:19.)

As explained above, Jonathan is nothing like the owner and managers of Serenity Ranch, Sebastian and Al Ahmed. Patients P.S. and A.S. even conceded that the conditions at Serenity Ranch were “deplorable” and “disgusting.” (Trial Transcript, 9/24/21, 193:19-195:7.) Patient P.S. called that facility a “trap house,” which is a colloquial reference to a location that sells drugs and often permits drug users to use on-site. Moreover, A.S. stated that Al Ahmed openly bribed and drugged patients, and have sex with patients. To the contrary, A.S. never heard of Jonathan until being prepped by the government for the trial and always thought that Mr. Garnto was the owner of Compass. (Trial Testimony, 9/24/21, 218:6-9.)

Though the jury’s verdict and sentencing guideline calculations do not reflect this, Jonathan opened Compass to help addicts. The government does not dispute this, nor can they. Nor has the government presented evidence showing that Jonathan did not believe Compass and WAR were helping addicts get better. The government’s own witness, Ms. Peiffer, stated that she personally recalled the speech that Jonathan gave the staff when the facility opened, referencing his cousin’s addiction and desire for Compass to be a refuge for addicts seeking real treatment. (Trial Testimony of Ms. Peiffer, 9/30/21, 143:19 – 146:21; 167:20-171:3.) Ms. Peiffer also recalled that Jonathan, “naïve” about the manipulative behavior of addicts, would sit in the courtyard to talk for hours on end when Compass opened, to meet patients, talk to them, and hear their stories. (*Id.*) Compass employee Lori Valkenburg also recalls the same. (*See Exhibit C.*) Indeed, it is in this setting that Jonathan met and played chess with patient P.D., who has submitted a letter of support for Jonathan. (*See Exhibit B.*)

The government also consistently implied that many aspects of Compass and WAR were illegal, when in fact they are legal and competitive trends in the addiction treatment world. For

example, the government implied that permitting couples to be treated at the same facility is somehow wrong, or that Compass and WAR was responsible for patients' "med seeking" behavior. (*See, e.g.*, 9/23/21, 176:7-177:10.) Scholarshipping patients, allowing couples to attend treatment together, and providing amenities, such as nail services and yoga, for patients is not illegal. Doctors may differ on whether such services *should* be provided for addicts – but they are not prohibited. Notably, many former patients in their supportive letters and videos state that they would rather "be on the street" than in detox getting help if their partner could not come with them. Being homeless on the street, using drugs and risking overdose is not a better option to permitting couples to attend treatment together. Also, patient referrals between facilities is not illegal. Facilities can refer patients to each other, provided there are no payments made for patient referrals. Ms. Peiffer did so as a care manager, prior to WAR opening, by sending patients to Sober Life, where she had a contact she trusted. (*See* Trial Transcript, 9/30/21, 157:7-158:6.)

Likewise, Jonathan is not responsible for patients' "med seeking," desire to stay in the Florida shuffle, or downward spirals. Addiction is hard. Jonathan recognizes that. The statistics for survival are abysmal and harrowing for a reason – addicts relapse and sometimes they do not survive. To say that Jonathan is personally responsible for this aspect of addiction is not an accurate reflection of the facts at hand or the nature of the disease. What became clear from the trial – and the former patients letters and videos – is that nobody but an addict can understand the actions – albeit illogical and self-destructing at times – but for another addict.

## **II. Jonathan's Conduct was not "Sophisticated" or Complex.**

This case is also different from other economic crimes and fraudulent schemes in that the money laundering and overall alleged "fraud" is not particularly sophisticated or complex. Rather, the basis for the complaint and indictment appear to be the Facilities' own ZenCharts records and various former patients' social media accounts. ZenCharts included all of the therapy and group

notes or, as the government would say, the absence thereof, as well as all of the changes made to patient records. The admission of couples to the Facilities and the practice of permitting scholarshipped patients was documented in ZenCharts – that is how the government even knows it occurred. These files are electronically stored and in plain view. Also, the yacht outings and comfort drinks were widely known and open, and discussed on social media. Compass and WAR were even “tagged” in the social media postings. The yacht was named “Second Chance,” the business name of the Compass is incorporated under. None of this conduct was “sophisticated,” complex, or hidden, as acknowledged by Dr. Clark:

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I'm simply asking: They're in the file, and they're open.  
They're not hidden, are they?  
A. No, they're in the medical record.  
Q. Right. Because that's how you got to look at all this.  
Compass and WAR -- you have access to ZenCharts, right?  
A. Yes.
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(Trial Testimony of Dr. Clark, 10/4/21, 227:13-18.)

Further, the so-called money laundering here consisted of Mr. Wasserstein and Jonathan setting up various bank accounts – in their own names or tied to them, and all in the United States – to transfer monies for taxation and financial purposes. That conduct is not illegal or sophisticated; instead, that is what entrepreneurs and smart businesspersons do. But-for the funds being tied to the healthcare fraud charges, there is nothing criminal about their financial affairs. This is not a “heartland” money laundering case by any stretch of the imagination. *See* U.S.S.G. ch.1, pt. A, intro. comment. 4(b). A typical money laundering case sees money “washed” and then transferred, making the funds difficult to trace and giving them appearances somewhat different from what the funds started as. That is not the case here. All monies were easily traceable. Almost all of the

monies are accessible to the government because they are sitting in various accounts they government could easily locate.

Application Note 5 to U.S.S.G. Section 2S1.1 provides guidance as to what constitutes “sophisticated laundering,” stating it is “complex or intricate” conduct that “typically involves the use of:

- (i) fictitious entities;
- (ii) shell corporations;
- (iii) two or more levels (i.e., layering) of transactions, transportation, transfers, or transmissions, involving criminally derived funds that were intended to appear legitimate; or
- (iv) offshore financial accounts.”

Additionally, for “purposes of subsection (b)(10)(C), ‘sophisticated means’ means especially complex or especially intricate offense conduct pertaining to the execution or 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.”

Clearly, under these parameters, the money laundering involved here was neither sophisticated nor involving sophisticated means. It turns out that only a very marginal percentage of money laundering cases (<7.5%) are subject to the Sophisticated Laundering enhancement. The enhancement is highly criticized because it leads to overly severe sentencing, boosting what are already high sentences by an additional 25%. Jonathan created no fictitious entities or “shells” for money to flow through. There was no layering of transactions. There were no offshore accounts.

There were no accounts in others' names. The facts of this case fall far short of conduct deserving of the enhancement.

### **III. The Loss as Computed by the Guidelines Overstates Jonathan's Culpability.**

Even under the mandatory guidelines regime, a departure where the loss substantially overstates the culpability of individual defendants is an "encouraged" ground for departure. *See* U.S.S.G. § 2B1.1 Application note 19(C). Courts have departed and/or varied in many cases where the criminal conduct initially was not organized and implemented specifically as a fraudulent scheme by the defendants and/or the defendants did not directly benefit from the fraud or benefitted from it to a much lesser extent than the loss figure would otherwise indicate. *See United States v. Hill*, 643 F.3d 807, 848 (11th Cir. 2011); *United States v. Broderon*, 67 F.3d 452 (2d Cir. 1995); *United States v. Nachamie*, 121 F. Supp. 2d 285 (S.D.N.Y. 2000); *United States v. Forchette*, 220 F. Supp. 2d 914 (E.D. Wis. 2002); *United States v. Costello*, 16 F. Supp. 2d 36 (D. Mass. 1998); *United States v. Jackson*, 798 F. Supp. 556 (D. Minn. 1992); *United States v. Schaffer*, 121 F. Supp. 2d 29 (D.D.C. 2000); *United States v. Walters*, 87 F.3d 663 (5th Cir. 1996).

Courts have the discretion to depart downward in cases like the present one where the offense level is pegged to a numerical figure, such as the amount of monies earned from specific patients identified, and the resulting offense level overstates the seriousness of a defendant's conduct. *See* 18 U.S.C. § 3553(b); U.S.S.G. § 2F1.1, comment (n.11); U.S.S.G. § 5K2.0.

In *United States v. Stuart*, the Third Circuit held that "[w]here application of the Guidelines' monetary tables bears little or no relationship to the defendant's role in the offense and greatly magnifies the sentence, the district court should have the discretion to depart downward." 22 F.3d 76, 83 (3d Cir. 1994). Likewise, the court in *United States v. Costello*, 16 F. Supp. 2d 36, 37 (D. Mass. 1998), departed downward six points in sentencing two defendants charged with conspiring to steal computer discs, compact discs, and computer software from their

employer. *See id.* at 40. After an evidentiary hearing, the court determined that the amount of the loss was \$20,859,523. The judge, however, found that the two defendants received only about 1% of the value of the goods, with a third conspirator organizing the theft and keeping the major part of the proceeds. *See id.* at 39. Recognizing that under such circumstances the amount of loss was not, as the guidelines assume, an appropriate proxy for culpability, the court departed downward by six levels. *See id.*; *see also United States v. Jackson*, 798 F. Supp. 556, 557 (D. Minn. 1992) (“The court finds departure is proper because the offense level is extraordinarily exaggerated by the dollar value involved in that the defendant was a minimal cause of the \$1.4 million loss.”)

As these decisions illustrate, a sentencing court must examine the particular circumstances surrounding each individual defendant’s participation in the crimes charged. If the guidelines’ assumption that the amount of losses claimed to exist in the PSI is indicative of J. Markovich’s culpability is contradicted by the facts of the case, the Court should depart downward:

The United States Sentencing Commission, Guidelines Manual § 2B1.1 (Nov. 1997), points me first to the value of the loss to the victim, under the general theory that the amount of loss is an appropriate proxy for the gravity of the defendant’s offense. But that is not the end of the analysis. I am obliged to look at the specific facts of the case before me, the human beings involved, the nature of the charges, and the circumstances of the offense to determine whether the factual circumstance I confront are “of a kind or to a degree not adequately taken into account by the Sentencing Commission.”

*Costello*, 16 F.Supp.2d at 37.

The guidelines computation, driven by use of an approximately \$84 million figure, grossly overstates Jonathan’s culpability. Compass and WAR did not bill or collect this amount of money for the specific “core” Florida shufflers identified as the basis of the charges. It is unclear where this number comes from, as the government’s exhibits presented at trial show different numbers with respect to the amounts health insurance companies paid to Compass in total, and far less amounts for the “core” patients involved.

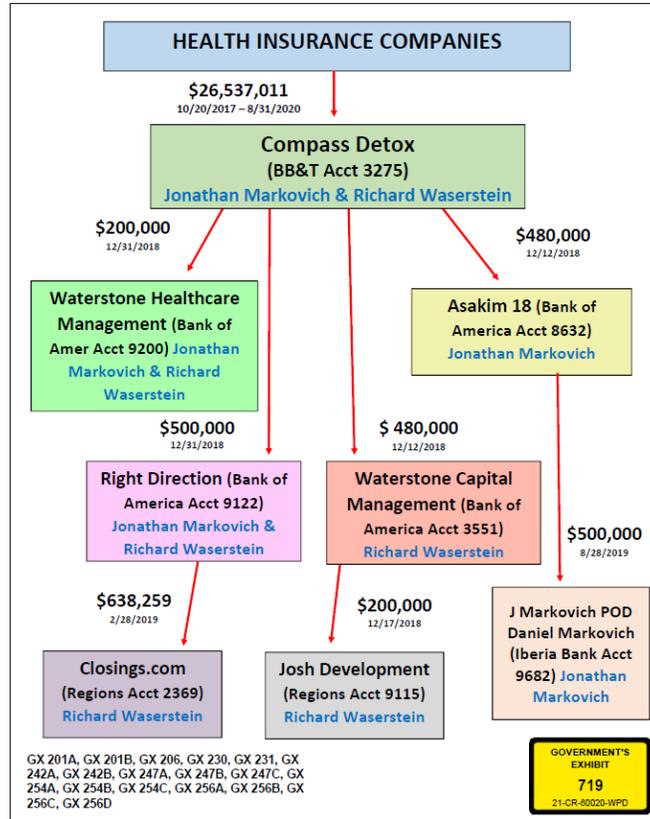
Indeed, the government essentially acknowledges that it has cherry-picked a loss amount in its sentencing memorandum (D.E. 579). The government provides the following chart in that filing to explain the loss numbers in this case:

<b>ENTITY<sup>3</sup></b>	<b>TOTAL BILLED</b>	<b>TOTAL PAID</b>
Compass Detox	\$80,768,109.86	\$24,687,180.18
WAR	\$11,168,209.16	\$2,291,426.93
Lab Billings for Compass/WAR patients	\$19,356,385.87	\$1,322,367.76
<b>TOTAL</b>	<b>\$111,292,704.89</b>	<b>\$28,300,974.87</b>

Those numbers, however, do not clarify how the government gets to an \$84,000,000 loss calculation. The government claims neither \$112,000,000 nor \$28,000,000, the monies listed in the chart, as the loss amounts. They know that they cannot. Indeed, they concede that the government “did not argue at the Markoviches’ trial that every dollar billed by Compass Detox and WAR was fraudulent.” Rather, the government now claims that the approximately \$84,000,000 loss amount stems from the “many patients” that were “repeat” patients and “top billers.” That is not a specific and reliable loss amount calculation; it is speculative and hyperbole.

After a years-long investigation and lengthy trial, the United States government should be held to the highest of standards of accuracy in establishing this loss amount – particularly since it is their basis to put Jonathan away for life. Instead of these random calculations by the government, Jonathan urges the Court to look at the total amounts collected for the “core” twelve patients that the government’s case was predicted on as a basis for loss. The collected amount for those individuals is far less than \$84,000,000; rather, it is the loss amount that the government has agreed to already for codefendants Mr. Garnto and Mr. Waserstein – capping loss to no more than \$9,000,000. (*See also* D.E. 548).

In addition, at most, between 2017 and 2020, Jonathan earned \$3,500,000 from Compass and WAR. Below shows the monies gained by Jonathan, as alleged by the government at trial:



(GEX 719; also see Trial Testimonies of Jennifer Mila and Melissa Parks.)

This gain amount is a better proxy for culpability here and, again, would result in the same loss amount calculation that the government has already agreed to for Jonathan’s codefendants.

**IV. The “Core” Former Patients Do Not Consider Themselves “Victims”.**

Though the government consistently argues that they are advocating on behalf of the patients in this case, they have yet to meet with and hear the stories of the “core” patients upon whom their case is predicated. We met with those patients and they themselves, as seen and heard in their own words, do not consider themselves “victims” of harm by Compass, WAR or Jonathan. Rather, they make it clear – they are victims of a raging and terrible opioid and heroin epidemic in the United States, that has many parties and components to blame, including opioid manufacturers, healthcare insurance companies, legislatures, doctors, and so forth. Addiction treatment centers

are a part of that and by no means blameless. However, to shift complete blame to these facilities for the patients' predicaments and vulnerability in society is not accurate.

### CONCLUSION

Jonathan Markovich is before the Court to fight for his life. As explained herein, a life sentence, or one so high that it is tantamount to such, is inappropriate and unjust here. We respectfully ask that the Court consider all of his arguments and the factors of 18 U.S.C. § 3553(a), and impose a "reasonable" but not greater than necessary sentence.

The circumstances articulated above, taken either separately or collectively with the other 18 USC §3553 sentencing factors offered in this memorandum, represent a mitigating circumstance of a kind, or to a degree, that have not been adequately taken into consideration by the Sentencing Commission in formulating the guidelines. *See* U.S.S.G. § 5K2.0. Moreover, the government should be held to its burden in establishing a specific, accurate, and reliable loss amount, the "victim" calculation should reflect the "victims'" own perspectives, and the positive and distinct nature of Compass, WAR and Jonathan – compared to other substance abuse treatment centers and their owners – should be considered. Keeping these factors in mind, a downward departure/variance is appropriate.

Regardless of how this Court resolves issues relating to the advisory guidelines here, we urge the Court to grant a variance or departure as to Jonathan and impose a sentence of **no greater than 84 months** of imprisonment. That is a severe sentence and punishment for a person in Jonathan's position, but also enables him to play some role in his children's lives and upbringing and use his education and skills to meaningfully contribute to society.

Dated: March 16, 2022

Respectfully submitted,

*s/ Vanessa Singh Johannes*

Vanessa Singh Johannes (FBN 1028744)  
E-mail: VJohannes@carltonfields.com  
CARLTON FIELDS  
700 N.W. 1st Avenue, Suite 1200  
Miami, Florida 33136-4118  
Telephone: (305) 539-7358  
*Counsel for Jonathan Markovich*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on March 16, 2022, I electronically filed the foregoing document, on behalf of all counsel for J. Markovich, with the Clerk of the Court using CM/ECF. Counsel for the United States, Mr. Hayes and Ms. DeBoer, received a true and correct copy via that manner.

*s/ Vanessa Singh Johannes*

\_\_\_\_\_  
Vanessa Singh Johannes (FBN 1028744)  
*Counsel for Jonathan D. Markovich*