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9 **UNITED STATES DISTRICT COURT**
10 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 vs.

14 ANDRANIK AMIRYAN,

15 Defendant.
16

) Case No.: 2:20-cr-00520-DMG

) DEFENDANTS SENTENCING
) POSITION; MEMORANDUM OF
) POINTS AND AUTHORITIES IN
) SUPPORT THEREOF

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18 Defendant, ANDRANIK AMIRYAN, by and through the undersigned Counsel
19 of record, hereby submits the following sentencing position and accompanying
20 memorandum of appoints and authorities, and exhibits in support thereof.
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22 In accord with the decision in *United States v. Booker*, 543 U.S. 220 (2005) and
23 Title 18 U.S.C. § 3553(a), Mr. AMIRYAN requests this Court to impose a sentence
24 that is “sufficient but not greater than necessary to comply with” the goals of sentencing
25 set forth in 18 U.S.C. § 3553(a)(2). 18 U.S.C. § 3553(a). Those goals, the consideration
26 of the “nature and circumstances of the offense,” Mr. AMIRYAN’S “history and
27 characteristics,” and the other factors set forth in §3553(a) support a minimal sentence
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1 of imprisonment, to be followed by a term of supervised release under such terms and
2 conditions the Court deems just and proper as fully detailed in the accompanying
3 memorandum of points and authorities and exhibits attached hereto.
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5 Dated: September 03, 2021

6 Respectfully Submitted,

7 MGDESYAN LAW FIRM

8 /s/ George G. Mgdesyan

9 George G. Mgdesyan

10 Attorney for Defendant

11 ANDRANIK AMIRYAN
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28 I.

1 **INTRODUCTION**

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3 Defendant, Mr. ANDRANIK AMIRYAN, by and through the undersigned
4 counsel of record, George G. Mgdesyan, hereby submits the following memorandum of
5 points and authorities in support of his requested sentence.

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7 II.

8 **FACTUAL BACKGROUND**

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10 On April 28, 2021, Andranik Amiryan pled guilty to Count One of Conspiracy
11 to Commit Bank Fraud in violation 18 U.S.C. §1349.

12 Under the terms of the plea agreement, Mr. AMIRYAN and the USAO agreed to
13 the following sentencing factors: a base offense level seven pursuant to USSG §
14 2B21.1(a) (1) and fourteen-level increase for loss of over \$550,000 pursuant to USSG §
15 2B21.1(a) (1). The parties a reserve the right to argue that additional specific offense
16 characteristics, adjustments, and departures under the Sentencing Guidelines are
17 appropriate.
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20 On July 14, 2021, the United States Probation Office (“USPO”) filed its
21 Presentence Investigation Report (“PSR”) in this matter. The USPO determined that:
22 Andranik Amiryan’s total offense level was twenty five, minus three for acceptance of
23 responsibility.
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25 The USPO further found that Mr. AMIRYAN has a criminal history score of 9,
26 which places him in criminal history category IV. The USPO also identified the
27 applicable Guidelines range for a supervised release term to be 63 to 78 years.
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1 In the case at hand, Defense is objecting to the Presentence Report's
2 calculation of the loss amount of a level 18. Parties have agreed that the loss amount of
3 this case should be level 14, as agreed upon in the plea agreement. \$650,600 of
4 CARES Act relief funds was deposited into an fraudulently opened account.
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6 Furthermore, the Defense agrees with the Government for a two-level
7 downward variance for defendant's honest and good faith attempt to cooperate with the
8 Government. Lastly, Andranik Amiryan should receive a three-level reduction for his
9 acceptance of responsibly as the parties have agreed upon in the plea agreement. Which
10 should bring the total Guideline level to 16, and not what the probation is
11 recommending in their Presentence Report, of a level 21.
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13 III.

14 DISCUSSION

15 A. OBJECTIONS TO GUIDELINE SENTENCING FACTORS

16 1. **Governing Guideline Principles**

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19 Even before *United States v. Booker*, 543 U.S. 220 (2005), the Supreme Court
20 said in *Koon v. U.S.*, 518 U.S. 81, 113 (1996), that “[i]t has been uniform and constant
21 in the federal judicial tradition for the sentencing judge to consider every convicted
22 person as an individual and every case as a unique study in the human failings that
23 sometimes mitigate, sometimes magnify, the crime and the punishment to ensue.” Thus,
24 the guidelines before *Booker*, “place[d] essentially no limit on the number of potential
25 factors that may warrant a departure.” *Koon*, 518 U.S. at 106; *U.S. v. Coleman*, 188
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1 F.3d 354, 358 (6th Cir.1999) (en banc) (there are a “potentially infinite number of
2 factors which may warrant a departure”).

3 A departure was warranted if the case was “unusual enough for it to fall outside
4 the heartland of cases in the guidelines.” Even when the guidelines were mandatory,
5 they did not “displace the traditional role of the district court in bringing compassion
6 and common sense to the sentencing process....In areas where the Sentencing
7 Commission has not spoken . . . district courts should not hesitate to use their discretion
8 in devising sentences that provide individualized justice.” U.S. v. Williams, 65 F.3d
9 301, 309-310 (2d Cir. 1995); “It is important, too, to realize that departures are an
10 important part of the sentencing process because they offer the opportunity to
11 ameliorate, at least in some aspects, the rigidity of the Guidelines themselves. District
12 judges, therefore, need not shrink from utilizing departures when the opportunity
13 presents itself and when circumstances require such action to bring about a fair and
14 reasonable sentence.” U.S. v. Gaskill, 991 F.2d 82, 86 (3rd Cir. 1993). “The Guidelines
15 are not a straightjacket for district judges.” U.S. v. Cook, 938 F.2d 149, 152 (9th Cir.
16 1991). The Guidelines “do not require a judge to leave compassion and common sense
17 at the door to the courtroom.” U.S. v. Dominguez, 296 F.3d 192, 196 n. 7 (3rd Cir.
18 2002) (quoting U.S. v. Johnson, 964 F.d 124, 125 (2d Cir.1992)); U.S. v. Blarek II, 7
19 F.Supp. 2d 192, 211 (EDNY 1998) (“To impose the harsh sentence suggested by
20 Probation and the government under the Guidelines without appropriate downward
21 departures would amount to an act of needless cruelty given the nature of the crimes
22 committed and the personal circumstances of these defendants . . . [i]f the 600-plus
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1 pages of the most recent set of sentencing guidelines have taught us anything, it is that
2 punishment cannot be reduced to an algorithm").

3 **B. CONSIDERING THE SENTENCING FACTORS UNDER 18 U.S.C. § 3553, A**
4 **SUBSTANTIAL VARIANCE IS WARRANTED AND THE REQUESTED**
5 **SENTENCE WOULD BE SUFFICIENT BUT NOT GREATER THAN**
6 **NECESSARY TO ACHIEVE SENTENCING OBJECTIVES**

7 The Probation Officer has calculated an advisory guideline range of 63 to 78
8 resulting from an adjusted offense level of 22 and Criminal History Category IV. As
9 stated above defense objects to the Probation officers calculation and believes the
10 proper guideline sentence should be level 16. The guideline range offers no useful
11 advice because it (1) is the product of a guideline that is not based on empirical
12 evidence or national experience; (2) fails to take any account of Defendant’s low risk of
13 recidivism; and (3) is far greater than necessary to promote the goals of sentencing in
14 this case.
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17 The Court must “impose a sentence sufficient, but not greater than necessary, to
18 comply with the purposes set forth in paragraph (2),” which are “the need for the
19 sentence imposed— (A) to reflect the seriousness of the offense, to promote respect for
20 the law, and to provide just punishment for the offense; (B) to afford adequate
21 deterrence to criminal conduct; (C) to protect the public from further crimes of the
22 defendant; and (D) to provide the defendant with needed educational or vocational
23 training, medical care, or other correctional treatment in the most effective manner.”
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25 18 U.S.C. § 3553(a)(2).
26

27 In “determining the particular sentence to be imposed,” the Court must consider
28 these purposes, the nature and circumstances of the offense and the history and

1 characteristics of the defendant, the need to avoid unwarranted disparities, and the need
2 to provide restitution to any victims of the offense. See 18 U.S.C. § 3553(a)(1)–(7).

3 **1. The Nature and Circumstances of the Offense and the History and**
4 **Characteristics of the Defendant**

5 (a) Nature and Circumstances of the Offense

6 While the underlying felony offense is serious, its seriousness is mitigated when
7 considering the nature and circumstances of the offense with his personal history and
8 characteristics. Furthermore, other co-conspirators who have been separately indicted
9 are responsible for a much larger role and being the mastermind of this conspiracy. Mr.
10 Amiryman was a smaller fish and was used in this conspiracy.
11

12 (b) Personal History and Characteristics

13 Attached to the instant memorandum are numerous character letters,¹ describing the
14 defendant as a good person with good intentions and very respectful and down to earth
15 man. (Attached hereto as Exhibit A). These characteristics are echoed by numerous
16 peers and family members.
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20 ¹ See generally *U.S. v. Ledezma*, 2007 4143225 (E.D. Wis. Nov 19, 2007)(Court granted
21 a departure based on substantial assistance. Court further varied downward to one day
22 imprisonment based on no criminal history, minimal role in the crime, and just punishment.
23 The Court noted that the defendant was a positive role model in the community by telling
24 young girls her story and how not to fall victim to similar circumstances.); *U.S. v. Szanto*,
25 2007 WL 3374399 (N.D. Ill. Nov. 8, 2007)(District court granted a downward variance on
26 several factors. First the defendant was a minimal participant in the crime since he believed
27 he was transporting Viagra not Ecstasy. Second, financial hardships were a motivating factor
28 but during a two year pretrial detention, the defendant had mastered the English language
making him more employable. Finally, he was a Canadian citizen and agreed to be deported.
Court varied by 12 months and sentenced him to 24 months, time served.); *U.S. v. Greer*, 375
F. Supp. 2d 790 (E.D. Wis. 2005)(no imprisonment in drug case appropriate partly because
defendant was a girlfriend playing peripheral role in drug crime, noting that too often women
are punished for remaining with boyfriend or spouse engaged in drug activity, who is
typically the father of her children).

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Mr. AMIRYAN's friend states in his letter to the Court:

I can assure you that he [Mr. AMIRYAN] is a hardworking, helpful, and obligated person. He does his best to be a good father figure and role model to his wife and children.

Friends further state:

He has always been kind and generous with other. He has a strong sense of duty, which applies to his career, family, and generous with others.

Mr. AMIRYAN's daughter, Christina Bella Amiryan states in her letter to the Court:

I write this letter to you because I want you to see my dad through his heart and not through his criminal offenses. It's clear that if someone spends time with him, they'd think that this man has never had an obstacle in his life; that is everything he ever wanted. All he cares about is us, his family.

His Priest Rev. Fr. Khajag Shahbazyan states:

The family- Andranik Amiryan, his wife Meline Ghazarian, children Raffi, Christina, and Robert have been active members of the St. Leon Armenian Cathedral. They are highly motivated and participate actively in church activities. It is truly a blessing for our church to have dedicated, honest, faithful family like the Amiryans.

Mr. Amiryan's personal history and characteristics are supported through the numerous letters from friends and family attesting to his character and describe him as a family man, who is a loving, respectful man, and whose character is wholly inconsistent with the actions constituting the underlying offenses.

Mr. Amiryan had a tough upbringing. Growing up in a former Soviet Union country, Armenia, he tried doing his best by coming to America to create a better life for himself and his family. Not knowing the English language and not having an education did not stop Mr. Amiryan from doing his best to provide for those around him, not only for his

1 wife, children, and brother, but also for his friends. After spending time in prison, Mr.
2 Amiryman was trying his best to be a law abiding citizen and do the right thing.
3 Unfortunately, because of the current COVID-19 pandemic, his family was in a
4 vulnerable state and Mr. Amiryman was taken advantage by more sophisticated criminals
5 who used Mr. Amiryman for their own benefit. Andranik Amiryman is remorseful for his
6 actions and for that reason he agreed to cooperate with the government. Being up front
7 with the government for what he did in this conspiracy and what he knows.
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11 **2. The Need for the Sentence Imposed to Reflect the Seriousness of the**
12 **Offense, Promote Respect for the Law, and Provide just Punishment for**
13 **the Offense**

14 In determining the proper sentence to promote respect for the law, the Supreme
15 Court explained that sentencing courts may consider sentences imposed on similarly
16 situated defendants: “The Government's legitimate concern that a lenient sentence for a
17 serious offense threatens to promote disrespect for the law is at least to some extent
18 offset by the fact that seven of the eight defendants in this case have been sentenced to
19 significant prison terms. Moreover, the unique facts of Gall's situation provide support
20 for the District Judge's conclusion that, in Gall's case, “a sentence of imprisonment may
21 work to promote not respect, but derision, of the law if the law is viewed as merely a
22 means to dispense harsh punishment without taking into account the real conduct and
23 circumstances involved in sentencing.” *Gall v. United States*, 552 U.S. at 54 (citations
24 omitted).
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27 Although the offense being serious, the circumstances surrounding the offense
28 require for a much less sentence so that just punishment may be provided. Mr. Amiryman

1 benefited very minimally from this conspiracy. The more sophisticated criminals used
2 Mr. Amiryan to walk into the bank so that his face can be captured on cameras instead
3 of theirs. Mr. Amriyan did not receive the proceeds that went into the bank, rather it
4 went into an account that was meant to be distributed to the more sophisticated
5 criminals. Mr. Amiryan was going to receive a nominal amount for going into the bank
6 and assist in disbursing the funds. Although, any case that involves fraud is undeniably
7 serious, there is no doubt that Mr. Amiryan's was a small player in a larger conspiracy.
8 Mr. Amiryan only wishes to turn his life around. A large sentence would not only
9 punish Mr. Amiryan but rather his wife and his children. They are in awe and saddened
10 by the fact that Mr. Amiryan has been incarcerated for approximately a year. This is the
11 first time that Mr. Amiryan has spent any substantial time away from his children who
12 are now adults. Mr. Amiryan is not only embarrassed for his conduct not only in front
13 of the court, his wife, but most importantly for his children who are now adults and now
14 understand why their father is incarcerated. Mr. Amiryan wishes to return to life as a
15 productive member of society in the most effective manner as soon as he can and to
16 return to his wife and children.
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21 In the instant matter, the offense is serious, however, a close look at the
22 underlying facts and circumstances previously stated clearly indicate that a sentence of
23 lengthy imprisonment would be but a derision of the law as a means² to dispense harsh
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26 ² See *United States v. Baker*, 445 F.3d 987, 992 (7th Cir. 2006) (affirming non-guideline
27 sentence of 78 months from 108 months for defendant convicted of distributing child porn,
28 justified in part by judge's finding that prison would mean more to this defendant than one
who has been imprisoned before, which resonated with goal of "just punishment" in §
3553(a)(2)(A) and "adequate deterrence" in Section 3553(a)(2)(B); *United States v. Cull*,
446 F.Supp.2d 961, 965 (E.D. Wis. 2006) (non-guideline sentence of 2 months in jail and 4

1 punishment without taking into account the real conduct and circumstances of the
2 offense.

3 **3. To Protect the Public from Further Crimes of the Defendant**
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5 But for the pandemic, Mr. Amiryan was attempting to become a productive
6 member of the community by locating employment, seeking treatment and staying with
7 family. With an appropriate sentence, he will continue down that road well after this
8 matter comes to a close. Thus, imposing a substantial and/or any significant prison term
9 in this instance would not serve to protect the public, only unnecessarily cost it.
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13 **C. MR. AMIRYAN'S CRIMINAL HISTORY CATEGORY IS SIGNIFICANTLY**
14 **OVER-REPRESENTED**

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16 According to the Presentence Investigation Report, it was concluded that Mr.
17 Amiryan scored a total criminal history of nine (9) and a Criminal History Category IV,
18 this is highly overstated. In reaching this score, the PSR took into account convictions
19 of which were all over a decade old, some even fifteen years old and all theft related.
20 First, was a 2001 burglary case when Mr. Amriyan was only 24 years old. Second was
21 a 2006 case for grand theft, where Mr. Amiryan was 26 years old. Lastly a 2009 case
22 where Mr. Amiryan was 30 years old. All convictions were from over a decade ago. No
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26 months home confinement, where advisory range was 10-14 months for marijuana offense
27 by defendant who had never been confined, was sufficient to impress on him the seriousness
28 of his crime and deter him from re-offending); *United States v. Qualls*, 373 F.Supp.2d 873,
877 (E.D. Wis. 2005) (generally, a lesser prison term is sufficient to deter one who has not
been subject to prior lengthy incarceration).

1 convictions involved violent cases. In fact, the most recent conviction the PSR
2 computes is one from 2009 merely twelve (12) years ago. In fact, Mr. Amiryan has
3 stayed out of trouble and has avoided any convictions from 2009 and on. It is clear
4 from the twelve year gap that Mr. Amiryan was on the path to better himself and stay
5 out of trouble, but for this pandemic which created a huge financial burden on Mr.
6 Amiryan's family.
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8 The criminal history category of IV significantly over-represents the seriousness of
9 his criminal history. This lapse of time clearly indicates that Mr. Amiryan does not have
10 a propensity to repeat the criminal activity of which is being convicted for in this case.
11 According to U.S.S.S.G Section 4A1.3(b)(1) "if reliable information indicated that the
12 defendant's criminal history category substantially overrepresents the seriousness of the
13 defendant's criminal history or likelihood that the defendant will commit other crimes,
14 a downward departure may be warranted." As such, a downward departure would be
15 appropriate due to the overrepresented criminal history of Mr. Amiryan.
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20 **D. Accepting Responsibility and Cooperation with the Government**

21 The Government, in their Sentencing Memorandum, discuss how Mr. Amiryan
22 failed to clearly demonstrate acceptance of responsibility by obstructing justice and
23 failing to disclose his true employment. Mr. Amiryan clearly has no intention to
24 obstruct and/or not accept responsibility, rather this a misunderstanding. The
25 Government recommends a two level downward variance because Mr. Amiryan was
26 "truthful and appeared genuinely willing to provide what information he knew."
27 (Assistant United States Attorney, Andre Brown). Mr. Amiryan provided whatever
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1 information and documentation he can to the government in their investigation. Mr.
2 AMIRYAN did absolutely everything he could do with the information he had to help
3 the government. By doing so, Mr. AMIRYAN has undoubtedly and
4 unargumentatively accepted responsibility of his actions and tried to the best of his
5 ability to rectify them. By being cooperative and providing the government with
6 information can only mean that he has accepted his role and responsibility in the
7 matter at hand.
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11 IV.

12 CONCLUSION

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14 WHEREFORE, considering the factors set forth in §3553(a) factors, couples with
15 Mr. Amiryan’s responsibility and cooperation. Lastly, due to the COVID-19 Pandemic,
16 the custody of **a Year and a Day** sentence merits strong consideration. If the Court
17 sentences Mr. Amiryan to any substantial time, having Mr. Amriyan transfer to a prison
18 facility creates the fear and likelihood of contracting COVID-19. Especially now, with
19 the Delta variant and spike in the COVID-19 numbers, Mr. Amiryan and his family are
20 naturally concerned that if incarcerated for any substantial time, he may contract the
21 Coronavirus as it spreads in detention facilities and prisons across the United States. It
22 now seems clear that the COVID-19 pandemic is not going away anytime soon, with
23 the number of infections on the increase again in many states and the Director of the
24 U.S. Center for Disease Control and Prevention, Dr. Rochelle Walensky, warning of
25 “impending doom” based on rising trend lines.
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Dated: September 3, 2021

Respectfully Submitted,

MGDESYAN LAW FIRM

/s/ George G. Mgdesyan

George G. Mgdesyan

Attorney for Defendant

ANDRANIK AMIRYAN