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The Honorable James Robart

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA

Plaintiff,

v.

AUSTIN HSU,

Defendant.

No. CR20-191 JLR

DEFENDANT’S SENTENCING
MEMORANDUM

I. INTRODUCTION

Austin Hsu, through counsel, presents this sentencing memorandum and accompanying materials in support of a sentence of five years of probation 18 U.S.C. Section 3561(c)(1), an appropriate fine, and court ordered community service.

Since the inception of this case, Dr. Hsu has been in full compliance with all conditions of pretrial release. He has deposited funds into the Court’s registry that should satisfy the entire restitution balance. Dr. Hsu is a chiropractor and is subject to state

1 licensing requirements. The medical board is filing for revocation of license to practice
2 as a result of this felony conviction. This collateral consequence has the effect of ending
3 Dr. Hsu's professional career. During his career he has helped countless patients and has
4 had a good relationship with his employees over a twenty-year period.

5
6 This case is incredibly sad. Dr. Hsu was facing financial ruin largely because of
7 circumstances beyond his control, including an unprecedented pandemic and
8 unanticipated, devastating business problems. These circumstances led him into a
9 misguided attempt to secure access to loan capital he was not entitled to. Dr. Hsu made
10 no attempt to conceal his personal identity in securing these loans. The loans that were
11 allocated never left Dr. Hsu's bank account. Dr. Hsu never applied for loan forgiveness
12 and however misguided his intentions, had every intention of paying these loans back.
13 From an early stage, Dr. Hsu accepted full responsibility for his actions. Dr. Hsu and
14 counsel have worked with the government to ensure that the restitution has been paid
15 prior to the sentencing in this matter.
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17 The defense respectfully requests that Dr. Hsu's actions are viewed in the context
18 of an unprecedented pandemic, the very real specter of financial ruin, as well as having to
19 end his life's work. His mindset was that he was that his businesses failing was
20 tantamount to failing his family, failing his employees, and failing his patients. The
21 Court should weigh this offense against a lifetime of Dr. Hsu's positive contributions to
22 his family, to his employees, to his patients and the community. The felony conviction
23 coupled with its associated collateral consequences render a sentence of Probation to be
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1 sufficient but not greater than necessary. This is especially so because the victims of this
2 offense are expected to be made financially whole imminently after the funds from the
3 Court's registry are released.

4 **II. BACKGROUND FACTS**

5
6 *i. Dr. Hsu's Parents' Sacrifices and Struggles Created a Strong Sense of Him*
7 *Needing to Care for Them and Helps Explain His Belief that Failing Businesses*
8 *Were Tantamount to Failing his Family.*

9 Dr. Austin Hsu is a 47-year-old chiropractor, who owns and operates Back to Health,
10 a chiropractic practice with locations in Bellevue, Renton, and Tacoma. He was born in
11 Taiwan but moved to the United States in 1978 when he was four years old. At that time,
12 China was threatening a forceful takeover of Taiwan and many citizens feared political
13 upheaval. His parents had established careers in Taiwan as a corporate manager and a
14 nurse respectively. They made the tremendous sacrifice to leave everything behind with
15 the hope of giving their children a better life in the United States.
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17 After moving to the Bronx, New York, Dr. Hsu's parents had to start over completely.
18 Their degrees were not transferable, and they took vastly different simply to make ends
19 meet. As immigrants, the road to making a living was difficult. Dr. Hsu's father worked
20 at many different jobs, often from early morning to late at night to support the family.
21 Even though he spent hours away from home, his love and care for his children was
22 apparent. One of his jobs as a salesman involved going into a dangerous part of town and
23 facing a constant threat of merchandise theft from his van. The job held a high level of
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1 stress and risk as he often carried high-priced goods. His father was often at risk for
2 robbery and, in one instance, was shot at while chasing a thief.

3 Despite his parents' grueling work schedules, the family still struggled financially.
4 His parents labored in several different fields. These included opening a clothing store
5 that required long hours away from their children, selling insurance through a multilevel
6 marketing company, and opening an ice cream store that closed despite all the effort they
7 put in. In later years, Dr. Hsu's father had such difficulty finding employment that he had
8 to leave his family to work in Asia for several years.
9

10 Dr. Hsu's mother was able to find work as a nurse's aide in New York City. Although
11 she was a registered nurse in Taiwan, her English was never strong enough to pass the
12 exam in the US despite her numerous attempts. Her job as a nurse's aide was a lower
13 paying position. She regularly took double shifts and worked around the clock so that she
14 could earn overtime. The family was forced to live in the basement of a relative's house
15 in Paramus, New Jersey. As such, Dr. Hsu's mother spent a total of 4-5 hours commuting
16 to work each day. Dr. Hsu remembers his mother waking up at 4am every morning and
17 not returning until late at night. In the winters, she could be seen trudging through dark,
18 snow piled roads without sidewalks to get to the bus stop only to then trek through many
19 city blocks to reach the hospital. Dr. Hsu's parents encouraged their children to use the
20 opportunities they had to pursue professional degrees so they would have a stable career.
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Seeing his parents' sacrifices, Dr. Hsu was determined at a young age to help his parents financially. Since he was a child, he has tried to help his family by working. Part of that drive was out of necessity as the family struggled financially. But the drive to help his parents was also to show appreciation and respect for their sacrifices. So, as early as seven years old, Dr. Hsu collected aluminum cans from trash receptacles to recycle for five cents each. At eight years old, he had a paper route making \$8 a week. He continued to work throughout his childhood, whether it was in helping at the family business or working at other jobs he could pick up. His parents' sacrifices instilled in him a strong work ethic and a desire to succeed. Dr. Hsu's dream was to one day be able to take care of his parents and to make all their sacrifices feel worth it.

1 In 1990, his mother was involved in a serious car accident. Even after conventional
2 medical treatment, she continued to experience pain. It was not until she received
3 chiropractic care that she was able to receive relief. This sparked Dr. Hsu's interest in
4 chiropractics and led to his pursuit of his profession.

5
6 After graduating Chiropractic School in 2001, he built his practice and developed
7 good relationships with referring doctors and enjoyed good relationships with his
8 patients.

9 With his success, Dr. Hsu felt he could finally take care of his parents the way he
10 always sought to do. His mother and father were still living in the basement of his uncle's
11 home. His father was still struggling to find stable income, and his mother was still
12 working tirelessly in the city. Dr. Hsu brought his parents to California so he could take
13 care of them. After they moved there, he was able to buy a house for them. He felt like he
14 could finally start paying them back for all they sacrificed for him.

15
16 In 2008, regulatory changes to the health care industry and the Great Recession
17 caused a significant drop in Dr. Hsu's business. As a result, the house he had bought for
18 his parents went into foreclosure. In 2009, he made the decision to move to Seattle while
19 his parents moved to Houston due to the lower cost of living. With the foreclosure, Dr.
20 Hsu did not have enough capital to start his business in Seattle. His parents gave him
21 what savings they had to help him. The foreclosure weighed heavily on his father, an
22 honorable person who strongly believed in not defaulting on any loans or bills. Dr. Hsu
23 felt like a failure.
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1 During 2011, Dr. Hsu's father began experiencing unexplainable health problems. It
2 began with stiff movements and difficulty in thinking and processing. His physicians
3 diagnosed him with Parkinson's. Although he took the medications prescribed for him,
4 they were never fully effective. Over the next couple of years, he began experiencing
5 other symptoms such as dizziness, difficulty in walking, slow movement, and difficulties
6 in speech. His condition steadily declined even though he continually sought care.
7 Despite repeated requests, he was never sent for an MRI by his treating physicians. In
8 2015, his condition declined rapidly. He was so dizzy and weak that he could not stand
9 up. His condition was so severe that he could not bathe himself. By this time, he was
10 severely underweight at 5'6", 110lbs. He was constantly fatigued, and his mind was
11 clouded. His vision was afflicted, and he began seeing shadows around every object. An
12 ophthalmologist recommended and performed cataract surgery on him but it resulted in a
13 worse situation. He had constant double vision and saw a harsh glare on everything. His
14 father began to suffer from depression. In late June of 2015, his primary physician finally
15 ordered an MRI.
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19 Tragically, while awaiting the results, Dr. Hsu's father took his life on July 1, 2015.
20 On that day, he told his wife he was not feeling well and would stay home while she went
21 to get groceries. When she returned, Dr. Hsu's mother found him hanging from a necktie.
22 After his passing, the family requested the MRI results. It indicated that he had a brain
23 tumor and likely did not have Parkinson's. The results had been ready few days before
24 Mr. Hsu's passing but were not relayed to him. The family wondered if the outcome
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1 would have been different had he been told of the correct diagnosis in time and given
2 hope in proper treatment. Dr. Hsu requested a second independent autopsy focusing on
3 the brain. The autopsy indicated the presence of Lewy bodies and ruled out Parkinson's.
4 Records related to Dr. Hsu's father's health and death are attached. See Attachment 1.
5



16 Dr. Hsu was greatly affected by his father's death. With suicide considered a stigma
17 in Asian culture and relatives not wanting others to know, he was unable to talk about it
18 with many people and process it.
19

20 Dr. Hsu blames himself for his father's death. He regrets not being physically present
21 to help his father navigate his care under the physicians. He felt like a failure because his
22 father made so many sacrifices for Dr. Hsu throughout his life, and he was unable to
23 support his father financially before he passed away. Dr. Hsu felt like he needed to
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1 succeed in his practice so that his father's sacrifices were not in vain and so he could
2 provide for his elderly mother.

3 Since his father's death Dr. Hsu has put tremendous pressure on himself to be
4 successful and to be able to be someone who can help support his remaining family. His
5 decision to invest in an MRI unit in 2018, the machine that could have potentially saved
6 his father's life, was not a coincidence. As more fully described below, this business
7 venture ultimately caused serious problems that played a role in Dr. Hsu's error in
8 judgment in this case.

9
10 *ii. Dr. Hsu's Seattle and Bellevue Businesses*

11 After moving to Seattle in 2010, Dr. Hsu had to completely restart his practice. He
12 started by subleasing space from another chiropractor. Around 2011, he subleased
13 additional space from an orthopedic surgery group called Bellevue Bone and Joint. In
14 2018, he was given the opportunity to buy Bellevue Bone and Joint's MRI unit and its
15 associated business. Unfortunately, Bellevue Bone and Joint's most utilized orthopedic
16 surgeon, Michael Battaglia M.D., was diagnosed with osteomyelitis and began to
17 experience serious health problems limiting his ability to work. With many staff
18 departures in September 2019, the remaining physicians were faced with substantially
19 higher overhead expenses in terms of rent (60k per month for a 15,000 sq ft space). This
20 forced Dr. Hsu and the two remaining orthopedic surgeons Michael Battaglia, M.D., and
21 Alan Brown, J.D, M.D. to attempt to renegotiate the lease for a smaller space. While
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1 successful at first, the landlord ultimately found a new tenant, a large publicly traded
2 company who could afford the entire space.

3 In the midst of the pandemic, on May 8th, Dr. Hsu, Dr. Brown and Dr. Battaglia were
4 given two months to vacate the premises and relocate all equipment, including the MRI
5 machine. MRI machines belong to a special subset of medical equipment that has very
6 specific requirements regarding its deinstallation, removal, and storage. Removal of an
7 MRI is a tremendous task. Due to the technical manner of the process and the strict safety
8 parameters that must be followed, the cost of removal of an MRI generally falls in the
9 range of \$60,000-\$100,000.
10

11 Unable to shoulder the costs, Dr. Hsu tried to negotiate a temporary sublease from the
12 Polyclinic for the two surgeons and himself in order that the MRI would not have to be
13 removed. PolyClinic was willing to write a letter to the landlord to have the Xray
14 equipment remain in the space. However, the landlord stated Dr. Hsu would be penalized
15 \$1407.61 each day past the moveout date if the equipment was still in the space if
16 PolyClinic decided not to take the lease. Dr. Hsu could not take that risk and had to make
17 arrangements to deinstall the Xray and MRI. Dr. Hsu had to hire an attorney to come to
18 an agreement and eventually paid a \$7337.03 penalty just to keep the MRI and Xray an
19 extra week past the July 8 deadline. Records related to the MRI and lease issues are
20 attached. See Attachment 2.
21

22 Following the de-installation of the MRI, Dr. Hsu was still faced with the challenge
23 and cost of finding a suitable space for it. MRI machines present unique challenges for
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1 building suitable space. Dr. Hsu was quoted a 1.2-million-dollar buildout cost for just a
2 space suitable for the MRI machine. Another estimated \$100,000 was budgeted for
3 electrical upgrades. When he bought the MRI unit, Dr. Hsu never anticipated that he
4 would need to move anytime soon and would not have purchased the unit had he known
5 what was going to happen. See Attachment 3.
6

7 *iii. COVID 19*

8 During all of these financial difficulties related to his businesses, COVID 19 was
9 emerging. Dr. Hsu, who still has family in Asia, was acutely aware of the devastation
10 COVID was causing. As the first infections in this country became publicized, Dr. Hsu
11 feared that his businesses would not be able to survive. A government mandated
12 shutdown was also a realistic scenario that caused Dr. Hsu stress and worry, especially
13 with the high month-to-month overhead costs he had to maintain regardless of whether
14 the clinics were operating or not. The PPP loan programs was just factoring in 2.5 times
15 the W2 payroll and unfortunately Dr. Hsu had numerous other expenses such as rent,
16 equipment operations, 1099 physicians, and workers that were not allowed to be factored
17 into such a loan. The buildout for the MRI machine was also a serious concern. The
18 combination of high expenses and the potential for serious, indeterminate shutdowns for
19 the foreseeable future caused Dr. Hsu grave worries as to the sustainability of his
20 businesses.
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23 *iv. The Loans*

24 On March 15, 2020, after hearing that Congress would approve a relief bill to
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1 support businesses that were suffering as a result of COVID 19, Dr. Hsu promptly
2 prepared documentation as required by the program. He submitted his application for
3 around \$140,000 through Bank of America. His application was equal to 2.5 months of
4 W2 payroll and was a legitimate application. Two weeks later he found out that funds
5 were exhausted, and his loan application was not funded. This was devastating to Dr. Hsu.
6 He later read that large companies such as the LA Lakers, AutoNation, and Cheesecake
7 Factory received PPP funding because the banks pushed through the loan applications of
8 their most favored clients. Dr. Hsu felt this was incredibly unfair as funds were supposed
9 to go towards small businesses with under 500 employees.
10

11 Within the following weeks, the number of patients dropped by 75% at Dr. Hsu's
12 clinics, while his expenses continued to hover at a \$60,000 per month rate. In addition to
13 the COVID concerns every business dealt with, Dr. Hsu also worried that some of the
14 rhetoric of prominent politicians (China Flu, Kung-Flu) were also very worrying for his
15 businesses. This was especially worrisome as Dr. Hsu personally encountered racial
16 discrimination after these remarks were made. Highly distressed, with no vaccine or
17 treatment in sight, and ongoing animosity towards Asians, Dr. Hsu began to realize his
18 businesses were doomed unless he got financial help. And failure did not feel like an
19 option. Failure would mean failing his employees. Failure meant he was going to fail his
20 patients and, most devastatingly, he was going to fail his elderly mother. These
21 realizations were especially difficult to grasp in light of the death of his father and, rightly
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1 or wrongly, the feeling of shame and guilt Dr. Hsu had that he somehow could have
2 prevented that death if had been able to better care for him.

3 On April 27th, when Congress approved and began the second round of PPP loans, he
4 still had the bad experience of the prior loan application fresh in his memory. Dr. Hsu
5 felt that he simply could not afford to fail at obtaining a loan for a second time. In order
6 to give himself a better chance at receiving a loan, he unfortunately submitted multiple
7 loan applications with false information, not having much expectation in any of them
8 being approved. He hoped that in a luck-of-the-draw system, at least one application
9 would be accepted and approved. What he did not expect was, because of the backlash
10 and public criticism of banks in the first round of PPP funding, the SBA had changed its
11 guidelines to make sure that more small businesses would receive loans. The result was
12 that five of Dr. Hsu's loans were funded. His understanding was if there was no PPP
13 forgiveness the borrower would be personally liable to pay back the loan in 2 years with
14 1% interest. He never applied or intended to apply for PPP forgiveness for these loans
15 and was intending to pay back the figures.

16 Despite the fact that some of the loans were funded, Dr. Hsu still feared financial ruin.
17 He had no idea how long COVID, the MRI debacle, or the Asian hate that was getting
18 progressively worse would continue. Dr. Hsu saw the SBA loans still open for Economic
19 Injury and Disaster Loans (EIDL) at 3.75% interest amortized over 30 years. Dr. Hsu
20 looked into other, more traditional loans, but was told that it would be very difficult
21 because of the tight lending standards. Dr. Hsu's understanding was that the SBA
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1 business loans that he applied for were non-forgivable, that he had to personally
2 guarantee them and that they were to be used for operating expenses and financial
3 obligations. He filled out the application, again containing information that was
4 admittedly false. It took him approximately five minutes before he submitted it. This
5 loan was also approved.
6

7 Dr. Hsu never spent the funds from the loans. It was his intent to use the funds in an
8 emergency situation (if needed) to sustain his businesses, and the EIDL loans to cover the
9 operating expenses as needed, along with the cost of the relocation and the build out for
10 the MRI.
11

12 As indicated above, Dr. Hsu acknowledges that the PPP and EIDL loan applications
13 contained false information. At the time, he rationalized that he never intended to harm
14 the lenders as he was personally guaranteeing the loans with his account receivables and
15 business assets. He also started interest payments on his EIDL loan even though the first
16 payment was not due until June 2021. Dr. Hsu deeply regrets the decision to submit false
17 information on the loan applications and is especially ashamed and embarrassed that he
18 entered employee's information and the information of some of his loved ones as a part
19 of those applications. While Dr. Hsu was under tremendous pressure and has a good
20 understanding as to the cognitive distortions that led to this offense, he is deeply ashamed
21 of his actions and knows it was a serious violation of trust. Given the opportunity, he
22 will do everything he can to rectify the loss of trust and to make amends to the
23 community, the government, and the Court.
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1 **THE SENTENCING GUIDELINES**

2 The defense agrees with the guideline calculations in the Presentence Report, and
3 those guidelines were agreed upon in the plea agreement. The total offense level after
4 acceptance of responsibility is 20 with a criminal history category I. This results in a
5 presumptive range of 33-41 months.
6

7 **III. RECOMMENDATION AND JUSTIFICATION**

8 **A. Five years of probation is proportionate to similar cases and would be**
9 **sufficient to meet the goals of Section 355(a).**

10 In *United States vs. Booker*, 543 U.S. 220, 125 S.Ct. 738 (2005), the Supreme
11 Court held that the United States Sentencing Guideline ranges were advisory rather than
12 mandatory, and that a sentencing court was to consider statutory factors, such as those set
13 forth in 18 U.S.C. § 3553(a), in tailoring a sentence in a particular case. That statute
14 mandates that the court shall impose a sentence sufficient, but not greater than necessary,
15 to comply with the purposes set forth in paragraph (2) of that statute. In considering the
16 final sentence the court imposes, the court should consider the need for the sentence
17 imposed to:
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20 Reflect the nature and circumstances of the offense and the history and
21 characteristics of the defendant; the need for the sentence imposed to reflect
22 the seriousness of the offense, to promote respect for the law, and to provide
23 just punishment for the offense; to afford adequate deterrence to criminal
24 conduct; to protect the public from further crimes of the defendant; and to
25 provide the defendant with needed educational or vocational training, medical
care, or other correctional treatment in the most effective manner; the kinds of
sentences available; the need to avoid unwarranted sentence disparities among
defendants with similar records who have been found guilty of similar conduct;
and the need to provide restitution to any victims of the offense.

1
2 18 U.S.C. § 3553(a).

3 *1. The nature and circumstances of the offense*

4 The nature and circumstance of the offense are unique and sad. Dr. Hsu has lived
5 his entire life in a pro-social manner. Dr. Hsu accepts full responsibility for his actions.
6 He made a terrible decision. The reality is that the terrible decision he made never would
7 have happened but for a series of calamitous events that were outside of his control. The
8 offense never would have happened had Dr. Hsu opted not to buy an MRI machine. The
9 offense never would have happened if Dr. Hsu and the doctors he shared space with had
10 not been evicted (something that never would have occurred but for the deterioration of
11 one of the joint tenant's health). The offense never would have happened but for COVID
12 19. The offense never would have happened if the first round of loans, which Dr. Hsu
13 legally applied for, were granted as they were for many big businesses.
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16 None of the money was spent. PPP loan forgiveness never was sought, and there
17 were no efforts to conceal that these funds were in Dr. Hsu's accounts. As a result, the
18 funds were easily identified and most of the funds were seized quickly. Even before the
19 legal troubles were becoming apparent, Dr. Hsu had every intention of paying the loans
20 back. As the Court is aware, Dr. Hsu also took responsibility for this case early and
21 before a grand jury returned an indictment, as well as before any significant discovery
22 was produced by the government. Prior to entering a plea in this matter, Dr. Hsu and the
23 government made arrangements for him to deposit funds into the Court registry making
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1 those funds available as quickly as possible to the victim of the offense. See Attachment
2 4.

3 2. *The history and characteristics of Dr. Hsu*

4 The history and characteristics of Dr. Hsu also are supportive of a probationary
5 sentence. Dr. Hsu has lived his entire life without a single criminal conviction. Prior to
6 this incident, his life has been almost entirely devoted to his family, to his employees and
7 his patients. He has many people who have rallied to support him because he has lived
8 his life by helping others through hard work. There are many examples of Dr. Hsu's
9 generosity in letters of support written by family, prior business partners, employees, and
10 patients.
11

12 Dr. Hsu's sister, Eugenia Hsu writes: "Perhaps the greatest quality I admire about
13 Austin is his sense of empathy. At an early age, he demonstrated a keen awareness of
14 others and a desire to help my parents." She goes on to say:

15 "“In first grade, Austin would collect aluminum soda cans from public trash cans
16 in order to exchange them for nickels at recycling machines. He did this in the
17 hopes of relieving some of the financial burden from my parents. Its was for this
18 same reason that Austin began delivering newspapers in elementary school-
19 waking up at dawn each morning so that he could prepare the newspapers and bike
20 to each house in time before school.” See Attachment 5.

21 On page two of Ed Le's letter (See Attachment 5, Le Letter). Mr. Le is an
22 attorney that has referred more than 30 *pro bono* clients to Dr. Hsu who have no
23 insurance and are unable to pay out of pocket. Mr. Le states:

24 Dr. Hsu is one of the few doctors who I know that has consistently provided free
25 services to these clients. I estimate that for the last three years, I probably sent

1 more than 30 *pro bono* patients who were in this category to him. There was
2 never a time he refused. Every patient who I refer there has come back with
highly positive reviews of his bedside manner, generosity, and empathy.

3 See Attachment 5.

4 Even at the height of the pandemic and during the middle of the eviction crisis and
5 the issues involving an MRI machine, Mr. Le sent two *pro bono* clients to Dr. Hsu. Mr.
6 Le had not referred a paying client to Dr. Hsu in more than six months. Despite all of the
7 difficulties and being on the precipice of financial ruin, Dr. Hsu still treated the *pro bono*
8 patients with no questions asked.
9

10 Dr. Hsu's former business partner, Dr. Henry Kan, writes that shortly after they
11 started their first business together, Dr. Kan's father was diagnosed with terminal liver
12 cancer. Dr. Hsu encouraged Dr. Kan to travel to China to be with his father. For the next
13 year and a half, Dr. Hsu gave 50% of everything he made to Dr. Kan despite the fact that
14 he was in China taking care of his dying father. He states:
15

16 ...to this day, I am forever grateful for the kindness and generosity that Austin
17 extended to me and our practice during that period. I will always remember his
18 selflessness in helping a friend in need.”

19 See Attachment 5, Khan letter.

20 3. *...to promote respect for the law, and to provide just punishment for the*
21 *offense; to afford adequate deterrence to criminal conduct*

22 A prison sentence is unnecessary to promote respect for the law, to provide just
23 punishment, or to deter others from committing similar offenses. The reality is Dr. Hsu's
24 life has already been devastated by this conviction. His reputation is all but ruined. He is
25

1 likely going to lose his chiropractic license. He is going to have to find another
2 livelihood and is now a felon. The felony, the loss of his reputation, the fact that
3 supervised release will follow would deter all but those who are totally heedless of
4 consequences. Anyone looking objectively at what has already happened to Dr. Hsu
5 would be deterred from making the same mistake.
6

7 *4. ...to protect the public from further crimes of the defendant; and to provide the*
8 *defendant with needed educational or vocational training, medical care, or*
9 *other correctional treatment in the most effective manner*

10 Dr. Hsu does not pose a danger to the public. He has lived his entire life in a
11 prosocial manner and has done nothing but work hard to build his businesses to help
12 others. But for an unprecedented confluence of events, this simply never would have
13 happened. Not only are those precise set of circumstances unlikely to ever resurface, but
14 its clear that Dr. Hsu has learned from his mistake. He acknowledges he should have
15 sought out help from others sooner and has shown deep remorse for panicking and
16 submitting applications with false information. In short, nothing like this will ever
17 happen again. This is not someone who needs to be imprisoned to protect the
18 community. While this was a terrible mistake, the community needs more people like
19 Dr. Hsu.
20

21 Dr. Hsu has shown a willingness to work with the Court on pretrial supervision,
22 and there is no reason to expect he won't do similarly well on probation or supervised
23 release. He has been receiving treatment for depression after this case was filed. See
24 Attachment 6.
25

1 Dr. David Dunner diagnosed Dr. Hsu as follows:

2 Diagnostic impression is major depressive episode single episode currently sever
3 with moderately severe anxious distress and with melancholic features. See Attachment
4 6, Dr. Dunner letter, Page 3, paragraph 2 (Mental Status Exam). Dr. Dunner also wrote
5 that Dr. Hsu has been experiencing symptoms of both depression and Post Traumatic
6 Stress Disorder: Dr. Dunner wrote:
7

8 He meets criteria for major depressive episode and for major depressive disorder.
9 The mood disorder prior to October was below threshold to diagnose dysthymic
10 disorder. The current depressive episode is characterized by moderately severe
11 anxious distress with feeling tense, unusually restless, difficulty concentrating
12 because of worry, fear that something awful may happen and feeling of loss of
13 control. He meets criteria for melancholic features with loss of pleasure, distinct
14 quality of the depressed mood, depression worse in the morning, early morning
15 awakening, significant weight loss and excessive guilt. He does not meet criteria
16 for mixed features or atypical features and depression is currently severe.
17 Posttraumatic stress disorder related to his father's suicide involved intrusive
18 memories, distressing dreams, flashbacks, distress at exposure, efforts to avoid
19 distressing memories, efforts to avoid external reminders, inability to remember
20 important aspects, exaggerated negative beliefs about himself, distorted cognitions
21 about the cause of the event, persistent negative emotional state, marked
22 anhedonia, estrangement and irritability, self-destructive behavior and sleep
23 disturbance. He met criteria for posttraumatic stress disorder with dissociative
24 symptoms.

19 See Attachment 6, Dunner letter, page 2 “Symptoms of his depression and PTSD”.

21 In addition, Dr. Andrew Benjamin writes that he has been treating Dr. Hsu since
22 March 17th, 2021 for PTSD relating to his father’s suicide and for depressive symptoms.
23 He reports that he and Dr. Hsu have formed a “strong therapeutic alliance” and that he
24 would benefit from continued psychotherapy. See Attachment 6, Dunner Letter. Dr. Hsu
25

1 is seeing Dr. Benjamin once a week for psychotherapy and Dr. Dunner for psych
2 medications monthly.

3 While impossible to know with certainty, it's possible that Dr. Hsu's depression
4 and Post Traumatic Stress related to his father's suicide contributed towards poor
5 decision making that led to this conviction, especially given the intense external pressures
6 he was dealing with. Going forward, he would welcome input from the Court and U.S.
7 Probation as to other treatment that may be helpful.

8
9 5. *...the kinds of sentences available; the need to avoid unwarranted sentence*
10 *disparities among defendants with similar records who have been found guilty*
11 *of similar conduct; and the need to provide restitution to any victims of the*
12 *offense.*

13 A probationary sentence would be consistent with other defendants with similar
14 records and who have been found guilty of similar conduct. Probation cites to the other
15 PPP loan case to be sentenced in this district, *U.S. v. Boake Zhang* (case no. 2:20-Cr-
16 00169-RAJ). In that case, Mr. Zhang had the exact same guideline range as Dr. Hsu
17 (total offense level of 20, criminal history category I and a presumptive range of 33-41
18 months). Like Dr. Hsu, all funds were recovered, both defendants were under financial
19 pressure and both men accepted responsibility early. Probation cites to the fact that Mr.
20 Zhang faced deportation as a consequence of his conviction and consequently "no longer
21 poses a risk to our community because he will likely be deported." Sentencing
22 Recommendation page 5.

1 The reality is that Dr. Hsu poses no risk to the community either, regardless of
2 whether he lives here or not. If anything, Dr. Hsu will likely continue to be the same
3 good and generous person he has been prior to this incident.

4 Further, its hard to understand how Probation concludes that Dr. Hsu's conduct
5 was significantly more egregious than that of Mr. Zhang. Both men made false
6 statements in loan applications, but both also made efforts early in the case to right their
7 wrongs and fully compensate the government of all outstanding restitution. Both men
8 showed remorse and both had lived crime free lives prior to being convicted of the
9 offenses. Neither spent any of the money that they received or applied for, at least in part
10 because they realized they had made serious errors and/or the offenses were detected
11 early.
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13
14 However, unlike Dr. Hsu, Mr. Zhang was a highly paid engineer who had a
15 generalized anxiety that his job at Lyft would end as a result of COVID. As an engineer
16 for Lyft, Mr. Zhang made \$19,000 per month in base salary. (See CR20-00169 RAJ
17 Docket No. 46, page one). He didn't own a business, didn't have business expenses and
18 didn't have employees to worry about. Instead, Mr. Zhang applied for loans as purported
19 start-up money for a business he *purportedly hoped to open*. In contrast, Dr. Hsu had
20 very real business problems. He had very real expenses, very real unforeseen
21 circumstances, and the very real prospect of financial ruin if he failed a second time at
22 securing loans that were, on their face, designed for struggling business owners.
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1 Probation's recommendation summarily claims that Mr. Zhang's harm to the
2 community "significantly less" than that of Dr. Hsu's harm. Its frankly unclear why
3 Probation is taking that position. Both men made false applications. Both input other's
4 identifying information into those loan applications. And while less money was
5 deposited into Mr. Zhang's bank account, the government correctly noted in their
6 sentencing memorandum that Mr. Zhang would have obtained more had he not been
7 caught.
8

9 In its Sentencing Recommendation in Mr. Zhang's case, the Government wrote:

10 Zhang does not deserve a lesser sentence because he "only" managed to obtain
11 \$16,500. Zhang certainly tried to obtain more-but he got caught. Lender 1
12 noticed his falsified EIN which prevented him from obtaining the first \$600,000
13 PPP loan. Only after being discovered by Lender 1 did Zhang rescind the other
14 loan applications. The Probation Office recommendation seems to give Zhang
15 credit because he "cancelled most of the transactions before they were processed."
16 Recommendation at 3. Most of the loans were processed. See, e.g. Plea
17 Agreement at Section 9-k (describing how Lender 2 tried to disperse the \$325,000
18 loan). The evidence shows that Zhang did not cancel the loans of his own accord;
19 rather, he was caught by Lender 1. The evidence also shows that Zhang would
20 have continued to seek COVID-19 relief funds without law enforcement
21 intervention-even after he was caught by Lender 1, he signed documents for
22 another PPP loan in the name of Zhang Sole Proprietorship. The PPP loan was
23 pending at the time of Zhang's arrest.
24

25 See U.S. v. Zhang, CR 20-00169RAJ, Docket 46, page 8.

Further, Mr. Zhang created three fake businesses to apply for loans and pretended
that his wife and his parents were restaurant workers, creating fake paperwork, paystubs
and tax forms to create the illusion the businesses were real and had been operating prior
to April 20, 2020.

1 Id.

2 Dr. Hsu, like Mr. Zhang, made a terrible mistake. But it's hard to understand how
3 Dr. Hsu's offense is significantly worse than that of Mr. Zhang's offense. Mr. Zhang
4 didn't even own a business. Even if he did get laid off from Lyft at some point, it's not
5 like he wasn't employable. He had worked at some of the top companies in the United
6 States and commanded a salary of \$19,000 per month (\$228,000 per year). Mr. Zhang
7 had assets exceeding 1.75 million dollars and a net worth of more than 1.2 million
8 dollars¹.

9
10 See *U.S. v. Zhang*, CR 20-00169RAJ, Docket 46, page 8.

11
12 In contrast, Dr. Hsu actually owned and operated businesses that were suffering
13 greatly as a result of the pandemic and other circumstances beyond his control. He really
14 was on the brink of financial ruin and was very much worried for his real businesses
15 having to close as a result of the pandemic, as a result of unforeseen eviction, and
16 expensive and logistically difficult move of an MRI machine and the toxic, racist rhetoric
17 perpetuated by politicians and social media towards Asians.

18
19 Both men made terrible mistakes in terrible and unprecedented circumstances. If
20 anything, Dr. Hsu at least had the motivation to preserve his businesses, to keep his
21 employees employed and to continue to be able to serve his patients. Mr. Zhang can say

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¹ It's also puzzling to counsel how Mr. Zhang convinced the Court to appoint The Federal Public Defender's office
25 with assets exceeding 1.75 million dollars and a net worth of 1.2 million dollars. Dr. Hsu is not utilizing court
resources to pay for his legal representation.

1 none of those things and its hard to understand how he is somehow viewed by Probation
2 as more deserving of leniency that Dr. Hsu.

3 While the crimes were similar in some respects, at least Dr. Hsu owned real
4 businesses and had the motivation to keep those businesses open, his employees
5 employed, and his patients with a chiropractor. And while Mr. Zhang should still be able
6 to work as a software engineer in a different country, Dr. Hsu is going to lose his license
7 to practice and won't be able to practice in this State or any other. Based on all of this,
8 Dr. Hsu should not be treated as harshly as Mr. Zhang and certainly should not be
9 sentenced as someone who has committed a more egregious offense.
10

11 A probationary sentence would be entirely consistent with the goal of avoiding
12 unnecessary sentencing disparities. If anything, Dr. Hsu's case is more sympathetic than
13 Mr. Zhang's and a sentence of probation coupled with a fine and/or community service is
14 merited.
15

16 **V. CONCLUSION**

17 For the reasons stated above, a probationary sentence is sufficient but not more
18 than necessary to meet the goals of sentencing. Mr. Hsu has never been someone that has
19 cut corners or victimized others to get ahead. Its an incredibly sad situation that should
20 be viewed in the context of an unprecedented pandemic, unenviable business problems,
21 and the compulsion to succeed in order to ensure his mother did not meet the same fate as
22 his father. Dr. Hsu was not looking for the easy way out in this case. He was looking for
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1 what he thought at the time was the only way out. He respectfully asks the Court to
2 impose a sentence of probation in this matter.
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6 Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 2, 2021, electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all participating counsel for this cause number.

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