

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA,

v.

CHAIM STERN,

Defendant.

**20-cr-00007 (JCH)**

**APRIL 7, 2021**

**SENTENCING MEMORANDUM ON BEHALF OF CHAIM STERN**

Mr. Stern will stand before this Court for sentencing on April 20, 2021, having pleaded guilty to a three-count Information charging him with Embezzlement of Money from a Pension Plan in violation of 18 U.S.C. § 664, Misapplication of Money Belonging to a Health Benefit Plan in violation of 18 U.S.C. § 669, and Failure to Pay Employee Withholding Taxes, in violation of 26 U.S.C. § 7202.

In this Memorandum, we do not seek to excuse Mr. Stern's conduct. He knows what he did was wrong and is ashamed of his actions.<sup>1</sup> But, as the Second Circuit has recently recognized in a different context, "an individual is more than the crime of which that individual has been [convicted]." *United States v. Mattis*, 963 F.3d 285, 293 (2d Cir. 2020). Mr. Stern, although now convicted of serious crimes, is also a loving husband, father, grandfather, and a man who, as the Sentencing Video and many letters of support submitted to the Court will attest (collected and filed herewith as Exhibit 2), has done tremendous good during his lifetime. Mr. Stern has also made extraordinary efforts to make restitution to those harmed by his actions—proving that his acceptance of responsibility goes well beyond mere words. He has paid back

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<sup>1</sup> We have submitted to Your Honor's Chambers, a Sentencing Video (cited as "Video at \_\_\_"), in addition to this memorandum and the other exhibits.

over \$4 million to the pension fund, \$1.5 million to the health care plan, and will pay at least \$1.1 million to the IRS before sentencing.

In considering Mr. Stern's conduct and deciding on his ultimate punishment, we respectfully request that the Court bear in mind the exhortation from the Second Circuit that "a sentencing judge must have some understanding of the diverse frailties of humankind." *United States v. Singh*, 877 F.3d 107, 121 (2d Cir. 2017) (internal quotation marks omitted). In "deciding what sentence will be 'sufficient, but not greater than necessary' to further the goals of punishment, 18 U.S.C. § 3553(a), a sentencing judge must have a 'generosity of spirit, that compassion which causes one to know what it is like to be in trouble and in pain.'" *Id.* Here, Mr. Stern has suffered through a lifetime of pain and denial, which did not allow him to admit that his businesses had failed and led him to commit the misconduct to which he has pleaded guilty.

The stipulated Guidelines range is 70–87 months imprisonment. We respectfully request that the Court impose a sentence well below the Guidelines. We submit that, because of Mr. Stern's unique background, his life of good works, his extensive efforts to provide restitution to the victims of his crimes, the fact that he has paid a severe financial and emotional penalty for his wrongdoing, and Mr. Stern's age and poor health, a sentence of probation or minimal prison time will be sufficient, but not greater than necessary, to meet the aims of 18 U.S.C. § 3553(a).

#### **I. MR. STERN'S BACKGROUND**

The Court, in fashioning a sentencing under § 3553(a), must consider "the history and characteristics of the defendant." § 3553(a)(1).

Mr. Stern is a remarkable man who conquered hardships that would have overwhelmed most of us, helped many people in his life, and created a large and beautiful

family. As we explain below, the traumas that he suffered in his early life left deep scars in which the seeds of his failure later in life were planted.

**A. Mr. Stern's Parents and His Difficult Childhood**

Mr. Stern is now 72 years old. He was born in Romania in 1948, three years after the end of World War II. His father, Alter Stern, was a Holocaust survivor. Prior to the war Alter lived in Siget, Hungary, with his pregnant wife and four children. After Hitler invaded Hungary, Alter Stern was conscripted to a "*munkatabor*," or Hungarian slave labor group. His pregnant wife and children were deported to Auschwitz, where they were murdered. The elder Mr. Stern spent the war as a Jewish slave laborer: beaten, starved, and treated brutally by the soldiers in charge.

Mr. Stern's mother survived the war in Romania. Mr. Stern's parents met, after the War, in a Displaced Person's Camp in Romania. Mr. Stern's father had lost his entire family during the war and, like many Holocaust survivors, was desperate to have someone in his life. They married and immediately began building a new family. Mr. Stern was born in Romania and moved with his family to Israel when he was two years old.

Following their move to Israel, Mr. Stern's family was poor and struggled to make ends meet. See Forensic Psychiatric Report completed by Yale School of Medicine, Department of Psychiatry under the direction of Dr. Howard Zonana, Director of Law and Psychiatry Division, (hereinafter "Yale Report") at 4 (filed herewith as Exhibit 1) (Mr. Stern describing the "hard life growing up in Israel; it was a hard country ... no food ... we needed to ration.").

As a result of the horrors that Mr. Stern's father suffered during the Holocaust, as well as his feelings of survivor's guilt, Mr. Stern's father was an abusive, rage-filled man.<sup>2</sup> Mr. Stern described to the forensic psychiatrist the extensive physical abuse he suffered at the hands of his father, for example being beaten with a stick.

When Mr. Stern was nine years old, his mother, who was pregnant at the time, left home, taking with her only the youngest child. Mr. Stern's wife, on the Sentencing Video, tells the story of how Mr. Stern returned from school and asked where his mother was. His father responded, "Mommy went away; she's not coming back." That was all the explanation that Mr. Stern ever received. Video at 1:28.

Although Mr. Stern did not understand it at the time, he now realizes that it is likely that his mother left his father, who appeared to be struggling with symptoms of Post-Traumatic Stress Disorder, because his father was physically and emotionally abusive to her and to their children.<sup>3</sup> After his mother left, Mr. Stern, who tried to protect

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<sup>2</sup> Mr. Stern has great difficulty speaking about his childhood or saying anything negative about his parents. In fact, for his entire adult life, he has repressed the abuse he faced as a child. Orthodox Jewish children are taught to honor their parents and to never criticize a parent. Moreover, Mr. Stern, like other Holocaust survivor's offspring, understood the horrors their parents faced during the war and so have great difficulty criticizing their parents. Thus, when Mr. Stern was asked during his pre-sentence interview about his childhood, he described his childhood (as he had done his whole life) as a somewhat idyllic time in a loving family, denying any history of physical abuse, describing his family's financial condition as comfortable, and stating that he and his siblings were "happy children." See PSR at 36. Only when pushed by undersigned counsel and the psychiatrist did Mr. Stern begin—slowly—to reveal the truth. But even after Mr. Stern finally admitted that his father had beaten him, he still attempted to excuse his father, stating that he likely deserved the punishment and that his father was trying to "raise a good man." Yale Report at 4.

<sup>3</sup> One indication of the level of abusiveness which Mr. Stern's father engaged in was his refusal to ever agree to a divorce. In Orthodox Judaism, a woman must obtain permission from her husband to obtain a divorce. This permission, or writ, is known as a "*get*." If the husband does not give a *get*, the wife cannot obtain a divorce and cannot remarry while the husband is alive. She is called a "chained" woman – denied freedom and chained to her husband until he dies. While a husband cannot be legally compelled to grant a *get*, men are supposed to grant one when a marriage has fallen apart. Men who refuse to give their wife a *get* are almost always men who

his siblings, faced the brunt of his father's abuse. Mr. Stern, who knew what his father had suffered at the hands of the Nazis, was unable to criticize or rebel against his father.

When Mr. Stern was twelve years old, Mr. Stern's father became ill. His father had untreated diabetes and had both of his legs amputated. Video at 2:55 (statement of Aaron Nutovich). Mr. Stern began scaling back on his schooling both to help care for his father and to work in his father's sausage casing shop. He was also expected to care for his younger siblings still living at home. After a short time his schooling ceased and while a tutor continued to come to the home to provide religious instructions to Mr. Stern, he did not receive any more secular education. Thus, from the age of twelve Mr. Stern helped his father run his small store and was also responsible "for all family matters, cleaning, cooking and caring for the younger children" including ensuring that they attended school and adhered to the rules. Yale Report at 5. Mr. Stern's brother, Moshe, speaks on the Sentencing Video about how his brother sacrificed so much for his siblings, characterizing Mr. Stern as "a person that gives away his heart for others." Video at 3:52.

Mr. Stern's cousin, Rina Goldzweig, describes what occurred after Mr. Stern's mother left, writing in a letter:

Chaim was abandoned by his mother at a very young age, together with his other siblings; the youngest was only 3 weeks old!

The burden of rising up the children fell all on Chaim's father's shoulders. Chaim's Father, my uncle, a Holocaust survivor and a victim of extermination camps, who lost a previous wife and children, was a sick man, not functioning and suffering among other ailments from anger outbursts causing the effect of beating his children often with a stick, leaving them bleeding.

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were abusive to their wives during the marriage. From the day Mr. Stern's mother left the marriage until the day Mr. Stern's father died, he refused to give his wife a *get*, keeping her chained to him for her entire life.

Chaim used to shield his younger brothers from the father and he took the brunt of the hitting off them!

The children grew up in dire poverty and misery without any supervision, going to sleep hungry and on the floor in absence of beds. The family was known to the welfare authorities.

Chaim understood even in his early years that he had to support his family's livelihood and he therefore gave up his studies in order to try and help supporting the family.

(Rina Goldzweig Letter, Ex. 2 at 1.)

As Mr. Stern grew older, his father's rage and abusive behavior intensified. His father would often curse him or "hit him with a stick all over." Yale Report at 5. Mr. Stern began to leave home and go and stay with his aunt for weeks at a time, "until [his father] would calm down." (*Id.*).

Mr. Stern told the psychiatrist how, in contrast to the turbulence and stress present in his home, he was surrounded by a "beautiful community" led by the Vizhnitz *Rebbe*<sup>4</sup> (or the Grand Rabbi of Vizhnitz), who gave him "strength to survive my youth." (*Id.*).

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<sup>4</sup> Chassidic Jews like Mr. Stern are ultra-Orthodox Jews who follow a particular *Rebbe* (Grand Rabbi). The *Rebbe* is their spiritual leader but he also advises followers on personal matters. *Rebbs* are different from Rabbis in that they are dynastic leaders and are considered to be a sort of conduit to God for their followers. The Yale Report states that Mr. Stern described his *Rebbe* as "a constant source of guidance and solace for him":

He described that he would meet with his *Rebbe* several times a year in Israel during High Holidays and other times; roughly a dozen times a year. Mr. Stern said he would only come to the *Rebbe* with important life issues for guidance. These topics included, according to Mr. Stern, marriage, buying a house, buying or selling a business. He did not "bother him with day-to-day matters of business." He said, "that would be too much little stuff for him to listen to." ... Mr. Stern emphasized that he has only ever sought guidance from his *Rebbe* and does not have a local rabbi whom he consults for guidance. He described that he has only ever consulted with his *Rebbe*, which in Mr. Stern's case, have been a line of individuals descended from the *Rebbe* from when Mr. Stern was a child in Israel.

(Yale Report at 6-7.)

His *Rebbe* was his mentor, protector, and guide, and the person to whom Mr. Stern turned to him for guidance and solace throughout his youth.

As Mr. Stern's relationship with his father deteriorated as he grew older, Mr. Stern confided in his *Rebbe* and sought advice about what he should do with his life. His *Rebbe* guided him to go to America. (*Id.*) Mr. Stern immigrated to America in 1969 with only \$50. He was 20 years old, had an elementary school education, and did not speak English. He had the name of cousins in Brooklyn, who helped him to settle into the Vizhnitz Orthodox Jewish community. He worked the nightshift at a textile factory, making \$90 per week. Shortly after coming to the United States, he was introduced to his wife by a matchmaker. He became a naturalized United States citizen in 1972 and settled with his wife and growing family in Queens.

Mr. Stern has carried the psychological scars from his abusive father his whole life. His statements to the psychiatrist reveal that he believes that his father had failed in a fundamental way, saying that his father "knew he had failed because he could not protect his family, what he needed to do above all else; *that failure can never be taken away*. He did good after that as much as he could." (*Id.* at 3). The forensic psychiatrists who evaluated Mr. Stern describes the consequences of Mr. Stern's childhood as follows:

When his parents separated and his mother left precipitously, and when his father subsequently became ill, Mr. Stern's education was interrupted, and he assumed the role of the parent in the household for his siblings in order to protect and preserve the family. The conflict with his father made Mr. Stern feel inadequate; the conflicts warned Mr. Stern against failure, particularly against failure to provide and protect the family. The father's burden of guilt and failure was transferred to his son who understood the consequences of failure meant annihilation. Mr. Stern strove to do right by and honor his father. Mr. Stern was often made to feel inadequate and lacking, but he always strove to do right by and honor his father.

(Yale Report at 16.)

**B. Mr. Stern Is an Adored Husband, Father, Grandfather and Great-Grandfather**

So often, children who are abused grow up to be adults who abuse their spouses or children. Not so Mr. Stern. From the time that he was a child, Mr. Stern was the caretaker for and protector of the more vulnerable members of his family. He learned from what happened to his father's first family the importance of protecting family and he became driven to be the protector of his wife, children, and grandchildren.

There is no question that Mr. Stern succeeded. He is a loving and much-loved husband, father, grandfather and great-grandfather. His children and grandchildren, in letters and videotaped statements, tell how he is a role model and all the love he showers on them. The love in this family is evident in the Sentencing Video, for example, showing Mr. Stern, with tears in his eyes, watching from a social distance as his children and grandchildren came to his home during the pandemic to celebrate, with signs and song, his and his wife's wedding anniversary.

And the letters tell how Mr. Stern is a remarkable father and grandfather. Mr. Stern's children recount on the Sentencing Video how they learned from him to think how they can help others in big and small ways. They explain that he taught this by example, by always stopping to give rides to other people, or by offering parents to bring items to their children in Israel when he would travel there, since shipping costs are so great. *See* Video at 7:40, 11:49. He taught this to his grandchildren by "always cradling [them] in his arms" and giving them "constant love and support" which helped them deal with tough things in life. Thus, his granddaughter Perela Landau, who has Symbrachadactily, a disease which causes fingers and toes to be undeveloped, tells how



Mr. Stern's "constant love and support helped me move past the hurtful comments and disgusted looks" she felt that people would give her. (Perela Landau Letter, Ex. 2 at 3.)

Mr. Stern's oldest granddaughter, Esty Perlstein writes how she has "a special and close relationship with" her grandparents and paints a beautiful picture of how Mr. Stern cares for his family:

One specific incident that comes to mind was when I was 8 weeks postpartum after a C section. After the birth of my twin babies, I had moved in for a weekend to my grandparents' home with my husband, my 4 year old daughter, and my 8 week old babies. Throughout the entire weekend, my grandfather was helping me with feedings, diaper changing, taking the babies on walks, just so that me and my husband can rest up. Even more so, when it came to at night, he took the night shift from 12 a.m. to 6 a.m. so that I can get my rest and recuperate. When I told him "zeidy (grandfather) I feel so bad," his response was "Don't worry about me, this is my enjoyment in life." This is my grandfather, living for his children and grandchildren and always trying to be kind, patient and caring.

... I want my children to be able to have their grandfather around as a role model and learn important values such as thoughtfulness, kindness, devotion and most important being a good human.

(Esty Perlstein Letter, Ex. 2 at 4.)

### **C. Mr. Stern Has Dedicated His Life to Helping Others**

As the Yale Report notes, Mr. Stern comes from a community where boundaries between family and community are fluid. Community members help one another to an extent not often seen in most of modern America. Mr. Stern was known throughout the community for his commitment to helping others. The Yale Report notes:

In and through his success, Mr. Stern remained true to his faith and culture, and sought to always share his good fortune with those in the community. He also sought to stay close to his Rebbe and gave generously to his Rebbe's synagogues and charities. In and through his generosity and selflessness, Mr. Stern has become a revered and important figure in his community. He is seen as a mentor and friend by many in his community.

(Yale Report at 16.)

The “selflessness” noted here is the same selflessness that Mr. Stern’s brother spoke about in the Sentencing Video when he spoke about how ever since Mr. Stern was a young boy, who gave up his own education and social life to work and care for his brothers and sisters, he was a “person that gives away his heart for others.” Video at 3:52. Nor did Mr. Stern stop taking care of his family when he left Israel. Once he arrived in New York, Mr. Stern wrote to his father every day, called when he could afford it, and sent money home to help. Yale Report at 16. He also helped four of his siblings leave Israel. Three settled in Brooklyn and one moved to Canada. Yale Report at 5.

Mr. Stern cared not only for his family but also for many others in his community. The many letters to Your Honor from members of his community to Your Honor and the Sentencing Video describe how Mr. Stern was known in his community as a person to whom anyone could turn for help and how Mr. Stern helped others, donating his own time, expertise, and money.

A number of the letters, and the Sentencing Video, tell how Mr. Stern helped in emergencies, such as when a person experienced the death of a loved one, and exhibited tremendous empathy and care. An example is the story shared by Jacob and Chanie Borenstein in the Sentencing Video. The Borensteins tell of the time they received a phone call that their son, who was at camp, had stopped breathing. They raced to the hospital and on the way called Mr. Stern for help. Unfortunately, their son died that night. When they returned home early the next morning, Mr. Stern was outside their home, just waiting for them. The Borensteins speak about how Mr. Stern “took care of all the arrangements for us” and how he comforted them. “He didn’t say anything, he just sat there crying. ... There were no words to be said, ... he sat there crying, holding Jacob and

letting Jacob cry on his shoulder.” Video at 7:12. This is the kind of empathy and compassion which Mr. Stern displayed for others, feeling their pain so deeply that he cried with them.<sup>5</sup>

Another member of the community tells about how she has known Mr. Stern and his wife for 50 years. When her marriage was falling apart and she was destitute, Mr. Stern “collected money from his friends to pay my rent and put food on the table for me and my family.” He helped convince her husband to give her a divorce (*see, supra* note 4), and “was always making sure that I was able to keep my head above water for me and my family after my divorce.” (Nechama Bienstock Letter, Ex. 2 at 7.)

Numerous letters tell stories which reveal how Mr. Stern is a man whose life is characterized by his instinct to think about how he can help others. His neighbor, Judith Neuman, tells how her 94 year old mother fell in the bathroom on a Sabbath morning and could not get up. The mother tried to reach Ms. Neuman but the daughter’s phone was turned off for Sabbath so she called 911 and police, an ambulance, and fire trucks arrived at the house. Ms. Neuman describes, “this drew a crowd as it was the time of day that many people were walking home from Sabbath services (we don’t drive on Sabbath either) and of course the sirens and commotion captured their curiosity. ... Only one person thought to come and get me and that person was Chaim Stern! While others were gawking, Judge Hall, he ran to my house to tell me something was happening by my mother.” (Judith Neuman Letter, Ex. 2 at 8-10.)

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<sup>5</sup> Nor was this a unique story. Chana Steinberg tells how her husband passed away suddenly, leaving her with four young children. “Immediately, Mr. Stern was in my house helping arrange the funeral and burial. Recognizing the need, and that I, due to my young children, would not be able to arrange the details, Mr. Stern stepped in and did whatever he could to ease my burden at the trying time.” (Chana Steinberg Letter, Ex. 2 at 6.)

Another story is told by Rabbi Noach Isaac Oelbaum, who is a Rabbi in Mr. Stern's community. Rabbi Oelbaum writes how when his daughter was a teenager, "she was diagnosed to be legally blind. You can imagine the heartbreak my wife and I went through. Even a simple task like doing homework took much effort." Mr. Stern started photocopying and enlarging her schoolwork, and bringing it to her every day, so that she could keep up with her class. Rabbi Oelbaum writes, "this is just a small example of the selfless acts of kindness Mr. Stern does, without fanfare." (Rabbi Oelbaum Letter, Ex. 2 at 11.)

Similarly, the letters to the Court tell how Mr. Stern had extra rooms in his home where he welcomed visitors who had nowhere to stay. (*See* Jacob Borenstein, Esq., Letter, Ex. 2 at 12-13) ("I have personally seen visitors from abroad arrive at their door asking for a place to stay and was amazed to see how Chaim and Miriam prepared hot meals for the visitors and treated them with the greatest respect and dignity.") Mr. Stern explained to a neighbor why he hosts these all these people, including strangers who come from Israel to solicit funds for charities:

Chaim's response, which I still remember until today, was that after hosting one of the greatest Jewish Rabbis (from Israel) on his visits to New York, he recognized that while that was a tremendous honor, there were many other people willing to host a famous Rabbi. But the real "mitzvah"<sup>6</sup> is to welcome all individuals, including the underprivileged who have nobody else to assist them. One of Chaim's life missions is treating all guests, including those in need with nobody else to turn to, as though they are royalty. As you can expect, word got out and, indeed, week after week his home has been like a free bed-and-breakfast with multitudes of visitors."

(Jacob Borenstein, Esq., Letter, Ex. 2 at 12.)<sup>7</sup>

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<sup>6</sup> A *mitzvah* is an act which is a good deed performed in fulfillment of G-d's commandments.

<sup>7</sup> *See also* Bernard Feilich Letter, Ex. 2 at 14 (telling how Mr. Stern "has an open home to the destitute" and "makes his home available to everyone, serving three meals a day, and sending

Even though Mr. Stern was a highly respected elder in his community, he always looked out for ways to help people who did not have his status. For example, Richard Kirschner writes to Your Honor about Mr. Stern's inclusiveness in synagogue. In the Orthodox community, men pray daily with a quorum (ten men) in a synagogue. The men generally have seats where they always sit and it can be intimidating for newcomers or young people to fit in. Mr. Kirschner writes that "Mr. Stern sits at a table which allows him to see what is going on in the synagogue" and when the synagogue is full "Mr. Stern always makes it his business to make sure that he finds a place for everyone coming in late (whether they are teenagers or general strangers) to sit and be comfortable at the service." Moreover, Mr. Stern makes a point to welcome people who have different religious practices from him. Mr. Kirschner explains, "Mr. Stern is a Chasidic person and a lot of the younger generation walking into the synagogue are generally of a much more modern Orthodox bent. Yet I find that they really like congregating at Mr. Stern's table because of the warmth that he exudes and the jovial banter that he has with them (sometime during and sometimes after service)." (Richard Kirschner Letter, Ex. 2 at 18.)

Indeed, some of these younger men have written to the Court to tell how Mr. Stern welcomed them into the community, and helped them by offering advice and a

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people off with a kind smile and a nice donation."); Samuel Kurtz Letter, Ex. 2 at 15-16 (telling how Mr. Stern hosted him for a weekend and he later learned that "my experience was not unique. Having spoken to Chaim's neighbors and friends that I met that weekend, I was told that rarely is there a week that Chaim does not host visitors over the Sabbath weekend."); Avery Melman Letter, Ex. 2 at 17 (telling how "whenever a new person enters into the synagogue, Mr. Stern is always welcoming and even more important, Mr. Stern will always ask the individual if he needs a place to eat or even sleep. I have seen Mr. Stern, on a Friday night, invite people to his Sabbath meal, that are visiting the community. These individuals are strangers and Mr. Stern recognizing the importance of welcoming guests into his home, does so without any reservation.").

welcoming home. (Jonathan Kroll Letter, Ex. 2 at 19-20;<sup>8</sup> Danny Schilo Letter, Ex. 2 at 21.)<sup>9</sup>

Mr. Stern also cared deeply for the residents and his employees in his nursing homes. His concern for the residents is evident both from the quality care that he provided them and from a story told by Shalom Sahar on the Sentencing Video. Mr. Sahar, a construction company owner who did a lot of work at BHCC, talks about how Mr. Stern is “special” and how Mr. Stern “would not come and sit in his office in the morning when he came to work, he would go to the floors, he would go door by door, room by room, to talk to people, if something they need. Like I say, he knew the people by their name, each one of them, he knew the problems they had, with their families, with their kids, with everything. I can admit it, there is not many people like Chaim Stern in the world.” Video at 11:11.

Similarly, Sam Ibrahim, who worked at BHCC for 13 years, tells the Court how the nursing home was a wonderful place to work, how Mr. Stern cared for the people, and created an atmosphere where everyone felt “like a family.” Video at 14:16.

As someone who cared about his employees, Mr. Stern feels tremendous remorse for wronging them, including by borrowing money from their pension fund and failing to fully fund their health care plan. We attempt to explain (not excuse) this conduct and show how Mr. Stern has done all that he could over the last few years to make restitution to the employees. What is particularly painful for Mr. Stern, however, is that he truly

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<sup>8</sup> Mr. Kroll writes how Mr. Stern “was generous with his time, friendship and guidance,” inviting Mr. Kroll into his home for Shabbat dinner. (Ex. 2 at 19-20.)

<sup>9</sup> Mr. Schilo writes how when he was new to the neighborhood Mr. Stern “offered me an ‘open house’ for anything I needed help with, ranging from personal and business advice to inviting me to share holiday meals with him and his family.” (Ex. 2 at 21.)

cared for his workers and sought to make BHCC a warm and family-like place for both the employees and residents.<sup>10</sup> In the Sentencing Video, Mr. Stern talks about how he tried to save the employees' jobs and feels terrible that he could not. Video at 15:25; 16:58.

Finally, in addition to giving his time and heart, Mr. Stern gave generously to charities in his community, and particularly to those connected to his Rebbe, the person who gave him "strength to survive [his] youth." Yale Report at 5. Mr. Stern was driven to do whatever he could to serve the community and thereby to support the Rebbe. Mr. Nutovics tells how "the Grand Rabbi of Viznitz, for whatever was needed for any of his charitable projects and he had many, Chaim Stern was the person that was called on first, the reason being there was never a negative response or a refusal to give from himself to all kinds of worthy causes." (Ahron Nutovics Letter, Ex. 2 at 22-27.) Similarly, Sol Chaimovits, tells how Mr. Stern devoted himself to helping his Rebbe financially and "accepted upon himself to pay for the expenses of the Rabbi's personal requirements." (Sol Chaimovits Letter, Ex. 2 at 28.)

Other letters tell how Mr. Stern helped support other important community organizations, such as Pesach Tikvah, an organization which is a major source of programs, living space, summer camps, and other resources for developmentally and psychologically disabled people. Rabbi Hershkowitz, the Development Director for

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<sup>10</sup> A website on which employees review and rate their jobs shows that prior to the extreme financial difficulties in 2018, Brooklyn Manor (one of the nursing homes) was considered by many employees to be a great place to work. <https://www.indeed.com/cmp/Bridgeport-Manor/reviews> Employee comments include remarks like "Patient centered", (comment left by a Nursing Assistant), "Strong teamwork and flexibility. Residents are priority", (comment left by a Therapeutic Recreation Director), "A very busy, life altering (in a good way) experience," (comment left by an LPN).

Pesach Tikvah and one of the founders of the organization, tells how when spoke with Mr. Stern about the program, “Chaim wanted to hear and understand what we are doing and how he can assist.” Rabbi Hershkowitz writes that when Chaim visited Pesach Tikvah “what followed at the visit is heartwarming. Chaim wept when he saw how the children were suffering and he promised to visit again and to be available whenever to help us. Chaim did not disappoint us. He listened and he acted. Connecting us to so many acquaintances of his and encouraging them to be of assistance to us. Anyone who knows Chaim would tell you that there are few people that match his passion for the suffering and even fewer that are willing to act on it. Chaim has shown passion all these years without asking anything in return, now when he needs our passion it is time that we grant it to him. If anyone deserves it is Chaim.” (Rabbi Hershkowitz Letter, Ex. 2 at 29-30.)

Another important community charity to which Mr. Stern donated is a volunteer ambulance service in Brooklyn, Hatzolah. Hatzolah's volunteers are constantly on-call, carrying their emergency radios 24 hours a day, 7 days a week. When a call goes out over the emergency radio, the closest volunteers respond to the scene with the lifesaving equipment they keep in their cars, while other volunteers rush to bring an ambulance. Because in severe medical emergencies the first few minutes often are the most crucial and because there are almost always volunteers who happen to be within a few blocks of the call, Hatzolah's volunteers have saved thousands of lives over the years.

Hatzolah is funded entirely by the Jewish community, although it answers calls for anyone within its coverage area. In a letter to the Court, the Vice President of Hatzolah, Mr. Benzion Lebovitz, tells the Court that “Hatzolah’s life-saving work would



not have been possible without the generosity of Mr. Chaim Stern. Mr. Chaim Stern has been a benefactor for Hatzolah since its inception.” (Benzion Lebovitz Letter, Ex. 2 at 31.)

## **II. MR. STERN’S CRIMINAL CONDUCT**

Mr. Stern makes no excuse for his actions. It is important, however, to place Mr. Stern’s wrongful conduct within the context of his life experience including, perhaps most critically, his lack of sophistication and inability to recognize and accept failure. *See, Singh*, 877 F.3d. at 119 (2d Cir. 2017) (“A defendant’s acceptance of responsibility and his assertion of mitigating circumstances are not necessarily inconsistent or incompatible.” As the Yale Report explains, “his understanding of his business situation and his judgment were influenced and limited by lack of education, limited business experience, insular culture, unfounded optimism and a desperate attempt to avoid failure.” Yale Report at 18. Indeed, the Yale Report details how Mr. Stern’s unique personality traits coupled with his lack of business acumen in an industry that faced unprecedented challenges led Mr. Stern to continue to operate the nursing homes even when it had become fiscally untenable.

### **A. Mr. Stern’s Purchase and Operation of Bridgeport Health Care Center**

In 1971, shortly after moving to America, Mr. Stern got a job through his in-laws working in a nursing home as a food-service worker. He worked hard and was promoted to food-service manager. The owner liked him and talked with Mr. Stern about becoming involved in running the business. That did not materialize, but Mr. Stern began considering investing in a nursing home himself.

At this point, in the mid-1980s, Mr. Stern's sole business experience was working as a food-service manager and helping at his father's small sausage shop in Israel. However, Mr. Stern was optimistic about his prospects. He had worked hard all his life and believed he could overcome any difficulties through hard work. And, most importantly, Mr. Stern was encouraged to enter the nursing home business by his *Rebbe*. In discussing his decision to enter this business, Mr. Stern "emphasized that he did not enter into business without careful consideration and consultation with his *Rebbe* and others to whom the *Rebbe* referred him." The *Rebbe* "reminded Mr. Stern of his positive attitude and willingness to work and encouraged him to take a chance." Yale Report. Thus, even though Mr. Stern had barely any secular education, having only attended a religious school up through approximately 8<sup>th</sup> grade,<sup>11</sup> had never run even a small business himself and certainly did not have any experience running a complex and highly-regulated company like a nursing home, nonetheless, with "the blessing of the *Rebbe*," Mr. Stern decided to enter the nursing home industry.

This naïve optimism in his ability to carry the day through nothing but hard work would lead to financial disaster and, eventually, to the crimes to which Mr. Stern has pleaded guilty.

Mr. Stern and his partners bought Bridgeport Health Care Center (BHCC) in a bankruptcy auction in 1990. Under the partnership's division of labor, Mr. Stern was responsible for the financial aspects of the business and his partners oversaw health care-related matters. While initially the business was profitable, over the years it became less so to the point where it was forced to declare bankruptcy. Between approximately 2013

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<sup>11</sup> Mr. Stern has always been ashamed of his lack of education and always told anyone who asked, including his children, that he had graduated high school even though he did not.

and 2018, BHCC was unable to pay many of its bills and repeatedly bounced checks, including payroll and checks to pay for the healthcare of its employees and owners. In April 2018, BHCC finally filed for bankruptcy. As discussed below, the causes for the business failure included (1) a general downturn in the nursing home industry, (2) Mr. Stern's lack of education and sophistication in business management, and (3) Mr. Stern's inability to admit failure.

### **1. The Downturn in the Nursing Home Industry**

First, the nursing home industry in general is in crisis in the 2000s in part because Medicare/Medicaid reimbursement rates were lowered, leading to a great stress on the industry. Additionally, states like Connecticut changed their policies to encourage the elderly to age at home, diverting money from nursing homes to home care. A program called "Money Follows the Person" had the goal of transitioning thousands of people from nursing homes to home and community based facilities, and significantly impacted the nursing home community. A report attached as Exhibit 3 found that between June 2015 and February 2020, more than 550 nursing homes closed in the United States and that even though there are significantly less nursing homes open today than there were in 2015, the occupancy rate at those still existing nursing homes is lower than it was in 2015. In Connecticut, 6.5% of the nursing homes closed during this time period. (Ex. 3 at 3, 5.) The nursing homes that Mr. Stern operated suffered financially from these trends.

## 2. Mr. Stern's Lack of Education and Sophistication in Business Management

Second, Mr. Stern was not a good businessman. He had no business experience, no secular education, limited ability to read, write (in English), or do math;<sup>12</sup> he has an extremely rigid personality which makes him resistant to taking advice from others or even acknowledging that he made a mistake;<sup>13</sup> and he has no business schooling or training. As a result of these limitations, Mr. Stern has no appreciation for the niceties of bookkeeping or proper business management. Instead, as he encountered financial difficulties he began to take money from wherever possible, to improperly commingle funds, and to rob Peter to pay Paul. While this naturally resulted in a myriad of debts it also created an illusion—to everyone but particularly to Mr. Stern—that the nursing home was financially sustainable.

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<sup>12</sup> As can be seen in the Yale Report (Ex. 1), Mr. Stern does not have a good understanding of basic math. For example, he could not figure out the correct answer to the question of “If there are 25 sticks of gum in one pack of chewing gum, how many sticks are in 8 packs?” He insisted that the correct answer was  $3 \frac{1}{3}$ , confusing multiplication and division. Yale Report at 12. Similarly, when asked to figure out if he had \$20, how many \$5.98 pens he could purchase and what would be his change he could not calculate the correct amount of change, stating that he could purchase three pens but incorrectly identifying the amount of change as “four and some change.” *Id.* at 15.

<sup>13</sup> The Yale report states: “Mr. Stern’s problem-solving style is analytic and rigid; that is, he forms a mental picture of the task and weighs options. He noted that he seeks advice from his *Rebbe* and from his sons and sons-in-laws but emphasized that he makes his own decisions. His style may allow him to make decisions easily when there is little feedback and no structure. The limitation of his style, however, is that he has difficulty incorporating feedback that runs counter to his analysis and plan. That, is, he rigidly adheres to his perception of the problem and solution and disregards feedback indicating his strategy is wrong. For example, on one arithmetic problem (25 sticks of chewing gum in a pack- how many in 8 packs), Mr. Stern answered, “Three and a third – you read the problem wrong; a third of stick.” When I suggested he try a different strategy, he answered, “I know math I know when to divide, when to multiply.” This type of error reflects impaired concentration but also reflects a fixed style resistant to change.” Yale Report at 12.

### 3. Mr. Stern's Inability to Admit Failure

Third, and relatedly, Mr. Stern was incapable of perceiving and admitting failure and therefore refused to acknowledge, even to himself, that the nursing homes were failing. The Yale Report explains how Mr. Stern learned as a child that he could not fail: “One clear message in early childhood was that “failure of any kind was not an option” and that failure resulted in ‘death and destruction.’” Yale Report at 3. This teaching was driven home by the demons his father suffered from. The Yale Report concludes that Mr. Stern’s “obsessive concern for failure reflects the influence of his father and his father’s experience as a Holocaust survivor who lost an entire family at the hands of the Nazis.”

*Id.* at 13. This passage from the Yale Report is poignant:

Mr. Stern’s background, including his abusive father, led him to turn to his Rebbe, the mentor who “saved” him. The mentorship led Mr. Stern to trust his Rebbe’s blessing and reassurance when Mr. Stern decided to purchase and operate nursing homes. Mr. Stern over-valued his Rebbe’s blessing and his own optimism over the fact he had limited education, having never graduated from middle school, and no experience in running any business. That same reliance on the power of the Rebbe’s blessing and his fear of failure prevented him from recognizing and dealing with the collapse of his business.

...

Mr. Stern is not psychotic and does not have primary cognitive deficiencies. It is likely, however, that his understanding of his business situation and his judgment were influenced and limited by lack of education, limited business experience, insular culture, unfounded optimism and a desperate attempt to avoid failure. Additionally, his cognitive and problem-solving style of rigid adherence and over-valuing of his own analysis and judgment despite external evidence to the contrary contributed to his holding on to his failed business. Perhaps even more relevant was the blessing of the business by the Rebbe; to Mr. Stern this approval assured success. The worse his financial situation became, the more his desperation and anxiety, and the more rigid his thinking likely became.

Yale Report at 16-18.

This refusal to admit defeat led Mr. Stern to continue to operate the nursing homes even when it had become fiscally impossible to do so. He did so by borrowing

money from friends and business acquaintances, not fully funding the employees' health care fund, not paying over the FICA withholding taxes, and not paying other creditors. And finally, at the end, when things became desperate, Mr. Stern borrowed money at an unconscionable annual interest rate of approximately 80%<sup>14</sup> and secured that loan by granting a mortgage on his home. He was (unsurprisingly) unable to repay this loan and his home is now in foreclosure. *See World Business Lenders, LLC v. Stern, et al*, Ind. No. 709055/2018 (Sup. Ct., Queens Cty).<sup>15</sup>

Thus, Mr. Stern's wife speaks on the Sentencing Video about how Mr. Stern was under great stress every week, worrying whether he would make payroll. *See Video at 16:20; 18:08.* To insure he would have sufficient funds to cover payroll, he would often borrow for short periods from friends. This is the reason for many of the loans with the Toner companies, noted in the PSR.<sup>16</sup>

Significantly, one of the nursing home's obligations which Mr. Stern did not pay was rent to the realty company that owned the land on which the nursing home stood. Mr. Stern and his partners, through a realty company, had purchased the nursing home buildings and grounds and had then leased those facilities to the nursing homes. The realty partners expected, and were entitled to, a return on this capital investment through

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<sup>14</sup> These exorbitant interest rates were legal only because the loan was made pursuant to Nevada law which does not have usury laws.

<sup>15</sup> Due to an arbitration clause in the loan document, this case is now in arbitration.

<sup>16</sup> Other times, as the PSR notes, money was just transferred back and forth between the Toner companies and Mr. Stern's companies. The reason for at least some of these transactions was because Mr. Stern was afraid that creditors would seize money if he left it in his accounts and so he would transfer money to friends, and the money later would be transferred back for him to use.

the rent which the nursing home had agreed to pay in the lease agreement.<sup>17</sup> The rent in the lease was at market rate,<sup>18</sup> and the partners could have leased the premises to another business nursing home and earned this rent

Nonetheless, because of the nursing homes' financial difficulties, Mr. Stern paid only a fraction of the rent due to the realty company under the lease (all applied to mortgage payments). By the time that the nursing homes went into bankruptcy the realty partners were owed \$12,953,500 in unpaid rent.<sup>19</sup>

BHCC's failure to pay the rent is relevant, we submit, to the Court's consideration of the government's assertion in the PSR that over a ten-year period Mr. Stern and his family and partners received fringe benefits that were paid for by BHCC, including health insurance for partners families, EZ Pass charges, Verizon charges, and cars. The implication is that Mr. Stern was draining the nursing home of money through personal expenditures. The total amount of these fringe benefits identified by the government adds up to approximately \$1,508,400. This, however, is a small fraction of the money to which the nursing-home owners were legitimately entitled and which they never received. If you deduct the total expenditures Mr. Stern and his partner's families

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<sup>17</sup> Moreover, the rent was included in the so-called "reimbursement rate" of the nursing home, meaning that the rent was an expense which the State of Connecticut determined was a reasonable expense, and for which the nursing home was compensated through the daily rate the State paid for each resident of the nursing homes.

<sup>18</sup> We attach, as Exhibit 4, an appraisal by Cushman & Wakefield showing that the lease amount was at market rate. The Cushman & Wakefield appraisal provide a table which when calculated out results in a fair market rent over ten years of \$19,975,744. The rent charged by BHCC pursuant to the lease was close to \$4 million less, or \$16,050,000. (The amount that was actually paid was significantly less - \$3,096,500).

<sup>19</sup> See Exhibit 5, which is a chart of the amount that BHCC was supposed to pay according to the lease versus the amount that BHCC actually paid.

received from the rent to which the realty partners were entitled, the realty partners, including the Sterns, were still owed approximately \$11,445,100.<sup>20</sup> Due to the outstanding rent obligations to the realty partners, Mr. Stern believed, with justification, he was not doing anything wrong by compensating the partners in a limited way for their investments by allowing their families to receive fringe benefits over the years, like leased cars and cellphones. Moreover, and in further contradiction to the implication that Mr. Stern was draining funds from the nursing home for his personal benefit, Mr. Stern was providing personal guarantees on loans to insure BHCC had sufficient funds.

Crucially, although many bills were going unpaid, Mr. Stern always made sure to pay for anything necessary for the care of the nursing homes' residents. BHCC always provided quality care to its residents, never failing to provide healthy food, cleaning, or medical care.<sup>21</sup>

The fact that BHCC was a failing business which would not have succeeded no matter who was managing it, can be shown by what transpired after the nursing homes went into bankruptcy and their management was taken over by a trustee. The Chapter 11 trustee was appointed in April, 2018. After the trustee's appointment, in an effort to save the nursing homes, the State of Connecticut raised the daily Medicaid reimbursement rate

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<sup>20</sup> The government also alleges that the charity account – Em Kohl Chai – which was established by Mr. Stern improperly paid \$4,454,041 in credit card charges. It does not seem that the government alleges that this money came from BHCC. Instead, it appears that what the government is saying is that this was part of the transactions between the Toner companies and BHCC.

<sup>21</sup>Mr. Stern stopped operating BHCC in 2018. Up to that time, BHCC was a well rated nursing home. For example, BHCC received “an above average rating of 4-Stars” in a 2016 report done by an independent website evaluating nursing homes to help families make choices. The report further states that BHCC had above average staffing levels for LPN and Certified Nursing Aides, which are the categories of workers who actually care for the patients.

<https://healthcarecomps.com/nursing-homes/ct/075370/>



that it paid to BHCC for each resident. The BHCC reimbursement rate for the period July 1, 2017 through June 30, 2018 per resident per diem was \$244.46. Once the trustee took over, the rate went up to \$300.00 in August 2018, and in November 2018 it went up further to \$306. Notwithstanding this higher rate, and the fact that the Trustee did not pay any of the rent which BHCC was obligated to pay under its lease with the realty company, the (dedicated and conscientious) bankruptcy Trustee could not make ends meet and BHCC was recently forced to convert its bankruptcy petition to Chapter 7. *See In Re The Rosegarden Health and Rehabilitation Center LLC and Bridgeport Heath Care Center Inc.*, 18-30623 & 18-50488 (Bankr. D. Conn.), ECF No. 63.

**B. The Criminal Acts to Which Mr. Stern Pleaded Guilty and His Efforts to Make Restitution**

Mr. Stern acknowledges that he acted improperly in three significant ways. He has done all that he can to make complete restitution in all three of these areas.

**1. Theft from a Health Care Plan**

First, Mr. Stern acknowledges that he improperly took money that belonged to BHCC's employee health care plan and used it for other purposes.

The background for this count is as follows: BHCC was obligated under its union contract to provide health care for its workers. BHCC did so through a self-insured health care plan. In other words, employees would go to health care providers, those providers would send their bills to an Administrator who BHCC retained, and the Administrator would pay those bills using funding pre-provided by BHCC. In order to protect itself against unusual or particularly expensive medical bills, BHCC took out so-called "stop-loss insurance," which covered medical expenses above a certain threshold. Money

received from these insurance policies was obligated to be used for the benefit of the health care plan. 18 U.S.C. § 669.

Because BHCC was in significant fiscal distress, it did not always have the money to fund its self-insurance plan, which meant that employee's medical bills would at times go unpaid. This was deeply upsetting to Mr. Stern, who knew that he was causing stress and hardship to BHCC employees and others insured under the BHCC health plan (including his own family members). But, given the pressures he faced simply to make payroll and to pay for the residents' medicine, food, and care, Mr. Stern, at times, simply did not have the money to adequately fund the health-care plan. Nevertheless, Mr. Stern acknowledges that failing to fund the plan, on which BHCC employees were relying for medical care, was a serious failure on his part.

But BHCC and Mr. Stern's failure to consistently fund BHCC'S health care plan was due to a lack of financial resources. Although this conduct is discussed extensively in the PSR, and Mr. Stern has agreed in the plea agreement to make restitution, under 18 U.S.C. § 3663(a)(3), for all claims unpaid by the BHCC health-care plan, this conduct was not criminal and is not charged as a crime in this case.<sup>22</sup>

What Mr. Stern did that *was* a crime with respect to the health-care plan was diverting a check for \$305,608.06 from the plan's stop-loss insurance that was meant to be used for the benefit of the plan and instead using this money to pay BHCC expenses, including payroll and nurse staffing, and to pay back a short term loan. Mr. Stern understands that this action of his was wrong and hurt the employees, one of whom was

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<sup>22</sup> A defendant can agree in a plea agreement to pay restitution which he is not obligated under the law to pay and which a Court would not be able to impose without the defendant's agreement. 18 U.S.C. § 3663(a)(3). That is what Mr. Stern has agreed to do in this case.

subsequently sued by his health-care provider over his medical expenses but who should have been paid with the funds from the stop-loss check. Mr. Stern has pleaded guilty and acknowledged this wrongdoing.

Mr. Stern has sought to rectify the harm he caused by raising money to pay restitution.

Specifically, the Department of Labor brought a lawsuit seeking to recover both the money that BHCC did not pay to the health care plan and the money that Mr. Stern wrongly diverted from the health care plan. Mr. Stern settled the case by agreeing to pay back an amount which a health care administrator determined was sufficient to pay all the unpaid Health Plan claims. Although the amount of the claims totals over \$4 million, the Claims Administrator did not believe that that was the amount that would be necessary to pay off all the outstanding claims. The reason for this is because health care providers have negotiated rates with insurance companies such that health care plans pay only a fraction of the amount charged to individual patients. The Claims Administrator, an experienced health care professional, estimated that approximately \$2.5 million would be needed in order to pay off the unpaid claims. Mr. Stern settled for that amount, with the insurance company paying \$1 million and Mr. Stern agreeing to pay \$1.5 million, which he paid on September 1, 2020, and BHCC paying \$26,392.<sup>23</sup>

Mr. Stern raised this \$1.5 million by humbling himself in front of his community – going to his community, admitting his wrongdoing, and asking people to help him.

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<sup>23</sup> The prosecutors in this case disagree with the Department of Labor and assert that the amount owed for outstanding health care claims is closer to \$9 million. We have not seen these calculations and do not know who is correct. In either case, Mr. Stern has agreed that any restitution obligation in this case will cover any amount that is outstanding.

While we believe and hope that this amount of money will be sufficient to settle the unpaid Health Plan claims, Mr. Stern agreed in the Plea Agreement to pay as restitution any outstanding Health Plan obligations that are not covered by the civil settlement.

## **2. Misappropriating Pension Fund Money**

The second crime to which Mr. Stern has pleaded guilty is improperly taking money from the BHCC employee pension plan. Although he took this money planning to return it (in addition to the interest he was paying), he knew when he took the money that he was not allowed to lend money from the pension fund to a charity he controlled.

Specifically, between January 2011 and August 2013, Mr. Stern took \$3,860,018 from the BHCC employee's pension plan. This money was booked as a loan to Em Kol Chai, a charity Mr. Stern ran. Additionally, Mr. Stern diverted \$303,828 in Pension Plan funds from an annuity owned by the pension plan to BHCC, resulting in a total of \$4,103,828 which Mr. Stern wrongly took from the Pension Plan.<sup>24</sup>

Mr. Stern used this money, for the most part, to "invest" in (or purchase) Life Settlement Policies. Mr. Stern placed his hopes on saving the nursing homes with these investments, which were almost a form of gambling for him. Life settlement investments involve investors purchasing life insurance policies from an insured person who no longer wishes to pay the premiums on their policy. Rather than allowing the policy to lapse, the insured sells the policy to a third party and that third party continues to pay the policy premiums until the insured dies. The third party then collect the insurance money.

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<sup>24</sup> For the purpose of settling the Civil Case, Mr. Stern's payment to the Pension Plan was split between a payment of principal and a large payment of interest. This was because the insurance policy did not cover interest and would only cover principal that was taken and not paid back.

Although Mr. Stern viewed these policies as the road to financial security, they are, in fact, very risky investments. This investment strategy has a major flaw. The premiums, which can amount to hundreds of thousands of dollars a year on a multi-million-dollar policy for an older person, must continue to be paid or else the policy lapses. And if the insured lives to an old age, the third party may lose money even if he eventually collects on the policy. Insurance companies are sophisticated actors and set the premiums at levels that allow them to make money under most circumstances. Moreover, insurance companies do not like the life settlement industry and often refuse to pay when the insured dies, so it is often necessary to litigate the policy recovery.

After some of his initial investments in these sorts of policies turned a significant profit, Mr. Stern became hooked on this form of investing/gambling. He began investing more and more in life settlement policies with the hope that he would be able to repay the money which he took from the pension plan, with interest, put the nursing homes back on solid financial footing, and make money both for his family and charities he cared about.

Similarly, Mr. Stern also purchased large life insurance policies on himself and his wife for his children's benefit. Indeed, the number and sum of policies that he purchased for his family's benefit, using borrowed money to pay the premiums, reflects what Mr. Stern's father drove into him as a child: a compulsive fear of failing to take care of his family and a drive to take care of his family even after he died.

While Mr. Stern did make some money off these policies, on the whole the incredible amount he was paying in yearly premiums drove him further into financial debt and ruin. He failed to appreciate, as all gamblers do, that you cannot beat the house.

As noted in the PSR, on August 27, 2018, Mr. Stern paid back approximately \$4,141,950 to the Pension Plan. These funds came from an investment Mr. Stern made in a life settlement policy. In addition, on July 28, 2020, Mr. Stern paid an additional \$60,000 to the pension plan and caused his insurance carrier to pay \$780,565 to the pension plan.

Thus, Mr. Stern wrongly took \$4,103,828 from the pension plan but paid back a total of \$4,982,515 to the pension plan in restitution payments for both principal and lost investment opportunity.

### **3. Failure to Pay Withholding Tax**

The third crime to which Mr. Stern has pleaded guilty is his failure to pay over to the IRS the withheld portion of BHCC's employee's FICA taxes (so-called "trust fund taxes"). Mr. Stern was obligated, as the manager of BHCC, to pay these taxes over to the IRS but he did not have the money to do so. He recognizes that inability to pay is not an excuse under the law, *see, e.g., United States v. Easterday*, 564 F.3d 1004, 1011 (9th Cir. 2009), and knows that he should have, if necessary, shut down the nursing homes rather than continue to operate while failing to pay over these taxes to the IRS. But Mr. Stern simply could not bring himself to admit his failure in this way and so he instead failed to pay over these taxes, always believing that he would eventually make enough to pay these back taxes.

Mr. Stern has sold all except one of the life insurance policies which he purchased for his family and has transferred the money (or is in the process of transferring the money) to his attorneys to be paid as restitution for the taxes that he failed to pay over.

### **III. THE COURT HAS BROAD SENTENCING DISCRETION**

Pursuant to a plea agreement, the parties stipulated to a guideline range of 70–87 months. Probation concurs in this calculation.

As the Court is well aware, however, the sentencing guidelines are not binding. *See generally United States v. Booker*, 543 U.S. 220 (2005). In fact, “a sentencing court may no longer rely exclusively on the Guidelines range; rather, the court must make an individualized assessment based on the facts presented and the other statutory factors.” *Beckles v. United States*, 137 S. Ct. 886, 894 (2017) (internal quotation marks omitted). Rather, the sentencing guidelines now just are “one factor among several courts must consider in determining an appropriate sentence” that is compliant with “§3553(a)’s overarching instruction to ‘impose a sentence sufficient, but not greater than necessary’ to accomplish the sentencing goals advanced in § 3553(a)(2).” *Kimbrough v. United States*, 552 U.S. 85, 111 (2007).

Moreover, as the Second Circuit has explained, “every Guidelines sentence is limited by § 3553(a)’s ‘parsimony clause,’ which instructs a district court to impose a sentence ‘sufficient, but not greater than necessary’ to achieve § 3553(a)(2)’s goals [and means] courts are required to carefully consider on an individualized basis ‘the nature and circumstances of the offense and the history and characteristics of the defendant.’ 18 U.S.C. § 3553(a)(1).” *United States v. Jenkins*, 854 F.3d 181, 190 (2d Cir. 2017).

These fundamental post-*Booker* sentencing principles are especially important in a case like this. As a number of courts have noted, the guidelines applicable to fraud and other like economic offenses—because they have numerous overlapping enhancements and give undue significance to dollar amounts absent relevant context—can often produce advisory sentencing ranges that are indisputably far “greater than necessary” and lack any common sentencing

wisdom.<sup>25</sup> In fact, the Second Circuit has held that “[w]here the Commission has assigned a rather low base offense level to a crime and then increased it significantly by a loss enhancement,”—as is the case here—“that combination of circumstances entitles a sentencing judge to consider a non-Guidelines sentence.” *United States v. Algahaim*, 842 F.3d 796, 800 (2d Cir. 2016). *Accord Kimbrough*, 552 U.S. at 101 (holding that sentencing courts “may vary from Guidelines ranges based solely on policy considerations, including disagreements with the Guidelines”) (internal brackets omitted). In short, it is clear that there is ample authority for the Court to vary significantly downward in this case and impose a more just sentence on Mr. Stern.<sup>26</sup>

#### **IV. OTHER FACTORS WHICH SUPPORT A SENTENCE THAT IS SIGNIFICANTLY BELOW THE GUIDELINES RANGE**

##### **A. Mr. Stern’s Extraordinary Restitution**

One factor we submit that that supports a downward variance in this case is the extraordinary restitution made by Mr. Stern.

As set forth above, Mr. Stern has paid full restitution to both the Pension Plan and the Health Care Plan for the money he wrongly took, and additionally has funded a trust

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<sup>25</sup> See, e.g., *United States v. Gupta*, 904 F. Supp. 2d 349, 351 (S.D.N.Y. 2012) (complaining that “the numbers assigned by the Sentencing Commission to various sentencing factors appear to be more the product of speculation, whim, or abstract number-crunching than of any rigorous methodology—thus maximizing the risk of injustice”), *aff’d*, 747 F.3d 111 (2d Cir. 2014); *United States v. Parris*, 573 F. Supp. 2d 744, 754 (E.D.N.Y. 2008) (noting that “the Sentencing Guidelines for white-collar crimes [can produce] a black stain on common sense”); *United States v. Adelson*, 441 F. Supp. 2d 506, 512 (S.D.N.Y. 2006) (lamenting “the utter travesty of justice that sometimes results from the guidelines’ fetish with absolute arithmetic, as well as the harm that guideline calculations can visit on human beings if not cabined by common sense”), *aff’d* 237 Fed. App’x 713 (2d Cir. 2008).

<sup>26</sup> Of note, the majority of offenders sentenced for fraud receive below guideline sentences. See U.S. Sentencing Commission, 2019 Sourcebook of Federal Sentencing Statistics tbl. 31 (2020), available at <https://www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2019/Table31.pdf>. See also *id.* at tbl. 32 (only 2,503 of 5,706 offenders sentenced under U.S.S.G. 2B1.1 receive guideline sentences).



to reimburse BHCC employees and health care providers for costs which should have been paid by BHCC's unfunded health insurance plan.

Mr. Stern obtained the money to pay this restitution, in part, by humbling himself in his community.

For many years, Mr. Stern was one of the most prominent members of his community. The letters to Your Honor show the high esteem in which he was held. He was the person to whom everyone turned for wisdom and help. Going to the community and admitting his crimes and his failure was the hardest and most humiliating thing that Mr. Stern has ever had to do. But he subsumed his self-esteem and his reputation in the community, understanding that this task was necessary for him to begin to right the wrong he committed. His fall from grace is captured in the letter of Ahron Nutovics, who writes:

My grandparents, parents, always belonged to the dynasty of Vizhnitz. The name Chaim Stern for as long as I remember was always a person to be looked up at. He was a person first and foremost serving the community. ...  
My personal connection with Mr. Stern for the last 30 years is being on the same Board for our vocational school, serving together on the Board of our synagogue, which caters to approximately 500 families and all the community needs. ...

...

On top of the above, any person in the community that needed any help on a personal level, shall it be financial needs or medical issues, Mr. Stern was the address that everyone turns to for connection, for financial help. Your Honor, the community as a whole, for all private people that were helped, and myself, are devastated by the mistake, misjudgment, and failing of Mr. Stern. It took me quite a while being so close to Mr. Stern to absorb the shock, pain and even anger, constantly asking myself, how could this happen.

...

Your Honor, when Mr. Stern will be standing before you on judgment day may you have mercy on this repentful broken soul. I met him a few times in the recent couple of years. He looks like a broken man, a shadow of his past. May Your Honor take into account his mental suffering, his downfall from grace, his shame in the community, etc., and deliver a merciful punishment for his misdeeds.

(Ahron Nutovics Letter, Ex. 2 at 22-27.)

Finally, Mr. Stern has disposed of assets, including surrendering all of the life insurance policies which he bought for the benefit of his family and the Vizhnitz community, and used that money, plus additional money that was raised from the community, to make restitution for the taxes he failed to pay over to the Federal Government.

As a result of Mr. Stern's extraordinary restitution efforts, and the failure of his businesses, Mr. Stern is destitute. As evidenced by Mr. Stern's financial statement, Mr. Stern and his wife are left with almost no assets to live on and will be left with substantial judgments against them (criminal forfeiture judgments in this case; civil penalties in the DOL case.) Even Mr. Stern's personal home is facing foreclosure.

**B. The Court Should Consider Mr. Stern's Age and Declining Health When Fashioning His Sentence**

Mr. Stern is 72 years old and is not a well man.

We attach as Exhibit 6 a lengthy letter from Gregg Rosner, MD, FACC, a Cardiologist at Columbia Hospital. Dr. Rosner performed multiple tests on Mr. Stern and the results of those tests, plus Mr. Stern's past medical history are included in this letter. The past medical history includes heart problems, breathing problems (COPD), a history of Thyroid cancer, hypertension, persistent asthma, obesity, obstructive sleep apnea, skin diseases, and problems with his shoulders.

Also included in this letter is a lengthy list of medications. On a daily basis, Mr. Stern takes a total of sixteen different medications plus various lotions and a breathing machine: four medications for his lungs (plus he must sleep with a sleep apnea device

due to “severe disordered breathing), five cardiac medications, and MSK, Endocrine, GI, GU, and Neuro medications.

Dr. Rosner sums up his letter telling the Court: “In summary, it is my medical opinion that Mr. Stern has multiple comorbidities which all require ongoing medical attention and when taken together reflect a generally unwell man. He expresses that many of his conditions have worsened under the tremendous stress that he is experiencing with his legal troubles. I do worry that his medical conditions will worsen under increasing stress.” (Ex. 6.)

Indeed, Mr. Stern’s condition appears to have worsened recently. His breathing, which for a while has been audible, is now loud. Counsel has witnessed that Mr. Stern is unable to walk more than a few blocks without having to stop.

In addition to these physical problems, Mr. Stern is suffering from significant mental health problems. The Yale Report finds that Mr. Stern is suffering from depression, which appears to be a long-standing problem which has been exasperated by recent events. It also expresses significant concern that Mr. Stern has impaired cognitive performance and cognitive dulling. It’s conclusion states that there is evidence of cognitive impairments in excess of expected age-related changes. (Ex. 1.)

We submit that given Mr. Stern’s substantial physical and mental health problems, a lengthy prison sentence will impose substantial burdens on both on Mr. Stern and the Bureau of Prisons. A defendant’s ill health is a factor which the law specifically notes should be taken into account by the Court and is the basis for a below Guidelines sentence. *See* § 3553(a)(2)(D) (“the need ... to provide the defendant with needed ... medical care”).

\* \* \*

“The sentencing of defendants in federal court is such a common occurrence that it is important to occasionally pause and remember what is at stake. A human life, designed both by nature and our nation’s Constitution to live free and pursue happiness, is taken away from family and familiar surroundings to serve days, months, years, or a lifetime in a prison cell.” *United States v. Faison*, No. GJH-19-27, 2020 WL 816699, at \*1 (D. Md. Feb. 18, 2020). That is, unfortunately, Your Honor’s task. But because, for Mr. Stern, “every day, month and year that [i]s added to the ultimate sentence will matter,” it is “crucial that judges give careful consideration to every minute that is added to a defendant's sentence.” *Faison*, 2020 WL 816699, at \*1.

Due to his criminal conduct, Mr. Stern’s reputation among both his family and community was destroyed and his finances have been ruined. He will be left with a significant forfeiture judgment against him. While Mr. Stern understand that he is still deserving of further punishment, we ask that Your Honor bear this, as well as his contrition and lifetime of good deeds, in mind when deciding on his appropriate punishment.

**V. CONCLUSION**

We ask that the Court sentence Mr. Stern to a sentence sufficient, but not greater than necessary, to accomplish the goals of the federal sentencing regime. We respectfully submit that, based on the factors set forth in this memorandum, a sentence of probation or minimal prison time will be sufficient, but not greater than necessary, to meet the aims of 18 U.S.C. § 3553(a).

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on the above date a copy of the foregoing document was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF system.

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