

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
BERN BENOIT,)
)
Defendant.)
_____)

CASE NO.: 1:20-CR-00296-JPB-AJB

**DEFENDANT BERN BENOIT’S SETENCING MEMORANDUM AND
MOTION FOR DOWNWARD DEPARTURE**

**TO THE HONORABLE J.P. BOULEE, UNITED STATES DISTRICT COURT
JUDGE:**

By and through his counsel of record, BERN BENOIT a/k/a BURN BENOIT submits the following sentencing memorandum and Motion for Downward Departure for this Court’s consideration prior to imposition of sentence herein. Defendant confirms that he received the Final Presentence Investigative Report (“PSR”) prepared by Maria J. Ridley United States Probation Officer on or about May 18, 2021 and understands that this Court will consider said report during sentencing. However, because the PSR includes an *advisory* guideline sentencing range together with a recommended sentence, Defendant submits this sentencing memorandum to assist the Court in determining the most appropriate sentence herein.

INTRODUCTION

"It is important to realize that departures are an important part of the sentencing process because they offer the opportunity to ameliorate, at least in some respects, the rigidity of the Guidelines themselves. District judges, therefore, need not shrink from utilizing departures when the opportunity presents itself and when circumstances require such action to bring about a fair and reasonable sentence." **United States v. Gaskill, 991 F.2d 82, 86 (3rd Cir. 1993).**

STATEMENT OF THE CASE
THE DEFENDANT BERN BENOIT a/k/a BURN BENOIT IS A VICTIM OF
CIRCUMSTANCES IN THIS MATTER

Defendant was named in a one-count Information in the above-entitled and numbered case wherein he was charged with Conspiracy to Commit Bank Fraud and Wire Fraud **18 U.S.C. § 1349 / Class B Felony**

DEFENDANT WAS NOT A BENEFCIARY OF THE FRAUD

The Defendant in this case, BERN BENOIT a/k/a BURN BENOIT was advised by his longtime Friend and Business Consultant) Jerry Baptiste to apply for a PPP loan.¹ The Defendant was hitherto a Limo Driver and successfully established a transportation company. The Defendant is unsophisticated and has only a High School education. Defendant met Jerry Baptiste sometime in 2006, where he solicited defendant to design website for defendant's transportation business. Jerry Baptiste and defendant later became friends and defendant relied on him primary for business

¹ Jerry Baptiste was later indicted and later arraigned on 08/25/2021 in connection with this matter and now a codefendant.

advice because of Baptiste sophistication. At offset of the pandemic Jerry Baptiste advised the Defendant BERN BENOIT a/k/a BURN BENOIT that he has an Accountant who will put together, the paperwork. Defendant merely provided some basic information and signed the Loan Application form. Jerry Baptiste and the Accountant supplied all the supporting documentation. The Defendant had no idea what information or documentation were put together to back up his loan application.

Other than Jerry Baptiste defendant never met or spoke to any of the codefendants in this case. After the Defendant noticed over \$800,000.00 in his account, whereas, he had only applied for \$100,000.00 he was shocked and called to find out from Jerry, why such a huge amount was deposited in his account. He was advised to send \$50,000.00 to Jerry and to send \$200,000.00 to the accountant. The Defendant was advised that Jerry and the Accountant would be setting up a business with the money and from the proceeds, they will facilitate his paying the loan. The Defendant was worried and concerned but complied with Jerry and the accountant since they knew better and were more enlightened than him. After all, they helped to obtain the loan. The Defendant BERN BENOIT a/k/a BURN BENOIT did not touch nor spend a cent of the loan on himself. The government promptly froze his account, and the balance of the money has been forfeited to the Government. **See Document No. 125.**

The government bugged the Defendant's telephone line and subpoenaed his e-mails based on warrant. No loan application documents were found in the

Defendant's house. The BERN BENOIT a/k/a BURN BENOIT is an unwitting tool in this matter. The Defendant BERN BENOIT a/k/a BURN BENOIT is a victim in this matter and is struggling with depression. Defendant is now a broken, humbled man in every sense of the word given his current physical, mental, emotional, and financial condition. Defendant is very embarrassed and humiliated, very remorseful, and regretful. Over his ignorant conduct herein.

The Defendant absolutely and sincerely accepts responsibility due to his ignorantly induced conduct and the consequences with which he must now deal. He recognizes that he will, forever be a convicted felon and will have to live with that stigma the rest of his life. Certainly, he is not a perfect man, but neither is he a man upon whom taxpayer monies should be spent unnecessarily to confine him, clothe him, feed him, and otherwise care for him while he is locked up in a federal prison for an excessive and unreasonable period.

The Defendant is hopeful that his remaining last years will be lived with dignity, honor, and productivity.

HISTORY AND CHARACTERISTICS
PERSONAL AND FAMILY DATA
THE DEFENDANT HAS NEVER HAD A RELATIONSHIP WITH HIS
FATHER

As indicated in the PSR, Defendant **BERN BENOIT** was born on October 4, 1975, in Boston, Massachusetts, to Ernest Benoit and Marie Parfait. The defendant has never had a relationship with his father. The defendant's mother, age 68, resides in Boston,

Massachusetts, where she is employed as nurse. She and the defendant share a positive relationship.

The lack of a paternal influence in the life of the defendant is a key factor for defendant's struggles. This factor should be considered by the Court to understand the struggles and mind set of the Defendant. The Defendant is a victim of circumstances.

DEFENDANT'S BROTHER JONES BENOIT (age 36), IS EMPLOYED BY THE U.S. AIRFORCE AND THEY SHARE A POSITIVE RELATIONSHIP

The defendant has one brother, Jones BENOIT (age 36), who resides in Aurora, Colorado. He is employed by the U.S. Air Force. Jones and the defendant share a positive relationship.

The defendant described his childhood as normal and devoid of any physical, sexual, or emotional abuse. The defendant and his brother were reared by their mother in a middleclass environment. He reported his basic needs were met.

The defendant has never been married and he does not have any children. His support system includes his mother, his brother, and Thomas Jackson.

The defendant has lived in Burbank, California, since 2018. The defendant lived in Los Angeles, California, from 1997 to 2018. Prior to California, the defendant lived in Boston, Massachusetts.

The defendant has been residing at 211 North Valley Street, Apartment 408, Burbank, California, since 2018. His future plans include residing in the Central District of California

and opening a trucking business.

The Defendant's only brother is employed by the United States Airforce. The Defendant is from a patriotic background. In this case, the Defendant is a victim of circumstances.

EDUCATIONAL, VOCATIONAL AND SPECIAL SKILLS

The defendant graduated from Wakefield High School in Wakefield, Massachusetts, in 1993. According to the defendant, he excelled academically in high school and played football. From 1993 to 1994, the defendant attended several business courses at Middlesex Community College in Burlington, Massachusetts. According to the defendant, he was disillusioned with college after his friends were unable to find jobs in their chosen profession; therefore, he withdrew to obtain immediate employment.

MOTION FOR DOWNWARD DEPARTURE

A ground exist that would support a downward departure in this case. The ground recognized as supporting a downward departure is the Defendant's medical condition. Indeed, the United States Court of Appeals for the Fifth Circuit recognizes that the Sentencing Guidelines do, in fact, allow for departures where it is found that a defendant is "elderly and **infirm**" **at the time of sentencing**. **United States v. Fierro, 38 F.3d 761, 775 (5th Cir. 1995).**

Several courts of appeals have granted downward departures based upon physical infirmities. For example, **in United States v. Greenwood, 928 F.2d 645, 646 (4th Cir.**

1991), the defendant was convicted of being a felon in possession of a firearm. The District Court granted the defendant's motion for a downward departure based upon his severe medical impairment that was caused by the loss of both of his legs below the knee and sentenced the defendant to four years of probation without incarceration. *Id.* The District Court noted that a sentence of incarceration would jeopardize the defendant's medical treatment that he had been receiving through the Veterans Administration.

Similarly, in **United States v. Long, 977 F.2d 1264, 1277-78 (8th Cir. 1992)**, the defendant was convicted for laundering money obtained from drug sales after a jury trial. The District Court granted the defendant's motion for a downward departure based upon extraordinary physical circumstances and departed from the applicable guideline of 46 to 57 months to five years' probation without incarceration. On appeal, the downward departure was upheld.

Also, in **United States v. Carey, 895 F.2d 318, 324 (7th Cir. 1990)**, the United States Court of Appeals for the Seventh Circuit held that the District Court could depart downward based upon a defendant's age (the defendant in Carey was sixty-two years old) and poor physical condition where the defendant had several serious operations as a result of a brain tumor. The Court of Appeals remanded the case with instructions for the District Court to make particularized findings in support of the downward departure.

Moreover, recent cases from several district courts are particularly instructive given their similarity to the instant case. **In United States v. Baron, 1995 WL 784844 (D. Mass. Oct. 2, 1995)** the District Court for the District of Massachusetts downward departed from a

sentence of 27-33 months to one-year probation conditioned upon six months home confinement in the case of a seventy-six-year-old defendant with substantial medical problems. Similar to the Defendant's condition, Mr. Baron's medical condition involved several conditions interrelating and potentially exacerbating each other.

In **United States v. Moy, 1995 WL 311441 (N.D. Ill. May 18, 1995)** the District Court for the Northern District of Illinois downward departed in the case of a seventy-eight-year-old defendant who suffered from coronary artery disease, a recent hernia repair, and a history of depression. In making its departure, the Moy Court noted that a healthy seventy-eight-year-old defendant has a life expectancy of only seven to eight years. Id. at *26. In addition to Moy's physical condition, the Court also based its downward departure upon the defendant's care of his wife who had serious health problems.

In another similar case, a District Court departed downward where a defendant was required to undergo dialysis three times a week as a result of a kidney disease. **United States v. Dusenbery, 1993 WL 393323, 1 (6th Cir. October 5, 1993)**,

In the instant case, the Defendant is without question, infirm." The Defendant is currently seen by a psychiatrist. Many courts have recognized that it would be inappropriate to incarcerate an individual with precarious physical condition thereby jeopardizing the treatment he is receiving from doctors familiar with his interrelated medical conditions.

GASTRIC SLEEVE SURGERY WAS PERFORMED ON THE DEFENDANT

U.S.S.G. § 5H1.4 provides that an extraordinary physical impairment may be a reason for downward departure. 5H1.4 allows a downward departure any time a sentencing court is presented with sufficient evidence of a serious physical impairment. **See United States v. Slater, 971 F.2d 626, 634-35 (10th Cir. 1992); United States v. Hilton, 946 F.2d 955, 958 (1st Cir. 1991).**

In 2008, the Defendant underwent gastric sleeve surgery. The Defendant needs special care to protect his health, especially as he has previously been subjected to gastric sleeve surgery.

THE DEFENDANT WAS DIAGNOSED WITH HIGH BLOOD PRESSURE AND BLOOD CLOT IN HIS LUNGS AND INTESTINES.

According to records from Cedars-Sinai Medical Center in Los Angeles, California, in January 2020, the defendant was diagnosed with high blood pressure and blood clots in his lungs and intestines. He is prescribed nadolol to manage his blood pressure, and warfarin to manage his blood clots. His treatment plan also includes weekly blood testing.

MENTAL AND EMOTIONAL HEALTH
THE DEFENDANT WAS DIAGNOSED WITH MAJOR DEPRESSIVE DISORDER, GENERALIZED ANXIETY AND PANIC DISORDER

The Defendant reported he suffered from depression in August 2016 and had a mental health breakdown, which required a 2-day hospitalization at Aurora Las Encinas Hospital in Pasadena, California. According to records, the defendant was admitted to the hospital after his ex-girlfriend contacted law enforcement due to his depressive state. He was diagnosed with major depressive disorder, generalized anxiety disorder, and panic disorder. The

defendant was discharged with an outpatient therapy referral and prescribed Lexapro 5mg.

THE DEFENDANT IS UNDERGOING TREATMENT WITH DR. GREGORY MCGOWEN, A PSYCHIATRIST IN BURBANK, CALIFORNIA

In September 2020, the Defendant began treatment with Dr. Gregory McGowen, a psychiatrist, in Burbank, California. The defendant reported his sessions are going well. According to the patient summary from Cedars Sinai Hospital in September 2020, the defendant is diagnosed with adjustment insomnia and adjustment disorder with mixed anxiety and depressed mood. He is prescribed mirtazapine, trazadone, and lamotrigine.

A DOWNWARD DEPARTURE IS WARRANTED

Separate from a variance under **18 U.S.C. § 3553(a)**, a sentencing court may *depart* from the guidelines calculation where, like here, “a court finds an atypical case, one to which a particular guideline linguistically applies but where conduct significantly differs from the norm...” **See U.S.S.G. Ch. 1, Pt. A § 4(b)**. As set forth above, Reality’s service to her country, in combination with her youth, employment record, and lack of criminal history, justifies a downward department. The conduct at issue here is a far cry from traditional criminal minded individuals. The Defendant was merely a victim of circumstances and persons that he was not sophisticated to understand. A downward departure from the recommended sentence is thus warranted under pertinent guideline policy statements. **See U.S.S.G. §§ 5H1** (“Age (including youth) may be relevant in determining whether a

departure is warranted..."); 5H1.3 ("Mental and emotional conditions may be relevant in determining whether a departure is warranted..."); 5H1.11 ("Military service may be relevant in determining whether a departure is warranted..."). The conduct at issue here is a far cry from traditional espionage (the original intent behind the Espionage Act), and involved a single disclosure, a single time, to a single news outlet.

Moreover, a fair and just analysis of the seven factors the Court is to consider prior to imposing a sentence herein supports Defendant's requested downward variance from the *advisory* sentencing guideline range and recommended sentence.

One important policy consideration to take into account in Defendant's case is the Commission's goal of "minimizing the likelihood that the Federal prison population will exceed the capacity of the Federal prisons." **U.S. SENTENCING COMM'N, AMENDMENT TO THE SENTENCING GUIDELINES, at 1 (July 18, 2014) (citing 28 U.S.C. § 994(g))**. Of course, such policy must be balanced with the need for safety to the public. *Id.* Since Defendant has no serious criminal record and poses no danger to the public, this Court may, and should, grant Defendant's request for downward variance from the *advisory* sentencing guideline range and recommended sentence to maintain prison space for more serious and dangerous offenders as suggested hereinabove.

The very nature of the nonviolent offense in which he was involved also supports the request for a downward variance sentence. Statistically speaking, Defendant is absolutely one of the least likely types of offenders to recidivate, and thus, any prison sentence is unnecessary to deter future criminal behavior by Defendant. As such, the requested

downward variance sentence is more than sufficient to protect the public from his potential to commit future crimes and to otherwise satisfy the deterrence factor.

The hereinbefore described physical, mental, and emotional conditions of Defendant are also quite relevant and very supportive of his request for a downward variance sentence.

THE DEFENDANT IS RESPONSIBLE AND HAS NO SUBSTANCE ABUSE PROBLEM

The defendant reported no substance abuse history. The defendant has one conviction for Driving Under the Influence (Alcohol) in 2017 and completed a three-month treatment program. According to records from Cedars-Sinai Medical Center, the defendant was diagnosed with alcohol use in September 2020 when he reported heavy drinking associated with depression.

GOVERNING LAW

The sentence imposed on the defendant should be driven by the “overarching” command of 18 U.S.C. § 3553(a), which instructs district courts to “‘impose a sentence sufficient, but not greater than necessary,’ to accomplish the goals of sentencing.” As the Court knows, **the U.S. Sentencing Guidelines are merely advisory and, while they generally provide the starting point for sentencing, a sentencing court may not presume that a within-guidelines sentence is reasonable, or that only “extraordinary circumstances... justify a sentence outside the Guidelines range.” In every sentencing, the court “must make an individualized assessment based on the facts presented.” This individualized assessment is undertaken pursuant to the long-standing principle that**

“the punishment should fit the offender and not merely the crime.” As the Supreme Court has explained, “[i]t has been uniform and constant in the federal judicial tradition for the sentencing judge to consider every convicted person as an individual and every case as a unique study in the human failings that sometimes mitigate and sometimes magnify the crime and the punishment to ensue. the punishment to ensue. Indeed, it is the district court that is uniquely situated to have greater familiarity with the individual defendant and individual case than the U.S. Sentencing Commission.

Accordingly, **after calculating the applicable guideline range, the sentencing court should then consider all the factors set forth in 18 U.S.C. § 3553(a) to determine whether the requested sentence is “sufficient, but not greater than necessary” to accomplish the goals of sentencing or whether a variance is warranted.**

TITLE 18 U.S.C. § 3553(a) ANALYSIS AND ARGUMENT

A Presentence Investigation Report (“PSR”) was ordered, prepared, and filed for record herein. The United States Sentencing Commission (the “Commission”) sets forth the following seven factors, all of which a court must consider prior to imposing a criminal sentence:

- (1) The nature and circumstances of the offense and the history and characteristics of the Defendant.
- (2) The need for the sentence imposed to reflect the four primary purposes of sentencing, i.e., retribution, deterrence, incapacitation, and rehabilitation.

- (3) The kinds of sentences available (e.g., whether probation is prohibited or whether a mandatory minimum term of imprisonment is required by statute).
- (4) The sentencing range established through application of the sentencing guidelines and the types of sentences available under the guidelines.
- (5) Any relevant policy statements promulgated by the Commission.
- (6) The need to avoid unwarranted sentencing disparities among defendants with similar records who have been found guilty of similar conduct; and
- (7) The need to provide restitution to any victims of the offense. U.S. FED. SENT. COMM'N, FED. SENTENCING: THE BASICS, at 2, 12 (Aug. 2015) (citing 18 U.S.C. §3553(a)). Analysis of these seven factors supports the sentence requested by Defendant hereinbelow.

This sentencing memorandum addresses the equitable 18 U.S.C. §3553(a)). factors. These factors require a sentencing court in federal criminal cases to evaluate the defendant's history and characteristics, among other wholistic factors. These factors ensure that federal sentencing addresses the individual, not just the crime for which they are convicted. Sentencing under these provisions should accomplish the goals of sentencing, including punishment, rehabilitation, and deterrence to both the defendant and members of the public at large with the goal of promoting respect for the law. To accomplish this individualized assessment, effective defense presentation of the defendant's background and history is required.

THE DEFENDANT HAS PROVIDED LETTERS OF SUPPORT FROM FAMILY

**MEMBERS, FRIENDS AND OTHER MEMBERS OF THE COMMUNITY TO
DEMONSTRATE HIS MORAL CHARACTER AND REPUTATION**

Letters of support from family members, friends, and other members of the community are required to demonstrate the defendant's moral character and reputation. To supplement the defense's sentencing memorandum, letters are usually addressed to the judge in support of a lenient sentence. These letters are typically submitted to the defense lawyer who will submit include them in the memorandum. **In this case, the Defendant BERN BENOIT a/k/a BURN BENOIT has provided the following Character letters**

"I want to start off by saying, I thank you for your time to take a minute to read this letter. My name is JAMES NOLAN SMITH SR. I started my car business in NORTH HOLLYWOOD, CA called EXTREME WHEELS AND TIRES. THE CAR GUY, in October of 2005. I met BERN's in 2006 as he was referred from another client. From our 1st encounter of me working on his car, I knew that this was a person that I could see myself being good friends with. He conducted himself with professionalism and class. At the time BERN 'S already had an established limousine and car service company here in L.A. so shortly after, we started sending each other clients. I Would send him my clients that needed a car service, and he would send me clients that needed Autobody work or car customization work which included me working on his fleet of cars also. To this day I'm his CAR GUY like I am for so many of my clients here in the LOS ANGELES AREA. My good friend BERN BENOIT has always been a man of class and integrity. I've always been able to count on Bern's since we started our friendship 15 years ago. He's been to countless Birthday parties for my kids and

several other close events that I've had for family and close friends. YOUR HONOR, BERN BENOIT is not a criminal by any means and from me knowing his background he comes from good soil. I can say this without batting an eye, Bern Benoit is not a criminal by any means. I do understand YOUR HONOR that he made a mistake as we all have made our fair share of mistakes in life. I would appreciate you taking BERN BENOIT'S character and background into account prior to sentencing YOUR HONOR. Thank you again YOUR HONOR for your time and consideration,” **See a copy of the Character Attestation Letter of JAMES NOLAN SMITH SR hereby attached**

Reproduced below is a Character Attestation from LaWanda Jackson

*“I am a published author of the book Breakthrough to Vision's Destiny, which can be found on Amazon.com. I have an online product store, Encourages Queen Enterprises (<http://bit.ly/EncourageQueen>) I can also be seen on my YouTube channel Encourage Queen. I have known Bern Benoit for more than 19 years. I first met him as a work associate of my husband Thomas. Over the years they have remained friends. Bern is very kind and respectful. I have had many interactions with him over the years. He is a real cool guy. He has even supported a couple of our Church's fundraisers for the boys mentoring program, Sword Warriors. Since I have known Bern, have known him to make regular travels to visit his mother. When he goes to visit, he always takes fresh baked goods to her that I bake. Over the last few years, Bern has had an intense desire to get closer to the Lord. Just recently he was even baptized. Overall, Bern is an upstanding individual.” **See a copy of the Character***

Attestation Letter of LaWanda Jackson hereby attached

Reproduced below is a Character Attestation from Mario Prendergast

*“My name is Mario Prendergast. I have known Bern Benoit professionally for over 10 years. I met Mr. Benoit while working executive protection for various clients in Los Angeles. While working Mr. Benoit presented himself as a professional, respectful, trustworthy, and hardworking person. I was new to California during the time we worked, and Mr. Benoit and I became friends. Throughout the years he has never displayed a negative trait. I have known Mr. Benoit to be a church going individual who avoids trouble. Based on my interactions and knowledge of Mr. Benoit and his lifestyle, he has only displayed a good character.” **See a copy of the Character Attestation Letter of Mario Prendergast hereby attached***

Reproduced below is a Character Attestation from Mark Stennett

*“I have known and shared a friendship with Bern for over 15 years. We met during a highlight of my life when we both worked as chauffeurs for celebrities such as Justin Timberlake. We then continued to build a friendship while working as drivers for many A-list celebrities. I admired his ability to use the resources around him to develop and open his own limousine company. Today, I continue to know Bern as a family man, a man with integrity, a man with a good heart, a believer in God, and a hard-working entrepreneur.” **see a copy of the Character Attestation Letter of Mark Stennett hereby attached***

Reproduced below is a Character Attestation from Rebecca Khammar

“I am writing this letter to you to provide a character reference for Bern Benoit, who I have known since 2005. I am currently a General Manager at the Bay Club Company which I've worked for 8 years and worked in the fitness industry for over 15 years which is how I met Bern in one of my gyms I was working at. Over the last 16 years I have witnessed Bern overcome trials and tribulations, support his family who depends on him a great deal and give from his heart to his friends and loved ones. Bern and I share a Goddaughter and it has been my honor to witness his faith in action over the years. He has endured more than anyone should have to since he was a child, yet he is always full of hope and faith. It is his faith that makes it difficult for him to do anything bad without feeling intense remorse. Overwhelming remorse and sadness are what he's feeling right now. I know that he would do anything to make amends without having to be taken away from his family. The idea of not being able to support and help his mother is what is affecting him the most. I know that he has learned his lesson. This transgression has shaken him to the core. Given the opportunity, he would make better decisions. It is my sincere hope that the court gives Bern leniency and a chance to rectify his mistakes without having to sacrifice precious time with his mother, niece, and nephew. I would be happy to speak to the court and elaborate on why I feel that Bern Benoit, a man of faith, amazing son, brother, uncle, Godfather, friend and a pillar of the community, deserves a second chance at living an upstanding life with his family. Thank you for your time”. **See a copy of the Character Attestation Letter of Rebecca Khammar hereby attached**

Reproduced below is a Character Attestation from Ronnie L. Breaux, Jr

*“My name is Ronnie L. Breaux, Jr, I am a professional musician from Los Angeles California. I have been in the music business for over 20 years writing and playing music. I started playing drums at the age of 5; I was born and raised in church. I have had the opportunity to travel the world playing with various world-renowned artists such as Robin Thicke, Backstreet Boys and Jennifer Lopez to name a few. Often there are down times in my industry, and I am able to work other jobs, like transportation assignments. It is on one of those transportation assignments 5 years ago I met Bern. I was new to the field, and he took me under his wing and made sure that I understand everything about that job to the best of my ability. For that I am extremely grateful. Failure was not an option on Bern's watch. From that point on Bern and I have become great friends, more like family! Bern is one of the most dependable people I know, his loyalty is second to none and I am truly blessed to consider him a friend. There's nothing that Bern wouldn't do for people, he gets extreme joy when the people around him succeed. He will push you to the finish line by any means necessary, that is his character, that's who he is. I strongly stand behind this statement of character for Bern Benoit. Please feel free to contact me if there are any additional questions.” **See a copy of the Character Attestation Letter of Ronnie L. Breaux, Jr hereby attached***

Reproduced below is a Character Attestation from Maurine Lopes

“My name is Maurine Lopes. I have been a paralegal for over 20 years. For the last couple of years have been the sole caretaker for my 82-year-old mother. I have personally known Bern Benoit for over 10 years. I met Bern through a mutual friend, and we quickly became close friend

*Bern came to California with nothing to start a business and make it on his own, and I have watched him build that business and successfully run it on his own. This is all because he is an extremely hard worker and will do whatever it takes to succeed. That carries over into his personal relationships as well. He is an extremely generous person when it comes to his friends and treats them like they are his family. I recently have had to deal with some health and family issues, and he has been there to help any way he could. It is m sincere hope that the court will take all of this into consideration when making its decision, and I would be happy to speak to all of these examples if called upon to do so. **See a copy of the Character Attestation Letter of Maurine Lopes hereby attached***

Reproduced below is a Character Attestation from David Howard

“I first met Bern 20yrs ago in my Business as I serviced him with a Haircut. Over the ears we've built a friendship as we helped other business owners build their brands to help them attract more clients by cross-marketing each other's services. I'm an Ordained Minister, Spiritual Leader, a d Barber/Salon Owner for 30 years serving my immediate community. One of the main reasons I've associated myself with Bern, was his impeccable Integrity I gravitated towards. He is a Man of his word, always do ng what he'd says he'll do. I Have

witnessed Bern Build a Single Car Transportation Company to a Multi-Car Fleet Transportation Company, while employing Individuals and showing them that they could duplicate him by starting their own Transportation Company as well. If I could make a request; I would Ask, That Bern Is allowed to Continue His Vision of Building a d Instilling Belief in Individuals, that with positive Intentions, they can achieve great things in Life to BERNefit Society.” **See a copy of the Character Attestation Letter of David Howard hereby attached**

Reproduced below is a Character Attestation from Devon Fairley

“I met Ber Benoit at least 16 years ago thru my friend Thomas. Over the years we l e been in contact and have worked together providing quality driving services to many clients. He has been a standup guy, and I appreciate that he doesn't say things that he cannot do. I’ve known him to be a man of his word. In being a chauffeur, it takes a certain mentality and personality to do the job at a hi h level, and he has done it successfully. We’ve discussed how other companies and drivers do the minimum effort, and in turn how we strive to provide upgraded and high-level service points.

Bern used to be a physically heavier man. But one day I saw him, and you could tell he was slimming down. He told me about his commitment to be eating better, working out on a regular basis, and continuing his journey. That was ears ago, and to this day he hasn't seemed to waiver in his decision. I’m proud to see that he achieves what he sets his mind to. It is good to see someone that not only talks the talk, but he walks out what he says. Although we

*haven't hung out as friends socially, I am glad that we met, and were able to work together. He has been understanding and responsive when I needed him to be. He has addressed any issues that occurred during work in a timely manner. It has been a good experience, and I have grown better in providing service because of him. **See a copy of the Character Attestation Letter of Devon Fairley hereby attached***

Reproduced below is a Character Attestation from Tracey Graham

I'm writing regarding Bern Benoit, who is appearing before your court. Bern asked me to write a character reference letter, but the truth is I was already planning on doing so before the request. I feel strongly about Mr. Benoit, and about his future, and I want to try to make you feel the same way. Mr. Benoit is a person of good moral character. I realize that might seem hard to believe, given the circumstances, but it's true, nonetheless. I have known Mr. Benoit for eighteen years, and in that time, I have seen him go through ups and downs, but all that time I have been convinced that he is a good person at the core. Mr. Benoit has made mistakes, and he is incredibly remorseful, and is willing to do whatever it takes to make reparations, financially and emotionally if possible. But to that, he needs you to give him an opportunity to get a second chance. I just hope you will recognize the power you wield regarding the future of this man and make a fair decision.

*Thank you” **See a copy of the Character Attestation Letter of Tracey Graham hereby attached***

This defendant’s sentencing memorandum tries to explain who he is and his conduct

and is asking for leniency. This sentencing memorandum is a walk on a fine line between accepting responsibility and seeking leniency on the one hand and pushing back against unfair characterizations of the defendant's conduct and potentially overly aggressive requests by the government for excessive punishment on the other hand.

CONCLUSION

When considering the totality of the § 3553(a) factors together with Defendant's substantial cooperation and assistance with federal government authorities, it is indisputable that Defendant's request for a downward variance from the *advisory* sentencing guideline range and recommended sentence is clearly within this Court's authority and discretion. Moreover, such a downward variance sentence is just and reasonable, fair, and appropriate, based upon such considerations that include the nature and circumstances of Defendant's offense, coupled with his overall history and specific personal characteristics.

As this Court is keenly aware, its sentencing obligation since the decisions in **United States vs. Booker, 125 S. Ct. 738 (2005)** and **Gall vs. United States, 552 U.S. 38 (2007)**, and their progeny is to impose "a sentence sufficient, but not greater than necessary" to comply with all the factors set forth in § 3553(a). And a fair and full analysis of the § 3553(a) factors absolutely confer upon the Court the authority to exercise great latitude and sound discretion to vary downward from the imprisonment recommended by the *advisory* guideline range. This is particularly true where, such as in the instant case, the recommended guideline sentence of Defendant is clearly excessive, inappropriate and fails to consider the § 3553(a)

factors and Defendant's cooperation with and assistance to government authorities. Having accepted responsibility and assumed accountability for his criminal conduct herein, Defendant is respectfully requesting the Court to exercise its great and sound latitude in this case by imposing a sentence that includes the combination of conditions that will, indeed, be reflective of a reasonable and just sentence in this case. Such a sentence will certainly provide just punishment for the crime committed by Defendant, but will also give due consideration to Defendant's lack of any criminal history, Defendant's serious physical and emotional and mental health problems with which he suffers, and Defendant's substantial assistance to and cooperation with government authorities. Moreover, such a sentence will protect the public by serving as a deterrent to others for criminal conduct of this nature, while affording Defendant with the opportunity to receive necessary medical care for his physical and emotional and mental health problems and continue a redemptive path of being a productive, law-abiding citizen.

Dated this 1ST day of September, 2021.

Respectfully submitted,

s/ Anthony O. Egbase

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CERTIFICATE OF COMPLIANCE

This is to certify that to the best of my knowledge this document has been prepared with one of the font and point selections approved by the Court in LR 5.1B, pursuant to LR 7. Specifically, the above-mentioned document has been prepared using Times New Roman font, 14 point.

Dated this 1ST day of September, 2021.

s/ Anthony O. Egbase

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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	CASE NO.: 1:20-CR-00296-JPB-AJB
	)	
BERN BENOIT,	)	
	)	
Defendant.	)	
_____	)	

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the above date, I electronically filed this document using the CM/ECF system which will automatically send email notification of such filing to all attorneys of record.

Respectfully submitted,

s/ Anthony O. Egbase
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