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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF WYOMING

UNITED STATES OF AMERICA, Plaintiff, v. PAUL D. MCCOWN, Defendant.	Case No. 22-CR-23-SWS

DEFENDANT'S RESPONSE TO GOVERNMENT'S MOTION TO MODIFY THE SPECIFIC OCCUPATIONAL[1] CONDITIONS OF PROBATION OF THE DEFENDANT

COMES NOW Defendant, Paul D. McCown (hereinafter "Mr. McCown" or "Defendant") by and through counsel and submits his *Defendant's Response to Government's Motion to Modify the Specific Occupational Conditions of Probation of the Defendant*. The grounds to deny the modification are as follows:

I. Procedural History and Current Posture

[1] For extensive coverage and annotations of this issue the Court should consider Thomas W. Hutchison et al., *Federal Sentencing Law and Practice* § 5F1.5 Occupational Restraints (2025 Ed. and Supp. 2026).

On **July 8, 2022**, Defendant was sentenced by this Court to 63 months in prison. He was released to probation on **March 21, 2025**, after serving home confinement starting in **September 2024**. **Exhibit A, Declaration of Defendant**. It is undisputed that he has had no violations of probation during that time and has paid restitution despite marginal employment due to his prior convictions. Recently, he has been working part-time as a coffee barista. *Id.* They recently wanted to move him back into management where he had been previously, but human resources' overconcerns with his criminal record terminated him. *Id.* They did this even though he had worked for them previously in management with the exact same criminal record. *Id.*

At the time of his sentencing the Court orally ruled and then later amended the judgment to include a specific term of his probation that:

> The defendant shall not work as a business manager or bookkeeper or hold any position of employment in which he has sole access to bank accounts, payroll systems, financial records, or the personal identifiers of any individuals; however, he may perform these positions and/or duties **<u>if supervised</u>** by a business partner. He shall not be a signatory on any business account without a co-signatory and shall not be in a position to deposit or distribute funds with respect to any business account without supervision by a business partner or co-signatory. He shall allow the U.S. Probation Officer access to any and all business records and permit the U.S. Probation Officer to review any business accounts upon which the defendant is a signatory.

ECF No. 44, *Amended Judgment*. (Emphasis added).

The Government is now moving to modify the Defendant's probation to include a provision that reads as follows:

> The defendant shall notify any prospective employer, business partner, client, contractor, fiduciary, or other third party with whom the defendant seeks to engage in employment, self-employment, volunteer work, or any position involving financial responsibilities, access to funds, financial records, personal identifying information, or positions of trust, of the nature and circumstances of the defendant's underlying offense(s) and requirements of his supervised release prior to commencing such activity. The defendant shall provide proof of such notification to the probation officer upon request and shall permit the probation officer to verify that the required disclosure has been made. The defendant shall not commence such employment or activity until the required notification has occurred and the probation officer has been informed of the notification.
>
> The defendant shall not have direct or indirect access to, control over, or authority regarding any business or organizational bank account, credit card, payroll system, financial management system, accounting records, financial records, or personal identifying information of any individual. The defendant shall not serve as a signatory, authorized user, custodian, or person with authority to initiate, approve, transfer, withdraw, deposit, distribute, disburse, spend, or otherwise controls funds on behalf of any business, organization, or third party. The defendant shall not occupy any position that permits unsupervised access to customer, employee, client, or vendor financial information or personal identifiers, including Social Security numbers, dates of birth, account numbers, or other sensitive identifying data. He shall allow the U.S. Probation Officer access to any and all business records and permit the U.S. Probation Officer to review any business information to which the defendant has access.

Defendant's probation will end in approximately **March 20, 2028**, which is one year and six months away.

II. Substantive Facts

Defendant was released in **September 2024** to home confinement. *Supra,* **Exhibit A**. He obtained a job with a law firm Bridgewater Law Group, 15505 Cornet St., Santa Fe Springs, CA 90670. He has a good reference from an employee/supervisor with that firm. **Exhibit B, Reference.** He left that position in February of 2026, because the fuel prices for the use of his vehicle were giving him zero net gain. **Exhibit A, Declaration of Defendant.**

He then went to work for Coffee Bean & Tea Leaf, where up to recently he was employed. His supervisor has also given him a good reference. **Exhibit C, Reference.**

Defendant has sent out over 2,000 resumes, almost all of which have been rejected.[2] **Exhibit A, Declaration of Defendant.** In this case, he contacted the COO's wife at BIORAY, Inc. through LinkedIn, and in those conversations, he indicated that he was "justice impacted," which means he had a criminal record. *Id.*

In California, job applicants with felony records are protected by strong "Ban the Box" protections under the California Fair Chance Act. The law prevents employers from automatically disqualifying candidates based on their criminal

[2] He has not applied for any positions of Vice President of Finance, Chief Financial Officer, or Director of Finance because of his criminal history, and with his specific supervision conditions he would not qualify, but could not hold the position.

history. Instead, it delays when and how an employer can review a felony record. It applies to employers with five or more employees. BIORAY, Inc. has 25 employees. An employer cannot run a background check or ask criminal history questions until the employer makes a conditional job offer. Once a conditional job offer is made the employer may request written permission to run a background check. An employer cannot immediately revoke a job offer just because a background check reveals a felony conviction. Before rescinding the offer, they must make a formal individualized assessment and determine whether the felony has a direct and adverse relationship on specific job duties. The employer must weigh the nature and gravity of the offense conduct, the amount of time that has passed, and the nature of the job being sought. https://www.r23law.com/articles/fair-chance-act. Defendant thought he cleared this hurdle when he was offered the job.

Defendant has brought a lawsuit against BIORAY, Inc. for violation of the California Fair Chance Act. **Exhibit D, Complaint.** The *Complaint* pleads and alleges as follow:

- On or about December 12th, 2025, defendant extended to Mr. McCown an offer of employment for the position of Chief of Staff at an annual salary of $120,000 a year plus 25% bonus potential. Prior to any formal contact with the defendant. Mr. McCown disclosed his justice impacted status to Emma King, spouse of Neil King, the company's Chief Operating Officer, who posted the job on LinkedIn. Defendants subsequently interviewed, vetted, and hired Mr. McCown for the Chief of Staff position with actual or constructive notice of his criminal history. ¶ 7.

- The Chief of Staff job description contained no mention of financial responsibilities, money handling duties, access to payroll systems, access to banking or financial accounts, or any financial decision-making authority. ¶ 8.

- Defendant conducted an initial background check on Mr. McCown prior to his starting date. The background check cleared Mr. McCown for employment. Mr. McCown began working. ¶ 10.

- Mr. McCown began employment with the Defendant on **January 5th, 2026**. During his tenure, Mr. McCown performed his duties professionally, met or exceeded expectations, and gave Defendants no independent reason to question his judgment, professionalism or trustworthiness. ¶ 11.

- In **mid-January 2026**, approximately two to three weeks after Mr. McCown began employment, defendant requested a second background check on Mr. McCown. ¶ 12.

- On **January 30th, 2026**, Defendant issued Mr. McCown a Pre Adverse Action Notice stating it had made a preliminary decision to revoke Mr. McCown's job offer based on his criminal history background check. The letter asserted that the "Chief of Staff" position at the Company is a position where the person works functionally with many departments and is exposed to confidential company information and data, including financial and personal information.

Id. Under the California Fair Chance Act, Mr. McCown was allowed to object. He provided a detailed response to every one of the allegations. His position was that as the Chief of Staff he did not have access to financial, banking, payment or accounting systems, he did not have signatory or approval authority over company funds, he had no ability to initiate, approved transfer or direct the movement of money and only limited access to financial information for analytical and advisory purposes. *Id.* ¶ at 15.[3]

He explained that he had discussed this issue with his probation officer. And he confirmed the role did not violate any conditions of his supervision. *Id.* ¶ at 15 (c). On February 13th, 2026, defendant terminated Mr. McCown's employment. *Id.* ¶ at 19.

The *Complaint* alleges that BIORAY, Inc.'s termination decision rests on a fundamental misreading of the judgment. The supervised release condition does not prohibit Mr. McCown from having any access to financial or personal information—it prohibits sole access without oversight, and expressly permits such duties when supervised by a business partner. Yet BIORAY, Inc.'s adverse action letter characterized the restriction as barring Mr. McCown from access to payroll data, bank account information, and sensitive employee data altogether, a sweeping mischaracterization of which the *Judgment* directs. This appears to stem from the company's call with probation officer Emmanuel Lara, where BIORAY, Inc. described the Chief of Staff role as a senior role with no supervision, effectively shaping his

[3] The Government makes much of the fact that Mr. McCown has a company American Express credit card. Companies supervise their employees' credit card purchases. Counsel for Mr. McCown has had several cards with different private and government agencies and those monthly charges are routinely reviewed. Nevertheless, Mr. McCown before accepting the card obtained approval from his probation officer. **Exhibit E, Text Messages**.

response in a way that does not reflect the *Judgment*'s actual requirements or how the role could have been structured. Had BIORAY, Inc., reviewed the *Judgment* itself, the individualized assessment should have focused on whether the role could be structured with appropriate supervision or co-access, not on whether access existed at all. There's no evidence that the company has ever considered that alternative. In its termination letter, the civil defendants stated that a company representative had contacted Mr. McCown's probation officer, who allegedly advised that Mr. McCown's supervised release terms prohibit him from accessing payroll data, company or employed bank account information, or sensitive personal data of employees, including personal identifying information and financial information.

To date, BIORAY, Inc. has been unable to provide any documentation or recording of that call with probation.[4]

Mr. McCown recognizes that his submissions to BIORAY, Inc. were mischaracterizations. **Exhibit A, Declaration of Defendant**

II. Argument

A. Introduction:

Defendant is 38 years old. He has 5 children. He remains married to his wife, who is a collateral victim in this situation. For much of the couple's marriage

4 As an important aside, Mr. McCown believes that his civil suit against BIORAY, Inc. will settle soon. He considers the proceeds' lost wages wherein 10% of that would go to restitution, and his family could use these remaining monies since he has not had meaningful employment while on probation. His probation officer suggests bringing this issue to court at the upcoming hearing.

Defendant had been the sole supporter of his wife and family. The Defendant is qualified with a prestigious education which now is horribly diminished by this situation. His wife is currently working, and their expenses far outpace their income; rent for a three-bedroom home in California is costing $4,000 per month.

It is well recognized that the Fourteenth Amendment due process clause recognizes an individual's right to work. *Van Zandt v. McKee*, 202 F.2d 490 (5th Cir. 1953)(holding although the right to life, liberty, and the pursuit of happiness includes the right to work and earn an honest living, it does not include the right to work for any particular employer without his consent since a man's right to work stops short of the employer's right not to hire him). That right is not an inalienable right since aliens who enter the United States on nonimmigrant visas and aliens who enter illegally have no constitutional right to work. Such an individual is legally unable to work. *Duenas-Rodriguez v. Ind. Comm.,* 606 P.2d 437 (Colo. 1980). Not only is due process implicated with these restrictions, but these restrictions also infringe on Mr. McCown's First Amendment rights. *United States v. Turner,* 44 F.3d 900, 903-904 (10th Cir. 1995). Conditions of probation that restrict a defendant's First Amendment rights to free association and speech must bear a reasonable relationship to the goals of probation. *United States v. Templar,* 453 F.2d 330, 334 (10th Cir. 1971) (within discretion of the trial court to restrict probationer's association with groups that would palpably encourage him to repeat his criminal conduct).[5]

B. Standard of Review:

District courts have broad discretion to prescribe special conditions of release. *See, e.g., United States v. Hanrahan,* 508 F.3d 962, 970-971 (10th Cir. 2007). However, this discretion is not without limits. For instance, the conditions imposed "must satisfy the three statutory requirements laid out in 18 U.S.C. § 3583(d). First, they must be reasonably related to at least one of following: the nature and circumstances of the offense, the defendant's history and characteristics, the deterrence of criminal conduct, the protection of the public from further crimes of the defendant, and the defendant's educational, vocational, medical, or other correctional needs. *Id.* at 970; 18 U.S.C. § 3583(d)(1). Second, they must involve no greater deprivation of liberty than is reasonably necessary to achieve the purpose of deterring criminal activity, protecting the public, and promoting the defendant's rehabilitation. 18 U.S.C. § 3583(d)(2). Third, they must be consistent with any pertinent policy statements issued by the Sentencing Commission. 18 U.S.C.§

[5] Prohibitions against the First Amendment intrude on a particularly significant liberty interest. *United States v. Englehart*, 22 F.4th 1197, 1208 (10th Cir. 2022); *United States v. Koch*, 978 F.3d 719, 726 (10th Cir. 2020). So the district court had to: (1) show that the condition was reasonably related to the goals of deterring criminality, protecting against further crimes, or promoting the defendant's needs (educational, vocational, medical, or correctional); (2) support imposition of the condition with evidence that the condition was needed to advance those goals; (3) limit the deprivation of liberty to what was reasonably necessary; (4) balance the purpose against the significant First Amendment concerns. 18 U.S.C. § 3583(d); *See United States v. Wolf Child*, 699 F.3d 1082, 1090 (9th Cir. 2012) (need to show a necessity and limit the deprivation); *Englehart*, 22 F.4th at 1207-08 (need to balance First Amendment concerns).

3583(d)(3).

C. Notification Specific Condition:

The Government's proposed modification—specifically the requirement that Defendant affirmatively disclose his criminal history to every potential employer, business partner, client, or contractor—not only fails the three-part statutory test under 18 U.S.C. § 3583(d), but it thwarts California's Fair Chance Act.

1. The condition is not reasonably related to the purposes of sentencing.

Under § 3583(d)(1), a special condition must be reasonably related to the nature and circumstances of the offense, the defendant's history, and the protection of the public. The current, already-restrictive conditions of Mr. McCown's probation are sufficient to protect the public, especially when coupled with California's Fair Chance Act. The Court has already imposed strict prohibitions on the Defendant handling money, acting as a signatory, or managing sensitive financial systems. These existing safeguards directly address the nature of his underlying offense. Because the Defendant is effectively barred from positions of financial authority without supervision, the proposed notification requirement serves no additional protective purpose. Furthermore, given that 92 percent of employers now conduct criminal background checks, the market already possesses a built-in mechanism for "vetting" the Defendant; that is especially true considering California's First Chance Act. https://www.ilr.cornell.edu/carow/carow-policy/short-history-criminal-background-searches-employment. Forcing the Defendant to proactively disclose his history in every minor professional interaction or volunteer engagement creates a barrier to re-entry that does not correlate to public safety but rather functions as an unnecessary "scarlet letter" [6] that severely hinders his ability to find gainful employment and support his five children. It is a rehabilitative block when state law sufficiently addresses the issue.

2. The condition involves a greater deprivation of liberty than is reasonably necessary.

Under § 3583(d)(2), the condition must be no greater than necessary to achieve the goals of rehabilitation and deterrence. The Government's proposed language is overly broad and practically prohibitive. By requiring the Defendant to notify any "prospective employer, business partner, client, [or] contractor" of the nature and circumstances of his offense before commencing any activity, the Government is effectively blacklisting the Defendant from the workforce. As evidenced by the termination from his previous employer, BIORAY, Inc., the Defendant is already subject to the realities of background checks under state law. Requiring him to disclose his history at the outset of every professional interaction essentially forces him to preemptively disqualify himself from roles where his actual job duties—which

[6] The term "scarlet letter" derives from Nathaniel Hawthorne's 1850 novel *The Scarlet Letter*, in which Hester Prynne is required to wear a scarlet "A" on her clothing as a public marker for her adultery. A scarlet letter thus came to describe a conspicuous mark of shame, disgrace, or social condemnation imposed upon an individual for perceived wrongdoing.

are already heavily restricted by this Court—would not even require financial access. Keep in mind the provision applies to all employers and places he might even volunteer; consequently, if he applied to the Natrona County School District as a bus driver, or as a volunteer coach for Little League, he would have to disclose. This is the case even though both of those entities perform background checks. Not that it matters, but Mr. McCown did disclose the nature of the offense to his son's head coach. This constitutes a severe deprivation of his liberty interest in pursuing a lawful occupational right recognized by the Supreme Court—without providing any countervailing benefit to the public, especially where California has made a policy decision on how to handle these situations so that otherwise qualified candidates are not excluded from the workforce for jobs for which they are qualified.

3. The condition is not consistent with pertinent policy statements and constitutional protections.

Under § 3583(d)(3), conditions must be consistent with pertinent policy statements and, by extension, constitutional standards. Courts have expressed significant concern regarding the vagueness and overbreadth of notification requirements in similar financial crime cases. As highlighted in *United States v. Bickart*, 825 F.3d 832 (7th Cir. 2016), mandatory disclosure provisions can be found unconstitutionally vague if they lack clear boundaries regarding what constitutes a "position of trust" or what triggers the notification requirement. In *Bickart*, defendant was convicted of tax fraud for submitting falsified tax returns and sentenced to 24 months in prison. *Id.* The court held that, "a supervised release condition requiring defendant to notify third parties of her record was unconstitutionally vague." *Id.* The point is further illustrated by *United States v. Souser*, 405 F.3d 1162, 1167 (10th Cir. 2005). In *Souser,* defendant pled guilty to making false statements to the United States Government and was sentenced to five years of probation. The 10th Circuit held that the condition to notify employer of her criminal history was erroneously imposed without compliance with the sentencing guidelines provision governing occupational restrictions. *Id.*

The Government's proposed language is sweeping, potentially capturing every professional encounter, including those that do not involve financial risk. By imposing such an ambiguous and wide-reaching mandate, the Government risks creating a condition that is impossible for the Defendant to comply with consistently, thereby setting him up for technical violations rather than fostering the rehabilitation and stability he has demonstrated over the past year.

Defendant has demonstrated compliance with his current probation terms, has paid on his restitution, despite financial difficulties, and has had zero violations. The Court's existing restriction regarding his lack of access to financial accounts already provides the necessary protection for the public. The proposed notification condition is an unnecessary, overbroad, and potentially unconstitutional restraint on the Defendant's ability to earn a livelihood and provide for his family. For these reasons, the request to modify the judgment should be denied. *Cf. United States v. Hull,* 893 F.3d 1221 (10th Cir. 2018) (defendant was convicted of committing bank robbery and appealed his condition of supervised release requiring him to notify third parties of risks he might pose to them. This provision, limited to employers that probation considered at risk, was held to be not vague and not an improper delegation of the judicial function).

D. Prohibition of Employment Specific Provision:

The Government's proposed modification—particularly its prohibition against Defendant's having any direct or indirect access to business accounts, financial systems, accounting records, financial information, or personal identifying information—fails the three-part statutory test under 18 U.S.C. § 3583(d). *See e.g. United States, v. Hamilton,* 986 F.3d 413 (4th Cir. 2021)(defendant was convicted of child pornography and was sentenced to a lifetime of supervised provision. The court held that special conditions of supervised release barring defendant from working in any type of employment without prior approval of his probation officer was overbroad and lacked sufficient nexus to the nature and circumstances of the offense of conviction).

A court may prohibit a defendant from engaging in a specified occupation, business, or profession, or may limit the terms under which the defendant may do so, only if it finds that: (1) a reasonably direct relationship existed between the defendant's occupation, business, or profession and the conduct relevant to the offense of conviction; and (2) the restriction is reasonably necessary to protect the public because there is reason to believe that, absent the restriction, the defendant will continue to engage in unlawful conduct similar to the conduct for which he was convicted. *United States v. Mike*, 632 F.3d 686, 698-99 (10th Cir. 2011); U.S.S.G. § 5F1.5(a)(1)-(2).

In addition, any occupational restriction must be the minimum restriction necessary to protect the public and serve the purposes of supervised release, which means under the applicable Guideline that the condition must be for the minimum time and the minimum extent necessary to protect the public. *United States v. Souser*, 405 F.3d 1162, 1167 (10th Cir. 2005). The Senate Judiciary Committee Report on the Comprehensive Crime Control Act explains that the provision was "intended to be used to preclude the continuation or repetition of illegal activities while avoiding a bar from employment that exceeds that needed to achieve that result." S. Rep. No. 225, 98th Cong., 1st Sess. 96-97. The condition "should only be used as reasonably necessary to protect the public. It should not be used as a means of punishing the convicted person." *Id.* at 96. Section 5F1.5 accordingly limits the use of the condition and, if imposed, limits its scope to the minimum reasonably necessary to protect the public. The Government's proposed language does not satisfy these requirements.

1. The proposed prohibition is not reasonably related to the specific conduct relevant to the offense.

Section 3583(d)(1) requires a special condition to be reasonably related to the nature and circumstances of the offense, the Defendant's history and characteristics, the purposes of deterrence and public protection, and his correctional needs. The relevant inquiry is not whether Defendant has ever worked in a business or held an occupation that involved some incidental contact with financial information. Rather, the Court must determine whether the occupation or duties sought to be prohibited bear a reasonably direct relationship to the conduct underlying the conviction. The Government's proposed condition is materially broader than that standard. It would prohibit Defendant from having any direct or indirect access to, control over, or authority regarding virtually any business financial account, credit card, payroll system, accounting record, financial-management system, financial record, or personal identifying information. It would also prohibit him from serving in any capacity that permits him to initiate, approve, transfer, withdraw, deposit, distribute, disburse, or otherwise control funds on behalf of any business, organization, or third party. That language is not limited to the specific occupational duties that created the risk addressed at sentencing. It instead reaches any position involving financial responsibilities or information, including positions in which Defendant could perform legitimate and lawful work without possessing unsupervised authority over money or confidential records. The condition therefore regulates an entire category of employment rather than addressing the particular risk presented by the offense. It basically delegates him to the trades, laborer, plumber, electrician, and or carpenter.

It is unnecessary overreaching especially where the Court has already made the necessary connection between Defendant's offense and the relevant employment restrictions. The *Amended Judgment* prohibits Defendant from working as a business manager or bookkeeper, or from holding a position in which he has **sole** access to bank accounts, payroll systems, financial records, or personal identifiers. It further prohibits him from acting as a signatory without a co-signatory and from depositing or distributing funds without supervision by a business partner or co-signatory. Those restrictions are directly tied to the risks associated with the offense. The Government's proposed absolute prohibition adds little, if anything, to those protections. It would extend the restriction from unsupervised financial authority to employment that merely involves some connection to financial matters, even where Defendant's access is limited, monitored, or incidental. Such an expansion is not reasonably related to the conduct relevant to the conviction. The Government's prohibition would prohibit Defendant from working as a manager at McDonald's or Chick-fil-A because he would have to make bank deposits. He could not even work as an employee in those places because he would be responsible for the till handling cash and credit cards.

2. The Government has not shown that absolute prohibition is reasonably necessary to protect the public.

Under § 3583(d)(1) and U.S.S.G. § 5F1.5(a)(2), an occupational restriction must be reasonably necessary to protect the public because there is reason to believe that, absent the restriction, the Defendant will continue to engage in similar unlawful conduct. The Government must therefore establish more than the theoretical possibility that the Defendant could misuse access to financial information or funds. It must demonstrate that broader restrictions are necessary because the existing limitations would not adequately protect the public. The record does not support that conclusion. Defendant has been on probation without a violation, has complied with the conditions imposed by the Court, and has paid restitution despite experiencing marginal employment opportunities. Those facts demonstrate that Defendant has used supervision as intended and has not shown a pattern of violating the Court's restrictions.

More importantly, the existing condition already prevents the precise conduct that presents a public-safety concern. Defendant cannot independently manage business funds, act as a sole signatory, control payroll systems, or possess sole access to sensitive financial records or personal identifiers. He may perform otherwise lawful duties only when supervised by a business partner or co-signatory, and he must permit the probation office to review relevant business records and accounts.

The current condition thus protects the public through direct controls: supervision, dual authorization, restricted access, and probation office oversight. The

Government has not identified any actual violation, attempted circumvention, or specific employment circumstance demonstrating that those safeguards have failed. Nor has it shown why Defendant's supervised participation in a business or financial-related position would create a risk that cannot be addressed through the restrictions already imposed.

An absolute prohibition is particularly unwarranted where a less-restrictive condition is available and has already been selected by the Court. The fact that Defendant's prior employment was affected by a background check and possibly the representations made in his application process does not establish that he should be categorically barred from any employment involving financial duties. The Government's objection focuses on Defendant's misrepresentations in the application process. Considering that fact a more appropriate special condition would require probation to review submissions made by the Defendant in applications of employment as opposed to the broader complete employment ban. The Court's existing conditions are narrowly tailored to determine what responsibilities he may lawfully undertake with supervision.

3. The existing restriction is the minimum restriction necessary.

Section 3583(d)(2) requires that a condition involve no greater deprivation of liberty than is reasonably necessary to achieve the goals of deterrence, public protection, and rehabilitation. Similarly, *Souser* requires an occupational restriction to be the minimum restriction necessary. The condition in the *Amended Judgment* satisfies that requirement because it is tailored to the risk. It does not give Defendant unrestricted access to financial systems or personal information. It does not permit him to act alone as a signatory or to control business funds without oversight. Instead, it allows him to work under supervision, with a business partner or co-signatory, while preserving the probation office's authority to review business records and accounts. That approach is both protective and rehabilitative. It permits Defendant to use his education and employment skills, support his wife and five children, pay restitution, and establish lawful financial stability, while preventing him from exercising the precise unsupervised authority that could create a risk of recidivism. Supervised employment also allows Defendant to demonstrate responsibility and compliance rather than making lawful employment practically impossible during the remaining period of probation.

By contrast, the Government's proposed provision would prohibit not only unsupervised control of funds, but also any direct or indirect access to financial systems, records, accounts, or identifying information. It would prevent Defendant from accepting positions that could be safely performed with limited access, segregation of duties, dual authorization, or supervision. The proposed condition therefore imposes the maximum restriction rather than the minimum one. The Court's original restriction is more appropriate because it balances the competing interests. It protects the public without categorically excluding Defendant from the workforce. It recognizes that the risk can be managed through supervision and accountability, rather than assuming that any employment involving financial matters is inherently unsafe. The Court—not the Government's proposed blanket condition—has already determined the appropriate limits of Defendant's employment, and the record provides no basis to conclude that those limits are inadequate.

Finally, the proposed prohibition would substantially undermine Defendant's rehabilitation and correctional needs. Gainful employment is central to successful reentry, family support, restitution, and compliance with supervised release. A condition that prevents Defendant from pursuing lawful work in fields for which he is educated and qualified, even where the work can be performed under supervision, creates a deprivation greater than necessary and risks making successful rehabilitation more difficult.

The Government's restriction is too closely akin to the restriction in *United States v. Wittig,* 528 F.3d 1280 (10th Cir. 2008), where the defendant had been convicted of conspiracy to commit bank fraud, and money laundering. The district court imposed a condition of supervised release that barred the defendant from being employed as an executive and engaging in any financial agreements or negotiations in a professional capacity without first obtaining court approval. *Wittig,* 528 F.3d at

1286. Defendant challenged the condition, and the court of appeals overturned it. The 10th Circuit Court of Appeals found the sentencing court's justification to be "conclusory" and inadequate. *Wittig*, 528 F.3d at 1288. With regard to the guideline application the appellate court stated that the sentencing court "did not explain how the restriction was connected to defendant's abuse of a management position for a criminal purpose. The offense of conviction was based upon defendant's personal conduct and not his conduct as an executive. . .the mere fact defendant engaged in such conduct while employed as an executive does not establish the necessary connection between the conduct and his management/executive position." *Whittig,* 528 F.3d at 1288; *See e.g. United States v. Erwin,* 299 F.3d 1230, 1231 (10th Cir. 2002)("Before such a prohibition is imposed, the district court is required to determine that without the prohibition the defendant will continue to engage in criminal conduct similar to that for which he was convicted"); *See also United States v. Rodenbaugh,* 795 F.3d 1281 (10th Cir. 2015)(Defendant was prevented from being a guide based on Lacey Act violations and the court held that the district court's failure to make specific findings to support occupational restriction imposed required remand).

IV. Conclusion

The Government's two requirements make the Defendant unemployable except for the trades. They keep him from work for which he is qualified and completely undermines his rehabilitation. This is not a case whereby Mr. McCown stole anything from BIORAY, Inc. There is no impropriety alleged at BIORAY, Inc. The Government has not demonstrated that its proposed notification and occupational restrictions satisfy 18 U.S.C. § 3583(d), U.S.S.G. § 5F1.5, or the governing Tenth Circuit precedent. The proposed conditions are not narrowly tied to the conduct underlying Defendant's conviction, are not supported by specific findings showing that existing safeguards are inadequate and impose substantially greater restraints on Defendant's liberty than necessary to protect the public or promote rehabilitation. As in *Wittig*, *Erwin*, and *Rodenbaugh*, a broad occupational prohibition cannot rest on conclusory assertions or the mere fact that the offense occurred in an employment-related setting; the Court must identify a reasonably direct relationship between the prohibited work and the criminal conduct and explain why the restriction is necessary. Here, Defendant has complied with supervision, committed no violations, made restitution payments despite limited employment opportunities, and remains subject to meaningful restrictions on unsupervised access to funds, financial systems, and sensitive information. Those existing conditions adequately address the identified risks while allowing Defendant to work lawfully, support his wife and five children, pay restitution, and continue his rehabilitation. The Government's proposed modifications would instead function as an unnecessarily broad employment ban and an ongoing public disclosure requirement. Accordingly, the Court should deny the proposed modifications and retain the employment and supervision conditions contained in the *Amended Judgment*.

DATED this 11th day of September.

Respectfully submitted,

TRACY R. HUCKE
Federal Public Defender

/s/ P. Craig Silva
P. Craig Silva
Assistant Federal Public Defender

CERTIFICATE OF SERVICE

I hereby certify that on September 11, 2026 the foregoing was electronically filed and consequently served on counsel of record.

/s/ P. Craig Silva
P. Craig Silva