

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA**

UNITED STATES OF AMERICA	)	
	)	
v.	)	Case No. 1:22-CR-54
	)	
GEORGE THACKER,	)	JUDGES ATCHLEY/STEGER
	)	
Defendant.	)	

**MOTION FOR DOWNWARD DEPARTURE, DOWNWARD VARIANCE, AND
SENTENCING MEMORANDUM IN SUPPORT**

The Defendant, George Thacker, by and through counsel, submits this Motion for Downward Departure, Downward Variance, and Sentencing Memorandum in Support for this Honorable Court's consideration in Mr. Thacker's sentencing.

I. PROCEDURAL HISTORY

George Thacker is before this Court on a one count Information filed on April 14, 2022, alleging wire fraud in violation of 18 U.S.C. § 1343. [ECF Doc. No. 1]. Mr. Thacker entered a guilty plea on April 21, 2022 to said count along with a written plea agreement. [ECF Doc. No. 10]. Mr. Thacker has remained on presentence release since that date without issue.

The Pre-Sentence Investigation Report (PSR) was completed on August 18, 2022 [ECF Doc. No. 12]. As set forth in the PSR, pursuant to U.S. Sentencing Guideline Manual § 2B1.1(a)(1), the base offense level for wire fraud under 18 U.S.C. § 1343 is seven. Under U.S. Sentencing Guideline Manual § 2B1.1(b)(1)(H), because the loss was more than \$550,000, but not more than \$1,500,000, a 14-level increase also applies. Under U.S. Sentencing Guideline Manual § B1.1(b)(12), an increase of two levels applies because the offense involved conduct described in

18 U.S.C. § 1040, for a total adjusted offense level of 23. Finally, a downward adjustment of a total of three levels for acceptance of responsibility was applied pursuant to U.S. Sentencing Guideline Manual §§ 3E1.1(a) and 3E1.1(b), resulting in a total offense level of 20. Mr. Thacker has no criminal convictions outside the instant conduct and is situated in criminal history category I. Accordingly, Mr. Thacker's guideline range is 33-41 months.

As set forth below, Mr. Thacker's regrettable conduct in this case is a marked deviation from his otherwise law-abiding life. Based on Mr. Thacker's history, character, and current status as owner/manager of the only hotel in Spring City, Tennessee (employing 14 local individuals), a downward departure and downward variance from the advisory sentencing range are warranted. Specifically, Mr. Thacker respectfully requests that this court impose a reduced sentence of imprisonment, ideally to a term of home confinement, which would allow him to continue to operate Spring City's only hotel, retain its 14 employees, and further serve his community.

II. PERSONAL BACKGROUND

George Thacker is 59 years old. Mr. Thacker is divorced, has one daughter, April Wesolowski, and has two grandchildren, Ava and River Wesolowski. Mr. Thacker was born in San Antonio, Texas to parents Clifton E. Thacker and Rose Marie Thacker. He has two sisters and three brothers. Mr. Thacker's family was exceptionally unstable and his childhood traumatic. When Mr. Thacker was around 12 years old, his father relocated the family to Kingston, Tennessee with the hope that family members in the area could help with the children. Mr. Thacker's mother relocated with the family but quickly moved back to Texas, abandoning her husband and children.

Mr. Thacker's father tried to care for the children but was unable. Consequently, Mr. Thacker and his siblings were placed into state care. Mr. Thacker's two sisters were adopted almost immediately. However, he and his three brothers remained separated in the foster care system. Mr.

Thacker never saw his mother, father, or most of his siblings again. Mr. Thacker does not know much about the lives of his parents or siblings and is currently in contact with only one of his siblings, a brother Jimmy who is an engineer in Florida.

Between the ages of 13 and 18, Mr. Thacker recalls being placed in three to four different foster homes. Mr. Thacker experienced emotional, physical, and sexual abuse both before and after his placement into foster care—to include being shocked by a cattle prod.

During this period of abuse, neglect and instability, Mr. Thacker found reprieve in his harmonica, a gift he received one Christmas from a local Toys for Tots program. Without any prior musical experience, Mr. Thacker taught himself to play the harmonica by listening to other instruments. As a teenager, Mr. Thacker began competing in regional bluegrass competitions. He often travelled to these competitions without the funds to return home. Competition prize money was Mr. Thacker's only way of getting home and, therefore, he knew he had to win. The harmonica became his only symbol of hope for a better future.

Mr. Thacker continued participating in bluegrass competitions while attending high school. While at Roane County High School, Mr. Thacker played both guitar and harmonica in the school band. In school, Mr. Thacker struggled with reading and writing and was placed in a special education program. Though he struggled academically, he connected with his teachers, who recognized his musical talent. This musical gift was also recognized by his classmates, who voted him "Most Talented" his senior year.

After graduating high school in 1982, Mr. Thacker left his foster home to begin a life on his own. Mr. Thacker found odd jobs as a garbageman and a semi-truck repairman at a local body shop. He eventually garnered enough skill and experience to open his own body shop, Thacker's Body Shop. (*See* Thacker's Body Shop Flyer, Exhibit "A").

While running his business, Mr. Thacker continued gaining traction as a musician. After success in local bluegrass competitions, Mr. Thacker was invited to perform in larger shows in Pigeon Forge and Knoxville. While managing the body shop during the day, Mr. Thacker traveled to Pigeon Forge six nights a week for a nine-month period to perform at popular Pigeon Forge venue, the Rainbow Jamboree. (See Rainbow Jamboree Flyer, Exhibit “B”). Mr. Thacker performed at other well-known Pigeon Forge venues including Dollywood.

While accompanying a friend to Grand Ole Opry in the 1990s, Mr. Thacker approached popular “old-time” mountain musician, Mike Snider and asked if he would hear him play the harmonica. Mr. Snider was so impressed with Mr. Thacker’s skills that he invited him to perform with the group that evening. This performance earned Mr. Thacker his first standing ovation at the Grand Ole Opry and served as the first of many performances on “country’s most famous stage.” Mr. Thacker performed at the Grand Ole Opry over 40 times in the past 20 years. Mr. Thacker performed at other notable venues including the Riverbend Festival and the Appalachian Museum. (See Legends/Mike Snider Flyer, Exhibit “C”).

Additionally, Mr. Thacker performed at large churches while on tour with popular southern gospel group, the Gaither Vocal Band. Some days, Mr. Thacker and the Gaither Vocal Band performed for audiences of 10,000 people. Mr. Thacker performed behind multiple famous artists including Brad Paisley, Kenny Chesney, Garth Brooks, and the Chicks (formerly known as the Dixie Chicks). In 1995, Thacker released bluegrass album, *Blazing a New Trail*. Over the years, Mr. Thacker received numerous recognitions and awards. One of his most notable recognitions is winning the Dogwood Arts Festival in Knoxville, Tennessee ten years in a row. Mr. Thacker believes he “went as far as he could go with the harmonica.”

In addition to his success as a harmonicist, Mr. Thacker found success as a local businessman and employer. Over a 20-year period, Mr. Thacker opened several Castrol Express Lube locations across the region, with shops in Sweetwater, Oliver Springs, Crossville, and Dayton. Mr. Thacker has since sold these locations. In 2007, Mr. Thacker developed New Lake Crossing, a shopping center, restaurant, and hotel in Spring City, Tennessee. Mr. Thacker says he did not develop New Lake Crossing to make money; this development was about saving the town. And, the development did help the town by bringing new businesses and jobs to the area.

Mr. Thacker's commitment to his community did not stop with the development of New Lake Crossing. With the support of a mentor, Mr. Thacker set his sights on a community role. Mr. Thacker was elected to the Spring City Chamber of Commerce and served as Chamber President for one year. (*See* Chamber Article, Exhibit "D"). In 2010, Mr. Thacker ran for Rhea County Executive. Mr. Thacker won this election and served the community as Rhea County Executive up until his resignation in 2022. To date, Mr. Thacker was the longest-serving County Executive in Rhea County history. Rhea County publication, *The Herald-News* presented Mr. Thacker with a "Best of the Best" Public Servant certificate ten years in a row. (*See* Herald News Article, Exhibit "E").¹

The following characterization from life-long friend Bailey Scott Smith sums up Mr. Thacker's devotion to his community:

I've never known anyone who loved his community like George. If a storm came through, he'd be out at 3 in the morning cutting trees. He fought for emergency services and brought in business. The last time I was there, a lady pulled up and asked him for \$20 for gas to take her mom to the doctor. People in that community have come to depend on George. He'd give people money almost daily. Every year he makes several trips to the store to make sure all the Toys for

¹ Though Mr. Thacker was a well-liked county executive, he was never the county's financial officer nor did any of these transactions involve the county's money.

Tots locations are full of toys. It means a lot to him because he was a foster child. It has nothing to do with his job. You'll not be able to find someone who will drop everything and try to help people and be unafraid to speak up for the little guy for a salaried county job. He goes to everything and supports everything. The community will feel his absence. I don't think they realize most of the things he does aren't in his job description. His replacement probably won't be willing to work around the clock. Most of his recreation centered around his vocation. He lived alone and was committed to his community like most people are to their families.

(See Letter in Support by Bailey Scott Smith, Exhibit "F").

Though he is no longer County Executive, Mr. Thacker continues to actively serve his community. For example, his daughter writes that he "has continued to be there for countless families through hardships, such as house fires." (See Letter in Support by April Wesolowski, Exhibit "G"). His former wife, Diane Brown, also writes of Mr. Thacker's ongoing devotion to his community:

[George] is always looking for ways to contribute to the community. He has continued to provide services for the citizens of Rhea County, just as he did when he was county executive, despite having to resign due to this situation. He continues to provide the community with assistance such as room and board for displaced families at his hotel.

(See Letter in Support by Diane Brown, Exhibit "H").

Despite a childhood that would set up many children for a disastrous adulthood, Mr. Thacker found success in many areas of his life. However, in spite of Mr. Thacker's successes, he remains a largely unsophisticated person. And, in this case, when faced with the highly unusual circumstances of the pandemic and the related aid efforts, Mr. Thacker applied for and received money from the government for his business and put it into his personal account. His conduct was limited in duration and did not involve significant or sophisticated planning. There was never any

attempt to hide funds or go to any lengths to conceal what he was doing. And, Mr. Thacker's actions, though regrettable, did not pose a danger to the community.

At this point, Mr. Thacker is 59-years old and has a host of chronic medical issues that require ongoing treatment. More specifically, he is partially blind, has a foot condition that makes it difficult to walk, has high blood pressure, and has a thyroid condition. Mr. Thacker is on medication for foot pain, blood pressure, and his thyroid. In recent months, he has sought treatment to deal with his childhood trauma and to understand/improve his decision-making. Since pleading guilty, he has resigned from his position as Rhea County Executive and his sole employment involves owning and operating Spring City's only hotel (located in the New Lake Crossing development).

In May of 2022, as a result of his guilty plea, Wyndham Hotels and Resorts sent a notice that effectively required Mr. Thacker to terminate their licensing agreement and cease operating as a Howard Johnson. Mr. Thacker has since renamed the hotel the "Grand Hotel" and is working hard to rebrand it and operate it on his own. In doing so, he employs 14 individuals from the local community and periodically provides room and board for displaced families in need. (*See* Picture of the Grand Hotel, Exhibit "I").

III. LAW & ANALYSIS

In order to determine an appropriate sentence, the district court must first examine the appropriate sentencing guidelines and calculate the applicable advisory range of punishment for the offense. U.S. Sentencing Guideline Manual § 1B1.1(a). In 2005, the United States Supreme Court deemed the United States Sentencing Guidelines "effectively advisory" in *United States v. Booker*, after finding the mandatory nature of the Guidelines as previously imposed was a violation of the Sixth Amendment to the United States Constitution. *United States v. Booker*, 543 U.S. 220,

245 (2005). *Booker* instead requires a sentencing judge to consider the guideline range and then impose a “reasonable” sentence. *Id.* In so doing, a sentencing court has the authority to consider “without limitation” any information concerning the background, character, and conduct of the defendant where not otherwise prohibited in determining and appropriate and reasonable sentence. U.S. Sentencing Guideline Manual § 1B1.4.

Second, after calculating the appropriate guideline level and range, the court should look to any potential grounds for downward departure set out within the guidelines that may be applicable in a given case, including the Commission’s policy statements. U.S. Sentencing Guideline Manual §§ 1B1.1(b); 5K2.0. Not all grounds for departure are guided or explicit and sentencing courts may also consider any factor or combination of factors that support downward departure, so long as it is not prohibited by the Guidelines and takes the case outside the “heartland of cases” contemplated within the guidelines. *United States v. Coleman*, 188 F.3d 354, 359-361 (6th Cir. 1999) (en banc); *Koon v. United States*, 518 U.S. 81, 98 (1996); U.S. Sentencing Guideline Manual § 5H1, introductory cmt.

Third, the Court must then examine the applicability of any grounds for an additional variance from the calculated guideline range. U.S. Sentencing Guideline Manual § 1B1.1(c). Such grounds include any of the factors set out within 18 U.S.C. § 3553(a). *Id.*

Ultimately, a district court in the post-*Booker* era is mandated by Section 3553(a) to determining the appropriate sentence for a defendant based upon the totality of the circumstances surrounding the case and under the auspice of reasonableness. Included in this mandate is the instruction that the court “shall impose a sentence *sufficient, but not greater than necessary*, to comply with the purposes set forth” in the provision. 18 U.S.C. § 3553(a) (emphasis added). U.S. Sentencing Guideline Manual § 1B1.1, background cmt. As the Supreme Court has emphasized

“[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, sometimes magnify, the crime and the punishment to ensue.” *Koon*, 518 U.S. at 113.

As set forth below, in application of this three-part analysis, Mr. Thacker’s guideline range is 33-41 months. *See* Part I, *supra*. Second, the Court has ample grounds upon which to depart downward from said range to include Mr. Thacker’s history of public service, employment record, and the business impact that his incarceration would have on the local community. *See* U.S. Sentencing Guideline Manual §§ 5H1.5 & 5H1.11. Third, when examining Mr. Thacker as an individual and his uncharacteristic conduct in this unique case, the Court has ample bases to vary downward from the advisory guideline range under 18 U.S.C. § 3553(a) and impose a sentence sufficient but not greater than necessary. Ultimately, Mr. Thacker respectfully requests to be sentenced to a reduced sentence of imprisonment, ideally to a term of home confinement, so that he is able to manage his hotel (the only hotel in Spring City) and retain its 14 employees.

A. Grounds for Downward Departure

Courts have recognized that two distinct types of departures exist under the United States Sentencing Guidelines, those that are specifically proscribed and those that are unguided. Based on this recognition, courts have been granted wide discretion to examine each case and defendant individually and apply grounds for departure that may be applicable based on the totality and uniqueness of the case. *See generally Koon*, 518 U.S. at 113. Adequate grounds for downward departure are set forth below.

Several factors, when considered individually and in aggregate, distinguish Mr. Thacker’s case from the typical cases covered by the guidelines. The Sixth Circuit has held that “a factor may

be considered in the aggregate if it is ‘atypical,’ even though it may not be sufficient, in and of itself, to support a departure.” *Coleman*, 188 F.3d at 361(quoting *United States v. Jones*, 158 F.3d 492, 499 (10th Cir. 1998)). *See also United States v. Kuhn*, 351 F. Supp. 2d 696, 703-705 (E.D. Mich. 2005) (defendant’s employment history and history of hands-on charitable works in the community warranted downward departure).

Accordingly, counsel respectfully requests that this Court issue a downward departure based on the following factors individually and in aggregate:

1. Business Impact on Community

Though not specifically proscribed in the Guidelines, the Sixth Circuit has held that the business impact of a defendant’s sentence on the community is a permissible consideration in determining whether to grant a downward departure. *United States v. Holz*, 118 F. App’x 928, 937 (6th Cir. 2004) (citing *United States v. Olbres*, 99 F.3d 28, 36 (1st Cir.1996); *United States v. Milikowsky*, 65 F.3d 4, 9 (2d Cir. 1995) (affirming a downward departure that was granted on the basis of economic impact on the defendant’s business, stating, “[w]hile we agree with our sister circuits that business ownership alone, or even ownership of a vulnerable small business, does not make downward departure appropriate ... , departure may be warranted where, as here, imprisonment would impose extraordinary hardship on employees.”)).

In *Holz*, the Sixth Circuit affirmed the district court’s downward departure, in part, on the basis that the defendant’s incarceration would cause economic harm to individuals involved in his construction project. *Holz*, 118 F. App’x at 930-931. There, the defendant was president of an entity involved in a construction project for which he was also the general contractor. *Id.* He had three employees all of whom relied on him for work. *Id.* at 938-39. Given his skill set, the district court found that the defendant would have been impossible to replace. *Id.* at 933. Also, the failure

of the project would have cost bank creditors and the defendant's brother significant financial losses. *Id.* The sentencing court ultimately found that the business impact and certain family circumstances, warranted a downward departure under U.S. Sentencing Guideline Manual § 5K2.0, resulting in a sentence of three years-probation. *Id.* at 930.

In this case, Mr. Thacker's incarceration would likely result in the failure of his hotel business. Mr. Thacker owns and operates the only hotel in Spring City, Tennessee, the Grand Hotel. It has a good reputation and serves an important function in the small town. The Grand Hotel was formerly a Howard Johnson. Since Mr. Thacker's plea of guilty, the Howard Johnson Group has effectively rescinded their licensing agreement. Mr. Thacker is now working hard to rebrand the hotel and run it alone. Should Mr. Thacker be incarcerated, the residents of Spring City would likely be without a hotel and 14 employees would lose their jobs. Accordingly, the business impact of Mr. Thacker's incarceration on the local community is extraordinary and warrants downward departure.

2. Public Service/Good Works § 5H1.11

Section 5H1.11 provides, in pertinent part, that "civic, charitable, or public service; employment-related contributions; and similar prior good works are not ordinarily relevant in determining whether a departure is warranted." U.S. Sentencing Guideline Manual § 5H1.11. However, the consideration of public service, good works is not prohibited either. In fact, courts have allowed such departures when the defendant's community service was extraordinary. *See, e.g., United States v. Turner*, 915 F.2d 1574 (table), 1990 WL 150475 at *4 (6th Cir. 1990) (affirming downward departure under U.S. Sentencing Guideline Manual § 5H1.11 from a range of 15-21 months to three years-probation due to defendant's community and civic activities, noting "it seems ill-conceived to deprive the Flint community of Turner's service by sentencing him to

prison when other means of punishment are available”); *United States v. Huber*, 462 F.3d 945, 952 (8th Cir. 2006) (affirming a downward departure for a defendant who had loaned money to neighbors and fellow farmers in need, saving farms from foreclosure); *United States v. Cooper*, 394 F.3d 172, 177 (3d Cir. 2005) (allowing a downward departure for community service that was “hands-on” and likely had a dramatic and positive impact on the lives of others).

In this case, Mr. Thacker’s dedication to his community in Rhea County remains extraordinary. As noted by his close friend, Mr. Thacker is “committed to his community like most people are to their families.” (See Letter in Support by Bailey Scott Smith, Exhibit “F”). He has operated businesses (with employees) in Rhea County for years and served his community as a Community Executive for over a decade. He currently owns and operates the town’s only hotel, employing 14 community members. And, like the defendants in *Turner*, *Huber*, and *Cooper*, Mr. Thacker has a history of and is currently involved in “hands-on” work in the community. Such work includes: cutting trees after storms, filling the Toys for Tots locations with toys, helping families after house fires, and providing room and board to displaced families at his hotel. (See Letters in Support, Exhibits “F, G, H”).

Accordingly, Mr. Thacker’s service to his community has been and remains extraordinary and warrants downward departure.

3. Employment Record § 5H1.5

Section 5H1.5 provides that the defendant’s employment record is “not ordinarily relevant in determining whether a departure is warranted,” but that the record “may be relevant in determining the conditions of probation or supervised release (e.g., the appropriate hours of home detention).” U.S. Sentencing Guideline Manual § 5H1.5. However, consideration of employment history is not prohibited and courts have affirmed downward departures based on the defendant’s

employment record in extraordinary cases. *See, e.g., Kuhn*, 351 F. Supp. 2d at 703-705 (defendant's employment history and history of hands-on charitable works in the community warranted downward departure); *Jones*, 158 F.3d at 498–99 (considering, among other factors, the defendant's steady work history and the effect the defendant's incarceration would have on his prospects for future employment in a very economically depressed community).

In this case, Mr. Thacker's employment history is highly extraordinary. He has managed to have a lengthy and productive work history in spite of a difficult childhood and lack of a formal education. Not only has he had steady employment for over forty years, he has been a steady employer for decades. He has owned and run a body shop, owned several Express Lubes, and developed a shopping center. As discussed herein, he is currently running a hotel and employing 14 members of his rural community.

Accordingly, Mr. Thacker's employment history should be taken into consideration, along with other factors, to warrant downward departure in this case.

B. Grounds for Variance Outside Sentencing Range

After determining the appropriate guideline range following any applicable downward departures, the Court is next tasked with considering a variance under 18 U.S.C. § 3553(a) outside the guideline range. *Gall*, 552 U.S. at 49. 18 U.S.C. § 3553(a) contains factors for this Court's consideration and includes the following:

Factors to be considered in imposing a sentence— The court shall impose a sentence *sufficient, but not greater than necessary*, to comply with the purposes set forth in paragraph (2) of this subsection. The court, in determining the particular sentence to be imposed shall consider—

- (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 seriousness of the offense, to promote respect for the law, and to provide just

punishment for the offense; to afford adequate deterrence to criminal conduct; to protect the public from further crimes of the defendant; to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;

(3) the kinds of sentences available;

(4) the kinds of sentence and sentencing range established for the applicable category of offense committed by the applicable category of defendant as set forth in the guidelines;

(5) any pertinent policy statement;

(6) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct;

(7) the need to provide restitution to any victims of the offense.

Courts are instructed to consider these factors as a whole and consider a variance in light of the totality or combination of factors. U.S. Sentencing Guideline Manual § 1B1.1(c). *See United States v. Musgrave*, 647 F. App'x 529, 539 (6th Cir. 2010). In so doing, the United States Supreme Court has directed appellate courts to adequately explain any variance, but has explicitly “rejected an appellate rule that required ‘extraordinary’ circumstances to justify a sentence outside the Guidelines range.” *Gall*, 552 U.S. at 50.

In this case, the Court is presented with an individual who made an uncharacteristic mistake, has admitted his error, does not pose a danger to society, and stands to help his community (and 14 employees) by continuing to operate Spring City’s only hotel. Accordingly, Mr. Thacker would ask this Court to impose a downward variance in this case and impose a sentence below the advisory range to achieve a sentence that is sufficient, but not greater than necessary to achieve the goals of sentencing pursuant to 18 U.S.C. § 3553(a).

1. The nature and circumstances of the offense warrant a sentence below the guideline range. U.S.C. § 3553(a)(1)

The instant offense involves the receipt of pandemic assistance aid loans, which were distributed in a highly unusual and fast-paced manner during a highly unusual time. In this case, when faced with these unusual circumstances, Mr. Thacker applied for and received money from the government for his business and put it into his personal account. Mr. Thacker's conduct occurred over a short period of time (approximately ten months) and involved the submission of simple documents to obtain three of these loans. There is no allegation that Mr. Thacker submitted more than minimal documentation in support of the loan applications. Nor was there any indication that he attempted to conceal the funds or engage in any complex or sophisticated "cover up." Here, the conduct at issue did not involve significant (or sophisticated) planning, was limited in duration, and had the highly unusual circumstance of being issued during a global pandemic. Mr. Thacker's actions, though regrettable, did not pose a danger to the community.

Accordingly, Mr. Thacker asks that this Honorable Court take the facts of this unique case into account in granting a downward variance in this matter. *See Gall*, 552 U.S. at 41-42 (affirming downward variance from a range of 30-37 months imprisonment to 36 months-probation, in part, because defendant's participation in the distribution of ecstasy was limited, lasting approximately seven months).

2. The history and characteristics of Mr. Thacker warrant a sentence below the guideline range. U.S.C. § 3553(a)(1)

Section 3553(a)(1) also directs a sentencing court to consider whether the "history and characteristics of the defendant" warrant a sentence below the guideline range. U.S.C. § 3553(a)(1). Given Mr. Thacker's history, his conduct in this case can be categorized as a "marked deviation" from an otherwise law-abiding life. In spite of a difficult childhood and lack of formal

education, Mr. Thacker's employment history is highly extraordinary. Not only has he had steady employment for over 40 years, he has been a steady employer for decades.

Significantly, Mr. Thacker is currently running Spring City's only hotel, employing 14 members of the small-town community. Given his community ties and small business experience, Mr. Thacker's involvement is important. Should Mr. Thacker be incarcerated, The Grand Hotel would likely fail, Spring City would be without a hotel, and 14 employees would lose their jobs.

Accordingly, the business impact of Mr. Thacker's incarceration is extraordinary and warrants a downward variance and/or alternative sentencing. *See Musgrave*, 647 F. App'x at 537 (affirming variance under multiple § 3553(a) factors, noting defendant's history as a successful businessman and current employer); *United States v. Tomko*, 562 F.3d 558, 571-72 (3d Cir. 2009) (en banc) (affirming variance under multiple § 3553(a) factors, noting that the defendant's incarceration would threaten the jobs of Tomko Inc.'s employees).

In addition to Mr. Thacker's business contributions, he has a history of extensive work in the community as well. Mr. Thacker was an active member of the Spring City Chamber of Commerce and was the longest-serving County Executive in Rhea County history, prior to his resignation in 2022. He has operated businesses (with employees) in Rhea County for years and served his community as a Community Executive for over a decade. He currently owns and operates the town's only hotel, employing 14 community members. And, Mr. Thacker has a history of and is currently involved in "hands-on" work in the community. Such work includes: cutting trees after storms, filling the Toys for Tots locations with toys, helping families after house fires, and providing room and board to displaced families at his hotel. (*See* Letters in Support, Exhibits "F, G, H").

Such extensive public service should also be considered in issuing a downward variance and/or alternative sentencing. *See Musgrave*, 647 F. App'x at 537 (affirming variance under multiple 3553(a) factors, noting defendant's "extensive work in the community"); *Tomko*, 562 F.3d at 572 (same).

Finally, it should be noted that Mr. Thacker has a history of severe childhood trauma and a host of chronic medical issues that require ongoing treatment. More specifically, Mr. Thacker is partially blind, has a foot condition making it hard to walk, has high blood pressure, and a thyroid issue. He is on medication for foot pain, blood pressure, and his thyroid. He has also sought treatment to deal with his childhood trauma and to understand/improve his decision-making. These ongoing mental and physical health issues, combined with other characteristics, should be taken into consideration in sentencing as well. *See, e.g., United States v. Suggs*, 822 F. App'x 422, 433-34 (6th Cir. 2020); *United States v. Helton*, 676 F. App'x 476, 481 (6th Cir. 2017).

Given Mr. Thacker's unique history and characteristics, a downward variance is appropriate in this case.

3. A sentence below the guideline range will provide just punishment and afford adequate deterrence to criminal conduct. U.S.C. § 3553(a)(2)

Deterrence under U.S.C. § 3553(a)(2) includes two components—specific deterrence and general deterrence. Specific deterrence looks to dissuade an individual defendant from committing future crimes, while general deterrence aims to have the same effect on "the population at large." *United States v. Camiscione*, 591 F.3d 823, 834 (6th Cir. 2010).

In this case, the specific deterrent effect of the instant conviction on Mr. Thacker cannot be understated. Mr. Thacker's close friend reflects on this as follows:

Since his arrest, George has expressed his remorse and regret to me on many occasions. I've spent hours on the phone with him and several nights at his home with him weeping and wishing he'd have

realized what he was doing and how wrong it was. He deeply feels shame and regret. I've witnessed him call friends and relatives and try to explain and apologize. He's given away a lot of his possessions to people and told them he loved them. I believe he has had a chance to truly reflect on his actions and sees that what he did was not only wrong but just plain foolish as well. He has taken responsibility for his actions and the impact it's and his reputation is a very hard lesson learned.

(See Letter in Support by Bailey Scott Smith, Exhibit "F"). Mr. Thacker's daughter writes about this effect as well:

I do believe my father's remorse is sincere. He has not blamed anyone else for his crime. In addition to being honest and owning up to his mistakes, he has shown integrity by being forthcoming and honest with everyone about his situation. He has taken responsibility for his actions and apologized for hurting his community by humbly and publicly stating remorse and taking accountability. He has reached out to numerous people to help himself by taking appropriate actions to assure this situation will not happen again and by educating others on the issue.

(See Letter in Support by April Wesolowski, Exhibit "G").

At this point, Mr. Thacker is now a convicted felon, owes substantial restitution, and faces this Court for sentencing. As a long-time resident of Rhea County, he has lost his good reputation. He has resigned from his position as Rhea County Executive and has lost his licensing agreement with Howard Johnson. Accordingly, the prosecution of this case sends a strong message to any other who would consider similar conduct, creating a significant general deterrence.

Here, a downward variance, ideally a term of home confinement, would allow Mr. Thacker to save Spring City's only hotel and continue to employ several members of his community. Such sentence would restrict Mr. Thacker's liberty so as to provide adequate deterrence while not depriving the community of his services. *See United States v. Husein*, 478 F.3d 318, 331 (6th Cir. 2007) (original range of 37-46 months; with court explicitly determining that the sentence of three years' supervised release, which included an initial 270-day term of home confinement, would act

as a sufficient deterrent to Husein despite the seriousness of the fraud). *See also Gall*, 552 U.S. at 48 (recognizing that custodial sentences are more severe, but that “offenders on probation are nonetheless subject to several standard conditions that substantially restrict their liberty”).

4. The kinds of sentences available. U.S.C. § 3553(a)(3)

The Court is presented with a wide array of punishments that are available for a defendant. While incarceration is the punishment most frequently examined under the statutory framework, probation, community confinement, home detention, and other alternative measures are also options that are available to the Court. The goal, of course, is to impose a sentence “sufficient, but not greater than necessary.” 18 U.S.C. § 3553(a); U.S. Sentencing Guideline Manual ch. 5, introductory cmt.

In this case, Mr. Thacker requests that this Court sentence him in a way that allows him to best serve his local community by continuing to run its only hotel and keep 14 community members employed. Little to no actual imprisonment would allow for this to happen and, though unusual, is not unheard of. *See Gall*, 552 U.S. at 43, 59-60 (though guideline range recommended 30-37 months-imprisonment, affirming sentence of 36 months-probation as both procedurally and substantively reasonable given that 3553(a) factors justified a substantial deviation from the Guidelines range). *See also Husein*, 478 F.3d at 334 (fraud case with original guideline range of 37-46 months; affirming the sentence of 3 years' supervised release, which included an initial 270-day term of home confinement); *Musgrave*, 647 F. App'x at 530 (affirming variance in fraud case from 57-71 month guideline range to one day of imprisonment, five years of supervised release with 24 months of home confinement, and \$250,000 fine); *Tomko*, 562 F.3d at 571 (affirming variance in fraud case from 12-18 month guideline range to 12 months-probation); *United States*

v. Howe, 543 F.3d 128, 130 (3d Cir. 2008) (affirming downward departure and variance in fraud case from 18-24 month guideline range to probation and home confinement).

5. The guideline sentence and any pertinent policy statements. U.S.C. § 3553(a)(4), (5)

In deciding whether or not to vary, the district court must consider, but is not bound by, the applicable guideline range and should consult relevant policy statements in determining an appropriate sentence for an individual defendant. *See Booker*, 543 U.S. at 245.

6. The need to avoid unwarranted sentence disparities. U.S.C. § 3553(a)(6)

The present offense involves one count of wire fraud. Recently, the Sixth Circuit Court of Appeals addressed sentencing statistics in white collar cases in *United States v. Musgrave*. 647 F. App'x 529 (6th Cir. 2016). In *Musgrave*, the defendant was convicted following a jury trial of one count of conspiracy to commit wire and bank fraud, two counts of wire fraud and one count of bank fraud, establishing an advisory guideline range of 57-71 months-imprisonment. *Id.* at 532. The sentencing court's original sentence was vacated and remanded and, upon resentencing, the court imposed a sentence of one day imprisonment, five years of supervised release with 24 months of home confinement, and a \$250,000 fine. *Id.* at 533. On appeal, the Sixth Circuit upheld this sentence as substantively reasonable as an appropriate downward variance from the advisory guideline range. *Id.*

In assessing the district court's consideration of 18 U.S.C. § 3553(a)(6) and various sentencing statistics, the Sixth Circuit Court of Appeals noted as follows:

Based on the district court's review of statistics and other cases, of all white-collar defendants in our circuit, nearly 30% receive no prison time, and approximately one-third of that 30% receive some form of home confinement instead.

Id. at 538. And, courts have formulated sentences in other fraud cases that utilize a combination of imprisonment, home confinement, community service, and substantial restitution to affect the goals of 18 U.S.C. § 3553. *See id.* *See also Husein*, 478 F.3d at 334 (fraud case with original guideline range of 37-46 months; affirming the sentence of three years' supervised release, which included an initial 270-day term of home confinement); *Tomko*, 562 F.3d at 571 (affirming variance in fraud case from 12-18 month guideline range to 12 months-probation); *Howe*, 543 F.3d at 130 (affirming downward departure and variance in fraud case from 18-24 month guideline range to probation and home confinement).

Accordingly, a variance in this case would not create any unwarranted sentence disparities.

7. The need to provide restitution. U.S.C. § 3553(a)(7)

The consideration of the need to satisfy restitution is one that a court may take into account when making a decision whether to grant a variance under 18 U.S.C. § 3553(a)(7). *See Musgrave*, 647 F. App'x at 536 (defendant's ability to satisfy restitution if not incarcerated noted as factor weighing in favor of variance). As in *Musgrave*, any period of incarceration that is imposed will hinder Mr. Thacker's ability to begin satisfying the restitution in this matter. And, should Mr. Thacker's hotel business fail during his incarceration, his ability will be further limited. Clearly, a non-incarcerated and employed individual can work to satisfy a restitution amount much faster than could be done in prison. Mr. Thacker would ask that this Honorable Court take this factor into consideration, along with all the other factors addressed above and grant a downward variance in this case.

8. Totality of U.S.C. § 3553(a) factors

In this case, the totality of the 3553(a) factors weighs in favor of a variance given the unusual nature of the offense, the otherwise law-abiding history and character of the defendant,

Mr. Thacker's role in the community as an employer and operator of its only hotel, and precedent granting variances and alternative sentences in cases like this one. *See Musgrave*, 647 F. App'x at 533; *Tomko*, 562 F.3d at 571.

III. CONCLUSION

As set forth herein, Mr. Thacker's regrettable conduct in this case is a marked deviation from his otherwise law-abiding life. Based on Mr. Thacker's history, character, and current status as owner/manager of the only hotel in Spring City, Tennessee (employing 14 local individuals), a downward departure and downward variance from the advisory sentencing range are warranted. Specifically, Mr. Thacker respectfully requests that this court impose a reduced sentence of imprisonment, ideally a term of home confinement, which would allow Mr. Thacker to continue to operate the hotel and retain its 14 employees. Should Mr. Thacker be allowed to continue to operate the hotel, he would work diligently to pay his restitution, keep his employees working, and earn back the trust of his community.

Respectfully submitted,

DAVIS & HOSS P.C.

s/Lee Davis

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's electronic filing system.

This the 9th day of September, 2022.

s/Lee Davis
Lee Davis