

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION**

UNITED STATES OF AMERICA

v.

Case No. 2:21-cr-107-SPC-MRM

EDRICA WATSON
_____ /

SENTENCING MEMORANDUM

Edrica Watson, through counsel, hereby files this memorandum in support of a sentence sufficient but not greater than necessary to achieve the goals of sentencing. In furtherance of that effort, Ms. Watson respectfully submits that a downward variance is warranted in this case. See PSR ¶ 98. Although, Ms. Watson scores in Zone D with an advisory guideline range of 21 to 27 months, followed by a period of supervised release of not more than five years, see PSR ¶¶ 83, 85, for the reasons presented in the PSR and in this memorandum, it is respectfully submitted that a sentence of time served followed by a term of supervised release is sufficient but not greater than necessary to achieve the goals of sentencing.¹

¹ Under the parsimony principle at 18 U.S.C. § 3553, the goal of sentencing “is to lock in a sentence that is not too short and not too long, but just right to serve the purposes of § 3553(a).” *United States v. Irey*, 612 F.2d 1160, 1197 (11th Cir. 2010) (*en banc*) cert. denied 563 U.S. 917 (2011). See *United States v. Johnson*, 635 F.3d 983, 989 (7th Cir. 2011) (parsimony provision must account for individual circumstances of each defendant); *United States v. Olhovsky*, 562 F.3d 530, 549, 550, 552 (3rd Cir. 2009) (citing *Gall v. United States*, 552 U.S. 38, 52 (2007)).

1. The offense, the prelude to the offense & cooperation

(1)(A). Offense Conduct

Ms. Watson immediately told investigating agents “that she established Unity Home Care Services LLC and that she applied for a PPP loan.” *See* PSR ¶ 23. On September 9, 2020,² Ms. Watson incorporated Unity Home Care Services, LLC, with a principal address and mailing address provided by an unindicted confederate: 12553 New Brittany Boulevard, Suite V-25, in Fort Myers, Florida. *See* PSR ¶ 15. Although the New Brittany address was also an address of the unindicted confederate who created all of the fraudulent documentation and pocketed practically all of the fraudulent proceeds, this September 9, 2020, incorporation proved to be a momentous event in Ms. Watson’s life. Referring to Paragraph 14 of the PSR:

The USSS reviewed confidential documents that led to an investigation into multiple businesses using the same principal address of 12553 New Britney Boulevard, Suite V-25, in Fort Myers, Florida. This address was found to be an opus virtual office that was contracted and paid for by an unindicted individual, L.P., for a co-owned venture with his wife, Parker Management Professionals LLC. Upon further investigation, USSS agents observed that the same employees were listed under the multiple businesses associated with this address. One of the businesses was Unity Home Care Services LLC.

This unindicted individual -- L.P. -- was also the registered owner of one of the illegitimate contractors in this criminal scheme as well as the individual who

² Ms. Watson pleaded guilty to making a false statement to a lending institution almost seven months later -- on April 2, 2021 -- in violation of 18 U.S.C. § 1014. *See* Docs. 29 at pgs. 20-21; 35 at pgs. 20-21; 36 & 37.

exclusively withdrew illegitimate payroll via ATM trans-actions from the Unity Home Care account. *See* PSR ¶ 21. In addition, L.P.:

- *via* checks drawn on the Unity Home Care Services account, accepted fraudulently obtained funds in the amount of \$27,525 and his unindicted wife accepted fraudulently obtained funds in the amount of \$16,740. “None of these transactions were traced to pay-roll, mortgage interest, or utilities as part of the PPP program.” (PSR ¶ 22).
- provided all of the bogus documentation used to fraudulently obtain the PPP loan. (PSR ¶ 23).
- “provided Watson with a hand written script instructing her what to tell the bank in an attempt to have the funds unfrozen. L.P. also provided an envelope containing documents for Watson to provide to the bank in an attempt to show the bank that the funds were needed for the employees. Watson advised that, until then, she had not seen anything regarding payroll or the employees. The envelope with documents was located during the search and seized by the USSS.” (PSR ¶ 26).
- wrote a complaint to the Federal Reserve in an endeavor to unfreeze the bank account for Unity Home Care Services. (PSR ¶ 27).

In the end, the United States Office of Probation reasons at PSR ¶ 98 that while Edrica Watson is an average participant in her crime:

[S]he is being held accountable to \$392,563, entirely. Additionally, the defendant had a relationship with L.P. and he was influential to her. The defendant’s motivation was to provide a house for her family.

Endorsing this observation, the presentence report reveals L.P. has contaminated Edrica Watson’s life for over three decades.

Ms. Watson was raised in a housing development, the child of a single, 15-year-old. *See* PSR ¶ 59. Six years before any ability to benefit from the example

of any male role model³ – a nine-year-old Edrica Watson became acquainted with L.P. through his romantic involvement with Ms. Watson’s maternal aunt. *See* PSR ¶ 34. About 20 years later – and almost a decade before the offense conduct presented herein – L.P. turned his attention to Ms. Watson: making her car payments and completing her taxes in the immediate aftermath of the father of her two children⁴ receiving a 15-year term of incarceration with the Florida Department of Corrections. *See* PSR ¶¶ 34, 60. Time passed. And L.P.’s propositions intensified. “L.P. later came back into the defendant’s life, and he asked her if she was still wanting to start her home health aide business.” *See* PSR ¶ 34. “Watson advised that while she created the Unity Home Care Services LLC, prior to the commencement of this offense, she planned to someday operate this business.” *See* PSR ¶ 25. “L.P. spoke to the defendant about helping her purchase a house.⁵ L.P. had discussions with the defendant regarding the fact that

³ Ms. Watson’s father had no place in her life until Ms. Watson was 15 years old. *See* PSR ¶ 56.

⁴ Ms. Watson’s children are currently 10 and nine years old. PSR ¶ 60. When Mr. Moore began his prison sentence and L.P. intervened in Ms. Watson’s life, her children were only one-year and five-months old.

⁵ Precisely because Ms. Watson was saving the money to purchase a house, she consumed neither the \$20,832 in illicit funds that L.P. deposited into her personal bank account (*see* PSR ¶ 24) nor the illicit cash she received from L.P. and stored in her residential safe (*see* PSR ¶¶ 24, 26). Two related points merit attention. First, L.P. told Ms. Watson he had provided her \$50,000 in cash. *See* PSR ¶ 26. He was off by more than half – federal agents seized only \$23,750 from Ms. Watson’s safe. *See* page 2 of Return relating to the search of Ms. Watson’s residence in Case No. 2:21-MJ-1182-MRM annexed hereto as “**Exhibit A.**” Second, Ms. Watson consumed not a cent of the criminally-acquired money was consumed for personal use: “USSS agents acknowledged that a review of Watson’s personal bank account confirmed that her monthly expenses were made through her employment income.” *See* PSR ¶ 28.

she was a minority and that it would be difficult for her, so he was willing to help her.” See PSR ¶ 34. “During her discussions with L.P., Watson was told that she could obtain money for her and her children.” See PSR ¶ 24. Eventually, L.P. and Ms. Watson were engaged in “a romantic relationship.” See PSR ¶ 34.⁶ “The defendant trusted L.P., but she ultimately realized what was happening, and she takes full responsibility for her actions.” *Id.* More specifically, Paragraph 24 of the PSR reports: “Watson advised that at first she did not know for certain that what they were doing was illegal, but she eventually knew it was illegal, and she continued with her participation.” See PSR ¶ 24. According to Paragraph 25 of the PSR:

Watson advised that L.P. had her personal information because he previously did her income taxes, and he knew her social security number and date of birth. Watson stated that L.P. used her information to fill out the PPP loan application, and then he provided her with the application to digitally initial, sign, and submit. Watson reported that L.P., with the assistance of his friend, created the supporting documents that were submitted to Customers Bank.

As referenced in Footnote 5, *supra*, details as to the allocation of the spoils of this criminal enterprise left much to be desired – at least from the perspective of Ms. Watson: she ended up with a total draw of less than \$45,000, all of which was recovered by law-enforcement. See also PSR at Footnote 1. From the negotiated checks that Ms. Watson wrote from the Unity Home Care account at L.P.’s direction, she was supposed to get a portion. See PSR ¶ 26. But L.P.

⁶ Additionally, PSR ¶ 98 notes “the defendant had a relationship with L.P. and he was influential to her.”

reneged. *Id.* And although L.P. was exploitative⁷ and inconsistent, Ms. Watson was not: as presented in Footnote 5, *supra*, because whatever loot L.P. deemed adequate to provide Edrica Watson went precisely for a residential down payment, none of that loot was expended and all of it was recovered. Indeed:

Watson was told that she could obtain money for her and her children. Watson stated that she asked L.P. if she could get into trouble for this, and he told her that it was going to be a loan. L.P. raised Watson's comfort level. Watson advised that at first, she did not know for certain that what they were doing was illegal, but she eventually knew it was illegal, and she continued with her participation. PSR ¶ 24.

As stated at PSR ¶ 40, Ms. Watson is an average participant in this case. Further, if there was a basis for a mitigating-role adjustment, Ms. Watson would have the burden to prove it. *See, e.g., United States v. Alaniz*, 148 F.3d 929, 937 (8th Cir. 1998). On the other hand -- and precisely as advanced at PSR ¶ 98 -- the inability to secure a downward adjustment under USSG § 3B1.2 does nothing to vitiate the ability to secure a downward variance on the basis of disparate offense conduct and/or culpability. *See, e.g., United States v. Smart*, 518 F.3d 800, 810 (10th Cir. 2008).

(1)(B). Cooperation

As presented in the opening of Part (1)(A) of this memo, Mr. Watson's cooperation with the authorities was immediate. *See* PSR ¶ 23. She has taken

⁷ Ironically, it appears that L.P.'s greatest exposure to detection and arrest was his decision to locate this and numerous other criminal ventures to the same address as at least one of his business enterprises. *See* Pages 2-3, *supra*. As to exposure for the specific PPP fraud at bar, however, L.P. set a course to ensure that Edrica Watson, and only Edrica Watson, was evidentiarily marooned -- the sitting duck now held exclusively responsible for the \$392,563 restitution. *See* PSR ¶ 98.

full responsibility for her actions, advising the probation office that she is sorry for her involvement in this criminal venture and that she is sorry she has hurt her family through this involvement as well as the potential collateral consequence of losing her nursing license. *See* PSR ¶ 34. Although she sought to make her cooperation complete, for the reasons that follow, that desire was stymied.

Pursuant to the plea agreement in this matter, the government agreed to apprise the Court of “the nature and the extent of the defendant’s cooperation and any other mitigating circumstances indicative of the defendant’s rehabilitative intent by assuming the fundamental civic duty of reporting crime.” *See* Doc. 29 at 6. Three days after a December 20, 2021, overture to defense counsel wherein the government expressed its desire to debrief Ms. Watson, Ms. Watson confirmed the identity of three individuals of interest with the government and then proposed dates for a debriefing.⁸ No date was set. Rather, a plea agreement was prepared containing USSG § 5K1.1 language. On March 3, 2022, Ms. Watson was advised that her acquiescence to the plea agreement would be a precondition to setting a date for a debriefing.⁹ Following Ms. Watson’s acquiescence of the government’s plea agreement on March 10, 2022, *see* Doc. 29 at 22, however, no debriefing has been set.

⁸ Written memorializations that corroborate these assertions are not annexed to this memorandum but will be provided to the Court at sentencing should the Court so desire.

⁹ *See* Footnote 8, *supra*.

Where the government does not file a motion regarding substantial assistance under U.S.S.G. § 5K1.1, the defendant may nonetheless benefit from her efforts to cooperate as such effort speak to the defendant's character. *United States v. Fernandez*, 443 F.3d 19, 33 (2nd Cir. 2006) *cert. denied* 549 U.S. 882 (2006); *United States v. Doe*, 398 F.3d 1254, 1260-61 (10th Cir. 2005); *see e.g., United States v. Arceo*, 535 F.3d 679, 688 (7th Cir. 2008). In this case, after soliciting Ms. Watson's participation in a debriefing, the government confirmed the identity of three persons of interest Ms. Watson provided. After Ms. Watson fulfilling the government's requirement to enter into a plea agreement, the government elected not to debrief Ms. Watson. As such, Ms. Watson respectfully seeks consideration of her solicited non-5K cooperation as a downward-variance factor.

2. The history and the characteristics of Edrica Watson

The realm of 18 U.S.C. § 3553(a) includes consideration of the defendant's life history. *See United States v. Battiest*, 553 F.3d 1132, 1136 (8th Cir. 2009) *cert. denied* 556 U.S. 1265 (2009). This only make sense as Ms. Watson has a constitutional right to individualized sentencing¹⁰ where the Court must approach every defendant "as an individual and every case as a unique study in the human failings that sometimes mitigate, sometime magnify, the crime and the punishment to ensue," *Koon v. United States*, 518 U.S. 81, 113 (1996). As such, and in addition to the compelling offense and rehabilitation factors presented in

¹⁰ *United States v. Brown*, 772 F.3d 1262, 1266 (11th Cir. 2014).

Part 1 of this memo, Ms. Watson now respectfully draws the Court's attention to the April 9, 2022, letter of Laura Simon (appearing as pages 19-20 of the PSR), the April 11, 2022, letter of Randy Simon (appearing as pages 21-22 of the PSR) and the following documents annexed hereto:

- “Exhibit B”** May 16, 2022, letter from Gina Louis, a friend of Ms. Watson.
- “Exhibit C”** May 13, 2022, letter from Jaleisce Williams Aidoo, a co-worker of Ms. Watson.
- “Exhibit D”** April 30, 2022, letter from Judele Boireau, a co-worker of Ms. Watson.

While each of the aforementioned documents speaks for itself, all of them serve to emphasize and embellish the multiple aspects of Ms. Watson's character and history the Court should take into consideration in fashioning Ms. Watson's sentence.

(2)(A). Remarkable professionalism and good deeds

Reached by Officer Petersen for comment, Mr. Simon confirmed that his father is under the care of Ms. Watson at The Terraces residential-care facility. *See* PSR ¶ 78. Howard Simon is 97 years old, bedridden, hard of hearing and suffers from dementia. *Id.* Characterizing Ms. Watson as “extraordinary,” Mr. Simon revealed his father: “needs stimulation, and the defendant was able to come up with ways to get him involved and has increased Howard's quality of life. Randy [Simon] stated that the defendant has gotten his father to play games such as checkers, and interact in ways that no one has tried before.” *Id.* Turning to

Mr. Simon's April 11 letter at Page 21 of the PSR, Mr. Simon underscores that when he travels from Los Angeles to visit his father:

Edrica always takes extra time to assist me. She even helped me get [my father] into a wheelchair and outside – something no one else at Renaissance has ever told us was possible! Words cannot describe how happy that made Dad. He asks for Edrica every night, and if anything happens to her, he will be despondent. All the quality care he now experiences from her will return to the mediocre level that seems to be the standard these days at care facilities.

Additionally:

Please make sure that everyone involved understands the whole picture here – Edrica made a terrible mistake, but my sister and I can speak to her wonderful character, her generosity, her responsible and meticulous care of our father, and the high ethical standards she brings to her work.

PSR at page 22.

Speaking for herself, and providing additional texture, Mr. Simon's sister, Laura, informs she met Edrica Watson in July 2021 at a time when Ms. Simon was upset "over my father's worsening dementia and physical condition." See PSR at page 19. But things got better for Ms. Simon and she continues:

Edrica told me to contact her anytime and assured me she'd do her best to help my dad.

And boy did she come through for us! My dad became badly depressed when he stopped being able to hear, despite hearing aids and an amplifier. It was Edrica who found a new way to communicate with him using dry erase boards! She informed the entire care staff of the need to use them. My dad was thrilled! Every time I visited from Connecticut he would say who is the genius who thought of this?' and I would say Edrica! He became a new person having a communication lifeline again.

On the nights when Edrica has shifts, dad gets so excited to see her. She spends extra time, although not part of her job, keeping him company. Because of his deafness we can't communicate with him by phone anymore, but Edrica makes a point of Face-timing us every night she works so we can see him, wave and blow kisses. On nights when she doesn't work, my dad frequently yells 'help help help' and is agitated in the night. But when she's on duty, he's much more content and peaceful.

Even though it is not part of her job duties, Edrica keeps thinking of ways to help my dad, which is challenging since he can't move, hear, or articulate his needs. A few weeks ago, when I Face-timed him I saw he was flipping through picture magazines Edrica bought him. When he was very agitated after his wife went to the hospital, Edrica held his hand and stayed with him until he fell asleep.

I was thrilled to see that she got him playing a matching game on the iPad – after months of me asking the staff to engage him more. No one else had gotten him to play games like that. Not any of the private aides I hired, no CNA or nurse, not even the recreation staff (whose job it is to engage the residents with activities) were able to get him going! But this is another example of how Edrica goes the extra mile – or rather many miles – to make her patients happy and bring fulfillment into their devoid lives.

Edrica is by far the best, most compassionate, responsible, and high-caliber nurse my dad has ever experienced in his long years of confined long-term care at a facility. If all staff were nearly as stellar as Edrica, I would not be the nervous wreck that I have become!

PSR at pages 19-20.

Unambiguously endorsing the high professional esteem with which the Simons hold Ms. Watson, and well before the Simons ever met Ms. Watson, at "Exhibit D," Ms. Boireau offers:

Edrica has a heart of gold, she cares for all of her residents as if they were family members. She is well loved by staff and our residents as well. Some residents always talk about how during Hurricane Irma the nurses were there with them through it all. I always hear how Edrica and her kids stayed at the facility for three days and the kids

colored and played games with all the residents[.] [T]ill this day it still touches the residents hearts and they light up every time they see here. I have seen her go above and beyond for her residents and even her co-workers. Truly, we need great nurses like Edrica.

Ms. Watson's professional dedication extends into her personal life: Ms. Louis informs that it is Ms. Watson "who shows up at work on her day off just to help celebrate a resident's birthday." *See* "Exhibit B."

A demonstrated history of good employment may be considered as a factor in fashioning an appropriate sentence under 18 U.S.C. § 3553(a). *See, e.g., United States v. Fuson*, 215 Fed. Appx. 468, 471 (6th Cir. 2007); *United States v. Jones*, 158 F.3d 492, 498 (10th Cir. 1998) (pre-*Booker* downward departure premised on "the defendant's long, impressive work story in a situation where good jobs are scarce" finding 'specifically that he has been employed in a very good position for 14 years, earning a very high income for the community in which he lives, which is an economically depressed area with few job opportunities"); *United States v. DiMattina*, 885 F.Supp.2d 572, 581-82 (E.D.N.Y. 2012) (continuous employment one factor considered in supporting downward variance); *see also United States v. Ruff*, 535 F.3d 999, 1001 (9th Cir. 2008). It is respectfully submitted that Edrica Watson is not just a good employee. She is an exceptional employee.

Relatedly, the unselfish good deeds of a defendant are a component of the defendant's history and characteristics the Court may consider in mitigation of sentence. *See, e.g., United States v. Adelson*, 441 F.Supp.2d 506, 513-14 (S.D.N.Y. 2006); *see also United States v. Vrdolyak*, 593 F.3d 676, 689 (7th Cir. 2010)

(Hamilton, J., dissenting) *cert. denied* 131 S.Ct. 200 (2010).¹¹ In addition to the preceding discussion, at “Exhibit B” Ms. Louis advises:

[E]very end of school year [Ms. Watson] boxes up all her kid’s belongings that they have either outgrown or wish to give away, then she asks her family or friends if they know of any single Moms who could use these things. Most moms don’t even know it’s her that is giving, she does it without wanting everyone to know. She always says, ‘it’s better from the heart and not the mouth.’ She is always trying to help women in situations like herself. She teaches her kids the importance of helping others and giving.

See also “Exhibit D” (Ms. Boireau relating the episode at work wherein although “[a] stranger to me at that time, Edrica saw my frustration and immediately reached out to help me. Even though she had her own floor and residents to take care of she made it her business to help and guide me through the system”).

(2)(B). Ms. Watson’s family

As the father of her two children is serving a term of incarceration, Ms. Watson is the sole provider for her children. *See* PSR ¶ 60. The younger of her children suffers from asthma and has a history of pneumonia and Respiratory Syncytial Virus. *Id.* Ms. Watson’s mother describes her as a “brilliant mother who works hard and has a beautiful soul.” *See* PSR ¶ 62. Unsurprisingly, then,

¹¹ “The most important mitigating information here involved not the ‘checkbook charity’ that can be easy for the wealthy, but many instances in which the defendant provided hands-on help in long-term relationships with people in need, or where he provided generous help anonymously. The district judge’s comments show that he was much more impressed by these many instances of the defendant’s generosity and kindness with his time and influence in situations where there was no visibility of public reward for his actions.” *Vrdolyak, supra*. As demonstrated in this memo, the source of Ms. Watson’s generosity clearly was moderate and self-effacing.

several contributors to this sentencing memo are bewildered by Ms. Watson's participation in the offense at bar. *See* PSR at page 21 (“[i]t is my understanding she has never been in trouble before, and I was honestly quite surprised to hear she was involved in making false statements to a bank. This seems so out of character to the Edrica I know”); Ms. Louis at “Exhibit B” (“I was aware of a guy in her life whom I always felt manipulated and dominated her. For some reason she always seemed unable or unwilling to stand up to him”); Ms. Aidoo at “Exhibit C” (“By no means is this a reflection of her true character at all. To know her is to love her. This was a mistake and a matter of being at the wrong place at the wrong time with the wrong people”).

Ms. Aidoo, a single mother herself who has known Ms. Watson for over a decade, emphasized that Ms. Watson has had little or no support raising her children:

While there is certainly no excuse or justification for her actions, I do believe that Edrica is extremely apologetic for her involvement. My request for leniency is out of my concern for her children. She is all they have and losing her to any time away will force them into the care of an estranged family or at worst the government if no one is able to take on the responsibility.

“Exhibit C” at 1.

As parental incarceration – particularly incarceration of the sole parent – has been demonstrated to directly contribute to the disintegration of the family through increased incidence of juvenile delinquency, mental illness, drug abuse,

academic decline and subsequent unemployment,¹² the Court may consider the deleterious effect imprisonment on Ms. Watson will have on her nine- and 10-year-old children. *United States v. Rivera*, 994 F.2d 942, 953-54 (1st Cir. 1993) (pre-*Booker*) (citing cases); *United States v. Chambers*, 885 F.Supp. 12, 14-15 (D.D.C. 1995 (pre-*Booker*); *United States v. Strong*, No. 96-CR-392-2, 1996 WL 745397, *1 (N.D. Ill. 1996) (pre-*Booker*) (citing *United States v. Pena*, 930 F.2d 1486, 1494-95 (10th Cir. 1991) (“[c]ourts have found that when a defendant is the sole caretaker for others that qualifies as an extraordinary circumstance”) see *United States v. Alba*, 933 F.2d 1117, 1122 (2nd Cir. 1991) (“[t]he sentencing court found that Gonzalez’ incarceration in accordance with the Guidelines might well result in the destruction of an otherwise strong family unit and concluded that these circumstances were sufficiently extraordinary in this case to support a downward departure”); *United States v. Hammond*, 37 F.Supp.2d 204, 207 (E.D.N.Y. 1999) (“[a] sentence without a downward departure would contribute to the needless suffering on young, innocent children”); see also *United States v. Antonakopoulos*, 399 F.3d 68, 83 (1st Cir. 2007) (failure to secure downward departure for parental responsibility pre-*Booker* does not foreclose basis for downward variance on same ground post-*Booker*). Such an argument is only fortified where the health of one of the defendant’s children -- as in this case -- is not the best.

¹² See generally Austin, Clear, et. al, *Unlocking America: Why and How to Reduce America’s Prison Population*, Department of Justice, Office of Justice Programs (Nov. 2007).

(2)(C). No criminal history

It is not as if Ms. Watson has remote and/or minor criminal history. She has none.

The striking incongruity differentiating Ms. Watson's criminal act from her otherwise law-abiding nature may be considered to support a downward variance. *See, e.g., United States v. Kathman*, 490 F.3d 520, 526 (6th Cir. 2007); *United States v. Hadash*, 408 F.3d 1080, 1084 (8th Cir. 2005); *United States v. Jones*, No. 07-40086-01-RDR, 2007 WL 4239456, *1 (D.Kan. 2007); *see also United States v. DeVegter*, 439 F.3d 1299, 1306 (11th Cir. 2006) (addressing a pre-*Booker* determination on an "aberrant behavior" departure and noting that such a departure embraces (1) a single criminal occurrence or transaction, (2) of limited duration that (3) represents a marked deviation from an otherwise law-abiding life); *United States v. Jones*, 158 F.3d 492, 500 (10th Cir. 1998) (pre-*Booker*); *United States v. Morales*, 972 F.2d 1007, 1011 (9th Cir. 1992) *cert. denied* 507 U.S. 1012 (1993) (pre-*Booker*); *United States v. Baker*, 804 F.Supp. 19, 21 (N.D.Cal. 1992) *appeal dismissed at* 8 F.3d 33 (9th Cir. 1993) (pre-*Booker*).

(2)(D). The full effect of this felony conviction on this licensed nurse

Although Ms. Watson "eats, breathes and sleeps" nursing, *see* PSR ¶ 80, the PSR notes she "will likely lose her nursing career as a result of the instant case, which in addition to the forfeiture and restitution owed in this case, will also serve as a punishment." *See* PSR ¶ 98; *see also* PSR at page 21.¹³ As to the specific,

¹³ Randy Simon writes: "Most importantly, I believe Edrica losing her nursing license over

collateral consequence of loss of professional license, the Court may consider this potentiality in the sentencing calculus as Ms. Watson alone was charged with this offense and abused no professional trust in the commission of this crime. *See generally United States v. Howard*, 28 F.4th 180, 208-09 (11th Cir. 2022) (no abuse of professional trust); *Howard*, 28 F.4th at 216-17 (no co-defendant, hence no disparity). As to the much more generalized stigma of a felony conviction and the irreparable harm to reputation and occupational opportunities that flow from such a conviction, the Court should take into consideration this permanent hindrance when fashioning a sanction not greater than necessary to achieve the goals of sentencing. *See generally United States v. Prosperi*, 686 F.3d 32, 47-48 (1st Cir. 2012); *United States v. Wulff*, 758 F.2d 1121, 1125 (6th Cir. 1985); *United States v. Smith*, 683 F.2d 1236, 1240 (9th Cir. 1982). No matter what lies ahead for this 40-year-old defendant, she will forever suffer occupational restrictions based entirely upon this felony conviction.

this court be an undeserved LIFE SENTENCE. She overcame many odds and worked hard to get her nursing license, and is a standout who makes a significant improvement in the many lives she touches every day, like our Dad's. She needs this career to support her kids, and she shouldn't lose it over this stupid and out-of-character mistake she made. Surely there must be a way for you, the prosecutor and judge to put your heads together and come up with a creative solution, like changing her plea to a misdemeanor, so she can avoid the automatic loss of her nursing license that her current guilty plea will trigger." *Id.* (emphasis in original). Subsequently, Mr. Simon pleads: "[P]lease preserve her nursing license so she can continue helping people like my Dad as only she can, while also providing for her children." *Id.* at page 22.

(2)(E). Compliance with conditions of release

At her December 15, 2021, initial appearance, Ms. Watson was released on her own recognizance. See PSR at page 1. On the one hand, compliance with a Court Order merely requiring Ms. Watson to lawfully conduct herself far from a Herculean challenge for Ms. Watson. On the other hand, it is always true that a defendant's performance and efforts while on pre-trial conditions are demonstrations of good character and rehabilitation, suitable for consideration not only as factors under § 3553(a) -- see, e.g., *United States v. Munoz-Nava*, 524 F.3d 1137, 1148-49 (10th Cir. 2008); *United States v. Baker*, 502 F.3d 465, 467 (6th Cir. 2007) -- but also of the defendant's willingness to obey restrictions put in place by the Court that serve as a reliable and direct indicator that Ms. Watson shall comply with the demands of a probationary term. See generally *United States v. Cox*, 271 F.Supp.3d 1085, 1087, 1090 (S.D. Iowa 2017) (noting, among many factors, "[d]efendant has fully complied with all conditions of her pre-trial release" in imposing a probationary term where defendant's advisory guideline range was 46-57 months); *United States v. Jaber*, 362 F.Supp.2d 365, 383 (D. Mass. 2005) (noting near perfect record on pre-trial release as one factor in imposing a term of probation where the defendant's advisory guideline range was 57-71 months). Cf. *United States v. Castro*, 500 F.Supp.2d 327, 330-31 (S.D.N.Y. 2007) (examining compliance with U.S. Pre-Trial Services in deeming defendant "a good candidate for voluntary surrender").

3. Conclusion

Before the Court is a 40-year-old, single mother of two pre-teen children with no criminal history but with a 30-year history of unwholesome contact with her unindicated confederate. Following a well-above average academic career, Ms. Watson has been employed in the nursing field since 2005. *See* PSR ¶¶ 73-74, 77 & 79.¹⁴

In considering the four factors at 18 U.S.C. § 3553(a)(2), and as they apply to Ms. Watson, the defendant respectfully submits:

RETRIBUTION: As a starting point in the process of ensuring there is just punishment for this offense, it is respectfully noted that all felonies are serious.¹⁵ The seriousness of this offense is moderated by its non-violent nature and specifically moderated by the fact that it was perpetrated against a solitary, corporate entity. *See* PSR ¶ 30. Further, Ms. Watson used no inside knowledge in the perpetration of the fraud nor did the completion of the offense disadvantage legitimate participants.¹⁶ Instead, while an average participant in this offense, Ms. Watson was under the influence of an unindicted confederate who scripted all of Ms. Watson's fraudulent communications and provided her all of the fraudulent documentation. *See* PSR ¶¶ 23, 26, 27 & 98.

DETERRENCE: Ms. Watson has no criminal history. She has no personal characteristics suggesting a criminal nature. With that noted, this felony conviction and the restitution

¹⁴ In addition to the bases for downward variance advanced in Parts 1 and 2 of this memo, it is noteworthy that a steady history of employment is, in itself, a factor in the consideration of a downward variance. *See United States v. DiMattina*, 885 F.Supp.2d 572, 582-82 (E.D.N.Y. 2012) (continuous employment since high-school graduation); *see also United States v. Ruff*, 535 F.3d 999, 1001 (9th Cir. 2009); *United States v. Fuson*, 215 F. App'x 468, 471 (6th Cir. 2007).

¹⁵ *United States v. Mann*, 536 F.Supp.3d 173, 181 (W.D. Mich. 2021).

¹⁶ *See, e.g., United States v. Cole*, 622 F.Supp.2d 632, 637-38 (N.D. Ohio 2008).

that Ms. Watson will pay entirely on her own shall certainly deter Ms. Watson in at least the following ways: occupational advancement, future employment, financial prosperity and the desire for home ownership – sadly, the incipient and disastrous rationale for this criminal venture. It is respectfully submitted that an incarcerative sentence will serve no further deterrent purpose for this defendant.

INCAPACITATION: So long as the Court deems the presentation as to retribution and deterrence reasonable, it is respectfully submitted that incapacitation of Edrica Watson through removal from society will serve only to incapacitate her children by eliminating her ability to physically, emotionally and financially care for her children.

REHABILITATION: The unindicted participant in this offense has been a pollutant in Ms. Watson's life since she was nine years old. At page 16 of this memo, Ms. Louis wonders why Ms. Watson "always seemed unable or unwilling to stand up to him." While it is surely possible that Ms. Watson's would have committed some criminal offense at some time in her life, it is surely impossible that Ms. Watson would not have and could not have committed this offense but for the noxious presence of L.P. Unquestionably, mental-health treatment available through the Office of Probation while on supervised release would benefit Ms. Watson.

In arriving at a sentence for Ms. Watson that (i) takes into account her history and characteristics, *see* 18 U.S.C. § 3553(a)(1), and (ii) that is sufficient but not greater than necessary to comply with the need for retribution, deterrence, incapacitation and rehabilitation, *see* 18 USC § 3553(a)(2), *see also* Footnote 1, *supra*, and (iii) that embodies Ms. Watson's constitutional right to individualized sentencing, *see Koon, supra; Brown, supra*, Ms. Watson respectfully submits that before the Court is a mother of two children whose character is blackened by one

and only one episode in her life – the offense conduct at bar. Ms. Watson not only benefits from a term of supervised release, but it is respectfully submitted that a sentence of supervised release will adequately address all of the constitutional and statutory factors inventoried in the preceding sentence.¹⁷ *United States v. Holland*, 874 F.2d 1470, 1475 (11th Cir. 1989) (twin goals of probationary sentence are rehabilitation of the probationer and protection of the public).

For the reasons appearing in the PSR, in this memorandum and to be presented at the forthcoming sentencing hearing in this matter, Mr. Watson respectfully seeks a downward variance and asks the Court to consider a sentence of time-served to be followed by a term of supervised release.

Respectfully submitted,

A. Fitzgerald Hall, Esq.
Federal Defender
Middle District of Florida

/s/ James Lappan
James Lappan, Esq.
Florida Bar No. 0160792
Assistant Federal Defender
1514 Broadway, Suite 301
Fort Myers, Florida 33901
Telephone: 239-334-0397
Fax: 239-334-4109

¹⁷ See, e.g., *Gall v. United States*, 552 U.S. 38, 48, 53-54 (2007) (as probationers are subject to conditions that substantially restrict their freedom, term of probation may be reasonable under § 3553(a) so long as it takes into account real conduct and circumstances). See generally *United States v. Edwards*, 595 F.3d 1004, 1016 n.9 (9th Cir. 2010) (quoting Senate Report No. 98-225 [August 4, 1983] at 92: “It may very often be that release on probation under conditions designed to fit the particular situation will adequately satisfy any appropriate deterrent of punitive purpose”).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this the 8th day of June 2022, a true copy of the foregoing was electronically filed and served electronically to Jesus Casas, Office of the United States Attorney, 2110 First Street, Fort Myers, Florida.

/s/ James Lappan
James Lappan, Esq.
Assistant Federal Defender