

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X

UNITED STATES OF AMERICA,

Plaintiff,

1:21-cr-00475

v.

BAREND OBERHOLZER,

Defendant.

-----X

SENTENCING MEMORANDUM OF MR. BAREND OBERHOLZER

Steptoe & Johnson LLP
1114 Avenue of the Americas
New York, NY 10036

Table of Authorities

CASES

<i>Gall v. United States</i> , 552 U.S. 38 (2007).....	15
<i>Nelson v. United States</i> , 555 U.S. 350 (2009).....	15
<i>United States v. Cavera</i> , 550 F.3d 180 (2d Cir. 2008).....	15
<i>Pepper v. United States</i> , 562 U.S. 476 (2011).....	16
<i>Peugh v. United States</i> , 569 U.S. 530 (2013).....	15
<i>Rita v. United States</i> , 551 U.S. 338 (2007).....	16
<i>United States v. Preacely</i> , 628 F.3d 72 (2d Cir. 2010).....	15

STATUTES

18 U.S.C. § 1349.....	1
18 U.S.C. § 3553(a)	<i>passim</i>
U.S.S.G. § 2B1.1.....	18
U.S.S.G. § 4C1.1(a)	17
U.S.S.G. § 4C1.1(b)(3)	16, 18

Table of Contents

I.	INTRODUCTION	1
II.	MR. OBERHOLZER’S PERSONAL HISTORY AND CHARACTERISTICS	2
A.	Family and Childhood.....	2
B.	Educational and Career Background.....	4
C.	In South Africa, Mr. Oberholzer Provided Significant Cooperation to United States Law Enforcement.....	5
D.	Royal Holdings.....	6
E.	Offense Conduct.....	9
F.	Post-Arrest Efforts to Provide Information.....	10
G.	Current Employment.....	11
H.	Community Service.....	12
III.	SENTENCING	15
A.	The Correct Advisory Sentencing Guidelines Imprisonment Range Is 27-33 Months .	15
1.	The Federal Sentencing Guidelines Are Advisory and Only One of Several Factors to Be Considered in Sentencing	15
2.	Mr. Oberholzer Should Be Granted a Two-Level Decrease in the Offense Level Computation Pursuant to U.S.S.G. § 4C1.1(a).....	16
B.	The Court Should Vary Downward Because No Further Imprisonment Is Necessary to Serve the Purposes of 18 U.S.C. § 3553(A)	18
1.	The Nature and Circumstances of the Offense and the History and Characteristics of the Defendant	18
2.	Seriousness of the Offense, Deterrence to Criminal Conduct, and Protection of the Public.....	19
3.	The Need to Avoid Unwarranted Sentencing Disparities	21
IV.	CONCLUSION.....	24

I. INTRODUCTION

Mr. Barend Oberholzer, affectionately known to friends and family as “Barry,” respectfully appears before this Court after pleading guilty to one count of conspiracy to commit wire and mail fraud (18 U.S.C. § 1349). Mr. Oberholzer is a fundamentally good man who made mistakes, has accepted responsibility, and seeks mercy from this Court. He was raised by parents who instilled a strong sense of community service and a love for family, values Mr. Oberholzer has carried into his adult life as a supportive husband and doting father of two beautiful young girls. Mr. Oberholzer is deeply remorseful for his actions, actions that affected not only himself and his family, but the business partners and investors who grew into close friends and confidants over the last few years. Mr. Oberholzer has apologized to them, received the forgiveness of many and, moving forward with their support and guidance, will continue to grow and mature as a law-abiding citizen.

The government will focus on the fact that Mr. Oberholzer and his co-defendant, Mr. Pittario, solicited investments in his company under false pretenses. But what is equally important is the fact that Mr. Oberholzer never intended to harm those who invested in his company. His company was legitimate, its technology was vetted, and the products were real. Mr. Oberholzer misguidedly believed that as his company continued its upward trajectory, all of its investors would not only be made whole but profit from their investments. But the Covid-19 pandemic, as well as a variety of other circumstances, forestalled those plans. And the actions he took in a misguided attempt to attract additional investors, and for which he pleaded guilty, will forever be the biggest mistake of his life. Mr. Oberholzer is ashamed of his actions, but accepts full responsibility for his conduct. In the time since his arrest and Indictment, Mr. Oberholzer has been given the opportunity to self-reflect and grapple with the choices and decisions he has made. And after introspection, he carries the full weight of his actions; he “is determined to right

his wrongs and give back to his community” to make amends for his wrongful conduct. Ex. 1 (Letter of E. Oberholzer). Mr. Oberholzer understands that his choices hurt those he cares most about, the friends and family who believed in him.

Mr. Oberholzer has continued to pour love into his family and nurture his daughters. He takes them to school, participates in their activities, and serves as his family’s emotional anchor. He has focused his energy and experience into helping former members of the Afghan Air Force – United States allies who are now refugees after watching their country fall into chaos – build new lives and thrive while adapting to the United States. He has taken the time to have difficult conversations with his friends and investors to express his regret and remorse; many of whom have accepted Mr. Oberholzer’s apologies and believe he is “worthy of leniency.” Ex. 2 (Letter of E. Cooper).

We respectfully request that the Court exercise mercy over him and when sentencing him take into full account Mr. Oberholzer’s life, his contributions to his community, his care and love for his family, and his acceptance of responsibility. After taking all of these factors into account, we respectfully urge that a period of 9 months’ home confinement would be an appropriate sentence for Mr. Oberholzer.

II. MR. OBERHOLZER’S PERSONAL HISTORY AND CHARACTERISTICS

A. Family and Childhood

Mr. Oberholzer was born in Houston, Texas on September 1, 1983 while his father (a Consultant General for South Africa) was stationed in the United States. His family returned to South Africa in 1985. PSR ¶¶ 68-69. Mr. Oberholzer’s mother is a retired realtor who resides in South Africa. He has three siblings who reside in Canada, Germany, and South Africa, respectively. Mr. Oberholzer lost his father, a career diplomat and criminal defense attorney, in 2014.

Mr. Oberholzer is a 40-year old husband and father of two girls, Chloe, age 12, and Claudia-Joy, age 8. He and his wife, Munique, have been together for 17 years. They married in 2008, welcomed Chloe in 2011, and Claudia-Joy four years later. As described nearly universally in the attached letters from Mr. Oberholzer’s friends and family, Mr. Oberholzer is a “devoted father, husband, and son and goes to great lengths to care for everyone around him.” Ex. 1 (Letter of E. Oberholzer). “His dedication to his wife and children is evident in every aspect of his life” and his “commitment to family values permeates his personal and professional spheres, creating a foundation of stability and support for his loved ones.” Ex. 3 (Letter of T. Pepe). Munique lovingly describes her husband as “considerate, respectful, quick to forgive, patient, and [kind]”. Ex. 4 (Letter of M. Oberholzer). Throughout his life [he] has consistently prioritized the well-being and happiness of his family.” Ex. 3 (Letter of T. Pepe).

Mr. Oberholzer is an attentive and loving father to his daughters. “He takes them to school daily [and] attends their practices and school events diligently.” Ex. 4 (Letter of M. Oberholzer). He puts them to bed at night, reading Bible stories and often falling asleep next to them. *Id.* Mr. Oberholzer had a close relationship with his father prior to his father’s sudden passing in 2014. Ex. 1 (Letter of E. Oberholzer). He visited his father daily and spoke to him multiple times per day. *Id.* Mr. Oberholzer has a similarly close relationship with his young children and is a consistent presence in his daughters’ lives, providing “guidance, encouragement, and a safe and nurturing environment.” *Id.*

Not only does Mr. Oberholzer support his family emotionally, he is also their sole financial provider. His wife, Munique, is a stay-at-home mother, and the family relies on Mr. Oberholzer for financial support. PSR ¶ 75. He ensures that his immediate family’s needs are

met and also supports his mother-in-law who is retired and has depended on Mr. Oberholzer's assistance for the last four years. Ex. 4 (Letter of M. Oberholzer).

Mr. Oberholzer is his family's "rock, [their] provider, and an exceptional role model for [his] daughters and he consistently puts the needs of his family first." *Id.* His wife, children, and extended family "rely on him for financial, emotional, and physical support." *Id.* They do not know how they will get by if Mr. Oberholzer cannot provide for them for an extended period of time. As a family, they need Mr. Oberholzer to be present.

B. Educational and Career Background

As a young school boy, Mr. Oberholzer displayed a gift for athleticism. When he was 13 years old, he received a rugby scholarship to a rugby school in South Africa, Paul Roos Gymnasium, a high school for boys in Stellenbosch, South Africa. PSR ¶ 92. After graduating Paul Roos, he spent several years playing professional rugby. He played around the world, represented the United States on the national rugby team in 2001 and 2002, and participated in two Under-20 Rugby World Cups before his rugby career was cut short in 2006 due to injury. PSR ¶ 72.

After his rugby career ended, Mr. Oberholzer followed his dream of learning to fly helicopters and attended Base 4 Aviation in Cape Town South Africa in 2007 where he became a validated commercial helicopter pilot. PSR ¶ 91. He began working as a helicopter salesperson for an aviation brokerage firm in South Africa after completing his schooling. He also enrolled in the online American Military University in 2014 where he completed courses in counterintelligence.

C. In South Africa, Mr. Oberholzer Provided Significant Cooperation to United States Law Enforcement.

Mr. Oberholzer began and built his career in helicopter sales in South Africa. At the time, the United States had imposed strict restrictions on Iranian sales and imports into the United States. South Africa, on the other hand, had not. In that political climate, it was not unusual for Iranian nationals in the market for helicopters to purchase equipment from South African vendors. Through his work, Mr. Oberholzer met an Iranian national named Koorush Taherkhani. Unbeknownst to Mr. Oberholzer in his initial dealings with Mr. Taherkhani, Mr. Taherkhani was the subject of a United States investigation, under suspicion of operating a front company used to acquire goods from the United States for illegal transshipment to and use in Iran. In or around January 2011, when United States authorities learned of Mr. Oberholzer's relationship with Mr. Taherkhani, the authorities asked Mr. Oberholzer for a meeting at the U.S. Embassy in Pretoria, South Africa.

In a series of meetings that followed, Mr. Oberholzer provided detailed information to United States authorities regarding Mr. Taherkhani, his business ventures, and his associates. Mr. Oberholzer's information, along with other investigative efforts, led to the arrest of Mr. Taherkhani's associates, Arash Ghahreman and Ergun Yildiz. While Mr. Taherkhani remains a fugitive, Mr. Yildiz pleaded guilty to conspiracy to export to Iran on October 9, 2014 and Mr. Ghahreman was found guilty by a jury of violating United States export and money laundering laws related to the purchase and export of military equipment to Iran. *See* Department of Justice, Press Release, San Diego Jury Finds Former Iranian National Guilty of Illegal Scheme to Export Sensitive U.S. Technology to Iran (April 27, 2015) <https://www.justice.gov/usao-sdca/pr/san->

[diego-jury-finds-former-iranian-national-guilty-illegal-scheme-export-sensitive-us](#) (enclosed as Ex. 5).¹

D. Royal Holdings

In 2016, Mr. Oberholzer and his wife moved to the United States where Mr. Oberholzer was a citizen. The couple laid roots in California where they and their young family continue to reside today.

In 2018, Mr. Oberholzer embarked on a new business venture and founded Royal Holdings Technologies (“Royal Holdings”). Royal Holdings was a technology company which, in its early days, was developing a product known as the SWORD, a device that could detect concealed weapons more easily and cost effectively than other available safety measures. In its earliest iterations, SWORD was conceived as a product utilizing a smart phone case with radio wave and thermal-imaging capabilities and a synchronized app to detect weapons on an individual’s person.

The idea for the company was born out of Mr. Oberholzer’s genuine commitment and desire to protect his community. Before Royal Holdings, some of Mr. Oberholzer’s proudest moments were in acts of service, for example, when he played rugby for his country and when he assisted the government in their law enforcement efforts. He wanted to transition service to his profession. As the father of small children, he also was especially impacted by the alarming rise of mass shooting events in the United States during that period. Royal Holdings was a way to create a business that served his community by protecting it. Mr. Oberholzer’s mission, and the mission of Royal Holdings, was to “save lives and make the world a safer place.” Ex. 6 (Letter of

¹ After Mr. Oberholzer’s assistance in Mr. Taherkani’s arrest, between 2011 and 2016, Mr. Oberholzer continued to periodically assist United States authorities in other South African-based investigations, including by providing information relating to suspected terrorist activity, drug trafficking, and other criminality.

J. Tate). Mr. Tate, a career employee of the United States Department of Defense who became acquainted with Mr. Oberholzer through Royal Holdings' work in the physical security sector, found Mr. Oberholzer's "vision and passion in the realm of physical security unparalleled." *Id.*

With a clear mission, Mr. Oberholzer and his co-defendant, Jaromy Pittario, incorporated Royal Holdings in February 2018.² At the outset, Mr. Oberholzer, along with the company's Chief Technology Officer Chuck Bloomquist, several PhD engineers, and others, outlined an initial prototype design of the technology.³ During this early stage, Earl Cooper, referred to as "Victim-3" in the Complaint, and his business partner Steve McClinton contacted Royal Holdings to partner as a reseller of Royal Holdings' products.⁴ On July 18, 2018, Mr. Cooper entered an agreement to serve as a reseller of SWORD to entities including public schools, hospitals, state and local law enforcement, and others. In August 2018, Mr. Cooper became the first outside investor in Royal Holdings and has remained active in the management of Royal Holdings since that time as a member of its Board of Directors.⁵ He remains on the Board to this day.

By November 2018, Royal Holdings had successfully developed a prototype of the technology and won eight awards from a public safety and security organization. *See* Tammy Waitt, AST Names 2018 'ASTORS' Homeland Security Awards Winners at the Javits Center in NYC, American Security Today (November 29, 2018), <https://americansecuritytoday.com/ast->

² Mr. Oberholzer met Mr. Pittario in 2016 in Los Angeles, California. Mr. Pittario told Mr. Oberholzer that he was "Jaromy Jannard-Pittario," the son of the founder of Oakley sunglasses and the he was a start-up company investor.

³ This initial development – including salaries for product engineers and source materials – was funded by Mr. Oberholzer with the proceeds of his work selling helicopters and helicopter parts.

⁴ Attached as Exhibit 2 is a letter in support of Mr. Oberholzer in which Mr. Cooper urges the Court to exercise leniency when sentencing.

⁵ Mr. Cooper made several subsequent investments in Royal Holdings between August 2018 and December 2018.

[names-2018-astors-homeland-security-awards-winners-at-the-javits-center-in-nyc/](#) (enclosed as Ex. 7). Royal Holdings previewed their thermal-imaging prototype at the Consumer Electronics Show (CES) in January 2019 and described to potential clients their intent to shift to using a more precise millimeter wave (mmWave) technology in a subsequent prototype. The CES 2019 preview was a success and Royal Holdings generated significant interest and feedback from potential customers.⁶ Based on consumer feedback from CES, Royal Holdings determined that clients desired a larger format device that could scan multiple individuals or crowds. In March 2019, Royal Holdings re-labeled SWORD as “X.1” and changed from a mobile device case to a kiosk format that could discreetly scan crowds and be deployed in schools, universities, conference centers, and other locations where large groups were at risk.

Thereafter, Mr. Oberholzer began the work of scaling and further developing and marketing X.1, an exhausting endeavor into which Mr. Oberholzer poured himself and his own finances entirely. He worked tirelessly in advancing Royal Holdings because he genuinely believed that its technology would help make communities safer. The pandemic, however, caused significant delays in the development of the mmWave prototype. More importantly, the lack of public events and gatherings altered the company’s business plan and strategy. In 2020, Royal Holdings redeployed their thermal imaging technology as a product named FEEVR that allowed users to screen crowds and identify individuals with an elevated temperature. It generated approximately \$5 million in revenue and approximately 350 clients. In order to ensure Royal Holdings developed a successful product, Mr. Oberholzer and his team worked “18 hours a day in his basement, to send out much needed equipment to keep companies open during the pandemic.” Ex. 8 (Letter of T. Dunphy).

⁶ Todd Dunphy, whose letter of support is attached as Exhibit 18, joined Royal Holdings as an investor and member of the Royal Holdings Board of Directors in January 2019, in part, due to the success of the CES 2019 showcase.

Mr. Oberholzer and Royal Holdings intended to shift back to their initial focus on a weapons detection system in 2021 but Mr. Oberholzer's plans failed to come to fruition following his investigation and Indictment by the United States government.

E. Offense Conduct

While Royal Holdings and its products, SWORD and X.1, were legitimate, some of the methods by which Mr. Oberholzer and Mr. Pittario solicited funds for the companies were admittedly not. Specifically, in 2019, in their efforts to acquire a \$1,000,000 loan to fund prototype development and an upcoming showcase event, the men made false and material misrepresentations to the lender. The lender was Dov Horowitz, the President of World Wide Tech Services ("WWTS"). Mr. Horowitz was impressed with the company and its mission and expressed interest in financially backing it. He proposed lending the company \$1,000,000. As a condition of the loan, Mr. Horowitz required a personal guaranty and proof of assets. Neither man had the assets to guaranty the loan. Royal Holdings, however, needed the influx in cash to scale and market X.1. Desperate for the company to succeed, Mr. Pittario and Mr. Oberholzer sent Mr. Horowitz falsified documents to make it seem like Mr. Pittario had the assets to personally guarantee the loan. In fact, Mr. Pittario did not.⁷ Nonetheless, the men sent falsified financial statements that inflated Mr. Pittario's assets. Upon receipt of the false documents, Mr. Horowitz executed the loan agreement.⁸

⁷ At the time that the loan was given, it was clear to Mr. Oberholzer that Mr. Pittario was not who he originally represented himself to be.

⁸ On June 20, 2019, WWTS wired \$1,000,000 to a bank account held in the name of Royal Holdings; Mr. Pittario was the signatory on this account. Within 48 hours of receiving the funds, approximately \$952,000 was disbursed from the Royal Holdings account. Approximately \$196,800 was disbursed to an account controlled by Mr. Oberholzer and approximately \$125,500 was disbursed to an account controlled by Mr. Pittario. However, the majority of the disbursements consisted of payments on "invoices from vendors, consultants, and contractors associated with the development of" SWORD and X.1. Complaint, Dkt. 1 at 18.

At his plea, Mr. Oberholzer fully acknowledged the wrongfulness of his conduct. As he explained to the Court, “while seeking funding for the company, I agreed with Mr. Pittario to solicit financing under false pretenses... Mr. Pittario and myself had misrepresented that Mr. Pittario had the financial assets to personally guarantee the loan when he did not... When I did this, I knew what I was doing was wrong and was against the law.” Transcript of March 28, 2023 Plea Allocution, Dkt. 106 at 17-18.

F. Post-Arrest Efforts to Provide Information

The criminal Complaint against Mr. Oberholzer and Mr. Pittario was filed on February 19, 2021. Mr. Oberholzer was subsequently arrested on February 23, 2021. After the filing of the Complaint and his arrest, Mr. Oberholzer attempted to mitigate the risk his arrest posed to Royal Holdings, a company he remained committed to and passionate about, by voluntarily stepping away. Following his arrest, Mr. Oberholzer resigned from his position as CEO and the Board of Directors appointed a new CEO.

An Indictment against Mr. Oberholzer was filed on July 21, 2021. On March 28, 2023, Mr. Oberholzer accepted responsibility for his actions and pleaded guilty to Count 1 of the Indictment pursuant to a plea agreement with the government.

After his indictment but before his plea, in May 2021, Mr. Oberholzer received information from a former colleague in Belgium regarding criminal activities by unnamed individuals that Mr. Oberholzer believed would be of interest to the United States government. Specifically, Mr. Oberholzer obtained information concerning an online ring of child pornographers involved in the manufacture and distribution of child pornography in the United States through intelligence connections in Belgium. Along with the undersigned attorneys, he

met with FBI Special Agents between May and June 2021 to share this intelligence and offer to assist with the investigation and potential prosecution of these criminals.

Mr. Oberholzer also acquired information regarding the use of front companies by Iranian entities to acquire aircraft in the United States and European Union in violation of United States sanctions, as well as information regarding internet service providers providing services to companies linked to the Iranian government. This information – along with information regarding a private channel that Mr. Oberholzer suspected was being used by a terrorist organization to recruit new members, raise funds, and coordinate terrorist activity – was shared with Mr. Oberholzer’s contacts at the U.S. Department of Defense in June 2021. After expressing initial interest in speaking with Mr. Oberholzer, the United States government ultimately declined to seek his assistance despite the value of the information.

G. Current Employment

After leaving Royal Holdings and while under the attendant stresses of being under Indictment, Mr. Oberholzer nonetheless was committed to remaining employed and taking care of his family.⁹ Mr. Oberholzer founded a company modernizing and selling helicopters. He has continued working to the present. The company refurbishes helicopters so they can be used for firefighting, medical evacuation, search and rescue, as well as commercial uses. As noted by the

⁹ Mr. Oberholzer has also recently suffered with significant health issues. On February 28, 2023, Mr. Oberholzer visited the emergency room of a Los Angeles hospital reporting chest pain that he believed was the result of a heart attack. *See* Ex. 9 (Notes from 2/28/2023 Emergency Room visit). He was examined and found to be in stable condition but the results of his EKG were abnormal; Mr. Oberholzer was advised to visit a cardiologist within the next 2 days for further evaluation. *Id.* Further evaluation and testing returned results within the normal range and the medical personnel concluded that his symptoms were likely induced by stress. *See* Ex. 10 (Letter of N. Ford, MD). Mr. Oberholzer was subsequently diagnosed with an “anxiety disorder with panic attacks” which contributed to “acute-on-chronic stress.” *Id.* His doctor advised him to “avoid/limit any acute psychological stress where possible” to mitigate his symptoms. *Id.*

Probation Office, Mr. Oberholzer's continued employment is a "positive development" and "steady employment is suggestive of low recidivism risk." PSR at 27.

H. Community Service

Mr. Oberholzer also continues in his charitable endeavors. Since he was a child, the value of community service was ingrained in Mr. Oberholzer. Mr. Oberholzer was raised by a father who served his home nation, South Africa. From a young age, he was "[a]lways the first to assist, mindful and courteous to all." Ex. 1 (Letter of E. Oberholzer). Mr. Oberholzer "has consistently demonstrated a commitment to giving back to the community" and is dedicated to "making a positive impact on the lives of others." Ex. 3 (Letter from T. Pepe). He truly believes in helping others through his knowledge and expertise. He has a "genuine concern for others and willingness to go above and beyond to make a difference in people's lives." Ex. 11 (Letter of S. McClinton). For Mr. Oberholzer, helping others is "almost a personal pillar or expectation, rather than a deliberate act of service; to him, it's just natural to extend yourself... without expecting any recognition in return." Ex. 12 (Letter of R. Simoes).

Mr. Oberholzer is deeply engaged in philanthropic work and community service. For example, Mr. Oberholzer has worked to expand opportunity for adolescents in his community. Mr. Oberholzer began a program with the Boy Scouts of America. Through this program, he hosts Scouts at the Camarillo Airport and introduces them to aviation. See Ex. 12 (Letter of R. Simoes). These Scouts have the opportunity to earn an Aviation Merit Badge which is granted after the Scouts learn about aviation and participate in several aviation-related activities such as an inspection of an aircraft and a flight in an aircraft. See Boy Scouts of America, Aviation Merit Badge, <https://www.scouting.org/merit-badges/aviation/#> (enclosed as Ex. 13); see also Ex. 14 (Photos of Boy Scouts). In addition to supporting a Boy Scouts aviation program, Mr.

Oberholzer contributes time and resources to the children’s charity, Aeroangel, which aids in the transport of children in need of life-saving medical procedures. *See* Ex. 12 (Letter of R. Simoes).

Mr. Oberholzer also works with the non-profit Afghan American Development Group (“AADG”) to assist in the resettlement of Afghan refugees from Afghanistan who are former Afghan Air Force personnel. He was introduced to the CEO of the AADG in fall 2021 after the collapse of Afghanistan following the withdrawal of the United States military caused many former Afghan military personnel to flee the country. *See* Ex. 15 (Letter of R. Pritchard). Mr. Oberholzer quickly became “essential to the future of [the] organization” for his international experience, leadership, and almost daily interaction with the program. Many of the former Afghan Air Force personnel – American allies – endured harsh conditions in foreign countries, as well as in refugee camps in the United States. Through his work with the AADG, Mr. Oberholzer helps support these refugees domestically and abroad. Upon learning of their struggles, he coordinated with a logistics company to help provide food, wood, winter clothing, wood-burning stoves, and other winter essentials to families in Afghanistan without electricity.

Id.

Domestically, through a charitable foundation known as the Upperwood Foundation, Mr. Oberholzer has established a ground school in California to teach former Afghan pilots commercial aviation. *Id.* Mr. Oberholzer has been recognized by the State of Michigan for his “extraordinary service” in contributing to the Afghan refugees who have settled in that state. Ex. 16 (State of Michigan Special Tribute). These individuals arrived in the United States “with very little” and through the ground school transitioned their military aviation skills to careers in commercial aviation. Ex. 17 (Letter of S. Noori). As of the submission of this memorandum, dozens of individuals have benefitted from this ground school. Individuals who participated in

the ground school are now pursuing careers in the United States aviation industry that would have been otherwise unavailable to them. With employment, these former Afghan Air Force personnel can provide for themselves here, while also sending needed resources to their families and members of their communities in Afghanistan who are suffering from food shortages and other struggles. *Id.* Some of the individuals who have benefitted from this program and submitted letters in support of Mr. Oberholzer include:

- Lt. Colonel Mohammad Alem Sadry: An Afghan Air Force pilot who broke his back in two places and was blinded while fleeing the Taliban in Afghanistan. *See* Ex. 18 (Letter of M. Sadry). Mr. Oberholzer assisted Lt. Colonel Sadry in finding free medical care and, subsequently, work as a Flight Procedures Training Instructor after Lt. Colonel Sadry learned he would never be able to fly again due to his injuries. *Id.*
- Captain Sebghat Rahimi: An Afghan Air Force pilot who participated in the Upperwood Foundation’s ground school and received United States commercial aviation training. *See* Ex. 19 (Letter of S. Rahimi). Captain Rahimi is now gainfully employed as a pilot for FedEx. *Id.*
- Major Yousef Omid: A graduate of the National Military Institute of Afghanistan and Afghan Air Force pilot who was in the United States at the time of Afghanistan’s collapse and was unable to return home. *See* Ex. 20 (Letter of Y. Omid). Shortly after the collapse, Major Omid found work at an Amazon warehouse. However, because of his aviation training through the Upperwood Foundation, Major Usef was able to secure better paying work as a FedEx pilot, and he is now able to provide for himself and his family who remain trapped in Afghanistan. *Id.* Major Usef also continues to seek job advancement and hopes to find employment with a major airline. *Id.*

Mr. Oberholzer has a reputation as a “compassionate and empathetic individual who is always willing to lend a helping hand.” Ex. 11 (Letter of S. McClinton). He is an “upstanding citizen” with the “ability to learn from his mistakes and to emerge as an even better person.” Ex. 17 (Letter of S. Noori). He “holds himself (and those around him) to very high standards...” and is “at the very core, kind and compassionate but also insightful and principled.” Ex. 1 (Letter of

E. Oberholzer). His community, friends, and family view Mr. Oberholzer as someone they know they can rely on no matter the circumstance or the time of day or night.

III. SENTENCING

A. The Correct Advisory Sentencing Guidelines Imprisonment Range Is 27-33 Months

1. The Federal Sentencing Guidelines Are Advisory and Only One of Several Factors to Be Considered in Sentencing

The Court must “impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in” 18 U.S.C. § 3553(a).¹⁰ The Guidelines remain relevant as an “initial benchmark” but are “only one of the factors to consider when imposing [a] sentence.” *Gall v. United States*, 552 U.S. 38, 49, 59 (2007); accord *Peugh v. United States*, 569 U.S. 530, 536 (2013). Thus, while the Guidelines form the starting point of this Court’s sentencing analysis, they are just that — a starting point. *United States v. Preacely*, 628 F.3d 72, 79 (2d Cir. 2010) (“[W]e have held that . . . ‘the Guidelines are guidelines—that is, they are truly advisory.’”) (citation omitted). The Guidelines are not presumed to be reasonable, and are entitled to no greater weight than any other factor. *Gall*, 552 U.S. at 50; *Nelson v. United States*, 555 U.S. 350, 352 (2009); *United States v. Cavera*, 550 F.3d 180, 189 (2d Cir. 2008) (en banc) (“A district court may not presume that a Guidelines sentence is reasonable; it must instead conduct its own independent review of the sentencing factors . . .”). The Court need not justify departure from them or find extraordinary reasons to do so; it is sufficient if “the Guidelines

¹⁰ *Kimbrough v. United States*, 552 U.S. 85, 101 (2017) (quoting 18 U.S.C. § 3553(a)). Those purposes are:

- (A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;
- (B) to afford adequate deterrence to criminal conduct;
- (C) to protect the public from further crimes of the defendant; and
- (D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.

18 U.S.C. § 3553(a)(2).

sentence . . . fails properly to reflect § 3553(a) considerations” or “the case warrants a different sentence regardless.” *Rita v. United States*, 551 U.S. 338, 351 (2007).

After considering the nature and circumstances of the offense, the history and characteristics of the defendant, all of the purposes set forth under Section 3553(a)(2), the Guidelines, and “the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct,” 18 U.S.C. § 3553(a)(6), the Court must impose the lowest sentence that is sufficient to comply with those purposes. *Pepper v. United States*, 562 U.S. 476, 491 (2011); *Kimbrough*, 552 U.S. at 101.

2. Mr. Oberholzer Should Be Granted a Two-Level Decrease in the Offense Level Computation Pursuant to U.S.S.G. § 4C1.1(a).

Both the PSR and the plea agreement’s advisory Guidelines calculations are based on the pre-November 2023 Guidelines. On November 1, 2023, however, the Guidelines’ provisions calculating criminal history were amended. “Zero point” offenders, like Mr. Oberholzer, now qualify for a two-level reduction in their offense level.¹¹ Applying the appropriate Guidelines calculation in the Amendments, the Guidelines calculate a total offense level of 18 and a criminal history category of I, yielding an advisory sentencing range of 27 to 33 months of incarceration.¹²

The amended U.S.S.G. § 4C1.1(a) provides that:

(a) ADJUSTMENT.—If the defendant meets all of the following criteria:

1. the defendant did not receive any criminal history points from Chapter Four, Part A;

¹¹ On August 24, 2023, the United States Sentencing Commission voted to allow retroactive application of the amendments to the Sentencing Guidelines relating to the calculation of defendant’s criminal history. *See U.S. Sentencing Commission Votes to Allow Retroactive Sentence Reductions and Announces Its Next Set of Policy Priorities*, United States Senate Committee on the Judiciary (August 24, 2023).

¹² The pre-Amendment Guidelines calculated an advisory sentencing range of 33 to 41 months of incarceration. Utilizing the pre-Amendment range, the Probation Office recommended that the court sentence Mr. Oberholzer to 24 months’ imprisonment—a downward variance of 9 months from the low end of the range. PSR at 26-27. Should this same downward variance be applied to the properly calculated Guidelines range, the result is a sentence of 18 months’ imprisonment. For the reasons asserted below, Mr. Oberholzer joins in the Probation Office’s well-reasoned recommendation for a downward variance, albeit modestly lower to a non-carceral sentence with a period of home confinement for nine months.

2. the defendant did not receive an adjustment under §3A1.4 (Terrorism);
3. the defendant did not use violence or credible threats of violence in connection with the offense;
4. the offense did not result in death or serious bodily injury;
5. the defendant did not personally cause substantial financial hardship;
6. the instant offense of conviction is not a sex offense;
7. the defendant did possess, receive, purchase, transport, transfer, sell, or otherwise dispose of a firearm or other dangerous weapon (or induce another participant to do so) in connection with the offense;
8. the instant offense of conviction is not covered by §2H1.1 (Offenses Involving Individual Rights);
9. the defendant did not receive an adjustment under §3A1.1 (Hate Crime Motivation or Vulnerable Victim) or §3A1.5 (Serious Human Rights Offense); and
10. the defendant did not receive an adjustment under §3B1.1 (Aggravating Role) and was not engaged in a continuing criminal enterprise, as defined in 21 U.S.C. § 848;

decrease the offense level determined under Chapters Two and Three by 2 levels.

Mr. Oberholzer meets all of the criteria set forth in U.S.S.G. § 4C1.1(a). Mr. Oberholzer “did not receive any criminal history points” and the instant offense did not involve, nor were there any allegations that it involved, any of the criteria set forth in §§4C1.1(a)(2)-(10). The instant offense did not involve violence, threats, the use of weapons, or sex offenses. Nor did the offense involve terrorism, hate crimes, or continuing criminal enterprises. Although the instant offense did result in a significant financial loss to the victims, it did not cause “substantial financial hardship” as that term is defined for the purposes of this sentencing provision.¹³ Accordingly, Mr. Oberholzer’s offense level must be reduced by two-levels pursuant to U.S.S.G. § 4C1.1(a).

¹³ U.S.S.G. § 4C1.1(b)(3) provides that in “determining whether the defendant’s acts or omissions resulted in “substantial financial hardship” to a victim, the court shall consider, among other things, the non-exhaustive list of factors provided in Application Note 4(F) of the Commentary to §2B1.1 (Theft, Property Destruction, and Fraud).” These factors counsel the court to consider whether “the offense resulted in the victim: (i) becoming insolvent; (ii) filing for bankruptcy under the Bankruptcy Code (title 11, United States Code); (iii) suffering substantial loss of a retirement, education, or other savings or investment fund; (iv) making substantial changes to his or her employment, such as postponing his or her retirement plans; (v) making substantial changes to his or her living arrangements, such as relocating to a less expensive home; [or] (vi) suffering substantial harm to his or her ability to obtain credit.” Application Note 4(F) of the Commentary to U.S.S.G. § 2B1.1. While the offense resulted in financial loss to the victims, these individuals were sophisticated investors and no evidence has been presented that

B. The Court Should Vary Downward Because No Further Imprisonment Is Necessary to Serve the Purposes of 18 U.S.C. § 3553(A)

1. The Nature and Circumstances of the Offense and the History and Characteristics of the Defendant

Considered in their totality, the “nature and circumstances of the offense and the history and characteristics of the defendant” support a sentence of time served with a significant period of home confinement. 18 U.S.C. § 3553(a)(1). With respect to the offense of conviction, this is not the case where an individual stole funds from investors solely for personal gain. Rather, in his zeal to build Royal Holdings and advance its mission of deploying technological products in the public interest, Mr. Oberholzer made mistakes and broke the law. These actions do not take away the fact that Mr. Oberholzer has been and will continue to be a devoted family man that is respected for his dedication to community service.

Although they acknowledge Mr. Oberholzer’s wrongdoing, as shown in their letters of support, Mr. Oberholzer’s business partners and investors maintain their belief in him as a man who has shown remorse, integrity, and reliability. Mr. Todd Dunphy, an investor, shareholder, and member of Royal Holdings’ Board of Directors, attests to Mr. Oberholzer’s “unwavering dedication” and that Mr. Oberholzer believed “his actions and decisions have always been in the best interest of not just the company but also the broader community.” Ex. 8 (Letter of T. Dunphy). Mr. Steve McClinton, one of Royal Holdings’ earliest business partners and a current member of the Board of Directors views Mr. Oberholzer as “an upstanding citizen who made an unfortunate mistake” but will “learn from his mistakes [] and emerge as an even better person.” Ex. 11 (Letter of S. McClinton). Mr. Earl Cooper, identified in the Complaint as “Victim 3”,

any identified or unidentified victim was affected in a manner such that they would be considered to have faced a “substantial financial hardship.”

considers Mr. Oberholzer a family friend and they have relationships with each other's wives, children, and in-laws. Ex. 2 (Letter of E. Cooper). Mr. Cooper acknowledges Mr. Oberholzer's actions but, based on Mr. Oberholzer's demonstrated loyalty and dedication in interactions with him, nonetheless views him as a man "worthy of leniency in the eyes of the court." *Id.* Mr. Oberholzer has expressed remorse for his actions and, in the eyes of his investors and business partners, is a man of integrity who will not take similar actions again in the future.

Prior to his Indictment, Mr. Oberholzer had no prior criminal convictions and no pending charges. PSR ¶ 60-66. Mr. Oberholzer's prior history is one of long-standing service to his country and his community. He is a proud father, loving husband, and valued member of his community. The nature and circumstances of the offense and Mr. Oberholzer's history and characteristics heavily militate towards leniency.

2. Seriousness of the Offense, Deterrence to Criminal Conduct, and Protection of the Public

In imposing a sentence, the Court is to ensure the sentence imposed is sufficient "to reflect the seriousness of the offense, [] promote respect for the law, [] to provide just punishment for the offense, [and] to afford adequate deterrence to criminal conduct." 18 U.S.C. § 3553(a)(2)(A). Mr. Oberholzer respectfully submits that a below-Guidelines sentence of a period of 9 months' home confinement sufficiently reflects these considerations. Even before sentencing, Mr. Oberholzer has been subject to punishment by virtue of the Indictment, the damage to his reputation and good-standing in the community, the emotional harm to his family, and the damage to his business. The punitive impact of these experiences sufficiently reflects the seriousness of the crime and affords adequate deterrence to criminal conduct.

Prior to Mr. Oberholzer's Indictment, he had a technology business on the cusp of success. He had grown Royal Holdings into a profitable company that delivered needed

equipment to companies so that they could remain open during the pandemic. Royal Holdings generated solid revenue and had a stable and growing client base. Not only did customers (including schools and other institutions) purchase the Feevr devices, they also purchased and exhibited interest in Royal Holdings' primary product, its weapons detection system designed to help keep communities safe in an era of mass shootings and acts of violence.

Following the filing of the Complaint and, ultimately, the Indictment, Mr. Oberholzer stepped down as CEO of Royal Holdings and removed himself from the company. He lost not only his livelihood and the fruits of his tireless labor, but also his passion. His "main driving force... was his deep-rooted desire to prevent and deter future mass school shootings." Ex. 21 (Letter of C. Bloomquist). Further, many of Royal Holdings' clients delayed or cancelled pre-orders and existing contracts. The Indictment and subsequent removal from the company and technology he built has taken a severe emotional toll on Mr. Oberholzer and his family. Those close to him have remarked on his diminished energy, remorse and "daily concern over what will happen with his family and people he supports on a daily basis." Ex. 8 (Letter of T. Dunphy). As the family patriarch, he has watched his wife and children suffer through tremendous uncertainty and apprehension over the future since his Indictment. Mr. Oberholzer's business was devastated, and the lives of his family members were turned upside down; he has since been diagnosed with an "anxiety disorder with panic attacks" while coping with the collective impact of these experiences.

The purposes of providing just punishment, protecting the community, affording adequate deterrence, and reflecting the seriousness of the offense have been met. Any sentence of incarceration would needlessly separate Mr. Oberholzer from his wife and children, whom he loves and supports, emotionally and financially. Mr. Oberholzer financially supports his wife, his

children, and his mother-in-law; all of whom would lose their only source of income should Mr. Oberholzer receive a custodial sentence.

3. The Need to Avoid Unwarranted Sentencing Disparities

Mr. Oberholzer respectfully submits that a sentence of time served with a period of home confinement is appropriate in this case to “avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct.” 18 U.S.C. § 3553(a)(6).

As discussed above, Mr. Oberholzer was convicted of conspiracy to commit mail and wire fraud in relation to the solicitation and receipt of investments in his company, Royal Holdings. However, his case can be distinguished from those of many others charged with similar offenses. Mr. Oberholzer acted primarily out of a misguided desire to bring Royal Holdings’ public safety products to the market. He did not take the responsibility of receiving investors’ funds lightly, working 18 hour days to ensure that Royal Holdings continued to progress toward the launch of its products. These facts distinguish Mr. Oberholzer from the typical individual sentenced pursuant to 18 U.S.C. § 1349 who is motivated entirely by greed and selfish enrichment.

In addition to considering the sentences of others with similar records who have been found guilty of similar conduct generally, the Court must also consider the sentence received by Mr. Oberholzer’s co-defendant, Mr. Pittario. Given their relative culpability and roles in the offense and to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct, Mr. Oberholzer should receive a sentence modestly below that of Mr. Pittario.

In his sentencing submission to the Court, Mr. Pittario represented himself as a mere “investor” in Royal Holdings who only later joined to “help Royal Holdings with the production

of an elaborate product launch.” Pittario Sentencing Submission, Dkt. 114 at 4-5. He asserted that it was Mr. Oberholzer who “portrayed [Mr. Pittario] as the ‘heir’ to the ‘Oakley fortune’” and that it was Mr. Oberholzer’s “idea to doctor Jaromy’s bank statements and brokerage records to make it look like he had a large net worth.” *Id.* at 5.

In truth, however, Mr. Pittario was at the core of the criminal conduct, although admittedly, Mr. Oberholzer’s role was central to it as well. But in order to keep the co-defendant’s relative roles in context, it is important to note that Mr. Pittario was intimately involved with Royal Holdings since its inception, helping to make key decisions. For example, in March 2018, shortly after Royal Holdings’ incorporation in February 2018, Mr. Oberholzer sought Mr. Pittario’s comments on a draft “advisor agreement” for Mr. Bloomquist, who would later become Royal Holdings’ Chief Technology Officer. *See* Ex. 22 (3/20/2018 Email from Oberholzer to Pittario). While Mr. Oberholzer handled the day-to-day operations of the company, Mr. Pittario was involved in making Royal Holdings’ key decisions as a founder, shareholder, and executive of the company.

This involvement extended to the misrepresentations regarding Mr. Pittario’s net worth and finances. Although Mr. Pittario states that it was Mr. Oberholzer’s idea to misrepresent his financial status and Mr. Oberholzer modified Mr. Pittario’s authentic documents to give the appearance that Mr. Pittario had a large net worth, it was Mr. Pittario who encouraged Mr. Oberholzer to take these actions. Indeed, on January 8, 2019, Mr. Pittario emailed Mr. Oberholzer, attaching a “personal financial statement” and stating, “do you think this looks good? Or should we give it some magic?” Ex. 23 (USAO_0028813.28171). The attached document is a purported “personal financial statement” for “Jaromy Jannard Pittario” that represents Mr. Pittario had an “individual monthly income” of \$49,500 and a “Total Net Worth”

of \$9,934,000.¹⁴ *Id.* Mr. Pittario was not an innocent bystander who took orders and direction from Mr. Oberholzer. Rather, it is clear that he was an equal partner in their making false representations and played a leading role in misrepresenting his personal financial status and in providing doctored financial statements and a guaranty to a \$1,000,000 loan that Mr. Pittario knew he did not have the ability to fulfill.

As noted in the government’s sentencing submission, the “evidence simply does not support Pittario’s self-serving statement that he ‘did not know about’ or participate in misrepresentations to investors or creditors...” United States Sentencing Submission, Dkt. 118 at 6. Unlike Mr. Pittario who has attempted to portray himself as a victim rather than an active and willing participant, Mr. Oberholzer does not seek to baselessly shift blame to others and minimize his actions. He takes full responsibility for his significant role in criminal conduct, acknowledges, without qualification, that he acted improperly, and is deeply remorseful for his conduct. He has spent the years since the Indictment seeking to improve himself. Mr. Oberholzer is now gainfully employed and employs members of his community through his company.

When considering the relative culpability of Mr. Oberholzer and Mr. Pittatio, as well as their respective roles in the scheme and levels of acceptance of responsibility, Mr. Oberholzer should receive a sentence modestly below that of his co-defendant, Mr. Pittario.

¹⁴ The false brokerage statement Mr. Pittario ultimately presented to Mr. Horowitz in June 2019 represented the value of Mr. Pittario’s brokerage account at \$8,492,320.02; at the time, the balance of the brokerage account did not exceed \$2.12. Complaint, Dkt. 1 at 17.

IV. CONCLUSION

In seeking to grow his company and develop its technology, Mr. Oberholzer made bad choices. He is ashamed and regretful but takes full responsibility for his actions. With the support and forgiveness of his family, his friends, and many of his business partners, he has sought to make amends for his wrongful conduct as he continues to be a supportive husband, loving father, reliable friend, and productive member of his community. For the reasons stated above, we respectfully request that the Court impose a sentence of a period of home confinement for nine months, as such a sentence is “sufficient, but not greater than necessary, to comply with the purposes” of sentencing.

Respectfully submitted,



Ryan P. Poscablo, Esq.
Julia Gatto, Esq.
Joshua Dupre, Esq.
Steptoe & Johnson LLP
1114 Avenue of the Americas
New York, NY 10036
(212) 506-3900
(212) 506-3921

Dated: January 06, 2024

Counsel for Defendant Mr. Barend Oberholzer