UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	
	:	
v.	:	Case No. 3:15-CR-00136 (MPS)
	:	
JEFFREY KRANTZ,	:	
Defendant	:	

SENTENCING MEMORANDUM
ON BEHALF OF JEFFREY KRANTZ

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This memorandum is respectfully submitted on behalf of defendant Jeffrey Krantz in connection with his sentencing for violation of 18 U.S.C. § 1343. For the reasons set forth below, we respectfully request that the Court impose a noncustodial sentence, a fine of $4,000 and an order of restitution of $402,650. Such a sentence is within the range agreed to by the government and Mr. Krantz in the Plea Agreement, dated July 28, 2015 ("Plea Agt.").

PRELIMINARY STATEMENT

The conduct to which Mr. Krantz has pleaded guilty occurred in 2008. In that year, he knowingly and wrongfully failed to confirm that certain electronic parts that were sold by his company Harry Krantz LLC ("the Company") were likely falsely remarked and inauthentic parts. (*See* Plea Agt. at 12.) As discussed below, we respectfully submit that application of the sentencing goals set forth in Section 3553(a), coupled with the unusual mitigating circumstances in this case, warrant a sentence that does not entail incarceration.

The many letters from friends and family attest to the exceptionally fine character of Jeffrey Krantz who led a blameless life before and after the incident that brings him before this Court. They speak to the extraordinary sensitivity, compassion and joy that sets him apart from others. And they also reveal a period of overwhelming stress in his professional and personal life at a time when he faltered. In this period, he failed to live up to the standards of integrity that he had always set for himself and his three young children. He has accepted responsibility for his conduct, and is now a felon. His and his wife's one worry now is whether he will be forced to separate from the family, especially **REDACTED**

We respectfully submit that there are substantial mitigating circumstances in this case that should persuade the Court that such separation is not necessary to fulfill the goals of sentencing. The first is that, while Mr. Krantz is blameworthy for permitting falsely remarked product to be sold, he did so at a time when the entire industry tolerated a high risk of inauthentic products entering the supply chain as long as they were functional. As the Probation Office concluded, "all electronics distributors were afflicted with a counterfeit part problem that was prevalent to the period of Mr. Krantz's offense." (PSR ¶ 98.)[1] Indeed, the conditions prevailing in "the electronic parts industry" as a whole during that time was one of the circumstances that led the government to agree that a sentence anywhere within the range of 0 to 10 months would be reasonable. A detailed Senate Subcommittee investigation report issued in 2012 revealed that the defense industry, including the military branches, tolerated remarked or inauthentic parts, as long as they were functional and operated as designed. As the Probation Office underscored in recommending a non-Guidelines sentence, Mr. Krantz did take it upon himself to get the products at issue tested by independent labs to ensure functionality at a minimum.

In concluding that a sentence of 0 to 10 months was reasonable for Mr. Krantz, the government also relied on another important mitigating factor: the "positive proactive steps [Mr. Krantz's] Company took while the defendant was the CEO to raise their standards and elevate the Company's Quality Control procedures and counterfeit detection capabilities well before this criminal conduct was discovered." (Plea Agt. at 5.) While Mr. Krantz has admitted to a knowing failure to stop the sale of remarked parts in 2008, the government also concluded that from that period on, he caused the Company to substantially tighten controls and improve internal quality processes, well before any Senate investigation (in 2012) and well before the

[1] The Presentence Report dated November 20, 2015 is referred to herein as the "PSR"

government's investigation. By 2013, when the government's investigation began, the Company was one of the very few parts distributors on the preferred provider list of some of the largest defense contractors in the country. Few cases present such clear evidence of voluntary rehabilitation.

While the government agreed not to pursue charges against the Company, which would have had immediate and fatal consequences for the Company, it determined that Mr. Krantz must be held accountable. Once notified of the government's decision, Mr. Krantz promptly accepted responsibility. The government made the highly unusual, and just, determination that under the circumstances a sentence below the Guidelines, anywhere within the range of 0 to 10 months, would be a reasonable sentence.

We respectfully submit this memorandum in an effort to sum up the man who awaits the Court's judgment and to review the many reasons why each of the considerations mandated in 18 U.S.C. § 3553 militates in favor of a noncustodial sentence.

STATEMENT OF FACTS

I. Mr. Krantz's History and Characteristics

A. Family Background

As summarized in the PSR, Mr. Krantz grew up on Long Island, the son of Richard Krantz and the grandson of Harry Krantz. Harry Krantz Company was founded by Mr. Krantz's grandfather in 1945, who started with a single office buying and selling radio parts. Over time, he grew the business into a real company. His son, Richard Krantz, expanded the company into the electronic component sourcing business. The company grew under Richard Krantz, who proved to be as tough and uncompromising a businessman as his father Harry had been. In this household, commerce and money were chiefly valued. Richard Krantz's mother (Jeff's

grandmother) would use money as a tool, trying to buy affection, and she created endless anxiety and conflict among her children and grandchildren. (See PSR ¶ 48). Indeed, after Harry Krantz died, she sought to wrest control of the Company from her son, Richard. She used Richard's cousins first to get him to cede control, and, when that did not work, she sued him for control of the Company. The litigation lasted 18 months and ended in a settlement where Richard agreed to buy her out of the Company. (PSR ¶ 48)

Richard's son, Jeffrey Krantz, wanted nothing to do with such a life. He struggled with a domineering father; joined a rock band in high school, and he dreamed of an artist's life. He entered Syracuse University, majoring in its Fine Arts program, with a focus on photography. Upon graduating with a degree in Fine Arts, he made a go of it in the art world, and like most others he struggled. Throughout this period, with the exception of a brief, two-month stint, Mr. Krantz resisted the offers of employment by his father in the family business. The disastrous two months that Mr. Krantz spent at the Company reminded him of all the reasons it would be the last place he would want to work.

But, at the age of 31, continued struggle for financial stability as an artist ultimately drove him back to his father and the Company. He recounts that this was a time when he felt broken. He had suffered from **REDACTED**

In his early 30s, however, he tried to reorder his life and his outlook on the world. He **REDACTED** and, importantly, found a conservative synagogue in Manhattan where he could try to orient himself. It was in this condition that Mr. Krantz decided to try to earn some steady income by working at the Company and "tough it out for a year." (PSR ¶ 53.) This was to be a temporary stop gap as Mr. Krantz figured out how he was going to

approach the next phase of his life. In some ways, he was embarking on a belated entry into adulthood.

Mr. Krantz found that he was absorbed by the facet of business that directly appealed to his strength: building interpersonal relations. The many letters from friends and family (See Appendix 3)[2] uniformly describe a man who is warm, sensitive and capable of making deep connections with people around him. Building business relations was a real strength. But he also found himself gradually drawn into the satisfying process of growing a Company that he came to believe provided real value. Thus, he ended up staying with the Company from 1995 until August 2015, when, as a condition of his Plea Agreement, Mr. Krantz was required to sever his ties to the Company.

The initial period of his connection to the Company was also the start of a far more important development in his life. He met and later married Melissa ("Missy") Pieniek. During the same period that Jeff Krantz worked to grow the Company, his family was growing as well. His daughter, Anna, was born in 2002 and just celebrated her 13th birthday and Bat Mitzvah celebration. He has two sons, Judah, age 10, and Elijah, age 8. **REDACTED**

This relationship is discussed in greater detail infra at 42-46.

[2] Appendix 3, which contains these letters have been collected and submitted to Probation with the request that it be added as an addendum to the PSR and that the letters be afforded confidential treatment.

B. The Harry Krantz Company and the Defense Industry

When Mr. Krantz joined the Company, his father, Richard, ran it with an iron hand. Jeff Krantz worked in the sales group as any other employee. He drew a modest salary of $500/week and a commission for any sales. The Company had approximately 25 employees and two locations, one in Long Island and one in Florida. Its business was buying and selling electronic parts.

Over the succeeding few years, the Company began to focus on the distribution chain of electronic component parts for the defense industry. Such parts include computer chips that help military equipment function. Beginning in the early to mid-2000's period, the Company became a distributor that sourced, bought and sold obsolete electronic parts.

1. The Defense Industry's Need for Obsolete Electronics

Because the average lifespan of the nation's weapons systems far exceeds the 18 to 24 month life cycle of the average computer chip design, the defense industry is a large consumer of obsolete, out-of-production, electronic parts. This led to problems that continue to this day. In 2012, the Senate Subcommittee on Armed Services issued an exhaustive report that described its investigation of the industry and its recommendations ("Senate Report" or "SR"). A copy is appended hereto as Appendix 1. The investigation revealed a fundamental industry dilemma: electronic components, even the best of them, have a limited life of two years, while the defense machinery that relies on these components is designed to last for decades. (SR 9 (describing 2 year obsolescence vs 35 years for F15 fighter jets).) "The Defense community is critically reliant on a technology that obsoletes itself every 18 months, is made in insecure locations and over which we have absolutely no market share influence." (SR 10). Put simply, the

components are no longer made by the original manufacturers such as Intel, but the government needs them to continually replace worn parts.

When the Senate Report quoted a knowledgeable witness who said the products are "made in insecure locations," it was referring to Asia, primarily China. In the early 2000s and before, electronic components manufacturing migrated to Asia. Major electronics manufacturers still get their components from China.

In 2011, one prominent trade organization explained:

> Initially the solution for many Independent Distributors was simply not purchase any product out of China. However, that approach has proven unrealistic, as in recent years, many Original Component Manufacturers (OCMs), OEMs, and EMS Providers have moved their operations to China. Therefore, a significant number of available excess inventories are indeed in China.

(Independent Distributors of Electronics Association ("IDEA"), Standard 1010-B Acceptability of Electronic Components Distributed in the Open Market (2011), 9.)

Thus, the industry as a whole confronted the fact that hard-to-find, obsolete components were most commonly found in Asia. And, as the Senate Report found in 2012, there was increasing risk of counterfeit items coming out of Asia, and China in particular. "The number of counterfeit incidents in the defense supply chain increased dramatically, growing from 3,868 in 2005 to 9,356 in 2008." (SR 3).

During the same period of increasing numbers of counterfeit incidents, the industry tolerated relaxed standards for verifying authenticity. Indeed, as the Senate Report discovered, it was not uncommon to find instances in which counterfeit products were knowingly used by the military. Because of the difficulty of finding genuine original electronic parts that are obsolete, the defense industry at times accepted remarked and even counterfeit goods for usage.[3] Over

[3]A product that is "remarked" is not necessarily "counterfeit." *See* discussion *infra* at 10-11.

time, the industry focused on whether the product was functional, even if counterfeit or inauthentic.

Thus, regulations and standards expressly permit and contemplate the use of remarked and other "nonconforming" products. *See* Federal Requisition Regulation 52.211-5: "Used, reconditioned, or remanufacturer supplies . . . may be used in contract performance if the contractor has proposed the use of such supplies, and the Contracting Officer has authorized their use." (SR 57)

The Senate Report provided a detailed description of specific instances in which major defense contractors as well as the military knowingly installed "nonconforming" parts on military equipment. (*See* SR discussion 25 through 61).

Indeed, even in the midst of the Senate investigation, one major contractor insisted that "if a nonconformity is identified by [division of Contractor] and [its] recommendation is to use the nonconforming part . . . , no notification to the Navy is required." (SR. 57.) The Contractor concluded that "the engineering consensus is that the units can remain on the airplane and be repaired on an attrition basis. . . . We did not alert the customers." (SR 52, 53.) The service engineer explained: "they are still good parts. Many used parts tend to have the same reliability as a new part." The Contractor was openly telling the Senate investigators that it was sending on to the military "nonconforming" parts without even feeling the need to tell the military about them.

This emphasis on functionality, rather than authenticity, apparently developed because of the overriding necessity of replacing these parts that are now obsolete and no longer manufactured.

Thus, in December 2011, after the Air Force was informed by the Senate Subcommittee that two prominent Contractors had intentionally decided not to tell the Air Force about counterfeit parts, the Air Force had this stunningly mild reaction: "[A]ggressively taking action to rectify the breakdown in communication, remove the parts in question, audit the associated supply chains, and ensure the responsible parties bear the financial burden of replacement." (SR 41) There is no mention of criminal referral, no mention of suspending the responsible contractor's right to do business with the government, no mention even of insisting on termination of the culpable individuals at the massive companies. In fact, as of March 2012, one of the Contractors had removed and replaced only a handful of the units affected by the suspect counterfeit. (SR 41).

2. The Problem of Identifying Counterfeit

Not only was there an industry culture that tolerated functional but inauthentic parts, the Senate Report concluded that there was no accepted method of ensuring authenticity or preventing counterfeit. In fact, even the term "counterfeit" was not defined: "DOD [Department of Defense] is limited in its ability to determine the extent to which counterfeit parts exist in its supply chain because it does not have a department-wide definition of the term 'counterfeit' and a consistent means to identify instances of suspected counterfeit parts." (SR, 1.) Moreover, while the National Defense Authorization Act of 2012 "required the [Secretary of Defense] to issue regulations defining the term counterfeit for DOD," (SR 66), the Defense Department has yet to do so. It explained: "DoD agrees . . . that industry standards on counterfeit parts currently vary and continue to evolve. For this reason, DoD has not mandated the use of specific industry standards but left their use to the contractor, and DoD has not adopted the still-changing

definitions in industry standards." (Federal Register Vol. 79, No. 87 dated May 6, 2014, at 26102 Comment discussing 48 CFR 202).

To this very day, the industry and the Department of Defense have not settled on industry standards regarding counterfeit parts. This fact further underscores the reality that still confronts an industry that is reliant on products that are obsolete, where functionality remains the key focus.

To further complicate matters, it must be understood that "counterfeit" (however it is defined) is not the same as "remarked." The IDEA defines "remarked" as those parts or devices in which the original part markings were removed or covered and then marked with a new part marking. (IDEA 1010-B at 16.) Products can be legitimately remarked for a host of reasons. Original manufacturers, authorized distributors, aftermarket manufacturers and others could have a legal right to apply post-manufactured marks to electronic components. Thus, for example, Aeronautics Standard 6081 specifically contemplates remarking under the notion of "rework". "Rework performed by the device manufacturer or by one of its Authorized Distributors with express permission of the manufacturer . . . for the purpose of remarking a device can be a manufacturer-authorized process." (AS 6081 at 22.)

A remarked product also does not mean it is not "new". Manufacturers at times remarked their own products to fit new specifications. Components Technology Institute, Inc., Presentation, Counterfeit Examples Electronic Components, at slides 32-33, 95-96 (noting parts that were remarked by Fairchild and National Semiconductor) available at http://www.cti-us.com/pdf/CCAP-101InspectExamplesA6.pdf. Some manufacturers historically remarked their own products. (AS 6081 at 22).

In short, learning that a part was remarked did not necessarily lead to a conclusion that the part was not authentic or that it was counterfeit.

The complexities of the issues were further magnified for an independent distributor such as the Company. Within the extensive defense industry, ranging from manufacturers to the defense branches of government, an independent distributor is a single link in the supply chain. As the Senate report noted, a single product could move through many middle brokers before it gets to a piece of military equipment. (SR at v). The challenges faced by this middle link in determining the authenticity of any product were substantial. Even highly sophisticated and major defense contractor companies found the authentication process daunting. "We're finding that you have to go down to the microns to be able to figure out that it's actually a counterfeit." (SR 7).

Small distributors, such as Mr. Krantz's, relied upon independent test labs. These labs performed testing functions using agreed methods to determine whether a product functions as designed, so-called Group A and B testing. But many companies did not send the products out for testing because of the costs. And even if they did, the most rigorous methods could provide no guarantee of authenticity.

C. Mr. Krantz's Personal Challenges and the Offense Conduct

In the early 2000s, it is fair to say that the man who dreaded the hard scrabble business world of his grandfather and father was not adequately prepared for the extraordinary challenges and risks posed by this industry. The artist who periodically sought the help of therapists to cope with life's challenges, who managed to enter a new life of stability in his mid-30s, who was starting a new family and dealing with **REDACTED**, was overwhelmed by the responsibilities of running the Company. He found little guidance from his

father; only remarkable tension and cause for deeper insecurity. These factors are discussed in greater detail *infra* at 36-39, 42-46.

It was in this context and at this time, that Mr. Krantz violated the law.

As set forth in the detailed allocution that Mr. Krantz delivered as part of his guilty plea (which the government had reviewed and approved), in 2005, he met Jeff Warga, the principal of another distribution company called Bay Components, LLC ("Bay"). Bay, located in Rhode Island, also bought and sold obsolete electronic parts for ultimate use by the U.S. military and commercial buyers. In 2005, Warga approached the Company about entering into a business relationship to sell microprocessor chips to Bay, which would in turn sell them to Goodrich Pump and Engine Control ("GPECS")

While not described in the Plea Agreement, the background is that Mr. Warga had a pre-existing relationship with representatives of GPECS, principally an individual named REDACTED

Mr. Warga informed Mr. Krantz that because Mr. Warga's small company did not have certain qualifications, GPECS preferred to buy products from Mr. Warga if they came from a better known company such as Harry Krantz Company.

Mr. Krantz and others at the company agreed to sell product to Mr. Warga who in turn would sell to GPECS. Between 2005 and 2008, the Company ultimately purchased and sold over a thousand chips to Bay, who then in turn sold them to GPECS. Mr. Krantz understood that GPECS wanted new and original parts, not falsely remarked parts.

Between August and September 2005, the Company bought 330 chips from a domestic supplier whom Mr. Warga had introduced to the Company. The Company then sold the chips to Bay, and Bay, in turn, sold the 330 chips to GPECS. In about late November 2005, Mr. Krantz

was informed that those chips were determined by GPECS to contain the wrong die (or processors inside a chip), and they were returned.

In early 2006, the Company received shipments of replacement chips from the same domestic supplier. The Company sent the chips to a certified outside laboratory for testing, and they passed military standard testing. The Company then shipped the chips to Bay, along with a small batch of additional chips that the Company had acquired from a China-based company called Lingxin. Bay shipped all the chips to GPECS.

Thereafter, the Company purchased hundreds more Lingxin chips, which it sold to Bay, which in turn sold them to GPECS. In the fall of 2006, however, GPECS returned the replacement chips because they were again determined to contain the wrong die. The Company replaced these chips with Lingxin chips and sold them to Bay who sold them to GPECS. From March 2006 up through and including October 2008, the Company sold over 900 Lingxin chips to Bay to ultimately be sold to GPECS.

During this period of time, Mr. Krantz was aware of the increasing risk that parts from China may have been remarked in such a way as to purport to be a new and original part when they were not. As noted, Mr. Krantz did have the chips sent out to independent labs for testing, but he was aware that test results could not provide certainty that the parts were new and original products. Certain of the chips had been tested by an external certified laboratory and had passed but GPECS returned them as problematic.

At some time in 2008, Mr. Krantz learned at least one Company quality inspector ("Inspector") believed that at least some of the Lingxin chips showed indicators of having been remarked and had failed the internal inspection. Several months later, a different Inspector determined that a different batch of Lingxin chips had failed an internal inspection process and

noted that the Inspector believed the parts had been remarked. Nevertheless, Mr. Krantz caused the chips to be sent out for independent testing and after most of them passed testing, he caused the chips that passed testing to be shipped to Bay and on to GPECS.

He did not cause the Company to notify either Bay or GPECS that some of the chips had shown signs of remarking or that some had failed HK's internal quality inspection procedures. In addition, while there were other measures Mr. Krantz could have required to try to determine authenticity, he did not do so. For example, he could have caused a greater sample of the chips to be subject to destructive testing, and he could have caused the Company to reach out to the original manufacturer of the chips to investigate whether the date code matched production dates for authentic part. Such steps most likely would have revealed that the parts were falsely remarked.

Mr. Krantz admits that in 2008 he was aware of a high probability that the chips in question were not original chips, but were falsely remarked chips that he nonetheless had shipped to Bay. He knowingly and wrongfully failed to confirm that the chips were likely remarked.

Mr. Krantz agrees the loss amount is $189,343.00, which is based on the sale of the chips to Bay and the CT Company between 2006 and 2008. He also acknowledges that half of the cost of replacement of the chips purchased by GPECS and sold to customers after they were discovered to be remarked in 2012 is approximately $402,650.00, which forms the basis of the restitution agreement for the wire fraud.[4]

[4] There are two points of disagreement with certain of the government witnesses that bear mention here. During the course of discussions with the government, the defense learned that Mr. Warga claimed that in 2005, after certain batches of chips had been returned by GPECS, Mr. Krantz told him in effect that he would send on used, counterfeit product and just make sure they passed functional testing. This same assertion is repeated in the PSR at ¶ 14. As we told the government, Mr. Krantz does not recall ever saying anything like that and does not believe he would have done so. Such a statement would suggest that he knew that all chips from Lingxin were counterfeit, remarked or used, and there would have been no basis for him to believe that as early as 2005. There is no document that

D. Mr. Krantz's Efforts at Compliance and Post-Offense Rehabilitation

What is particularly disappointing about Mr. Krantz's conduct is that it departed so widely from his general approach to issues of quality control. Even during the period in question – 2005 to 2008 – Jeff Krantz generally tried to do things the right way. He sought to mitigate the risks that he and everyone else in the industry understood to be growing with respect to products from Asia. Thus, unlike many other small independent distributors during that early period, the Company put in place a substantial quality control mechanism at considerable cost. Under his direction, the Company employed a full-time electrical engineer as of October 2006 to enable the Company to do internal testing of products for functionality as well as authenticity. By 2007, the Company had employed other control personnel: Quality Assurance Manager; Product and Quality Control Director. The Company invested in expensive equipment to conduct in-house inspections and tests. The tests included visual inspection, decapsulation (*i.e.*, removing the cap to see what the component looked like internally), electrical testing, and temperature chamber testing. The Company spent hundreds of thousands of dollars during this period in connection with quality control processes.

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corroborates Mr. Warga's claimed memory on this point. Mr. Krantz was prepared to plead guilty to wire fraud and he has no motive to disown a statement that he honestly recalls. The government later concluded that Mr. Krantz's disagreement with Mr. Warga's recollection on this uncorroborated statement from 2005 does not impair Mr. Krantz's acceptance of responsibility.

The other point of disagreement is the statement by GPECS's representative, **REDACTED** that in a meeting in 2005, he recalls telling Mr. Krantz that GPECS wanted no product from China or Asia. There is no documentary evidence that corroborates this communication from **REDACTED** to Mr. Krantz or anyone else at the Company. Mr. Krantz has no recollection of such a condition being imposed and does not believe it is accurate. In 2005, the industry's sensitivities about counterfeit coming from China was not nearly as acute as they became in 2008 and thereafter. Moreover, if GPECS had had such a condition, it would have been specified in the written invoices that serve as the governing contract between the parties. No such condition was included in the GPECS or Bay invoices to the Company. Again, the government is aware that Mr. Krantz denies that he was informed of this condition and concluded that this disagreement does not impair Mr. Krantz's acceptance of responsibility.

The most that can be said about both of these alleged statements is that uncorroborated recollections differ. As the government correctly concluded, they do not impact the genuine acceptance of responsibility Mr. Krantz has and continues to demonstrate.

And, unlike many other independent distributors, the Company also offered its customers the additional assurance of getting products tested by independent testing companies at their laboratories. Such companies would provide certifications for those products that passed rigorous testing processes.

Importantly, as the risks of counterfeit items from China continued to rise throughout the 2000's, Mr. Krantz determined to shut down its purchases from China in late 2008. Ironically, the Senate Report and its scathing critique of the instances of "nonconforming" items knowingly sold to the military, all occurred after 2008 and well into 2011. Similarly, as noted supra at 7, the IDEA association was lamenting the issue of counterfeit from China in 2011. In many ways, Mr. Krantz had caused his Company to be ahead of the industry.

As most relevant to the Court's sentencing, after 2008, Mr. Krantz's voluntary rehabilitative efforts are undisputed. He accelerated his efforts to improve quality controls. Under his leadership, the Company had become a substantial player as an independent distributor in the defense industry. His ambition was to be one of the select few that would be chosen by all the major defense contractors as a trusted supplier.

Thus, in addition to ending purchases from China, Mr. Krantz embarked on a number of structural changes designed to position the Company as one of the most trusted sources of electronic parts. In 2012, Mr. Krantz persuaded David Friede to join him as a partner in the business and help in taking the Company to the next level. While young, Mr. Friede had already established a reputation as a highly knowledgeable, focused, and trustworthy individual in the distribution industry. He had owned a distribution company himself and when that company disbanded, he joined Harry Krantz Company. He and Mr. Krantz proved to be a great team.

Mr. Friede complemented Mr. Krantz's big picture and customer relations skills by providing much needed organization, methodical and focused attention to details of operations and systems. Quality control continued to be a focus of the Company even as it meant greater costs and negative impact on the Company's bottom line. A description of the improvements is provided by Mr. Friede in his letter to the court. (Appendix 3, Tab 36). Among other things, the average salary of quality control personnel doubled from the 2008 time period to 2015, and from 2012 to 2015, approximately $650,000 was spent on new testing equipment, training and product tracking capabilities.

Together, Mr. Krantz and Mr. Friede enabled the Company to achieve every certification available in the industry. The Company was a member of all the significant industry associations. Mr. Friede was on the board of IDEA (until news of the government investigation unfortunately leaked out in early 2015, when the IDEA voted him off the board).

The major defense contractors engaged in in-depth inspections of the facilities at the Company as well as its qualifying processes, and they conducted annual audits. The Company achieved gold standard status and went on the list of premier suppliers for **REDACTED**

Thus, by July 2015, when Mr. Krantz agreed to plead guilty to the conduct that ended in 2008, he had largely succeeded in realizing his ambition of making the Company one of the very best distributors in the country providing critical and reliable service to the defense industry.

E. Mr. Krantz's Cooperation with The Government Investigation

While unknown to Mr. Krantz at the time, on August 10, 2011, a military helicopter went down during an exercise and two military personnel were tragically killed as a result. As one might expect, a thorough investigation was performed. While not deemed to be a contributing

cause of the failed equipment, the investigation discovered that certain chips, known as "102s," originating from GPECS were not authentic. While purporting to be manufactured by Intel, Intel informed GPECS they had not made that particular chip bearing that date code.

Even prior to learning about any government investigation, in late 2012, the Company received inquiries from GPECS representatives who sought detailed information about the origin of the 102 chips. Mr. Krantz and Mr. Friede fully cooperated and instructed others at the Company to provide the requested information. In one of the earlier exchanges, Mr. Krantz informed GPECS that the chips came from a company based in China, and all the paperwork GPECS requested was produced without the need for any subpoena or other compulsory process. Apparently, Mr. Warga had closed Bay Components by 2012 and as a consequence, although GPECS's direct supplier had been Bay, GPECS was unable to obtain necessary paperwork from Mr. Warga. They thus looked to Harry Krantz Company to help piece together the paperwork.

Several months later, in or about January 2013, the government issued a grand jury subpoena upon the Company. Mr. Krantz initially asked the Company's regular outside corporate counsel to respond to the subpoena. But when it became clear that the Company may itself be under scrutiny, he caused the Company to engage Latham & Watkins.

Mr. Krantz's mandate to Latham was to provide full and efficient cooperation to the government, in the manner that large law firms are accustomed to doing in order to win the confidence of prosecutors engaged in corporate investigations. Latham set about doing just that. The Company freely signed a tolling agreement with the government and consistently communicated with the prosecutors to provide requested documents. More than 25,000 pages of documents were produced in all during the course of the investigation. And the Company spent

over $1,000,000 in legal fees and costs to comply as fully with the government requests as it could. All under the direction of Jeff Krantz.

Mr. Krantz also directed Latham to agree to an extraordinary level of transparency. Mr. Krantz directed the Company to permit federal agents to image the Company's hard drive so they could freely search the system for evidence of wrongdoing at the Company. He also directed the Company to sign a written consent to search the premises for hard copy documents of any files the government sought.

And he willingly signed a tolling agreement as to his personal liability. Thus, conduct that terminated in 2008, which would otherwise have required prosecution by 2013, was prosecutable in 2015. Mr. Krantz chose to waive any statute of limitations arguments or defenses.

II. Mr. Krantz's Acceptance of Responsibility

As is typical in complex corporate investigations, counsel for the Company and for Mr. Krantz had many discussions and several face to face meetings to ensure that the facts and legal issues were being analyzed correctly. Such candid discussions were particularly important in light of the unusual facts and circumstances that the defense industry faced during the entirety of the 2000s.

After the government's examination of thousands of documents obtained from the Company, the government pointed to a handful, all predating 2009, that were problematic and that suggested the Company sold remarked products on isolated occasions. The defense met with the highest levels of the U.S. Attorney's Office to persuade the government to exercise its discretion not to bring any charges for such conduct, in light of the industry tolerance for remarked products as long as they were functional. Ultimately, the government agreed that, in

light of the age of the conduct, the improvement of the Company's controls since 2008, as well as the collateral devastating consequences of an indictment on the Company which would shutter the business leaving many employees out of work, the government would not bring charges against the Company. *See* Govt. Ltr. to Latham as Company Counsel, dated July 28, 2015 (Appendix 2). The government made clear, however, that Mr. Krantz would have to take personal responsibility for his conduct in connection with the sales of chips to Bay Components.

With the understanding that his guilty plea to the charges would obviate the need for any charges against the Company, Mr. Krantz promptly agreed to accept personal responsibility. Prompt disposition would maximize the chances of company survival notwithstanding the guilty plea of its executive. While Mr. Krantz could not honestly allocute to a deliberate effort to sell items he knew to be counterfeit, he could allocute to conduct that essentially involved conscious avoidance or willful blindness regarding the nature of the products being sold to Bay Components and ultimately to GPECS. Based on the government's own exhaustive investigation, it agreed the offense conduct (described *supra* at 12-14), would constitute full acceptance of responsibility.

Mr. Krantz accepts that such conduct constituted wire fraud, in violation of 18 U.S.C. §1343.

III. The Applicable Range of Penalties

Under the U.S. Sentencing Guidelines ("USSG"), the applicable range of imprisonment for Mr. Krantz would be 15 to 21 months. As the government and the Probation Office have concluded, however, a sentence within the range of 0 to 10 months is reasonable based on all the circumstances of this case.

A strict application of the Guidelines results in the following analysis:

- Pursuant to USSG §2B1.1(a)(1), the base offense level is 7, and the level is increased by 10 (pursuant to §2B1.1(b)(1)(G) because the loss was more than $120,000 but less than $200,000. (*See* Plea Agt. at 4; PSR at ¶¶ 30-31.)
- Three levels are subtracted under USSG §3E1.1 for acceptance of responsibility, yielding a total offense level of 14. (*See* Plea Agt. at 4; PSR at ¶¶ 37-39.)
- Mr. Krantz is in criminal history category I.
- The resulting range of imprisonment is 15 to 21 months.

As the Plea Agreement provides, however:

> Based on the circumstances of this case, including, but not limited to, the time of the criminal conduct, the electronic parts industry at the time, and the positive proactive steps the Company took while the defendant was the CEO to raise their standards and elevate the Company's Quality Control procedures and counterfeit detection capabilities well before this criminal conduct was discovered, **the parties agree that a Guideline range of 0-10 months of imprisonment, including a term of probation or supervised release, is reasonable and that a sentence within the agreed range is reasonable.**

Id. at 5. The Probation Department concurs that the Guidelines calculations should not apply: "Considering his background and characteristics, and the parties' agreement that a non-custodial sentence may be appropriate, it does not seem that a guideline sentence is appropriate in this matter." (PSR ¶ 98).

Pursuant to the Plea Agreement and the PSR, the fine range for the offense is $4,000 to $378,686 in accordance with USSG §5E1.2(c)(4). Mr. Krantz has also agreed to an order of restitution amounting to $402,650.

ANALYSIS

I. THE APPLICABLE LEGAL STANDARD

In United States v. Booker, the Supreme Court rendered the Sentencing Guidelines advisory. 543 U.S. 220, 245 (2005). When determining an appropriate sentence, judges "may not presume that the Guidelines range is reasonable," but rather must "make an individualized assessment on the facts presented" in light of the factors laid out in 18 U.S.C. § 3553(a). Gall v. United States, 552 U.S. 38, 50 (2007). The "overarching instruction" of 18 U.S.C. § 3553(a) is that district courts should "'impose a sentence sufficient, but not greater than necessary' to accomplish the sentencing goals advanced in § 3553(a)(2)." Kimbrough v. United States, 552 U.S. 85, 89 (2007) (quoting Gall, 552 U.S. at 50).

When determining a sentence in light of these goals, as relevant here, the key factors a court must consider are: (1) the nature and circumstances of the offense, (2) the offender's history and characteristics, (3) the sentencing range established in the Guidelines, and (4) the need to avoid unwarranted sentence disparities among similarly situated defendants. See 18 U.S.C. § 3553(a)(1), (a)(3)-(7).

The Court's discretion to give such weight to these factors as it deems just is broad, and it may consider any fact that it deems relevant to sentencing. See, e.g., United States v. Jones, 460 F.3d 191, 194 (2d Cir. 2006) (affirming downward variance based on judge's own "sense of what is fair and just" and defendant's "education, emotional condition, favorable employment record, family support, and good record on state probation"); United States v. Ortiz, 213 F. App'x 312, 317 (5th Cir. 2007) (holding that the district court properly considered, among other factors, defendant's lack of criminal history, family responsibilities with aging parents and children in his care, services in the armed forces and his stable work history); 18 U.S.C. § 3661

("No limitation shall be placed on the information concerning the background, character, and conduct of a person convicted of an offense which a court of the United States may receive and consider for the purpose of imposing an appropriate sentence."); see also United States v. Gray, 453 F.3d 1323, 1325 (11th Cir. 2006) (affirming downward variance of more than 50% from low-end of range based on defendant's "age, his prior minimal criminal record, and his medical condition").

II. THE SECTION 3553(a) FACTORS SUPPORT A NONCUSTODIAL SENTENCE

We respectfully submit that application of each of the foregoing legal standards militates in favor of a noncustodial sentence upon Mr. Krantz.

A. The Nature and Circumstances of the Offense

First, the nature and circumstances of Mr. Krantz's offense are unique, with mitigating circumstances predominant. Mr. Krantz pleaded guilty to wire fraud in that he turned a blind eye to the likelihood of falsely remarked products being sold to Bay and GPECS. The government does not contend that he intentionally sold inauthentic or falsely remarked product.

Thus, while Mr. Krantz committed his offense through a criminal level of recklessness, he is not a defendant who intentionally set out to commit a crime or harm a third party. This distinction is one the courts may consider in assessing the nature of the offense. "Deeply ingrained in our legal tradition is the idea that the more purposeful is the criminal conduct, the more serious is the offense, and, therefore, the more severely it ought to be punished." Tison v. Arizona, 481 U.S. 137, 156 (1987); United States v. Ovid, No. 09-CR-216 JG, 2010 WL 3940724, at *7 (E.D.N.Y. Oct. 1, 2010) (supporting 60 month sentence from fraud where

guidelines range was 210 – 262 months where defendant lacked bad intentions at outset of fraud and was not directly involved in much of the fraudulent activity).

Moreover, Mr. Krantz committed his offense at a time when the industry had high tolerance for such conduct. As discussed *supra* at 6-9, the Senate Report revealed an industry practice that focused on functionality. The military needed to replace electronic components that had long since become obsolete, and thus functionality overrode concerns about authenticity. Even in the midst of the Senate investigation in 2011 and 2012, major contracting companies described knowing installation of remarked and "nonconforming" products on military equipment without feeling the need to notify the military about such products. Indeed, even in the midst of the Senate investigation, it appears that major contractors defended their practice, as one testified: "if a nonconformity is identified by [division of Contractor] and [its] recommendation is to use the nonconforming part . . . , no notification to the Navy is required." (SR. 57) "[T]he engineering consensus is that the units can remain on the airplane and be repaired on an attrition basis. . . . We did not alert the customers." (SR 52, 53). "[T]hey are still good parts. Many used parts tend to have the same reliability as a new part." (SR 54). This lax attitude appeared to have been shared by some military agencies. In December 2011, after the Air Force was informed by the Senate Subcommittee that two prominent Contractors had intentionally decided not to tell the Air Force about counterfeit parts, the Air Force said it was: "aggressively taking action to rectify the breakdown in communication," (SR 41) but made no mention of suspending dealings with the contractor or insisting on termination of the culpable individuals. In fact, the Senate Report noted that as of March 2012, one of the contractors had removed and replaced only a handful of the units affected by the suspect counterfeit. (SR 41).

Mr. Krantz caused the Company to consistently test the products to ensure that they passed testing by independent laboratories. The 102 chips at issue in this case were in fact tested by independent labs and passed the tests. Those tests helped to ensure that the products would be functional, but they were inadequate to ensure authenticity.

Mr. Krantz acknowledges that this was not enough, and he acknowledges that the notion that "everyone was doing it" is no defense. He accepts full criminal responsibility for his conduct. But the industry conditions help to explain why a man of his otherwise wonderful character came to commit this offense. They help to explain a period of weakness where he might have indulged in self-justification with the thought that he was doing nothing worse than many of his peers at the time.

That period of weakness will haunt Mr. Krantz for the rest of his life and will be a source of shame as he tries to raise his children to be strong and morally confident adults. We ask that the Court consider and understand the totality of circumstances that can sometimes bring even good men to such disappointing moments. Courts have considered industry practices that can help to put misconduct in context for purposes of assessing whether a more lenient sentence could satisfy the goals of sentencing. See e.g., United States v. Butler, No. 1:08-cr-370(JBW), Document No. 341 (E.D.N.Y., Jan. 22, 2010) (in sentencing defendant to 5 years instead of Guidelines sentence of life imprisonment, Judge Weinstein took into account as one factor "the circumstances of the financial industry in which he worked" and the fact that "the industry . . . has been allowed to run rampant by regulators and negligent supervisors alike.").

B. Pre-Investigation Efforts at Rehabilitation

No assessment of Mr. Krantz and his offense would be complete without considering the substantial efforts he made to promote quality controls after the date of his offense, and long

before any Senate or government investigation was commenced. A review of those efforts demonstrates that Mr. Krantz's failures in the 2008 time period were aberrational and not a reflection of Mr. Krantz's true characteristics.

The Second Circuit's long history of giving weight during sentencing to evidence of a defendant's post-offense rehabilitation predates Booker and Gall. See United States v. Workman, 80 F.3d 688 (2d Cir.1996) (defendant granted two level downward departure for rehabilitation where he voluntarily left a narcotics conspiracy, joined the military and completed service honorably before he was arrested in connection with the conspiracy); United States v. Cornielle, 171 F.3d 748 (2d Cir.1999) (one-level downward departure for rehabilitation of a former member of a narcotics and fraud conspiracy, who, in the four years between the commission of the crime and his arrest, had returned to college, was maintaining a high grade-point average, and was working part time as a volunteer counseling persons infected with HIV); United States v. Blumenthal, No. 03-cr-651(RPP) 2003 WL 22888803 (S.D. N.Y. Dec. 5, 2003) (defendant received three level downward departure for rehabilitation where he voluntarily left drug dealing conspiracy moved to Virginia to disassociate himself with conspirators, completed college and became gainfully employed before his arrest).

In Gall v. United States, 552 U.S. 38 (2007), the Supreme Court held it was reasonable for the district court to conclude that the 3553(a) factors supported a probationary sentence, instead of guideline sentence of 30 to 37 months, based in part on defendant's self-motivated post-offense rehabilitation. The Supreme Court noted that the sentencing court

> "quite reasonably attached great weight to Gall's self-motivated rehabilitation, which was undertaken not at the direction of, or under supervision by, any court, but on his own initiative. This also lends strong support to the conclusion that imprisonment was not necessary to deter Gall from engaging in future criminal conduct or to protect the public from his future criminal acts."

Gall v. United States, 552 U.S. 38, 59 (2007) (upholding probationary sentence where ecstasy dealer was prosecuted years after he withdrew from drug dealing conspiracy and where in the intervening period he graduated from college, stopped using drugs, and gained lawful employment). In Gall, the Supreme Court suggested there was a greater justification for a downward departure for rehabilitative conduct that occurred prior to the arrest as opposed to after it. Id.

In a subsequent decision, the Supreme Court went further by holding that a district court at resentencing (after the sentence was invalidated on appeal) could consider evidence of the defendant's postsentencing rehabilitation in support of a downward variance and that such evidence was highly relevant to the 3553(a) factors. Pepper v. United States, 562 U.S. 476, 491 (2011). In Pepper, the Supreme Court noted that a categorical bar on the consideration of postsentencing rehabilitation evidence would contravene Congress' expressed intent of § 3661. The Court listed the various 3553(a) factors to which evidence of post sentencing rehabilitation may be highly relevant, including the following:

> "'history and characteristics of the defendant[;] . . . the need for the sentence imposed' to serve the general purposes of the sentencing set forth in § 3553(a)(2) – in particular, to 'afford adequate deterrence to criminal conduct,' 'protect the public from further crimes of the defendant' and 'provide the defendant with needed educational or vocational training . . . or other correctional treatment in the most effective manner."

Id. (citing §§ 3553(a)(2)). It further noted that "[p]ost sentencing rehabilitation may also critically inform a sentencing judge's overarching duty under § 3553(a) to 'impose a sentence sufficient, but not greater than necessary' to comply with the sentencing purposes set forth in § 3553(a)(2)." Id. (remanding for resentencing and directing district court to consider and give appropriate weight to the post sentencing rehabilitation evidence); see also United States v.

Collette, No. 3:14-cr-205 (MPS) (Judgment – Doc.No. 67) (D. Conn. Oct. 15, 2015) (this Court imposed 24 months rather than 210-240 months guideline range for child porn possession in part taking into "account the defendant's strong performance during a lengthy period of pretrial release" which included obtaining treatment and counseling).

As discussed supra at 15-17, even in the mid-2000s, Mr. Krantz did not ignore the difficulties that confronted the electronic parts industry. As early as 2007, he began building a structure for quality control, investing money in the personnel and equipment resources necessary to develop better assurances about the quality of the products the Company was buying and selling. But in 2009 and thereafter, there is no question that he took his Company to a new level in terms of quality control. Thus, in recommending a non-Guidelines sentence, the government relied on: the "positive proactive steps [Mr. Krantz's] Company took while the defendant was the CEO to raise their standards and elevate the Company's Quality Control procedures and counterfeit detection capabilities well before this criminal conduct was discovered." (Plea Agt. at 5.)

Such "positive proactive steps" included halting purchases of product from China by late 2008, increasing the employment and training of quality control personnel and processes, and, importantly, hiring Dave Friede who could truly focus on increasing the rigor of the organization and all of its processes. Mr. Krantz made him an equal partner of the company his grandfather had created. As Mr. Friede notes: "this proved to me how serious he was, to making Harry Krantz a World Class Supplier, in addition to how he valued what we could accomplish together." (Friede Letter, Appendix 3, Tab 36.)

Between 2008 and July 2015 when Mr. Krantz stepped down as CEO, all quality control staff was replaced at Harry Krantz. Most of the staff had previous experience in the industry and

Harry Krantz paid the new staff commensurate with their experience. Average salaries for such staff jumped from $19,200 to $43,700 during this period.

By 2013, when the government's investigation began, the Company was well on its way to achieving every certification available for an independent distributor and becoming one of the very few distributors on the preferred provider list of the four largest defense contractors in the country. Mr. Friede explains that "we certified the company and staff to the highest standards in the industry at the time." (Friede Letter, Appendix 3, Tab 36.)

It did not require a criminal investigation or prosecution to persuade Mr. Krantz to undertake these efforts. Nor did it take the findings made public in the Senate Report in 2012 to motivate Jeff Krantz to try to do better. In many ways, he had made remedial efforts long before many of his peers in the industry were even thinking about doing so.

C. Mr. Krantz's History and Characteristics

In imposing a "sentence sufficient, but not greater than necessary" to accomplish the sentencing goals, Kimbrough, 552 U.S. at 89, the courts consider what punishment is proportionate to the above-described offense and appropriate for a man of the defendant's particular character.

1. Mr. Krantz's Exceptional Qualities

Mr. Krantz is a first time offender who has led an unblemished, law-abiding life prior to this case.[5] The many letters submitted on his behalf attest to Mr. Krantz's exceptional qualities. He is consistently described by his many friends, relatives and business associates as a man of compassion, unusual sensitivity, warmth, intelligence and integrity. What emerges from these

[5] See United States v. Armendariz, 451 F.3d 352, 358-59 (5th Cir. 2006) (defendant's lack of criminal record and steady employment history can be taken into account under § 3553(a)(1)).

many letters is a picture of a man constantly in search of self-knowledge, improvement and generosity. One who puts the welfare of others ahead of his own, and who strives to be a good man, sharing his humor, his time, and his devoted attention to the needs of others. Mr. Krantz's involvement in his synagogue, his broader community, and his good works are also an independent basis for variance under 3553(a). See United States v. Rioux, 97 F.3d 648, 663 (2d Cir. 1996) (finding good charitable and civic deeds supported downward departure).

The letters speak for themselves and we will not attempt to summarize them all. If it is true that a man is known by the company that he keeps, the many friends who have submitted letters on Mr. Krantz's behalf bespeak his exceptional character. They uniformly describe appreciation for the good fortune that brought Mr. Krantz into their lives. Oliver Sultan is a man Mr. Krantz met at a birthing class 13 years ago. As he put it:

> As my wife and I were contemplating parenthood and the kind of world we wanted to build for our daughter, it was evident to us that that world should be filled with people like Jeff – someone who enjoys life, keenly smart, with a great sense of humor and a love of culture, but also someone with a strong sense of ethics, values and history, someone generous and hospitable.

(Appendix 3, Tab 25). Karen Weissman and Alex Lee, who met Mr. Krantz because their respective daughters were in pre-school together, describe him as "sensitive, intelligent, always willing to give emotional support, understanding and insight when someone is struggling with an issue. He has the ability to uplift you with humor, while remaining respectful." (Appendix 3, Tab 10). An old friend from college, Mark Fiedler, similarly refers to Mr. Krantz as a "sensitive and compassionate person, empathetic to the feelings of others, considerate, creative, warm, witty and real. . . . a trusted friend with an unerring moral compass. There are not many people in the world who I would unequivocally put my faith in, but Jeffrey is one of them." (Appendix 3, Tab. 7). Jeffrey Keswin, who met Mr. Krantz in Lamaze class 13 years ago states that

"[c]onversations flow easily with Jeff, as he stands humble and kind of spirit. Jeff is a good listener, in a world where such is not common." (Appendix 3, Tab 11). Rosemary Li-Houpt, relates that when she and her husband moved to New York City from Toronto, Mr. Krantz was an important welcoming presence and that they were "grateful that Jeff was there early on to exemplify everything we were looking for." (Appendix 3, Tab 24). And her husband, Simon Houpt, recounts how he turned to Mr. Krantz as his closest American friend about the serious decision to seek U.S. citizenship: "Jeff and I spoke at length about the unique qualities of American citizenship, about its privileges, and especially about its duties. And so it was that, in the spring of 2009, I found myself at the Pearl Street Courthouse in Lower Manhattan, alongside more than 300 other new citizens, pledging allegiance to the United States of America. It is one of the most significant days of my life." (Appendix 3, Tab 16).

Ms. Houpt states that she cannot think of "a more responsible, caring, generous and trustworthy individual." And she discloses that she named Mr. Krantz the trustee for her insurance trust "knowing that I could without any hesitation rely on him to manage the money that would be used to care for my family in the event of my death. Jeff continues in this role to this day." (Appendix 3, Tab 24). Dr. Eileen Flowers describes how close she and her family have become with Mr Krantz and his family. She attaches a picture of Mr. Krantz with her infant daughter, as she shares the fact that he and his family were the first in whom Dr. Flowers entrusted her baby Ella. (Appendix 3, Tab 31). Another friend, Stephen Maharam, states: "I value him so thoroughly and trust him so implicitly that I have named him as a Trustee in my will." (Appendix 3, Tab 29).

Mr. Krantz's generous and deeply empathetic nature is also outlined in the letters from the Rabbis of the Town & Village Synagogue where Mr. Krantz first found a pathway to

personal stability in his mid-thirties. Rabbi Sebert describes how he met Mr. Krantz, "a struggling young artist-entrepreneur . . . [who] sought out a spiritual and moral center for his life." (Appendix 3, Tab 15). Both he and Rabbi Sosland describe how Mr. Krantz sought to bridge a generational gap in the synagogue between the aging founders who were veterans of WWII and the younger members of the synagogue who did not know the founding group. He contributed his photography skills to document the growing relationships between the generations. According to Rabbi Sosland, Mr. Krantz "had developed a particular friendship with a 93-year old man named **REDACTED**, whom Jeff visited on a regular basis to sit and talk about life." He then came up with the "inspired idea" of asking the younger members to interview the elderly group and to document the process through photography. They "created an extraordinary exhibit at the synagogue – entirely curated by Jeff – where members could come and learn about some of the seniors and their personal histories." They thereby "honored a group of people often invisible to synagogue life." (Appendix 3, Tab 32). As Rabbi Sebert states, Mr. Krantz's devotion to the synagogue only grew and he later came to serve on the Board of Trustees.

There can be little question that Mr. Krantz is a compassionate, big-hearted man who does what so many of us fail to do (excusing our repeated failure with myriad justifications): he gives of his time to nurture the human connections he discerns all around him.

Thus, his wife's father, Tobias Pieniek, who is a lawyer, describes how Mr. Krantz became concerned about a former warehouse employee, **REDACTED** who was hospitalized. (Appendix 3,Tab 1). Mr. Krantz, became personally involved in ensuring **REDACTED** had sufficient insurance coverage. **REDACTED**, who was alone in the world and without friends, named Mr. Krantz as his health care agent in the Living Will and Health Care Proxy that Mr. Krantz asked his father-in-law to prepare on a pro bono basis. When **REDACTED** later ended up

at a nursing home, Mr. Krantz regularly visited him, taking his young boy Judah with him, and arranging for other company employees to visit as well. This continued for two years before REDACTE passed away. Mr. Krantz then tended to all of his funeral arrangements. "This care and compassion for a former, relatively low-level, employee who turned to him for help, truly reflects Jeffrey's character." Barbara Rein, a longstanding employee of the Company also describes the care Mr. Krantz took for the former employee, stating that "Jeffrey treated him with dignity and respect and in essence, Jeffrey was his only family." (Appendix 3,Tab 39).

Mr. Krantz's care for the Company employees was not limited to **REDACTED** A friend, Mark Senders, describes the discussions Mr. Krantz has had with him about the stresses of the ongoing investigation and he states that "Jeff has been most concerned with how this situation and the consequences of it would affect not only his wife and children, but also the company, its employees and their families. . . . Jeff is consumed about what everything means for the people directly in his life as well as those only indirectly like the families of the Harry Krantz Co. employees." (Appendix 3, Tab 23). His son, Joshua Senders, echoes the observation: "I recall several situations where Jeff committed significant dollars from his pocket to ensure a higher level of insurance coverage and care for his employees." (Appendix 3, Tab 28).

Compassion and sensitivity are not the only attributes that set Mr. Krantz apart. Integrity and a sense of fairness are additional key aspects of Mr. Krantz's character to which the supporting letters attest. Thus, Ms. Houpt and Mr. Maharam made him a trustee in matters of vital importance to their and their families' lives. Robin Oshins, Mr. Krantz's sister-in-law, states that "He is the husband to my only sister, the father to my only niece and nephews, and the guardian to my children; there's no one else on earth my husband or I would choose for that role." (Appendix 3, Tab 12). She is not unique in having entrusted Mr. Krantz with guardianship

of her children. Mr. Krantz is also the guardian of the children of his own sister, Susan Krantz, who calls him her hero, the one who found his tearful sister lost in the middle of Queens as a young girl. (Appendix 3, Tab 5).

Jonathan Morris, a corporate partner at UK law firm Berwin Leighton Paisner calls Jeff "someone of the highest integrity who has consistently displayed to me the values of honesty, trust, respect, loyalty and morality." (Appendix 3, Tab 9). David Paseltiner, the Company's outside corporate counsel, describes how, contrary to Mr. Paseltiner's advice, Mr. Krantz insisted that when he brought on a new partner in the Company, each of the terms of the operating agreement should apply equally to him and the new partner. The new partner did not need to have the same voting and transfer rights as Mr. Krantz immediately upon joining the Company and Mr. Krantz was in a position to dictate the terms, but "his position . . . was that for the partnership to work, both partners had to have equal rights under the agreement."[6] (Appendix 3, Tab 2).

This instinct for fairness and compassion apparently started early: Mr. Krantz's mother discusses the time when Mr. Krantz, a Little Leaguer, stuck up for his young coach who was publicly humiliated by a parent during a game and took it upon himself to write a letter to the head of the town's Little League. (Appendix 3, Tab 35).

As the PSR reflects, Mr. Krantz's relationship with his father, Richard Krantz, has been marked by conflict and tension. When his father wrote his letter to the Court, he did not share a copy with Mr. Krantz. But his father, writing with characteristic brevity and sharpness, describes his son repeatedly as "loving, caring, sensitive and devoted," and he concludes "[t]his is my son, whom I'm so very proud of and who I love so deeply." (Appendix 3, Tab 33). His sister-in-

[6] This new partner was David Friede.

law, Robin Oshins, writes that "for three years I've witnessed him, in the face of a very taxing investigation, maintain his integrity, shower his family, friends, and colleagues with compassion, and continue to reflect and grow as an individual. One of the things I admire the most about Jeffrey is his pursuit of growth and development." (Appendix 3, Tab 12). His father-in-law, Tobias Pieniek refers to him as "a loving and devoted husband and father, a loyal friend, and decent, caring, and compassionate human being whose moral compass is beyond reproach." (Appendix 3, Tab 1).

While good deeds are surely substantial evidence of a man's character, there may be no better proof than the values that he instills in his children. Elaine Cook, a fellow parent at middle school for Mr. Krantz's eldest child, Anna, marvels at the remarkable qualities of the 13-year old girl. She was about to celebrate her Bat Mitzvah, and in lieu of gifts, she took it upon herself to ask that guests contribute to the research of hemophilia **REDACTED**

(Appendix 3, Tab 6).

2. The Aberrational Misconduct

The life that Mr. Krantz has built for himself and his family stands in sharp contrast to his felony plea and the conduct that led to it. How did a man of his stellar qualities fail to act responsibly when dealing with Mr. Warga and Bay Components?

Part of the answer lies in the discussion *supra* at 6-9 about the lax industry standards, but another part of the explanation may be that he simply was not up for the challenges that life suddenly had in store for him during that critical period. As the chronology outlined *supra* at 5 reveals, during the period that is at issue in the offense conduct, Mr. Krantz had only fairly recently gotten his life together, entered the Company, married, had Anna in 2002, Judah in 2005 and Elijah in 2007. The Company was growing rapidly, and Mr. Krantz was rushing to fill shoes

that he still shared with a highly domineering father. This was all happening right in the middle of the transactions with Jeff Warga between 2005 and 2008. In this critical period:

- As the Senate Report found, the risk of counterfeit products from China was growing. Indeed, the Report described the escalation of risk precisely in the period from 2005 to 2008. (SR 1.) Implicit in this report, of course, is the important fact that just because a product is from Asia did not mean it was counterfeit. To the contrary, the vast bulk of the original parts had been manufactured in Asia and China in particular. (IDEA 1010B, 9). But in the period in question, the incidents of counterfeit coming from that region was growing.
- Mr. Krantz was now the father of three very young children, who were the center of his life. As many of the letters from friends and relatives attest, Mr. Krantz was a parent who was and is exceptionally involved in the upbringing of his children. He commuted from his home in Manhattan to the Company located in Long Island.
- **REDACTED**

- **REDACTED**

- These **REDACTED** issues required an enormous commitment of Mr. Krantz's time, energy and emotion. Though they proved to be a blessing for Mr. Krantz in that **REDACTED** (as discussed infra at 42-46), the stresses posed **REDACTED** were enormous. **REDACTED**

- As Mr. Krantz took on increasing responsibility for the family-owned company, his father's role decreased but in ways that were fraught with tension and anger. In 2008, father-son began buy-out negotiations with each other that continued for two years and understandably raised tensions in the family as a whole. (PSR ¶ 53.)
- Jeff Warga's Bay Components, of course, was only one of many companies that Mr. Krantz had to deal with during the 2005-2008 time period. For all of the many problems and tensions in his life, the Company was growing as the need for its services grew.

During this entire period, Jeff Krantz's own psychological struggle posed its own substantial challenge. **REDACTED**

REDACTED

REDACTED

. As discussed *supra* at 4, 31-32, the late 1990s was a period when Mr. Krantz found the synagogue and community that helped to get him on his feet and when he gave up his efforts to make a career in photography. He met and married Missy, he had two children and he was now the president of his father's business. In early 2007, as he was now "responsible for operating the family business during changing economic circumstances," **REDACTED** for individual help. **REDACTED**

REDACTED

REDACTED

We respectfully submit that the **REDACTED** reports, when considered in light of all the other information in the record, provides some explanation for why a person who is at his core a decent, honest and respectful man, failed so critically to uphold his own standards of integrity in 2008. This record serves to demonstrate that his failure was an aberration. This is the same person who has, for years, consistently drawn the strong affection and trust of highly intelligent and discerning men and women; people who trust him with their insurance trusts, wills or guardianship of their children. As his sister-in-law so succinctly summed up: he heroically strives to improve, to learn and be better than he was.

Thus, it was the same man who stumbled badly in 2008 who nevertheless had the products tested by independent labs; the man who shut down purchases from China, well ahead of his industry peers; the man who set about getting the Company more organized to the best of his ability; the man who had the foresight to understand the value of a highly detail-oriented and focused partner in David Friede who could drive the Company operationally,[7] and brought him on, substantially diluting his own equity stake in his family's business. Together, they raised the Company's standards to the point that each of the major defense contractors had the Company on its preferred provider's list.

It is on this record that the Court can confidently conclude Mr. Krantz's failure was anomalous and uncharacteristic of the man he truly is and is further support for a noncustodial sentence. See United States v. Howe, 543 F.3d 128 (3d Cir. 2008) (affirming probationary sentence for wire fraud despite an 18-24 month guideline range, where district court deemed the offense an "isolated mistake" in the context of defendant's otherwise long and upstanding life).

[7] As the PSR reports, Mr. Krantz "reveres that decision [to hire Mr. Friede] 'as one of my top decisions.'" (PSR ¶ 69.)

D. Goals of Sentencing Can Be Achieved Without Incarceration

We respectfully submit that the interest in deterrence (both specific and general) is more than satisfied by the punishment Mr. Krantz and his family have already endured as a result of his conduct. As a result of his felony plea, Mr. Krantz has little prospect of ever returning to the one job where he found success. His professional life was wrapped up in the success of the Company and watching it not only grow but flourish as one of the premier independent electronics distributor. As part of the Plea Agreement, he was compelled to separate from the Company's operations and is now sidelined. Moreover, the reality is that no one anywhere in the defense supply chain will want to have any dealings with Mr. Krantz lest they draw unwanted attention to their own companies. It is entirely unclear where and how Mr. Krantz will find another job. This unfortunate reality should be considered in assessing the need for further punishment. See United States v. Gaind, 829 F.Supp. 669 (S.D.N.Y. 1993) (granting downward departure as a consequence of prosecution defendant's livelihood was destroyed and he could not reenter his profession); United States v. Speed Joyeros, S.A., 204 F.Supp.2d 412, 440 (E.D.N.Y. 2002) (holding two level downward departure for destruction of livelihood was warranted where defendant had been ordered not to engage in the jewelry or rare metals business during her term of supervised release); United States v. Mizrahi, No. 00-CR-960(JBW), 2008 WL 3009983, at *2 (E.D.N.Y. June 16, 2008) (finding specific deterrence is served by loss of ability to perform one's chosen business and sentencing defendant to one month where guideline range was 4 to 10 months).

The successes of the family business in the past years enabled Mr. Krantz to accumulate some wealth, and his family is permitted, through a trustee, to draw income, if any, from the struggling Company. But the financial future for him and his family is most uncertain and dire.

The fact that he brought this uncertainty on his family through his conduct is most painful to Mr. Krantz. As brave a face as Mr. Krantz may put on his circumstance, the letters from friends and relatives provide a small window into how deeply he worries and regrets the harm this has inflicted on his family.

It also does not take much to imagine how difficult it had to have been for Mr. Krantz who has meant so much for so many people for so many years, to go to each of them, hat in hand, asking whether they would write a letter on his behalf. It hardly matters to his deep remorse and shame that they all agreed so eagerly to help. Beyond his close circle of friends and loved ones, the broad obloquy following on the publicity his case has received is yet another source of shame for Jeff Krantz. The notoriety of his criminal charge is deeply humiliating. The experience has been punitive.

Under these circumstances, there is no goal of sentencing that would be furthered by requiring a period of incarceration. Mr. Krantz's qualities are such that there is zero risk of him engaging in the aberrational conduct again.[8] He demonstrated rehabilitative conduct long before there was any criminal investigation. And there is no reason to believe that a sentence of incarceration, notwithstanding the unique circumstances of this case, would promote general deterrence. The conduct is now nearly 8 years old, and in the wake of the Senate Report issued in 2012, the industry has seen vast improvement in controls.

The only impact incarceration would have is on Mr. Krantz's innocent family members.

[8] According to a report by the United States Sentencing Commission, first time offenders with similar demographic characteristics as Mr. Krantz are highly unlikely to recidivate. The report states that only 6.2% of defendants who are over 50, like Mr. Krantz, and in Criminal History Category I are even arrested again, let alone convicted. See United States Sentencing Commission, Measuring Recidivism: The Criminal History Computation of the Federal Sentencing Guidelines, at 28 (May 2004). Moreover, defendants who receive zero criminal history points are the least likely persons to recidivate (Id. at 7, 10, 15) as are offenders sentenced under the fraud guidelines. (Id. at 30.) Recidivism rates decrease with educational level and where the defendant is married. (Id. at 29.)

The risk of harm **REDACTED** is enormous. As Missy Krantz explains in excruciating detail, **REDACTED**

(Appendix 3, Tab 18). **REDACTED**

REDACTED

REDACTED

REDACTED

Educational and health professionals who are familiar with this family provide further insight into the exceptionally close bond Mr. Krantz has with all his children but especially Judah. Kay Loua is a teacher at Midtown West, PS 212 who has taught all three of the Krantz children. She describes a level of involvement by Mr. Krantz in each of his children's progress and emotional well-being that will leave most fathers feeling inadequate. She describes how Mr. Krantz "put a team together to assist Judah through this time" and their brainstorming sessions even after he cycled out of her class. Having detailed his interactions with each of the three

unique children, she ends: "He has now read to the children for six of our six years together, chaperoned five of the five overnight trips we have taken, attended too many scheduled and unscheduled meetings to count, and proved over and over again that he is a devoted father whose family would be lost without him."

REDACTED

Courts in this Circuit have repeatedly held that a close family member who has special needs requiring the defendant's presence is a clear basis for departing from the Guidelines. United States v. Alba, 933 F.2d 1117, 1122 (2d Cir. 1991) (upholding a downward departure based on family circumstances where defendant lived with his wife, two young daughters and his disabled father who depended on him to help him in and out of his wheelchair and where sentencing court found that Guidelines sentence "might well result in the destruction of an otherwise strong family unit"); United States v. Burks, No. 08-CR-332, 2010 WL 1221752, at *2

(E.D.N.Y. Mar. 29, 2010) (sentencing defendant to 1 month prison instead of guidelines range 57 – 71 months where defendant provided emotional and financial support to two children, including one with special needs); United States v. Butler, No. 1:08-cr-370(JBW), Document No. 341 (Sentencing Statement) (E.D.N.Y., Jan. 22, 2010) (citing defendant's young child and his ability to support his family economically and psychologically as one reason in support of 5 year sentence instead of life sentence under the Guidelines); United States v. Deutsch, 104 F. App'x 202, 203 (2d Cir. 2004) (upholding downward departure from a Guidelines range of 12 – 18 months to a prison sentence of three months based on family circumstances where he had 6 children under the age of 16 and his wife had an illness that prevented her from caring for them on her own).

Thus, even in cases involving substantial prison terms required by the Guidelines, courts have imposed probationary sentences. United States v. Diambrosio, Case No. 04-66, 2008 WL 732031, at * 3, 5, N. 9 (E.D. PA. Mar. 13, 2008) (imposing a probationary sentence instead of 46-57 months Guideline range to securities trader when incarceration would have had exceptionally adverse effects on defendant's three young children, including one with ADHD whom defendant regularly took to the doctor and where defendant was crime-free 8 years after the offense conduct).

The First Circuit previously upheld a probationary sentence where the defendant, REDACTED had a special relationship with a boy who was being treated for ADHD which had only recently been brought under control. United States v. Sclamo, 997 F.2d 970, 972 (1st Cir. 1993) (sentenced to 6 months home confinement where Guidelines range was 28 months). The boy in that case, James, was diagnosed with ADHD after a period of disruptive behavior at school. At the time of sentencing James was seeing a psychologist for treatment who believed Mr. Sclamo's

presence was necessary for James to continue to progress and Sclamo's removal could trigger a regression. **REDACTED** Mr. Sclamo was not the boy's father (he lived with the boy's mother) but the nevertheless court granted Mr. Sclamo six months home detention, recognizing that a prison sentence, by removing Mr. Sclamo from James' daily life, would potentially damage James' behavioral development. United States v. Sclamo, 997 F.2d 970, 972 (1st Cir. 1993).

REDACTED

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In light of the age of the crime, its aberrational nature, the rehabilitation long before any criminal investigation, the salutary character of this defendant, and the critical role he plays in the emotional and mental well-being of **REDACTED** , we respectfully submit that any term of incarceration would be inappropriate and wholly unwarranted. A noncustodial sentence would be more than adequate to address the seriousness of the conduct at issue here.

E. Probation Would Not Result In Sentencing Disparities

Imposing a noncustodial sentence would not give rise to unwarranted sentencing disparities. First, given the unique facts and circumstances of Mr. Krantz's offense, there is no risk that a sentence in this case will somehow be viewed as inconsistent with other analogous cases. This case truly is *sui generis*. Our research has uncovered no case in which a defendant was prosecuted under Section 1343 on a theory of conscious avoidance, for an offense that well exceeded the traditional statute of limitations period of 5 years and where the defendant had

voluntarily implemented processes subsequent to his conduct that would prevent a recurrence of that conduct, long before any criminal investigation was even commenced.

The only case that bears any resemblance to the offense at issue here is United States v. Peter Picone, who was recently sentenced to 37 months' imprisonment. (No. 3:13-cr-128 (AWT), (D. Conn. Oct. 7, 2015). Aside from the fact that his offense involved sale of inauthentic electronic parts, the resemblance ends there. Having been charged in 8 counts, he pled to one count of conspiracy to traffic in counterfeit goods in violation of 18 USC § 2320(a). At a total offense level of 21, his Guidelines range was 37 to 46 months. He admitted that he knowingly bought and sold counterfeit parts from China through his company Tytronix, and he provided false testing reports from a fictional lab attesting that the parts had passed testing. His illegal conduct spanned from 2007 to 2012. He later changed the name of his company from Tytronix to Epic because the government seizure of Tytronix imports had started to mount, and he sought to avoid scrutiny at the border by using the name of a new company. Evidencing the seriousness of his conduct, the government sought a sentence within the 37 to 46 months Guidelines range. (Govt's Sentencing Memorandum – Doc. No. 82). The Court imposed a sentence at the low end of the range.

Here, of course, the government has agreed that a sentence within the range of zero to 10 months would be appropriate, and Mr. Krantz's aberrant conduct stands in sharp contrast to the multi-year fraudulent behavior of Picone. Thus, concerns about disparity of sentences simply do not apply here.

To the contrary, a non-custodial sentence in this case would be well in line with hundreds of other cases in the federal system where defendants eligible for non-prison sentences in fact received such sentences. See United States Sentencing Commission, Statistical Information

Packet, Fiscal Year 2012, Fifth Circuit, at 9 (reporting that more than 64% of the offenders who are eligible for non-prison sentences receive noncustodial sentences.)

III. $4,000 FINE SHOULD BE IMPOSED

The Presentence Report concludes that the Sentencing Guidelines in this case yields a fine range of $4,000 to $40,000. We respectfully request that the Court impose the lowest fine advised by the Guidelines. All the reasons discussed above in support of a non-custodial sentence apply equally to militate in favor of the most lenient financial penalty. Mr. Krantz is not working but his family's living expenses continue as before. While it is theoretically possible for the family to continue to draw income from the Company, the reality is that the Company is very much struggling to survive. As Dave Friede explains, Mr Krantz's guilty plea "decimated our sales." And because "our burn rate is higher than our income we are having difficulty financing our obligations." (Appendix 3, Tab 36). As the PSR reports, Mr. Krantz has negative monthly cash flow. (PSR ¶ 74). Moreover, while his life's savings are not insubstantial, they will be the source of income for him and his young family for the foreseeable future.

To add to the burden, the Plea Agreement provides for an order of restitution of $402,650. We ask that the Court permit Mr. Krantz to agree on a schedule of payment with the Probation Department that would enable Mr. Krantz to pay this over a period of years. Even so, the financial burden on Mr. Krantz will be extreme. We respectfully submit that there are no sentencing goals that would be furthered by requiring a fine that exceeds $4,000.

CONCLUSION

For the foregoing reasons, we respectfully request that the Court impose a noncustodial sentence on Mr. Krantz, along with a $4,000 fine and a restitution order for $402,650 that may be paid in accordance with a schedule to be determined with the Probation Department over a period of two years.

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