

# **EXHIBIT A**

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10 UNITED STATES DISTRICT COURT  
 11 NORTHERN DISTRICT OF CALIFORNIA  
 12 SAN FRANCISCO DIVISION

13 UNITED STATES OF AMERICA,

14 Plaintiff,

15 v.

16 CHRISTOPHER LISCHEWSKI,

17 Defendant.

Case No. 3:18-cr-00203-EMC

**DEFENDANT CHRISTOPHER  
 LISCHEWSKI'S CORRECTED  
 SENTENCING MEMORANDUM AND  
 MOTION FOR DOWNWARD  
 DEPARTURE**

Date: June 3, 2020  
 Time: 2:30 p.m.  
 Dept. Courtroom 5 – 17th Floor  
 Judge: Hon. Edward M. Chen

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1 In accordance with Criminal Local Rule 32-5(b) and the Joint Stipulation and Order to  
2 Continue Sentencing (ECF 662), Defendant Christopher Lischewski hereby respectfully submits  
3 his sentencing memorandum to provide the Court with additional information about Mr.  
4 Lischewski not contained in the Final Presentence Investigation Report (PSR), to discuss the  
5 factors set forth in 18 U.S.C. § 3553, and respectfully to suggest a sentence of 12 months of home  
6 confinement, which is “sufficient but not greater than necessary” to effectuate the objectives  
7 codified in that statute.<sup>1</sup>

## 8 I. INTRODUCTION

9 Christopher Lischewski stands before this Court for sentencing. Having presided over this  
10 case since its inception, including a 13-day trial, the Court is familiar with the facts. The advisory  
11 Guidelines range is bloated by an artificial “volume of commerce” number and increased  
12 incorrectly by several adjustments to which Mr. Lischewski has objected in a separate,  
13 contemporaneously filed brief. It will be decidedly up to the judgment of this Court to apply the  
14 Section 3553 factors and to determine a sentence tailored to Mr. Lischewski that is “sufficient but  
15 not greater than necessary” to fulfill the objectives of a federal criminal sentence. Courts  
16 sentencing antitrust defendants in this District, elsewhere in California and in other Districts  
17 across the country have uniformly imposed sentences substantially below the advisory Guidelines  
18 range, by applying the jurisprudence of Section 3553. The totality of the facts described in detail  
19 below demonstrate that Mr. Lischewski is a good man who has led an exemplary life. He is a  
20 loyal, loving, and dedicated family man who has cared generously for his mother, his son, his  
21 wife, his brother-in-law, and his niece and nephew. He is a generous friend and a responsible,  
22 philanthropic member of his community. He is a conscientious businessman who as a CEO  
23 provided employment, leadership, and economic security to persons around the globe.  
24 Regardless of the advisory Guidelines range this Court settles on after considering Mr.  
25 Lischewski’s separately filed objections to the PSR, Mr. Lischewski’s personal circumstances and  
26 the actual characteristics of this offense, in particular in the midst of a global pandemic,

27  
28 <sup>1</sup> Mr. Lischewski is concurrently filing a separate brief setting forth his objections to the PSR.



1 countenance mercy, and a sentence of 12 months of home confinement.

## 2 II. CHRISTOPHER LISCHEWSKI'S PERSONAL BACKGROUND

3 While this Court is familiar with the evidence both sides presented during trial, it is not  
4 yet fully familiar with Chris Lischewski, his background, his present circumstances, and his  
5 character. Nearly 50 of Chris's friends, colleagues, family members, and peers have sent letters  
6 of support for Chris to this Court. Their words, memories, and stories paint a full and vibrant  
7 picture of Chris Lischewski, a man who is "honest, hard-working, with a strong moral code and  
8 sense of integrity."<sup>2</sup> These letters bear scant resemblance to the government's unfair and  
9 inaccurate attempts to portray Mr. Lischewski as a greedy villain.

10 In letter after letter, Chris Lischewski is described as "a trustworthy friend, loving and  
11 considerate husband, strong and principled father and 'Uncle Chris' to his friend's daughters."<sup>3</sup>  
12 He is "consistently honorable."<sup>4</sup> He has a "strong moral character,"<sup>5</sup> a "loving heart, and [has  
13 made] outstanding contributions to his community."<sup>6</sup> Chris has been "a very earnest mentor, a  
14 straightforward manager, and an advisor with exceptional vision."<sup>7</sup> "Chris's ability to connect  
15 with people, along with his humble empathetic nature, has earned him great respect as a trusted  
16 community leader and mentor."<sup>8</sup> "Chris shows up in times of crisis or need."<sup>9</sup> He is "the best  
17 friend a person could ask for."<sup>10</sup> He is "a builder and motivator."<sup>11</sup> "[A] leader and contributor  
18 in everything he does."<sup>12</sup> A "man of character."<sup>13</sup> "[U]niquely warm, supportive, positive,

19 \_\_\_\_\_  
20 <sup>2</sup> Exh. 2-5 (Melvin).

21 <sup>3</sup> Exh. 2-8 (Foster).

22 <sup>4</sup> Exh. 2-35 (Humphreys).

23 <sup>5</sup> Exh. 2-23 (Horn).

24 <sup>6</sup> Exh. 2-9 (Pane).

25 <sup>7</sup> Exh. 2-44 (Cronk).

26 <sup>8</sup> Exh. 2-16 (Krahn).

27 <sup>9</sup> Exh. 2-5 (Melvin).

28 <sup>10</sup> Exh. 2-13 (Valencia).

<sup>11</sup> Exh. 2-7 (McIvor).

<sup>12</sup> Exh. 2-13 (Valencia).

<sup>13</sup> Exh. 2-11 (Vaktskiold).

1 energetic, and highly engaged.”<sup>14</sup> Chris is “selfless”<sup>15</sup> and “incredibly thoughtful and  
 2 generous.”<sup>16</sup> Chris “exemplifies [] personal selflessness.”<sup>17</sup> He is “the most inspirational person  
 3 I have ever worked with”<sup>18</sup> and “a transformational leader.”<sup>19</sup> “Chris has always been generous  
 4 and supportive, and a proponent of equality irrespective of background, creed or sex. He  
 5 rewarded honesty and hard work.”<sup>20</sup> He is “a good and fair man.”<sup>21</sup> “I’ve never met a guy that  
 6 works harder and more honestly than Chris.”<sup>22</sup> He is “honest, direct, reliable, honorable,  
 7 transparent, and responsible.”<sup>23</sup> By all accounts, the conduct for which Chris has been convicted  
 8 is a dramatic outlier, and not at all in line with the Chris that is well-known to his family, friends,  
 9 colleagues, and members of his community.

#### 10 **A. Mr. Lischewski’s Childhood and Family Background**

11 “Chris came from a very modest beginning.”<sup>24</sup> His parents were born in the small town  
 12 of Neidenburg in East Prussia, a region of Germany, in 1930. During World War II, Chris’s  
 13 parents were both forced to flee their homes with whatever they could carry as the Russians  
 14 approached. After the war, Chris’s father emigrated to Canada, where he learned that he could  
 15 become an American citizen by joining the U.S. military. So, he joined the U.S. Air Force,  
 16 trained as an electrician, and eventually became a U.S. citizen.<sup>25</sup>

17 While Chris’s father was visiting family in Germany, he ran into Chris’s mother, who he  
 18 had known from grade school. They had a whirlwind romance and Chris’s father convinced

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19 <sup>14</sup> Exh. 2-26 (Breitner).

20 <sup>15</sup> Exh. 2-27 (Gray).

21 <sup>16</sup> Exh. 2-16 (Krahn).

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24 <sup>19</sup> Exh. 2-16 (Krahn).

25 <sup>20</sup> Exh. 2-11 (Vaktskiold).

26 <sup>21</sup> Exh. 2-8 (Foster).

27 <sup>22</sup> Exh. 2-9 (Pane).

28 <sup>23</sup> Exh. 2-32 (Sylvester).

<sup>24</sup> Exh. 2-9 (Pane).

<sup>25</sup> Exh. 1 (Lischewski).

1 Chris's mother to move to the U.S. When they arrived in the U.S. in the 1950s, neither had  
 2 completed high school and they didn't have "a penny to their names."<sup>26</sup> Shortly thereafter,  
 3 Chris's sister was born in Dover, Delaware, and in 1960, Chris was born at the Air Force hospital  
 4 in Bitburg, Germany. Because Chris's mother was not yet an American citizen, Chris's birth  
 5 certificate lists his nationality as "stateless." Upon returning to the United States, Chris and his  
 6 mother became naturalized American citizens in 1966. Chris's parents "worked hard to become  
 7 excellent citizens and to raise their family in the traditions of their new home country."<sup>27</sup>

8 With Chris's father in the Air Force, the family moved frequently. Chris spent 12 of his  
 9 first 14 years on military bases in Germany. They lived in military housing, and "while [they]  
 10 didn't have much, [they] had enough." Chris describes their household as "tightknit but strict,"  
 11 with an emphasis on "school over everything else." Chris's parents wanted to make sure he and  
 12 his sister Cornelia "received an education that they never had the opportunity to obtain." Chris  
 13 and Cornelia both described their parents as hard workers, instilling in their children a strong  
 14 work ethic and stressing "honestly, responsibility and accountability."<sup>28</sup>

15 Chris's father retired from the Air Force in 1975 after 20 years of service. The family  
 16 moved to Las Vegas, and Chris's father began to study to become a high school shop teacher.  
 17 Then, tragically, just a year later, Chris's father had a heart attack and suddenly died. He was 45-  
 18 years-old. Chris was 15. At the time, Chris's "maternal grandparents also resided in their home,  
 19 and over an 18-month period, his grandfather, father and grandmother all passed away."<sup>29</sup>

20 Chris's family members and friends described how hard it was for Chris to lose his father,  
 21 at such a formative stage, just as Chris was preparing to enter high school. "[It] was a painful loss  
 22 for Chris. He was forced to grow up quickly and to become self-sufficient."<sup>30</sup> Chris "took over  
 23 the role of being the man of the house, caring for his Mother and Sister."<sup>31</sup> In Chris's own words,

24 <sup>26</sup> Exh. 2-2 (C. Lischewski).

25 <sup>27</sup> Exh. 2-5 (Melvin).

26 <sup>28</sup> Exh. 1 (Lischewski); Exh. 2-2 (C. Lischewski).

27 <sup>29</sup> Exh. 2-5 (Melvin).

28 <sup>30</sup> Exh. 2-8 (Foster).

<sup>31</sup> Exh. 2-43 (Mody).

1 “[m]y father’s death was a traumatic experience for our family. My mom, who was working as a  
2 nurse, continued on but her heart was broken and she never remarried.”<sup>32</sup>

3 In spite of this loss, and perhaps because Chris’s father had placed such emphasis on “the  
4 importance of education and hard work,”<sup>33</sup> Chris thrived in high school—both as a student and an  
5 athlete. His high school English instructor Dell Montoya described Chris as “curious, sensitive,  
6 open-minded, [and] highly-intelligent. . . . His engaging social skill-set and outgoing personality  
7 allowed him to thrive and distinguish himself quickly and proficiently.”<sup>34</sup> Similarly, Chris’s  
8 childhood friend Brad Foster described Chris as “hard-working, athletic, smart and respected.”<sup>35</sup>  
9 Brad wrote, “for me and Chris, growing up in a working class family, taking on summer jobs and  
10 playing sports in our neighborhood were some of the most important influences shaping our  
11 growth and development. Our experience with and appreciation for hard work, our parents’ focus  
12 and drive and our love of sports also shaped our sense of responsibility, competitiveness, and  
13 fairness. These were the foundations of our lives.”<sup>36</sup>

14 In 1978, Chris was in the first graduating class of Bonanza High School in Las Vegas.  
15 After graduation, Chris decided to explore the world outside of Las Vegas, so he enrolled at  
16 Tulane University in New Orleans. As Chris explained, “[a]t 17-years-old, I hugged my mom  
17 and got in my car for the 2,000-mile drive from Las Vegas to New Orleans.” At Tulane, Chris  
18 discovered that he had to work hard to keep up with students who had attended rigorous prep  
19 schools. He also discovered his interest in business, and in particular, finance and accounting.  
20 As a junior, Chris transferred to the University of Southern California, where he completed his  
21 undergraduate degree.

22 Throughout college, Chris struggled to pay for his education. His mother helped as much  
23 as she could, but Chris worked hard to support himself. As Chris explained, “[b]eginning after  
24

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25 <sup>32</sup> Exh. 1 (Lischewski)

26 <sup>33</sup> Exh. 1 (Lischewski)

27 <sup>34</sup> Exh. 2-10 (Montoya).

28 <sup>35</sup> Exh. 2-8 (Foster).

<sup>36</sup> *Id.*

1 my sophomore year of high school, and all through college, I spent my summers working in  
2 construction in Las Vegas. I got my first construction job by sitting down with the yellow pages  
3 and calling one construction company after another until I was granted an interview. That  
4 interview resulted in a job that started the same day. . . . Although my days were long, often  
5 starting at 4:00 am and ending at 4:00 pm, the money I earned paid for most of my college  
6 education.”<sup>37</sup>

7 **B. Mr. Lischewski’s Hard Work and Dedication to the Tuna Industry, including**  
8 **Sustainability**

9 After graduating from college, Chris worked for several years as an accountant and  
10 consultant, before joining StarKist in 1991. At StarKist, Chris led fish procurement and global  
11 operations, where he traveled around the world setting up tuna factories. To this day, Chris  
12 remains proud that those factories “provided more than 3,000 jobs in economies that desperately  
13 needed the employment.”<sup>38</sup>

14 In 1999, Chris joined Bumble Bee—which was then the only American-owned packaged  
15 seafood company—as President and CEO. It was a job that “defined [his] life,” and he was very  
16 good at it. He came to be known as “the guiding force in the world tuna industry.”<sup>39</sup> Under  
17 Chris’s leadership, Bumble Bee grew from a company on the brink of collapse into the nation’s  
18 largest branded seafood company. As Bumble Bee’s CEO, Chris had a wide range of  
19 responsibilities: government relations; sustainability efforts; trade policy; and factory operations.  
20 He effectively guided the company through several changes in ownership. Chris thrived in his  
21 job at Bumble Bee; as he describes it, he valued being “able to run a business, build a team,  
22 generate significant employment, create value for [] investors and provide a healthy, nutritious  
23 and low-cost food for millions of consumers.”

24 Through his work at Bumble Bee, Chris became interested in sustainability. He was  
25 dedicated to “establishing global policies to ensure the long-term sustainability of tuna resources

26 <sup>37</sup> Exh. 1 (Lischewski)

27 <sup>38</sup> *Id.*

28 <sup>39</sup> Exh. 2-46 (LaRosh).

1 while also generating significant employment and improved social conditions in the developing  
 2 economies where we operated.” In 2009, Chris and others founded the International Seafood  
 3 Sustainability Foundation (“ISSF”). “ISSF was built on the core belief that the private market  
 4 should play a leading role in promoting sustainable fishing by ensuring that the world’s tuna  
 5 processors only source tuna that is harvested sustainably.”<sup>40</sup> Chris also made significant  
 6 commitments to other sustainability initiatives, including through the National Fisheries Institute,  
 7 the Global Seafood Sustainability Initiative, and the Oceans Caucus Foundation, among many  
 8 others.

9 By all accounts, Chris was respected as a hard-working, thoughtful, and considerate  
 10 manager. He “[c]ared deeply about his people and his team,” “was inclusive and supportive,”<sup>41</sup>  
 11 “took great pride in [his employees’] individual achievements,”<sup>42</sup> and was an “articulate, friendly,  
 12 and an excellent manager.”<sup>43</sup> “He was always willing to roll up his sleeves and give his best  
 13 personal effort.”<sup>44</sup> Although the seafood industry can be male-dominated, Chris went out of his  
 14 way to encourage and support female leaders.<sup>45</sup> And when Chris visited Bumble Bee’s factories,  
 15 he “walked up and down the lines, he engaged with the hourly laborers, asking them about their  
 16 work and treating them with kindness, dignity, and honor. He made everyone he interacted with  
 17 feel they were a part of a family, not just an employee.”<sup>46</sup>

18 Former Bumble Bee employee David McIvor described Chris as “the most amazing  
 19 manager I have worked for in my 35 years working as a professional. . . . He always exhibited the  
 20 highest ethical standards and his moral compass points true north. I have never worked with any  
 21 one more talented or hardworking.”<sup>47</sup> Bumble Bee employee Bryan Hutcheson wrote, “I have

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22 <sup>40</sup> Exh. 2-30 (Pike).

23 <sup>41</sup> Exh. 2-37 (Stites).

24 <sup>42</sup> Exh. 2-26 (Breitner).

25 <sup>43</sup> Exh. 2-31 (Perekslis).

26 <sup>44</sup> *Id.*

27 <sup>45</sup> Exh. 2-37 (Stites).

28 <sup>46</sup> Exh. 2-31 (Perekslis).

<sup>47</sup> Exh. 2-7 (McIvor).

1 always known Chris to be trustworthy and dependable. . . . He is fair in his professional  
 2 approach, he listens and allows for different opinions to be expressed.”<sup>48</sup> Bumble Bee employee  
 3 Teresa Karp noted that the “employee turnover under Chris was extremely low, which was a  
 4 direct reflection of his leadership, knowledge, and kind heart.”<sup>49</sup> Chris’s longtime assistant Patty  
 5 Chavez observed firsthand how much Chris cared about his employees; once, “we had a tragedy  
 6 at one of our plants in Georgia where one of our employees passed away. She was a single mom  
 7 and her family had very limited funds. Chris paid for the employee’s funeral and offered to help  
 8 her family with whatever they needed.”<sup>50</sup>

9 Many of Chris’s supporters noted Chris’s dedication to mentorship. Cameron Breitner  
 10 wrote about meeting Chris when Cameron was a junior employee at a firm that invested in  
 11 Bumble Bee. “Despite my youth and junior title, Chris recognized me as someone he believed in.  
 12 . . . It can be a life-changing experience to find a person who inspires you to have confidence in  
 13 yourself and to strive to accomplish great things. Chris was this person for me . . . . My  
 14 experience with Chris made me a better person and a better mentor. I try to emulate his example  
 15 of generosity by investing my time in talented people, regardless of their age or title, or whether  
 16 there is anything ‘in it for me.’” Another friend, David McIvor, wrote, “One of the [] things that  
 17 impressed me is that [Chris] has a policy of offering internships to any college kids who have an  
 18 interest in advancing themselves. One of the students that interned with Bumble Bee . . . went on  
 19 to graduate from Oxford with a degree in sustainability and currently works with an organization  
 20 that helps companies implement and comply with best sustainability practices.”<sup>51</sup> And Chris’s  
 21 assistant Patty noted, “I can’t tell you how many Bumble Bee employees and industry partners  
 22 benefitted from Chris’s generosity. Many of our employee’s children did their required college  
 23 internships at Bumble Bee.”<sup>52</sup>

24  
 25 <sup>48</sup> Exh. 2-24 (Hutcheson).

26 <sup>49</sup> Exh. 2-25 (Karp).

27 <sup>50</sup> Exh. 2-22 (Chavez).

28 <sup>51</sup> Exh. 2-7 (McIvor).

<sup>52</sup> Exh. 2-22 (Chavez).

1 Chris’s enthusiasm as a mentor extends to his family members, as well. His nephew Tim  
 2 de Vrijer described Chris as a “supportive, loving mentor and guide.”<sup>53</sup> Tim wrote, “Uncle Chris  
 3 taught me the importance of good values and hard work. He gave me positive, purposeful  
 4 direction about how to be a responsible citizen, employee, and adult.”<sup>54</sup> Tim also talked about  
 5 Chris’s mentorship in business. “During every lesson, Uncle Chris emphasized ethics and  
 6 morals. He told me that business relationships are based on trust. He told me to treat other  
 7 people with respect and never cut corners.”<sup>55</sup>

### 8 C. Mr. Lischewski as a Husband and Father

9 While working at Bumble Bee, Chris met his wife Louise, who was also working in the  
 10 seafood industry. In 2005, Louise moved from Vancouver to San Diego to be with Chris, and in  
 11 2007, when Chris was 47, their son Raithe was born. Chris and Louise have a kind, loving and  
 12 respectful marriage, and he is a tremendously dedicated husband and father—including his 13-  
 13 year-old son Raithe in nearly all of his activities. “Chris has always been clear that his family is  
 14 his number one priority”<sup>56</sup>; it is obvious to all that Raithe has “captured Chris’s heart.”<sup>57</sup> Indeed,  
 15 dozens of Chris’s family and friends wrote about Chris’s dedication to Louise and Raithe. One  
 16 friend wrote, “I can confirm what I’m sure you will hear from many others; Chris is a great,  
 17 caring and loving husband/father to Louise and their young son Raithe. Chris relishes his time  
 18 with his family.”<sup>58</sup> Another noted, “Chris’[s] love for, and dedication to his son Raithe is obvious  
 19 to all of his friends.”<sup>59</sup> And a friend told this story: “Once, during Chris’s National Sales  
 20 Meeting presentation, Raithe’s babysitter called. Chris answered his cell phone from the podium,  
 21 knowing it was regarding Raithe. . . . This was a beautiful example to all the young parents in the  
 22

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23 <sup>53</sup> Exh. 2-3 (T. DeVrijer).

24 <sup>54</sup> *Id.*

25 <sup>55</sup> *Id.*

26 <sup>56</sup> Exh. 2-41 (Travers).

27 <sup>57</sup> Exh. 2-25 (Karp).

28 <sup>58</sup> Exh. 2-12 (Altman).

<sup>59</sup> Exh. 2-23 (Horn).



1 audience.”<sup>60</sup> Another friend, with whom Chris plays soccer, wrote about Raithe joining their  
 2 adult soccer games. “It is very refreshing to witness the father-son competition within the game  
 3 and the special bond they enjoy.”<sup>61</sup>

4 Chris’s sister Cornelia observed that Chris “raised Raithe to be loving and kind to his  
 5 grandmother who during her last years, after having a stroke, could be quite difficult.”<sup>62</sup> Chris’s  
 6 friend Brad Foster shared how Chris and Louise have “taught Raithe to stand up for those who  
 7 could not do so for themselves.”<sup>63</sup> Brad recalled an afternoon during which his daughter Halle  
 8 and Raithe were playing outside on a beach. “When one of the adult bar patrons tried to force  
 9 Halle away and take over the beach game, it was Raithe, at 4 feet, 2 inches tall, that jumped in  
 10 between the man and my daughter and told him to ‘Go away, we’re playing this game!’ Raithe  
 11 might have been the underdog, but he was not going to back down.”<sup>64</sup>

12 Louise described Chris’s devotion to setting a good example for Raithe, including by  
 13 teaching him “that hard work and resilience are needed to make communities stronger and united;  
 14 the power of kindness can change lives; and that being a team player is more important than  
 15 individual victory.”<sup>65</sup> She noted how hard this criminal case has been for Chris because he hasn’t  
 16 been able to protect Raithe from the pain that it’s caused: “Raithe wanted to write a letter to you  
 17 in defense of his Dad. Chris asked him to leave the challenge of that to others. He didn’t want  
 18 his son to bear such a burden on his young shoulders.”<sup>66</sup>

19 **D. Mr. Lischewski’s Compassion and Generosity**

20 The letters submitted on Chris’s behalf paint a picture of a man who is dedicated to his  
 21 community and always ready to help a friend in need. Several friends and family members wrote  
 22

23 <sup>60</sup> Exh. 2-25 (Karp).

24 <sup>61</sup> Exh. 2-40 (Travino).

25 <sup>62</sup> Exh. 2-2 (C. Lischewski).

26 <sup>63</sup> Exh. 2-8 (Foster).

27 <sup>64</sup> *Id.*

28 <sup>65</sup> Exh. 2-1. (L. Lischewski)

<sup>66</sup> *Id.*

1 of conversations with Chris that changed the course of their lives.<sup>67</sup>

2 Chris's brother-in-law, Steven Reid, wrote a touching handwritten letter explaining that  
3 Chris was there to support him in Steven's darkest days when he "needed it most."<sup>68</sup> Because of  
4 Chris's love and support, Steven's "whole life changed completely." In Steven's own words,  
5 "[Chris] managed to give me the reason to want to live and he has never asked any questions  
6 about my past. His only desire was to show me enough mercy that I could see I had a place in  
7 this world and that I was needed." Longtime friend David McIvor wrote about one memorable  
8 call with Chris: "When I was at the lowest point in my life in late 2006, losing my business,  
9 getting divorced, having had a daughter assaulted, I was considering ending my life. Chris  
10 coincidentally called to ask my advice about fatherhood [and] asked me to be the Godfather to his  
11 soon to be son, Raithe. . . . From that call, I decided to seek help. During counseling I was asked  
12 to list what it was I valued most. My reply: family and my friendship with Chris and Louise."<sup>69</sup>  
13 Chris's niece Lillian described a visit with her Uncle Chris, soon after she had graduated from  
14 college: "I was confused and scared about what to do next with my life. . . . Chris patiently  
15 listened . . . to the things I was confused about and what I was scared of. After I finished, I  
16 remember he took a moment to consider what I had said and then went on to say that he was not  
17 worried about me. He said that what he had seen in me as a child and as a young adult gave him  
18 the faith to know that I would be fine. . . . This conversation . . . has always stayed with me and I  
19 still refer back to it when I am feeling confused about next steps. . . . Uncle Chris's faith in me  
20 allowed me to have even more faith in myself."<sup>70</sup> And Chris's friend Jen Long expressed that  
21 Chris had "singlehandedly transformed [her] life" by encouraging her to advocate for herself and  
22 to believe in her abilities.<sup>71</sup>

23  
24 <sup>67</sup> Exh. 2-42 (Vaden) ("Chris's generosity has helped individuals regain optimism in their lives  
25 that previously felt extinguished. He doesn't do it for attention or the pat on the back. He  
generally cares.").

26 <sup>68</sup> Exh. 2-6 (Reid).

27 <sup>69</sup> Exh. 2-7 (McIvor).

28 <sup>70</sup> Exh. 2-4 (L. DeVrijer).

<sup>71</sup> Exh. 2-28 (Long).

1 Other friends wrote of Chris’s generosity and kindness, in particular during trying times.  
 2 Jake Williams wrote about Chris’s support when Jake was leaving the Navy. Chris recommended  
 3 that Jake consider the University of Southern California’s Master of Business for Veteran’s  
 4 program, and then Chris went above and beyond by offering to cover the cost of tuition beyond  
 5 what the Navy would pay.<sup>72</sup> Jake wrote, “No one had ever made me such a generous offer, with  
 6 no agenda or strings attached.”<sup>73</sup> When Jake later asked Chris how to repay him, Chris  
 7 responded, ““Pay it forward, when you make it big one day you’ll do the same.””<sup>74</sup> Another  
 8 friend, Jeff Strauss, talked about the stress he felt when a fire broke out at his restaurant the day  
 9 before Thanksgiving. “Chris was the first to arrive to offer his support. He showed up for me  
 10 and for the staff in a moment of crisis. We all remember [] how much that meant to us.”<sup>75</sup> Many  
 11 others chimed in with similar stories—Chris stepping in with a caring word, a much-needed  
 12 donation or a helping hand.<sup>76</sup>

13 Chris has also worked hard for the greater San Diego community, and in particular he has  
 14 made significant contributions to support the youth of San Diego—by helping to develop a youth  
 15 soccer club<sup>77</sup>, by volunteering for Big Brothers Big Sisters of San Diego (BBBS), and by  
 16  
 17  
 18  
 19

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20 <sup>72</sup> Exh. 2-15 (Williams).

21 <sup>73</sup> *Id.*

22 <sup>74</sup> *Id.*

23 <sup>75</sup> Exh. 2-18 (Strauss).

24 <sup>76</sup> *See, e.g.*, Exh. 2-19 (Svoboda); Exh. 2-30 (Pike) (“When my wife had a terrible fall and brain  
 25 injury, Chris was one of the first to call and offer aid.”); Exh. 2-39 (Howell) (“I could always  
 26 count on Chris to help me analyze the situation or give me support and encouragement.”); Exh. 2-  
 27 41 (Travers) (“Some of our players are also coaches of young children and Chris is always  
 28 willing to assist financially when their team needs help with new uniforms or league fees.”); Exh.  
 2-42 (Vaden) (“[Chris’s] willingness to lend an ear listening to my plans, ideas and even struggles  
 always followed with sound advice and support. It is something I’m eternally grateful for and I  
 am a better man because of it.”); Exh. 2-46 (LaRosh) (Chris “was a major sponsor of [a]  
 tournament which [] supported abused women and children.”).

<sup>77</sup> Exh. 2-20 (Maurer); *see also* Exh. 2-21 (Marin); Exh. 2-40 (Travino).

1 working on behalf of La Jolla Country Day School, among others.<sup>78</sup> “Chris’s passion for . . .  
 2 mentoring San Diego youth” is recognized as an example of his “extraordinary humanitarian  
 3 values.”<sup>79</sup> Rick Valencia, a BBBS board member, wrote, “What initially impressed me the most  
 4 about Chris was how he rolled up his sleeves and got involved in the organizational details. . . .  
 5 It is rare that a major CEO would join a local chapter of a non-profit organization instead of  
 6 delegating it to someone on his team. It is even more rare for a [] CEO to dig in and do the heavy  
 7 lifting of an average board member the way Chris did.”<sup>80</sup> Tina Rose described the workplace-  
 8 mentoring program which Chris developed, “Beyond School Walls,” which allows students to  
 9 build relationships with mentors in professional environments.<sup>81</sup> And longtime friend Steve  
 10 Altman wrote, “Chris is a philanthropic leader in our community and was instrumental in the  
 11 success of [BBBS]. For many years, Chris has set an example in San Diego . . . by contributing  
 12 his personal time and effort.”<sup>82</sup> Chris’s dedication, both personally and on behalf of Bumble Bee,  
 13 has been a motivator to others, setting an example for other San Diego companies.<sup>83</sup>

14  
 15  
 16  
 17  
 18  
 19  
 20 <sup>78</sup> Numerous friends wrote of Chris’s willingness to support others’ passions and organizations.  
 21 Chris’s high school English instructor Dell Montoya told how Chris helped him to “form a  
 22 consortium to develop and finance a secondary school based on my educational premise and  
 23 theory that all things are interrelated.” Exh. 2-10 (Montoya). Michael Horn talked about Chris’s  
 24 support of Mama’s Kitchen, a community organization in San Diego to support people with  
 serious illnesses who are in need of food and nutrition. Exh. 2-23 (Horn). Jiri Svoboda, a  
 professor of music at San Diego Mesa College, wrote of Chris’s contributions to the college’s  
 Recital Hours, a free venue for students and community members to experience live music on a  
 weekly basis. Exh. 2-19 (Svoboda).

25 <sup>79</sup> Exh. 2-25 (Karp).

26 <sup>80</sup> Exh. 2-13 (Valencia)

27 <sup>81</sup> Exh. 2-14 (Rose).

28 <sup>82</sup> Exh. 2-12 (Altman).

<sup>83</sup> Exh. 2-14 (Rose).

1           **E.     Mr. Lischewski’s Unwavering Commitment to his Mother**<sup>84</sup>

2           Finally, it is worth pausing on Chris’s close relationship with and dedication to his  
3 mother. Through the hardship of being newcomers to the United States, struggling to support  
4 themselves financially, and losing Chris’s father so suddenly, Chris and his mother formed a  
5 particularly strong bond, which continued until the day she died, in November 2018. Chris’s  
6 sister Cornelia described Chris as “the kind of son that any parent could ever want.” Cornelia  
7 wrote: “He not only cared for our mother financially, but also with his time, patience and his  
8 loving attentions. . . . His care of our mother was not just a duty, but it was based on the love and  
9 the sense of care he felt towards her.”<sup>85</sup> As Chris’s mother grew older, Chris traveled to Las  
10 Vegas, helped his mother pack up her belongings, and moved her to a house near Chris’s in San  
11 Diego. “Every Sunday [Chris took] our mother, plus his family, out to dinner at her favorite  
12 restaurant. He and Louise, his wife, always made sure our mother had the care and medical  
13 treatment she needed.”<sup>86</sup> As a result, “[o]ur mother trusted and totally relied, and was able to  
14 totally rely, on Chris.”<sup>87</sup> “Chris’s patience and the love he felt for our mother was evident to all. .  
15 . . Even towards the end of her life, his care and love for her never wavered.”<sup>88</sup>

16           In the letters submitted to this Court, numerous commented on Chris’s obvious dedication  
17 to his mother. Chris’s cousin noted, “[t]o his Canadian family, [Chris] is described as the ‘son  
18 that every mother wishes she had’ and he earned that title by spending countless nights in hospital  
19

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20 <sup>84</sup> While this section focuses on Chris’s relationship with his mother, Chris has a close  
21 relationship with many of his relatives. Indeed, Louise wrote of Chris’s dedication to members of  
22 Louise’s family: “When my mother was diagnosed with stage four cancer at the age of 60, Chris  
23 worked tirelessly to ensure that she had access to quality health care that was not available in  
24 Canada. When my mother passed away, Chris showered her funeral in flowers. He knew she  
25 loved flowers, and that her family could not afford them.” Similarly, Louise commented on the  
26 support Chris had showed to her brother Steven, expressing that “Chris is personally responsible  
27 for the life that Steven breathes today.” When Chris met Steven, he was “homeless, country-less,  
28 addicted to drugs and suicidal all of his adult life. . . . Many in society step over people like my  
brother. Chris reached out to Steven to raise him up. Chris continues to counsel my brother so  
that he can feel accomplished as a contributing member of society.” Exh. 2-1 (L. Lischewski).

<sup>85</sup> Exh. 2-2 (C. Lischewski).

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

1 at his mother’s bedside while she recovered from a serious illness.”<sup>89</sup> Chris’s longtime friend  
 2 Bob Pane wrote, “Chris and I are the same type of son. We both loved spending time with our  
 3 mothers and were there when they needed us. . . . The way a son treats his mother says a lot  
 4 about a man. Chris was a devoted son who deeply cherished his mother.”<sup>90</sup> Friend Steve  
 5 Altman shared how much he personally learned “observing Chris as he helped support and  
 6 provide for his elderly Mother over the years. . . . [Chris] not only made sure that she had the  
 7 necessary help, but he visited her often and called her frequently. . . . Having talked with Chris  
 8 and having observed him care for his Mother (and also do the difficult but necessary things to  
 9 help her be comfortable) until her fairly recent passing has helped me immensely and has made  
 10 me a better son to my parents.”<sup>91</sup> And Chris’s wife Louise recalled that “[w]hen [Chris’s mother]  
 11 took her final breath in November 2018, [Chris] was there holding her hand. Chris stayed there  
 12 with her alone in his thoughts for several hours after she passed away, not wanting to leave her  
 13 alone until she was taken to her final resting place.”<sup>92</sup> For Chris, losing his mother in the midst  
 14 of this criminal case caused him significant anguish and regret.

### 15 **III. THE COURT SHOULD SENTENCE MR. LISCHEWSKI TO A SENTENCE OF** 16 **NO MORE THAN 12 MONTHS’ HOME CONFINEMENT**

#### 17 **A. Legal Standard**

18 Pursuant to 18 U.S.C. § 3553, a district court must strive to “impose a sentence sufficient,  
 19 but not greater than necessary” to reflect the seriousness of the offense, promote respect for the  
 20 law, and provide just punishment. *See United States v. Carty*, 520 F.3d 984, 991 (9th Cir. 2008)  
 21 (en banc) (citing 18 U.S.C. § 3553(a)). The Supreme Court has described this parsimony  
 22 provision as the statute’s “overarching” principle. *Kimbrough v. United States*, 552 U.S. 85, 101  
 23 (2007).

24 The Supreme Court has further directed that a sentencing judge should consider “every

25 <sup>89</sup> Exh. 2-5 (Melvin); *see also* Exh. 2-43 (Mody) (“Chris was always the most loving and  
 26 dedicated son to his Mother. . . . Every parent would want a son like Chris.”).

27 <sup>90</sup> Exh. 2-9 (Pane).

28 <sup>91</sup> Exh. 2-12 (Altman).

<sup>92</sup> Exh. 2-1 (L. Lischewski).

1 convicted person as an individual and every case as a unique study in the human failings that  
 2 sometimes mitigate, sometimes magnify, the . . . punishment to ensue.” *Pepper v. United States*,  
 3 562 U.S. 476, 487 (2011). In this individualized context, the Guidelines are but one sentencing  
 4 factor among many that courts must consider, and the court may not “presume that a sentence  
 5 within the applicable Guidelines range is reasonable.” *Nelson v. United States*, 555 U.S. 350, 352  
 6 (2009).

7 In particular, a court must look to: (1) the history and characteristics of the defendant,  
 8 including any criminal record (or lack thereof); (2) the need to provide just punishment for the  
 9 offense; (3) the nature and circumstances of the offense; (4) the need to avoid unwarranted  
 10 sentencing disparities; (5) the importance of affording adequate deterrence to criminal conduct;  
 11 and (6) the need to protect the public from further crimes. *Pepper*, 562 U.S. at 491; *Carty*, 520  
 12 F.3d at 991. Here, these factors all support the imposition of a sentence of no more than 12  
 13 months of home confinement.

## 14 **B. The 3553(a) Factors Warrant a Sentence Well Below the Advisory Guidelines**

### 15 **1. History and Characteristics of the Defendant**

16 In directing courts to consider the personal history and characteristics of a defendant as a  
 17 necessary sentencing factor,<sup>93</sup> Congress plainly intended the “elementary principle of weighing  
 18 the good with the bad, which is basic to all the great religions, moral philosophies, and systems of  
 19 justice.” *United States v. Adelson*, 441 F. Supp. 2d 506, 514 (S.D.N.Y. 2006), *aff’d*, 301 F.  
 20 App’x 93 (2nd Cir. 2008). The letters to the Court submitted by Mr. Lischewski’s family,  
 21 friends, colleagues, and fellow community members reveal a nearly universal theme: Mr.  
 22 Lischewski is a hardworking, thoughtful, and compassionate man.<sup>94</sup> Mr. Lischewski gives  
 23

24 <sup>93</sup> The Probation Department refused to give any weight to Mr. Lischewski’s personal history and  
 25 characteristics. PSR ¶ 85.

26 <sup>94</sup> The sentiments expressed in the letters submitted to this Court echo the trial testimony of  
 27 Wayne Kay, the former Chief Executive Officer of Big Brothers Big Sisters of San Diego  
 28 County, who spoke of Mr. Lischewski’s dedication to that organization. Mr. Kay described Mr.  
 Lischewski as having “an impeccable reputation” and “[h]onest in every way.” Trial Tr. at  
 2623:13-25. Even the government’s first witness, Jeffrey Chang, testified about Mr.  
 Lischewski’s good character and reputation. Trial Tr. at 406:23-410:13.

1 generously—to family members, friends, employees, and charities who need support, time, and  
2 assistance. In spite of his professional commitments, Chris has long been active in his  
3 community and has demonstrated a true dedication to giving back. As Chris’s niece Lillian  
4 described, Chris has “unwavering focus, an amazing work ethic and he [is] always a fair and  
5 honest person.”<sup>95</sup>

6 Mr. Lischewski’s deep devotion to his family—including to his wife, son, brother-in-law,  
7 and mother—also bears on the Court’s determination of a sentence. *See, e.g., United States v.*  
8 *Ameline*, 409 F.3d 1073, 1112, n.21 (9th Cir. 2005). And Mr. Lischewski’s lack of any prior  
9 criminal history highlights the fact that this conviction is completely out of character for Mr.  
10 Lischewski. The letters before this Court universally attest to that. Mr. Lischewski has never  
11 before been arrested for any crime, let alone convicted of one. As the son an immigrant mother  
12 widowed at a young age, Chris worked construction jobs in sweltering heat to put himself through  
13 college and graduate school, and has since been consistently and honestly employed in positions  
14 of increasing responsibility and stature throughout his entire life. Due to his lack of criminal  
15 history, Mr. Lischewski is classified with a Criminal History Category of I. But when a  
16 defendant has no criminal record whatsoever, even this low Criminal History Category can lead  
17 to an overly high guideline range since defendants with minor criminal histories can receive  
18 identical categorizations. Accordingly, the Ninth Circuit has held that where, as here, a defendant  
19 has a “complete lack of criminal history,” the court may consider that history “as a mitigating  
20 factor” in support of a downward variance. *United States v. Autery*, 555 F.3d 864, 874 (9th Cir.  
21 2009).

22 If the letters from Mr. Lischewski’s family, friends, and colleagues demonstrate anything,  
23 it is that his “personal history and characteristics starkly contrast with the nature and  
24 circumstances of” this crime. *United States v. Gupta*, 904 F. Supp. 2d 349, 353 (S.D.N.Y. 2012),  
25 *aff’d*, 747 F.3d 111 (2nd Cir. 2014). Mr. Lischewski’s strong family and community support, his  
26 unflagging work ethic, and the admirable trajectory of his life all counsel in favor of a sentence of

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27  
28 <sup>95</sup> Exh. 2-4 (L. DeVrijer).



1 no more than 12 months' home confinement.

## 2 **2. Just Punishment**

3 Section 3553(a) also instructs courts to consider “the need for the sentence . . . to provide  
4 just punishment.” 18 U.S.C. § 3553(a)(2)(A). In deciding upon a sentence that is sufficient but  
5 not greater than necessary, the Court should consider the extent to which Mr. Lischewski has  
6 already suffered as a result of the indictment, trial, and verdict, as well as the extent to which Mr.  
7 Lischewski faces additional punishment in other proceedings.

8 First, the very fact of Mr. Lischewski's indictment and the jury's verdict have been deeply  
9 humiliating and damaging for Mr. Lischewski and have imposed on him, his family, and his  
10 friends a public shaming. Although many of Mr. Lischewski's friends and family have  
11 steadfastly remained by his side and lent him support during this challenging time—as  
12 demonstrated by the dozens of letters of support submitted to this Court—this investigation and  
13 trial have caused Mr. Lischewski great anguish and emotional pain. This case has been followed  
14 closely by the media, and Mr. Lischewski has been the subject of numerous unflattering news  
15 stories in major news publications, including the Los Angeles Times, CNN, and Bloomberg, as  
16 well as trade publications that are followed and read by Mr. Lischewski's colleagues. For  
17 someone deeply proud of his professional accomplishments, seeing his face on CNN under a  
18 headline about the jury's verdict has been punishment in itself. *See United States v. Vigil*, 476 F.  
19 Supp. 2d 1231, 1315 (D.N.M. 2007) (accounting for the “incalculable damage to [the  
20 defendant's] personal and professional reputation as a result of tremendous media coverage of his  
21 case and the case against his co-conspirators” as a collateral consequence for the purposes of  
22 “fashioning a just sentence”).

23 Second, Mr. Lischewski has suffered severe and lasting professional consequences as a  
24 result of this investigation and case. He was forced to step down from his position as President  
25 and CEO of Bumble Bee, a company that he believed in and cared about, and he was ultimately  
26 terminated. He has been completely shunned by many of his colleagues, both inside and outside  
27 of Bumble Bee. Mr. Lischewski was a highly respected industry leader and a champion of global  
28 sustainability. His nearly twenty years at the helm of Bumble Bee was his life's work and one of

1 his greatest accomplishments. To have all of that evaporate as a result of this case has been  
2 shattering. Further, Mr. Lischewski will likely never be able to return to the packaged seafood  
3 industry, and to the sustainability efforts that were a focus of his life. He is unlikely to ever again  
4 have the opportunity to run a company anything like Bumble Bee, even though it was a job in  
5 which he thrived and excelled, and one that he loved.

6 Third, Mr. Lischewski remains a defendant in a massive civil multi-district litigation  
7 (MDL) currently pending in the Southern District of California, before Judge Sammartino, in  
8 which plaintiffs are seeking millions of dollars in damages from Mr. Lischewski and Bumble  
9 Bee, among others. A civil plaintiff has already filed a motion to lift the stay of discovery against  
10 Mr. Lischewski, so that it can proceed with its claims against him. Mr. Lischewski is the only  
11 individual defendant in that lawsuit (and in the MDL, generally).

12 Fourth, the carnage caused by this criminal investigation has had devastating financial  
13 effects on Mr. Lischewski and his family. Bumble Bee filed for bankruptcy and has sold its key  
14 assets to a Taiwanese company. It has wrongfully abandoned all of its advancement and  
15 indemnity obligations to Mr. Lischewski, including its duty to advance funds for his defense in  
16 the civil and criminal cases. Mr. Lischewski's personal investment in the company of over \$8  
17 million, is now worthless. He has sold his home. He has liquidated many of his personal assets.  
18 He no longer has an income and fears he may never again be able to be gainfully employed or to  
19 serve his community.

20 The impact of this case on Mr. Lischewski and his family already has been far-reaching  
21 and severe. These significant additional forms of punishment counsel in favor of a humane  
22 sentence.

### 23 **3. Circumstances of the Offense**

24 Under Section 3553(a), a sentencing judge must also consider "the seriousness of the  
25 offense," as well as the "nature and circumstances" surrounding that offense. 18 U.S.C.  
26 § 3553(a)(1)-(2)(A). The Guidelines are meant to advise courts on sentencing for only a  
27 "heartland" of cases: the "set of typical cases embodying the conduct that each guideline  
28 describes." *Koon v. United States*, 518 U.S. 81, 93 (1996). Where, as here, a court is faced with

1 an atypical case outside of that “heartland,” it should consider an appropriate variance from the  
2 Guidelines.

3 The evidence introduced at trial showed that this was not the typical price-fixing case.  
4 Indeed, throughout the course of the month-long trial, the government offered no evidence  
5 establishing that Bumble Bee’s prices were ever affected by any agreements with competitors.  
6 Indeed, the prosecutors specifically eschewed offering any proof on that topic, repeatedly  
7 claiming it was not necessary. During the conspiracy period, Bumble Bee was operating in a  
8 highly competitive industry, in an era of unprecedented cost inflation, and where one of the three  
9 major tuna companies was engaged in predatory, below-cost pricing that posed a threat to the  
10 entire industry. Despite these circumstances, the government presented no evidence that a single  
11 sale of canned tuna occurred at a fixed price. It presented no evidence that the price-fixing  
12 conspiracy had any impact on the sale of canned tuna. And it presented no evidence that any  
13 customer was harmed by the price-fixing.

14 Mr. Cameron and Mr. Worsham testified that they agreed with competitors to fix list  
15 prices, but the evidence incontrovertibly showed that customers do not pay list prices.<sup>96</sup> The  
16 government also alleged that Mr. Cameron and Mr. Worsham reached an agreement to  
17 discontinue 10/\$10 promotions on albacore, but the documentary evidence presented at trial made  
18 clear that 10/\$10 promotions continued throughout the conspiracy period, including after the  
19 companies purportedly agreed to end them.<sup>97</sup> Moreover, to the extent Mr. Lischewski’s  
20 subordinates reached any agreements with competitors, those agreements simply confirmed  
21 pricing actions that Mr. Worsham and Mr. Hodge—two of the government’s key cooperating  
22 witnesses—described as “inevitable” and that the companies had “no choice” but to take.<sup>98</sup>  
23 These circumstances are far outside the “heartland” of price-fixing cases and the Court should  
24 consider a downward variance from the Guidelines accordingly. Indeed, as the Probation Officer

25  
26 <sup>96</sup> See TX 2665.

27 <sup>97</sup> See TX 2732, 2736, 2740; Trial Tr. 2527:23-2529:1 (Levinsohn).

28 <sup>98</sup> Trial Tr. at 1840:10–12 (Worsham); *id.* at 1467:14–1468:4 (Hodge); *see also id.* at 1422:15–23 (Hodge).

1 agreed, the advisory Guidelines range is distorted by the artificial “volume of commerce” number  
2 and needs to be adjusted substantially on that ground alone.<sup>99</sup>

#### 3 4. Need to Avoid Unwarranted Sentence Disparities

4 Section 3553(a)(6) directs sentencing courts to consider “the need to avoid unwarranted  
5 sentence disparities among defendants with similar records who have been found guilty of similar  
6 conduct.” 18 U.S.C. § 3553(a)(6); *United States v. Saeteurn*, 504 F.3d 1175, 1181 (9th Cir. 2007)  
7 (“Congress’s primary goal in enacting § 3553(a)(6) was to promote national uniformity in  
8 sentencing.”) (citations omitted). This factor relates to both the sentences imposed on Mr.  
9 Lischewski’s purported co-conspirators as well as others convicted of price fixing in the past.  
10 Accordingly, the Court should consider the fact that, although the government alleged a multi-  
11 year conspiracy involving at least sixteen co-conspirators, Mr. Lischewski is the *only person* who  
12 faced trial, and one of only four individual co-conspirators who were indicted.

13 The Court must avoid any significant disparity in the sentences between Mr. Lischewski  
14 and the defendants who pled guilty—Mr. Cameron, Mr. Hodge, and Mr. Worsham—that would  
15 unconstitutionally punish Mr. Lischewski for exercising his right to trial. The Ninth Circuit has  
16 long recognized that a court may not punish a defendant for exercising this constitutional right.  
17 *See United States v. Stockwell*, 472 F.2d 1186, 1187 (9th Cir. 1973). A disparity in the sentences  
18 of co-conspirators, with those pleading guilty receiving more lenient sentences, can amount to the  
19 unconstitutional punishment of a defendant who exercises his right to a trial. *United States v.*  
20 *Capriola*, 537 F.2d 319, 320-21 (9th Cir. 1976) (a disparity in the sentences of co-conspirators,  
21 with those pleading guilty receiving more lenient sentences, may amount to the unconstitutional  
22 punishment of a defendant who insists on a trial); *see also United States v. Medina-Cervantes*,  
23 690 F.2d 715, 716 (9th Cir. 1982) (vacating sentence where trial record gave “rise to the inference  
24 that [defendant] was punished more severely because of his assertion of the right to trial by  
25 jury”); *United States v. Corona-Verbera*, 509 F.3d 1105, 1120 (9th Cir. 2007) (noting that the  
26 district court had imposed a sentence 76 months below the Guidelines range to account for the

27 <sup>99</sup> *See* Mr. Lischewski’s concurrently filed Objections to the Final Presentence Investigation  
28 Report at 3-11.

1 sentences given to co-conspirators, even though they, unlike the defendant, had pleaded guilty,  
2 accepted responsibility, and cooperated with the government). Indeed, as the Ninth Circuit has  
3 held, “[t]he need to avoid unwarranted sentencing disparities among codefendants involved in the  
4 same criminal activity has long been considered a legitimate sentencing concern.” *United States*  
5 *v. Ray*, 930 F.2d 1368, 1373 (9th Cir. 1990). This sort of disparity is “one of the most important  
6 evils the guidelines were intended to cure.” *Id.*

7 Although Mr. Cameron, Mr. Hodge, and Mr. Worsham have not yet been sentenced, the  
8 Government has stipulated to substantially lower Guidelines ranges for each of these individuals  
9 and they will likely seek non-custodial sentences. Additionally, Chicken of the Sea and its  
10 current and former employees, including Shue Wing Chan, have received total amnesty from the  
11 government and will not be prosecuted for the same conduct underlying the charges the brought  
12 against Mr. Lischewski. Given the fact that many other individuals in the packaged seafood  
13 industry engaged in price-fixing, including individuals who were much more culpable, and have  
14 never been—and never will be—prosecuted, let alone imprisoned, Mr. Lischewski should be  
15 given a non-custodial sentence to avoid unwarranted sentencing disparities.

16 The Court also must consider sentences imposed in other price-fixing cases. As the PSR  
17 itself recognized, this is *particularly* true in price-fixing cases where, as here, the Guidelines  
18 recommendations are skewed dramatically by the volume of commerce calculation.<sup>100</sup> A review  
19 of sentences in cases in which defendants were convicted at trial of Sherman Act violations, in  
20 this District and elsewhere, reveals that courts routinely vary significantly downward from the  
21 Guidelines in such cases. The following table collects representative sentences from these  
22 Sherman Act cases:

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28 <sup>100</sup> PSR ¶ 87.

**Sentences in N.D. Cal/E.D. Cal. Sherman Act Cases**

Case	Defendant	Guidelines Range Requested by Government	Guidelines Range Found by Court	Custodial Sentence
<i>United States v. Marr</i> , 4:14-cr-00580-PJH (N.D. Cal.)	Gregory Casorso	Offense level 19 (30–37 months) <sup>101</sup>	Offense level 15 (18–24 months) <sup>102</sup>	18 months <sup>103</sup>
	Javier Sanchez	Offense level 20 (33–41 months) <sup>104</sup>	Offense level 15 (18–24 months) <sup>105</sup>	21 months <sup>106</sup>
	Michael Marr	Offense level 23 (46–57 months) <sup>107</sup>	Offense level 19 (30–37 months) <sup>108</sup>	30 months <sup>109</sup>
<i>United States v. AU Optronics</i> , 3:09-cr-00110-	Shiu Lung Leung	Offense level 31 (108–135 months) <sup>110</sup>	Offense level 31 (108–135 months) <sup>111</sup>	24 months <sup>112</sup>
	Hui Hsiung	Offense level 32 (121–151 months) <sup>113</sup>	Offense level 32 (121–151 months) <sup>114</sup>	36 months <sup>115</sup>

<sup>101</sup> ECF 360 at 3, 22 (government’s sentencing memorandum).

<sup>102</sup> ECF 405 at 3:12-20 (sentencing transcript).

<sup>103</sup> ECF 377 (sentencing minute entry).

<sup>104</sup> ECF 358 at 5, 29 (government’s sentencing memorandum).

<sup>105</sup> ECF 404 at 39:15–21 (sentencing transcript).

<sup>106</sup> ECF 379 (sentencing minute entry).

<sup>107</sup> ECF 348 at 1–2, 31 (government’s sentencing memorandum).

<sup>108</sup> ECF 448 at 3:18–23 (sentencing transcript).

<sup>109</sup> ECF 437 (sentencing minute entry)

<sup>110</sup> ECF 1142 at 11–12 (government’s sentencing memorandum). To be clear, here, the government calculated Leung’s offense level at 31. *Id.* It then stated that, because the court had already sentenced Leung’s co-defendants (who were more culpable than Leung) to 36-month sentences, it did not believe that the court would agree that Leung’s offense level was 31, with a corresponding sentence of 108-135 months. *Id.* at 12 (“[T]he government respectfully disagrees that the enumerated factors supported the departures given to H.B. Chen and Hsiung, it recognizes that the resulting 36-month sentences will be viewed as a benchmark in setting Leung’s term of incarceration based on section 3553(a)(6).” *Id.* at 13. In light of those shorter sentences, the government asked that the court at least sentence Leung to an offense level of 19, with a term of incarceration of 30 months. *Id.* at 15–16.

<sup>111</sup> ECF 1155 at 5:12–18 (sentencing transcript).

<sup>112</sup> ECF 1147 (sentencing minute entry).

<sup>113</sup> ECF 948 at 1, 48–51 (government’s sentencing memorandum).

<sup>114</sup> ECF 963 at 11:21–12:19 (sentencing transcript).

<sup>115</sup> ECF 969 (sentencing minute entry).

Case	Defendant	Guidelines Range Requested by Government	Guidelines Range Found by Court	Custodial Sentence
SI (N.D. Cal.)	Hsuan Bin Chen	Offense level 32 (121–151 months) <sup>116</sup>	Offense level 32 (121–151 months) <sup>117</sup>	36 months <sup>118</sup>
<i>United States v. Florida</i> , 4:14-cr-00582-JD (N.D. Cal.)	John Lee Berry, III	Offense level 15 (18–24 months) <sup>119</sup>	Offense level 15 (18–24 months) <sup>120</sup>	10 months <sup>121</sup>
	Robert Rasheed	Offense level 20 (33–41 months) <sup>122</sup>	Offense level 17 (24–30 months) <sup>123</sup>	14 months <sup>124</sup>
	Refugio Diaz	Offense level 15, with criminal history (24–30 months) <sup>125</sup>	Offense level 13 with criminal history (18–24 months) <sup>126</sup>	8 months <sup>127</sup>
	Alvin Florida, Jr.	Offense level 21 (37–46 months) <sup>128</sup>	Offense level 21 (37–46 months) <sup>129</sup>	21 months <sup>130</sup>

<sup>116</sup> ECF 948 (government’s sentencing memorandum).

<sup>117</sup> ECF 963 at 11:21–12:19 (sentencing transcript).

<sup>118</sup> ECF 969 (sentencing minute entry).

<sup>119</sup> ECF 443 at 9–10, 16 (government’s sentencing memorandum).

<sup>120</sup> ECF 473 at 16:1–4 (sentencing transcript).

<sup>121</sup> ECF 456 (sentencing minute entry).

<sup>122</sup> ECF 443 at 9–10, 16 (government’s sentencing memorandum).

<sup>123</sup> ECF 472 at 33:5–8 (sentencing transcript).

<sup>124</sup> ECF 457 (sentencing minute entry).

<sup>125</sup> ECF 443 at 9–10, 16 (government’s sentencing memorandum).

<sup>126</sup> During the sentencing hearing in *Diaz*, Judge Donato initially ruled that the applicable offense level was 13, which translates to a Guidelines range of 18–24 months. ECF 474 at 12:9–13 (sentencing transcript). But just before imposing *Diaz*’s sentence, Judge Donato indicated that “the guidelines range [was] 24 to 30 months,” which is consistent with offense level 15. *Id.* at 15:22–24.

<sup>127</sup> ECF 458 (sentencing minute entry).

<sup>128</sup> ECF 491 at 8, 24 (government sentencing memorandum).

<sup>129</sup> ECF 504 at 16:5–11 (sentencing transcript)

<sup>130</sup> ECF 498 (sentencing minute entry).

Case	Defendant	Guidelines Range Requested by Government	Guidelines Range Found by Court	Custodial Sentence
<i>United States v. Chandler</i> , 2:11-cr-00511-WBS (E.D. Cal.)	Donald M. Parker	Offense level 20 (33–41 months) <sup>131</sup>	Offense level 15 (18–24 months) <sup>132</sup>	6 months <sup>133</sup>
	Andrew B. Katakis	Offense level 23 (46–57 months) <sup>134</sup>	Offense level 19 (30–37 months) <sup>135</sup>	10 months <sup>136</sup>
<i>United States v. Galloway</i> , 4:14-cr-0607 PJH (N.D. Cal.)	Thomas Joyce	Offense level 15 (18–24 months) <sup>137</sup>	Offense level 13 (12–18 months) <sup>138</sup>	12 months and 1 day <sup>139</sup>
	Glen Guillory	Offense level 17 (24–30 months) <sup>140</sup>	Offense level 15 (18–24 months) <sup>141</sup>	18 months <sup>142</sup>

In all of these price-fixing and bid-rigging cases, the court imposed a significantly below-guidelines sentence. In fact, the average custodial sentence was less than half of the low-end of the Guidelines range, and for the price-fixing sentences, that number drops to roughly a quarter of the low-end of the Guidelines. For example, in connection with the sentencing of top officials of AU Optronics Corp. (“AUO”) following guilty verdicts at trial, Judge Illston accepted the PSR’s volume-of-commerce calculation of \$2.34 billion.<sup>143</sup> That figure is more than 2.3 times larger than what the government even alleges here (and as set forth in Mr. Lischewski’s concurrently-

<sup>131</sup> ECF 687 at 4 (government sentencing memorandum)

<sup>132</sup> ECF 703 at 19:16–21 (sentencing transcript).

<sup>133</sup> ECF 719 at 2 (amended judgment as to Parker).

<sup>134</sup> ECF 662 at 1–2, 7–8, 25 (government sentencing memorandum).

<sup>135</sup> ECF 677 at 7:15–17 (sentencing transcript).

<sup>136</sup> ECF 664 at 2 (judgment as to Katakis).

<sup>137</sup> ECF 318 at 3 (government sentencing memorandum).

<sup>138</sup> ECF 328 at 32:13–16 (sentencing transcript).

<sup>139</sup> ECF 323 (sentencing minute entry).

<sup>140</sup> ECF 336 at 1, 3, 19 (government sentencing memorandum).

<sup>141</sup> ECF 350 at 14:15–17 (sentencing transcript).

<sup>142</sup> ECF 337 (sentencing minute entry).

<sup>143</sup> Notably, in the AU Optronics case, the government introduced substantial evidence, including the testimony of an expert witness, to substantiate its volume of commerce calculation. As this Court is aware, no such evidence was provided here.



1 filed Objections to the PSR, he vigorously contests the government’s volume of commerce  
2 figure). In AUO, primarily as a result of this large volume of commerce, the Guidelines  
3 recommended a prison sentence of 121 to 150 months for both AUO’s CEO (Hsuan Bin Chen)  
4 and president of its American division (Hui Hsiung). Because even the low-end of that range  
5 exceeded the statutory-maximum punishment under the Sherman Act, both the government and  
6 PSR recommended these two defendants receive 120-month sentences (i.e., the statutory  
7 maximum). The government described that case as “the largest, most egregious antitrust  
8 conspiracy that the Department of Justice has ever prosecuted.” *United States v. AU Optronics*  
9 *Corp.*, No. 09-cr-00110-SI, Dkt. No. 948 at 61 (N.D. Cal. Sept. 11, 2012). Despite the Guidelines  
10 and the 120-month sentencing recommendations, Judge Illston sentenced both defendants to 36  
11 months in prison.

12 Similarly, in *Marr, Florida*, and *Chandler*, three significant multi-defendant Sherman Act  
13 cases, Judges Hamilton, Donato and Shubb, respectively, sentenced every defendant significantly  
14 below the Guidelines range, including to sentences of 12 months and less.

15 Section 3553(a)(6) requires that Mr. Lischewski’s sentence be significantly below the  
16 range recommended by the Guidelines, like the Sherman Act defendants who have come before  
17 him. Moreover, Mr. Lischewski’s sentence must be far shorter than the ones imposed on the  
18 defendants in the AU Optronics case, whose conduct inarguably affected vastly more commerce.

## 19 5. Deterrence

20 The Court must also weigh the potential deterrent effect of any sentence as to Mr.  
21 Lischewski. Here, there is zero risk that Mr. Lischewski—a first-time offender—will be in this  
22 position again, and that he will reoffend. As a practical matter, he will never again be in a  
23 position to do so: he has been terminated by the company he ran for nearly two decades and is a  
24 convicted felon. *Cf. Gupta*, 904 F. Supp. 2d at 355 (“As to specific deterrence, it seems obvious  
25 that, having suffered such a blow to his reputation, [the defendant] is unlikely to repeat his  
26 transgressions, and no further punishment is needed to achieve this result.”). Even more  
27 significantly, this case has exacted a significant emotional and physical toll, not only on Mr.  
28 Lischewski, but on his family, as well. Mr. Lischewski has already felt the acute pain and

1 embarrassment of prosecution. He stands before this Court and his community with the stain of a  
2 felony conviction. As courts in this circuit have recognized, a “felony conviction and the  
3 conditions of probation constitute[] sufficient specific deterrence to prevent [defendants like Mr.  
4 Lischewski] from engaging in similar conduct in the future.” *See United States v. Edwards*, 595  
5 F.3d 1005, 1011 (9th Cir. 2010).

6 Accordingly, a sentence of no more than 12 months of home confinement would  
7 adequately serve as a deterrent to Mr. Lischewski.

## 8 **6. Protection of the Public**

9 Finally, in determining the sentence to be imposed, the Court must consider the need to  
10 “protect the public from further crimes of the defendant.” 18 U.S.C. § 3553(a)(2)(C). As the  
11 letters submitted in support of Mr. Lischewski show, he is not a criminal from whom the public  
12 needs protection. But the Court need not rely on the letters written in support of Mr. Lischewski  
13 on this issue. The PSR itself recognizes that “it is unlikely that he would be a risk to reoffend.”  
14 PSR, Sentencing Recommendation at 2. Indeed, he is a 59-year-old first-time offender who has  
15 suffered significant shame and had his life turned upside down as a result of his trial and  
16 conviction. As other courts have recognized, these facts make Mr. Lischewski far less likely to  
17 ever again pose any sort of threat to society. *See, e.g., United States v. Carmona-Rodriguez*, No.  
18 04-cr-667-RWS, 2005 WL 840464, at \*4 (S.D.N.Y. Apr. 11, 2005) (imposing a below-Guidelines  
19 sentence on a 55-year-old, first-time offender based on the fact that “defendants who [are] over  
20 the age of forty . . . exhibit markedly lower rates of recidivism”); *see also* United States  
21 Sentencing Commission, *Measuring Recidivism: The Criminal History Computation Of The*  
22 *Federal Sentencing Guidelines*, at p. 28 (2004).

## 23 **C. Mr. Lischewski Should Not Be Required to Serve a Custodial Sentence in a** 24 **Federal Prison in the Midst of the Deadly Coronavirus Pandemic**

25 Finally, though not a factor explicitly mentioned in Section 3553(a), Mr. Lischewski turns  
26 to the global pandemic sweeping the globe and the impact it should have on his sentence. As the  
27 PSR correctly recognizes, “a custodial sentence would be more punitive on [Mr. Lischewski] than  
28

1 someone younger.”<sup>144</sup> COVID-19 has exponentially compounded this concern. In light of the  
 2 ongoing public health emergency, it would be inconsistent with Section 3553(a) for the Court to  
 3 sentence Mr. Lischewski, a 59-year old, first-time, non-violent offender, to a term of  
 4 incarceration in a setting where social distancing is impossible, and where Mr. Lischewski will be  
 5 exposed daily to a real and tangible threat to his life, when home detention is readily available as  
 6 an alternative.

7 Public health experts uniformly warn that prisons are particularly vulnerable to outbreaks  
 8 of COVID-19.<sup>145</sup> Incarcerated individuals “are at special risk of infection, given their living  
 9 situations,” and “may also be less able to participate in proactive measures to keep themselves  
 10 safe;” “infection control is challenging in these settings.”<sup>146</sup> Healthcare experts emphasized such  
 11 concerns recently in a joint letter to President Trump:

12 More than 221,000 people are incarcerated in federal prisons. . . . These people are  
 13 housed cheek-by-jowl, in tightly-packed and poorly-ventilated dormitories; they  
 14 share toilets, showers, and sinks; they wash their bedsheets and clothes infrequently;  
 15 and they often lack access to basic personal hygiene items. These facilities lack the  
 16 ability to separate sick people from well people and to quarantine those who have  
 17 been exposed. They are tinderboxes, ready to explode and endanger our entire  
 18 country. Adequate medical care is hard to provide, even without COVID-19.<sup>147</sup>

17 “Jails and prisons, which are generally ‘congregate settings,’ simply do not have the infrastructure  
 18 to ‘contain’” the spread of COVID-19.”<sup>148</sup>

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19 <sup>144</sup> PSR ¶ 87.

20 <sup>145</sup> For example, the Centers for Disease Control and Prevention (“CDC”) have warned COVID-  
 21 19 poses a heightened risk to those incarcerated in jails and prisons. “*Interim Guidance on Mgmt.*  
 22 *of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities*,” Ctrs. for  
 23 Disease Control and Prevention 2 (Mar. 23, 2020), available at  
<https://www.cdc.gov/coronavirus/2019-ncov/downloads/guidance-correctional-detention.pdf>.

24 <sup>146</sup> “*Achieving A Fair And Effective COVID-19 Response: An Open Letter to Vice-President Mike*  
 25 *Pence, and Other Federal, State, and Local Leaders from Public Health and Legal Experts in the*  
 26 *United States*,” Yale.edu (Mar. 2, 2020), available at <https://bit.ly/2W9V6oS>.

26 <sup>147</sup> “*COVID 19 Public Health Expert Letter to President Trump*,” Scribd.com (Mar. 27, 2020),  
 27 available at [https://www.scribd.com/document/454182211/COVID-19-Public-Health-Expert-](https://www.scribd.com/document/454182211/COVID-19-Public-Health-Expert-Letter-to-Trump)  
[Letter-to-Trump](https://www.scribd.com/document/454182211/COVID-19-Public-Health-Expert-Letter-to-Trump).

28 <sup>148</sup> Premal Dharia, “*The Coronavirus Could Spark a Humanitarian Disaster in Jails and Prisons*,”  
 Slate.com (Mar. 11, 2020), available at <https://bit.ly/3921Jwi>.

1 As a result, authorities in the United States have begun to embrace alternatives to  
 2 incarceration to help stem the spread of the virus among inmates and prison personnel. On March  
 3 26, 2020, Attorney General William Barr issued a memorandum to the Director of the Bureau of  
 4 Prisons (BOP) to express that “at-risk inmates who are non-violent and pose minimal likelihood  
 5 of recidivism” would be “safer serving their sentences in home confinement rather than in BOP  
 6 facilities.”<sup>149</sup> He advised that the BOP should “utilize home confinement, where appropriate, to  
 7 protect the health and safety of BOP personnel and the people in our custody,” and he provided  
 8 criteria for the BOP to use in making release determinations. Those criteria included, “[t]he age  
 9 and vulnerability of the inmate to COVID-19”; “[t]he security level of the facility currently  
 10 holding the inmate, with priority given to inmates residing in low and minimum security  
 11 facilities”; “[t]he inmate’s score under [the BOP’s risk assessment tool used to predict  
 12 recidivism]”<sup>150</sup>; “[w]hether the inmate has a demonstrated and verifiable re-entry plan,” including  
 13 whether he would face a lower risk of contracting COVID-19 upon release than he would face in  
 14 his BOP facility; and “[t]he inmate’s crime of conviction, and assessment of the danger posed by  
 15 the inmate to the community.”<sup>151</sup>

16 On April 3, 2020, Attorney General Barr released a second memorandum to the BOP, in  
 17 which he advised that “emergency conditions [due to COVID-19] are materially affecting the  
 18 functioning of the [BOP]” and ordered the BOP to “move with dispatch” to expand the group of  
 19 prisoners eligible for release into home confinement.<sup>152</sup> The BOP has since “began immediately  
 20 reviewing all inmates who have COVID-19 risk factors, as described by the CDC, to determine

21 \_\_\_\_\_  
 22 <sup>149</sup> “Memorandum for Director of Bureau Prisons,” Office of the Attorney General (Mar. 26,  
 23 2020), available at <https://www.justice.gov/file/1262731/download>; see also Sarah Lynch, “U.S.  
 24 Attorney General Seeks to Expand Home Confinement Option as Coronavirus Spreads in  
 25 Prisons,” Reuters (Mar. 26, 2020), available at <https://reut.rs/2xzF7pQ>.

26 <sup>150</sup> Indeed, under the BOP’s risk assessment tool, Mr. Lischewski falls into the “minimum” risk  
 27 category and would be eligible for early release. See “Prisoner Assessment Toll Targeting  
 28 Estimated Risk and Needs (PATTERN) Interactive Tool,” Urban.org (Sept. 4, 2019), available at  
<https://apps.urban.org/features/risk-assessment/>.

<sup>151</sup> “Memorandum for Director of Bureau Prisons,” Office of the Attorney General (Mar. 26,  
 2020), available at <https://www.justice.gov/file/1262731/download>.

<sup>152</sup> “Memorandum for Director of Bureau of Prisons,” Office of the Attorney General (Apr. 3,  
 2020), available at <https://www.justice.gov/file/1266661/download>.

1 which inmates are suitable for home confinement.”<sup>153</sup> As of May 12, 2020, the BOP had released  
 2 2,431 prisoners from BOP custody pursuant to these directives.<sup>154</sup>

3 Federal courts across the country have recognized the need to protect inmates from these  
 4 dangerous prison conditions, and thus have started to release defendants who, for example, meet  
 5 the BOP criteria. *See, e.g., United States v. Harris*, No. 19-cr-00356-RDM, Dkt. No. 35 (D.D.C.  
 6 Mar. 26, 2020) (observing that “incarcerating Defendant while the current COVID-19 crisis  
 7 continues to expand poses a far greater risk to community safety than the risk posed by  
 8 Defendant’s release to home confinement”); *Jimenez v. Wolf*, No. 18-cv-10225-MLW, Dkt. No.  
 9 507-1 (D. Mass. Mar. 26, 2020) (ordering release of immigrant detainee in the midst of  
 10 the COVID-19 pandemic and noting that “being in a jail enhances risk” and that in jail “social  
 11 distancing is difficult or impossible”); *United States v. Stephens*, No. 15-cr-95-AJN, 2020 WL  
 12 1295155, at \*2 (S.D.N.Y. Mar. 19, 2020) (releasing defendant in light of “the unprecedented and  
 13 extraordinarily dangerous nature of the COVID-19 pandemic”); *Xochihua-James v. Barr*, 798 F.  
 14 App’x 52 (9th Cir. 2020) (*sua sponte* releasing detainee from immigration detention “in light of  
 15 the rapidly escalating public health crisis”); *United States v. Perez*, No. 19-cr-297-PAE, 2020 WL  
 16 1329225 at \*1 (S.D.N.Y. Mar. 19, 2020) (releasing defendant due to the “heightened risk of  
 17 dangerous complications should he contract COVID-19”); *United States v. Huneus*, No. 19-cr-  
 18 10117-IT, Dkt. No. 642 (D. Mass. Mar. 17, 2020) (granting release based on “extraordinary and  
 19 compelling reasons”).

20 <sup>153</sup> “Frequently Asked Questions Regarding Potential Inmate Home Confinement in Response to  
 21 the COVID-19 Pandemic,” Bureau of Prisons (May 2, 2020), available at  
<https://www.bop.gov/coronavirus/faq.jsp>.

22 <sup>154</sup> *See* “COVID-19 Home Confinement Information,” BOP.gov (last accessed May 12, 2020),  
 23 available at <https://www.bop.gov/coronavirus/>. Several states have taken even more aggressive  
 24 approaches. For instance, the Chief Justice of Ohio’s Supreme Court, along with the state’s  
 25 governor, recommended that judges across the state release at-risk inmates and pursue  
 26 alternatives to confinement at sentencing. “Release Ohio Jail Inmates Vulnerable to  
 27 Coronavirus, Chief Justice Urges,” WLWT (Mar. 19, 2020), available at  
<https://www.wlwt.com/article/release-ohio-jail-inmates-vulnerable-to-coronavirus-chief-justice-urges/31788560>. New Jersey has released more than 1,000 inmates statewide as part of a similar  
 28 effort, and three of the largest counties in the nation have followed suit, with Los Angeles  
 County, Santa Clara County, and Harris County (Houston) taking unprecedented steps to reduce  
 their jail populations. Ned Parker, Linda So, Brad Heath, & Grant Smith, “Spread of  
 Coronavirus Accelerates in U.S. Jails and Prisons,” Reuters (Mar. 28, 2020), available at  
<https://reut.rs/2UudMyw>.

1 Yet, in spite of these efforts, the BOP is experiencing a COVID-19 outbreak. On March  
 2 21, 2020, the BOP was reporting only three confirmed cases of COVID-19.<sup>155</sup> As of May 12, the  
 3 BOP reported that it had 3,379 prisoners and 250 staff members with confirmed positive test  
 4 results for COVID-19, and 49 inmate deaths due to the disease.<sup>156</sup> The percentage increase of  
 5 confirmed COVID-19 cases within BOP facilities has continued to rise at an alarming rate. And  
 6 the cases reported by the BOP certainly underestimate the true number of infections due to  
 7 limited testing, delays in reporting, and the presence of asymptomatic inmates and staff.<sup>157</sup>

8 Mr. Lischewski is *exactly* the type of individual that the BOP is releasing to home  
 9 detention. Indeed, Mr. Lischewski meets every one of the Attorney General’s criteria for release:  
 10 he will be 60-years-old in September and thus in the category of “more vulnerable” individuals;  
 11 he has no risk of recidivism; he would be released to his home, where he would be at a  
 12 significantly lower risk of contracting COVID-19 than in a prison; and he poses no danger to any  
 13 other person or the community.<sup>158</sup> To compel Mr. Lischewski to serve a sentence in a federal  
 14 prison in the midst of this pandemic—during a time when the Attorney General, the BOP, and  
 15 courts across the country are working to release prisoners with similar risk profiles—would not  
 16 only unnecessarily endanger Mr. Lischewski’s life, but also undermine these efforts to reduce the  
 17 prison population. As another judge in this District recently observed, “[b]y now it almost goes

18 \_\_\_\_\_  
 19 <sup>155</sup> “*First Federal Inmate Tests Positive for Coronavirus*,” AP Reports, Bloomberg (Mar. 21,  
 20 2020), available at <https://www.bloomberg.com/news/articles/2020-03-21/ap-exclusive-1st-fed-inmate-tests-positive-for-coronavirus>

21 <sup>156</sup> See “*COVID-19 Cases*,” BOP.gov (last accessed May 12, 2020), available at  
 22 <https://www.bop.gov/coronavirus/>. To give just one example, on May 9, 2020, inmate Scott  
 23 Douglas Cutting, Sr., who was sentenced to a 26-month sentence for Aiding and Assisting in the  
 24 Preparation of False Tax Returns, died as a result of complications from COVID-19. He had  
 been imprisoned at the Federal Correctional Institution Terminal Island, in San Pedro, California.  
 See “*Calif. Man Imprisoned For Tax Fraud Dies Of COVID-19*,” Law 360 (May 11, 2020),  
 available at <https://www.law360.com/tax-authority/articles/1272365/calif-man-imprisoned-for-tax-fraud-dies-of-covid-19>.

25 <sup>157</sup> Indeed, non-BOP correctional facilities have seen significantly higher numbers of COVID-19  
 26 cases, as well as inmate deaths. See, e.g., “*70% of Texas Prisoners Tested Have the Coronavirus. Experts Say it’s Time for More Testing and Fewer Inmates*,” The Texas Tribune (May 4, 2020),  
 available at <https://www.texastribune.org/2020/05/04/coronavirus-texas-prisons-testing/>.

27 <sup>158</sup> Congress, too, has recognized the “general appropriateness” of permitting a defendant to serve  
 28 “a sentence other than imprisonment in cases in which the defendant is a first offender who has  
 not been convicted of a crime of violence or an otherwise serious offense.” 28 U.S.C. § 994(j).

1 without saying that we should not be adding to the prison population during the COVID-19  
 2 pandemic if it can be avoided.” See *United States v. Garlock*, No. 18-cr-00418-VC, 2020 WL  
 3 1439980, at \*1 (N.D. Cal. Mar. 25, 2020).

4 Further, the risk to Mr. Lischewski cannot be resolved by postponing a custodial sentence.  
 5 Public health experts confirm that the risks posed by COVID-19 will not subside soon. CDC  
 6 director Dr. Robert Redfield has stated that the CDC is preparing “most likely, for another wave  
 7 that we would anticipate in the late fall, early winter where there will still be a substantial portion  
 8 of Americans that are susceptible.”<sup>159</sup> Even without a second wave, the virus will persist as a  
 9 threat to public health until a vaccine is made available, which could take 12-18 months, if not  
 10 significantly longer.<sup>160</sup>

11 To prevent Mr. Lischewski from moving forward with his life for an indefinite period of  
 12 time, while forcing him to live with the burden of his looming imprisonment, would impose a  
 13 punishment separate and apart from any sentence. Mr. Lischewski wants to begin serving his  
 14 sentence, so that he can begin rebuilding his life and working to support his family. Just as Mr.  
 15 Lischewski had the right to be sentenced “without unnecessary delay” pursuant to Federal Rule of  
 16 Criminal Procedure 32(b), so too should he be able to begin serving his sentence within a  
 17 reasonable period of time and putting the experience of this criminal case behind him. *Cf. United*  
 18 *States v. Carpenter*, 781 F.3d 599, 610 (1st Cir. 2015) (“[W]e see no reason to depart from the  
 19 majority view that assumes that the Sixth Amendment also protects against post-trial delay.”).

20 While COVID-19 spreads through the country’s prisons, any term of incarceration would  
 21 be inconsistent with Section 3553. Indeed, Section 3553(a)(3) requires consideration of the  
 22 “kinds of sentences available,” including alternatives to imprisonment. Taking into account the  
 23 need for just punishment, 18 U.S.C. § 3553(a)(2)(A), the need to protect the public, 18 U.S.C. §

24 <sup>159</sup> See Sam Whitehead “*CDC Director on Models for the Months to Come: ‘This Virus Is Going*  
 25 *to be with Us*,” NPR (Mar. 31, 2020), available at  
 26 <https://www.npr.org/sections/healthshots/2020/03/31/824155179/cdc-director-on-models-for-the-months-to-come-this-virus-is-going-to-be-with-us>.

27 <sup>160</sup> See Noah Higgins-Dunn, “*White House Advisor Fauci Says Coronavirus Vaccine Trial is on*  
 28 *Target and Will Be ‘Ultimate Game Changer*,” CNBC (Apr. 1, 2020), available at  
<https://www.cnbc.com/2020/04/01/white-house-advisor-fauci-says-coronavirus-vaccine-trial-is-on-target-and-will-be-ultimate-game-changer.html>.

1 3553(a)(2)(C), and the need to provide necessary medical care, 18 U.S.C. § 3553(a)(2)(D), Mr.  
2 Lischewski respectfully requests that this Court sentence him to a period of 12 months of home  
3 confinement.

4 **IV. CONCLUSION**

5 For the foregoing reasons, Mr. Lischewski respectfully requests that the Court impose a  
6 sentence of no more than 12 months’ home confinement. Such a sentence would be sufficient,  
7 but not greater than necessary, given the facts of this case and Mr. Lischewski’s character. It  
8 would appropriately reflect the seriousness of the offense, take into account Mr. Lischewski’s  
9 complete lack of criminal history and provide just punishment and deterrence.

10 If the Court determines that, in spite of the present health crisis, a term of imprisonment is  
11 necessary, Mr. Lischewski requests that the Court make the following recommendation for BOP  
12 designation and include this language in the Judgment and Commitment Order:

13  
14 The Court strongly recommends to the Bureau of Prisons that Defendant Christopher  
15 Lischewski be designated to the satellite minimum-security prison camps at USP  
16 Lompoc in California, provided the COVID-19 virus has not infected the camp  
17 locations. Alternatively, if the camps at USP Lompoc are at capacity or infected  
18 with COVID-19, Mr. Lischewski should be designated to the satellite minimum-  
19 security prison camp at FCI Mendota in California, provided the COVID-19 virus  
20 has not infected the camp location.

21  
22 Mr. Lischewski further requests that the Court permit him to self-surrender if he is to be  
23 incarcerated. Mr. Lischewski is a “good candidate for voluntary surrender,” having “kept all

24 ///  
25 ///  
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27 ///

28 court appearances, complied with conditions of pretrial release, and is not viewed as a flight risk



1 or a danger to the community.” PSR, Sentencing Recommendation at 2.

2 Respectfully submitted,

3 Dated: June 1, 2020

4 KEKER, VAN NEST & PETERS LLP

5 By: /s/ Elliot R. Peters

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